



Università
Ca' Foscari
Venezia

Master's Degree programme
in Comparative International Relations

Final Thesis

**EU implementation of the
United Nation's Convention
on the Rights of Persons
with Disabilities**

A deaf perspective

Supervisor

Ch. Prof. Gabriele Asta

Assistant supervisor

Ch. Prof. Sara De Vido

Graduand

Daesy Conte

Matriculation Number 875334

Academic Year

2022 / 2023

“Recognizing and respecting differences in others, and treating everyone like you want them to treat you, will help make our world a better place for everyone. Care...be your best. You don't have to be handicapped to be different. Everyone is different!”

Kim Peek

ABSTRACT

The ratification of the United Nation's Convention on the Rights of Persons with Disabilities by the European Union in 2010 was a turning point in the history of the European Union itself: for the first time, the EU has become a party to an international human rights treaty. And even more important is the fact that this treaty does not concern human rights in general but is rather aimed at people with disabilities.

This case study outlines the role of the European Union in the protection, promotion, and monitoring of the implementation of the UNCRPD in its member states. This thesis analyses the structure and strategies of the EU framework on the implementation of the Convention and considers their effects on the deaf population so far.

This work first provides a general overview on the United Nation's Convention on the Rights of Persons with Disabilities. Legal basis and EU values will be analyzed in relation to the negotiation and ratification phases that led the Convention to become binding for the EU and its Member States. It then moves to the outlining of the EU framework on the implementation of the UNCRPD, the structure and tasks of which will be outlined together with the cooperation with national monitoring frameworks and the strategies adopted by the EU framework itself. Subsequently, this work will focus on a specific disability, namely deafness outlining both the improvements and the pending issues identifying possible solutions towards a deeper implementation of the Convention.

The research method will be qualitative and predominantly analytical, with descriptive strokes, with the retrieval of primary documentary evidence to gain in-depth knowledge on the topic and a variety of secondary sources to further investigate the case-study.

LIST OF ABBREVIATIONS

AG	Advocate General
ASEAN	Association of Southeast Asian Nations
BGSL	Bulgarian Sign Language
Card	EU Disability Card
Charter	Charter of Fundamental Rights of the European Union
Council	Council of the European Union
Commission	European Commission
CoRPD	Committee on the Rights of Persons with Disabilities
CRPD/Convention	United Nations Convention on the Rights of Persons with Disabilities
CFSP	Common Foreign and Security Policy
DPOs	Disabled Persons' Organizations
ECHR	European Convention on Human Rights
CJEU/Court	Court of Justice of the European Union
EDF	European Disability Forum

EEC	European Economic Community
EESC	European Economic and Social Committee
EMPL	Committee on Employment and Social Affairs
ENNHRI	European Network of National Human Rights Institutions
ENO	European Network of Ombudsmen
EP/Parliament	European Parliament
ESF	European Social Fund
ESI	European Structural and Investment
EU/Union	European Union
Equinet	European Network of Equality Bodies
FRA	European Union Agency for Fundamental Rights
FRP	Fundamental Rights Platform
HLGD	High Level Group on Disability
ICT	Information and communication technology
LIBE	Committee on Civil Liberties, Justice and Home Affairs
LIS	Italian Sign Language

MEP	Member of the European Parliament
NHRIs	National Human Rights Institutions
OHCHR	United Nations Human Rights Office of the High Commissioner
OPDs	Organizations of persons with disabilities
PETI	European Parliament's Petitions Committee
Pillar	European Pillar of Social Rights
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights

TABLE OF CONTENTS

ABSTRACT	5
LIST OF ABBREVIATIONS	6
TABLE OF CONTENTS	9
CHAPTER 1: GENERAL INTRODUCTION	12
1. EVOLUTION OF THE CONCEPT OF DISABILITY	12
2. DIFFUSION OF DISABILITY RIGHTS IN EUROPE	14
3. OBJECTIVES	17
4. STRUCTURE	18
CHAPTER 2: UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES	19
1. THE CONVENTION	19
2. EUROPEAN UNION RATIFICATION	22
2.1. LEGAL BASES FOR THE RATIFICATION	24
2.2. EU VALUES AND THE RATIFICATION	27
3. CONSEQUENCES OF THE EU RATIFICATION	36
CHAPTER 3: EU FRAMEWORK ON THE IMPLEMENTATION OF THE UNCRPD	41
1. COMPOSITION	41
2. TASKS	43
2.1. PROMOTION	44
2.2. PROTECTION	49
2.3. MONITORING	53
3. COOPERATION WITH DOMESTIC MONITORING FRAMEWORKS	57
3.1. EUROPEAN NETWORK OF NATIONAL HUMAN RIGHTS INSTITUTIONS	58
3.2. EUROPEAN NETWORK OF EQUALITY BODIES	61
3.3. EUROPEAN NETWORK OF OMBUDSMEN	65
4. STRATEGY FOR THE RIGHTS OF PERSONS WITH DISABILITIES 2010-2020: A RENEWED COMMITMENT TO A BARRIER-FREE EUROPE	68

4.1. ACCESSIBILITY	69
4.2. PARTICIPATION	72
4.3. EQUALITY	78
4.4. EMPLOYMENT	82
4.5. EDUCATION AND TRAINING	86
4.6. SOCIAL PROTECTION	88
4.7. HEALTH	91
4.8. EXTERNAL ACTION	93
5. STRATEGY FOR THE RIGHTS OF PERSONS WITH DISABILITIES 2021-2030: A UNION OF EQUALITY	96
5.1. ACCESSIBILITY	98
5.2. EU RIGHTS ENJOYMENT	100
5.3. DECENT QUALITY OF LIFE AND LIVING INDEPENDENTLY	101
5.4. EQUAL ACCESS AND NON-DISCRIMINATION	105
5.5. EXTERNAL ACTION	107
5.6. EFFICIENT DELIVERY OF THE STRATEGY	108
5.7. LEADING BY EXAMPLE	109
5.8. AWARENESS, GOVERNANCE AND MEASURING PROGRESS	110
<u>CHAPTER 4: A DEAF PERSPECTIVE</u>	114
1. IMPROVEMENTS	119
2. A HETEROGENEOUS APPLICATION OF EU PROVISIONS AMONG MEMBER STATES	126
3. PATH TOWARDS A DEEPER IMPLEMENTATION OF THE CRPD WITHIN THE EU	130
<u>CHAPTER 5: CONCLUSIONS</u>	138
<u>CHAPTER 6: REFERENCES</u>	142
1. BIBLIOGRAPHY	142
2. ONLINE RESOURCES	143
3. OFFICIAL INSTITUTIONAL DOCUMENTS	152

CHAPTER 1: GENERAL INTRODUCTION

1. EVOLUTION OF THE CONCEPT OF DISABILITY

The concept of disability has changed several times throughout the last centuries from being a defect or a cause of discrimination, even becoming a cause of eugenics, to a challenge towards the creation of a more inclusive world.¹

Since ancient times, disability has been considered a problem, a defect, a cause of inferiority, and even a divine punishment. From Plato to Aristotle, from the Greeks to the Romans, persons with disabilities were stigmatized and the mother was held primarily responsible for the deformity of her child.² In other words, the monstrosity of a child is a mirror of the blames of the mother, or rather the punishment.

The Church nourished this vision of disability, that is, as a result of the intervention of diabolical forces.³ Afterwards, with the spread of Christianity the compassion towards people with disabilities became a widespread feeling among the people who met them. In fact, they were considered weak and unlucky subjects,⁴ in respect of which pietistic behaviors became widespread. However, this feeling of piety was soon replaced by medicalization, with the aim of excluding people with disabilities from society confining them to hospitals and madhouses.⁵

Soon after the industrial revolution and the birth of new technologies, disability became a social issue: accidents while using the new technologies caused physical disabilities and prevented

¹ This does not mean that persons with disabilities do not face disabilities: discrimination was reduced but not eradicated, and people with different kinds of impairment face new types of discrimination. The latter will be illustrated in sections 4 and 5 of chapter 3.

² CARIO, *Breve storia della disabilità*, 7 July 2014, www.educare.it.

³ STILO, *La disabilità nella storia*, Rome, 2013, p. 14.

⁴ CUOLLO, *La storia della disabilità: un riassunto per capire il presente*, 2 July 2021, www.accessiway.com.

⁵ FOUCAULT, *Storia della follia nell'età classica*, Milan, 1998.

people from going back to work,⁶ thus being condemned to a position of social marginality. In those years in fact, people started considering that to be worthy of being part of society one had to actively participate in its productivity, and of course people with disabilities were not able to do so.

This ideal of perfection finds its maximum manifestation under Nazism, the actions of which began precisely against people with disabilities, who were considered as lives unworthy of being lived.⁷ Nazi genocide began therefore with the aim of eliminating disability through sterilization of adults, euthanasia of children and work in concentration camps.⁸ As a matter of fact, a mass destruction of persons with disabilities was planned, especially of people with ‘mental deficits’, the numbers of which was increasing in numbers and was therefore considered as the worst threat of the time.

The approach to disability remained almost unchanged until the 1970s, when a significant change in the conception of disability can be registered with the introduction of the inalienable rights of people with disabilities in different fields, from education to work. Specifically, the concept of human rights of persons with disabilities started being internationally accepted.

In subsequent years, the rights of people with disabilities have been at a standstill until 2006, when the General assembly of the United Nations adopted the Convention on the Rights of Persons with Disabilities (hereafter “CRPD”).⁹ This started a series of mobilizations both at local and international level in all areas concerned, which begin to bear fruit, but for which there is still much to do.

In today’s society, disability is considered to be a different type of normality characterized by difficulties, which can be turned

⁶ AMENDOLAGINE, *Da castigo degli dei a diversamente abili: l'identità sociale del disabile nel corso del tempo*, 7 November 2014, www.stateofmind.it.

⁷ FRIEDLANDER, *Le origini del genocidio nazista: dall'eutanasia alla soluzione finale*, Rome, 1997.

⁸ CUOLLO, *op. cit.*

⁹ DE MEULDER, MURRAY, MCKEE, *The Legal Recognition of Sign Languages – Advocacy and Outcomes Around the World*, Bristol, 2019, pp. 4-5.

into strength. For this reason, it is appropriate to consider that disability is a condition that can be mitigated through the creation of an accessible context,¹⁰ which is an ethical and moral duty of an inclusive society.

The evolution of the understanding of disability allows to make the distinction between the implications of the use of a precise term or expression when referring to this group of people. The term ‘handicapped’ has actually almost fallen in disuse due to its referral to a disadvantage in filling a role in life, the idea of which has always been at the basis of the stigma people with disabilities face every day.

Following the transition from the medical-charity model to the social-human rights model, even the term ‘disabled’ shall be preferably avoided. The focus should be on the fact that ‘dis-ability’ depends on the environment in which persons with disabilities live¹¹ and which settles obstacles in their daily life preventing them from enjoying their fundamental rights.

For these reasons, this text will refer to this group of people as ‘persons with disabilities’ only, concentrating on what they can do rather than underlining their impairments and difficulties putting obstacles to their self-determination.

2. DIFFUSION OF DISABILITY RIGHTS IN EUROPE

Born with an economic purpose and aiming at ensuring peace between the European states, the European Economic Community did not make human rights one of its priorities. However, the transition from the EEC to the European Union after the Maastricht Treaty in 1992 has allowed the enlargement of its competences¹². Although it did not have the competence to act on human rights matters, the

¹⁰ COLASANTO, *La libertà di essere imperfetti; la bellezza di essere fragili*, 2020, www.academia.edu.

¹¹ VANHALA, *The Diffusion of Disability Rights in Europe*, in *Human Rights Quarterly* vol. 37, no. 4, 2015, p. 833, www.discovery.ucl.ac.uk.

¹² For a more detailed description of the enlargement of EU competences, see section 2.2.IV of chapter 2 of this paper.

European Union became progressively involved in the protection of human rights, including the rights of persons with disabilities.

As a subject of law and policy, disability has always generally been considered as a social security, health, welfare and charity issue rather than a citizenship and human rights one.¹³

European countries and the EU have always been avant-gardist in the transformation of the concept of disability from a mere medical condition to a social condition requiring the attribution of human rights. In point of fact, an anti-discrimination provision was already included at EU level in 1997 through Article 13 of the Treaty of Amsterdam empowering the Council to “take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”¹⁴ acting unanimously on the proposal of the Commission and after having consulted the European Parliament.

The provisions enshrined in the aforementioned article are not legally binding, since they legitimize the use of a special legislative procedure by the Council in anti-discrimination policies, but it does not regulate the characteristics thereof. The Council of the European Union adopted therefore in 2000 the Equal Treatment Framework Directive defining the minimum standards of legal protection against discrimination based on disability, age, religion, belief or sexual orientation in the EU.¹⁵ This Directive was specifically referred to the labour market and concerned the need to establish an equal treatment among all citizens,¹⁶ but it led member states to adopt relevant

¹³ DEGENER, *Disability as a Subject of International Human Rights Law and Comparative Discrimination Law*, in STANLEY ET AL., *The Human Rights Persons with Intellectual Disabilities*, May 2005, p. 151.

¹⁴ European Union, *Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts*, 2 October 1997, OJ C 340 of 10 November 1997, art. 1 para. 8, www.eur-lex.europa.eu.

¹⁵ VANHALA, *op. cit.*, p. 843.

¹⁶ Council directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303 of 2 December 2000, www.eur-lex.europa.eu.

provisions within national legislation between 2002 and 2004.

On 30 October 2003, the European Commission proposed a European action plan, namely the European Union Disability Action Plan, aimed at setting out a sustainable and operational approach to disability issues in the EU. The proposal was based on 3 main pillars which constituted the main objectives to be achieved between 2004 and 2010, namely an equal treatment in employment, the reinforcement of the mainstream of disability issues and the improvement in accessibility for all persons with disabilities.¹⁷

The commitment of the Commission to improve the respect of the rights of persons with disabilities was reinforced by the inclusion of the High-Level Group on Disability (hereafter “HLGD”)¹⁸ within its expert groups on 4 October 2005. Its task was to establish close cooperation between the Commission, the civil society and the institutions of member states on disability-related issues and facilitate the exchange of information, experiences and views of the parties.¹⁹ The policy areas in which the activity of the HLGD was recognized were human rights, employment and social affairs, and justice and home affairs.

After the entry into force of the Lisbon Treaty in 2009, the EU Charter of Fundamental Rights became legally binding²⁰. It was drafted in 2000 and contained the most important personal freedoms and rights to be granted within the EU. The peculiarity of this document was its legal value, since it was signed by the presidents of the three main EU institutions and was therefore only binding for EU institutions themselves and not for member states. Seven years later,

¹⁷ European Commission Communication COM/2003/0650 of 30 October 2003 concerning a European action plan for equal opportunities for people with disabilities, www.eur-lex.europa.eu.

¹⁸ As reported on the official website of the Commission, this expert group was closed in 2020. Its last meeting was held on 15 October 2020 and did not concern the conclusion of the activities of the group.

¹⁹ The official information on the HLDG can be consulted within the register of Commission expert groups available at www.ec.europa.eu.

²⁰ A detailed explanation of this transition will be provided in section 2.2.IV of chapter 2.

article 6 of the Treaty of Lisbon recognized the Charter to have the same legal value as all other treaties, placing it among the primary sources of EU law.²¹ Among the rights and freedoms granted to EU citizens, the Charter dedicates two articles to two fundamental aspects on which the UN General assembly based the CRPD in 2006. Articles 21 and 26 refer respectively to non-discrimination and to the integration of persons with disabilities. Through these two provisions, the Charter prohibits any kind of discrimination, including the one based on disability, and recognizes the right of persons with disabilities to “benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the (European) [c]ommunity”.²²

The EU ratification of the CRPD in 2010 is therefore not a starting point in addressing the rights of persons with disabilities at EU level, but it rather proves the strong commitment of the Union in the field and allows the organization to be more active in the protection of the rights of an almost disregarded minority group. As a matter of facts, the ratification of the CRPD enhanced the EU commitment towards a truly barrier-free Europe for persons with disabilities already introduced through the EU Disability Action Plan 2004-2010.

3. OBJECTIVES

The ratification of the United Nations Convention on the Rights of Persons with Disabilities by the European Union in 2010 was a turning point in the history of the European Union itself: for the first time, the EU has become a party to an international human rights treaty. And even more important is the fact that this treaty does not concern human rights in general but is rather aimed at people with disabilities.

The corpus of sources consulted for the purposes of this case

²¹ ANDERSON, MURPHY, *The Charter of Fundamental Rights: History and Prospects in Post-Lisbon Europe*, EUI LAW, 2011, [www. hdl.handle.net](http://www.hdl.handle.net).

²² European Union, *Charter of Fundamental Rights of the European Union*, OJ C 326 of 26 October 2012, art. 26, www.eur-lex.europa.eu.

study is composed of mainly primary sources including international treaties, legal acts adopted by EU institutions and national governments, but also documents and reports adopted by NGOs and associations dealing with the rights of persons with disabilities.

The present paper outlines the role of the European Union in the protection, promotion, and monitoring of the implementation of the United Nations CRPD in its member states. This thesis analyses the structure and strategies of the EU framework on the implementation of the Convention and considers their effects on the deaf population so far.

4. STRUCTURE

This work first provides a general overview on the United Nations Convention on the Rights of Persons with Disabilities. Legal basis and EU values will be analyzed in relation to the negotiation and ratification phases that led the Convention to be binding for EU institutions and its member states. It then moves to the outlining of the EU framework on the implementation of the CRPD, the structure and tasks of which will be outlined together with the cooperation with national monitoring frameworks and the strategies adopted by the EU framework itself. Finally, this work will focus on a specific disability, namely deafness, outlining both the improvements and the implementation gaps of the EU framework.

CHAPTER 2: UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

1. THE CONVENTION

The number of persons with disabilities is progressively increasing and has risen to 1.3 billion, involving 15% of the global population.²³ They encounter many difficulties in everyday life, even though several steps have been taken to foster the inclusion of people with disabilities within the society. Among them, the first important step was the establishment of the International Day of Persons with Disabilities by the United Nations in 1992²⁴ with the aim of promoting the rights and welfare of persons with disabilities in all fields.

Since then, the international community has not been particularly active in the protection of the rights of persons with disabilities until 2001, when the General assembly of the United Nations communicated through the newly established Ad Hoc Committee its intention to adopt a ‘disability-specific’ human rights convention.²⁵ Soon after the communication, the committee held eight sessions of negotiations from 2002 to 2006²⁶ that boasted the participation of persons with disabilities in the decision-making process for the first time in history. This respects for the first time the need of persons with disabilities to actively participate in the decision-making process, which has given rise to the widespread of the motto ‘Nothing about Us, Without Us’, first invoked in the 1990s by the South African disability rights movement. Used by most of the organizations led by persons with disabilities at national, regional and international level, it aims at taking control over decisions affecting

²³ World Health Organization, *Disability*, 2022, www.who.int.

²⁴ UN General Assembly, International Day of Disabled People, adopted on 14 October 1992, UN Doc. A/RES/47/3, www.undocs.org.

²⁵ HARPUR, *Embracing the new disability rights paradigm: the importance of the Convention on the Rights of Persons with Disabilities*, in MOORE (ed.), *Disability & Society*, Vol. 27, No. 1, January 2012, p. 4.

²⁶ United Nations Department of Economic and Social Affairs, Convention on the Rights of Persons with Disabilities (CRPD), www.social.desa.un.org.

their own lives, overcoming systemic oppression of which they have always been victims.²⁷ The United Nations responded to the call of the organizations of persons with disabilities (hereafter “OPDs”) worldwide by actively involving them in the elaboration of the Convention. In doing so, the UN managed to show to the entire world that the right to participation is not an utopia, but is rather the basis for the development of “truly inclusive societies, in which all voices are heard and persons with disabilities can help shape a better world for all”.²⁸

Despite the participation of two opposite categories involved, namely the states and the ‘disabled people’s organizations’, the discussions resulted in the fastest negotiated human rights treaty. The negotiations led indeed to the prompt presentation of a draft proposal to the General assembly on 5 December 2006, which was immediately followed by the adoption by unanimity of the Convention on the Rights of Persons with Disabilities on December 13 of the same year²⁹ with binding force for the ratifying states, aiming at the improvement in the safeguard of the rights of persons with disabilities. The Convention entered into force on 3 May 2008 together with the Optional Protocol attached to it establishing an individual complaints mechanism for the Convention itself.

The CRPD did not create new rights for persons with disabilities that were not yet contained in already existing legislations, but rather clarified and elaborated already existing human rights within the disability field. Indeed, the Convention provided for a global human rights status: it does not give any definition of the concept of disability, but it provides in Article 2 a comprehensive definition of discrimination based on disability, which includes “any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition,

²⁷ PFEIFER, *From “Nothing about Us Without Us” to “Nothing Without Us”*, 2022, www.ndi.org.

²⁸ United Nations Department of Economic and Social Affairs, *International Day of Disabled Persons 2004 – Nothing about Us, Without Us*, 2004, www.un.org.

²⁹ AMENDOLAGINE, *op, cit.*

enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.³⁰

The aim of the Convention is to promote, protect and ensure full and equal enjoyment of human rights and fundamental freedoms to all people with disabilities without any kind of discrimination. To achieve this goal, States Parties shall ban all kind of discrimination based on disability whatever the origin could be and give legal protection against discriminatory acts.³¹

An important accent was also put on the enhancement of the respect for the inherent dignity of persons with disabilities, to which direct and indirect references can be identified throughout the whole document. As a matter of facts, it was introduced in the preamble and was subsequently resumed in articles 1, 3, 8, 16, 24 and 25.³² Each of these articles deals with a different aspect to which the rights enshrined in the Convention are to be applied, however, dignity appears to be the leitmotif of the entire document and the concept on which the actions of the State Parties are to be based.

In order to fully monitor the accomplishment of the CRPD by its parties, the UN General assembly established through the Optional Protocol the Committee on the Rights of Persons with Disabilities (hereafter “CoRPD”). Furthermore, the Optional Protocol introduced the obligation for all States Parties to report to the CoRPD the status of enforcement of the rights enshrined in the Convention every four years. The reports provided by the States Parties are to be discussed and evaluated during the meeting sessions.

The control of the committee over the States Parties was also anticipated in Article 33 of the Convention, which required the ratifying parties to establish a domestic framework promoting, protecting and monitoring the implementation of the provisions

³⁰ United Nations General Assembly, *Convention on the Rights of Persons with Disabilities*, adopted on 13 December 2006, UN Doc. A/RES/61/106, art. 2, www.un.org.

³¹ *Ibid.*, art. 23.

³² UN General Assembly, *CRPD*, cit.

enshrined in the CRPD.

Through this legislative act the United Nations finally managed in actual fact to change after decades of hard work the perception of people with disabilities from mere objects of mercy, protection and medical treatment to subjects with rights. The United Nations recognized that disability was a human rights issue to be addressed at international level,³³ and the Convention was the starting point to change the perception of the international community as a whole towards disability.

The Convention has a great historical importance from different points of view. On the one hand, it has recorded the highest number of signatories in history to a UN Convention on its opening day on 30 March 2007, reaching 82 signatories.³⁴ On the other hand, it was the first human rights convention to be open for signature by regional integration organizations.³⁵ This specific feature allowed the European Union to sign and ratify in 2010 its first human rights treaty.

Being the signature of the Convention open for both the EU and its member states, it is generally defined as a mixed agreement.³⁶ This is due to the fact that there is a joint jurisdiction between the Union and its member states: part of the provisions of the Convention falls within the competence of the EU and another part falls within the powers of domestic governments.

2. EUROPEAN UNION RATIFICATION

The European Union had never become a party to an

³³ Press release IP/07/446 of the European Commission on 30 March 2007 concerning the signature of the UN treaty on disability rights, www.commission.europa.eu.

³⁴ SEATZU, *La Convenzione delle Nazioni unite sui diritti delle persone disabili: i principi fondamentali*, in *Diritti umani e diritto internazionale*, Vol. 3, 2008, p. 535.

³⁵ ULDRY, *The Ratification of the UN Convention on the Rights of Persons with Disabilities by the European Union*, 2016, p. 6, www.edf-feph.org.

³⁶ Further information on this type of agreements will be provided in section 2.1 of this chapter dealing with the ratification of the Convention by the EU.

international human rights treaty before 2010, when it ratified the CRPD. What is even more important is the fact that the first international human rights treaty ever ratified by the EU was aimed at the protection and promotion of the rights of persons with disabilities.

The European Commission has played an active role in the negotiations prior to ratification, which resulted in the Commission being a “focal point for matters relating to the implementation of the [...] Convention.”³⁷ This means that the Commission represents the EU when reporting to the CoRPD. Its detailed functions were laid down in the Code of Conduct³⁸ establishing the competences of the EU and its member states in the implementation of the Convention. As soon as the negotiations started, the Commission recognized the CRPD as being in line with EU legislation and jurisprudence, especially when it comes to the concept of equality and the definition of the concept of discrimination as well as the inclusion of a ‘reasonable accommodation’ among the solutions to fight discrimination.

The European Union has been the only regional integration organization to become part to a core UN human rights convention and was among the first signatories on the precise day in which the Convention became open for signature, on 30 March 2007.³⁹ For the sake of completeness, it is important to point out that the possibility for regional integration organization to become a party to the CRPD could be applied to all the organizations⁴⁰ of this kind. In this sense, the Association of Southeast Asian Nations (hereafter “ASEAN”), inter alia, could have been one of the contracting parties to the Convention. However, the definition of this subject of international law was narrowed to organizations “constituted by sovereign [s]tates of a given region, to which its member states have *transferred competence* in respect of *matters governed by the [...] Convention*”

³⁷ Council decision (EC) no 48/2010 of 26 November 2009, OJ L 23 of 27 January 2010, art. 3, www.eur-lex.europa.eu.

³⁸ *Ibid.*, Annex II.

³⁹ Press release IP/07/446, *op. cit.*

⁴⁰ CRPD, *cit.*, art. 42.

(emphasis added).⁴¹ As the oldest and the most developed regional integration organization, the EU was – and still is – the only one to meet the aforementioned requirement, becoming the only ‘non-state’ contracting party to the CRPD. The integration structures that are typical of the EU are still far from being reached by the ASEAN, which addresses actually only economic and environmental issues⁴² as a collective entity, lacking therefore of the competence in social policy area, to which most of the provisions of the Convention refer.

Although the formal ratification occurred on 23 December 2010, the EU had already adopted its Act of Accession to the CRPD in 2009 through Decision 2010/48/EC. The Council Decision had a binding effect both on EU institutions and Member States,⁴³ and the ratification placed the Convention among the intermediate sources of EU law.⁴⁴ In this sense, the CRPD has a quasi-constitutional status within EU law, since it is placed below the Treaties and above secondary sources in EU law hierarchy.

2.1. Legal bases for the ratification

The legal bases allowing the European Union to ratify the CRPD can be identified both in the constitutive treaties of the Union, namely the Treaty on the European Union (hereafter “TEU”) and the Treaty on the Functioning of the European Union (hereafter “TFEU”), and in the Convention itself.

The legal personality of the European Union is explicitly enshrined by article 47 TEU, but it also derives from article 216(1) TFEU. The latter provides for the possibility of the Union to “conclude an agreement with one or more third countries or international organizations,” which shall be binding for both EU institutions and member states, in order to achieve “one of the

⁴¹ *Ibid.*, art. 44(1).

⁴² CIESIN, *Regional Economic Integration Organizations*, www.ciesin.org.

⁴³ Council decision (EC) no 48/2010, cit.

⁴⁴ In the hierarchical structure of EU law, intermediate sources are placed below primary sources (Constitutive Treaties, Accession agreements, the Charter and general principles) and above the acts of EU institutions (secondary sources). Indeed, they are not primary sources, but they are binding for EU institutions and EU member states (art. 216 para. 2 TEU).

objectives referred to in the Treaties”.⁴⁵ However, the complementary aspect enshrined in the TFEU does not replace a characteristic that is typical of the EU, namely the possibility for the Union and its member states to act simultaneously in the external sphere.⁴⁶ The EU, therefore, does not have an ‘absolute’ treaty-making power. Indeed, the member states limit the possibility for the EU to conclude international agreements on its own to the little cases in which the agreement comes wholly within the EU exclusive competences⁴⁷ enlisted in art. 3 TFEU. Still, since most of EU competences fall within the category of shared competence, one may improperly consider mixed agreements as the rule for international agreements, with some exceptions. Whereas it is true that most of EU competences are shared with member states, mixity is not the general rule but is rather at the discretion of the Council⁴⁸ to require a mixed agreement when shared competences are at issue. Nevertheless, mixity is imperative when the agreement covers matters that fall within the exclusive competences⁴⁹ of the EU and its member states. Technically speaking, ‘mixed agreements’ are international agreements concluded by the EU and its member states (not necessarily all of them), and one or more subjects of international law.⁵⁰ As far as the convention at issue is concerned, the CRPD is an example of mandatory mixed agreement in light of the presence of exclusive competences⁵¹ of the

⁴⁵ Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326 of 26 October 2012, art. 216, para. 1, www.eur-lex.europa.eu.

⁴⁶ SCHÜTZE, *Foreign Affairs and the EU Constitution: Selected Essays*, Cambridge University Press, 2014, p. 173.

⁴⁷ CHAMON, *Negotiation, ratification and implementation of the CRPD and its status in the EU legal order*, in FERRI, BRODERICK (eds.), *Research Handbook on EU Disability Law*, 2020, p. 53.

⁴⁸ CHAMON, *Constitutional limits to the political choice for mixity*, in NEFRAMI, GATTI (eds.), *Constitutional issues of EU external relations law*, p. 155.

⁴⁹ ROSAS, *Mixity Past, Present and Future: Some Observations*, in CHAMON, GOVAERE (eds.), *EU External Relations Post-Lisbon. The Law and Practice of Facultative Mixity*, Leiden, Brill, 2020, pp. 8-16.

⁵⁰ HELISKOSKI, *Mixed Agreements: The EU Law Fundamentals*, in SCHÜTZE, TRIDIMAS (eds.), *Oxford principles of European Union Law*, Vol. 1, Oxford, March 2018, p. 1178.

⁵¹ CHAMON, *Constitutional limits to the Political Choice for Mixity*, cit., p. 141.

member states,⁵² notwithstanding the prevalence of shared competences of the provisions thereof. The nature of the agreement implies the need for the Commission, the Council and the member states to agree on a code of conduct establishing the respective competences for each provision and their *modus operandi*,⁵³ as well as the representation and voting⁵⁴ in the bodies derived from the Convention. The aforementioned division entails the fact that the commitment of the EU and its member states does not include the provisions that are not an integral part of EU law,⁵⁵ which can bind member states only as independent subjects of international law in case they are contracting parties to the Convention. Concretely, although those provisions form part of an agreement concluded at EU level, the Commission will not be allowed to start infringement proceedings against member states failing to implement those provisions, just as the interpretation thereof will be out of the jurisdiction of the CJEU.

As regards the specificity of the issue addressed by the UN in this convention, the Council derived its competence to become a party to the Convention from articles 19 and 114 TFEU. The two articles concern respectively the abolishment of every kind of discrimination and the internal market. Although the latter does not seem to address the issue the Convention tries to solve, it actually does since it deals with the adoption of laws facilitating the functioning of the internal market and eliminating the barriers deriving from the inconsistencies in domestic legislation that prevent people with disabilities from

⁵² Inter alia, Legal capacity (art. 12), Nationality and registration at birth (art. 18), sign language recognition (art. 22), right to marriage (art. 23)

⁵³ In matters of exclusive competence of the member states, they will aim at the elaboration of coordinated positions when possible; for matters of exclusive EU competence, the EU will aim at the elaboration of its proper positions; for matters of shared, supporting and supplementing competence both the EU and member states shall elaborate common positions.

⁵⁴ CHAMON, *Negotiation, ratification and implementation of the CRPD*, cit., p. 58.

⁵⁵ HELISKOSKI, *Mixed Agreements as a technique for organizing the international relations of the European Community and its Member States*, in KOSKENNIEMI (ed.), *Erik Castrén Institute monographs on international law and human rights*, Vol. 2, 2001, p. 62.

participating in the internal market.⁵⁶ This last aspect includes the need to foster the harmonization of the legal framework within the EU member states, allowing persons with disabilities to participate in the internal market both as labour market participants and goods producers or consumers.

The aforementioned articles have been defined by the Union itself as the legal bases in the ratification of the Convention jointly with the procedural provisions enshrined in article 218 TFEU⁵⁷ providing the procedure to be followed in the conclusion of agreements with third countries or international organizations.

The last legal bases for the ratification of the Convention can be found in the CRPD itself, namely in article 44. For the first time, a human rights convention was open for signature by regional integration organizations, and the characteristics of this new possible party needed therefore to be identified. As a matter of facts, article 44 provides for a definition of regional integration organizations, which shall be “constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed” by the Convention itself. Subsequently, it extends the notion of ‘States Parties’ to the regional integration organizations⁵⁸ which shall become party of the Convention and attributes them the right to vote in the Conference⁵⁹ of States Parties.

All the aforementioned articles allowed the European Union to become a party to the Convention reaffirming its commitment to the protection of human rights and freedoms to be granted to persons with disabilities.

2.2. EU values and the ratification

Article 2 TEU provides a list of the values on which the Union is based, namely respect for human dignity, equality, freedom, human rights, democracy and rule of law. These values are common to all the member states and are a pre-requisite for the accession of a new

⁵⁶ ULDRY, *op. cit.*, p. 16.

⁵⁷ *Ibid.*, p. 17.

⁵⁸ CRPD, *cit.*, art. 44 para. 2.

⁵⁹ CRPD, *cit.*, art. 44 para. 4.

member state in the community.

It is in name of the values the EU shall uphold and promote both on its internal and external dimension that the Convention has been ratified for the first time by a regional integration organization. This section will not take into account all the EU values but will rather tackle with the ones the writer considers to be the four main pillars on which the rights of persons with disabilities are based, namely the first four listed above, the respect of which makes it possible for member states to fully comply with the other EU values too. These same values will be reflected in the strategies established by the EU to implement the provisions enshrined in the CRPD within its territory.

I. Human dignity

Every human being owns a special value that is intrinsic to his humanity⁶⁰ and is therefore worthy of respect. The very fact of being a human being makes every single individual worthy of respect. When it comes to persons with disabilities however, what may seem obvious in everyday life is actually not for people suffering of an impairment of any kind.

In the specific case of persons with disabilities, human dignity is the founding moral principle of a truly inclusive and universal human rights framework, recognizing their special needs and living conditions without stigmatizing them for their impairments, but rather considering them as bearer of human rights.⁶¹ Human dignity is the foundation of rights protection and shall be intended as intrinsic in the human being as such.

The European Union has always underlined the relevance of human dignity as the real basis of fundamental rights. It is not by chance that the very first article of the EU Charter of Fundamental Rights enshrines the inviolability of human dignity, which shall not

⁶⁰ ULDRY, *op. cit.*, p. 19.

⁶¹ GRAUMANN, *Human Dignity and People with Disabilities*, in DÜWELL, BRAARVIG, BROWNSWORD, MIETH, *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives*, Cambridge, 2014, p. 484 ff.

only be respected but also protected.⁶²

International law provides human dignity with “attention, recognition and protection in all prominent human rights agreements”,⁶³ but the first human rights instrument asserting the subjective right to human dignity is the Charter. The latter actually allows individuals to claim before the Court violations of their human dignity for the first time.⁶⁴ It is important to underline, however, that the nature of the Charter described in the previous section leads to a limited scope thereof. After all, the Charter did not extend the competences of the Union and is therefore only binding for member states when implementing EU law. Nevertheless, the respect and protection of human dignity is and will always be the “EU’s top job”,⁶⁵ a major priority of the EU as whole as one of its founding values regardless of the people holding the rotating presidencies of EU institutions.

The respect and protection of human dignity becomes even more important when it comes to persons with disabilities, the group whose dignity was perhaps the most violated in world history. The EU has proven its strong commitment in the protection of human dignity and the rights of persons with disabilities, and the ratification of the CRPD put these two aspects of EU politics together pushing forward the EU actions aiming at fostering the enjoyment of fundamental rights by persons with disabilities.

Persons with disabilities are finally considered worthy of respect since the transition from the medical model to the social model occurred, and the protection of their dignity derives from the enjoyment of social rights across the Union.⁶⁶ As a matter of facts, the former perception of ‘disability’ hurt the dignity of persons with

⁶² European Union, *Charter*, cit., art. 1.

⁶³ NEFFE, *Protecting Human Dignity is the EU’s Top Job*, in Euractiv, 2019, www.euractiv.com.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ VAN HOUT, *Foreword to Dignity for All: Realizing Social Rights in the EU*, edited by the United Nations Human Rights Regional Office for Europe, 2021, www.europe.ohchr.org.

disabilities⁶⁷ and the European Union has been one of the pioneers of the right for human dignity for all its citizens.

II. Equality

If it is true that the very fact of being a human being makes every single individual worthy of respect, then it is also true that everyone shall be ‘able’ to participate in the economic, social and cultural life without any kind of discrimination. A ‘dis-abled’ person is such if and only if the environment prevents him from actively participating within the community⁶⁸ of which he himself is part.

What is important to underline is that equality does not mean disregarding the particular needs of persons with disabilities, but rather considering and understanding those special needs in order to enable them to fully enjoy their rights without incurring into welfarism.

The European Union promotes equality among its citizens and celebrates diversity, where diversity stands for the uniqueness of every single individual. Chapter 3 of the EU Charter of Fundamental Rights is entirely dedicated to equality and banishes in article 20 all kind of discrimination whatever the origin could be, even specifically referring to disability as one of the causes of discrimination. Subsequently, article 26 recognizes the right of persons with disabilities to seek for their independence, but also for their social integration,⁶⁹ even in the occupational sphere if possible, and participation in the life of the community.

In the CRPD, equality of opportunity is one of the general principles enshrined in article 3, and non-discrimination is explicitly considered as interconnected with equality in article 5.⁷⁰ Furthermore, the Convention established the need to promote “an environment in which persons with disabilities can effectively and fully participate in

⁶⁷ SYMEONIDOU, *Trapped in our Past: the Price we Have to Pay for Our Cultural Disability Inheritance*, in *International Journal of Inclusive Education*, Vol 12, no. 6, 2009, pp. 565-574, www.academia.edu.

⁶⁸ VANHALA, *op. cit.*, p. 833.

⁶⁹ European Union, *Charter*, cit.

⁷⁰ CRPD, art. 3, 5.

political and public life on an equal basis with others”.⁷¹

Needless to say, that in presence of an impairment of any kind, a minimum assistance is required to reduce the effects of the impairment on the life of the person concerned. However, this must act as a springboard for the self-determination of the person with disabilities rather than limiting his or her autonomy.

III. Freedom

Among the values enlisted in art. 2 TEU, freedom is the most generic one. The concept of freedom the founding treaties refer to encompasses different kinds of freedom, starting from the so-called ‘four freedoms’ at the bases of the Single Market. The European Single Market, founded in 1993, can be considered as the greatest legacy of the EEC and the greatest European achievement,⁷² and is based on the freedom of movement of goods, persons, capital and services within the EU.

The concept of freedom within the Union was mainly focused on the economic aspect at the time of its foundation. However, the social and political aspects gained importance within the organization over time, and the concept of freedom covers at present all areas of the life of EU citizens.⁷³ This is reflected in the list of individual freedoms protected at EU level by the Charter, such as respect for private life, freedom of association, of thought, expression, religion.

Albeit the concept of freedom could seem difficult to attribute to persons with disabilities, it must be underlined that just like human rights, fundamental freedoms are universal, indivisible, interdependent and interrelated.⁷⁴ In fact, the purpose of the Convention was to “promote, protect and ensure the full and equal enjoyment of all human rights *and fundamental freedoms* by all persons with disabilities” (emphasis added),⁷⁵ which is strictly linked to the respect

⁷¹ *Ibid.*, art. 29.

⁷² Jacques Delors Institute, *The four freedoms in the EU: Are they inseparable?*, 2018, www.institutdelors.eu.

⁷³ European Union, *Charter*, cit., art. 6-19.

⁷⁴ *CRPD*, cit., Preamble.

⁷⁵ *Ibid.*, art. 1.

and promotion for their inherent dignity.

The term ‘freedom’ is a constant within the whole Convention, being both its purpose and a right persons with disabilities hold but which has often been disregarded. Freedom may therefore be considered as a guiding principle of the CRPD, the provisions of which are comprehensive of all the facets contained within a concept as recalled as difficult to define. In this regard, the presence of *freedom* among the *rights* declared by the Convention raises questions about the juxtaposition of these two words that are worthy of a minimum analysis. One may wonder indeed in what sense freedom is a right and when it became one. Whereas “all human beings are born free and equal,”⁷⁶ defining it as a right might seem superfluous. But when this fails, the idea comes in that it shall be framed as a human right. It is precisely after the horrors, the violence and the rubble of a cruel war (World War II) that the people felt the need to include freedom among the human rights to be protected within their constitutions⁷⁷ and even within the Universal Declaration of Human Rights adopted in 1948. From that moment, freedom has become something to protect and defend whenever a human-rights-based document is adopted. In this respect, the Convention and the Charter are not exception, and the Convention provides an interpretation of freedom that is perfectly in line with the way the EU understands freedom itself in its activities. Among the freedoms enshrined in the CRPD, freedom of expression, opinion and access to information need to be underlined.⁷⁸ They are much more than freedoms, they are the essence of the human being as such and are strictly related to the right of persons with disabilities to take part in the decision-making procedures directly affecting them. Having been disproportionately impacted by the COVID-19 pandemic, persons with disabilities have transformed the motto ‘Nothing about Us, Without Us’ in ‘Nothing

⁷⁶ United Nations General Assembly, *Universal Declaration of Human Rights*, Paris, 10 December 1948, UN Doc. A/RES/217, art. 1, www.un.org.

⁷⁷ CARLASSARE, *Ecco la Libertà e la sua attuale grande storia*, 22 April 2016, www.patriaindipendente.it.

⁷⁸ *Ibid.*, art. 21.

Without Us'.⁷⁹ The latter underlines that the freedoms enshrined in art. 21 CRPD⁸⁰ shall not only concern the aspect of life of persons with disabilities but shall rather regard their participation in the society as a whole. They belong to the society, they are affected as everyone else by the decisions and have therefore the right to be part of the society in every single aspect.

Accessibility to information is precisely an implicit goal of the Convention, requiring the text to be made “available in accessible formats”⁸¹, in order to allow persons with disabilities to enjoy their right of access to information. In this case, the accessibility to the CRPD is a prerequisite not only for the enjoyment of the rights enshrined in the document, but also for the possibility of persons with disabilities to report any possible violation thereof in the States Parties.

From what has been presented in this section, one might conclude that the freedoms of persons with disabilities are strictly connected to the principle of equality among all EU citizens without discrimination of any kind.

IV. Respect for Human Rights

The European union has always made of the respect for human rights one of its main pillars since its foundation. The Maastricht Treaty, signed in 1992, was a turning point in the European integration process and enlarged the competences of the European community to areas that were different from the economic competence. The treaty introduced a three-pillar structure introducing two new areas of action of the former EEC, which was transformed into the European Community. After all, the economic element was still the predominant one, but the social element began to spread within the Community. Common Foreign and Security Policy (hereafter “CFSP”), and Justice and Home Affairs became respectively the second and third pillar of

⁷⁹ PFEIFER, *op. cit.*

⁸⁰ Freedom of expression and opinion, freedom to seek, receive and impart information and ideas on an equal basis with others, through the form of communication of their choice.

⁸¹ CRPD, *cit.*, art. 49.

the EU increasing the competences of the former EEC. Within the CFSP, the treaty aimed at the strengthening of the protection of human rights and fundamental freedoms of the citizens of the member states.⁸² The commitment of the Union towards the protection of human rights and fundamental freedoms was proved, inter alia, by the establishment of EU citizenship.

This state of affairs makes it therefore clear that as soon as the EU was born, the social element gained importance in the European community, and fundamental rights have been at the heart of the European integration process since the entry into force of the Maastricht Treaty.⁸³ The respect for human rights was officially introduced in the constitutive treaties as one of the EU values through the Treaty of Amsterdam in 1997 in the current art. 2 TEU.

Human rights policy and action within the Union can be divided in two main streams, one being the protection of human rights for EU citizens, the other their promotion worldwide.

The protection of human rights for EU citizens evolved over time, starting from a judicial evolution prior to the birth of the Union itself. As a matter of facts, the Court of Justice of the European Union (hereafter “CJEU”) first referred to fundamental human rights in 1969, defining them as “general principles of Community law [...] protected by the Court”⁸⁴ itself. Since the EU did not yet provide for a normative protection of fundamental rights, they were part of EU law as general principles only that were found in constitutional traditions that were common to member states⁸⁵ and international treaties ratified by member states themselves such as the European Convention on Human Rights (hereafter “ECHR”). However, the aforementioned provisions were not binding in the EU legal order, and

⁸² European Union, Treaty on the European Union, OJ C 191 of 29 July 1992. art. B, www.eur-lex.europa.eu.

⁸³ FABBRINI, *Human Rights in the EU: Historical, Comparative and Critical Perspectives*, in *Il Diritto dell’Unione Europea*, 2017.

⁸⁴ Court of justice of the European union, case 29/69, *Erich Stauder v City of Ulm – Sozialamt*, judgement of 12 November 1969, www.curia.europa.eu.

⁸⁵ European Parliament, Policy department C, *The Evolution of Fundamental Rights Charters and Case Law*, 2011, p. 55, www.europarl.europa.eu.

it was at the discretion of the Court to make these general principles to prevail in the case law.

The judicial evolution was followed by a normative phase, since the first treaties of the European communities did not contain any provision concerning the protection of fundamental rights. After the establishment of fundamental rights as one of the EU values common to the member states,⁸⁶ the respect of which is also subject to assessment by the European commission in the pre-accession phase of EU applicant states, the politicization of fundamental rights reached its peak with the drafting of the Charter of Fundamental Rights of the European union in 2000.⁸⁷ The Charter put a spotlight on the need to protect fundamental rights, but was not binding for member states until 2009 when “the Union recognize(d) the rights, freedoms and principles set out in the Charter [...] (to) have the same legal values as the Treaties” without extending the competences of the EU.⁸⁸ However, the limited application of the Charter described in section 2.1. of this chapter shall be borne in mind.

Articles 21 and 26 of the Charter advocating respectively for non-discrimination and the integration of persons with disabilities were already contained in the draft document. This proves the strong commitment of the EU in being as inclusive as possible in the protection of human rights from the very beginning. For this very reason, the Union established in 2007 the European Union Agency for Fundamental Rights through regulation EC 168/2007 aiming at providing the “relevant institutions, bodies, offices and agencies of the Community [...] with assistance and expertise relating to fundamental rights in order to support [the member states] when [...] tak[ing] measures or formulat[ing] courses of action within their respective

⁸⁶ European Union, *Treaty of Amsterdam*, cit., art. 1 para. 8.

⁸⁷ DE BURCA, *The Drafting of the EU Charter of Fundamental rights*, in *European Law Review*, 2001, p. 214.

⁸⁸ European Union, *Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community*, 13 December 2007, OJ C 306 of 17 December 2007, art. 6 para. 1, www.eur-lex.europa.eu.

spheres of competence to fully respect fundamental rights”.⁸⁹ This was done following the example of the United Nations Human Rights Council established by the UN General assembly in 2006 with the aim to promote and protect human rights around the world.⁹⁰

The promotion of the universality and indivisibility of human rights is, together with democracy, one of the main external activities of the Union.⁹¹ Not only human rights have always been crucial at every turning point in the ‘constitutional’ development process of the EU,⁹² but the shifting geopolitical landscape is generating new challenges that are strictly intertwined with human rights, giving rise to the need for a new approach⁹³ thereof. It is for this reason that the EU proudly announced to be among the first signatories of the CRPD,⁹⁴ which was at the same time the first international human rights treaty ever ratified by the EU. Moreover, the aim of the Convention underlines the particular attention of the Union towards the rights of minority groups, including people with disabilities.

3. CONSEQUENCES OF THE EU RATIFICATION

Albeit the Convention was signed by the EU on its opening day for signature in 2007, it entered into force only on 22 January 2011.⁹⁵ The act of accession to the CRPD was adopted by the Council

⁸⁹ Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights in OJ L 53 of 22 February 2007.

⁹⁰ United Nations General Assembly, *Human Rights Council*, UN Doc. A/RES/ 60/251 of 3 April 2006.

⁹¹ European Union External Action, Human rights and democracy at the core of EU external action, www.eeas.europa.eu.

⁹² FABBRINI, *op. cit.*, pp. 69 ff.

⁹³ European Union External Action, Human rights and democracy, *cit.*

⁹⁴ Press release IP/07/446 of the European Commission, *cit.*

⁹⁵ It shall be noticed that the signature is not sufficient for an international agreement to be binding, but a ratification is needed in order for the agreement enter into force for the state party. Nevertheless, the signature of the treaty obliges the contracting party not to deprive the treaty of its object and purpose even before the ratification thereof. After the ratification, a further obligation is added, namely the obligation to act in compliance with

in 2009⁹⁶ and served as formal ratification of the Convention by the EU on 23 December 2010.

As one of the States Parties to the Convention, the EU is legally bound by the provisions enshrined in the Convention itself, just as all the other States Parties. Yet, once ratified the CRPD became binding at EU level and EU institutions had the duty to act in conformity with the provisions enshrined in it⁹⁷ and take even additional measures to implement the rights contained thereof. An additional indirect implication of the ratification concerns EU member states, which have the obligation to comply with the provisions laid down in the Convention when implementing EU law.⁹⁸ Therefore, they could even be held responsible by the CJEU in case of failure to comply with the provisions thereof related to the implementation of EU law.

The general obligations binding for all States Parties are exhaustively enlisted in art. 4 CRPD and encompass both the legislative field and the subsequently need to implement and monitor the legislation, policies and programs within all States Parties,⁹⁹ including the EU. The Convention commits all States Parties to ensure on the one hand the full enjoyment of fundamental rights for persons with disabilities on an equal basis with all other citizens and protect on the other hand the respect for their inherent dignity.¹⁰⁰

It must be noticed that the ratification of the CRPD does not imply the enlargement of the competences¹⁰¹ of neither EU institutions

the provisions enshrined in the treaty.

⁹⁶ See Council decision (EC) no. 48/2010, cit.

⁹⁷ ULDRY, *op. cit.*, p. 18.

⁹⁸ *Ibid.*

⁹⁹ CRPD, art. 4.

¹⁰⁰ Press release IP/11/4 of the European Commission Vice-President Reding on 5 January 2011 concerning the ratification of the UN Convention on disability rights, www.ec.europa.eu/commission.

¹⁰¹ Among the fields laid down by the Convention, the EU may have an exclusive competence to act, a shared competence jointly with member states or none – in specific areas in which member states still hold their exclusive competence and are responsible for the implementation of the CRPD –.

nor the EU as a whole to all the areas referred to in the document. As a matter of facts, the principle of conferral through which member states confer the competences to the EU remained unchanged as stated in art. 5 TEU. Since both member states and the EU have competences in the fields covered by the CRPD, they committed themselves to work jointly in order to fulfil the obligations laid down by the Convention in the respect of the competences established in the constitutive treaties.¹⁰²

The first direct consequence of the ratification was the inclusion of the CRPD provisions among the foundations of both the universal right to equality before the law and the protection against discrimination¹⁰³ on which the enjoyment of all the other rights depends. For example, the ratification implied the obligation for the EU organs – including the CJEU – to interpret the prior EU legislation, such as Recital 4 of Council Directive 2000/78/EC¹⁰⁴ establishing a general framework for equal treatment in employment and occupation, in compliance with the provisions enshrined in the Convention. Recital 4 of the Directive states:

“The right of all persons to equality before the law and protection against discrimination constitutes a universal right recognized by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedom, to which all Member States are signatories.”

Even though the Directive considers disability within the principal causes of discrimination in the employment and occupation

¹⁰² Council decision (EC) no. 48/2010, cit., Recital 7.

¹⁰³ CLIFFORD, *The UN Disability Convention and its Impact on European Equality Law*, in *The Equal Rights Review*, Vol. 6, 2011, p. 19, www.escri-net.org.

¹⁰⁴ *Ibid.*

area,¹⁰⁵ there is still no referral to any kind of document concerning the rights of persons with disabilities. This means that the referral to persons with disabilities was indirectly driven from more general documents, such as the UDHR and the ECHR.

So far, the Convention served merely as a legal basis identified by the CJEU in its documents, with the exception of only one judgement in which the term ‘disability’ was interpreted in light of the CRPD provisions. In this case, the Court held disability as a concept referring to “a limitation which results [...] from long-term physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person [...] in professional life on an equal basis with other workers”¹⁰⁶ in compliance with the social model sponsored by the Convention.

After its entry into force within the EU, the CJEU shall seek consistency with the CRPD, the provisions of which have even helped the Court in the interpretation of the scopes of some parts of the Charter adopted in 2012, namely art. 21 and 26,¹⁰⁷. In fact, the Convention provides the States Parties with an exhaustive definition of the concept of discrimination based on disability¹⁰⁸ and allows a better interpretation of what was enshrined in the Charter covering the concept of non-discrimination in a much broader sense.¹⁰⁹

In any case, it is no surprise that the Convention acts as a support in the interpretation of other documents, since it is the first one addressing persons with disabilities, while all the other documents on which the Court could base its judgements deal with human rights in a broader sense, or specific areas of social and political rights by ‘accidentally’ referring to disability. In actual fact, the ratification of the Convention allows persons with disabilities to not only enjoy their rights, but also to claim a possible violation of the rights enshrined

¹⁰⁵ Council directive 2000/78/EC, *op. cit.*, art. 1-2.

¹⁰⁶ Court of justice of the European union, case C-354/13, *Fag og Arbeide v Kommunernes Landsforening*, judgement of 18 December 2014, www.curia.europa.eu.

¹⁰⁷ CLIFFORD, *op. cit.*, p. 19.

¹⁰⁸ UN General Assembly, *CRPD*, art. 2.

¹⁰⁹ European Union, *Charter*, *cit.*, art. 21.

thereof¹¹⁰ before the CoRPD.¹¹¹

The CRPD requires all States Parties to establish in their domestic borders and according to their own systems of organization an appropriate framework implementing the provisions enshrined in it and monitoring the implementation¹¹² itself. This aspect includes the obligation for States Parties to provide the Committee on the Rights of Persons with Disabilities every five years with “a comprehensive report on measures taken to give effect to its obligations under the [...] Convention and on the progress made in that regard”.¹¹³ In order to fully comply with its obligations, the EU has designated its own framework for the CRPD, the composition, tasks and achievements of which will be the focus of the next chapter.

Since its ratification, the CRPD has strongly influenced EU policy, starting from the adoption of the European Disability Strategy 2010-2020 by the Commission, the elements of which will be analyzed in section four of the next chapter. As a matter of facts, the Commission justified much of the contents of the strategy as necessary in order to effectively implement the provisions lied in the Convention¹¹⁴ within the EU.

¹¹⁰ NEFFE, *op. cit.*

¹¹¹ The terms to address the CoRPD to claim a possible violation of the rights enshrined in the Convention will be provided in section 5.8. of chapter 2.

¹¹² UN General Assembly, *CRPD*, cit., art. 33.

¹¹³ *Ibid.*, art. 35.

¹¹⁴ CLIFFORD, *op. cit.*, p. 19.

CHAPTER 3: EU FRAMEWORK ON THE IMPLEMENTATION OF THE UNCRPD

The EU is in all aspects a party to the CRPD and its obligations as a regional integration organization are therefore equal to all the other parties within the limits of its competences.¹¹⁵ After having ratified the Convention, states parties are required to establish a framework to promote, protect and monitor the implementation of the CRPD¹¹⁶ at domestic level.

As a party to the Convention, the EU has designated its own framework for matters of EU competence which completes the monitoring frameworks established in the member states. The proposal by the Commission for the establishment of such a framework came in 2012 in accordance with the Code of Conduct between the Council, member states and the Commission defining the competences of the EU institutions¹¹⁷ in the implementation and representation of the EU within the CRPD. The proposal was then endorsed by the Council in the same year through an informal note and became finally operational in 2013.

1. COMPOSITION

After having analyzed the specific provisions of articles 4 and 33 CRPD concerning the involvement of the civil society but also persons with disabilities and their representative organizations in the institutional implementing and monitoring framework,¹¹⁸ the Commission identified five existing EU institutions and bodies that shall be part of such framework.

The institutions and bodies proposed by the Commission were

¹¹⁵ UN General Assembly, *CRPD*, cit., art. 44, para. 2.

¹¹⁶ *Ibid.*, art. 33, para. 2.

¹¹⁷ European Union Notice no. 2010/C 340/08, of 15 December 2010, OJ C 340, p. 11, www.eur-lex.europa.eu.

¹¹⁸ European Commission non-paper on the setting-up at EU level of the Framework required by art. 33.2 of the Convention on the rights of persons with disabilities of 31 August 2012, p. 1, www.fra.europa.eu.

afterwards confirmed by the Council, which identified the Commission, the European Parliament, the European Ombudsman, the EU Agency for Fundamental Rights (hereafter “FRA”) and the European Disability Forum (hereafter “EDF”) as the members of the EU framework¹¹⁹ on the implementation of the CRPD.

The members cooperate in the establishment of a work program that shall include both joint activities implemented by more than one member or by the framework as a whole.¹²⁰ They share information and take into account the activities of every member.

Within the framework, a Chair is appointed for a one-year term in a rotating system. His role is the promotion of the principle of collegiality¹²¹ on which the working method of the EU framework is based. Furthermore, he or she maintains close contacts with the Secretariat coordinating the organization and preparation of the meetings. The EU framework’s Secretariat is appointed every two years and facilitates the activities of the framework carrying out organizational tasks of the framework.¹²² The members of the EU framework meet at least twice a year and take their decisions by consensus, the procedure of which lies under the responsibility of the Chairperson.

In June 2014 the Commission submitted on behalf of the EU its first report on implementation of the CRPD¹²³ to the CoRPD, which provided for its concluding observations in October 2015. In its concluding observations, the CoRPD expressed its concern for the double role of the Commission. As a matter of facts, it was designated

¹¹⁹ Note of the Council of the European Union on the set-up of the EU-level Framework required by art. 33.2 of the UN Convention on the rights of persons with disabilities, p. 2, www.fra.europa.eu.

¹²⁰ European Union Agency for Fundamental Rights, *EU Framework for the UN Convention on the Rights of Persons with Disabilities*, www.fra.europa.eu.

¹²¹ *Ibid.*

¹²² FRA, *The EU framework to promote, protect and monitor the UNCRPD - Operational provisions*, p.2, www.fra.europa.eu.

¹²³ European Parliament, *Study on the implementation of the 2015 concluding observations of the CRPD Committee by the EU*, December 2021, p. 18, www.europarl.europa.eu.

as both a focal point in the implementation of the Convention and a member of the monitoring framework thereof¹²⁴ and recommended the EU to separate the two roles of the Commission. In order to comply with the recommendation of the CoRPD, the Commission announced in 2015 its intention to withdraw from the EU framework. Its implementing role needed to be separated from the monitoring role of the EU framework¹²⁵ in order to avoid the conflict of interests that would arise from the dual role of the Commission. Having considered its withdrawal, the composition of the Framework was then revised by the Council in 2017, when the former composition of the framework was reaffirmed with the only exception of the Commission.

As a special¹²⁶ party to the Convention, the EU shall carry its actions in the implementation and monitoring of the CRPD only in the areas in which member states transferred their competences and with respect to the internal organization and functions. Similarly, even the tasks of the EU framework shall be limited to the areas in which the EU does have competences and with respect to EU domestic law.¹²⁷

2. TASKS

The members of the EU framework jointly contribute to the promotion, protection and monitoring of the Convention. Furthermore, they actively contribute to the review of the implementation of the CRPD within the EU. The EU framework actively participates admittedly in all stages of the review process¹²⁸ from the first list of issues provided by the CoRPD to the discussion thereof and the

¹²⁴ United Nations Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of the European Union, UN Doc. No. CRPD/C/EU/CO/1 of 2 October 2013, p. 10.

¹²⁵ *Ibid.*

¹²⁶ Since then, human rights conventions had never to be opened for signature by regional integration organizations.

¹²⁷ United Nations Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of the European Union, cit., p. 1.

¹²⁸ European Union Agency for Fundamental Rights, *EU CRPD Framework – contribution to EU review process*, www.fra.europa.eu.

constructive dialogue between the EU and the CoRPD.

Both the EU and all its member states have ratified the CRPD,¹²⁹ and just like all the former agreements concluded by the Union, the Convention is binding for EU institutions.¹³⁰ However, the mandate of EU framework shall be limited to the areas of EU competences identified by the member states in the funding treaties.

Albeit the majority of the policy areas covered by the Convention¹³¹ falls within the competences of member states recognizing to the EU only a supporting role, the members of the EU framework shall contribute to the tasks of promotion, protection and monitoring of the CRPD within EU competences.¹³² In any case, the EU framework is a complement of national frameworks even in matters of EU competence,¹³³ when both cooperate in the promotion, protection and monitoring of the implementation of the Convention by the EU.

2.1. Promotion

After its ratification, the CRPD became an integral part of the EU legal order, meaning that EU legislation and practices are required to be consistent with the provisions enshrined in the Convention.¹³⁴ The promotion at EU level thereof is a task of all the members of the framework within their competence.

When the EU framework was established, the Commission was one of its members and promoted the provisions of the Convention by “encouraging mutual learning and exchange of good practices”¹³⁵ through dedicated events. Its main promoting activity

¹²⁹ See the official UN website reporting the updated status of ratification of the CRPD, available at www.treaties.un.org.

¹³⁰ *TFEU*, cit., art. 216, para. 2.

¹³¹ The principal areas of action of the Convention are health, education, administrative cooperation, civil protection (competence of the member states with the only support of the EU), employment and social cohesion (shared competences between the EU and the member states).

¹³² Note of the Council, *op. cit.*, p. 5.

¹³³ European Commission non-paper, *op. cit.*, p. 2.

¹³⁴ *FRA, EU Framework for the UN CRPD*, cit.

¹³⁵ Note of the Council, *op. cit.*, p. 2.

consisted in the writing of annual reports jointly with its HLDG on the implementation of the CRPD both in the member states and within the EU, which shall use the Convention as a benchmark.¹³⁶

In addition, the Commission was required to organize training sessions for legal practitioners and policy makers, and disseminating information on the Convention.¹³⁷ For this purpose, an annual work forum was to be organized to promote collective learning on the implementation of the CRPD among all the actors concerned at EU level, within the member states and from civil society as a whole, which includes the so-called ‘disabled persons’ organizations’ (hereafter “DPOs”).¹³⁸ Finally, the Commission shall provide financial support to civil society organization, especially DPOs promoting and raising awareness on the Convention.¹³⁹

After the withdrawal of the Commission from the EU framework, its tasks needed to be redistributed -when possible- within the other members. In particular, the enactment of reports and the organization of trainings became an exclusive competence of the EDF within the framework.¹⁴⁰

Public debates and hearings are one of the tools carried out by the European Parliament in the promotion of the rights of persons with disabilities within the EU. Since the ratification of the Convention, the EP adopted a number of 79 positions taking into account the rights of persons with disabilities for the adoption of regulations, directives and decisions¹⁴¹ jointly with the Council. Even though none of the legislative acts adopted after having considered the positions of the EP directly address persons with disabilities, the commitment of the European Parliament is self-evident.

¹³⁶ European Commission non-paper, *op. cit.*, footnote n. 6, p. 2.

¹³⁷ *Ibid.*, p. 2.

¹³⁸ *Ibid.*, footnote n. 7, p. 2.

¹³⁹ European Commission non-paper, *op. cit.*, p. 2.

¹⁴⁰ General Secretariat of the Council, Revised EU-level Framework Required by Article 33.2 of the UN Convention on the Rights of Persons with Disabilities, 9 February 2017, 6170/17, pp. 4-5, www.eur-lex.europa.eu.

¹⁴¹ See the list of legislative texts adopted by the Parliament within 2011 and 2023 available at www.europarl.europa.eu.

Press conferences are an even more common and effective tool through which the European Parliament promotes the rights of persons with disabilities focusing especially on accessibility and inclusion in the labour market,¹⁴² which is one of the most discussed topics in the protection of the rights of persons with disabilities. Furthermore, an inter-committee network was created in order to promote a coordinated approach within the EU and raise awareness of disability related issues.¹⁴³ The network is presided by the Committee on Employment and Social Affairs and is composed by members of different committees of the EP cooperating in the review and screening of documents and activities.

The European Ombudsman investigates complaints about maladministration in EU institutions and bodies¹⁴⁴ raised by EU citizens or businesses and organizations having their registered office in an EU country. However, when it comes to the promoting task of the provisions of the CRPD, it contributes to make EU citizens aware of their rights and obligations.¹⁴⁵

The promotional activity of the European Ombudsman encompasses the publication of an annual activity report containing a dedicated section on disability¹⁴⁶ and spreads information on the topic through the European Network of Ombudsmen.¹⁴⁷ It includes national and regional ombudsmen and similar bodies of both the EU member states and candidate countries for membership, as well as similar bodies of other European Economic Area countries. The European Ombudsman and the Committee on Petitions of the European Parliament form part of this network to promote good administrative practices throughout the EU¹⁴⁸ trying to prevent complaints about

¹⁴² See the press room section in the official website of the European Parliament at www.europarl.europa.eu.

¹⁴³ FRA, *EU Framework for the UN CRPD*, cit.

¹⁴⁴ TFEU, cit., art. 228.

¹⁴⁵ FRA, *EU Framework for the UN CRPD*, cit.

¹⁴⁶ Note of the Council, *op. cit.*, p. 2.

¹⁴⁷ For a description of the European Network of Ombudsmen, see section 3.3 of this chapter.

¹⁴⁸ FRA, *EU Framework for the UN CRPD*, cit.

maladministration in EU institutions and bodies.

FRA is the independent center of reference in the promotion of human rights, and it increases awareness of the Convention within the EU.¹⁴⁹ The rights of persons with disabilities are a specific component of its awareness-raising activities which include the publication of reports, communications, the organization of events and the engagement of stakeholders themselves.

In particular, FRA addresses disability mainly as part of the anti-discrimination thematic area,¹⁵⁰ but a cross-cutting approach also enables the agency to address the issue through the other thematic areas. A report on fundamental rights issues covered by the thematic areas of FRA is published annually together with thematic reports¹⁵¹ putting a spotlight on the challenges that people with disabilities face every day.

One of the main promoting activities of FRA is the organization of training and educational activities engaging the stakeholders¹⁵² to train competent professionals. Furthermore, thematic events are periodically organized in order to raise awareness among EU citizens on disability issues. Since 2018, FRA organized or participated in 33 events, the last of which was held in Vienna on 31 May 2022 addressing the issue of an inclusive and barrier free working environment¹⁵³ for persons with disabilities. On that occasion, FRA presented EU developments in the promotion of the rights of persons with disabilities and in the fight against violence towards children with disabilities.

FRA's civil society cooperation channel, namely the Fundamental Rights Platform (hereafter "FRP"), facilitates the exchange of information and the sharing of knowledge between

¹⁴⁹ Council Regulation (EC) No 168/2007, *cit.*, art. 2-4.

¹⁵⁰ Council Decision (EC) No 203/2008 of 28 February 2008 implementing Regulation (EC) 168/2007 as regards the adoption of a Multi-annual Framework for the European Union Agency for Fundamental Rights for 2007-2012, OJ L 63 of 7 March 2008, art. 2, para. b, www.eur-lex.europa.eu.

¹⁵¹ Note of the Council, *op. cit.*, p.2.

¹⁵² European Commission non-paper, *op. cit.*, p. 4.

¹⁵³ FRA, Austrian inclusion conference reopens, www.fra.europa.eu.

governmental and non-governmental organizations dealing with human rights.¹⁵⁴ The FRP represents therefore the civil society and forms part of the cooperating bodies in the task of promotion of fundamental rights within the EU.¹⁵⁵

The presence of an organization composed by persons with disabilities themselves among the members of the framework strengthens the effectiveness of its work¹⁵⁶. The EDF promotes the rights of persons with disabilities through awareness-raising thematic campaigns,¹⁵⁷ such as the one concerning the implementation of the EU Disability Card.¹⁵⁸

As the only representative of persons with disabilities and their families, the EDF prepares reports and organizes hearings for specific issues related to the rights of persons with disabilities in order to “disseminate the relevant information to its European and national member organizations.”¹⁵⁹ The main goal of the actions of the EDF is to reinforce the technical knowledge of European and national organizations and their advocacy abilities in order to guarantee to persons with disabilities the full enjoyment of their fundamental rights.

A further strategic promotional activity put in place by the EDF is to provide public authorities with technical advice on the implementation of the Convention and verify the compliance of EU

¹⁵⁴ FRA, Civil society and the Fundamental Rights Platform, www.fra.europa.eu.

¹⁵⁵ Council Regulation (EC) No 555/2022 of 5 April 2022 amending Regulation (EC) No 168/2007 establishing a European Union Agency for Fundamental Rights, OJ L 108 of 7 April 2022, p. 10, www.eur-lex.europa.eu.

¹⁵⁶ It must be noticed that the effectiveness of the activity of the other members and of EU institutions is not criticized, but it is rather important to underline the relevance of the direct participation of persons with disabilities themselves in matters that directly affect themselves.

¹⁵⁷ FRA, *EU Framework for the UN CRPD*, cit.

¹⁵⁸ For further information on this project see sections 4.2. and 5.2 of this work.

¹⁵⁹ European Commission non-paper, *op. cit.*, p. 4.

legislation and policies with the provisions thereof.¹⁶⁰ In this sense, the EDF plays in the opinion of the writer the role of a sort of advisor who reaches in this case the highest level of experience being directly involved in every single decision taken in name of the implementation of the CRPD.

From what has been presented so far, one may conclude that the promoting task of the EU framework as a whole is divided between its members according to their role within the Union and their competences.

2.2. Protection

Protection is a task in which the work of the EU framework needs to be divided between two different cases, namely the compliance with the CRPD of member states on the one hand and of EU institutions on the other hand. This implies that the framework plays a different role according to whom the alleged breaches refer.

However, it is important to underline that unlike the former analyzed task, this specific task is not performed by all the members of the EU framework. In particular, the only member of the framework enabled to deal with the compliance of the EU member states with the Convention is the European Parliament's Petitions Committee (hereafter "PETI").¹⁶¹ The latter plays also a role concerning the compliance of EU institutions with the CRPD together with the European Ombudsman and the EDF.¹⁶²

The protection of the rights of individuals in compliance with the Convention is primarily a matter for national frameworks and courts. In this sense, the role of the EU framework in the protection of individuals' rights is only complementary to the national frameworks¹⁶³ and concerns the actions of the member states only when implementing EU law. However, in case the complaints concern a matter of EU law that is directly relevant to the case, the EU may

¹⁶⁰ *Ibid.*

¹⁶¹ General Secretariat of the Council, Revised EU-level Framework, cit., pp. 5-6.

¹⁶² Note of the Council, *op. cit.*, p. 3.

¹⁶³ *Ibid.*

have a more relevant role.¹⁶⁴

EU citizens can obtain a formal hearing by EU institutions by submitting their petitions to the PETI. As a matter of facts, the PETI can collect petitions from any EU citizen on matters that fall within the competence of the Union¹⁶⁵ to protect them against breaches of member states. Petitioners are then allowed to present their concerns when heard by the Committee, which can afterwards provide either a full explanation or even a non-judicial remedy.¹⁶⁶ Furthermore, it works jointly with other committees of the Parliament and the Disability Intergroup¹⁶⁷ in case specific issues on matters that come into their sphere of competence are raised.¹⁶⁸ In order to guarantee the full impartiality when carrying out this task, the PETI shall be independent from both the member states and the Commission.

Needless to say, that the PETI plays a much broader role when it comes to petitions that concern the policymaking and the legislative actions of EU institutions,¹⁶⁹ even in their public administration functions. It collects petitions about EU legislation and policies and is allowed to submit oral questions to the Council and the Commission to be discussed in plenary sessions. In addition, the PETI has the power to issue reports on the alleged breach affirmed in the petition or even draft resolutions¹⁷⁰ following a special legislative procedure.

¹⁶⁴ FRA, *EU Framework for the UN CRPD*, cit.

¹⁶⁵ *TFEU*, cit., art. 227.

¹⁶⁶ It must be noticed that the courts are the only authoritative interpreters of EU law and are therefore the only ones allowed to issue legally binding decisions imposing sanctions. For this reason, the final documents issued by institutions that are different from the Court such as the PETI -but also by the Ombudsman- are defined as 'non-judicial'.

¹⁶⁷ The Disability Intergroup is an informal grouping of MEPs promoting the full and equal enjoyment of human rights by persons with disabilities. It was established in 1980 and is a key ally in the adoption of legislations that are favorable to persons with disabilities in the areas in which they face more difficulties. Further information is available at www.edf-feph.org.

¹⁶⁸ European Commission non-paper, *op. cit.*, p. 5.

¹⁶⁹ General Secretariat of the Council, Revised EU-level Framework, cit., p. 6.

¹⁷⁰ *Ibid.*

It is important to underline that during its membership within the EU framework, the Commission was allowed to deal with EU citizens' complaints and to start infringement proceedings in case it considered the actions of a member state not to be in compliance with the Convention when implementing EU law.¹⁷¹ These two aspects of the activity of the Commission find their legal bases in the founding treaties, respectively in articles 20 para. 20(d) and 258 TFEU, and the Commission is therefore empowered to do so even in the reformed framework. However, after its withdrawal from the EU framework, these actions shall be considered as proper of the Commission as an institution only -and therefore not specific for the compliance with the Convention- and not as a member of the framework.

Complaints about maladministration in the EU institutions, bodies, offices and agencies are primarily tackled by the European Ombudsman, who is allowed to hear complaints raising issues of law or administrative issues and undertake 'ex officio' investigations as well as present reports¹⁷² on the issue. In fact, individuals can turn to the Ombudsman in case they deem an EU institution not to act in compliance with the CRPD¹⁷³ in order to seek suitable redress.

With regard to CRPD-related complaints, the European Ombudsman has dealt with complaints concerning the accessibility of materials of every kind on institutional websites, accessibility to the buildings of the EU institutions, sign language interpretation at events¹⁷⁴ and health insurance claims by EU staff members that are recognized as caregivers of children with disabilities.¹⁷⁵

In order to guarantee the full accessibility to the complaint procedure, the Ombudsman has also made available on its official website an easy-to-read version of her work and the instructions to lodge a complaint in 24 languages.¹⁷⁶ This does not only allow to

¹⁷¹ Note of the Council, *op. cit.*, p. 3.

¹⁷² TFEU, *cit.*, art. 228.

¹⁷³ FRA, *EU Framework for the UN CRPD*, *cit.*

¹⁷⁴ Some examples of complaints concerning sign language interpretation will be provided in the next chapter, dealing specifically with deafness.

¹⁷⁵ FRA, *EU Framework for the UN CRPD*, *cit.*

¹⁷⁶ *Ibid.*

make people aware of the role of the European Ombudsman and the complaint system, but rather allows all persons with reading difficulties to directly address their complaints without the need of a mediator. The official website of the Ombudsman likewise allows people with visual impairments to freely seek for the needed information. An example of this is represented by the possibility to adapt the text size to one's needs and even to increase the contrast¹⁷⁷ of the webpage. Every EU citizen – or non-EU citizen residing in a member state – able to do so has therefore the opportunity to turn to the Ombudsman to claim a lack of compliance with the Convention by an EU organ according to the terms already specified above.

Last but not least, the EDF can collect both information and complaints from persons with disabilities concerning their direct experiences. These claims are to be brought to the attention of the administrations that are responsible for the situation claimed¹⁷⁸ by the person and to the general public.

Unlike the European Ombudsman, the PETI and the Commission, the EDF cannot produce any document on the issue presented by the petitioner. However, it is allowed to provide assistance to persons with disabilities seeking redress by intervening as a third party to the European Committee on Social Rights and the European Court of Human Rights.¹⁷⁹

It is clear therefore, that the protection of the rights of persons with disabilities in compliance with the Convention is primarily a matter for national frameworks, and the EU framework plays mainly a complementary role to its member states in accordance with the division of competences thereof provided in the Code of Conduct to the CRPD. Truth be told, it is in this area that the activity of the EU

¹⁷⁷ Contrast sensitivity issues are among the most common consequences of disorders of the visual system such as glaucoma and diabetic retinopathy which lead to a proper visual impairment. The use of darker shades of the same colors (blue in the case of the European Ombudsman website) allows a better sensitivity to contrast and enables people with this kind of impairment to be autonomous.

¹⁷⁸ Note of the Council, *op. cit.*, p. 3.

¹⁷⁹ FRA, *EU Framework for the UN CRPD*, cit.

framework is limited the most as a consequence of the mixed character of the Convention within the EU.

2.3. Monitoring

The key role of the EU framework is the collection of data and information in order to make sure that EU law, as well as its application, complies with the CRPD. For this purpose, each member of the EU framework is essential to ensure that the provisions contained in the Convention are correctly transposed and applied within the EU.

Reports on the implementation and on human rights are periodically published by the European Parliament in the monitoring process on the application of EU law.¹⁸⁰ Albeit the publication of reports is the main activity of the EP in the monitoring procedure, the Parliament also carries out studies analyzing specific aspects of the implementation of the CRPD within the EU. In this regard, the European Parliament is allowed to ask for the European Parliamentary Research Service (EPRS) to provide an objective analysis on EU policy issues to support them in their work.¹⁸¹

Implementation assessments form likewise part of the monitoring procedure by the European Parliament. The latter provides together with the studies a link between EU institutions and EU citizens. This makes of the implementation assessments an important instrument for EU institutions, the activity of which shall take into consideration the results of implementation assessments and studies.

The European Parliament does not participate in the monitoring task as a whole, but there are specific committees and working groups thereof that are responsible for different aspects, namely the Committee on Employment and Social Affairs (hereafter “EMPL”), the Committee on Civil Liberties, Justice and Home Affairs (hereafter “LIBE”), and the Bureau Working Group on Equality and

¹⁸⁰ *Ibid.*

¹⁸¹ European Parliament, *European Parliamentary Research Service (EPRS)*, www.europarl.europa.eu.

Diversity.¹⁸²

The EMPL is responsible for employment policy and social policy that concern working conditions, social protection and security.¹⁸³ Furthermore, the elimination of all forms of discrimination, including discrimination based on disability, at the workplace and in the labour market fall under the responsibility of the EMPL.

Any other form of discrimination based on disability fall within the responsibilities of the LIBE, which is in charge of the protection of the rights of EU citizens – even including the protection of minorities – and the fight against discrimination within the territory of the Union.¹⁸⁴ The committee is indeed responsible for the measures that are needed to fight discrimination of any kind occurring outside the workplace and the labour market.

The monitoring task of the Parliament is not only enacted *ex post*, but also *ex ante*. In this respect, the Working Group on Equality and Diversity guides the Parliament's General Secretariat in the adoption of administrative measures implementing the CRPD.¹⁸⁵

During the membership of the Commission, another *ex-ante* monitoring strategy was applied by the Commission itself on behalf of the framework. The strategy consisted in the preparation of an impact assessment to be submitted to the Impact Assessment Board,¹⁸⁶ which had to verify the compliance of EU implementation with the Convention. Despite the withdrawal of the Commission, this task is still carried out by the Commission itself but cannot be considered as an activity of the EU framework anymore and was therefore removed in the reformed framework.

Strategic inquiries are conducted by the European Ombudsman

¹⁸² FRA, *EU Framework for the UN CRPD*, cit.

¹⁸³ EU Monitor, Committee on Employment and Social Affairs (EMPL), www.eumonitor.eu.

¹⁸⁴ EU Monitor, Committee on Civil Liberties, Justice and Home Affairs (LIBE), www.eumonitor.eu.

¹⁸⁵ FRA, *EU Framework for the UN CRPD*, cit.

¹⁸⁶ Note of the Council, *op. cit.*, p. 4.

in the monitoring activity towards the EU administration. Indeed, Emily O'Reilly -the European Ombudsman since 2013- conducted on her own initiative an investigation on the respect for fundamental rights in the so-called 'cohesion policy'.¹⁸⁷ The matter of the investigation included the misuse of EU funds after having received a number of complaints claiming that the money was used to further confine persons with disabilities in healthcare residences, therefore marginalizing them rather than integrating them within the society.¹⁸⁸ Investigations are conducted by asking to the institution a list of questions to be answered before an established deadline and draft afterwards a report¹⁸⁹ on the issue.

The FRA is responsible for the provision of data and development of indicators. Its main task within the framework is to autonomously collect and analyze objective and reliable data on fundamental rights issues within the EU¹⁹⁰ in accordance with its competences.¹⁹¹

A report on the developments in the implementation of the Convention is published every year in the Fundamental Rights Report¹⁹² issued annually by the FRA. In addition, the agency elaborates human rights indicators following the OHCHR indicator model.¹⁹³ The indicators shall support the assessment of the

¹⁸⁷ Established in 2014, aims at creating growth and jobs tackling climate change and energy dependence on the one hand and help the most vulnerable members of society. The reduction of poverty and social exclusion is a major goal of the policy and consists of the attribution of EU funds to the less developed regions in the EU, the use of which shall be in compliance with the Charter and under the responsibility of the Commission.

¹⁸⁸ Press release 14/2014 of the European Ombudsman on 21 May 2014 concerning the EU "cohesion" policy, www.ombudsman.europa.eu.

¹⁸⁹ General Secretariat of the Council, Revised EU-level Framework, cit., p. 7.

¹⁹⁰ European Commission non-paper, *op. cit.*, p. 7.

¹⁹¹ See Council Regulation (EC) No 168/2007 of 15 February 2007, cit., art. 3-4.

¹⁹² FRA, *EU Framework for the UN CRPD*, cit.

¹⁹³ An in-depth description of the model can be found on the official website of the United Nations Human Rights Office of the High Commissioner, available at www.ohchr.org.

implementation of those rights,¹⁹⁴ an example of which can be identified in its project on the political participation of persons with disabilities.

The development of indicators and benchmarks supporting the monitoring process completes the role of the FRA¹⁹⁵ within the monitoring task of the framework. This is to be made taking into consideration the policy needs and shall be in line with the already existing benchmarks.

Last but not least, the EDF supervises EU legislation and verifies its compliance with the Convention. This allows the EDF to draft a report on its own on the implementation of the provisions enshrined in the CRPD by the EU and its member states.¹⁹⁶ As a matter of facts, the EDF prepared its alternative report and answers to the issues enlisted in the observations of the CoRPD in 2015,¹⁹⁷ contributing to the improvement in the implementation of the CRPD within the EU.

The actions of the EDF in the monitoring procedure take into consideration the complaints it receives¹⁹⁸ on the implementation of the Convention. In this sense, the EDF transposes the complaints in the documents it issues for the evaluation on the implementation of the Convention.

Even though the EU framework plays a relevant role in the promotion, protection and monitoring of the implementation of the CRPD, it is important to bear in mind that the majority of the policy areas covered by the Convention falls within the competences of member states. In this sense, the main activity of the framework consists in complementing the national monitoring frameworks. For this reason, the next section will focus precisely on the cooperation between the EU framework and the monitoring frameworks of the EU

¹⁹⁴ FRA, *EU Framework for the UN CRPD*, cit.

¹⁹⁵ General Secretariat of the Council, *Revised EU-level Framework*, cit., p. 7.

¹⁹⁶ *Ibid.*

¹⁹⁷ FRA, *EU Framework for the UN CRPD*, cit.

¹⁹⁸ *Ibid.*

member states.

3. COOPERATION WITH DOMESTIC MONITORING FRAMEWORKS

National monitoring frameworks are primarily responsible for promoting, protecting and monitoring the implementation of the Convention within their national borders. Said frameworks can include “one or more independent mechanisms [...] tak[ing] into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.”¹⁹⁹ They can therefore take several forms and can be composed of a number of organizations of different kinds including national equality bodies, Ombudspersons, National Human Rights Institutions and generic monitoring committees composed by the representatives of organizations dealing with the rights of persons with disabilities.²⁰⁰

As part to an international organization that is party to the Convention, EU member states join forces with one another and cooperate with the EU framework to foster the promotion, protection and monitoring of the implementation of the CRPD within their domestic borders and the Union. In point of fact, the representatives of the components of the national monitoring frameworks take part to European networks, where they share information and coordinate activities to be carried out.²⁰¹

The cooperating activity between the members of national monitoring frameworks mainly take place within the European Network of National Human Rights Institutions (hereafter “ENNHRI”), the European Network of Equality Bodies (hereafter “Equinet”) and the European Network of Ombudsmen (hereafter “ENO”), the specificities and functions of which will be described in the next three points.

¹⁹⁹ UN General Assembly, *CRPD*, cit., art. 33, para. 2.

²⁰⁰ FRA, *EU Framework for the UN CRPD*, cit.

²⁰¹ *Ibid.*

3.1. European Network of National Human Rights Institutions

National Human Rights Institutions (hereafter “NHRIs”) have proven to be the strongest insurance of both effectiveness and independence of the national monitoring frameworks²⁰² in the promotion, protection and monitoring of the implementation of the CRPD. They act as a bridge between the state and civil society, putting the responsibilities of states in relation to the rights of citizens.²⁰³ The rights of persons with disabilities represent an important operating field for European NHRIs, for the establishment of which member states shall take into account the so-called Paris Principles.²⁰⁴

Among the main criteria that NHRIs are required to meet, the writer considers two of them fundamental when it comes to the implementation of the rights of persons with disabilities enshrined in the Convention. Namely, pluralism, freedom to address any human rights issue arising and the cooperation with both national and international actors²⁰⁵ shall act as guiding principles for NHRIs. The compliance of the NHRIs with these principles is periodically verified and evaluated through an accreditation process before the Subcommittee on Accreditation assigning a status²⁰⁶ to each NHRI according to their compliance with the Paris Principles.²⁰⁷

²⁰² CAUGHEY, LIU, *The Role of National Human Rights Institutions and Organizations of Persons with Disabilities in the National Monitoring of the CRPD*, in RIOUX, VIERA, BUETTGEN, ZUBROW (eds.), *Handbook of Disability: Critical Thought, Human Rights and Social Change in a Globalizing World*, Springer Nature Switzerland, 16 July 2022, pp. 1-25.

²⁰³ Organization for Security and Co-operation in Europe, National Human Rights Institutions, www.osce.org.

²⁰⁴ European Network of National Human Rights Institutions, Rights of Persons with Disabilities, www.ennhri.org.

²⁰⁵ United Nations General Assembly, *National institutions for the promotion and protection of human rights*, adopted on 20 December 1993, UN Doc. A/RES/48/134, pp. 3 ff., www.un.org

²⁰⁶ There are three possible statuses to be assigned, namely *A status* (for NHRIs fully compliant with Paris Principles), *B status* (partly compliant with Paris Principles) or *no status* (not compliant with Paris Principles).

²⁰⁷ European Network of National Human Rights Institutions, UN Paris

When it comes to the rights of persons with disabilities, NHRIs play a key role in the implementation of the rights enshrined in the CRPD at domestic level. In this regard, they make recommendations to both parliaments and governments to reform legislation and policy affecting persons with disabilities.²⁰⁸ Albeit their recommendations are not binding for governments and policymakers, they are usually heard,²⁰⁹ but this does not mean that they are always acted upon. Furthermore, NHRIs raise awareness on the rights of persons with disabilities and conduct research on the implementation thereof, the results of which are included in the periodical reports to be submitted to both regional and international bodies²¹⁰ on the domestic status of implementation of the Convention. In some cases,²¹¹ NHRIs are also allowed to supervise the attitudes of the operators towards persons with disabilities in care institutions, regularly report their level of enjoyment of fundamental rights, and investigate individual complaints²¹² on matters of their competence.

At present, over forty European NHRIs joined their forces in the ENNHRI to improve the promotion and protection of human rights within the region. The network operates on the basis of working groups that are dedicated to the most bursting issues. In particular, the rights of persons with disabilities cover an important area of work for all the European NHRIs, hence a CRPD Working Group was established to reduce the multiple barriers and discrimination persons with disabilities face²¹³ on a daily basis.

Principles & Accreditation, www.ennhri.org.

²⁰⁸ ENNHRI, Rights of Persons with Disabilities, cit.

²⁰⁹ Office of the United Nations High Commissioner for Human Rights, *National Human Rights Institutions. History, Principles, Roles and Responsibilities*, New York and Geneva, 2010, p. 20.

²¹⁰ ENNHRI, Rights of Persons with Disabilities, cit.

²¹¹ It depends to the kind of model of NHRI adopted by the states and to the tasks conferred through their mandate. Broadly speaking, there are different kinds of national institutions that can be identified as NHRIs, namely human rights commissions, human rights ombudsman institutions, hybrid institutions, consultative and advisory bodies, institutes and centers.

²¹² ENNHRI, Rights of Persons with Disabilities, cit.

²¹³ *Ibid.*

The European Ombudsman, the FRA and the EDF participate to the CRPD working group of the ENNHRI on behalf of the EU monitoring framework²¹⁴ as an observer²¹⁵ with the aim to work together with the European NHRIs in the implementation of the Convention within the EU and its member states. The CRPD Working Group acts notably as both a hub on experts on disability-related issues and a platform to share knowledge, good practices, but also challenges that European NHRIs must cope with when dealing with the rights of persons with disabilities.²¹⁶

Providing a common ground on the rights of persons with disabilities among all the CRPD independent monitoring mechanisms -including the NHRIs- is one of the main objectives of the CRPD Working Group.²¹⁷ At the same time, it is indeed important to find a point of contact between the aforementioned independent mechanisms and the EU, just as all the other institutions tackling issues related to the content of the Convention. The identification, development and promotion of a good practice in the action of NHRIs in the implementation of the CRPD within ENNHRI and internationally is another focal point of the activities of the working group. After all, the ultimate goal is the cooperation in the identification of a common path towards a proper interpretation and an appropriate implementation of the Convention²¹⁸ within the states parties. This also includes the development by the CoRPD of a legal framework in the contracting parties in order to align the work of the courts.

In 2020, the Georgian Public Defender's Office proposed to the Working Group the publication of a periodic update on its activities. Since then, the Working Group has been issuing quarterly

²¹⁴ It must be noticed that they take part to the working group individually and not as 'the EU framework'. Therefore, they count as three different observers even though they participate on behalf of the EU framework.

²¹⁵ FRA, *EU Framework for the UN CRPD*, cit.

²¹⁶ ENNHRI, *Rights of Persons with Disabilities*, cit.

²¹⁷ ENNHRI, *Comments of the CRPD Working Group of the European Network of NHRIs (ENNHRI) on the Draft Additional Protocol to the Oviedo Convention*, p. 3, www.menneskeret.dk.

²¹⁸ *Ibid.*

newsletters reporting any news related to the rights of persons with disabilities,²¹⁹ including not only the activities of the working group but also regional and international news. At present, 11 newsletters have been published, the majority of which -five out of eleven- dealt with Covid-19-related issues. The choice to mainly focus on Covid-19-related issues does not depend on the fact that the pandemic was the most discussed topic, but rather on the effects that the pandemic was having on the life of persons with disabilities. The global crisis of Covid-19 has namely deepened pre-existing inequalities²²⁰ bringing disproportional harm to persons with disabilities and their rights.²²¹ The exponential increase in inequalities persons with disabilities already faced before the outbreak of the pandemic shed a light on the imperative need to foster the level of inclusion of persons with disabilities within the society,²²² which includes the accessibility to information.

Furthermore, the Working Group provides every year an annual report on its activities sharing its key achievements²²³ in the year taken into consideration. This does not only allow everyone to learn more about the key achievements of the ENNHRI CRPD Working Group, but it is indeed a signal of transparency of the Working Groups, which wants to make the public aware of its activities, even though it is not required to do so.

3.2. European Network of Equality Bodies

First established in 2000 by the Racial Equality Directive (2000/43/EC), equality bodies are public organizations promoting equal treatment and giving assistance to victims of discrimination. They are the upholders of the EU value of equality -an analysis of

²¹⁹ ENNHRI, Rights of Persons with Disabilities, cit.

²²⁰ UN Secretary-General, Policy Brief: A Disability-Inclusive Response to COVID-19, p. 2, www.un.org.

²²¹ ENNHRI CRPD Working Group Chair Ekaterine Skhiladze in ENNHRI CRPD Working Group newsletter No. 5 on the recovery from the effects of the Pandemic on the rights of persons with disabilities, April-June 2021, p. 2, www.ennhri.org.

²²² UN Secretary-General, *op. cit.*, p. 18.

²²³ ENNHRI, Rights of Persons with Disabilities, cit.

which was already provided in chapter two of this work- and of the right to non-discrimination.²²⁴

Equality bodies are established at national level and are common institutions not only in EU member states, but also in wider Europe. Their establishment is regulated by the EU equal treatment legislation²²⁵ establishing the requirements to be fulfilled by equality bodies.²²⁶

Most of EU member states went well beyond the requirements established by the EU equal treatment legislation focusing on the work on race and gender. As a matter of facts, many equality bodies have extended their area of work to all the grounds for discrimination, including, inter alia, age, gender identity, health status and disability within their areas of action.²²⁷

The goal of equality bodies is the promotion of more equal societies and fights against discrimination. To do this, they work both on a general basis by collecting data and conducting research on equality, and on a particular basis taking complaints from anyone experiencing discrimination and providing them with legal assistance.²²⁸ Furthermore, equality bodies give advice to employers, service providers and civil society organization on how good equality plans and practices shall be put in place.²²⁹ It is therefore clear that equality bodies take different kinds of actions both *ex ante* and *ex post* and in any matter of discrimination.

The great commitment of equality bodies to promote equality

²²⁴ Equinet, *Equality Bodies*, www.equineteurope.org.

²²⁵ In particular, the Race Equality Directive (2000/43/EC) and the Gender Equality Directives on employment, self-employment and access to goods and services are the basis legislative acts regulating the activities of equality bodies.

²²⁶ Equinet, *National Equality Bodies, Champions of Equality and Non-Discrimination*, p. 1, www.equineteurope.org.

²²⁷ Equinet, Written observations in applications nos. 34591/19 and 42545/19 Franc TOPLAK v. Slovenia and Iztok MRAK v. Slovenia, 28 July 2020, p. 1, www.equineteurope.org.

²²⁸ Equinet, *Equality Bodies*, cit.

²²⁹ *Ibid.*

and tackle discrimination led many states parties to design their equality bodies as CRPD independent mechanisms.²³⁰ In order to ensure the full independence of equality bodies, no change on the structure thereof has been made until 2015, when developing standards were established in order to ensure their full potential to be achieved²³¹ and to standardize their actions. Furthermore, since most of national equality bodies have been identified as members of their national CRPD monitoring framework, it is important for them to cooperate at European level.

Equality bodies of all EU member states gradually joined Equinet together with other non-EU member states. At present, the network counts forty-nine members. It is not to be considered as a mere group of national equality bodies, but it is rather a network ensuring the flow of information and knowledge²³² among its members.

Disability is specifically one of the working areas in which Equinet operates, and one of the most discussed topics concerns the concept of ‘reasonable accommodation’²³³ for persons with disabilities. First introduced among the forms of discrimination in 2006, refers to the required and suitable modification and adjustments “not imposing a disproportionate or undue burden [...] to ensure [...] the full enjoyment or exercise”²³⁴ of all human rights and fundamental freedoms by persons with disabilities on an equal basis with others. Equinet’s working group on equality law analyzed this definition in 2020 while preparing its third-party intervention in the Toplak and

²³⁰ Equinet, Equinet’s submission to the UN CRPD draft General Comment on Article 5 – Equality and Non-Discrimination, p. 7., www.ohchr.org.

²³¹ Equinet, Working Paper on Developing Standards for Equality Bodies, 2016, p. 2, www.equineteurope.org.

²³² OHCHR study on youth and human rights Equinet’s input, p.1, www.ohchr.org

²³³ It must be noticed that the concept of reasonable accommodation differs from the one of accessibility, which refers to the fact that the needs of persons with disabilities are taken into consideration when providing a service of any kind.

²³⁴ UN General Assembly, CRPD, cit., art. 3.

Mrak v Slovenia case.²³⁵ Unlike accessibility -that relates to groups-, reasonable accommodation was to be considered as related to individuals,²³⁶ and the information on this difference was still little spread within the states parties to the Convention.²³⁷ This led Equinet to consider it necessary for the member states of the Council of Europe to adapt their actions to the changes in legislation, jurisprudence and practices across the Council of Europe member states.²³⁸

In 2022, Equinet considered it necessary to broaden the understanding of the concept of reasonable accommodation and pushing it beyond the ground of disability²³⁹ in order to achieve substantive equality. This new interpretation of the concept roots substantive equality in the “elimination of discrimination and the deployment of positive action”²⁴⁰ addressing the obstacles accruing from a wrong approach to the issue. Indeed, Equinet advocates for the centrality of the concept of reasonable accommodation in the achievement of real equality and the abolition of discriminations that affects the rights of persons with disabilities. However, this understanding is still far from finding the specific provision in the European legislation.

Needless to say, that reasonable accommodation is neither the only disability-related issue nor the only disability-related matter on which Equinet’s work is based. However, the analysis of the viewpoint of the network on these issues provides in the opinion of the

²³⁵ The case concerned the accessibility of polling stations for persons with disabilities using wheelchairs. Critical questions concerning the obligation of contracting states to the ECHR to ensure the right to vote for persons with disabilities without discrimination were raised.

²³⁶ CRPD Committee, Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 19/2014 (Fiona Given vs. Australia), 29 March 2018, CRPD/C/19/D/19/2014, para. 8.5., www.docstore.ohchr.org.

²³⁷ Equinet, Written observations, cit., p. 10.

²³⁸ *Ibid.*

²³⁹ CROWLEY, *Equality Bodies and Reasonable Accommodation Beyond the Ground of Disability*, 2022, Brussels, p. 7, www.equineteurope.org.

²⁴⁰ *Ibid.*

writer the best example of how Equinet acts and how it could influence both the actions of equality bodies and policy makers.

3.3. European Network of Ombudsmen

Ombudsmen have mainly the task to investigate and report on complaints that concern maladministration issues of public authorities. Unlike courts, they provide for recommendations only that are not binding for the public authorities involved in the issue. This allows their procedures to be much more flexible, quick and cheaper. Furthermore, the non-bindingness of the recommendations issued by the ombudsmen does not at all mean lack of consideration by the public authorities,²⁴¹ which would rather voluntarily follow them.

The effectiveness of the actions of ombudsmen have led many EU (and European) countries to appoint their national ombudsmen, together with other national institutions, as independent national mechanism for the promotion, protection and monitoring of the implementation of the CRPD²⁴² within their domestic borders. This same decision was shared by the EU, which included its European Ombudsman among the members of the EU framework²⁴³ promoting, protecting and monitoring the implementation of the Convention within the Union and its member states, the role and tasks of which have been presented in section two of this chapter.

The kind of complaints ombudsmen receive every day has led them to cooperate with one another to provide citizens with the best possible service. This is due to the fact that almost 75% of all complaints submitted to them -especially the ones submitted to the European Ombudsman- fall outside their remit,²⁴⁴ while working closely with their colleagues and being aware of their respective mandates allows them to guarantee that citizens can be directed to the

²⁴¹ Speech of the European Ombudsman, Professor P. Nikiforos Diamandouros on the role of the Ombudsman in strengthening accountability and the rule of law, held in London on 29 November 2009, www.ombudsman.europa.eu.

²⁴² FRA, *EU Framework for the UN CRPD*, cit.

²⁴³ General Secretariat of the Council, Revised EU-level Framework, cit., p. 4.

²⁴⁴ Speech of the European Ombudsman, *op. cit.*

bodies that are more suitable with their grievances.

Established in 1996, the ENO is an effective mechanism for cooperation on case handling at EU level. It is composed of over ninety-five offices in thirty-six European (not only EU) countries and it includes on the one side the national and regional ombudsmen - including the European Ombudsmen-, and on the other hand similar bodies of EU member states as well as candidate countries for EU membership and the PETI.²⁴⁵ The European Ombudsman at that time, Jacob Söderman, considered his mandate as a limited one and called for the creation of the ENO, which shall provide the exchange of views and mutual support²⁴⁶ in order to meliorate the ability of ombudspersons to supervise the administrative activities of EU institutions.

Until now, disability-related issues have been dealt with twice by the ENO as parallel investigations²⁴⁷ towards the Commission. In both cases, the effects of the covid-19 pandemic on the rights of persons with disabilities have been considered. On the one hand, the European Ombudsman Emily O'Reilly assessed the work of the Commission in the accommodation of its staff members with disabilities during the covid-19 emergency. The case was opened on 3 June 2020 and resolved one year later by providing a list of best practices accommodating the needs of staff members with disabilities or carers of children with disabilities.²⁴⁸ The list was drafted by the European Ombudsman after having received response from -among

²⁴⁵ European Network of Ombudsmen, The European Network of Ombudsmen, www.eno.ombudsman.europa.eu.

²⁴⁶ HOFMANN, The developing role of the European Ombudsman, in HOFMANN, ZILLER (eds), *Accountability in the EU – The Role of the European Ombudsman*, 30 June 2017, p.21, www.elgaronline.com.

²⁴⁷ Through this kind of inquiries, the European Ombudsman and the members of the ENO discuss issues involving EU, national and regional administrations. Parallel investigations involve therefore cooperation between the participating offices in order to achieve common goals.

²⁴⁸ Decision of the European Ombudsman No SI/2(2020/MMO) of 29 June 2021 on how the European Commission has accommodated the needs of staff members with disabilities in the context of the COVID-19 emergency, p. 1, www.ombudsman.europa.eu.

the others- national and regional ombudsman by means of the ENO²⁴⁹ providing their own viewpoint and experiences on the issue.

On the other hand, the covid-19 emergency was one of the aspects to be considered in the inquiry conducted by the European Ombudsman on her own initiative on how the Commission monitors the right employment of EU Structural and Investment (hereafter “ESI”) funds in the right of persons with disabilities to independent living and inclusion within the community. The ENO members provided with their opinions on how the right to independent living was being implemented in their member states as required by the European Ombudsman,²⁵⁰ the replies of which who were taken into consideration when drafting the final assessment. Most of national ombudsmen denounced in their replies the misuse of the funds, since they were employed in a mere displacement of persons with disabilities from big to smaller institutions²⁵¹ without making therefore a minimum contribution to the guarantee of neither their independent living, nor their inclusion within the community. The European Ombudsman considered in her final assessment the response to the covid-19 pandemic as one of the main causes of the non-inclusive actions of the member states. Indeed, persons with disabilities were disproportionately impacted by the covid-19 pandemic,²⁵² and the European Ombudsman found it necessary to issue a new guidance for member states towards the ‘deinstitutionalization’²⁵³ in the use of ESI funds.²⁵⁴

²⁴⁹ *Ibid.*, footnote No. 1, p. 3.

²⁵⁰ Decision of the European Ombudsman No OI/2/2021/MHZ of 27 April 2022 on how the European Commission monitors EU Structural and Investment funds to ensure they are used to promote the right of persons with disabilities to independent living and inclusion in the community, pp. 2, 11-12, www.ombudsman.europa.eu.

²⁵¹ *Ibid.*, p. 11.

²⁵² PFEIFER, *op. cit.*

²⁵³ The CoRPD considers continued investment in institutional care to hamper the full realization of both the right to live independently and be included in the community. Indeed, deinstitutionalization is a specific objective of the CRPD. The CoRPD therefore recommended in its concluding observations dated 2 October 2015 the EU to foster

From what has been presented so far, one may conclude that the ENO, as well as the other two networks presented in this section, is fundamental in the promotion, protection and monitoring of the implementation of the CRPD within the states parties to the Convention. Since these networks do not belong to only one of the states parties, their impartiality constitutes the guarantee of a detached way of acting, the only goal of which is the promotion and protection of human rights, including the ones enshrined in the CRPD.

4. STRATEGY FOR THE RIGHTS OF PERSONS WITH DISABILITIES 2010-2020: A RENEWED COMMITMENT TO A BARRIER-FREE EUROPE

The very first display of the strong commitment of the EU towards the respect of the provisions enshrined the CRPD within its territory came even before the ratification of the treaty (precisely, one month before the ratification) through a ten-year framework renewing the commitment of the EU to ‘a barrier-free Europe’. As already stressed out in the first chapter of this work however, the EU already dealt with disability-related issues before the ratification of the Convention but concentrated at first on the economic aspect. This can be seen in 2000, when all kind of discrimination, including disability, was prohibited in the area of employment and occupation.²⁵⁵ In 2003 the EU moved a step forward and added to the economic aspect the structural and public service-related issues to be dealt with in a 6-year framework.²⁵⁶

Despite the fact that the EU gave special attention to the disability-related issues it dealt with before the CRPD became part of the EU legal order, what had been done was no longer enough after the ratification of the Convention. At the moment of the ratification, the rate of poverty of persons with disabilities was 70% higher than

deinstitutionalization within its member states.

²⁵⁴ Decision of the European Ombudsman No OI/2/2021/MHZ, cit., p. 5.

²⁵⁵ Council directive 2000/78/EC, cit., art. 2.

²⁵⁶ European Commission Communication COM/2003/0650, cit.

the average,²⁵⁷ which was only partly due to their limited access to employment.

The CRPD requires the contracting parties to “ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities,”²⁵⁸ and the EU was bound to the provisions enshrined thereof. In order to comply with its obligations under the Convention, the EU started working together with its member states to tackle the environmental and attitudinal barriers preventing persons with disabilities from fully exercising their fundamental rights and freedoms.²⁵⁹

On 15 November 2010 the Commission shared with the EP, the Council, the European Economic and Social Committee (hereafter “EESC”) and the Committee of the Regions its ten-year strategy aiming at the full participation of persons with disabilities both in society and economy,²⁶⁰ enabling them to fully exercise the rights enshrined in the Convention. The Strategy aims at eliminating both physical and environmental barriers. To do so, it focused its activity on eight main areas -namely accessibility, participation, equality, employment, education and training, social protection, health, external actions-²⁶¹ the key actions of which will be outlined in the next paragraphs.²⁶²

4.1. Accessibility

“Ensure accessibility to goods, services including public services and assistive devices for people with

²⁵⁷ European Commission Communication COM/2010/636 final of 15 November 2010 concerning the establishment of a ten-year European Disability Strategy, p. 3, www.eur-lex.europa.eu.

²⁵⁸ UN General Assembly, *CRPD*, cit., art. 4.

²⁵⁹ European Commission Communication COM/2010/636 final, cit. p. 3.

²⁶⁰ European Platform for Rehabilitation, *European Disability Strategy 2010-2020: Analysis of the Mid-Term Review and proposals for the next steps*, 2015, p. 2, www.epr.eu.

²⁶¹ European Commission Communication COM/2010/636 final, cit. p. 4.

²⁶² Each paragraph will start with a quotation from the Communication document resuming the final aim of the strategy in each area of action.

disabilities.”²⁶³

As one of the general principles on which the CRPD is based,²⁶⁴ accessibility shall be one of the guiding principles of the actions of the states parties to the Convention. Broadly speaking, accessibility refers to the possibility of persons with disabilities to not only have equal opportunities, but also get full information as independently and fairly as others. Indeed, information and services are accessible only when they can be obtained and enjoyed by persons with disabilities with substantially equivalent ease of use²⁶⁵ as people without disabilities.

In 2010 the Commission recognized that in all the areas²⁶⁶ included in the definition of accessibility there were still major barriers to be tackled. One example worth mentioning is the rate of public websites fully complying with web accessibility standards, which reached 5%, as well as many television broadcasters providing only few subtitled and audio-described programs.²⁶⁷

Accessibility is at the basis for participation both in society and in the economy, and the Commission proposed therefore to use all the instruments at the disposal of the EU -legislative instruments, but also other instruments such as standardization- to improve the accessibility²⁶⁸ in all the required areas. In this policy area, the objective was therefore to ensure accessibility of goods, services - including public services- and assistive devices for persons with disabilities.

At the end of the ten-year period, 63% of the intended actions (seventeen out of twenty-seven) were fully implemented, while the

²⁶³ European Commission Communication COM/2010/636 final, cit. p. 5.

²⁶⁴ UN General Assembly, *CRPD*, cit., art. 3(f).

²⁶⁵ Case Western Reserve University, *What is Accessibility*, www.case.edu.

²⁶⁶ European Commission Communication COM/2010/636 final, cit. p. 5.

²⁶⁷ European Commission staff working document SEC/2007/1469, *Accompanying document to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee on the Region of 8 November 2007*, p. 7, www.ec.europa.eu.

²⁶⁸ European Commission Communication COM/2010/636 final, cit. p. 5.

partially implemented ones reached 22% (six out of twenty-seven).²⁶⁹ The most iconic action improving accessibility within the EU was the adoption of the European Accessibility Act in 2019 aiming at the improvement of access to “mainstream products and services that [...] address the particular needs of persons with disabilities.”²⁷⁰ The general scope was indeed to improve the functioning of the internal market for accessible goods and services by eliminating the barriers created by divergent rules within and among EU member states. As a matter of facts, the Directive provides, *inter alia*, member states with an exhaustive list of the accessibility requirements,²⁷¹ as well as non-binding examples²⁷² on the implementation of said requirements.

This time however, the economic aspect was not the predominant one in the EU activities in this policy area. It is worth mentioning the achievements in the first modified area, an area that has always represented an immense barrier for people with disabilities, namely public transports. Indeed, all passenger rights Regulations -with the only exception for air passenger rights- were accordingly amended under the proposal of the Commission.²⁷³ Lost or damaged mobility equipment -e.g., wheelchairs- or assistive devices are now to be compensated²⁷⁴ by carriers and terminal managing bodies responsible for the loss or damage. This same clause refers to passengers with disabilities of bus and coach transport,²⁷⁵ rail transports,²⁷⁶ as well as sea and inland waterways,²⁷⁷ while for what

²⁶⁹ European Commission Doc No SWD/2020/289 final/2 evaluating the European Disability Strategy 2010-2020 of 27 November 2020, p. 14.

²⁷⁰ Council and European Parliament directive 2019/882/EU of 17 April 2019 on the accessibility requirements for products and services, OJ L 151 of 7 June 2019, operative clause No 3, www.eur-lex.europa.eu

²⁷¹ *Ibid.*, Annex I.

²⁷² *Ibid.*, Annex II.

²⁷³ European Commission Doc No SWD/2020/289 final/2, *cit.*, pp. 22-23.

²⁷⁴ The compensation shall be equal to the cost of replacement or repair of the equipment.

²⁷⁵ Council and European Parliament Regulation (EU) No 181/2011 of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 in OJ L 55 of 28 February 2011, art. 17.

²⁷⁶ Council and European Parliament Regulation (EU) No 1371/2007 of 23

concerns air transport, there is an ongoing procedure within the priority pending proposals of the Commission²⁷⁸ on the issue.

For what concerns the accessibility policy area, the Strategy has been quite instrumental in establishing a framework in which legislations and policies could be issued²⁷⁹ to promote the rights of persons with disabilities both within the EU and outside its borders. However, most of the actions of the Strategy were taken at EU level only, which underlines the need for a wider view about actions and progress within EU member states.²⁸⁰ Albeit the EU considers its actions within this policy area quite successful, it recognized in its evaluating document that the Strategy mainly focused on ‘visible disabilities’, namely physical impairments, and disregarded the ‘non-visible’ ones,²⁸¹ namely sensory and intellectual-relational impairments, which need another kind of accessibility activities²⁸² to be implemented.

4.2. Participation

“Achieve full participation of people with disabilities in society by (a) enabling them to enjoy all the benefits of EU citizenship; (b) removing administrative and attitudinal barriers to full and equal participation; (c) providing quality community-based services, including

October 2007 on rail passenger’s rights and obligations in OJ L 315 of 3 December 2007, art. 25.

²⁷⁷ Council and European Parliament Regulation (EU) No 1177/2010 of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 in OJ L 334 of 17 December 2010, art. 15.

²⁷⁸ European Commission Communication COM/2020/690 final of 19 October 2020 concerning the Commission Work Programme 2020, Annex III number 5, www.eur-lex.europa.eu.

²⁷⁹ Mental Health Europe, Assessment of the European Disability Strategy 2010-2020, position paper of April 2019, p. 1, www.mhe-sme.org.

²⁸⁰ European Commission Doc No SWD/2020/289 final/2, cit. p. 5.

²⁸¹ *Ibid.*, p. 23.

²⁸² For example, simplified environments, less complicated information provided to the public, presence of a sign language interpreters for deaf people in public offices, mental health literacy of public officials, etc.

access to personal assistance.”²⁸³

The CRPD promotes full and effective participation in society of persons with disabilities on an equal basis with others. This does not only refer to the participation in the political and public life,²⁸⁴ but also in cultural life, recreation, leisure and sport,²⁸⁵ encompassing indeed all aspects of life. When it comes to the transposition of this right within the EU, the main limitation in the participation of persons with disabilities on an equal basis with other is represented by the EU citizenship rights,²⁸⁶ the protection of which is not yet fully guaranteed²⁸⁷ and is therefore the subject of many claims raised by persons with disabilities themselves as well as associations and organizations advocating for their fundamental rights. By way of illustration, a person with disability moving to an EU country different from his residential one may lose access to national benefits²⁸⁸ -e.g., free or reduced-cost in public transport-, which often prevents them from freely moving to another EU country.

The Commission commits itself to tackle the citizenship-related issues by first facilitating and promoting the use of the European model of disability parking card.²⁸⁹ It then promised to work to promote the transition from the institutional to a community-based care by establishing structural funds and raising awareness²⁹⁰ of the living conditions of persons with disabilities in residential institutions.

²⁸³ European Commission Communication COM/2010/636 final, cit. p. 6.

²⁸⁴ UN General Assembly, CRPD, cit., art. 29.

²⁸⁵ *Ibid.*, art. 30.

²⁸⁶ Freedom of movement within the EU territory; vote and stand as candidates in the EP and in national parliaments; enjoy consular and diplomatic protection by member states in third countries; petition to the EP; refer to the European Ombudsman; good administration; access to documents.

²⁸⁷ WADDINGTON, *The potential for, and Barriers to, the Exercise of Active EU Citizenship by People with Disabilities: The Right to Free Movement*, in HALVORSEN, HVINDED, BICKENCACH, FERRI, RODRIGUEZ (eds.), *The Changing Disability Policy System: Active Citizenship and Disability in Europe*, vol. 1, Routledge, 2017, pp. 196 ff.

²⁸⁸ European Commission Communication COM/2010/636 final, cit. p. 5.

²⁸⁹ *Ibid.*

²⁹⁰ *Ibid.*, p. 6.

Finally, the Commission focuses on the improvement in the accessibility of cultural, recreational and sport activities and events, as well as the promotion of the participation and organization of disability-specific sports events.²⁹¹

The work of the Commission in this policy area reached the highest number of fully implemented actions (twenty-two) representing the 81% of the intended actions²⁹² to be implemented. The first implemented actions worth noticing were the ones in support of independent living of persons with disabilities. Markedly, an EU funding legislation was established in order to support member states in the transition from institutional to community-based care²⁹³ laying down the general and common provisions of EU funds, including the ESI funds established specifically to finance the ‘deinstitutionalization’ of persons with disabilities in EU member states.

Another contribution to the fulfillment of the objectives of the Strategy in the protection policy area came from the inclusion of young persons with disabilities into the Erasmus+ youth mobility projects. For the first time, young persons with disabilities had the opportunity to travel abroad and make the same experiences of their peers. Inter alia, a group of six young volunteers from different EU countries (Spain, France, Finland and Latvia) with different backgrounds (learning difficulties, previous substance abuse, intellectual impairment, orphanage) experienced different voluntary jobs²⁹⁴ and had the opportunity to get involved for the first time.

²⁹¹ *Ibid.*

²⁹² European Commission Doc No SWD/2020/289 final/2, cit., pp. 14, 24.

²⁹³ Council and European Parliament Regulation (EU) No 1303/2013 of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 in OJ L 347 of 20 December 2013, Annex XI number 9, www.eur-lex.europa.eu.

²⁹⁴ European Commission Directorate General for Education and Culture,

Further actions promoted instead participation of persons with disabilities into sports by funding disability-specific sporting events and projects -even through the Erasmus+ program-²⁹⁵ as well as raising awareness on their participation into sports events. To this end, an EU sport award promoting sport as a tool for inclusion and European identity building was introduced in 2014. The ‘#BeInclusive EU Sport Awards’ reward every year the most inclusive²⁹⁶ and non-discriminant projects,²⁹⁷ and spreads the participation of persons with disabilities into sports. In addition, following the commitment request of the Council,²⁹⁸ the European Commission hosted on 28-29 November 2019 the European day of persons with disabilities, where politicians, high-level experts and self-advocates discussed the challenges persons with disabilities experience.

An action on which the writer would like to shed a light is the implementation in February 2016 of the European Disability Card (hereafter “Card”) pilot project in a group of eight member states²⁹⁹ addressing the issue of lack of mutual recognition of disability status among EU member states. In this sense, the project aims at ensuring equal access to benefits across national borders in the areas of transport, culture, sport and leisure.³⁰⁰ Ended in 2019, the project completely changed the life of persons with disabilities living in the countries that maintained the card³⁰¹ even when they were no more supposed to implement it. The Card proved to be effective and efficient overall but certainly needs several improvements. As

Erasmus+ Inclusion and Diversity Strategy – in the field of Youth, December 2014, p. 20, www.ec.europa.eu.

²⁹⁵ European Commission Doc No SWD/2020/289 final/2, cit., p. 25.

²⁹⁶ Does not only refer to persons with disabilities, but includes every group of people dealing with social challenger (ethnic minorities, refugees, migrants, etc.).

²⁹⁷ European Commission, #BeInclusive EU Sport Awards, www.sport.ec.europa.eu.

²⁹⁸ Council Conclusions No ST/9156/2019/INT on Access to sport for persons with disabilities in OJ C 192, points 24-33, www.eur-lex.europa.eu.

²⁹⁹ Belgium, Cyprus, Estonia, Finland, Italy, Malta, Romania and Slovenia.

³⁰⁰ European Commission Doc No SWD/2020/289 final/2, cit., p. 24.

³⁰¹ European Disability Forum, The European Disability Card, www.edf-feph.org.

revealed by the study of the Commission assessing the results of the pilot project, whereas 63% of cardholders noticed an increase in their cultural participation, less than 20% reported their participation in sport activities to have increased³⁰² owing to the Card. Even the production and delivery costs proved to be convenient, with production costs ranging between €0,14 (Belgium) and €5 (Finland) per card and the delivering costs ranging between €0,50 (Malta) and €2 (Cyprus).³⁰³ What is important to point out in this matter is that regardless of the rate of benefits resulting from the study conducted by the Commission, the Card supported after all the mutual recognition of disability status across the participating member states. Despite the different disability assessments on which member states rely to determine the eligibility for the Card, the service guarantees the recognition of the disability status when moving to another member state regardless of the different eligibility criteria adopted by the residing state. Malta and Cyprus, for example, require a minimum reduction in capacity of respectively 20% and 66%³⁰⁴ for a person to be eligible for the card. Regardless of the reasons that led the two countries to identify criteria that differ by 46 percentage points, citizens residing in the two member states would maintain their benefits when travelling to another member state. It goes without saying that a citizen who was not eligible for the Card in their residing country might not access the benefits in another member state notwithstanding the different criteria. In this sense, an action aimed at combating discrimination *of* persons with disabilities results instead in discrimination *among* persons with disabilities. It is precisely for this reason that a staggering number of petitioners call for the alignment of disability assessment methods and tools with the International

³⁰² European Commission, *Study assessing the implementation of the pilot action on the EU Disability Card and associated benefits – Final Report*, May 2021, p. 3.

³⁰³ *Ibid.*, p. 4.

³⁰⁴ PRIESTLEY, *Disability assessment, mutual recognition and the Eu Disability Card. Progress and opportunities*, Policy Department for Citizen's Rights and Constitutional Affairs of the European Parliament, November 2022, Table 9, p. 46, www.europarl.europa.eu.

Classification of Function, Disability and Health³⁰⁵ endorsed by the World Health Organization in 2001 as an international standard in impairment assessment. Besides that, the Card represents a reliable identification document making even the work of service providers easier, since no additional proof of the status will be required if member states mutually recognize the disability status of the other countries. As things stand at present, while the Card project promotes equality and overcomes discriminations, the homogenization of disability assessment procedures raises considerations on the principles of subsidiarity and proportionality³⁰⁶ on which the EU is based. Even though social policies fall within the shared competence between the EU and its member states,³⁰⁷ most of the benefits and services deriving from the disability assessment fall within the policy areas³⁰⁸ thereof that fall within the exclusive competence of the member states. Nevertheless, the EU promotes the harmonization of living and working conditions among member states, as well as the implementation of “measures which take account of the diverse forms of national practices [...] which will favour the harmonization of social systems.”³⁰⁹ At the same time, being disability a category to which member states dedicate a big part of public spending on social protection and assistance,³¹⁰ the disability assessment criteria may be considered as one of the main public spending rationing mechanisms for member states. This is indeed a case in which shared and exclusive competences overlap, making it rather difficult to identify a meeting point between the needs of persons with impairments and the requirements of the member states. As a result, the project will be resumed within the Strategy for the 2021-2030 horizon that will be outlined in the next section.

³⁰⁵ *Ibid.*, pp. 14-17.

³⁰⁶ *Ibid.*, p. 17.

³⁰⁷ *TFEU*, cit., art. 4.

³⁰⁸ Inter alia, educational support, social security benefits, housing services and support, employment support, social assistance.

³⁰⁹ *TFEU*, art. 151.

³¹⁰ Eurostat, *Expenditure on social protection benefits by function*, 2022, www.ec.europa.eu.

4.3. Equality

“Eradicate discrimination on grounds of disability in the EU.”³¹¹

If a guiding principle of the protection and promotion of fundamental rights and freedoms were to be identified, this would certainly be equality. And it is not by chance that equality is one of the values on which the EU is founded,³¹² and in name of which the EU acts. Equality as such is strictly linked to the principle of non-discrimination,³¹³ since equal and effective legal protection is against bias of any kind.³¹⁴

The Commission proposed a two-pronged approach in this policy area involving on the one hand the re-interpretation of existing EU legislation to protect persons with disabilities from discrimination, and the implementation of an active policy opposing discrimination and promoting equal opportunities in EU policies³¹⁵ on the other hand. Furthermore, the Commission committed itself to pay attention to the further discrimination that persons with disabilities may experience on other grounds. Broadly speaking, the final aim of the Strategy in this policy area was to completely eradicate discrimination based on disability within the EU.

So simple to define, equality was the most difficult goal to attain for the Strategy at issue, probably too ambitious to achieve in the short time available to the Strategy. In this sense, the implementation rate in this area of 82% (nine fully implemented and two partially implemented actions out of eleven)³¹⁶ is misleading in the evaluation of the real improvement. The fulfilment of said objective “would have [actually] required heavy changes [...] that would have gone beyond the Strategy’s possible scope for

³¹¹ European Commission Communication COM/2010/636 final, cit. p. 7.

³¹² Consolidated version of the Treaty on the European Union, OJ C 326/13 of 26 October 2012, art. 2, www.eur-lex.europa.eu.

³¹³ UN General Assembly, *CRPD*, cit., art. 5.

³¹⁴ In this sense, equality and non-discrimination are often defined as the ‘twin principles’.

³¹⁵ European Commission Communication COM/2010/636 final, cit. p. 6.

³¹⁶ European Commission Doc No SWD/2020/289 final/2, cit., p. 14.

achievement.”³¹⁷

In the ten-year period at its disposal, the Commission managed to monitor both the application and the impact of Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation. The Commission established that albeit some member states had to cope with initial difficulties in the correct transposition of the provisions of reasonable accommodation,³¹⁸ with one of them even even found by the CJEU to be in breach of the Directive in 2013,³¹⁹ they all managed to implement the required measures in order to properly transpose the Directive into their legal orders.³²⁰

Supporting the Council negotiation on the proposal for a directive on equal treatment beyond the field of employment was the most difficult task in this policy area for the Commission, which managed an only partial implementation³²¹ of the horizontal directive on equal treatment³²² proposed in 2008. The supporting activity of the Commission in this regard failed to achieve the required unanimity in the Council on the draft proposal. In this sense, the action did not result in the expected aftermaths, and the non-adoption of the directive -which in fact has not yet been adopted- leaves a legal gap as regards protection from discrimination based on disability. Indeed, the

³¹⁷ *Ibid.*, p. 26.

³¹⁸ Report from the Commission to the European Parliament and the Council COM/2014/02 final on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('Racial Equality Directive') and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive'), of 17 January 2014, section 6 number 2, www.eur-lex.europa.eu.

³¹⁹ Court of Justice of the European Union, case C-312/11 *Commission v. Italy*, judgment of 4 July 2013, www.eur-lex.europa.eu.

³²⁰ Report from the Commission, *op. cit.*, section 2.

³²¹ European Commission Doc No SWD/2020/289 final/2, *cit.*, pp. 27, 84.

³²² European Commission Communication COM/2008/426 final of 2 July 2008 concerning the proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, www.eur-lex.europa.eu.

directive aims at covering areas that are still disregarded³²³ in the protection from discrimination of persons with disabilities, notably social protection, healthcare, education, access to goods and services, and housing. The deadlock in which the directive finds itself is due to continuous opposition of two delegations³²⁴ considering the proposal as an infringement of national competence on certain issues (such as education) as well as conflicting with the principles of subsidiarity³²⁵ and proportionality³²⁶ regulating the exercise of competences³²⁷ at EU level. Furthermore, the same two delegations have maintained general reservations³²⁸ on the proposal submitted by the Commission as a consequence of their concern on budgetary implications and costs of the provisions enshrined thereof. At the same time, this situation depends also on procedural aspects binding the adoption of actions combating discrimination to a special legislative procedure³²⁹ by the Council.³³⁰ In this regard, the Commission identified in the aforementioned procedure a gap in the protection against discrimination and proposed to facilitate the decision-making process

³²³ Equinet, Time to adopt the Equal Treatment Directive, 25 June 2018, www.equineteurope.org.

³²⁴ It is not possible to identify the involved ones in the reports of the Council.

³²⁵ This principle is only applicable for shared and supplementary competences and safeguards the ability of the member states to take decisions and allows the intervention of EU institutions only when the objective cannot be sufficiently achieved by member states. even when the EU institutions are allowed to intervene, their activity shall be an added value to the activity of the member states.

³²⁶ This principle is applicable to all kinds of competences and requires the EU institutions to adopt the act that binds the member states the less.

³²⁷ Council Progress Report 12070/22 on the proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation of 16 November 2022, p. 2, www.eur-lex.europa.eu.

³²⁸ Used in exceptional cases in which there are significant risks that the financial interests of the EU are not protected.

³²⁹ Unlike the ordinary legislative procedure, in the special legislative procedure the two co-legislators do not have the same power: while one of them (usually the Council) adopts legal acts by unanimity, the other one (usually the EP) maintains its veto power (it can either accept or reject the proposal), but cannot amend the proposal. In addition

³³⁰ *TFEU*, art. 19.

in this area by moving from special to ordinary legislative procedure and from unanimity to qualified majority voting.³³¹

The remaining actions implemented in this area focused on awareness raising on the concept of reasonable accommodation on the one hand and the promotion of diversity to tackle discrimination. An exhaustive guidance on reasonable accommodation for persons with disabilities was provided towards the end on the Strategy addressing employers and service providers in order to clarify the concept of reasonable accommodation³³² and specify what kind of accommodation they can offer³³³ to their employees. An effective action by the Commission in its awareness raising activity was the implementation of campaigns addressing different aspects of discrimination on disability grounds. On the one hand, the ‘What can Social Europe do for you’ introduces for the first time a disability specific focus³³⁴ among the society’s most pressing challenges to be examined. On the other hand, disability discrimination was -and still is- addressed through the ‘For Diversity Against Discrimination campaign’ establishing journalist awards, designing leaflets, setting stands at conferences and organizing the so-called ‘Diversity days’,³³⁵ bringing more and more people closer to the fight against discrimination and promotion of diversity within society.

From what has been presented so far, one may conclude that the fact that almost all intended actions have been fully implemented in the ten-year period is proof that the work of the Commission is on the right track. However, the ambitious formulation found in the

³³¹ European Commission Communication COM/2019/186 final to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions of 16 April 2019 identifying areas for an enhanced move to qualified majority voting, www.eur-lex.europa.eu.

³³² *European Commission, How to put reasonable accommodation into practice, Guide of promising practices, 2020, p. 12, www.ec.europa.eu.*

³³³ *Ibid., p. 13 ff.*

³³⁴ *European Commission, ‘What can Social Europe do for you’ campaign, www.ec.europa.eu.*

³³⁵ *European Commission, ‘For Diversity Against Discrimination campaign’, www.ec.europa.eu.*

communication of the Strategy by the Commission resulted in the opinion of the writer too much challenging not only for the reduced period at its disposal, but also because the EU member states are not yet fully ready to do so. This is demonstrated by the fact that a directive promoting equal treatment beyond the field of employment is at a standstill since 2008, and the Council did not even manage after the ratification of the CRPD by all member states³³⁶ to find a meeting point and implement it.

4.4. Employment

“Enable many more people with disabilities to earn their living on the open labour market.”³³⁷

The full enjoyment of independent living is predominantly dependent on the accessibility of persons with disabilities to the labour market on an equal basis with others,³³⁸ since the assurance of an income is for everyone the minimal requirement for their own livelihood. Following the trace of the equality and non-discrimination discourses provided in the previous paragraph, one might expect persons with disabilities to gain a living by a freely chosen (or accepted) work and in a work environment that shall be accessible and inclusive for them. However, the spread of the medical-charity model leads to the exclusion of persons with disabilities from the labour market, which means that they are disproportionately affected by poverty,³³⁹ mostly because they are not allowed to work even though they would be able to do so.

In this policy area, the Commission intended to increase the participation of persons with disabilities in the labour market. This group was -and still is- indeed under-represented in this area, where the employment rate reached 46%³⁴⁰ only. To achieve the target set in

³³⁶ See the official UN website reporting the updated status of ratification of the CRPD, available at www.treaties.un.org.

³³⁷ European Commission Communication COM/2010/636 final, cit. p. 7.

³³⁸ UN General Assembly, *CRPD*, cit., Art. 27(1).

³³⁹ DEVANDAS AGUILAR, *Social protection and persons with disabilities*, in *International Social Security Review*, Vol. 70, p. 49, www.onlinelibrary.wiley.com.

³⁴⁰ European Commission Doc No SWD/2020/289 final/2, cit., p. 28.

this policy area, the Commission planned to exploit the potential of the Europe 2020 Strategy³⁴¹ together with its ‘Agenda for new skills and jobs’ establishing an employment rate target to be achieved by 2020.³⁴² The exploitation of these two projects shall consist in the provision of all the support needed to member states, namely information exchange, analysis and political guidance, to spread awareness on the issue as well as identify challenges and suggest solutions.³⁴³ Particular attention should be paid to young people with disabilities during their transition from education to employment³⁴⁴ as well as intra-job mobility. Furthermore, the Strategy included the involvement of social partners to address quality jobs and self-employment, including the career advancement issue.³⁴⁵ Needless to say, that all the actions of the Strategy shall promote diversity management at the workplace in the creation of an accessible and inclusive working environment.

The work of the Union was quite effective in terms of implementation of the intended actions enlisted by the Commission. among the sixteen intended actions, twelve (75%) were fully implemented, while three of them (19%) were only partially implemented, and only one action was not implemented at all³⁴⁶ at the end of the ten-year period. Despite the high implementing rate however, the increase in participation of persons with disabilities in the labour market is not easy to quantify.

³⁴¹ Adopted in 2010, it aims at restoring the EU after the crisis and face the new challenges. The main goal is to make of the EU a smart, sustainable and inclusive economy allocating high rates of employment, productivity and social cohesion.

³⁴² European Commission Communication COM/2010/682 final of 23 November 2010 concerning the establishment of an Agenda for new skills and jobs for a European contribution towards full employment, p. 2, www.eur-lex.europa.eu.

³⁴³ European Commission Communication COM/2010/636 final, cit. p. 7.

³⁴⁴ Eurofound, *Active inclusion of young people with disabilities or health problems*, Publications Office of the European Union, Luxembourg, 2012, pp. 20 ff., www.old.adapt.it.

³⁴⁵ *Ibid.*

³⁴⁶ European Commission Doc No SWD/2020/289 final/2, cit., p. 14.

Among the policy tools implemented, particular attention should be paid to the European Pillar of Social Rights (hereafter “Pillar”) explicitly asserting the right of persons with disabilities to a life in dignity.³⁴⁷ Followed by the homonymous Action Plan setting out concrete initiatives to turn its provisions into reality, the Pillar asserts 20 guiding principles towards a strong social Europe that shall be fair, inclusive and full of opportunities,³⁴⁸ and it is the basis on which well-functioning labour markets and good welfare systems shall be built for the benefit of all EU citizens.

Statistical data on the employment situation of persons with disabilities were improved through the creation of an ad hoc module of the 2011 Labour Force Survey³⁴⁹ focusing specifically on the issue, as well as the inclusion of a “proxy variable on disability”³⁵⁰ in all population surveys. All these data are coordinated by Eurostat, which is, jointly with the Academic Network of European Disability experts,³⁵¹ a significant tool for the formulation of suitable policies and legislative initiative dealing with disability and employment. This improvement allowed the inclusion of disability-based considerations in the general surveys analyzing the employment rate within the EU. However, the system will not be fully inclusive until the Employment Committee will implement a specific indicator for vulnerable groups within the open labour market, which would allow a fully comprehensive evaluation of the situation. In this sense, the improvement of the statistical data may be considered as only partially implemented and slightly relevant in the results of employment

³⁴⁷ European Parliament, Council and Commission, European Pillar of Social Rights, 2017, Brussels, Pillar No 17, www.commission.europa.eu.

³⁴⁸ European Commission, European Pillar of Social Rights, www.commission.europa.eu.

³⁴⁹ Commission Regulation (EU) No 317/2010 of 26 April 2010 adopting the specifications of the 2011 ad hoc module on employment of disabled people for the labour force sample survey provided for by Council Regulation (EC) No 577/98 in OJ L 97 of 17 April 2010, www.eur-lex.europa.eu.

³⁵⁰ European Commission Doc No SWD/2020/289 final/2, cit., p. 28.

³⁵¹ A group of disability experts, created in 2007 by the Commission, supporting policy development via studies, analysis, research and publication. In 2020, it was replaced by the European Disability Expertise project.

surveys that may be conducted.

A last aspect in which the Strategy was quite successful was the shift of the focus from what people with disabilities cannot do to their residual abilities. Indeed, 42% of employees want the working environment of their organizations to be “diverse and inclusive of all types of people,”³⁵² and this is because more and more employers – though still too few – progressively committed to diversity policies. In this sense, the Strategy opposed to the so-called ‘disability benefit culture’ that discourage persons with disabilities to enter the job market,³⁵³ enabling their work integration -at least from the theoretical point of view-.

Albeit the data on the implementation in this area are quite positive, there is strong divergence on the practical results of the Strategy on the participation of persons with disabilities in the labour market. While the institutional stakeholders both at EU and member state level considered the statistical data and awareness raising improvements considerably positive for the issue, most of disability rights defenders³⁵⁴ look upon employment as the worst performing area of the Strategy on the grounds of the persisting gaps³⁵⁵ between persons with disabilities and others. As a matter of facts, the final report indicates an increase in the employment rate from 46% (in 2010) to 52% (in 2018), and a reduction in the employment gap between persons with disabilities and the others from 26% (2010) to 24,2% (2018).³⁵⁶ In this sense, the Strategy was certainly not decisive for significantly reducing the gap in the labour market participation.

Having been -and still being- among the most important topics to tackle and to take into account for next EU policies, employment will be one of the policy areas on which the Strategy for the Rights of

³⁵² McDERMOTT, *More employees are demanding diversity at work. Where do European companies stand?*, 8 December 2022, www.euronews.com.

³⁵³ BOURONIKOS, *The Status of Employment and disability in the EU in 2021*, 30 July 2021, www.ied.eu.

³⁵⁴ Organizations representing persons with disabilities, business organizations and EU citizens.

³⁵⁵ European Commission Doc No SWD/2020/289 final/2, cit., p. 28.

³⁵⁶ *Ibid.*, p. 29.

Persons with Disabilities 2021-2030 will concentrate. The issue will therefore be further analyzed in the next section of this work.

4.5. Education and training

“Promote inclusive education and lifelong learning for pupils and students with disabilities.”³⁵⁷

Quality education is a relevant aspect ensuring the normal development of a human being. It is through education that children are introduced into society and have their first contacts with people outside their family. In this sense, education is a fundamental requirement for the full development of human personality,³⁵⁸ and inclusive education, as well as lifelong learning,³⁵⁹ shall be granted at all levels³⁶⁰ without discrimination. However, mainstream education is not accessible for children with disabilities,³⁶¹ who are even generally isolated from the group.

While recognizing its little competence³⁶² in this policy area, the Commission offered its support to the national efforts towards the achievement of an inclusive and quality training and education through the Youth on the Move³⁶³ initiative.³⁶⁴ In addition, the Commission advocates for the removal of both legal and organizational barriers persons with disabilities face in education, as well as an early identification of special teaching needs to provide a personalized learning when needed.

³⁵⁷ European Commission Communication COM/2010/636 final, cit. p. 8.

³⁵⁸ UNESCO, *Convention against Discrimination in Education*, Doc. No CPG.61/VI.11y/AFSR, Paris, 14 December 1960, art. 5, www.unesdoc.unesco.org.

³⁵⁹ The right to education does not only refer to the school period, but rather to the training of any kind.

³⁶⁰ UN General Assembly, *CRPD*, cit. art. 24(1)

³⁶¹ European Commission Communication COM/2010/636 final, cit. p. 7.

³⁶² Education falls within the competence of member states, and the EU does only have a supportive role.

³⁶³ Established through EP and Council Decision 1719/2006/EC of 15 November 2006, supported non-formal learning activities for young people. It was replaced in 2013 (when the project was ended) by the Erasmus+ program.

³⁶⁴ European Commission Communication COM/2010/636 final, cit., p. 8.

Within the eleven intended actions to be implemented, only four of them were fully implemented at the end of the ten-year period, while six actions were partially implemented and one of them was not implemented³⁶⁵ at all. However, since education falls within the competences of the member states, the writer does not consider these numbers as a real failure of the Strategy. In any case, for the sake of completeness, the implemented actions in this policy area are worth of mention in this work.

Most of the implemented activities focused on soft law instruments, awareness-raising and funding, with the latter being the actions with the highest implementation rate.³⁶⁶ Among the little implemented actions, the Commission managed to keep the participation of young people with fewer opportunities -including young persons with disabilities- in the ‘Youth in Action Programme’ among the priorities³⁶⁷ of the project. At the same time, the Commission succeeded in ensuring that the proposals of the Lifelong Learning³⁶⁸ program included accessibility and reasonable accommodation criteria.³⁶⁹

Working on the increase of knowledge on education levels and opportunities of persons with disabilities, the Strategy only managed to improve e-skills³⁷⁰ of persons with disabilities, an action that is anything but underestimated. The reason that prompted the Committee to include this action within the Strategy was the progressive digitalization of every single aspect of life. However, the digitalization of the global economy was accelerated by the Covid-19 pandemic, and the improvement achieved between 2010 and 2020 was not enough

³⁶⁵ European Commission Doc No SWD/2020/289 final/2, cit., p. 14.

³⁶⁶ *Ibid.*, p. 29.

³⁶⁷ European Commission, Youth Action Programme guide, 2012, p. 8, www.ec.europa.eu.

³⁶⁸ Is based on the idea learning is not limited to a specific phase in life but rather over the course of a lifetime. ‘Lifelong Learning’ includes therefore early childhood education and compulsory education, as well as vocational education and training, tertiary education, and adult education leaving no one behind.

³⁶⁹ European Commission Doc No SWD/2020/289 final/2, cit., p. 87.

³⁷⁰ *Ibid.*, p. 86.

anymore.³⁷¹ Hence, digital skills will be dealt with in the 2021-2030 Strategy with much more emphasis.

Is on the one hand the support of the Strategy to EU stakeholders seems to have fostered the inclusion of children with disabilities into education and the trainings for school staff working with them,³⁷² stakeholders representing persons with disabilities pointed out on the other hand that specific measures supporting the transition from education to the labour market were not included at all. Furthermore, the educational gap between persons with disabilities and without disabilities still persist at the end of the ten-year period. While the gap remained almost unchanged (from 9,6% in 2010 to 10% in 2018), it is important to underline that between 2010 and 2016 the rate of early school leavers with a disability in the age group 18-24 increased from 21,6% to 23,6% and decreased then to 19,9% in 2018.³⁷³ This does not only mean that the impact of the Strategy in this area is neither clearly measurable, nor reliable, but also raises doubts about the distribution of the activities in the ten-year period, which was perhaps not optimal for the purpose of the objectives to be achieved.

4.6. Social protection

“Promote decent living conditions for people with disabilities.”³⁷⁴

The stigma of the society towards persons with disabilities can have to opposite results: on the one hand isolation and segregation derive from the belief that having an impairment of any kind means not being able to do something, on the other hand welfarism is the consequence of the common belief that they need to be helped to do something. Disability is not -and shall not be restricted to- a marker of a person with an impairment of any kind but is rather the result of the

³⁷¹ Decent jobs for youth, *Enabling young persons with disabilities: inclusive digital skills initiatives*, 15 July 2022, www.decentjobforyouth.org.

³⁷² European Commission Doc No SWD/2020/289 final/2, cit., p. 29.

³⁷³ *Ibid.*, pp. 29-30.

³⁷⁴ European Commission Communication COM/2010/636 final, cit. p. 8.

interaction between that person and the environmental barriers³⁷⁵ preventing him or her from being fully involved in society. The low participation of persons with disabilities in education and in the labour market found in the previous sections inevitably result in income inequalities, poverty and social exclusion, which shall be addressed by means of adequate actions.

Social protection systems and poverty reduction programs are the first actions the Commission intends to implement to tackle the issue. In particular, an European platform against poverty shall assess the adequacy and sustainability of the implemented social protection systems,³⁷⁶ as well as financial support through the European Social Fund (hereafter “ESF”).

In terms of implementation, the Strategy was quite successful in this area: four actions out of six were fully implemented, while the remaining two were partially implemented. In this sense, the rate of implementation in the social protection policy area (67%) surpasses the rate in the accessibility policy area (63%), despite they fully implemented respectively four and twenty-two actions.³⁷⁷ However, this does not necessarily mean that this policy area was more efficient in terms of practical effects.

The Pillar proclaimed in 2017 explicitly recognized the right to inclusion of persons with disabilities³⁷⁸ and contributed to the integration and improvement of social policies within the EU and across its member states. A further implementation of the provisions contained in the Pillar led to the adoption of two more legal acts, namely a Directive on the balance between work and life, and a Recommendation on access to social protection for workers and self-employed.³⁷⁹ The legal acts respectively recognize the rights of

³⁷⁵ VANHALA, *op. cit.*, p. 833.

³⁷⁶ European Commission Communication COM/2010/758 final of 16 December 2010 establishing the European Platform against Poverty and Social Exclusion: a European framework for social and territorial cohesion, p. 7, www.eur-lex.europa.eu.

³⁷⁷ European Commission Doc No SWD/2020/289 final/2, *cit.*, p. 14.

³⁷⁸ European Parliament, Council and Commission, *op. cit.*, Pillar No 17.

³⁷⁹ European Commission Doc No SWD/2020/289 final/2, *cit.*, p. 31.

parents and carers of persons with disabilities -including the leave right-,³⁸⁰ and include the ‘invalidity benefits’ among the branches of social protection³⁸¹ to be guaranteed to the workers.

Social inclusion was one of the areas in which the EU invested the most via its funds and programs, an example being the Rights, Equality and Citizenship program.³⁸² The latter established a 439 million budget to fund actions whose results shall go beyond the member state³⁸³ receiving the funds, with non-discrimination and the promotion of the rights of persons with disabilities being one of the targets of the program.

The implemented activities in this policy area are closely linked to deinstitutionalization, which is often enlisted within the objectives of the actions. This is the case, inter alia, of the ESF established under the framework of the European Platform against Poverty to support the member states in the transition from institutional to community-based care,³⁸⁴ which shall include both the development of individual services and the accessibility of general services for persons with disabilities.

As mentioned above, the implementation rate is not directly proportional to the practical results of the Strategy. In fact, social protection is indeed the worst area in terms of effectiveness so far. If it is true on the one hand that there has not been a great change for what concerns poverty and social exclusion, it is also true that at the end of the ten-year period the gap between persons with disabilities and persons without disabilities has widened. This aspect is reflected in the

³⁸⁰ Council and European Parliament directive (EU) 2019/1158/EU of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, OJ L 188 of 12 July 2019, art. 4 ff., www.eur-lex.europa.eu.

³⁸¹ Council recommendation (EC) 2019/C 387/01 of 8 November 2019 on access to social protection for workers and the self-employed, OJ C 387 of 15 November 2019, Number 3.2(d), www.eur-lex.europa.eu.

³⁸² European Commission Doc No SWD/2020/289 final/2, cit., p. 31.

³⁸³ European Commission, *Rights, Equality and Citizenship Programme 2014-2020*, www.ec.europa.eu.

³⁸⁴ Council and European Parliament Regulation (EU) No 1303/2013, cit., Annex XI number 9.

poverty and social exclusion risk rate, which changed from 29,6% in 2010 to 28,4% in 2019 for persons with disabilities³⁸⁵ and from 20,8% in 2010 to 18,4% in 2019 for persons without disabilities.³⁸⁶ This means that over the same period, the risk decreased by 2.4 percentage points for persons with disabilities and only 1.2 percentage points for persons without disabilities. These numbers led to an increasing gap (from 8,8% to 10%), meaning that the risk of poverty and social exclusion persists, which ought to signal the need for new initiatives to be implemented.

4.7. Health

“Foster equal access to health services and related facilities for people with disabilities.”³⁸⁷

Persistent health inequalities are a huge issue in the life of persons with disabilities. Among the main barriers creating inequalities, the excessive treatment costs are probably the most difficult to deal with. At the same time, inaccessible public transports and health facilities prevent persons with disabilities from moving freely even in this area. Even though considerable progress has been made in many countries in recent years, persons with disabilities are actually still victims of discrimination in getting appropriate healthcare³⁸⁸ in their own countries and abroad.

Also in this case as in the case of education, this area falls out of the merits of the Union, and its main activity consists therefore in complementing its member states' actions via funding, policy monitoring and mutual learning. The Commission intended therefore to pay particular attention to persons with disabilities when implementing policies dealing with health inequalities, as well as raising awareness in the field of safety and health at work preventing

³⁸⁵ European Commission, European comparative data on Europe 2020 and persons with disabilities, December 2021, p. 10, www.eurostat.ec.europa.eu.

³⁸⁶ *Ibid.*, p. 87.

³⁸⁷ European Commission Communication COM/2010/636 final, cit. p. 9.

³⁸⁸ European Economic and Social Committee, Denied the right to health: persons with disabilities have more difficulty accessing healthcare, 10 March 2023, www.eesc.europa.eu.

accidents at the workplace and promoting reintegration of workers with disabilities.³⁸⁹ All other initiatives in this policy area shall consist in the monitoring of policy developments on accessibility to healthcare, including not only quality health but also rehabilitation services specifically designed for persons with disabilities.

The Strategy intended to implement twelve actions in this area and managed to fully implement seven of them (58%), while four actions were only partially implemented and one of them was not implemented at all.³⁹⁰ Despite its limited scope of actions and the limited availability of data on the issue, the Strategy contributed to the spread of disability considerations in EU legislation. This is the case of the Directive providing member states with explicit rules on cross-border healthcare affirming the obligation for the member state of treatment to provide the patient with the full data essential for the procedure, including information on the accessibility of health facilities for persons with disabilities.³⁹¹

Furthermore, the strategy supported the production of statistics, data collection and the monitoring activities. This included, *inter alia*, the development of an ad hoc module on employment of people with disabilities,³⁹² as well as a dedicated ‘disability survey’ (the European Health and Social Integration Survey) presenting statistics on all the aspects concerning the situation of persons with disabilities within the EU.³⁹³

The data collected by the final surveys on the Strategy reported a decrease in the discontent of medical examinations for persons with disabilities from 7,6% (2010) to 4,5% (2019).³⁹⁴ This shows that the structural limitations of the Union did not prevent the Strategy from giving its contribution, even though a little one, to the quality of

³⁸⁹ European Commission Communication COM/2010/636 final, cit. p. 8.

³⁹⁰ European Commission Doc No SWD/2020/289 final/2, cit., p. 14.

³⁹¹ Council and European Parliament directive (EU) 2011/24/EU of 9 March 2011 on the application of patient’s rights in cross-border healthcare, in OJ L 88 of 4 April 2011, art. 4(2)(a), www.eur-lex.europa.eu.

³⁹² Commission Regulation (EU) No 317/2010, cit.

³⁹³ Eurostat, Disability statistics, www.ec.europa.eu.

³⁹⁴ European Commission Doc No SWD/2020/289 final/2, cit., p. 33.

healthcare services for persons with disabilities. Nevertheless, the Strategy did not manage to fully achieve its objective in this policy area, mainly because of the lack of disaggregated information available that prevented the development of suitable policies as well as their monitoring.

4.8. External action

“Promote the rights of people with disabilities within the EU external action.”³⁹⁵

Human rights are an important area of work for the EU both within its borders and all over the world. As already outlined in section 2 of chapter I of this work, persons with disabilities started being considered in EU policies in 1997 by adding disability among the causes of discrimination³⁹⁶ to be addressed. The ratification of the CRPD pushed the promotion and protection of the rights of persons with disabilities -as well as the fundamental human rights in general, being the first international treaty on human rights ever ratified by the EU- outside the Union itself. After all, the ratification enhanced the EU commitment to promote and protect the rights of people with disabilities in its external action, including the EU enlargement and neighborhood, as well as development programs.

The ratification of the CRPD enhanced the EU commitment towards the spread of the rights persons with disabilities worldwide.³⁹⁷ The Commission shall concentrate its activities of the ten-year period in the spread of disability as a human rights issue in the external action of the Union.³⁹⁸ Furthermore, the Strategy shall raise awareness on the CRPD and the special needs of persons with disabilities enshrined

³⁹⁵ European Commission Communication COM/2010/636 final, cit. p. 9.

³⁹⁶ European Union, *Treaty of Amsterdam*, cit., art. 13.

³⁹⁷ In all fairness, it must be noticed that the 2010-2020 Strategy was communicated before the ratification of the CRPD by the EU. The two documents were adopted respectively on 15 November 2010 and 23 December 2010. Therefore, technically speaking, the Strategy does not implement the Convention, but it is perfectly aligned to the framework thereof and in compliance with the Act of Accession to the CRPD adopted in 2009 through Decision 2010/48/EC.

³⁹⁸ European Commission Communication COM/2010/636 final, cit. p. 9.

thereof, as well as consolidate the network dealing with disability issues and raise awareness on disability issues within EU delegations.³⁹⁹ Last but not least, the Commission commits to ensure that candidate countries move forward in the promotions of the rights of persons with disabilities and make use of the financial instruments provided by the EU for the pre-accession assistance to improve their situation within the country.

The objective of the Strategy was the implementation of eleven actions in the ten-year period. However, in 2019 only two actions (18%) were fully implemented, while the remaining nine were at least partially implemented.⁴⁰⁰ The writer does not consider these numbers worrying, since before the Strategy was adopted the rights of persons with disabilities were not yet part of the EU external action. The strong commitment of the EU towards this issue can be seen from the fact that the very first external action of the Strategy consisted in the ratification of the Convention one month after the adoption of the Strategy. This action, together with the inclusion of external action as one of the eight areas of work of the Strategy, raised awareness on the intention of the EU to engage with countries and institutions all over the world to improve the conditions for persons with disabilities⁴⁰¹ across the globe.

Further commitment was demonstrated by the inclusion of people with disabilities in EU-funded humanitarian aid operation, even providing a list of operational tools⁴⁰² supporting the activities of the partners of the Directorate-General for European Civil Protection and Humanitarian Aid Operations. In addition, disability considerations have been incorporated in EU development programs, an example being the European Consensus on Development providing a general description of the difficulties people with disability face⁴⁰³ in

³⁹⁹ *Ibid.*

⁴⁰⁰ European Commission Doc No SWD/2020/289 final/2, cit., p. 14.

⁴⁰¹ *Ibid.*, p. 33.

⁴⁰² Commission Operational Guidance on the inclusion of persons with disabilities in EU-funded humanitarian aid operations, February 2019, pp. 7-22, www.ec.europa.eu.

⁴⁰³ European Commission, Council and European Parliament joint statement

order to ensure that no-one is left behind in the development cooperation of member states.

Last but not least, the Rights Based approach training addressed to the EU delegations and headquarters' staff relaunched in October 2019 included information on disability matters⁴⁰⁴ aimed at a capacity building on the issue. At the same time, structural adjustments were put in place in order to make EU delegations and offices facilities worldwide accessible for persons with disabilities, though the European Ombudsman still deals with citizens' complaints claiming the lack of accessibility in some EU institutional buildings.⁴⁰⁵

The beginnings of the inclusion of the rights of people with disabilities within the EU external action were certainly not the best, and this is mainly due to the lack of indicators (the so-called 'disability markers') needed to plan and monitor interventions specifically addressing disability-related issues⁴⁰⁶ that prevented the possible attribution of EU activities undertaken in this area to the influence of the Strategy. However, the fact that all planned actions have been implemented, at least in part, bodes well for the future of the effectiveness of the protection and promotion of the rights of persons with disabilities in the EU external action.

For what has been presented so far, one may conclude that the Strategy has generally had a positive impact on EU rules and policies introducing considerations on the condition of people with disabilities, with the implemented actions in some policy areas being more impactful than others. And still, people with disabilities face challenges in their daily life with the high rates of poverty and unemployment being particularly worrying. However, the writer considers the Strategy as a good starting point towards the fulfilment of the CRPD by the EU and its member states and the empowerment

on the new European consensus on development, 2017, section 2 number 31, www.international-partnership.ec.europa.eu.

⁴⁰⁴ European Commission Doc No SWD/2020/289 final/2, cit., p. 33.

⁴⁰⁵ FRA, *EU Framework for the UN CRPD*, cit.

⁴⁰⁶ European Commission Doc No SWD/2020/289 final/2, cit., p. 34.

of persons with disabilities so that they can fully participate in society on an equal basis with others.

It is important to underline that unlike the strategy that will be presented in the next section, the 2010-2020 strategy was not affected by the COVID-19 pandemic. The impact of the health crisis has disproportionately impacted persons with disabilities⁴⁰⁷ deepening discrimination on the ground of impairment of any kind. It is therefore foreseeable that the rates presented in this section will be quite different in the next section as a consequence of the impact of the pandemic, which shall be taken in consideration in the evaluation of the strategy.

5. STRATEGY FOR THE RIGHTS OF PERSONS WITH DISABILITIES 2021-2030: A UNION OF EQUALITY

In 2020 the EU counted around 87 million people⁴⁰⁸ with some form of disability. 87 million people facing unemployment, unmet healthcare needs, poverty, social exclusion, lack of accessibility to education and recreation activities, and discriminations. The European Disability Strategy covering the last decade paved the way towards a barrier-free Europe, and still, their risk of poverty is much higher (10 percentage points)⁴⁰⁹ compared to persons without disabilities.

The outbreak of COVID-19 drastically worsened the situation, and the healthcare of persons with disabilities was the most affected area together with the economic sphere. Needless to say, that the health crisis amplified obstacles and inequalities⁴¹⁰ for people with disabilities experiencing higher infection rates – referred notably to persons with disabilities living in residential care – and isolation as a

⁴⁰⁷ PFEIFER, *op. cit.*

⁴⁰⁸ Speech of the European Commissioner Dalli on the Strategy for the Rights of Persons with Disabilities 2021-2030, held in Brussels on 3 March 2021, www.ec.europa.eu.

⁴⁰⁹ European Commission, *European comparative data on Europe 2020*, cit., p. 10.

⁴¹⁰ United Nations Department of Economic and Social Affairs, *COVID-19 Outbreak and Persons with Disabilities*, www.un.org.

consequence of social distancing. Restrictive personal service delivery jeopardized the independent living of persons with disabilities, while the limited accessibility of information and communication technology (hereafter “ICT”) made even small tasks such as distance learning and teleconferencing challenging. The pandemic made it therefore even more urgent to tackle the issue and to scale up European action.

The strategy for the new decade was transmitted from the Commission to the European Parliament, the Council, the EESC and the Committee of the Regions on 3 March 2021. The day of the communication was not a day like any other: March 2 is the ‘World Hearing Day’, a World Health Organization’s annual campaign to raise awareness on – and prevent – deafness and hearing loss across the world.⁴¹¹ Even though there is no evidence of the link between the campaign and the transmission of the strategy to the EU institutions, the connection, either for coincidence or by choice, is striking and is therefore worthy of mention.

The establishment of the EU objectives towards the improvement of life of persons with disabilities within the EU and globally is the general aim of the new strategy. Considering the final assessment of the previous strategy, ‘A Union of Equality’ is intended to carry out the pending activities and push the EU action forward in the implementation of the CRPD. In particular, the strategy aims at enabling the enjoyment of EU rights, quality of life and autonomy for persons with disabilities on an equal basis with others, as well as the abolition of discriminations.⁴¹² To do so, the activity of the Strategy shall focus on eight main areas – namely accessibility; EU rights enjoyment; decent quality of life and living independently; equal access and non-discrimination; external actions; efficient delivery of the Strategy; leading by example; awareness, governance and measuring progress –,⁴¹³ the key intended actions of which will be

⁴¹¹ World Health Organization, *World Hearing Day*, www.who.int.

⁴¹² Speech of the European Commissioner Dalli, *op. cit.*

⁴¹³ IVANKOVIC-KNEZEVIC, *Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030*, p. 2. www.ec.europa.eu.

outlined in the next paragraphs.⁴¹⁴

5.1. Accessibility

The Commission calls member states to include accessibility as an ordinary aspect of all their policies and actions, in particular the ones related to the European Green Deal, the Renovation Wave, and the New European Bauhaus.⁴¹⁵ In addition, training in accessibility issues shall be delivered to professionals dealing with public services and disability-related issues.

As regards EU policy, the Commission commits to the assessment of the correct implementation of EU rules directly addressing accessibility, as well as identification of legislative gaps and the subsequent proposal for further legislative actions. In particular, the Commission intended to evaluate, *inter alia*, the EU legal acts of two main areas between 2021 and 2022, notably the regulations on the rights of passengers and the Web Accessibility Directive.⁴¹⁶ In its final reports, the Commission established Regulation (EC) 1107/2006 on the rights of persons with disabilities and reduced mobility when traveling by air offers effective protection against discrimination and provides free assistance making the use of air transport more accessible⁴¹⁷ than it was before. However, persons with disabilities are generally not aware of their rights, and if they are, it is quite difficult for them to get individual redress in case of complaints. At the same time, Regulation (EU) 1177/2010 on waterborne passenger rights managed to ensure the same level of

⁴¹⁴ Unlike the former strategy, it will not be possible to provide an evaluation of the activities of the different areas and a list of the implemented actions.

⁴¹⁵ European Commission Communication COM/2021/101 final of 3 March 2021 concerning a new European Strategy for the Rights of Persons with Disabilities 2021-2030, p. 4, www.eur-lex.europa.eu.

⁴¹⁶ European Commission Communication COM/2021/101 final, *cit.*, footnote n. 27.

⁴¹⁷ Commission staff working document No SWD/2021/417 final of 10 December 2021, Evaluation of Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, pp. 34-35, www.ec.europa.eu.

rights across the EU,⁴¹⁸ regardless of the volume of waterborne traffic that defined the level of passenger rights prior to the Regulation. The same attainment was attributed to Regulation (EU) 181/2011 on bus and coach passenger rights.⁴¹⁹ Despite the homogenization of the rights of passengers travelling by sea and inland waterway, persons with disabilities are generally not aware of their rights, and some aspects of the Regulation need to be clarified. This is notably the case of the notion of ‘extraordinary circumstances’ and ‘re-routing under comparable conditions,’⁴²⁰ for which the Irish Ferries asked for a clarification by the CJEU in 2021. As far as the Web Accessibility Directive, the Commission reported its effectiveness, since public service broadcasting (namely television and radio) websites and apps became easier to use,⁴²¹ therefore accessible for persons with disabilities. Furthermore, the perceived long-term benefits in terms of accessibility deriving from the Directive shall outweigh the costs for its implementation.⁴²² However, the lack of a standard monitoring methodology has led to a divergent application and reporting structure thereof, which resulted in monitoring discrepancies between member states with previous knowledge on accessibility and the less aware ones. The Commission suggested therefore on the one hand to clarify the definition of compliance status and the establishment of a clear reporting structure on the other hand,⁴²³ aiming at the standardization

⁴¹⁸ Commission staff working document No SWD/2021/413 final of 10 December 2021, Evaluation of Regulation (EU) No 1177/2019 of the European Parliament and of the Council of 24 November 2019 concerning the rights of passengers when travelling by sea and inland waterway, p. 28, www.ec.europa.eu.

⁴¹⁹ Commission staff working document No SWD/2021/415 final of 10 December 2021, Evaluation of Regulation (EU) No 181/2011 concerning the rights of passengers in bus and coach transport, pp. 29 ff., www.ec.europa.eu.

⁴²⁰ Court of Justice, case C-570/19 *Irish Ferries v. National Transport Authority*, opinion of AG Szpunar delivered on 4 March 2021, www.curia.europa.eu.

⁴²¹ European Commission, Study supporting the review of the application of the Web Accessibility Directive (WAD) VIGIE 2020-0656, October 2022, p. 7, www.digital-strategy.ec.europa.eu.

⁴²² *Ibid.*, p. 8.

⁴²³ *Ibid.*, p. 10.

of the monitoring and reporting activities by member states.

The flagship initiative in this policy area consisted in the establishment of AccessibleEU, a European resource center aiming at the increase in coherence among accessibility policies and accessibility to relevant knowledge.⁴²⁴ The proposal by the Commission was welcomed by the EP, which adopted on 4 October 2022 a resolution⁴²⁵ formalizing the activity of AccessibleEU promoting cooperation at EU level to inspire policy development both at EU and national level.

5.2. EU rights enjoyment

Participation in political life and freedom of movement across EU member states are the rights on which the EU is supposed to concentrate its activities towards the full enjoyment of EU rights of persons with disabilities on an equal basis with others. As already anticipated in the previous section, the right to move to and freely reside in a member state shall be an issue of major importance. Indeed, the flagship initiative in this policy area consists in the creation of a European Disability Card by the end of 2023⁴²⁶ that shall be acknowledged in all member states. Without reiterating what has already been said in section 4.2. concerning the Card pilot project, the writer considers it rather necessary to underline the final positive evaluation, which made of the Card the most representative project of participation of people with disabilities. As a matter of facts, the Card will be created on the basis on the pilot project, filling the gaps that undermined the achievement of some objectives set by the Commission.

As far as the participation in the EU democratic process is concerned, the Strategy calls for the cooperation between the Commission and EU member states⁴²⁷ via all the tools at their

⁴²⁴ European Commission Communication COM/2021/101 final, cit., p. 5.

⁴²⁵ European Parliament resolution (INI) No 2022/2013 of 4 October 2022 on AccessibleEU Centre in support of accessibility policies in the EU internal market, in OJ C 132 of 14 April 2023, www.eur-lex.europa.eu.

⁴²⁶ European Commission Communication COM/2021/101 final, cit., p. 6.

⁴²⁷ European Commission report COM/2020/731 final of 15 December 2020

disposal. This includes dedicated discussions within the European Cooperation Network on Elections ensuring free and fair elections. In particular, the Commission commits to support full electoral participation and accessibility of persons with disabilities to European elections – both as voters and candidates –,⁴²⁸ as well as ensure the candidate lists to reflect diversity within society. In addition, the Strategy supports the full participation of persons with disabilities in the Conference on the Future of Europe,⁴²⁹ which shall allow them to make their voices heard and make their contribution to the common future. While implementing the European Democracy Action Plan, the Commission will tackle the needs of citizens with disabilities in the collection and scrutiny of e-voting.⁴³⁰

At present, there is no evidence on the activity of the Strategy in this policy area, but EU citizens with disabilities have hopes in the coming months for the confirmation of the Card by the Commission. At the same time, for the 2024 elections of the European Parliament, full accessibility for persons with disabilities – both as candidates and voters – is expected.

5.3. Decent quality of life and living independently

The COVID-19 pandemic intensified and put a spotlight on the challenges persons with disabilities residing in institutional settings face every day. Not only they were more likely to contract the virus, but they were also isolated as a consequence of the introduction of social distancing,⁴³¹ which prevented them from having any contact with people living outside the residential care. In this sense, the pandemic did not only have consequence on physical health, but also on mental health. Forced isolation and lack of social contacts

on progress towards effective EU citizenship 2016-2020, pp. 4, 8, www.ec.europa.eu.

⁴²⁸ European Commission Communication COM/2021/101 final, cit., p. 7.

⁴²⁹ *Ibid.*

⁴³⁰ European Commission, European Democracy Action Plan, www.commission.europa.eu.

⁴³¹ United Nations Department of Economic and Social Affairs, *COVID-19 Outbreak and Persons with Disabilities*, cit.

definitely increased loneliness – notably the feeling of being alone –⁴³² among people with disabilities, even without experiencing a higher level of forced isolation compared to others. American research predicting depression and anxiety among adults with disabilities during the pandemic stressed and exponential increase in the risk of depression (61 percentage points, while the same risk reached only 22 percentage points in the pre-pandemic period) and anxiety (50 percentage points) diagnosis as the most worrying impact of social isolation⁴³³ that persons with disabilities have been forced to because of the pandemic.

All this, together with the workforce shortages, the challenging working conditions and the heterogeneity of services provided within and across member states led the Commission to call for further and prompt effort towards deinstitutionalization and independent living.⁴³⁴ In this process, the Commission ensures the allocation of dedicated funds including, inter alia, the 2021-2027 shared management funds and ESI funds. In addition, investments in the digital skills of people with disabilities shall contribute to the removal of accessibility barriers enabling the use of ICT and artificial intelligence⁴³⁵ for both social and medical needs.

In this area, the Commission established two flagship initiatives aiming on the one hand to make it possible for people with disabilities to live in accessible and supported housing in the community, or to continue living at home with the required personal assistance,⁴³⁶ and on the other hand improve the service delivery for persons with disabilities. The latter includes a process of upskilling and reskilling of service providers in order to improve the

⁴³² Nordic Welfare Centre, *The impact of the COVID-19 pandemic on social isolation and loneliness*, 1 February 2023, p. 20, www.nordicwelfare.org.

⁴³³ WANG, MANNING, BOGART, ADLER, NARIO-REDMOND, OSTROVE, LOWE, *Predicting depression and anxiety among adults with disabilities during the COVID-19 pandemic*, in DAWN (ed), *Rehabilitation Psychology*, Vol. 67 No 2, pp. 179-188, 2022, p. 182.

⁴³⁴ European Commission Communication COM/2021/101 final, cit., p. 8.

⁴³⁵ *Ibid.*

⁴³⁶ DICSJ, *EU Guidance on independent living and inclusion in the community*, 17 July 2022, www.edf-feph.org.

attractiveness of jobs in the social service delivery area⁴³⁷ and to provide a service that shall take into consideration to the needs of persons with disabilities.

The focus area on decent quality of life and living independently shall concentrate on three more objectives covering two different areas, namely employment and the consolidation of social protection systems.⁴³⁸ The development of new skills for new jobs shall be the pioneering objective in employment, since right skills and qualifications are a prerequisite to access the labour market and succeed in it. In this sense, the Commission calls on member states to ensure that their national skills strategies encompass the specific needs of all persons with disabilities⁴³⁹ in compliance with the Pillar and the Skills Agenda committing the Commission to the development of peer learning for vulnerable groups. In addition, member states shall adopt flexible training formats in order to ensure the accessibility of vocational education and training and their inclusiveness for vulnerable groups⁴⁴⁰ including, inter alia, adults with disabilities.

Fostering access to quality and sustainable jobs is another key issue identified by the Commission in the Strategy. To achieve this goal, the Commission presented on 20 September 2022 its ‘Disability Employment Package’⁴⁴¹ aiming at the improvement in labour market outcomes of persons with disabilities. As one of the flagship initiatives of the Strategy, the Package will ensure reasonable accommodation and combat stereotypes within the working environments, as well as

⁴³⁷ European Association of Service providers for Persons with Disabilities, *EU Framework on Social Services of Excellence for persons with disabilities: Input of the Taskforce on Quality of Services*, 2022, www.easpd.eu.

⁴³⁸ European Commission Communication COM/2021/101 final, cit., pp. 9-12.

⁴³⁹ *Ibid.*, p. 10.

⁴⁴⁰ Council recommendation (EC) 2020/C 417/01 of 24 November 2020 on vocational education and training (VET) for sustainable competitiveness, social fairness and resilience, in OJ C 417 of 2 December 2020, www.eur-lex.europa.eu.

⁴⁴¹ European Union of the Deaf, *EU Commission announces its new Disability Employment Package to improve labour market outcomes for persons with disabilities*, 20 September 2022, www.eud.eu.

securing health and security at work providing guidance and support to both employers and workers. To do so, equality bodies need to be strengthened⁴⁴² to protect victims of discrimination and prevent discriminating attitudes themselves. In addition, the Commission presented on 9 December 2021 an Action Plan on Social Economy promoting the integration of under-represented groups within the open labour market⁴⁴³ which shall be based on the improvement of the working environment enabling the social economy.

The Commission launched in 2022 a study on social protection and services for persons with disabilities aiming at the evaluation of social protection within and across EU member states, examining good practice on disability-issues⁴⁴⁴ – namely health insurance, extra-costs due to disability, monetary and non-monetary benefits – of member states’ policies. The final analysis has found the adoption of measures addressing the needs of people with disabilities to varying extents⁴⁴⁵ in the vast majority of the thirty-five analyzed countries⁴⁴⁶ in compliance with the rights enshrined in the CRPD. However, important gaps and obstacles still prevent persons with disabilities from fully enjoying their rights to social protection and equal opportunities. In this sense, the report presents several recommendations both at national and EU level to address the gaps

⁴⁴² European Commission proposal No COM/2022/689 final of 7 December 2022 for a Council directive on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in the field of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC, www.commission.europa.eu.

⁴⁴³ European Commission, *Building an economy that works for people: an action plan for the social economy*, December 2021, p. 14, www.commission.europa.eu.

⁴⁴⁴ European Commission, *Social protection for people with disabilities in Europe: an analysis of policies in 35 countries*, 3 January 2023, www.ec.europa.eu.

⁴⁴⁵ *Ibid.*

⁴⁴⁶ All 27 EU member states, the UK and 7 potential candidate countries.

and obstacles identified in the analysis⁴⁴⁷ – notably poverty, the accessibility of assistive technology and personal assistance services, and the scarce effectiveness of application of the procedures – calling the policymakers to fulfill their obligations under the Convention.

5.4. Equal access and non-discrimination

The ‘twin principles’ analyzed in section 4.3. of the 2010-2020 Strategy under the policy area of equality are replicated in the new strategy. The objectives of the Strategy in this field include an improvement in accessibility to justice, legal protection, freedom and security, equal access to social protection as well as goods and services, inclusive and accessible education, sustainable and equal access to healthcare, and accessibility to art and culture, recreation, leisure, sport and tourism.⁴⁴⁸

While supporting the digitalization of judicial systems as an improvement in the accessibility to justice for persons with disabilities, the Commission stresses that particular attention in this area shall be paid to women with disabilities – who seem to be two to five times more likely to face violence than other women –,⁴⁴⁹ as well as persons with disabilities living in residential cares. The Commission commits indeed, inter alia, to pave the way for the ratification of the 2000 Hague Convention on the international protection of vulnerable adults by all EU member states via the study launched on 25 March 2022 on the protection of vulnerable adults in cross-border situations. Said study evaluates the legal difficulties and practical challenges in the cooperation across member states in the protection of vulnerable adults with intellectual disabilities⁴⁵⁰ and

⁴⁴⁷ European Social Policy Network, *Social protection for people with disabilities in Europe. An analysis of policies in 35 countries*, 2022, pp. 18-24, www.ec.europa.eu.

⁴⁴⁸ European Commission Communication COM/2021/101 final, cit., pp. 13-17.

⁴⁴⁹ European Parliament resolution 2018/26855RSP of 29 November 2018 on the situation of women with disabilities, operative clause G, www.europarl.europa.eu.

⁴⁵⁰ European Commission, Study on the cross-border legal protection of vulnerable adults in the EU, final report, November 2021, p. 10,

subsequently promotes the ratification of the Hague Convention as a further step in the implementation of the rights enshrined in the CRPD.

As far as social protection is concerned, the Commission reiterates its commitment towards the full implementation by the Council of the directive on equal treatment beyond the field of employment⁴⁵¹ proposed by the Commission itself in 2008. The amount of legal acts ensuring the rights of workers with disabilities outlined throughout the previous paragraphs of this work – though not sufficient for equal accessibility to and inclusion in the labour market – made of equal accession to social protection in general an almost disregarded area by policymakers. The directive proposed by the Commission aims at filling in the gap that exists in national and EU policies. At present, the directive was only partially implemented by the Council,⁴⁵² and no further action was registered after the publication of the evaluation of the 2010-2020 Strategy.

Inclusion and accessibility in education is a difficult issue to tackle for the Commission because it falls out of the merits of the Union. However, it planned to use all the tools at its disposal to push the activities of member states forwards towards an inclusive and accessible education system. Indeed, it published in 2021 the so-called ‘toolkit for inclusion in early childhood education and care’, which includes a specific chapter dedicated to children with disabilities and their families.⁴⁵³ In addition, the Commission offers its support for member states in the development national teachers education systems addressing Special Needs Education teachers shortage, as well as general competences for all education professionals⁴⁵⁴ to manage diversity in their classrooms and make of schools an inclusive environment for children with disabilities.

www.op.europa.eu.

⁴⁵¹ European Commission Communication COM/2021/101 final, cit., p. 14.

⁴⁵² European Commission Doc No SWD/2020/289 final/2, cit., p. 84.

⁴⁵³ European Commission, Toolkit for inclusive early childhood education and care. Providing high quality education and care to all young children, 2021, pp. 99-148, www.op.europa.eu.

⁴⁵⁴ European Commission Communication COM/2021/101 final, cit., p. 16.

The most striking area among the ones declared in the Strategy on which the Commission intends to focus, is in the opinion of the writer the accessibility to art, culture, recreation, leisure, tourism and sport. This finally represents the actual transition from the charity model to the social model, aiming at the full inclusion of persons with disabilities within society. Art, culture, recreation, leisure, tourism and sport increase wellbeing⁴⁵⁵ and give everyone, persons with disabilities most importantly, the possibility to develop their potential. When it comes to persons with disabilities, this allows them to concentrate on the residual abilities rather than on the ‘lacking’ ones. For this reason, the Commission aspires to become a partner of the International Paralympic Committee⁴⁵⁶ to promote and support inclusion in sport, and fight against stereotypes. In addition, the Commission commits to the monitoring of the implementation of article 30 of the CRPD promoting participation in cultural life, recreation, leisure and sport⁴⁵⁷ and the support to member states in the adoption of policies increasing participation of persons with disabilities in the aforementioned activities.⁴⁵⁸ Last but not least, the European Capital of Smart Tourism Award will continue promoting the development of accessible tourism,⁴⁵⁹ with accessibility being one of the categories in which European cities compete every year.

5.5. External action

After the achievements of the first decade of disability-inclusive external action, the Union reiterates its commitment to promote disability considerations in the framework of EU enlargement, as well as its relationship with third countries and international organizations. The EU will act in the most transparent

⁴⁵⁵ WHEATLEY, BICKERTON, *Subjective well-being and engagement in arts, culture and sport*, in *Journal of Cultural Economics*, Vol. 41, pp. 23-45, 21 March 2016, pp. 25-29, www.link.springer.com.

⁴⁵⁶ European Commission Communication COM/2021/101 final, cit., p. 18.

⁴⁵⁷ UN General Assembly, *CRPD*, cit. art. 30.

⁴⁵⁸ European Commission Communication COM/2021/101 final, cit., p. 18.

⁴⁵⁹ European Commission, *European Capitals of Smart Tourism. An initiative to reward innovative and smart tourism practices in European Cities*, www.smart-tourism-capital.ec.europa.eu.

way possible by sharing its strategies and practices on the implementation of the Convention in the UN multilateral fora,⁴⁶⁰ which will also allow the EU to benefit from the global exchange of opinions and practices.

In this sense, the Commission and the High Representative for Foreign Affairs and Security Policy updated in 2021 the toolbox on the rights-based approach to add the so-called ‘disability marker’,⁴⁶¹ which included discrimination against persons with disabilities among the inequalities to be addressed in EU external actions. Furthermore, the Strategy underlines the commitment of the Commission to ensure that EU delegations play a more active role in the mainstream of the CRPD and the ratification thereof, as well as enhance international cooperation with a special focus on accessibility and employment⁴⁶² in all multilateral fora outside the annual CRPD conference of states parties.

5.6. Efficient delivery of the Strategy

The success of an efficient delivery of the Strategy has been placed entirely in the hands of the flagship initiative establishing the Disability Platform. Adopted on 27 October 2021, it replaced the pre-existing High-Level Group on Disability and supports the implementation of both the EU strategy and national disability strategies.⁴⁶³ Moreover, the Commission looks forward to enhance disability inclusiveness in the Better Regulation toolbox in order to ensure EU regulations to be consistent with the CRPD,⁴⁶⁴ as well as include disability matters in impacts assessments when relevant.

At the same time, cooperation between EU institutions and

⁴⁶⁰ European Commission Communication COM/2021/101 final, cit., p. 21.

⁴⁶¹ European Commission staff working document No SWD/2021/179 final of 30 June 2021 updating the Toolbox for placing rights-holders at the center of EU0s Neighborhood, Development and International Cooperation by applying the Human Rights Based Approach to international partnerships, p. 39.

⁴⁶² European Commission Communication COM/2021/101 final, cit., p. 22.

⁴⁶³ European Commission, *Equality: All members of the new Disability Platform now known*, 13 December 2021, www.ec.europa.eu.

⁴⁶⁴ European Commission Communication COM/2021/101 final, cit., p. 23.

member states on the issue shall be pushed forward in order to reinforce the implementation of the CRPD, as well as reflecting the commitment of the EU as a party to the Convention. The Commission calls therefore on all EU institutions, bodies, agencies and delegations to appoint their own disability coordinators,⁴⁶⁵ which shall guarantee a continuous work on disability-related issues.

Needless to say, that a fundamental aspect in the implementation of both the Strategy and the CRPD concerns the EU fundings. Inter alia, Erasmus+ program will provide for financial support and other inclusion measures that shall be necessary for participants with disabilities⁴⁶⁶ to ensure them equal opportunities within the program. In addition, the Commission calls for member states to use EU funds in compliance with the provisions enshrined in the CRPD and to encourage the CRPD focal points in the fulfilment of the provisions thereof throughout the programming period.

5.7. Leading by example

The Commission strongly commits to the abolition of all physical and environmental barriers to make of the European Commission an inclusive and accessible institution. While it will adopt a renewed HR strategy including actions promoting diversity within the institution and inclusion of persons with disabilities, it will also progressively work to remove architectural barriers preventing persons with disabilities to access the Commission facilities.⁴⁶⁷

In 2022, the Commission adopted a multiannual Action Plan on web accessibility that shall ensure all the web presence of the European Commission – including websites, social media content, mobile apps – to be accessible for persons with disabilities.⁴⁶⁸ The plan was adopted to push all EU institutions, agencies and bodies to follow the initiative of the Commission and make their web presence

⁴⁶⁵ *Ibid.*

⁴⁶⁶ *Ibid.*, p. 25.

⁴⁶⁷ *Ibid.*, pp. 27-27.

⁴⁶⁸ European Commission, *Web Accessibility Action Plan 2022-2025*, www.wikis.ec.europa.eu.

compliant with European accessibility standards.⁴⁶⁹ In addition, the Commission committed to improve by 2023 accessibility of its audiovisual communications, as well as graphic design services, publications and events, even including when possible sign language interpretation and ‘easy-to-read’ documents and texts. In this case, the leading action of the Commission was effective, since the official website of the European Ombudsman was subsequently made accessible through easy-to-read versions of her work and the instructions to lodge a complaint in 24 languages,⁴⁷⁰ as well as other little adjustments allowing full accessibility to the complaint procedure.

It is therefore noticeable, that the Commission looks forward to lead by example by reaching unprecedented rates of inclusion and accessibility, in the hope that other EU institutions, bodies and agencies will do likewise.

5.8. Awareness, governance and measuring progress

Awareness-raising will never be enough and will always need to be strengthened in order to combat stigmas on physical, sensory and intellectual-relational impairments. In this respect, the Commission reiterates its willingness to cooperate with member states through the organization of dedicated events, an example being the European Day of Persons with Disabilities.⁴⁷¹ On this occasion, more than 400 policymakers, experts and disability advocates gather to exchange ideas, opinions, experiences,⁴⁷² and it is even an opportunity to establish a dialogue with authorities and stakeholders.

People with disabilities are allowed to address the CoRPD in case they claim to be victims of a violation by a state party⁴⁷³ to the

⁴⁶⁹ For a list of the European accessibility standards, see Council and European Parliament directive 2019/882/EU of 17 April 2019 on the accessibility requirements for products and services.

⁴⁷⁰ FRA, *EU Framework for the UN CRPD*, cit.

⁴⁷¹ European Commission Communication COM/2021/101 final, cit., p. 27.

⁴⁷² European Commission, *European Day of Persons with Disabilities 2022*, 24-25 November 2022, www.ec.europa.eu.

⁴⁷³ UN General Assembly, Optional Protocol to the Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006, UN Doc.

Optional Protocol to the Convention. In order for a communication to be accepted by the CoRPD, it shall meet the six requirements provided in article 2 of the Protocol. First of all, the communication shall be anonymous and shall neither constitute an abuse of the right of submission thereof nor be incompatible with the provisions enshrined in the CRPD.⁴⁷⁴ Furthermore, all domestic remedies must be exhausted before submitting the communication, unless they are unduly prolonged or “unlikely to bring effective relief.”⁴⁷⁵ At the same time, the claim needs to be accompanied by the appropriate documentation⁴⁷⁶ supporting the alleged systematic violation of the rights enshrined in the Convention. The acceptability of such a communication also depends on the language in which it is written,⁴⁷⁷ which shall be contained within the list of the official languages⁴⁷⁸ of the UN. At the time of submission, the facts that are subject of the claim cannot be accepted if they have already been investigated by the CoRPD – or under any other international investigation procedure –⁴⁷⁹ or if they occurred before the official recognition of the competence of the CoRPD in this regard⁴⁸⁰ by the state party. If all these requirements are met, the communication shall be submitted to the attention of the state party involved, which shall provide the Committee with written explanations or statements on the matter⁴⁸¹ and suggest the remedy it may take to comply with the provisions under the Convention.

Even though all member states have ratified the Convention, not all of them have ratified the Protocol, as well as the EU itself, the

A/RES/61/106, art. 1, www.ohchr.org.

⁴⁷⁴ *Ibid.*, art. 2(a-b).

⁴⁷⁵ *Ibid.*, art. 2(d).

⁴⁷⁶ *Ibid.*, art. 2(e).

⁴⁷⁷ International Disability Alliance, Inquiry procedure of the CRPD Committee under the Optional Protocol, www.internationaldisabilityalliance.org.

⁴⁷⁸ Arabic, Chinese, English, French, Russian and Spanish.

⁴⁷⁹ UN General Assembly, Optional Protocol to the CRPD, cit., art. 2(c).

⁴⁸⁰ *Ibid.*, art. 2(f).

⁴⁸¹ *Ibid.*, art. 3.

accession document of which is at a standstill since 2008.⁴⁸² In order to put an end to this deadlock, the Commission commits to promote the ratification of the Optional Protocol by the remaining member states, as well as re-examine the pending Council Decision and suggest changes where necessary.

As far as the proper implementation of the CRPD is concerned, it is a task of the Commission to coordinate the implementation of the Convention at EU level. In addition, as a party to the CRPD the EU was required to establish a framework promoting, protecting and monitoring the implementation of the Convention.⁴⁸³ In this respect, the EU established its framework, the specificities of which have been outlined in the current chapter, in compliance with its obligations under the Convention. As a focal point of the EU framework and a former member thereof, the Commission proposed an annual dialogue with the members of the framework in order to increase the effectiveness of the mechanism. At the same time, the Commission was supposed to examine in 2022 the functioning of the EU framework and eventually propose actions on the basis of its findings.⁴⁸⁴ However, there is no information available proving the fact that the examination actually took place.

Finally, the Commission established in 2021 a framework monitoring the implementation of the objectives and actions of the Strategy.⁴⁸⁵ In addition, the Commission aims at developing by the end of 2023 new disability indicators together with a clear roadmap for the implementation, which shall include different aspects in which persons with disabilities face inequalities or discrimination. Last but not least, a report on the Strategy will be prepared in 2024 in order to assess the progress of the implementation thereof hitherto and update its objective and actions⁴⁸⁶ if deemed necessary.

From what has been presented so far, one may notice that the

⁴⁸² European Commission Communication COM/2021/101 final, cit., p. 27.

⁴⁸³ UN General Assembly, *CRPD*, art. 33(2).

⁴⁸⁴ European Commission Communication COM/2021/101 final, cit., p. 28.

⁴⁸⁵ European Commission, *Check progress on the Strategy for the Rights of Persons with Disabilities*, 25 May 2022.

⁴⁸⁶ European Commission Communication COM/2021/101 final, cit., p. 29.

timetable established by the Commission seems to be respected so far – except for the evaluation of the EU framework which was supposed to be completed by 2022, of which no information is nevertheless still available –, which bodes well for the success of the Strategy and for the achievement of very important objectives contained thereof, an example being the adoption of the European Disability Card, as well as the establishment of targets to increase the rate of employment of persons with disabilities and reduce the employment rate gap with people without disabilities.

Another aspect worthy of notice and that will certainly in the opinion of the writer favor the effectiveness of the Strategy is that unlike the strategy covering the last decade that focused mostly on ‘visible impairments’, the strategy programmed for the current decade is expected to include ‘invisible impairments’ in its activities. In this case, the Strategy would prove to be truly inclusive, by acknowledging that different types of impairments imply different needs to be considered and met.

Speaking of invisible impairments and specific needs related to a specific impairment, the next chapter will outline the implementation of the CRPD by the Union from a deaf perspective. Specifically, the chapter will first provide an analysis of the improvements in the rights of persons with disabilities, which will be followed by the focus on the heterogeneous application of EU provisions across member states. In conclusion, the work will identify the implementing gaps of the EU framework and will reiterate the hopes that the deaf population has in the strategy just described.

CHAPTER 4: A DEAF PERSPECTIVE

People with disabilities represent a minority, though increasing, of the world population. While persons with disabilities represented 10-15% of EU population in 2012,⁴⁸⁷ the rate reached 25% in the following 6 years only.⁴⁸⁸ At present, roughly 87 million people have some form of disability in the EU. These numbers include not only physical impairments, which are visible and therefore directly associated to ‘disability’, but also sensory and intellectual-relational impairments, albeit typically disregarded or erroneously regarded as similar when drafting legislative acts. Visible disabilities are the ones on which EU policy was based so far,⁴⁸⁹ without taking into account that different forms of impairments imply different needs to be considered and met. This chapter will shed alight on one of the ‘disregarded’ impairments, namely deafness, identifying the improvements and issues related to the implementation of the CRPD among EU member states.

Unlike physical impairments, deafness is not only a medical condition of individuals with hearing impairment or loss, but it is likewise a condition that compel the Deaf⁴⁹⁰ to use often a method of communication other than the oral one – namely sign language – or recur to technological aids supporting their inclusion and participation in society. This makes of deaf people not only a group of individuals with hearing impairment, but also the members of a community representing a cultural and linguistic minority as a result of social rejection and alienation from the hearing community.⁴⁹¹ In this sense,

⁴⁸⁷ LECERF, *European disability policy – From defining disability to adopting a strategy*, June 2017, European Parliamentary Research Service, p. 10, www.europarl.europa.eu.

⁴⁸⁸ GRAMMENOS, PRIESTLEY, *Statistics on Persons with Disabilities*, 13 July 2020, table 1, www.ec.europa.eu/eurostat.

⁴⁸⁹ European Commission Doc No SWD/2020/289 final/2, cit. p. 23.

⁴⁹⁰ It is important to underline the difference between the word ‘deaf’ with lowercase letter and with capital letter. The first one refers to the physical and medical condition, while the second one refers to the person as part of the deaf community.

⁴⁹¹ FOSTER, *Social alienation and peer identification: A study of the social construction of deafness*, in *Human Organization*, Vol. 48(3), 1989, p. 233,

the rights of the Deaf are closely linked to the accessibility to communication between deaf and hearing people.

Before analyzing the aspects that shall be considered while addressing the rights of deaf people, the author considers it necessary to underline the heterogeneity of the deaf population, which leads to different communicative methods to be adopted. Indeed, deaf people do not always communicate in their national⁴⁹² sign language nor share the sense of belonging to the deaf community,⁴⁹³ and resort to other communication solutions, even including their national oral language. In this sense, a totally inclusive environment shall not only reckon with the generic differentiation of types of impairment – which is already difficult as demonstrated by the ten-year strategy concluded in 2020 –,⁴⁹⁴ but also the differences within the forms of impairment when these lead to different needs and therefore different actions to be put in place. The heterogeneity that characterizes the deaf population makes the work of policymakers quite challenging in the establishment of a set of general measures dealing with the different issues they face.⁴⁹⁵ It goes without saying that while this level of inclusion seems a mere utopia, it is rather difficult to achieve in a short time, but it can be reached if, and only if, institutions progressively enhance the protection, promotion and monitoring of the rights of persons with disabilities with due consideration.

As a ‘communicative disability’, deafness requires a series of reasonable accommodations enabling deaf people to enjoy their right

www.jstor.org.

⁴⁹² For the sake of completeness, though not particularly relevant in this text, the author considers it necessary to point out that sign language is not universal, but rather specific for each country. For this reason, ‘sign language’ will be often referred to as ‘national sign language’.

⁴⁹³ KRAUSNEKER, *La protezione e la promozione delle lingue dei segni e dei diritti dei suoi utilizzatori negli stati membri del Consiglio d'Europa: analisi delle necessità*, Strasbourg, Council of Europe, December 2008, pp. 15-18, www.lissubito.com.

⁴⁹⁴ European Commission Doc No SWD/2020/289 final/2, cit. p. 23.

⁴⁹⁵ MUNOZ-BAELL, RUIZ, *Empowering the deaf. Let the deaf be deaf*, in *Journal of Epidemiology Community Health*, Vol. 54, January 2000, p. 41, www.researchgate.net.

to a normal cognitive and social development, as well as the right to linguistic and cultural identity when it comes to the so-called ‘deaf signers’.⁴⁹⁶ The latter are directly linked to the right to equal opportunities and equal accessibility in all spheres of public life on the one hand, and the right to education and to social participation on the other hand, enshrined in the Convention.⁴⁹⁷

The social isolation of which most of the Deaf suffer is the direct by-product of the lack of an early exposure to a linguistic input in their childhood. Without going into the details of the linguistic and cognitive aspects of language acquisition that are not in the interest of this work, it is important to be aware of the key role language plays in social interaction. It is widely known that language acquisition is at the basis of a normal cognitive development, which is strictly related to psychological and relational aspects⁴⁹⁸ characterizing language acquisition, the irregularities of which affect the social development of a person. As far as deaf children are concerned, the only natural language⁴⁹⁹ able to provide a linguistic input from the very first moment (regardless of the subsequent choice to resort to different communication methods, including the use of technological aids compensating the lack of perception of sounds)⁵⁰⁰ is the one that travels on the undamaged visual-manual channel, that is sign language.

The inclination of the hearing community to consider sign languages as a mere signed version of the oral language makes it rather difficult to confer them the status of ‘natural language’ as well as minority language. While the recognition of sign languages as

⁴⁹⁶ It is used to refer to the members of the deaf population communicating through their national sign language.

⁴⁹⁷ *CRPD*, cit., art. 3, 24, 27, 29, 30.

⁴⁹⁸ BRANCHINI, CARDINALETTI, *La lingua dei Segni nelle disabilità comunicative*, Milano, Franco Angeli, 2016, pp. 121-157.

⁴⁹⁹ Used to refer to a linguistic system that has evolved naturally as a means of communication among people, with its own structure, grammar and specific linguistic properties that differentiate them from the other languages.

⁵⁰⁰ It is important to point out that the technological aids to which people with hearing impairment resort do not ‘heal’ from deafness, but they just compensate the hearing impairment when they are in operation.

natural languages is progressively spreading within the EU⁵⁰¹ after the attribution of an equality status with spoken languages⁵⁰² by the UN General assembly, their inclusion among the minority languages seems to be hardly attainable. This is due to the principle of territoriality on which most of the countries base the definition of minority language. The focus of this point should be on the need for a linguistic system to be diffused in a specific geographical area to be granted the status of minority language,⁵⁰³ thus excluding sign languages, the users of which cannot be identified in a limited territory. As a greater defender of linguistic and cultural diversity within its territory,⁵⁰⁴ the EU supports the consideration of the alternative principles introduced by the Council of Europe in 1992 providing a fuller definition of linguistic minorities through the inclusion of non-territorial languages⁵⁰⁵ among the four recognized categories. In this sense, non-dominant languages include linguistic systems that are “used within the territory of the State (but which) cannot be identified with a particular area thereof”.⁵⁰⁶ Minority language, hence, shall be understood as a group of individuals sharing the willingness to preserve the collective identity of the group⁵⁰⁷ in which they recognize themselves. This same idea was resumed in the Convention, whereby the UN General assembly recognizes and supports the specific cultural and linguistic identity of persons with

⁵⁰¹ At present, eleven member states recognized their national sign languages within their Constitutions or via ad-hoc laws.

⁵⁰² *CRPD*, cit., art. 2.

⁵⁰³ PEDLEY, VIAUT, *What do minority languages mean? European perspectives*, in CODÓ, JASPERS (eds.), *Multilingua*, Vol. 38(2), 2019, p. 137, www.degruyter.com

⁵⁰⁴ European Union, *TEU*, cit., art. 3.

⁵⁰⁵ PRYS JONES, *Study on endangered languages and linguistic diversity in the European Union*, European Parliament’s Culture and Education Committee, March 2013, p. 5, www.europarl.europa.eu.

⁵⁰⁶ Council of Europe, *European Charter for Regional or Minority Languages*, Strasbourg, 5 November 1992, art. 1, www.coe.int.

⁵⁰⁷ MARZIALE, *Sordità: una disabilità in diverse prospettive. La lingua dei segni come strumento di cittadinanza*, in RORDORF (ed.) *Questione Giustizia*, Dossier 3, 2018, www.questionegiustizia.it.

disabilities, including sign languages and deaf culture.⁵⁰⁸ Nevertheless, the principle of territoriality still dominates the depiction of minority languages, the recognition of which is an exclusive competence of the country in which the speakers thereof live,⁵⁰⁹ thus excluding the EU from the establishment of a definition to be shared among its member states.

An inclusive education system and lifelong learning shall be among the priorities of the policymakers while tackling the discriminations persons with disabilities face, assuring the “full development of (their) human potential [,] a sense of dignity and self-worth”.⁵¹⁰ This includes the delivery of education in the most appropriate languages or means of communication, even providing a trained staff capable of building an environment in which academic and social development are maximized. Considering the fact that the oral language in which education is delivered at school is often a sort of second language for deaf children, it is clear that they receive an education in a foreign language. For this reason, the presence of a communication assistant (not a sign language interpreter)⁵¹¹ and the organization of inclusive projects are fundamental aspects in classes in which a deaf student is present – regardless of the communicative methods they resort to – in order to grant the equal quality education they deserve.

These same adjustments shall be transposed outside the education system in the creation of an accessible environment tackling the sense of disorientation and exclusion, as well as communication difficulties in times of need that the Deaf face every day in a ‘hearing world’. In this regard, the parties to the Convention commit to provide

⁵⁰⁸ *CRPD*, cit., art. 30.

⁵⁰⁹ PASIKOWSKA-SCHNASS, *Regional and minority languages in the European Union*, European Parliament, 2016, p. 5, www.europarl.europa.eu.

⁵¹⁰ *CRPD*, cit., art. 24.

⁵¹¹ Unlike the sign language interpreter which is only providing a translation from the oral language to the signed language (and vice versa), the communication assistant is a socio-educational operator with the role of mediator and facilitator to communication, learning, integration and the relationship between the student with an impairment and the family, the classmates and the school.

“live assistance and intermediaries, including [...] professional [s]ign [l]anguage interpreters, to facilitate accessibility to buildings and other facilities open to the public,”⁵¹² not to mention the general instructions that should be understandable for all. This does not only include the sign language interpreting service, but also the provision of subtitles to multimedia content along with visual emergency signs.

Deafness is indeed a complex impairment to tackle due to the double implication that this entails. On the one hand, the lack (or reduction) of perception of sounds requires a number of reasonable accommodations fostering the independent living of deaf people. On the other hand, the deaf community is an unusual linguistic minority (95% of deaf children have hearing parents)⁵¹³ for which normal linguistic acquisition from parent to child is often not possible. This implies both the need to go far beyond the removal of physical barriers and the urgency to accelerate the recognition of national sign languages followed by the attribution of the status of non-territorial minority language.

The following sections will put at first a spotlight on the (little) improvements in the accessibility of services for deaf people along with their independent living after the entry into force of the Convention. Subsequently, the heterogeneous application of EU and CRPD provisions among EU member states will be outlined, followed by the identification of possible solutions to the pending issues towards a deeper implementation of the Convention. The following sections will not blame on the EU and its member states, but will rather highlight the need to consider the specificities of the forms of impairment in the creation of a truly barrier-free Europe.

1. IMPROVEMENTS

When the EU was not yet the organization founded through the Maastricht Treaty, the recognition of national sign languages, as well

⁵¹² *CRPD*, cit., art. 9.

⁵¹³ Modavi Onlus, *La lingua dei segni è un diritto ed ha una funzione pedagogico-educativa*, 27 November 2014, www.modavi.it.

as the profession of sign language interpreter and the accessibility to information was still an issue on which the European Communities tried to reach a common ground among its member states.⁵¹⁴ Nevertheless, only four⁵¹⁵ of the fifteen member states of the Community officially recognized their national sign languages in 1998⁵¹⁶ and promoted their spread among the neighbor countries. The situation remained almost unchanged until the adoption of the CRPD, when its ratification by the EU fostered the progressive enlargement of the list of sign languages recognized at national level until the complete recognition of all the sign languages (30)⁵¹⁷ existing within the EU.

Even before the Convention became legally binding for the EU, the very first event proving the commitment of the Union and its member states in the implementation of the CRPD took place in 2009. The European parliamentary elections that were held that year resulted in a historical achievement for the deaf community: for the first time a deaf citizen was appointed as a member of the European parliament (hereafter “MEP”).⁵¹⁸ Ádám Kósa is a Hungarian practicing lawyer, former president of the Hungarian Association for the Deaf and Hard of Hearing and member of the European People’s Party (EPP) until 2021. At present, he is a non-attached⁵¹⁹ MEP and a member of EMPL⁵²⁰ advocating for the rights of persons with disabilities as well

⁵¹⁴ European Parliament Resolution A2-302/87 on sign languages for the deaf of 17 June 1988 in OJ C 187 of 18 July 1988, pp. 236-238, www.eur-lex.europa.eu.

⁵¹⁵ Finland, Portugal, Spain, Sweden.

⁵¹⁶ European Parliament Resolution B4-0985/98 on sign language of 18 November 1998 on OJ C 379 of 7 December 1998, p. 66, www.eur-lex.europa.eu.

⁵¹⁷ European Union of the Deaf, *Alternative report for the second review of the European Union by the United Nations Convention on the Rights of Persons with Disabilities Committee*, 15 February 2022, Annex I, www.edf-feph.org.

⁵¹⁸ JENKINSON, *Sign-language champion*, 9 March 2011, www.politico.eu.

⁵¹⁹ MEP who does not belong to one of the recognized political groups of the EP.

⁵²⁰ European Parliament, MEPs - Ádám Kósa, www.europarl.europa.eu.

as interest representation specialized in anti-discrimination.⁵²¹

The following parliamentary elections were held in 2014, when a second member of the deaf community was appointed as a MEP. Former president of the European Union of the Deaf, Helga Stevens is a Belgian politician and was the vice-chair of the European Conservatives and Reformists Group for almost her entire mandate⁵²² as a MEP. The first policy line of her mandate was the recognition of sign language in each member state, which resulted in the conference ‘Multilingualism and equal rights in the European Union: the role of sign languages’,⁵²³ followed by the adoption of a resolution about sign languages, education and employment.⁵²⁴ Reiterating the eligibility of sign languages as natural linguistic systems⁵²⁵ and the equality between professional sign language and spoken language interpreters,⁵²⁶ the resolution calls for the member states to legally recognize their respective sign languages within their legal systems in compliance with the CRPD.⁵²⁷ After the approval of the resolution following the motion by Dr. Helga Stevens, five new sign languages⁵²⁸ were officially recognized by their national governments.

The presence of these two figures within the EP is not only a symbol of inclusion but is rather the possibility for the Deaf to make their voice heard and participate in the decision-making process. Truth

⁵²¹ European People's Party, Ádám Kósa – former EPP Group MEP, www.eppgroup.eu.

⁵²² European Parliament, MEPs – Helga Stevens, www.europarl.europa.eu.

⁵²³ ZATINI, *Parlamento Ue in campo per il riconoscimento della lingua dei segni*, 30 September 2016, www.storiadeisordi.it.

⁵²⁴ European Parliament resolution 2016/2952 (RSP) of 23 November 2016 on sign languages and professional sign language interpreters, www.europarl.europa.eu.

⁵²⁵ *Ibid.*, operative clause E.

⁵²⁶ *Ibid.*, operative clause I.

⁵²⁷ Articles 9, 21, 24 and 30 in particular include the use of sign languages and the interpreting service among the accessibility issues and possible reasonable accommodations to overcome the communicative barriers deaf people face.

⁵²⁸ Irish Sign Language (2016), Italian Sign Language (2021), Dutch Sign Language (2020), Slovenian Sign Language (2021), Bulgarian Sign Language (2021).

be told, the presence of deaf MEPs guarantees the incorporation of disability-based considerations during the plenary sessions of the institution, as well as the committees of which they are members.

In 2016 the Commission funded a 4-year research project within the Horizon 2020 program involving ten universities (including Ca' Foscari University of Venice) of seven countries – France, Germany, Italy, Israel, Netherlands, Spain and Turkey – working on the description of the linguistic phenomena of six sign languages⁵²⁹ and aiming at the production of a complete grammar reference⁵³⁰ thereof. Although the EU economic contribution covered most of the total cost of the project (€ 2.499.337, 50 out of €2.518.737,50),⁵³¹ it did not involve EU member states only, which clarifies its ambition not to remain confined to the EU, but rather to lead by example for all the other countries. The project was closed on 30 April 2020 with the publication of a “geographical atlas of sign languages”⁵³² which is expected to include as soon as possible further studies on other sign languages.

When a pivotal five-years period abolishing the roaming charges started in June 2017,⁵³³ the additional communicative barriers deaf people traveling abroad faced were almost eradicated. Although it is now obvious the high use of mobile data of a citizen traveling abroad, it must be considered that deaf people rely on internet to overcome the communication barriers they face, which increase significantly when traveling abroad. The end of roaming charges undoubtedly allowed the Deaf to maintain abroad the autonomy⁵³⁴

⁵²⁹ Italian Sign Language, Catalan Sign Language, Spanish Sign Language, Turkish Sign Language, German Sign Language and Dutch Sign Language.

⁵³⁰ SCOTELLARO, *SIGN-HUB, Progetto di ricerca europeo sulle Lingue dei Segni*, 19 April 2018, www.unive.it.

⁵³¹ Cordis, *The Sign-Hub: preserving, researching and fostering the linguistic, historical and cultural heritage of European Deaf signing communities with an integral resource*, www.cordis.europa.eu.

⁵³² SCOTELLARO, *op. cit.*

⁵³³ Council and European Parliament Regulation (EU) No 531/2012 of 13 June 2012 on roaming on public mobile communications networks within the Union in OJ L 172 of 30 June 2012.

⁵³⁴ British Deaf News Team, *What impact will Brexit have on the Deaf*

achieved through the communicative strategies adopted in their country, at least within the Union.

A consortium of seven European organizations⁵³⁵ started on 1 October 2020 a project funded by the Erasmus+ program aiming at the preservation and enhancement of the cultural and historical heritage of the deaf communities. The project consists in the creation of an application designed ad hoc for deaf visitors to enable their museum experiences without the need of a physical sign language interpreter.⁵³⁶ In this sense, the application addresses the shortage of sign language interpreters through interactive small screen technology disseminating information and promoting cultural heritage. The bespoke project fosters the accessibility of cultural events and the independent living of deaf people, without linking their experience to the presence of a professional sign language interpreter. Needless to say, that sign language interpreters are fundamental figures for the accessibility and inclusion of deaf signers. Nevertheless, ‘Deaf Museums’ cannot be regarded in the opinion of the writer as an offense to the profession of sign language interpreter,⁵³⁷ but is rather a significant step forward in the shift from assistentialism to reasonable accommodation.

As already mentioned previously, the Covid-19 pandemic has deepened pre-existing inequalities. As far as the Deaf are concerned, the pandemic underlined the lack of accessibility to information, which directly affected their right to health. Indeed, the bulletins of the institutions containing information on the progress of the pandemic

community?, 1 November 2016, www.britishdeafnews.co.uk.

⁵³⁵ Siena School for Liberal Arts (Italy), UCLan (United Kingdom), Pragma (Netherlands), European Union of the Deaf (Belgium), Fondazione Musei Senesi (Italy), Equalizent (Austria) and Deaf Studio (Slovakia).

⁵³⁶ CONSTANTINO, LOIZIDES, IOANNOU, *A Personal Tour of Cultural Heritage for Deaf Museums Visitors*, in IOANNIDES, FINK, MOROPOULOU, HAGEDORN-SAUPE, FRESA, LIESTØL, RAJCIC, GRUSSENMEYER (eds.), *Digital Heritage. Progress in Cultural Heritage: Documentation, Preservation, and Protection*, pp. 214-221, 31 October 2016, www.link.springer.com.

⁵³⁷ Just like the museum guides provide the visitor with the choice of different spoken languages, this application includes sign language among the possible choices.

and on the security measures taken to counter its spread were not fully accessible at the very first moment,⁵³⁸ since they were only sometimes subtitled. As a result of the pressure from deaf signers and people advocating for their rights, the reading of the official bulletins started being simultaneously translated by sign language interpreters in March 2020.⁵³⁹ The same difficulties were encountered in the official communications of the European Commission, which provided on 31 March 2020 its first update on the state of the pandemic in the EU translated into the International Sign Language⁵⁴⁰ as requested by the EUD.⁵⁴¹

Communication barriers have multiplied during the pandemic, when the personal protective devices prevented the lip-reading along with facial and visual cues on which all the Deaf rely⁵⁴² regardless of their communicative strategies⁵⁴³ and their interlocutors. Throughout the first period of the health emergency, information and awareness campaigns explaining the accommodations needed to clearly communicate with people with hearing impairment during the emergency were launched by associations and organizations advocating for their rights. The most effective way to overcome the linguistic barrier that face masks represented from the very first moment was to keep a safe distance, lower the face mask and speak

⁵³⁸ PFEIFER, *op. cit.*

⁵³⁹ GULLI, VOLTERRA, *La comunità sorda segnante italiana all'epoca del coronavirus: lingua dei segni e accessibilità*, pp. 7-8, www.istc.cnr.it.

⁵⁴⁰ European Commission Audiovisual Service, *Statements by Ursula von der Leyen, President of the Commission on coronavirus (international sign language version)*, www.audiovisual.ec.europa.eu.

⁵⁴¹ EUD, *Accessibility to information on COVID-19 in different EU Member States*, 2021, www.europa.eu.

⁵⁴² SILECCHIA, *L'accessibilità per le persone sorde durante l'emergenza da Covid-19 – Il caso studio dell'Italia*, Bachelor Degree Thesis, 2020, p. 146, www.dspace.unive.it.

⁵⁴³ It is important to underline that visual cues in general (including lip reading and facial expressions) are a fundamental element for both sign language users (for which they constitute one of the minimal parts composing the sign) – even in communication between deaf signers – and the so-called 'oralists', namely deaf people communicating through their national oral language.

slowly⁵⁴⁴ in order to allow the lip reading and facilitate the interaction with deaf or hard of hearing people. Another strategy – though less applied – was to write down the information, which may not always be effective considering that as far as deaf people are concerned the linguistic level of the spoken language varies from person to person,⁵⁴⁵ just as for all ‘foreign’ speakers. Subsequently, a new inclusive device was released in the United States and reached the European countries very quickly. A new face mask with a transparent rectangle started being considered the best way to protect people from the external environment and facilitate the interaction⁵⁴⁶ with and among deaf people. Most of the people who daily interacted with persons with hearing impairment have therefore procured the so-called ‘clear masks’ on their own initiative⁵⁴⁷ in order to make communication accessible for all.

While most of the activities focus on the removal of the communication barriers, it is equally important to take into consideration the need of deaf people to live independently. In this regard, a Spanish movement created an innovative technology, notably ‘Visualfy’, aiming at the empowerment of deaf people. The service gives access to different hearing accessibility solutions for mobile phones, homes and public spaces, and is based on an algorithm recognizing sounds and translating them into visual alerts on the connected device.⁵⁴⁸ Born as an autonomy device for homes, the technology aims at making the society deaf people life in fully accessible. For this reason, the service is not reserved exclusively for deaf people, but may also be requested by companies and organizations committed to hearing accessibility. In this sense, the technology of Visualfy does not only recognize a doorbell or an alarm

⁵⁴⁴ POON, JENSTAD, *Communication with face masks during the COVID-19 pandemic for adults with hearing loss*, 21 March 2022, p. 6, www.ncbi.nlm.nih.gov.

⁵⁴⁵ SARCHET, MARSCHARK, BORGNA, CONVERTINO, SAPERE, DIRMYER, *Vocabulary Knowledge of Deaf and Hearing Postsecondary Students*, 2014, p. 3, www.ncbi.nlm.nih.gov.

⁵⁴⁶ SILECCHIA, *op. cit.*, p. 147.

⁵⁴⁷ POON, JENSTAD, *op. cit.*, p. 6.

⁵⁴⁸ Visualfy, About us, www.visualfy.com.

clock, but also a fire alarm, the beep warning for one's turn at a hospital waiting room, turning them into visual (colors) and sensory (vibration) alerts in any connected device.

Albeit the improvements enlisted in this section seem a great achievement for the Deaf, they are the result of unilateral activities of EU member states and have not been enacted at EU level. Unlike the resolution of the EP on sign languages and professional sign language interpreters – which is common to all the member states – and the Covid-19 information in International Sign Language, neither the election of deaf MEPs nor the introduction of clear masks or any other accommodation mentioned in this section regard all EU member states. Indeed, the activities are not sufficiently widespread to consider them as improvements at EU level, but rather at national level. This is due to the little influence the Union has on minority language policy and in the main areas covered by the CRPD to which deaf and hearing people refer when calling for an action of the EU institutions.

2. A HETEROGENEOUS APPLICATION OF EU PROVISIONS AMONG MEMBER STATES

The principle of conferral regulating the competences of the Union makes it rather difficult for the EU institutions to shape the behavior of the member states on the issue. For this reason, the instruments to which they can resort are usually soft law⁵⁴⁹ ones such as the EP resolution on sign languages and professional sign language interpreters. The non-bindingness of such instruments together with the lack of competence by the Union in such an area respecting the self-government of EU member states can only result in an heterogeneous application of EU provisions among its member states.

As far as the recognition of sign languages as minority language is concerned, the EU is obliged by the funding treaties to respect its linguistic diversity⁵⁵⁰ but it shall at the same time respect

⁵⁴⁹ A system of rules, documents and acts that do not create legal obligations for member states.

⁵⁵⁰ European Union, *TEU*, cit., art. 3.

the national identities of the member states.⁵⁵¹ Indeed, the status of a language can only be defined by the state where it is spoken,⁵⁵² and sign languages are no exception. The EU periodically reiterates the need to recognize sign languages at national level as well as the urgency to train professional sign language interpreters as any other foreign language interpreter,⁵⁵³ but the enactment of such provisions depends exclusively on the member states according to their cultural, organizational and ideological aspects. In this sense, it is no surprise that while only half of the member states⁵⁵⁴ have recognized their national sign languages, the legal framework thereof varies from country to country. To give an example, the Portuguese Constitution recognizes Portuguese Sign Language as an instrument of accessibility to education and equal opportunities as well as cultural expression,⁵⁵⁵ while the Belgium parliament recognized in an ad hoc decree the French Belgian Sign Language as “la langue [...] propre à la communauté des sourds”⁵⁵⁶ (the language of the deaf community). The latter allowed the recognition of the deaf community as a minority group based on a language and culture of its own⁵⁵⁷ and not on an impairment. On the other hand, the ideological bias considering deafness as a disease to be ‘healed’ via technological aids⁵⁵⁸ prevented Italy from recognizing the Italian Sign Language (hereafter “LIS”) until 2021. The deadlock in which Italy found itself before converting the Decree Law n. 41 into Law n. 69 drew the attention of the CoRPD,

⁵⁵¹ *Ibid.*, art. 4.

⁵⁵² PASIKOWSKA-SCHNASS, *op. cit.*, p. 7.

⁵⁵³ See resolution A2-302/87 on sign languages for the deaf of 17 June 1988; resolution B4-0985/98 on sign language of 18 November 1998; and resolution 2016/2952 (RSP) of 23 November 2016 on sign languages and professional sign language interpreters.

⁵⁵⁴ Austria, Belgium, Bulgaria, Denmark, Finland, France, Greece, Italy, Malta, Netherlands, Portugal, Slovenia and Spain.

⁵⁵⁵ *Constitution of the Republic of Portugal*, review of 1997, art. 74(h), www.parlamento.pt.

⁵⁵⁶ Decree Law of the Belgium Parliament of the French Community n. 29549 of 22 October 2003 in OJ n. 410 of 25 November 2003, art. 1, www.ejustice.just.fgov.be.

⁵⁵⁷ DE MEULDER ET AL., *op. cit.*, p. 291.

⁵⁵⁸ *Ibid.*, p. 178.

which showed a deep concern for its strictly medical definition of disability⁵⁵⁹ breaking away from the one enshrined in the Convention. In 2021 the Republic of Italy finally recognized both the Italian Sign Language and its tactile version (used by deaf-blind people), and acknowledged the interpreter as a professional specialized in the translation and interpretation of the recognized languages.⁵⁶⁰ Bulgaria is one of the last EU countries (together with Italy and Slovenia) which have officially recognized their respective sign language. On 21 January 2021, the Bulgaria National Assembly approved a law recognizing Bulgarian Sign Language (hereafter “BGSL”) as a natural language through which hearing impaired people express themselves,⁵⁶¹ though the writer considers it necessary to underline the heterogeneity of communicative strategies among the deaf community. Among the provisions contained in the Bulgarian Sign Language Act, the most striking ones may be the increase of free interpreting service from ten to one-hundred-and-twenty hours per year and the creation of a Bulgarian Sign Language Council within the Educational Ministry⁵⁶² supporting the use and study of BGSL at school. However, the law did not tackle a fundamental aspect that needed to be improved to grant accessibility to the interpreting service, namely the number of BGSL interpreters. Indeed, while the number of Deaf sign language users is around 50.000, the listed number of active sign language interpreters in Bulgaria is 46.⁵⁶³ This implies that one interpreter shall serve for 1086 people, unlike Finland, where the person-interpreter ratio is estimated to be 8:1.⁵⁶⁴

⁵⁵⁹ United Nations Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Italy*, adopted on 31 August 2016, UN Doc. CRPD/C/ITA/CO/1, section III(A), www.un.org.

⁵⁶⁰ Law of the Republic of Italy n. 69 of 19 May 2021 in OJ n. 120 of 21 May 2021, art. 34-ter, www.gazzettaufficiale.it.

⁵⁶¹ STORM, *Bulgaria officially recognizes sign language*, 31 March 2021, www.hearinglikeme.com.

⁵⁶² The Sofia Globe, *Bulgaria's Parliament approves law on sign language*, 21 January 2021, www.sofiaglobe.com.

⁵⁶³ European Union of the Deaf, *Bulgaria – Deaf and Sign Language*, www.eud.eu.

⁵⁶⁴ LOZANOVA, *Issues in Bulgarian Sign Language Interpreting*, in *English Studies at NBU*, vol. 4, issue 2, 20 December 2018, pp. 131-144,

Last but not least, Spain reflected in its domestic law the same dichotomy recognized between Spanish language and Catalan language in their signed versions, recognizing at first the Spanish Sign Language in 2007,⁵⁶⁵ even regulating all the activities linked thereof, and subsequently recognizing in 2010 the Catalan Sign Language⁵⁶⁶ as “Catalan heritage language”⁵⁶⁷ within the Catalan Autonomous Community.

While the recognition of national sign languages is a fundamental aspect for the accessibility to communication, other accommodations are needed in order to create an environment that shall be as inclusive as possible, taking into account the heterogeneity characterizing the deaf community. The EU has always been well aware of this need and included the provision of subtitles among the accessibility components of audiovisual media services.⁵⁶⁸ The attempt to provide a quality service is demonstrated by the fact that the European Accessibility Act itself requires the subtitles to be transmitted “with adequate quality for accurate display [...] and synchronized with sound and video, while allowing for user control of their display and use”⁵⁶⁹ and provides in Annex II a list of non-binding examples of the solutions which shall help in the meeting of the accessibility requirements enlisted in Annex I. These same requirements shall be met also in the entertainment in the digital era, fostering the participation of deaf people in cultural events⁵⁷⁰ through which knowledge and understanding of both European cultures and languages is spread. The Italian law officially recognizing LIS does not properly transpose these provisions, but commits itself to the

www.esnbu.org.

⁵⁶⁵ Law of the Kingdom of Spain n. 27 of 23 October 2007 in OJ n. 255 of 24 October 2007, art. 1., www.boe.es.

⁵⁶⁶ Law of the Catalan Parliament n. 17 of 3 June 2010 in OJ n. 5647 of 10 June 2010, www.parlament.cat.

⁵⁶⁷ DE MEULDER ET AL., *op. cit.*, p. 276.

⁵⁶⁸ Council and European Parliament directive 2019/882/EU, *cit.*, Annex I Section IV.

⁵⁶⁹ *Ibid.*

⁵⁷⁰ European Parliament resolution 2014/2148 (INI) of 28 April 2015 on European film in the digital era, clause n. 9, www.eur-lex.europa.eu.

promotion of experimental projects aiming at the diffusion of interpreting and subtitling services.⁵⁷¹ Nevertheless, the Italian state TV has updated the regulation on TV subtitles for deaf and hard-of-hearing viewers in accordance with EU law adding the specifications of each element contributing to the synchronism of subtitles.⁵⁷² However, similar information cannot be found for other member states, not even among the ones which recognized the respective sign language before the entry into force of the CRPD. This does not mean that Italy is the only member state providing a subtitling service: 80% of European countries broadcasts movies at the cinema with subtitles, for which Deaf Italian are still struggling.⁵⁷³ The lack of national rules regulating the subtitling strategies results on the one hand in the absence of the obligation to include subtitles to make the information accessible, and the heterogeneity of subtitling techniques within the country on the other hand.

If it is true that most of the policy areas involved in the promotion and protection of the rights of the Deaf (and of persons with disabilities in general) fall within the powers of domestic governments, it is also true that the EU can influence their actions and suggest guidelines to be followed by its member states. The next section will underline the implementation gaps of the EU framework considering the possible actions thereof remaining within the competence conferred to the EU in the funding treaties. This will include the report of the requests of the EUD to the Union and the evaluation their feasibility in light of the EU competences and its primary sources.

3. PATH TOWARDS A DEEPER IMPLEMENTATION OF THE CRPD WITHIN THE EU

Reduced competence does not mean less (or worse)

⁵⁷¹ Law of the Republic of Italy n. 69, cit., art. 34-ter.

⁵⁷² RAI, Norme e convenzioni editoriali essenziali. Sottotitoli televisivi per spettatori sordi e con difficoltà uditive, June 2021, www.rai.it.

⁵⁷³ BUNETTO, *Cinema senza barriere, i sordi lanciano una petizione: "Vogliamo i film con i sottotitoli"*, 28 December 2021, www.sordionline.com.

implementation. Whereas the Code of Conduct⁵⁷⁴ attributes little competence on CRPD-related matters to the EU, all the areas that fall within the exclusive or shared competence of the Union have been properly addressed,⁵⁷⁵ meaning that the Union is on the right way towards the protection and promotion of the Deaf and persons with disabilities in general. While the EU is overwhelmingly compliant with its obligations under the Convention, there are still aspects to be dealt with in order to foster the inclusion of people with hearing and other impairments within society.

The lack of competences in most of the matters related to the rights of the Deaf (and persons with impairments in general) does not completely prevent EU institutions from acting in compliance with the CRPD and taking action to push the member states towards a full implementation of the Convention. The reiterated resolutions⁵⁷⁶ of the EP on sign languages and professional sign language interpreters together with the funding of the project SIGN-HUB is evidence of this. Nevertheless, the Deaf are an almost disregarded group within the actions of the disability strategies until now, which mainly concentrate on ‘visible’ impairments.⁵⁷⁷ And even when considerations on deafness are made, discussions and actions concentrate on sign languages, while there is also much more to consider. The heterogeneity characterizing the deaf community does not allow generalization: not all deaf people use sign language as a means of communication, and they do not necessarily recognize themselves as members of the deaf community. Therefore, it is important to take into consideration the different needs of deaf people

⁵⁷⁴ The full text of the Code of Conduct establishing the competences of the EU for CRPD matters is contained in Annex II of Council decision (EC) no 48/2010.

⁵⁷⁵ QUINN, End-of-mission statement by the United Nations Special Rapporteur on the rights of persons with disabilities, Mr. Gerard Quinn, on his visit to the European Union, 31 March 2022, Brussels, www.ohcrh.org.

⁵⁷⁶ See resolution A2-302/87 on sign languages for the deaf of 17 June 1988; resolution B4-0985/98 on sign language of 18 November 1998; and resolution 2016/2952 (RSP) of 23 November 2016 on sign languages and professional sign language interpreters.

⁵⁷⁷ European Commission Doc No SWD/2020/289 final/2, cit. p. 5.

even starting from the ones they have in common. For example, there are other professionals besides sign language interpreters who are fundamental for all deaf people, that is assistants to autonomy and communication. Unlike sign language interpreters who provide a translation of the spoken message to the signed language in all the spheres of life, they are professional figures of the national educational systems mediating between the deaf child and the school environment⁵⁷⁸ composed by hearing people. In this case, the support offered *to the teachers*⁵⁷⁹ is not only a linguistic one, but also a social and cultural mediation. Nevertheless, such an important figure is not still officially recognized within the EU, where member states have not yet incorporated this figure in their legislative frameworks. And yet, all the states parties to the Convention shall ensure the provision of effective individualized support measures needed to create a full inclusive environment maximizing both academic and social development⁵⁸⁰ of the student with an impairment of any kind. Being the role and education of assistants to autonomy and communication a matter of member states' competence, the EU cannot adopt legal acts regulating the specificities of this figure. However, the inclusion of this figure between the professionals contributing to the inclusion of the Deaf in society together with sign language interpreters in a future resolution of the EP may push the member states to do the same within their domestic legal frameworks.

However, if the protection of the rights of the Deaf were to concentrate on sign languages as a starting point, their recognition at national level cannot be considered as a point of arrival, but rather the beginning of a numbers of actions contributing to the progressive inclusion of the Deaf in society. By way of illustration, the recognition of French Belgian Sign Language (2003) and Flemish Sign Language

⁵⁷⁸ Assistente alla comunicazione LIS, *Chi è l'assistente alla comunicazione?*, www.assistenteallacomunicazione.it.

⁵⁷⁹ It is not the child who needs to adapt to the teachers, but it is rather the latter who need to conform to the needs of the deaf student. To do so, teachers (usually ignoring the basics of sign language and deaf culture) need the support of a professional figure guiding them in the work with the deaf child.

⁵⁸⁰ *CRPD*, cit., art. 24(2).

(2006) in Belgium⁵⁸¹ was followed by the election of Helga Stevens as a MEP in 2014.⁵⁸² Whereas the official recognition of the national sign language is a remarkable event, the election of a deaf MEP is in the opinion of the writer an even more exceptional one. However, this event was an isolated one together with the election of the Hungarian Ádám Kósa, but the results of their work were striking.⁵⁸³ Indeed, the presence of persons with disabilities shall not be an extraordinary event, but shall rather be a constant within an institution promoting and celebrating diversity⁵⁸⁴ such as the EU. The presence of persons with disabilities in EU institutions would not only allow their participation in the political process, but would also foster disability-based considerations when they are needed, and the work of the two deaf MEPs proves it: before the election of Ádám Kósa as a MEP, the EP appeared not to have fully understood the needs of persons with disabilities and the obligations arising for EU institutions from the ratification of the CRPD.⁵⁸⁵ Indeed, the needs of persons with disabilities were brought under the attention of the EP and the Union as a whole by MEPs Kósa and Stevens, who experienced the bias and discriminations firsthand, and asked the EU institutions to comply with their obligations under the Convention. Taking this into account, it comes without saying that as much as disability experts can make a contribution to EU institutions, persons with disabilities are undoubtedly the only ones who can make the difference for themselves by taking actively part to the decision-making process, and the active participation of DPOs in the adoption of the CRPD is proof of this.

If the recognition of national sign languages necessarily leads to a number of adjustments within the domestic framework to make that recognition effective, the situation at EU level remains

⁵⁸¹ DE MEULDER ET AL., *op. cit.*, pp-291-294.

⁵⁸² European Parliament, MEPs – Helga Stevens, *cit.*

⁵⁸³ The results of their activities as MEPs can be found in section 2 of this chapter.

⁵⁸⁴ *European Commission, For Diversity Against Discrimination campaign*, *cit.*

⁵⁸⁵ Fidesz, *Interview with Ádám Kósa, member of the European parliament*, www.fidesz-eu.hu.

unchanged. Whereas there is no European sign language to be recognized, not even the election of two deaf MEPs managed to make the EU accessible for the Deaf both as workers and citizens. The interpreting service at the EP is not provided by default but needs to be planned ad hoc with sign language interpreters who do not belong to the registered staff of the EP but have to travel specifically from their native country.⁵⁸⁶ At the same time, the sessions of the EP open to the public and visible from the institution's website do not provide captioning or subtitling at all unless specifically organized with the support from an outside contributor. The Convention commits states parties to "take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information [...] on an equal basis with others and through all forms of communication of their choice,"⁵⁸⁷ including national sign languages and subtitles. At present, neither one nor the other are included among the services provided by the EU to foster accessibility of the Deaf. The lack of recognition of sign languages has led the EUD to ask for the recognition of all the sign languages already recognized at national level as official languages of the EU⁵⁸⁸. In addition, the EUD calls for the limitation of the use of International Sign to the communication or information available in English only and the availability of information and communications in all the national sign languages when they are provided in all spoken languages.⁵⁸⁹ While the latter may be realizable even taking into account the little users of the International Sign,⁵⁹⁰ the inclusion of the national sign languages among the official languages of the EU seems more an utopia. This is due to the fact that the enlargement of the list of the EU official

⁵⁸⁶ *Ibid.*

⁵⁸⁷ *CRPD*, cit., art. 21(b).

⁵⁸⁸ European Union of the Deaf, *Alternative report*, cit., pp. 9-10.

⁵⁸⁹ *Ibid.*, p. 13.

⁵⁹⁰ It must be noticed that the International Sign is not a natural sign language, but it is rather a conventional signed system collecting the signs from different sign languages of the world. In addition, the Deaf do not learn the International Sign and prefer the American Sign Language as a sort of 'international' sign language.

languages is not under the responsibility of the EU itself, but depends on the official language chosen by the new member state at the time of accessing the Union.⁵⁹¹ The status of official language of the EU allows its users to write to the EU institutions in the recognized language and receive an answer in the same language.⁵⁹² What is even more important with regard to sign languages, is the translation of the meetings of the Council to all the official languages and the possibility to use any of the official languages in the sessions of the EP.⁵⁹³ Notwithstanding the unquestionable benefits the inclusion of the thirty national sign languages would imply for the Deaf, a radical and unlikely change⁵⁹⁴ allowing the officialization of more than one language per member state to the funding treaties would be needed in order to meet the request of the EDF. However, the linguistic barriers represented by the sessions of the EU institutions need to be overcome, and the provision of a subtitling and sign language interpreting service may be the most inclusive solution. At the same time, the inclusion of professional sign language interpreters within the EU staff would allow deaf signers to reach out the EU institutions in their national sign languages and receive an answer in the same language.

Whereas discrimination is addressed in most of the legal acts adopted, there is still a legal gap in terms of protection from disability-based discrimination. This was supposed to be addressed via the Equal Treatment Directive⁵⁹⁵ proposed by the Commission in 2008 – which is at a standstill since then – to extend the equal treatment that was established in 2000 for employment and occupation⁵⁹⁶ to all spheres of life.⁵⁹⁷ Such an important act cannot be held in stalemate for so long,

⁵⁹¹ European Union, Languages, www.european-union.europa.eu.

⁵⁹² European Union, *Charter*, cit., art. 41.

⁵⁹³ European Union, Languages, cit.

⁵⁹⁴ At present, every new member state accessing the Union declares its official language. In case the country has more than one official language, it will have to choose only one of them.

⁵⁹⁵ The issues related to the implementation of this directive have been addressed in section 4.3 of the previous chapter.

⁵⁹⁶ Council directive 2000/78/EC, cit.

⁵⁹⁷ European Commission Communication COM/2008/426 final, cit.

representing an important legal gap in the EU legal frameworks in terms of combating discrimination. A solution must be found to implement the directive as soon as possible, whether it is an amendment to article 19 TFEU as proposed by the Commission⁵⁹⁸ or the identification of a meeting point between the majority of the Council and the two opposing member states.

Finally, the data collection for the statistics on people with disabilities is perhaps the most important aspect around which the above-mentioned problems develop. The data collection and the resulting statistics are essential in the monitoring of the implementation of the CRPD by the EU and its member states, but they may be misleading if all existing variables are not taken in consideration. Indeed, while the data reported by Eurostat at the end of the 2010-2020 disability strategy indicate a significant improvement in the promotion and protection of the rights of persons with disabilities,⁵⁹⁹ the Commission recognized in its final report that the Strategy focused mainly on the ‘visible’ impairments.⁶⁰⁰ This difference is due to the fact that the collected data are divided by age and gender on the one hand, and by severe and slight activity limitation,⁶⁰¹ ignoring the importance of a variable such as the disability type. As a matter of facts, the inclusion of such a variable in the analysis of the collected data would have underlined the hugely different barriers persons with different types of impairment face and the need to focus on the ‘invisible’ impairments. Since the aim of the statistics is to provide the real rate of implementation of the Convention, it comes without saying that it is preferable to conduct a data collection that shall be disaggregated by type of impairment in order to provide a truthful and more accurate statistics.

A framework established to promote, protect and monitor the implementation of the provisions enshrined in the CRPD shall be as inclusive as possible to overcome the barriers persons with disabilities face every day. It is therefore imperative to diversify the focus of its

⁵⁹⁸ European Commission Communication COM/2019/186 final, cit.,

⁵⁹⁹ European Commission, European comparative data on Europe 2020, cit.

⁶⁰⁰ European Commission Doc No SWD/2020/289 final/2, cit. p. 5.

⁶⁰¹ European Union of the Deaf, *Alternative report*, cit., p. 4.

actions to meet different needs in a shorter time-period and consider the different types of impairment when monitoring the effectiveness of the implemented actions. If it is true that the final aim of the Convention can only be reached progressively, it is also true that the most effective strategy towards a full barrier free Europe consists in dwelling in every single aspect that may hinder the achievement of the final objective and find a solution for it.

CHAPTER 5: CONCLUSIONS

The present work has analyzed the evolution of the concept of disability from a medical issue to a social model based on human rights and the developments that this has entailed in the EU. Human rights became one of the main priorities of the former EEC as soon as the Maastricht Treaty allowed in 1992 the enlargement of its competences. Disability was included among the most common causes of discrimination through the Treaty of Amsterdam, after which a series of legal acts addressing discrimination and promoting equality among citizens were adopted.

The adoption of the CRPD by the UN General assembly in 2006 marked an historical moment in the evolution of the concept of disability. Proposing a social perspective in the understanding of disability, the Convention boosted the transition from the medical-charity model to the social-human rights model. Besides being the first human rights treaty based on disability, the CRPD is also the first international treaty open for signature by regional integration organizations. However, the final ratification of only one of them – namely the EU – may suggest a failure in the attempt to involve non-state parties to such an important treaty. In the opinion of the writer, the UN General assembly was rather aware of the implications of such a narrow definition of regional integration organization would have. In this sense, it may be possible to consider the narrow understanding of the non-state party as the representation of the ambition to also include the other organizations in the future following the example of the EU in the expansion of their competences.

The ratification of the Convention by the Union in 2010 was not only in line with the values on which the EU is based, but it was also consistent with the line on which anti-discrimination EU law had been developed until then, which was the proof of its strong commitment to address the rights of persons with disabilities at EU level.

As soon as the 2004-2010 EU Disability Action Plan was concluded, the European Commission shared with the EU institutions a new ten-year strategy aiming at the full participation of persons with

disabilities in society and economy. The very first action under the strategy was the ratification of the Convention, which came one month after the ten-year strategy was started. Albeit this may seem a pure coincidence, it could be regarded more as a positive tactical move by the EU, which focused its activity within the strategy, inter alia, on external actions. Indeed, the EU Act of Accession to the CRPD was already adopted on 26 November 2009 through Decision 2010/48 of the Council of the EU, while the formal ratification occurred on 23 December 2010.

As a party to the CRPD the EU had to comply with the obligation to establish its own framework to promote, protect and monitor the implementation of the Convention at domestic level. The latter was designated in 2012 and is composed by the European Parliament, the European Ombudsman, the EU Agency for Fundamental Rights and the European Disability Forum, the work of which shall complete the frameworks established in the member states. A thorough analysis of the implemented actions of the strategy in comparison with the intended actions declared when it was shared for the first time underlined diverging results. While the implementing rate suggest a positive impact of the strategy on EU rules and policies introducing disability-based considerations, the rates of poverty and unemployment are particularly worrying and have not resulted in the expected improvement. Among the causes of these partial positive results, the concentration of ‘visible’ impairments as well as the lack of disaggregated data collection for the evaluation of the strategy may be regarded as the most influential, which leads to the need to ameliorate the EU actions within the next strategy.

The ongoing disability strategy aiming at a ‘Union of equality’ had a very difficult start due to the outbreak of the covid pandemic, which impacted persons with disabilities disproportionately and deepened discrimination. The very first period of the new strategy focused therefore on healthcare – notably the higher infection rates people with disabilities experienced and isolation as a consequence of social distancing – and accessibility to information on the status of the pandemic and the safety measures to be adopted. Regardless of the historical period in which the strategy began, there are many

expectations in all the areas on which the Commission decided to focus its activities. In particular, the adoption of the European Disability Card – which is expected by the end of 2023 – is regarded as a milestone among the achievement of persons with disabilities, addressing the lack of mutual recognition of disability status among EU member states that hinders the full enjoyment of EU rights for persons with disabilities. In addition, the strategy aims at leading by example for its member states above all, but also for the other international organizations, being the EU the only regional organization that ratified the Convention.

The choice to focus on deafness in the last chapter puts together the passion of the writer for the deaf world and sign languages, and the need to put a spotlight on the urgency to provide a disaggregated collection of data for type of impairment in the assessment of progress in the protection, promotion and monitoring of the rights of persons with disabilities. Define deafness as sensory disability is highly reductive, since the damage to the auditory apparatus implies an impairment that goes far beyond the medical condition, which is the communicative impairment. This makes of deaf people not only a group of individuals sharing a hearing impairment, but also the members of a community representing a cultural and linguistic minority resulting from social rejection and alienation from the majority hearing population. To be fair, the Deaf are not completely disregarded, but again generalization on a group of people that is actually far from homogeneous prevails. The final aim of the chapter was to shed a light on the heterogeneous implementation of the provisions enshrined in the Convention among EU member states and take a cue from domestic laws to propose solutions to the pending issues at EU level. However, the unexpected lack of actions and legal acts protecting and promoting the rights of the Deaf at domestic level made it rather difficult to identify sampling activities to be transposed at EU level.

While the main focus of the policymakers in this area regards sign languages recognition and the interpreting services, a large slice of deaf non-signers is unwittingly set aside, taking for granted that all the Deaf recognize themselves as members of the deaf community, but

they do not in reality. Furthermore, even when deaf people communicate through sign languages, it is not by simply recognizing the national sign language that their rights are acknowledged, protected and respected. The provision of subtitling services, as well as the recognition of professional figures such as sign language interpreters and assistants to autonomy and communication, are equally important in the implementation of the CRPD both at EU and national level.

As a matter of facts, the hearing impairment serves as a paradigm in the identification of the pending issues despite an appropriate implementation of the Convention, but the same specificities highlighted in the last chapter can be identified for each form of impairment. Indeed, though similar for some aspects, every type of impairment implies different difficulties and different needs to be met. The lack of differentiation in the activity of the institutions and in the assessment of the progress of the situations of person with disabilities is the result of a lack of consideration of the heterogeneity of the roughly 87 million EU citizens having some form of impairment. This unintentional carelessness is the sign of the urgency to change the way of thinking about disability in name of the diversity that the EU admires and promotes, but which seems still hard to accept. The change of mental attitude which is necessary to innovate the mindset from disability to diversity shall start from converting the final aim of the EU from equality to equity, not giving to everyone the same tools, but giving everyone the necessary tools to achieve the same goal.

CHAPTER 6: REFERENCES

1. BIBLIOGRAPHY

BRANCHINI, CARDINALETTI, *La lingua dei Segni nelle disabilità comunicative*, Milano, Franco Angeli, 2016.

CAUGHEY, LIU, *The Role of National Human Rights Institutions and Organizations of Persons with Disabilities in the National Monitoring of the CRPD*, in RIOUX, VIERA, BUETTGEN, ZUBROW (eds.), *Handbook of Disability: Critical Thought, Human Rights and Social Change in a Globalizing World*, Springer Nature Switzerland, 16 July 2022.

CHAMON, *Constitutional limits to the political choice for mixity*, in NEFRAMI, GATTI (eds.), *Constitutional issues of EU external relations law*, pp. 137-165.

CHAMON, *Negotiation, ratification and implementation of the CRPD and its status in the EU legal order*, in FERRI, BRODERICK (eds.), *Research Handbook on EU Disability Law*, 2020, pp. 52-70.

DE MEULDER, MURRAY, MCKEE, *The Legal Recognition of Sign Languages – Advocacy and Outcomes Around the World*, Bristol, 2019.

DEGENER, *Disability as a Subject of International Human Rights Law and Comparative Discrimination Law*, in STANLEY ET AL., *The Human Rights Persons with Intellectual Disabilities*, May 2055.

FOUCAULT, *Storia della follia nell'età classica*, Milan, 1998.

FRIEDLANDER, *Le origini del genocidio nazista: dall'eutanasia alla soluzione finale*, Rome, 1997.

GRAUMANN, *Human Dignity and People with Disabilities*, in DÜWELL, BRAARVIG, BROWNSWORD, MIETH, *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives*, Cambridge, 2014.

HARPUR, *Embracing the new disability rights paradigm: the importance of the Convention on the Rights of Persons with Disabilities*, in MOORE (ed.), *Disability & Society*, Vol. 27, No. 1, January 2012.

HELISKOSKI, *Mixed Agreements as a technique for organizing the*

international relations of the European Community and its Member States, in KOSKENNIEMI (ed.), Erik Castrén Institute monographs on international law and human rights, Vol. 2, 2001.

HELISKOSKI, *Mixed Agreements: The EU Law Fundamentals*, in SCHÜTZE, TRIDIMAS (eds.), *Oxford principles of European Union Law*, Vol. 1, Oxford, March 2018, pp. 1174-1207.

ROSAS, *Mixity Past, Present and Future: Some Observations*, in CHAMON, GOVAERE (eds.), *EU External Relations Post-Lisbon. The Law and Practice of Facultative Mixity*, Leiden, Brill, 2020, pp. 8-16.

SCHÜTZE, *Foreign Affairs and the EU Constitution: Selected Essays*, Cambridge University Press, 2014, pp. 173-286.

SEATZU, *La Convenzione delle Nazioni unite sui diritti delle persone disabili: i principi fondamentali*, in *Diritti umani e diritto internazionale*, Vol. 3, 2008.

SILECCHIA, *L'accessibilità per le persone sorde durante l'emergenza da Covid-19 – Il caso studio dell'Italia*, Bachelor Degree Thesis, 2020.

STILO, *La disabilità nella storia*, Rome, 2013.

WADDINGTON, *The potential for, and Barriers to, the Exercise of Active EU Citizenship by People with Disabilities: The Right to Free Movement*, in HALVORSEN, HVINDED, BICKENCACH, FERRI, RODRIGUEZ (eds.), *The Changing Disability Policy System: Active Citizenship and Disability in Europe*, vol. 1, Routledge, 2017.

WANG, MANNING, BOGART, ADLER, NARIO-REDMOND, OSTROVE, LOWE, *Predicting depression and anxiety among adults with disabilities during the COVID-19 pandemic*, in DAWN (ed), *Rehabilitation Psychology*, Vol. 67 No 2, May 2022.

2. ONLINE RESOURCES

AMENDOLAGINE, *Da castigo degli dei a diversamente abili: l'identità sociale del disabile nel corso del tempo*, 7 November 2014, www.stateofmind.it (accessed 07 March 2023).

ANDERSON, MURPHY, *The Charter of Fundamental Rights: History and Prospects in Post-Lisbon Europe*, EUI LAW, 2011, www.hdl.handle.net (accessed 17 April 2023).

Assistente alla comunicazione LIS, *Chi è l'assistente alla*

comunicazione, www.assistenteallacomunicazione.it (accessed 03 May 2023).

British Deaf News Team, *What impact will Brexit have on the Deaf community*, 1 November 2016, www.britishdeafnews.co.uk (accessed 23 May 2023).

BOURONIKOS, *The Status of Employment and disability in the EU in 2021*, 30 July 2021, www.ied.eu (accessed 12 April 2023).

BUNETTO, *Cinema senza barriere, i sordi lanciano una petizione: "Vogliamo i film con i sottotitoli"*, 28 December 2021, www.sordionline.com (accessed 17 May 2023).

CARIO, *Breve storia della disabilità*, 7 July 2014, www.educare.it (accessed 07 March 2023).

Case Western Reserve University, *What is Accessibility*, www.case.edu (accessed 15 April 2023).

CIESIN, *Regional Economic Integration Organizations*, www.ciesin.org (accessed 03 June 2023).

CLIFFORD, *The UN Disability Convention and its Impact on European Equality Law*, in *The Equal Rights Review*, Vol. 6, 2011, www.escri-net.org (accessed 01 June 2023).

COLASANTO, *La libertà di essere imperfetti; la bellezza di essere fragili*, 2020, www.academia.edu (accessed 30 March 2023).

CONSTANTINOU, LOIZIDES, IOANNOU, *A Personal Tour of Cultural Heritage for Deaf Museums Visitors*, in IOANNIDES, FINK, MOROPOULOU, HAGEDORN-SAUPE, FRESA, LIESTØL, RAJCIC, GRUSSENMEYER (eds.), *Digital Heritage. Progress in Cultural Heritage: Documentation, Preservation, and Protection*, pp. 214-221, 31 October 2016, www.link.springer.com (accessed 16 May 2023).

CROWLEY, *Equality Bodies and Reasonable Accommodation Beyond the Ground of Disability*, 2022, Brussels, www.equineteurope.org, (accessed 03 April 2023).

CUOLLO, *La storia della disabilità: un riassunto per capire il presente*, 2 July 2021, www.accessiway.com (accessed 07 March 2023).

DE BURCA, *The Drafting of the EU Charter of Fundamental rights*, in *European Law Review*, 2001, www.eui.eu, (accessed 18 April 2023).

Decent jobs for youth, *Enabling young persons with disabilities: inclusive digital skills initiatives*, 15 July 2022, www.decentjobforyouth.org (accessed 19 April 2023).

DEVANDAS AGUILAR, *Social protection and persons with disabilities*, in *International Social Security Review*, Vol. 70, 2017, www.onlinelibrary.wiley.com (accessed 07 April 2023).

DICSI, *EU Guidance on independent living and inclusion in the community*, 17 July 2022, www.edf-feph.org (accessed 27 May 2023).

European Network of National Human Rights Institutions, Comments of the CRPD Working Group of the European Network of NHRIs (ENNHRI) on the Draft Additional Protocol to the Oviedo Convention, www.menneskeret.dk (accessed 05 May 2023).

European Network of National Human Rights Institutions CRPD Working Group Chair Ekaterine Skhiladze in ENNHRI CRPD Working Group newsletter No. 5 on the recovery from the effects of the Pandemic on the rights of persons with disabilities, April-June 2021, www.ennhri.org (accessed 17 April 2023).

Equinet, *Equality Bodies*, www.equineteurope.org (accessed 12 April 2023).

Equinet, Equinet's submission to the UN CRPD draft General Comment on Article 5 – Equality and Non-Discrimination, www.ohchr.org (accessed 11 April 2023).

Equinet, *National Equality Bodies, Champions of Equality and Non-Discrimination*, www.equineteurope.org (accessed 11 April 2023).

Equinet, Time to adopt the Equal Treatment Directive, 25 June 2018, www.equineteurope.org (accessed 02 June 2023).

Equinet, Working Paper on Developing Standards for Equality Bodies, 2016, www.equineteurope.org (accessed 28 April 2023).

Equinet, Written observations in applications nos. 34591/19 and 42545/19 Franc TOPLAK v. Slovenia and Iztok MRAK v. Slovenia, 28 July 2020, www.equineteurope.org (accessed 13 April 2023).

EU Monitor, Committee on Civil Liberties, Justice and Home Affairs (LIBE), www.eumonitor.eu (accessed 01 June 2023).

EU Monitor, Committee on Employment and Social Affairs (EMPL), www.eumonitor.eu (accessed 03 April 2023).

European Association of Service providers for Persons with Disabilities, *EU Framework on Social Services of Excellence for persons with disabilities: Input of the Taskforce on Quality of Services*, 2022, www.easpd.eu (accessed 12 April 2023).

European Commission, #BeInclusive EU Sport Awards, www.sport.ec.europa.eu (accessed 31 March 2023).

European Commission, *Building an economy that works for people: an action plan for the social economy*, December 2021, www.commission.europa.eu (accessed 27 May 2023).

European Commission, *Equality: All members of the new Disability Platform now known*, 13 December 2021, www.ec.europa.eu (accessed 16 March 2023).

European Commission, *European Capitals of Smart Tourism. An initiative to reward innovative and smart tourism practices in European Cities*, www.smart-tourism-capital.ec.europa.eu (accessed 21 April 2023).

European Commission, European comparative data on Europe 2020 and persons with disabilities, December 2021, www.eurostat.ec.europa.eu (accessed 21 March 2023).

European Commission, *European Day of Persons with Disabilities 2022*, 24-25 November 2022, www.ec.europa.eu (accessed 12 May 2023).

European Commission, European Democracy Action Plan, www.commission.europa.eu (accessed 20 April 2023).

European Commission, European Pillar of Social Rights, www.commission.europa.eu (accessed 12 April 2023).

European Commission, *'For Diversity Against Discrimination campaign'*, www.ec.europa.eu (accessed 18 May 2023).

European Commission, *Rights, Equality and Citizenship Programme 2014-2020*, www.ec.europa.eu (accessed 23 April 2023).

European Commission, *Social protection for people with disabilities in Europe: an analysis of policies in 35 countries*, 3 January 2023, www.ec.europa.eu (accessed 12 April 2023).

European Commission, *'What can Social Europe do for you'* campaign, www.ec.europa.eu (accessed 08 May 2023).

European Commission Directorate General for Education and

Culture, Erasmus+ Inclusion and Diversity Strategy – in the field of Youth, December 2014, www.ec.europa.eu (accessed 12 May 2023).

European Disability Forum, The European Disability Card, www.edf-feph.org (accessed 02 May 2023).

European Economic and Social Committee, Denied the right to health: persons with disabilities have more difficulty accessing healthcare, 10 March 2023, www.eesc.europa.eu (accessed 08 May 2023).

European Network of National Human Rights Institutions, Rights of Persons with Disabilities, www.ennhri.org (accessed 28 March 2023).

European Network of National Human Rights Institutions, UN Paris Principles & Accreditation, www.ennhri.org (accessed 13 April 2023).

European Network of Ombudsmen, The European Network of Ombudsmen, www.eno.ombudsman.europa.eu (accessed 20 April 2023).

European Parliament, Policy department C, The Evolution of Fundamental Rights Charters and Case Law, 2011, www.europarl.europa.eu (accessed 17 March 2023).

European Parliament, *European Parliamentary Research Service (EPRS)*, www.europarl.europa.eu (accessed 17 April 2023).

European Parliament, MEPs – Ádám Kósa, www.europarl.europa.eu (accessed 19 May 2023).

European Parliament, MEPs – Helga Stevens, www.europarl.europa.eu (accessed 19 May 2023).

European Parliament, Study on the implementation of the 2015 concluding observations of the CRPD Committee by the EU, December 2021, www.europarl.europa.eu (accessed 09 April 2023).

European People's Party, Ádám Kósa – former EPP Group MEP, www.eppgroup.eu (accessed 19 May 2023).

European Platform for Rehabilitation, European Disability Strategy 2010-2020: Analysis of the Mid-Term Review and proposals for the next steps, 2015, www.epr.eu (accessed 22 April 2023).

European Social Policy Network, *Social protection for people with disabilities in Europe. An analysis of policies in 35 countries*, 2022,

www.ec.europa.eu (accessed 17 April 2023).

European Union, Languages, www.european-union.europa.eu (accessed 28 May 2023).

European Union Agency for Fundamental Rights, Austrian inclusion conference reopens, www.fra.europa.eu (accessed 13 March 2023).

European Union Agency for Fundamental Rights, Civil society and the Fundamental Rights Platform, www.fra.europa.eu (accessed 29 March 2023).

European Union Agency for Fundamental Rights, *EU CRPD Framework – contribution to EU review process*, www.fra.europa.eu (accessed 12 April 2023).

European Union Agency for Fundamental Rights, *EU Framework for the UN Convention on the Rights of Persons with Disabilities*, www.fra.europa.eu (accessed 02 June 2023).

European Union Agency for Fundamental Rights, *The EU framework to promote, protect and monitor the UNCRPD - Operational provisions*, www.fra.europa.eu (accessed 02 June 2023).

European Union External Action, Human rights and democracy at the core of EU external action, www.eeas.europa.eu (accessed 04 June 2023).

European Union of the Deaf, *Accessibility to information on COVID-19 in different EU Member States, 2021*, www.europa.eu (accessed 29 May 2023).

European Union of the Deaf, *Alternative report for the second review of the European Union by the United Nations Convention on the Rights of Persons with Disabilities Committee*, 15 February 2022, www.edf-feph.org (accessed 03 June 2023).

European Union of the Deaf, Bulgaria – Deaf and Sign Language, www.eud.eu (accessed 18 May 2023).

European Union of the Deaf, *EU Commission announces its new Disability Employment Package to improve labour market outcomes for persons with disabilities*, 20 September 2022, www.eud.eu (accessed 21 April 2023).

Eurostat, Disability statistics, www.ec.europa.eu (accessed 28 May 2023).

FABBRINI, *Human Rights in the EU: Historical, Comparative and Critical Perspectives*, in *Il Diritto dell'Unione Europea*, 2017, www.dirittounioneuropea.eu (accessed 04 June 2023).

Fidesz, *Interview with Ádám Kósa, member of the European parliament*, www.fidesz-eu.hu (accessed 07 May 2023).

FOSTER, *Social alienation and peer identification: A study of the social construction of deafness*, in *Human Organization*, Vol. 48(3), 1989, www.jstor.org (accessed 17 April 2023).

GRAMMENOS, PRIESTLEY, *Statistics on Persons with Disabilities*, 13 July 2020, www.ec.europa.eu/eurostat (accessed 19 April 2023).

GULLI, VOLTERRA, *La comunità sorda segnante italiana all'epoca del coronavirus: lingua dei segni e accessibilità*, www.istc.cnr.it (accessed 02 May 2023).

HOFMANN, The developing role of the European Ombudsman, in HOFMANN, ZILLER (eds), *Accountability in the EU – The Role of the European Ombudsman*, 30 June 2017, www.elgaronline.com (accessed 15 April 2023).

IVANKOVIC-KNEZEVIC, *Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030*, www.ec.europa.eu (accessed 14 April 2023).

Jacques Delors Institute, *The four freedoms in the EU: Are they inseparable?*, 2018, www.institutdelors.eu (accessed 29 March 2023).

JENKINSON, *Sign-language champion*, 9 March 2011, www.politico.eu, (accessed 08 May 2023).

KRAUSNEKER, *La protezione e la promozione delle lingue dei segni e dei diritti dei suoi utilizzatori negli stati membri del Consiglio d'Europa: analisi delle necessità*, Strasbourg, Council of Europe, December 2008, www.lissubito.com (accessed 17 May 2023).

LECERF, *European disability policy – From defining disability to adopting a strategy*, June 2017, European Parliamentary Research Service, www.europarl.europa.eu (accessed 19 April 2023).

LOZANOVA, *Issues in Bulgarian Sign Language Interpreting*, in *English Studies at NBU*, vol. 4, issue 2, 20 December 2018, www.esnbu.org (accessed 01 June 2023).

MARZIALE, *Sordità: una disabilità in diverse prospettive. La lingua dei segni come strumento di cittadinanza*, in RORDORF (ed.) *Questione Giustizia*, Dossier 3, 2018, www.questionegiustizia.it (accessed 10

May 2023).

MCDERMOTT, *More employees are demanding diversity at work. Where do European companies stand?*, 8 December 2022, www.euronews.com (accessed 17 May 2023).

Mental Health Europe, *Assessment of the European Disability Strategy 2010-2020*, position paper of April 2019, www.mhe-sme.org (accessed 07 May 2023).

Modavi Onlus, *La lingua dei segni è un diritto ed ha una funzione pedagogico-educativa*, 27 November 2014, www.modavi.it (accessed 11 May 2023).

MUNOZ-BAELL, RUIZ, *Empowering the deaf. Let the deaf be deaf*, in *Journal of Epidemiology Community Health*, Vol. 54, January 2000, www.researchgate.net (accessed 03 June 2023).

NEFFE, *Protecting Human Dignity is the EU's Top Job*, in Euractiv, 2019, www.euractiv.com (accessed 17 March 2023).

Nordic Welfare Centre, *The impact of the COVID-19 pandemic on social isolation and loneliness*, 1 February 2023, www.nordicwelfare.org (accessed 09 April 2023).

PRIESTLEY, *Disability assessment, mutual recognition and the Eu Disability Card. Progress and opportunities*, Policy Department for Citizen's Rights and Constitutional Affairs of the European Parliament, November 2022, Table 9, p. 46, www.europarl.europa.eu (accessed 04 June 2023).

United Nations Human Rights Office of the High Commissioner study on youth and human rights Equinet's input, www.ohchr.org (accessed 17 May 2023).

Organization for Security and Co-operation in Europe, National Human Rights Institutions, www.osce.org (accessed 19 March 2023).

Office of the United Nations High Commissioner for Human Rights, *National Human Rights Institutions. History, Principles, Roles and Responsibilities*, New York and Geneva, 2010, www.ohchr.org, (accessed 21 April 2023).

PASIKOWSKA-SCHNASS, *Regional and minority languages in the European Union*, European Parliament, 2016, www.europarl.europa.eu (accessed 01 June 2023).

PEDLEY, VIAUT, *What do minority languages mean? European perspectives*, in CODÓ, JASPERS (eds.), *Multilingua*, Vol. 38(2), 2019,

www.degruyter.com (accessed 29 May 2023).

PFEIFER, *From “Nothing about Us Without Us” to “Nothing Without Us”*, 2022, www.ndi.org (accessed 05 March 2023).

POON, JENSTAD, *Communication with face masks during the COVID-19 pandemic for adults with hearing loss*, 21 March 2022, www.ncbi.nlm.nih.gov (accessed 17 May 2023).

PRYS JONES, *Study on endangered languages and linguistic diversity in the European Union*, European Parliament’s Culture and Education Committee, March 2013, www.europarl.europa.eu (accessed 21 May 2023).

RAI, *Norme e convenzioni editoriali essenziali. Sottotitoli televisivi per spettatori sordi e con difficoltà uditive*, June 2021, www.rai.it (accessed 26 May 2023).

SARCHET, MARSCHARK, BORGNA, CONVERTINO, SAPERE, DIRMYER, *Vocabulary Knowledge of Deaf and Hearing Postsecondary Students*, 2014, www.ncbi.nlm.nih.gov (accessed 23 April 2023).

SCOTELLARO, *SIGN-HUB, Progetto di ricerca europeo sulle Lingue dei Segni*, 19 April 2018, www.unive.it (accessed 08 May 2023).

STORM, *Bulgaria officially recognizes sign language*, 31 March 2021, www.hearinglikeme.com (accessed 29 May 2023).

SYMEONIDOU, *Trapped in our Past: the Price we Have to Pay for Our Cultural Disability Inheritance*, in *International Journal of Inclusive Education*, Vol 12, no. 6, 2009, www.academia.edu (accessed 05 March 2023).

The Sofia Globe, *Bulgaria’s Parliament approves law on sign language*, 21 January 2021, www.sofiaglobe.com (accessed 19 May 2023).

ULDRY, *The Ratification of the UN Convention on the Rights of Persons with Disabilities by the European Union*, 2016, www.edf-feph.org (accessed 06 March 2023).

United Nations Department of Economic and Social Affairs, *COVID-19 Outbreak and Persons with Disabilities*, www.un.org (accessed 17 April 2023).

United Nations Department of Economic and Social Affairs, *International Day of Disabled Persons 2004 – Nothing about Us, Without Us*, 2004, www.un.org (accessed 18 March 2023).

VAN HOUT, *Foreword to Dignity for All: Realizing Social Rights in the EU*, edited by the United Nations Human Rights Regional Office for Europe, 2021, www.europe.ohchr.org (accessed 27 March 2023).

VANHALA, *The Diffusion of Disability Rights in Europe*, in *Human Rights Quarterly* vol. 37, no. 4, 2015, www.discovery.ucl.ac.uk (accessed 05 March 2023).

Visualfy, About us, www.visualfy.com (accessed 18 April 2023).

WHEATLEY, BICKERTON, *Subjective well-being and engagement in arts, culture and sport*, in *Journal of Cultural Economics*, Vol. 41, pp. 23-45, 21 March 2016, www.link.springer.com (accessed 07 May 2023).

World Health Organization, *Disability*, 2022, www.who.int (accessed 17 April 2023).

World Health Organization, *World Hearing Day*, www.who.int (accessed 02 June 2023).

ZATINI, *Parlamento Ue in campo per il riconoscimento della lingua dei segni*, 30 September 2016, www.storiadeisordi.it (accessed 20 May 2023).

3. OFFICIAL INSTITUTIONAL DOCUMENTS

Committee on the Rights of Persons with Disabilities, Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 19/2014 (Fiona Given vs. Australia), 29 March 2018, CRPD/C/19/D/19/2014, www.docstore.ohchr.org.

Constitution of the Republic of Portugal, review of 1997, www.parlamento.pt.

Consolidated version of the Treaty on the European Union, OJ C 326/13 of 26 October 2012, www.eur-lex.europa.eu.

Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326 of 26 October 2012, art. 216, para. 1, www.eur-lex.europa.eu.

Council and European Parliament directive (EU) 2011/24/EU of 9 March 2011 on the application of patient's rights in cross-border healthcare, in OJ L 88 of 4 April 2011, www.eur-lex.europa.eu.

Council and European Parliament directive 2019/882/EU of 17 April 2019 on the accessibility requirements for products and services,

OJ L 151 of 7 June 2019, www.eur-lex.europa.eu.

Council and European Parliament directive (EU) 2019/1158/EU of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, OJ L 188 of 12 July 2019, www.eur-lex.europa.eu.

Council and European Parliament Regulation (EU) No 181/2011 of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 in OJ L 55 of 28 February 2011, www.eur-lex.europa.eu.

Council and European Parliament Regulation (EU) No 531/2012 of 13 June 2012 on roaming on public mobile communications networks within the Union in OJ L 172 of 30 June 2012, www.eur-lex.europa.eu.

Council and European Parliament Regulation (EU) No 1177/2010 of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 in OJ L 334 of 17 December 2010, www.eur-lex.europa.eu.

Council and European Parliament Regulation (EU) No 1303/2013 of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 in OJ L 347 of 20 December 2013, www.eur-lex.europa.eu.

Council and European Parliament Regulation (EU) No 1371/2007 of 23 October 2007 on rail passenger's rights and obligations in OJ L 315 of 3 December 2007, www.eur-lex.europa.eu.

Council Conclusions No ST/9156/2019/INT on Access to sport for persons with disabilities in OJ C 192, www.eur-lex.europa.eu.

Council decision (EC) no 48/2010 of 26 November 2009, OJ L 23 of 27 January 2010, www.eur-lex.europa.eu.

Council Decision (EC) No 203/2008 of 28 February 2008 implementing Regulation (EC) 168/2007 as regards the adoption of a Multi-annual Framework for the European Union Agency for

Fundamental Rights for 2007-2012, OJ L 63 of 7 March 2008, www.eur-lex.europa.eu.

Council directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303 of 2 December 2000, www.eur-lex.europa.eu.

Council recommendation (EC) 2019/C 387/01 of 8 November 2019 on access to social protection for workers and the self-employed, OJ C 387 of 15 November 2019, www.eur-lex.europa.eu.

Council recommendation (EC) 2020/C 417/01 of 24 November 2020 on vocational education and training (VET) for sustainable competitiveness, social fairness and resilience, in OJ C 417 of 2 December 2020, www.eur-lex.europa.eu.

Council of Europe, European Charter for Regional or Minority Languages, Strasbourg, 5 November 1992, www.coe.int.

Council Progress Report 12070/22 on the proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation of 16 November 2022, www.eur-lex.europa.eu.

Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights in OJ L 53 of 22 February 2007, www.eur-lex.europa.eu.

Council Regulation (EC) No 555/2022 of 5 April 2022 amending Regulation (EC) No 168/2007 establishing a European Union Agency for Fundamental Rights, OJ L 108 of 7 April 2022, www.eur-lex.europa.eu.

Court of Justice, case C-570/19 *Irish Ferries v. National Transport Authority*, opinion of AG Szpunar delivered on 4 March 2021, www.curia.europa.eu.

Court of Justice of the European Union, case 29/69, *Erich Stauder v City of Ulm – Sozialamt*, judgement of 12 November 1969, www.curia.europa.eu.

Court of Justice of the European Union, case C-312/11 *Commission v. Italy*, judgment of 4 July 2013, www.eur-lex.europa.eu.

Court of justice of the European union, case C-354/13, *Fag og Arbeide v Kommunernes Landsforening*, judgement of 18 December 2014, www.curia.europa.eu.

Decision of the European Ombudsman No OI/2/2021/MHZ of 27 April 2022 on how the European Commission monitors EU Structural and Investment funds to ensure they are used to promote the right of persons with disabilities to independent living and inclusion in the community, www.ombudsman.europa.eu.

Decision of the European Ombudsman No SI/2(2020/MMO of 29 June 2021 on how the European Commission has accommodated the needs of staff members with disabilities in the context of the COVID-19 emergency, www.ombudsman.europa.eu.

Decree Law of the Belgium Parliament of the French Community n. 29549 of 22 October 2003 in OJ n. 410 of 25 November 2003, www.ejustice.just.fgov.be.

Eurofound, *Active inclusion of young people with disabilities or health problems*, Publications Office of the European Union, Luxembourg, 2012, www.old.adapt.it.

European Commission, *Check progress on the Strategy for the Rights of Persons with Disabilities*, 25 May 2022.

European Commission, *How to put reasonable accommodation into practice, Guide of promising practices*, 2020, www.ec.europa.eu.

European Commission, *Study assessing the implementation of the pilot action on the EU Disability Card and associated benefits – Final Report*, May 2021.

European Commission, *Study on the cross-border legal protection of vulnerable adults in the EU*, final report, November 2021, www.op.europa.eu.

European Commission, *Study supporting the review of the application of the Web Accessibility Directive (WAD) VIGIE 2020-0656*, October 2022, www.digital-strategy.ec.europa.eu.

European Commission, *Toolkit for inclusive early childhood education and care. Providing high quality education and care to all young children*, 2021, www.op.europa.eu.

European Commission, *Youth Action Programme guide*, 2012, www.ec.europa.eu.

European Commission, *Web Accessibility Action Plan 2022-2025*, www.wikis.ec.europa.eu.

European Commission Audiovisual Service, *Statements by Ursula von der Leyen, President of the Commission on coronavirus*

(international sign language version), www.audiovisual.ec.europa.eu.

European Commission Communication COM/2003/0650 of 30 October 2003 concerning a European action plan for equal opportunities for people with disabilities, www.eur-lex.europa.eu.

European Commission Communication COM/2008/426 final of 2 July 2008 concerning the proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, www.eur-lex.europa.eu.

European Commission Communication COM/2010/636 final of 15 November 2010 concerning the establishment of a ten-year European Disability Strategy, www.eur-lex.europa.eu.

European Commission Communication COM/2010/682 final of 23 November 2010 concerning the establishment of an Agenda for new skills and jobs for a European contribution towards full employment, www.eur-lex.europa.eu.

European Commission Communication COM/2010/758 final of 16 December 2010 establishing the European Platform against Poverty and Social Exclusion: a European framework for social and territorial cohesion, www.eur-lex.europa.eu.

European Commission Communication COM/2019/186 final to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions of 16 April 2019 identifying areas for an enhanced move to qualified majority voting, www.eur-lex.europa.eu.

European Commission Communication COM/2020/690 final of 19 October 2020 concerning the Commission Work Programme 2020, www.eur-lex.europa.eu.

European Commission Communication COM/2021/101 final of 3 March 2021 concerning a new European Strategy for the Rights of Persons with Disabilities 2021-2030, www.eur-lex.europa.eu.

European Commission, Council and European Parliament joint statement on the new European consensus on development, 2017, www.international-partnership.ec.europa.eu.

European Commission Doc No SWD/2020/289 final/2 evaluating the European Disability Strategy 2010-2020 of 27 November 2020, www.ec.europa.eu.

European Commission non-paper on the setting-up at EU level of the Framework required by art. 33.2 of the Convention on the rights of persons with disabilities of 31 August 2012, www.fra.europa.eu.

European Commission Operational Guidance on the inclusion of persons with disabilities in EU-funded humanitarian aid operations, February 2019, www.ec.europa.eu.

European Commission proposal No COM/2022/689 final of 7 December 2022 for a Council directive on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in the field of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC, www.commission.europa.eu.

European Commission Regulation (EU) No 317/2010 of 26 April 2010 adopting the specifications of the 2011 ad hoc module on employment of disabled people for the labour force sample survey provided for by Council Regulation (EC) No 577/98 in OJ L 97 of 17 April 2010, www.eur-lex.europa.eu.

European Commission report COM/2020/731 final of 15 December 2020 on progress towards effective EU citizenship 2016-2020, www.ec.europa.eu.

European Commission staff working document No SWD/2021/179 final of 30 June 2021 updating the Toolbox for placing rights-holders at the center of EU0s Neighborhood, Development and International Cooperation by applying the Human Rights Based Approach to international partnerships, www.ec.europa.eu.

European Commission staff working document No SWD/2021/413 final of 10 December 2021, Evaluation of Regulation (EU) No 1177/2019 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway, www.ec.europa.eu.

European Commission staff working document No SWD/2021/415 final of 10 December 2021, Evaluation of Regulation (EU) No 181/2011 concerning the rights of passengers in bus and coach transport, www.ec.europa.eu.

European Commission staff working document No SWD/2021/417

final of 10 December 2021, Evaluation of Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, www.ec.europa.eu.

European Commission staff working document SEC/2007/1469, Accompanying document to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee on the Region of 8 November 2007, www.ec.europa.eu.

European Parliament resolution 2014/2148 (INI) of 28 April 2015 on European film in the digital era, www.eur-lex.europa.eu.

European Parliament resolution 2016/2952 (RSP) of 23 November 2016 on sign languages and professional sign language interpreters, www.europarl.europa.eu.

European Parliament resolution 2018/26855RSP of 29 November 2018 on the situation of women with disabilities, www.europarl.europa.eu.

European Parliament Resolution A2-302/87 on sign languages for the deaf of 17 June 1988 in OJ C 187 of 18 July 1988, www.eur-lex.europa.eu.

European Parliament Resolution B4-0985/98 on sign language of 18 November 1998 on OJ C 379 of 7 December 1998, www.eur-lex.europa.eu.

European Parliament resolution (INI) No 2022/2013 of 4 October 2022 on AccessibleEU Centre in support of accessibility policies in the EU internal market, in OJ C 132 of 14 April 2023, www.eur-lex.europa.eu.

European Parliament, Council and Commission, European Pillar of Social Rights, 2017, Brussels, www.commission.europa.eu.

European Union, *Charter of Fundamental Rights of the European Union*, OJ C 326 of 26 October 2012, www.eur-lex.europa.eu.

European Union, *Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts*, 2 October 1997, OJ C 340 of 10 November 1997, www.eur-lex.europa.eu.

European Union, *Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European*

Community, 13 December 2007, OJ C 306 of 17 December 2007, www.eur-lex.europa.eu.

European Union, Treaty on the European Union, OJ C 191 of 29 July 1992. art. B, www.eur-lex.europa.eu.

European Union Notice no. 2010/C 340/08, of 15 December 2010, OJ C 340, www.eur-lex.europa.eu.

Eurostat, *Expenditure on social protection benefits by function*, 2022, www.ec.europa.eu.

General Secretariat of the Council, Revised EU-level Framework Required by Article 33.2 of the UN Convention on the Rights of Persons with Disabilities, 9 February 2017, 6170/17, www.eur-lex.europa.eu.

Law of the Catalan Parliament n. 17 of 3 June 2010 in OJ n. 5647 of 10 June 2010, www.parlament.cat.

Law of the Kingdom of Spain n. 27 of 23 October 2007 in OJ n. 255 of 24 October 2007, www.boe.es.

Law of the Republic of Italy n. 69 of 19 May 2021 in OJ n. 120 of 21 May 2021, www.gazzettaufficiale.it.

Note of the Council of the European Union on the set-up of the EU-level Framework required by art. 33.2 of the UN Convention on the rights of persons with disabilities, www.fra.europa.eu.

Press release IP/07/446 of the European Commission on 30 March 2007 concerning the signature of the UN treaty on disability rights, www.commission.europa.eu.

Press release IP/11/4 of the European Commission Vice-President Reding on 5 January 2011 concerning the ratification of the UN Convention on disability rights, www.ec.europa.eu/commission.

Press release 14/2014 of the European Ombudsman on 21 May 2014 concerning the EU “cohesion” policy, www.ombudsman.europa.eu.

QUINN, End-of-mission statement by the United Nations Special Rapporteur on the rights of persons with disabilities, Mr. Gerard Quinn, on his visit to the European Union, 31 March 2022, Brussels, www.ohcrh.org.

Report from the Commission to the European Parliament and the Council COM/2014/02 final on the application of Council Directive

2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('Racial Equality Directive') and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive'), of 17 January 2014, www.eur-lex.europa.eu.

Speech of the European Commissioner Dalli on the Strategy for the Rights of Persons with Disabilities 2021-2030, held in Brussels on 3 March 2021, www.ec.europa.eu.

Speech of the European Ombudsman, Professor P. Nikiforos Diamandouros on the role of the Ombudsman in strengthening accountability and the rule of law, held in London on 29 November 2009, www.ombudsman.europa.eu.

UNESCO, *Convention against Discrimination in Education*, Doc. No. CPG.61/VI.11y/AFSR, Paris, 14 December 1960, www.unesdoc.unesco.org.

United Nations Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of the European Union, UN Doc. No. CRPD/C/EU/CO/1 of 2 October 2013, www.un.org.

United Nations Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Italy*, adopted on 31 August 2016, UN Doc. CRPD/C/ITA/CO/1, www.un.org.

United Nations General Assembly, *Convention on the Rights of Persons with Disabilities*, adopted on 13 December 2006, UN Doc. A/RES/61/106, www.un.org.

United Nations General Assembly, International Day of Disabled People, adopted on 14 October 1992, UN Doc. A/RES/47/3, www.undocs.org.

United Nations General Assembly, *Human Rights Council*, UN Doc. A/RES/60/251 of 3 April 2006, www.un.org.

United Nations General Assembly, *National institutions for the promotion and protection of human rights*, adopted on 20 December 1993, UN Doc. A/RES/48/134, www.un.org.

United Nations General Assembly, Optional Protocol to the Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006, UN Doc. A/RES/61/106, www.ohchr.org.

United Nations General Assembly, *Universal Declaration of Human Rights*, Paris, 10 December 1948, UN Doc. A/RES/217, www.un.org.

United Nations Secretary-General, Policy Brief: A Disability-Inclusive Response to COVID-19, www.un.org.