Documentation

LE DROIT EUROPEEN DES PERSONNES HANDICAPEES ET LA CONVENTION DE L'ONU

SEMINAIRE POUR DES PRATICIENS DU DROIT ET DE LA POLITIQUES

412DV129 Trèves, les 13-14 décembre 2012

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VERSION CONSOLIDÉE DU TRAITÉ SUR L'UNION EUROPÉENNE

Journal officiel de l'Union européenne C 83, 30.3.2010

Article 2

L'Union est fondée sur les valeurs de respect de la dignité humaine, de liberté, de démocratie, d'égalité, de l'État de droit, ainsi que de respect des droits de l'homme, y compris des droits des personnes appartenant à des minorités. Ces valeurs sont communes aux États membres dans une société caractérisée par le pluralisme, la non-discrimination, la tolérance, la justice, la solidarité et l'égalité entre les femmes et les hommes.

Article 3
(ex-article 2 TUE)

1. L'Union a pour but de promouvoir la paix, ses valeurs et le bien-être de ses peuples.

2. L'Union offre à ses citoyens un espace de liberté, de sécurité et de justice sans frontières intérieures, au sein duquel est assurée la libre circulation des personnes, en liaison avec des mesures appropriées en matière de contrôle des frontières extérieures, d'asile, d'immigration ainsi que de prévention de la criminalité et de lutte contre ce phénomène.

3. L'Union établit un marché intérieur. Elle œuvre pour le développement durable de l'Europe fondé sur une croissance économique équilibrée et sur la stabilité des prix, une économie sociale de marché hautement compétitive, qui tend au plein emploi et au progrès social, et un niveau élevé de protection et d'amélioration de la qualité de l'environnement. Elle promeut le progrès scientifique et technique.

Elle combat l'exclusion sociale et les discriminations, et promeut la justice et la protection sociales, l'égalité entre les femmes et les hommes, la solidarité entre les générations et la protection des droits de l'enfant.

Elle promeut la cohésion économique, sociale et territoriale, et la solidarité entre les États membres.

Elle respecte la richesse de sa diversité culturelle et linguistique, et veille à la sauvegarde et au développement du patrimoine culturel européen.

1. L'Union établit une union économique et monétaire dont la monnaie est l'euro.

2. Dans ses relations avec le reste du monde, l'Union affirme et promeut ses valeurs et ses intérêts et contribue à la protection de ses citoyens. Elle contribue à la paix, à la sécurité, au développement durable de la planète, à la solidarité et au respect mutuel entre les peuples, au commerce libre et équitable, à l'élimination de la pauvreté et à la protection des droits de l'homme, en particulier ceux de l'enfant, ainsi qu'au strict respect et au développement du droit international, notamment au respect des principes de la charte des Nations unies.

3. L'Union poursuit ses objectifs par des moyens appropriés, en fonction des compétences qui lui sont attribuées dans les traités.

Article 6
(ex-article 6 TUE)

1. L'Union reconnaît les droits, les libertés et les principes énoncés dans la Charte des droits fondamentaux de l'Union européenne du 7 décembre 2000, telle qu'adaptée le 12 décembre 2007 à Strasbourg, laquelle a la même valeur juridique que les traités.

Les dispositions de la Charte n'étendent en aucune manière les compétences de l'Union telles que définies dans les traités.

Les droits, les libertés et les principes énoncés dans la Charte sont interprétés conformément aux dispositions générales du titre VII de la Charte régissant l'interprétation et l'application de celle-ci et en prenant dûment en considération les explications visées dans la Charte, qui indiquent les sources de ces dispositions.

1. L'Union adhère à la Convention européenne de sauvegarde des droits de l'Homme et des libertés fondamentales. Cette adhésion ne modifie pas les compétences de l'Union telles qu'elles sont définies dans les traités.

2. Les droits fondamentaux, tels qu'ils sont garantis par la Convention européenne de sauvegarde des droits de l'Homme et des libertés fondamentales et tels qu'ils résultent des traditions constitutionnelles communes aux États membres, font partie du droit de l'Union en tant que principes généraux.

Article 19

1. La Cour de justice de l'Union européenne comprend la Cour de justice, le Tribunal et des tribunaux spécialisés. Elle assure le respect du droit dans l'interprétation et l'application des traités.

Les États membres établissent les voies de recours nécessaires pour assurer une protection juridictionnelle effective dans les domaines couverts par le droit de l'Union.

2. La Cour de justice est composée d'un juge par État membre. Elle est assistée d'avocats généraux.

Le Tribunal compte au moins un juge par État membre.

Les juges et les avocats généraux de la Cour de justice et les juges du Tribunal sont choisis parmi des personnalités offrant toutes garanties d'indépendance et réunissant les conditions visées aux articles 253 et 254 du traité sur le fonctionnement de l'Union européenne. Ils sont nommés d'un commun accord par les gouvernements des États membres pour six ans. Les juges et les avocats généraux sortants peuvent être nommés de nouveau.

3. La Cour de justice de l'Union européenne statue conformément aux traités:
a) sur les recours formés par un État membre, une institution ou des personnes physiques ou morales;
b) à titre préjudiciel, à la demande des juridictions nationales, sur l'interprétation du droit de l'Union ou sur la validité d'actes adoptés par les institutions;
c) dans les autres cas prévus par les traités.

VERSION CONSOLIDÉE DU TRAITÉ SUR LE FONCTIONNEMENT DE L'UNION EUROPÉENNE

Journal officiel de l'Union européenne C 83, 30.03.2010

Article 10

Dans la définition et la mise en oeuvre de ses politiques et actions, l'Union cherche à combattre toute discrimination fondée sur le sexe, la race ou l'origine ethnique, la religion ou les convictions, un handicap, l'âge ou l'orientation sexuelle.

Article 19
(ex-article 13 TCE)

1. Sans préjudice des autres dispositions des traités et dans les limites des compétences que ceux-ci confèrent à l'Union, le Conseil, statuant à l'unanimité conformément à une procédure législative spéciale, et après approbation du Parlement européen, peut prendre les mesures nécessaires en vue de combattre toute discrimination fondée sur le sexe, la race ou l'origine ethnique, la religion ou les convictions, un handicap, l'âge ou l'orientation sexuelle.
2. Par dérogation au paragraphe 1, le Parlement européen et le Conseil, statuant conformément à la procédure législative ordinaire, peuvent adopter les principes de base des mesures d'encouragement de l'Union, à l'exclusion de toute harmonisation des dispositions législatives et réglementaires des États membres, pour appuyer les actions des États membres prises en vue de contribuer à la réalisation des objectifs visés au paragraphe 1.

Article 267
(ex-article 234 TCE)

La Cour de justice de l'Union européenne est compétente pour statuer, à titre préjudiciel:
a) sur l'interprétation des traités,
b) sur la validité et l'interprétation des actes pris par les institutions, organes ou organismes de l'Union.

Lorsqu'une telle question est soulevée devant une juridiction d'un des États membres, cette juridiction peut, si elle estime qu'une décision sur ce point est nécessaire pour rendre son jugement, demander à la Cour de statuer sur cette question.
Lorsqu'une telle question est soulevée dans une affaire pendante devant une

juridiction nationale dont les décisions ne sont pas susceptibles d'un recours juridictionnel de droit interne, cette juridiction est tenue de saisir la Cour.

Si une telle question est soulevée dans une affaire pendante devant une juridiction nationale concernant une personne détenue, la Cour statue dans les plus brefs délais.

CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE

(2000/C 364/01)

Article 20

Égalité en droit

Toutes les personnes sont égales en droit.

Article 21

Non-discrimination

1. Est interdite, toute discrimination fondée notamment sur le sexe, la race, la couleur, les origines ethniques ou sociales, les caractéristiques génétiques, la langue, la religion ou les convictions, les opinions politiques ou toute autre opinion, l'appartenance à une minorité nationale, la fortune, la naissance, un handicap, l'âge ou l'orientation sexuelle.

2. Dans le domaine d'application du traité instituant la Communauté européenne et du traité sur l'Union européenne, et sans préjudice des dispositions articulières desdits traités, toute discrimination fondée sur la nationalité est interdite.

Article 22

Diversité culturelle, religieuse et linguistique

L'Union respecte la diversité culturelle, religieuse et linguistique.

Article 25

Droits des personnes âgées

L'Union reconnaît et respecte le droit des personnes âgées à mener une vie digne et indépendante et à
participer à la vie sociale et culturelle.

Article 26

Intégration des personnes handicapées

L'Union reconnaît et respecte le droit des personnes handicapées à bénéficier de mesures visant à assurer
leur autonomie, leur intégration sociale et professionnelle et leur participation à la vie de la communauté.

COMMISSION EUROPÉENNE

Bruxelles, le 15.11.2010
COM(2010) 636 final

COMMUNICATION DE LA COMMISSION AU PARLEMENT EUROPÉEN, AU CONSEIL, AU COMITÉ ÉCONOMIQUE ET SOCIAL EUROPÉEN ET AU COMITÉ DES RÉGIONS

Stratégie européenne 2010-2020 en faveur des personnes handicapées: un engagement renouvelé pour une Europe sans entraves

{SEC(2010) 1323}
{SEC(2010) 1324}

COMMUNICATION DE LA COMMISSION AU PARLEMENT EUROPÉEN, AU CONSEIL, AU COMITÉ ÉCONOMIQUE ET SOCIAL EUROPÉEN ET AU COMITÉ DES RÉGIONS

Stratégie européenne 2010-2020 en faveur des personnes handicapées: un engagement renouvelé pour une Europe sans entraves

TABLE DES MATIÈRES

1. INTRODUCTION

Le handicap, de léger à lourd, touche une personne sur six dans l'Union européenne[1]. Ce sont 80 millions de personnes environ qui n'ont pas la possibilité de participer pleinement à la société et l'économie à cause d'obstacles d'ordre environnemental et comportemental. Le taux de pauvreté des personnes handicapées est de 70 % supérieur à la moyenne[2], en partie parce que leur accès à l'emploi est limité.

Plus d'un tiers des personnes âgées de plus de 75 ans souffrent de handicaps partiels et plus de 20 % sont atteintes de handicaps lourds[3]. Ces chiffres devraient par ailleurs augmenter au fur et à mesure du vieillissement démographique dans l'Union.

L'Union européenne et ses États membres disposent d'un large mandat pour améliorer la situation sociale et économique des personnes handicapées.

- L'article 1er de la Charte des droits fondamentaux de l'Union européenne (la Charte) dispose ce qui suit: «La dignité humaine est inviolable. Elle doit être respectée et protégée». Son article 26 prévoit que «L'Union reconnaît et respecte le droit des personnes handicapées à bénéficier de mesures visant à assurer leur autonomie, leur intégration sociale et professionnelle et leur participation à la vie de la communauté». En outre, l'article 21 interdit toute discrimination fondée sur un handicap.

- Le traité sur le fonctionnement de l'Union européenne (TFUE) exige de l'Union qu'elle combatte toute discrimination fondée sur un handicap dans la définition et la mise en œuvre de ses politiques et actions (article 10) et lui confère le pouvoir de légiférer en vue de lutter contre toute discrimination (article 19).

- La Convention des Nations Unies relative aux droits des personnes handicapées (la Convention des Nations Unies), premier instrument juridiquement contraignant dans le domaine des droits de l'homme auquel sont parties l'Union européenne et ses États membres, s'appliquera bientôt dans toute l'Union[4]. Cette convention impose aux États parties de protéger et de garantir la jouissance de tous les droits de l'homme et de toutes les libertés fondamentales par les personnes handicapées.

Au sens de la Convention des Nations Unies, on entend par personnes handicapées des individus qui présentent des incapacités physiques, mentales, intellectuelles ou sensorielles durables dont l'interaction avec diverses barrières peut faire obstacle à leur pleine et effective participation à la société sur la base de l'égalité avec les autres.

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1 Module ad hoc relatif à l'emploi des personnes handicapées pour l'enquête européenne sur les forces de travail (EFT), 2002.

2 Statistiques de l'Union européenne sur le revenu et les conditions de vie, SRCV-UE, 2004.

3 Module ad hoc de l'enquête sur les forces de travail (EFT) et SRCV-UE 2007.

4 Adoptée en 2007, signée par tous les États membres et l'Union européenne, ratifiée en octobre 2010 par seize États membres (Belgique, République tchèque, Danemark, Allemagne, Espagne, France, Italie, Lettonie, Lituanie, Hongrie, Autriche, Portugal, Slovénie, Slovaquie, Suède et Royaume-Uni) et en cours de ratification dans les autres, la Convention des Nations Unies aura un caractère contraignant dans l'Union et fera partie de son ordre juridique.

La Commission œuvrera de concert avec les États membres afin de lever les obstacles à une Europe sans entraves, sur la base des dernières résolutions du Parlement européen et du Conseil[5]. La présente stratégie fournit un cadre permettant d'agir au niveau européen, mais aussi en association avec les mesures nationales, afin de répondre aux besoins disparates des hommes, des femmes et des enfants handicapés.

La participation pleine et entière des personnes handicapées à la société et à l'économie est fondamentale si l'Union veut garantir le succès de sa stratégie «Europe 2020» pour une croissance intelligente, durable et inclusive[6]. L'édification d'une société dans laquelle tout le monde à sa place ouvre également des débouchés commerciaux et stimule l'innovation. L'accessibilité de tous aux services et aux produits présente des atouts économiques majeurs au vu de la demande induite par le nombre croissant de consommateurs âgés. Par exemple, le marché européen des dispositifs d'assistance (dont la valeur annuelle est estimée à plus de 30 milliards d'EUR[7]) est encore fragmenté, et les produits restent onéreux. Les cadres d'action et de réglementation, de même que les procédures d'élaboration des produits et des services, ne reflètent pas avec justesse les besoins des personnes handicapées. De nombreux biens et services, ainsi que la majorité des équipements construits, ne sont toujours pas suffisamment accessibles.

Il est d'autant plus urgent d'agir que le ralentissement économique a eu des conséquences négatives sur la situation des personnes handicapées. La stratégie a pour but d'améliorer l'existence des personnes et d'apporter de plus grands bénéfices à la société et à l'économie, sans pour autant soumettre l'industrie et l'administration à des contraintes indues.

2. OBJECTIFS ET ACTIONS

L'objectif général de la stratégie présentée ici est de mettre les personnes handicapées en mesure d'exercer l'ensemble de leurs droits et de tirer pleinement parti de leur participation à la société et à l'économie européenne, notamment grâce au marché unique. Il est nécessaire de faire preuve de cohérence afin de réaliser cet objectif et de garantir l'application effective de la Convention des Nations Unies partout en Europe. Cette stratégie s'appuie sur des actions au niveau européen destinées à compléter celles entreprises à l'échelon national, elle définit également les mécanismes[8] essentiels à l'application de la Convention dans l'Union européenne, y compris au sein des institutions européennes, et détermine le soutien indispensable au financement, à la recherche, à la sensibilisation et au recueil de statistiques et de données.

La stratégie met l'accent sur la suppression des entraves auxquelles se heurtent les personnes handicapées[9]. La Commission a répertorié huit principaux domaines d'action: **l'accessibilité, la participation, l'égalité, l'emploi, l'éducation et la formation, la protection sociale, la santé ainsi que l'action extérieure**. Chaque domaine comporte des mesures phares réunies sous l'objectif global de l'Union, lequel est repris dans un encadré. Ces domaines ont été

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5 Résolutions du Conseil SOC 375 du 2 juin 2010 et 2008/C 75/01 et résolution du Parlement européen B6-0194/2009 et P6_TA(2009)0334.

6 COM(2010) 2020.

7 Deloitte & Touche, *Access to Assistive Technology in the EU*, 2003, et BCC Research, 2008.

8 Article 33 de la Convention des Nations Unies.

9 Enquête Eurobaromètre de 2006: 91 % des citoyens européens pensent que plus d'argent devrait être dépensé pour supprimer les barrières physiques qui compliquent la vie des personnes handicapées.

choisis en fonction de l'intérêt qu'ils peuvent représenter au regard des objectifs généraux de la stratégie et de la Convention des Nations unies, des documents stratégiques y afférents des institutions de l'Union européenne et du Conseil de l'Europe, des résultats du plan d'action européen en faveur des personnes handicapées (2003-2010) et des consultations menées auprès des États membres, des parties prenantes et du public. Les références aux actions nationales visent à compléter l'action de l'Union, et non à couvrir l'ensemble des obligations nationales découlant de la Convention des Nations Unies. La Commission agira également sur la situation des personnes handicapées au moyen de la stratégie «Europe 2020», de ses initiatives phares et d'une relance du marché unique.

2.1. Domaines d'intervention

1 — Accessibilité

Par accessibilité, on entend la possibilité donnée aux personnes handicapées d'avoir accès, au même titre que les autres, à l'environnement matériel, aux transports, aux technologies et aux systèmes d'information et de communication ainsi qu'à d'autres installations et services. Des entraves importantes subsistent dans ces domaines. Par exemple, en moyenne, seuls 5 % des sites web publics de l'UE-27 répondent totalement aux normes d'accessibilité. Un plus grand nombre d'entre eux est toutefois partiellement accessible. Bon nombre d'organismes de télédiffusion offrent encore peu de programmes accompagnés de sous-titres ou d'audiodescription[10].

L'accessibilité est un préalable à la participation à la société et à l'économie, mais reste un objectif de longue haleine pour l'Union. La Commission propose d'utiliser des instruments législatifs ou autres, tels que la normalisation, pour optimaliser l'accessibilité du cadre bâti, des transports et des technologies de l'information et de la communication, conformément à la stratégie numérique et à l'initiative phare «Une Union de l'innovation». Dans le respect des principes d'une meilleure réglementation, elle étudiera l'éventuel avantage d'adopter des mesures réglementaires garantissant l'accessibilité des produits et des services, y compris des mesures destinées à accroître le recours aux marchés publics (dont la grande efficacité a été prouvée aux États-Unis[11]). Elle encouragera l'intégration du principe d'accessibilité et de la «conception pour tous» dans les programmes scolaires et les formations pour les professions concernées et favorisera le développement d'un marché européen des technologies d'assistance. Après consultation des États membres et d'autres parties prenantes, la Commission réfléchira à l'opportunité de proposer un acte législatif sur l'accessibilité dans l'Union européenne d'ici à 2012. Dans ce cadre, des normes spécifiques visant à améliorer considérablement le fonctionnement du marché intérieur des produits et des services accessibles pourraient entre autres être élaborées pour certains secteurs.

L'action de l'Union soutiendra et complétera les mesures nationales visant à mettre en œuvre le principe d'accessibilité, à éliminer les entraves actuelles et à augmenter la disponibilité et l'éventail des technologies d'assistance.

Garantir aux personnes handicapées l'accessibilité des biens, des services, dont les services publics, et des dispositifs d'assistance.

2 — Participation

De nombreux obstacles empêchent encore les personnes handicapées d'exercer pleinement leurs droits fondamentaux, dont les droits rattachés à la citoyenneté européenne, et de participer complètement à la société au même titre que les autres. Ces droits comprennent le droit à la libre circulation, le droit au libre établissement et au mode de vie de son choix, et le droit de prendre pleinement part à des activités culturelles, récréatives et sportives. Par exemple, une personne reconnue comme handicapée qui s'établit dans un autre pays de

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10 CE (2007), SEC (2007) 1469, p. 7.

11 Section 508 du *Rehabilitation Act* et *Architectural Barriers Act*.

l'Union peut perdre le bénéfice de certaines prestations sociales, comme la gratuité ou des tarifs réduits dans les transports en commun.

La Commission s'emploiera:

– à lever les entraves à l'exercice des droits des personnes handicapées, en tant qu'individus, consommateurs, étudiants, acteurs économiques et politiques; à résoudre les problèmes liés à la mobilité à l'intérieur de l'Union; à faciliter et à promouvoir l'utilisation du modèle européen de la carte de stationnement pour personnes handicapées;

– à favoriser la réorientation des soins hospitaliers vers des soins de proximité grâce au financement, par les Fonds structurels et le Fonds de développement rural, de services de proximité, et à des activités de sensibilisation à l'hébergement des personnes handicapées dans des résidences spécialisées, en particulier les enfants et les personnes âgées;

– à améliorer l'accessibilité des organisations, activités, structures, biens et services sportifs, récréatifs et culturels, y compris audiovisuels; à encourager la participation à des manifestations sportives, dont certaines seront organisées spécifiquement pour les personnes handicapées; à examiner les moyens de faciliter l'utilisation de la langue des signes et du braille dans les relations avec les institutions européennes; à prendre des mesures relatives à l'accessibilité des bureaux de vote afin de faciliter l'exercice des droits électoraux des citoyens de l'Union; à encourager le transfert par-delà les frontières des œuvres protégées dans un format accessible; à promouvoir l'utilisation des exceptions prévues par la directive sur les droits d'auteur[12].

L'Union européenne contribuera aux actions nationales visant:

– à mener à terme la réorientation des soins hospitaliers vers des soins de proximité, en utilisant les Fonds structurels et le Fonds de développement rural pour la formation de personnels et l'adaptation des infrastructures sociales, l'élaboration de plans de financement pour l'assistance personnalisée, la création de bonnes conditions de travail pour les professionnels de la santé et l'apport d'un soutien aux familles et aux prestataires de soin informels;

– à rendre accessibles les organisations et activités sportives, récréatives et culturelles et à recourir aux exceptions prévues dans la directive sur les droits d'auteur.

Faire en sorte que les personnes handicapées participent pleinement à la société:

- en leur permettant de tirer parti de tous les avantages de la citoyenneté européenne;

- en éliminant les entraves d'ordre administratif et comportemental qui empêchent une participation totale et équitable;

- en fournissant des services de proximité de qualité, y compris l'accès à une assistance personnalisée.

[12] Directive 2001/29/CE. Un protocole d'accord entre les parties prenantes a été signé le 14 septembre 2009.

3 — Égalité

Plus de la moitié des Européens estiment que la discrimination fondée sur le handicap ou l'âge est répandue dans l'Union[13]. Conformément aux articles 1er, 21 et 26 de la Charte des droits fondamentaux de l'Union et aux articles 10 et 19 du traité sur le fonctionnement de l'Union européenne, la Commission favorisera l'égalité de traitement des personnes handicapées au moyen d'une stratégie à deux volets. Celle-ci s'appuiera sur la législation actuelle de l'Union pour assurer la protection contre toute discrimination, ainsi que sur la mise en place de mesures actives destinées à lutter contre la discrimination et à promouvoir l'égalité des chances dans les politiques de l'Union. La Commission examinera également avec attention l'effet cumulé de discriminations dont les personnes handicapées peuvent souffrir pour d'autres raisons, telles que la nationalité, l'âge, la race, l'origine ethnique, le sexe, la religion ou les convictions, ou encore l'orientation sexuelle.

Elle veillera aussi à ce que la directive 2000/78/CE[14] interdisant toute discrimination en matière d'emploi soit pleinement appliquée; elle encouragera la diversité et luttera contre toute discrimination au moyen de campagnes de sensibilisation au niveau européen et national, et soutiendra les travaux d'ONG actives dans ce domaine à l'échelle de l'Union.

L'Union soutiendra et complétera les politiques et programmes nationaux visant à promouvoir l'égalité, par exemple en encourageant les États membres à mettre leur législation sur la capacité juridique en conformité avec la Convention des Nations Unies.

Éliminer dans l'Union toute discrimination fondée sur le handicap.

4 — Emploi

Les emplois de qualité sont un gage d'indépendance économique, ils favorisent la réussite personnelle et offrent la meilleure protection contre la pauvreté. Toutefois, le taux d'emploi des personnes handicapées n'est que de 50 % environ[15]. Dans la perspective des objectifs de croissance de l'Union, il est nécessaire que les personnes handicapées soient plus nombreuses à occuper des emplois rémunérés sur le marché du travail ordinaire. La Commission exploitera tout le potentiel de la stratégie «Europe 2020» et de son programme pour le renouvellement des compétences et des emplois en mettant à la disposition des États membres des analyses, des orientations politiques, des informations et d'autres formes d'aide. Elle recueillera davantage de données sur l'emploi des femmes et des hommes handicapés, cernera les problèmes et proposera des solutions. Elle examinera tout particulièrement la situation des jeunes handicapés au moment de leur entrée dans la vie active. Elle agira sur la mobilité intraprofessionnelle sur le marché du travail ordinaire et dans les ateliers protégés grâce à l'échange d'informations et à l'apprentissage mutuel. En collaboration avec les partenaires sociaux, elle se penchera également sur le travail indépendant et la qualité des emplois, y compris les conditions de travail et les progressions de carrière. La Commission apportera un plus grand soutien aux initiatives volontaires visant à promouvoir la gestion de la diversité sur le lieu de travail, comme les chartes de la diversité, ainsi qu'une initiative d'entrepreneuriat social.

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13 Eurobaromètre spécial 317.

14 Directive 2000/78/CE du Conseil, JO L 303 du 2.12.2000, p. 16.

15 Enquête sur les forces de travail (EFT), module ad hoc, 2002.

L'Union européenne soutiendra et complétera les efforts déployés au niveau national afin d'analyser l'emploi des personnes handicapées, de lutter contre les principes et les dangers de certaines prestations d'invalidité qui ne les incitent pas à entrer dans la vie active, de les aider à s'insérer dans le marché du travail en ayant recours au Fonds social européen (FSE), d'élaborer des politiques actives du marché du travail, de rendre les lieux de travail plus accessibles, de mettre en place des services d'insertion professionnelle, des structures de soutien et des formations sur le tas, de promouvoir l'utilisation du règlement général d'exemption par catégorie[16], qui autorise l'octroi d'aides d'État sans notification préalable à la Commission.

Permettre à davantage de personnes handicapées de gagner leur vie sur le marché du travail ordinaire.

5 — Éducation et formation

Dans la tranche d'âge comprise entre 16 et 19 ans, le taux de déscolarisation s'élève à 37 % chez les personnes lourdement handicapées et à 25 % chez les personnes partiellement handicapées alors qu'il est de 17 % pour les personnes ne souffrant d'aucun handicap[17]. Les enfants atteints de handicaps lourds se heurtent à des difficultés et parfois à une ségrégation dans l'accès à l'enseignement général. Les personnes handicapées, et notamment les enfants, doivent être intégrées de façon appropriée dans le système éducatif général et bénéficier d'un soutien individuel, notamment dans l'intérêt même de ces derniers. Tout en respectant pleinement la responsabilité des États membres en ce qui concerne le contenu des enseignements et l'organisation des systèmes éducatifs, la Commission soutiendra l'objectif d'un enseignement et d'une formation de qualité favorisant l'insertion dans le cadre de l'initiative «Jeunesse en mouvement». Elle permettra aux personnes handicapées de s'informer davantage sur les niveaux et possibilités de formation et améliorera leur mobilité en favorisant leur participation au programme pour l'éducation et la formation tout au long de la vie.

L'Union soutiendra les mesures nationales qui ont été engagées au titre du cadre stratégique «Éducation et formation 2020» pour la coopération européenne dans le domaine de l'éducation et de la formation[18] et visent à éliminer les entraves juridiques et structurelles auxquelles se heurtent les personnes handicapées dans l'accès à l'enseignement général et aux systèmes d'éducation et de formation tout au long de la vie, à apporter un soutien en temps utile à l'éducation accessible à tous et à l'apprentissage personnalisé ainsi qu'à la détection précoce des besoins spécifiques, à mettre en place une formation et un soutien appropriés pour les professionnels de l'éducation, à tous les niveaux et à établir des rapports sur les taux de participation et les résultats obtenus.

Promouvoir l'éducation accessible à tous et l'apprentissage tout au long de la vie pour les élèves et les étudiants handicapés.

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16 Règlement (CE) n° 800/2008 de la Commission, JO L 214 du 9.8.2008, p. 3.

17 Enquête sur les forces de travail (EFT), module ad hoc, 2002.

18 Conclusions du conseil du 12 mai 2009 concernant un cadre stratégique pour la coopération européenne dans le domaine de l'éducation et de la formation («Éducation et formation 2020»), JO C 119 du 28.5.2009, p. 2.

6 – Protection sociale

Des taux de scolarisation dans l'enseignement général et d'activité plus faibles sont source d'inégalités de revenus, de pauvreté, d'exclusion sociale et d'isolement pour les personnes handicapées. Celles-ci doivent pouvoir profiter des systèmes de protection sociale, des programmes de réduction de la pauvreté, de l'aide aux handicapés, des programmes de logement public, d'autres services de base ainsi que des programmes en matière de retraite et de prestations sociales. La Commission s'appuiera sur la plateforme européenne contre la pauvreté pour examiner ces questions. Elle évaluera le caractère approprié et viable des systèmes de protection sociale et apportera son soutien au moyen des Fonds structurels. Tout en respectant pleinement la compétence des États membres, l'Union encouragera les mesures nationales visant à garantir la qualité et la viabilité des systèmes de protection sociale pour les personnes handicapées, notamment par l'échange d'idées sur les moyens d'action et par l'apprentissage mutuel.

Promouvoir des conditions de vie décentes pour les personnes handicapées.

7 — Santé

Les personnes handicapées n'ont pas toujours pleinement accès aux services de santé, dont les traitements médicaux de routine, et peuvent être victimes d'inégalités en matière de santé sans rapport avec leurs handicaps. Elles ont le droit de bénéficier d'une égalité d'accès aux soins de santé, y compris les soins préventifs, à des services de santé et de réadaptation de qualité et abordables qui tiennent compte de leurs besoins, notamment en ce qui concerne l'égalité des sexes. Cette tâche incombe principalement aux États membres, qui sont chargés de mettre en place et de fournir des services de santé et des soins médicaux. La Commission soutiendra les initiatives en faveur de l'égalité d'accès aux soins, y compris les services de santé et de réadaptation destinés aux personnes handicapées. Elle examinera tout particulièrement la situation de celles-ci lorsqu'elle appliquera des mesures visant à résoudre les inégalités en matière de santé; elle favorisera les actions dans le domaine de la santé et de la sécurité au travail pour réduire les risques de handicap au cours de la vie professionnelle et pour améliorer la réinsertion des travailleurs handicapés[19]; elle œuvrera aussi à la prévention de ces risques.

À travers son action, l'Union soutiendra les mesures nationales visant à fournir des services et des équipements de santé accessibles et non discriminatoires, à sensibiliser au handicap les écoles de médecine et les établissements de formation des professionnels de la santé, à mettre en place des services de réadaptation appropriés et à soutenir les services de santé mentale ainsi que la mise sur pied de services d'intervention précoce et d'évaluation des besoins.

Favoriser l'égalité d'accès des personnes handicapées aux services de santé et aux établissements qui délivrent ces services.

[19] Stratégie communautaire 2007-2012 pour la santé et la sécurité au travail - COM(2007) 62.

8 — Action extérieure

L'Union européenne et ses États membres doivent promouvoir les droits des personnes handicapées dans le cadre de leur action extérieure, dont les programmes d'élargissement de l'Union, de voisinage et d'aide au développement. Les travaux de la Commission s'effectueront, le cas échéant, dans un contexte plus large de non-discrimination afin que le handicap devienne un thème essentiel des droits de l'homme dans le cadre de l'action extérieure de l'Union. La Commission sensibilisera à la Convention des Nations Unies et aux besoins des personnes handicapées, y compris en matière d'accessibilité, dans le domaine de l'aide d'urgence et de l'aide humanitaire; elle consolidera le réseau de correspondants pour les personnes handicapées, et sensibilisera davantage les délégations de l'Union aux questions relatives au handicap; elle veillera à ce que les pays candidats et potentiellement candidats renforcent les droits des personnes handicapées et fera en sorte que les instruments financiers d'aide de pré-adhésion soient utilisés pour améliorer leur situation.

L'action de l'Union soutiendra et complétera les initiatives nationales visant à aborder les questions de handicap dans le dialogue avec les pays tiers et, le cas échéant, à englober le handicap et l'application de la Convention des Nations Unies en s'appuyant sur les engagements pris à Accra en matière d'efficacité de l'aide. Elle encouragera les forums internationaux (Nations Unies, Conseil de l'Europe, OCDE) à parvenir à des accords et à prendre des engagements.

Promouvoir les droits des personnes handicapées dans le cadre de l'action extérieure de l'Union.

2.2. Mise en œuvre de la stratégie

Cette stratégie requiert l'engagement commun et renouvelé des institutions de l'Union et de tous les États membres. Les actions dans les principaux domaines précités doivent reposer sur les actions générales ci-après.

1 — Sensibilisation

La Commission veillera à ce que les personnes handicapées soient conscientes de leurs droits, en accordant une attention toute particulière à l'accessibilité des informations et des canaux de communication. Elle s'efforcera de faire davantage connaître le principe de la «conception pour tous» appliqué aux produits, aux services et à l'environnement matériel.

L'Union soutiendra et complétera les campagnes nationales de sensibilisation du public aux capacités et à la contribution des personnes handicapées, et favorisera l'échange de bonnes pratiques au sein du groupe de haut niveau sur les personnes handicapées (GHNPH).

Sensibiliser la société aux questions de handicap et faire en sorte que les personnes handicapées connaissent mieux leurs droits et sachent les exercer.

2 — Soutien financier

La Commission veillera à ce que les programmes de l'Union dans les domaines d'action pertinents pour les personnes handicapées, par exemple les programmes de recherche, offrent des possibilités de financement. Le coût des mesures permettant aux personnes handicapées de prendre part aux programmes de l'Union doit pouvoir être remboursé. Les principes d'accessibilité et de non-discrimination doivent être appliqués dans l'utilisation des instruments de financement de l'Union, notamment les Fonds structurels.

L'Union soutiendra et complétera les efforts nationaux visant à améliorer l'accessibilité et à lutter contre les discriminations grâce au financement habituel des politiques, à l'application correcte de l'article 16 du règlement général sur les Fonds structurels[20] et à un durcissement des exigences en matière d'accessibilité dans les procédures de marchés publics. Toutes les mesures doivent être appliquées conformément à la législation européenne relative à la concurrence, notamment en matière d'aides d'État.

Optimaliser l'utilisation des instruments de financement de l'Union en faveur de l'accessibilité et de la non-discrimination et mieux faire connaître les possibilités de financement des mesures en faveur des personnes handicapées dans les programmes après 2013.

3 — Recueil de statistiques et de données - Suivi

La Commission réorganisera les informations sur le handicap collectées au moyen de diverses enquêtes sociales européennes (statistiques de l'Union sur les revenus et les conditions de vie, module ad hoc de l'enquête sur les forces de travail, enquête européenne par interview sur la santé), élaborera une enquête spécifique sur les entraves à l'intégration sociale des personnes handicapées et présentera une série d'indicateurs servant à suivre l'évolution de la situation des personnes handicapées au regard des objectifs phares de la stratégie «Europe 2020» en matière d'éducation, d'emploi et de réduction de la pauvreté. L'agence européenne des droits fondamentaux sera invitée à apporter sa contribution dans le cadre de son mandat, en collectant des données et en menant des recherches et analyses.

La Commission élaborera également un outil en ligne qui présentera une synthèse des mesures concrètes et de la législation visant à l'application de la Convention des Nations Unies.

L'Union soutiendra et complétera l'action des États membres destinée à collecter des statistiques et des données sur les entraves auxquelles se heurtent les personnes handicapées dans l'exercice de leurs droits.

Compléter les statistiques périodiquement recueillies sur le handicap en vue de suivre l'évolution de la situation des personnes handicapées.

4 — Dispositifs requis par la Convention des Nations Unies

Le cadre de fonctionnement imposé à l'article 33 de la Convention des Nations Unies (points de contact, dispositifs de coordination, mécanisme indépendant et participation des personnes

[20] Règlement (CE) n° 1083/2006 du Conseil, JO L 210 du 31.7.2006, p. 25.

handicapées et des organisations qui les représentent) doit être envisagé à deux niveaux: dans les États membres pour un grand nombre de politiques de l'Union et au sein des institutions européennes. À l'échelle de l'Union, des dispositifs de coordination reposant sur les instruments existants seront établis à la fois entre les services de la Commission et les institutions de l'Union, et entre l'Union et les États membres. L'application de la présente stratégie et de la Convention des Nations Unies sera examinée régulièrement au sein du GHNPH, qui réunit des représentants des États membres et leurs points de contact nationaux, la Commission, des personnes handicapées et les organisations qui les représentent ainsi que d'autres parties prenantes. Des rapports sur l'évolution de la situation continueront d'être établis pour les réunions ministérielles informelles.

Un cadre de suivi sera également mis en place, il contiendra un ou plusieurs mécanismes destinés à promouvoir, à préserver et à suivre l'application de la Convention des Nations Unies. Lorsque la Convention des Nations Unies aura été conclue, la Commission, après avoir étudié le rôle éventuel de certains organismes et institutions de l'Union, proposera un cadre de fonctionnement visant à faciliter l'application de la Convention des Nations Unies en Europe sans entraîner de contraintes administratives indues.

D'ici la fin de l'année 2013, la Commission rendra compte des progrès accomplis dans le cadre de cette stratégie; elle abordera dans son rapport la mise en œuvre des actions, les progrès réalisés à l'échelon national ainsi que le rapport de l'Union au comité des Nations Unies sur les droits des personnes handicapées[21]. La Commission s'appuiera sur des statistiques et des données pour illustrer l'évolution des disparités entre les personnes handicapées et la population dans son ensemble, et pour définir des indicateurs sur le handicap liés aux objectifs de la stratégie «Europe 2020» en matière d'éducation, d'emploi et de réduction de la pauvreté. Ce sera alors l'occasion de revoir la stratégie et les actions qui en découlent. Un rapport supplémentaire de la Commission est programmé pour 2016.

3. CONCLUSION

La stratégie présentée ici a pour but d'exploiter tout le potentiel que recèlent la Charte des droits fondamentaux de l'Union européenne, le traité sur le fonctionnement de l'Union européenne, et la convention des Nations Unies; elle vise aussi à exploiter pleinement la stratégie «Europe 2020» et les instruments qui l'accompagnent. Elle met en mouvement une procédure destinée à renforcer la position des personnes handicapées de sorte que celles-ci puissent participer pleinement à la société au même titre que les autres. Compte tenu du vieillissement démographique en Europe, ces actions auront une incidence concrète sur la qualité de vie d'une partie de plus en plus en importante de la population. Les institutions de l'Union et les États membres sont invités à œuvrer de concert dans le cadre de cette stratégie afin de bâtir pour tous une Europe sans entraves.

[21] Articles 35 et 36 de la Convention des Nations Unies.

IV

(Actes adoptés, avant le 1er décembre 2009, en application du traité CE, du traité UE et du traité Euratom)

DÉCISION DU CONSEIL

du 26 novembre 2009

concernant la conclusion, par la Communauté européenne, de la convention des Nations unies relative aux droits des personnes handicapées

(2010/48/CE)

LE CONSEIL DE L'UNION EUROPÉENNE,

vu le traité instituant la Communauté européenne, et notamment ses articles 13 et 95, en liaison avec l'article 300, paragraphe 2, premier alinéa, seconde phrase, et paragraphe 3, premier alinéa,

vu la proposition de la Commission,

vu l'avis du Parlement européen [1],

considérant ce qui suit:

(1) En mai 2004, le Conseil a autorisé la Commission à mener des négociations au nom de la Communauté européenne concernant la convention des Nations unies pour la protection et la promotion des droits et de la dignité des personnes handicapées (ci-après dénommée la «convention des Nations unies»).

(2) La convention des Nations unies a été adoptée par l'Assemblée générale des Nations unies le 13 décembre 2006 et elle est entrée en vigueur le 3 mai 2008.

(3) La convention des Nations unies a été signée au nom de la Communauté le 30 mars 2007, étant entendu qu'elle pourrait être conclue à une date ultérieure.

(4) La convention des Nations unies constitue un pilier pertinent et efficace pour la promotion et la protection des droits des personnes handicapées au sein de l'Union européenne, auxquels tant la Communauté que ses États membres attachent la plus grande importance.

(5) Il convient donc d'approuver la convention des Nations unies au nom de la Communauté, dans les meilleurs délais.

(6) Cette approbation devrait toutefois être assortie d'une réserve, à formuler par la Communauté européenne, concernant l'article 27, point 1, de la convention des Nations unies, précisant que la Communauté conclut la convention des Nations unies sans préjudice de la faculté accordée aux États membres, en vertu du droit communautaire aux termes de l'article 3, paragraphe 4, de la directive 2000/78/CE du Conseil [2], de ne pas appliquer aux forces armées le principe de l'égalité de traitement en ce qui concerne le handicap.

(7) Tant la Communauté que ses États membres sont compétents dans les domaines couverts par la convention des Nations unies. La Communauté et les États membres devraient dès lors en devenir des parties contractantes, de manière à pouvoir ensemble remplir les obligations découlant de la convention des Nations unies et exercer les droits qu'elle leur confère dans les situations de compétence mixte, de façon cohérente.

(8) La Communauté devrait accompagner le dépôt de l'instrument de confirmation formelle du dépôt d'une déclaration spécifiant, conformément à l'article 44, point 1, de la convention, les matières dont traite la convention pour lesquelles compétence lui a été transférée par ses États membres,

DÉCIDE:

Article premier

1. La convention des Nations unies relative aux droits des personnes handicapées est approuvée au nom de la Communauté, moyennant une réserve concernant son article 27, point 1.

2. Le texte de la convention des Nations unies figure à l'annexe I de la présente décision.

Le texte de la réserve émise figure à l'annexe III de la présente décision.

[1] Avis rendu le 27 avril 2009 (non encore publié au Journal officiel).

[2] JO L 303 du 2.12.2000, p. 16.

Article 2

1. Le président du Conseil est autorisé à désigner la ou les personnes habilitées à déposer, au nom de la Communauté, l'instrument de confirmation formelle auprès du secrétaire général des Nations unies, conformément aux articles 41 et 43 de la convention des Nations unies.

2. Lors du dépôt de l'instrument de confirmation formelle, la ou les personnes désignées déposent également la déclaration de compétence, figurant à l'annexe II de la présente décision, et la réserve, figurant à l'annexe III de la présente décision, conformément à l'article 44, point 1, de la convention.

Article 3

Pour les sujets relevant de la compétence de la Communauté et sans préjudice des compétences respectives des États membres, la Commission est le point de contact pour les questions relatives à l'application de la convention des Nations unies, conformément à l'article 33, point 1, de la convention. Les précisions relatives à la fonction du point de contact à cet égard sont énoncées dans un code de conduite préalablement au dépôt de l'instrument de confirmation formelle au nom de la Communauté.

Article 4

1. Pour les questions relevant de la compétence exclusive de la Communauté, la Commission représente la Communauté lors des réunions des organes créés par la convention des Nations unies, en particulier lors de la conférence des États parties visée à l'article 40 de la convention, et agit au nom de la Communauté pour les questions faisant partie des attributions desdits organes.

2. Pour les questions relevant de la compétence mixte de la Communauté et des États membres, la Commission et les États membres fixent à l'avance les modalités appropriées pour la représentation de la position de la Communauté lors des réunions des organes créés par la convention des Nations unies. Les précisions relatives à cette représentation sont énoncées dans un code de conduite devant être approuvé préalablement au dépôt de l'instrument de confirmation formelle au nom de la Communauté.

3. Lors des réunions visées aux paragraphes 1 et 2, la Commission et les États membres, si nécessaire en consultant au préalable les autres institutions de la Communauté concernées, coopèrent étroitement, notamment en ce qui concerne les questions de suivi, d'établissement de rapports et de modalités de vote. Les dispositions prévues pour assurer une coopération étroite sont également abordées dans le code de conduite visé au paragraphe 2.

Article 5

La présente décision est publiée au *Journal officiel de l'Union européenne*.

Fait à Bruxelles, le 26 novembre 2009.

Par le Conseil
Le président
J. BJÖRKLUND

ANNEXE I

CONVENTION RELATIVE AUX DROITS DES PERSONNES HANDICAPÉES

Préambule

LES ÉTATS PARTIES À LA PRÉSENTE CONVENTION,

a) rappelant les principes proclamés dans la Charte des Nations unies selon lesquels la reconnaissance de la dignité et de la valeur inhérentes à tous les membres de la famille humaine et de leurs droits égaux et inaliénables constitue le fondement de la liberté, de la justice et de la paix dans le monde;

b) reconnaissant que les Nations unies, dans la Déclaration universelle des droits de l'homme et dans les pactes internationaux relatifs aux droits de l'homme, ont proclamé et sont convenues que chacun peut se prévaloir de tous les droits et de toutes les libertés qui y sont énoncés, sans distinction aucune;

c) réaffirmant le caractère universel, indivisible, interdépendant et indissociable de tous les droits de l'homme et de toutes les libertés fondamentales et la nécessité d'en garantir la pleine jouissance aux personnes handicapées sans discrimination;

d) rappelant le pacte international relatif aux droits économiques, sociaux et culturels, le pacte international relatif aux droits civils et politiques, la convention internationale sur l'élimination de toutes les formes de discrimination raciale, la convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes, la convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, la convention relative aux droits de l'enfant et la convention internationale sur la protection des droits de tous les travailleurs migrants et des membres de leur famille;

e) reconnaissant que la notion de handicap évolue et que le handicap résulte de l'interaction entre des personnes présentant des incapacités et les barrières comportementales et environnementales qui font obstacle à leur pleine et effective participation à la société sur la base de l'égalité avec les autres;

f) reconnaissant l'importance des principes et lignes directrices contenus dans le programme d'action mondial concernant les personnes handicapées et dans les règles pour l'égalisation des chances des handicapés et leur influence sur la promotion, l'élaboration et l'évaluation aux niveaux national, régional et international des politiques, plans, programmes et mesures visant la poursuite de l'égalisation des chances des personnes handicapées;

g) soulignant qu'il importe d'intégrer la condition des personnes handicapées dans les stratégies pertinentes de développement durable;

h) reconnaissant également que toute discrimination fondée sur le handicap est une négation de la dignité et de la valeur inhérentes à la personne humaine;

i) reconnaissant en outre la diversité des personnes handicapées;

j) reconnaissant la nécessité de promouvoir et protéger les droits de l'homme de toutes les personnes handicapées, y compris de celles qui nécessitent un accompagnement plus poussé;

k) préoccupés par le fait qu'en dépit de ces divers instruments et engagements, les personnes handicapées continuent d'être confrontées à des obstacles à leur participation à la société en tant que membres égaux de celle-ci et de faire l'objet de violations des droits de l'homme dans toutes les parties du monde;

l) reconnaissant l'importance de la coopération internationale pour l'amélioration des conditions de vie des personnes handicapées dans tous les pays, en particulier dans les pays en développement;

m) appréciant les utiles contributions actuelles et potentielles des personnes handicapées au bien-être général et à la diversité de leurs communautés et sachant que la promotion de la pleine jouissance des droits de l'homme et des libertés fondamentales par ces personnes ainsi que celle de leur pleine participation renforceront leur sentiment d'appartenance et feront notablement progresser le développement humain, social et économique de leurs sociétés et l'élimination de la pauvreté;

n) reconnaissant l'importance pour les personnes handicapées de leur autonomie et de leur indépendance individuelles, y compris la liberté de faire leurs propres choix;

o) estimant que les personnes handicapées devraient avoir la possibilité de participer activement aux processus de prise de décisions concernant les politiques et programmes, en particulier ceux qui les concernent directement;

p) préoccupés par les difficultés que rencontrent les personnes handicapées, qui sont exposées à des formes multiples ou aggravées de discrimination fondées sur la race, la couleur, le sexe, la langue, la religion, l'opinion politique ou toute autre opinion, l'origine nationale, ethnique, autochtone ou sociale, la fortune, la naissance, l'âge ou toute autre situation;

q) reconnaissant que les femmes et les filles handicapées courent souvent, dans leur famille comme à l'extérieur, des risques plus élevés de violence, d'atteinte à l'intégrité physique, d'abus, de délaissement ou de défaut de soins, de maltraitance ou d'exploitation;

r) reconnaissant que les enfants handicapés doivent jouir pleinement de tous les droits de l'homme et de toutes les libertés fondamentales, sur la base de l'égalité avec les autres enfants, et rappelant les obligations qu'ont contractées à cette fin les États parties à la convention relative aux droits de l'enfant;

s) soulignant la nécessité d'intégrer le principe de l'égalité des sexes dans tous les efforts visant à promouvoir la pleine jouissance des droits de l'homme et des libertés fondamentales par les personnes handicapées;

t) insistant sur le fait que la majorité des personnes handicapées vivent dans la pauvreté et reconnaissant à cet égard qu'il importe au plus haut point de s'attaquer aux effets pernicieux de la pauvreté sur les personnes handicapées;

u) conscients qu'une protection véritable des personnes handicapées suppose des conditions de paix et de sécurité fondées sur une pleine adhésion aux buts et principes de la Charte des Nations unies et sur le respect des instruments des droits de l'homme applicables, en particulier en cas de conflit armé ou d'occupation étrangère;

v) reconnaissant qu'il importe que les personnes handicapées aient pleinement accès aux équipements physiques, sociaux, économiques et culturels, à la santé et à l'éducation ainsi qu'à l'information et à la communication pour jouir pleinement de tous les droits de l'homme et de toutes les libertés fondamentales;

w) conscients que l'individu, étant donné ses obligations envers les autres individus et la société à laquelle il appartient, est tenu de faire son possible pour promouvoir et respecter les droits reconnus dans la Charte internationale des droits de l'homme;

x) convaincus que la famille est l'élément naturel et fondamental de la société et a droit à la protection de la société et de l'État et que les personnes handicapées et les membres de leur famille devraient recevoir la protection et l'aide nécessaires pour que les familles puissent contribuer à la pleine et égale jouissance de leurs droits par les personnes handicapées;

y) convaincus qu'une convention internationale globale et intégrée pour la promotion et la protection des droits et de la dignité des personnes handicapées contribuera de façon significative à remédier au profond désavantage social que connaissent les personnes handicapées et qu'elle favorisera leur participation, sur la base de l'égalité des chances, à tous les domaines de la vie civile, politique, économique, sociale et culturelle, dans les pays développés comme dans les pays en développement,

SONT CONVENUS DE CE QUI SUIT:

Article premier

Objet

La présente convention a pour objet de promouvoir, protéger et assurer la pleine et égale jouissance de tous les droits de l'homme et de toutes les libertés fondamentales par les personnes handicapées et de promouvoir le respect de leur dignité intrinsèque.

Par personnes handicapées, on entend des personnes qui présentent des incapacités physiques, mentales, intellectuelles ou sensorielles durables dont l'interaction avec diverses barrières peut faire obstacle à leur pleine et effective participation à la société sur la base de l'égalité avec les autres.

Article 2

Définitions

Aux fins de la présente convention:

on entend par «communication», entre autres, les langues, l'affichage de texte, le braille, la communication tactile, les gros caractères, les supports multimédias accessibles ainsi que les modes, moyens et formes de communication améliorée et alternative à base de supports écrits, supports audio, langue simplifiée et lecteur humain, y compris les technologies de l'information et de la communication accessibles;

on entend par «langue», entre autres, les langues parlées et les langues des signes et autres formes de langue non parlée;

on entend par «discrimination fondée sur le handicap» toute distinction, exclusion ou restriction fondée sur le handicap qui a pour objet ou pour effet de compromettre ou réduire à néant la reconnaissance, la jouissance ou l'exercice, sur la base de l'égalité avec les autres, de tous les droits de l'homme et de toutes les libertés fondamentales dans les domaines politique, économique, social, culturel, civil ou autres. La discrimination fondée sur le handicap comprend toutes les formes de discrimination, y compris le refus d'aménagement raisonnable;

on entend par «aménagement raisonnable» les modifications et ajustements nécessaires et appropriés n'imposant pas de charge disproportionnée ou indue apportés, en fonction des besoins dans une situation donnée, pour assurer aux personnes handicapées la jouissance ou l'exercice, sur la base de l'égalité avec les autres, de tous les droits de l'homme et de toutes les libertés fondamentales;

on entend par «conception universelle» la conception de produits, d'équipements, de programmes et de services qui puissent être utilisés par tous, dans toute la mesure possible, sans nécessiter ni adaptation ni conception spéciale. La «conception universelle» n'exclut pas les appareils et accessoires fonctionnels pour des catégories particulières de personnes handicapées là où ils sont nécessaires.

Article 3

Principes généraux

Les principes de la présente convention sont:

a) le respect de la dignité intrinsèque, de l'autonomie individuelle, y compris la liberté de faire ses propres choix, et de l'indépendance des personnes;

b) la non-discrimination;

c) la participation et l'intégration pleines et effectives à la société;

d) le respect de la différence et l'acceptation des personnes handicapées comme faisant partie de la diversité humaine et de l'humanité;

e) l'égalité des chances;

f) l'accessibilité;

g) l'égalité entre les hommes et les femmes;

h) le respect du développement des capacités de l'enfant handicapé et le respect du droit des enfants handicapés à préserver leur identité.

Article 4

Obligations générales

1. Les États parties s'engagent à garantir et à promouvoir le plein exercice de tous les droits de l'homme et de toutes les libertés fondamentales de toutes les personnes handicapées sans discrimination d'aucune sorte fondée sur le handicap. À cette fin, ils s'engagent à:

a) adopter toutes mesures appropriées d'ordre législatif, administratif ou autre pour mettre en œuvre les droits reconnus dans la présente convention;

b) prendre toutes mesures appropriées, y compris des mesures législatives, pour modifier, abroger ou abolir les lois, règlements, coutumes et pratiques qui sont source de discrimination envers les personnes handicapées;

c) prendre en compte la protection et la promotion des droits de l'homme des personnes handicapées dans toutes les politiques et dans tous les programmes;

d) s'abstenir de tout acte et de toute pratique incompatible avec la présente convention et veiller à ce que les pouvoirs publics et les institutions agissent conformément à la présente convention;

e) prendre toutes mesures appropriées pour éliminer la discrimination fondée sur le handicap pratiquée par toute personne, organisation ou entreprise privée;

f) entreprendre ou encourager la recherche et le développement de biens, services, équipements et installations de conception universelle, selon la définition qui en est donnée à l'article 2 de la présente convention, qui devraient nécessiter le minimum possible d'adaptation et de frais pour répondre aux besoins spécifiques des personnes handicapées, encourager l'offre et l'utilisation de ces biens, services, équipements et installations et encourager l'incorporation de la conception universelle dans le développement des normes et directives;

g) entreprendre ou encourager la recherche et le développement et encourager l'offre et l'utilisation de nouvelles technologies — y compris les technologies de l'information et de la communication, les aides à la mobilité, les appareils et accessoires et les technologies d'assistance — qui soient adaptées aux personnes handicapées, en privilégiant les technologies d'un coût abordable;

h) fournir aux personnes handicapées des informations accessibles concernant les aides à la mobilité, les appareils et accessoires et les technologies d'assistance, y compris les nouvelles technologies, ainsi que les autres formes d'assistance, services d'accompagnement et équipements;

i) encourager la formation aux droits reconnus dans la présente convention des professionnels et personnels qui travaillent avec des personnes handicapées, de façon à améliorer la prestation des aides et services garantis par ces droits.

2. Dans le cas des droits économiques, sociaux et culturels, chaque État partie s'engage à agir, au maximum des ressources dont il dispose et, s'il y a lieu, dans le cadre de la coopération internationale, en vue d'assurer progressivement le plein exercice de ces droits, sans préjudice des obligations énoncées dans la présente convention qui sont d'application immédiate en vertu du droit international.

3. Dans l'élaboration et la mise en œuvre des lois et des politiques adoptées aux fins de l'application de la présente convention, ainsi que dans l'adoption de toute décision sur des questions relatives aux personnes handicapées, les États parties consultent étroitement et font activement participer ces personnes, y compris les enfants handicapés, par l'intermédiaire des organisations qui les représentent.

4. Aucune des dispositions de la présente convention ne porte atteinte aux dispositions plus favorables à l'exercice des droits des personnes handicapées qui peuvent figurer dans la législation d'un État partie ou dans le droit international en vigueur pour cet État. Il ne peut être admis aucune restriction ou dérogation aux droits de l'homme et aux libertés fondamentales reconnus ou en vigueur dans un État partie à la présente convention en vertu de lois, de conventions, de règlements ou de coutumes, sous prétexte que la présente convention ne reconnaît pas ces droits et libertés ou les reconnaît à un moindre degré.

5. Les dispositions de la présente convention s'appliquent, sans limitation ni exception aucune, à toutes les unités constitutives des États fédératifs.

Article 5

Égalité et non-discrimination

1. Les États parties reconnaissent que toutes les personnes sont égales devant la loi et en vertu de celle-ci et ont droit sans discrimination à l'égale protection et à l'égal bénéfice de la loi.

2. Les États parties interdisent toutes les discriminations fondées sur le handicap et garantissent aux personnes handicapées une égale et effective protection juridique contre toute discrimination, quel qu'en soit le fondement.

3. Afin de promouvoir l'égalité et d'éliminer la discrimination, les États parties prennent toutes les mesures appropriées pour faire en sorte que des aménagements raisonnables soient apportés.

4. Les mesures spécifiques qui sont nécessaires pour accélérer ou assurer l'égalité de facto des personnes handicapées ne constituent pas une discrimination au sens de la présente convention.

Article 6

Femmes handicapées

1. Les États parties reconnaissent que les femmes et les filles handicapées sont exposées à de multiples discriminations, et ils prennent les mesures voulues pour leur permettre de jouir pleinement et dans des conditions d'égalité de tous les droits de l'homme et de toutes les libertés fondamentales.

2. Les États parties prennent toutes mesures appropriées pour assurer le plein épanouissement, la promotion et l'autonomisation des femmes, afin de leur garantir l'exercice et la jouissance des droits de l'homme et des libertés fondamentales énoncés dans la présente convention.

Article 7

Enfants handicapés

1. Les États parties prennent toutes mesures nécessaires pour garantir aux enfants handicapés la pleine jouissance de tous les droits de l'homme et de toutes les libertés fondamentales, sur la base de l'égalité avec les autres enfants.

2. Dans toutes les décisions qui concernent les enfants handicapés, l'intérêt supérieur de l'enfant doit être une considération primordiale.

3. Les États parties garantissent à l'enfant handicapé, sur la base de l'égalité avec les autres enfants, le droit d'exprimer librement son opinion sur toute question l'intéressant, les opinions de l'enfant étant dûment prises en considération eu égard à son âge et à son degré de maturité, et d'obtenir pour l'exercice de ce droit une aide adaptée à son handicap et à son âge.

Article 8

Sensibilisation

1. Les États parties s'engagent à prendre des mesures immédiates, efficaces et appropriées en vue de:

a) sensibiliser l'ensemble de la société, y compris au niveau de la famille, à la situation des personnes handicapées et promouvoir le respect des droits et de la dignité des personnes handicapées;

b) combattre les stéréotypes, les préjugés et les pratiques dangereuses concernant les personnes handicapées, y compris ceux liés au sexe et à l'âge, dans tous les domaines;

c) mieux faire connaître les capacités et les contributions des personnes handicapées.

2. Dans le cadre des mesures qu'ils prennent à cette fin, les États parties:

a) lancent et mènent des campagnes efficaces de sensibilisation du public en vue de:

i) favoriser une attitude réceptive à l'égard des droits des personnes handicapées;

ii) promouvoir une perception positive des personnes handicapées et une conscience sociale plus poussée à leur égard;

iii) promouvoir la reconnaissance des compétences, mérites et aptitudes des personnes handicapées et de leurs contributions dans leur milieu de travail et sur le marché du travail;

b) encouragent à tous les niveaux du système éducatif, notamment chez tous les enfants dès leur plus jeune âge, une attitude de respect pour les droits des personnes handicapées;

c) encouragent tous les médias à montrer les personnes handicapées sous un jour conforme à l'objet de la présente convention;

d) encouragent l'organisation de programmes de formation en sensibilisation aux personnes handicapées et aux droits des personnes handicapées.

Article 9

Accessibilité

1. Afin de permettre aux personnes handicapées de vivre de façon indépendante et de participer pleinement à tous les aspects de la vie, les États parties prennent des mesures appropriées pour leur assurer, sur la base de l'égalité avec les autres, l'accès à l'environnement physique, aux transports, à l'information et à la communication, y compris aux systèmes et technologies de l'information et de la communication, et aux autres équipements et services ouverts ou fournis au public, tant dans les zones urbaines que rurales. Ces mesures, parmi lesquelles figurent l'identification et l'élimination des obstacles et barrières à l'accessibilité, s'appliquent, entre autres:

a) aux bâtiments, à la voirie, aux transports et autres équipements intérieurs ou extérieurs, y compris les écoles, les logements, les installations médicales et les lieux de travail;

b) aux services d'information, de communication et autres services, y compris les services électroniques et les services d'urgence.

2. Les États parties prennent également des mesures appropriées pour:

a) élaborer et promulguer des normes nationales minimales et des directives relatives à l'accessibilité des installations et services ouverts ou fournis au public et contrôler l'application de ces normes et directives;

b) faire en sorte que les organismes privés qui offrent des installations ou des services qui sont ouverts ou fournis au public prennent en compte tous les aspects de l'accessibilité par les personnes handicapées;

c) assurer aux parties concernées une formation concernant les problèmes d'accès auxquels les personnes handicapées sont confrontées;

d) faire mettre en place dans les bâtiments et autres installations ouverts au public une signalisation en braille et sous des formes faciles à lire et à comprendre;

e) mettre à disposition des formes d'aide humaine ou animalière et les services de médiateurs, notamment de guides, de lecteurs et d'interprètes professionnels en langue des signes, afin de faciliter l'accès des bâtiments et autres installations ouverts au public;

f) promouvoir d'autres formes appropriées d'aide et d'accompagnement des personnes handicapées afin de leur assurer l'accès à l'information;

g) promouvoir l'accès des personnes handicapées aux nouveaux systèmes et technologies de l'information et de la communication, y compris l'internet;

h) promouvoir l'étude, la mise au point, la production et la diffusion de systèmes et technologies de l'information et de la communication à un stade précoce, de façon à en assurer l'accessibilité à un coût minimal.

Article 10

Droit à la vie

Les États parties réaffirment que le droit à la vie est inhérent à la personne humaine et prennent toutes mesures nécessaires pour en assurer aux personnes handicapées la jouissance effective, sur la base de l'égalité avec les autres.

Article 11

Situations de risque et situations d'urgence humanitaire

Les États parties prennent, conformément aux obligations qui leur incombent en vertu du droit international, notamment le droit international humanitaire et le droit international des droits de l'homme, toutes mesures nécessaires pour assurer la protection et la sûreté des personnes handicapées dans les situations de risque, y compris les conflits armés, les crises humanitaires et les catastrophes naturelles.

Article 12

Reconnaissance de la personnalité juridique dans des conditions d'égalité

1. Les États parties réaffirment que les personnes handicapées ont droit à la reconnaissance en tous lieux de leur personnalité juridique.

2. Les États parties reconnaissent que les personnes handicapées jouissent de la capacité juridique dans tous les domaines, sur la base de l'égalité avec les autres.

3. Les États parties prennent des mesures appropriées pour donner aux personnes handicapées accès à l'accompagnement dont elles peuvent avoir besoin pour exercer leur capacité juridique.

4. Les États parties font en sorte que les mesures relatives à l'exercice de la capacité juridique soient assorties de garanties appropriées et effectives pour prévenir les abus, conformément au droit international des droits de l'homme. Ces garanties doivent garantir que les mesures relatives à l'exercice de la capacité juridique respectent les droits, la volonté et les préférences de la personne concernée, soient exemptes de tout conflit d'intérêt et ne donnent lieu à aucun abus d'influence, soient proportionnées et adaptées à la situation de la personne concernée, s'appliquent pendant la période la plus brève possible et soient soumises à un contrôle périodique effectué par un organe compétent, indépendant et impartial ou une instance judiciaire. Ces garanties doivent également être proportionnées au degré auquel les mesures devant faciliter l'exercice de la capacité juridique affectent les droits et intérêts de la personne concernée.

5. Sous réserve des dispositions du présent article, les États parties prennent toutes mesures appropriées et effectives pour garantir le droit qu'ont les personnes handicapées, sur la base de l'égalité avec les autres, de posséder des biens ou d'en hériter, de contrôler leurs finances et d'avoir accès aux mêmes conditions que les autres personnes aux prêts bancaires, hypothèques et autres formes de crédit financier; ils veillent à ce que les personnes handicapées ne soient pas arbitrairement privées de leurs biens.

Article 13

Accès à la justice

1. Les États parties assurent l'accès effectif des personnes handicapées à la justice, sur la base de l'égalité avec les autres, y compris par le biais d'aménagements procéduraux et d'aménagements en fonction de l'âge, afin de faciliter leur participation effective, directe ou indirecte, notamment en tant que témoins, à toutes les procédures judiciaires, y compris au stade de l'enquête et aux autres stades préliminaires.

2. Afin d'aider à assurer l'accès effectif des personnes handicapées à la justice, les États parties favorisent une formation appropriée des personnels concourant à l'administration de la justice, y compris les personnels de police et les personnels pénitentiaires.

Article 14

Liberté et sécurité de la personne

1. Les États parties veillent à ce que les personnes handicapées, sur la base de l'égalité avec les autres:

a) jouissent du droit à la liberté et à la sûreté de leur personne;

b) ne soient pas privées de leur liberté de façon illégale ou arbitraire; ils veillent en outre à ce que toute privation de liberté soit conforme à la loi et à ce qu'en aucun cas l'existence d'un handicap ne justifie une privation de liberté.

2. Les États parties veillent à ce que les personnes handicapées, si elles sont privées de leur liberté à l'issue d'une quelconque procédure, aient droit, sur la base de l'égalité avec les autres, aux garanties prévues par le droit international des droits de l'homme et soient traitées conformément aux buts et principes de la présente convention, y compris en bénéficiant d'aménagements raisonnables.

Article 15

Droit de ne pas être soumis à la torture ni à des peines ou traitements cruels, inhumains ou dégradants

1. Nul ne sera soumis à la torture, ni à des peines ou traitements cruels, inhumains ou dégradants. En particulier, il est interdit de soumettre une personne sans son libre consentement à une expérience médicale ou scientifique.

2. Les États parties prennent toutes mesures législatives, administratives, judiciaires et autres mesures efficaces pour empêcher, sur la base de l'égalité avec les autres, que des personnes handicapées ne soient soumises à la torture ou à des peines ou traitements cruels, inhumains ou dégradants.

Article 16

Droit de ne pas être soumis à l'exploitation, à la violence et à la maltraitance

1. Les États parties prennent toutes mesures législatives, administratives, sociales, éducatives et autres mesures appropriées pour protéger les personnes handicapées, à leur domicile comme à l'extérieur, contre toutes formes d'exploitation, de violence et de maltraitance, y compris leurs aspects fondés sur le sexe.

2. Les États parties prennent également toutes mesures appropriées pour prévenir toutes les formes d'exploitation, de violence et de maltraitance en assurant notamment aux personnes handicapées, à leur famille et à leurs aidants des formes appropriées d'aide et d'accompagnement adaptées au sexe et à l'âge, y compris en mettant à leur disposition des informations et des services éducatifs sur les moyens d'éviter, de reconnaître et de dénoncer les cas d'exploitation, de violence et de maltraitance. Les États parties veillent à ce que les services de protection tiennent compte de l'âge, du sexe et du handicap des intéressés.

3. Afin de prévenir toutes les formes d'exploitation, de violence et de maltraitance, les États parties veillent à ce que tous les établissements et programmes destinés aux personnes handicapées soient effectivement contrôlés par des autorités indépendantes.

4. Les États parties prennent toutes mesures appropriées pour faciliter le rétablissement physique, cognitif et psychologique, la réadaptation et la réinsertion sociale des personnes handicapées qui ont été victimes d'exploitation, de violence ou de maltraitance sous toutes leurs formes, notamment en mettant à leur disposition des services de protection. Le rétablissement et la réinsertion interviennent dans un environnement qui favorise la santé, le bien-être, l'estime de soi, la dignité et l'autonomie de la personne et qui prend en compte les besoins spécifiquement liés au sexe et à l'âge.

5. Les États parties mettent en place une législation et des politiques efficaces, y compris une législation et des politiques axées sur les femmes et les enfants, qui garantissent que les cas d'exploitation, de violence et de maltraitance envers des personnes handicapées sont dépistés, font l'objet d'une enquête et, le cas échéant, donnent lieu à des poursuites.

Article 17

Protection de l'intégrité de la personne

Toute personne handicapée a droit au respect de son intégrité physique et mentale sur la base de l'égalité avec les autres.

Article 18

Droit de circuler librement et nationalité

1. Les États parties reconnaissent aux personnes handicapées, sur la base de l'égalité avec les autres, le droit de circuler librement, le droit de choisir librement leur résidence et le droit à une nationalité, et ils veillent notamment à ce que les personnes handicapées:

a) aient le droit d'acquérir une nationalité et de changer de nationalité et ne soient pas privées de leur nationalité arbitrairement ou en raison de leur handicap;

b) ne soient pas privées, en raison de leur handicap, de la capacité d'obtenir, de posséder et d'utiliser des titres attestant leur nationalité ou autres titres d'identité ou d'avoir recours aux procédures pertinentes, telles que les procédures d'immigration, qui peuvent être nécessaires pour faciliter l'exercice du droit de circuler librement;

c) aient le droit de quitter n'importe quel pays, y compris le leur;

d) ne soient pas privées, arbitrairement ou en raison de leur handicap, du droit d'entrer dans leur propre pays.

2. Les enfants handicapés sont enregistrés aussitôt leur naissance et ont dès celle-ci le droit à un nom, le droit d'acquérir une nationalité et, dans la mesure du possible, le droit de connaître leurs parents et d'être élevés par eux.

Article 19

Autonomie de vie et inclusion dans la société

Les États parties à la présente convention reconnaissent à toutes les personnes handicapées le droit de vivre dans la société, avec la même liberté de choix que les autres personnes, et prennent des mesures efficaces et appropriées pour faciliter aux personnes handicapées la pleine jouissance de ce droit ainsi que leur pleine intégration et participation à la société, notamment en veillant à ce que:

a) les personnes handicapées aient la possibilité de choisir, sur la base de l'égalité avec les autres, leur lieu de résidence et où et avec qui elles vont vivre et qu'elles ne soient pas obligées de vivre dans un milieu de vie particulier;

b) les personnes handicapées aient accès à une gamme de services à domicile ou en établissement et autres services sociaux d'accompagnement, y compris l'aide personnelle nécessaire pour leur permettre de vivre dans la société et de s'y insérer et pour empêcher qu'elles ne soient isolées ou victimes de ségrégation;

c) les services et équipements sociaux destinés à la population générale soient mis à la disposition des personnes handicapées, sur la base de l'égalité avec les autres, et soient adaptés à leurs besoins.

Article 20

Mobilité personnelle

Les États parties prennent des mesures efficaces pour assurer la mobilité personnelle des personnes handicapées, dans la plus grande autonomie possible, y compris en:

a) facilitant la mobilité personnelle des personnes handicapées selon les modalités et au moment que celles-ci choisissent, et à un coût abordable;

b) facilitant l'accès des personnes handicapées à des aides à la mobilité, appareils et accessoires, technologies d'assistance, formes d'aide humaine ou animalière et médiateurs de qualité, notamment en faisant en sorte que leur coût soit abordable;

c) dispensant aux personnes handicapées et aux personnels spécialisés qui travaillent avec elles une formation aux techniques de mobilité;

d) encourageant les organismes qui produisent des aides à la mobilité, des appareils et accessoires et des technologies d'assistance à prendre en compte tous les aspects de la mobilité des personnes handicapées.

Article 21

Liberté d'expression et d'opinion et accès à l'information

Les États parties prennent toutes mesures appropriées pour que les personnes handicapées puissent exercer le droit à la liberté d'expression et d'opinion, y compris la liberté de demander, recevoir et communiquer des informations et des idées, sur la base de l'égalité avec les autres et en recourant à tous moyens de communication de leur choix au sens de l'article 2 de la présente convention. À cette fin, les États parties:

a) communiquent les informations destinées au grand public aux personnes handicapées, sans tarder et sans frais supplémentaires pour celles-ci, sous des formes accessibles et au moyen de technologies adaptées aux différents types de handicap;

b) acceptent et facilitent le recours par les personnes handicapées, pour leurs démarches officielles, à la langue des signes, au braille, à la communication améliorée et alternative et à tous les autres moyens, modes et formes accessibles de communication de leur choix;

c) demandent instamment aux organismes privés qui mettent des services à la disposition du public, y compris par le biais de l'internet, de fournir des informations et des services sous des formes accessibles aux personnes handicapées et que celles-ci puissent utiliser;

d) encouragent les médias, y compris ceux qui communiquent leurs informations par l'internet, à rendre leurs services accessibles aux personnes handicapées;

e) reconnaissent et favorisent l'utilisation des langues des signes.

Article 22

Respect de la vie privée

1. Aucune personne handicapée, quel que soit son lieu de résidence ou son milieu de vie, ne sera l'objet d'immixtions arbitraires ou illégales dans sa vie privée, sa famille, son domicile ou sa correspondance ou autres types de communication ni d'atteintes illégales à son honneur et à sa réputation. Les personnes handicapées ont droit à la protection de la loi contre de telles immixtions ou de telles atteintes.

2. Les États parties protègent la confidentialité des informations personnelles et des informations relatives à la santé et à la réadaptation des personnes handicapées, sur la base de l'égalité avec les autres.

Article 23

Respect du domicile et de la famille

1. Les États parties prennent des mesures efficaces et appropriées pour éliminer la discrimination à l'égard des personnes handicapées dans tout ce qui a trait au mariage, à la famille, à la fonction parentale et aux relations personnelles, sur la base de l'égalité avec les autres, et veillent à ce que:

a) soit reconnu à toutes les personnes handicapées, à partir de l'âge nubile, le droit de se marier et de fonder une famille sur la base du libre et plein consentement des futurs époux;

b) soient reconnus aux personnes handicapées le droit de décider librement et en toute connaissance de cause du nombre de leurs enfants et de l'espacement des naissances ainsi que le droit d'avoir accès, de façon appropriée pour leur âge, à l'information et à l'éducation en matière de procréation et de planification familiale; et à ce que les moyens nécessaires à l'exercice de ces droits leur soient fournis;

c) les personnes handicapées, y compris les enfants, conservent leur fertilité, sur la base de l'égalité avec les autres.

2. Les États parties garantissent les droits et responsabilités des personnes handicapées en matière de tutelle, de curatelle, de garde et d'adoption des enfants ou d'institutions similaires, lorsque ces institutions existent dans la législation nationale; dans tous les cas, l'intérêt supérieur de l'enfant est la considération primordiale. Les États parties apportent une aide appropriée aux personnes handicapées dans l'exercice de leurs responsabilités parentales.

3. Les États parties veillent à ce que les enfants handicapés aient des droits égaux dans leur vie en famille. Aux fins de l'exercice de ces droits et en vue de prévenir la dissimulation, l'abandon, le délaissement et la ségrégation des enfants handicapés, les États parties s'engagent à fournir aux enfants handicapés et à leur famille, à un stade précoce, un large éventail d'informations et de services, dont des services d'accompagnement.

4. Les États parties veillent à ce qu'aucun enfant ne soit séparé de ses parents contre leur gré, à moins que les autorités compétentes, sous réserve d'un contrôle juridictionnel, ne décident, conformément au droit et aux procédures applicables, qu'une telle séparation est nécessaire dans l'intérêt supérieur de l'enfant. En aucun cas un enfant ne doit être séparé de ses parents en raison de son handicap ou du handicap de l'un ou des deux parents.

5. Les États parties s'engagent, lorsque la famille immédiate n'est pas en mesure de s'occuper d'un enfant handicapé, à ne négliger aucun effort pour assurer la prise en charge de l'enfant par la famille élargie et, si cela n'est pas possible, dans un cadre familial au sein de la communauté.

Article 24

Éducation

1. Les États parties reconnaissent le droit des personnes handicapées à l'éducation. En vue d'assurer l'exercice de ce droit sans discrimination et sur la base de l'égalité des chances, les États parties font en sorte que le système éducatif pourvoie à l'insertion scolaire à tous les niveaux et offre, tout au long de la vie, des possibilités d'éducation qui visent:

a) le plein épanouissement du potentiel humain et du sentiment de dignité et d'estime de soi, ainsi que le renforcement du respect des droits de l'homme, des libertés fondamentales et de la diversité humaine;

b) l'épanouissement de la personnalité des personnes handicapées, de leurs talents et de leur créativité ainsi que de leurs aptitudes mentales et physiques, dans toute la mesure de leurs potentialités;

c) la participation effective des personnes handicapées à une société libre.

2. Aux fins de l'exercice de ce droit, les États parties veillent à ce que:

a) les personnes handicapées ne soient pas exclues, sur le fondement de leur handicap, du système d'enseignement général et à ce que les enfants handicapés ne soient pas exclus, sur le fondement de leur handicap, de l'enseignement primaire gratuit et obligatoire ou de l'enseignement secondaire;

b) les personnes handicapées puissent, sur la base de l'égalité avec les autres, avoir accès, dans les communautés où elles vivent, à un enseignement primaire inclusif, de qualité et gratuit, et à l'enseignement secondaire;

c) il soit procédé à des aménagements raisonnables en fonction des besoins de chacun;

d) les personnes handicapées bénéficient, au sein du système d'enseignement général, de l'accompagnement nécessaire pour faciliter leur éducation effective;

e) des mesures d'accompagnement individualisé efficaces soient prises dans des environnements qui optimisent le progrès scolaire et la socialisation, conformément à l'objectif de pleine intégration.

3. Les États parties donnent aux personnes handicapées la possibilité d'acquérir les compétences pratiques et sociales nécessaires de façon à faciliter leur pleine et égale participation au système d'enseignement et à la vie de la communauté. À cette fin, les États parties prennent des mesures appropriées, notamment:

a) facilitent l'apprentissage du braille, de l'écriture adaptée et des modes, moyens et formes de communication améliorée et alternative, le développement des capacités d'orientation et de la mobilité, ainsi que le soutien par les pairs et le mentorat;

b) facilitent l'apprentissage de la langue des signes et la promotion de l'identité linguistique des personnes sourdes;

c) veillent à ce que les personnes aveugles, sourdes ou sourdes et aveugles — en particulier les enfants — reçoivent un enseignement dispensé dans la langue et par le biais des modes et moyens de communication qui conviennent le mieux à chacun, et ce, dans des environnements qui optimisent le progrès scolaire et la sociabilisation.

4. Afin de faciliter l'exercice de ce droit, les États parties prennent des mesures appropriées pour employer des enseignants, y compris des enseignants handicapés, qui ont une qualification en langue des signes ou en braille et pour former les cadres et personnels éducatifs à tous les niveaux. Cette formation comprend la sensibilisation aux handicaps et l'utilisation des modes, moyens et formes de communication améliorée et alternative et des techniques et matériels pédagogiques adaptés aux personnes handicapées.

5. Les États parties veillent à ce que les personnes handicapées puissent avoir accès, sans discrimination et sur la base de l'égalité avec les autres, à l'enseignement tertiaire général, à la formation professionnelle, à l'enseignement pour adultes et à la formation continue. À cette fin, ils veillent à ce que des aménagements raisonnables soient apportés en faveur des personnes handicapées.

Article 25

Santé

Les États parties reconnaissent que les personnes handicapées ont le droit de jouir du meilleur état de santé possible sans discrimination fondée sur le handicap. Ils prennent toutes les mesures appropriées pour leur assurer l'accès à des services de santé qui prennent en compte les sexospécificités, y compris des services de réadaptation. En particulier, les États parties:

a) fournissent aux personnes handicapées des services de santé gratuits ou d'un coût abordable couvrant la même gamme et de la même qualité que ceux offerts aux autres personnes, y compris des services de santé sexuelle et génésique et des programmes de santé publique communautaires;

b) fournissent aux personnes handicapées les services de santé dont celles-ci ont besoin en raison spécifiquement de leur handicap, y compris des services de dépistage précoce et, s'il y a lieu, d'intervention précoce, et des services destinés à réduire au minimum ou à prévenir les nouveaux handicaps, notamment chez les enfants et les personnes âgées;

c) fournissent ces services aux personnes handicapées aussi près que possible de leur communauté, y compris en milieu rural;

d) exigent des professionnels de la santé qu'ils dispensent aux personnes handicapées des soins de la même qualité que ceux dispensés aux autres, notamment qu'ils obtiennent le consentement libre et éclairé des personnes handicapées concernées; à cette fin, les États parties mènent des activités de formation et promulguent des règles déontologiques pour les secteurs public et privé de la santé de façon, entre autres, à sensibiliser les personnels aux droits de l'homme, à la dignité, à l'autonomie et aux besoins des personnes handicapées;

e) interdisent dans le secteur des assurances la discrimination à l'encontre des personnes handicapées, qui doivent pouvoir obtenir à des conditions équitables et raisonnables une assurance maladie et, dans les pays où elle est autorisée par le droit national, une assurance vie;

f) empêchent tout refus discriminatoire de fournir des soins ou services médicaux ou des aliments ou des liquides en raison d'un handicap.

Article 26

Adaptation et réadaptation

1. Les États parties prennent des mesures efficaces et appropriées, faisant notamment intervenir l'entraide entre pairs, pour permettre aux personnes handicapées d'atteindre et de conserver le maximum d'autonomie, de réaliser pleinement leur potentiel physique, mental, social et professionnel, et de parvenir à la pleine intégration et à la pleine participation à tous les aspects de la vie. À cette fin, les États parties organisent, renforcent et développent des services et programmes diversifiés d'adaptation et de réadaptation, en particulier dans les domaines de la santé, de l'emploi, de l'éducation et des services sociaux, de telle sorte que ces services et programmes:

a) commencent au stade le plus précoce possible et soient fondés sur une évaluation pluridisciplinaire des besoins et des atouts de chacun;

b) facilitent la participation et l'intégration à la communauté et à tous les aspects de la société, soient librement acceptés et soient mis à la disposition des personnes handicapées aussi près que possible de leur communauté, y compris dans les zones rurales.

2. Les États parties favorisent le développement de la formation initiale et continue des professionnels et personnels qui travaillent dans les services d'adaptation et de réadaptation.

3. Les États parties favorisent l'offre, la connaissance et l'utilisation d'appareils et de technologies d'aide, conçus pour les personnes handicapées, qui facilitent l'adaptation et la réadaptation.

Article 27

Travail et emploi

1. Les États parties reconnaissent aux personnes handicapées, sur la base de l'égalité avec les autres, le droit au travail, notamment à la possibilité de gagner leur vie en accomplissant un travail librement choisi ou accepté sur un marché du travail et dans un milieu de travail ouverts, favorisant l'inclusion et accessibles aux personnes handicapées. Ils garantissent et favorisent l'exercice du droit au travail, y compris pour ceux qui ont acquis un handicap en cours d'emploi, en prenant des mesures appropriées, y compris des mesures législatives, pour notamment:

a) interdire la discrimination fondée sur le handicap dans tout ce qui a trait à l'emploi sous toutes ses formes, notamment les conditions de recrutement, d'embauche et d'emploi, le maintien dans l'emploi, l'avancement et les conditions de sécurité et d'hygiène au travail;

b) protéger le droit des personnes handicapées à bénéficier, sur la base de l'égalité avec les autres, de conditions de travail justes et favorables, y compris l'égalité des chances et l'égalité de rémunération à travail égal, la sécurité et l'hygiène sur les lieux de travail, la protection contre le harcèlement et des procédures de règlement des griefs;

c) faire en sorte que les personnes handicapées puissent exercer leurs droits professionnels et syndicaux sur la base de l'égalité avec les autres;

d) permettre aux personnes handicapées d'avoir effectivement accès aux programmes d'orientation technique et professionnel, aux services de placement et aux services de formation professionnelle et continue offerts à la population en général;

e) promouvoir les possibilités d'emploi et d'avancement des personnes handicapées sur le marché du travail, ainsi que l'aide à la recherche et à l'obtention d'un emploi, au maintien dans l'emploi et au retour à l'emploi;

f) promouvoir les possibilités d'exercice d'une activité indépendante, l'esprit d'entreprise, l'organisation de coopératives et la création d'entreprise;

g) employer des personnes handicapées dans le secteur public;

h) favoriser l'emploi de personnes handicapées dans le secteur privé en mettant en œuvre des politiques et mesures appropriées, y compris le cas échéant des programmes d'action positive, des incitations et d'autres mesures;

i) faire en sorte que des aménagements raisonnables soient apportés aux lieux de travail en faveur des personnes handicapées;

j) favoriser l'acquisition par les personnes handicapées d'une expérience professionnelle sur le marché du travail général;

k) promouvoir des programmes de réadaptation technique et professionnelle, de maintien dans l'emploi et de retour à l'emploi pour les personnes handicapées.

2. Les États parties veillent à ce que les personnes handicapées ne soient tenues ni en esclavage ni en servitude, et à ce qu'elles soient protégées, sur la base de l'égalité avec les autres, contre le travail forcé ou obligatoire.

Article 28

Niveau de vie adéquat et protection sociale

1. Les États parties reconnaissent le droit des personnes handicapées à un niveau de vie adéquat pour elles-mêmes et pour leur famille, notamment une alimentation, un habillement et un logement adéquats, et à une amélioration constante de leurs conditions de vie et prennent des mesures appropriées pour protéger et promouvoir l'exercice de ce droit sans discrimination fondée sur le handicap.

2. Les États parties reconnaissent le droit des personnes handicapées à la protection sociale et à la jouissance de ce droit sans discrimination fondée sur le handicap et prennent des mesures appropriées pour protéger et promouvoir l'exercice de ce droit, y compris des mesures destinées à:

a) assurer aux personnes handicapées l'égalité d'accès aux services d'eau salubre et leur assurer l'accès à des services, appareils et accessoires et autres aides répondant aux besoins créés par leur handicap qui soient appropriés et abordables;

b) assurer aux personnes handicapées, en particulier aux femmes, aux filles et aux personnes âgées, l'accès aux programmes de protection sociale et aux programmes de réduction de la pauvreté;

c) assurer aux personnes handicapées et à leurs familles, lorsque celles-ci vivent dans la pauvreté, l'accès à l'aide publique pour couvrir les frais liés au handicap, notamment les frais permettant d'assurer adéquatement une formation, un soutien psychologique, une aide financière ou une prise en charge de répit;

d) assurer aux personnes handicapées l'accès aux programmes de logements sociaux;

e) assurer aux personnes handicapées l'égalité d'accès aux programmes et prestations de retraite.

Article 29

Participation à la vie politique et à la vie publique

Les États parties garantissent aux personnes handicapées la jouissance des droits politiques et la possibilité de les exercer sur la base de l'égalité avec les autres, et s'engagent:

a) à faire en sorte que les personnes handicapées puissent effectivement et pleinement participer à la vie politique et à la vie publique sur la base de l'égalité avec les autres, que ce soit directement ou par l'intermédiaire de représentants librement choisis, notamment qu'elles aient le droit et la possibilité de voter et d'être élues, et pour cela les États parties, entre autres mesures:

   i) veillent à ce que les procédures, équipements et matériels électoraux soient appropriés, accessibles et faciles à comprendre et à utiliser;

   ii) protègent le droit qu'ont les personnes handicapées de voter à bulletin secret et sans intimidation aux élections et référendums publics, de se présenter aux élections et d'exercer effectivement un mandat électif ainsi que d'exercer toutes fonctions publiques à tous les niveaux de l'État, et facilitent, s'il y a lieu, le recours aux technologies d'assistance et aux nouvelles technologies;

   iii) garantissent la libre expression de la volonté des personnes handicapées en tant qu'électeurs et à cette fin, si nécessaire et à leur demande, les autorisent à se faire assister d'une personne de leur choix pour voter;

b) à promouvoir activement un environnement dans lequel les personnes handicapées peuvent effectivement et pleinement participer à la conduite des affaires publiques, sans discrimination et sur la base de l'égalité avec les autres, et à encourager leur participation aux affaires publiques, notamment par le biais:

   i) de leur participation aux organisations non gouvernementales et associations qui s'intéressent à la vie publique et politique du pays, et de leur participation aux activités et à l'administration des partis politiques;

   ii) de la constitution d'organisations de personnes handicapées pour les représenter aux niveaux international, national, régional et local et de l'adhésion à ces organisations.

Article 30

Participation à la vie culturelle et récréative, aux loisirs et aux sports

1. Les États parties reconnaissent le droit des personnes handicapées de participer à la vie culturelle, sur la base de l'égalité avec les autres, et prennent toutes mesures appropriées pour faire en sorte qu'elles:

a) aient accès aux produits culturels dans des formats accessibles;

b) aient accès aux émissions de télévision, aux films, aux pièces de théâtre et autres activités culturelles dans des formats accessibles;

c) aient accès aux lieux d'activités culturelles tels que les théâtres, les musées, les cinémas, les bibliothèques et les services touristiques, et, dans la mesure du possible, aux monuments et sites importants pour la culture nationale.

2. Les États parties prennent des mesures appropriées pour donner aux personnes handicapées la possibilité de développer et de réaliser leur potentiel créatif, artistique et intellectuel, non seulement dans leur propre intérêt, mais aussi pour l'enrichissement de la société.

3. Les États parties prennent toutes mesures appropriées, conformément au droit international, pour faire en sorte que les lois protégeant les droits de propriété intellectuelle ne constituent pas un obstacle déraisonnable ou discriminatoire à l'accès des personnes handicapées aux produits culturels.

4. Les personnes handicapées ont droit, sur la base de l'égalité avec les autres, à la reconnaissance et au soutien de leur identité culturelle et linguistique spécifique, y compris les langues des signes et la culture des sourds.

5. Afin de permettre aux personnes handicapées de participer, sur la base de l'égalité avec les autres, aux activités récréatives, de loisir et sportives, les États parties prennent des mesures appropriées pour:

a) encourager et promouvoir la participation, dans toute la mesure possible, de personnes handicapées aux activités sportives ordinaires à tous les niveaux;

b) faire en sorte que les personnes handicapées aient la possibilité d'organiser et de mettre au point des activités sportives et récréatives qui leur soient spécifiques et d'y participer, et, à cette fin, encourager la mise à leur disposition, sur la base de l'égalité avec les autres, de moyens d'entraînement, de formations et de ressources appropriés;

c) faire en sorte que les personnes handicapées aient accès aux lieux où se déroulent des activités sportives, récréatives et touristiques;

d) faire en sorte que les enfants handicapés puissent participer, sur la base de l'égalité avec les autres enfants, aux activités ludiques, récréatives, de loisir et sportives, y compris dans le système scolaire;

e) faire en sorte que les personnes handicapées aient accès aux services des personnes et organismes chargés d'organiser des activités récréatives, de tourisme et de loisir et des activités sportives.

Article 31

Statistiques et collecte des données

1. Les États parties s'engagent à recueillir des informations appropriées, y compris des données statistiques et résultats de recherches, qui leur permettent de formuler et d'appliquer des politiques visant à donner effet à la présente convention. Les procédures de collecte et de conservation de ces informations respectent:

a) les garanties légales, y compris celles qui découlent de la législation sur la protection des données, afin d'assurer la confidentialité et le respect de la vie privée des personnes handicapées;

b) les normes internationalement acceptées de protection des droits de l'homme et des libertés fondamentales et les principes éthiques qui régissent la collecte et l'exploitation des statistiques.

2. Les informations recueillies conformément au présent article sont désagrégées, selon qu'il convient, et utilisées pour évaluer la façon dont les États parties s'acquittent des obligations qui leur incombent en vertu de la présente convention et identifier et lever les obstacles que rencontrent les personnes handicapées dans l'exercice de leurs droits.

3. Les États parties ont la responsabilité de diffuser ces statistiques et veillent à ce qu'elles soient accessibles aux personnes handicapées et autres personnes.

Article 32

Coopération internationale

1. Les États parties reconnaissent l'importance de la coopération internationale et de sa promotion, à l'appui des efforts déployés au niveau national pour la réalisation de l'objet et des buts de la présente convention, et prennent des mesures appropriées et efficaces à cet égard, entre eux et, s'il y a lieu, en partenariat avec les organisations internationales et régionales compétentes et la société civile, en particulier les organisations de personnes handicapées. Ils peuvent notamment prendre des mesures destinées à:

a) faire en sorte que la coopération internationale — y compris les programmes internationaux de développement — prenne en compte les personnes handicapées et leur soit accessible;

b) faciliter et appuyer le renforcement des capacités, notamment grâce à l'échange et au partage d'informations, d'expériences, de programmes de formation et de pratiques de référence;

c) faciliter la coopération aux fins de la recherche et de l'accès aux connaissances scientifiques et techniques;

d) apporter, s'il y a lieu, une assistance technique et une aide économique, y compris en facilitant l'acquisition et la mise en commun de technologies d'accès et d'assistance et en opérant des transferts de technologie.

2. Les dispositions du présent article sont sans préjudice de l'obligation dans laquelle se trouve chaque État partie de s'acquitter des obligations qui lui incombent en vertu de la présente convention.

Article 33

Application et suivi au niveau national

1. Les États parties désignent, conformément à leur système de gouvernement, un ou plusieurs points de contact pour les questions relatives à l'application de la présente convention et envisagent dûment de créer ou désigner, au sein de leur administration, un dispositif de coordination chargé de faciliter les actions liées à cette application dans différents secteurs et à différents niveaux.

2. Les États parties, conformément à leurs systèmes administratif et juridique, maintiennent, renforcent, désignent ou créent, au niveau interne, un dispositif, y compris un ou plusieurs mécanismes indépendants, selon qu'il conviendra, de promotion, de protection et de suivi de l'application de la présente convention. En désignant ou en créant un tel mécanisme, ils tiennent compte des principes applicables au statut et au fonctionnement des institutions nationales de protection et de promotion des droits de l'homme.

3. La société civile — en particulier les personnes handicapées et les organisations qui les représentent — est associée et participe pleinement à la fonction de suivi.

Article 34

Comité des droits des personnes handicapées

1. Il est institué un comité des droits des personnes handicapées (ci-après dénommé «le comité») qui s'acquitte des fonctions définies ci-après.

2. Le comité se compose, au moment de l'entrée en vigueur de la présente convention, de douze experts. Après soixante ratifications et adhésions supplémentaires à la convention, il sera ajouté six membres au comité, qui atteindra alors sa composition maximale de dix-huit membres.

3. Les membres du comité siègent à titre personnel et sont des personnalités d'une haute autorité morale et justifiant d'une compétence et d'une expérience reconnues dans le domaine auquel s'applique la présente convention. Les États parties sont invités, lorsqu'ils désignent leurs candidats, à tenir dûment compte de la disposition énoncée au paragraphe 3 de l'article 4 de la présente convention.

4. Les membres du comité sont élus par les États parties, compte tenu des principes de répartition géographique équitable, de représentation des différentes formes de civilisation et des principaux systèmes juridiques, de représentation équilibrée des sexes et de participation d'experts handicapés.

5. Les membres du comité sont élus au scrutin secret sur une liste de candidats désignés par les États parties parmi leurs ressortissants, lors de réunions de la conférence des États parties. À ces réunions, où le quorum est constitué par les deux tiers des États parties, sont élus membres du comité les candidats ayant obtenu le plus grand nombre de voix et la majorité absolue des votes des représentants des États parties présents et votants.

6. La première élection aura lieu dans les six mois suivant la date d'entrée en vigueur de la présente convention. Quatre mois au moins avant la date de chaque élection, le secrétaire général de l'Organisation des Nations unies invitera par écrit les États parties à proposer leurs candidats dans un délai de deux mois. Le secrétaire général dressera ensuite la liste alphabétique des candidats ainsi désignés, en indiquant les États parties qui les ont désignés, et la communiquera aux États parties à la présente convention.

7. Les membres du comité sont élus pour quatre ans. Ils sont rééligibles une fois. Toutefois, le mandat de six des membres élus lors de la première élection prend fin au bout de deux ans; immédiatement après la première élection, les noms de ces six membres sont tirés au sort par le président de la réunion visée au paragraphe 5 du présent article.

8. L'élection des six membres additionnels du comité se fera dans le cadre d'élections ordinaires, conformément aux dispositions du présent article.

9. En cas de décès ou de démission d'un membre du comité, ou si, pour toute autre raison, un membre déclare ne plus pouvoir exercer ses fonctions, l'État partie qui avait présenté sa candidature nomme un autre expert possédant les qualifications et répondant aux conditions énoncées dans les dispositions pertinentes du présent article pour pourvoir le poste ainsi vacant jusqu'à l'expiration du mandat correspondant.

10. Le comité adopte son règlement intérieur.

11. Le secrétaire général de l'Organisation des Nations unies met à la disposition du comité le personnel et les moyens matériels qui lui sont nécessaires pour s'acquitter efficacement des fonctions qui lui sont confiées en vertu de la présente convention et convoque sa première réunion.

12. Les membres du comité reçoivent, avec l'approbation de l'Assemblée générale des Nations unies, des émoluments prélevés sur les ressources de l'Organisation des Nations unies dans les conditions fixées par l'Assemblée générale, eu égard à l'importance des fonctions du comité.

13. Les membres du comité bénéficient des facilités, privilèges et immunités accordés aux experts en mission pour l'Organisation des Nations unies, tels qu'ils sont prévus dans les sections pertinentes de la convention sur les privilèges et les immunités des Nations unies.

Article 35

Rapports des États parties

1. Chaque État partie présente au comité, par l'entremise du secrétaire général de l'Organisation des Nations unies, un rapport détaillé sur les mesures qu'il a prises pour s'acquitter de ses obligations en vertu de la présente convention et sur les progrès accomplis à cet égard, dans un délai de deux ans à compter de l'entrée en vigueur de la présente convention pour l'État partie intéressé.

2. Les États parties présentent ensuite des rapports complémentaires au moins tous les quatre ans, et tous autres rapports demandés par le comité.

3. Le comité adopte, le cas échéant, des directives relatives à la teneur des rapports.

4. Les États parties qui ont présenté au comité un rapport initial détaillé n'ont pas, dans les rapports qu'ils lui présentent ensuite, à répéter les informations déjà communiquées. Les États parties sont invités à établir leurs rapports selon une procédure ouverte et transparente et tenant dûment compte de la disposition énoncée au paragraphe 3 de l'article 4 de la présente convention.

5. Les rapports peuvent indiquer les facteurs et les difficultés qui affectent l'accomplissement des obligations prévues par la présente convention.

Article 36

Examen des rapports

1. Chaque rapport est examiné par le comité, qui formule les suggestions et recommandations d'ordre général sur le rapport qu'il estime appropriées et qui les transmet à l'État partie intéressé. Cet État partie peut communiquer en réponse au comité toutes informations qu'il juge utiles. Le comité peut demander aux États parties tous renseignements complémentaires relatifs à l'application de la présente convention.

2. En cas de retard important d'un État partie dans la présentation d'un rapport, le comité peut lui notifier qu'il sera réduit à examiner l'application de la présente convention dans cet État partie à partir des informations fiables dont il peut disposer, à moins que le rapport attendu ne lui soit présenté dans les trois mois de la notification. Le comité invitera l'État partie intéressé à participer à cet examen. Si l'État partie répond en présentant son rapport, les dispositions du paragraphe 1 du présent article s'appliqueront.

3. Le secrétaire général de l'Organisation des Nations unies communique les rapports à tous les États parties.

4. Les États parties mettent largement leurs rapports à la disposition du public dans leur propre pays et facilitent l'accès du public aux suggestions et recommandations d'ordre général auxquelles ils ont donné lieu.

5. Le comité transmet aux institutions spécialisées, fonds et programmes des Nations unies et aux autres organismes compétents, s'il le juge nécessaire, les rapports des États parties contenant une demande ou indiquant un besoin de conseils ou d'assistance techniques, accompagnés, le cas échéant, de ses observations et recommandations touchant ladite demande ou indication, afin qu'il puisse y être répondu.

Article 37

Coopération entre les États parties et le comité

1. Les États parties coopèrent avec le comité et aident ses membres à s'acquitter de leur mandat.

2. Dans ses rapports avec les États parties, le comité accordera toute l'attention voulue aux moyens de renforcer les capacités nationales aux fins de l'application de la présente convention, notamment par le biais de la coopération internationale.

Article 38

Rapports du comité avec d'autres organismes et organes

Pour promouvoir l'application effective de la présente convention et encourager la coopération internationale dans le domaine qu'elle vise:

a) les institutions spécialisées et autres organismes des Nations unies ont le droit de se faire représenter lors de l'examen de l'application des dispositions de la présente convention qui relèvent de leur mandat. Le comité peut inviter les institutions spécialisées et tous autres organismes qu'il jugera appropriés à donner des avis spécialisés sur l'application de la convention dans les domaines qui relèvent de leurs mandats respectifs. Il peut inviter les institutions spécialisées et les autres organismes des Nations unies à lui présenter des rapports sur l'application de la convention dans les secteurs qui relèvent de leur domaine d'activité;

b) dans l'accomplissement de son mandat, le comité consulte, selon qu'il le juge approprié, les autres organes pertinents créés par les traités internationaux relatifs aux droits de l'homme en vue de garantir la cohérence de leurs directives en matière d'établissement de rapports, de leurs suggestions et de leurs recommandations générales respectives et d'éviter les doublons et les chevauchements dans l'exercice de leurs fonctions.

Article 39

Rapport du comité

Le comité rend compte de ses activités à l'Assemblée générale et au Conseil économique et social tous les deux ans et peut formuler des suggestions et des recommandations générales fondées sur l'examen des rapports et des informations reçus des États parties. Ces suggestions et ces recommandations générales sont incluses dans le rapport du comité, accompagnées, le cas échéant, des observations des États parties.

Article 40

Conférence des États parties

1. Les États parties se réunissent régulièrement en conférence des États parties pour examiner toute question concernant l'application de la présente convention.

2. Au plus tard six mois après l'entrée en vigueur de la présente convention, la conférence des États parties sera convoquée par le secrétaire général de l'Organisation des Nations unies. Ses réunions subséquentes seront convoquées par le secrétaire général tous les deux ans ou sur décision de la conférence des États parties.

Article 41

Dépositaire

Le secrétaire général de l'Organisation des Nations unies est le dépositaire de la présente convention.

Article 42

Signature

La présente convention est ouverte à la signature de tous les États et des organisations d'intégration régionale au siège de l'Organisation des Nations unies à New York à compter du 30 mars 2007.

Article 43

Consentement à être lié

La présente convention est soumise à la ratification des États et à la confirmation formelle des organisations d'intégration régionale qui l'ont signée. Elle sera ouverte à l'adhésion de tout État ou organisation d'intégration régionale qui ne l'a pas signée.

Article 44

Organisations d'intégration régionale

1. Par «organisation d'intégration régionale», on entend toute organisation constituée par des États souverains d'une région donnée, à laquelle ses États membres ont transféré des compétences dans les domaines régis par la présente convention. Dans leurs instruments de confirmation formelle ou d'adhésion, ces organisations indiquent l'étendue de leur compétence dans les domaines régis par la présente convention. Par la suite, elles notifient au dépositaire toute modification importante de l'étendue de leur compétence.

2. Dans la présente convention, les références aux «États parties» s'appliquent à ces organisations dans la limite de leur compétence.

3. Aux fins du paragraphe 1 de l'article 45 et des paragraphes 2 et 3 de l'article 47 de la présente convention, les instruments déposés par les organisations d'intégration régionale ne sont pas comptés.

4. Les organisations d'intégration régionale disposent, pour exercer leur droit de vote à la conférence des États parties dans les domaines qui relèvent de leur compétence, d'un nombre de voix égal au nombre de leurs États membres parties à la présente convention. Elles n'exercent pas leur droit de vote si leurs États membres exercent le leur, et inversement.

Article 45

Entrée en vigueur

1. La présente convention entrera en vigueur le trentième jour suivant le dépôt du vingtième instrument de ratification ou d'adhésion.

2. Pour chacun des États ou chacune des organisations d'intégration régionale qui ratifieront ou confirmeront formellement la présente convention ou y adhéreront après le dépôt du vingtième instrument de ratification ou d'adhésion, la convention entrera en vigueur le trentième jour suivant le dépôt par cet État ou cette organisation de son instrument de ratification, d'adhésion ou de confirmation formelle.

Article 46

Réserves

1. Les réserves incompatibles avec l'objet et le but de la présente convention ne sont pas admises.

2. Les réserves peuvent être retirées à tout moment.

Article 47

Amendements

1. Tout État partie peut proposer un amendement à la présente convention et le soumettre au secrétaire général de l'Organisation des Nations unies. Le secrétaire général communique les propositions d'amendement aux États parties, en leur demandant de lui faire savoir s'ils sont favorables à la convocation d'une conférence des États parties en vue d'examiner ces propositions et de se prononcer sur elles. Si, dans les quatre mois qui suivent la date de cette communication, un tiers au moins des États parties se prononcent en faveur de la convocation d'une telle conférence, le secrétaire général convoque la conférence sous les auspices de l'Organisation des Nations unies. Tout amendement adopté par une majorité des deux tiers des États parties présents et votants est soumis pour approbation à l'Assemblée générale des Nations unies, puis pour acceptation à tous les États parties.

2. Tout amendement adopté et approuvé conformément au paragraphe 1 du présent article entre en vigueur le trentième jour suivant la date à laquelle le nombre d'instruments d'acceptation déposés atteint les deux tiers du nombre des États parties à la date de son adoption. Par la suite, l'amendement entre en vigueur pour chaque État partie le trentième jour suivant le dépôt par cet État de son instrument d'acceptation. L'amendement ne lie que les États parties qui l'ont accepté.

3. Si la conférence des États parties en décide ainsi par consensus, un amendement adopté et approuvé conformément au paragraphe 1 du présent article et portant exclusivement sur les articles 34, 38, 39 et 40 entre en vigueur pour tous les États parties le trentième jour suivant la date à laquelle le nombre d'instruments d'acceptation déposés atteint les deux tiers du nombre des États parties à la date de son adoption.

Article 48

Dénonciation

Tout État partie peut dénoncer la présente convention par voie de notification écrite adressée au secrétaire général de l'Organisation des Nations unies. La dénonciation prend effet un an après la date à laquelle le secrétaire général en a reçu notification.

Article 49

Format accessible

Le texte de la présente convention sera diffusé en formats accessibles.

Article 50

Textes faisant foi

Les textes anglais, arabe, chinois, espagnol, français et russe de la présente convention font également foi.

EN FOI DE QUOI les plénipotentiaires soussignés, dûment habilités par leurs gouvernements respectifs, ont signé la présente convention.

ANNEXE II

DÉCLARATION RELATIVE À LA COMPÉTENCE DE LA COMMUNAUTÉ EUROPÉENNE CONCERNANT LES QUESTIONS RÉGIES PAR LA CONVENTION DES NATIONS UNIES RELATIVE AUX DROITS DES PERSONNES HANDICAPÉES

(Déclaration faite en application de l'article 44, point 1, de la convention)

L'article 44, point 1, de la convention des Nations unies relative aux droits des personnes handicapées (ci-après dénommée la «convention») prévoit que l'instrument de confirmation formelle ou d'adhésion d'une organisation régionale d'intégration économique doit indiquer l'étendue de sa compétence dans les domaines régis par la convention.

Actuellement, les membres de la Communauté européenne sont le Royaume de Belgique, la République de Bulgarie, la République tchèque, le Royaume de Danemark, la République fédérale d'Allemagne, la République d'Estonie, l'Irlande, la République hellénique, le Royaume d'Espagne, la République française, la République italienne, la République de Chypre, la République de Lettonie, la République de Lituanie, le Grand-Duché de Luxembourg, la République de Hongrie, la République de Malte, le Royaume des Pays-Bas, la République d'Autriche, la République de Pologne, la République portugaise, la Roumanie, la République de Slovénie, la République slovaque, la République de Finlande, le Royaume de Suède et le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord.

La Communauté européenne note que, aux fins de la convention, l'expression «États parties» s'applique aux organisations régionales d'intégration économique dans les limites de leurs compétences.

La convention des Nations unies relative aux droits des personnes handicapées s'applique, en ce qui concerne la compétence de la Communauté européenne, aux territoires dans lesquels le traité instituant la Communauté européenne est d'application, dans les conditions énoncées dans ledit traité, notamment à son article 299.

Conformément à l'article 299, la présente déclaration n'est pas applicable aux territoires des États membres auxquels ledit traité ne s'applique pas et ne préjuge pas des mesures ou positions qui pourraient être adoptées au titre de la convention par les États membres concernés au nom et dans l'intérêt de ces territoires.

En application de l'article 44, point 1, de la convention, la présente déclaration indique les compétences transférées par les États membres à la Communauté en vertu du traité instituant la Communauté européenne dans les matières dont traite la convention.

L'étendue et l'exercice des compétences communautaires sont, par nature, appelés à évoluer continuellement et la Communauté complétera ou modifiera la présente déclaration, si besoin est, conformément à l'article 44, point 1, de la convention.

Dans certains domaines, la Communauté européenne a une compétence exclusive, et dans d'autres, cette compétence est partagée entre la Communauté européenne et les États membres. Les États membres demeurent compétents pour toutes les questions pour lesquelles il n'y a pas eu de transfert de compétence à la Communauté européenne.

Actuellement:

1. La Communauté a une compétence exclusive en ce qui concerne la compatibilité des aides d'État avec le marché commun et le tarif douanier commun.

   Dans la mesure où les dispositions du droit communautaire sont affectées par celles de la convention, la Communauté européenne dispose d'une compétence exclusive pour assumer de telles obligations en ce qui concerne sa propre administration publique. À cet égard, la Communauté déclare qu'elle est compétente dans le domaine de la réglementation relative aux recrutements, conditions d'emploi, rémunérations, formation, etc., des fonctionnaires et autres agents non élus, en vertu du statut et de ses dispositions d'exécution [1].

2. La Communauté a une compétence mixte avec les États membres en ce qui concerne les mesures destinées à combattre la discrimination fondée sur le handicap, la libre circulation des biens, des personnes, des services et des capitaux, l'agriculture, le transport par chemin de fer, par route, par voie navigable et par voie aérienne, la fiscalité, le marché intérieur, l'égalité des rémunérations entre travailleurs masculins et travailleurs féminins, la politique en matière de réseaux transeuropéens et les statistiques.

[1] Règlement (CEE, Euratom, CECA) n° 259/68 du Conseil du 29 février 1968 fixant le statut des fonctionnaires des Communautés européennes ainsi que le régime applicable aux autres agents de ces Communautés (JO L 56 du 4.3.1968, p. 1).

La Communauté européenne dispose d'une compétence exclusive pour la conclusion de cette convention en ce qui concerne ces questions uniquement dans la mesure où les dispositions de la convention ou des instruments juridiques adoptés en application de celle-ci affectent les règles communes établies précédemment par la Communauté européenne. Lorsqu'il existe des règles communautaires mais que celles-ci ne sont pas affectées, notamment dans les cas où les dispositions communautaires ne définissent que des normes minimales, les États membres sont compétents, sans préjudice de la compétence de la Communauté européenne d'agir dans ce domaine. Dans les autres cas, ce sont les États membres qui sont compétents. Une liste des actes communautaires pertinents qui ont été adoptés par la Communauté européenne figure en appendice. L'étendue de la compétence de la Communauté européenne découlant de ces actes doit être évaluée par rapport aux dispositions précises de chacune des mesures, et en particulier selon que lesdites dispositions établissent des règles communes.

3. Dans le cadre de la convention des Nations unies, les mesures communautaires ci-après peuvent entrer en ligne de compte. Les États membres et la Communauté s'attachent à élaborer une stratégie coordonnée pour l'emploi. La Communauté contribue au développement d'un enseignement de qualité en encourageant la coopération entre les États membres et, si nécessaire, en appuyant et en complétant leur action. La Communauté met en œuvre une politique de formation professionnelle, qui appuie et complète les actions des États membres. Afin de promouvoir un développement harmonieux de l'ensemble de la Communauté, celle-ci développe et poursuit son action tendant au renforcement de sa cohésion économique et sociale. La Communauté mène une politique de coopération au développement et une coopération économique, financière et technique avec des pays tiers sans préjudice des compétences respectives des États membres.

Appendice

ACTES COMMUNAUTAIRES AYANT TRAIT AUX QUESTIONS RÉGIES PAR LA CONVENTION

Les actes communautaires énumérés ci-après illustrent l'étendue du domaine de compétence de la Communauté en vertu du traité instituant la Communauté européenne. La Communauté a une compétence exclusive en ce qui concerne certaines questions tandis que d'autres questions relèvent de la compétence mixte de la Communauté et des États membres. L'étendue de la compétence de la Communauté européenne découlant de ces actes doit être évaluée par rapport aux dispositions précises de chacune des mesures, et en particulier selon que lesdites dispositions établissent des règles communes qui sont affectées par les dispositions de la convention.

— concernant l'accessibilité

Directive 1999/5/CE du Parlement européen et du Conseil du 9 mars 1999 concernant les équipements hertziens et les équipements terminaux de télécommunications et la reconnaissance mutuelle de leur conformité (JO L 91 du 7.4.1999, p. 10).

Directive 2001/85/CE du Parlement européen et du Conseil du 20 novembre 2001 concernant des dispositions particulières applicables aux véhicules destinés au transport des passagers et comportant, outre le siège du conducteur, plus de huit places assises, et modifiant les directives 70/156/CEE et 97/27/CE (JO L 42 du 13.2.2002, p. 1).

Directive 96/48/CE du Conseil du 23 juillet 1996 relative à l'interopérabilité du système ferroviaire transeuropéen à grande vitesse (JO L 235 du 17.9.1996, p. 6), telle que modifiée par la directive 2004/50/CE du Parlement européen et du Conseil (JO L 164 du 30.4.2004, p. 114).

Directive 2001/16/CE du Parlement européen et du Conseil du 19 mars 2001 relative à l'interopérabilité du système ferroviaire transeuropéen conventionnel (JO L 110 du 20.4.2001, p. 1), telle que modifiée par la directive 2004/50/CE du Parlement européen et du Conseil (JO L 164 du 30.4.2004, p. 114).

Directive 2006/87/CE du Parlement européen et du Conseil du 12 décembre 2006 établissant les prescriptions techniques des bateaux de la navigation intérieure et abrogeant la directive 82/714/CEE du Conseil (JO L 389 du 30.12.2006, p. 1).

Directive 2003/24/CE du Parlement européen et du Conseil du 14 avril 2003 modifiant la directive 98/18/CE du Conseil établissant des règles et normes de sécurité pour les navires à passagers (JO L 123 du 17.5.2003, p. 18).

Directive 2007/46/CE du Parlement européen et du Conseil du 5 septembre 2007 établissant un cadre pour la réception des véhicules à moteur, de leurs remorques et des systèmes, des composants et des entités techniques destinés à ces véhicules (directive-cadre) (JO L 263 du 9.10.2007, p. 1).

Décision 2008/164/CE de la Commission du 21 décembre 2007 concernant la spécification technique d'interopérabilité relative aux personnes à mobilité réduite dans le système ferroviaire transeuropéen conventionnel et à grande vitesse (JO L 64 du 7.3.2008, p. 72).

Directive 95/16/CE du Parlement européen et du Conseil du 29 juin 1995 concernant le rapprochement des législations des États membres relatives aux ascenseurs (JO L 213 du 7.9.1995, p. 1), telle que modifiée par la directive 2006/42/CE du Parlement européen et du Conseil relative aux machines et modifiant la directive 95/16/CE (JO L 157 du 9.6.2006, p. 24).

Directive 2002/21/CE du Parlement européen et du Conseil du 7 mars 2002 relative à un cadre réglementaire commun pour les réseaux et services de communications électroniques (directive «cadre») (JO L 108 du 24.4.2002, p. 33).

Directive 2002/22/CE du Parlement européen et du Conseil du 7 mars 2002 concernant le service universel et les droits des utilisateurs au regard des réseaux et services de communications électroniques (directive «service universel») (JO L 108 du 24.4.2002, p. 51).

Directive 97/67/CE du Parlement européen et du Conseil du 15 décembre 1997 concernant des règles communes pour le développement du marché intérieur des services postaux de la Communauté et l'amélioration de la qualité du service (JO L 15 du 21.1.1998, p. 14), telle que modifiée par la directive 2002/39/CE du Parlement européen et du Conseil du 10 juin 2002 modifiant la directive 97/67/CE en ce qui concerne la poursuite de l'ouverture à la concurrence des services postaux de la Communauté (JO L 176 du 5.7.2002, p. 21) et telle que modifiée par la directive 2008/6/CE du Parlement européen et du Conseil du 20 février 2008 modifiant la directive 97/67/CE en ce qui concerne l'achèvement du marché intérieur des services postaux de la Communauté (JO L 52 du 27.2.2008, p. 3).

Règlement (CE) nº 1083/2006 du Conseil du 11 juillet 2006 portant dispositions générales sur le Fonds européen de développement régional, le Fonds social européen et le Fonds de cohésion, et abrogeant le règlement (CE) nº 1260/1999 (JO L 210 du 31.7.2006, p. 25).

Directive 2004/17/CE du Parlement européen et du Conseil du 31 mars 2004 portant coordination des procédures de passation des marchés dans les secteurs de l'eau, de l'énergie, des transports et des services postaux (JO L 134 du 30.4.2004, p. 1).

Directive 2004/18/CE du Parlement européen et du Conseil du 31 mars 2004 relative à la coordination des procédures de passation des marchés publics de travaux, de fournitures et de services (JO L 134 du 30.4.2004, p. 114).

Directive 92/13/CEE du Conseil du 25 février 1992 portant coordination des dispositions législatives, réglementaires et administratives relatives à l'application des règles communautaires sur les procédures de passation des marchés des entités opérant dans les secteurs de l'eau, de l'énergie, des transports et des télécommunications (JO L 76 du 23.3.1992, p. 14), telle que modifiée par la directive 2007/66/CE du Parlement européen et du Conseil du 11 décembre 2007 modifiant les directives 89/665/CEE et 92/13/CEE du Conseil en ce qui concerne l'amélioration de l'efficacité des procédures de recours en matière de passation des marchés publics (JO L 335 du 20.12.2007, p. 31).

Directive 89/665/CEE du Conseil du 21 décembre 1989 portant coordination des dispositions législatives, réglementaires et administratives relatives à l'application des procédures de recours en matière de passation des marchés publics de fournitures et de travaux (JO L 395 du 30.12.1989, p. 33), telle que modifiée par la directive 2007/66/CE du Parlement européen et du Conseil du 11 décembre 2007 modifiant les directives 89/665/CEE et 92/13/CEE du Conseil en ce qui concerne l'amélioration de l'efficacité des procédures de recours en matière de passation des marchés publics (JO L 335 du 20.12.2007, p. 31).

— concernant l'autonomie et l'inclusion sociale, le travail et l'emploi

Directive 2000/78/CE du Conseil du 27 novembre 2000 portant création d'un cadre général en faveur de l'égalité de traitement en matière d'emploi et de travail (JO L 303 du 2.12.2000, p. 16).

Règlement (CE) nº 800/2008 de la Commission du 6 août 2008 déclarant certaines catégories d'aide compatibles avec le marché commun en application des articles 87 et 88 du traité (Règlement général d'exemption par catégorie) (JO L 214 du 9.8.2008, p. 3).

Règlement (CEE) nº 2289/83 de la Commission du 29 juillet 1983 fixant les dispositions d'application des articles 70 à 78 du règlement (CEE) nº 918/83 du Conseil relatif à l'établissement du régime communautaire des franchises douanières (JO L 220 du 11.8.1983, p. 15).

Directive 83/181/CEE du Conseil du 28 mars 1983 déterminant le champ d'application de l'article 14 paragraphe 1 sous d) de la directive 77/388/CEE en ce qui concerne l'exonération de la taxe sur la valeur ajoutée de certaines importations définitives de biens (JO L 105 du 23.4.1983, p. 38).

Directive 2006/54/CE du Parlement européen et du Conseil du 5 juillet 2006 relative à la mise en œuvre du principe de l'égalité des chances et de l'égalité de traitement entre hommes et femmes en matière d'emploi et de travail (JO L 204 du 26.7.2006, p. 23).

Règlement (CEE) nº 918/83 du Conseil du 28 mars 1983 relatif à l'établissement du régime communautaire des franchises douanières (JO L 105 du 23.4.1983, p. 1).

Directive 2006/112/CE du Conseil du 28 novembre 2006 relative au système commun de taxe sur la valeur ajoutée (JO L 347 du 11.12.2006, p. 1), telle que modifiée par la directive 2009/47/CE du Conseil du 5 mai 2009 modifiant la directive 2006/112/CE en ce qui concerne les taux réduits de taxe sur la valeur ajoutée (JO L 116 du 9.5.2009, p. 18).

Règlement (CE) nº 1698/2005 du Conseil du 20 septembre 2005 concernant le soutien au développement rural par le Fonds européen agricole pour le développement rural (Feader) (JO L 277 du 21.10.2005, p. 1).

Directive 2003/96/CE du Conseil du 27 octobre 2003 restructurant le cadre communautaire de taxation des produits énergétiques et de l'électricité (JO L 283 du 31.10.2003, p. 51).

— concernant la mobilité personnelle

Directive 91/439/CEE du Conseil du 29 juillet 1991 relative au permis de conduire (JO L 237 du 24.8.1991, p. 1).

Directive 2006/126/CE du Parlement européen et du Conseil du 20 décembre 2006 relative au permis de conduire (JO L 403 du 30.12.2006, p. 18).

Directive 2003/59/CE du Parlement européen et du Conseil du 15 juillet 2003 relative à la qualification initiale et à la formation continue des conducteurs de certains véhicules routiers affectés aux transports de marchandises ou de voyageurs, modifiant le règlement (CEE) nº 3820/85 du Conseil ainsi que la directive 91/439/CEE du Conseil et abrogeant la directive 76/914/CEE du Conseil (JO L 226 du 10.9.2003, p. 4).

Règlement (CE) nº 261/2004 du Parlement européen et du Conseil du 11 février 2004 établissant des règles communes en matière d'indemnisation et d'assistance des passagers en cas de refus d'embarquement et d'annulation ou de retard important d'un vol, et abrogeant le règlement (CEE) nº 295/91 (JO L 46 du 17.2.2004, p. 1).

Règlement (CE) nº 1107/2006 du Parlement européen et du Conseil du 5 juillet 2006 concernant les droits des personnes handicapées et des personnes à mobilité réduite lorsqu'elles font des voyages aériens (JO L 204 du 26.7.2006, p. 1).

Règlement (CE) nº 1899/2006 du Parlement européen et du Conseil du 12 décembre 2006 modifiant le règlement (CEE) nº 3922/91 du Conseil relatif à l'harmonisation de règles techniques et de procédures administratives dans le domaine de l'aviation civile (JO L 377 du 27.12.2006, p. 1).

Règlement (CE) nº 1371/2007 du Parlement européen et du Conseil du 23 octobre 2007 sur les droits et obligations des voyageurs ferroviaires (JO L 315 du 3.12.2007, p. 14).

Règlement (CE) nº 1370/2007 du Parlement européen et du Conseil du 23 octobre 2007 relatif aux services publics de transport de voyageurs par chemin de fer et par route, et abrogeant les règlements (CEE) nº 1191/69 et (CEE) nº 1107/70 du Conseil (JO L 315 du 3.12.2007, p. 1).

Règlement (CE) nº 8/2008 de la Commission du 11 décembre 2007 modifiant le règlement (CEE) nº 3922/91 du Conseil en ce qui concerne les règles techniques et procédures administratives communes applicables au transport commercial par avion (JO L 10 du 12.1.2008, p. 1).

— concernant l'accès à l'information

Directive 2001/83/CE du Parlement européen et du Conseil du 6 novembre 2001 instituant un code communautaire relatif aux médicaments à usage humain (JO L 311 du 28.11.2001, p. 67), telle que modifiée par la directive 2004/27/CE du Parlement européen et du Conseil (JO L 136 du 30.4.2004, p. 34).

Directive 2007/65/CE du Parlement européen et du Conseil du 11 décembre 2007 modifiant la directive 89/552/CEE du Conseil visant à la coordination de certaines dispositions législatives, réglementaires et administratives des États membres relatives à l'exercice d'activités de radiodiffusion télévisuelle (JO L 332 du 18.12.2007, p. 27).

Directive 2000/31/CE du Parlement européen et du Conseil du 8 juin 2000 relative à certains aspects juridiques des services de la société de l'information, et notamment du commerce électronique, dans le marché intérieur («directive sur le commerce électronique») (JO L 178 du 17.7.2000, p. 1).

Directive 2001/29/CE du Parlement européen et du Conseil du 22 mai 2001 sur l'harmonisation de certains aspects du droit d'auteur et des droits voisins dans la société de l'information (JO L 167 du 22.6.2001, p. 10).

Directive 2005/29/CE du Parlement européen et du Conseil du 11 mai 2005 relative aux pratiques commerciales déloyales des entreprises vis-à-vis des consommateurs dans le marché intérieur et modifiant la directive 84/450/CEE du Conseil et les directives 97/7/CE, 98/27/CE et 2002/65/CE du Parlement européen et du Conseil et le règlement (CE) nº 2006/2004 du Parlement européen et du Conseil («directive sur les pratiques commerciales déloyales») (JO L 149 du 11.6.2005, p. 22).

— concernant les statistiques et la collecte de données

Directive 95/46/CE du Parlement européen et du Conseil du 24 octobre 1995 relative à la protection des personnes physiques à l'égard du traitement des données à caractère personnel et à la libre circulation de ces données (JO L 281 du 23.11.1995, p. 31).

Règlement (CE) nº 577/98 du Conseil du 9 mars 1998 relatif à l'organisation d'une enquête par sondage sur les forces de travail dans la Communauté (JO L 77 du 14.3.1998, p. 3), et ses règlements d'application.

Règlement (CE) nº 1177/2003 du Parlement européen et du Conseil du 16 juin 2003 relatif aux statistiques communautaires sur le revenu et les conditions de vie (EU-SILC) (JO L 165 du 3.7.2003, p. 1), et ses règlements d'application.

Règlement (CE) nº 458/2007 du Parlement européen et du Conseil du 25 avril 2007 concernant le système européen de statistiques intégrées de la protection sociale (Sespros) (JO L 113 du 30.4.2007, p. 3), et ses règlements d'application.

Règlement (CE) nº 1338/2008 du Parlement européen et du Conseil du 16 décembre 2008 relatif aux statistiques communautaires de la santé publique et de la santé et de la sécurité au travail (JO L 354 du 31.12.2008, p. 70).

— concernant la coopération internationale

Règlement (CE) nº 1905/2006 du Parlement européen et du Conseil du 18 décembre 2006 portant établissement d'un instrument de financement de la coopération au développement (JO L 378 du 27.12.2006, p. 41).

Règlement (CE) nº 1889/2006 du Parlement européen et du Conseil du 20 décembre 2006 instituant un instrument financier pour la promotion de la démocratie et des droits de l'homme dans le monde (JO L 386 du 29.12.2006, p. 1).

Règlement (CE) nº 718/2007 de la Commission du 12 juin 2007 portant application du règlement (CE) nº 1085/2006 du Conseil établissant un instrument d'aide de préadhésion (IAP) (JO L 170 du 29.6.2007, p. 1).

ANNEXE III

RÉSERVE FORMULÉE PAR LA COMMUNAUTÉ EUROPÉENNE CONCERNANT L'ARTICLE 27, POINT 1, DE LA CONVENTION DES NATIONS UNIES RELATIVE AUX DROITS DES PERSONNES HANDICAPÉES

La Communauté européenne déclare que, conformément au droit communautaire (notamment à la directive 2000/78/CE du Conseil du 27 novembre 2000 portant création d'un cadre général en faveur de l'égalité de traitement en matière d'emploi et de travail), les États membres peuvent, le cas échéant, émettre leurs propres réserves concernant l'article 27, point 1, de la convention relative aux droits des personnes handicapées dans la mesure où l'article 3, paragraphe 4, de ladite directive du Conseil leur confère le droit d'exclure du champ d'application de cette directive, en matière d'emploi dans les forces armées, le principe d'absence de discrimination fondée sur le handicap. Par conséquent, la Communauté déclare conclure la convention sans préjudice du droit susmentionné, conféré aux États membres conformément au droit communautaire.

Protocole facultatif se rapportant à la Convention relative aux droits des personnes handicapées

Les États Parties au présent Protocole sont convenus de ce qui suit :

Article premier

1. Tout État Partie au présent Protocole (« État Partie ») reconnaît que le Comité des droits des personnes handicapées (« le Comité ») a compétence pour recevoir et examiner les communications présentées par des particuliers ou groupes de particuliers ou au nom de particuliers ou groupes de particuliers relevant de sa juridiction qui prétendent être victimes d'une violation par cet État Partie des dispositions de la Convention.

2. Le Comité ne reçoit aucune communication intéressant un État Partie à la Convention qui n'est pas partie au présent Protocole.

Article 2

Le Comité déclare irrecevable toute communication :

a) Qui est anonyme;

b) Qui constitue un abus du droit de présenter de telles communications ou est incompatible avec les dispositions de la Convention;

c) Ayant trait à une question qu'il a déjà examinée ou qui a déjà été examinée ou est en cours d'examen devant une autre instance internationale d'enquête ou de règlement;

d) Concernant laquelle tous les recours internes disponibles n'ont pas été épuisés, à moins que la procédure de recours n'excède des délais raisonnables ou qu'il soit improbable que le requérant obtienne réparation par ce moyen;

e) Qui est manifestement mal fondée ou insuffisamment motivée; ou

f) Qui porte sur des faits antérieurs à la date d'entrée en vigueur du présent Protocole à l'égard de l'État Partie intéressé, à moins que ces faits ne persistent après cette date.

Article 3

Sous réserve des dispositions de l'article 2 du présent Protocole, le Comité porte confidentiellement à l'attention de l'État Partie intéressé toute communication qui lui est adressée. L'État Partie intéressé soumet par écrit au Comité, dans un délai de six mois, des explications ou déclarations éclaircissant la question et indiquant les mesures qu'il pourrait avoir prises pour remédier à la situation.

Article 4

1. Après réception d'une communication et avant de prendre une décision sur le fond, le Comité peut à tout moment soumettre à l'urgente attention de l'État Partie intéressé une demande tendant à ce qu'il prenne les mesures conservatoires nécessaires pour éviter qu'un dommage irréparable ne soit causé aux victimes de la violation présumée.

2. Le Comité ne préjuge pas de sa décision sur la recevabilité ou le fond de la communication

du simple fait qu'il exerce la faculté que lui donne le paragraphe 1 du présent article.

Article 5

Le Comité examine à huis clos les communications qui lui sont adressées en vertu du présent Protocole. Après avoir examiné une communication, le Comité transmet ses suggestions et recommandations éventuelles à l'État Partie intéressé et au pétitionnaire.

Article 6

1. Si le Comité est informé, par des renseignements crédibles, qu'un État Partie porte gravement ou systématiquement atteinte aux droits énoncés dans la Convention, il invite cet État à s'entretenir avec lui des renseignements portés à son attention et à présenter ses observations à leur sujet.

2. Le Comité, se fondant sur les observations éventuellement formulées par l'État Partie intéressé, ainsi que sur tout autre renseignement crédible dont il dispose, peut charger un ou plusieurs de ses membres d'effectuer une enquête et de lui rendre compte sans tarder des résultats de celle-ci. Cette enquête peut, lorsque cela se justifie et avec l'accord de l'État Partie, comporter des visites sur le territoire de cet État.

3. Après avoir étudié les résultats de l'enquête, le Comité les communique à l'État Partie intéressé, accompagnés, le cas échéant, d'observations et de recommandations.

4. Après avoir été informé des résultats de l'enquête et des observations et recommandations du Comité, l'État Partie présente ses observations à celui-ci dans un délai de six mois.

5. L'enquête conserve un caractère confidentiel et la coopération de l'État Partie sera sollicitée à tous les stades de la procédure.

Article 7

1. Le Comité peut inviter l'État Partie intéressé à inclure, dans le rapport qu'il doit présenter conformément à l'article 35 de la Convention, des précisions sur les mesures qu'il a prises à la suite d'une enquête effectuée en vertu de l'article 6 du présent Protocole.

2. À l'expiration du délai de six mois visé au paragraphe 4 de l'article 6, le Comité peut, s'il y a lieu, inviter l'État Partie intéressé à l'informer des mesures qu'il a prises à la suite de l'enquête.

Article 8

Tout État Partie peut, au moment où il signe ou ratifie le présent Protocole ou y adhère, déclarer qu'il ne reconnaît pas au Comité la compétence que lui confèrent les articles 6 et 7.

Article 9

Le Secrétaire général de l'Organisation des Nations Unies est le dépositaire du présent Protocole.

Article 10

Le présent Protocole est ouvert à la signature des États et des organisations d'intégration régionale qui ont signé la Convention, au Siège de l'Organisation des Nations Unies à New York, à compter du 30 mars 2007.

Article 11

Le présent Protocole est soumis à la ratification des États qui l'ont signé et ont ratifié la Convention ou y ont adhéré. Il doit être confirmé formellement par les organisations d'intégration régionale qui l'ont signé et qui ont confirmé formellement la Convention ou y ont adhéré. Il sera ouvert à l'adhésion de tout État ou de toute organisation d'intégration régionale qui a ratifié ou confirmé formellement la Convention ou qui y a adhéré mais qui n'a pas signé le Protocole.

Article 12

1. Par « organisation d'intégration régionale » on entend toute organisation constituée par des États souverains d'une région donnée, à laquelle ses États membres ont transféré des compétences dans les domaines régis par la Convention et le présent Protocole. Dans leurs instruments de confirmation formelle ou d'adhésion, ces organisations indiquent l'étendue de leur compétence dans les domaines régis par la Convention et le présent Protocole. Par la suite, elles notifient au dépositaire toute modification importante de l'étendue de leur compétence.

2. Dans le présent Protocole, les références aux « États Parties » s'appliquent à ces organisations dans la limite de leur compétence.

3. Aux fins du paragraphe 1 de l'article 13 et du paragraphe 2 de l'article 15, les instruments déposés par des organisations d'intégration régionale ne sont pas comptés.

4. Les organisations d'intégration régionale disposent, pour exercer leur droit de vote à la réunion des États Parties dans les domaines qui relèvent de leur compétence, d'un nombre de voix égal au nombre de leurs États membres Parties au présent Protocole. Elles n'exercent pas leur droit de vote si leurs États membres exercent le leur, et inversement.

Article 13

1. Sous réserve de l'entrée en vigueur de la Convention, le présent Protocole entrera en vigueur le trentième jour suivant le dépôt du dixième instrument de ratification ou d'adhésion.

2. Pour chacun des États ou chacune des organisations d'intégration régionale qui ratifieront ou confirmeront formellement le Protocole ou y adhéreront après le dépôt du dixième instrument de ratification ou d'adhésion, le Protocole entrera en vigueur le trentième jour suivant le dépôt par cet État ou cette organisation de son instrument de ratification, d'adhésion ou de confirmation formelle.

Article 14

1. Les réserves incompatibles avec l'objet et le but du présent Protocole ne sont pas admises.

2. Les réserves peuvent être retirées à tout moment.

Article 15

1. Tout État Partie peut proposer un amendement au présent Protocole et le soumettre au Secrétaire général de l'Organisation des Nations Unies. Le Secrétaire général communique les propositions d'amendement aux États Parties, en leur demandant de lui faire savoir s'ils sont favorables à la convocation d'une réunion des États Parties en vue d'examiner ces propositions et de se prononcer sur elles. Si, dans les quatre mois qui suivent la date de cette communication, un tiers au moins des États Parties se prononcent en faveur de la convocation d'une telle réunion, le Secrétaire général convoque la réunion sous les auspices de l'Organisation des Nations Unies. Tout amendement adopté par une majorité des deux tiers des États Parties présents et votants est soumis pour approbation à l'Assemblée générale de l'Organisation des Nations Unies, puis pour acceptation à tous les États Parties.

2. Tout amendement adopté et approuvé conformément au paragraphe 1 du présent article entre en vigueur le trentième jour suivant la date à laquelle le nombre d'instruments d'acceptation atteint les deux tiers du nombre des États Parties à la date de son adoption. Par la suite, l'amendement entre en vigueur pour chaque État Partie le trentième jour suivant le dépôt par cet État de son instrument d'acceptation. L'amendement ne lie que les États Parties qui l'ont accepté.

Article 16

Tout État Partie peut dénoncer le présent Protocole par voie de notification écrite adressée au Secrétaire général de l'Organisation des Nations Unies. La dénonciation prend effet un an après la date à laquelle le Secrétaire général en a reçu notification.

Article 17

Le texte du présent Protocole sera diffusé en formats accessibles.

Article 18

Les textes anglais, arabe, chinois, espagnol, français et russe du présent Protocole font également foi.

En foi de quoi les plénipotentiaires soussignés, dûment habilités par leurs gouvernements respectifs, ont signé le présent Protocole.

COUNCIL OF THE EUROPEAN UNION

Brussels, 7 June 2011

11125/11

SOC 460
COHOM 156

NOTE

from:	The Commission
to:	COUNCIL (Employment, Social Policy, Health and Consumer Affairs)
Subject:	Ratification and implementation of the UN Convention on the Rights of People with Disabilities - Information from the Commission (Any other business item)

Delegations will find attached a note from the Commission in preparation for the EPSCO Council meeting on 17 June.

Information Note from the European Commission
on progress in implementing the UN Convention
on the Rights of Persons with Disabilities to the EPSCO Council

1. Introduction

This note is based on the 4th Disability High Level Group Report[1] and reports on progress in ratifying and implementing the UN Convention on the Rights of Persons with Disabilities. It provides an update of developments in the national implementation of the Convention, with a more detailed reference to the governance structures required by Article 33 of the UNCRPD. The report of this year also examines the interface between implementation of the UNCRPD and the headline targets set in the context of the Europe 2020 Strategy for education, employment and poverty.

The annual progress reporting by the Disability High-Level Group was triggered by the Council Conclusions adopted under the German Presidency in 2007. The first joint Report was discussed by the ministers responsible for disability issues on 22 May 2008 under the Slovenian Presidency. The second Report responded to the Council's request in the Resolution adopted under the Slovenian Presidency for an assessment as to how national actions reflect the commitments entered into by the European Union and the Member States with a view to implementing the UNCRPD. The Report identified seven priority areas where collaboration at EU level could be useful and highlighted progress in the nine priorities for joint action that were identified in the first report. The second Report also highlighted the importance of four key matters for the implementation of the UNCRPD that were presented at the ESPSCO Council in June 2009. The third Report was presented on 19 May 2010 at the third informal ministerial meeting on disability issues organised under the Spanish Presidency in Zaragoza. It complemented the two previous Reports but also had a stronger focus on procedural matters and governance aspects.

[1] Available online at: http://ec.europa.eu/social/BlobServlet?docId=6851&langId=en

2. Ratification/formal confirmation/accession

Since the previous Report from the Disability High Level Group (March 2010), further progress has been achieved, three additional Member States having ratified the Convention,[2] and three Member States having ratified the Optional Protocol.[3] In addition, one Member State has finished the internal ratification procedure for the Convention and the Optional Protocol and is awaiting deposit with the UN.[4] One Member State[5] signed the Optional Protocol. Moreover, in 2010, the EU formally confirmed the Convention.

The current situation is as follows:

- All Member States and the EU have signed the Convention,
- 22 Member States have signed the Optional Protocol,
- 17 Member States have ratified the Convention, (Austria, Belgium, Czech Republic, Denmark, Germany, France, Hungary, Italy, Latvia, Lithuania, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK),
- 1 Member State has finished the internal ratification procedure for the Optional Protocol and the Convention and is in the process of depositing the ratification instruments at the UN Headquarters (Cyprus),
- 14 Member States have ratified the Optional Protocol (Austria, Belgium, France, Germany, Hungary, Italy, Latvia, Lithuania, Portugal, Slovakia, Slovenia, Spain, Sweden, UK), and
- The EU has formally confirmed the Convention.

On 26 November 2009 the Council Decision concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities was adopted (Decision 2010/48/EC). Before final confirmation of the Convention on behalf of the EU, the Commission, Council and Member States needed to agree on a Code of Conduct (see Article 3 and 4 of the Council Decision) setting out the framework for implementation of the Convention within the EU and, *inter alia,* the applicable coordination, representation, voting and speaking arrangements in the UN.

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2 Lithuania, Slovakia, Romania.
3 Latvia, Lithuania, Slovakia.
4 Cyprus.
5 Greece.

The Code of Conduct was agreed on the 2 December 2010,[6] enabling the EU to complete the procedure of conclusion of the Convention by depositing its instruments of formal confirmation with the UN Secretary General in New York on 23 December 2010.

The Convention entered into force with respect to the EU on 22 January 2011. The EU is bound by the Convention to the extent of its competences as these are listed in an Annex to the Decision 2010/48/EC. The EU will have to submit its first Report to the UN Committee in Geneva by 22 January 2013.

With respect to the Representation of the EU *vis-à-vis* the UN in UNCPRD matters within EU competence, the Member States and the EU are bound by the principle of loyal cooperation and the principle of unity of external representation and these principles should permeate their cooperation. It is essential to build up good cooperation practices in line with the provisions of the Code of Conduct.

The proposal for EU accession to the Optional Protocol, adopted by the Commission on 29 August 2008[7] and transmitted to the European Parliament and the Council is still with the Council. Before pursuing the discussion on the Optional Protocol, it was decided to give priority to the procedure of formal confirmation of the Convention and to the adoption of a Code of Conduct. Now that these two procedures have been completed, the Commission considers that the process of accession of the EU to the Optional Protocol should be continued.

The process of ratification of the Convention is ongoing in 9 Member States. As the UN Convention came into force on 3 May 2008 the Commission encourages its swift ratification by the remaining Member States.

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6 Code of Conduct between the Council, the Member States and the Commission setting out internal arrangements for the implementation by and representation of the EU relating to the UNCRPD, Council of the European Union, 16243/10.

7 COM (2008) 530 final. The proposal was endorsed by the European Parliament on 24 April 2009.

3. Progress on implementation and monitoring of the UNCRPD

The effective implementation of the UNCRPD requires a proper *governance structure*. To that end, Article 33.1 UNCRPD directly obliges the State Parties, to designate one or more focal points within government for matters relating to the implementation of the UNCRPD, and to give due consideration to the establishment of a coordination mechanism to facilitate related action in different sectors and at different levels. The efforts to put effective governance structures in place in the Member States are ongoing and advancing. Some Member States have very recently established structures and processes, while others are at the beginning or in the midst of the implementation process.

It was therefore very timely that the first Work Forum, organised in November 2010, focused on the implementation of Article 33 of the UNCRPD, and on the involvement of persons with disabilities in those structures. The Work Forum provided examples of good practices such as: effective methods of involvement and consultation with people with disabilities, action plans which work across Ministries, consultative structures, legislative instruments and multi annual funding programs.

Most Member States have designated the Focal Point within their Ministry of Welfare, Labour or Social Affairs while it is interesting to note that in a recent report of the UN-OHCHR there was a recommendation to nominate the Focal Point in the Ministry of Justice.

The establishment of a *Coordination Mechanism* is optional, but a majority of the Member States has chosen to establish such a mechanism.[8] Many Member States combine the lead for the Coordination Mechanism and Focal Point into one body.

[8] AT, BE, CY, CZ, DK, DE, ES, FR, HU, IT, IE, LU, LV, NL, PT, RO, SE, UK.

For the EU the European Commission is the Focal Point[9]. Certain aspects of the coordination between the Council, the Member States and the Commission in the implementation of the Convention are covered by the Code of Conduct, adopted on 2 December 2010. The Code contains provisions on representation of the EU *vis-à-vis* the UN in UNCRPD matters, how to coordinate the establishment of positions (point 6), speaking arrangements (points 7 and 9), voting arrangements (point 8), nominations (point 10) reporting and monitoring (point 12).

Article 33.2 of the UNCRPD obliges State Parties to maintain, strengthen, designate or establish a framework, including one or more independent mechanism, to promote, protect and monitor the implementation of the Convention in accordance with their legal and administrative systems.

A majority of the Member States having ratified report that they have established an independent mechanism. While all Member States recognise the importance of involving civil society in developing and implementing laws relating to persons with disabilities, only some of them have arrangements for involving civil society in the monitoring process.

At the EU level, the Commission has announced that it will present during 2011 its proposal on a framework for the purposes of Article 33 UNCPRD.

4. The interface between implementation of the UNCRPD and Europe 2020

The fourth Disability High Level Group Report highlights the link between the implementation of the UNCRPD and the goals of the Europe 2020 Strategy for education, employment and poverty reduction. The three relevant headline targets are: raising to 75% the **employment rate** for women and men aged 20-64; **improving education levels**, in particular by aiming to reduce school drop-out rates to less than 10% and by increasing the share of 30-34 years old having completed tertiary or equivalent education to at least 40%; and promoting **social inclusion**, in particular through the reduction of poverty, by aiming to lift at least 20 million people out of the risk of poverty and exclusion.

[9] Article 3, Decision 2010/48/EC, point 11, Code of Conduct.

On the basis of the EU Statistics on Income and Living Conditions (SILC) from 2008, it is estimated that the percentage of persons with disabilities having completed tertiary education or equivalent in the age group 30-34 is around 19%, while for those without disabilities the figure is around 31%. The employment rate (from the same source) among those between 20-64 years old with disabilities is 45 % compared to 73% for persons without disabilities. The poverty risk for persons with disabilities older than sixteen years is 21% while for those without disabilities it is about 15%. The situation of persons with disabilities therefore has to improve in order to contribute to reaching the headline targets. This means that the Member States should include measures addressing the situation of persons with disabilities when they prepare their programmes aiming to reach the Europe 2020 headline targets.

In this respect, the Disability High Level Group Report shows some interesting examples and practices, for example involving the Member State's UNCRPD focal point in the preparation of the National Reform Programmes (NRP), and setting specific targets for persons with disabilities in the NRP. The overall picture so far, however, is that few NRPs contain specific measures for persons with disabilities. Moreover, the existing measures and national plans do not appear to address disability mainstreaming objectives in the actions designed to reach the three headline targets. Member States are therefore encouraged to mainstream disability concerns in their general measures but also to consider the inclusion of specific measures in their NRPs to improve the situation of persons with disabilities. This process could be underpinned by the setting of national disability targets in these three areas, in order to strengthen the disability-relevant contribution to the policies aimed at reaching the headline targets.

In order to be able to monitor progress as regards the position of persons with disabilities in the context of these three headline targets, it is of great importance that the Member States and the EU improve their relevant data and statistics. While some efforts are being made, the Member States' answers to the questionnaire reveal that there are insufficient statistics and data on disability-related issues with regard to the three above-mentioned headline targets.

While there is a need for more and better disability related data from the Member States, the European Commission will use annual SILC data to report regularly on the situation of persons with disabilities in education, employment and poverty, compared to the figures for the rest of the population.

At the same time, the Member States are encouraged to improve their data collection, statistics and the development of disability related indicators.

FIFTH DISABILITY HIGH LEVEL GROUP REPORT

ON THE IMPLEMENTATION OF THE UN CONVENTION

ON THE RIGHTS OF PERSONS WITH DISABILITIES

(May 2012)

Disclaimer

This report has only been very partially edited.

A large part of this document is based on contributions written in English mainly by non native authors. The Commission did not have the time or sufficient translating resources to correct linguistic imperfections. This linguistic reservation applies even more to most parts of the report dealing with Belgium and France. Parts of these contributions have been included in the report in the original French version.

The Report takes account of developments until approximately 1 April 2012.

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INTRODUCTION

This Report gives an overview of progress made in ratifying and implementing the UN Convention on the Rights of Persons with Disabilities in the EU and its Member States. It is prepared on the basis of replies to questionnaires and updates received from 27 Member States and various non governmental stakeholders. The Report can be particularly useful in helping to identify good practices.

It provides an update of developments in the national and EU implementation of the Convention, with detailed reference to the governance structures required by Article 33 of the UNCRPD. The report of this year also examines the legal and regulatory framework for accessibility, and changes introduced as a consequence of UNCRPD implementation.

The first chapter summarises the updated information on the process of signature and ratification of the Convention and its Optional Protocol by the Member States and the EU, as well as on reservations and declarations. The second chapter focuses on progress in the national implementation and monitoring of the UNCRPD. The third chapter provides an overview of accessibility legislation, regulations and standards implementing Article 9 of the UN Convention – which stipulates that "State Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications […] and to other facilities and services open or provided to the public".

These three chapters are complemented by three annexes with practical information. Annex 1 presents, in a table, the state of signatures, reporting and ratifications/formal confirmation of the UNCRPD and the Optional Protocol by the Member States and the Union. Annex 2 lists details of identified responsible authorities, focal points, coordination mechanisms and contact points. Annex 3 provides links to websites where more information on the UNCRPD can be found, including national translations of the text of the UNCRPD and the Optional Protocol.

1. STATE OF PLAY ON SIGNATURE AND RATIFICATION OF THE CONVENTION AND OPTIONAL PROTOCOL IN THE EU AND THE MEMBER STATES

On 30 March 2007, the day of opening for signature, the UN Convention on the Rights of Persons with Disabilities was signed by the European Community and twenty two Member States. Seventeen of those Member States also signed the Optional Protocol.

As of March 2012 the UN CRPD has been signed by the European Community (now the European Union) and all its Member States. The Optional Protocol has been signed by 22 Member States.

The EU deposited the instruments of conclusion/formal confirmation at the UN the 23 December 2010 so the Convention entered into force for the EU on 22 January 2011. Twenty Members States have ratified the UN CRPD: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Germany, Denmark, Spain, France, Hungary, Italy, Lithuania, Luxembourg, Latvia, Portugal, Romania, Slovenia, Sweden, Slovakia, United Kingdom. The Optional Protocol has been ratified by sixteen Member States: Austria, Belgium, France, Cyprus, Germany, Hungary, Italy, Latvia, Lithuania, Portugal, Slovakia, Slovenia, Spain, Sweden, UK.

Ratifications

The ratification procedures are in most cases complicated and provide for various stages involving several institutions.

Austria signed the UN Disability Rights Convention and the Optional Protocol on 30 March 2007 in New York. The Convention and the Protocol were ratified on 6 August 2008 and entered into force on 26 October 2008. There has been a translation of the Convention and the Protocol into German language and into an easy-to-read version for people with learning disabilities.

In Belgium the statement of the reasons (Exposé des Motifs) was finalised on 21 March 2008. It was presented to the meeting of the Council of Ministers (Conseil des Ministres) by mid 2008. The Council of Ministers addressed it to the State Council (Conseil d'Etat) before presenting the file to the Parliament for a vote. The same procedure was followed at eight various levels of competent authority (federal state, the Communities and the Regions). Belgium ratified the Convention and the Optional Protocol on 2 July 2009. They became executive on 1 August 2009.

Bulgaria ratified the Convention on 26.01.2012. Bulgaria also signed the Optional Protocol on 18.12.2008. The UN Convention has been translated and will be published in Bulgarian language. The UN Convention entered into force in Republic of Bulgaria on 21 April 2012.

In Cyprus, the ratification of the UNCRPD and the Protocol were enabled by Law 8(III)/2011 of 4 March 2011. The instruments of ratification were deposited at the UN on 27 June 2011 and the Convention and the Protocol entered into force in the Republic of Cyprus on 27 July 2011.

The Czech Republic ratified the Convention on the Rights of Persons with Disabilities in September 2009. That important event influenced the preparation and form of a new National Plan in the field of disability, i.e. National Plan for Promoting Equal Opportunities for Persons with Disabilities 2010–2014 approved by Resolution of the Government of the Czech Republic No 253 of 29 March 2010. The Czech Republic has not ratified the Optional Protocol yet, however, the National Plan for the Creation of Equal Opportunities for Persons with Disabilities 2010–2014[1] takes into account the preparation of a draft for its ratification by the end of 2012.

Denmark launched a comprehensive consultation process in the autumn of 2008, encompassing all ministries, organisations and the general public and aimed at assessing any legal and financial preconditions for and implications of ratifying the UN Convention on the Rights of Persons with Disabilities. The comprehensive consultation process formed the basis of the government's continued work. As the coordinating ministry of disability aspects, the Ministry of Social Welfare[2], established an inter-ministerial working group in autumn 2008 tasked with identifying implications and preconditions for Denmark's ratification of the UN Convention. The inter-ministerial working group held its first meeting on 4 September 2008. The meeting reviewed the obligations of the Convention and concluded that it needed, in particular, to study the scope of obligations inherent in the non-discrimination provisions under Article 5, obligations under the provisions of accessibility under Article 9 and obligations under the provision of education under Article 24. This conclusion led to the set up of three subgroups each charged with performing a detailed analysis of one of the mentioned problem areas. The Ministry of Social Welfare headed up the subgroups on non-discrimination provisions and accessibility, while the Ministry of Education was in charge of the subgroup on education. The subgroups on anti-discrimination and accessibility held two meetings, supplemented by several written consultation rounds. Concurrently with the work in the inter-ministerial working group, Denmark adopted Act no. 1347 of 19 December 2008 amending the Parliamentary Election Act, the Danish European Parliament Elections Act and the Local and Regional Government Election Act. The amended Act ensures that Denmark meet the provisions of Article 29 of the Convention, which require state parties to guarantee persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others. In addition to the amendments made to the elections legislation, the inter-ministerial working group concluded that no further legislation was needed before Denmark could ratify the Convention. The analyses carried out by the subgroups and the inter-ministerial working group were presented to the Government on 11 March 2009 and constituted the basis for preparing a motion for resolution to ratify the Convention. The draft motion for resolution underwent an external consultation round and was uploaded to the public consultation portal, www.borger.dk, on 23 March 2009, the deadline for comments being 6 April 2009. Stakeholder organisations were able to monitor the ratification process constantly at the Ministry of Social Welfare website and later at the Ministry of the Interior and Social Affairs website and were also able throughout the process to contact the Ministry directly. The final resolution was presented in the Danish parliament on 22 April 2009 and adopted on 28 May 2009. In close cooperation with the Ministry of Foreign Affairs, the Ministry of the Interior and Social Affairs subsequently launched the preparation of the ratification instruments for the formal ratification of the UN Disability Convention. The

[1] Approved by Resolution of the Government of the Czech Republic on 29 March 2010 No. 253.

[2] The ministry has changed name three times since then: first to the Ministry of the Interior and Social Affairs, then to the Ministry of Social Affairs, and latest to the Ministry of Social Affairs and Integration.

ratification instrument was deposited on 23 July 2009. The Convention has formally been in force for Denmark since 23 August 2009. The ministry regularly briefed the organisations for people with disabilities in Denmark throughout the entire ratification process. Additionally, four meetings were held with these organisations in Denmark, at which the Convention and the ratification process were discussed and reviewed.

Estonia: The Parliament of Estonia has adopted the Act of ratification of the UNCRPD and endorsed the accession to the Optional Protocol in March 2012. The President of Estonia has proclaimed the Act. The instrument of ratification is prepared but not deposited yet and ratification has not entered into force (May 2012). Estonia made an interpretative declaration upon ratification about Article 12.

A detailed analysis of the articles of the UNCRPD was done and the compliance of Estonian legislation with them was assessed beforehand to determine whether full implementation of every particular obligation is already ensured. The Ministry of Social Affairs consulted with people with disabilities on the impact of the UNCRPD on individuals, businesses and others. The articles of the UNCRPD were also discussed with other ministries, associations of local governments, the Estonian Chamber of People with Disabilities and Estonian Institute of Human Rights. Many issues requiring further clarification also emerged during the preparation of ratification and that prolonged the ratification process. However, it was concluded that no amendments of legislation were needed in order to proceed.

In Finland, the main part of the legislation already complies with the requirements of the Convention. The Ministry of Social Affairs and Health is preparing the legislative amendments needed for the ratification of the Convention. A new Act on the use of coercion on persons with intellectual disabilities and dementia will be required by Article 14 of the Convention (Liberty and security of person). A working group to prepare the legislation was set up in July 2010. In relation to the right of persons with disabilities in need of institutional or residential care to move from one municipality to another, Article 18 (Liberty of movement and nationality) and Article 19 (living independently and being included in the community) required changes in the Municipality of Residence Act and the Social Welfare Act. The legislative amendments necessitated by Articles 18 and 19 were completed during 2010 and the relevant Acts entered into force on 1 January 2011.

Additional issues requiring further clarification or specification of legislation may also emerge during the preparation for ratification. Finland has currently no mechanism that has been, or could as such be, designated to attend to the tasks referred to Article 33.2 of the UN Convention. Thus, the ratification of the Convention will necessitate either the establishment of a new mechanism or the transformation or some existing mechanism into such a mechanism. All in all, preparation of the legislative amendments will still take time and Finland would be prepared to ratify the Convention during the current Government's term of office.

The Ministry for Foreign Affairs has, in May 2011, set up a working group to prepare the measures necessitated by the ratification of the Convention and its Optional Protocol in Finland. The working group is comprised of representatives of the public administration and the local and regional authorities, as well as the National Council on Disability (VANE), the Finnish Disability Forum and the Center for Human Rights of Persons with Disabilities (VIKE). The work of the working group and the preparation of the legislative amendments is still ongoing. The intention is to ratify the Convention during the current Government's term of office (2011-2015).

France: The ratification of the UNCRPD and the Optional Protocol were enabled by Law 2009-1791 of 31 December 2009. The instruments of ratification were deposited at the UN on 18 February 2010. Consequently, the Convention and the Optional Protocol entered into force in France on 20 March 2010.

Germany: The German Bundestag passed the law with the consent of the Bundesrat which was necessary for ratifying the Convention and the Optional Protocol. The law entered into force on 1 January 2009. Germany ratified both the Convention and the Optional Protocol. The instruments of ratification were deposited 24 February 2009 at the UN Headquarters. Germany has translated both the Convention and the Protocol into sign and easy-to-read versions.

Greece signed the UNCRPD on 30th March 2007 and the Optional Protocol on 27th September 2010. On 11 April 2012 the Greek Parliament enacted Law 4074 / 2012 ratifying the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto. The instrument of ratification of both the Convention and the Optional Protocol is expected to be deposited with the Depositary of the Convention within the current month.

Hungary has ratified the Convention and the Optional Protocol on the 20th July 2007 by the Act No 92 of 2007.

Ireland signed, subject to ratification, the UNCRPD on its opening for signature on 30 March 2007. It is the Government of Ireland's intention to ratify the UNCRPD as quickly as possible, taking into account the need to ensure that all necessary requirements under the Convention are being met. There will be no undue delay in the State's ratification of it; however, Ireland does not become party to treaties until it is first in a position to comply with the obligations imposed by the treaty in question, including by amending domestic law as necessary. The National Disability Strategy (NDS) of Ireland in many respects comprehends many of the provisions of the UNCRPD. A high-level Interdepartmental Committee advises on and monitors legislative, policy and administrative actions required to enable the State to ratify the UNCRPD. This Committee has developed a Work Programme to (i) address any elements of the National Disability Strategy that require alignment with the Convention and (ii) address any matters that fall outside the NDS which are required to enable Ireland to ratify. This programme is being progressed across the relevant Government Departments. At the Committee's request, the National Disability Authority, the lead statutory agency for the sector, has independently assessed the remaining requirements for ratification so as to ensure conclusively that all such issues will be addressed. The Committee will also closely examine the Optional Protocol to the Convention in consultation with the Department of Foreign Affairs and the Office of the Attorney General (the Government's legal advisers). The Optional Protocol will be addressed by the Government at the time of ratification of the Convention.

Italy: On November 28th, 2008, the Italian Government approved the ratification proposal for the UN Convention and Optional Protocol, which was passed by the Parliament on February 24th, 2009. By law no. 18 of 3 March 2009, the Italian Parliament has ratified the UN Convention and the Protocol. On 15 May 2009 Italy deposited its instruments of ratification with the depositary of the Convention.

The ratification decision also established the new National Observatory on the condition of persons with disabilities, which met for its first official meeting on 16 December 2010. The Observatory is responsible for the implementation of the UNCRPD in close co-operation with the inter-ministerial Committee on Human Rights (CIDU) of the Italian Ministry of Foreign Affairs. It will also assure the monitoring activities provided by Article 33.2 of the UN Convention.

Latvia: On 28 January 2010 the Parliament of Latvia finalised the ratification of the Convention at the national level. In accordance with the Depositary Notification communicated by the Secretary-General of the United Nations, the ratification was completed on 1 March 2010. The Convention entered into force for Latvia on 31 March 2010 in accordance with its Article 45(2). Furthermore, on 3 June 2010 the Parliament of Latvia has ratified at the national level also the Optional Protocol to the Convention. The ratification of the Optional Protocol was completed on 31 August 2010 and it entered into force for Latvia on 30 September 2010.

Lithuania: On 30 March 2007, the Minister of Social Security and Labour of Lithuania signed the UNRCPD and its Optional Protocol in New York. On 27 June 2007, by Order No. A1-176, the Minister of Social Security and Labour initiated an inter-institutional taskforce to deliver the analysis of relevance and feasibility for ratification of these international instruments. The taskforce involved representatives from the Ministry of Culture, the Ministry of Health, the Ministry of Education and Science, the Ministry of Transport and Communication, the Ministry of Social Security and Labour, the Ministry of Foreign Affairs, the Ministry of National Defence, the Ministry of Environment, the Office of Equal Opportunities Ombudsperson, the Department of Physical Education and Sports under the Government of the Republic of Lithuania and representatives of NGOs.

The analysis of the relevance and feasibility of ratifying the UNCRPD encompassed the conformity of the Lithuanian legal framework with the provisions of the Convention as well as the possibility of ratifying all articles of the Convention and the Protocol. On 27 May 2010, seeking to become a full-fledged member of the international community pursuing the equal opportunities mainstreaming policy effectively, Lithuania ratified the UN Convention and its Optional Protocol (Republic of Lithuania Law on the Ratification of the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol, Official Gazette, 2010, No.67-3350).

Luxembourg: After analysing the compatibility of national legislation with the Convention - in order to identify potential conflicting laws or regulations - Luxembourg started the official ratification procedure in May 2010 and finally ratified the Convention and the Optional Protocol on 13th July 2011 (Law of 28th July 2011). The date of the deposit of the instrument of ratification at the UN Headquarters is the 26 September 2011. The Convention entered into force for Luxemburg on October 26, 2011.

In Malta, a Disability Matters Bill was approved by Parliament on 26 March 2012. It will come into effect in mid-April. In light of these legislative changes, fresh consideration is being given to the ratification by Malta of the Convention and the Optional Protocol.

The Netherlands is carrying out a study of the nature and scope of the obligations of the UN Convention as a preliminary step for an impact assessment of the financial consequences of the Convention. The results are expected in spring 2012. Based on the results, the draft

version of the Approval and Introductory Act will be finalised. These Acts contain all changes necessary in Dutch laws to implement the Convention. Civil society is actively involved in these legal analyses and in the drafting of the Approval and Introductory Act.

The Netherlands expect to start the consultation process with civil society of the drafts of the Approval and Introductory Act in spring 2012. The proposals for the Approval and Introductory Act will then be submitted to the Council of State. Upon receipt of the advisory opinion of the Council of State the proposals will be submitted to the Parliament. It is expected that this will take place in 2012. The ratification process will be concluded when both Chambers of Parliament have consented to the proposals for legislation.

Poland: For international agreements concerning human rights, the Polish Constitution requires "a major ratification process", which means that the Council of Ministers has to adopt a draft Act on the ratification and submit it to the Parliament for consideration and approval, before the President can ratify the agreement. Ratified agreements are promulgated in the Official Journal of Laws and only then constitute part of the domestic legal order.

The assessment of compatibility of national legislation with the Convention, carried out by the Ministry of Labour and Social Policy, in collaboration with relevant ministries, resulted in the proposal on ratification of the Convention in July 2011. Extensive consultations with social partners and NGOs took place. Consideration of the proposal by the Council of Ministers, foreseen for August 2011, has been suspended to make additional consultations with the Minister of Finance.
The process was slowed down because of the parliamentary election which took place on 9 October 2011 (a new Government's term of office started on 8 November 2011).
On 27 March 2012 the Council of Ministers considered the proposal on ratification of the Convention, revised following the adoption of new legislation since August 2011, and decided to submit a draft Act on the ratification to the Parliament for consideration.

Portugal: The UNCRPD was ratified in 2009 and since then it is part of the Portuguese legal system. Both the first Action Plan for Persons with Disabilities (2006-2009) and the National Strategy for Disability (2011-2013) develop and implement the Principles and obligations defined in the Convention. According to the latest Government proposal, the National Institute for Rehabilitation (INR, I.P.) will be designated the national coordination mechanism within the government and it will elaborate the national report to submit to the Committee on the Rights of Persons with Disabilities in 2012. The civil society has been consulted in the beginning of current year. According to the latest Government proposal, the independent mechanism will be designated in 2012.

In Romania, the Ratification Law of the UNCRPD was promulgated by the President of Romania in November 2010 (Law 221/2010 for the Ratification of the Convention regarding the Rights of the Persons with Disabilities) and the instruments of ratification were deposited 31 January 2011. Depositing the instrument of ratification of the Convention by Romania was announced by the Secretary General of the United Nations - as depositary of the Convention on the Rights of Persons with Disabilities - on January 31, 2011. In accordance with Article 45, paragraph 2 of the Convention, it entered into force for Romania on 2nd of March 2011.

Slovak Republic: The National Council of the Slovak Republic expressed its agreement with the Convention and the Optional Protocol in its Resolution no. 2048 of 9 March 2010 and decided that it constitutes an international agreement which, pursuant to Article 7 (5) of the

Constitution of the Slovak Republic, has precedence over national laws. The President of the Slovak Republic ratified the Convention and the Optional Protocol on 28 April 2010. On 26 May 2010 the Deed of Ratification was deposited with the Secretary General of the United Nations.

The Convention became binding for the Slovak Republic on 25 June 2010 in accordance with Article 45 (2) and also the Optional Protocol entered into force on 25 June 2010.

Slovenia: The Act on Ratification of the Convention and the Protocol was adopted in the Parliament on April 2, 2008. The Convention and the Protocol were published in the Official Journal of the Republic in Slovenia. The Ministry of Foreign Affairs sent the documents to the UN Permanent Mission of Slovenia, which handed in the documents at the UN on 24 April 2008. The UN Convention and the Protocol were officially translated, submitted to the UN and published on the UN web page by 2007. In 2008, the Convention was printed in Slovenian in both the usual and the accessible formats for persons with disabilities, namely the easy-to-read, Braille and sign language versions.

Spain signed the UNCRPD and the Optional Protocol on 30 March 2007 in New York. The instruments of ratification were deposited at the UN on 3 December 2007 and were published into the Spanish Official State Gazette (BOE) on 21 April 2008. Consequently, they entered into force in Spain on 3 May 2008.

Sweden: An investigator within the Government's office examined Swedish legislation in order to see if it is in harmony with the UN Convention's requirements and those of the Optional Protocol. This work has been published in a report and referred to stakeholders for further consideration. This report formed the basis of a bill to the Parliament. The ratification of the Convention requires a parliamentary resolution. Sweden ratified the UN Convention and its Optional Protocol on 15 December 2008. According to the above mentioned examination, the Swedish legislation is in harmony with the UN Convention's requirements. The translation into Swedish can be found at www.sweden.gov.se.

The United Kingdom ratified the Convention on 8 June 2009 and the Optional Protocol on 7 August 2009. The UK developed reporting and monitoring arrangements, including the establishment of an independent mechanism comprising the UK's four equality and human rights commissions. The UK submitted its initial report to the UN on 24 November 2011.

The European Union signed the Convention the 30 March 2007. On the 26 November 2009 the Council Decision concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities was adopted (Decision 2010/48/EC).[3]

As required by Articles 3 and 4 of this Decision, a Code of Conduct needed to be adopted before the deposit of the instrument of formal confirmation on behalf of the European Union could take place. On 2 December 2010, the Code of Conduct between the Council, the Member States and the Commission was agreed, setting out internal arrangement for the implementation ad representation of the EU relating to the UNCRPD.[4] Following this, the

[3] Decision 2010/48/EC http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:023:0035:0061:EN:PDF

[4] **http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:340:0011:0015:EN:PDF, 2010/C 340/08**

EU deposited the instruments of ratification on 23 December 2010. The UNCPRD entered into force with respect to the EU on 22 January 2011.

In August 2008, the Commission adopted a proposal for a Council Decision on the EU accession to the Optional Protocol (COM(2008) 530 final/2). However, it was decided within the Council to give priority to negotiations on the Decision on the Conclusion of the Convention, and then on the Code of Conduct. Now that the Code of Conduct has been agreed in December 2010, and the EU has concluded the Convention, it is up to the Council Presidency to act on the Commission's Draft Decision on the Optional Protocol.

Declarations and Reservations

The majority of the Member States do not foresee any reservation as regards to the matter of application of the Convention or of the Optional Protocol. Even though the need for reservations after finalising the screening of the national legislation may arise, most countries express a strong political will to ratify the entire Convention and its Optional Protocol.

As exception, at the signing ceremony the Dutch Ambassador had a statement on several articles. It is not known now whether the need for new reservations or explanations will arise.

During the ratification of the Convention on 27th of May, 2010, the Lithuanian Government has made a statement regarding the Article 25 (a). The Parliament of the Republic of Lithuania stated that the concept “sexual and reproductive health” can’t be interpreted as establishing new human rights and constituting relevant international obligations for the Republic of Lithuania. In the content of this concept is not included support, promotion or advertising of disabled peoples abortions and sterilization and medical procedures which could lead to discrimination based on genetic characteristics.

The Maltese Government has also already made an interpretative statement regarding the phrase “sexual and reproductive health” in Article 25(a) to the effect that Malta understands that this phrase does not constitute recognition of any new international law obligation, does not create any abortion rights and cannot be interpreted to constitute support, endorsement, or promotion of abortion. Malta further understands that the use of this phrase is intended exclusively to underline the point where health services are provided, they are provided without discrimination on the basis of disability. Malta has also made a reservation pursuant to Article 29(a)(i) and (iii) of the Convention. While declaring its full commitment to ensure the effective and full participation of persons with disabilities in political and public life, including the right to vote by secret ballot in elections and referenda, and to stand for elections, with regard to Article 29(a)(i), Malta reserved the right to continue to apply its current electoral legislation in so far as voting procedures, facilities and materials are concerned and with regard to (a)(iii) Malta reserved the right to continue to apply its current electoral legislation in so far as assistance to voting procedure is concerned. It is envisaged that both the above-mentioned interpretative statement and reservation will be confirmed on ratification.

France has not made any reservations; however, it made a declaration on the term 'consent' in Article 15. France will interpret this term in conformity with international instruments such as the Council of Europe Convention on Human Rights and Biomedicine and its Additional Protocol on Biomedical Research, as well as on its national legislation which is already consistent with the latter instruments.

Poland submitted a reservation concerning article 23.1 (b) and 25 (a) (reproductive health). International law of treaties asks for the confirmation at the moment of submitting ratification documents. This point will be decided at the moment of ratifying the Convention. Currently it is planned to slightly modify the original text of this reservation and submit an additional one concerning article 23.1 (a) (on marriage of a disabled person whose disability results from a mental illness or mental disability), as well as an interpretative declaration concerning article 12 (on application of the incapacitation).

When depositing the Deed of Ratification, the Slovak Republic expressed a reservation in respect of the provision of Article 27 (1), a) of the Convention on the Rights of Persons with Disabilities in accordance with its Article 46, in the following wording: "The Slovak Republic shall apply the provisions of Article 27 (1) a) provided that implementation of prohibition of discrimination on the basis of disability when determining the conditions of recruitment, hiring and continuance of employment shall not apply to hiring of members of armed forces, armed state security services, armed corps, National Security Authority, Slovak Information Service and Fire Brigade and Rescuers."

The UK has introduced a proportionate system of review for social security benefit appointees and therefore removed its reservation in respect of Equal Recognition before the Law (Convention Article 12.4) when it submitted its initial report to the UN. The reservations in respect of Work and Employment (Convention Article 27 mainly); and Liberty of Movement (Convention Article 18); and an interpretative declaration and a reservation in respect of Education (Convention Article 24, Clause 2 (a) and 2 (b) remain in place.

Cyprus has submitted a reservation on Article 27 of the Convention regarding employment.

The EU in the Decision concerning the conclusion of the UNCRPD states that it concludes the Convention without prejudice to the right, conferred on its Member States by virtue of the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, to exclude non-discrimination on the grounds of disability with respect to employment in the armed forces from the scope of the Directive. Therefore the Member States may, if appropriate, enter their own reservations to Article 27(1) of the Disabilities Convention to the extent that Article 3(4) of the said Council Directive.

2. ACTIONS UNDERTAKEN BY THE MEMBER STATES, EUROPEAN UNION AND STAKEHOLDERS TO IMPLEMENT AND MONITOR THE UNCRPD

Austria

2.1. National Implementation of the UNCRPD

2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)

In Austria, the Federal Ministry of Labour, Social Affairs and Consumer Protection is the Focal point at federal level. The Ministry of Labour, Social Affairs and Consumer Protection is also responsible for coordinating the implementation of the UN Disability Rights Convention in Austria. In 2012 the government has foreseen a decision on a National Action Plan (NAP) on the implementation of the UN Disability Rights Convention 2012 to 2020 ("**NAP Behinderung**"). The National Disability Action will promote the objectives of the UN Disability Rights Convention and contain the guidelines and strategies for the Austrian policy for persons with disabilities in the upcoming years (from 2012 to 2020).

2.1.2. National strategies to implement the UNCRPD

In accordance with Article 35 para. 1 of the UNCRPD, Austria drew up its **First State Report** for the United Nations in October 2010. On the basis of numerous contributions from governmental and non-governmental organisations, this comprehensive report reflects the measures taken to fulfil the obligations from the agreement. The main purpose of the **National Action Plan 2012 to 2020** is to promote and to implement the aims of the UNCRPD. The Plan is built on the basis of the First State Report of the Austrian Government required by the UNCRPD, submitted in 2010.

The Federal Ministry of Labour, Social Affairs and Consumer Protection, in its function to coordinate disability policy in Austria, was responsible to set up the National Action Plan. The draft of the Action Plan was presented in January 2012. The Federal Disability Advisory Board was involved in the process of setting up the plan from the beginning. In order to involve all stakeholders, the plan was established in close cooperation with civil society. There will be a further broad discussion with stakeholders, civil society and NGOs at the end of February 2012. After that the Action Plan is expected to be adopted by the Federal Government in spring 2012.

2.2. Monitoring of the UNCRPD

2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)

The 2008 amendment to the Federal Disability Act established the Independent Monitoring Committee. The Monitoring Committee is also represented in the Federal Disability Advisory Board at the Federal Ministry of Labour, Social Affairs and Consumer Protection with representatives from the federal government, the nine "Länder" as regional authorities, the social insurance institutions, disability organisations, social partners and the Disability Ombudsman.

The Independent Monitoring Committee has started to work on implementing the UNCRPD in 2008. Since December 2008 the Committee has held 37 meetings (one per month). Every 6 months ca. a public meeting is organized. The latest public meeting took place in November 2011. One meeting was held at the Austrian Parliament in November 2009. About 40 individual complaints were raised until now. The Independent Monitoring Committee regularly gives a written and published expert opinion on a current disability policy issue (e.g. inclusive education, occupational and work therapy, violence and abuse, personal assistance, legal capacity and supported decision-making) and makes recommendations. Although the Independent Monitoring Committee is only responsible for the federal level, it also deals with requests at the regional level if no other monitoring unit is in charge.

2.2.2. The involvement of civil society in the monitoring process (Article 33.3)

The Independent Monitoring Committee is solely composed of members from civil society. In fact, the members of the Committee are representatives from disability organizations, human rights organizations, development organizations and representatives of academic institutions.

Representatives of disability organisations are involved in many boards of the Federal government (for example protection against dismissal of people with disabilities, most second level authorities in matters of people with disabilities).

The Federal Disability Advisory Board has to be heard by the Federal Minister of Labour, Social Affairs and Consumer Protection in all important issues concerning people with disabilities.

Furthermore, there are various tools and methods used in Austria to foster the empowerment of people with disabilities:

- Experts' opinions on laws
- Support in all questions about equal rights
- Raising public awareness: events, campaigns, reports, brochures
- Brochures in 'Easy-to-read'-versions
- Empowerment-programmes financed by the Federal Ministry of Labour, Social Affairs and Consumer Protection
- Working groups with representatives from all stakeholders, including the disability NGOs
- 'Peer-Groups'

2.2.3. Collecting statistics and/or developing indicators (Art. 31)

The National Action Plan 2012-2020 refers to the necessity to set up further disability statistics in Austria. The plan also contains some disability indicators such as the unemployment quota of people with disabilities.

Belgium

2.1. National Implementation of the UNCRPD

2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)

In Belgium, the Federal Public Service Social Security is the focal point at the federal level and also the coordinating mechanism (interfederal: for the national level and the level of the Regions and Communities). In each administration at the federal level, a contact point is or will be designated.

Focal points were also established in the various regions and communities:

- *Flemish* region: the team 'Equal Opportunities in Flanders' (*Gelijke Kansen in Vlaanderen*);
- Walloon region: the Agency for Integration of Persons with Disabilities (*Agence Wallonne pour l'Intégration des Personnes handicapées*);
- *Brussels-Capital* region: the "Equal Opportunities and Diversity" body *(cel Gelijke Kansen en Diversiteit);*
- Commission of the *French-speaking* Community (*Commission communautaire française - COCOF*): the PHARE Service (*Personne Handicapée Autonomie Recherchée*) ;
- *Joint Community Commission* (*Commission communautaire commune - COCOM*): the COCOM Administration;
- *French-speaking community:* the WBI Multilateral World Service (*Wallonie-Bruxelles International – Service multilatéral mondial*) ;
- German-speaking community: the Office for People with Disabilities (*Dienststelle für Personen mit Behinderung*).

2.1.2. National strategies to implement the UNCRPD

Belgium ratified the Convention and the Optional Protocol on 2 July 2009. They became binding on 1 August 2009.

In accordance with article 35, § 1 of the UNCRPD, Belgium drew up its **First State Report** for the United Nations in July 2011. On the basis of numerous contributions from governmental organisations at the federal level and at the level of the Regions and Communities and with implication of the civil society, this comprehensive report reflects the measures taken to fulfil the obligations of the UNCRPD.

Both on the federal and on the regional level, governments work on a mainstreaming policy for the inclusion of persons with disabilities.

Flanders published its strategic framework on disability 2012-2014 in December 2011. The strategic and operational goals will be translated into concrete action plans during 2012. The evaluation of the framework strategy will be handled via indicators, deliverable from January 2012 on.

Wallonia is busy to prepare its strategic framework on disability 2012-2017. It will be translated into concrete action plans during the last six months of 2012. The first action of this

plan is nominated 'A more inclusive society'. The evaluation of the framework strategy will be handled via indicators in link with UNCRPD.

2.2. Monitoring of the UNCRPD

2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)

On 12th July 2011 Belgium designed the Centre for Equal Opportunities and Opposition to Racism (the Centre) as independent mechanism to promote, protect and monitor the implementation of the Convention.

The Centre was established in 1993. Following the extension of its mandate in 2003 and 2007, it became Belgium's national equality body. It provides advice to government on disability issues and handles complaints of discriminations against persons with disabilities. The Centre is currently a national human rights institution with B-Status.

Both the federal state and the federated entities (Communities and Regions) have agreed to designate the Centre. The operation of the independent mechanism has been defined through individual agreements between the Centre and the federal state and the seven federated entities. This includes the establishment of a CRPD Unit and of a CRPD Commission.

On the one hand, the CRPD Unit, a permanent expertise and administrative cell composed of five persons, amongst whom a head of unit has been created to promote, protect and monitor the implementation of the CRPD. The CRPD Unit works in close cooperation with the other branches of the Centre and is in permanent contact with public authorities, national institutions, DPOs, NGOs, independent mechanisms abroad and international organisations.

On the other hand, the Disability Commission is a non-permanent body composed of 23 members chosen by their knowledge, experience and interest in the disability sector, among which a President elected by his/her peers. Members emanate from: DPOs (10), universities (6) and labour unions (7). The Disability Commissions approves the annual and triennial strategic plans of the independent mechanism and follows its daily activities.

2.2.2. The involvement of civil society in the monitoring process (Article 33.3)

At national level
The Belgian Disability Forum (BDF) and the national higher Council of disabled persons monitor the work on the implementation of the Convention. The BDF expressed opinions during the implementation of the ratification process and will follow the application of the Convention.

The BDF is an ASBL comprising 20 associations of disabled persons. The ASBL aims to inform its members regarding the repercussions of supranational regulation on the rights of disabled persons. The ASBL also endeavors to make the political, economic and social Belgian actors aware of the need to incorporate the disabled needs of persons into their discussion and decision process. The BDF is the official representative of Belgium within the European Disability Forum.

At federal level
The national higher Council of disabled persons is in charge of examining all the problems relating to disabled persons, falling within the federal competence. The Council is entitled, through its own initiative or at the request of the relevant Ministers, to deliver opinions or to make proposals on these subjects, inter alia for rationalisation and of the coordination of the legal and regulatory provisions. The Council is composed of 20 members, specially qualified through their participation in activities of organizations of persons with disabilities or through social or scientific activities.

At regional and community level
People with disabilities and the organizations/associations representing them are members of the management Board of the Office of the German-speaking Community for People with Disabilities. They are therefore directly involved in important decision-making processes during the formation of the policymaking for the disabled in the German-speaking Community.
There is also an annual plenary meeting attended by the disabled and all the organizations/associations representing them. The aim is to discuss common concerns and questions and work out joint responses to outstanding issues.

In Flanders, the umbrella organization "Toegankelijkheidsoverleg Vlaanderen" ('Accessibility consultation Flanders') represents people with disabilities concerning the accessibility-topic. They are consulted with regards to the accessibility policy that the Flemish Equal Opportunities unit works on.

With regards to disability, there is no regional board or council representing people with disabilities. But "Equal opportunities in Flanders" actively consults civil society when setting their policy targets via the open method of coordination. Representative organizations are not only involved when elaborating the transversal equal opportunities policy. Even at the level of the different departments and policy fields structures are created to guarantee the participation of people with disabilities in the policy preparation and execution (for e.g. the working group ‘Integrale Jeugdhulp’, the advisory committee at the Flemish Agency for Disabled Persons (VAPH), Flemish Platform for organizations with disabilities, commission diversity at SERV, etc.). Furthermore, ad hoc consultations will be organized when deemed necessary (for e.g. in regard to the first report on the CRPD).

In 2011, a research project was set up to examine the possibilities, conditions and approach of participation of people with disabilities in policy preparation and execution (Nothing about us without us. Policy participation of people with disabilities). Its aim is to end up with a formula for an advisory, communication and consultation structure for the Flemish Government.

For the territory of the Walloon Region, a Walloon Advisory Board for Persons with Disabilities was created. This council aims to ensure the participation of persons with disabilities and of their associations to the development of the measures which concern them. To this end, the council:
- represents all the associations representative of persons and can ensure coordination of them;
- Gives to the Walloon regional Council and to the Government, upon their request or own initiative, opinions on the guidelines of the policy for persons with disabilities, and on the practical methods of its implementation;

- delivers its opinion on the operation of the Agency and the way in which it carries out the missions which are entrusted to it

Various tools and methods are used in Belgium to foster empowerment of people with disabilities, both at federal and local level.

The associative sector regularly organizes debates, dialogue and training. For example, training intended mainly for the professionals, including the professionals of the associative sector, is organized by the SPF Social Security. In the German speaking Community each disabled person who contacts the Office for People with Disabilities is given individual assistance in the form of an Individual Service Plan (*Individueller Dienstleistungsplan* - IDP) specifying the measures necessary for their social integration and full participation. Furthermore, awareness-raising measures are also being continually organised to increase the general public's awareness of the needs of the disabled. Regular training courses are also available for disabled people. The people concerned and the organisations representing them are actively involved in a working group for monitoring the implementation of the UN Convention on the Rights of Persons with Disabilities and the Action Plan 2006 – 2015 of the Council of Europe. People with disabilities and their respective organisations were involved when drafting the first report on the implementation of the CRPD. They will certainly be involved when drafting the action plan, even if the form has not been determined yet.

In Wallonia, pursuant to Article 120 a) of the new communal law, it is possible for the communes of to establish an Advisory Board of disabled persons.
These communal Advisory Boards of disabled persons aim to:
- Incorporate the needs of disabled persons into local authorities' urban and communal policies.
- Strengthen or establish regular co-operation and dialogue mechanisms enabling disabled persons, by the channel of their representative organizations, to contribute to planning, implementation, follow-up and the evaluation of each action of the political and social field aiming at equality and inclusion.

– All reception and accommodation services approved by the AWIPH are required to create a "Council of the users" representing those and, if necessary, their legal representatives, comprising at least three members including an elected President at its centre. Its members can under no circumstances form part of the organizing service power.

Since February 2011, due to his first “Equal Chances Plan”, an “Equal Chances public agent” will be designated in all communes and cities of Wallonia.

2.2.3. Collecting statistics and/or developing indicators (Article 31)

Since there is no single definition of 'disability' in Belgium, certain persons with disabilities may not be recorded by various data collection mechanisms, and due to the structure of the Belgian State and of legislation on the protection of privacy, it is not possible to globalize the various statistics. For example, at federal level, there are statistics on the benefits and on medical certificates allowing for granting benefits as well as various social and tax advantages.

In the Walloon Region, the indicators currently used are those relating to the management Contract of the Walloon Agency for the Integration of Persons with Disabilities. Indeed, certain main principles of this contract relate to a number of articles of the Convention.

In Flanders, indicators are being drawn up to measure the progress made within the framework of the Open Method of Coordination. These indicators will be available from January 2012 on.

Bulgaria

2.1. National Implementation of the UNCRPD

2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)

The focal point is the Integration of People with Disabilities Department, in the Ministry of Labour and Social Policy.

Bulgaria is currently in the process of establishing a coordination mechanism foreseen in Article 33 (1) of the UN Convention. Representatives of the NGOs of and for people with disabilities which are members of the National Council for Integration of People with Disabilities are involved in that discussion and also in the same process of establishment of the coordination mechanism. There is a draft of amendment of legislation in relation to the establishment of the coordination mechanism foreseen in 33 (1) of the CRPD.

2.1.2. National strategies to implement the UNCRPD

- At the beginning of 2011, an expert group was set up with the task to prepare a comprehensive plan for preparing Bulgaria for implementation of the UN CRPD. Representatives of the national representative NGOs of and for people with disabilities take part of the mentioned expert group. The outcome of that expert group was presented to the Council for Integration of People with Disabilities and it was taken into account for ratification of the CRPD.
- In 2012, following ratification, the Ministry of Labour and Social Policy will prepare a biannual action plan for the implementation of the UN Convention by the expert group draft.

2.2. Monitoring of the UNCRPD

2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)

During the work of the expert group preparing the comprehensive plan for Bulgaria's implementation of the UN CRPD, the issues of a framework for promoting/protecting/ monitoring CRPD will be discussed.

2.2.2. The involvement of civil society in the monitoring process (Article 33.3)

The National Council of Integration of People with Disabilities has been set up with the Council of Ministers. The National Council was established when the new "Integration of People with Disabilities Act" was adopted and came into force 1 January 2005. The National Council is functioning according to the "Regulation of Procedure of the National Council for the Integration of People with Disabilities" and the criteria for representation of organizations of people with disabilities and organizations for people with disabilities, adopted by the Council of Ministers, in Ordinance No 346 from 17 December 2004. The mentioned Regulation lays down the criteria for representation of the organizations of and for people with disabilities which are members of the National Council. In accordance with the Integration of People with Disabilities Act, it is responsible for the cooperation in the policy

development and conduct in the field of disability. It is an advisory body which includes representatives of the state, named by the Council of Ministers, representative organizations of and for people with disabilities, representative organizations of workers and employees, representative organizations of employers and the National Association of Municipalities.

Representatives of NGOs of and for people with disabilities are members of the National Council for Integration of People with Disabilities, which gives a preliminary stand before the statutory instruments for people with disabilities are adopted.

Currently 20 non-governmental organizations of and for people with disabilities in Bulgaria are members of that National Council. Members of the National Council which represent children and adults with disabilities are also involved in drafting the national strategy, action plans, pieces of legislation and also expert group for preparing Bulgaria for the implementation of the UN CRPD.

There is a National strategy for ensuring equal opportunities for people with disabilities and a biannual Action plan for implementation of the strategy. The Bulgarian Government is confident of the great importance of implementation of UN CRPD and it always expresses its willingness to discuss with civil society the problems related to the ratification of the UNCRPD in the framework of the National Council for integration of people with disabilities. In 2012 the Bulgarian disability strategy will be updated to be brought in line with the European Union Disability Strategy and the UN Convention for persons with disabilities.

2.2.3. Collecting statistics and/or developing indicators (Article 31)

During the work of the expert group responsible for preparing the comprehensive plan for Bulgaria's implementation of the UN CRPD, the issue of developing indicators will be discussed.

Cyprus

2.1. National Implementation of the UNCRPD

2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)

In Cyprus, the Department for Social Inclusion of Persons with Disabilities has been nominated as the focal point for the implementation of the Convention.

As coordination mechanism for the ratification, implementation and monitoring of the Convention was nominated the Pancyprian Council for Persons with Disabilities which is the highest consultative body for the issues of persons with disabilities. The role of the Council is to consult the government as to the formulation, monitoring and implementation of social policies for persons with disabilities. The Chairman of the Council is the Minister of Labour and Social Insurance and its members are representatives of co-responsible for disability issues Ministries, Organisations of persons with disabilities, social partners (trade unions and organisations of employers) as well as independent persons.

In order to strengthen the coordination procedures regarding the implementation of the UNCRPD the establishment of thematic sub-committees under the Council with the participation of a liaison officer to be nominated by each responsible Ministry dealing with disability issues is in process. The whole coordination mechanism will be supported administratively by the Department for Social Inclusion of Persons with Disabilities.

2.1.2. National strategies to implement the UNCRPD

Strategy guidelines, aims, policies and measures promoted on disability issues are already included in the Governance Programme 2008-2013, the Strategic Development Plan 2007-2013, the National Strategy on Social Protection and Social Inclusion, the National Employment Strategy and others. Taking into account the new European Disability Strategy the Council of Ministers has decided to assign to the Department for Social Inclusion of Persons with Disabilities the coordination of the formulation of a National Disability Action Plan.

2.2. Monitoring of the UNCRPD

2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)

By a Council of Ministers Decision on the 9th of May 2012, the Ombudsman and Commissioner for the Protection of Human Rights being also the Equality Authority in Cyprus has been nominated as the independent mechanism pursuant to Article 33.2 of the UN Convention.

2.2.2. The involvement of civil society in the monitoring process (Article 33.3)

The representatives of the disability movement are involved in the monitoring process through the Pancyprian Council for Persons with Disabilities. In addition, the representatives of the Cyprus Confederation of Organisations of Persons with Disabilities will participate in a

consultative committee to cooperate with the Ombudsman and Commissioner for the Protection of Human Rights.

2.2.3. Collecting statistics and/or developing indicators (Article 31)

There in no central Disability Database for the time being. Each state service collects its own statistical data according to the services provided to persons with disabilities. The Statistical Service also collects and issues data related to employment and social protection of persons with disabilities according to Eurostat requirements and standards.

Recognising the need for the establishment of National Records on persons with disabilities in Cyprus in order to be able to formulate the appropriate policies, programmes and measures, the Ministry of Labour and Social Insurance has prepared a plan for the creation of a new System for the Assessment of Disability and Functioning based on the International Classification of Functionality, Disability and Health of the World Health Organisation. The new System aims to provide credible and reliable information to all public services related to the needs and capabilities of persons with disabilities. The disability database will also enable the collection of statistics and the development of indicators related to the application of Article 31 of the Convention.

Czech Republic

2.1. National Implementation of the UNCRPD

2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)

In the Czech Republic, the Convention has entered into force on 12 February 2010, so the relevant bodies have started working. The Ministry of Labour and Social Affairs was appointed as the national focal point for the issues relating to the implementation of the Convention.

2.1.2. National strategies to implement the UNCRPD

A new National Plan for Promoting Equal Opportunities for Persons with Disabilities 2010–2014 was approved by Resolution of the Government of the Czech Republic No 253 of 29 March 2010. The basic format of the new Plan, its content and structure, draw on the general principles on which the Convention is based. In the development of the document, only those articles of the Convention which are most important and relevant for the next five years in terms of promoting an equal and non-discriminatory environment for persons with disabilities were selected.

The National Plan is divided into separate chapters corresponding to the individual articles of the Convention. Each chapter contains a quotation of the relevant article of the Convention, brief explanation of the field in question, the desirable target situation to be achieved, and clearly formulated measures specifying the competent department and the proposed deadline for fulfilment.

2.2. Monitoring of the UNCRPD

2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)

In the Czech Republic, the Ministry of Labour and Social Affairs is the focal point as it is responsible for its implementation pursuant to legal regulations. Based on the current practice and experience of other State Parties to the Convention, the establishment of another focal point is not considered at present.

The process of creating monitoring mechanisms to implement the Convention was initiated in 2010. In the Czech Republic, no institution has been established yet that would systematically deal with the issues of human rights (national institution to protect and promote human rights consistent with Paris Principles), although the Ombudsman conducts an informal review of state administration. However, the Ombudsman's principal task is to observe the performance of state administration in pursuance of good governance principles.

On account of this situation, it was not possible to use existing institutions to monitor the Convention, and other options had to be found to comply with the provisions of the Convention. A suitable solution may be one of the alternatives, the Monitoring Committee. This alternative is also accepted by organizations of persons with disabilities. Nevertheless, consensus regarding the composition of such Committee, the number of its members and its

legal form has not been reached yet. However, the negotiations and consultations conducted to date have brought numerous ideas and suggestions which will be processed and used in the preparation of the statute and rules of procedure of the referred Monitoring Committee.

A comprehensive draft on measures taken to give effect to the Convention and its monitoring at the national level according to Article 33 will be prepared in cooperation with the organizations of persons with disabilities and social partners. The Government of the Czech Republic should approve it no later than in the 1st half of 2012.

2.2.2. The involvement of civil society in the monitoring process (Article 33.3)

The involvement of civil society is guaranteed by the Government Board for People with Disabilities and other formal and informal mechanisms of cooperation, e.g. with the Czech National Disability Council. The Government Board for People with Disabilities was established by the resolution of the Czech Government (1991) as its advisory body for the issues of disability. The Board cooperates with the public administration authorities as well as with the non - governmental sphere. It consists of Government representatives and ministries, as well as representatives of associations of persons with disabilities and their employers.

Organisations representing persons with disabilities play an important role, not to say the most important, in the policy planning and decision-making process concerning disability issues. One of them is for example the Czech National Disability Council, an umbrella organisation which associates about 114 organisations of persons with disabilities. The Council has its representatives in the Government Board for People with Disabilities.

Also other representative organisations are invited to take active part in the policy planning, for example through participation in working groups established to deal with any disability-related issues (preparation of new legislation, proposals for amendments of the existing legislation, creation of disability policy plans and concepts etc.).

At local level, municipalities are supposed to take into account the views and opinions of persons with disabilities and their representative organisations when planning disability policy measures (in the field of social services, accessibility etc.). Most municipalities welcome the possibility of discussing the key issues with the organisations and individuals through public hearings, debates, surveys etc.

As far as awareness-raising activities are concerned, several conferences, debates, workshops, seminars etc. are organised in order to mainstream disability issues and to foster active participation of persons with disabilities in public life.

2.2.3. Collecting statistics and/or developing indicators (Article 31)

There are several resources of statistical data, e.g. in 2007, the Czech Statistical Office was given a task to propose a system of statistical information collection related to persons with disabilities and their needs. The results of its work and first comprehensive report on the situation of persons with disabilities with statistical data were published in 2008.

Denmark

2.1. National Implementation of the UNCRPD

2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)

The Ministry of Social Affairs and Integration is appointed as the national focal point for issues related to implementing the Convention. The reason for the appointment is that the Ministry of Social Affairs and Integration is the coordinating ministry for disability matters. The appointment was made by parliamentary decision B 194, which adopted the ratification of the convention. As the coordinating ministry for disability matters, the Ministry exercises its function as the national focal point in close contact and coordination with the other parts of the government and organisations in the disability area.

The Ministry of Social Affairs and Integration heads The Inter-ministerial Committee of Civil Servants on Disability Matters which is tasked with facilitating the coordination of government disability policy.

2.1.2. National strategies to implement the UNCRPD

Since Denmark's ratification of the UN Convention on the Rights of Persons with Disabilities in 2009, the UNCRPD has set the framework for goals and specific initiatives in the disability field, including the progressive realization of economic, social and cultural rights.

No comprehensive national action plan encompassing all ministries has yet been finalised, but a wide range of initiatives has been carried out within the individual ministries in order to implement the UNCRPD progressively. The Ministry of Social Affairs yearly reviews and reports on the Government's disability policy initiatives to the Parliamentary Ombudsman, and has made the first report to the UN Committee on the Rights of Persons with Disabilities on measures taken with a view to implementing the UN Convention of 13 December 2006 on the Rights of Persons with Disabilities. These reports give a good introduction to the comprehensive work put in the follow up on the ratification.

New action plan for the disability area
The government has launched the work of a new long-term, multi-disciplinary action plan for the disability area. The action plan work will be divided into two phases, briefly described below.

The first phase consists of an analysis to map trends and challenges in the disability area, the aim being to determine the key challenges and priority action areas. The analysis will be conducted with participation of relevant key players in the area.

In the second phase, the above analysis will be used to prepare a new action plan for the disability area. The action plan will have a 5-10-year perspective.

The action plan must contribute to setting up clear political and economic priorities for disability-policy initiatives across policy areas and must function as a framework for the continued work of implementing the UN Convention on the Rights of Persons with Disabilities.

2.2. Monitoring of the UNCRPD

2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)

Parliamentary decision B 15 of 2010 established "The Danish Institute for Human Rights" as the independent mechanism for the promotion, protection and monitoring of the implementation of the UNCRPD. The Danish Institute for Human Rights carries out its mandate in accordance with the principles relating to the status and functioning of national institutions for protection and promotion of human rights (Paris Principles). The Danish Government will present legislation in 2012 which turns the Danish Institute for Human Rights (which is currently part of the Danish Center for International Studies and Human Rights) into an independent institution in order to strengthen and clarify the Institute's position as Denmark's National Human Rights Institution. The legislative proposal contains changes in the composition of the board of the Institute, i.a. in order to ensure that one of the board members is appointed upon nomination of the Disabled Peoples Organisations Denmark. In this way the Government of Denmark intends to ensure the involvement and participation of representatives of disabled people in the monitoring process according to article 33.2 of the UNCRPD.

The Danish Disability Council is a Government-funded body made up of representatives of people with disabilities, nominated by the Danish Council of Organisations of Disabled People, and from the labour market parties as well as representatives from relevant fields of research. The task of the Council is to monitor the situation of people with disabilities in society and to act as an advisory body to the Government and Parliament on issues relating to disability policy.

The Danish Parliamentary Ombudsman "Folketingets Ombudsmand" is tasked with monitoring the equal treatment of persons with disability within his area of competence.

Together the Danish Institute for Human Rights, the Danish Disability Council and the Danish Parliamentary Ombudsman constitute the framework for the promotion, protection and monitoring of the UNCRPD in accordance with article 33.2 of the UNCRPD.

2.2.2. The involvement of civil society in the monitoring process (Article 33.3)

Civil society, specifically organisations of people with disability, will be involved in the monitoring process in accordance with the relevant provisions of the UNCRPD.

The organisations of persons with disability will be closely consulted in the work of the Danish Institute for Human Rights.

The umbrella organisation Danish Council of Organisations of People with Disabilities (Danske Handicaporganisationer) is consulted on a regular basis on relevant matters and during all stages of the policy-making process. The Danish Council of Organisations of People with Disabilities is also strongly represented in the Danish Disability Council

Furthermore, dialogue through consultation with civil society/disability organisations at all stages of new initiatives, financial support to disability organisations, public funds

(satspuljen) support of training schemes, awareness raising activities etc. are used to foster empowerment of people with disability.

2.2.3. Collecting statistics and/or developing indicators (Article 31)

Denmark uses the UN Standard Rules on equal opportunities and treatment of people with disabilities, in which the concept of "disability" covers loss or impairment of a person's ability to participate fully and effectively in society on an equal basis with others. The definition is intended to focus on the obstacles in surroundings that prevent persons with disabilities from participating on an equal basis with others. As the concept of disability is environment-related, it cannot be defined more unambiguously and there is no single definition of disability.

Furthermore as a result of the principle of sector accountability, the individual sector ministry is responsible for collecting data in the individual area. No common norm exists for data processing of specific statistics in the disability area, and no permanent norms exist in terms of highlighting the disability aspect in relation to statistics on the individual sectors.

General disability-related statistics are available via Statistics Denmark and the National Social Appeals Board as statements and reports on the extent of social benefits and services. These are categorised in compliance with relevant statutory provisions. Hence, Denmark does not centrally register data on private individuals. Instead, Denmark conducts national surveys that can be merged with registered data with a view to stressing the trend in, e.g., employment of persons with disabilities in relation to the population in general. The Danish National Institute of Social Research conducts such surveys, and the institute performs various surveys and analyses in the area of social welfare, including the disability area. The results of the surveys are accessible to the public and constitute a significant part of the public debate on the development of social welfare in general.

At present, there is no complete list of relevant disability data and statistics, but work is being undertaken under the auspices of the Interministerial Committee of Civil Servants on Disability Matters to prepare one.

A documentation project to improve social statistics has been launched in the area of disability. The objective of the project is to make specific recommendations for improving, renewing and simplifying the ongoing documentation of local activities and their effects. Project participants are Local Government Denmark, Statistics Denmark, Danish Regions, the Ministry of Finance and the Ministry of Social Affairs (chairman). The project group aims at preparing an agreement comprising a proposal for introducing a reporting system that is based on the civil registration number and builds on the electronic transfer of data generated in local casework. Short term, the purpose is to establish better basic documentation in the area so that developments in the disability area can be monitored. The long-term objective is to measure the effects of central and local government disability policy. In addition, other national players contribute to collecting and communicating information in the area.

The Social Services Gateway is a freely accessible Internet-based portal where authorities, providers and citizens can seek information about local, regional and private services for persons with disabilities (and other disadvantaged groups). The gateway was established in 2007 to reinforce the foundation for individual citizens' choice of specific services and with a view to generating general openness and transparency in the services existing in the area. Today, local and regional councils report information to the Social Services Gateway about a

vast number of different aspects of individual services, including target groups, number of places, services and methods of treatment, rates, staff, physical conditions, evaluations of conditions, food and eating conditions, resident activities, etc. The Social Services Gateway is run by the National Board of Social Services under the Ministry of Social Affairs.

Moreover, various national research and evaluation institutions contribute new knowledge and data collection in the disability area. From 2009 through 2010, the Danish National Centre for Social Research – an independent national research centre under the Ministry of Social Affairs and Integration– released 24 publications on disability. The Danish Evaluation Institute for Local Governments (KREVI) and the Institute of Local Government Studies (AKF) each released two publications in the area during the same period.

Estonia

2.1. National implementation of the UNCRPD

2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)

The Ministry of Social Affairs (especially Social Welfare Department) is responsible for the implementation of the UNCRPD. In the future, the Ministry of Social Affairs shall become the focal point and also coordination mechanism. It cooperates with other ministries and the Estonian Chamber of Disabled People[5] for implementation.

2.1.2. National strategies to implement the UNCRPD

After ratification of the UNCRPD, a strategy will be elaborated for effective and comprehensive implementation of the Convention.

Right now the disability policy of Estonia is based on three main documents: the UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (the abridged and adjusted version of the UN General Assembly Resolution 48/96); the Recommendation of the Committee of Ministers to Member States on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society (improving the quality of life of people with disabilities in Europe 2006-2015); and the European Disability Strategy 2010-2020.

All the mentioned documents follow the principles of the UNCRPD. Estonia will continue to work within an anti-discriminatory and human rights framework to enhance independence, freedom of choice and the quality of life of people with disabilities and to raise awareness of disabilities as a part of human diversity. Estonian disability policy acknowledges the basic principle that society has a duty towards all its citizens, to ensure that the difficulties related to disability are minimised through active supporting of healthy lifestyle, adequate health care, rehabilitation, supportive services and supportive communities.

The following tools and methods are used in Estonia to foster the implementation of the UNCRPD:

- Dialogue with other ministries (working groups, councils, written statements) to promote awareness about the UNCRPD, protect the rights of persons with disabilities and enhance collaboration between ministries;
- Dialogue and collaboration with the Estonian Chamber of Disabled People (projects and seminars about the implementation of the UNCRPD, awareness-raising campaigns, workshops etc. for general public, ministries and local governments as well as for organisations of people with disabilities);
- Financing and supporting activities of non-governmental organisations, e.g. projects that promote and protect the rights of persons with disabilities, enhance awareness etc.

[5] The Estonian Chamber of Disabled People is the national umbrella organisation of persons with disabilities in Estonia. This umbrella body was established in 1993 and has continuously gained new members since then. Right now the Chamber has 47 member organisations. It is also a member of European Disability Forum.

Civil society has been involved in the ratification process and it will be involved in the implementation process after the ratification as well. The Memorandum of principles of cooperation has been signed recently between the Government and the Estonian Chamber of Disabled People. A multidisciplinary high-level workgroup that includes relevant ministries, local governments and non-governmental organizations to implement the UNCRPD will be established after ratification. The workgroup will also remain in constant contact with people with disabilities through their representative organisations by the implementation of the UNCRPD.

2.2. Monitoring of the UNCRPD

2.2.1. Framework, including independent mechanisms, for promoting/protecting/monitoring (Article 33.2)

A mechanism pursuant to Article 33.2 of the UNCRPD is not established yet, but it will be formed by the Estonian Chamber of Disabled People[6] in the coming months, following the ratification of the UNCRPD.

2.2.2. The involvement of civil society in the monitoring process (Article 33.3)

Estonia is using different means and methods to foster empowerment of people with disabilities, such as meetings, conferences, dialogue, collaboration, awareness raising and training. The Government also consults civil society when working on legislation, strategies or other important documents related to disability.

In the context of establishing an independent monitoring mechanism according to Article 33.2 of the UNCRPD, special attention should be paid to the need to ensure that civil society, in particular persons with disabilities and their respective organisations are included in the monitoring work of the mechanism. A multidisciplinary working group that includes several representative organisations of persons with disabilities, human rights organisations etc. for monitoring the implementation of the UNCRPD in different fields and levels will be established after the ratification of the UNCRPD. The working group will discuss its observations and statements with people with disabilities.

Civil society was involved in the ratification process and will be involved in the implementation and monitoring process after the ratification as well. The main partner is the Estonian Chamber of Disabled People. It is the national co-operation and co-ordination body for people with disabilities in Estonia. The Chamber was established in 1993 and now has 47 member organisations. The goal of the Chamber is to facilitate the improvement in the quality of life of persons with disabilities. For this purpose, the Chamber co-operates with governmental bodies and social partners in order to secure that Estonian legislation and enforcement of it also considers the disability perspective.

One of the tasks of the Chamber is also to monitor the implementation of the UN Standard Regulations in Estonia. Other tasks of the Chamber are:

– To participate in elaboration of national social policy, special initiation of the elaboration and implementation of laws and other drafts of legal acts, development plans, programmes and projects related to persons with disabilities;

[6] http://www.epikoda.ee/index.php?op=2&path=IN+ENGLISH

– To support social and working activity of persons with disabilities;
– To support the development and professional growth of member organizations;
– To promote awareness of society about the issues related to persons with disabilities and to form positive public opinion on issues related to them;
– To improve the collection and generalization of information and statistical data related to persons with disabilities, supporting the activity and research of the respective branches of science.

For an efficient execution of these tasks, the Chamber has established four commissions: the education commission, the health care and rehabilitation commission, the employment commission, and the organizational development commission.

2.2.3. Collecting statistics and/or developing indicators (Art. 31)

The Estonian government is collecting appropriate statistics which can be used for monitoring the implementation of the UNCRPD. The existing indicators will be reviewed and new ones will be applied under the strategy of persons with disabilities which will be elaborated after the ratification of the UNCRPD.

Throughout the past years, many surveys have been carried out. The aim of these surveys was to identify the changes that have taken place in the situation of independent living, employment, provision of services and thereby to evaluate the implementation and effectiveness of relevant policies and measures taken.

Finland

2.1. National Implementation of the UNCRPD

2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)

Finland has signed both the UN Convention and its Optional Protocol on 30 March 2007. The Ministry for Foreign Affairs has, in May 2011, set up a working group to prepare the measures necessitated by the ratification of the Convention and its Optional Protocol in Finland. However, the work of the working group and other related work are still ongoing. Therefore neither focal points nor a coordination mechanism have yet been specifically designated. Information on the UN CRPD is spread by the Ministry for Foreign Affairs, the Ministry of Social Affairs and Health, the National Council on Disability and by disabled people's organisations. The Threshold Association, a disabled people's organisation, created an internet-based contact point.

2.1.2. National strategies to implement the UNCRPD

In 2010, the Ministry of Social Affairs and Health prepared a specific Disability Policy Programme in order to guarantee equal treatment of persons with disabilities. The programme outlines the concrete disability policy actions for the next few years (2010–2015). The social development to achieve sustainable and accountable disability policy is outlined in the same context. The objective of the programme is to create a strong foundation for human rights, non-discrimination, equality and inclusion. The programme was prepared in cooperation with the different administrative sectors, expert bodies, NGOs, DPOs and other stakeholders.

The Disability Policy Programme contains concrete proposals on how to promote and implement the UN Convention in different sectors. Areas that are covered include: independent living, social inclusion, building, transport, education, employment, social protection, health and rehabilitation, safety, culture, international cooperation and statistics. The main content of the Disability Policy Programme are measures to ensure the following objectives:

1. Preparation and implementation of the legislative amendments necessitated by the ratification of the UN Convention on the Rights of Persons with Disabilities;
2. Improving the socioeconomic status of persons with disabilities and combating poverty;
3. The availability and high quality of special services and support measures will be ensured across the country;
4. Accessibility in society will be strengthened and increased;
5. Disability research will be reinforced, the information base improved, and diversified high-quality methods developed in support of disability policy and monitoring.

The National Council on Disability (VANE) is responsible for monitoring the implementation of the Disability Policy Programme. More information in English is available at http://www.vane.to/vampo_eng.html

Furthermore, there have been major developments related to the priorities for action described in the previous reports in relation to independent living (point 4 of the 2nd HLG report),

namely, the legislative reform on personal assistance services and moving into community-based settings.

Background
There are 336 municipalities in Finland that are in charge of providing *e.g.* social and health services, including services for persons with disabilities, to their inhabitants. Services are funded by a block grant subsidy from the state, municipal taxes and by service users. The services for persons with disabilities are mostly free of charge.

In Finland the starting point is that services are provided to all citizens on an equal basis. In addition, special services tailored to the needs of persons with disabilities are provided in accordance with the Act on Services and Support for the Disabled and the Special Care Act for Persons with Intellectual Disabilities. According to these Acts, severely disabled persons have a subjective right to the following services: transportation services, service housing, daily activities, personal assistance and alterations and assistive devices in housing. In this connection a subjective right means that the municipality is obliged to provide the service as soon as the criteria set out in the legislation are fulfilled irrespectively of the financial situation of the municipality.

Legislative reform concerning interpretation services for persons with disabilities
A revised Act on interpretation services for deaf-blind, hard of hearing people and persons with a speech disorder entered into force on 1 September 2010. In effect, the responsibility for organising and financing these services was transferred from the municipalities to the Social Insurance Institution of Finland. It means that the state now takes full responsibility for financing the interpretation services.

The new Act did not change the existing rights to interpretation services, but only changed the administration and financing responsibility of those services. Deaf-blind persons have by law the right to obtain a minimum of 360 hours and persons with hearing and speech impairments a minimum of 180 hours of interpretation services a year. The amount of interpretation services may vary according to the person's individual needs.

In 2010, the total number of people with disabilities receiving interpretation services was 4500.

A new housing programme for intellectually disabled persons
In January 2010, the Finnish Government issued a Resolution on a programme to organise housing and related services for people with intellectual disabilities in 2010–2015.

The goal is to provide persons with intellectual disabilities individual housing solutions in regular housing environments and to reinforce their inclusion and equal treatment in the community and society.

The development objectives for disability legislation laid down in the Government Programme, the guidelines of the Finnish Disability Policy Programme, and the UN Convention on the Rights of Persons with Disabilities define good housing as one of the prerequisites for independent living and inclusion.

The programme aims at giving people with intellectual disabilities who are moving out of institutions or their childhood homes the opportunity of individual housing in an accessible

and functioning home in a regular housing environment. At the same time, the number of institutional care places for persons with intellectual disabilities is reduced systematically and in a controlled way.

The programme also aims at producing about 1,500 homes for persons with intellectual disabilities moving from institutions and about 2,000 homes for grown-up persons moving out of their childhood homes. Once implemented, the programme will reduce the number of places in institutions, from 2,000 long-term places of the year 2010 to about 500 places by the end of 2015. Implementation of the programme is ongoing. In 2010-2011, the construction of over 1000 dwellings has been started, financed by investment grants from the Housing Finance and Development Centre of Finland (ARA).

2.2. Monitoring of the UNCRPD

2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)

The work of the working group set up to prepare the measures necessitated by the ratification and other related work is still ongoing. Thus, a framework including one or more independent mechanisms pursuant to Article 33.2 of the UN Convention has not yet been established. However, in the context of nominating/establishing a mechanism referred to in Article 33.2 of the UN Convention, particular attention will be paid to the need to ensure that civil society, in particular persons with disabilities and their respective organisations are involved in the monitoring process.

2.2.2. The involvement of civil society in the monitoring process (Article 33.3)

In Finland, there is already a well-established practice to cooperate and involve civil society and other organisations in all stages of reforming legislation. Also, in its existing human rights reporting practice, the Finnish Government encourages civil society to actively participate in the reporting to the international organisations. Usually, when a periodic report is prepared, civil society is asked to provide views on the information to be included in the report, and the interested civil society representatives are invited to attend a discussion on the draft report before its finalisation. Civil society is also encouraged to participate in the so called "shadow reporting", i.e., to send parallel reports to the human rights treaty monitoring bodies.

The organisations of persons with disabilities have actively participated in international processes related to the human rights of persons with disabilities, in particular in relation to the drafting of the UN Convention. Organisations of persons with disabilities and the National Council on Disability have also been consulted on the legislative amendments needed for the ratification of the UN Convention. In addition to the representatives of the public administration and the local and regional authorities, the National Council on Disability (VANE), the Finnish Disability Forum and the Centre for Human Rights of Persons with Disabilities (VIKE) are members of the working group set up to prepare the measures necessitated by the ratification of the Convention and its Optional Protocol.

The organisations of persons with disabilities and the National Council on Disability are also consulted in relation to the overall human rights policy of Finland, which includes a focus on the rights of persons with disabilities.

In connection with awareness-raising, organisations of persons with disabilities have been notified in various contexts of the legislative amendments necessitated by the ratification of UNCRPD.

The preparation of the Government Disability Policy Programme was based on a process of active participation of persons with disabilities and their organisations. This included - among other activities - a series of ten open seminars in different parts of the country, where both representatives of the key ministries and persons with disabilities met and debated on the challenges of promoting "a society for all".

2.2.3. Collecting statistics and/or developing indicators (Article 31)

The collection of statistics has not yet been linked to the Convention. Statistics on disability are collected mainly by the National Institute for Health and Welfare, Statistics Finland and the Social Insurance Institution of Finland.

In general, statistics are based on national legislation. However, since disability is not used as a variable in population surveys, it is impossible to gather comprehensive data on persons with disabilities in Finland. Statistics Finland collects disability statistics only according to EU legislation through different EU surveys (for example Labour Force Survey's ad hoc module 2011 on employment of people with disabilities) for which the definitions and specifications are given by Eurostat.

Statistics on disability describe mostly services provided to persons with disabilities. SOTKAnet Indicator Bank (www.sotkanet.fi) operated by the National Institute for Health and Welfare (THL) is an information service that offers key population welfare and health data from Finnish municipalities since 1990. Disability data is collected by several different indicators that fall under the following five categories: services for persons with disabilities, housing services for people with intellectual disabilities, sheltered work for disabled people, statutory services and assistance for disabled people and other disability services and benefits. Social Insurance Institution of Finland provides annual statistics about the benefits it grants to persons with disabilities.

A monitoring group on barrier-free communications services chaired by the Ministry of Transport and Communications will this year start to develop concrete indicators for a barrier-free information society. The Ministry of Transport and Communications have published a study that presents a number of justifications and suggestions for actions that could be applied in promoting information society accessibility and are based on well planned usage of indicators and measured data.

France

2.1. National Implementation of the UNCRPD

2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)

Since disability policy is of cross-cutting nature, it is expected that rather than nominating a single focal point, the government will designate all ministerial bodies directly involved in disability policy. Depending on the organization mechanisms of the different ministries, the focal point will either be an administration, a bureau or even a mission.

Since the dissemination of knowledge on the Convention onto the entire country is necessary for its effective implementation, focal points could perhaps be put in place at the level of decentralized services and regional authorities. The practical details of such a designation still require further analysis, so as to respect the constitutional principle of free administration of regional authorities.

Sans être officiellement désignées comme « points focaux locaux » au sens de la convention de l'ONU – car, placées sous l'autorité des présidents de Conseil général dont les collectivités départementales qu'ils dirigent sont régies par le principe constitutionnel de libre administration des collectivités territoriales- , les maisons départementales des personnes handicapées (MDPH) constituent de facto autant de relais locaux pour l'application des dispositions de la convention, telles qu'elles s'expriment dans notre législation nationale. Pour mémoire, les MDPH sont administrées par une commission qui réunit le département, l'Etat, les organismes locaux de sécurité sociale et, pour un quart de ses membres, les représentants d'associations de personnes handicapées. Elles sont présentes dans chacune des 100 collectivités départementales et exercent une mission d'accueil, d'information et de conseil des personnes handicapées et de leurs familles. Elles reçoivent et procèdent à l'évaluation de toutes les demandes de reconnaissance de droit (prestations, orientations) qui relèvent d'une décision de la commission des droits et de l'autonomie des personnes handicapées (CDAPH) ; elles assurent également l'accompagnement et le suivi de la mise en œuvre desdites décisions. Elles ont enfin une mission de sensibilisation de tous les citoyens au handicap. Elles sont donc « un carrefour incontournable » et un interlocuteur privilégié de la personne handicapée : elles doivent l'aider et lui simplifier toutes les démarches nécessaires à la réalisation de son projet de vie. Réciproquement, elles sont pour tous, un lieu de référence local pour l'ensemble des questions touchant au handicap.

La coordination de l'activité des MDPH est assurée au niveau national par la Caisse Nationale de Solidarité pour l'Autonomie (CNSA). Cette caisse a été créée en 2004-2005 pour collecter et distribuer les financements nécessaires aux prestations, services et établissements qui contribuent à l'autonomie des personnes handicapées et des personnes âgées. Elle rassemble elle aussi des représentants de l'Etat, des départements, des partenaires sociaux (employeurs et syndicats), des personnes handicapées et des personnes âgées, ainsi que des institutions spécialisées (établissements et services).

Parmi ses missions, cette caisse anime le réseau des MDPH, sans pour autant exercer une autorité hiérarchique sur ses maisons, chacune d'elles étant autonome et relevant de son département d'implantation. Par la contribution au financement de leur fonctionnement, par l'échange de bonnes pratiques, par la diffusion d'informations et de recommandations, par la signature de conventions de qualité de services, par l'organisation de formations, la caisse

contribue à faire converger les pratiques des maisons afin d'assurer une égalité de traitement des personnes handicapées sur tout le territoire national.

Even though the coordination mechanism is deemed voluntary according to the Convention, France has decided to yet put in place such a mechanism. The Interministerial Commitee of Disability (Comité interministériel du handicap (CIH)), established by the decree nr. 2009-1367 of 6 November 2009, will be responsible for setting up this mechanism. By appointing the interministerial CIH as the coordination mechanism, the French Government wishes to highlight that it regards disability policy as a political priority.

Moreover, the CIH's secretary general will be able to appoint and call together the focal points as deemed necessary. The secretary general has already set up meetings with responsible persons and administration on several occasions ever since its creation, even though they have not yet been officially appointed as focal points for the implementation of the UNCRPD.

The French Government also expresses its wish to establish close relations between the coordination mechanism and the representatives of persons with disabilities. Therefore, the government asked the CIH secretary general to also exercise the duties of the secretary of the National Advisory Council for Persons with Disabilities (Conseil National Consultatif des Personnes Handicapées), in order to establish an institutional link between both bodies.

2.1.2. National strategies to implement the UNCRPD

The implementation of the obligations arising from the UN CRPD and its Optional Protocol has been foreseen through the law nr. 2005-102 of 11 February 2005. Through its adoption, the adaptation of the French national legislation to the UN Convention will be very limited. The law of 11 February 2005 moreover goes further than the UN Convention on certain points, and thereby it gives a functional nature to most general obligations in the UN CRPD.

As the Convention sets out the establishment of a national action plan, the law of 11 February 2005 requires the holding of a national conference on disability every three years. These conferences will gather representatives of organizations of persons with disabilities, social/medical institutions or services working with persons with disabilities, social insurance institutions, trade unions and employer organizations and other bodies relevant in disability policy.

In order to prepare the conference, the law maintains that the Government has to deposit a report on the implementation and future developments of the national disability policy at the parliamentary assemblies' bureau, after a consultation with the National Advisory Council for Persons with Disabilities.

The first conference was held on 10 June 2008. It gave the opportunity to the French President to present his action plan in relation to persons with disabilities. The Plan consisted of seven objectives:

- To allow residential homes for persons with disabilities to fully fulfil their mission;
- To further develop benefits for persons with disabilities in the light of the establishment of a fifth risk of social welfare (un cinquième risque de protection sociale);
- To turn benefits for adults with disabilities (l'allocation aux adultes handicapés (AAH)) into a tool to increase resources and facilitate persons with disabilities' access to the labour market;

– To conclude a National Employment Pact for persons with disabilities;
– To decide upon an annual plan to support employment of persons with severe disabilities
– To increase and improve the accessibility to all aspects of city life;
– To allow all children with disabilities to have access to education adapted to their needs.

Une seconde Conférence nationale sur le handicap s'est tenue le 8 juin 2011, avec comme thème central une « société inclusive à tous les âges de la vie ».

Six ans après le vote de la loi du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées, la deuxième Conférence nationale du handicap du 8 juin 2011 a procédé au bilan d'application de cette loi fondamentale pour la pleine insertion des personnes handicapées dans la société.

Elle s'inscrit dans la continuité de la Conférence de juin 2008 qui a dressé un constat encourageant de l'action des pouvoirs publics en matière d'égalité des droits et des chances, de participation et d'accès à la citoyenneté des personnes handicapées. L'effort de solidarité nationale, quels que soient les contributeurs publics et privés, envers ces citoyens a fortement progressé au fil des années, notamment en termes de compensation du handicap, d'accessibilité à la Cité, d'emploi et de ressources, avec notamment une forte revalorisation de l'allocation pour adultes handicapés, mais aussi dans les champs de la recherche, la prévention et la formation.

Depuis la première Conférence nationale du handicap de 2008, le travail réalisé par l'ensemble des parties prenantes (services de l'État, collectivités locales, associations, opérateurs publics et privés), témoigne d'une mobilisation sans précédent de chaque acteur pour que soit prise en compte la thématique du handicap dans toutes les composantes de la société et s'attacher à ancrer au quotidien les droits que la Nation reconnait aux personnes handicapées.

<u>Les mesures phares présentées lors de la conférence du 8 juin 2011 sont les suivantes :</u>

<u>- Un effort sans précédent des pouvoirs publics pour l'accessibilité :</u>

- Un plan pluriannuel de mise en accessibilité des lieux de travail dans les trois fonctions publiques, les écoles de service public et les petites communes ;
- Un plan d'accessibilité numérique des sites internet de l'Etat et du Gouvernement;

<u>- Des moyens pour garantir un accès aux savoirs de qualité, répondant aux besoins de tous les enfants et de tous les étudiants handicapés :</u>

Dès la rentrée 2011, recrutement d'auxiliaires de scolarisation qualifiés, sous contrat de droit public, afin de faire face à la montée en charge de la scolarisation en milieu ordinaire et qu'aucun enfant ne reste sans solution d'accompagnement

<u>- Un nouveau plan pour l'emploi des travailleurs handicapés :</u>

- La création de 1000 postes supplémentaires chaque année dans les entreprises adaptées pendant 3 ans, soit 3000 postes supplémentaires ;
- Les jeunes en situation de handicap inscrits comme publics prioritaires des contrats Etat/régions pour l'apprentissage ;

- Une mission spécifique confiée au service public de l'orientation pour les jeunes handicapés, notamment issus des établissements médico-sociaux ;
- Des mesures pour améliorer l'information des salariés sur les formations accessibles dans chaque région

- Faire du handicap un des axes stratégiques de la recherche en France :

- En prenant en compte le handicap dans l'actualisation de la stratégie nationale de recherche et en impliquant les associations de personnes handicapées dans ces travaux.

- Des réponses spécifiques pour les plus fragiles

- Un abondement pluriannuel des fonds départementaux de compensation ;
- L'établissement de conventions d'objectifs et de moyens avec les MDPH, afin de stabiliser leur financement et leur personnel et d'améliorer le service rendu aux usagers ;
- Renforcer l'aide à la garde d'enfants pour les parents lourdement handicapés : il s'agit de majorer de 30 % le complément de libre choix de mode de garde, pour apporter un soutien à domicile aux parents lourdement handicapés dans la garde de leur enfant.

2.2. Monitoring of the UNCRPD

2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)

The establishment of a mechanism to protect, promote and monitor the implementation of the Convention, is currently being considered in the light of the recent reform that brings together several bodies of fundamental rights protection under the authority of a *Défenseur des Droits*, without prejudice to the powers of the National Advisory Council for Human Rights (*Commission Nationale Consultative des Droits de l'Homme* (CNCDH).

Le Défenseur des droits est une autorité constitutionnelle indépendante présidée depuis le 22 juin 2011 par M. Dominique Baudis. Il est nommé par le Président de la République pour un mandat de 6 ans non renouvelable et non révocable. Cette autorité, qui regroupe notamment les missions antérieures du Médiateur de la République, du Défenseur des enfants, de la Haute Autorité de Lutte contre les Discriminations et pour l'Egalité (HALDE) est chargée de veiller à la protection des droits, des libertés et de promouvoir l'égalité en particulier pour l'ensemble des personnes handicapées, quel que soit leur âge.

2.2.2. The involvement of civil society in the monitoring process (Article 33.3)

Co-operation with disabled persons is ensured by the Advisory national Board of disabled persons (CNCPH).

The law of 17 January 2002 had created the CNCPH to ensure the participation of disabled persons in the development and in the implementation of the policies related to disability (article L. 146-1 of the CASF). The CNCPH links the public authorities and civil society. Indeed, it assembles the following institutions: organizations for persons with disabilities and their relatives, administrative bodies, bodies financing social protection of disabled persons or

relevant research projects, trade-unions, professional organizations, the representatives of territorial authorities.

The law of 11 February 2005 widened the scope of responsibility of the CNCPH beyond its right of initiative or the optional rights granted by the Government, by giving it the responsibility to assess the situation of persons with disabilities. It is given the role to analyse whether the situation corresponds to the national principle of solidarity. According to Government's proposals it shall be granted this responsibility "by continuous multi-annual programming". Especially, the last article of the 2005 law envisages an obligatory consultation of the CNCPH for all regulatory texts of application of the law of 11 February 2005.

The CNCPH plays therefore an essential role for both, in the implementation of the law and in the evaluation and development of policies dealing with disability.

The CNCPH organized the work of its Committees as to examine the most complex decrees and foster the co-operation with the administrations, which allowed for a smooth development of certain draft texts. Thus, the CNCPH was not an advisory body solely responsible for approving or disapproving. Rather, it could play an active role in the development of regulation. In 90 % of the cases, the application texts of the 11 February 2005 law were given favorable comments by the CNCPH.

The CNCPH discussed several topics which developed into a report on disabled persons in situation of dependence and on the granting of minimal incomes. The Minister of Labour, Solidarity and the Civil Service, and the secretary of State responsible for Solidarity also contributed to the report on the development of "trade plans".

The CNCPH is responsible for "coordinating" the Departmental Advisory Boards of Disabled Persons (CDCPH) provided for in article L. 146-2, evaluating the departmental implementation of disability policy and the situation of disabled persons. To facilitate their analyses, the CDCPH gather information on the activities of the Departmental Houses of Disabled Persons (MDPH) and of the contents and the application of the Departmental Programmes for the Inclusion of Disabled Workers (PDITH). They moreover have access to the data of the Committee of the Rights of Autonomy of Persons with Disabilities (CDAPH) and of the institutions working with persons with disabilities.

2.2.3. Collecting statistics and/or developing indicators (Art. 31)

In accordance with Article 31 of the UN Convention, France has to set up a statistical mechanism specifically for monitoring the implementation of the UNCRPD. Currently, France does not yet have this type of mechanism. However numerous tools used on a national level for collecting information on persons with disabilities could be used to this end. For instance, once may refer to the survey on disability and dependence (HID), which relates to all persons residing or being looked after in special facilities or living in ordinary homes. The HID survey is being updated since April 2008, carried out with 40,000 participants. Numerous statistics are also available in the field of employment.

Moreover, an interministerial Observatory for accessibility and universal conception has been established on 11 February 2010, with the mission to monitor the developments, identify the challenges to the implementation of accessibility, disseminate good practice and create

monitoring indicators. The first progress report will be presented in 2011 during the national disability conference. The Observatory is composed of construction and transportation experts and representatives of organizations for persons with disabilities. The secretary general of the interministerial committee for disability issues is in charge of its secretariat.

L'Observatoire insiste tout particulièrement sur l'objectif final d'une Cité conçue pour tous. Afin d'accompagner la mise en mouvement de la société française et en particulier de la filière industrielle dans cette voie, il est important de rendre concrète et opérationnelle la notion de « conception universelle ». À cet effet, il a organisé, le 9 décembre 2011, une journée technique visant à promouvoir cette nouvelle approche en France à partir d'actions qui la déclinent actuellement sur le territoire et d'exemples relevés dans d'autres pays

Monsieur Philippe BAS, ancien ministre délégué à la Sécurité sociale, aux Personnes âgées, aux Personnes handicapées et à la Famille, sénateur de la Manche, préside l'Observatoire depuis le 10 novembre 2011. Cette instance s'est réunie le 9 février 2012 pour évoquer ses principales missions et faire un point d'étape au regard de l'objectif d'accessibilité fixé par la loi de 2005.

At the same time, numerous studies carried out for Community coordination use indicators which are also relevant to disability-related issues (employment, fight against exclusion, social welfare…) and could therefore be used for collecting statistics of developing indicators.

Germany

2.1. National implementation of the UNCRPD

2.1.1. Focal points and coordination mechanisms for implementing (Art. 33.1)

Germany highlights the importance of national implementation and monitoring structures as a precondition for an effective implementation. Due to the federal structure of Germany, an important part of the implementation of the Convention lies with the German Länder.

The Federal Ministry for Labour and Social Affairs (www.bmas.bund.de) is appointed focal point according to Article 33. Some of the Länder have appointed focal points on their level as well. Others work with a comparable structure.

The Federal Government Commissioner for Matters relating to Persons with Disabilities (www.behindertenbeauftragter.de) is appointed Coordination Mechanism according to Article 33. In September 2010, the Commissioner has appointed in close cooperation with the German Disability Council (www.deutscher-behindertenrat.de) an advisory board called "Inclusion Committee", in order to ensure a long-term and strategic consultation process with civil society, particularly with organisations of and for persons with disabilities in the implementation process of the Convention. For this reason, the Committee consists mainly of people with different disabilities. In addition, the Committee installs four thematic working groups to integrate the broader civil society in the process and enable the development of technical input to specific themes and topics.

2.1.2. National strategies to implement the UNCRPD

The UN Convention is the international equivalent to the change of paradigms, which was initiated in Germany especially by the Ninth Book of the Social Code and the Equality Act for Persons with Disabilities. The Federal Government will use the UN Convention to strengthen and promote new developments in disability policy in order to further advance a self-determined and discrimination-free participation in Germany.

In the Coalition Agreement of the Federal Government for the 17th legislative period it was agreed to draw up a National Action Plan (NAP) to implement the UN Convention. This Plan, adopted by the Federal Government on 15 June 2011, draws up a long-term overall strategy for the implementation of the Convention. It is a package of measures rather than a legislative package and is, in particular, aimed at closing existing gaps between the legal situation and the practice. More than 200 plans, projects and activities show that inclusion is a process that covers all areas of life.

The federal government's action plan is supplemented by other action plans of the federal states, municipalities, rehabilitation providers, disability and social organisations as well as providers of services for persons with disabilities and private sector companies. Most of the Länder have developed or still are developing own action plans. Also cities and enterprises and institutions like the German Social Accident Insurance have brought on action plans.

The voice of the civil society, especially of organisations of and for persons with disabilities, has been and is streamlined in a special advisory board. The closest cooperation with persons

with disabilities and their organisations is not only postulated by the UN Convention. It is also of tremendous importance for the Federal Ministry and the Federal Commissioner.

2.2. Monitoring of the UNCRPD

2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)

The Federal Government's Cabinet decision of 1 October 2008 initiating the legislative procedure for ratifying the Convention and the Optional Protocol entrusted the Deutsche Institut für Menschenrechte e.V. (German Institute for Human Rights) with the monitoring task under Article 33(2) UNCRPD.

The Institute is an independent body operating on the basis of the United Nations Paris Principles, to which Article 33(2) refers. It is currently financed by the Federal Ministry of Justice, the Foreign Ministry and the Federal Ministry of Economic Cooperation and Development and its independence is guaranteed via its legal form and the articles of association. It started work in 2001 and was recognised internationally as the national human rights institution with an A-status in 2003. To comply with the monitoring task under UNCRPD, a separate department within the Institute for the tasks under Article 33(2) has been set up. The Federal Ministry for Labour and Social Affairs provides some 430 000 EUR a year to support the independent body.

The Monitoring Body has six staff members – besides the head, the body is comprised of two research and policy professionals (one law, one social science), one assistant, one public relations and communications and one for administrative matters. The existing budget of the National Monitoring Body provides additional resources to organise conferences, to cover travel costs and conferences fees, and to commission research to some minor extend.

The German Institute started to set up the National Monitoring Body in May 2009, which is under full operation since November the same year. Since then, it has developed a great number of activities, e.g. it holds regular consultations with civil society organisations, has started a publication series with elements in easy to read, organised public conferences.

For up-to-date information on the work of and events organised by the Mechanism see its website www.institut-fuer-menschenrechte.de/de/monitoring-stelle.html (German only).

2.2.2. The involvement of civil society in the monitoring process (Art. 33.3)

All three pillars involve civil society in the implementation and/or monitoring process:

1) Federal Ministry of Labour and Social Affairs as focal point

Civil society was consulted during the ratification process, for the implementation of the Convention by means of a national action plan these consultations were continued with several workshops, bi- and multilateral meetings and via the online-portal www.einfach-teilhaben.de. and a special advisory board with civil society representatives. Members of the special advisory board are representatives from disability organizations, social partners, charity organizations, the Federal Government Commissioner for Matters relating to Persons with Disabilities and a representative of an academic institution.

As mentioned above, the closest cooperation with persons with disabilities and their organisations is not only postulated by the UN CRPD. It is also of tremendous importance for the Federal Ministry and the Federal Commissioner.

Furthermore and with a view to implementing the UN CRPD, the Federal Ministry of Labour and Social Affairs takes – among others - the following measures to inform the public about the Convention:

- broad public awareness campaign to implement the UN CRPD;
- regular lectures for civil society and other institutions;
- translation of the convention into accessible formats (easy-to-read language and sign language) and distribution of all versions via brochures, dvd and/or the internet;
- Handbook for persons with disabilities: the handbook is the Ministry's most important publication in the area of disability policy. The new version will include the text of the Convention and provide information on it;
- Online portal www.einfach-teilhaben.de, which gathers information for persons with disabilities, their families, enterprises and administration.

2) Federal Government Commissioner for Matters relating to Persons with Disabilities as coordinating mechanism

In order to ensure a long-term and strategic consultation process with civil society, particularly with organisations of and for persons with disabilities, the Commissioner established a council. One of the main tasks of the council is to advise the federal government in questions related to the national action plan to implement the UN CRPD. In addition, the Commissioner established a consultative committee with members only from organisations of and for persons with disabilities. The Commissioner also launched a website that includes participatory elements of web 2.0 in order to ensure the participation of individuals. In addition, the coordinating mechanism informs the public in expert meetings and campaigns on all relevant aspects of the implementation of the Convention.

3) Monitoring Body at the German Institute for Human Rights:

The National Monitoring Body has underlined in public statements that monitoring the implementation is a task involving a number of non-state actors besides the National Monitoring Body, such as the UN Committee on the Rights of Persons with Disabilities at the international level and civil society, in particular persons with disabilities and their representative organisations within Germany. Consequently, the collaboration of these actors is of great importance. Thus, the German civil society organisations have the standing invitation to participate in the regular consultations with the National Monitoring Body. These meetings take place twice or three times a year. Although the National Monitoring Body does neither have the mandate nor the resources to handle complaints, it is open to receive individual communications and to learn from them, since individual cases might indicate deficits in structural terms.

2.2.3. Collecting statistics and/or developing indicators (Article 31)

Statistics on the population, labour market and housing situation in Germany are collected by the Federal Statistics Office and the Regional Statistical Offices under the *Mikrozensusgesetz*

(Micro-Census Act). The micro-census is a multiple random sample survey which provides detailed information on the economic and social situation of the population and answers questions about employment, the labour market and training.

On the basis of *§131 SGB IX* a statistical survey of persons with severe disabilities, which started as early as 1979, is carried out every two years.

In addition to the evaluation of existing data, part of the action plan will be the establishment of a better data basis on the situation of persons with disabilities in Germany. A pre-study with suggestions for a respective roadmap was presented in February 2011. The work on the report is on progress. It will be published end of 2012.

Greece

2.1. National Implementation of the UNCRPD

2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)

Until the governance structure is established, all ministries are called to take the provisions of the UNCRPD into consideration when working on questions related to disability.

2.1.2. National strategies to implement the UNCRPD

Until now, no concrete measures were taken for the implementation of the Convention. Greece is in the stage of examining relevant methods, processes and policies. One of the main priorities for all government-owned mechanisms involved in the issue of disability is also adapting the existing legal framework to the requirements of the Convention. The review of the existing legal framework in relation to the UN CRPD provisions as well as the establishment of new or additional regulations are considered necessary for the implementation of the Convention. The establishment of a central mechanism that will examine the subject of disability in all the dimensions will strengthen the effort for a united and completed approach to disability.

In terms of major developments, deinstitutionalisation is a basic pillar in the area of health and social care. Within this aim, 35 structures (small houses with a limited number of patients and staff) have been established, where people with disabilities are under constant care from specialized personnel (nurses, psychologists etc.). The aim is to increase the number of these establishments in the next few years. (See HLG-Report 2008, chapter 4 on Independent living).

2.2. Monitoring of the UNCRPD

2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Art. 33.2)

As required by Article 33.2 of the UN CRPD, a monitoring body should be defined to facilitate and supervise the application of the Convention in different sectors and on different levels. In Greece, such a body has not yet been defined. All ministries are thus reminded to recall the provisions of the Convention until a new body is established.

2.2.2. The involvement of civil society in the monitoring process (Art. 33.3)

The national organizations of people with disabilities are much consulted by the governmental bodies. They offer essential advice and support the rights of people with disability. After the development of an independent mechanism, the participation of organizations of people with disabilities is considered as essential. They will fully participate in the process of monitoring the implementation of the Convention.

The role of the National Confederation of Disabled People (ESAMEA) and the National Confederation of Parents and Tutors of Disabled People (POSGAMEA), the most representative NGOs of people with disabilities, may participate in the dialogue with the

Ministries' services for the determination and implementation of the UN Convention and also for the nomination of the monitoring body.

People with disabilities and their representative organisations participate as full members in several committees and working groups at national, regional and local level contributing in the formulation of policies relating to people with disabilities. In addition, they are members of political parties on an equal basis with ordinary members and to several non-profit organisations.

According to Law 2430/1997, every year on the 3rd December – which is the International Day of People with Disabilities - several events take place under the aegis of the Greek Parliament, the Ministry of Health and Social Solidarity and the National Confederation of Disabled People (ESAMEA) with the aim to raise awareness of the human and social rights of people with disabilities in Greece. On the same day, each year, ESAMEA submits a report on the situation of people with disabilities in Greece to the president of the Greek Parliament.

It is a priority for all authorities, ministries and unions of people with disabilities to raise awareness of issues related to disability and to participate in dialogue to implement related programmes and actions more effectively.

Seminars, lectures and conferences are organized on a regular basis, covering subjects that are related to disability. They are not only relevant for people with disabilities but for the society as a whole. These meetings, seminars and conferences are organised each year throughout the country by the Secretariat General of Communication/ Secretariat General of Information with the aim to promote positive attitudes towards people with disabilities. Advertising campaigns are also promoted by the government authorities or by non-governmental organisations, aiming at the sensitization of society in the subject of disability, showing ways of improving the lives of people with disabilities.

2.2.3. Collecting statistics and/or developing indicators (Article 31)

The central administration - mainly governmental bodies and the ministries – meet on a regular basis to exchange information and statistical data on people with disabilities so that they have a complete overview of the issue in the whole of Greece.

As an institution assembling individual statistical indicators, the national statistical service produces regularly centralized statistical bulletins with regard to disability. Thereby, it is possible to locate weaknesses and omissions concerning the obligations mentioned in the UNCRPD. Consequently, adequate policies can be developed in order to effectively implement the Convention.

Hungary

2.1. National Implementation of the UNCRPD

2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)

The National Council on Disability Affairs (NCD) was established by the act on the rights of people with disabilities in 1998. The NCD is an advisory body to the Government with the following rights:

- To take initiatives, make proposals, and provide consultation and co-ordination in all decisions related to persons with disabilities;
- To carry out analysis and evaluation in the process of implementing such decisions;
- To comment on draft legislation concerning persons with disabilities;
- To make proposals for decisions, programs and legislation affecting persons with disabilities;
- To be involved in co-ordinating activities related to the affairs of persons with disabilities;
- To brief the Government regularly about the situation of persons with disabilities;
- To elaborate the National Disability Program and monitor the implementation thereof.

According to the Statutes of the Ministry of National Resources, the tasks related to the implementation of human rights conventions belong to the Ministry's responsibility, and the Constitution on Operation of the Ministry assigns the international issues connected to disability to the Department of Disability. This way the appointment of the central governmental actor is indirectly deducible, although no concrete, specified appointment has been done.

2.1.2. National strategies to implement the UNCRPD

The Hungarian Parliament adopted the National Disability Action Plan in 2006 for 2007-2013. In order to implement the DAP the Government adopted the midterm Action Plan for 2007-2010. Although these legal and policy instruments were adopted before the ratification of the UNCRPD, in great part they comply with the principles and main targets of the Convention. The new Action Plan for 2011-2013 was elaborated in February 2011. In the work process the UNCRPD is identified also formally as a main point of reference.

Furthermore, the following developments have taken place in relation to the implementation:

- The Hungarian Parliament adopted the Act No 125 in 2009 on the Hungarian Sign Language and the use of Hungarian Sign Language. This Act implements Article 9 subsection 1.b), Article 21, Article 24 subsections 3.b), 3.c), 4.
- The Ministry of National Resources coordinates the interministerial discussions on the legislation concerning the strategy and the tasks of the Government regarding the implementation of the transition from institutional care of disabled people (deinstitutionalisation). That will implement Article 19 UNCRPD. With the governmental decree 1257/2011, the Hungarian Government has adopted the Strategy of the replacement of the large social institutions providing nursing and caring for persons with disabilities with community based settings (Deinstitutionalisation) 2011 – 2041 (hereinafter referred to as Strategy). Based on the decree, the Minister of National Resources has established the National Body for Deinstitutionalisation (hereinafter referred to as Body). The Body is in

charge of coordinating the tasks defined in the Strategy. Every three years, the Minister of National Resources proposes an Action Plan encompassing the realization of the Strategy scheduled for the three-year-period to the Government, which is also outlined by the Body. The first Action Plan has to be submitted on March 31 2012. The realization of the task is supported by the EU development resource Code TIOP 3.4.1, which amounts to 7 billion HUF and aims at the deinstitutionalisation of 1500 capacities.

- On the assignment of the legal predecessor of the Ministry of National Resources, a National Autism Strategy was adopted in July 2008, under the technical guidance of the Hungarian Autistic Society. This five-year comprehensive plan for the development of services for people living with autism sets out medium-term targets and tasks in the field of diagnostics, professional staff training, education, development, employment, adult training and family support.

2.2. Monitoring of the UNCRPD

2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)

Taking into account that the NCD already had the right and duty to follow up and comment governmental activities related to persons with disabilities as well as to monitor the implementation of the National Disability Program, the Government Decree No 1065 of 2008 (X.14.) assigned to the NCD the task to promote, protect and monitor the UNCRPD.

Nevertheless this solution is not fully in line with the UNCRPD since the NCD is not considered as an independent body because it is constituted by representatives of the relevant ministries and governmental organisations as well as representatives of the civil society.

It is also important to mention that in 2009 the Hungarian Ombudsman for civil rights carried out an ex officio thematic review about the effectiveness of the rights of people with disabilities.

The first deadline for the compilation of the report required by Article 35 UNCRPD was 3 May 2010 for Hungary. Due to the governmental restructuring the contributions from the different ministries arrived with a great delay, so Hungary asked for the extension of deadline until 15 October 2010. The National Report has been prepared by that deadline and Hungary submitted it through the UN High Commissioner for Human Rights to the UN Commission on Human Rights. The Committee on the Rights of Persons with Disabilities reviewed the Hungarian report on the implementation of the Convention and adopted a 31-item list of issues requesting supplementary information on April 20 2012. The written replies of Hungary to the list of issues have to be submitted within a month. The consideration of the report will take place on September 20-21 2012 in Geneva.

2.2.2. The involvement of civil society in the monitoring process (Article 33.3)

Civil society takes part in the monitoring process mainly through the National Council on Disability Issues, since it was officially appointed by the Government Decree mentioned above for the task of monitoring. In the NCD, the elected civil members and the national civil society organisations representing various branches of disability as permanent representatives take part, therefore civil society is fully involved in the process. The NCD consists of two

main parts, namely, the governmental and non-governmental side. Within this constellation, the non-governmental side itself has a dual composition. On the one hand, the representatives of the main branches of organisations advocating the rights of persons with disabilities are permanent members of the Council. On the other hand, there are also elected members from the non-governmental sector. They win their seats during a delegating meeting arranged on the basis of legislative regulation where the participants are exclusively those non-governmental organisations working for the benefit of persons with disabilities that do not have permanent seats in the Council. Thus, the NGOs elect these members from amongst themselves.

Every policy document, proposal, draft, etc. which deals with disability issues or may have an impact on people with disabilities, has to be submitted to the Council for further comments. Besides, during the elaboration of such documents, the relevant civil organisations are consulted about the draft proposals and provisions.

The National Council on Disability Issues has the right to discuss, comment all policy documents and draft legislation dealing with disability and/or having any impact on people with disabilities.

Apart from the above mentioned involvement, drafts of new legislation related to disability is discussed separately also with the professional and interest representation organisations mainly concerned.

2.2.3. Collecting statistics and/or developing indicators (Article 31)

In the course of a national census there are always questions concerning the status of being disabled and the type of it. Regarding the fact that disability and information related to it are so called sensitive data, the declaration on it is voluntary, this means that the validity of statistics compiled on this base is doubtful. For measuring the implementation of international conventions, including mainly the UNCRPD, the legal predecessor of the Ministry of National Resources developed a specific system of indicators. By using this set of tools it is considered possible to get a more realistic view on the social process affecting people living with disabilities.

Ireland

2.1. National implementation of the UNCRPD

2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)

Focal point and coordination arrangements pursuant to Article 33.1 will be settled in due course following Ireland's ratification of the UNCRPD.

The Disability Policy Division (DPD) of the Department of Justice and Equality co-ordinates both the implementation of the National Disability Strategy and the work of the Interdepartmental Committee on the UNCRPD, which are the primary elements at present in meeting the requirements of the UNCRPD.

2.1.2. National strategies to implement the UNCRPD

The Irish Government launched its National Disability Strategy (NDS) in September 2004 to underpin the participation of people with disabilities in Irish society. The NDS builds on existing policy and legislation, including the policy of mainstreaming public services for people with disabilities, and comprehends many of the provisions of the UNCRPD.

The NDS continues to be the focus of Government policy and the Programme for Government 2011-2016 commits to publishing "following wide consultation, a realistic implementation plan for the National Disability Strategy (NDS), including sectoral plans with achievable time scales and targets within available resources and ensuring whole of government involvement and monitoring of the Strategy, in partnership with the disability sector". The Minister for Disability, Equality, Mental Health and Older people has established a new National Disability Strategy Implementation Group to guide the development of this plan and monitor its subsequent implementation. This Group replaces the former National Disability Strategy Stakeholder Monitoring Group.

Implementation of the NDS, which is ongoing in spite of current economic circumstances, also provides the basis for implementation of the UNCRPD.

The key elements of the National Disability Strategy are:

- the Disability Act 2005
- Sectoral Plans for services prepared by six Government Departments
- the Citizens Information Act 2007 which provides for a personal advocacy service for people with disabilities
- the Education for Persons with Special Educational Needs Act 2004
- a multi-annual investment programme 2006-2009 targeted at high-priority disability support services.

The Disability Act 2005 is designed to support the provision of disability-specific services and improve access to mainstream public services for people with disabilities. In accordance with the Act, a review of its operation was carried out in 2010. Under the Act, six Government Departments published Sectoral Plans in December 2006 that set out the programme of measures to be taken in relation to the provision and mainstreaming of services for people with specified disabilities. The relevant Departments are those with the functions

of Employment [7] ; Health [8] ; Transport [9] ; Social Protection [10] ; Environment [11] ; and Communications. The Disability Act also requires the preparation of reports relating to the progress made in the implementation of the Sectoral Plans not more than three years after their publication. These Reports were approved for publication by Government in February 2010. The general finding was one of significant and substantial progress by all six Departments.

In terms of the UNCRPD, the NDS is complemented by a high-level Interdepartmental Committee on the UNCRPD which advises on and monitors legislative, policy and administrative actions required to enable the State to ratify the UNCRPD. The committee is chaired by Disability Policy Division of the Department of Justice and Equality and contains officials from the six Sectoral Plan Departments as well as other relevant Government Departments and the Office of Public Works. It has developed a Work Programme to address (i) any elements of the NDS that require alignment with the Convention; and (ii) any matters outside the NDS required for ratification. This programme is being progressed across the relevant Government Departments. At the Committee's request, the National Disability Authority, the lead statutory agency for the sector, has independently assessed the remaining requirements for ratification so as to ensure conclusively that all such issues will be addressed.

An example of what is required for ratification of the UNCRPD is the enactment of mental capacity legislation. The Government's Legislation Programme as announced on 11 January 2012, indicates that the Mental Capacity Bill is expected to be published in the current Parliamentary session. The Bill will replace the Wards of Court system with a modern statutory framework governing decision-making on behalf of adults who lack capacity. The passage of this Bill will add substantially to the overall progress on implementation of the requirements towards ratification of the Convention.

2.2. Monitoring of the UNCRPD

2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)

The role of the Interdepartmental Committee on the UNCRPD was outlined at 2.1.2. It is likely that this committee will continue to monitor the process towards implementation following Ireland's ratification.

The National Disability Strategy (NDS), as also outlined at 2.1.2, comprehends many of the provisions of the UNCRPD. Progress on its implementation is driven by the Senior Officials Group on Disability (SOGD), which reports to the Cabinet Committee on Social Policy.

Progress on the overall implementation of the NDS is monitored by the National Disability Strategy Implementation Group, which provides a means of facilitating dialogue between all parties involved. Membership of the Group is made up of representatives of the Senior Officials

[7] Sectoral Plan is at *www.entemp.ie/labour/strategy/sectoralplan.pdf*
[8] www.dohc.ie/publications/fulltext/disability_sectoral_plan/
[9] www.transport.ie/upload/general/7760-0.htm
[10] w.ww.welfare.ie/EN/Policy/CorporatePublications/HowWeWork/Disability%20Sectoral%20Plan/Pages/index.aspx
[11] www.environ.ie/en/LocalGovernment/LocalGovernmentAdministration/SectoralPlan/PublicationsDocuments/FileDownLoad,2011,en.pdf

Group on Disability (SOGD) [12] ; County and City Managers Association; the Disability Stakeholder Group (DSG)[13]; and the National Disability Authority.

The National Disability Authority (NDA) is the lead state agency on disability issues and is under the aegis of the Department of Justice and Equality. It develops and monitors standards in services for people with disabilities and advises Government on disability policy and practice. The NDA is actively involved with the implementation of important aspects of the National Disability Strategy and supports Government Departments and agencies in meeting relevant objectives.

2.2.2. The involvement of civil society in the monitoring process (Art. 33.3)

The purpose of the National Disability Strategy Implementation Group is to maintain a constructive relationship with stakeholders, provide them with a forum to raise issues and a means of facilitating dialogue between all parties involved in the NDS. Membership of the NDSIG (see also 2.2.1. above) includes the Disability Stakeholder Group, which represents the sector, its organisations and service users.

The Interdepartmental Committee on the UNCRPD consults with people with disabilities through their representative organisations and has prepared Irish language and Braille versions of the UNCRPD.

People with disabilities, their families, carers, advocates and service providers were consulted on the Sectoral Plans before they were completed. Each plan includes arrangements for complaints, monitoring and review procedures. The DSG, apart from being part of the NDSIG, is in ongoing consultation with relevant Government Departments in relation to Sectoral Plans and all aspects of disability.

Disability organisations were also consulted in respect of the review of the operation of the Disability Act (see also 2.1.2.). A consultation event was held with the assistance of and in the headquarters of the National Disability Authority (NDA). Presentations were made and discussions held at the event on the context of the review; clarification of its purpose in examining the operation of the Act; and an overview of each Part of the Act under review and how it operates at present. Following the event, an official invitation was extended to all stakeholders to make submissions on the review.

2.3. Collecting statistics and/or developing indicators (Art. 31)

The Central Statistics Office (CSO) is the national statutory body with responsibility for the collection, compilation, extraction and dissemination for statistical purposes of information

[12] The SOGD comprises officials from the Departments of Health; Social Protection; Transport, Tourism and Sport; Environment, Community and Local Government; Jobs, Enterprise and Innovation; Communications, Energy and Natural Resources; Arts, Heritage and the Gaeltacht; Agriculture, Fisheries and Food; Education and Skills; Children and Youth Affairs and Public Expenditure and Reform.

[13] The DSG comprises representatives from Disability Federation of Ireland; Inclusion Ireland; Mental Health Reform; National Federation of Voluntary Bodies; National Service Users Executive and Not for Profit Business Association. It also includes a number of service users who are serving as individuals in a personal capacity.

relating to economic, social and general activities and conditions in the State14. CSO surveys with particular relevance in providing statistics on people with disabilities include:

- the Census of Population
- the National Disability Survey
- the Quarterly National Household Survey
- the annual Survey on Income and Living Conditions (SILC)

The National Disability Authority has a statutory remit to undertake, commission or collaborate in disability research and to contribute to the development of statistical information relating to programmes and services for people with disabilities. The NDA fulfils this remit in a number of ways, including:

- the production and dissemination of disability research on a wide range of policy and service related issues;
- contributing expertise to national research and development initiatives - such as the Central Statistics Office's National Disability Survey, the Health Research Board's National Disability Databases (see below), and projects in partnership with agencies such as the National Women's Council, the Council for Ageing and Older People, the Equality Authority and many others;
- hosting the NDA Annual Disability Research Conference;
- the NDA Database of Disability Research in Ireland;
- funding research at grassroots level through the Research Promotion Scheme (RPS); and
- funding postgraduate research through the NDA Disability Research Scholarships

There are two national service-planning databases in Ireland for persons with disabilities managed by the Health Research Board: the National Intellectual Disability Database and the National Physical and Sensory Disability Database. These databases inform decision-making in relation to the planning of specialised health and personal social services for people with intellectual, physical or sensory disabilities.

[14] www.cso.ie

Italy

2.1. National Implementation of the UNCRPD

2.1.1. Focal points and coordination mechanisms for implementing (Art. 33.1)

The Ministry of Labour and Social Policies, Directorate-General for inclusion and social policies serves as the focal point for Italy, in co-ordination with other relevant ministries and departments, as well as regional and local authorities.

2.1.2. National strategies to implement the UNCRPD

The tasks assigned to the National Observatory aim at giving new and constant inputs regarding public policies in the field of disability and can be summarized as follows:

a. implementation of the UN Convention on the Rights of Persons with Disabilities, also through a detailed report on the measures taken, as provided by Article 35 of the Convention, in close co-operation with the Inter-ministerial Committee on Human Rights;
b. to set up of a two-year plan of action for the promotion of the rights and integration of people with disabilities, as provided by national and international provisions;
c. to collect statistical data on the situation of people with disabilities, with reference to the local peculiarities;
d. to set up a national report on the implementation of policies in the field of disabilities (as provided in national Law n. 104/1992);
e. to promote studies and researches that can contribute to the identification of priority areas of actions and programs for the promotion of the rights of people with disabilities.

2.2. Monitoring of the UNCRPD

2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)

The ratification act of the UN Convention was adopted by the Italian Parliament by national Law n. 18/2009, also providing the establishment of a National Observatory in order to monitor the condition of people with disabilities. The National Observatory, which met for its official session on December 16th, 2010, will also ensure the implementation of the activities provided by Article 33.2 of the UN Convention.

The Observatory is a collective body that will facilitate the constant link between government and people with disabilities and their families and supporting organizations, and the discussion on the various needs of people with disabilities in order to identify proper and joint solutions, based on an effective coordination of policies and programs.

The Scientific and Technical Committee (CTS) within the Observatory deals with scientific analysis in relation to the activities and tasks of the Observatory itself. The Committee meets regularly since the first meeting of the Observatory; in 2011 it produced the methodological guidelines on the Observatory's several activities and functions.
On July 2011 six working groups were formed in order to deal with all major areas of reference set by the UN Convention on the Rights of Persons with Disabilities. It was thus

confirmed that the research and analysis of the working groups, whose members are, by a large number, representatives of associations of people with disabilities, will contribute to the report under Article 35 of the UN Convention, in order to give maximum importance to the Convention provisions on the full participation of civil society and organizations representing people with disabilities throughout the monitoring process (art.33.3).

2.2.2. The involvement of civil society in the monitoring process (Art. 33.3)

In the Observatory the following entities are represented: the administrative departments from the national level involved in the definition and implementation of policies in favour of persons with disabilities; regions and autonomous provinces of Trento and Bolzano; the local autonomies, i.e. provinces and municipalities; the national Institutes of social provisions and protection; the national institute of statistics; trade unions representing persons with disabilities, workers, retired people and employers; national associations representing persons with disabilities; organizations from the non profit sector dealing with disability issues.

The national organisations and federations representing people with disabilities have been involved in the decision-making processes on disability issues, at national, regional and local level. In 1992 the law n. 104/1992 introduced a National Conference on the policies for disability with the active participation of people with disabilities and their representative organisations. Organised every three years, the last Conference was held in Turin in October 2009. The law provides a Communication to the Parliament on the conclusions of the National Conference.

Until the ratification of the UN Convention, Italy lacked an institutional body for the permanent consultation of persons with disabilities. However, thanks to the National Observatory for monitoring the condition of people with disabilities, established by the national law for the ratification of UN Convention (Law 18/2009), mainstreaming strategy on disability issues will be thoroughly discussed there. It has to be underlined that within the Observatory 14 members out of 40 are representatives of organisations and federations of people with disabilities.

2.2.3. Collecting statistics and/or developing indicators (Article 31)

A specific data collection related to the implementation of the Convention has not been launched yet. However, at www.disabilitaincifre.it, a website promoted by the Ministry of Labour and Social Policies in co-operation with ISTAT, the national institute for statistics, various data on Persons with Disabilities are available. The website is currently under development on the basis of a Protocol among the Ministry of Labour and Social Policies and ISTAT.

In December 2011 the General Directorate for inclusion and social policies of the Ministry of Labour and Social Policies, in accordance with the CTS guidelines, signed an agreement with the National Institute of Statistics (ISTAT) in order to fully comply with the provisions on statistics of art. 31. The agreement covers a series of activities such as, for example, the analysis of the life conditions of people with disabilities; an experimental analysis of the disability condition of children (0-17 years) through the inclusion of specific questions; a feasibility study for the preparation of a national registry of persons with disabilities, listed by gender, age, residence, type of disability to be used for statistical purposes; a system of

specific indicators to monitor the level of social inclusion of people with disabilities, in accordance with the provisions of the UN Convention, and new statistical tools for mental and intellectual disabilities.

Latvia

2.1. National Implementation of the UNCRPD

2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)

The Ministry of Welfare of Latvia is directly responsible for disability policy in the area of social protection and at the same time in charge of monitoring the implementation and development of equal opportunities policy for disabled people in Latvia at large; as such, this ministry is the official focal point for matters relating to the implementation of the Convention.

According to the Law on Convention on the Rights of Persons with Disabilities from 28/01/2010, passed in the follow-up to ratification, the Ministry of Welfare is appointed as coordinating body for the implementation of the Convention).

This task is carried out by gathering information from other ministries and preparing respective annual reports, by keeping track of developments of other ministries' policy related to disability, and by taking into consideration complaints and ideas for the improvement of legislation in different areas. These are proposed by NGOs. The ministry then tries to solve these problems in cooperation with other involved ministries.

The National Council of Disability Affairs (NCDA), established by the Cabinet of Ministers, is used as a forum to carry out coordination and monitoring of the Convention. Chairman of the NCDA is the Minister of Welfare, and the Ministry of Welfare carries out the secretariat's function for the National Council of Disability Affairs (it plans the content and coordinates the work). The NCDA is an advisory institution that takes part in development and implementation of integration policy of disabled people. NCDA involves line ministers, Chairperson of the Latvian Association of Local and Regional Governments, Ombudsman, Chairperson of Public Utilities Commission, Director of Society Integration Foundation, President of Free Trade Union Confederation of Latvia and also representatives of key non-governmental organizations. Starting from 2009 the progress and challenges of implementation of the Convention has been discussed in every NCDA meeting. Every year specific items of the Convention, article by article, are included in every NCDA meeting’s agenda.

Specific working groups are being established to carry out in-depth analysis, prepare reports and generate solutions and recommendations to be presented to the responsible ministries for further implementation. Working groups on legal capacity, employment matters, tackling accessibility matters have been established. The task of the latest working group will be finding bottlenecks and generating solutions of problems related to all kinds of accessibility and presenting results at the NCDA meetings on regular basis.

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Coordination of implementation of the Convention is carried out also through several working groups formed by the Ministry of Welfare under policy guidelines and strategic plans.

Information about all NCDA meetings and relevant working groups is available at the Ministry of Welfare home page www.lm.gov.lv (in Latvian).

2.1.2. National strategies to implement the UNCRPD

Several strategic documents or advanced plans for a strategy directly devoted to the disability policy matters are already in place:

- Different ministries carry out implementation of the concept paper „Equal opportunities for all**”** (adopted by the Cabinet in 1998). The concept paper covers actions until 2010 within the following fields: health, education, employment, proper environment and social security. Planned actions for the implementation of this concept paper have to be included in the annual action plans of ministries. The Ministry of Welfare prepares each year the report on progress and presents it at the NCDA meeting. After 2010 an evaluation report has been prepared stating that the economic crisis that hit Latvia in 2008 particularly hard has negatively affected the implementation of several activities that were requesting additional public means. Nevertheless some progress can be observed and objectives that have not been reached are to be included in coming policy papers.
- The „Basic Principles on Policy for Elimination of Disability and its Consequences, 2005-2015” elaborated by the Ministry of Welfare has been adopted by the Cabinet in 2005. This strategic document contains guidelines for preventing disabilities and the basic principles, objectives and priorities of state social protection policy for persons with disabilities. The implementation of this strategy is supported by the „Action Plan for Implementing the Basic Principles on Policy for Elimination of Disability and its Consequences 2005-2015”, adopted by the Cabinet in 2006. An aim determined in the Action Plan is to eliminate or to reduce the risk of disability for persons with threatened/prognosticated disability, to reduce the effect of a disability on persons with disability and to reduce the risk of social exclusion for all those persons. The Ministry of Welfare prepares each year the report on progress and submits it to the Cabinet.
- The UNCRPD Implementation Action Plan 2010-2012, adopted by the Cabinet in October 2009, envisages initial steps for promoting the implementation of the Convention. Due to the significant financial restrictions caused by the recession, this plan includes only short term activities where additional financing is not required, or reduced to a minimum, or supported by EU financial instruments. One of the tasks of this Action plan is to elaborate the UNCRPD implementation programme for 2013-2019 which will be a comprehensive strategy to reach the UNCRPD objectives.
- Currently the strategic document (policy guidelines) “Basic Principles of Implementation of the Convention on the Rights of Persons with Disabilities for 2013-2019” is being elaborated. This strategy will replace previous policy guidelines and plans and thus create one comprehensive policy planning document.

All above mentioned documents as well as annual reports on their implementation are available at the Ministry of Welfare home page www.lm.gov.lv (in Latvian).

2.2. Monitoring of the UNCRPD

2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)

According to the above mentioned Law on the Convention on the Rights of Persons with Disabilities, the Ombudsman office as the independent institution ensures monitoring of the implementation of the Convention. Representatives of the Ombudsman office participate in

the above mentioned NCDA and in all working groups for the implementation of the Convention.

As the ministry is responsible for disability policy at large, it is also responsible for monitoring the implementation of the Convention. All line ministries are responsible for the implementation of their specific activities, according to their respective sphere of competence

2.2.2. The involvement of civil society in the monitoring process (Art. 33.3)

Civil society, in particular persons with disabilities and their representative organizations, shall be involved through the NCDA and the above mentioned working groups. Starting from 2007, on a regular basis, the Ministry of Welfare organises meetings with DPO's to discuss practical and political issues.

Information about all monthly meetings with NGOs is available at the Ministry of Welfare home page www.lm.gov.lv (in Latvian).

NGOs representing persons with disabilities have the opportunity to participate in the process of policy planning as well as monitoring of implementation. DPO’s are involved in all working groups established by the ministry; they provide expertise and opinion on national legal acts and planned services. During the preparation of draft laws and regulations, and the development of amendments on existing legislation (for example, Policy Guidelines for Reduction of Disability and its Consequences, draft law On Disability and its sub laws, the conformity assessment of national legal acts to the United Nation Convention), the NGOs have played and continue to play a significant role.

The future strategic document “Basic Principles of Implementation of the Convention on the Rights of Persons with Disabilities for 2013-2019” is being elaborated in close cooperation with line ministries and DPO’s.

2.2.3. Collecting statistics and/or developing indicators (Article 31)

In Latvia the statistical data which cover also disability maters, are collected and available in several institutions, depending on the respective policy area. It should be mentioned at this stage that the Ministry of Welfare has subordinate institutions (the State Social Insurance Agency, the State Employment Agency, the State Medical Expertise Commission of Health and Capacity for Work (Expertise Commission)) whose regular statistics are used to monitor disability policy. Besides, relevant data related to disability statistics are collected also by other ministries (for instance the Ministry of Education and Science, the Ministry of Health, the Ministry of Transport etc.) and, of course, by the Central Statistical Bureau (CSB). Some statistics are provided in the annual public reports of respective ministries, or institutions, via their home pages, and in the CSB publications. Data is mostly longitudinal.

The definition of disability in Latvia is related to the level of impairment and thus all the public services and entitlements are provided to the persons with disability status that is granted by the Expertise Commission. Accordingly whenever the statistics on disabled persons are collected they include persons with disability status. An exception are provisions for technical aids, which persons with different kinds of functional disorders are entitled to, not only persons with disability status.

The improvement of data collection for the total number of persons with disability is in progress: during the 2004-2006 EU structural funds' planning period the Expertise Commission, involving ERDF co-financing, created the disability information system, i.e. a unified database of disabled people. To continue the development of this database during the 2007-2013 EU structural funds' planning period the Expertise Commission, involving ERDF co-financing, has started a new project, “Digitalization of the archive data bases and implementation of e-services”. One of the outputs of this project is an improved disability information system, which allows to obtain comprehensive and detailed statistical data distributed by gender, age, administrative region, as well as by diagnosis, covering all persons with disabilities (and also persons with anticipated disability), including also historical data, which previously was mostly available only in paper form.

In general, the above mentioned data sources are successfully used for policy formulation and monitoring of implementation. However, it is not sufficient for monitoring the implementation of the Convention because the available data cover multidimensional and multidisciplinary area of the Convention only partially.

The monitoring mechanism of the implementation of the Convention, including Article 31, is not yet adjudicated. Therefore in a view of ensuring both the monitoring of implementation of the Convention and preparation of reports on progress (in accordance with the article 35, paragraph 1 of the Convention) the development of indicators will be discussed during the forthcoming meeting of the working group for preparation of the strategic document “Basic Principles of Implementation of the Convention on the Rights of Persons with Disabilities for 2013-2019”. The working group will start its activities in March 2010 and in parallel to the elaboration of the strategic document for 2013-2019, all relevant ministries will be asked to make proposals for specific indicators which could support the analysis of the implementation of the Convention. After reaching an agreement on the indicators, the involved relevant ministries will be obliged to ensure collecting and maintenance of these specific statistical data.

Lithuania

2.1. National Implementation of the UNCRPD

2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)

As the UN Convention on the Rights of Persons with Disabilities was ratified on 27 May 2010, the coordination mechanism and focal points were designated by the Resolution of Government No. 1739 on 8th of December, 2010.

The Ministry of Social Security and Labour was designated as coordinating body and focal point for implementing the UN Convention. Other public authorities (the Ministry of Education and Science, the Ministry of Transport and Communications, the Ministry of Health, the Ministry of Environment, the Ministry of Economics, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of the Interior, the Ministry of Culture, the Department of Physical Education and Sports under the Government of the Republic of Lithuania, the Department of Statistics and the Information Society Development Committee under the Ministry of Transport and Communications) were designated as sub-focal points for the implementation of UN Convention according to their competence.

2.1.2. National strategies to implement the UNCRPD

The main aims and objectives of the UN Convention and its implementation are included in the National Social Integration Programme for Persons with Disabilities 2010-2012 (hereinafter referred to as the Programme).

The main aim of the Programme is to achieve equal opportunities and improve the quality of life for people with disabilities in line with international and national public policy objectives and commitments.

The main objectives of the Programme are:

1. To increase aid to the families of people with disabilities (children, adults);
2. To develop services for people with disabilities in the community and improve their quality of life;
3. To improve the environment for people with disabilities, the legal framework, and accessibility;
4. To improve health care and medical rehabilitation services for people with disabilities and improve the quality of these services;
5. To increase and raise the effectiveness and accessibility for the disabled of education and training services;
6. To increase access to employment and labour market;
7. To strengthen legal protection;
8. To increase participation in public and political life;
9. To increase participation in physical education and sports activities;
10. To improve the management of the social inclusion process.

The Programme is coordinated and monitored by the Department for the Affairs of Disabled at the Ministry of Social Security and Labour.

It is noteworthy that after the ratification of the UN Convention, the Plan for Implementation of the National Social Integration Programme for Persons with Disabilities 2010-2012 was complemented with other measures proposed by public authorities and non-governmental organizations of disabled persons. The document was approved by the Minister of Social Security and Labour.

2.2. Monitoring of the UNCRPD

2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)

The Council for the Affairs of Disabled at the Ministry of Social Security and Labour (hereinafter referred to as the Council) and the Office of Equal Opportunities Ombudsperson perform the function of independent mechanism. The Office of Equal Opportunities Ombudsperson performs the function of protection and ensures that all the rights of disabled people are guaranteed. The Ombudsperson also takes actions so that violation of the rights of persons with disabilities are stopped: the Ombudsperson accepts complaints, investigates them, solves problems, and writes comments to the Courts. The Council monitors the implementation of the UN Convention and in particular:

- Assesses the human rights situation in respect to disabled persons;
- Draws public authorities' attention to the violation of disabled rights;
- Helps to foresee measures to protect from human rights violation;
- Makes proposals for improving legislation and seeking to properly implement the Convention;
- Analyzes how provisions of the UN Convention are implemented.

2.2.2 The involvement of civil society in the monitoring process (Article 33.3)

The rights of people with disabilities are defended and represented by the associations of disabled persons. Decisions are taken after including the opinions and experiences of persons with disabilities.

The Ministry of Social Security and Labour has several subordinated bodies: the Department for the Affairs of the Disabled, the Service for Establishing Disability and Capacity for Work, the Dispute Commission, and the Centre for Technical Assistance for People with Disabilities. They organize regular meetings with relevant NGOs in order to ensure closer cooperation, distribution of information as well as resolution of existing problems. Relevant problems related to the establishment of ability-for-work and disability, determination of the need for professional rehabilitation services, ensuring equal opportunities etc. are issues discussed at these meetings.

As mentioned above, disabled persons are involved in the process of monitoring the implementation of the provisions of the UN Convention through representatives of non-governmental organizations of disabled people who take part in the activities of the Council.

The Council analyzes the most important issues in relation to the social integration of people with disabilities and submits proposals to the Minister of Social Security and Labour regarding the implementation of social integration policy relating to the needs of people with disabilities (after the ratification of the UN Convention, the Council also monitors its implementation).

The Council is composed, on a voluntary basis and according to the principle of equal partnership rights, of state institutions and representatives delegated from the Lithuanian Union of Persons with Visual Impairment, the Lithuanian Society of Persons with Hearing Impairment, the Lithuanian Association of Disabled, the Lithuanian Union of Persons with Disabilities, “Viltis” Association for Care for People with Intellectual Disorders, the Lithuanian Association for Care for People with Mental Disorders and the Paralympic Committee of Lithuania. They each have one main representative, at the level of either the president, the vice-president or the chairman.

The members of the Council representing state institutions are chosen within the Ministry of Social Security and Labour, the Ministry of Health, the Ministry of Education and Science, the Ministry of Environment, the Ministry of Communications, the Ministry of Interior and the Ministry of the Economy. They have one representative each - the vice-minister.

The purpose of the Council is to examine the key issues of social integration of persons with disabilities and to assist the Minister of Social Security and Labour and other Ministers in the implementation of the social integration policy. Decisions by the Council inform and advise the Minister of Social Security and Labour.

2.2.3. Collecting statistics and/or developing indicators (Article 31)

The Equal Opportunities Division of the Ministry of Social Security and Labour (MSSL), acting within the scope of its competence, collects, systematises and analyses information about the implementation of the equal opportunities policy in Lithuania and abroad.

The Department for the Affairs of the Disabled at the Ministry of Social Security and Labour collects, on an annual basis, information and statistics related to the social integration of people with disabilities from the state, local authorities and organizations of people with disabilities. It also systematises and summarises them before notifying the Ministry of Social Security and Labour, state and local authorities and organizations of people with disabilities.

The Service for Establishing Disability and Ability-for-Work under the Ministry of Social Security and Labour draws up statistical reports on persons with disabilities and submits them to the Ministry of Social Security and Labour and to the Department of Statistics. The Service for Establishing Disability and Ability-for-Work under the Ministry of Social Security and Labour exchanges information and collaborates with individual healthcare establishments, the National Labour Exchange under the Ministry of Social Security and Labour, the State Social Insurance Fund Board under the Ministry of Social Security and Labour, local authorities, state institutions and other organisations in accordance with the provisions of the Law on Legal Protection of Personal Data.

Luxembourg

2.1. National Implementation of the UNCRPD

2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)

The Ministry of Family Affairs and Integration is the designated focal point within the Luxembourg Government for matters relating to the implementation of the Convention. It also fulfils a coordination role, cooperating closely, on matters relating to the Convention, with an ad hoc Steering Group representing different players within civil society.

2.1.2. National strategies to implement the UNCRPD

The 2009-2014 state agenda plans the development of an outline law on disability proposing a global concept of integration and non-discrimination of persons with disabilities. Simultaneously, the Ministry of Family Affairs and Integration is developing a national strategy to put in place the UNCRPD and the Optional Protocol to allow persons with disabilities to participate fully in all aspects of society.

The analysis of the national legislation in relation to the ratification of the Convention was meant to identify possible laws which may be at the source of discrimination against persons with disabilities. The main findings were related to the accessibility of public services, to higher education as well as adults' legal protection.

In order to raise public awareness about the situation of persons with disabilities and to provide information about the objectives of the Convention, the Family and Integration Ministry has developed an information and awareness campaign on the topic of the UNCRPD.

The principle objectives of the campaign are as follows:
- Informing persons with disabilities about the objectives of the Convention
- Raising awareness of the wider public on the rights of persons with disabilities, showing through various means (posters, adverts) that these rights equal general human rights.
- Providing information to the family members and officials from the social, education, health and care sectors on the UNCRPD.

This campaign was developed in close cooperation with Info-Handicap - Centre National d'Information et de Rencontre du Handicap - and various NGOs and other institutions dealing with disability and persons with disabilities.

Furthermore, the Ministry of Family and Integration is also cooperating closely, on matters relating to the UNCRPD, with an ad hoc Steering Group representing different players within civil society. Together with the Steering Group it is organizing, on a regular basis, working groups where persons with disabilities and all people interested in the subject can express their views freely and be directly involved in the decision making process related to the main subjects of the UNCPRD.

From March to December 2011, during four full-day Working Meetings, the Ministry of Family Affairs and Integration elaborated a national disability Action Plan. This was achieved

together with civil society and in close cooperation with the other Ministries. The Action Plan contains short and mid-term actions and announces modifications of the relevant bills that aim to implement most of the crucial provisions of the UNCRPD. The Government has accepted the 5-Year Action Plan on March 9, 2012. It has been officially presented to the public on March 28 by the Minister of Family Affairs and Integration together with representatives of the different working groups.. Thanks to the contributions of persons with disabilities, the document is now an Action Plan from persons with disabilities for persons with disabilities.

2.2. Monitoring of the UNCRPD

2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)

The 2011 act on the approval of the CRPD[15] allocates the task of promoting and monitoring the Convention to the Consultative Commission of Human Rights of the Grand Duchy of Luxembourg. It will carry out that task jointly with the Centre for Equal Treatment, while the task of protecting has been allocated to the National Ombudsman.

The mission of the Consultative Commission of Human Rights is to promote human rights throughout the Grand Duchy of Luxembourg *inter alia* for persons with disabilities, while the Ombudsman is mainly dealing with citizens' individual complaints. As for the Centre for Equal Treatment, its purpose is to promote, analyse and monitor equal treatment between all persons without discrimination on the basis of race, ethnic origin, sex, sexual orientation, religion or beliefs, disability or age.

2.2.2. The involvement of civil society in the monitoring process (Article 33.3)

The "Conseil supérieur des personnes handicapées" is a national council which has its legal basis in the law of September 12, 2003 about the income of disabled people. It is composed of 11 members, of which five disabled persons, four representatives of organisations for persons with disabilities, one representative of the "Centre national d'information et de rencontre du handicap" and one of the Ministry of Family Affairs and Integration. It is allowed to take the initiative of giving advice on specific disability-related issues and it is bound to express its view on every single law or other disability-specific legal instruments and to advise the Minister on other issues on her request.

Furthermore, the Ministry of Family Affairs and Integration cooperates largely with Info-Handicap-Conseil National des Personnes Handicapées which represents Luxembourg in the European Disability Forum (EDF). It is a loose federation currently comprising more than 50 member organisations which are active in many different areas. Some members are major service providers, responsible for running large institutions, while others are very small self-help or support groups. One of Info-Handicap's main tasks is thus to identify shortcomings in these areas and seek solutions in cooperation with the authorities. It is also undertaking, on a regular basis, actions to raise awareness in the field of disability.

[15] Loi du 28 juillet 2011 portant 1. approbation de la Convention relative aux droits des personnes handicapées, faite à New York, le 13 décembre 2006; 2. approbation du Protocole facultatif à la Convention relative aux droits des personnes handicapées relatif au Comité des droits des personnes handicapées, fait à New York, le 13 décembre 2006; 3. désignation des mécanismes indépendants de promotion, de protection et de suivi de l'application de la Convention relative aux droits des personnes handicapées.

Consultations between the Ministry of Family and Integration and several organisations of and for disabled persons take place on a regular basis. This cooperation is of variable geometry depending on the questions and problems that need to be tackled.
The pillars of the policy for disabled persons are social inclusion and the participation at all levels as well as the maintenance and development of the personal autonomy and independence of persons with disabilities. An evaluation of the expectations and of the needs is necessarily carried out before the launch of a new project.

Another important tool used to foster empowerment of people with disabilities is the support of the Ministry of Family and Integration for umbrella organisations which coordinate the activities of a number of member organisations. For some years now, two of those organisations, namely Info-Handicap a.s.b.l. and "Solidarität mit Hörgeschädigten", have been benefiting from a convention (that guarantees them regular subsidies) with the Ministry of Family and Integration for their information, consultation and training services.

That same ministry is also cooperating closely, on matters relating to the UNCRPD, with an ad hoc Steering Group representing different players within civil society. Together with that "Steering Group" it is organizing, on a regular basis, task groups where persons with disabilities and other people interested in the subject can express their views freely and are directly involved in the decision making process related to the main subjects of the UNCPRD.

2.2.3. Collecting statistics and/or developing indicators (Article 31)

The department for persons with disabilities of the Ministry of Family Affairs and Integration is reflecting upon and developing a common coherent strategy for a coordinated collection of statistical data. In the meantime, Luxembourg uses statistical data collected by different actors working with issues related to disability such as the *Service des Travailleurs Handicapés de l'Administration de l'Emploi*, the *Service de l'Education Différenciée, l'Assurance Dépendance et la Caisse Nationale des Prestations Familiales.* While collecting relevant data, the main problems encountered were the double citing of certain figures and the legal protection of specific data.

Malta

2.1. National Implementation of the UNCRPD

2.1.1. Focal points and coordination mechanisms for implementing (Art. 33.1)

The Disability Matters Act was approved by the Maltese Parliament on 26 March 2012. It will come into effect in mid-April. It includes amendments to the Equal Opportunities (Persons with Disability) Act. These amendments include the identification of the Ministry responsible for Social Policy as the focal point for the Convention.

2.1.2. National strategies to implement the UNCRPD

No strategy is yet in place since Malta still has to ratify the Convention.

2.2. Monitoring of the UNCRPD

2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Art. 33.2)

The Disability Matters Bill currently being debated in Parliament includes amendments to the Equal Opportunities (Persons with Disability) Act. These amendments include the identification of the National Commission Persons with Disability as the independent mechanism for the Convention.

2.2.2 The involvement of civil society in the monitoring process (Art. 33.3)

To date, several seminars and conferences have been held with representatives of disability organisations and other stakeholders in order to disseminate information about the Convention. The text of the Convention has been produced in accessible formats through EU funding. To date, it is available in audio, Maltese, easy-to-read Maltese versions, and in Maltese Sign Language.

The National Commission for Persons with Disability (KNPD) has the legal capacity to promote and raise awareness of disability issues and has now been identified as the independent mechanism for the Convention. The Commission is composed of not less than fourteen members. Seven of the members shall be appointed from amongst such persons appearing to the Prime Minister to best represent the Ministries responsible for Social Policy, Labour, Health, Education, Housing and Economic Planning. Another seven of the members shall be appointed from among such persons who, in the opinion of the Prime Minister, best represent voluntary organisations working in the field of disability issues. Furthermore, half the board members must themselves be persons with disabilities, or family members of persons with a mental disability. Either the chairperson, or the vice chairperson must be disabled himself or he must be related to a person with a mental disability. More than half of the employees of the KNPD's secretariat have disabilities.

The KNPD has a comprehensive programme of empowering persons with disability. KNPD organises regular awareness-raising campaigns with the direct participation of persons with disability and often with EU funding. These include an annual national conference and the

Parliament of Persons with Disability. KNPD organises training for persons with disability to assume these roles and tasks, as well as disability studies and lectures, mainly for university students. These sessions always include the direct involvement of persons with disability, in both the curriculum design as well as lecture-delivery. Disability Equality Training is also provided to public and private organisations and community groups. KNPD, on a regular basis, includes persons with disability when participating in activities organised at EU level (e.g. annual Conference organised to mark the European Day of Persons with Disability in December).

2.2.3. Collecting statistics and/or developing indicators (Art. 31)

KNPD collects statistics but not with direct reference to the Convention. The information published in KNPD's Annual Equal Opportunities Act (Cap. 413) Report is relevant to this but may be limited in scope for this purpose.

In 2009, KNPD published statistics about the quality of life of disabled people in Malta, based on the 2005 National Census. This will be updated after the next Census due to take place in 2011.

Further information can be obtained from the KNPD website, www.knpd.org.

The Netherlands

2.1. National Implementation of the UNCRPD

2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)

It is proposed that after the ratification of the UNCRPD the focal point will be the Ministry of Health, Welfare and Sport. The coordination mechanism consists of an interministerial Steering Group in which all relevant government departments and other government levels (local and provincial) are represented.

2.1.2. National strategies to implement the UNCRPD

Equal treatment and mainstreaming of issues relevant for persons with disabilities are the basic conditions for policies on a local and national level. The Government and the Parliament also assess policies on this aspect. Apart from this, no comprehensive implementation plan for the Convention has yet been put in place.

However, in the course of preparing for the ratification of the UNCRPD, the government focal point (the Ministry of Health, Welfare and Sport) prepares and supports conferences and publications on the UNCRPD.
Moreover, some measures have already been taken for the implementation of the UNCRPD:

- The Ministry of the Interior and Kingdom Relations has issued an obligation for municipalities to provide for at least 25 percent of the polling stations in every region to be completely accessible. A detailed regulation will enter into force in 2012 providing for accessible public transport system. Most buses are already accessible and around 50% of the bus stops will be accessible in 2015. This regulation sets out different time schemes for different aspects of transport system. After finalization of the notification procedure in Brussels (European Commission, DG MOVE), the regulation will enter into force in the Netherlands by the beginning of 2012. On the labour market and domain of social affairs, the growing influx of young people into the scheme for young disabled is a worrying development. In order to increase the labour participation for young persons with disabilities a new Act came into force on 1st January 2010. Under this Act, young persons must be given the chance to look for a regular job or ‘supported job’ before they apply for a benefit. The Rutte Government has taken further steps to increase chances on labour participation. On 1st February 2012, the Government has proposed to Parliament a new law, the ‘Working to capacity Act’ (Wet werken naar vermogen), for a new system on work according to capacity. The proposal integrates several existing systems into one new system for different groups (among them young persons with disabilities) and will be executed by municipalities. Main features of the new system are a single benefit, a single reintegration budget, and (under certain conditions) dispensation from the statutory national minimum wage. The new Act will not apply to people who are permanently incapable to work and people who can only work in sheltered employment. For these groups the existing laws remain unchanged. The Dutch Government aims to put the new Act into effect on 1st January 2013.
- In the domain of education the equal treatment act is broadened to all aspects of primary, secondary and higher education.
- The equal treatment act on the basis of handicap and chronic illness has been made applicable in the field of primary and secondary education and housing and will be applicable with regard to public transport in the near future (halfway 2012). At the moment

further extension of the applicability of this act with respect to web-accessibility is being prepared.

At local level many municipalities have started different stimulating programs, such as Agenda 22 in the municipality of Utrecht. This is a working method that has been derived from the 22 rules that the United Nations drafted. This working method means that the city of Utrecht involves disabled people actively in its policy. This includes the accessibility of buildings, access to public transport and better readability and usability of various forms for people with intellectual disabilities. This agenda seeks to ensure that all people of Utrecht, with and without disabilities, can participate in society.

2.2. Monitoring of the UNCRPD

2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)

The Netherlands have designated the new National Human Rights Institute (NHRI) as the independent mechanism for promoting, protecting and monitoring the UNCRPD. To set up the NHRI, a draft law has been approved by Parliament. The law will enter into force by July 2012. The NHRI will then start its work.

2.2.2. The involvement of civil society in the monitoring process (Art. 33.3)

After ratification, the National Human Right Institute will involve civil society in the monitoring process.

Furthermore, civil society is monitoring the implementation of UNCRPD when asked for an opinion in the process of drafting new legislation and policies relevant to persons with disabilities. To this end, strong relations between several government departments and civil society have been formalized. Monitoring of UNCRPD also takes place within the ambit of several formal advisory bodies to the government in which civil society is represented. These bodies advise the government on major policy subjects. Civil society in the Netherlands is well organised and receives government funding for its work on empowering persons with disabilities, also with a view to monitoring governmental action.

On a local level, municipalities are legally obliged to establish a formal advisory and monitoring structure for persons with disabilities in the area of labour and social support. Furthermore, municipalities create “platforms” for persons with disabilities to advice local authorities, shopkeepers’ associations service providers etc. on any issue relevant for persons with disabilities. These platforms are supported by a national program funded by the government and aiming at the empowerment of persons with a disability.

2.2.3. Collecting statistics and/or developing indicators (Article 31)

A “participation index” has been developed to measure the level of participation of persons with disabilities. This index includes indicators on education, labour, leisure, housing and the level of using mainstream provisions.

Poland

2.1. National Implementation of the UNCRD

2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)

Poland has not ratified the Convention yet, so no “relevant structures, namely focal point, coordination mechanism and a framework including independent mechanism to protect, promote and monitor the UNCRPD pursuant to its Article 33” have been put in place.
Decisions concerning these issues will be taken at the moment of deciding on the ratification of the Convention, giving due consideration to the legal system in force, existing human rights protection structures and the Convention provisions.

2.1.2. National strategies to implement the UNCRPD

As Poland has not ratified the Convention yet, there is no formal obligation to implement it. Preparation for the ratification is carried out within the framework of the procedure applicable to the ratification of international agreements, set out by the Act on international agreements.
The adoption of any special strategy is not envisaged.

The same will apply to the implementation of the Convention once Poland ratifies it. Relevant Ministries apply the principle of disability mainstreaming and include disability issues into legislation, programmes and action plans.

The Polish Government and the self-government authorities have been called upon by the Sejm to undertake activities aiming at implementing the rights mentioned in the Resolution - Charter of the Rights of Persons with Disabilities passed on 1 August 1997. The implementation of these rights aims to enable persons with disabilities to lead an independent, self-reliant and active life and not to be discriminated in any area of life. These goals reflect the goals of the Convention. In the Resolution, the Sejm called upon the Government to submit annual reports on these activities. The reports are prepared in cooperation with various Ministries and central offices and presented to the Sejm by the Government Plenipotentiary for Disabled People, situated within the Ministry of Labour and Social Policy.

Several developments regarding to information on “Voting rights” have taken place in Poland, in relation to the last Report.

The Act-Election Code, adopted on 5 January 2011, replaced previous legal acts on conduct of various elections. It includes some provisions concerning persons with disabilities. But enjoyment of the right to vote by persons with disabilities has been further improved thanks to additional provisions regarding adaptation of the organisation of elections to the needs of people with various disabilities, provided in the Act of 27 May 2011 on the amendments to the Act-Election Code and to the Act implementing the Act-Election Code. The amended Act-Election Code came in force on 1 August 2011. The Act-Election Code lays down rules and procedure for nominating candidates, the conduct and the conditions of validity of the elections to the Sejm and the Senate of the Republic of Poland, of the President of the Republic of Poland, to the European Parliament in the Republic of Poland, to the proclaiming bodies of the local self-government units, as well as of mayors.

The Act grants special rights to disabled voters. A disabled voter is defined in the Act as a person with reduced physical, psychological, mental or sensory performance, which hinders participation in the election. But some provisions of the Act concern only voters with a severe or moderate degree of disability, within the meaning of the Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities.
People who have the right to vote shall be put down on the register of voters. A disabled voter, following a written request to the office of the municipality submitted not later than 14 days before the election, is added to the register of voters in the electoral district chosen by him from among electoral districts with polling stations adapted to the needs of disabled voters, in the municipality of his residence.
One can vote in person. A voter with a severe or moderate degree of disability, within the meaning of the Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities, may delegate somebody to vote on his behalf. This solution also applies to voters who turn 75 on election day at the latest. Authorisation for voting shall be granted before the wójt or another officer authorized by the wójt for the drafting of authorisation for voting. The document of authorisation for voting shall be prepared at the domicile of the voter, who grants authorisation for voting, or elsewhere, as requested by the authorising person.
During voting, a disabled voter may request for help of other person, excluding members of the electoral commission and the persons of trust.
According to the Election Code, voting is conducted in permanent and separate electoral districts established in the municipality. Separate electoral districts are formed, *inter alia*, in health care institutions and nursing homes. In these separate districts a second ballot box can be used.
Moreover, as concerns disabled voters, the Act provides, *inter alia*, for:

- the right to obtain information about the organisation of elections by telephone, by printed material sent on request, including in electronic form,
- placing of information, by the National Electoral Commission on its website, on the rights of disabled voters, in the form which takes into account the various types of disabilities and preparation of information in Braille about these rights and passing it on request to interested persons,
- the obligation of members of the district election commission to transmit verbally the content of election notices,
- ensuring the accessibility of polling stations for people with reduced mobility,
- the possibility of postal voting, according to the statutory defined procedure, by a voter with a severe or moderate degree of disability, within the meaning of the Act on Vocational and Social Rehabilitation and Employment of Persons with disabilities,
- voting using overlays to voting cards prepared in Braille (the overlay model has been defined by the National Electoral Commission).

The Regulation of the Minister of Infrastructure of 29 July 2011 on the polling stations adapted to the needs of voters with disabilities came into force on 1 August 2011.

2.2. Monitoring the UNCRPD

2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)

In Poland an independent mechanism pursuant to Article 33.2 of the UN Convention will be nominated at the moment of ratifying the Convention. Poland has already well-established

administrative procedures for reporting on the application of different UN conventions concerning human rights and it intends to maintain them. Should there be a need for any adaptations, they will be considered at a later stage.

2.2.2. The involvement of civil society in the monitoring process (Article 33.3)

Means ensuring involvement of civil society in the process of implementation and monitoring of the UNCRPD has not yet been defined. Common legal regulations which are already in force will continue to be applied.

According to the Act on access to public information, any person has the right to obtain information from public authorities and to request access to the official documents elaborated, inter alia, by the public authority bodies.

The representatives of people with disabilities are consulted within the framework of decision-making processes conducted with the participation of:

- the National Consultative Council for Disabled People (on the national level), which is an advisory body of the Government Plenipotentiary for Disabled People and acts as a platform of cooperation to the benefit of persons with disabilities between bodies of national administration, bodies of territorial self-government and non-governmental organisations. The scope of activities of the Council includes the submission to the Plenipotentiary of proposals for actions aimed at meeting the needs of people with disabilities. It also includes the submission, upon the Plenipotentiary's request, of opinions on the proposals for underlying principles of policy concerning employment and vocational and social rehabilitation of persons with disabilities and on legislative projects that can affect the situation of persons with disabilities, as well as informing on the need to establish or change the regulations in this respect;

- the voluntary voivodship councils for persons with disabilities (on the regional level), which are consultative and advisory bodies serving the marshals of voivodships; their task is to inspire actions aimed at vocational and social rehabilitation of persons with disabilities and exercising the rights by persons with disabilities, to issue opinions on the voivodship programmes of action for the benefit of persons with disabilities, to evaluate their implementation as well as to advise on draft resolutions and programmes prepared for adoption by the voivodship parliament from the perspective of their impact on persons with disabilities;

- the voluntary powiat (district) councils for persons with disabilities (on the local level), which are consultative and advisory bodies serving the starostas; the scope of their activity is powiat-wide and their tasks are similar to those of the voivodship councils.

Moreover, the Foundation "Regional Development Institute" and the Polish Disability Forum (an umbrella organisation in the field of disability) were involved in the assessment of compliance of the Polish legislation and the Convention provisions, which was carried out in 2008 as a part of a project co-financed by the State Fund for Rehabilitation of Persons with Disabilities. Their recommendations included in the report "Polish way to the Convention on the rights of persons with disabilities" are duly taken into consideration by governmental administration when considering the necessity of and elaborating proposals for amendments to national legislation prior to a decision on the ratification of the Convention.

Furthermore, consultative and participatory techniques are used to raise the awareness in terms of equal treatment and non-discrimination of persons with disabilities. Moreover they aim at supporting the incorporation of their needs in legislative and practical matters. The application of such techniques results in the participation of people with disabilities in the various evaluation and advisory bodies. It also results in promoting the integration of persons with disabilities in the upbringing and education (starting from pre-school age); organizing of seminars and conferences, media campaigns, events and other actions in order to integrate persons with disabilities into the local communities. It shall also raise awareness of the local self-governments on the needs of people with disabilities.
It should be mentioned that, according to the Resolution of the Sejm of the Republic of Poland - Charter of the Rights of Persons with Disabilities, the Government Plenipotentiary for People with Disabilities annually informs the Sejm on actions undertaken by the Polish Government and local authorities to implement the rights of persons with disabilities defined in the Resolution. This is followed by the Parliamentary debate on the developments in increasing the opportunities of persons with disabilities in the most important areas of daily life, and on questions of avoiding and eliminating any kinds of discrimination of people with disabilities.

2.2.3. Collecting statistics and/or developing indicators (Article 31)

A more thorough examination of the Convention may reveal the need to collect statistical data which currently is not in place. At the moment, there is no particular need to collect additional statistical data or to develop indicators in view of monitoring the application of the Convention.

Portugal

2.1. National Implementation of the UNCRPD

2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)

Portugal ratified the UNCRPCD in September 2009. According to the latest Portuguese Government proposal, the Focal Point will be situated within the Ministry of Foreign Affairs and the Ministry of Solidarity and Social Security. The National Institute for Rehabilitation is going to be designated as Coordination Mechanism. And finally, the Ombudsman will be invited to be the Independent Mechanism at national level.

2.1.2. National strategies to implement the UNCRPD

The Portuguese Government approved the National Strategy for the Disability (2011-2013) by the Resolution of Ministers nº 97/2010 of 14th December 2010. This strategy is based on the UNCRPD and succeeds the Action Plan for the Integration of People with Disabilities or Impairments (2006-2009).

The National Institute for Rehabilitation (INR, I.P.) is responsible for the planning, execution and coordination of policies aimed to promote the fundamental rights of persons with disabilities. This Institute will monitor the implementation of the National Strategy for Disability. This strategy was a result of a public consultation and is intended to promote a wide partnership between public and private entities, central, regional or local administration, social partners, NGOs and civil society as well as people with disabilities. It establishes a set of measures, targets and indicators distributed by five strategic areas of action:

Axis nº1: Disability and multiple discrimination;
Axis nº2: Justice and exercise of rights;
Axis nº3: Autonomy and quality of life;
Axis nº4: Accessibility and design for all;
Axis nº5: Modernization of Administrative and Information systems.

Regarding axis nº1 and 2, the National Strategy for the Disability intends to:

- Promote awareness and information about domestic violence against persons with disabilities
- develop a program about UNCRPD at national level;
- make an assessment of national legislation verifying if Portuguese laws are meeting the requirements of UNCRPD;
- make the first national report regarding the UNCRPD implementation;
- review national laws concerning the accessibilities in buildings;
- promote public dissemination of rights, dignity and better health conditions for persons with disability;

Regarding axis nº3 and 4: The National Strategy for the Disability intends to:

- develop a national campaign on the employment of persons with disabilities
- Implement a National System of Intervention in Precocious Childhood
- Strengthen teachers skills in special education
- Develop initiatives addressed to persons with disability in order to increase their skills

- Increase the number of accessible beaches
- Increase the number of accessible public buildings
- Create a guide on good practices in accessible tourism
- Improve accessibility of public transports
- Reinforce school manuals and books in accessible formats

Regarding axis nº5: Administrative modernization and information systems intends to:

- develop a project that will allow public services to answer questions and doubts of persons with hearing impairments;
- Consolidate the accessibility of public services internet sites.

The National Strategy for Disability is intended to strength the disability public policy and to consolidate the previous Action Plan for the Integration of People with Disabilities. It develops a mainstreaming approach of disability and defines the measures that will be adopted and implemented in the different areas of public policy.

Annually the National Institute for Rehabilitation I.P. elaborates a report concerning the complaints based on the disability discrimination act. The complaint procedure is also available on the Institute's website.

The Portuguese Government approved the Decree-Law 163/2006, 08th August that establishes the technical norms of accessibility to public and collective equipments, public buildings and housing. This new law reinforces the accessibility rules as well as the sanctions that apply to public or private entities.

Portugal has also approved the National Plan for the Promotion of Accessibility (2006-2015) to provide to persons with disabilities, autonomy, equal opportunities and full participation. This plan incorporates a set of measures of accessibility in the built of environment, transportation and information and communication technologies (ICT) and supportive technologies (TA) to all citizens without exception.

In October 2010, the Disability Rights Promotion International (DRPI) project was launched in Portugal. This project involves the National Institute for Rehabilitation I.P., the Calouste Gulbenkian Foundation and the High Institute for Social and Political Sciences/Lisbon Technical University. The DRPI project will create an independent instrument to monitor the Convention on the Rights of Persons with Disabilities and is intended to promote the human rights of persons with disability and their empowerment. The DRPI project is an innovative approach that involves three institutions with knowledge in disability, human rights and social research areas. It is also intended to be freely used by the independent mechanism that monitors the Convention.

The National Strategy for Disability sets up some measures, namely, the creation of an Independent Mechanism responsible for the promotion and screening of the UNCRPD.

The National Institute for Rehabilitation also invested in research and manuals in specific areas such as multiple discrimination of women with disabilities, deinstitutionalization of children with disability, accessible tourism, the available information on disability produced in public administration data and the implementation of ICF in health and social security inquiries.

These studies were financed by the ESF and are available on the Institute's website (www.inr.pt). From 2010 to 2012 it has approved more research studies on the mental health of persons with intellectual disability, the violence against persons with disabilities and personal assistance services. Most of the studies were made by research centres of Portuguese Universities and created manuals and/or recommendations to implement good practices in different public and private services.

2.2. Monitoring of the UNCRPD

2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)

Portugal has not yet nominated an independent mechanism as mentioned in Article 33.2 of the UN Convention. However, according to the latest Portuguese Government proposal, the Ombudsman will be invited to be the Independent Mechanism.

2.2.2. The involvement of civil society in the monitoring process (Article 33.3)

The 38/2004 law ensures full participation of people with disabilities or their representative organisations in the drafting of legislation on disability, execution and evaluation of all policies mentioned in this law, so as to ensure their involvement in all situations of everyday life and society in general.

The technical and financing program of the National Institute for Rehabilitation, I.P. for NGOPD has been developed in the framework of the Convention on the Rights of Persons with Disabilities since 2009. This Financial Program has contributed to developing civil society activities in different areas as cultural and leisure activities, empowerment and awareness, accessible and easy to read information on human rights and technical seminars. The National Institute for Rehabilitation I.P. undertook some initiatives (i.e. conferences/seminars/presentations) in order to disseminate the UNCRPD and has a training program for specific groups (persons with disabilities, local communities' architects and social workers, journalists and public servants). It even published a children's version of the UN Convention and a manual for parliamentarians about the implementation of the Convention. All documentation is available and can be freely consulted on the institute's website institute (www.inr.pt).

The involvement of NGOs is also guaranteed through the National Council for the Rehabilitation and Integration of the People with Disabilities ("Conselho Nacional de Reabilitação e Integração das Pessoas com Deficiência" – CNRIPD), which is a consultative body of the Minister of Labour and Social Solidarity providing the Government with information used in deciding on matters related to the definition of the National Rehabilitation Policies. This body supports and includes representatives of all kinds of organizations of people with disabilities as well as social partners and public authorities. It issues opinions and presents proposals for measures related to the problems of rehabilitation and disability.

The State encourages and supports people with disabilities, their families and the disability movement throughout all measures taken for the prevention of disabilities, the rehabilitation and the social integration of people with disabilities.

In recent years, the disability movement has grown significantly and consolidated its form of acting. In some cases it has taken on an active role of claiming rights for the people with disabilities. The dialogue between the State and NGOs, and the logistical and financial support that the latter have received, has contributed to encouraging the social role played by associations.

In doing so, the Portuguese Government is adhering to both the principles contained in the Basic Law and to the international recommendations for the participation of people with disabilities in the definition and concretisation of effective related policies.

2.2.3. Collecting statistics and/or developing indicators (Article 31)

The Portuguese Census 2011 will update the last Census 2001. It will include the Washington Group questions about Disability as well as questions about accessibility in the environment and private houses. However the results of Portuguese Census 2011 are not available yet.

In 2010 the National Institute for Rehabilitation made two studies about the available information on disability produced in public administration data and the implementation of ICF in health and social security inquiries. The National Statistic Institute also adopted a Recommendation about the use of ICF in national data collection systems.

Romania

2.1. National Implementation of the UNCRPD

2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)

The focal point is the General Directorate for the Protection of Persons with Disabilities, within the Ministry of Labour, Family and Social Protection. It also acts as the coordination mechanism.

2.1.2. National strategies to implement the UNCRPD

Romania has not yet developed any comprehensive strategy to implement the UNCRPD.

However, the promotion and observance of the rights of disabled persons shall be, mainly, the duty of the local public administration authorities where the disabled person has his/her domicile or residence and, in subsidiary, and complementarily, of the central public administration authorities, civil society and the family or of the legal representative of the person.
Based on the principle of equality, the competent public authorities shall ensure the necessary financial resources, and take specific measures as to ensure the direct and unlimited access to services. The Ministry of Labour, Family and Social Protection through the General Directorate for the Protection of Persons with Disabilities and the other local and central public authorities shall ensure the necessary conditions for the social integration and inclusion of disabled persons.

2.2. Monitoring the UNCRPD

2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)

Within the Law 221/2010 for the Ratification of the Convention the monitoring mechanism was established. The Ministry of Labor, Family and Social Protection through the General Directorate for the Protection of Persons with Disabilities is designated the central authority for the implementation of the UNCRPD, incorporating functions of both coordination mechanism and focal point. The independent monitoring mechanism is not established yet.

2.2.2 The involvement of civil society in the monitoring process (Art. 33.3)

Civil society will be involved through the independent mechanism to protect, promote and monitor the UNCRPD.

The NGOs of persons with disabilities are consulted in regard to all legislative measures for persons with disabilities in the following areas:

- For activities related to the protection and promotion of the rights of disabled persons, the Ministry of Labour, Family and Social Protection and the local and central public administration authorities maintain dialogue, collaboration and partnership relationships with the non-governmental organizations of persons with disabilities or

which represent their interests, and with the cult institutions recognized by law with activity in this field.

- The Council for the analysis of the problems of disabled persons is an advisory body attached to the General Directorate for the Protection of Persons with Disabilities, formed by representatives of central public administration authorities as well as representatives of civil society.

- The task of the Council is to analyze problems related to the protection of disabled persons, to propose measures regarding the improvement of their living conditions and to notify the competent bodies of the breach of the rights of disabled persons.

The Ministry of Labour, Family and Social Protection through the General Directorate for the Protection of Persons with Disabilities may conclude partnerships with non-governmental organizations of disabled persons, which represent their interests or perform activities in the field of promotion and defense of human rights.

2.2.3. Collecting statistics and/or developing indicators (Article 31)

The Ministry of Labour, Family and Social Protection through the General Directorate for the Protection of Persons with Disabilities is collecting statistics on the number of persons with disabilities, the kinds of disabilities, the number of residential institutions and the living conditions they offer, the number and type of alternative services, data regarding the implementation of specific quality standards in residential institutions and data regarding the costs.

Slovakia

2.1. National Implementation of the UNCRPD

2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)

Currently, no contact point has been established in the Slovak Republic to deal with implementation of the Convention.

However, the discussion on the modalities of implementation of the Convention is very intense. Several meetings discussing the modalities concerning institutional infrastructure have already taken place: for instance a Round Table organized by the Slovak Disability Council, the umbrella organization for NGOs working for people with various types of disability (March 2011), whose recommendations were also introduced publicly at the constituting meeting of the Government Council for Human Rights, Minorities and Gender Equality (April 2011); the meeting of the representatives of the Ministry of Labour, Social Affairs and Family of the Slovak Republic and the Ministry of Foreign Affairs of the Slovak Republic (March 2011); the meeting of the representatives of the Ministry of Labour, Social Affairs and Family of the Slovak Republic and the Government's Office of the Slovak Republic (July 2011) to mention a few.

The core document in this respect is the "Proposal for the implementation of Article 33 of the Convention on the Rights of Persons with Disabilities", introduced by the Disability Rights Center on the second meeting of the Government Council for Human Rights, Minorities and Gender Equality on June 27th 2011. The document offered analysis of the resource and competence implications with respect to several governmental bodies (the Office of the Prime Minister, the Office of the Deputy Prime Minister for Human Rights and National Minorities, Ministry of Labour, Social Affairs and Family of the Slovak Republic) which are considered for the position of the Central Focal Point, as well as that of specialized (secondary) focal points at the respective ministries.

2.1.2. National strategies to implement the UNCRPD

No strategy on the Convention implementation has been developed so far. However, a new National Programme of developing the living conditions of persons with disabilities has been under preparation, based on the Convention on the Rights of Persons with Disabilities and could serve as a national strategy. By Resolution no. 158 of 2 March 2011, the Government approved the Statute of the Government Council for Human Rights, Minorities and Gender Equality and also abrogated the Council of the Government for people with disabilities. The role and functions of the Council of the Government for people with disabilities have been taken over by the Committee for People with Disabilities, a standing expert body of the newly established Government Council for Human Rights, Minorities and Gender Equality. The Statute of the Committee for People with Disabilities has been approved by the Council on June 27th 2011.

The newly constituted Committee for Persons with Disabilities made the finalization of the National Programme for the Development of living conditions of persons with disabilities its priority, in line of which the Committee established a specialised expert working group to deal with this issue in more detail. The deadline for completion of the National Programme

for the Development of living conditions of persons with disabilities is envisaged for the end of 2012.

2.2. Monitoring of the UNCRPD

2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)

The Slovak Republic has currently not established an unambiguous, independent mechanism for promoting, protecting and monitoring the Convention. Some conclusions in this respect can be however drawn from the recently approved Proposal for a Creation of the Nationwide Strategy on the Protection and Promotion of Human Rights in the Slovak Republic, which suggests mandating the current parliamentary ombudsman institution (The Public Defender of Rights) with the task of independent promotion, protection and monitoring of the rights of people with disabilities by creating a post of vice-ombudsman for disability issues. The finalization of the Strategy is set for the end of September 2012.

2.2.2. The involvement of civil society in the monitoring process (Article 33.3)

Civil society, in particular persons with disabilities and their representative organisation (in accordance with Article 33 (3) of the Convention) have been preparing for the monitoring process through the National Council of Persons with Disabilities.

Apart from this, also the Statute of the Committee for People with Disabilities follows the principles of parity and direct participation, thus creating wide and relevant possibilities for people with disabilities to participate and influence the work of the Committee.

The Statute recognizes six different groups of organizations representing different types of disability - intellectual disability, chronic illness, mental and behavioral disorder, hearing impairment, physical disability, and visual impairment. According to the Statute, two representatives, elected by organisations representing different types of disability, became members of the Committee following a call for interest opened on July 4th 2011. In order to make the call widely accessible, it was marketed both on the internet and in one of the nationwide daily newspapers.

An initiative to create a nationwide coalition of organisations of people with disabilities and the independent monitoring mechanism shall be discussed during a thematic meeting of the Committee for People with Disabilities scheduled for February 21st 2012 (focusing on UNCRPD implementation process and related issues).

2.2.3. Collecting statistics and/or developing indicators (Article 31)

At present, there is no national coordination of disability research in Slovakia either in terms of research institutions or explored topics. The final available research products on issues related to disability and the lives of the disabled and their families are rather matter of individual research initiatives of various, mainly publicly-funded institutions. For working purposes, these can be divided into several groups:

- *Sectoral Disability Research* (these are mostly different research projects thematically linked to the selected topical issues addressed in the scope of individual sectoral Ministries, such as sector of Labour, Social Affairs and Family, sector/ of Education, Science, Research and Sport, Ministry of Culture, etc.)

- *Disability Research conducted by universities and the Slovak Academy of Sciences* (this refers to different research projects implemented with the support of national grant schemes, such as VEGA, and international grant schemes)

- *Research implemented by independent and civil society organizations* (such as IVO/Institute for Public Affairs, SOCIA Foundation, Slovak Disability Council etc.)

The Statistical Office of the Slovak Republic does not collect data regarding people with disabilities disaggregated by gender, age, education or various types of disability (physical, visual, auditory, intellectual/learning, mental, internal), the cause of the disability, level of independence, economic activity or whether they live in home/community-based environment/independent living or in institutional settings. In the framework of the ESSPROS methodology – European System of Integrated Social Protection Statistics, there are data on the number of recipients of disability pensions, including recipients of disability pension for youth, and data on expenditure on disability social benefits.

In 2009, the Statistical Office conducted a pilot project that aimed to prepare and test the Slovak version of the European Disability and Social Integration Module (EDSIM). Given the fact that testing of the Slovak version of questions of the module was carried out on a small sample, the results of the survey were not representative and were not published. Outputs from the project were provided to Eurostat.

Slovenia

2.1. National Implementation of the UNCRPD

2.1.1. Focal points and coordination mechanisms for implementing (Art. 33.1)

The Ministry of Labour, Family and Social Affairs was designated as the focal point within government for matters relating to the implementation of the Convention in accordance with the Act on ratification of UNCRPD and the Protocol, in accordance with the Slovenian system of disability policy.

Within the National Assembly there is a special Committee on Labour, the Family, Social Policy and Disability and within the National Council of the Republic of Slovenia there is a special independent Commission for Social Care, Labour, Health and the Disabled (the current president of this commission is a person with a disability).

The framework of organisations which are also dealing with disability issues in Slovenia is composed of the National Council of Disabled People's Organisation of Slovenia (NSIOS) with its representative and other disabled people's organisation working on a national level and of several expert and governmental institutions.

2.1.2. National strategies to implement the UNCRPD

In 2006, the Slovenian Government accepted the Action Programme for Persons with Disabilities 2007-2013. The program is based on the Convention on the Rights of Persons with Disabilities, as well as on other UN documents, Action Programme of the EU for persons with disabilities and on the Action Programme of the Council of Europe. Slovenian Government approves a yearly report on implementation and control of the objectives and measures of APPD (report for 2010 – in Slovenian only).

The purpose of Slovenia's Action Programme for Persons with Disabilities is to promote, protect and ensure the full and equal enjoyment of all human rights by persons with disabilities, and to promote respect for their inherent dignity. The program comprises twelve fundamental objectives together with 124 measures, comprehensively governing all spheres of persons with disabilities life, and referring to the period 2007 – 2013.

The last section of Action Programme for Persons with Disabilities 2007-2013 (APPD) includes a list with several actions for the implementation and control of the objectives and measures laid down in the APPD. Participation of civil society is provided for in 2nd article: "ensuring that disabled people's organizations are fully involved in control procedures". Further to that a Disabled Organisations Act (article 4) prescribes that all the state institutions should consult with Disabled People's Organisations in all matters concerning the planning of national policy and actions to ensure equal opportunities and equal treatment of disabled people.

A special Governmental committee was established to control the implementation of actions laid down in the APPD and has the task to prepare an annual report to be send to the Ministry of Labour, Family and Social Affairs. Members of this committee are representatives of all

relevant ministries, institutions and of the NSIOS, as representatives of persons with disabilities.

The goals of the Action Programme for persons with disabilities 2007-2013 are to:

1. Expand awareness throughout society regarding persons with disabilities, their contribution to the development of society, rights, dignity and needs;
2. Ensure that all persons with disabilities have the right to decide, on an equal basis with others and without discrimination, where they wish to live and have the right to fully participate in community life;
3. Ensure that persons with disabilities have access to the physical environment, transport, information and communications;
4. Ensure, on an equal basis with others and without discrimination, an inclusive educational system at all levels and lifelong learning;
5. Ensure that persons with disabilities have access to work and employment without discrimination in a work environment that is open, inclusive and accessible;
6. Ensure that persons with disabilities have an adequate standard of living, financial assistance and social security;
7. Ensure to persons with disabilities effective health care;
8. Enable persons with disabilities' full inclusion in cultural activities and collaboration in the area of accessibility of cultural materials on an equal basis with others;
9. Ensure persons with disabilities' participation in sports and cultural activities;
10. Ensure that persons with disabilities can participate in the religious and spiritual activities of their communities on an equal basis with others;
11. Strengthen the position of organizations of persons with disabilities;
12. Detecting and preventing violence and discrimination against persons with disabilities.

2.2. Monitoring of the UNCRPD

2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)

According to Article 28 of the Equalization of Opportunities for persons with Disabilities Act (Official Gazette, 94/2010), the Council for Persons with Disabilities of the Republic of Slovenia (hereinafter: Council) shall be an independent tripartite body; it shall be composed of representatives of DPOs, representatives of professional institutions in the field of protection of persons with disabilities and representatives of the Government of the Republic of Slovenia. The tasks of the Council shall include promotion and monitoring the implementation of the Act Ratifying the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of Persons with Disabilities, too.

The Act provides that “the ministry responsible for the protection of persons with disabilities shall perform professional, administrative and technical tasks for the Council” and that “funds for the work of the Council shall be provided from the budget of the Republic of Slovenia”.

Until the establishment of the Council in 2013, the Government Council for the Disabled will perform its functions.

Big efforts to protect, promote and monitor the UNCRPD are provided by NSIOS whose mission is the systemic implementation of human rights of disabled people and their legal representatives as well as full inclusion and equality of disabled people in all social areas. In this sense NSIOS is also constantly pursuing to examine Slovenian legislation and provide initiatives for its amendments in accordance with the interests of the disabled; to participate in the preparation of new legislation and to verify whether the interests of disabled people and their organisations are adequately taken into account in the proposed laws. NSIOS also encourages the provision of equal opportunities for disabled persons in the society and is always asserting the principle “nothing about disability without disabled”.

2.2.2. The involvement of civil society in the monitoring process (Article 33.3)

Civil society and in particularly persons with disabilities and their representative organizations are involved and fully participate in the monitoring process through the Government Council for persons with disabilities of the Republic of Slovenia. They may also submit proposals directly to the drafts of Acts, to the Programmes and are participating at working groups.

The Government Council for Persons with Disabilities ensures that persons with disabilities are given due consideration in all national programme documents and gives expert opinions on proposed acts and implementing regulations.

Besides, the Council discusses all legal acts concerning the status of persons with disabilities in different stages of drawing up and adoption, it monitors the implementation of adopted legal acts and draws attention to problems and deficiencies that arise in the process. Within international cooperation the Council keeps itself informed of new developments in the EU concerning persons with disabilities (reports of ministries, NSIOS and representative organisations of persons with disabilities). The Council considers expert reports of institutions operating in the field of protection of persons with disabilities. It draws up opinions and positions on documents the relevant ministries prepare for the Government and on initiatives and proposals submitted to it by disability organisations, social economy organisations, professional institutions and individuals.

The Council is tripartite – it consists of representatives of representative disability organisations, Government representatives and experts. Of fifteen members, five are representatives of organisations of persons with disabilities.

Under the Slovenian Act on disability organizations adopted in 2002, Article 4 on Engagement to consult disability organisations provides that "Disability organizations participate in shaping the national policies and measures for providing equal opportunities and equal treatment of persons with disabilities. National authorities consult disability organizations on all matters from previous paragraph" Furthermore Article 10 states that, disability organizations among other define interests and defend the needs of persons with disabilities on all levels concerning the life of disabled persons and contribute to the awareness of general public and have an impact on changes in favour of disabled persons, plan, organize and perform program

Representative and other disability organizations functioning on national level can join into a national council of disability organizations - National Council of Organisations of Persons

with Disabilities. The goal of the Council is to coordinate the interests of all persons with disabilities in the country, respecting the autonomy of each disability organization and to represent them in the dialogue between professional associations, national authorities, public institutions and other stakeholders. The National Council proposes candidates for the representatives of persons with disabilities in the authorities of national institutions and authorities of international organizations and cooperation, and performs other commonly agreed activities.

The government and line ministries consistently respect this provision and consult the representatives of representative disability organizations on all important issues. Also public discussions on preparatory acts are being held at the same time.

2.3. Collecting statistics and/or developing indicators (Article 31)

Statistics and data are collected by different institutions, for example by Ministry of Labour, Family and Social Affairs; the Employment Service of Slovenia; the Pension and Disability Insurance Institute of the Republic of Slovenia; the Statistical Office of Republic of Slovenia; the Fund for the Promotion of the Employment of the Disabled; the Health Insurance Institute of Slovenia; the Social Protection Institute of the Republic of Slovenia; the University Rehabilitation Institute – Soča, etc.

Spain

2.1. National Implementation of the UNCRPD

2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)

The focal point for the UNCRPD is the Ministry of Foreign Affairs and Cooperation as well as the Ministry of Health, Social Services and Equality, through the Directorate-General for Disability Support Policies, which is responsible for the coordination of both.

The government coordination mechanism to protect, promote and monitor compliance with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) is the National Disabilities Council. The National Disabilities Council was designated in 2009 as the body of reference for the promotion and monitoring of international legal instruments in matters of the human rights of persons with disabilities, and in particular the implementation of the UNCRPD but it existed before that date and it was used by the government as an instrument for the coordination between all the Ministries.

This is a consulting body made up equally of representatives of all of the ministries and representatives of persons with disabilities. It was created in 2004 by Royal Decree 1865/2004[16], which regulates the National Disabilities Council. It is assigned to the Ministry of Education, Social Policy and Sport and formalises the participation of the associative movement of people with disabilities, their families and the General State Administration in the definition and coordination of a coherent disability policy.

In particular, promoting equal opportunities and non-discrimination of people with disabilities is the task of this Council. To do so, and on account of the adoption of tzhe UN Convention, the original responsibilities of the National Council on Disability have been modified and extended through Royal Decree 1468/2007[17], of 2 November by adding the functions of constituting reference body for promoting and monitoring legal international instruments regarding the human rights for people with disabilities. The last modifications of the National Council on Disability were introduced by the Royal Decree 1855/2009[18], of 4 December. Furthermore, the Commission on Integral Policies on Disabilities was created in the Congress of Deputies.

Spain is made up of Autonomous Communities. Considering the distribution of competences between the central government and the autonomous regions, the Ministry of Health, Social Services and Equality holds periodic meetings with the general directors responsible for disability policies in each autonomous region, through the Directorate-General for Disability Support Policies. The Ministry thereby ensures coordination between both levels of administration. The approval and operation of a mechanism such as that of the joint work methodology between the national government and the general directorates of the autonomous

[16] www.mtas.es/sgas/Discapacidad/ConsejoDisca/RD1865-04.htm
[17] http://www.mtas.es/sgas/Discapacidad/ConsejoDisca/RD1865_04modif.pdf
[18] http://www.boe.es/boe/dias/2009/12/26/pdfs/BOE-A-2009-20890.pdf

regions in matters of disability encourage the putting into practice of the focal points and the obligations set forth in the UN Convention at the Spanish regional government level.

2.1.2. National strategies to implement the UNCRPD

Spain ratified the UNCRPD and the Optional Protocol, and has been incorporated into national law.[19]

In Spanish Law, the evolution of disability towards a social model had already occurred before the coming into effect on 3 May 2008 of the Convention. This evolution started with the adoption of the Law 13/1982 of 7 April, on Social Integration of Disabled Persons (LISMI) and culminates with the adoption of the Law 51/2003, 2 December, on equal opportunities, non discrimination and universal accessibility of people with disabilities (LIONDAU) and its implementing rules.

The Law 26/2011 for the normative adaptation to the UN Convention made progress in many areas, amending regulations and modifying several Spanish laws in response to the Convention, and including important positive action measures in health, housing, employment and other areas.

The first step taken within the global strategy for implementing the UNCRPD, was the creation of an inter-ministerial working group to draw up an integral study of Spanish law, with the objective of adapting it to the Convention's provisions. This group was approved by the Council of Ministers on July 10, 2009. It was presided over by the Ministry of Health and Social Policies (currently the Ministry of Health, Social Services and Equality) and included all the ministries. It was advised by the CERMI (Spanish Committee of Representatives of Persons with Disabilities). The work group conclusions contained basic information for the first Spanish Report sent to the UN Committee of the CRPD on 3 May 2010.

A permanent inter-ministry work group continues working in different areas such as education, justice, culture, etc. Specific forums were created in these areas like the Inclusive Education Forum which is working in the modification of the university law and the Justice and Disabilities Forum which is analysing matters of the article 12 of the UNCRPD.

The UN Committee on the Rights of Persons with Disabilities considered the initial report of Spain (CRPD/C/ESP/1) at its 56th and 57th meetings, held on 20 September 2011, and adopted concluding observations at its 62nd meeting, held on 23 September 2011, that constitute a framework to continue with the work of implementing CRPD in Spain.

The Spanish Disability Strategy 2012-2020, approved in November 2011, has been elaborated taking into account the principal areas of concern and recommendations made by the Committee, as well as the general targets established in Europe 2020 and the specifics of the EU Disability Strategy 2010-2020.

The III Action Plan for Persons with Disabilities is still in force, and sets the government's strategy for 2009-2012 in matters of disabilities; this falls within the framework laid down by the UNCRPD.

[19] boe.es/aeboe/consultas/bases_datos/doc.php?id=BOE-A-2008-6996

The Spanish Strategy of Action for the Employment of People with Disabilities 2008-2012 is another governmental initiative in order to promote quality employment for persons with disabilities and prevent any kind of discrimination in the labour conditions.

The periodic meetings with the general directors of the autonomous regions' governments allow to promote the measures for compliance with the Convention within their areas of authority, as part of their action plans for persons with disabilities.

All of the mechanisms began early in their work of promoting, protecting and monitoring the UNCRPD. One reflection of this was the joint Declaration[20] supporting the UNCRPD, signed by the Ministry of Foreign Affairs and Cooperation, the Ministry of Labour and Social Affairs (currently the Ministry of Health, Social Policies and Equality), CERMI and the ONCE Foundation.

At the same time, the dissemination of the UNCRPD has been a priority in the actions undertaken. Thus, the Convention has been published and distributed in different accessible formats: Easy to read (Real Patronato de Discapacidad and the CNSE Foundation), audio format (ONCE Bibliographic Service), Spanish and Catalonian sign language (Real Patronato de Discapacidad and the CNSE Foundation) and in Braille. Likewise, it has been translated into all of the official languages: Spanish, Basque, Galician and Catalonian. All these formats are available at: http://www.convenciondiscapacidad.es/convencionESPANA.html

2.2. Monitoring of the UNCRPD

2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)

The Royal Decree 1855/2009[21], which modified the regulation of the National Disabilities Council mentioned above, designates it as the body of reference for the promotion and monitoring of international legal instruments in matters of the human rights of persons with disabilities, and in particular the implementation of the UNCRPD. The National Disabilities Council created the CERMI (Spanish Committee of Representatives of Persons with Disabilities), applying the provisions of article 33.2, as the first independent civil society organization. This also fulfills the provisions of article 33.3, concerning the monitoring and follow-up of the Convention's application in Spain.

2.2.2 The involvement of civil society in the monitoring process (Article 33.3)

The Ministry of Health, Social Services and Equality works very closely with civil society and promotes its involvement. Different mechanisms have been created, both on the Ministry's initiative and by the principal organizations of representatives of persons with disabilities. Among them are:

- The participation of the academic sector, through Madrid's Carlos III University, in the elaboration of reports relative to Spanish legislation that needs to be adapted to the provisions of the UNCRPD.
- The permanent link with the European Disability Forum (EDF) through the Social and International Relations Area of the ONCE Foundation, headquartered in Brussels.

[20] http://sid.usal.es/idocs/F3/LYN10297/3-10297.pdf
[21] http://www.boe.es/boe/dias/2009/12/26/pdfs/BOE-A-2009-20890.pdf

- The web page[22] created by the CERMI to offer specialized information on the UNCRPD, which represents a fundamental instrument for promoting, disseminating and raising awareness of the principles of this agreement.

All projects on regulations and general plans concerning people with disabilities are consulted through the National Disability Council, in which organizations of people with disabilities and their families are represented.

People with disabilities have access to all public means of training that are of interest and likewise, they have programmes financed by Public Administrations and other collaborators that are undertaken by their organizations in order to favour their competence and skills.

Dialogue is open permanently by these Organizations and those who represent them.

2.2.3. Collecting statistics and/or developing indicators (Article 31)

In Spain, the National Statistics Institute (INE in its Spanish initials) has been carrying out a macro survey on disabilities since 1986. The updated edition of this survey was published in 2008, under the title: Encuesta sobre Discapacidades, Autonomía personal y Situaciones de Dependencia[23] (Survey on Disabilities, Personal Autonomy and Dependent Situations).

As a consequence of Spain's ratification of the UNCRPD, and as relates to Article 31, the government initiated a project to include the disabilities indicator in all of the active population statistics produced by the INE.

A new yearly statistical operation called Employment of Persons with Disabilities (EPD 2008: Empleo de las Personas con Discapacidad[24]) was first published on 20 December 2010 as a pilot project. This data collection, elaborated by the Statistics National Institute of Spain (INE), focuses on the employment of people with disabilities, but also includes information about educational levels of people with disabilities aged 14-64. EPD is prepared through the exploitation of data from the Economically active population survey (EPA) and the National Database of people with disabilities (BEPD) with the collaboration of Spanish Committee of People with Disabilities and ONCE Foundation (Spanish National Organization of Blind).

The results became from the crossing statistics data of the two sources mentioned above (EPA and BEPD) so that it was possible to combine the socio-demographic and labour force information with the people who has recognized a legal disability situation equal or up to 33% in the Spanish legislation. The use of survey and administrative data have the advantage of less budget cost and also make less burden in the answers of the informers.

In December 2011, INE published the detail results for year 2009-2010 of the EPD statistical operation. INE also receives information about persons with disabilities and their situation

[22] http://www.convenciondiscapacidad.es

[23] http://www.ine.es/jaxi/menu.do?type=pcaxis&path=/t15/p418&file=inebase&L=0

[24] **http://www.ine.es/jaxi/menu.do?type=pcaxis&path=%2Ft22%2Fp320%2Fa2008%2F&file=pcaxis&N=&L=0**

through bodies like Observatorio Estatal de la Discapacidad [25], Real Patronato de la Discapacidad[26] and the information system named SID[27].

[25] http://www.observatoriodeladiscapacidad.es/
[26] http://www.rpd.es/
[27] http://sid.usal.es/

Sweden

2.1. National Implementation of the UNCRPD

2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)

The Division for Family and Social Services of the Ministry of Health and Social Affairs is responsible for the co-ordination of disability policy within the Government and has been appointed as the national focal point for matters related to the United Nations Convention on the Rights of Persons with Disabilities.

The Family and Social Services Division of the Ministry of Health and Social Affairs is also leading a working group within the Government consisting of civil servants representing the following ministries: Ministry of Employment, Ministry of Culture, Ministry of Justice, Ministry of Education and Research, Ministry of Health and Social Affairs, Ministry of Finance and the Ministry of Enterprise Energy and Communication. The purpose of this group is to mainstream disability policy within the Government.

Furthermore, The Swedish Agency for Disability Policy Coordination (Handisam) plays an important role in co-ordinating, monitor and accelerating disability policy by supporting the sectoral authorities tasked with implementing the national plan for disability policy.

2.1.2. National strategies to implement the UNCRPD

The current disability policy was established already in the year of 2000 when the Swedish Parliament passed the Government Bill “From patient to citizen: a national action plan for disability policy”. This decision by the Parliament represented a step of fundamental importance for Swedish disability policy. Since then the objective of disability policy has been a society that makes it possible for disabled people to fully participate in the life of the community. The aim is to mainstream a disability perspective in all sectors of society by identifying and removing obstacles to full participation for people with disabilities. Another goal is to prevent and fight discrimination against people with disabilities and to make it possible for boys and girls, men and women to lead independent lives and to make their own decisions about their own lives.

The ten-year action plan ended in 2010. The Government has decided a strategy for the future disability policy during 2011. The implementation of the UNCRPD forms the basis of the future disability policy. In the strategy the Government presents a number of strategic objectives for disability policy in nine priority areas for the coming five-year period: physical accessibility, IT policy, social policy, education policy, labour market policy, the judicial system, transport policy, public health policy, and culture, media and sport policy.

Within these areas the strategy defines the direction and give concrete form to how society’s measures will be implemented, coordinated and consolidated, and continuously monitored in order to develop disability policy.

2.2. Monitoring of the UNCRPD

2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)

2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)

In October 2010, the Delegation for Human Rights in Sweden presented its final report with proposals on, inter alia, how the system for national implementation of human rights can be strengthened. One of the proposals of the Delegation was the establishment of a national institution for human rights. According to the proposal, such an institution should be provided with a broad mandate to protect and promote human rights according to all human rights conventions ratified by Sweden, including the CRPD. The Delegation's report features contributions from a wide range of actors in society and has also been the topic of a consultation process during the autumn of 2011. At present, the Delegation's proposals are being considered within the Government Offices as part of the elaboration of Sweden's third human rights action plan, which is planned to be finalised during 2012. The proposal of establishing a national human rights institution with the mandate to protect and promote the rights under the CRPD and other human rights conventions is being considered within that context.

In the meantime the responsibility of protecting and promoting the rights proclaimed in the CRPD lies within existing state agencies in accordance with their respective mandates. In that context, the Family and Social Services Division of the Ministry of Health and Social Affairs and the Agency for Disability Policy Coordination (Handisam) play an important role.

2.2.2. The involvement of civil society in the monitoring process (Art. 33.3)

The Government has established a committee as a forum for mutual information and discussions (according to standard rules 17 and 18). The Minister for Elderly Care and Public Health at the Ministry of Health and Social Affairs, who is responsible for disability policies, is chairing the committee which is composed of members of the Swedish disability organisations together with State Secretaries from seven Ministries. Members of the committee meet four times a year and the agenda for the meetings are prepared jointly between the government and the disability movement.

The co-operation with people with disabilities and their representative organisations is of great importance. In an agreement between the Government, non-profit organisations in the social area and the Swedish Association of Local Authorities and regions, it is stated that the relationship between the Government and the non-profit organisations is to be characterised by responsibility and mutuality, be based on the circumstances of both and utilise the perspectives and expertise of both. The agreement also contains a description of the principles which should apply to cooperation between the disability movement and the Equality Ombudsman. At the moment the interacting between the Government and people with disabilities and their representative organisations are being under discussion in order to develop the dialogue in accordance with the Convention.

In almost all local municipalities there are local councils dealing with disability policies.
The Swedish Agency for Disability Policy Coordination (Handisam) has the task to raise awareness about the UN Convention amongst people with disabilities, authorities, politicians and stakeholders throughout the municipalities and county councils. In 2010 Handisam was granted slightly more than 190 000 EUR for this purpose.

The leading principle is dialogue and before any major step is taken in the policymaking process the dialogue intensifies with different kinds of public debates. In the governments public inquires civil society and disability organisations are among the respondents.
The Swedish Disability Federation has been granted 5,3 millions SEK from The Swedish Inheritance Fund to run a project with the purpose of raising awareness about the UN Convention amongst people with disabilities, authorities, politicians and stakeholders. Disability organisations are also frequently used as bodies to which a proposed measure is referred to for consideration. Civil society usually produces shadow reports in connection to the Governments reports, which are given high priority. In almost all local municipalities there are local councils dealing with disability policies.

2.2.3. Collecting statistics and/or developing indicators (Article 31)

Statistics Sweden (SCB) is a governmental administrative agency under the Ministry of Finance. The agency supplies statistics for decision making, debate and research to ministries and other customers. Besides producing and communicating statistical data, it is tasked with supporting and coordinating the Swedish system for official statistics. The agency also produces national population studies. Another state agency that produces reports related to people with disabilities is the Swedish National Institute of Public Health. The Institute works to promote health and prevent ill health and injury, especially for population groups most vulnerable to health risks. The institute produces reports on public health on a regular basis.

The definition of disability in Sweden is related to the environment and not to the diagnoses or level of impairment of the individual. The statistics that are provided in the field of disability can therefore be seen as somewhat scattered or fragmentised. You would find rather precise statistics in connection to different support system or special support measures directed to a well defined group of persons. However, people with disabilities that are not entitled to, or chose not to receive support within the social service system or in the labour market, would be difficult to find within the existing statistics. Some groups within the disability sector, such as persons with minor cognitive disabilities or group of persons with psychiatric disabilities would therefore be very hard to define.

There are continuously a lot of individual studies made in the field of disability. This is of course an opportunity to extract trends or indication of problems also for a broader group of people. Still, there is a need to strengthen the provision of longitudinal statistics in the field of disability. One way of doing this is to use general population studies combined with a well defined screening process to distinguish if a person might be classified as a person with disability or not. Screening questions would probably also be able to roughly distinguish what kind of impairment is causing the disability.

To promote this work the government is planning to deal with related issues of methodology. The government is also considering ways to find indicators that will enable monitoring of this group and their performance/situation in those fields where statistics are underdeveloped.
The general strategy for Swedish disability policy is to include disability into all relevant political areas. Therefore there is also a need to measure the development of the society from the perspective of accessibility and inclusion of persons with disabilities. To promote this the governmental authority Handisam is developing a system of indicators that will measure the progress of accessibility for persons with disability in a broad range of areas.

There will always be a need for special studies as a complement to statistics based on the population. There have been initiatives to create a more holistic system for provision of statistics and data in the field of disability. A number of legal restrictions is however preventing interconnection of such a coherent statistical system. This is a difficult balance between protection of personal integrity and needs of data and a question that the government is continuously considering and investigating.

Furthermore, the Delegation for Human Rights and the Swedish Agency for Disability Policy Coordination have recently finished a project on indicators for the implementation of certain selected human rights. The project also includes indicators relating to the rights of persons with disabilities.

United Kingdom

2.1. National Implementation of the UNCRPD

2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)

The Office for Disability Issues (ODI)[28] is the designated focal point within the United Kingdom Government for matters relating to implementation of the Convention. It also fulfils a coordination role, liaising closely with other Government Departments and the UK's Devolved Administrations, (in Northern Ireland, Scotland, and Wales), on matters relating to the Convention. For example, ODI coordinated the UK's report on implementation of the Convention and continues working with other Government Departments and the Devolved Administrations on coordination issues with a view to avoiding duplication, and using existing co-ordination structures where appropriate.

The responsibility for actively implementing the Convention in respect of areas that fall within their policy remits rests with individual Devolved Administrations and Government Departments.

Ministers, ODI and officials in other Government Departments, regularly meet disabled people and their organisations to discuss a wide variety of issues including the Convention. Similar arrangements operate in the Devolved Administrations.

2.1.2. National strategies to implement the UNCRPD

The UK Government is developing an overarching Disability Strategy to coordinate work towards disability equality. Disabled people's rights as set out in the Convention will be an integral part of the Strategy. The Strategy will demonstrate the UK Government's commitment to overcoming the barriers which prevent disabled people from fulfilling their potential and having opportunities to play a full role in society. It is likely to focus on three main areas identified by disabled people:

- Realising aspirations: ensuring appropriate support and intervention for disabled people at key life transitions, to realise disabled people's potential and aspirations for education, work and independent living.
- Individual control: enabling disabled people to make their own choices and have the right opportunities to live independently; and
- Changing attitudes and behaviours: promoting positive attitudes and behaviours towards disabled people to enable participation in work, community life and wider society, tackling discrimination and harassment wherever they occur.

The aim is for the Strategy to be published later in 2012.

The Disability Strategy will mainly apply to England, except where issues are not devolved to Wales, Scotland and Northern Ireland. The devolved administrations will adopt there own strategic approaches to the achievement of disability equality.

2.2. Monitoring the UNCRPD

[28] http://www.odi.gov.uk/

2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Art. 33.2)

The UK's four equality and human rights commissions, i.e. the Equality and Human Rights Commission (EHRC), the Scottish Human Rights Commission (SHRC), the Northern Ireland Human Rights Commission (NIHRC) and the Equality Commission for Northern Ireland (ECNI)[29], have been designated as the independent element of the UK's framework to promote, protect and monitor implementation.
The four Commissions, as the independent element of the UK framework, are developing their plans in respect of promoting, protecting and monitoring implementation of the Convention in the UK. The four Commissions meet regularly and where they consider it appropriate to do so, co-ordinate their activities. For example, in January 2010 the SCHR ran an event on the Convention in conjunction with the EHRC's Scotland Office and the Scottish Government.

The EHRC has information on its website about the Convention, and how its work relates to the Convention and its role within the framework to promote, protect and monitor implementation. The EHRC had worked to promote the Convention, for example by: hosting conferences to raise awareness of the Convention; publishing their 'Hidden in plain sight – Inquiry into disability related harassment' report (August 2011); producing 'What does it mean for you?' guidance about what the Convention can mean for disabled people and their organisations (published Summer 2010); and working with legal professionals and legal advisors to increase awareness and use of the Convention.

2.2.2. The involvement of civil society in the monitoring process (Article 33.3)

The UK government recognises that the involvement and participation, of disabled people and their organisations is crucial for the success of the Convention. Departments and Devolved Administrations are actively encouraged to involve disabled people in policy development.

The UK government is developing a new Disability Strategy aimed at enabling disabled people to fulfill their potential and have opportunities to play a full role in society.

The 'Fulfilling Potential' discussion document published on 1 December 2011 asked disabled people, their organisations and those who support disabled people to explore how the new disability Strategy should be framed and what actions would be both realistic and have the greatest impact. http://odi.dwp.gov.uk/odi-projects/fulfilling-potential.php

The Strategy will build on previous involvement of disabled people including the Independent Living Strategy in England and Wales and the Roadmap as reported in previous UK contributions to HLG reports.

Scotland and Northern Ireland have involved disabled people and their organisations in the development of their own disability strategies covering areas where powers are devolved.

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[29] www.equalityhumanrights.com/
http://www.nihrc.org/
http://scottishhumanrights.com/
http://www.equalityni.org/site/default.asp?secid=home

2.2.3. Collecting statistics and/or developing indicators (Article 31)

In December 2011 the UK has published the baseline results of fieldwork conducted between June 2009 and March 2011 on the Life Opportunities Survey (LOS). This survey aims to collect information on disabled and non-disabled people's life opportunities, covering areas such as work, education, social participation and the use of public services. It also aims to identify the reasons why people do not take part in work or leisure activities that they would like to, or why people experience difficulties with using public services. The information provided will be used to help target policies and resources where they are needed. http://odi.dwp.gov.uk/disability-statistics-and-research/life-opportunities-survey.php#how

European Union

2.1. Implementation of the UNCRPD

2.1.1. Focal points and coordination mechanisms for implementing (Article 33.1)

On 26 November 2009, the Council of the European Union adopted the Decision[30] concerning the conclusion, by the European Union, of the UNCRPD. It designates the European Commission as a focal point, both vis-à-vis Member States to the extent of Union competence as well as to the Union's institutions. On the 2 December 2010, the Council adopted the Code of Conduct, which further specifies internal arrangements for the implementation and the representation of the EU.[31] Point 11 in the Code of Conduct further elaborates the role of the EU focal point. The adoption of the Code of Conduct enabled the EU completing the procedure of conclusion of the Convention by depositing its instruments of formal confirmation with the UN Secretary General in New York on 23 December 2010. As a party to the Convention, it is currently working on implementing the UNCRPD to the extent of the EU's competences. It also works to promote a stronger and better coordination within its services, with the other EU institutions and with the Member States. Coordination for the implementation of the UN CRPD within the EU institutions takes place within the ad-hoc committee of CPAS. The Council within its relevant working group allows for coordination with the Member States, also with the possible involvement of the Disability High Level Group.

The Code of Conduct sets out certain aspects of the coordination between the EU and the Member States, especially with regard to the coordination in establishing positions relating to the UNCRPD (point 6), coordination of speaking and voting arrangements, and with respect to monitoring and reporting.

2.1.2. Strategies to implement the UNCRPD

On the 15 November 2010 the European Disability Strategy for the years 2010-2020 was adopted. It aims at ensuring effective implementation of the UN CRPD. It also marks a renewal of the EU's commitment to improve the situation of citizens with disabilities, sets the work plan and priorities for the coming years. The overall aim of the Strategy is to empower people with disabilities so that they can enjoy their full rights, and benefit fully from participating in society and in the European economy, notably through the Single market. It sets clear objectives to remove the barriers persons with disabilities meet in their everyday life.
The specific measures over the next decade are clustered around eight priority areas dealing with (1) Accessibility, (2) Participation, (3) Equality, (4) Employment, (5) Education and training, (6) Social protection, (7) Health, and (8) External Action.

The Strategy is accompanied by a Commission Staff Working Document that sets out a list of actions, with respect to each of the eight priority areas, for the first five years of the Strategy's

[30] Council Decision 2010/48/EC, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:023:0035:0061:EN:PDF

[31] Code of Conduct between the Council, the member States and the Commission setting out internal arrangements for the implementation by and representation of the EU relating to the UNCRPD

period (2010-2015).[32] Each action is also given an indicative timing. Progress in the implementation of those actions is subject to regular review, via the DHLG and the Commission's Inter-service group on Disability. The Commission will issue a progress report by the end of 2013. This, combined with the EU report to the UN Committee on the implementation of the Convention, due in 2013, will provide an opportunity to revise the Strategy and the actions. A further report is scheduled for 2016.

2.2.1. Framework, including independent mechanisms, for promoting/ protecting/ monitoring (Article 33.2)

Paragraph 13 of the Code of Conduct[33] setting out the intra-EU arrangement for the implementation of the UN Convention provides that the Commission shall propose in due course an appropriate framework (for one or several independent mechanisms), taking into account all relevant EU institutions, bodies and agencies[34].

With a view to setting up a framework at EU level, the Commission has identified four separate existing EU institutions and bodies that currently exercise the tasks of promotion, protection and monitoring under their respective mandates:
- the European Parliament's Petitions Committee,
- the European Ombudsman,
- the European Commission,
- the EU Agency for Fundamental Rights (FRA).

They would form "**the EU framework**", together with the European Disability Forum (EDF), the EU wide representative organisation of persons with disabilities, in order to ensure the direct involvement of persons with disabilities and their representative organisations as required by art. 33.3 of the Convention[35].

The Commission's proposal was presented to the member states in COHOM on 25 January 2012 and is still under discussion after a second COHOM meeting on 16 May 2012.

The EU framework's mandate covers areas of EU competence, and it is a complement to the national frameworks and independent mechanisms which bear the main responsibility for the promotion, protection and monitoring of the UNCPRD in the Member States.

The EU framework will carry out its tasks with respect to:

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[32] SEC(2010) 1324 final

[33] Code of Conduct between the Council, the Member States and the Commission setting out internal arrangements for the implementation by and representation of the European Union relating to the United Nations Convention on the Rights of Persons with Disabilities, OJ C 340, 15.12.2010, p. 11.

[34] Hereafter, the term “institution” will be used for simplicity, except where reference is made to the specific Treaty provisions.

[35] the Council, in point 23 of its conclusions on the European Disability Strategy, "*Support of the implementation of the European Disability Strategy 2010-2020"*, 3099th Employment, Social Policy, Health and Consumer Affairs Council meeting Luxembourg, 17 June 2011 invited the Commission to involve civil society, in particular persons with disabilities and their representative organisations, in the implementation of the Convention at the EU level, as well as in the required monitoring and reporting activities.

- EU legislation and policy[36] in those areas where the Member States have transferred competences to the EU. This will be the main area of the framework's actions;
- the implementation of the Convention by EU institutions in their capacity as Public Administration (for example in relation to their employees and in their interaction with the public).

The Commission's proposal aims to ensure a simple, efficient and practical framework which, while respecting the separation of competences between the EU and the Member States, acts in complementarity with the frameworks and Independent Mechanisms established at member states' level, maximises the synergies between the work of existing bodies and institutions, and avoids an undue administrative and financial burden[37].

Point 12 in the Code of Conduct sets out certain aspects of the monitoring and reporting, especially with regard to the respective competence of the EU and the Member States. It highlights the complementarity of EU and Member State reports and the need to work in the spirit of sincere cooperation. This means for instance providing each other with the reports for information, on a confidential basis, before submitting them to the Committee on the Right of Persons with Disabilities, and, on request, assisting each other with experts to the Delegations for the examination of the Reports by the Committee.

2.2 The involvement of civil society in the monitoring process (Article 33.3)

In line with the principle of the EU Disability Strategy: "nothing about people with disabilities without people with disabilities" as well as with the Convention's obligation[38] to consult and involve representative organisations of disabled people when implementing the UN Convention, the Commission ensures participation of persons with disabilities, their families, their European representatives and relevant stakeholders in the development and implementation of disability policies.

People with disabilities are consulted through different channels and tools, such as, communications, consultation documents or participation in expert groups. Representatives of civil society and in particular of EU-level disability organisations are full members of the High Level Group on Disability where they have the possibility to raise their concerns, contribute to discussions, and co-draft policy documents.

In the development of the European Disability Strategy 2010-2020 there was extensive consultation with civil society, in particular representative organisations of persons with disabilities at European level. Besides the consultation with civil society in the DHLG, all NGOs active in the field of disability that are co-financed through the EU PROGRESS programme were invited to put forward their views as well as to dedicate part of their annual work programmes to activities related to the preparation of the new strategy, there was a consultative workshop with the main stakeholders, with participants representing civil society, sectoral business representatives and the social partners and public online consultation, where 101 replies on behalf of a wide variety of civil society organisations were received.

[36] As illustrated in the EU declaration of competences annexed to Council Decision 2010/48 for conclusion of the Convention.
[37] As stated in the European Disability Strategy 2010-2020, Communication from the Commission to the European Parliament, The Council, the European Economic and Social Committee and the Committee of the Regions, "A renewed commitment to a barrier-free Europe", COM(2010) 636 final.
[38] Article 4.3

The yearly conference, the European Day of Persons with Disabilities, presents interested individuals and organisations advocating the rights of people with disabilities the opportunity to address their views to the European decision makers. In addition to the thematic discussion the conference expresses political commitment and offers networking possibilities. As the conference is organised by the Commission in partnership with EDF the positions of people with disabilities are considered at all stages. In 2011 the conference explored the way out of the financial and economic crisis from the perspective of persons with disabilities. Following up to the presentation of the Commission's proposals for the post-2013 Multiannual Financial Framework and the future of the EU's Cohesion Policy, it discussed how the European Union can support recovery for all in the context of Europe 2020. The European Day conference looked into how EU legislation, policies and funding can contribute both to promoting enjoinment of the rights enshrined in the UNCRPD and to finding a way out of the crisis.

The second edition of the Access City Award saw the participation of 114 cities from 23 EU countries – almost twice as many as for the inaugural edition in 2010. The project was endorsed by the EDF from the early phase of its preparation. Participation of civil society is an essential part of the Access City Award. First, the element of participation and involvement is reflected in the award criteria. One of the criteria looks at evidence of active involvement of people with disabilities, their representative organisations in the planning, implementation and maintenance of a city’s accessibility policies and initiatives. In the selection procedure both at national level and also at the EU level, EDF representatives were actively involved.

The second Work Forum on the Implementation of the Convention of Persons with Disabilities, organised by the European Commission, took place in late October 2011. Civil society, DPO's in particular, was involved in the conception of the conference. The Forum focussed on the governance structures foreseen by Article 33, and in particular looked at how to coordinate the implementation of the Convention at both national and EU levels, analysing different aspects of coordination in three main sessions. The first session addressed implementation within the Member States; the second session was devoted to the coordination of the implementation at EU level; the third session, discussed issues of coordination in the process of reporting to the United Nations. The experience of the coordination with civil society in the preparation of parallel reports and the technical support provided by the International Disability Alliance were shared with participants.

The Work Forum benefited from active participation from a wide representation of Member States, from various Government Departments, NHRIs and a significant participation of people with disabilities largely through the European Disability Forum’s (EDF) representative structures; it provided a platform for mutual learning, exchange of experience and provided an opportunity for constructive reflection and a dialogue on how to best involve persons with disabilities and their organisation.

The European Union also recognises that the empowerment of persons with disabilities needs sufficient financial support. The European Social Fund supports, among other things, projects to promote independent living, through staff training and modernising care systems. Furthermore, the Commission supports to running costs of various European organisations which have as their primary objectives to represent the interests of disabled people at Community level as well as organisations active in promoting equal opportunities for people with disabilities.

The European Union recognises the strength of European networks that lies in their capacity to gather and mobilise relevant members from different Member States into an open forum of discussion or exchange of expertise and experience able to inform and influence policy-making, as well as relaying EU action vis-à-vis network members.

Civil society has an important contribution to make towards effective implementation of the UN Convention. Making a difference requires a sustained, cohesive coalition capable of mobilising and analysing information, making that information available to key actors and mobilising many sources of influence. Representative organisations are in a central position to influence policy in the European Union and in the Member states through their national members. Influence is gained through the increased expertise and information which are important to policy formulation and implementation.

2.3. Collecting statistics and/or developing indicators (Article 31)

Based on data provided by Eurostat, the Commission estimates that there are up to 80 million EU citizens with disabilities. They constitute one of the largest categories of vulnerable citizens in the EU.

Presently the proportion of persons with disabilities tends to be in the order of 10%[39] of the working age population across the Member States, with current demographic trends likely to lead to a further increase.
Available evidence suggests that persons with disabilities suffer explicit or concealed discrimination or are at risk of discrimination.

1) They are socially and economically disadvantaged:

- Employment rates for persons with very severe and severe degrees of disability are respectively 19,5% and 44,1%
- Incidence of poverty for persons with disabilities is 70% higher than average[40]

2) The limitations to the ability of persons with disabilities to work carry a significant risk of isolation and exclusion

- The "benefit trap" appears to be a significant obstacle for labour market participation of the persons with disabilities.

3) The limitations of opportunities of persons with disabilities to participate fully in education carry a significant disadvantage for personal development

- Measures to facilitate full inclusion of persons with disabilities at all levels of education would considerably improve their standing in the labour market and their social inclusion

As the likelihood of having an impairment or a long-standing health problem increases with age, the current demographic trend is likely to lead to a further increase of the prevalence of

[39] According to the 2002 Labour Force Survey special module, Europe-wide average share of persons who see themselves as restricted in their functioning is 10.4% of the labour force. Further 5.2% have a long-standing health problem but do not see themselves as restricted. As incidence of disability increases with age, these proportions are higher among elderly persons.
[40] According to the 2004 EU-SILC data, over 17%of those aged 16-64 who were strongly limited in what they could do had income below the risk of poverty line compared to just over 10% of those not limited at all.

disability. Many areas mentioned above, such as content and structure of education, the norms for built environment and public spaces, leisure issues as well as social assistance are almost exclusively in the competence of the Member States. Often local authorities have a decisive role in monitoring these norms and delivering these services. The Member States are tackling these issues, but in different manners and to different degrees with very little coordination.

In order to ensure proper monitoring the collection of data is crucial. In this context and within Eurostat's annual work programme, activities in the European Statistical System (ESS)[41] will continue on further developing – through Partnership Health and in cooperation with international organisations – **Community statistics on disability and social integration** in order to provide the relevant and comparable statistical data needed to monitor the situation of people with disabilities.

More detailed statistical data on disability are also needed as part of health information in order to respond to the specific requirements inter alia those that result from the **Programme of Community Action in the field of Public Health (2003-2008)**[42]. Health information at Community level covers data ranging from health status - including disability – to health determinants, including demography, geography and socio-economic situations, personal and biological factors, and living, working and environmental conditions, paying special attention to inequalities in health. The development of the statistical element of health information is also integral part of Eurostat's annual work programme, with activities carried out in the context of Partnership Health and in cooperation with international organisations.
In general, the aim of producing comparable data on disability and on integration of people with disabilities into society can be achieved only by means of surveys that make use of common instruments. Health Interview Surveys (HIS) and Disability Interview Surveys (DIS) are widely accepted instruments that could provide comparable data for topics related to health, disability and social integration.

However, the main work related to disability statistics in 2007-2008 has been focused on development of the following initiatives:

European health and social integration survey (EHSIS)
The Council in its Resolution of 17 March 2008 on the situation of persons with disabilities in the European Union underlines that disability statistics are needed to establish a picture of the overall situation of persons with disabilities in Europe. Such statistical and research data allow informed disability policies to be formulated and implemented at the different levels of governance.

The Commission in its communication on a European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe, {SEC(2010) 1323} {SEC(2010) 1324} emphasised that EU action will support and supplement Member States' efforts to collect statistics with a view to monitoring the situation of persons with disabilities. This action will be implemented through a call for tender (with 29/30 lots, one lot for each Member State, Norway and Iceland, plus a lot for coordination) to be launched in the second quarter of 2011.

[41] European Statistical System, see: http://epp.eurostat.ec.europa.eu/portal/page?_pageid=1153,47169267,1153_47183518&_dad=portal&_schema=PORTAL

[42] Decision No 1786/2002/EC of the European Parliament and of the Council of 23 September 2002 adopting a programme of Community action in the field of public health (2003-2008), OJEC L 271/10

2011 LFS ad-hoc module on employment of disabled people
The proposal was prepared by a Task Force. The aim of the module thus is to measure the extent of disabled people's participation in the labour market (and not to measure the prevalence of disabilities in general) following the current understanding of disability, in particular: 1) Limitation in work participation (in amount, type of work and transport to and from work) (3 variables), 2) Limitation in work participation related to health conditions or diseases (1 variables), 3) Limitation in work participation related to carrying out basic activities, 4) Use of or need for special assistance at work.

The common feature of these two actions is that the effort was made to incorporate/transfer the new concept of disability into questions and variables proposed. During the last three decades the conceptual approaches to the measurement of disability has changed. Three milestones in that evolution have to be mentioned 1) the medical model[43] ; 2) the social model[44] and 3) the biosocial model[45]. The biosocial model incorporated into the International Classification of Functioning, Disability and Health (ICF, WHO 2001) attempts to bridge the gap between the medical and social models. The biosocial concept was followed also by the UN Convention on the Rights of Persons with Disabilities.

ANED, Academic Network of Disability expert
The Commission supported in 2007 the establishment of an European Academic network of disability experts. The Network provides data collection, provides comments on policy papers and develops national and EU reports on the situation of persons with disabilities in Europe in a number of areas like employment, social inclusion and social protection, education, independent living, statistics and data collection. The network is also active on the development of indicators.

Particularly noteworthy are two key documents compiled by ANED, which have been thoroughly reviewed and updated in 2011:

- IDEE – Indicators of disability equality in Europe: the report includes presentation and discussion of 12 selected indicators; the main themes addressed are those of employment, post-compulsory education and household poverty. The study's key priorities were to populate and update a number of items of direct relevance to EU2020 indicators, and to present items of direct relevance to actions in the EU Disability Strategy (e.g. accessibility).

- Annotated review of European Union law and policy with reference to disability: the publication consists in a detailed review of EU legislation with reference to disability, from provisions in primary law to soft law instruments (Council recommendations, Parliament resolutions, or even studies or guidelines). The guiding principle for inclusion in the review was whether an instrument contributes to shaping European disability policy.

[43] Disability regarded as 'a restriction or lack of ability to perform normal activities, which has resulted from the impairment of a structure or function of the body or mind (concepts and definitions based on the medical model resulted in the International Classification of Impairments, Disabilities and Handicaps (ICIDH) in 1980
[44] Disability results from interaction between individuals and non-inclusive society
[45] The ICF (WHO 2001) states that disability is a complex phenomenon that is both a problem at the level of a person's body and a complex and primarily social phenomenon i.e. it is a disadvantage experienced by an individual resulting from barriers to independent living or educational, employment or other opportunities that impact on people with impairments, ill health or activity limitations (difficulty seeing, hearing, walking ..)

Furthermore, ANED is developing an online tool with an overview of European and national instruments relative to disability and the rights of persons with disability. The tool will allow to identify availability and contents of the main instruments needed for the implementation of the UNCRPD.

Civil society actions and strategies

2.1. Actions and strategies by civil society to implement the UNCRPD

The Confederation of Family Organisations in the European Union (COFACE) in 2011 dedicated several meetings of its working group *Inclusive policies for disabled and other dependent persons and their families* (COFACE-Disability) to the analysis of the UNCRPD. In particular, three policy positions were adopted:

- in April 2011, a policy position on the Family Dimension of the UN Convention on the Rights of Persons with Disabilities. The position undertakes a systematic analysis of the family dimension of the Convention, illustrating the main implications of the CRPD for the improvement of the rights and wellbeing of persons with disabilities and their families. The position intends to raise awareness on the scope and relevance of the Convention among family organisations, policy makers and other representatives of civil society. A factsheet and a book containing the position and the full text of the Convention were produced.
- COFACE identified guidelines for an effective implementation of the right to inclusive education and published a policy position on Inclusive education for persons with disabilities in line with Article 24 of the UN Convention.
- In December, COFACE released a policy position on Active ageing of Family Carers, in line with the European Year of Active Ageing and Intergenerational Solidarity. The position aims to stress the importance of the family carers and their specific needs, in line with the requirements of the Convention (among others in the Preamble and Art. 8 and Art. 28), to put families in the conditions of contributing to the full and equal realisation of the rights of persons with disabilities.

Some of COFACE member organisations (Unapei, UNAFTC, APF) also develop activities concerning the UNCRPD. Among them, APF and UNAFTC organised study days and held sessions (in other events such the Journées Nationales des Parents de l'APF) with a focus on the family dimension of the UN CRPD. Moreover, UNAPEI adopted an action plan to implement the UN CRPD and started to develop some awareness raising and information activities to implement the action plan.

The European Disability Forum (EDF) was active throughout the year at the European and international level and, in cooperation with its members, at the national level. In order to reinforce its capacity to promote the UNCRPD, it established an Advisory Group to the Board to provide technical expertise to the governing bodies on matters relating to implementation.

Governance of the Convention at the EU level
In May, EDF Annual General Assembly adopted the EDF strategy for implementation of the Convention. Implementation of *Article 33 CRPD "National implementation and monitoring"* has been identified as the main focus of EDF actions for 2011-2012.
Throughout 2011, EDF has held exchanges with the EU Fundamental Rights Agency, EQUINET, the European group of the National Human Rights Institutions, European Parliament, Commission, European Economic and Social Committee and NGOs, moving forward the agenda of good governance of the UNCPRD. EDF proposed the establishment of a European Disability Committee to replace and reinforce the current High Level Group as

coordination mechanism pursuant to article 33(1) of the UNCRPD. The EDF proposal was presented to the HLG members at one of the Group's meetings.
EDF also provided input to the EP resolution on the Disability Strategy 2010-2020, and contributed its expertise to the 2nd annual Work Forum on the implementation of the UNCRPD held in Brussels in October.

In December 2011, EDF was consulted by the Commission on its proposal for the establishment of the European independent monitoring framework pursuant to Article 33(2) CRPD. EDF found the proposal for a light-structured framework inadequate and voiced concerns that it would not comply with the CPRD standards and Paris Principles. At the same time, EDF drew the attention of the Council Human Rights Working Group (COHOM) to the shortcomings of the proposal and suggested a number of minimum conditions to be met.

In December, a High-Level Meeting on Disability was convened by the President of the Commission José Manuel Barroso. The meeting, co-chaired by the Commission and EDF Presidents, brought together the Presidents of the European Council and of the European Parliament, as well as EDF Executive Committee members. The meeting, to be reconvened in 2013, focused on the implementation of the Convention and ratification by the EU of the Optional Protocol, as well as the impact of the crisis on persons with disabilities.

UNCRPD article-specific work at the European level
In 2011, EDF started deepening its expertise of specific UNCRPD articles by contributing to legal debates at the international level: in January, it elaborated on UNCRPD *Articles 13 "Access to justice"* and *16 "Freedom from exploitation, violence and abuse"* in its third-party intervention to the European Court of Human Rights (ECtHR) on a case of disability hate crime; in July, it joined forces with other organisations to unwrap the protection standards of *Article 12 "Equal recognition before the law"* in a third-party intervention to the ECtHR on a case of forced sterilisations of women with disabilities; and in October, it addressed *Article 9 "Accessibility"* in a third-party intervention in a British Court of Appeal case on the rights of air passengers.

In May 2011, EDF joined forces with the European Network of Independent Living, International Disability Alliance, Mental Disability Advocacy Center, Open Society Foundation and Galway University to develop implementing guidelines for the right to live independently and being included in the community pursuant to *Article 19 UNCRPD*. Throughout the year, EDF participated in the activities of the expert group on transition from institutional to community–based services raising awareness on the right to live independently. It also discussed definition of community based services in its task force on service provision and quality control.

In March 2011, EDF and the European Trade Union Confederation co-organised a conference on the challenges in implementation of *Article 27 "Work and employment"*.

Throughout 2011, EDF campaigned in favour of legislation with regard to accessibility of websites for persons with disabilities, in order to implement *UNCRPD Articles 9 "Accessibility"* and *21 "Freedom of expression and opinion, and access to information"*.
Mainstreaming of Article 9 has been an important priority in 2011: EDF actively monitored the commitment of the European Commission to ensure that any legislation produced under the Digital Agenda for Europe flagship of Europe 2020 is CRPD-compliant.

Implementation of the existing European legislation in light of Article 9 was also monitored: EDF issued a Toolkit on the Telecoms package, which contains many provisions in relation to accessibility of electronic communication products and services, to support its members in the transposition and implementation process at national level. EDF also followed the creation and developments of European standards by providing inputs to the standardisation mandates 376 and 420 European Accessibility Requirements for Public Procurement of Products and Services in the ICT domain and built environment, respectively.
To implement *Article 30(1)(b) "Participation in cultural life, recreation, leisure and sport"*, EDF monitored the developments in the cross-border provision of accessible television programmes in relation to implementation of the Audiovisual media Services Directive.

Throughout the autumn, EDF participated in an NGO campaign based on *Article 29 "Participation in political and public life"* and organised in its framework a roundtable at the European Parliament.

EDF members' work at the national level

Governance of the Convention at the national level
In April, EDF launched a consultation with its members to better understand how the implementation of Article 33 UNCRPD was progressing in the Member States. The responses were received from organisations in 14 countries (Austria, Belgium, Czech Republic, Denmark, Germany, Hungary, Latvia, Lithuania, Romania, Slovakia, Slovenia, Spain and Sweden). The overall evaluation of the EDF members of the national efforts to set up an implementing and monitoring framework at the national level was rather negative. The focal points in most countries have been placed under the Ministry of Social Affairs and not allocated any additional resources to adequately do their work. The involvement of DPOs in the process has been described as inadequate; very few countries have taken steps to establish an independent mechanism that would be in full compliance with Paris Principles.

EDF participated and co-organised seminars on the implementation of the UNCRPD in Slovakia and Lithuania.

Disability mainstreaming in the UN system
EDF continued encouraging its members to make submissions to the international human right fora to mainstream disability issues throughout the UN system. This work is conducted in close cooperation with the International Disability Alliance. In 2011, EDF members from Austria, Denmark, Finland and Italy made written submissions to various UN Treaty Bodies and the Human Rights Council. These exercises have greatly improved the awareness of the EDF members about international human rights standards that can be used for the promotion of disability rights.

The European Association of Service providers for Persons with Disabilities (EASPD) and its member organizations across Europe have carried out several activities during 2011 with the purpose of promoting the implementation of the UN Convention on the Rights of Persons with Disabilities (UNCRPD).

The importance of the UNCRPD has been stressed during the Executive Committee meeting in March 2011 and in the general Assembly of July 2011, where the UNCRPD has been

indicated as a reference document in all the work of the EASPD, very high on the EASPD agenda. This reference is also a milestone of the EASPD strategic choices for 2011 -2014.

EASPD events and activities
EASPD has organized a number of events and activities during 2011with the objective of disseminating information on key articles of the UN Convention and facilitating the implementation at grassroots level. Among these are the following:

- 30th June-1st July 2011: EASPD organised a conference under the title *"Old? So what? Independent Living for Seniors with Disabilities"* bringing together stakeholders and experts from all over Europe to discuss independent living and individualized support in the mainstream services for elderly persons with disabilities.

- 3rd-4th October 2011 EASPD organized a closed seminar on the theme of deinstitutionalization in Western European countries. The seminar has been organized in cooperation with KVPS (the Service Foundation for Persons with Intellectual Disabilities) and was sponsored by Ray, Finland.

- 9th-10th November 2011: EASPD held in Brussels the final conference of the project *ImPaCT in Europe "Connect, Personalise, Care: Person Centred Technology for Greater Quality of Life"*, bringing together key stakeholders from across Europe to demonstrate how assistive technology can significantly support independence for people with disabilities in a person-centred way.

- 9th November 2011: EASPD celebrated its 15th anniversary by inviting members and friends to the European Parliament and renewing its commitment to the UNCRPD.

- During 2011 EASPD organised Provider Fora in Bulgaria, Estonia, Poland, Romania, Slovakia and Slovenia. In all these, the UNCRPD was presented to stakeholders and service providers. Specific Articles of the Convention, particularly within the fields of employment, education and independent living, were explored further.

EASPD has been involved in a number of *projects* during 2011. Amongst them are ImPaCT in Europe which finished the 31st of December 2011, and Pathway to Inclusion:

- ImPaCT in Europe was a two-year project which aimed to "accelerate the effective participation of target groups at risk of exclusion and improving their quality of life" by facilitating the development and implementation of PCT, stimulating the effective use of ICT-enabled services and competence building of the end users of PCT.
- EASPD is the promoter of the "Pathway to Inclusion" project to develop a sustainable network of all those committed to inclusive education.
- EASPD is partner of the project *INCLUSION – GALILEO* consortium, focusing on accessible solutions for people with limited mobility. The project will develop a satellite navigation system that will empower wheelchair users.

Member organizations' events and activities for the implementation of the UNCRPD
EASPD is a European network of service providers for persons with disabilities and has a great number of members across Europe. In 2011 these members have supported the implementation of the UNCRPD through numerous activities. Common for the service

provider organizations is that the UNCRPD is used as a guideline in their daily work providing services for persons with disabilities.

In cooperation with its members BAG:WfbM (Bundesarbeitsgemeinschaft Werkstätten für Behinderte Menschen) and Unapei (Union Nationale Des Associations De Parents et Amis de Personnes Handicapées Mentales), in 2011 EASPD has worked on the report ”Analysis of the legal meaning of Article 27 of the UNCRPD”. The Report deals with the role of sheltered workshops in light of the UNCRPD.

The main work for organizations in countries where the UNCRPD has not yet been ratified has focused on lobbying activities towards governments for ratification. To better reach this objective, in 2011 EASPD enlarged its membership to the Turkish organisation Dolunay Association of Adult Disability.

In countries where the Convention has been ratified the organizations have worked on promoting a correct implementation as well as internal and external awareness raising activities. Unfortunately, only a few organizations have been asked for involvement in the NRP’s and few know the procedure of these.

Moreover EASPD developed a successful cooperation with AATE, the Association for the Advancement of Assistive Technology in Europe.

The European Platform for Rehabilitation (EPR) has undertaken a number of actions throughout 2011 that contribute to the implementation of the UN Convention on the rights of persons with disabilities (UNCRPD). EPR and its members have proactively engaged into the process of internalising the requirements and implications of the UN Convention in the delivery of services to persons with disabilities. At several occasions, the most relevant stakeholders at European and/or national level were involved in the discussions. EPR members are leading service providers to people with disabilities throughout Europe, and have undertaken actions to promote and implement the UNCRPD in practice.

- 2 March 2011: EPR organised in collaboration with Mrs. Frieda Brepoels, Member of the European Parliament, a Dinner Debate on ‘the cross-border dimension of health and social services’. The rights of people with disabilities as well as a guarantee to quality of services were the starting points for the various speeches and discussions.

- EPR drafted an analytical paper on the EU Disability Strategy 2010 – 2020. Most emphasis was put on the implementation of the UNCRPD, and its implications for service providers in the domains of health, education, long term care, independent living, employment and rehabilitation.

- 16-17 June 2011: EPR organised a strategic workshop for directors on ‘leadership in the rehabilitation sector’. The session highlighted different articles in the UN Convention, and looked into how directors and managers in the sector should use the Convention as overall guideline of their strategy and leadership.

- In the field of *Living independently and being included in the community* (Article 19), EPR promoted the International Classification of Functioning, Disability and Health (ICF) as a way to enhance a person’s functioning and maximize participation in society in

general and in community in particular. EPR organized a benchmarking group (5-6 May in Hasselt) on the implementation of ICF within organizations from Germany, Portugal, Slovenia, the Netherlands and Belgium.

- During a two day training seminar (hosted by INTRAS in Valladolid on 21-22 September), professionals reflected on the growing need for specialised services throughout Europe to assist people with mental health problems.

- In 2011 the EPR Annual Conference was dedicated to ‘reintegration of young people with disabilities’. With a very high attendance of nearly 150 participants, this event – hosted by EPR Greek members in Athens - had a big impact on sharing experiences between rehabilitation professionals on the implementation of the UN Convention in this domain.

- Under the strand ‘accessibility’, the EPR organised as partner of the AEGIS project a final conference entitled “Accessibility Reaching Everywhere” (28 to 30 November in Brussels). The aim was to bring together people with disabilities as well as platform and application accessibility developers, representative organisations, the Assistive Technology industry, and policy makers.

3. ACCESSIBILITY LEGISLATION, REGULATIONS AND STANDARDS IMPLEMENTING ARTICLE 9 UNCRPD

Austria

The Austrian law contains no uniform competency regulation concerning disability. This is what is known as an overlap area. There are also several federal and regional laws containing legal rulings regarding accessibility which are of significance to persons with disabilities.

a. Accessibility legislation: its place in the legal and regulatory framework

On 6 July 2005 the Austrian Parliament adopted a disability equality package, including the Federal Disability Equality Act as well as Amendments to the Disability Employment Act and to the Federal Disability Act (in force since 1 January 2006). This anti-discrimination package offered for the first time enforceable protection against discrimination of people with disabilities and enshrines legal consequences if the prohibition of discrimination is violated (financial compensation).

One of the key elements of the Federal Disability Equality Act is the legal prohibition of discrimination on grounds of disability. If services, products, infrastructures, buildings or transport facilities/systems are not accessible, this may cause discrimination prohibited by law and can lead to financial compensation (for details see Chapter 1.9, 7 and 8 of "the Government Report on the Situation of People with Disabilities in Austria 2008, www.bmask.gv.at).

The Austrian construction law falls into the legal competence of the nine Länder, which are the regional authorities. Until now it was not possible to harmonize this regional law in the field of technical regulations which could bring a higher standard of accessibility all over Austria. In Austria there is quite a numerous range of standard regulations concerning barrier-free buildings and accessibility. These so called ÖNORMEN (Austrian Standards) are very important for people with disabilities because they give an answer to technical aspects (what has to be done in a concrete situation). Often they are part of a legal act and – in that case – are legally binding.

The Advisory council for architectural culture („Baukulturbeirat"), which is a task force of qualified architects and representatives of all federal ministries, published in June 2011 the recommendation „Barrier-free Construction – Design for all" (www.bka.gv.at/site/6992/default.aspx).

b. General law, technical regulations and standards

Please see points e. and c.

c. Role of national, European and international standards

The Austrian Standards Institute (www.as-institute.at/en) works out – in cooperation with disability experts – standards in the field of technical requirements on accessibility for people with disabilities. Observance of the Austrian standard „ÖNORM B 1600" (Standardisation principles on barrier-free construction and design) has become mandatory for erecting new buildings of the federal administration and, among other things, also for the adaptation of transport facilities of the Austrian Federal Railways to suit the needs of disabled people. Other „ÖNORMEN" apply to educational and training institutions, basic principles for planning special facilities for disabled or older people as well as barrier-free tourist facilities, technical aids, mobile wheelchair lifts, acoustic signals, tactile and visual platform paving and toilet facilities for people with disabilities. See the following list of outputs and publications, a rather complete list of Austrian Accessibility Standards:

- ÖNORM B 1600 „Barrierefreies Bauen – Planungsgrundlagen" („Barrier-free construction – Design principles");

- ÖNORM B 1601 „Spezielle Baulichkeiten für behinderte oder alte Menschen – Planungsgrundsätze" („Special buildings for disabled or elderly people – Design principles");

- ÖNORM B 1602 „Barrierefreie Schul- und Ausbildungsstätten und Begleiteinrichtungen" („Barrier-free schools and training centers and institutions associated");

- ÖNORM B 1603 „Barrierefreie Tourismuseinrichtungen – Planungsgrundlagen" („Barrier-free tourism institutions – Design principles");

- ÖNORM B 4970 „Anlagen für den öffentlichen Personennahverkehr – Planung" („Facilities for short distance public transport – Design");

- ÖNORM B 5410 „Sanitärräume im Wohnbereich – Planungsgrundlagen" („Sanitary facilities in residential areas – Design principles")

- ÖNORM EN 81-1 „Sicherheitsregeln für die Konstruktion und den Einbau von Aufzügen – Teil 1: Elektrisch betriebene Personen- und Lastenaufzüge" („Safety rules for the construction and installation of lifts – Part 1: Electric passenger and freight elevators");

- ÖNORM EN 81-2 „Sicherheitsregeln für die Konstruktion und den Einbau von Aufzügen – Teil 2: Hydraulisch betriebene Personen- und Lastenaufzüge" („Safety rules for the construction and installation of lifts – Part 2: Hydraulic lifts and hoists");

- ÖNORM EN 81-40 „Sicherheitsregeln für die Konstruktion und den Einbau von Aufzügen – Spezielle Aufzüge für den Personen- und Gütertransport – Teil 40: Treppenschrägaufzüge und Plattformaufzüge mit geneigter Fahrbahn für Personen mit Behinderung" („Safety rules for the construction and installation of lifts - Special lifts for the movement of people and goods – Part 40: Stairlifts and inclined platform lifts with inclined roadway for people with disabilities");

- ÖNORM EN 81-41 „Sicherheitsregeln für die Konstruktion und den Einbau von Aufzügen – Spezielle Aufzüge für den Personen- und Gütertransport – Teil 41: Vertikale Plattformaufzüge für Behinderte" („Safety rules for the construction and installation of lifts – Special lifts for the movement of people and goods - Part 41: Vertical platform lifts for disabled people");

- ÖNORM EN 81-72 „Sicherheitsregeln für die Konstruktion und den Einbau von Aufzügen – Besondere Anwendungen für Personen- und Lastenaufzüge – Teil 72: Feuerwehraufzüge" („Safety rules for the construction and installation of lifts – Particular applications for passengers and goods lifts – Part 72: Firefighters lifts");

- ÖNORM V 2104 „Technische Hilfen für blinde, sehbehinderte und mobilitätsbehinderte Menschen – Baustellen- und Gefahrenbereichsabsicherungen“ („Technical aids for blind, visually impaired and physically disabled people – construction and hazardous area hedges “);

- ISO 21542 „Building construction – Accessibility and usability of the built environment“.

d. Changes in legislation/regulation linked to the implementation of the UN CRPD

In Austria the implementation of the UN Convention has not directly led to changes in accessibility legislation/regulation. However the public awareness about accessibility has increased because of the UNCRPD.

In January 2012 the Federal Ministry of Labour, Social Affairs and Consumer Protection presented the draft of a new National Disability Action Plan 2012-2020. This plan includes reference to accessibility with an own comprehensive chapter.

e. Services regulated for accessibility

Principally all private services are regulated for accessibility in Austria: if they are offered in public, all consumer transactions and the acts of the federal public administration are regulated by the disability equality law. This is the case for website providers, restaurant owners, food discounters, transport providers, federal ministries, public institutions, social insurance institutions, hospitals, medical services, private insurance companies and so on.

For instance the Austrian E-Government Act requires that all public websites must be barrier-free and accessible. With that it is necessary to publish also easy-to-read versions and sign language.

f. Goods regulated for accessibility as part of a service

The relevant Federal Disability Equality Act does not state technical provisions on the accessibility of goods.

g. Goods regulated for accessibility

Please see points e. and f.

h. Enforcement of accessibility legislation

According to the Federal Disability Equality Act a person who feels discriminated can – after passing a mandatory conciliation procedure – enforce damages by court when the discrimination is based on a lack of accessibility.

i. Non-compliance and litigation

The core element of protection against disability discrimination is the possibility to get a compensation of the material or immaterial damage suffered. The assertion of claims in court has to be preceded, however, by obligatory conciliation proceedings at the Federal Social Office (a body of the Federal Ministry of Labour, Social Affairs and Consumer Protection). Taking legal action without an attempt at conciliation is inadmissible. The deadlines for the

assertion of claims due to discrimination are extended by the duration of the conciliation process. The purpose of conciliation is to promote an out-of-court settlement. This is intended to avoid long and possibly expensive court cases. The option of free mediation by independent mediators is available within the framework of this conciliation procedure.

An easing of the burden of proof (rules on evidence which have a similar effect to a reversal of the burden of proof) applies to court cases. In the case of important and lasting harm to the general interests of the group of persons protected by the disability equality law, the umbrella body of the Austrian disability organisations (Österreichische Arbeitsgemeinschaft für Rehabilitation – ÖAR, a member of EDF) can initiate a class action on the basis of a recommendation by the Federal Disability Advisory Board.

Since the coming into force of the Federal Disability Equality Act 2006 until the end of 2011 there have been more than 1.000 conciliation procedures in Austria.

The Federal Disability Ombudsman, which was introduced in 2006 in combination with the disability equality law, is an independent body. It has the task of advising and supporting people with disabilities in cases of discrimination as well as raising public awareness of problems in equality or accessibility issues.

Belgium

In Belgium, accessibility falls mainly within the competence of the federate entities. Any refusal to implement the reasonable accommodation for a person with disability is a form of discrimination in various legislations. The equality of treatment of persons with disabilities and the protection against discrimination are established in the Belgian Constitution (articles 10 and 11) and the laws made by the different levels of power.

a. Accessibility legislation: its place in the legal and regulatory framework

At the federal level, the anti-discrimination legislation is being implemented in the three anti-discrimination laws of the 10th of May 2007 tending to combat certain forms of discriminations:

- the general law anti-discrimination;
- the anti-racism law;
- the law on gender.

Article 9 of the law of 10 May 2007 refers to the combat against certain forms of discriminations and stipulates that any indirect distinction based on one of the protected criteria constitutes indirect discrimination unless, in the event of indirect distinction on the basis of a disability, it is shown that no reasonable accommodation can be set up. Reasonable accommodation are appropriate measures, taken according to requirements in a concrete situation, to make it possible for a disabled person to reach, to take part and progress in the fields for which this law is in force, except if these measures impose with regard to the person who has to adopt them a disproportionate charge. This charge is not disproportionate when it is compensated adequately by measures existing within the framework of the followed public policy concerning disabled persons.

For further information on the measures implemented by the federal government concerning the accessibility of transport (railway, aviation, and maritime transport) see the Belgian report on the UNCRPD.[46]

Flemish Region

- *The Flemish Urbanisation Regulation concerning the accessibility of public buildings of June 5th 2009 (in effect since March 1st 2010).*

[46] Article 9 : « Des mesures d'accessibilité relatives au droit à la mobilité personnelle des personnes handicapées sont stipulées dans les contrats de gestion entre l'Etat fédéral et les trois sociétés du Groupe **SNCB**. Celles-ci s'engagent de garantir un accès équitable et non discriminatoire au transport ferroviaire et d'assurer l'utilisation optimale de celui-ci. Ces mesures comprennent notamment celles relatives à l'accessibilité par ascenseurs, rampes ou dispositifs équivalents d'un ensemble de gares. En matière de **transport aérien**, le règlement (CE) N°1107/2006 du Parlement européen et du Conseil du 5 juillet 2006 concernant les droits des personnes handicapées et des personnes à mobilité réduite lorsqu'elles font des voyages aériens a été transposé dans la loi belge et établit des règles relatives à la protection et à l'assistance en faveur des personnes handicapées et des personnes à mobilité réduite. Quant au droit **maritime et fluvial belge**, il prévoit que les personnes handicapées ou à mobilité réduite jouissent d'un traitement non discriminatoire et de la fourniture gratuite d'une assistance spécialisée à leur intention, tant dans les terminaux portuaires qu'à bord des navires, ainsi qu'un dédommagement financier en cas de perte ou de dégradation de leur équipement de mobilité. »

This regulation replaces the federal law of 1975 and is a section of the framework decree on the built environment. It requires that the rules on accessibility are integrated in the procedures to obtain a building permit or urban authorization and non-compliance with these rules entails the refusal of the building permit. The Regulation applies to all building and/or renovating activities on publicly accessible constructions or parts thereof and when a building permit is required for the activity or a reporting duty exists.

The rules apply to new buildings, rebuilding, renovations or annexations of public buildings of public parts of buildings. Existing buildings are free of additional modifications as long as no changes are foreseen requiring a building permit. The legislation also foresees a compulsory advisory mechanism that will be implemented during 2012. To ensure a better congruity with common building practice, the regulation was slightly adapted in 2011.

- The Decree holding the framework for the Flemish equal opportunities and equal treatment policy (July 10th 2008).

This decree outlines the principles of the Flemish non-discrimination policy. It prohibits discrimination based on disability (among 18 other grounds), but also qualifies that the refusal of reasonable accommodations can be construed as discrimination.

In Flanders, several complementary measures were set in place to ensure a correct implementation of the accessibility legislation:

- distribution of a short brochure within the building and public sector
- organisation of trainings for architects and civil servants working in urbanisation
- the website www.toegankelijkgebouw.be contains the Flemish manual on accessibility.
- 'wenkenbladen': These shortlists provide concrete and specific tips on how to enhance the accessibility of buildings and services. Some examples of 'wenkenbladen' are: banks, libraries, hotels, cultural centres, parks, playgrounds, swimming pools, sidewalks etc.

The Flemish government also carries out general information and awareness-raising campaigns:

- The campaign 'Accessible Flanders': this campaign wants to raise awareness of accessibility of public buildings. The website www.toevla.be contains information regarding the accessibility both of buildings, premises and tourist facilities such as town and city halls, schools, hotels, museums, socio-cultural centres, sports centres, cycle paths, footpaths and other tourist facilities.
- Accessible events: 'Intro vzw' provides tailor-made advice for events (music festivals, sport manifestations, etc) and support in the practical build-up of the event. In cooperation with volunteers and specialised organizations they also provides services such as personal assistance, feeling chairs, "ringleiding" (type of hearing aid), etc.
- Information point Accessible Travels: at this agency and on the website www.accessinfo.be (in 4 languages) travellers can find reliable information on and propositions of accessible holidays.

Région Wallonne

Any form of direct or indirect discrimination on the basis of disability is prohibited by the Walloon Government's Decree of the 6th of November 2008, relating to the fight against

certain forms of discrimination (later completed by the Decree of March 19, 2009).[47] It stipulates, in its Article 13, that reasonable accommodations have to be carried out in order to guarantee the respect of the principle of equal treatment with regard to disabled persons.

Since February 1999, the Walloon code of Regional planning, of Town planning and of the Inheritance (CWATUP) also fixed, in Articles 414 and 415, a series of rules relating to the accessibility of persons with mobility reduced to spaces and buildings or parts of buildings open to the public or for collective use.

By the "*Code wallon de l'Action sociale et de la Santé*", of the 21st December 2011, the Walloon Government takes care to ensure the full and complete participation of disabled persons in social and economic life, some are the origin, nature or the degree of their disability. The Walloon Government also provides for the implementation of such programmes to « *rendre accessibles aux personnes handicapées les établissements et installations destinés au public, les lieux d'éducation, de formation et de travail ainsi que la voirie »*' (article 268). Furthermore, the "*Code wallon de l'Action sociale et de la Santé*" stipulates that disabled persons accompanied by assistance dogs are admitted everywhere except in places that have received an exemption from the authority.

By its decree of 4 February 2004, the Walloon Government laid down the conditions and the procedures of intervention of material aid to disabled persons' integration.

In concrete terms, the Walloon Agency for disabled persons' Integration (AWIPH) grants interventions for individual requests for installation of the residence and of the post and for technical aid encouraging the social and professional integration of disabled persons.

Disabled persons accompanied by assistance dogs are admitted everywhere except in the places having received an exemption from the authority[48].

Various associations published booklets and guides concerning the accessibility the majority of which received financial support from the Ministry of social Affairs and from the Health of the Walloon Region.[49] Moreover, the ASBL ANLH carries out a database on technical aid (Access AT: www.accesat.be)

Lastly, the AWIPH support of the initiatives intended to disseminate information on technical aid. Disabled persons can obtain this information while applying to the Regional office close to their residence but also to the CICAT (Coordination of Information and Councils in technical Aid).

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[47] Ce décret se base notamment sur les principes établis dans la directive européenne 2000/78/CE portant sur la création d'un cadre général en faveur de l'égalité de traitement en matière d'emploi et de travail.

[48] Livre IV du Code wallon de l'Action sociale et de la Santé – volet decrétal

[49] As examples of publications:

- The event accessible by the ASBL Year 2000
- Tourism in Belgium for persons with mobility reduced by the Touring Club (2002)
- The dimension accessible by the architecture school of Cambre (March 2004)
- Accessibility by the cabinet of the Minister for social Affairs and of the Health of the Walloon Region
- Gardens accessible to persons with mobility reduced by the ASBL Nature and Progress (2004)
- Booklet of information on accessibility for the attention of the elected representatives, for the attention of the architects and for the attention of the contractors by the Cabinet of the Minister for social Affairs and of the Health of the Walloon Region (March 2004)
- Reference frame on accessibility by the (CAWAB) Collective Accessibilité Wallonnie Brussels comprising 21 associations representative of disabled persons.

The CICAT and regional offices work closely with resource and evaluation centres specializing in technical aids, so that disabled persons can make an informed choice based on their needs as well as offers available on the market.

German-speaking Community

There are two legal bases in the German-speaking community (both are currently under revision):

a. *Erlass der Regierung vom 12. Juli 2007 zur Festlegung der Bestimmungen zur behindertengerechten Gestaltung von bezuschussten Infrastrukturen* (Government Order of 12 July 2007 laying down the legal provisions governing facilities for the disabled in subsidised infrastructures): Since the effective date of the Order (2 December 2007), all projects covered by the Order must meet the technical requirements relating to facilities for the disabled if they are to be eligible for subsidies from the German-speaking Community.
b. *Dekret vom 19. März 2012 zur Bekämpfung bestimmter Formen von Diskriminierung* (Decree of 19 March 2012 for combating certain Forms of Discrimination): the Decree is intended to implement various European directives in the German-speaking Community. It goes beyond the requirements of the EU directives in that it follows federal Belgium legislation by including additional aspects of discrimination in its definition of discrimination and defining both direct and indirect discrimination.

The following guidelines are also available:

1. The DPB has prepared a set of guidelines, *Zugänglichkeit zum Wahlbüro!* (Access to the polling station), which uses text, drawings and photographs to describe requirements for parking spaces, access ways and polling booths.
2. Another set of guidelines is called *Praktischer Leitfaden für Ausrichter von öffentlichen Veranstaltungen* (Practical guidelines for organisers of public events), using drawings, photographs and text to explain how to make events accessible.
3. The *Eurecard-Label* is a service card that provides proof of a disabled person's entitlement to the cross-border use of services and concessions in the tourism, culture and sports sectors
4. The *Eurewelcome-Label* confirms accessibility in the sense of making visitors feel welcome (adopting a respectful, obliging and helpful attitude to all visitors, with or without special needs) and encourages greater accessibility through the voluntary reduction of physical barriers as an official label recognising the social benefits of a service as part of brand image.
5. The DPB published on its website detailed information on the accessibility of buildings and public events. This is a guideline for architects and event organisers on how to be accessible for an as large as possible group of people and in particular for people with disabilities.

In addition, the German-speaking Community also provides training in accessible construction for architects and their clients and craftspersons. The *Dienststelle für Personen mit Behinderung* (Office for People with Disabilities) inspects infrastructure projects to determine their accessibility.Continual efforts are also being made to raise awareness among private developers.

Brussels-Capital Region:
La Région de Bruxelles-Capitale a mis en place un coordinateur régional en matière d'accessibilité globale dans la cellule égalité des chances et la diversité du ministère de la région de Bruxelles-capitale. Ce coordinateur conseil le gouvernement bruxellois et doit développer un plan d'action sur l'accessibilité globale (avec un budget de 50 000 euros). Il travaille en collaboration avec une plate-forme qui regroupe un grand nombre d'acteurs concernés (autorités publiques, associations, …) et qui a pour tâche de relayer les informations en la matière et de coordonner les actions nécessaires.

b. General law, technical regulations and standards

Flemish Region

The requirements are found in the Flemish Urbanisation Regulation. This however only provides norms for those elements that can be read on a building plan (for e.g. height and width of doors, not the visual markings). The additional handbook however contains additional options and/or improvements (in order to go beyond what is legally required).

Walloon region

The requirements are found in the Walloon Code of Regional planning and heritage (CWATUPE, articles 414 and 415).

c. Role of national, European and international standards

Flemish Region

Accessibility legislation in the Flemish Region makes use of CEN, EN and BIN (Belgian norms) standards.

d. Changes in legislation/regulation linked to the implementation of the UN CRPD

Flemish Region

No changes were made to the equality and antidiscrimination legislation.

The ratification however did inspire the equality mainstreaming policy; in the framework of objectives for disability mainstreaming (created via the open method of coordination) 2 important generic objectives were included:

1. the existing legislation will be examined on its conformity with the UN Convention on the Rights of Persons with Disabilities;
2. the impact of the UN Convention on the Rights of Persons with Disabilities will be examined for every policy domain within the Flemish Government.

This framework of objectives will be evaluated at the end of 2014, and will hopefully foster legislative and/or policy changes where necessary.

Région Wallonne

La Ministre de la Santé, de l'Action sociale et de l'Egalité des chances a été chargée par le Gouvernement wallon de réaliser un screening de la législation et de la réglementation wallonnes afin de vérifier que ces normes sont compatibles avec la Convention relative aux droits des personnes handicapées, adoptés à New York le 13 décembre 2006 et, le cas échéant, de procéder aux adaptations nécessaires comme le prévoit l'article 4 de ladite convention.

German-speaking Community

At the moment, the Government Order of the German-speaking Community dating 12 July 2007 is under revision in order to better meet the provisions of the UN Convention of the Right of Persons with Disabilities. The Parliament of the German-speaking Community has approved a decree to combat certain forms of discrimination. It prohibits discrimination based on disability (among several other reasons), but also defines the refusal of reasonable accommodations as a form of discrimination.

e. Services regulated for accessibility

Etat fédéral

Banques

Ces dernières années, les banques ont pris des mesures afin de rendre leurs services plus accessibles aux personnes handicapées :

Mesures pour les malvoyants

Pour les personnes ayant des problèmes de vue, des extraits de compte en braille sont prévus par plusieurs banques. Ensuite, certaines institutions ont adapté leurs systèmes de PC banking aux personnes malvoyantes, et proposent une application qui permet de relier le système de PC banking à un logiciel sonore spécial et des lecteurs de cartes vocaux adaptés. Cette application permet aussi d'agrandir les caractères se trouvant à l'écran.

Fin 2011 l'une de ces institutions a mis à la disposition de ses clients quelque 800 guichets automatiques avec accompagnement vocal pour les retraits d'argent. Ces guichets sont adaptés pour les clients ayant des problèmes de vue et qui ne peuvent donc utiliser les écrans tactiles. Les appareils dotés d'une technologie vocale sont reconnaissables à leur autocollant en braille.

Accessibilité des bâtiments

La législation régionale existante en la matière vise à améliorer l'accès des personnes à mobilité réduite aux bâtiments accessibles au public. Elle s'applique tant aux nouvelles constructions qu'aux rénovations nécessitant un permis d'urbanisme. L'obtention de celui-ci dépend du respect des dispositions de la législation en vigueur. Ainsi, un nouveau comptoir d'accueil doit comporter au moins une partie modulaire accessible à tous. Un espace doit être dégagé de part et d'autre du comptoir. Par ailleurs, une partie de celui-ci doit être plus basse.

De leur côté, de nombreux guichets automatiques respectent les normes ADA (Americans with Disabilities Act), lesquelles permettent une meilleure accessibilité de ces guichets aux

moins valides. Ces normes ont notamment trait à la hauteur du clavier et de l'écran des appareils. Elles sont prises en compte lors de la construction des guichets automatiques.

Chemins de fer

Conformément au contrat de gestion de la Société nationale des Chemins de fer belge (SNCB), la politique d'accessibilité est élaborée en concertation avec le Conseil supérieur national des personnes handicapées (CSNPH). Le CSNPH est le seul interlocuteur agréé en la matière. Le CSNPH mène un travail de fond afin d'amener la SNCB à rendre accessible son réseau et ses services. Il s'agit d'un "travail de fourmis" dont les aspects concrets sont discutés au sein d'un groupe de travail commun à la SNCB et au CSNPH

Aéroports

Au niveau des déplacements aériens, Brussels International Airport (BIA) relève de la compétence fédérale. Le Conseil Supérieur National des Personnes Handicapées (CSNPH) a profité de l'entrée en vigueur de la directive européenne EU1107 pour commencer à participer au groupe de travail Personnes à Mobilité Réduite, mis en place par BIA.

Flemish Region

The Flemish Urbanisation Regulation does not regulate services as such, only the accessibility of public buildings. There is however a subsidization regulation in vigour in certain policy domains within the Flemish government that has a specific focus on accessibility. For example, touristic facilities can receive governmental funding only when they comply with the accessibility norms. Another example exists in elderly care. Elderly homes can get a specific accreditation when in compliance with accessibility norms. This accreditation is however not compulsory.

Région Wallonne

Le gouvernement wallon prévoit la mise en œuvre des programmes visant notamment à '*rendre accessibles aux personnes handicapées les établissements et installations destinés au public, les lieux d'éducation, de formation et de travail ainsi que la voirie*' (article 8 du décret du 06 avril 1995 relatif à l'intégration des personnes handicapées).

L'Agence wallonne pour l'intégration des personnes handicapées (AWIPH) a mis en place un programme d'initiatives spécifiques destiné au financement de projets développés par des services experts en matière d'accessibilité et de mobilité. Ce programme a notamment pour objectif l'information, la sensibilisation et la promotion de l'accessibilité et de la mobilité auprès du grand public, des architectes, de la société civile, des entreprises, des hommes de métier et des autorités publiques.

Par ailleurs, ce sont les articles 414 et 415 du CWATUPE[50] qui définissent la liste des lieux soumis à la réglementation en faveur de l'accessibilité en Wallonie.

[50] http://dgo4.spw.wallonie.be/DGATLP/DGATLP/pages/DGATLP/Dwnld/CWATUPE.pdf

f. Goods regulated for accessibility as part of a service

Flemish Region

There is no regulation on accessibility of goods at the level of the Flemish Region.

Région Wallonne

Pour l'accessibilité aux bâtiments se référer à la question e.

Pour favoriser le degré d'accessibilité des média, depuis 2002, le gouvernement wallon s'est engagé à rendre la majorité des sites Web de la Région wallonne accessibles aux personnes déficientes visuelles. La mise en œuvre de cette politique a été intégrée en 2005 dans le volet wallon du Plan national de lutte contre la fracture numérique. On compte, pour l'instant, 27 sites symbolisés par le label « *AnySurfer* » ou « *BlindSurfer* ».

En matière de transports publics, le contrat de gestion 2005-2010 conclu entre la Région wallonne, la Société Régionale Wallonne du Transport (SRWT) et la Société de Transport en commun (TEC) prévoit, en termes d'objectifs spécifiques, la généralisation progressive des bus à plancher surbaissé et les quais adaptés aux personnes à mobilité réduite.

Plus particulièrement, le groupe TEC s'est engagé à exécuter le plan de renouvellement du matériel roulant, adopté par le Conseil d'administration de la SRWT du 7 octobre 2004, en acquérant notamment systématiquement des bus répondant aux normes d'accessibilité optimale.

g. Goods regulated for accessibility

Flemish Region

There is no compulsory regulation for the accessibility of manufactured goods. However EU-norms (BIN, EN and CEN) are enforced on a voluntary basis – with the exception of elevators in publicly accessible buildings, which are required to comply with EU-norms.

The Flemish Regulation on accessibility of public buildings does however foresee norms for doors as well as for parking places.

The '*wenkenbladen*' (documents that provide concrete and specific tips on how to enhance the accessibility of buildings and services) can be a useful tool. Some examples of '*wenkenbladen*' are: banks, libraries, hotels, cultural centres, parks, playgrounds, swimming pools, sidewalks etc.

h. Enforcement of accessibility legislation

Flemish Region

The regulation enforces certain criteria to obtain a building permit. If the building plans do not comply with the legislation, the permit is not granted. If later on it is shown that these adaptations with regards to accessibility were not put in place, the general sanctions of

building violations apply. These can be a financial penalty, administrative sanctions or remedial actions (restore the original state (break down) or execute certain adaptations).

Région Wallonne

Pour porter plainte pour discrimination ou simplement pour s'informer, il est possible de s'adresser directement à l'un des 12 Espaces Wallonie[51] qui sont désormais compétents pour entendre et traiter les plaintes pour discriminations en apportant une information claire et directe.

L'AWIPH analyse les contrats de gestion des autres Organismes d'Intérêt Public (OIP) wallons en termes de prise en compte des besoins des personnes handicapées. C'est ainsi que depuis peu, l'AWIPH a relevé que le service public wallon de l'emploi et de la formation (FOREM) a édité sur son site Web une page spécifique « Travail et Handicap » ; l'entièreté du site a obtenu le label '*AnySurfer'*. L'Agence wallonne à l'exportation et aux investissements étrangers (AWEX) dispose notamment d'un immeuble totalement accessible et de mobiliers de bureau adaptés. Le Fonds du Logement des familles nombreuses de Wallonie (FLW) a également obtenu le label '*AnySurfer'* pour son site Web.

Le Port automne de Liège a été attentif à l'accessibilité de ses dernières acquisitions immobilières. Des actions sont également entreprises afin d'améliorer l'accessibilité du port de plaisance. Dans le cadre de l'organisation de réunions avec les riverains des sites dont elle a la charge, la Société publique d'aide à la qualité de l'environnement (SPAQUE) reste attentive à trouver des lieux de réunion accessible à tous. L'ensemble des locaux de la Société wallonne des aéroports (SOWAER) est accessible aux personnes à mobilité réduite.

Dans le cadre du programme «Destination 2015» proposé par le Commissariat général au Tourisme et Wallonie-Bruxelles Tourisme apparait une action spécifique intitulée "Tourisme pour tous - Accessibilité pour les PMR". Cette action comporte un double enjeu: clarifier les informations et rendre le secteur touristique davantage accessible.

Par ailleurs, L'AWIPH et la Commission Wallonne de la Personne Handicapée ont participé activement aux consultations officielles opérées en 2011 et en 2012 dans le cadre des révisions du CWATUPE (Code wallon de l'Aménagement du Territoire, de l'Urbanisme, du Patrimoine et de l'Energie) et du Code wallon du logement.

Enfin, dans le cadre du plan global d'égalité des chances approuvé par le Gouvernement wallon le 24 février 2011, il a été prévu de désigner des personnes de contact dans chacune des administrations pour veiller à la prise en compte des besoins des personnes en situation de handicap, notamment en matière d'accessibilité.

German-speaking Community

An examination regarding the fulfilment of the accessibility requirements is conducted by a jury before granting the project. The jury consists of a representative of the '*Dienststelle für Personen mit Behinderung'* (DPB) and an external expert, both designated by the

[51] http://www.wallonie.be/vlw/n-14-decembre/les-essentiels/vous-etes-discrimine-e.html

management board of the DPB. An additional member is a civil servant of the Ministry of German-speaking Community.

i. Non-compliance and litigation

Flemish Region

Non-compliance with accessibility or the lack of reasonable accommodation can be construed as a manifestation of discrimination before the court on the basis of the decree holding the framework for the Flemish equal opportunities and equal treatment policy of 10 July 2008.

Bulgaria

In December 2007 the Council of Ministers of the Republic of Bulgaria adopted a strategy on providing equal opportunities for people with disabilities 2008 – 2015, which is consistent with the European tendencies regarding equal treatment. The main goals of the strategy served as a basis for the drafting of an action plan on providing equal opportunities for people with disabilities 2008 – 2009, including planned activities in the fields of rehabilitation and social integration, persons in charge and deadlines for implementation.

One of the goals of the strategy and the action plan is the establishment of an environment, adapted to the needs of people with disabilities, which includes rendering public, residential buildings, outdoor areas and workplaces wheelchair-accessible, provision of accessible transport and accessible information and communications.

a. Accessibility legislation: its place in the legal and regulatory framework

There are legal provisions in the Integration of people with disability Act, Spatial Development Act and Protection against Discrimination Act. There are norms in the fields of: architectural environment, accessible transport, tourism, and information and communications.

The Protection Against Discrimination Act, in article 5, states that "Harassment on the grounds referred to in Article 4 (1)[52], sexual harassment, incitement to discrimination, persecution and racial segregation, as well as the building and maintenance of an architectural environment hampering the access to public places of people with disabilities shall be considered discrimination."

The rules on the provision of an accessible living and architectural environment are regulated in detail in the Integration of People with Disabilities Act. The above mentioned law contains a section with rules on the spatial development of urban territories for the population, including people with disabilities. It is an obligation of the Ministry of Regional Development and Public Works to create conditions for accessible living for disabled people. It is an obligation of the Transport Ministry to make transport services wheelchair-accessible. Auxiliary means, devices and facilities as well as medical products for people with disabilities are provided by the Social Assistance Agency. One of the obligations of the State Agency for Youth and Sports and the Ministry of Education and Science is to create, in cooperation with the municipalities, the sport federations and the sport clubs, conditions for social integration of people with disabilities. The Culture Ministry, in cooperation with the municipalities, is obliged to provide conditions for integrating disabled people in the area of culture. The municipalities, within their competence, are responsible for providing accessible living and architectural environment, while the Bulgarian National Television, the Bulgarian National Radio and the Bulgarian News Agency are obliged to provide information, accessible for people with disabilities.

In connection with the provision of labour conditions and civil service positions for people with disabilities, the Civil Servants Act stipulates that the appointment body shall provide

[52] Article 4 (1) - Any direct or indirect discrimination on grounds of gender, race, nationality, ethnicity, human genome, citizenship, origin, religion or belief, education, convictions, political affiliation, personal or social status, disability, age, sexual orientation, marital status, property status, or on any other grounds established by law or by an international treaty to which the Republic of Bulgaria is a party, shall be banned.

access for people with disabilities to the buildings, where the administration works, by overcoming the respective architectural and other barriers. Six test centres have been established in the country: in the cities of Sofia, Varna, Plovdiv, Bourgas, Veliko Turnovo and Montana. The tests are computer-based and are held in real time. Candidates with visual impairment sit for the exam in specially-equipped halls with screen reader and speech synthesizer while sign language interpretation is provided for people with hearing impairment and the test is held in wheelchair accessible halls.

b. General law, technical regulations and standards

There are requirements in legislation like the Integration of people with disabilities Act, the Spatial Development Act, the Ordinance for accessible architectural environment with clear standards and also the Protection against discrimination Act.

The main guidelines in the Republic of Bulgaria regarding the provision of physical access to public buildings and areas as well as to residential buildings are contained in Ordinance No. 4 on the Provision of Accessible Environment in Urban Territories.

c. Role of national, European and international standards

The Republic of Bulgaria has undertaken all necessary measures at national level for the implementation of Regulation (EC) No. 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when traveling by air as administrative and criminal liability is envisaged for the people having violated the requirements of the regulation. The Commission for the Protection of Competition monitors the fulfillments of the commitments of the tour operators and the tourist agents under Regulation (EC) No. 1107/2006 in its capacity of a national body in charge of the implementation of this regulation.

In air transport, there are effective requirements regarding airport infrastructure and multiple requirements for accessibility for people with disabilities are implemented at community and national level.

There are provisions for the implementation of Regulation (EO) N1371/2007of the European Union for rights and obligations of travelers.

d. Changes in legislation/regulation linked to the implementation of the UN CRPD

The Republic of Bulgaria ratified the UN CRPD on 26 January 2012 and there is an expert group elaborating a biannual action plan for its implementation, which may include measures of legislative changes; these will be connected to accessibility to some extent. The draft action plan has to be finished in 6 months period.

e. Services regulated for accessibility

The Ordinance on Administrative Servicing contains a requirement under which the administrations shall provide convenient and easy access for people with disabilities to the administrative servicing unit by adapting service premises and the access to them. For example, the desks for administrative servicing at the head office of the Maritime Shipping Administration Executive Agency and the territorial units in the cities of Varna, Rousse, Bourgas and Lom have been made wheelchair accessible. A portal for blind people has been created within the official website of the Transport Ministry.

The Transport Ministry, within its competences, has drafted a special programme, Generally Accessible Transport, on the provision of wheelchair accessible transport. The programme is implemented through the Road Administration Executive Agency and the Railway Administration Executive Agency, in coordination with the Finance Ministry, as its main goal is providing greater access for people with disabilities to transport services. With a view to achieving the above goal, the losses upon intra and intercity carriage are covered under the national budget while carriers are compensated for free of charge travel and reduced fares for certain groups of citizens, including people with disabilities, within the executive budget.

f. Goods regulated for accessibility

There is Consumer Protection Act which regulates the protection of consumers, the powers of State bodies and the activity of consumer associations in this area. The purpose of this Act is to ensure protection of the fundamental consumer rights. There is a Commission for Consumer Protection which organizes National campaigns for safety of the products.

According to Article 168 on Medicinal Products in the Human Medicine Act the packaging of a medicinal product shall consist of immediate and/or outer packaging and of a patient brochure. When a medicinal product is allowed for use, its name on the outer packaging, the pharmaceutical form and the content of the active substance per dosing unit shall also be printed in Braille.

g. Enforcement of accessibility legislation

In the Protection against discrimination Act there is stated that a refusal to provide goods or services, as well as the provision of goods and services of a lower quality or on less favourable terms on the grounds referred to in Article 4 (1) shall not be allowed.

The Commission for Protection against Discrimination shall:
- ascertain violations of this or other Acts regulating equal treatment, the perpetrator of the violation and the aggrieved person;
- decree prevention and termination of the violation and restoration of the original situation;
- impose the sanctions envisaged and implement administrative enforcement measures;
- issue mandatory directions for compliance with this or other Acts regulating equal treatment and etc.

There are fines in many legislative pieces as it is stated for example in the Integration of people with disabilities Act etc. In the Protection against discrimination act measures are administrative.

h. Non-compliance and litigation

There is an Ombudsman Act which regulates the legal status, organization and activities of the Ombudsman. The Ombudsman shall intervene by the means provided for in this Act, when citizens' rights and freedoms have been violated by actions or omissions of the State and municipal authorities and the administrations thereof, as well as by the persons commissioned to provide public services.

Complaints and alerts to the Ombudsman may be submitted by natural persons, irrespective of

their citizenship, gender, political affiliation, or religious beliefs. Complaints and alerts may be written or oral, and may be submitted in person, by post or by other conventional means of communication.

Cyprus

a. Accessibility legislation: its place in the legal and regulatory framework

The rights of persons with disabilities for access to goods and services are protected in Cyprus by the general law "The Persons with Disabilities Law 2000-2007". In particular, under Article 6 of this law, unequal treatment of a person - based on disability and being unjustified - for the provision of goods, facilities and services is considered to be discrimination.

Apart from the above general law, the right of persons with disabilities to accessibility is also protected in specific national laws:

- Public Buildings: Regulation 61.H of the Construction of houses and roads legislation (1999) whereby all new buildings should be accessible to persons with disabilities. Responsible for the control of good implementation are the local authorities, by whom no building permit is issued unless is the plan abides by the regulation.
- Telecomunications: 2004 Law for the Regulation of Electronic Communications and Postal Services.
- Health Services: 2001 – 2006 Law for the Use of Medicines.
- Sea Transport Services: 2004 Law for Merchant Shipping.
- Elevator requirements: 2002 Law for Basic Requirements for Specific Goods.
- Television and Radio Information: 1998-2011 Law for Radio and Television Stations.
- Employment to the Wider Public Sector: 2009 Law for the Recruitment of Persons with Disabilities in the Wider Public Sector; 1988 Law for the Recruitment of Blind Trained Telephone Operators in the Public Sector.
- Public Education: The Law for Education and Training of Children with Special Needs 113(I)/1999 is the legislative framework which regulates all matters regarding the education of children with special educational needs (SEN) attending public schools. Children with disabilities are entitled to "free appropriate public education" along with students who are not disabled; the state is responsible for making education as well as schools accessible to them. There is also a 2006 Law for the Conduct of University Induction Examinations and the provision of reasonable adjustments.
- Social Protection: Various Laws for the provision of financial assistance, allowances, pensions etc.
- Public Procurement: 2006 Law for Public Contracts for Goods and Services.

b. General law, technical regulations and standards

As explained in point a., the general law "The Persons with Disabilities Law 2000-2007" provides (article 6) for general accessibility requirements regarding equal treatment of persons with disabilities in the fields of provision of goods and services. In article 7 it also states the requirement for compliance with the technical requirements for public transport as defined in specific law and regulations; Furthermore, in article 8, the Law provides for accessibility requirements in the fields of telecommunications and information.

A new legislation concerning the EU directive for safety in use and accessibility of the buildings is under process to be adopted. A Guide of about 80 pages for the "Safety in use and Accessibility" of the built environment is about to be issued, including technical regulation and technical standards. A special Annex is included, concerning schools, banks, hotels and

touristic settlements, restaurants and cafeterias, beaches. There is an annex concerning pavements and walkways.

c. Role of national, European and international standards

All national regulations developed keep up with the European standards. All projects financed through the Structural Funds are monitored and approved by the Accessibility Bureau of the Ministry of Communications and Works, so as to comply with the latest European accessibility requirements and an Accessibility Certificate is issued.

d. Changes in legislation/regulation linked to the implementation of the UN CRPD

The ratification by the Republic of Cyprus of the UN Convention on the Rights of Persons with Disabilities has not yet led to any changes in accessibility legislation.

A new legislation concerning the protection of the parking places for Blue badge holders is under preparation. The legislation concerns all parking places both in public and private buildings and provides for a higher fine than the existing one.

In addition, the existing 1999 Regulation for Construction of houses and roads is under amendment process in order to be harmonised with the EU directive concerning the "safety in use and accessibility of buildings" which comprises very detailed accessibility requirements.

e. Services regulated for accessibility

- Public Health
- Public Education
- Employment
- Social Protection (financial assistance, pensions, allowances etc)
- Public buildings
- Public buses
- Airport services
- Sea transport services
- Hotels
- Telecommunications
- Television and Radio Information
- Public Procurement

f. Goods regulated for accessibility as part of a service

The Ministry of Education and Culture following the directive of the aforementioned legislation provides the following:

<u>Access to school buildings</u>

- Schools increase access for individual pupils by making 'reasonable adjustments'. For instance, lessons are held on the ground floor if one of the pupils uses a wheelchair and the school does not have a lift.
- Other changes to the physical environment that schools make to increase access include: lighting and paint schemes to help visually impaired children, lifts and

ramps to help physically impaired children, carpeting and acoustic tiling of classrooms to help hearing impaired pupils.

- The state provides transportation to all disabled children who do not attend neighbouring schools.
- In many cases the vehicles used for transportation have the relevant equipment to suit the child's needs.
- Assistants are also provided on school transport if needed.
- The Ministry of Education and Culture also provides schools with special equipment such as wheelchairs, walking aids etc. to be used by disabled children.

Access to the curriculum

1. The curriculum is made accessible with the use of assistive technology. Examples of technology that children with SEN use include: touch-screen computers, joysticks and trackerballs, easy-to-use keyboards, interactive whiteboards, text-to-speech software, Braille-translation software, software that connects words with pictures or symbols etc.
2. Information that is normally provided in writing (such as handouts, timetables and textbooks) is made more accessible by providing it in Braille, in large print, on audiotape, using a symbol system.
3. Lessons provide opportunities for all pupils to achieve and are responsive to pupil diversity.
4. Sign language interpreters are provided to deaf children who need it.
5. Teachers allow additional time to disabled pupils to finish an exam, or use equipment in practical work.
6. Teachers allow for the mental effort expended by some disabled pupils, for example using lip reading.
7. Home schooling by special educators or classroom teachers is also available if a child cannot go to school because of health problems.
8. School visits, are made accessible to all pupils irrespective of impairment.
9. Other adjustments that help children to have better access to the curriculum include: changes to teaching and learning arrangements, classroom organisation, timetabling and support from other pupils.

g. Goods regulated for accessibility

Buses, tactile pavement plaques, elevators, W.C. equipment, automatic doors, special ramps, parking areas, wheelchairs are regulated for accessibility.

h. Enforcement of accessibility legislation

The Technical Services of the Local Authorities are responsible for the control of good implementation of the Construction Regulations during application for construction licence procedure.
In the new regulation in process, of “safety in use and accessibility”, an accessibility statement in the form of detailed questionnaire concerning accessibility requirements would be necessary. This way the architects are informed and at the same time they are committed in applying accessibility in to their projects.

If there is a complaint about any misuse concerning accessibility, the local authority is responsible to restore it.

i. Non-compliance and litigation

Any citizen with disabilities can bring a case on non-compliance with accessibility provisions to court according to the general law “The Persons with Disabilities Law 2000-2007”. Article 9 of the law provides that any person that without reasonable cause acts or fails to act in a manner which amounts to discrimination against a person with disabilities shall be guilty of an offence punishable with a fine up to €6.800 or with imprisonment not exceeding six months or with both sentences. In the case of a legal entity committing discrimination the fine can be up to €11.960.

Also, any persons with disabilities or an organisation representing persons with disabilities can bring a case of discrimination because of non compliance with accessibility provisions to the Office of the Ombudsman and Protection of Human Rights which can issue recommendations for corrective actions.

Czech Republic

a. Accessibility legislation: its place in the legal and regulatory framework

With the active cooperation of organisations of persons with disabilities, in the past fifteen years numerous laws have entered into force which have created a solid legislative framework to ensure accessibility and use not only for public buildings, but also transport infrastructure and vehicles intended for public transport.

In connection with the creation of a barrier-free environment, certain basic regulations are worth mentioning, in particular the Building Act[53] and its Implementing Decrees.

The Building Act features significant modifications compared to previous provisions; barrier-free solutions and usage of buildings are recognised to be in public interest. The Building and Construction Authority can, under the provisions of the Act, order the owner of the construction, building site or developed area to arrange for its barrier-free access and usage. In addition, only such products, materials and constructions may be used in the building which will enable the due usage of the building including its barrier-free usage if the building has been designed as such.

The Implementing Decree on Building Documentation [54] comprises conditions and requirements for clearly defined and controllable solutions of buildings in terms of barrier-free access and usage by persons with limited mobility and orientation, both in the text as well as drawings sections.

The Decree on General Land Use Requirements[55] determines conditions for designing public areas so as to allow their barrier-free usage.

The Decree on General Technical Requirements for Barrier-Free Usage of Constructions[56] specifies general technical requirements for buildings and their parts so as to ensure their usage by persons with mobility related, visual, hearing and mental disability, the elderly, pregnant women, and persons accompanying a child in a pram or a child under the age of three.

On 14 July 2004, the Czech Government adopted the Governmental Plan for Funding the National Development Programme Mobility for All[57]. This programme focuses on the elimination of barriers in transport and buildings intended for public usage implemented before the date of entry into force of the Building Act which imposed the duty of barrier-free access.

The programme aims to create continuous and coherent barrier-free access routes in cities and municipalities so as to improve the accessibility of transport and buildings for persons with disabilities. In the programme, an invitation to submit plans for barrier-free access routes is announced twice a year. The plans are discussed and assessed by the Steering Committee and Assessment Committee of the programme. In its meetings, the Steering Committee, consisting

[53] Act No. 183/2006 Coll., on Special Planning and Building Code, as amended.
[54] Decree No. 499/2006 Coll., on Building Documentation.
[55] Decree No.501/2006 Coll., on General Land Use Requirements.
[56] Decree No. 398/2009 Coll., on General Technical Requirements for Barrier-Free Usage of Constructions.
[57] Resolution of the Government of the Czech Republic of 14 July 2004 No. 706.

of representatives of each department, deals not only with the evaluation of plans but also with issues of the concept, promotion and funding of the whole programme.

For the section of the Ministry of Culture, an obligation results from the Resolution to provide funding of investment undertakings in 2009 - 2015 leading to the elimination of barriers in the buildings of cultural facilities, i.e. in the buildings of museums, art galleries, theatres, cinemas, etc. amounting to approximately CZK 10 million annually.

The promotion of accessibility of cultural services for persons with disabilities is regarded a priority even in the fundamental strategic document for libraries, the Library Development Concept 2004 – 2010. The measures are implemented both in form of the continuous funding of the Library and Printing Office for the Blind K. E. Macana, a contributory institution of the Ministry of Culture, and by announcing grant tenders.

The scope of activity of the Ministry of Regional Development includes the programme "Barrier-Free Municipalities" whose purpose is to provide state support to investment and non-investment plans concerning the elimination of barriers in the buildings of urban and municipal authorities and in the social care facilities incorporated in the all-embracing chains of barrier-free routes in municipalities and cities. The state support is a system of investment or non-investment subsidies covering up to 50 % of the actually incurred costs of the undertaking in the relevant year. The following activities are referred to in particular:

- elimination of barriers in entrances and exits of buildings,
- elimination of barriers inside buildings,
- barrier-free adjustments of sanitary and social facilities in public premises,
- acquisition and application of lifting and transport technologies and systems.

In conformity with the conditions leading to the elimination of barriers to accessibility for persons with disabilities, police stations and additional premises used by the Czech Police have been subjected to gradual adjustments as well. Older premises of the district departments of the Czech Police which have not been adjusted yet are equipped with button signalling for persons with limited mobility and orientation leading to the office of the supervisor or security guard.

While renovating premises such as the previously and newly established contact and coordination centres, barrier-free entrances are built and parking space provided. In the existing premises, entrance doors are being adjusted, additional entrance platforms installed where the construction allows, and entrances for persons with disabilities are signed accordingly.

Premises of service rooms must be adjusted for internal communication, including the appropriate equipment for contact with persons with disabilities. Moreover, the venues designed for imparting information to the public must be equipped, besides other things, with induction loop system and signed with the international symbol of hearing disability.

Within the administration of the Ministry of Industry and Trade, legislative regulations were issued in recent years to institutionalize testing of aids and devices, and certification of selected products for buildings and constructions.

Regarding transport structures, the principle of non-discrimination focuses mainly on accessibility of transport routes for passengers with limited mobility and orientation. Solutions of all constructions in terms of their barrier-free accessibility and usage are contained in Implementing Decrees to the Building Act[58]. Issues of the barrier-free usage have also been incorporated in technical standards: ČSN 73 6110 Design of Local Communications (2006), ČSN 73 6425 Bus, Trolleybus and Tram Stops, Part 1: Design of Stops (2007).

The Ministry of Transport has participated actively in the preparation of the European Parliament and of the Council Regulation on the Rights of Passengers in Bus and Coach Transport[59] which will come into force on 1 March 2013. This Regulation is, inter alia, targeted at persons with limited mobility in consequence of disability, and it was adopted with a view to enabling such persons to travel by bus and coach at a comparable level with other citizens.

In railroad transport, the accessibility for persons with disabilities is incorporated in all programmes. By construction, update or renovation, the railroad constructions are designed and realized so as to meet the requirements of barrier-free accessibility according to the Decree on General Technical Requirements for Barrier-Free Usage of Constructions[60].

The update and operation of nation-wide railways incorporated in the European rail system are subject to principles of the directly applicable EU regulation which is the Commission Decision on Technical Specifications for Interoperability Relating to Persons with Limited Mobility and Orientation in Trans-European Conventional and High-Speed Rail System[61].

Mobility issues as such, including recommendations how to solve issues of mass transport (low-floor means of transport, equipment of stops, or traffic islands, adjustment of pavements and other movable or immovable facilities of cities and municipalities to suit persons with disabilities) are the subject of "Mobility Issues in an Aging Population" published by the Centre for Traffic Research and designed for staff of state administration[62].

The right to equal treatment and the prohibition of discrimination are defined by the Anti-Discrimination Act[63]. Paragraph 3 of Article 2 understands direct discrimination as such action or inaction, where an individual is treated less favourably than another person is treated or would be treated in a comparable situation, on the basis of race, ethnic origin, nationality, gender, sexual orientation, age, disability, religion, belief or opinion. Moreover, paragraph 5 determines discrimination as the action of treating an individual less favourably on the basis of her or his alleged origin as set out in paragraph 3.

[58] Implementing Decree No. 398/2009 Coll., No. 499/2006 Coll., No. 501/2006 Coll., No. 503/2006 Coll. to Act No. 183/2006 Coll., on Special Planning and Building Code, as amended.

[59] Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the Rights of Passengers in Bus and Coach Transport and amending Regulation (EC) No 2006/2004.

[60] Decree No. 398/2009 Coll., on General Technical Requirements for Barrier-Free Usage of Constructions.

[61] Commission Decision 2008/164/EC of 21 December 2007 concerning Technical Specifications of Interoperability Relating to Persons with Reduced Mobility in Trans-European Conventional and High-Speed Rail System.

[62] Published by NOVPRESS, Brno, ISBN-978-80-87342-05-3.

[63] Act No. 198/2009 Coll., on Equal Treatment and on Legal Means of Protection against Discrimination and on Amendment to Some Acts, as amended.

Afterwards, paragraph 2 of Article 3 of the referred Act defines indirect discrimination on the basis of disability also as the refusal or omission to take appropriate measures to enable the person with disability to access a certain job, to carry out certain work tasks or functional or other procedures at work, to utilise vocational counselling, or to participate in other specialized learning, or to take advantage of services intended for the general public, unless such measure would impose a disproportionate burden.

While making a decision whether a particular measure does not impose a disproportionate burden, in particular the level of merit is taken into consideration which the implementation of the given measure will bring to persons with disabilities, the acceptability of the financial burden of the measures for individuals or legal entities who are in charge of such implementation, the availability of financial and other assistance to give effect to the measures, and the eligibility of alternative action to meet the needs of persons with disabilities. A measure is not considered to impose a disproportionate burden if an individual or a legal entity is obliged to give effect to such measure under special regulation.

b. General law, technical regulations and standards

Please see point a. above.

c. Role of national, European and international standards

Current Czech legislation in the field of the barrier-free use of building is entirely comparable with the standards in force in EU countries.

d. Changes in legislation/regulation linked to the implementation of the UN CRPD

An important step helping to improve accessibility was the approval of an amendment to the Act on Public Administration Information Systems taking into account the needs and requirements of persons with disabilities. This Act was implemented by a decree on the form of disclosure of information related to public administration by means of websites for people with disabilities, which defined accessibility rules in detail.

1 April 2011 was the effective date of the Government Regulation on the Determination of Minimum Values and Indicators for Quality and Safety Standards and on the Proving Method in Connection with the Provision of Public Services in Passenger Transport[64], which implements the Act on Public Services in Passenger Transport[65] and defines the share of vehicles in public transport which must allow the transport of persons with limited mobility and orientation. The purpose is to enhance access for persons with disabilities to public transport provided by the state, regions or municipalities.

The Department of Transport, in cooperation with the Road and Motorway Directorate of the Czech Republic provides barrier-free usage of motorway and speedways constructions in places accessible to pedestrians, which means in particular rest areas and the surroundings of emergency call boxes, as part of its competence of a Special Building and Construction

[64] Government Regulation No. 63/2011 Coll. on the Determination of Minimum Values and Indicators for Quality and Safety Standards and on the Proving Method in Connection with the Provision of Public Services in Passenger Transport.

[65] Act No. 194/2010 Coll., on Public Services in Passenger Transport and on Amendment to Some Acts, as amended.

Authority for the respective land communications. The review of norms, technical regulations and model sheets of land communications concerning the issues of barrier-free usage of land communications are prepared in cooperation with the appointed representatives of non-governmental organizations, in particular with the Czech National Disability Council.

Since 2009, the barrier-free usage of the premises of schools and school facilities has been regulated by a separate Decree of the Ministry of Regional Development on General Technical Requirements for Barrier-Free Usage of Constructions[66].

The scope of activity of the Health Department includes Decree on Requirements for Material and Technical Equipment of Health Care Facilities[67] which determines, in addition to the above conditions, that the basic operating areas of inpatient departments must be equipped so that they can be used by patients with limited mobility and orientation.

e. Services regulated for accessibility

Please see above.

f. Goods regulated for accessibility as part of a service

Please see above.

g. Goods regulated for accessibility

Please see above.

h. Enforcement of accessibility legislation

The administration examines accessibility requirements before granting permits or allowing marketing of products.

i. Non-compliance and litigation

Non-compliance of accessibility legislation could be brought to court or to other relevant bodies by individuals, NGO's, public authorities, state bodies etc.

[66] Decree No. 398/2009 Coll., on General Technical Requirements for Barrier-Free Usage of Constructions.
[67] Decree No. 221/2010 Coll., on Requirements for Material and Technical Equipment of Health Care Facilities.

Denmark

a. Accessibility legislation: its place in the legal and regulatory framework

In Denmark accessibility is covered by the legal and regulatory framework.

For instance, for electronic communication networks and services the designated Universal Service Provider must provide, in accordance with sections 6 – 8 of the Executive Order 701 of 26 June 2008 on Universal Service, a number of specified services for disabled end-users on further specified terms and conditions. These services include a text telephony service and a related 24-hour call center. The pricing of USO-products for disabled end-users is regulated. Provision of public pay telephones is regulated in section 6 of the Electronic Communications Networks and Services (ECNSA) and Executive Order 710 of 25 July 1996. There is a specific provision allowing the use of hearing-aids in the executive order.

For passenger ships, MSC/Circ.735 "Recommendation on the design and operation of passenger ships to respond to elderly and disabled persons' needs" is mandatory.

In Denmark, accessibility to buildings is regulated through building legislation (the Building Act and Danish Building Regulations), which covers new building, refurbishment and renovation of existing buildings. The Danish Building Regulations are regularly updated.

Stricter accessibility requirements in connection with conversions in existing buildings were introduced in 2008, making such buildings subject to the requirement of level-free access, etc. With effect from 2 February 2008, the 2008 Buildings Regulations introduced a host of new requirements for accessibility for persons with disabilities, and existing accessibility requirements were significantly tightened.

The Building Regulations list the following requirements:

- level-free access to all units on the entrance floor of a building
- level-free access to all units on the floors of a building, parking spaces for people with disabilities, accessible passage from the car park to the building
- disabled toilets (open to the public)
- lifts that can be operated by people in wheelchairs
- induction loop systems in rooms with common activities, mobile/wireless induction loops or other forms of installations (e.g. in conference rooms and at desks)
- establishment of wheelchair spaces at permanently mounted spaces
- available signs and information in buildings

Further, several projects have been started at the Danish Building Research Institute (SBi), generally to help determine the extent to which it can be ensured that already existing provisions on accessibility are observed, so that accessibility to buildings is enhanced and improved. Thus, the projects are to be part of an overall assessment of whether additional

tools for observing accessibility provisions can improve accessibility to buildings for persons with disabilities.

The Building Regulations requirements on accessibility also apply for publicly subsidised housing as regulated in the Danish Act on Social Housing, etc. The Act sets out special requirements for housing accessibility, and funding is annually earmarked for refurbishing existing housing with a general view to increasing housing accessibility in the sector. To this end, a project has been launched to map accessibility in the more than 550,000 homes in the social housing sector. The project is presented on the Internet portal, www.danmarkbolig.dk. In the portal, persons with disabilities can find information on the accessibility of individual homes, and thus obtain help to find the homes best suited to their disabilities.

The Act on Social Housing, etc. lays down specific provisions on layout and design of social housing for persons with disabilities.

For more information in English about accessibility and article 9 in a Danish context: http://www.sm.dk/Temaer/sociale-omraader/Handicap/Documents/Engelsk_FNs_rapport_22082011.doc.pdf

b. General law, technical regulations and standards

In relation to accessibility of electronic communication networks and services, the European Universal Service Directive 2002/22/EC as amended by Directive 2009/136/EC has been implemented in the Danish Act no. 169 of 3 March 2011 on Electronic Communications Networks and Services (ECNSA).

Se above regarding the Building Regulation.

c. Role of national, European and international standards

For ships IMO standards are used. If there are no IMO standards for a subject, the Danish government would propose development of an international standard.

d. Changes in legislation/regulation linked to the implementation of the UN CRPD

As mentioned in “State of play” the only change in legislation found to necessary before the ratification was an amendment to make sure that Denmark met the provisions of Article 29 of the Convention, which require state parties to guarantee persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others.

In 2010 the requirement of accessible signs and information was introduced in connection with the implementation of the UN Convention on the Rights of Persons with Disabilities. Further, the Danish Building Research Institute performs a range of communications tasks on the building legislation on behalf of the Danish Enterprise and Construction Authority. The

tasks include advisory services, knowledge dissemination and preparation of directions, instructions and checklists.

e. Services regulated for accessibility

Services regulated for accessibility include a text telephony service and a related 24-hour call center. There are provisions for public pay telephones, as well as for passenger transport in passenger ships.

For more information in English about accessibility and article 9 in a Danish context: http://www.sm.dk/Temaer/sociale-omraader/Handicap/Documents/Engelsk_FNs_rapport_22082011.doc.pdf

f. Goods regulated for accessibility as part of a service

The Universal Service Provider for electronic communication networks and services (point a.) provides hardware and software needed to use the text telephony service.
Passenger ships are regulated for accessibility.

For more information in English about accessibility and article 9 in a Danish context: http://www.sm.dk/Temaer/sociale-omraader/Handicap/Documents/Engelsk_FNs_rapport_22082011.doc.pdf

g. Goods regulated for accessibility

Provision of public pay telephones is regulated in section 6 of the ECNSA and Executive Order 710 of 25 July 1996. There is a specific provision allowing use of hearing-aids in the executive order.
Passenger ships are regulated for accessibility.

For more information in English about accessibility and article 9 in a Danish context: http://www.sm.dk/Temaer/sociale-omraader/Handicap/Documents/Engelsk_FNs_rapport_22082011.doc.pdf

h. Enforcement of accessibility legislation

The Danish Business Authority enforces compliance with legislation regarding electronic communication networks and services. Non-compliance may be fined.
Accessibility requirements are examined before granting permits; there may be fines if a service or product is found not complying with existing regulations.

i. Non-compliance and litigation

Non-compliance with accessibility legislation may be brought before the Danish Business Authority. Decisions made by the Danish Business Authority may be appealed to the Telecommunications Complaint Board.
Non-compliance will result in the permit to operate a passenger ship being withheld or withdrawn. Non-compliance may also result in the case be brought to court.

Estonia

Estonia has done the necessary preparations needed for ratification of the UNCRPD but ratification has not entered into force yet.. So far the rights of people with disabilities, accessibility included, have been regulated and ensured by several provisions of law and included in strategic development plans of Estonian ministries.

a. Accessibility legislation: its place in the legal and regulatory framework

Legislation for buildings in Estonia, e.g. Building Act (adopted in 2002, latest review in 2011), also covers accessibility: if required by the purpose, buildings' parts intended for public use have to be accessible to and usable by persons with reduced mobility and by visually impaired and hearing impaired persons.

The Ministry of Economic Affairs and Communications is also developing different guidelines in different areas (e.g. building environment guidelines, universal design).

Access of disabled persons to public buildings is regulated by Regulation No. 14 Requirements to Guarantee Mobility of Persons with Physical, Visual and Hearing Disabilities in Public Buildings issued by the Minister of Economic Affairs and Communications in 2002. Similar requirements of access to residential buildings are the objective of one of the measures stipulated in the Development Plan for Residential Issues in Estonia for 2007-2013. The Estonian Housing Economy Development Plan 2008-2013 (approved by the Government in 2008) stipulates several direct activities to improve accessibility under the strategic development trend of guaranteeing housing availability, e.g. supporting the adaptation of housing to special needs and preparation of guidelines with respect to technical solutions in order to guarantee persons with physical disabilities access to residential buildings.

There are no legislative amendments planned for adoption in near future in the built environment sector because adequate legislation has been developed and it has come into force.

Estonia also has a Public Transport Act (adopted on 2000, last redaction on 2011), according to which disabled children, people with profound disabilities aged 16 and over, and persons accompanying people with severe or profound visual disabilities or guide dogs accompanying such persons are allowed to travel by public transport free of charge. The Transport Development plan for 2006-2013 stipulates that access to transport services and infrastructure has to be guaranteed for people with reduced mobility. This is done by development and maintenance of infrastructure. A new transport development plan for the next period is being drafted.

Local governments are responsible for arranging of transportation for persons with disabilities according to the Social Welfare Act (adopted on 1995, latest review in 2011); this is done by offering social transport and the service of adapted taxis.. The new Traffic Act (enforced in 2011) enacts specific requirements for people with visual and mobility disability on moving on pavements, also some exclusive rights of disabled drivers with reduced mobility and the drivers who are servicing a person with reduced mobility or a blind person. The Traffic Act is elaborated on that topic by a regulation of the Minister of Social Affairs.

The Electronic Communications Act (adopted in 2004, latest review in 2011) takes into consideration also the interests of different social groups, including persons with special needs. The access of disabled persons to information technologies is also prescribed in the Information Society Development Plan 2006-2013. This focuses on how to exploit the opportunities created by ICT wisely and to use them to improve overall quality of life. The Plan stipulates that particular attention should be paid to the inclusion of social groups with special needs into society, supporting regional development and local initiatives. One of the groups given high priority is people with disabilities. The goals and principles that were set in the Estonian Broadband Strategy 2005-2007 are also considered in the Strategy of Information Society 2006-2013. One of them is to make all public sector websites accessible to people with special needs.

The Ministry of Social Affairs of Estonia has prepared a Development Plan for Children and Families for 2011-2020 in 2011. Many activities in it are directed to improving the quality of life of children with disabilities and their families, including accessibility of services etc. The goal is to make it possible for every member of society to live their lives to the full with the help of the opportunities offered by ICT, and participate actively in public life. People with disabilities are included also in National Health Plan 2009-2020 and the Development Plan for the Education System 2007-2013. Furthermore, the Government takes actions to attain equalization of opportunities for persons with disabilities.

Lack of accessibility can be seen as discrimination according to the Equal Treatment Act, if existing legislation is disregarded or not obeyed in the sphere of education or employment.

b. General law, technical regulations and standards

General accessibility requirements are provided by general law, most of them for physical accessibility by Regulation No. 14 Requirements to Guarantee Mobility of Persons with Physical, Visual and Hearing Disabilities in Public Buildings issued by the Minister of Economic Affairs and Communications on 2002. Technical regulations and standards can specify the requirements for special products.

c. Role of national, European and international standards

Estonia does not have general national accessibility standards in addition to the abovementioned legislation, these issues are rather dealt with in different development plans and plans of action, e.g. for transport sector, design, health, education etc. Different European standards and best practices have been used as models for developing these plans. Principles of universal design are also mainstreamed to promote accessibility to different services – employment, buildings, transportation, medical services, information and communication, education, leisure, culture etc.

EC Regulation No 181/2011 of the European Parliament and of the Council concerning the rights of passengers in bus and coach transport will come into force in Estonia on 1st of March 2013. Regulation No 1371/2007 of the European Parliament and of the Council on rail passengers' rights and obligations is implemented partially due to the need for large-scale and long-term investments.

UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities (adopted in 1993, approved by Estonian Government in 1995) are also obeyed as an

international document. This guide has established an important framework for the implementation of universal design principles in Estonian society. Some international standards may be adopted by some enterprises in their economy sector, not nationally.

d. Changes in legislation/regulation linked to the implementation of the UN CRPD

Estonia has not completed the ratification process of the UN Convention on the Rights of Persons with Disabilities yet. During the preparation process for the ratification, that has been conducted in the last years, there has been no need for changes in accessibility legislation. Still, the UNCRPD is used as an instrument and basis for policy-making.

e. Services regulated for accessibility

Service providers have to follow legislation that is mentioned above.

Requirements on health protection (including requirements for spaces, indoor furniture, indoor climate, lighting, maintenance, territory, etc.) for the facilities where social welfare services are provided are imposed by the Minister of Social Affairs with several regulations.

Possibilities of vocational education for persons with disabilities are ensured by the Regulation No. 25 by the Minister of Education and Science since 2006: conditions and procedures of vocational education of persons with special needs.

Requirements for the environment of children with disabilities (public buildings, streets, vehicles) are also stipulated in the Child Protection Act. In other respects legislation is based on the principle of equal treatment and children with disabilities are not differentiated from children without disabilities.

Requirements for work, tools and workplace adjustments for employees with disabilities are imposed in the Occupational Health and Safety Act and also in the Labour Market Services and Benefits Act.

Public libraries are bound by the Public Libraries' Act to offer free home service for persons with limited mobility, if needed. Interpreter for deaf party of a proceeding are enabled according to the Code of Civil Procedure and Code of Criminal Procedure.

Requirements imposed on accommodation, children's and health institutions, etc. do not differentiate between persons with disabilities and persons without disabilities. Therefore there are neither special requirements nor legislation imposed on them in addition to the ones mentioned above. Generally, there are no different rules or regulations for public or private service providers.

f. Goods regulated for accessibility as part of a service

There is Regulation No. 14 Requirements to Guarantee Mobility of Persons with Physical, Visual and Hearing Disabilities in Public Buildings issued by the Minister of Economic Affairs and Communications in 2002. It regulates access of disabled persons to public buildings and has imposed some requirements for goods used by it, including ramps, stairs, handrails, signs, bathrooms, mailboxes, box-offices, ATMs, ticket machines, counters, doors,

gates, elevators, fixture, fitment, equipment, lighting, upholstery materials and colors, flooring, toilet-bowls, washbasins etc.

g. Goods regulated for accessibility

Please see answer f.

h. Enforcement of accessibility legislation

The enforcement of accessibility legislation has administrative nature and all the mentioned types of enforcement power fines, examining accessibility requirements before granting permits or allowing marketing of products can be applied, if necessary. Enforceability of accessibility legislation could be better in Estonia. A lot of relevant tasks are directed to local governments (e.g. construction supervision, social transportation etc.) and the capability of local governments to accomplish its duties varies in different regions. The compliance with accessibility legislation is monitored also by the Chancellor of Justice (Ombudsman) who can also pay inspection visits, if necessary.

i. Non-compliance and litigation

A case of non-compliance with accessibility legislation can be brought to court, to the Chancellor of Justice (Ombudsman) or to the Gender Equality and Equal Treatment Commissioner. The Gender Equality and Equal Treatment Commissioner is an independent and impartial expert who acts independently, monitors compliance with the requirements of the Gender Equality Act and Equal Treatment Act. The Commissioner provides opinions concerning possible cases of discrimination. The Commissioner can be called upon by natural persons, the Chancellor of Justice by a legal entity or a natural person. The Chancellor accepts applications that explain what sections of the legislation or situation are not in conformity with the Constitution and the law according to the opinion of the applicant. He also can perform inspection in public institutions. The Chancellor proposes to harmonise the situation with the Constitution and the law. If the position of the Chancellor is not met or if the institution does not respond to the inquiry, he may submit a report to the body that monitors the activity of the institution, or to the Government or the Parliament. The Chancellor of Justice has the right to conduct conciliation. His position is final and can not be challenged in court.

Finland

The Ministry for Foreign Affairs has, in May 2011, set up a working group to prepare the measures necessitated by the ratification of the Convention and its Optional Protocol in Finland. The work of the working group and other related work are still ongoing, and the points below have to be interpreted accordingly.

a. Accessibility legislation: its place in the legal and regulatory framework

In Finland, lack of accessibility is not specifically defined as discrimination. Discrimination on the grounds of disability and health, among other reasons, is, however, banned under the Non-Discrimination Act. Discrimination can be direct or indirect. In practice, lack of accessibility may become direct or indirect discrimination, but only in the following contexts:

1. conditions for access to self-employment or means of livelihood, and support for business activities;
2. recruitment conditions, employment and working conditions, personnel training and promotion;
3. access to training, including advanced training and retraining, and vocational guidance;
4. membership and involvement in an organisation of workers or employers or other organisations whose members carry out a particular profession, including the benefits provided by such organisations.

Moreover, the Non-Discrimination Act binds the employer to take any reasonable steps to help a person with disabilities to gain access to work or training, to cope at work and to advance in their career. In assessing what constitutes reasonable, particular attention must be devoted to the costs of the steps, the financial position of the person commissioning work or arranging training, and the possibility of support from public funds or elsewhere towards the costs involved.

The Ministry of Justice has formed a working group to revise Non-Discrimination Act during this governmental period (2011-2014).

Finland’s Disability Policy Programme 2010-2015 calls for strong inputs in the accessibility of the Finnish society over the next few years. With this programme, the aim is to strengthen the social, cultural, ecological and economic sustainability of the society as well as its justice and fairness. The objective is to ensure the design, realisation and implementation of services, environments and products in such a way that all people can use them.

Some of the measures included in the programme require the removal of existing barriers, whereas others call for functioning solutions for the future. The former set of measures is represented by the measure obligating all sectors of administration to reconstruct inaccessible facilities by the year 2020. The latter measures include the development of the monitoring of an accessible communications policy as well as the further development of accessibility of the electronic services of public administration and accessibility of public transport. Examples of the latter kind of measures also include guidance for accessible planning, development of legislation concerning new buildings, harmonisation of the interpretation of the accessibility legislation, the work to develop new and innovative solutions as well as the development of accessibility in relation to work and learning environments, social and health services and sports and culture.

The objective is to ensure continuous accessible chains of action. This means, for example, that one has the possibility to move smoothly and seamlessly between home, workplace, school, places of service and leisure activities as well as their near environments. This means also that all these facilities, places and means of transport between them as well as information about them must be accessible. The prerequisite for a non-discriminatory social development is that the principles of design for all are realised in the various parts of the action chain under the responsibility of various sectors of administration. Awareness about accessibility and the strengthening of accessibility should be raised to a similar kind of mainstreaming development in society that we currently have in terms of environmental awareness.

Built environment

The Land Use and Building Act (132/1999) defines the objectives land use planning in Finland. The first objective is to promote a safe, healthy, pleasant, socially functional living and working environment which provides for the needs of various population groups, such as children, the elderly and the disabled. The Act states that a building must, in so far as its use requires, also be suitable for people whose capacity to move or function is limited. The Land Use and Building Decree (895/1999) provides further regulations to ensure accessibility in different types of buildings. These include administrative and service buildings as well as commercial and service premises in other buildings to which everyone must have access for reasons of equality, and residential buildings with their building sites. This Section also covers buildings with work space which, for purposes of equality, must be designed and built so that they provide persons with restricted ability with sufficient opportunity to work, taking into account the nature of the work.

The Finnish Building Code lays out technical regulations and guidelines which supplement the Land Use and Building Act. The Building Code applies to new constructions; renovation and refurbishment are mainly outside the scope of the Building Code. Particularly the following decrees set out the requirements for the accessibility of public and residential buildings; F1 Barrier-free building (2005), F2 Safety in use of buildings (2001), G1 Housing design (2005).
(http://www.ymparisto.fi/default.asp?contentid=68171&lan=en).

At present, lack of accessibility in the built environment is mainly dealt with as a technical issue.

There are various guidelines concerning physical accessibility of buildings, as well as guide books on how to interpret building standards. The following organisations have given voluntary recommendations on the accessibility of communications, which are based on international standards:

- Advisory Committee on Information Management in Public Administration (JUHTA, Ministry of the Interior)
- Finnish Information Society Development Centre (TIEKE)
- Finnish Federation of the Visually Impaired (FFVI)

Finnish Design for All Network promotes accessibility of built environments, accessibility of communication and services, as well as usability of products. The DfA web portal includes

information, studies, tools and links to various areas of the accessibility. http://dfasuomi.stakes.fi/EN/index.htm.

Transport

The Ministry of Transport and Communications is preparing a transport policy report which is to be submitted to Parliament in spring 2012. The section concerning public transport emphasises the importance of accessibility in accordance with the accessibility strategy published by the Ministry in 2003. In recent years, accessibility has been stressed mainly in the conditions for transport purchases (railways) and in different legislative undertakings.

Technical regulations on transport equipment are mainly derived from European Union legislation and the Finnish legislation has been harmonised to better coincide with the legislation in other EU countries. There are technical regulations concerning equipment both for road traffic (city buses, railways) and water-born traffic (larger vessels).

Also the general legislation concerning passenger traffic is based on the EU legislation which the new Finnish Act for Public Transport (869/2009) only complements. The new act includes not only the obligation to set regional targets for the standard of the services (including accessibility), but also the obligation for certain quality of services by bus-service operators (including the obligation to report on the accessibility of services).

In Finland, the EU legislation on passenger rights applies. Provisions on the rights of persons with disabilities and persons with reduced mobility are included in the European Parliament and Council Regulations No 1107/2006 on air traffic, No 1371/2007 on train traffic, No 1177/2010 on water-born traffic and No 181/2011 on bus traffic. These regulations grant persons with disabilities the access to the above mentioned services, as well as and the arrangement of necessary assistance. However, the set of rights covered by different types of transport varies.

The only legislation that is solely national is the legislation concerning taxi traffic. The aim of the legislation has traditionally been to secure a sufficient level of services suitable for persons with disabilities. There are several regulations promoting the mobility of persons with disabilities. These regulations concern the training and education of taxi drivers and entrepreneurs (disability knowledge and skills), the granting of taxi licenses (there must be enough vehicles suitable for persons with disabilities), vehicles (there are different quotas and definitions for accessible taxis and taxis for persons with disabilities) and price (special supplements for assistance).

Information society

The Communications Market Act includes regulations on the public service obligation for the provision of general telecommunication services and on a decree on the minimum requirements for public telecommunication services provided for persons with hearing, speech and vision disorders.

The Act on Television and Radio Operations was amended as of 1 July 2011 so that national commercial channels were obliged to subtitle even Finnish and Swedish programmes. The decree complementing the act defines the percentage values for the increased need for

subtitling in 2011–2016. According to the effective decree, the public service broadcasting company YLE must subtitle all its programmes by 2016 (excluding music, sports and children's programmes).

The Government is carrying out the Action Programme towards a barrier-free information society for 2011-2015. The primary target groups of the Action Programme include government actors, product developers, service providers, R&D centres and different kinds of organisations. In addition, the programme can be used as a guideline by any other information society actor. The programme represents a step forward in implementing a barrier-free information society, and it will play a major role in developing the Finnish information society and communications policy over the next years.

The Action Programme aims at coordinating the development of information society accessibility; increasing people's information society skills and capabilities; developing increasingly multi-channel services and technology-neutral communications; improving the usability of hardware, software and auxiliary devices; improving the accessibility and comprehensibility of online content; supporting research and development activities and improving the accessibility in public procurements. The measures and targets of the Action Programme are defined annually by a working group monitoring the implementation of the programme.

Assistive technology

Services for assistive technology are regulated by several different pieces of legislation. Municipalities bear the main responsibility for providing the services. The National Insurance Institute of Finland, insurance and employee insurance companies, employment administration and State Treasury pay for the assistive devices that they are responsible for.

Disabled students and other students in need of special support are entitled to receive – free of charge – special assistive devices and services which they need to allow them to take part in their classes. Such aids are for example computers, lifts or special desks. Severely disabled students at upper secondary school or in grades 7-10 of comprehensive school are entitled to the assistive devices required for their studies (such as computers and low vision aids), under condition that these are specified in a special vocational training plan approved in accordance with the individual rehabilitation plan the Social Insurance Institution of Finland (KELA) assumes has been drawn up.

b. General law, technical regulations and standards

See point a.

c. Role of national, European and international standards

See point a.

With regard to the design of lifts suitable for disabled users, the Building Code F1 'Barrier-free building' (2005) refers to the EU Directive on lifts (95/16/EC), the EU Directive on machinery (98/37/EC) and the Standard EN 81-70:2003.

d. Changes in legislation/regulation linked to the implementation of the UN CRPD

The Ministry for Foreign Affairs has, in May 2011, set up a working group to prepare the measures necessitated by the ratification of the Convention and its Optional Protocol in Finland. Its work is still ongoing.

e. Services regulated for accessibility

See point a.

f. Goods regulated for accessibility as part of a service

See point a.

g. Goods regulated for accessibility

See point a.

The City Council of Helsinki has decided that the municipal public transport system (buses, trams and metro as well as stops and stations) must be accessible for all people.

h. Enforcement of accessibility legislation

See point a.

Before granting a building permit, the local building control authority examines the compliance of the plans with the accessibility legislation. The building control authority may also require a more detailed separate report on accessibility as a precondition for the building permit.

i. Non-compliance and litigation

In Finland, complaints can be made by anyone to the Chancellor of Justice and to the Parliamentary Ombudsman. The Chancellor of Justice supervises the lawfulness of the actions of Government ministers and public officials. He also monitors the implementation of basic rights and liberties and human rights. The Parliamentary Ombudsman of Finland monitors public authorities and officials to ensure that they observe the law and fulfill their duties in the discharge of their functions.

For example, the Parliamentary Ombudsman decisions 657/4/03 and 619/4/03 concern access to the voting site. Even though the Ombudsman did not find any unlawfulness in these two cases, the two central election boards in question were reminded that persons with physical disabilities need to be ensured both voting secrecy and unimpeded access to the voting site. The legal basis was the Constitution of Finland (731/1999), Section 6: Everyone is equal before the law. No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, *disability* or other reason that concerns his or her person.) The decisions of the Chancellor of Justice and the Parliamentary Ombudsman are not subject to appeal.

France

I. **Contexte général de l'accessibilité:**

La loi n°2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées garantit l'accès aux droits fondamentaux de toute personne handicapée, et retient le principe d'une cité accessible à tous en 2015 dans la plus grande autonomie possible. La France s'est fixé un objectif ambitieux: rendre l'ensemble des aspects de la vie quotidienne totalement accessible à toutes les formes de handicap d'ici 2015.

La loi du 11 février 2005 instaure l'accessibilité du cadre bâti, des transports et des nouvelles technologiques. L'accessibilité, jusqu'alors physique, est renforcée par l'inclusion des nouvelles technologies. Si ces textes s'adressent prioritairement aux personnes handicapées, ils concernent en fait la société dans son entier.

A ce stade, la question de l'accessibilité suscite davantage de l'inquiétude que de la mobilisation de la part des propriétaires concernés. Le sentiment général des associations est également à l'inquiétude : elles craignent que l'éloignement des dates butoirs ne démobilise les propriétaires et que les tentatives de contourner les obligations légales se multiplient. Les difficultés rencontrées sont principalement au nombre de deux :

- l'accessibilité est largement ressentie par les propriétaires et exploitants comme une contrainte technique supplémentaire et un coût supplémentaire : la mise en œuvre de cette politique nécessite un effort important de pédagogie, de mobilisation et d'accompagnement ;

- la réglementation en matière d'accessibilité est désormais très complète mais elle est également très complexe : sa mise en œuvre suppose donc une attention particulière en matière de formation.

Les objectifs de la France pour atteindre cet objectif d'accessibilité en 2015 sont :

- de faire partager le sens et les objectifs de la politique de mise en accessibilité par toute la société ;
- d'améliorer la formation et développer les connaissances sur l'accessibilité et la conception universelle ;
- d'accompagner, y compris financièrement, les collectivités locales dans la mise en accessibilité de leur patrimoine ;
- d'améliorer l'accès aux biens et aux services, dans une logique d'accès aux droits.

Concrètement, dans le cadre de la 2ème Conférence nationale du handicap de juin 2011 le Gouvernement a retenu des mesures[68] volontaristes visant en particulier à :

- accompagner le déploiement de l'accessibilité aux lieux de travail, aux vecteurs numériques et aux nouvelles technologies, par le lancement d'un plan métiers du handicap orienté vers le développement des métiers de l'accessibilité et de la conception universelle ;

[68] L'ensemble des mesures est consultable à l'adresse : http://www.solidarite.gouv.fr/IMG/pdf/Dossier_de_presse_conference_handicap-2.pdf

- améliorer l'accès aux soins des personnes handicapées, tant sur l'accessibilité de l'offre que des lieux de soins ;
- permettre l'accès du plus grand nombre à la culture et aux loisirs ;
- sensibiliser l'ensemble de la société à la conception universelle.

II . Principaux domaines concernés :

1. Domaine des transports :

Dans le domaine des transports, la loi introduit le concept de la chaîne du déplacement, qui éclaire la notion d'accessibilité. Cette chaîne comprend le cadre bâti, la voirie, les espaces publics, les systèmes de transport et leur intermodalité. Pour atteindre ce résultat, elle prévoit l'élaboration de documents de planification et de programmation des mesures à prendre et des travaux à réaliser : les schémas directeurs d'accessibilité (SDA) pour les transports et les plans d'accessibilité de la voirie et des espaces publics (PAVE) pour la voirie et les espaces publics. Elle instaure la concertation comme principe de base dans tous les processus d'élaboration des documents de programmation et de planification spécifiques à l'accessibilité (PAVE[69] et SDA[70]) ou portant sur l'organisation globale des déplacements tels que les plans de déplacements urbains (PDU).

Concernant la politique d'accessibilité des services de transports, la loi impose :

- un objectif de résultat : la mise en accessibilité de tous les services de transports collectifs d'ici février 2015. Lorsqu'il s'avère techniquement impossible (ITA[71]) de mettre en accessibilité les réseaux existants, doivent être mis à disposition des personnes handicapées ou à mobilité réduite des « transports de substitution » adaptés à ces personnes.

- un objectif de moyens : la loi oblige les acteurs à améliorer l'accessibilité de l'infrastructure des services de transport et du matériel roulant dans certaines occasions :
  - les travaux réalisés sur les arrêts de bus ou sur les gares doivent intégrer les prescriptions techniques d'accessibilité ;
  - les matériels roulants achetés pour l'extension des réseaux ou le renouvellement des flottes doivent être accessibles ;
  - les rénovations à mi-vie du matériel ferroviaire doivent intégrer l'accessibilité aux personnes handicapées ou à mobilité réduite.

- une procédure de dépôt de plainte : la loi de 2005 et les décrets qui en découlent prévoient que chaque autorité organisatrice de transport (AOT) mette en place une procédure de « dépôt de plainte » concernant les obstacles à la libre circulation des personnes à mobilité réduite. Il

69 *PAVE : plans de mise en accessibilité de la voirie et des espaces publics*

70 *SDA : schémas directeurs d'accessibilité*

71 ITA : impossibilité technique avérée

ne s’agit pas d’une « plainte » au sens pénal du terme mais d’un signalement des obstacles rencontrés.

Enfin, l’octroi d’aides publiques favorisant le développement des systèmes de transport collectif est subordonné à la prise en compte de l’accessibilité.

Pour conforter la mobilisation dans le domaine du transport, l'État apporte l'appui de son réseau scientifique et technique en publiant des guides méthodologiques et des recueils de bonnes pratiques, en conduisant des programmes de recherche et d'innovation dans les transports terrestres (PREDIT) et en organisant des journées de formation et d'échanges.

Il s’est également doté d’instances spécifiques :

- **le comité interministériel du handicap** a été créé pour définir, coordonner et évaluer les politiques menées par l'État. Il réunit tous les ministres concernés par la politique du handicap ;
- **l'observatoire interministériel de l'accessibilité et de la conception universelle,** qui réunit les représentants de tous les acteurs de l'accessibilité; il a pour mission d'évaluer l'accessibilité du cadre de vie, d'identifier les obstacles à la mise en œuvre des prescriptions législatives, de repérer les difficultés rencontrées au quotidien par les personnes handicapées et à mobilité réduite et de constituer un centre de ressources capitalisant, valorisant et diffusant les bonnes pratiques en matière d'accessibilité et de confort d'usage pour tous.

En application de l’article L. 114-2-1 de l’action sociale et de la famille, l'État doit organiser tous les trois ans une conférence nationale du handicap. La seconde en date du 8 juin 2011 a été l'occasion de dresser le bilan d'application de la loi dans toutes ses dimensions, de mesurer le chemin parcouru depuis la première conférence nationale de 2008 et de mieux identifier les domaines dans lesquels les progrès doivent encore être confirmés.

Les premiers résultats des politiques volontaristes des autorités organisatrices et des opérateurs sont déjà visibles et de bonnes expériences existent dans les départements.

Plus spécifiquement, d'un point de vue sectoriel :

– Concernant le réseau autoroutier concédé : l'accessibilité des personnes handicapées est actuellement diversement prise en compte, en fonction des maîtres d'ouvrage. Néanmoins, la loi imposant une accessibilité de l’ensemble des services en 2015, les sociétés concessionnaires d’autoroutes ont mis en place des programmes afin que l’échéance soit respectée sur l’ensemble du réseau autoroutier. Concernant l'accès aux aires de services, le renouvellement massif des bâtiments accueillant du public prévue dans les années à venir facilitera l’intégration des prescriptions réglementaires.

2. **Domaine du bâti :**

Le décret n° 2006-555 du 17 mai 2006 relatif à l'accessibilité aux personnes handicapées des établissements recevant du public, des installations ouvertes au public et des bâtiments d'habitation, a été pris pour application de cette loi. Il introduit les exigences réglementaires concernant l’accessibilité des bâtiments d’habitation collectifs (BHC) neufs et existants, des

maisons individuelles (MI) neuves, ainsi que des établissements recevant du public et des installations ouvertes au public (ERP-IOP) neufs et existants. Il définit les performances à atteindre par un bâtiment pour être accessible, ainsi que les actions qui doivent pouvoir y être réalisées par un usager handicapé. Ces exigences sont traduites en seuils réglementaires dans des arrêtés d'application parus en 2006 et 2007.

Depuis l'entrée en vigueur de cette loi, tous les bâtiments d'habitation collectifs neufs présentent des caractéristiques permettant leur utilisation par une personne handicapée.

De plus, les prestations offertes par l'ensemble des établissements neufs recevant du public sont accessibles dès la construction. Des règles supplémentaires sont définies pour certains types d'établissements spécifiques recevant du public. En outre, les ERP existants sont soumis à une obligation de mise en accessibilité à l'horizon 2015.

L'ensemble de ces dossiers font l'objet d'une instruction dans une commission consultative départementale de sécurité et d'accessibilité, à laquelle participent des associations de personnes handicapées, des représentants d'exploitant d'ERP et des représentants des services de l'État. Cette commission a pour objectif de prendre en considération la spécificité du projet et les potentielles contraintes de mise en accessibilité notamment pour les ERP existants.

Lorsque le montant des travaux réalisés dépasse 80% de la valeur de celui-ci, l'obligation de mise en accessibilité porte sur l'ensemble des parties communes ainsi que sur les logements touchés par les travaux dans la limite des contraintes du cadre bâti existant. De ce fait, toute réhabilitation lourde, entraîne la création d'un nouveau bâtiment d'habitation accessible moyennant de potentielles dérogations instruites par la commission consultative départementale de sécurité et d'accessibilité sus-mentionnée.

En 2007, le Ministère de l'enseignement supérieur et de la recherche a fait réaliser un guide méthodologique destiné à toutes les universités, puis, en 2009, un cahier des charges-cadre afin que les 148 établissements d'enseignement supérieur concernés fassent réaliser leur diagnostic d'accessibilité.

Par ailleurs, les constructions neuves et les réhabilitations lourdes inscrites dans les contrats de projets Etats-Régions (CPER) 2007 - 2013 contribuent à la mise en accessibilité du parc immobilier universitaire.

Le réseau des œuvres universitaires et scolaires, engagé depuis 2008 dans la mise en accessibilité de l'intégralité de ces structures, a en outre crée des résidences dédiées aux handicaps lourds à Grenoble, Toulouse, Nancy, Versailles et Créteil.

Enfin, un plan de rénovation de l'immobilier universitaire, opération Campus, a été lancé en 2008. Celui-ci permettra aux 10 campus lauréats de se rendre conformes aux normes d'accessibilité.

Le ministère des sports et le pôle ressources sport et handicap accompagnent les collectivités territoriales et les maitres d'œuvre dans la prise en compte de l'accessibilité dans les **équipements sportifs**. Ce dernier développe à cet effet des guides pratiques en matière d'accessibilité.

Un guide relatif aux piscines est déjà téléchargeable sur le site du pôle. Un guide relatif aux gymnases sera publié très prochainement et d'autres guides sont en préparation : stades, bases nautiques. Ces guides présentent d'une part les obligations réglementaires, d'autre part des préconisations.

3. **Domaine de la culture :**

3.1 **Accès au domaine de la culture :**

L'action des autorités françaises s'est traduite par plusieurs types d'interventions :

- **la formation à l'accessibilité :**

A cette fin, le Ministère de la Culture et de la Communication a déterminé la liste des diplômes, titres et certifications concernés par l'obligation de formation à l'accessibilité du cadre bâti aux personnes handicapées. L'ensemble des écoles nationales supérieures d'architecture intègre désormais cette thématique.

Au delà des diplômes d'architecture, cette obligation a été étendue aux professionnels participant à l'aménagement du cadre bâti et notamment aux designers d'objet et aux créateurs industriels, aux designers d'espace ou encore de la communication (graphique, multimédia).

Par ailleurs, une formation continue des professionnels est indispensable afin d'avoir une meilleure compréhension des enjeux de l'accessibilité. Ainsi, a été mis en œuvre, depuis 2006, un accompagnement des professionnels de la culture qui repose sur un plan de formation à la mise en conformité du cadre bâti. L'intérêt de ces formations est double :

- former les professionnels du cadre bâti du ministère aux besoins des personnes handicapées et à la nouvelle réglementation,

- sensibiliser les associations représentatives des personnes handicapées à la problématique de préservation du patrimoine.

- **La mise à disposition de guides pratiques :**

Le Ministère de la Culture et de la Communication a entrepris la réalisation d'une série de guides pratiques de l'accessibilité. Trois ouvrages ont d'ores et déjà été publiés :
- un premier de portée générale (2007),
- un deuxième consacré au spectacle vivant (2009),
- un troisième dédié à l'accueil des personnes handicapées mentales dans les lieux de culture (2010).

Cette collection s'enrichira prochainement de guides portant notamment sur les expositions accessibles, les bibliothèques et handicap et le cinéma et l'audiovisuel et handicap.

- **L'accessibilité aux établissements culturels** :

Un objectif en cours de réalisation est de rendre les établissements culturels accessibles à tous et pour tous.

Ainsi, depuis la loi du 11 février 2005, le Ministère de la culture et de la communication agit pour que soient rendus accessibles les établissements nationaux d'enseignement supérieur

« culture », les établissements nationaux « patrimoines », les établissements nationaux de diffusion de la création artistique et les établissements territoriaux.

– **Une mobilisation accrue des établissements publics « culture » :**

La Réunion des établissements culturels pour l'accessibilité (RECA) regroupe une vingtaine d'établissements publics engagés dans la réalisation de mesures permettant d'améliorer l'accueil des personnes handicapées dans les établissements culturels.

– **L'accès à la création artistique :**

La constitution de réseaux pour l'accès à la création artistique est encouragée et soutenue. Le ministère de la culture et de la communication a inscrit la prise en compte de l'accessibilité au sein de la directive nationale d'orientation des directions régionales des affaires culturelles, qui déclinent en région le soutien aux associations œuvrant en faveur de l'accès aux pratiques artistiques des personnes handicapées.

Cette action s'est développée au plan national dans les secteurs du théâtre et de la musique notamment par le soutien aux associations œuvrant en faveur de l'accès aux pratiques artistiques des personnes handicapées : l'Association Musique et situations de handicap (MESH), le Centre de Ressource Théâtre et Handicap (CRTH), Accès Culture.

Enfin, en 2007, le prix « musées pour tous, musées pour chacun » a été créé afin de distinguer une réalisation d'excellence en matière d'accessibilité pour les visiteurs handicapés, quel que soit le type de handicap. Cette réalisation prend la forme d'aménagements durables, de documents d'aide à la visite ou encore d'actions de médiation permettant ou facilitant l'accessibilité. En 2010, le Ministre de la Culture et de la Communication a exprimé son souhait de voir ce prix étendu à l'ensemble du champ des institutions culturelles du ministère. Ainsi, a été mis en place le prix « patrimoines pour tous, patrimoines pour chacun » afin d'impliquer l'ensemble des établissements patrimoniaux (Archives, musées de France, monuments historiques, Villes et Pays d'Art et d'Histoire) dans la mise en place d'une accessibilité généralisée de référence en direction de toutes personnes en situation de handicap.

3.2 **Accès aux médias :**

Des solutions volontaires se sont développées sous l'impulsion du Gouvernement français et du Conseil supérieur de l'audiovisuel, en accord avec les professionnels du secteur.

En France, de nombreuses dispositions ont été introduites dans la réglementation audiovisuelle afin de rendre les programmes télévisés accessibles aux personnes souffrant d'un handicap.

S'agissant des personnes sourdes ou malentendantes, la loi n° 2005-102 du 11 février 2005 a posé le principe général d'adaptation de la totalité des programmes télévisés des principales chaînes, à l'exception des messages publicitaires et de quelques dérogations justifiées par les caractéristiques de certains programmes, dans un délai maximum de cinq ans suivant la publication de la loi.

Plus récemment, des dispositions relatives à l'adaptation des programmes télévisés aux personnes aveugles ou malvoyantes par le recours à la technique dite de l'audiodescription ont également été introduites par la loi n° 2009-258 du 5 mars 2009 relative à la communication

audiovisuelle et au nouveau service public de la télévision dans la loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication.

L'article 7 de la directive du 10 mars 2010 encourage le développement de l'accessibilité des services de médias audiovisuels aux personnes souffrant de déficiences visuelles ou auditives. Le Conseil supérieur de l'audiovisuel a décidé, dans le cadre de sa délibération n° 2010-57 du 14 décembre 2010 relative à la protection du jeune public, à la déontologie et à l'accessibilité des programmes sur les services de médias audiovisuels à la demande, de recommander aux éditeurs et distributeurs de SMAD de rendre les programmes accessibles aux personnes sourdes, malentendantes, aveugles ou malvoyantes.

3.3 **Accès à la lecture :**

La loi du 1er aout 2006 relative aux droits d'auteur et droits voisins dans la société de l'information, loi dite DADVSI, a introduit dans le code de la propriété intellectuelle une nouvelle exception au droit de reproduction et de représentation des auteurs et des titulaires de droits voisins au bénéfice des personnes handicapées.
Cette exception permet, sans autorisation préalable, ni rémunération des ayants droit, la reproduction et la représentation d'œuvres protégées sur des supports adaptés aux personnes handicapées, effectuées à des fins non lucratives par des personnes morales et par des établissements ouverts au public. Cette disposition permet l'accès aux supports physiques comme numériques. Pour exemple, la Bibliothèque nationale de France a inauguré, fin mars 2010, une plate-forme sécurisée de dépôt et de transfert des fichiers numériques ayant servi à l'impression des œuvres (PLATON).

Enfin, Frédéric Mitterrand, Ministre de la Culture et de la Communication et Roselyne Bachelot, Ministre des Solidarités et de la Cohésion sociale, ont traité de l'accessibilité au cinéma et à l'audiovisuel pour les personnes en situation de handicap à l'occasion d'une séance de travail de la Commission Nationale Culture Handicap le 26 janvier 2012. A cette occasion, le Ministre de la Culture et de la Communication a annoncé aux associations représentant les personnes en situation de handicap plusieurs mesures dont notamment:

- la mise en place d'une aide incitative du CNC pour que le sous-titrage et l'audio-description des films s'imposent progressivement dès leur sortie en salle ;
- le lancement de deux missions : l'une sur les métiers de l'audiodescription, l'autre sur la coordination de l'information sur les oeuvres sous-titrées et audio-décrites;
- la mise en place d'un groupe de travail afin d'accompagner la petite et moyenne exploitation cinématographique dans la mise en accessibilité des cinémas;
- la rédaction en cours d'un nouvel ouvrage de la collection Culture et Handicap consacré précisément à l'accessibilité au cinéma**.**

III- **Mesures envisageables**

Six ans après le vote de la loi du 11 février 2005, et afin d'assurer le rendez-vous de 2015, la priorité de la France en matière d'accessibilité concerne les secteurs suivants :

- les lieux de travail des secteurs publics et privés accessibles aux travailleurs handicapés,

- les nouvelles technologies d'information, de communication et de consommation,

- la santé,

- la formation de l'ensemble des professionnels concernés par la thématique du handicap,

- la culture et les loisirs,

- les transports.

La mesure la plus importante consiste à faire de l'accessibilité un « mot d'ordre » ou un principe général de société de « l'accès à tout pour tous ». Ce principe s'applique à l'ensemble de la population d'une société. Cette accessibilité doit pouvoir s'appuyer sur 4 piliers indispensables qu'une politique publique doit prévoir :

- L'accessibilité pour tous sans exclusion. La loi prend en compte toutes les formes de handicap, et concerne les personnes handicapées et les personnes à mobilité réduite, y compris de manière temporaire.

- L'accessibilité de l'ensemble de la chaîne des déplacements. Pour la première fois, une loi considère de façon intégrée le cadre bâti, les espaces publics, la voirie, les systèmes de transport et leur inter-modalité. L'enjeu est bien d'éliminer tout obstacle dans le cheminement des personnes atteintes d'une quelconque déficience.

- Des changements progressifs jusqu'en 2015. La loi impose des résultats selon un calendrier précis de mise en œuvre et elle prévoit des sanctions.

- **Une accessibilité concertée.** La loi est le fruit de la concertation avec les associations représentant les personnes handicapées.

En effet, s'il est « aisé » de concevoir des infrastructures et bâtiments neufs en tenant compte des handicaps, reprendre des infrastructures existantes peut s'avérer économiquement rédhibitoire dans certains cas. Par exemple, sur autoroute, l'aménagement de certains refuges permettant l'accès aux postes d'appels d'urgence n'est matériellement pas possible ou nécessiterait des investissements colossaux. Ainsi des mesures devraient être prises pour pallier ce type de situation. Par ailleurs, la difficulté réside davantage dans les moyens qui peuvent être débloqués par les différents maîtres d'ouvrages afin de réaliser les travaux nécessaires. Cette question ne se pose pas sur le réseau autoroutier concédé, mais elle peut devenir cruciale pour d'autres maîtres d'ouvrages.

L'ensemble de ces acteurs doivent dépasser le seul critère de coût lié à la mise en accessibilité des biens et des services. Au-delà de cet aspect financier, c'est l'ensemble d'une société qui est rendue accessible non pas à une catégorie de population mais à l'ensemble de la population constituant cette société. C'est un investissement à long terme d'intérêt national, voire européen, qui doit permettre une société inclusive pour une population.
Dans le domaine des transports, il est important de favoriser la concertation avec les associations comme avec les professionnels, tout au long des projets et de choisir un mode d'organisation permettant d'intégrer au mieux les avis, contraintes et revendications de chacun et :

- communiquer vers les maîtres d'ouvrage en utilisant par exemple la presse professionnelle, en diffusant des guides et en valorisant les bonnes pratiques ;
- attirer leur attention sur le traitement des espaces de transition entre le bâti, la voirie et les transports et l'entretien et l'exploitation des aménagements ;
- promouvoir la formation des services techniques et des professionnels qui interviennent sur l'espace public et la formation en général;

- sensibiliser les citoyens dans le cadre de comités de quartiers, de démarches de plans de mobilité et par l'utilisation de cartes de Gulliver ;
- associer le plus possible les réseaux scientifiques et les constructeurs.

Plus spécifiquement, dans le domaine routier, un manque de normalisation a été constaté concernant les bandes de guidage pour les personnes aveugles ou mal-voyantes. Différents systèmes sont actuellement testés par plusieurs maîtres d'ouvrage, mais la diversité des systèmes ne facilite pas leur reconnaissance et usage par les personnes handicapées. Il serait donc utile que les expérimentations puissent rapidement converger pour permettre une harmonisation des pratiques.

Enfin, les pouvoirs publics doivent règlementer pour les constructions neuves. L'existant doit être amélioré en cas de modification dans des mesures raisonnables.

Dans le domaine du bâti, deux grands axes prioritaires pourraient être développés à l'avenir :

- La formation des professionnels aux notions d'accessibilité ;
- La prise en compte des besoins réels des usagers en favorisant la concertation dès l'amont des projets.

Les petites et moyennes entreprises doivent avoir une meilleure connaissance des besoins des personnes en situation de handicap et mieux inclure la notion de conception universelle dans les biens et services. Elles doivent travailler en concertation avec les associations de personnes handicapées et à mobilité réduite, comme c'est actuellement le cas dans plusieurs villes européennes.

Concernant les constructeurs ou opérateurs de transport, le développement de la formation aux métiers liés à l'accessibilité des personnes en situation de handicap doit se poursuivre par la mise en place de nouveaux cursus de formation par exemple, voire l'émergence de nouveaux métiers.

La mise en place de plans de communication est indispensable, d'une part pour mieux faire connaître les besoins des personnes handicapées et à mobilité réduite et d'autre part, faire évoluer les mentalités.

Pour le transport maritime, depuis l'entrée en vigueur de la règlementation française sur l'accessibilité, de nombreuses PME ont su se positionner sur des marchés en ce qui concerne:

- la décoration intérieure (contraste pour les malvoyants)
- l'éclairage
- les affichettes et panneaux en braille etc…

Les petites et moyennes entreprises, par leur réactivité et leur capacité d'innovation, doivent être le support d'une politique de mise en accessibilité dans le domaine du bâti.

Germany

Equal access to the physical environment, means of transport, services and facilities as well as to information and communication technologies are essential conditions enabling people with and without disabilities to live together in a self-determined way in all areas of life.
In its schemes on accessibility, Germany pursues a broad approach with particular emphasis on the creation of accessibility in all areas of life. The Federal Republic of Germany has a number of laws and regulations on accessibility to implement the constitutional dictate of Article 3, para. 3, sentence 2 of the Basic Law that "No person shall be disfavoured because of disability".

Under the provisions of the Act on Equal Opportunities for Persons with Disabilities (BGG) providing for the prohibition of discrimination against disabled persons by public authorities and the creation of accessibility as well as under the equal opportunities legislation of the federal states, the government and the states are obliged to ensure comprehensive accessibility.

The goal of the Equal Opportunities Act is: constructional and other facilities, means of transport, technical utensils, information processing systems, acoustic and visual sources of information and communication facilities as well as other designed areas of life are to be accessible to and useable by persons with disabilities without particular obstacles in the customary manner and as a matter of principle without the assistance of others. In the sense of "design-for-all", the special focus lies on the characteristic "usable …. as a matter of principle without the assistance of others". This particularly strengthens the self-determination and personal responsibility of persons with disabilities. The regulations for the creation of accessibility are the core element of the Federal Act on Equal Opportunities for Persons with Disabilities which acted as model for the equal opportunity legislation of the 16 federal states. Moreover, the requirements of this Act are also relevant for other areas, e.g. the provision of benefits and services in the field of rehabilitation. This applies, in particular, also to rehabilitation services provided by the social insurance funds. Ten years after their introduction, the effectiveness of the provisions and instruments of the Equal Opportunities Act shall be reviewed. An evaluation to this effect is scheduled for 2013. On the basis of this evaluation, a potential need for amendments will be decided on.

The creation of accessibility is a dynamic process which can only be gradually implemented, taking account of the principle of proportionality and the means that are available. The standards of accessibility to be called on are subject to constant change. Specifically for individual regulatory areas, they are established by recognised technical regulations (such as the DIN standards of the German Institute for Standardisation) and - on the basis of the Act on Equal Opportunities for Persons with Disabilities - also via programmes, plans and agreed goals. Because, due to the long lifespan of current infrastructure facilities and vehicles, any necessary adjustments can only be made step by step, constructional and other facilities, means of transport, information processing systems and communication facilities are being successfully designed such that they can be used by persons with disabilities without particular difficulty and as a matter of principle without the assistance of others.

The access to justice for people with disabilities is guaranteed by German law. Corresponding provisions are, for example, contained in the Courts Constitution Act (GVG) and the Code of Criminal Procedure (StPO). The German Sign Language has been recognised as a language in its own right. In all proceedings before German courts and in administrative procedures with federal authorities, persons with hearing and speech impairments have the right to choose to

communicate either through German Sign Language, sound-accompanying signs or through other technical communication aids. Any costs arising in this regard are to be borne by the authorities or courts.

Blind and visually disabled persons participating in administrative procedures have the right that documents enabling them to exercise their rights be made accessible to them. The form of such documents depends on the possibilities of perception of the persons involved. Documents can, for example, be made accessible by being read out, with the help of sound recording devices, in Braille or capital letters, electronic form or by other means. The persons concerned are not to be charged with additional costs associated with the provision of these documents. The same applies to court proceedings.

In the Coalition Agreement of the Federal Government for the 17th legislative period it was agreed to draw up a National Action Plan (NAP) to implement the UN Convention. It was adopted by the Federal Government on 15 June 2011. With the NAP, a long-term overall strategy was drawn up for the implementation of the Convention. It is a package of measures rather than a legislative package and, in particular, aimed at closing existing gaps between the legal situation and the practice. More than 200 plans, projects and activities show that inclusion is a process that includes all areas of life. An important measure, for example, is ensuring access to medical care. All persons with disabilities are to be provided with unlimited access to every kind of health care and health services. The NAP therefore includes the objective of making a sufficient number of medical practices accessible over the next ten years. Together with the federal states and the medical profession, the federal government is going to develop an overall concept to give incentives for the creation of barrier-free access to or barrier-free equipment of practices and hospitals. The federal government's action plan is supplemented by other action plans of the federal states, municipalities, rehabilitation providers, disability and social organisations as well as providers of services for persons with disabilities and private sector companies. Some of these plans have already been adopted.

Accessibility and taking account of the "design-for-all" have become increasingly important criteria for companies, also with a view to the demographic trend of an ageing society. Accessibility opens up new consumer groups and thus, in addition to enhancing the participation of disabled persons, also new market opportunities for companies. Public relations and the provision of information on the implementation of accessibility in different areas of life are of crucial importance. Market research is therefore a major precondition for the development and supply of barrier-free goods and services. In this context it is important to identify products and services of special interest and to promote market research in these areas in a targeted way. Such research must include persons with disabilities. Many products are developed on the basis of scientific innovation or as a result thereof. Therefore, the training of experts involved in product development should contain elements to raise awareness of the subjects "accessibility" and "design-for-all".

With regard to information and the stimulation of change in the public's mindset, a lot of importance has been attached to the dissemination of good examples. For the above mentioned reasons, small and medium-sized enterprises (SME) should participate in this process. Since 2009, the Federal Ministry of Economics and Technology has organised conferences, particularly with SMEs, to make companies aware of the "design-for-all". A lot of good examples could be identified and published as a result. In 2012, further conferences will be held on this topic. But goods and services for persons with disabilities are not only in high demand by companies but also by the public sector - e.g. in social assistance.

Retail quality labels could support this process. In Germany, the government-supported initiative „Economic Factor Age“ developed the “Generation-Friendly Shopping” quality mark in cooperation with the German Retail Federation (Deutscher Handelsverband) and other institutions and organisations. The quality mark is awarded to stores catering to the needs of persons with a handicap, for example by ensuring an optimal design of their store entrance and arrangement of goods and by labelling their products with clearly legible price tags. Suitable measures should be adopted to sensitize consumer counselling services for accessibility as an distinctive characteristic of products and services. The involvement of people with disabilities is crucial for the success and acceptance of these measures.

Greece

The Greek constitutional law (article 4) defines that all people are equal before the law and that all Greek women and men have equal rights and obligations. According to that article, the same principles apply also to disable people.

Facilitation and accessibility

The General Secretary of Public Administration and Electronic Government with its circular letters mention the necessity of serving people with disability in priority and urging all public sector services to ensure accessibility to disable people.

Circulars of the Ministry of Interior define that public sector services, institutions and local authorities' services should provide for the accessibility of the built environment to people with disabilities. The Law 2831/2000 contains special clauses for the buildings to be accessible by people with disabilities. These clauses are related to issues such as the accessibility to entry-exit points of buildings, to sidewalks, elevators, post mail boxes and etc.

The Ministry of Environment, Physical Planning and Public Works has organised a "Committee of Accessibility" which recommend to the Minister issues that have to do with the implementation of the Law 2831/2000. Among others, members of this Committee are people from the National Confederation of Disabled People (ESAMEA).

The Athens Urban Transport Organisation's (OASA- www.oasa.gr) provides information about the accessibility to and the use of all means of transport (bus, trolley, metro, tram, train). In addition, the related infrastructure such as airports, bus and railway stations are accessible to people with disabilities. Most of city's transportation means are equipped with ramps in order to facilitate the boarding of people with disabilities using a wheel-chair.

Although there is no specific legislation about the e-accessibility and the participation of disable people in electronic government society, institutions or disability organisations develop websites in order to cover the special needs of this category of people.

A network of sports facilities accessible for athletes with disabilities has been developed; a network of sidewalks refurbished with ramps and tactile guide and also an accessible beach in Athens are available to disabled people.

More steps should be taken as well in the direction of comprehensive and systematic promotion of accessibility across the full range of policies and to raise awareness in particular of the sensitive group of children.

All Greek authorities, ministries etc. promote the right of disable people to accessibility in all areas of their daily and professional life. Article 9 of the UNCRPD is a guideline and all efforts are made under its principles.

a. Accessibility legislation: its place in the legal and regulatory framework

Circulars of the Ministry of Interior define that public sector services, institutions and local authorities' services should be provided for the accessibility of the built environment to people with disabilities. The Law 2831/2000 contains special clauses for buildings to be

accessible by people with disabilities. These clauses are related to issues such as the accessibility to entry-exit points of buildings, to sidewalks, elevators, post mail boxes and etc.

The Ministry of Environment, Physical Planning and Public Works has organised a "Committee of Accessibility" which recommend to the Minister issues that have to do with the implementation of the Law 2831/2000.

b. General law, technical regulations and standards

The existing legislation covers the basic requirements for the development of goods, products and services accessible to disabled people. Then, circulars produced by the Ministries, formulate, where appropriate, special conditions that must be followed for the development and implementation of accessible goods / services. For example, Law 2831/2000 Article 28 refers to special arrangements to accommodate people with disabilities to buildings, new and existing, and in public spaces. The Ministry of Public Works with a series of circulars required public bodies to take appropriate measures to implement the law. These circulars define technical details.

c. Role of national, European and international standards

The Greek legislation on accessibility follows international standards and has been defined from regulations produced by international bodies, e.g. mainly E.U., U.N, CoE. Although current legislation covers this issue, it seems there is a need for updating it after the upcoming ratification of the U.N. Convention on rights for people with disabilities.

d. Changes in legislation/regulation linked to the implementation of the UN CRPD

Signing the U.N. Convention has not yet led to any changes regarding accessibility legislation, but it is expected that the ratification will affect current legislation, although it already covers all main topics that should be included in legislation regarding accessibility.

e. Services regulated for accessibility

The law 2831/2000 Article 28 provides special arrangements to accommodate people with disabilities.
More specifically, paragraph 1 defines that areas of new buildings should ensure both horizontal and vertical access by people with disabilities. These buildings are the buildings used by the public: public Services, public entities, private legal entities of the public sector, civil society organizations, local authorities first and second tier or uses, rollup public, education, health and social care, offices and trade as well as in parking lots of these buildings.

f. Goods regulated for accessibility

The Athens Urban Transport Organisation's (OASA-www.oasa.gr) provides information about the accessibility to and the use of all means of transport (bus, trolley, metro, tram, train). In addition, the related infrastructure such as airports, bus and railway stations are accessible to disabled people. Most of the city's means of transport are equipped with ramps in order to facilitate the boarding of people with disabilities using wheel-chairs. Besides means of transport, all goods and services either produced for or provided to the public should be

harmonised with internal legislation and E.U. directives and regulations, e.g. telephones, ATM's, doors, elevators, tables etc.

g. Enforcement of accessibility legislation

For particular buildings, the responsible departments for the implementation of accessibility in public spaces are the units of Accessibility and the Technical Services of the Municipalities. Other bodies responsible for implementation of accessibility in public buildings are the units of accessibility of the ministries, public entities, regions and local authorities, first and second degree. Monitoring of the implementation of accessibility works carried out by the Inspector General of Public Administration, who in that jurisdiction, directs and coordinates all the control mechanisms of the state to determine the motivation and compliance of public bodies and municipalities in implementing the projects accessibility. In particular, the control and policing of points of accessibility of public spaces and parking spaces shall be the responsibility of the concerned municipal police.

h. Non-compliance and litigation

Complaints may be submitted with a signed claim to the Ombudsman. A claim could be brought either by any directly concerned natural or legal person or association of persons. After the investigation, the Ombudsman, if required by the nature of the case may draw the conclusion which informs the relevant minister and the competent services, and mediates in any suitable way to solve the problem.

At the same time, any person can go to court, asking either the compliance of public or private entities with existing legislation on accessibility or to claim compensation for any damage.

Hungary

a. Accessibility legislation: its place in the legal and regulatory framework

The Hungarian law on the rights and equal opportunities of persons with disabilities (ACT XXVI of 1998 7/A. §) recognised the equal right to accessible public services. To implement this law the accessibility of public services is obligatory. The legislation defines accessibility in a complex way, so not just the accessibility of buildings is obligatory but the accessibility of information and services are also obligatory. This obligation refers to governmental, self-governmental and private public service providers; the earliest connecting deadline was 31. December 2008, and the latest was 31. December 2013.

The law declares in a separate paragraph, that people with disabilities must be provided with equal chances to access information of general interest, furthermore to information that refers to the rights of people with disabilities and (refers to) the services provided for them.

Paragraph 27 shows the human right viewpoint of the law, and declares: “Any person that has been treated unfairly on the grounds of his/her disability, he/she shall be entitled to all the rights that are to be enforced when personal rights are violated”. This refers to all the rights named/declared under the law, so if there is a lack of accessibility, - after the deadline expires - the defaulter can be sued.

b. General law, technical regulations and standards

The Hungarian law on the rights and equal opportunities of persons with disabilities (ACT XXVI of 1998) recognises the right of accessible services and the requirements of suppliers. The law on Hungarian Sign Language and the use of Hungarian Sign Language (ACT CXXV of 2009) recognises the ICT accessibility of deaf people. The Hungarian law about the construction and protection of the built environment (ACT LXXVIII of 1997) and its implementation regulation, the governmental regulation about the national settlement planning and building requirements (253/1997.) contain the technical specifications of the physical accessibility.

We try to build the most modern requirements in the tendering packages during the implemented accessibility projects financed by EU and national resources. (About this we inform more in the answer belongs to the point c).

c. Role of national, European and international standards

In 2007, the legal predecessor of the Ministry of National Resources has put forward a Manual aiming to realize equal accessibility, which was updated in 2009 based on the new building acts. This expert document on architecture contains a broader system of requirements than the effective legislative provisions in the field of realizing accessibility, such as the W3C recommendation on web accessibility or other ICT standards where no relevant legal regulation has been formulated yet. The application of the Manual in cases of development projects financed by the European Union is obligatory.

d. Changes in legislation/regulation linked to the implementation of the UN CRPD

Hungary ratified the UN Convention on the Rights of Persons with Disabilities and the related Optional Protocol in 2007. The main impact of the ratification is the declaration of the law on Hungarian Sign Language and the use of Hungarian Sign Language (ACT CXXV of 2009). This law recognises −inter alia− the communication rights of deaf and deaf-blind people and their rights to free sign language interpreting service, and learning through Sign Language, and TV programmes have to be subtitled, and during formal –judicial, police, etc. –processes obligatory to use Sign Language interpreter.

This Convention inspired the modification of the governmental regulation about the national settlement planning and building requirements (253/1997.) in 2009, which enlarge the technical and architectural specifications in connection with the physical accessibility.

We will take into consideration the principles of the Convention when reviewing the Hungarian law on the rights and equal opportunities of persons with disabilities (ACT XXVI of 1998). On the basis of the professional trends, national and international experiences we will update the legislation about the accessibility.

e. Services regulated for accessibility

The accessibility obligation of the ACT XXVI of 1998 refers to the further public services:

- all public power activity- including all kinds of authority, governmental, administrational and judicial activity- furthermore the activity of the parliament, organisations subordinate to the parliament, the Constitutional Court, parliamentary commissioners, the prosecution, home defence and security organisations practicing their competence.
- public media, education, public education and collection, culture, science, social, child welfare, child protection, health, sport, youth, and employment services, cares and activities provided by institutions run by the state.
- all activities of local and minority governments practicing their competence- including especially the authority and other administrational activities- and according to the 2nd point services, cares and activities provided by local and minority governments, NGOs and parochial institutions, and institutions financed by them.
- service activity provided in all kinds of customer services, furthermore
- service activity based on all kinds of authority permit or authority obligation, that serves the public care of a settlement or a part of a settlement, is not restricted and cannot be restricted.

f. Goods regulated for accessibility as part of a service

There is no legislation in force in connection with the accessibility of the goods.

g. Goods regulated for accessibility

There is no accessibility legislation for manufactured goods in Hungary at the moment.

h. Enforcement of accessibility legislation

In accordance with the legal regulations in force, compliance with accessibility provisions during the construction of a new building or the reconstruction of an already existing one is

verified by the building authorities in each case in advance. In principle, granting a building permit must be denied in all cases where fulfilling the requirements is not guaranteed. In practice however, it poses a serious problem that the experts of the building authority are not well-informed enough about accessibility requirements and numerous mistakes derive from inefficient construction.

The effective provisions do not impose classic sanctions on accessibility legislation. Non-compliant providers will first and foremost have to face the previously mentioned possibility of litigation. Moreover, the Equal Treatment Authority may investigate whether maintainers have fulfilled legal obligations in a given case. In cases of a violation, the Authority may impose a fine.

In our plans, reviewing the legal framework to provide accessibility will also extend to the legal consequences of non-compliance.

i. Non-compliance and litigation

The Hungarian law on the rights and equal opportunities of persons with disabilities (ACT XXVI of 1998 27. paragraph) declared “Any person has been treated unfairly on the grounds of his/her disability, he/she shall be entitled to all the rights that are to be enforced when personal rights are violated”. This means in practice, that the defaulter can be sued because of violation of individual rights.

Furthermore, in the case of breaking the law considering the accessibility legislation, plaintiffs can turn to the Commissioner of Fundamental Rights (ombudsman) and to the Equal Treatment Authority.

According to the Hungarian law on the rights and equal opportunities of persons with disabilities (ACT XXVI of 1998 25. paragraph (7)) “The National Council on Disability Affairs and the national organisations for advocating the rights of persons with disabilities may initiate court proceedings against anybody violating the rights of persons with disabilities as encoded in legislation in order to enforce such rights, even if it is not possible to establish the identity of the particular disabled person who has experienced the insult.”

Ireland

a. Accessibility legislation: its place in the legal and regulatory framework

Equality (anti-discrimination) legislation, the Equal Status Acts 2000 to 2008, provides that anyone selling goods, providing services, selling or letting accommodation, educational institutions and clubs must do all that is reasonable to accommodate the needs of a person with a disability by providing special treatment or facilities, where without these it would be impossible or unduly difficult to access goods, services, accommodation etc. This is subject to nominal cost.

The Disability Act 2005 obliges public bodies to make their buildings, services communications, and information as well as heritage sites accessible for people with disabilities and is supported by statutory codes of practice and also practical guidelines. It also establishes requirements for a complaints process with appeals to the national Ombudsman. Programmes of works have been undertaken and committed in sectoral plans (disability action plans produced by key Government Departments under the Disability Act).

Part M of the Building Regulations also covers accessibility and applies to new buildings (other than private houses) which have to have mandatory Disability Access Certificates; and over time to public areas of public sector buildings.

b. General law, technical regulations and standards

Legislation provides specific requirements for the public sector as stated above and provides for the Disability Access Certificate for all sectors. It is also a subject of regulations, i.e. in the case of new buildings, Part M of the Building Regulations sets out general requirements, and the accompanying Technical Guidance Document lists specifications for particular aspects of a building (e.g. doorway and corridor widths) that would satisfy the accessibility specifications.

c. Role of national, European and international standards

2011 Irish legislation on the legal requirement for Energy Suppliers in relation to Universal Design is set out in Section 3 (3) of The European Communities (Internal Market in Electricity and Gas) (Consumer Protection) Regulations of 2011 (S.I. No. 463 of 2011). This section states that suppliers must apply the principles of Universal Design to:

- all products and services offered or provided to final customers, and
- communications with final customers.

In early 2012 the National Standards Authority of Ireland (NSAI) produced the first global guidance standard for Energy suppliers in Ireland. This was specifically based on the universal design of how the energy suppliers (electricity and gas) communicate to their customers – verbal, written and electronic based communication. The National Disability Authority's Centre for Excellence in Universal Design and the office of the Commission for Energy Regulation in Ireland co-chaired the production of this guidance standard with all the key stakeholders from energy suppliers in Ireland and diverse user group representations from age, size ability and disability.

d. Changes in legislation/regulation linked to the implementation of the UN CRPD

Since signing the Convention, updating and strengthening of Building regulations, and introduction of mandatory Disability Access Certificates for new buildings have occurred as part of the National Disability Strategy, the key vehicle for advancing policies in relation to people with disabilities.

e. Services regulated for accessibility

Equality legislation covers both public and private sectors. The Equal Status Acts 2000 to 2008 apply to people who:

- Buy and sell a wide variety of goods,
- Use or provide a wide range of services,
- Obtain or dispose of accommodation,
- Attend at, or are in charge of, educational establishments,
- There are separate provisions on discriminatory clubs.

Disability legislation is specific to the public sector only. The Disability Act 2005 regulates for access to public buildings and heritage sites and access to services and information provided by public bodies.

Regulations for the building sector, Part M of the Building Regulations, apply to both public and private sectors.

f. Goods regulated for accessibility as part of a service

Equality legislation states “goods and services” without specifying the nature of those goods and services. Disability legislation provides for accessibility to be taken into account in public procurement of goods and services, again without specifying the nature of goods involved.

g. Goods regulated for accessibility

The Public Transport Regulation Act 2009 specifically requires that improved access to transport systems and in particular to public transport services by people with disabilities be achieved.

In 2010 the Irish government introduced S.I. No. 248/2010,the Taxi Regulation Act 2003 (Wheelchair Accessible Hackneys and Wheelchair Accessible Taxis - Vehicle Standards) Regulations 2010. This regulation covers:

- applications for the grant of a wheelchair accessible hackney or a wheelchair accessible taxi licence;
- applications for the renewal of a licence ; and
- renewal of a wheelchair accessible hackney or a wheelchair accessible taxi licence.

The Merchant Shipping Act 2010 covers passenger vessels to ensure that they are accessible to people with disabilities. This is based on the EU Regulation 1177/2010 on the rights of passengers travelling by Sea and Inland Waterways.

The Irish statutory Centre for Excellence in Universal Design is working with the National Standards Authority in relation to universal design standards for services. Work to date has included recent adoption of a SWIFT standard for improved energy services to customers, including those with disabilities. The national regulatory body for the energy sector is working to achieve compliance.

h. Enforcement of accessibility legislation

For accessibility of goods and services generally (equality legislation), the Equality Authority provides advice and information and can guide complainants, the Equality Tribunal adjudicates on complaints, and can make an award of monetary compensation to the complainant, to be paid by the offending organisation.

Disability legislation governing access to public services, premises and information provides that individuals can appeal to a statutory Inquiry Officer, or ultimately to the Ombudsman, who can recommend that appropriate action be taken by the public body.

With regard to accessibility of new buildings, an award of a Disability Access Certificate is required before the building can be occupied. This is the role of Local Authorities.

i. Non-compliance and litigation

Individuals can bring a complaint to the Equality Tribunal (for complaints regarding general accessibility of goods/services) and the remedy is usually damages awarded to the complainant. Awards may be appealed to the Courts. The Equality Authority can join the complainant in taking the case.

Individuals can bring a complaint, under the Disability Act, on accessibility of public services to the head of the Public Body who must then appoint a statutory Inquiry Officer to investigate the complaint and advise on remedial steps to be taken. Should the complainant be dissatisfied with the outcome of this process they have the right to refer it to the Ombudsman.

Italy

a. Accessibility legislation: its place in the legal and regulatory framework

General provisions on accessibility of infrastructures (built environment) are included in the law n. 104/1992 (Statutory law to promote the assistance, the social integration and rights of persons with disabilities), which provides for all designs of public buildings and private buildings open to the public to comply with the legislation regarding the removal of architectural barriers. Authorizations to build depend on the same legislation.

The Consolidated Building Act (*Testo Unico Edilizia*, approved by *Decreto del Presidente della Repubblica* n. 380/2001 and related provisions (e.g. law n. 13/1989) provides for the removal of architectural barriers in private and public buildings and relevant sanctions.

Detailed technical regulations on accessibility of public buildings and private buildings open to the public are included in Presidential Decree n. 503 of 24 July1996.

Law n. 4/2004[72] provides for specific measures aimed at enhancing access to ICT tools and devices for persons with disabilities. The Law states that measures to favour ICT accessibility belong to the measures to implement equality principles enshrined in the Constitutional Law (art. 3). Therefore it regards the granting of equality conditions.

Law n. 104/1992 establishes that municipalities should identify suitable ways to provide individual transport for persons with disabilities who are not able to use public transport, by drawing up mobility plans foreseeing alternative services.

Law n. 37/1974 provides for guide dogs to be allowed free of charge on public transport. Recent public means of transport such as train buses and coaches are equipped with special facilities for passengers with disabilities and with reduced mobility. All European directives and regulations concerning accessibility of public transport have been implemented, in particular Regulation (EC) n. 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 which is expected to pave the way for similar regulations in the field of bus and maritime transport.

It should be noted also that Decree of the Ministry of Cultural Heritage and Activities of 28 March 2008 adopted the Guidelines for the elimination of architectural barriers in places of cultural interest.

In the Italian law accessibility is designed primarily to overcome architectural barriers as well as all physical obstacles that are a source of discomfort for the mobility of everyone and especially for those who have a reduced or impaired mobility, permanently or temporarily; limiting or preventing anyone from convenient and safe use of parts, equipment or components or represented by the lack of measures and indicators that allow the orientation and recognition of places and sources of danger to anyone and in particular for the blind, partially-sighted and deaf.

[72] For the English version see the following link: http://www.pubbliaccesso.it/normative/law_20040109_n4.htm

The concept of architectural barrier is, therefore, very extensive and articulated and includes elements of different nature, which may cause perceptual or physical limitations, such as particular conformations of the objects and places that may be a source of disorientation, fatigue, discomfort or distress. Architectural barriers are therefore not only narrow steps or passages, but also slippery, uneven or bumpy paths and roads, stairs without handrails, steep ramps, lobbies without seating systems or protection from the weather, the lack of guidance or indications that helps identify any source of danger, and so on. Physical barriers are an obstacle to "anyone", not only for particular categories of persons with disability, but for all potential users.

Specific initiatives are adopted by the regions on the base of their responsibility (since 2001) for local governance of social policies.

b. General law, technical regulations and standards

See item a.

Regarding L. 4/2004 and ICT accessibility the Law is accompanied by an implementation regulation and technical rules contained in secondary norms (Regulation DPR 75/2005 for English version see http://www.pubbliaccesso.it/normative/implementation_regulations.htm and Ministerial Decree 8 July 2005 http://www.pubbliaccesso.it/normative/DM080705-en.htm) which set technical requisites and guidelines. So, on the one hand, the Law provides for principles, and guidelines regarding training, responsibilities of e.g. public managers regarding ICT procurement etc.; on the other hand, implementation regulation gives operative indications concerning the assessment of accessibility etc.

c. Role of national, European and international standards

See item a.

Regarding L. 4/2004 and ICT accessibility, international guidelines such as WCAG (Web Content Accessibility Guidelines released by W3C) are taken into account as point of reference. Under this aspect it is worth mentioning that in consideration of the release of the WCAG 2.0, the technical requisites (Annex A of DM 5 July 2004) are undergoing a revision (already notified to European Commission according to EC Directive 98/34).

d. Changes in legislation/regulation linked to the implementation of the UN CRPD

Italy is in the first phase, checking the effectiveness of national legislation in relation to the principles of the UNCRPD. The national Law n. 18/2009 provides the establishment of a National Observatory in order to monitor the condition of people with disabilities. The National Observatory, which met for its official session on December 16th, 2010, to monitor the condition of people with disabilities will also assure the implementation of the activities provided by the Article 33.2 of the UN Convention. On July 2011 six working groups, of which one has to examine issues related to accessibility, were formed within the Observatory, in order to deal with all major areas of reference set by the UN Convention.

e. Services regulated for accessibility

Transport, education, tourism, cultural activities, electoral services.

Regarding ICT accessibility Law 4/2004 mainly targets public administrations websites and public procurement of ICT devices. (The compliance to accessibility provisions is also stated in the Digital Administration Code legislative Decree 2005/82 as modified by legislative Decree 235/2010 as compulsory obligation for public administration websites).

As for Digital tools used in Education (Digital content for education and learning) specific provisions are contained in the Ministerial decree 30 April 2008 – only in Italian http://www.pubbliaccesso.it/normative/DM300408.htm)

f. Goods regulated for accessibility as part of a service

Article. 7 of Law no. 104/1992 provides that the National Health Service is obliged to ensure assistance and the supply of any equipment, tool, prostheses and technical aids necessary for the treatment of impairments, in order to make sure that poor persons with disabilities have the opportunity to benefit from equipment and help to promote personal mobility. In this area, reference can be made to Ministerial Decree 27 August 1999, n. 332, dealing with types and modes of prostheses and services free of charge, by the NHS. For the other types of equipment, tool, prostheses and technical aids not specifically listed under that provision, is possible to obtain a tax advantage.

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g. Goods regulated for accessibility

People with disabilities can obtain a special license to drive a vehicle adapted to their specific needs, after authorization by a Local Medical Committee (ASL), responsible for ensuring the driving capacity (Article 116, c. 5, *Codice della Strada*). Moreover, Article 27 of Law no. 104/1992 introduces a 20% subsidy on costs to modify the driving systems, and several forms of tax benefits are listed for the purchase of a vehicle for people with disabilities or their families (reduced VAT, income tax deduction, exemption from payment of road fees and exemption from property transfers). In addition regions introduced contributions for purchasing vehicles for people with disabilities.

At the national level, regarding the possibility for people with disabilities to benefit from aids, equipment, technology for mobility, Decree of the President of the Republic n. 917 of December 22, 1986 (*Approvazione del T.U. sulle imposte dei redditi*) provides the possibility to deduct 19% of the costs incurred for the purchase of necessary means for personal mobility, and ICT and technical means designed to promote personal autonomy and the possibility of real integration of disabled people. E.g.: wheelchairs, artificial limbs, guide dogs for blind people, vehicles adapted to the needs of people with disabilities. Furthermore, a special VAT (4% instead of 20%) is reserved for orthopedic appliances or special vehicles with engines or other mechanism of propulsion, stair lifts, prostheses and aids related to permanent functional impairment (Law n. 263 of May 29, 1989). Law n. 30 of 28 February 1997 establishes a special VAT for purchasing technical and ICT aids designed to promote the autonomy of people with disabilities.

h. Enforcement of accessibility legislation

Law no. 104 of February 5, 1992, states that any project to be implemented in public or private buildings (when open to public) are subject to control by the municipality which has to verify their compliance to local regulations.

Regarding ICT accessibility, art. 9 of DPR 75/2005 (implementation regulation of L. 4/2004) states that each administration has to appoint a person responsible for ICT accessibility and it foresees a monitoring activity by a public body (former CNIPA, now DigitPA). Disciplinary sanctions can be applied to public managers who do not respect the requirements of the law.

More recently (December 2009), in order to have a more effective compliance to the law leveraging on users involvement in a full Web 2.0 way, the "Observatory for the Accessibility of Public Administration Websites" has been launched. Through the portal www.accessibile.gov.it , any citizen can complain regarding lack of accessibility (or usability) of public websites, but he/she can also give evidence to good practices. Through the website is also possible to monitor how the reports are handled until the cases are solved. Moreover, www.accessibile.gov.it has become a tool to spread the culture of web accessibility by giving space to news, examples, guidelines and good practices.

i. Non-compliance and litigation

In order to ensure equality and non discrimination of people with disabilities in every field of social life, including accessibility, Italy adopted Law no. 67, March 1, 2006 (*Measures for the judicial protection of persons with disabilities who are victims of discrimination).* In defining the concept of anti-discrimination, Article 2 refers to the principle of equal treatment from which it follows that there can be no discrimination against persons with disabilities.

As for the procedural aspects of the protection, article 3 refers to article 44 of Legislative Decree no, 286, July 25, 1998 (*Consolidated text of provisions governing immigration and the status of the foreigner).* According to art. 44, when dealing with any form of discrimination from a single person or a public administration, anyone can file a case in civil courts to obtain the adoption of any necessary measure to remove the effects of that discrimination.

Non-execution of judge's orders can imply imprisonment until three years. The procedure ends with the executive order to terminate any behavior, conduct or act of discrimination, and to undertake any necessary measure to remove the effects of discrimination.

The intervention of the court is therefore not limited to modifying what had already happened, but also aimed to prevent discrimination in the future, thanks to positive actions for substantial equality of all people with disabilities.

Associations entitled to protect the rights of persons with disabilities (art. 4), identified by the Decree of the President of the Council of Ministers 21 June 2007, n. 181 (*Associations and entities qualified to act for judicial protection of persons with disabilities, victims of discrimination)* can also act on behalf of the disabled person after delegation of the party concerned, under form of public act or private writing (Art. 4, paragraph 1). In case of collective discrimination, associations and organizations are empowered to act without delegation (Art. 4, paragraph 3).

Latvia

a. Accessibility legislation: its place in the legal and regulatory framework

At the national level any discrimination is prohibited by the Constitution. However non-discrimination principles on the grounds of disability have been incorporated into different national laws, for example regarding access to education, consumer rights, health sector, social security, employment, etc.. Thus the responsibility regarding accessibility falls into scope of respective branch ministries.

Policy planning documents relevant for the topic, approved in 2011:
Action Plan for Implementing the Basic Principles on Policy for Elimination of Disability and its Consequences 2005-2015", adopted in 2006. The plan includes measures to foster equal rights of persons with disabilities in different spheres of life.
On 25 May 2011, the Cabinet of Ministers approved "***The Electronic Government Development Plan for 2011–2013***"[73] has been prepared in 2011 (order No.218) covering measures to: reduce the administrative burden and increase efficiency of the organizational process in the public administration; develop electronic services tailored to the needs of population and enterprises; develop state information systems and the ICT infrastructure, fostering internet access; facilitate public involvement in the policy-making process. It is developed for further implementation of Information Society Development Guidelines and continuity of e-Government Development Programme 2005-2009 and developed with regard to the objectives set in the Malmö Declaration and European eGovernment Action Plan 2011-2015.
The plan comprises 192 measures and its aim is to provide available public services to citizens in a convenient and simple way, through electronic data exchange between public administration and local government entities, while increasing government efficiency and reducing its costs. It is planned to create and develop more than 220 e-services within the framework of the Plan, including for citizens with disabilities. Implementation of the Plan is proceeding according to the time schedule approved in the Plan. In 2011 20 e-services have been developed, in 2012 there are planned to develop more than 150 e-services.

In line with National development documents setting the objectives to facilitate the e-skills to benefit from the digital society on 18th May 2011, the Cabinet of Ministers approved the "Electronic Skills Development Plan for 2011-2013" (order No.207)[74] taking into account the objectives set in the "Digital Agenda for Europe" as well as related national policy documents. The Plan is a short-term policy planning document and its aim is to promote the development of an information society allowing the population of Latvia to learn general e-skills commensurate with their education and professional activity levels during the period from year 2011 to 2013. The plan sets the objectives to raise the awareness and motivation of the necessity of e-skills as one of the eight key competences which are fundamental for individuals in a knowledge-based society.
The main target groups of the Plan are government employees, the unemployed and job seekers, retirees, long- term social care institution residents, disabled persons, prisoners according to Digital Agenda for Europe *Action 066: Implement by 2011 long-term e-skills and digital literacy policies and promote relevant incentives for SMEs and disadvantaged groups*.

[73] http://polsis.mk.gov.lv/view.do?id=3718

[74] http://polsis.mk.gov.lv/view.do?id=3662

Measures for facilitating e-skills of other target groups are foreseen in other national development planning documents.
The Plan's implementation has started. One of the tasks in the Plan is to hold the annual European E-skills Week with the aim to promote e-skills and ICT profession by involving and informing all groups of population, including entrepreneurs.

b. General law, technical regulations and standards

Built environment

The accessibility of the built environment in construction policy is regulated by the Construction law, which defines „accessibility of the environment" and also determines that a structure shall be designed and constructed so as to ensure the accessibility of the environment.

Currently there are two regulations of the Cabinet of Ministers in force- Regulation No 567 „Regulation on Latvian Building code LBN 208-08 „Public buildings and structures"" and Regulation No409 „Regulation on Latvian Building code LBN 211-98 „Multi-storey Multi-apartment Residential Buildings"" that include requirements of ensuring physical accessibility for persons with disabilities. In Regulation No567 the chapter "A*ccessibility in public buildings for people with disabilities"* provides ensuring requirements of physical accessibility in public buildings. In Regulation No409 the chapter "*Requirements of comfort for disabled persons"* provides requirements of physical accessibility in residential buildings, if there are anticipated apartments for families having disabled people with movement impairments.

Transport

Public transport

Currently an intensive work is underway to incorporate the main requirements for passenger rights into national law in accordance with the European Parliament and Council Regulation of 16 February 2011 (EU) No 181/2011 on bus passengers' rights and amending Regulation (EC) No 2006/2004, including, inter alia, provisions for disabled persons and persons with reduced mobility.

Procedures for the provision and use of public transportation services are determined in the Regulations "The order of provision and utilization of public transport services" which determine that all information in a bus about bus stop place shall be accessible in visual form and carried in audio form. Categories of passengers who have the right to pay lower fees for public transportation services provided along basic routes in a network of routes, as the procedure of paying lower fees and the amount by which the said fees are to be lowered are determined in the Regulation "Categories of passengers who have the right to pay lower fees for public transportation services provided along basic routes in a network of routes".

Environmental requirements established in the assignment of the planning architecture and referred to the Cabinet Regulations „General Building Regulations" are taken into consideration when designing and building the state roads network.

The national standard LVS 448:2008 "Railway applications. Passenger platforms for 1520 mm railway lines" lay down general requirements, which is harmonised with the EC decision 2008/164/EC of21 December 2007, concerning the technical specification of interoperability relating to "persons with reduced mobility" in the trans-European conventional and high-speed rail system. Standard requirements provide the upgrade of platforms height from 200 mm to 550 mm height from the rail surface.

Air transport

In the field of aviation 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 including European Civil Aviation Conference (ECAC) Doc 30 is applicable to the Republic of Latvia. Latvian Civil Aviation Agency exercises the supervising of application.

Sea transport

The Directive 2003/24, which amends Directive 98/18/EC on safety rules and standards for passenger ships engaged on domestic voyages, has been implemented by the Regulations of the Cabinet of Ministers No145 "Regulations Regarding the Safety of Ro-Ro Passenger Ships and High-Speed Passenger Craft" adopted on 14 February 2006. The Directive includes specific requirements for persons with reduced mobility, in particular access to the ship, signs, messages relay systems, alarms and additional requirements, designed to ensure mobility on board ships. The issue of accessibility to new ships for international services Latvia as member state of the International Maritime Organisation should follow to the Recommendation on the Design and Operation of Passenger Ships to Respond to Elderly and Disabled Persons' Needs regulated by the International Maritime Organisation.

In Latvia the European Parliament and Council Regulation (EU) No 1177/2010 on the rights of passengers travelling by sea and inland waterway was adopted on November 24, 2010, (will be applied from 18/12/2012) therefore amending Regulation (EC) No 2006/2004.

In the issue of accessibility to new ships for international services Latvia as member state of the International Maritime Organisation should follow to the Recommendation on the Design and Operation of Passenger Ships to Respond to Elderly and Disabled Persons' Needs regulated by the International Maritime Organisation.

ICTs and communications

In the field of information and communication technologies, Universal service directive 2002/22/EC and its amendment 2009/136/EC is transposed in the Electronic communications law and Electronic mass media law, ensuring the principle of equivalence of choice and access, access to European single emergency number 112, must carry obligations**.**

The Postal Law stipulates that secograms (postal items, which contains notifications or printed papers prepared in a special manner, using the writing system for the blind – Braille, as well as other information carriers addressed to the blind) are exempted from payment for postal services.

Regulations of the Cabinet of Ministers, No.171 "Procedures by which Institutions Place Information on the Internet" (adopted 6 March 2007) prescribes the procedures, by which institutions shall place information on the Internet in order to ensure availability thereof. In addition, in websites of institutions must be a section "easy to read", hence covering more citizen groups that are able to comprehend the information. In the regulations there defined a range of technical requirements for websites, that gives the possibility to perceive the information in several ways (in written form, as well as in the form of pictures and sound). And websites shall provide for a possibility to select the font size[75].

The Electronic Documents Law foresees that state and local authorities are obliged to accept electronically signed documents from individuals and legal entities, therefore, for many

[75] http://www.likumi.lv/doc.php?id=154198

services persons can apply by sending a digitally signed request to the official e-mail of the competent authority. Many of them a person can also receive electronically.

In order to reduce the administrative burden on enterprises and citizens and ensure good governance principles in accordance with the State Administration Structure Law and the Administrative Procedure Law, the Ministry of Environmental Protection and Regional Development examining drafts of regulatory acts and policy planning documents developed by other ministries and giving official opinions afterwards, urges institutions to include principles of electronically available services both applying and receiving, also including advantages (faster or cheaper receive for the electronic channel) etc, and to reduce the administrative burden on businesses and citizens. In 2011, there are given 146 official opinions on legislation and policy planning documents developed by other ministries.

The Ministry of Environmental Protection and Regional Development developing its own legislation, takes into consideration mentioned principles and includes them into the policy and regulatory acts.

To provide the observation of principles stated by State Administration Structure Law, the regulations of the Cabinet of Ministers, No.357 „Procedures by which institutions cooperating provide information electronically, as well as provide and certify the trueness of such information" (approved on 13th April, 2010) prescribes procedures, basic principles and available methods for cooperation between institutions electronically providing the information at their disposal and confirmation of such information.

The regulations of the Cabinet of Ministers Nr.792 (adopted on 11th October, 2011) "Regulations on action program" Infrastructure and Services" appendix 3.2.2.2 activity "Development of Public Internet Access Points"" provides for development of new public Internet access points or significant improvement of existing public Internet access points in local governments, in order to increase possibilities for Internet access to widest range of society groups, promoting access to electronic and other services, and information provided by public administration and commercial companies. The available total funding for the activity is 3 million LVL. Implementation of the activity ensures the Ministry of Environmental Protection and Regional Development as the responsible authority and the State Regional Development Agency as a cooperation authority.

Within the framework of the activity it is planned to create around 547 new or improve existing public internet access points – in each city (except Riga), municipality or municipality's territorial unit (town, rural territory) not more than one public Internet access points.

Mentioned regulations on the implementation of 3.2.2.2 activity has set a criterion for provision of horizontal priority "Equal Opportunities" - a project being appraised on this criterion, the project will receive extra points if it foresees specific actions to ensure equal opportunities, including providing services to persons with functional disabilities.

c. Role of national, European and international standards

When developing national standards international and best practices are being used to develop national standards. European Standards foreseen in EU Regulation are being incorporated and adopted as national standards.

d. Changes in legislation/regulation linked to the implementation of the UN CRPD

Currently the future strategic document "Basic Principles of Implementation of the Convention on the Rights of Persons with Disabilities for 2013-2019" is being elaborated in close cooperation with line ministries and DPO's, it is foreseen that this document will also include certain proposals for measures and amendments to the legal acts to promote accessibility.

e. Services regulated for accessibility

See above.
Additional amendments to the legal acts regarding access to goods and services are under debate currently.

f. Goods regulated for accessibility as part of a service

See above.

g. Goods regulated for accessibility

See above.

h. Enforcement of accessibility legislation

Supervision (control) exists regarding construction process.

i. Non-compliance and litigation

In case of discrimination or non-compliance individual person or an NGO can file a case in court.

Lithuania

a. Accessibility legislation: its place in the legal and regulatory framework

The Law on Equal Opportunities (Official Gazette, 2008, No. 76-2998) prohibits all types of direct and indirect discrimination on grounds of age, sexual orientation, disability**,** race, ethnicity, religion or beliefs at work, educational institutions and in the sphere of services and goods.

According to Article 8 of this act, following the principle of equal opportunities, sellers or manufacturers of goods and providers of services must, irrespective of consumers' gender, race, nationality, language, origin, social status, faith, beliefs, views, age, sexual orientation, disability, ethnicity or religion:

i. create equal conditions for all consumers to obtain the same products, goods and services including provision with housing and applying equal terms and guarantees for the same products, goods and services of the same value;
ii. while providing information on or while advertising products, goods or services to consumers, ensure that such information does not convey humiliation or scorn or restriction of rights or giving privileges on the grounds of gender, race, nationality, language, origin, social status, faith, beliefs, views, age, sexual orientation, disability, ethnicity or religion and that such information does not form a public attitude that an individual has an advantage or disadvantage due to the aforementioned grounds.

Provisions of the Law of Social Integration of the Disabled require those with duties under the Law to make adjustments to special needs of disabled in the fields of: provision of information, health care, accessibility, education, transport, etc.

The Law also provides that the Ministry of Environment is responsible for the preparation of construction technical regulations for the adaptation of environment to the needs of the disabled and for supervising the implementation of such regulations.

In the 11 Article of The Law of Social Integration of the Disabled for provision of accessibility are responsible:

- For adaptation of facilities for disabled persons' special needs are responsible local authorities;
- For territorial planning and design of buildings and public works buildings, housing and the environment, public transport facilities for passenger service, and their infrastructure, information environmental adaptation are responsible local authorities, owners and users of the objects.

Article 34 of the Republic of Lithuania Law on Education establishes that access to education shall be ensured for persons with special needs by adapting the school environment and by providing special pedagogical, psychological and special assistance.

The Law On Fundamentals of Protection of the Rights of the Child (Official Gazette, 1996, no. 33-807) provides that public buildings, streets and transportation means, which are to be used by a disabled child, shall be adapted to the special needs of a disabled child. The Law also provides that adapted accommodations shall be installed within institutions intended for these children. State and municipal executive institutions shall ensure according to their

competence and potential that requirements indicated in parts one and two of this article, would be implemented.

The Law on Construction stipulates that during the design, construction, reconstruction or major renovation of buildings (except blocks of flats under renovation) and engineering constructions, it is necessary to adapt them to the special needs of disabled according to the Law of Social Integration of the Disabled.

The responsibilities to provide reasonable accommodation for disabled persons are embedded in The Law on Equal Opportunities. In The Law on Equal Opportunities there is embedded that employers „shall take appropriate measures to enable a person with disabilities to have access to employment, to work, to seek career or to undergo training, including reasonable accommodation, if those measures shall not cause disproportionate burden to employer“. This provision regulates only employer‘s duty, but not in the area such as social protection, education, provision of goods and services.

In Lithuania there is a Programme for the Adaptation of Housing of the Disabled (hereinafter referred to as the Programme) which also contributes to improvement of accessibility for the disabled. The purpose of the Programme is to seek independence and social integration of the disabled, meeting their special needs and adapting housing and its environment to their special needs. The Programme is targeted at disabled with physical impairment and having difficulty moving around the house who need an adaptation of housing.

Article 14 of The Law on Education of Republic of Lithuania establishes that access to education shall be ensured for persons with special needs by providing special pedagogical, psychological and special assistance.

b. General law, technical regulations and standards

Information regarding accessibility in Lithuanian legislation is provided in point a.

Adaptation of constructions and territories to disabled people’s needs in Lithuania is enshrined in construction technical regulations (CTR): Orders of the Minister of Environment on Construction Technical Regulations:

CTR 2.03.01:2001-Constructions and Territories. Requirements for needs of the Disabled;
CTR 2.02.02:2004-The Buildings of Public Service;
CTR 2. 02-01-2004-Residential Buildings;
CTR 2.02.09:2005-Deatched Residential Buildings;
CTR 2.06.02:2001-Bridges and Tunnels. General Requirements;
CTR 2.06.01:1999-Transport Systems of Cities, Towns and Villages;
CTR 1.05.06:2010-Designing of the Structure;
CTR 1.07.01:2010-Documents authorising construction works
CTR 1.07.01:2010-Completion of Construction

In Lithuania the Information Society Development Committee under the Ministry of Transport and Communications prepared Methodological Recommendations for the development and testing of web sites adapted to the needs of disabled people. According to the aforementioned Recommendations, state and municipal authorities are obliged to adapt web sites for disabled. The Information Society Development Committee once a year performs an analysis to ascertain whether the web pages are adapted for the disabled.

c. Role of national, European and international standards

Lithuania does not develop purely national accessibility standards. All European Standards and several international ones in the area of accessibility are adopted as national standards.

Accessibility for disabled and persons with reduced mobility to transport services are regulated by European Union regulations which are binding in Lithuania:

- Regulation of the European Parliament and of the Council concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004;
- Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations;
- 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;
- Regulation of the European Parliament and of the Council on the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004.

d. Changes in legislation/regulation linked to the implementation of the UN CRPD

Measures to improve access to the environment for people with disabilities are included in the National Programme for Social Integration of the Disabled 2003-2012 and its implementation measures. New National Programme for Social Integration of the Disabled 2013-2019 are being prepared now. Measures for improving accessibility are going to be included in it. In 2011 workshops on universal design were organized in Lithuania for architects, designers and other specialists. The material for workshops was prepared according to international documents (including the UNCRPD).

e. Services regulated for accessibility

See point a.

In Lithuania lawyers, notaries and bailiffs must ensure that disabled persons have access to their services. The bailiff's office should be established on the first floor of the building. If there is a lift for disabled, the office can be on other floors of the building. Anyway, access to services provided by lawyers, notaries and bailiffs has to be ensured. The Lithuanian Chamber of Bailiffs and the Ministry of Justice are responsible for controlling that offices meet all requirements regarding accessibility for disabled people.

f. Goods regulated for accessibility as part of a service

According to Lithuanian national law, when implementing equal treatment, a seller or producer of goods or a service (commercial or public) provider, without regard to gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion, must:

1. provide consumers with equal access to the same products, goods and services, including housing, as well as apply equal conditions of payment and guarantees for the same products, goods and services or for products, goods and services of equal value;

2. when providing consumers with information about products, goods and services or advertising them, ensure that such information does not convey humiliation, contempt or restriction of rights or extension of privileges on the grounds of gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion and that it does not form public opinion that these qualities make a person superior or inferior to another.

g. Enforcement of accessibility legislation

A person who considers himself wronged by failure to apply equal treatment shall have the right to appeal to the Equal Opportunities Ombudsman. An appeal to the Equal Opportunities Ombudsman shall not preclude the possibility of defending rights in court. Associations or other legal persons which have, in accordance with the legal act regulating their activities, the defence and representation in court of persons discriminated against on a particular ground as one of their activities may, on behalf of the person discriminated against, represent him in judicial or administrative procedures in the manner prescribed by laws. In the course of the investigation or upon completion of the investigation, the Equal Opportunities Ombudsperson may take a decision:

1. to refer the investigation material to a pre-trial investigation institution or the prosecutor if features of a criminal act have been established;
2. to address an appropriate person or institution with a recommendation to discontinue the actions violating equal rights and to amend or repeal a legal act related thereto;
3. to hear cases of administrative offences and impose administrative sanctions;
4. to dismiss the complaint if the violations indicated in it have not been corroborated;
5. to terminate the investigation if the complainant withdraws his complaint or when there is a lack of objective evidence about the committed violation or when the complainant and offender conciliate or when acts that violate equal rights cease to be performed or when a legal act that violates equal rights is amended or repealed;
6. to admonish for committing a violation;
7. to suspend the investigation if the person, whose complaint or actions, in reference to which a complaint has been made, are under investigation, is ill or away;
8. temporarily, until taking the final decision, to ban an advertisement if there is sufficient evidence that the displayed or intended to be displayed advertisement can be recognised as inciting ethnic, racial, religious hatred or hatred on the basis of sex, sexual orientation, disability, beliefs or age and would do serious harm to the public interests, would humiliate human honour and dignity and would pose threat to the principles of public morals;
9. to impose an obligation on operators of advertising activity to terminate an unauthorised advertisement and to establish the terms and conditions for the discharge of this obligation.

In Lithuania, the Department for the Affairs of Disabled at the Ministry of Social Security and Labour (hereinafter – Department) inspects buildings' compliance with design solutions, which should fulfil the requirements to meet the needs of disabled. In the case of renovated (modernized) buildings, the Department for the Affairs of Disabled doesn’t inspect buildings' compliance with design solutions. According to the CTR (Construction Technical Regulation) “Completion of Construction” in the Commission for completion of constructions should be involved representative or authorised person of the Department, who inspects that constructions would be adapted to the needs of disabled. If there are violations of the CTR,

the responsible body shall be punished according to the Republic of Lithuania Code of Administrative Violations. Sanctions are applied by The State Territorial Planning and Construction Inspectorate under the Ministry of Environment or the Court.

The following institutions control that the requirements set in legislation are properly implemented: municipalities and the State Territorial Planning and Construction Inspectorate under the Ministry of Environment according to their competence.

h. Non-compliance and litigation

Victims of discrimination have the right to appeal to the Equal Opportunities Ombudsman or defend their rights in court. Associations or other legal persons which can, in accordance with the legal act regulating their activities, defend and represent in court persons discriminated against on a particular ground, may, do so in judicial or administrative procedures in the manner prescribed by laws.

The Equal Opportunities Ombudsman does not have litigation powers and cannot represent victims of discrimination in court.

A person who has suffered discrimination has the right to claim compensation for economic and non-economic damages from the persons guilty thereof in the manner prescribed by laws.

Luxembourg

a. Accessibility legislation: its place in the legal and regulatory framework

There is an accessibility act dated March 2001 (*Loi du 29 mars 2001 portant sur l'accessibilité des lieux ouverts au public*) which regulates the accessibility of the built environment. The regulations, that are specified in a grand-ducal regulation dated November 2001 (*Règlement grand-ducal modifié du 23 novembre 2001 portant exécution des articles 1 et 2 de la loi du 29 mars 2001 portant sur l'accessibilité des lieux ouverts au public*), only apply to public or publicly funded buildings and facilities which have been newly built or substantially renovated.

Furthermore, there is the 2008 (22 July 2008) act regarding the accessibility of public spaces to persons with disabilities who are accompanied by an assistance dog (22 July 2008) and the 2008 Grand-Ducal regulation (19 December 2008) regarding the limitations to the access of persons with disabilities accompanied by assistance dogs to those places.

Lack of accessibility has been considered discrimination since the 2006 act on equal treatment (*Loi du 28 novembre 2006 sur l'égalité de traitement*) but only in regard to workplace discrimination. Since the ratification of the Convention by the Grand-Duchy of Luxemburg (*Loi du 28 juillet 2011*) steps have been undertaken to incorporate the concept of reasonable accomodation, as well as the denial of reasonable accomodation as a form of discrimination, into relevant legal documents.

b. General law, technical regulations and standards

Cf. point c.

Furthermore a series of accessibility measures aim to guarantee that persons with disabilities enjoy equal opportunities and the full participation in all aspects of life. These various measures are the following:

- National accessibility concept and the label "Accessibility Plus"
- The Standards Guide (Guide des norms) which is a reference document on accessible construction and which gives clear explanations of the legal provisions
- The label "EureWelcome" resulting from an interregional collaboration supported by INTERREG
- ECA – European concept for Accessibility
- ECA for Administrations

The question of accessibility is a constant concern in Luxembourg.

c. Role of national, European and international standards

In the Grand-Duchy, the legislator develops its own national standards (cf. accessibility act and regulation). In the context of accessibility there is also compilation of non-mandatory norms (cf. “Guide des normes”). Those norms and directives coexist with the legal standards and they go more into details than the legal standards.

If there is more precise information needed on a special subject where there are no clear legal provisions, the authorities tend to turn to the relevant DIN rules of the “Deutsches Institut für

Normung e.V.". This is often the case regarding the installation of special lifts, tactile materials for the floor or road traffic signal systems for blind persons.

These are the relevant DIN rules:

- DIN EN 81-70:2003 + A1:2004: Safety rules for the construction and installations of lifts - Particular applications for passenger and goods passengers lifts - Part 70: Accessibility to lifts for persons including persons with disability;
- DIN 32984: 2011-10: Tactile materials for the floor at public places
- DIN 32981: 2002-11: Additional equipment for road traffic signal systems to ensure that they can also be used by blind persons

d. Changes in legislation/regulation linked to the implementation of the UN CRPD

During the first trimester 2012 the Luxemburg Government has accepted and presented a new national 5-year action Plan for the implementation of the UN-CRPD. This action plan announces some major changes in accessibility legislation during the next 5 years. These changes will mainly broaden the scope of the 2001 accessibility act.

e. Services regulated for accessibility

As indicated in point a., presently, the regulations only apply to public or publicly funded buildings and facilities which have been newly built or substantially renovated. The exhaustive enumeration of those services can be found in art.1 and 2 of the following grand-ducal regulation: "Règlement grand-ducal modifié du 23 novembre 2001 portant exécution des articles 1 et 2 de la loi du 29 mars 2001 portant sur l'accessibilité des lieux ouverts au public".

f. Goods regulated for accessibility as part of a service

Some of the legal and regulatory provisions relate to the accessibility of goods, as e.g. those about the parking lots, the toilets, bathtubs, kitchen worktops or the telephone booths. (cf. *Règlement grand-ducal modifié du 23 novembre 2001 portant exécution des articles 1 et 2 de la loi du 29 mars 2001 portant sur l'accessibilité des lieux ouverts au public)*

g. Goods regulated for accessibility

The accessibility of doors, elevators, stairs and other central elements of a building is regulated in the 2011 accessibility act and its corresponding regulation ("règlement"). As for goods like busses or trains, the government makes sure of their accessibility by integrating accessibility criteria in their public calls for tender.

h. Enforcement of accessibility legislation

Currently, the enforcement is of administrative nature. There is one administration department « *service national de la sécurité dans la fonction publique* » that is responsible for examining compliance with the provisions of the 2001 accessibility act. As the provisions of that particular act apply to public or publicly funded buildings and facilities, a permit to build an edifice or to exploit a service in such a building is only granted if the conditions set out in the accessibility act are fulfilled.

i. Non-compliance and litigation

In Luxembourg, in case of a persisting disagreement with the administration, you may bring the matter before the Mediator (Ombudsman). As the 2001 Accessibility Act applies to public or publicly funded buildings and facilities, one can of course call upon the ombudsman if one feels victim of a case of noncompliance with the relevant act.

At the present day, the bill provides no consequences, no penalty and no fines, for non-compliance with accessibility legislation. But that is most likely going to change in the near future. As a matter of fact, the accessibility legislation and the accessibility standards are going to be revised and that will probably be one of the modifications.

Malta

a. Accessibility legislation: its place in the legal and regulatory framework

Articles 12 and 13 of the Equal Opportunities (Persons with Disability) Act (Cap. 413) provide for rules on access of disabled people on an equal basis with others with regards to access to premises and the provision of goods, services and facilities.

The Act also allows for the test of reasonableness which takes into consideration the nature and cost of the required accommodation, the financial resources of the person or organisation required to carry out the accommodation, and the availability of public funds to cover the expenses (Article 20).

b. General law, technical regulations and standards

Rule on Access for all are provided for by the Equal Opportunities (Persons with Disability) Act, (Cap. 413), while in relation to physical accessibility to buildings this is monitored through the 'Access for All Guidelines' referred to in point e.

c. Role of national, European and international standards

The 'Access for All Design Guidelines' which deal with accessibility to buildings were developed locally with reference to accessibility standards used in other countries.

d. Changes in legislation/regulation linked to the implementation of the UN CRPD

Bill no. 85 of 2011 "Various Laws (Disability Matters) (Amendment) Act, 2011", which is currently being debated in the Maltese Parliament, is aimed at bringing Maltese legislation in line with UNCRPD, thus paving the way to Malta's ratification thereof. The Bill includes amendments to the Equal Opportunities (Persons with Disability) Act (Cap. 413) and it will further strengthen existing legislation, by including 'and use' in the provision of goods, services and facilities (Article 15 of the Equal Opportunities (Persons with Disability) Act (Cap. 413).

e. Services regulated for accessibility

As mentioned above, Articles 12 and 13 of the Equal Opportunities (Persons with Disability) Act (Cap. 413) refer to physical accessibility of buildings as well as access to the provision of goods, facilities, and services.

Indeed, Article 12 refers to access to premises it shall be unlawful for any person to discriminate against another person on the grounds of the disability of such other person or a disability of any of his family members by refusing amongst other to allow access to, or the use of any premises, or of any facilities within such premises

On the other hand, Article 13 refers to the provision of goods and services to qualified persons with disablity and stipulates the following:

(1) Save as provided for in sub-article (3), no qualified person with a disability shall, on the grounds of disability, be excluded from participation in or be denied the benefits

of the programmes or activities of any person or body in relation to the goods, facilities or services to which this article applies or be discriminated against by any person or body providing such goods, facilities or services which the qualified person seeks to obtain or use.

(2) This article applies to the provision (whether on payment or not) of goods, facilities and services to the public or any article of the public and includes in particular, but without prejudice to the generality of the foregoing -
    (a) access to and use of any place which members of the public or a section of the public are permitted to enter;
    (b) the provision of property rights and of housing;
    (c) accommodation in a hotel, boarding house or similar establishment;
    (d) facilities by way of banking, insurance or for grants, loans, credit or finance;
    (e) participation in occupational and other pension schemes;
    (f) facilities for education;
    (g) facilities for entertainment, sports or recreation;
    (h) facilities for transport or travel by land, sea or air;
    (i) the services of any profession or trade, or of any local or other public authority;
    (j) membership of associations, clubs or other organisations;
    (k) enjoyment of civic rights and performance of civic duties; and
    (l) such ther facilities and services as the Minister may prescribe by regulations made under this Act.

(3) The provisions of sub-articles (1) and (2) of this article shall not apply where compliance with such provisions in relation to a qualified person with a disability would be impracticable or unsafe and could not be made practicable and safe by reasonable modification to rules, policies or practices, or the removal of architectural, communication or transport barriers or the provision of auxiliary aids or services.

(Please see also point d. regarding the addition of ‘use’ in Article 13 through the Disability Matters Amendment Bill.)

f. Goods regulated for accessibility as part of a service

Kindly refer to point e.

g. Goods regulated for accessibility

In general, manufactured goods are not regulated for accessibility in Malta.

In terms of access to buildings, the ‘Access for All Design Guidelines’ produced by the National Commission Persons with Disabilities covers accessibility of buildings, including all areas and facilities within, as well as outside areas.

These Guidelines are constantly updated and a third edition will become operational as of 1 June 2012. The overriding objective remains that of providing a comprehensive guide to the achievement of a physical environment that is inclusive, accessible and adheres to the principles of universal design. In brief, the main aim is towards the achievement of an environment that does not inherently feature obstacles and barriers to anyone, irrespective of ability, age or physical condition. It is acknowledged that no set of guidelines can hope to take

account of all imaginable possibilities encountered in the physical environment; cognisant of the fact that essentially all buildings and physical environments are unique. In this context, these guidelines aspire to provide general guidance to the minimum standards of most of the elements and structures likely to form part of the physical environment and that would allow a disabled person to independently enter and make use of the facility. In essence, they provide a framework to direct creative efforts in providing an accessible environment in new and existing buildings.

h. Enforcement of accessibility legislation

In relation to accessibility of buildings to be used by the public (including places of work), the National Commission Persons with Disability assesses development applications submitted to the Malta Environment and Planning Authority in order to assess their conformity with the Access for All Design Guidelines. If the application is not compliant with such Guidelines, the National Commission Persons with Disability can object to the granting of building permit and inform the Malta Environment and Planning Authority accordingly.

Also, as previously mentioned, Articles 12 and 13 of the Equal Opportunities (Persons withDisability) Act (Cap. 413) provide for access to premises and also the provision of goods and services to qualified persons with a disability. In this regard, by virtue of Articles 32 and 33 of the Act, the National Commission Persons with Disability may initiate investigations or deal with complaints on the breach of the provisions of the Equal Opportunities (Persons with Disability) Act (Cap. 413). Procedure for the Investigation of Complaints Regulations (LN 13/01 and LN3/02) lays down the procedure to be adopted by the National Commission for Persons with Disability in investigating complaints including the possibility to formally request remedial action. This happens when the Commission concludeds that an unlawful act constitutes a breach of any provision of the Act; in the event of non complaince there is the possibility of appealing to the Civil Courts to order the necessary remedial action to be undertaken immediately.

i. Non-compliance and litigation

As stated in the previous reply, Articles 32, 33 and 34 of the Equal Opportunities (Persons with Disability) Act (Cap. 413) stipulates the rules for the dealing with complaints, investigations and enforcement of the provisions of the Act

Articles 33 and 34 of the Act and Procedure for the Investigation of Complaints Regulations (LN 13/01 and LN3/02) provide for the situations when the National Commission for Persons with Disability may refer an alleged discrimination to the Civil Courts. Such referral by the Commission does not prevent any person having a legal interest in the matter to, either personally or through his/her legal representative, bring a civil action related to an alleged unlawful act of discrimination and make a request for compensation of damages thereto.

Moreover, the proposed Disability Matters Amendments Bill, which is currently in Parliament, proposes to also allow disability NGOs the power to seek remedial action.

The Netherlands

a. Accessibility legislation: its place in the legal and regulatory framework

In the Netherlands there is legislation which deals with accessibility in various domains, such as:

The Act on equal treatment on the ground of disability or chronic disease (Wgbh/cz). This Act combats discrimination of persons with a disability in the fields of education, labour, housing and public transport. The three domains first mentioned are in force. The last domain will be in force after technical regulations will be published in 2012. An important element in this Act is the duty to provide for reasonable accommodation, when needed and appropriate. The lack of doing so is considered to be forbidden discrimination.

The Act on social support (Wmo). This Act compels local authorities to promote participation of all citizens including persons with disabilities. Where (physical or social) inaccessibility occurs, the authorities have to provide compensation. Domains include housing, mobility, leisure.

The 2003 Building Code (Bouwbesluit) regulates usability (including accessibility) of new or renewed public buildings. The regulations cover functional requirements depending on the use of the building or parts of it.

Several Acts regulate the public transport system. Regulations for accessibility are part of these general acts. Due to lifetime cycle of buildings, buses, trains, trams, metro and ferries a stepwise approach to full accessibility is chosen.

The Act on sheltered Workplaces (WSW) guarantees and effectuates the right to employment for those who are only capable to work in an adapted environment. The WSW aims to protect and to stimulate the capacity to work under regular conditions. The local authorities are concerned that as much indicated inhabitants as possible find jobs under adapted conditions. Besides several reintegration measures might be used.

A regulation based on the Media act (Mediawet) rules that since 2011 95 % of the Dutch-language programmes of the national public broadcasting service are subtitled for persons with hearing impairments; programmes of commercial broadcasters should be subtitled for 50 % of the Dutch–language programmes. Most of the programmes in other languages are subtitled for the general public. Apart from this, the Netherlands government considers the accessibility of the media for persons with visual impairments of utmost importance. So far the choice has been not to regulate this via the Media act. The government has chosen to approach the national public as well as commercial broadcasters to underline the importance of sufficient accessibility for persons with visual impairments and also requested them to provide information about what measurements already have been or will be taken to reach this goal. The results so far are very positive.

Several regulations support the participation of pupils with a disability in education. Such regulations include the earlier mentioned building code, the provision of (technical) aids and a special budget for indicated pupils with a disability who attend regular education at the level of primary, secondary and vocational education. Institutions for higher education have a legal duty to provide for education for all students with disabilities, who meet the admission

demands for all. The earlier mentioned Wgbh/cz obliges them to provide for reasonable accommodation, when needed and appropriate.

Besides legislation, there are also several guidelines, handbooks and action plans with respect to accessibility. In the list below, some of them are mentioned:

Buildings

- Guidelines for layout and design of governmental buildings - In general buildings in use by the government will be accessible according to the standards of the International Accessibility Symbol.
- The hallmark living (Keurmerk Wonen) gives guidelines of the layout of neighbourhoods (including accessibility like lowered kerbstones).
- The Handbook on accessibility gives instructions to designers on size and measurements for accessible buildings and public space outdoor (publ. by Misset in cooperation with user organizations)
- Guidelines on the construction and design of specific buildings like schools, catering industry, shops. These guidelines give examples to implement the Building code mentioned above.

Public Transport

- Voertuigenreglement (as an implementation of directive 2001/85/EC) regulates accessibility of buses.
- Several Handbooks governing voluntary adjustments in or on bus stops, taxis, walking routes and train-transport (the latter still in progress).
- A Memorandum gives standards and guidelines for railway stations. It also contains standards on accessibility.
- Implementation schedule on accessibility: schedule in which the accessibility of railway stations and trains will be improved. For instance, the minister of Transport will send an Action Plan to Parliament in spring 2012 concerning the full accessibility of trains by 2030.

Access to the internet

- Guidelines on accessible internet sites including accessibility. The Ministry of the Interior and Kingdom Affairs integrated accessibility into basic guidelines used for public websites (www.webrichtlijnen.overheid.nl) The Web Guidelines are based on the principle of 'universal design'. A website that complies with the Web Guidelines is accessible to all users (search engines, browsers, mobile phones) and people with disabilities. Moreover, implementation of web guidelines when building a new website does not cost more than building them from the same site without web guidelines. For government websites the web guidelines are already mandated since September 2006. For provinces, water boards and municipalities the web guidelines are mandatory since 2010.

b. General law, technical regulations and standards

Accessibility requirements are not provided in general law. See point a.

c. Role of national, European and international standards

The Dutch Normalisation Institute develops standards in the field of accessibility. Special attention is paid to implementing the ISO/CEN-Guide on design for all.

d. Changes in legislation/regulation linked to the implementation of the UN CRPD

Until now legislation and regulations have not been changed as a consequence of implementing the UN CRPD. Accessibility is a factor that has been given attention in several domains. For instance, the code on equal treatment in public transport on the basis of disability or chronic disease was already in progress, independently of article 9 of the UN-convention.

e. Services regulated for accessibility

See point a. In addition, some initiatives of close cooperation between government and civil society can be mentioned.

On December 3, 2009, the then Minister of Health, opened the information point "AllesToegankelijk.nl" (All Accessible). In “all accessible” both entrepreneurs and organizations of people with disabilities, government and research institutes work together to improve the accessibility of goods and services for people with disabilities. “All Accessible” is an important part in spreading knowledge and increasing awareness and support towards an accessible Netherlands.

“All Accessible” provides information and is also a platform that connects supply and demand accessible to everyone who want to know more about accessibility and focuses specifically on entrepreneurs.

f. Goods regulated for accessibility as part of a service

This is not applicable in the Netherlands.

g. Goods regulated for accessibility

See point a.

h. Enforcement of accessibility legislation, non-compliance and litigation

In the Netherlands, cases concerning the non-compliance of accessibility legislation can be brought to court as well as to a quasi-judicial body, i.e. the Dutch Equal Treatment Commission. This Commission is an independent organisation that was established in 1994 to promote and monitor compliance with equal treatment legislation. The Commission also gives advice and information about the standards that apply. When the Commission (CGB) receives a request for an opinion about alleged differentiation, it investigates whether the equal treatment law has been violated.

Everyone in the Netherlands can ask the Commission for an opinion or advice about a specific situation concerning unequal treatment. Petitioning the Commission is free of charge and legal representation is not required. The Commission does not have to wait for petitions to be

filed; it is also entitled to investigate on its own initiative in specific areas where systematic or persistent patterns of discrimination are suspected. Unlike court verdicts the opinions of the Commission are not legally binding. In practice the opinions have a great moral significance and are followed up in most cases.

One can also bring a case to court for unequal treatment as a consequence of lack of accessibility, for instance when there is no reasonable accommodation provided to make the service/good accessible. Depending on the specific circumstances of the individual case, various remedies are available, e.g. damages, enforcing accessibility etc.

Poland

a. Accessibility legislation: its place in the legal and regulatory framework

On 1 August 1997 the Sejm of the Republic of Poland adopted a Resolution – Charter of Rights of Persons with Disabilities, whereby it reiterates the rights conferred by the Constitution of the Republic of Poland, Convention on the Rights of the Child and the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities. This document defines the rights of persons with disabilities to live a life that is independent, self-reliant, active and free from any aspects of discrimination. It provides a list of ten rights[76] pointing at the crucial areas where vigorous action needs to be taken by the Government and local authorities to carry into effect the rights of persons with disabilities. In particular it calls for action to ensure access to goods and services allowing full participation in public life, school education, work conditions accommodated as necessary, life in environment free of functional barriers including access to public offices, polling stations, public utilities, use of means of transport at ease, access to information and communication.

Accessibility requirements are considered mainly as technical issues. The general accessibility requirements are set up in various legal acts and the special, more detailed accessibility requirements of technical nature are defined in legal regulations.

Legal obligations and rules on accessibility for persons with disabilities concern mainly the built environment and various services.

The definition of reasonable accommodation regarding employment has been included in the Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities and lack of such reasonable accommodation is considered as violation of the rule of equal treatment in employment - in the light of antidiscrimination provisions of the Act – Labour Code.

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[76] The list, included into the **Resolution – Charter of Rights of Persons with Disabilities,** mentions disabled persons` right to:

1. access to goods and services which enable them to fully participate in the social life
2. access to medical treatment and care, early diagnosis, medical rehabilitation and education
3. access to comprehensive rehabilitation aiming at social adaptation
4. education in integrated systems or in special schools or to education on an individual basis, if necessary
5. psychical and pedagogical assistance and other kind of specialized assistance enabling personal development
6. work on the open labour market or in an adjusted environment when such a requirement results from their disability
7. social security - taking into account the necessity of bearing higher costs related to disability and taking these costs into account in the tax system
8. life in functional barrier-free environment, including:
   - access to public buildings
   - use of public transport
   - access to information
   - possibility of interpersonal communication
9. a self-governing representation and to consult draft legislation concerning people with disabilities
10. full participation in public, social, cultural, artistic and sports life as well as in recreation and tourism appropriately to individual needs and interest.

In 2011, provisions concerning needs of persons with disabilities, particularly persons with reduced mobility, were included in special regulations: on the technical conditions to be met by buildings and facilities of the underground (issued according to the Act – Law on Construction) and by trams and trolleybuses and their necessary equipment (issued according to the Act – Transportation Law). The Act on Public Collective Transport, which came into force on 1 March 2011, determines the rules of organization and operation of regular passenger carriage in public road, railway, other rail vehicle (for example tram), rope, cable and field, sea and inland waterway transport, carried out on Polish territory and in border areas. It obliges to take into account the needs of persons with disabilities and persons with reduced mobility as concerns defining requirements for means of transport and organization of transport services. The Act provides that transport plans should be prepared by the Minister of Infrastructure and self-government bodies on any level, taking into account inter alia the need for sustainable development of public transport, in particular the needs of disabled persons and persons with reduced mobility, in the field of transport services.

b. General law, technical regulations and standards

Provisions obligating to ensure access for persons with disabilities to various buildings or services are included in general law, i.e. in the legal acts, and the special accessibility requirements are defined in legal regulations, implementing these acts. For example:

- The Act on Spatial Planning and Management and the Act - Law on Construction introduced the obligation to consider the needs of persons with disabilities when planning and building any new buildings and other constructions of public use and multi-family dwelling-houses and also when modernizing or remodelling existing ones. Technical standards that buildings and related installations should fulfil are set out in the regulation implementing the Act – Law on Construction in force since 1995. The special technical and construction provisions concerning public roads, road engineering facilities, railway structures and railway crossings with public roads, which ensure that they are accessible for persons with disabilities, are included in other various regulations implementing the Act - Law on Construction.
- There are also other special technical provisions defining accessibility requirements included in regulations implementing various acts, such as the Regulation on the technical conditions to be met by the hotel facilities and other facilities in which hotel services are provided, implementing the Act on Tourism Services.
- Special requirements concerning school buses are defined in the Regulation of Minister of Infrastructure on the technical conditions for vehicles and the scope of their necessary equipment, issued by virtue of the Act – Road Traffic Law.
- Provisions concerning needs of persons with disabilities were included in the Regulation of the Ministry of Infrastructure on technical conditions to be met by trams and trolleybuses and their necessary equipment (issued according to the Act – Transportation Law).

c. Role of national, European and international standards

The accessibility legislation in Poland mainly makes use of international or European standards. For example:

- Poland applies provisions of the Regulations No. 107 of the United Nations Economic Commission for Europe (UN/ECE) on uniform provisions concerning the approval of

vehicles category M2 and M3 with respect to their general construction. Appendix 8 of the Regulations sets out requirements for technical equipment facilitating access for passengers with reduced mobility which are harmonized in this respect with the applicable requirements of the EU Directive 2001/85/EC. These requirements should be applied by the 42 countries that are parties to the Agreement, done at Geneva on 20 March 1958.

- Websites (particularly of public administration bodies) should meet the requirements of e-accessibility defined by W3C Consortium in guidelines WCAG 1.0 and WCAG 2.0.

For information on Polish standards see point g. below.

d. Changes in legislation/regulation linked to the implementation of the UN CRPD

The awareness on accessibility has been raised thanks to dissemination of information concerning not only provisions of the UN Convention on the Rights of Persons with Disabilities but also other EU documents as well as the Recommendation Rec(2006)5 of the Committee of Ministers of the Council of Europe to member states on the "Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015". This might probably contribute to:

- better implementation of the provisions concerning needs of persons with disabilities and persons with reduced mobility, included in EU regulations and national special regulations adopted in accordance with the EU legislation regarding rights of passengers (in 2011 the technical conditions to be met by buildings and facilities of underground and by trams and trolley buses and their necessary equipment were defined in two regulations of the Minister of Infrastructure);
- improvement of access for persons with disabilities to enjoyment of the right to vote (the new Act-Election Code entered into force on 1 August 2011; the Act provides, inter alia, for: ensuring the accessibility of information concerning election and the accessibility of polling stations for people with reduced mobility, the possibility for a voter with a severe or moderate degree of disability to vote by post or to delegate somebody to vote on his/her behalf, possibility to vote using overlays to vote cards prepared in Braille).

e. Services regulated for accessibility

The Act on Spatial Planning and Management and the Act - Law on Construction introduced the obligation to consider the needs of persons with disabilities in new construction projects, but also when modernizing existing buildings as well as multi-family dwelling housing. Technical standards that buildings and related installations (including parking lots) should fulfil are set out in the regulation implementing the Act – Law on Construction in force since 1995. These standards are to be applied when planning, building or remodelling.

The services in the following areas are regulated by additional legal provisions ensuring accessibility for persons with disabilities:

- public transport (the Act – Transportation Law, according to which carriers are obliged to ensure proper conditions of safety and hygiene as well as comfort and due

services for users, and should undertake actions facilitating the use of means of transport by travellers, particularly by persons with reduced mobility and disabled persons;, the Act on Public Collective Transport, which obliges to take into account the needs of persons with disabilities and persons with reduced mobility as concerns defining requirements for means of transport and organization of transport services; the Act – Air Law, which - in Annex No 2 to the Act - set up the system of fines for breach of provisions of the Regulation (EC) No 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air; this system of fines came in force on 18 September 2011),

- telecommunication (the Act - Telecommunication Law provides that telecom operators are obliged to ensure disabled persons access to services of general access, also by providing the necessary facilities particularly for blind and dim-sighted persons, persons using hearing aids, deaf or dumb persons and wheelchair users. Special requirements in this field are included in the regulation implementing provisions of the Act),
- post (the Act – Postal Law introduces an obligation for operators providing general access postal services to undertake adaptations enabling persons with disabilities' access to services),
- audio-visual media (since 1 July 2011 the amended Act on Radio and Television Broadcasting obliges television broadcasters to ensure the availability of programs for persons with visual or hearing impairments by introducing appropriate facilities such as audio description, subtitling for the deaf and sign language translations; at least 10% of the quarterly time of broadcasting, with the exception of advertising and telesales, should have such facilities),
- health (the Regulation of the Minister of Health of 2 February 2011 on requirements to be met with regard to technical and sanitary facilities and equipment of health care institutions, issued according to the Act of 15 April 2011 on Medical Activity),
- education (the Act on System of Education provides that the system ensures any citizen the right to education and sets up various obligations for public authorities to enable people's enjoyment of this right; for example it sets up an obligation for local self-government to provide students with disabilities, in the age 5-21, free transportation and care during transport to the nearest school),
- higher education (The Act – Higher Education Law stipulates that among main tasks of university or other school is creating conditions for people with disabilities to participate fully in the process of education and research; terms and procedure of recruitment for entrance exams should take into account the specific needs of candidates who are disabled, and the statute of study have to specify how to adapt the organization and proper implementation of the educational process to the specific needs of students who are disabled, including adapting the conditions of study to the type of disability. Moreover, the Act provides (in art. 164.3) that didactic classes for students may also be conducted with the use of methods and techniques of distance education. This creates possibilities particularly for persons with reduced mobility to use e-learning courses. There is a special scholarship for disabled students, in the amount depending on student’s degree of disability, available irrespective to social scholarship),
- hotel industry (the Regulation on the hotel facilities and other facilities in which hotel services are provided, issued according to the Act on Tourism Services),
- information provided by entities implementing public tasks (the Act on Informatization of Activities of Entities Performing Public Tasks - by the virtue of the amendment of the Act, which came into force in June 2010, the definition of minimal

requirements for ICT systems, on which Council of Ministers is authorized to issue regulations, was completed bearing in mind the need to ensure access to information resources for persons with disabilities; the Act on Access to Public Information),
- sports facilities (there is an obligation, introduced by the Act - Law on Construction, to take into account the needs of persons with disabilities when planning and building any new sports buildings and facilities, in a way similar to other constructions of public use, and also when modernising or remodelling existing ones),
- contacts between persons with disabilities and public administration organs or services (the Act of 18 August 2011 on sign language and other means of communication).

A number of universities establish their standards for actions enabling persons with various kinds of disabilities to study. Some activities in this area are financially supported by the State Fund for Rehabilitation of Persons with Disabilities (PFRON).

f. Goods regulated for accessibility as part of a service

Ensuring accessibility of services is a matter of general law (i.e. of the legal acts). And the special accessibility requirements are defined in legal regulations, implementing these acts, that have more technical nature, or often in the Polish standards.

The Act on System of Education provides that the system ensures any citizen the right to education and sets up various obligations for public authorities to enable people enjoyment of this right. There are available manuals and auxiliary books for blind students (in Braille) and for partially-sighted students (in enlarged print), as well as manuals for special education of students with mental retardation and deaf students.

g. Goods regulated for accessibility

There are, *inter alia*, special accessibility legal provisions concerning:

- construction of school busses (defined in the Regulation of Minister of Infrastructure on the technical conditions for vehicles and the scope of their necessary equipment, issued by virtue of the Act – Road Traffic Law),
- technical conditions to be met by trams and trolleybuses and their necessary equipment, taking into account needs of persons with disabilities (included in the Regulation of the Ministry of Infrastructure issued according to the Act – Transportation Law).

Goods are manufactured in Poland in accordance with the Polish standards issued by the Polish Normalization Committee. There are for example several Polish standards defining requirements for technical aids for persons with disabilities manufactured as medical devices in accordance with the provisions of Directive 93/42/EEC.

The classification of technical aids that are used by persons with disabilities, based on their basic function, has been introduced by the Polish Standard PN-EN ISO 9999:2007. The classification covers the following eleven classes: aids for individual therapy; aids for exercising; orthotics and prostheses; aids for personal care and protection; personal mobility aids; household aids; equipment and adaptation of home and other premises; aids enabling communication and information; aids to use the products and goods; aids and equipment to improve the environment, tools and machines; aids for recreation.

Polish standards associated with the accessibility of transport regards to "Technical aids for the blind and visually impaired. Sound signaling on pedestrian crossings with traffic lights. PN-Z-80100:2004 "and "Accessibility of objects and facilities for persons with disabilities. Signs of public information PZ-Z-80101:2007".

h. Enforcement of accessibility legislation

Enforcement of accessibility requirements is done mainly in the field of construction and technical equipment and has administrative nature.

Construction supervision, i.e. control and monitoring system of construction processes, is exercised by the General Inspector of Construction Supervision (on the central level) and bodies of architectural and construction supervision (on voivodship and powiat levels) as well as of specialized construction supervision which control *inter alia* compliance of architectural and construction solutions with relevant legal provisions, standards and principles of technical knowledge.

The Act - Law on Construction provides that buildings must be designed and constructed in the manner specified in the regulations, providing, among others, conditions necessary for persons with disabilities, in particular wheelchair users, to use buildings and other constructions of public use and multi-family dwelling-houses. As concerns such buildings, derogations from the technical and construction provisions may not result in reducing the accessibility for persons with disabilities.

A construction project must be approved by the competent authority. The project should include information concerning accessibility for persons with disabilities. Any deviation from the approved construction project, related to ensuring the conditions necessary for use of the building by persons with disabilities, constitute a significant deviation from the project and as such require a decision on changing the building permit.

It is necessary to notify the relevant construction supervision body of completion of the construction which requires a building permit. The construction supervision inspectorate can then carry out the mandatory inspection of construction. The check includes, among other things, verifying compliance with the architecture and construction project in providing the conditions necessary for use of the building by persons with disabilities, as concerns public use buildings and multi-family dwelling housing. If irregularities are found, apart from the refusal of the decision to permit the use of an object, it shall impose a fine provided for in the Act - Law on Construction.

The General Inspector of Construction Supervision and voivodship inspectors of construction supervision are relevant authorities for construction products. A construction product may be placed on the market if it is suitable for use in the performance of works, to the extent corresponding to its functional characteristics and intended purpose and enables meeting basic requirements by the construction object. Who is marketing a construction product not suitable for use in the performance of works, is subjected to a fine.

Technical devices (for example lifts and lifting platforms for persons with disabilities), defined in the Act on technical inspection, are subjected to technical inspection during their designing, manufacturing (including manufacturing materials and components), installation,

repairing and modernizing, marketing and operating. The factory manufacturing technical devices should have the appropriate permission issued by the competent technical inspection authority.

Who allows to operate technical devices without obtaining the decision of the competent body of technical inspection unit on the release of device for use or marketing, or against the decision to suspend operation of a technical device or withdraw from the market, is subjected to a fine (according to the Code of Procedure in Cases of Misconduct) or penalty of restriction of liberty.

The Office of Electronic Communication has introduced the Senior Certificate and Certificate "Without Barriers" for telecommunication companies who offer special services for the elderly and persons with disabilities.

i. Non-compliance and litigation

A case on non-compliance of accessibility legislation, considered as violation of the rule of non-discrimination and equal treatment, may be brought, by the individual person or by an NGO, to court or to the Ombudsman, officially called the Human Rights Defender.

The Human Rights Defender, who safeguards human rights and freedoms specified in the Constitution and other legislative acts, as well as safeguards implementation of the rule of equal treatment, investigates whether there has been an infringement on the legal regulations or rules of social coexistence and justice as a result of action or neglect by the bodies, organizations or institutions obliged to comply with and implement such freedoms and rights. After investigation of a case, the Human Rights Defender may, among others:

- address the motion to the body, organization or institution, if he considers its action as an infringement of the human and civil freedoms and rights,
- request to start civil legal proceedings or take part in such ongoing proceedings with the rights of a public prosecutor.

Community organizations, including non-governmental organizations representing the interests of persons with disabilities, are granted with special procedural rights in the Polish law:

- According to the Code of Civil Procedure, in cases regarding the protection of consumers, the community organizations whose statutory objectives include the protection of equal status and the principle of non-discrimination may, upon the consent of the citizens, institute actions on behalf of the citizens, and may, upon the consent of the claimant, join the proceedings at any stage thereof. Such organisations, even if they do not participate in proceedings, may present to the court an opinion which is essential to the case in the form of a resolution passed by their duly authorised bodies.
- According to the Administrative Procedure Code, in a case concerning an individual person, a community organization shall have the right to file a demand to initiate proceedings and to be admitted to participate in proceedings if the statutory objectives of that organization justify it and it is in the social interest. A state administration agency, acknowledging the demand of the community organization as well-founded, shall decide on initiating the proceedings ex officio, or on admitting the organization

to participate in the proceedings. Denial to initiate proceedings or to admit the community organization to participation in the proceedings may be subjected to complaint. The community organization shall participate in proceedings enjoying all the rights of the party to the proceedings.

Furthermore, a state administration agency, initiating the proceedings in a case concerning an individual person, shall notify a community organization of the proceedings if it decides that the organization can be interested in these proceedings on account of its statutory objectives and if it is in the social interest. A community organization even if it does not participate in the proceedings may, with the approval of a state administration agency, submit its opinion in the case, expressed in the resolution or in the declaration of its statutory body, to that agency.

Any person against whom the principle of equal treatment has been infringed is entitled to compensation. In matters of breach of the principle of equal treatment provisions of the Act - Civil Code apply.

Portugal

a. Accessibility legislation: its place in the legal and regulatory framework

Portugal has an anti-discrimination law, Law No. 46/2006 of 28th August, which legislates on matters relating to discrimination in general, and also with discrimination in the areas of accessibility.
However, in technical terms, the issues of accessibility are legislated by Decree-Law No. 163/2006 of 8th August.

b. General law, technical regulations and standards

See point g.

c. Role of national, European and international standards

The Portuguese legislation in the field of accessibility has national concepts, but also complies with European standards. It should be noted in the introduction of the European Card in Portuguese legislation, the European Directive on buses, measures the European Concept of Accessibility of the European Commission, Air Transport - new rights for people with reduced mobility.

d. Changes in legislation/regulation linked to the implementation of the UN CRPD

The ratification of UN Convention on the Rights of Persons with Disabilities is after the entry into force of legislation that regulates accessibility. Thus, it is the intention of Portugal to make changes to Decree-Law No. 163/2006 of 8th August

e. Services regulated for accessibility

By 2006, the existing legislation in Portugal on accessibility was applicable only to government services. With the entry into force of Law No. 46/2006 of 28th August and Decree-Law No. 163/2006 of 8th August, the government departments and private entities have become the subject of regulation.

f. Goods regulated for accessibility as part of a service

The Decree-Law No. 163/2008 of 8th August contains a set of technical standards to improve accessibility for people with reduced mobility, in particular, on public roads, buildings and establishments in general, and also buildings, establishments and facilities for specific use and, finally, accessible routes.

g. Goods regulated for accessibility

The legislation in force in Portugal on accessibility laws in general and abstract. However, the transport, telecommunications and other services conform to technical standards applicable to each sector.

h. Enforcement of accessibility legislation

Complaints relating to discrimination in the area of accessibility, and taking into account the Law No 46/2006 of 28th August and Decree-Law No. 163/2006 of 8th August, can be treated in an administrative form, which is the submission of a complaint, the process of opening a misdemeanour procedure and, if confirmed, imposing a fine. They can also be treated with legal recourse to the courts.

i. Non-compliance and litigation

Individual citizens, non-governmental organizations of disabled persons or other entities can file complaints for violation of legislation on accessibility, which can be from the civil courts in general or even with the Ombudsman.

Romania

a. Accessibility legislation: its place in the legal and regulatory framework

The Law no. 448/2006 Regarding the Protection and Promotion of the Rights of Disabled Persons, with further completions and modifications, (http://www.anph.ro/eng/news.php?ida=5) has a chapter (chapter IV) dedicated to accessibility: that foresees in view of ensuring the access of disabled persons to the physical, informational and communicational environment.

b. General law, technical regulations and standards

- The Norm 051/2001 for the adaptation of the civil buildings and the urban space to the needs of persons with disabilities was approved by the Order no 649/2001 of Minister of Public Work, Transport and Home. In the present the Norm is the subject of modifications, the deadline for the new Norm is the end of 2012.
- The Norm sets the minimum quality conditions required by the users (persons with disabilities) from the civil buildings, buildings for public utility and the afferent urban space, in accordance with Law 10/1995 (the Law of quality in constructions).
- The Guide regarding the designing the web pages for the authorities and institutions of central and local public administration. The Guide is addressed to public administrations using ICT.
- http://www.mcsi.ro/Minister/Domenii-de-activitate-ale-MCSI/Tehnologia-Informatiei/Ghiduri-IT-%281%29/Realizarea-paginilor-web-pentru-autoritatile-si-in

c. Changes in legislation/regulation linked to the implementation of the UN CRPD

Romania will harmonize the national legislation with the UN Convention on the Rights of Persons with Disabilities by the end of 2012.

d. Services regulated for accessibility

Physical environment:

- The public utility buildings, the ways of access, the dwelling buildings constructed using public funds, the common transportation means and their stations, the cabs, the railway transport wagons for the travellers and the platforms of the main stations, the parking spaces, the public streets and roads, the public telephones, the informational and communicational environment shall be adapted according to the legal provisions in the field, so as to allow the free access of disabled persons.
- The buildings in the patrimony and the historical buildings shall be adapted, observing the architectonic characteristics, according to the specific legal provisions.
- The authorities provided by law shall issue the building permit for the public utility buildings subject to the observance of the legal provisions in this field, so as to allow the free access of disabled persons.

Transport:

- In order to facilitate the free access of disabled persons to transport and travel, the local public administration authorities shall take measures for:
    i. the adaptation of all the common transportation means in circulation;

ii. the adaptation of all the stations of common transportation means according to the legal provisions, including the marking by tactile pavement of the access spaces to the entry door in the means of transport;
iii. the mounting of the bill boards corresponding to the needs of the persons with a visual and hearing handicap in public transportation means;
iv. the printing in capital letters and contrasting colours of the routes and numbers of the transportation means.

- All the taxi operators shall ensure at least a car adapted to the transport of the disabled persons using the wheel chair.
- The refusal of taxi drivers to ensure the transport of the disabled person and walking device shall be deemed as discrimination.
- adapting the pedestrian crossings on the public roads and streets according to the legal provisions, including the marking by tactile pavement;
- the installation of visual and sound signalling systems at the intense traffic crossroads.
- guide dogs accompanying persons with a severe disability shall have a free and free of charge access to all the public places and in the means of transport.
- The railway infrastructure administrators and the railway transport operators shall:
  i. adapt at least one wagon and the main train stations in order to allow the access of the disabled persons using the wheel chair;
  ii. mark by a contrasting tactile pavement the ways to the embarking platforms, counters or other utilities.
- In the parking spaces next to public utility buildings and in the organized ones, at least 4% of the total number of parking lots shall be adapted, reserved and signalled by an international sign, but not less than two lots, for the free of charge parking of the means of transport for disabled persons.
- The disabled persons or the legal representatives thereof, upon request, may benefit from a card-permit for free parking lots. The vehicle transporting a disabled person owning a card-permit shall benefit from free of charge parking.
- In the parking spaces of the public field and as close to the domicile as possible, their administrator shall distribute free of charge parking lots to the disabled persons who requested and need such parking.

<u>Communications and informational environment:</u>

- Publication houses shall make available the electronic matrixes used for printing magazines and books to the authorized legal persons requesting them to transform them in a format accessible to the persons with sight or reading deficiencies, according to the copyright and related rights, as subsequently amended and supplemented.
- Public libraries shall establish sections with books in formats accessible to the persons with sight or reading deficiencies.
- Telecom operators shall:
  i. adapt at least one booth to a public telephone battery according to the legal provisions in force;
  ii. provide information on the cost of services in forms accessible to disabled persons.
- Banking services operators shall make available to disabled persons at their request, account statements and other information in accessible formats.
- The employees of the operators of banking and mail services shall assist in the filling in of forms, at the request of disabled persons
- The owners of hotels spaces shall:
  i. adapt at least one room for the housing of the disabled person using the wheel chair;

ii. mark by tactile pavement or carpets the entry, the reception desk and own the tactile map of the building;
iii. mount elevators with tactile signs.

- The local and central authorities and institutions shall ensure, for the direct relations with the persons with a hearing or deafblind handicap, authorized interpreters of the mimic and gesture language or of the specific language of the deafblind person.
- The public local and central authorities and the private law or public local and central institutions shall provide information and documentation services accessible to disabled persons.
- The public relation services shall display and dispose of information accessible to the persons with a visual, hearing and mental handicap
- The public authorities shall take measures for:
  i. - making accessible their own web pages, in view of improving the accessing of electronic documents by the persons with a sight and mental handicap;
  ii. - the use of pictograms in all the public services;
  iii. - the adaptation of telex and telefax telephones for the persons with a hearing handicap.

In the purchase of equipment and software, the public institutions shall take into account the observance of the accessibility criterion.

e. Goods regulated for accessibility

The public authorities shall take measures for:

- making accessible their own web pages, in view of improving the accessing of electronic documents by the persons with a sight and mental handicap;
- the use of pictograms in all the public services;
- the adaptation of telex and telefax telephones for the persons with a hearing handicap.

In the purchase of equipment and software, the public institutions shall take into account the observance of the accessibility criterion.

Telecom operators shall:

- adapt at least one booth to a public telephone battery according to the legal provisions in force

The railway infrastructure administrators and the railway transport operators shall:

- adapt at least one wagon and the main train stations in order to allow the access of the disabled persons using the wheel chair

Visual and sound signalling systems at the intense traffic crossroads.

All the taxi operators shall ensure at least a car adapted to the transport of the disabled persons using the wheel chair.

The local public administration authorities shall take measures for:

- the adaptation of all the common transportation means (buses, trams) in circulation.

f. Enforcement of accessibility legislation

The Law no. 448/2006 Regarding the Protection and Promotion of the Rights of Disabled Persons, with further completions and modifications is mentioning in Chapter IX / Legal Responsibility the facts which are deemed as minor offences and sanctioned by fines: http://www.anph.ro/eng/news.php?ida=5 (e.g. the parking of other means of transport on the parking lots adapted, reserved and signalled through an international sign for disabled persons; the issuance of disability degree certificates breaching the criteria, etc).

The Social Inspection, a governmental structure, is responsible with the control of the implementation of accessibility.

g. Non-compliance and litigation

A person can bring a case on non-compliance of accessibility legislation to court. The claim can be brought by an individual, or an NGO. The court can decide to give a sanction by fine and by binding to make the service accessible.

Slovakia

a. Accessibility legislation: its place in the legal and regulatory framework

Railway transport

The issue of access for persons with disabilities to railway transport services is governed by regulation (EC) no. 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (hereinafter referred to as the "Regulation"). The regulation lays down the obligation for railway undertakings or the infrastructure manager to provide disabled persons and persons with reduced mobility the right to carriage on a non-discriminatory basis. Disabled persons and persons with reduced mobility are entitled to information on the accessibility of rail services and on the conditions of access to carriages and on facilities in trains. It also establishes the obligation for railway undertakings and infrastructure managers in accordance with the technical specifications for interoperability (TSI) to ensure the accessibility of stations, platforms and other facilities for disabled persons and persons with reduced mobility. The TSI PRM also applies fully in the purchase of new and the upgrading of existing rolling stock. They establish the obligation to ensure accessibility of vehicles for people with reduced mobility and disabled persons. Station managers are obliged to provide assistance to persons with reduced mobility and disabled persons for the purpose of boarding/alighting from a service for which they have purchased a transport ticket. In the case of the complete or partial loss of or damage to mobile equipment or other special equipment used by disabled persons or persons with reduced mobility, no limit on compensation is applied from the side of the railway undertaking.

Road transport

On 10 November 2011 there entered into force technical regulation "TP 10/2011 – Design of barrier-elimination measures for persons with reduced mobility and orientation on roads", which is the methodology for creating barrier-free measures, lays down requirements for the design of barrier-elimination measures for persons with reduced mobility and orientation on roads and provides specimen graphic prints of barrier-elimination measures for persons with reduced mobility and orientation, with a description and reasoning for the use of specific solutions. Severely disabled persons are entitled to exemption from paying for motorway toll stickers. Under § 6(6)(ch) of Act no. 135/1961 Coll. on roads, as amended, no payment is made in the case of motor vehicles and vehicle combinations for which a financial contribution is provided to persons with severe disability for increased costs associated with the operation of a passenger motor vehicle under § 8 of Act no. 447/2008 Coll. on financial contributions for compensation of severe disability and amending certain laws.

Electronic communications and postal services

Government Resolution no. 360 of 13.5.2009 approved the National Policy for Electronic Communications for 2009 to 2013, which sets out the strategy for the development of electronic communications networks and services in the Slovak Republic, in particular in the field of the harmonisation of the regulatory framework, the development of competition, use of the frequency spectrum, privacy and security, crisis management and critical infrastructure, international cooperation and development of innovative services. In accordance with the National Policy for Electronic Communications for 2009 – 2013 and with the Strategy for the Transition from Analogue to Digital Terrestrial TV and Radio Broadcasting in Slovakia, 2011 saw the digitalisation of terrestrial television. Digital technology provides possibilities on the basis of which even persons with severe disabilities benefit from television in such a degree

that was not achievable with analogue solutions. Digital television broadcasting allows such services as closed captioning and narration, and allows greater functionality in the form of advanced electronic programme guides.

In the framework of the transition to digital broadcasting in accordance with § 67 (4) of the Digital Broadcasting Act, from 15.3.2011 to 31.8.2011 the MTCRD SR provided a one-time non-repayable grant to purchase equipment for receiving digital television, regardless of reception platform, in Slovakia. Grant applications could be submitted by severely disabled persons who are beneficiaries of payment in material distress, or persons assessed jointly with beneficiaries.

The standing of disabled persons is covered by Act no. 351/2011 Coll. on electronic communications, which entered into effect on 1.11.2011. The act, in the field of regulating consumer relations in electronic communications in certain cases, specifically emphasises the standing of disabled customers. This concerns in particular the extension of obligations on undertakings providing electronic communications to provide information for disabled persons on services intended for them, the obligation to take measures to ensure equal access to services for end users with disabilities. There is also the possibility here for the SR Telecommunications Regulatory Authority to impose an obligation to provide free information on cost control for an electronic communications service provided to a disabled customer. In the case of universal service, the SR Telecommunications Regulatory Authority may impose the obligation to lease or sell, if a disabled user so requests, a specially equipped telecommunications terminal appropriate to his disability for the price of a standard telecommunications terminal, or to ensure barrier-free access to selected public payphones.

On the basis of an intergovernmental agreement, the Universal Postal Convention (SR Ministry of Foreign Affairs Notice no. 50/2010 Coll. on the acceptance of Acts of the Universal Postal Union), the Slovak Postal Service (Slovenská pošta, a. s. hereinafter referred to as "Slovak Post"), provides a domestic and international Postal Service for visually impaired users for free posting of items identified as a "blind literature" weighing up to 7000 g. The content of these items may be documents prepared for the blind (Braille script) or pressed relief Latin (Klein script), blocks with Braille labels, audio recordings on electromagnetic and optical media, special papers for the blind, but only if they are posted by an institution for the blind, or if they are addressed to such an institution.

Construction and housing policy

The main policies, principles and requirements ensuring a barrier-free environment and accessibility of buildings in the Slovak Republic are incorporated into the following generally binding legal regulations:

- Act no. 50/1976 Coll. on zoning and the building code (the Building Act) as amended;
- Decree no. 532/2002 Coll. laying down details on general technical requirements for construction and general technical requirements for buildings used by persons with reduced mobility and orientation (which replaced the previous Decree no. 192/1994 Coll.).

Education

Accessibility in education pursuant to Article 9 of the Convention on the Rights of Persons with Disabilities (hereinafter referred to as the "Convention") is codified in Act no. 365/2004 Coll. on equal treatment in certain areas and protection against discrimination, amending certain other laws (the Antidiscrimination Act) as amended at all levels of education. Its principle is reflected in generally binding legal regulations of the education sector, governing

the admission of pupils to schools and their education. The basic right to accessibility of education for pupils with disabilities in schools providing pre-primary, primary and secondary levels of education is laid down in the provisions of § 6 (3) and § 9 (4) of Act no. 596/2003 Coll. on central government in education and school authorities and on the amendment of certain acts, as amended. The provisions of § 144(2) and (3) of Act no. 245/2008 Coll. on education (the Schools Act) and on the amendment of certain acts as amended guarantee their right to specific forms and methods in education corresponding to their needs and the right to use special textbooks and special didactic and compensatory aids, sign language, Braille and alternative ways of communicating. Further particulars regarding the admission of pupils with disabilities to schools, their graduation and the organisational arrangements of their education, besides the above-mentioned Act no. 245/2008 Coll. on education (the Schools Act) and on the amendment of certain acts as amended, are governed also in particular by its following implementing regulations: SR Ministry of Education Decree no. 320/2008 Coll. on primary schools as amended by Decree no. 224/2011 Coll., SR Ministry of Education Decree no. 282/2009 Coll. on secondary schools as amended by Decree no. 268/2011 Coll., SR Ministry of Education Decree no. 318/2008 Coll. on the completion of study at secondary schools as amended by SR Ministry of Education, Science, Research and Sport Decree no. 209/2011 Coll.

Culture

An important step in creating stable elements in the care of culture for people with disabilities and of the accessibility of cultural services is SR Act of Parliament no. 434 of 26 October 2010 on the granting of subsidies by the Ministry of Culture of the Slovak Republic (hereinafter the "Ministry of Culture"). The act provides for the purpose, scope, method and conditions for granting subsidies by the Ministry of Culture. In § 2 – Purpose of granting subsidies – as follows: paragraph (1). The Ministry may in the respective budgetary year provide subsidy from the state budget for these purposes: in point f) – cultural activities of disabled or otherwise disadvantaged groups. Promotion of the availability of cultural services is often dependent on the creation of financial mechanisms and limits in this field.

b. General law, technical regulations and standards

Railway transport

In the code of carriage of a passenger rail carrier there is codified its obligation in connection with the infrastructure manager to provide free assistance upon boarding/alighting from a train if the passenger gives prior notification of their intended destination.

Road transport

On 10 November 2011 there entered into effect the technical regulation "TP 10/2011 – Design of barrier-elimination measures for persons with reduced mobility and orientation on roads"

Water transport

The issue of non-discrimination and the exercise of rights of persons with disabilities and persons with reduced mobility in water transport is governed by Regulation (EU) No 1177/2010 of the European Parliament and of the Council.

Construction and housing policy

The main policies, principles and requirements ensuring a barrier-free environment and accessibility of buildings in the Slovak Republic are incorporated into the following generally binding legal regulations:
– Act no. 50/1976 Coll. on zoning and the building code (the Building Act) as amended;
Decree no. 532/2002 Coll. laying down details on general technical requirements for construction and general technical requirements for buildings used by persons with reduced mobility and orientation (which replaced the previous Decree no. 192/1994 Coll.).

The provisions of the Building Act relating to basic requirements for constructions are taken from Council Directive 89/106/EEC (from Annex 1). The act mandated also general technical requirements for buildings used by persons with reduced mobility and orientation, which are detailed in Decree no. 532/2002 Coll.. Zoning documentation, architectural designs and construction projects must meet the conditions specified by this Decree, whereby the attributes of barrier-free access in the most basic features will be achieved; typological principles for making environments and buildings accessible are set out in a manner compatible with standards of other European countries.
General technical requirements for buildings used by persons with reduced mobility and orientation apply, irrespective of the building owner, to

- apartment buildings and other buildings for housing,
- an apartment, if it is to be used by a person with reduced mobility and orientation (a special-purpose apartment),
- a house, if it is to be used by a person with reduced mobility and orientation (a special-purpose house),
- a non-residential building in the part intended for use by the public,
- a building in which there is envisaged the employment of persons with reduced mobility and orientation (building with a sheltered workplace),
- an engineering construction in a part intended for use by the public.

c. Role of national, European and international standards

Water transport
The issue of non-discrimination and the exercise of rights of disabled persons and persons with reduced mobility in water transport is governed by international European standards.

Electronic communications and postal services:
The MTCRD SR in connection with the rights of disabled people was actively involved in the commenting process, voting and translation of European standards adopted in the system of Slovak Technical Standards, listed in the attached Table 1.

Construction and housing policy
The provisions of the Building Act relating to basic requirements for constructions are taken from Council Directive 89/106/EEC (from Annex 1). The act mandated also general technical requirements for buildings used by persons with reduced mobility and orientation, which are detailed in Decree no. 532/2002 Coll.. Zoning documentation, architectural designs and construction projects must meet the conditions specified by this Decree, whereby the attributes of barrier-free access in the most basic features will be achieved; typological principles for making environments and buildings accessible are set out in a manner compatible with standards of other European countries.

Education

Accessibility in education is codified in national legislation in accordance with European standards.

d. Changes in legislation/regulation linked to the implementation of the UN CRPD

Electronic communications and postal services

In accordance with the Convention on the Rights of Persons with Disabilities, Slovak Post is making barrier-free entrances for persons with reduced mobility and orientation in newly-opened post offices in accordance with the SR Ministry of Environment Decree no. 532/2002 Coll. laying down details on general technical requirements for construction and general technical requirements for buildings used by persons with reduced mobility and orientation (§ 57). Slovak Post at its leased and own premises in which barrier-free entrances have not been constructed is gradually making them and will continue to do so in the framework of the planned reconstruction and modernisation of post offices. Slovak Post also provides persons with disabilities, by agreement, all financial services and pension payments by means of a postman.

e. Services regulated for accessibility

Railway transport

The Regulation and Rail Transport Act provide for the provision of access to railway transport services for disabled persons and persons with reduced mobility on a non-discriminatory basis.

Air transport

The issue of non-discrimination and the application of rights of persons with disabilities and persons with reduced mobility in air transport was addressed by Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006, which creates rules for the protection and provision of assistance services for persons with disabilities and persons with reduced mobility in air transport, with the aim of protecting them against discrimination and of ensuring that they are provided assistance services.

Construction and housing policy

General technical requirements for buildings used by persons with reduced mobility and orientation apply, irrespective of the building owner, to:

- apartment buildings and other buildings for housing,
- an apartment, if it is to be used by a person with reduced mobility and orientation (a special-purpose apartment),
- a house, if it is to be used by a person with reduced mobility and orientation (a special-purpose house),
- a non-residential building in the part intended for use by the public,
- a building in which there is envisaged the employment of persons with reduced mobility and orientation (building with a sheltered workplace),
- an engineering construction in a part intended for use by the public.

Social affairs

The commitments made by signingthe Convention are reflected in Act no. 447/2008 Coll. on financial contributions to compensate for severe disability and on the amendment of certain acts, in particular through the provision of a financial contribution for personal assistance, where personal assistance ensures also help by means of interpreting in sign language,

articulation and tactile interpreting, as well as by means of a financial contribution for transport, a financial contribution for the acquisition of aids, a financial contribution for purchasing a passenger motor vehicle, a financial contribution to offset increased expenses associated with the operation of a passenger motor vehicle, a financial contribution for purchasing lifting equipment, a financial contribution for modification of an apartment, a financial contribution for modification of a house, a financial contribution for modification of a garage. In accordance with the Social Services Act (§ 9 of Act no. 448/2008 Coll.) providers of social services, both public and non-public (private) are required to meet general technical requirements for construction and general technical requirements for buildings used by persons with reduced mobility and orientation under a special regulation (the Building Act and implementing decree). Compliance with the barrier-free accessibility in the provision of social services is one of the criteria for evaluating the quality of a social service provided. In the interest of ensuring accessibility for persons with disabilities to various services in the framework of social services an interpreting service is provided (in sign language, articulation and tactile interpreting), escort and reading services (§§ 43 and 44 of the Social Services Act) to these people by professional social services staff.
http://www.employment.gov.sk/legislativa.html (Social Services Act)

Healthcare

The availability of health care in relation to severely disabled persons in Slovakia is not regulated, but is based comprehensively on an anti-discrimination approach. With regard to the needs of severely disabled persons, the obligation for compliance of the material and technical equipment of healthcare facilities pursuant to barrier-free access and movement within these facilities is established by Edict of the Ministry of Health of the Slovak Republic no. 09812/2008-OL on minimum requirements for staffing and material-technical equipment of individual types of healthcare facilities as amended, laid down under § 8(2) of Act no. 578/2004 Coll. on healthcare providers, health care workers, professional organisations in health care and amending certain laws as amended. The edict is published in the Journal of the SR Ministry of Health part 32-51, of 28 October 2008, Volume 56, link: *http://www.health.gov.sk/?vestniky-mz-sr*. This legislative material obliges healthcare facilities to provide barrier-free access and to enable patients with reduced mobility and orientation to move via horizontal communications, ramps or elevators. At individual departments there must be at least one shower cabinet accessible for persons with reduced mobility and also for a wheelchair with an immobile patient. Toilets for patients must have a door that can be opened outwards and at least one toilet cubicle must be accessible for patients with reduced mobility and orientation. The basic material equipment and instrumentation of a department must include at least one bed for persons with reduced mobility, including an antidecubitus bed. Through the law on the scope and conditions of payment for medicinal products, medical aids and dietary foods on the basis of public health insurance the Ministry of Health of the Slovak Republic sets out the scope and terms of payment for medicinal products, medical aids and dietary foods on the basis of public health insurance. In relation to people with disabilities, this consists primarily in maintaining the greatest affordability through regulation of the amount of supplementary payments, by setting prescription, indicative and quantitative restrictions that reflect the special needs of these patients.

Education

A support service for enabling or improving the accessibility of education for pupils with disabilities is the legislatively established position of teaching assistant at a nursery school,

primary school and secondary school, including special schools. During higher education students with disabilities have the possibility to use the assistance of a coordinator for education of students with disabilities.

f. Goods regulated for accessibility as part of a service

Railway transport
The Regulation and Rail Transport Act provide for the provision of access to railway transport services for disabled persons and persons with reduced mobility on a non-discriminatory basis.

Education
Textbooks and textbook transcripts in formats suitable for pupils with visual impairments (textbooks in Braille, electronic textbooks).

g. Enforcement of accessibility legislation

As regards the issue of enforceability of rights in the field of access for persons with disabilities, anyone has the right to seek court protection of their rights, if they feel that their rights have been infringed through non-compliance with the principle of equal treatment on the grounds of their disability. They may also demand that the party who failed to comply with the principle of equal treatment refrain from such conduct, and, if possible, rectify the unlawful state or provide adequate redress. If adequate redress were not to be satisfactory, the aggrieved party may claim non-pecuniary damages in cash (§ 9 of Act no. 365/2004 Coll. the Antidiscrimination Act), as well as damage compensation.

Everyone has the right to protection of their rights also out of court, for example through mediation, by lodging complaints with public authorities, or by means of the Office of the Ombudsman.

Authorities are also involved in the enforceability of law in the field of access to products, facilities, services or an environment with regard to persons with disabilities. The competent authorities may impose fines for failure to comply with obligations imposed in relevant legislation, carry out compliance checks, and may refuse to issue or may revoke a licence.

For example, under § 43 of Act no. 514/2009 Coll. on rail transport as amended, the competent authority may impose on a rail undertaking a fine in the case that it fails to comply with the rights of passengers under a special regulation (Regulation of the European Parliament and Council. 137/2007 on the rights and obligations of rail passengers), or if it does not create conditions to improve passenger comfort and ease of movement and travel of select groups of passengers, passengers with child pushchairs and transport of guide dogs, for example through the fact that it does not provide guidance and information essential for passengers on rail vehicles for their safe carriage according to the carriage contract, including passengers with impaired hearing or sight.

In the field of construction, it is worth mentioning that the Building Act sets out basic general technical requirements for buildings used by persons with reduced mobility. The intention pursued is not simply the constitutionality of legislation, but also the possibility of better control and enforceability of law from the side of building authorities, since pursuant to § 43e of the Building Act “general technical requirements for construction, including general

technical requirements for buildings used by persons with reduced mobility and orientation specify requirements for the zoning-technical solution of a construction, the building-technical and purpose solution of buildings, under which legal persons, individuals, central and local governments are obliged to proceed in siting, designing, permitting, implementing, approving, using and removing buildings".

Implementing legislation, Decree no. 532/2002 Coll. lays down details on general technical requirements for construction and on general technical requirements for buildings used by persons with reduced mobility and orientation.

Railway transport
Supervision over the application of Regulation (EC) No 1371/2007 of the European Parliament and of the Council on rail passengers' rights and obligations is carried out by the Railway Regulatory Authority. If the case of a violation of the carriage code, the person affected has the right to turn with their complaint directly to the carrier, or to the Slovak Trade Inspectorate.

Water transport
As a result of Regulation (EU) No 1177/2010 of the European Parliament and of the Council, Act no. 338/2000 Coll. on inland waterway vessels is to be amended.

Education
The task of supervision over compliance with accessibility in education is performed by the State Schools Inspectorate.

Culture
The Ministry of Culture promotes the availability of library, museum and gallery services for persons with disabilities by means of implementing measures deriving from the government strategy papers: Strategy for Development of Slovak Libraries for 2008 – 2013 – measure no. 3.7: support for the availability of libraries for disadvantaged groups, including persons with disabilities (the document was approved in SR Government Resolution no. 943 of 7 November 2007), as well as by means of the Strategy for Development of Museums and Galleries to 2011 (the document was approved in SR Government Resolution no. 1078 of 20 December 2006). In objectives 4.1 and 4.5 there are detailed the measures supporting equal opportunities for disadvantaged groups including people with disabilities.

h. Non-compliance and litigation

Judicial system
"A person who has knowledge that accessibility legislation is being violated has the right to file a complaint to state authorities performing supervision and monitoring and to seek redress – this may concern, for example, barrier-free access issues, availability of websites for the visually impaired, etc. If the rights of a person are directly violated, that person is entitled to file at the competent court litigation to protect their rights, most usually a claim for protection against discrimination under the Anti-Discrimination Act.

There applies the general rule that anyone can claim their rights at court, if they are or have been subject to infringement of their rights, legally protected interests or freedoms through a failure to comply with the principle of equal treatment. In court proceedings a person may

require an offender to refrain from such conduct, if possible to rectify the unlawful state or provide adequate redress.

If through a violation of accessibility regulations, constituting a breach of the principle of equal treatment, there could be infringed the rights, legally protected interests and freedoms of a large or uncertain number of persons, or if through such a violation a public interest could otherwise be seriously endangered, the right to claim protection of the right at court pertains also to a legal entity established by law or whose aim or subject of activity is protection against discrimination. A legal person may seek in particular a decision that the principle of equal treatment has been infringed, and that the party who failed to comply with the principle of equal treatment refrain from such conduct and, if possible, rectify the unlawful state.

Protection of rights in connection with legislation and its potential conflict with international treaties by which the Slovak Republic is bound may be appealed by a person, for example through a complaint to the Ombudsman, who is entitled to submit to the Constitutional Court of the Slovak Republic a petition for commencing proceedings on the accordance of legislation if a generally binding legal regulation contravenes a fundamental right or freedom awarded to a natural person or legal person.".

Education

Any failure to comply with a right to accessibility in education of persons with disabilities is dealt with by an organisation at a higher management level, including the Ministry of Education, Science, Research and Sport of the Slovak Republic, the State Schools Inspectorate, the courts.

Culture

The Ministry of Culture is committed to protecting human dignity, fundamental rights and freedoms, to prohibiting the incitement of hatred and to preventing the spread of specific types of programmes by means of legislative measures. For the field of electronic media and video-on-demand, the protection of human dignity, fundamental rights and freedoms, the prohibition of incitement of hatred and prevention of the spread of specific types of programmes are permanently ensured by the provisions of § 19 of Act no. 308/2000 Coll. on broadcasting and retransmission and on the amendment of Act no. 195/2000 Coll. on telecommunications, as amended (hereinafter referred to as the "Broadcasting Act"). Under § 19(1) of the Broadcasting Act a video-on-demand service, a programme service and components thereof may not:

b) through the manner of their production and content infringe the human dignity and fundamental rights and freedoms of others,
c) promote violence and overtly or covertly incite hatred, denigrate or defame on the basis of gender, race, colour, language, faith and religion, political or other opinion, national or social origin, nationality or ethnic group,
d) promote war or describe cruel or otherwise in human conduct in a manner that inappropriately trivialises them, excuses them or approves of them,
e) depict without justification scenes of real violence, where there is unduly emphasised the actual course of dying or where there are depicted persons exposed to physical or mental suffering that is considered to be an infringement of human dignity; this applies even if the persons concerned have consented to such depiction.

The Council for Broadcasting and Retransmission (hereinafter referred to as the "Council") as the supervisory authority may impose on a broadcaster or a video-on-demand service provider

for a breach of obligations laid down in § 19 of the Broadcasting Act an obligation to broadcast a notice of the violation of the act, or to suspend provision of the programme, for at most 30 days. For a breach of such obligation the Council may concurrently impose on a broadcaster of a television programme service a fine from €3319 to €165 969, a broadcaster of a radio programme service a fine from €497 to €49 790, an Internet broadcaster a fine from €500 to €60 000 and a video-on-demand service provider a fine from €500 to €40 000. If a broadcaster, despite the imposition of repeated penalties, deliberately and seriously violates obligations laid down in § 19(1)(b) or (c) of the Broadcasting Act, the Council can revoke its licence.

Slovenia

a. Accessibility legislation: its place in the legal and regulatory framework

Slovenia has undertaken to respect prohibition of discrimination in relation to disability in all areas of human life, including accessibility. The basic rights for equalising opportunities arise from the Constitution of the Republic of Slovenia, in which Article 14 is worded as follows: "…everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status, disability or any other personal circumstance". The constitution explicitly emphasises the right to equality of persons with disabilities before the law and that nobody shall be discriminated against due to disability (Sendi and others, 2008 [77]).

The umbrella act regulating the area of protection of persons with disabilities is the 2010 Equalisation of Opportunities for Persons with Disabilities Act (ZIMI)[78]. The first chapter of the Act – elimination of discrimination against persons with disabilities – covers the area of access of buildings and facilities in public use, public transport, residence and goods / services provided by public. For this area, the strategic document "Action Programme for Persons with Disabilities 2017−2013)" [79] and the document "National guidelines to improve built environment, information and communications accessibility for people with disabilities"[80] are crucial.

On 7 December 2005 the Government adopted national Guidelines to improve accessibility for persons with disabilities to physical environment and information and communication, which are a comprehensive set of measures to be implemented by 2025. The objectives laid down in the National guidelines are based on a number of acts adopted by the Republic of Slovenia (such as in the area of environmental planning, building construction, accessibility to apartments, working environment and equipment, air and road transport, electronic communications, etc.). Access to services of public and private sectors and to the physical environment is considered to be the right of persons with disabilities and of all other functionally impaired persons. By this project the state aims at establishing accessible environment for living and work of all people and at providing all groups of people with equal opportunities both in the areas of education, culture and recreation and in the area of decision-making.

The technical aspect of managing the built environment, space and communications is regulated with the following: the Spatial Management Act[81], the Construction Act (ZGO-1)[82],

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[77] R. Sendi, B. Černič Mali, B. K. Kebler, B. Tominc, S. Mijukič, B. Kobal, S. Smolej and M. Nagode, (2008). *Ukrepi za uresničevanje pravic invalidov do dostopa brez ovir, končno poročilo* (Measures for the implementation of the rights of persons with disabilities for obstacle-free access, final report). Ljubljana: Urban planning institute of the Republic of Slovenia.

[78] Official Gazette of the Republic of Slovenia, No. 94/2010

[79] Available at: http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti_pdf/api_07_13.pdf (10 December 2010).

[80] Official Gazette of the Republic of Slovenia, No. 113/2005

[81] Official Gazette of the Republic of Slovenia, No. 110/2002 (8/2003 corr.), amendments: Official Gazette of the Republic of Slovenia, No. 58/2003-ZZK-1 (Land Register Act) , 33/2007-ZPNaèrt (Spatial Planning Act) 108/2009-ZGO-1C (Act amending the Construction Act), 79/2010 Odl.US (Ruling of the Constitutional Court): U-I-85/09-8, 80/2010-ZUPUDPP (Spatial Planning of Arrangements of National Significance Act).

[82] Official Gazette of the Republic of Slovenia, No. 110/2002, amendments: Official Gazette of the Republic of Slovenia, No. 97/2003 Odl.US (Ruling of the Constitutional Court): U-I-152/00-23, 41/2004-ZVO-1

the Rules on the requirements for free access to, entry to and use of public buildings and facilities and multi-apartment buildings[83], and the SIST ISO/TR 9527 National standard – building construction: needs of persons with disabilities and other functionally impaired persons in buildings[84] and the Use of Slovenian Sign Language Act [85].

Accessibility is also one of the objectives of the housing policy, based on the implementation of the National Housing Programme[86].

b. General law, technical regulations and standards

The majority of provisions on accessibility are determined in the sectoral legislative provisions, while more detailed technical requirements are given in regulations or standards.

Example:
The Construction Act regulates the conditions for construction of all kinds of works, sets out the essential requirements and the fulfilment thereof regarding the characteristics of works, prescribes the method and conditions for pursuit of the activities (Article 1 of ZGO-1), while the Rules on railway stations and stops facilities[87] specify the equipment of railway stations and stops that enables passengers and other persons equal, independent and safe access to trains and movement at train stations.

c. Role of national, European and international standards

The Slovenian legislation is developed on the grounds of European recommendations and directives, and UN recommendations and documents from the area of human rights and provision of equal opportunities to persons with disabilities for inclusion in society and for overcoming obstacles.

Example:
With the Construction Act, Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market has been transposed into Slovenian law (Official Gazette of the Republic of Slovenia, No. 376 of 27 December 2006, p. 36); also, the Directive of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications has been transposed (Official Gazette of the Republic of Slovenia, No. 255 of 30 September 2005, p.22) (Article 2 of the Construction Act).

d. Changes in legislation/regulation linked to the implementation of the UN CRPD

(Environment Protection Act), 45/2004, 47/2004, 62/2004 Odl.US (Ruling of the Constitutional Court): U-I-1/03-15, 102/2004-official consolidated text (14/2005 corr.), 92/2005-ZJC-B (Act Amending Public Roads Act), 93/2005-ZVMS (Veterinary Compliance Criteria Act), 111/2005 Odl.US (Ruling of the Constitutional Court): U-I-150-04-19, 120/2006 Odl.US (Ruling of the Constitutional Court): U-I-286/04-46, 126/2007, 57/2009 Skl.US (Constitutional Court Order): U-I-165/09-8, 108/2009, 61/2010-ZRud-1 (Mining Act), (62/2010 corr.).

[83] Official Gazette of the Republic of Slovenia, No. 97/2003, amendments: Official Gazette of the Republic of Slovenia, No. 77/2009 Odl.US (Ruling of the Constitutional Court): U-I-138/08-9.

[84] Official Gazette of the Republic of Slovenia, No. 92/1999, amendments: Official Gazette of the Republic of Slovenia, No. 97/2003

[85] Official Gazette of the Republic of Slovenia, No. 96/2002.

[86] Official Gazette of the Republic of Slovenia, No. 43/2000.

[87] Official Gazette of the Republic of Slovenia, No. 53/2002, amendments: 61/2007-ZVZelP (Railway Traffic Safety Act), 72/2009.

Ratification of the UN Convention on the Rights of Persons with Disabilities initiated the preparation and adoption of the Equalisation of Opportunities for Persons with Disabilities Act, the Electronic Communications Act[88] and amendments to the Vocational Rehabilitation and Employment of Disabled Persons Act[89].

e. Services regulated for accessibility

Unhindered movement of functionally impaired persons is guaranteed by Article 17 of the Construction Act (ZGO-1). The Act determines that all works in public use that are newly constructed, and works in public use that are reconstructed, must ensure that functionally impaired persons are able to access, enter and use the works without physical obstructions or communicational barriers.

The second paragraph of Article 17 lays down that every newly constructed or reconstructed works in public use, whose construction is carried out pursuant to the provisions of this Act and that does not have all its premises on the ground floor must be equipped with at least one lift or other appropriate device for such purposes.

With regard to the reconstruction of works in public use that are protected in accordance with regulations on cultural heritage, the essential requirements attained for the works may differ from those prescribed, but only under the condition that the deviation is not such that because of it there would be a threat to the safety of the works, to the lives and health of people, to traffic, to neighbouring works or to the environment (Article 17(3) of ZGO-1).

With regard to apartment buildings with more than ten apartments constructed pursuant to the provisions of this act, the requirement for ensuring unhindered access, entry and use must be fulfilled by at least one-tenth of all the apartments, and all joint premises intended for such apartments (Article 17(4) of ZGO-1).

Access, entry and use without physical obstructions or communicational barriers shall be ensured through project design and construction (Article 17(5) of ZGO-1).

In Article 2, the ZGO-1 defines that works in public use are works whose use is intended for all under the same conditions; such works are divided in terms of manner of use into public areas and non-residential buildings intended for public use. A public area is an area whose use is intended for all under the same conditions. A non-residential building intended for public use is a building whose use is intended for all under the same conditions. Public infrastructure works are civil engineering works that form a network serving a specific type of public utility of national or local importance or forms a network of general benefit to the public.

[88] Official Gazette of the Republic of Slovenia, Nos. 43/2004, 86/2004-ZVOP-1 (Personal Data Protection Act), 129/2006, 13/2007-official consolidated text, 102/2007-ZDRad (Digital Broadcasting Act), 110/2009, 33/2011.

[89] Vocational Rehabilitation and Employment of Disabled Persons Act (ZZRZI), Official Gazette of the Republic of Slovenia, Nos. 63/2004, 72/2005, 100/2005-official consolidated text, 114/2006, 16/2007-official consolidated text, 14/2009 Odl.US (Ruling of the Constitutional Court) : U-I-36/06-18, 84/2011 Odl.US (Ruling of the Constitutional Court): U-I-245/10-13, U-I-181/10-6, Up-1002/10-7, 87/2011.

The Use of Slovenian Sign Language Act, adopted in 2002, grants deaf persons the right to use Slovenian sign language, to be informed in techniques adjusted to their needs and lays down the scope and method of exercising the right to a sign language interpreter.

f. Goods regulated for accessibility as part of a service

The legislation referred to in point a. determines: accessibility of services provided in works in public use (in point e. in more detail); accessibility of public transport; public use of the Slovenian sign language (interpretation), and the right to assistive devices.

g. Goods regulated for accessibility

Based on legislation and public tenders, goods from the areas stated in point f. are adapted to and accessible to persons with disabilities, for example: books, medicinal products, public toilets, automated teller machines, phone booths, buses, vessels, aeroplanes, public transport ticket machines (in Ljubljana), and lifts.

h. Enforcement of accessibility legislation

The legislation contains penal provisions for non-implementing legal provisions and their violations; the transgressions are adjudicated by inspection services.

Example of penal provision:
Article 164 of the Construction Act determines that a fine of EUR 1,500 to EUR 30,000 shall be imposed upon a legal person if it "…fails to ensure that functionally impaired persons are able to access, enter and use a facility in public use of which it is the investor without physical obstructions or communicational barriers."

In article 96, the ZGO-1 lays down that in the procedure of issuing a permit for use, the relevant administrative body shall deny the issue of the permit if it establishes, inter alia, that the construction is non-compliant and the changes that arose during construction caused change in the location's conditions or other conditions and elements determined by the building permit that could affect health conditions, the environment, the safety of the works or a change in the prescribed essential requirements, provision of unhindered access and movement of functionally impaired persons.

i. Non-compliance and litigation

The right to judicial protection is declared in Article 23 of the Constitution, under which "Everyone has the right to have any decision regarding his rights, duties and any charges brought against him made without undue delay by an independent, impartial court constituted by law." (Kresal Šoltes, 2007[90]).

[90] K. Kresal Šoltes (2007): *Uveljavljanje in varstvo pravic* (Enforcement and protection of rights) in Barbara Kresal et al. (editor): *Vodnik po pravicah invalidov v slovenski zakonodaji*, (Guide to the rights of persons with disabilities in Slovenian law pp. 139-148. Ljubljana: Institute for Labour Law at the Faculty of Law, University of Ljubljana.

Anyone who believes that his right(s) were violated by an act or action of a state authority, local self-government body or bearer of public authorities, can turn to the Ombudsman, her four deputies or professional associates.
The Ombudsman can:

- warn the authority that has violated the right(s) to rectify the violation or the irregularity committed or even propose that it compensate for the damage caused;
- submit proposals for amendments to laws and other regulations to the Government or the Parliament;
- propose to all authorities that fall within her competence that they improve their operation and relations with clients;
- give her opinion on any case involving the violation of rights and freedoms. It does not matter what kind of proceeding is involved, or what phase the proceeding is at before the authority concerned.

The Ombudsman has no statutory powers in relation to the private sector and cannot intervene in cases in which rights are violated by, for example, a private company. In such cases, she can put pressure on state authorities, local self-government bodies and bearers of public authorities responsible for supervising the work of a private undertaking (Ombudsman's website[91]).

The Advocate of the Principle of Equality prevents and eliminates discrimination in Slovenia. He examines petitions or complaints concerning alleged cases of discrimination. He issues legally non-binding opinions on whether a person has been discriminated against in a certain situation (subject to unequal treatment because of personal circumstances). At the same time, he recommends to the offender ways to eliminate the violation, its causes and consequences. Through such non-formal intervention, the Advocate tries to eliminate the violation and provides help to improve future practice. When an issue cannot be resolved in this way, the Advocate may ask inspection authorities to prosecute for minor offences. A proceeding before the Advocate is cost-free and confidential. The Advocate also provides assistance to persons who were discriminated against during legal and other proceedings, i.e. by giving advice on legal remedies and how to use them before other state authorities. Anyone has the right to ask the Advocate for advice on whether their actions could result in discrimination, on how to act in order to avoid discrimination or how to more effectively respect the right to equal treatment. In addition, the Advocate provides general information on discrimination issues and the situation in this area in Slovenia (website of the Office for Equal Opportunities[92]).

[91] Available at: http://www.varuh-rs.si/ (9 February 2012).
[92] Available at: http://www.uem.gov.si/ (9 February 2012).

Spain

a. Accessibility legislation: its place in the legal and regulatory framework

The idea of integral accessibility that is promoted under the Law of Equal Opportunities, Non-Discrimination and Universal Accessibility of People with Disabilities (hereinafter referred to as LIONDAU; Ley de Igualdad de Oportunidades, No Discriminación y Accesibilidad Universal de las Personas con Discapacidad), means that the built environment has to be considered as a chain in which all links must be accessible, so that the accomplishment of the activities of a person with disability are not interrupted or impeded because one of the links in the chain, an environment or a space, is not accessible and does not let them advance along their journey by themselves.

The First National Plan of Accessibility contains the commitment of Governments in relation to the promotion of accessibility, which will be developed in successive three-year periods until 2012.

The Spanish Disability Strategy 2012-2020, approved in November 2011, is inspired by principles of Law 26/2011, 1 August, for the normative adaptation to the Convention on the Rights of Persons with Disabilities and Law 51/2003, 2 December, of equal opportunities, non discrimination and universal accessibility of people with disability (LIONDAU) that defines the concept of Universal Accessibility. One of the main objectives of this Strategy is Accessibility understood as the right of persons with disabilities to access the physical environment, transport, information technology and communications systems, and other facilities and services with the same conditions than the rest of the population. The first strategic measure on accessibility is to support the “European Accessibility Act” mentioned in the EU Disability Strategy 2010-2020.

In the Spanish legislative system, Autonomous Communities (Regional Governments) have the competencies for the development of laws to be applied within their territory. In particular, every Autonomous Community has its own accessibility legislation, which includes technical guidelines for its implementation.

Furthermore, in order to harmonize and to establish a general framework to be considered by all the regional authorities, the national government has issued the Law 51/2003 of equal opportunities, non discrimination and universal accessibility for people with disabilities.

In this Law 51/2003, lack of accessibility is seen as indirect discrimination. The technical issues related with its implementation are specified in several royal decrees and orders.

- Royal Decree 1417/2006, of 1 December, that establishes the Arbitral System for resolving complaints on equal opportunities, non discrimination and accessibility on the basis of disability.
- Royal Decree 366/2007 of 16 March, which sets forth the conditions of accessibility and non-discrimination of people with disabilities in their relations with the General State Administration.
- Royal Decree 505/2007 of 20 April, which sets forth the basic conditions of accessibility and non-discrimination of people with disabilities for accessing and using public spaces and buildings.
- Royal Decree 1494/2007, of 12 November, by which the Regulations on basic conditions for access for persons with disabilities to technologies, products and services related to the information society and social communication media are passed.

- Royal Decree 1544/2007, of 23 November, by which the basic conditions of accessibility and non-discrimination for access to and the use of means of transportation by people with disabilities are regulated.
- Royal Decree 173/2010, of 19 February, amending the Technical Building Code, approved by Royal Decree 314/2006 of March 17, in terms of accessibility and non discrimination of persons with disabilities.
- Royal Decree 422/2011, of 25 March, by which the Regulation on basic conditions for participation of persons with disabilities in political life and electoral processes are regulated.

All these regulations are available in both Spanish and English at http://sid.usal.es/spanishlawsondisability

Work is currently underway on the two Royal Decrees that are missing in order to complete the development of the LIONDAU, in accordance with what is foreseen in the aforementioned Law:

- Basic conditions of accessibility and non-discrimination for access to and the use of goods and services at the public's disposal.
- Training curriculum on universal access and the training of professionals.

b. General law, technical regulations and standards

In those areas where accessibility is regulated by a law as a general framework, its technical requirements are specified by different pieces of law within the Spanish legal system: Royal Decrees and Orders. Examples of these are listed under point g.

Besides, some technical standards are recognised as mandatory by law. An example of this is the UNE EN 81-70-2004 on accessibility to lifts for persons including persons with disability, which is included in the Spanish Technical Building Code, the normative framework that establishes the safety and habitability requirements of buildings set out in the Building Act.

c. Role of national, European and international standards

European standards are adopted and translated in Spain by AENOR, the Spanish Association for Standardization and Certification. AENOR also elaborates its own standards applicable only in Spain.

Some references (www.aenor.es):

- UNE 41510:2001 Accesibilidad en el urbanismo.
- UNE 41522:2001 Accesibilidad en la edificación. Accesos a los edificios.
- UNE 41520:2002 Accesibilidad en la edificación. Espacios de comunicación horizontal.
- UNE 41523:2001 Accesibilidad en la edificación. Espacios higiénico-sanitarios.
- UNE 41524:2010 Accesibilidad en la edificación. Reglas generales de diseño de los espacios y elementos que forman el edificio. Relación, dotación y uso.
- UNE 41500:2001 IN Accesibilidad en la edificación y el urbanismo. Criterios generales de diseño.
- UNE 200007:2007 IN Accesibilidad en las interfaces de las instalaciones eléctricas de baja tensión.
- UNE 153030:2008 IN Accesibilidad en televisión digital.
- UNE 139801:2003 Aplicaciones informáticas para personas con discapacidad. Requisitos de accesibilidad al ordenador. Hardware.

- UNE 139803:2004 Aplicaciones informáticas para personas con discapacidad. Requisitos de accesibilidad para contenidos en la Web.
- UNE-EN 81-70:2004 Reglas de seguridad para la construcción e instalación de ascensores. Aplicaciones particulares para los ascensores de pasajeros y de pasajeros y cargas. Parte 70: Accesibilidad a los ascensores de personas, incluyendo personas con discapacidad.
- UNE-EN 81-70:2004/A1:2005 Reglas de seguridad para la construcción e instalación de ascensores. Aplicaciones particulares para los ascensores de pasajeros y de pasajeros y cargas. Parte 70: Accesibilidad a los ascensores de personas, incluyendo personas con discapacidad.
- UNE-CEN/TS 81-82:2008 EX Reglas de seguridad para la construcción e instalación de ascensores. Ascensores existentes. Parte 82: Mejora de la accesibilidad a los ascensores de personas, incluyendo personas con discapacidad.
- UNE 139802:2009 Requisitos de accesibilidad del software
- UNE 170002:2009 Requisitos de accesibilidad para la rotulación.
- UNE 170002:2009 ERRATUM: 2009. Requisitos de accesibilidad para la rotulación.
- UNE 41501:2002 Símbolo de accesibilidad para la movilidad. Reglas y grados de uso.
- UNE-ISO/IEC 24751-1:2012 Tecnologías de la información. Adaptabilidad y accesibilidad individualizadas en aprendizaje electrónico, en educación y formación. Parte 1: Marco y modelo de referencia.
- UNE-ISO/IEC 24751-2:2012 Tecnologías de la Información. Adaptabilidad y accesibilidad individualizadas en aprendizaje electrónico, en educación y formación. Parte 2: Necesidades y preferencias para la prestación digital del "acceso para todos".
- UNE-ISO/IEC 24751-3:2012 Tecnologías de la Información. Adaptabilidad y accesibilidad individualizadas en aprendizaje electrónico, en educación y formación. Parte 3: Descripción de recurso digital "acceso para todos".

d. Changes in legislation/regulation linked to the implementation of the UN CRPD

Spain has signed and ratified the UN Convention on the Rights of Persons with Disabilities. Taking this into consideration, relevant legislation has been revised and, when necessary, modified in order to comply with the Convention. All modifications came into force by adoption of the Law 26/2011 on the normative adaptation to the International Convention on the Rights of Persons with Disabilities, dated 1 August 2011 (Available at: http://www.boe.es/boe/dias/2011/08/02/pdfs/BOE-A-2011-13241.pdf)

In Spain everything regarding accessibility for people with disabilities concerning guides, orientations, etc. that have been drawn up in this field, have used the obligations set forth in Art. 9 of the UN Convention as a reference.

e. Services regulated for accessibility

The scope of the Law 51/2003 of equal opportunities, non discrimination and universal accessibility for people with disabilities, modified by the mentioned Law 26/2011, applies to the following services:

- Telecommunications and information society
- Urban built environment, infrastructures and buildings
- Transports
- Goods and services available to the public
- Communication with the public administration
- Access to justice
- Cultural heritage, in accordance with heritage legislation.

f. Goods regulated for accessibility as part of a service

Accessibility to goods used in the provision of services is considered under the scope of the Law 51/2003, as above listed. Details about its technical implementation are still under study.

g. Goods regulated for accessibility

- Technologies, services and products related with the information society and social communication means. Regulated by Royal Decree 1494/2007 (http://www.boe.es/aeboe/consultas/bases_datos/doc.php?id=BOE-A-2007-19968)
- Means of transport, including buses, stations, etc. Regulated by Royal Decree 1544/2007 (http://www.boe.es/aeboe/consultas/bases_datos/doc.php?id=BOE-A-2007-20785)
- Most of construction products, such as doors, etc., are regulated in the relevant accessibility legislation of the Autonomous Communities. Furthermore, provisions for accessibility in goods related with urban built environment, such as street furniture, as stated in Law 51/2003, are regulated by the Royal Decree 505/2007 (http://www.boe.es/aeboe/consultas/bases_datos/doc.php?id=BOE-A-2007-9607)

h. Enforcement of accessibility legislation

The Law 51/2003 includes provisions in this regard under Chapter III “Promotion and defence”. In particular, the law provides for two mechanisms of enforcement:

1. A system for infractions and sanctions for equal opportunities, non-discrimination and universal accessibility of persons with disabilities, passed to keep watch over the degree of fulfilment and efficiency of what has been set forth in both the LIONDAU and in the development of these regulations. Eleventh final provision, specified by Law 49/2007.

2. An arbitrating system. Article 17 of Law 51/2003, specified by Royal Decree 1417/2006.

Besides, accessibility legislation issued by the Autonomous Communities has its own system for infractions and sanctions. Apart from this, within the procedures for public works contracts (build environment and building), administrations has to examine accessibility requirements before granting permits.

i. Non-compliance and litigation

Any individual, NGO or state body can bring a claim to court. Besides to the arbitrating system above mentioned, claims can be brought to the Permanent Specialised Office (Oficina Permanente Especializada), a body of the National Disability Council, under the scope of the Spanish Ministry of Health, Social Services and Equality.

Sweden

a. Accessibility legislation: its place in the legal and regulatory framework

In Sweden lack of accessibility is seen as discrimination in the area of employment and of higher education.

The Swedish Discrimination Act prohibits discrimination in cases where the employer, by taking reasonable support and adaptation measures, can see to it that an employee, a job applicant or a trainee with a disability is put in a comparable situation to people without such a disability.

The Discrimination Act also prohibits discrimination in cases where an education provider, by taking reasonable measures regarding the accessibility and usability of the premises, can see to it that a person with a disability who is applying or has been accepted for education under the Higher Education Act (1992:1434) or for education that can lead to a qualification under the Act concerning authority to award certain qualifications (1993:792), is put in a comparable situation to people without such a disability.

A new Planning and Building Act entered into force in Sweden on 2 May 2011. The Act replaces regulation from 1987 and 1994 and includes significant improvements. For increased accessibility an assessment of the accessibility and usability of a building for people with impaired mobility or orientation is to be made at the planning permission stage. This will ensure that accessibility is provided for correctly from the very start.

The National Board of Housing, Building and planning is responsible for the general supervision of the planning and building administration within the country. The National Board issues for example regulations and general recommendations on the removal of easily eliminated obstacles.

b. General law, technical regulations and standards

Accessibility requirements are provided both in general law and in technical regulations or standards. Se under e. about the Planning and building Act (PBL) which includes accessibility and usability for persons with impaired movement or orientation as one of several technical requirements for construction works.

The work on standardisation is a basic precondition in the accessibility work in Sweden for example in the work on e-inclusion. Handisam has produced a proposed action plan for e-inclusion that highlights initiative areas within various policy areas, with the aim of contributing towards everyone being able to share in the information society and for this to be as easy as possible. Proposals for a future structure for following up e-accessibility have been prepared in an investigation.

Within the accessibility work, according to the Government, the State should set a good example in order to effectively achieve results. Authorities under the Government should therefore formulate and conduct their activities bearing in mind the goals of the disability policy. The Ordinance on the government authorities' responsibility for the implementation of the disability policies provides support for this work. According to the Ordinance (2001:526), government authorities must, by conducting inventories and drawing up action plans, work to

make their premises, their operations and information more accessible to persons with disabilities. The Ordinance has been important for the accessibility work, although other measures have also been of importance, such as regulations regarding easily eliminated obstacles.

The Act on Housing Adaptation Grants instructs the municipalities to provide grants for adaptation in order to increase the accessibility to and usability of existing housing for persons with disabilities or elderly people. Sweden's Government allocates approximately SEK 40 million annually in grants for the conversion of public meeting areas and non-governmental cultural premises. Around half of the total of 100 projects in 2009 used the funds they had been granted to make the premises accessible and usable for persons with disabilities.

Stringent demands are stipulated as regards the form and function of public information symbols, in order for them to make life easier for citizens. The Swedish Institute of Assistive Technology has developed graphic symbols in a national standard in order to increase the use of non-verbal information presentation in buildings and other public locations, particular consideration has been given to persons with various disabilities. This relates particularly to disabilities that affect vision, cognitive capacity or movement. They should be seen as part of the work of making society accessible for many more people. The symbols that are included in the new Swedish standard conform to the requirements for form and function that exist for the standardisation of public information symbols. All have been tested for comprehension in accordance with an international ISO standard for test methods (ISO 9186-1).

c. Role of national, European and international standards

The Swedish National Guidelines for Public Sector Websites give public sector organisations practical advice and examples on how to procure, create and evaluate websites and eServices in order to improve accessibility, usability, search ability and comply with the international standards and EU i2010 goals. The guidelines have had a huge impact on the accessibility and usability of public websites and eServices in Sweden.

EU law places demands on transporters and station managers regarding rights for persons with disabilities or reduced mobility; the Regulation on rail passengers' rights and obligations and the Regulation concerning the rights of disabled persons and persons with reduced mobility when travelling by air. These legal instruments establish that persons with disabilities and persons with reduced mobility are entitled to travel with the relevant form of transport and to receive assistance in conjunction with their journey.

For shipping, the Swedish Maritime Administration has issued national regulations and general advice about the adaptation of passenger vessels with regard to persons with disabilities. There is also EU legislation that regulates technical requirements for vehicles within the various transport types, which is intended for example to ensure that they are accessible to persons with disabilities.

d. Changes in legislation/regulation linked to the implementation of the UN CRPD

In recent years, the government has intensified the work in the fields of an accessible civil service, easily eliminated obstacles in the built environment and accessible public transport.

The Swedish government is investigating the possibility to include discrimination on grounds of inaccessibility on other areas than working life and higher education.

e. Services regulated for accessibility

The Swedish Planning and Building Act (PBL) includes accessibility and usability for persons with impaired movement or orientation as one of several technical requirements for construction works. The requirements apply to buildings, plots, public locations and areas with facilities other than buildings. Swedish building regulations also contain detailed requirements regarding accessibility in housing. In all new and converted accommodation, for example, there must be accessible wet rooms. All new buildings must, for example, have accessible entrances, and newly built accommodation must have a turning area for indoor wheelchairs. The building regulations also require lifts in new and converted housing buildings of more than three floors, and for storage areas, mailboxes, laundry rooms, waste areas, refuse disposal and other accom-modation supplements to be accessible and usable. The requirement for lifts also exists for buildings that contain working premises to which the general public have access, as well as public premises.

A new Planning and Building Act entered into force on 2 May 2011. An assessment of the accessibility and usability of a building for people with impaired mobility or orientation is to be made at the planning permission stage. This will ensure that accessibility is provided for correctly from the very start. The municipalities are responsible for the requirements in the Planning and Building Act being satisfied on a local level. In order to drive through developments locally and regionally, the Government has supported municipalities in the creation of indicators and systems for open comparisons of accessibility and accessibility work for persons with disabilities.

More and more municipalities are already working voluntarily to observe accessibility issues in the production of detailed plans, in-depth overview plans and regular overview plans. The Swedish National Board of Housing, Building and Planning has been working since 2006 on guidance for municipalities regarding overview planning, for example via a series of publications that include accessibility. The National Board is responsible for the general supervision of the planning and building administration within the country. The National Board issues for example regulations and general recommendations on the removal of easily eliminated obstacles.

The Government and Parliament have decided on specific transport policy goals and funds for achieving an accessible and usable transport system. Among the 13 prioritised areas, the accessibility goal has been specified as follows: The transport system must be designed so that it can be used by persons with disabilities.

The Disability and Public Transportation Act (1979:558) contains provisions to the effect that the body that supervises public transport and the body that plans and exercises such transport must ensure that the services and the means of transport that are used are accessible to persons with disabilities as far as possible.

The Special Transport Services Act (SFS 1997:736) regulates an obligation for each municipality to arrange passenger transport for individuals who, due to a disability that is not only temporary, have significant difficulties in moving about themselves or in travelling by public transport.

Local and regional public transport is the responsibility of the country's municipalities, that are performing comprehensive work to adapt public transport to the needs of persons with disabilities. Public transport vehicles are accessible to an increasingly great extent: two-thirds of the buses operating local services are low-floor vehicles, and more than half of the buses have automatic stop announcements.

The State is speeding up the work in the municipalities by providing state grants for vehicles, terminals, stops, training, information and payment systems, pedestrian and cycle paths, wheelchair lifts, lifts, co-ordination measures, etc. As a rule, the State pays half the costs for each measure.

Over the past 10 years, government authorities have conducted a range of projects aimed at promoting the issue of making public transport accessible, as well as to integrate the work of the State, municipalities and the private sector. This relates to both physical measures in the infrastructure and vehicles, as well as 'softer' initiatives such as training personnel in how to treat persons with disabilities in an appropriate manner. These projects have been conducted in collaboration with the disabled people's movement.

There have also been major improvements aimed at increasing accessibility in the road transport system. More than half of all bus-stops in the national road network have been converted to make it possible for more and more persons with disabilities to travel by bus.

Identification of obstacles in the physical environment, both indoors and outdoors, and in both private and public properties, is performed by the municipalities. Various tools for analysing accessibility at an overall level are being developed in municipalities and regions.

A concrete example of measures that have been implemented are the regulations regarding public procurement. The Public Procurement Act stipulates that the technical specifications in tender documentation should, where possible, be determined with regard to the criteria in respect of accessibility for persons with disabilities or be formulated with a view to the needs of all users. The specifications should ensure that the properties of materials, goods and services are suitable for the area of application, both in the works contract and the service and supply contract.

The National Board of Health and Welfare has investigated whether persons with disabilities can apply for care and support on the same terms as the rest of the population. This has taken place by means of charting accessibility to Sweden's social welfare offices and healthcare centers. In this context, accessibility also refers to how accessible the environment is, as well as how usable services and products are for persons with disabilities. The conclusions of the charting process are that accessibility is high for persons with mobility disabilities, which indicates that the national regulations and the targeted information efforts in recent years have been effective. In the majority of healthcare centers and social welfare offices, however, there are major deficiencies as regards accessibility for persons with other types of disability, in particular impaired vision, impaired hearing and cognitive disabilities. This means that the Government needs to become clearer in its communication of what accessibility is.

The Government has implemented measures to drive through developments in order to break the cycle of isolation entailed by the inability to use IT. In addition to increased access to

broadband and new technical solutions, the Government has invested in increased usability and accessibility of established and new services for persons with disabilities.

For example, the Swedish Post and Telecom Agency (PTS) is developing electronic services for persons with disabilities in conjunction with affected players. PTS has conducted trials with 'streaming' talking books and talking newspapers on mobile phones. In a report that was submitted to the Government in autumn 2009, the Swedish Agency for Disability Policy Coordination, Handisam, submitted a proposed action plan for e-Inclusion, in the report "Rätt från början" ["Right from the beginning"]. Several measures from the action plan have already been implemented within various policy areas.

The Electronic Communications Act (2003:389) aims at ensuring that private individuals, legal entities and public authorities shall have access to secure and efficient electronic communications. Universal services shall always be available for everybody on equivalent terms throughout Sweden at affordable prices.

If it is necessary for the universal services to be available at affordable prices, the party that is considered appropriate for this may be ordered to, at an affordable price, provide access for people with disability to services according to the same extent and on equivalent terms as for other end-users and satisfy the needs of people with disability for such special services.

Access to universal services shall be safeguarded through procurement by the State if this is called for especially having regard to the costs for the provision of the service or the network.

The Discrimination Act (2008:567) also grants that a job applicant or a trainee with a disability is put in a comparable situation to people without such a disability. The provision is applicable in cases concerning the digital work environment.

f. Goods regulated for accessibility as part of a service

The Swedish National Guidelines for Public Sector Websites takes an integrated approach to usability, accessibility and standardization. The Guidelines support the procurement, development, and maintenance of a website or eService by a public administration so that it offers equal opportunity usage for all citizens. The guidelines contain criteria which cover the entire lifecycle of a website or eService. The guidelines are intended for several target groups and give recommendations concerning strategic planning as well as design, development and administration. As follows from the principle of mainstreaming accessibility, the Guidelines present web accessibility as an integral part of the overall development process.

g. Enforcement of accessibility legislation

The Planning and Building Act specifies sanctions for transgressions of the requirements for construction works, including accessibility in new and altered buildings, as a fixed sum and/or prohibition on the use of the building or a part thereof, until the faults have been rectified.

In the event of transgressions, the municipal building committee decides whether the consequences are to be financial fines and/or demands to rectify the deficient accessibility solutions. Financial fines are not earmarked for accessibility-improving measures.

h. Non-compliance and litigation

The Equality Ombudsman supervises compliance with the law and is entitled to bring a case in the courts on behalf of an individual who considers himself or herself to have been discriminated against. Certain non-profit organisations are also entitled to take legal action. The Equality Ombudsman must also work to ensure that discrimination that is linked to disability does not occur in any area of social life, and work to achieve equal rights and opportunities regardless of disability. The Ombudsman must, through advice and in other ways, contribute to the person who has been subjected to discrimination being able to utilise his or her rights. Furthermore, the authority is tasked for example with providing information and training, suggesting constitutional amendments to counteract discrimination, as well as implementing other suitable measures.

United Kingdom

a. Accessibility legislation: its place in the legal and regulatory framework

Accessibility legislation is in force in the UK, with this issue generally being treated as an aspect of discrimination law. In England, Scotland and Wales, section 20 of the Equality Act 2010 builds on all previous discrimination legislation. It formally recognises the rights of disabled people to access everyday services, whether they are paid for or not. It consolidates and expands the previous duty on public authorities to think about the implications of their programmes and policies from the perspective of race, gender and disability. It imposes a duty to make reasonable adjustments for disabled people in specified circumstances. A tribunal or court can determine that non-compliance with this duty is unlawful discrimination.

The duty to make reasonable adjustments applies in the following areas:

- Services and public functions (Part 3 and Schedule 2)
- Premises (Part 4 and Schedule 4)
- Work (Part 5 and Schedule 8)
- Education (Part 6 and Schedule 13)
- Associations (Part 7 and Schedule 21)
- Each of the Parts mentioned above (Schedule 21)

The duty comprises three requirements:

1) changing the way things are done, such as changing a rule or policy;
2) making changes to a physical feature, such as providing a ramp to allow wheelchair users access to a building; and
3) providing auxiliary aids and services, such as providing special computer software or providing a different service.

In each case, the duty applies where a disabled person is put at a substantial disadvantage in comparison with a person who is not disabled. The duty holder then has to take reasonable steps to avoid the disadvantage.

Information on the Equality Act 2010 Act can be found at: at
http://www.legislation.gov.uk/ukpga/2010/15/contents/enacted

The Disability Discrimination Act 1995 provides similar protection in Northern Ireland.

The UK has guidelines and voluntary standards covering a wide range of areas, e.g. the "Lifetime Homes" standard which defines standards and guidelines to ensure homes are accessible to everyone. All social housing will be built to these standards from 2011, with the aim that all housing will be by 2013[93]. Building Regulations in England and Wales impose certain accessibility requirements on domestic and non-domestic buildings.[94]

[93] Information on the Lifetime Homes standard can be found at:
http://www.communities.gov.uk/publications/housing/lifetimehomesneighbourhoods

[94] Information can be found in Approved Document M at :
http://www.planningportal.gov.uk/england/professionals/en/4000000000988.html
Information on the Public Service Accessibility Regulations 2000 for public transports can be found at http://www.dft.gov.uk/topics/access/buses-and-coaches/legislation/ and at http://www.dft.gov.uk/topics/access/rail/rail-vehicles/

UK airports like others in the EU, must comply with EU Regulation 1107/2006, which require that they provide services to ensure that disabled passengers can move through the airport, board, disembark and transit between flights.

The Communications Act 2003 sets minimum targets for subtitling, signing and audio description on television channels. The Code of Television Access Services produced by the UK communications regulator Ofcom gives guidance on these targets and how access to television services can be improved for people with hearing or visual impairments[95].

Regulations similarly exist covering Scotland and Northern Ireland.

The "Five Principles for Improving Provision of Information for Disabled People" sets out guidelines on how disabled people's access to information on public services can be improved[96].

b. General law, technical regulations and standards

As above, all service providers are required to comply with the provisions of the Equality Act 2010 or the Disability Discrimination Act 1995 in Northern Ireland. There are, however, some areas such as transport and buildings where there are also specific technical regulations and standards in place. Meeting a specific technical regulation may not be sufficient to meet the wider provisions of the Equality Act 2010 and the Equality Act 2010 does not set specific technical regulations or standards.

c. Role of national, European and international standards

European accessibility standards have been developed and are used in the context of the following EU mandates:

- Mandate 283 - Mandate to the European Standards Bodies for a guidance document in the field of safety and usability of products by people with special needs (e.g. elderly and disabled).
- Mandate 273 - Mandate to the European Standards Bodies for standardization in the field of information and communications technologies (ICT) for disabled and elderly people.
- Mandate 292 - Mandate to the European Standards Bodies for a guidance document in the field of safety of consumers and children - Product information.
- Mandate 293 - Mandate to the European Standards Bodies for a guidance document in the field of safety of consumers and children - Child safety.
- M/376: Standardization Mandate to CEN, CENELEC and ETSI in support of European Accessibility Requirements for Public Procurement of Products and Services in the ICT Domain (PDF) (7 December 2005)
- M/420: Standardization Mandate to CEN, CENELEC and ETSI in support of European Accessibility Requirements for Public Procurement in the Built Environment (PDF) (21 December 2007).

BSI (the national standards body) refers to the following legislation when developing British Standards:

- Equality Act 2010
- UN Convention on the Human Rights of Disabled People
- EU Employment Equality Directive.

There are also the following relevant EU resolutions:

[95] http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/ctas.pdf
[96] Information on the five principles can be found at: http://odi.dwp.gov.uk/common/publications-index.php

- EU Policy (1) CoE Resolution ResAp (2001)1 “on the introduction of the principles of universal design into the curricula of all occupations working on the built environment” (“Tomar Resolution”) “Universal design” ResAP(2007)3 “Achieving full participation through Universal Design”
- Recommendation Rec(2006)5 of the Committee of Ministers to member states on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015 EU Disability Action Plan (DAP) 2008-2009

d. Changes in legislation/regulation linked to the implementation of the UN CRPD

The reasonable adjustments duty in the Equality Act 2010, and previously for England, Scotland and Wales the Disability Discrimination Act 1995, are in accordance with the provisions of Article 9 of the UN Convention on the Rights of Persons with Disabilities. The Equality Act 2010 continues to build on the good work already achieved – one example of a significant change to the reasonable adjustment duty is a single threshold for the ‘trigger point’ of when a disabled person is put at a ‘substantial disadvantage’.

e. Services regulated for accessibility

In the UK, all service providers in both the public and private sectors are under a duty to make reasonable adjustments in certain circumstances where a disabled person is put at a ‘substantial disadvantage compared to non-disabled people’. Reasonable steps must be taken to avoid the disadvantage or to adopt a reasonable alternative method of providing the service.

The duty for service providers is anticipatory. This means that a service provider cannot wait until a disabled person wants to use its services but must think in advance (and on an ongoing basis) about what disabled people with a range of impairments might reasonably need. This is because the relationship between, for example, a shop and its customers is transitory and, whilst a service provider can reasonably be expected to anticipate such things as ramps for mobility-impaired customers, it would not be expected to provide personalised adjustments in the same way as is expected of employers.

However, section 20 of the Act recognises the need to strike a balance between the rights of disabled people and the interests of service providers. Thus, the reasonable adjustment duty only requires service providers to make adjustments that are reasonable in all the circumstances, depending on a number of factors including the size and nature of the organisation, the financial resources available to it and the nature of the services provided.

Section 20 of the Act specifically provides that the duty to make reasonable adjustments does not require a service provider to take a step that would fundamentally alter the nature of the service they provide.

f. Goods regulated for accessibility as part of a service

The duty to make reasonable adjustments applies to the provision of both goods and services under Part 3 of the Equality Act 2010. To the extent that the provision of a service includes access to goods, that is covered by the duty.

g. Goods regulated for accessibility

In general, manufactured goods are not regulated for accessibility in the UK. However, the requirement for services to be accessible means that that goods used in providing a service must be accessible or the service provider must provide an alternative way of accessing their service. For example, a bank would need to ensure that its ATMs are accessible or provide ATM services in a reasonable alternative manner; a bath manufacturing company is not required to manufacture accessible baths but must ensure that their sales processes are accessible.

Public Transport Accessibility is covered by a number of regulations:

- The Public Service Accessibility Regulations 2000 and its amendments require improved accessibility of buses and coaches. All single-decker buses, double-decker buses, and coaches on scheduled services must comply by 2016, 2017 and 2020 respectively - http://www.dft.gov.uk/topics/access/buses-and-coaches/legislation/
- Since December 1998, all new and refurbished rail vehicles have had to meet Rail Vehicle Accessibility Regulations - All rail vehicles, both heavy and light rail, must be accessible by no later than 1 January 2020 - http://www.dft.gov.uk/topics/access/rail/rail-vehicles/
- UK airports like others in the EU, must comply with EU Regulation 1107/2006, which require that they provide services to ensure that disabled passengers can move through the airport, board, disembark and transit between flights - http://europa.eu/legislation_summaries/transport/mobility_and_passenger_rights/l24132_en.htm The Civil Aviation Authority promotes and enforces compliance of air regulations within the UK.
- Part M (Access to and use of buildings) of the Building Regulations 2010 sets out minimum requirements to ensure that a broad range of people are able to access and use facilities within buildings. http://www.planningportal.gov.uk/buildingregulations/approveddocuments/partm/
- The Communications Act 2003 sets minimum targets for subtitling, signing and audio description on television channels. The Code of Television Access Services produced by the UK communications regulator Ofcom gives guidance on these targets and how access to television services can be improved for people with hearing or visual impairments. http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/ctas.pdf
- The BSI (British Standards Institution) Group is the UK's National Standards Body. It works with manufacturing and service industries, businesses, the UK and other national governments and consumers to facilitate the production of British, European and international standards including those relating to disability accessibility.
- BSI also runs a consumer network including a representative who focuses on ‘Design for All’. There is a Disabled Experts’ Reference Group (DERG), who provides advice and input to standards in development. http://www.bsigroup.com/en/Standards-and-Publications/How-to-get-involved/Disabled-Experts-Reference-Group/
- ISO Guide 71 (also known as CEN/CENELEC Guide 6) provides Guidelines for standards developers to address the needs of older persons and persons with disabilities. http://www.iso.org/iso/catalogue_detail?csnumber=33987
- The BS 8878 Web Accessibility Code of Practice published in November 2010 presents a fully up-to-date, detailed guide for businesses and organizations to make their web products more accessible to disabled and older users - http://shop.bsigroup.com/en/ProductDetail/?pid=000000000030180388BS 8878 Web accessibility. Code of Practice.

h. Enforcement of accessibility legislation, non-compliance and litigation

The Equality Act 2010 provides for enforcement where an individual disabled person considers that they have been discriminated against because of a failure to comply with the duty to make reasonable adjustments. Depending on the circumstances, the individual may bring a claim before a tribunal or court. Remedies can include damages, declarations, quashing orders, mandatory orders and injunctions. This means that the tribunal or court can

require that certain adjustments are made in order to make the service or goods accessible to the claimant.

In addition, the Equality and Human Rights Commission, an independent statutory body with a remit including the elimination of discrimination and the reduction of inequality, has enforcement powers in this regard under the Equality Act.

Accessibility legislation in the UK is enforced by the application of case law, brought by individuals or bodies on behalf of individuals when they believe there rights have been infringed or a law broken in regards to them accessing a product or service.

European Union

The European Commission is committed to removing the economic and social barriers that prevent people with disabilities from enjoying their rights and full and complete participation in all areas of life.

Equality of opportunity for people with disabilities is at the centre of the multiannual European Disability Strategy 2010-2020 which was adopted on 15 November 2010[97], and its predecessor the EU Disability Action Plan 2003-2010[98].

The overarching goal of the EU Strategy is the continuous and sustainable improvement in the situation of persons with disabilities in economic, social and participatory terms.

The European Disability Strategy 2010-2020[99] provides the key elements of accessibility policies in the EU. It defines 'accessibility' as meaning that people with disabilities have access, on an equal basis with others, to the physical environment, transportation, information and communications including technologies and systems (ICT), and other facilities and services in line with Art. 9 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD), to which the EU is a party.

Accessibility concept

Accessibility is considered as a wide concept that includes the prevention and elimination of obstacles that pose problems for persons with disabilities in using products, services and infrastructures. General accessibility measures address in a anticipatory manner the most common problems that persons with disability face. Accessibility and Reasonable accommodation are two related concepts that have to be understood within the "social model of disability". They are both contributing to solutions to ensure equal access for person with disabilities when interacting with goods and services and performing a task.

Accessibility targets the general group of person with disabilities addressing their most common needs and needs to be complemented by measures of reasonable accommodation, namely appropriate measures to be taken, where needed in a particular case, to enable a person with a disability to have access to a product or a service that target a particular individual with a disability.

Achieving accessibility requires acting on the design and functioning of the product, service or infrastructure itself to be "more usable" by persons with disabilities in general while taking into account the diversity of requirements coming from various impairments. Accessibility is thus mostly preventive and proactive while reasonable accommodation is often reactive.

The implementation of accessibility is often supported by general guidelines or standards that describe how products or services should be built.

EU policy background

In the EU, persons with disabilities and older persons constitute a substantial and strongly growing part of the population that can benefit from accessibility measures. Older persons often have chronic illnesses that have associated impairments. Furthermore, even with good

[97] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0636:EN:NOT

[98] http://ec.europa.eu/social/main.jsp?catId=430&langId=en.

[99] COM (2010) 636

health, mobility and dexterity are reduced and the functional performance of the senses diminishes. This leads to activity limitations. Over 32 % of those between 55 and 65 years of age report a disability. That figure increases to over 40 %, 60 % and 70 % for each additional ten years.

While the ageing of the population can raise the visibility of the market potential of products with good accessibility features in the most commercial areas, particularly health care, there are other areas where the economic potential is often overlooked by industry. Industry's response is limited and disabled persons do not benefit from the opportunities created by the single market as much as other citizens do. But also the myriad of national, regional and local accessibility rules and regulations does not make things easier for industry. These can *de facto* act as obstacles to the free movement of goods, persons and services in the EU and to potential economies of scale.

Addressing accessibility at EU level

At EU level, accessibility has been addressed mainly in three thematic policy areas: ICT, transport and built environment. It has been a core element of the EU policy since the nineties. Accessibility was already addressed in the European Disability Action plan 2003 -2010.

At EU level there are various legislative acts that contain certain accessibility provisions regulating some goods and services. The detailed list of EU legal acts addressing accessibility is contained in the Declaration of Competences annexed to the Council Decision on the conclusion by the EU of the UN Convention on the Rights of Persons with Disabilities (UNCRPD)[100]. In general, accessibility is not the main purpose of these legal instruments, but one of the many issues addressed:

- There are some legal instruments that contain general accessibility provisions like the Structural Funds Regulation[101] or the Public Procurement Directives[102]. Some legal instruments, like the Copyright Directive, are of enabling nature and permit the Member States to develop exceptions in national legislation that aim to improve accessibility for persons with disabilities but do not impose obligations[103].
- There are some acts that require specific products to be accessible. This is the case of lifts[104] and vehicles with more than eight seats[105] or even for some specific groups of persons with disabilities, like the Braille requirement for packaging of medicines[106].
- There are some sector regulations that have some general provisions for persons with disabilities addressing accessibility to some extent or indirectly, like the eCommunication package in the area of Information and Communication Technologies[107] and the various Regulations on the rights of persons with reduced mobility[108] in the area of transport.

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100 See Annex II in the document available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:023:0035:0061:EN:PDF

101 Regulation (EC) No 1083/2006 and COM(2011) 615 final

102 Directives 2004/17/EC and 2004/17/EC.

103 Directive 2001/29/EC.

104 Directive 95/16/EC.

105 Directive 2001/85/EC

106 Directive 2004/27/EC

107 http://ec.europa.eu/information_society/policy/ecomm/eu-rules/index_en.htm

108 http://europa.eu/legislation_summaries/transport/mobility_and_passenger_rights/l24132_en.htm

With regard to ICT, in addition to the eCommunication package, the EU has invested significantly in RTD work. There are a number of Directives that address disability issues and that provide for possibility to address accessibility matters either in the terminals, the networks, the services including broadcasting services.

Furthermore, the eAccessibility policy has focused on the web and the promotion of Design for All. Accessibility to ICT is also dealt with in the Digital Agenda[109].

In the transport sector significant attention at EU level has been given to provide assistance to passengers with reduced mobility, while less work has been done on the accessibility side (accessibility of vehicles and transport infrastructures such as stations, bus stops). However in the rail area specific accessibility legislation is developed to address the accessibility of rail vehicles and stations that are part of the Trans-European network. The recent White Paper on transport refers to accessibility of the transport infrastructures beyond the service provision to persons with reduced mobility.

In the area of the built environment, some RTD projects and studies have been undertaken and accessibility has emerged in the policy discussions in the context of the lead market initiative for sustainable construction. Information on accessibility is gathered as part of social sustainability that includes some regulatory and standardisation aspects. EU transnational projects on accessibility address for example the training of professionals in accessible design, the development of tools for carrying out a detailed accessibility audit of buildings or accessibility in tourism infrastructures and services.

EU standardisation on accessibility

Since a number of years the Commission has been investing in the development of common voluntary standards on accessibility in specific areas. Currently, European standardisation organisations are working on preparing standards under three mandates given by the European Commission.

The first two Mandates address accessibility in the sense of point 2 (a) of article 9 of the Convention:

- Mandate 376 focuses on accessibility standards for ICT goods and services, and the standards are intended to be used in public procurement proceedings.
- Mandate 420 aims at developing accessibility standards for the built environment also intended to be used in public procurement.

. The third Mandate addresses accessibility in the sense of article 4 (f) of the Convention:

- Mandate 473 aims at including accessibility following "Design for all" (or Universal Design) in relevant mainstream standards and to develop process standards for manufactures and services providers on how to include accessibility in their product development cycle and service provision.

Horizontal instruments fostering accessibility

Public procurement

The current Public Procurement Directive allows for the integration of social considerations and specifically states the use of "Design for All" and accessibility requirements whenever

[109] COM(2010) 245

possible in the technical specifications in the contract documentation for public bids. [110] The Commission has issued a legislative proposal in 2011 making accessibility compulsory in public procurement in the EU.

Structural Funds
The General Regulation [111] on the European Regional development Fund, the European Social Fund and the Cohesion Fund, one of the largest financial instruments of the EU, places emphasis on addressing the issue of accessibility in its Article 16: "*The Member States and the Commission shall take appropriate steps to prevent any discrimination on the basis of gender, race or ethnic origin, religion or belief, disability, age or sexual orientation during the various stages of implementing the Funds and, in particular, access to them. Accessibility for disabled persons shall be one of the criteria to be observed in defining operations co-financed by the Funds and to be taken into account during the various stages of implementation*".
The Commission has made a toolkit for using EU Structural and Cohesion funds and Ensuring accessibility and non-discrimination of people with disabilities. It includes examples of the prevention of discrimination on the basis of disabilities and accessibility for disabled persons as a horizontal principle, and also refers to a number of specific areas for potential action, including in the fields of transport, ICT and access to finance.

Research
Research activities in the area of accessibility to the built environment, transport and ICT have been in place since the early 90s. Only in the area of eAccessibility (addressing both accessibility to mainstream products and services and assistive solutions) there has been a budget of over 200 Million Euros and with over 200 projects. The current 7th Frame work programme addresses the area of eAccessibility. . The budget for the 7th Frame work programme and for deployment activities under the Competitive and innovation Programme are over 100 Million Euros.

Antidiscrimination Legislation
The European Directive establishing a general framework for equal treatment in employment and occupation contains an article on the obligation of employers to provide reasonable accommodation for disabled persons.[112] No reference is made in this context to accessibility.

However the 2008 Commission proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of inter alia disability, states that in order to guarantee the compliance with the principle of equal treatment in relation to person with disabilities, the measures necessary to enable persons with disabilities to have effective non-discriminatory access (meaning accessibility) among other to goods and services which area available to the public shall be provided by anticipation including through appropriate modifications or adjustments. However such measures should not impose a disproportionate burden, nor require a fundamental alteration or require the provision of alternatives thereto.[113]

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4 Directive 2004/18/EC of 31 March 2004 of the European Parliament and of the Council on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts

111 Article 16 of the COUNCIL REGULATION (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999, OJ L 210, 31.7.2006, p.25

112 Article 5 of Directive 2000/78

113 Art 4 COM (2008) 426

Notwithstanding this previous obligation, reasonable accommodation shall be provided unless it would impose a disproportionate burden.

On going EU developments on accessibility

In the European Disability Strategy 2010-2020, the Commission has proposed to use legislative and other instruments, such as standardisation, to foster accessibility to complement on going activities. The Commission is preparing the development by the end of 2012 of a 'European Accessibility Act', *which could include the development of specific standards for particular sectors to substantially improve the proper functioning of the internal market for accessible goods and services*.

To that end the European Commission has issued a contract for a study on the potential socio-economic impacts of possible new legal measures by the EU to improve accessibility of goods and services for people with disabilities. This study will serve as a basis for *exploring the merits of adopting EU regulatory measures to substantially improve the proper functioning of the internal market for accessible products and services, including measures to step up the* use of public procurement.

The Commission work programme for 2012 describes this initiative as Proposal for a Directive to improve the market of goods and services that are accessible for persons with disabilities and elderly persons, based on a "design for all" approach. This business friendly initiative will include binding measures to promote procurement and harmonisation of accessibility standards.

The objective of this initiative is the improvement of the functioning of the Internal Market in relation to accessible goods and services in creating economies of scale and remedying market failures improving the effectiveness of accessibility legislation to create an EU level playing field.

It is expected that this will stimulate innovation in the accessibility field through the development and use of European standards, increasing also the incentives in the markets by increasing public procurement of accessible goods and services;

Improving the availability in the market of accessible goods and services as well as increased competition among industry on accessibility will improve the inclusion and participation of persons with disabilities in the European society and economy.

ANNEX 1: STATE OF PLAY

Dates of signatures and ratification					
Country	**Signature**		**Ratification*/Formal confirmation**		**Reporting**
	UN Convention	**Optional Protocol**	**UN Convention**	**Optional Protocol**	**1st Report submitted to UN**
AT	30 March 2007	30 March 2007	25 September 2008	25 September 2008	October 2010
BE	30 March 2007	30 March 2007	2 July 2009	2 July 2009	**July 2011**
BG	27 September 2007	18 December 2008	**26 January 2012**		
CY	30 March 2007	30 March 2007	**27 June 2011**	**27 June 2011**	
CZ	30 March 2007	30 March 2007	28 September 2009		**October 2011**
DE	30 March 2007	30 March 2007	24 February 2009	24 February 2009	**September 2011**
DK	30 March 2007		23 July 2009		**August 2011**
EE	25 September 2007		**14 April 2012****		
EL	30 March 2007	27 September 2010	**11 April 2012****		
ES	30 March 2007	30 March 2007	3 December 2007	3 December 2007	May 2010
FI	30 March 2007	30 March 2007			
FR	30 March 2007	23 September 2008	18 February 2010	18 February 2010	
HU	30 March 2007	30 March 2007	20 July 2007	20 July 2007	October 2010
IE	30 March 2007				
IT	30 March 2007	30 March 2007	3 March 2009	3 March 2009	
LT	30 March 2007	30 March 2007	18 August 2010	18 August 2010	
LU	30 March 2007	30 March 2007	**26 September 2011**	**26 September 2011**	
LV	18 July 2008	22 January 2010	1 March 2010	31 August 2010	
MT	30 March 2007	30 March 2007			
NL	30 March 2007				
PL	30 March 2007				
PT	30 March 2007	30 March 2007	23 September 2009	23 September 2009	
RO	26 September 2007	25 September 2008	**31 January 2011**		
SE	30 March 2007	30 March 2007	15 December 2008	15 December 2008	**February 2011**
SI	30 March 2007	30 March 2007	24 April 2008	24 April 2008	
SK	26 September 2007	26 September 2007	26 May 2010	26 May 2010	
UK	30 March 2007	26 February 2009	8 June 2009	7 August 2009	**November 2011**
EU	30 March 2007		23 December 2010		

§ Dates in **bold** show developments under 2011 and 2012

* Ratification means the deposit of the instrument of ratification with the Secretary-General of the United Nations

** The Internal procedure achieved, but the instruments of ratification not yet deposited with the Secretariat General of the UN.

ANNEX 2: RESPONSIBLE AUTHORITIES AND CONTACT PERSONS

This annex contains an overview of responsible authorities, focal points, coordination mechanisms and contact points. The data were provided by the Member States in reply to the following questions:

* Who is responsible for the implementation (putting into practice) of the UN Convention, *i.e.* the focal point foreseen in article 33(1) of the Convention?

* Have you established a coordination mechanism foreseen in article 33(1) of the Convention?

Austria

Focal Point at federal level: Federal Ministry of Labour, Social Affairs and Consumer Protection (mail to: behindertenrechtskonvention@bmask.gv.at)

Coordination mechanism: Federal Ministry of Labour, Social Affairs and Consumer Protection (Website: www.bmask.gv.at)

Independent mechanism: Independent Committee on monitoring the implementation of the CRPD in Austria (Chair: Marianne Schulze)

Office of the Austrian CRPD Monitoring Committee
c/o Federal Ministry of Labour, Social Affairs and Consumer Protection
A-1010 Vienna, Stubenring 1
Fax: +43 1 718 94 70 2706
e-Mail: buero@monitoringausschuss.at
Website: www.monitoringausschuss.at

Contact:

Max Rubisch
Federal Ministry of Labour, Social Affairs and Consumer Protection (CRPD Focal Point)
A-1010 Vienna, Stubenring 1
E-Mail: max.rubisch@bmask.gv.at, Tel. +43-1-711 00-6262

Andreas Reinalter
Federal Ministry of Labour, Social Affairs and Consumer Protection (CRPD Focal Point)
A-1010 Vienna, Stubenring 1
E-Mail: andreas.reinalter@bmask.gv.at, Tel. +43-1-711 00-2255

Belgium

Focal Points:

- Federal level : Federal Public Service Sociale Security – DG Strategy & Research
- Flanders: Gelijke Kansen in Vlaanderen (Equal Opportunities in Flanders)
- Walloon region: Agence Wallonne pour l'Intégration des Personnes handicapées (Agency for Integration of Persons with Disabilities)

- Brussels-Capital region: Cel Gelijke Kansen en Diversiteit (Equal Opportunities and Diversity Body)
- Commission of the French speaking Community COCOF : Service Personne Handicapée Autonomie Recherchée (PHARE)
- Joint Community Commission COCOM : Administration COCOM
- French-Speaking community : WBI Service multilatéral mondial (WBI Multilateral World Service)
- German-speaking community: Dienststelle für Personen mit Behinderung (Office for People with Disabilities)

Coordination mechanism: Federal Public Service Sociale Security – DG Strategy & Research

Independent mechanisms: Centre for Equal Opportunities and Opposition to Racism

Contacts:

- Federal level + interfederal coordination mechanism: Greet van Gool - Federal Public Service Social Security, DG Strategy, International Affairs & Research – Mail: greet.vangool@minsoc.fed.be; CoordinationmechanismUNCRPD@minsoc.fed.be
- Flanders : Marian Vandenbossche – Gelijke Kansen in Vlaanderen– Mail: marian.vandenbossche@dar.vlaanderen.be
- Walloon Region: Jean-Marc HURDEBISE – AWIPH - Agence wallonne pour l'intégration des Personnes handicapées - Mail : jm.hurdebise@awiph.be
- Brussels Capital Region : Melissa De Schuiteneer - Cel Gelijke Kansen en Diversiteit - Mail: mdeschuiteneer@mbhg.irisnet.be
- Commission of the French speaking Community COCOF : DEBACKER Philippe – Service PHARE –Mail : pdebacker@cocof.irisnet.be
- Joint Community Commission COCOM - Edith Poot - Administration COCOM – Mail: epoot@ggc.irisnet.be
- French-Speaking community : FAURE Marien – WBI Service multilatéral mondial – Mail : m.faure@wbi.be
- German-speaking community: Joel Arens - DPB - Dienststelle für Personen mit Behinderung – Mail : joel.arens@dpb.be
- Independant mechanism: Centre for Equal Opportunities and Opposition to Racism – Mail: epost@cntr.be

Bulgaria

Focal Point: Integration of People with Disabilities Department at Ministry of Labour and Social Policy

Coordination mechanism: None established

Independent mechanism: None established

Contact:
Joanna Germanova
Ministry of Labour and Social Policy
Directorate "Policy for people with disabilities, equal right and social benefits"

2 Triaditza street, 1051 Sofia, Bulgaria
Email: jpetrova@mlsp.government.bg, Tel.: + 359 2 8119 658

Nadezhda Harizanova
Integration of People with Disabilities' Department
Directorate "Policy for people with disabilities, equal right and social benefits"
Ministry of Labour and Social Policy
2 Triaditza street, 1051 Sofia, Bulgaria
Email: nharizanova@mlsp.government.bg, Tel.: + 359 2 8119 656

Ministry of Labour and Social Policy
National Council for Integration of People with Disabilities.
Council of Ministers, regional governors, regional government in cooperation with civil society.

Ministry of Youth, Education and Science, Ministry of Health, Ministry of Regional Development and Republic Works, Ministry of Justice, Ministry of Culture, Ministry of transport, ICT, Ministry of economy, energetic and tourism, State Agency for Child Protection, Agency for People with Disabilities, Social Assistance Agency, National Statistical Institute and regional government.

Cyprus

Focal Point: Department for Social Inclusion of Persons with Disabilities at Ministry of Labour and Social Insurance

Coordination mechanism: The Pancyprian Council for the Persons with Disabilities.

Independent mechanism: Ombudsman and Commissioner for the Protection of Human Rights.

Contact:
Christina Flourentzou-Kakouri
Department for Social Inclusion of Persons with Disabilities
1430 Nicosía, Cyprus
Tel: 00357 22 815120, Fax: 00357 22 482737
e-mail: cflourentzou@dsid.mlsi.gov.cy

Czech Republic

Focal Point: Ministry of Labour and Social Affairs

Coordinating mechanism: Ministry of Labour and Social Affairs
Ministry of Foreign Affairs
Government Board for People with Disabilities
Czech National Disability Council

Independent mechanism: none established

Contact:
Stefan Culik
Ministry of Labour and Social Affairs
Na Poricnim pravu 1
128 01 Prague 2
Czech Republic
Tel: +42 22192 2693
E-mail: Stefan.Culik@mpsv.cz

Denmark

Focal Point: The Ministry of Social Affairs and Integration

Coordination: The Inter-ministerial Committee of Civil Servants on Disability Matters

Independent mechanism: The Danish Institute for Human Rights

Contact:
Anne Bækgaard (aba@sm.dk) or Thomas Falslund Johansen (tfj@sm.dk)
Ministry of Social Affairs and Integration
Holmens Kanal 22, DK-1060 København K
+45 33 92 93 00

The Danish Disability Council
Civil society: involvement through representative organizations ("Danske Handicaporganisationer"/Danish Council of Organisations of Disabled People,
Each sector Ministry is responsible of implementing necessary changes etc. in their area (the principle of sector responsibility)

Estonia

Focal Point: Ministry of Social Affairs.

Coordination mechanism: Ministry of Social Affairs (network of all the ministries yet to be formed)

Independent mechanism: none established, to be formed by the Estonian Chamber of Disabled People

Contact:
Aile Rahel Ausna
Social Welfare Department, Ministry of Social Affairs, Gonsiori 29, 15027 Tallinn, Estonia.
E-mail: rahel.ausna@sm.ee; Tel: +372 626 9228

Ministry of Foreign Affairs
Ministries (Ministry of Education and Research, Ministry of Justice, Ministry of Culture, Ministry of Internal Affairs, Ministry of Economic Affairs and Communications, Ministry of Finance) and non-governmental organizations (Estonian Chamber of Disabled People,

Estonian Union of People with Visual Impairment, Estonian Association of Hard Hearing, Estonian Union of Persons with Mobility Impairment, Association of Estonian Cities, Association of Municipalities of Estonia
Estonian National Council of People with Disabilities

Finland

Focal Point: none established

Coordination mechanism: none established

Independent mechanism: none established

Contact:
Satu Sistonen, Legal Officer (until May 2012)
Ministry of Foreign Affairs
Unit for human right courts and conventions
Email: satu.sistonen@formin.fi

Eveliina Pöyhönen
Ministerial Adviser
Social Inclusion Team
Department for Promotion of Welfare and Health
Ministry of Social Affairs and Health
P.O. Box 33, FI-00023 Government, Finland
Email: eveliina.poyhonen@stm.fi
Tel. +358 9 160 74133, +358 50 570 2186

France

Focal point: All administrations, services and bureaus working on the implementation of disability policy (not formally appointed yet as focal points)

Coordination mechanism: Interministerial committee of disability, chaired by the Prime Minister

Independent mechanism: Not appointed yet (see Chapter 2)

Contact:
Pascal FROUDIERE
European and International Affairs Unit
DIRECTORATE GENERAL FOR SOCIAL COHESION
Ministry for Solidarity and Social Cohesion
Phone : +33 (0)1 40 56 80 14
E-Mail : pascal.froudiere@social.gouv.fr

Germany

Focal Point: Federal Ministry of Labour and Social Affairs

Coordination Mechanism: Federal Government Commissioner for Matters relating to Persons with Disabilities

Monitoring Mechanism: German Institute for Human Rights
CRPD National Monitoring Mechanism
Zimmerstrasse 26/27, 10969 Berlin, Germany
Tel.: 0049-30-259359-450
E-Mail: monitoring-stelle@institut-fuer-menschenrechte.de
Fax: 0049-30-259359-459
www.institut-fuer-menschenrechte.de/en/monitoring-mechanism.html

Contact:
André Necke
Desk officer, Federal Ministry of Labour and Social Affairs,
email: andre.necke@bmas.bund.de
Tel. +49-30-527-1780

Barbara Braun
Desk officer, Federal Ministry of Labour and Social Affairs,
email: barbara.braun@bmas.bund.de
Tel. +49-30-527-2433

Greece

Focal point: None established

Coordination mechanism: none established

Independent mechanism: none established

Contact:
1. Stelakatos Michael,
Ministère des Affaires Etrangeres
Zalokosta 3, Athènes
e-mail: m.stelak@mfa.gr
Tel. : +30 210 368 33 19

2**.** Nikolsky Dimitrios
Ministry of Health and Social Solidairty
Aristotelous 17, Athens
e-mail: d.nikolsky@yyka.gov.gr
Tel: +30 210 5227700

Hungary

Focal Point: Ministry of National Resources

Coordination mechanism: not established

Independent mechanism: National Council on Disability Issues

Contact:
Mr Roland KISGYŐRI
Deputy Head of Department
Email: roland.kisgyori@nefmi.gov.hu
Ministry of National Resources

Ireland

Focal Point: will be confirmed following ratification

Coordination mechanism: will be confirmed following ratification

Independent mechanism: will be confirmed following ratification

Contact:
Richard Godfrey
Disability Policy Division
Department of Justice and Equality
Email: rcgodfrey@justice.ie
Tel: +353 1 4790212

Italy

Focal Point: Ministry of Labour and Social Policies - Directorate general for inclusion and social policies,

Coordination mechanism: Ministry of Labour and Social Policies- Directorate general for inclusion and social policies

Independent mechanism: National Observatory for monitoring the condition of people with disabilities (Law 18/2009)

Contact:
Alfredo Ferrante, aferrante@lavoro.gov.it, disabili@lavoro.gov.it
Head of Unit for persons with disabilities
Directorate general for inclusion and social policies
Ministry of Labour and Social Policies
Via Fornovo, 8
00192 Roma - IT
Tel +39 06.4683.4659-4457

Latvia

Focal Point: The Ministry of Welfare

Coordination mechanism: The National Council of Disability Affairs (NCDA)
Independent mechanism: The Ombudsman office (also the NCDA and working groups)

Contact:
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Elina Celmina, Tel: +371 67021612, Elina.Celmina@lm.gov.lv

Equal Opportunities Policy Division
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Latvia

fax +371 67021607

Lithuania

Focal Point: Ministry of Social Security and Labour

Sub-Focal points: The Ministry of Education and Science, the Ministry of Transport and Communications, the Ministry of Health, the Ministry of Environment, the Ministry of Economics, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of the Interior, the Ministry of Culture, the Department of Physical Education and Sports under the Government of the Republic of Lithuania, the Department of Statistics, Information Society Development Committee under the Ministry of Transport and Communications.

Coordinating mechanism: Ministry of Social Security and Labour

Independent mechanism: The Council for the Affairs of Disabled at the Ministry of Social Security and Labour and the Office of Equal Opportunities Ombudsperson.

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Head of Equal Opportunities Division,
Tel: +370 5 266 42 61,

Rūta Jakubauskienė, ruta.jakubauskiene@socmin.lt
Chief Specialist of Equal Opportunities Division
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Luxembourg

Focal point: Ministry of Family Affairs and Integration

Coordination mechanism: Ministry of Family Affairs and Integration

Independent mechanism:

Task of promoting and monitoring: Consultative Commission of Human Rights (of the Grand Duchy of Luxembourg) jointly with the Centre for Equal Treatment
Task of protecting: National Ombudsman

Contact:
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Ministry of Family Affairs & Integration
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L-2919 Luxembourg
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Malta

Focal Point: Ministry for Justice, Dialogue and the Family

Coordination mechanism: Ministry for Justice, Dialogue and the Family

Independent mechanism: National Commission Persons with Disability (KNPD)

Contact:
For implementation: Anne-Marie Callus, Kummissjoni Nazzjonali Persuni b'Diżabilità, Bugeia Institute, Braille Street, St Venera

The National Commission Persons with Disability (KNPD) established by the Equal Opportunities (Persons with Disability) Act (includes representatives of the main Government Ministries and also the voluntary sector working in the field).

The Netherlands

Focal Point: The Ministry of Health, Welfare and Sport (VWS)

Coordination mechanism: Proposed network of representatives from all layers of government.

Independent mechanism: National Human Rights Institute

Contact:
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Léon Poffé
Ministry of Health, Welfare and Sport

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NL 2500 EJ The Hague
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Poland

Focal Point: Ministry of Labour and Social Policy

Coordination mechanism: none established

Independent mechanism: none established

Contact:
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Department of Economic Analyses and Forecasts,
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Małgorzata Kiełducka, malgorzata.kielducka@mpips.gov.pl
Ministry of Labour and Social Policy, Office of the Government Plenipotentiary for Disabled Persons,
Nowogrodzka 1/3/5, 00-513 Warsaw, Poland
Tel: +48 22 529 06 12, fax. +48 22 529 06 02

Portugal

Focal point: to be designated

Coordination mechanism: National Institute for the Rehabilitation (waiting for Governmental designation)

Independent mechanism: to be designated

Contact:
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National Institute for the Rehabilitation
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1069-178 Lisbon
Portugal
Tel: 00351 21 792 95 00
Fax: 00351 21 792 95 95
E-mail: José.M.Serodio@inr.mtss.pt

Romania

Focal Point: Ministry of Labor, Family and Social Protection / General Directorate for the Protection of Persons with Handicap

Coordination mechanism: Ministry of Labor, Family and Social Protection / General Directorate for the Protection of Persons with Handicap

Independent mechanism: none established

Contact:
Gabriela Dobre
General Directorate for the Protection of Persons with Handicap
Ministry of Labor, Family and Social Protection
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Tel: +4 021 212 54 38
Fax: +4 021 212 54 43
gabriela.dobre@anph.ro

Slovak Republic

Focal Point: none established

Coordination mechanism: none established

Independent mechanism: none established

With regard to the fact that the SR Government through a vote of no confidence by the legislative body has lost the mandate to carry out its function, the contact point together with the coordination mechanism in the framework of central government will be established only after the early parliamentary elections in June 2012.

Contact: (will be confirmed after the establishment of coordination mechanism)
Ministry of Labour, Social Affairs and Family of the Slovak Republic
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Slovakia
Tel.: +421 2 2046 1055
Fax.: +421 2 2046 1075
dana.podobna@employment.gov.sk

Slovenia

Focal Point: Ministry of Labour, Family and Social Affairs, Directorate for persons with disability

Coordination mechanism: None established

Independent mechanisms: Government Council for Persons with Disabilities;

National Council of Disabled People's Organisation of Slovenia (NSIOS)

Contact:
Cveto Uršič,
Ministry of Labour and Social Affairs, general director, Directorate for disabled
Kotnikova 28, 1000 Ljubljana, SLOVENIA, tel: + 386 1 369 75 38, fax: +386 1 369 75 64
cveto.ursic@gov.si

Governmental Council for Persons with Disabilities
Relevant ministries
Slovenian National Council of disabled people's organizations

Spain

Focal Point : Ministry of Foreign Affairs and Cooperation as well as the Ministry of Health, Social Services and Equality[114], through Directorate-General for Disability Support Policies, which is responsible for the coordination of both.

Coordination: National Disability Council (General State Administration, Associations of common public interest, experts advisors).

Independent Mechanism: CERMI (Spanish Committee of Representatives of Persons with Disabilities) created by the National Disability Council

Contact:
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dgdiscapacidad@msssi.es
General Director of Disability Support Policies. Ministry of Health, Social Policy and Equality
Paseo de la Castellana 67-6ª planta
tel: + 34 918226502/03

Eva Mendoza
eva.mendoza@maec.es
Humans Rights Office - Ministry of Foreign Affairs and Cooperation (MAEC)

Sweden

Focal Point: Ministry of Health and Social Affairs

Coordinating mechanisms: Social Services Division of the Ministry of Health and Social Affairs; Swedish Agency for Disability Policy Coordination

Independent mechanism: none established

[114] The recent ministerial reorganization undertaken by the Spanish government, under which social policies, and therefore the UNCRPD, have been assigned to the new Ministry of Health, Social Services and Equality.

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Ministry of Health and Social Affairs Social Services Division
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UK

Focal Point: Office for Disability Issues (ODI)

Coordinating mechanism: Office for Disability Issues (ODI)

Independent mechanisms: UK's four equality and human rights Commissions i.e. the Equality and Human Rights Commission (EHRC), the Scottish Human Rights Commission (SHRC), the Northern Ireland Human Rights Commission (NIHRC) and the Equality Commission for Northern Ireland (ECNI)

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Fax: +44 20 7449 5087

Department for Work and Pensions; Office for Disability Issues

European Union

Focal point: European Commission

Coordination mechanism: none established

Independent mechanism: none established

Contact:
Johan ten Geuzendam,
Head of Unit,
D3 Rights of Persons with Disabilities
European Commission
DG Justice
Rue Luxembourg 46 - 1049 Brussels

ANNEX 3: WEBSITES

Belgium
Federal Ministry of Social Security: www.socialsecurity.fgov.be/
Flemish administration for 'Equal Opportunities in Flanders' : www.gelijkekansen.be
Walloon Agency for Integration of Persons with Disabilities : www.awiph.be/
Brussels Joint Community Commission : www.bico.irisnet.be
Office of the German-speaking Community for Persons with Disabilities: www.dpb.be

Cyprus
Ministry of Labour and Social Insurance: www.mlsi.gov.cy
Department for Social Inclusion of Persons with Disabilities: www.mlsi.gov.cy/dsid

Czech Republic
Ministry of Labour and Social Affairs: www.mpsv.cz
Czech National Disability Council: www.nrzp.cz

Denmark
Ministry of Social Affairs and Integration: www.ism.dk

Estonia
Ministry of Social Affairs: www.sm.ee
The Estonian Chamber of Disabled People www.epikoda.ee

Finland
Electronic Treaty Data Base www.finlex.fi
Ministry of Foreign Affairs formin.finland.fi

France
Ministry for Solidarity and Social Cohesion: http://www.solidarite.gouv.fr/

Germany
Federal Ministry of Labour and Social Affairs:
www.bmas.de
Portal for persons with disabilities, their family, administrations and enterprises
www.einfach-teilhaben.de
Federal Commissioner:
www.behindertenbeauftragter.de
Monitoring Mechanism:
www.institut-fuer-menschenrechte.de/en/monitoring-mechanism.html

Greece
Ministry of Health and Social Security: www.mohaw.gr,
National Confederation of People with Disabilities: www.esaea.gr

Hungary
http://www.szmm.gov.hu

Ireland

http://www.justice.ie/en/JELR/Pages/Disability%20Policy

Italy
Ministry for Social Solidarity
www.solidarietasociale.gov.it

Latvia
Ministry of Welfare
www.lm.gov.lv

Lithuania
Ministry of Social Security and Labour and Department of Disabled People
http://www.ndt.lt/id-teises_aktai.html; http://www.socmin.lt/

Luxembourg
Ministry of Family Affairs and Integration
http://www.mfi.public.lu/

Malta
National Commission Persons with Disability (NCPD) website http://www.knpd.org.

The Netherlands
www.rijksoverheid.nl/onderwerpen/gehandicapten/gelijke-behandeling (Dutch)
www.rijksoverheid.nl

Poland
Ministry of Labour and Social Policy websites: www.mpips.gov.pl,
http://www.niepelnosprawni.gov.pl/dokumenty-organizacji-narodow-zj/konwencja-o-prawach/

Portugal
The Ministry of Solidarity and Social Security
The National Institute for Rehabilitation, I.P. www.inr.pt

Romania
National Authority for Persons with Handicap: www.anph.ro

Slovakia
Ministry of Labour, Social Affairs and Family of the Slovak Republic
www.employment.gov.sk

Slovenia
http://www.mddsz.gov.si/en/legislation/
http://www.mddsz.gov.si/en/publications/

Spain
Ministry of Health, Social Services and Equality: www.msssi.es
Ministry of Foreign Affairs and Cooperation: www.maec.es
Comité Español de Representantes de Personas con discapacidad (CERMI): www.cermi.es

Sweden
Government's home page: www.sweden.gov.se
Contains an Easy Read version of the Convention, Braille and sign language.

UK
www.officefordisability.gov.uk
Contains English language Easy Read version of the Convention.

European Union
Until April: http://ec.europa.eu/social/main.jsp?catId=429&langId=en
After May 2011 http://ec.europa.eu/justice/policies/intro/policies_intro_en.htm

Other relevant websites
http://www.un.org/disabilities/
www.easpd.eu
www.handicap.dk
www.nrozp.sk
www.cnditalia.it
www.superando.it
www.edf-feph.org/
www.epr.eu
www.enil.eu
www.coface-eu.org
http://www.un-convention.info/index.html
Independent (part funded by the UK Government) UK website dedicated to promoting disabled persons human rights.

ANNEX 4: NORWAY'S CONTRIBUTION TO THE 5TH HIGH LEVEL GROUP REPORT ON THE IMPLEMENTATION OF THE UNCRPD

Ratification of CRPD.

Norway signed the CRPD on 30. March 2007, the day of opening for signature. Norwegian legislation complies with the Convention, with the exception that a new act on legal capacity and guardianship has not yet been implemented. The new act was necessary to bring our legislation i compliance with article 12 of the CRPD. A new administration has to be set up to administer a more professionalized system of supportive guardians. Since legal capacity and guardianship concerns a civil right, the Government deems that the new legislation has to be implemented before ratification. The Government aims at ratifying the CRPD and will submit a proposition to the Parliament in the near future.

National implementation and monitoring

Each government ministry is responsible for disability matters within its field of competence. Norwegian policy has for many years had the same goals as the CRPD. The Ministry of Children, Equality and Social Inclusion coordinates the government's disability policy and functions as focal point for CRPD matters. That ministry chairs the government's committee of state secretaries on disability matters. 11 ministries are represented.
The Equality and Anti-discrimination Ombud is responsible for promoting, protecting and monitoring the important Anti-discrimination and Accessibility Act. The Ombud has these functions also as concerns CEDAW and CERD. In addition the Ombud has a special responsibility for monitoring living conditions for persons with disabilities.

There are a number of mechanisms for participation of persons with disabilities and their representative organizations in disability issues.

On national level:

- Regular meetings on political level between the Government and representatives of the organizations of persons with disabilities several times a year.
- Additional Meetings on political and administrative level between individual ministries and umbrella organizations or individual organizations from time to time and on specific issues.
- The National Disability Council is a forum for consultation between the government, disability organizations and experts on disability issues.

On County Council and Municipal level:

- Each County Council and Municipal Council is obliged by law the have an advisory Council on Disability matters to ensure participation of persons with disability on important matters, including accessibility, discrimination and services. In addition to representatives of persons with disabilities representative of the County or Municipal Council often take part in these advisory councils.

Norwegian disability organizations receive an annual government subsidy of more than NOK 100 million.

Formal decisions on the implementation on article 33 of CRPD will be taken in connection with its ratification.

Collecting statistics and /or developing indicators.

Statistic Norway (SSB) has the overall responsibility for meeting the need for statistics on Norwegian society and is also responsible for coordinating all official statistics in Norway. There is no established official definition on disability to be used in preparation of all statistics. Thus disability is defined according to the purpose of the statistics. Eurostat has developed a questionnaire, (European Disability and Social Integration Module) which partly has been integrated in the living condition survey on health.(Health Interview Survey)
However, SSB prepare several statistics which include markers on disability, some of them may also be disaggregated on gender and age. Some examples: The Labour Force Survey, the Population and Housing Census, and Living Conditions Survey on Health in Norway. Norway also conducts the EU-Silc, which might be disaggregated on disability.

Accessibility in national law.

In Norway accessibility legislation is found both in legislation concerning technical issues and as part of antidiscrimination legislation. Necessary links are made between the two when covering the same aspects of accessibility.

Accessibility requirements were first introduced in the building legislation in 1976. The requirements have been strengthened and expanded by later revisions. The latest revision was (made) in 2010 when universal design replaced accessibility as the defined objective in the building legislation, widening the scope of requirements and the required quality of accessibility to buildings and constructions.

Universal design is also required in legislation concerning city planning/outdoor environments, transport and public procurement. An Anti-Discrimination and Accessibility Act has been effective in Norway since 2009. It protects people with disabilities from discrimination and requires that public and private undertakings that offer goods or services to the general public are obliged to ensure the universal design of the undertaking’s normal function provided this does not entail an undue burden for the undertaking. This covers the physical environment as well as the undertakings ICT services.
Requirements for further accessibility to services and goods and strengthened requirements for ICT services are under preparation for inclusion in the Anti-Discrimination and Accessibility Act.

Norway signed the UN convention on the Rights of Persons with Disabilities in 2003. The convention has been carefully examined to decide if more accessibility legislation should be introduced to comply with the convention. This has verified that the existing and pending Norwegian plans, policies and legislation in the field of accessibility are in line with the convention.

The premises of all public and private services directed towards the public in new buildings must be universally designed according to the building legislation. There are no exceptions to this requirement. In addition sectorial legislation has specific and more extensive requirements concerning universal design and accessibility, i.e. schools and universities, selected public offices and transport.

The Anti-Discrimination and Accessibility Act requires universal design of the undertaking's normal function provided this does not entail an undue burden for the undertaking. This requirement is also effective for services located in existing/old buildings, and covers all services directed towards the public.

The Public Procurement Act requires that all services and products purchased by providers of public services should be evaluated in accordance with universal design. There are no exceptions to this requirement except products and services where universal design is not relevant. All providers of services directed towards the public must comply with the Anti-Discrimination and Accessibility Act which requires that the physical means used in providing the service, including ICT, should be universally designed.

Concrete regulations concerning products are effective for some products, mainly those used in environments which should be accessible to the public. Examples of this are busses, ships and other means of transport affected by EU-regulations. In addition construction products such as elevators, electric switches, water-taps etc should be universally designed according to building regulations. A number of other products are covered by national standards and comparable guidelines. The scope of these standards is wide, covering ICT, out-door areas, infrastructure and more.

To support the implementation of national laws on universal design and accessibility and stimulate the work towards a universally designed society the Norwegian Government has launched action plans. The plan in operation is "Norway universally designed by 2025 The Norwegian government's action plan for universal design and increased accessibility 2009-2013.

Products for private use (with the exception of technical aids), are as a rule not covered by accessibility regulations. A national project conducted by the Norwegian Design Council is in operation to increase the use of universal design when designing products for the private sphere. Typical products dealt with in this project are toothbrushes, cutlery and kitchen equipment, packaging, internet design, cars etc.

Since it has been decided to use universal design when implementing accessibility in Norway, a number of new national standards have been developed. In addition existing standard have been reviewed and revised to cover the level of accessibility required by universal design. New standards has been developed amongst others for buildings, out-door areas, ICT and transport. A standard for goods and services is pending. International standards are used or included in national standards when relevant.

The various laws requiring universal design differs slightly when it comes to enforcement, but in general the enforcement is done administratively. A breach of the law can, if not corrected, result in fines or injunction to correct situation. If a case is not resolved the parties it may be brought to court.

The Anti-Discrimination and Accessibility Act is enforced by The Equality and Anti-Discrimination Ombud. Anyone affected can bring a claim to the Ombud.

The law enforcement role of the Ombud includes making statements in connection with complaints regarding violations of laws and regulations that are within the working scope of

the Ombud. The Equality and Anti-Discrimination Tribunal will try appeals based on the Ombuds statements. Parties may take the case to court if the Tribunal's conclusion is not accepted.

The Norwegian policies on universal design and accessibility take into account views expressed by NGOs and other parties. Representatives from interest organizations for people with disabilities participate in all relevant committees and panels.

Links: Norway universally designed by 2025 The Norwegian government's action plan for universal design and increased accessibility 2009-2013.

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Phone +47 22 249090
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Coordination mechanism: Ministry of Children, Equality and Social Inclusion

Independent mechanism: Equality and anti-discrimination ombud.
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DIRECTIVE 2000/78/CE DU CONSEIL

du 27 novembre 2000

portant création d'un cadre général en faveur de l'égalité de traitement en matière d'emploi et de travail

LE CONSEIL DE L'UNION EUROPÉENNE,

vu le traité instituant la Communauté européenne, et notamment son article 13,

vu la proposition de la Commission ([1]),

vu l'avis du Parlement européen ([2]),

vu l'avis du Comité économique et social ([3]),

vu l'avis du Comité des régions ([4]),

considérant ce qui suit:

(1) Conformément à l'article 6 du traité sur l'Union européenne, l'Union européenne est fondée sur les principes de la liberté, de la démocratie, du respect des droits de l'homme et des libertés fondamentales, ainsi que de l'État de droit, principes qui sont communs à tous les États membres et elle respecte les droits fondamentaux, tels qu'ils sont garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et tels qu'ils résultent des traditions constitutionnelles communes aux États membres, en tant que principes généraux du droit communautaire.

(2) Le principe de l'égalité de traitement entre homme et femme est bien établi dans un ensemble important de textes de droit communautaire, notamment dans la directive 76/207/CEE du Conseil du 9 février 1976 relative à la mise en œuvre du principe de l'égalité de traitement entre hommes et femmes en ce qui concerne l'accès à l'emploi, à la formation et à la promotion professionnelles, et les conditions de travail ([5]).

(3) Dans la mise en œuvre du principe de l'égalité de traitement, la Communauté cherche, conformément à l'article 3, paragraphe 2, du traité CE, à éliminer les inégalités et à promouvoir l'égalité, entre les hommes et les femmes, en particulier du fait que les femmes sont souvent victimes de discriminations multiples.

(4) Le droit de toute personne à l'égalité devant la loi et la protection contre la discrimination constitue un droit universel reconnu par la Déclaration universelle des droits de l'homme, par la Convention des Nations unies sur l'élimination de toutes les formes de discrimination à l'égard des femmes, par les pactes des Nations unies relatifs aux droits civils et politiques et aux droits économiques, sociaux et culturels et par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales signés par tous les États membres. La Convention n° 111 de l'Organisation internationale du travail interdit la discrimination en matière d'emploi et de travail.

(5) Il est important de respecter ces droits fondamentaux et ces libertés fondamentales. La présente directive ne porte pas atteinte à la liberté d'association, dont le droit de toute personne de fonder avec d'autres des syndicats et de s'y affilier pour la défense de ses intérêts.

(6) La charte communautaire des droits sociaux fondamentaux des travailleurs reconnaît l'importance de la lutte contre les discriminations sous toutes leurs formes, y compris la nécessité de prendre des mesures appropriées en faveur de l'intégration sociale et économique des personnes âgées et des personnes handicapées.

(7) Le traité CE compte au nombre de ses objectifs la promotion de la coordination entre les politiques de l'emploi des États membres. À cet effet, un nouveau chapitre sur l'emploi a été intégré dans le traité CE en vue de l'élaboration d'une stratégie coordonnée pour l'emploi et en particulier de la promotion d'une main-d'œuvre qualifiée, formée et susceptible de s'adapter.

(8) Les lignes directrices pour l'emploi en 2000, approuvées par le Conseil européen de Helsinki les 10 et 11 décembre 1999, soulignent la nécessité de promouvoir un marché du travail favorable à l'insertion sociale en formulant un ensemble cohérent de politiques destinées à lutter contre la discrimination à l'égard de groupes tels que les personnes handicapées. Elles soulignent également la nécessité d'accorder une attention particulière à l'aide aux travailleurs âgés pour qu'ils participent davantage à la vie professionnelle.

(9) L'emploi et le travail constituent des éléments essentiels pour garantir l'égalité des chances pour tous et contribuent dans une large mesure à la pleine participation des citoyens à la vie économique, culturelle et sociale, ainsi qu'à l'épanouissement personnel.

(10) Le Conseil a adopté, le 29 juin 2000, la directive 2000/43/CE relative à la mise en œuvre du principe de l'égalité de traitement entre les personnes sans distinction de race ou d'origine ethnique ([6]), laquelle assure déjà une protection contre de telles discriminations dans le domaine de l'emploi et du travail.

(11) La discrimination fondée sur la religion ou les convictions, un handicap, l'âge ou l'orientation sexuelle peut compromettre la réalisation des objectifs du traité CE, notamment un niveau d'emploi et de protection sociale

([1]) JO C 177 E du 27.6.2000, p. 42.
([2]) Avis rendu le 12 octobre 2000 (non encore paru au Journal officiel).
([3]) JO C 204 du 18.7.2000, p. 82.
([4]) JO C 226 du 8.8.2000, p. 1.
([5]) JO L 39 du 14.2.1976, p. 40.
([6]) JO L 180 du 19.7.2000, p. 22.

élevé, le relèvement du niveau et de la qualité de la vie, la cohésion économique et sociale, la solidarité et la libre circulation des personnes.

(12) À cet effet, toute discrimination directe ou indirecte fondée sur la religion ou les convictions, un handicap, l'âge ou l'orientation sexuelle dans les domaines régis par la présente directive doit être interdite dans la Communauté. Cette interdiction de discrimination doit également s'appliquer aux ressortissants de pays tiers, mais elle ne vise pas les différences de traitement fondées sur la nationalité et est sans préjudice des dispositions en matière d'entrée et de séjour des ressortissants de pays tiers et à leur accès à l'emploi et au travail.

(13) La présente directive ne s'applique pas aux régimes de sécurité sociale et de protection sociale dont les avantages ne sont pas assimilés à une rémunération au sens donné à ce terme pour l'application de l'article 141 du traité CE ni aux versements de toute nature effectués par l'État qui ont pour objectif l'accès à l'emploi ou le maintien dans l'emploi.

(14) La présente directive ne porte pas atteinte aux dispositions nationales fixant les âges de la retraite.

(15) L'appréciation des faits qui permettent de présumer l'existence d'une discrimination directe ou indirecte appartient à l'instance judiciaire nationale ou à une autre instance compétente, conformément au droit national ou aux pratiques nationales, qui peuvent prévoir, en particulier, que la discrimination indirecte peut être établie par tous moyens, y compris sur la base de données statistiques.

(16) La mise en place de mesures destinées à tenir compte des besoins des personnes handicapées au travail remplit un rôle majeur dans la lutte contre la discrimination fondée sur un handicap.

(17) La présente directive n'exige pas qu'une personne qui n'est pas compétente, ni capable ni disponible pour remplir les fonctions essentielles du poste concerné ou pour suivre une formation donnée soit recrutée, promue ou reste employée ou qu'une formation lui soit dispensée, sans préjudice de l'obligation de prévoir des aménagements raisonnables pour les personnes handicapées.

(18) La présente directive ne saurait, notamment, avoir pour effet d'astreindre les forces armées ainsi que les services de police, pénitentiaires ou de secours à embaucher ou à maintenir dans leur emploi des personnes ne possédant pas les capacités requises pour remplir l'ensemble des fonctions qu'elles peuvent être appelées à exercer au regard de l'objectif légitime de maintenir le caractère opérationnel de ces services.

(19) En outre, pour que les États membres puissent continuer à maintenir la capacité de leurs forces armées, ils peuvent choisir de ne pas appliquer les dispositions de la présente directive relatives au handicap et à l'âge à tout ou partie de leurs forces armées. Les États membres qui exercent ce choix doivent définir le champ d'application de cette dérogation.

(20) Il convient de prévoir des mesures appropriées, c'est-à-dire, des mesures efficaces et pratiques destinées à aménager le poste de travail en fonction du handicap, par exemple en procédant à un aménagement des locaux ou à une adaptation des équipements, des rythmes de travail, de la répartition des tâches ou de l'offre de moyens de formation ou d'encadrement.

(21) Afin de déterminer si les mesures en question donnent lieu à une charge disproportionnée, il convient de tenir compte notamment des coûts financiers et autres qu'elles impliquent, de la taille et des ressources financières de l'organisation ou de l'entreprise et de la possibilité d'obtenir des fonds publics ou toute autre aide.

(22) La présente directive est sans préjudice des lois nationales relatives à l'état civil et des prestations qui en dépendent.

(23) Dans des circonstances très limitées, une différence de traitement peut être justifiée lorsqu'une caractéristique liée à la religion ou aux convictions, à un handicap, à l'âge ou à l'orientation sexuelle constitue une exigence professionnelle essentielle et déterminante, pour autant que l'objectif soit légitime et que l'exigence soit proportionnée. Ces circonstances doivent être mentionnées dans les informations fournies par les États membres à la Commission.

(24) L'Union européenne a reconnu explicitement dans sa déclaration nº 11 relative au statut des Églises et des organisations non confessionnelles, annexée à l'acte final du traité d'Amsterdam, qu'elle respecte et ne préjuge pas le statut dont bénéficient, en vertu du droit national, les Églises et les associations ou communautés religieuses dans les États membres et qu'elle respecte également le statut des organisations philosophiques et non confessionnelles. Dans cette perspective, les États membres peuvent maintenir ou prévoir des dispositions spécifiques sur les exigences professionnelles essentielles, légitimes et justifiées susceptibles d'être requises pour y exercer une activité professionnelle.

(25) L'interdiction des discriminations liées à l'âge constitue un élément essentiel pour atteindre les objectifs établis par les lignes directrices sur l'emploi et encourager la diversité dans l'emploi. Néanmoins, des différences de traitement liées à l'âge peuvent être justifiées dans certaines circonstances et appellent donc des dispositions spécifiques qui peuvent varier selon la situation des États membres. Il est donc essentiel de distinguer entre les différences de traitement qui sont justifiées, notamment par des objectifs légitimes de politique de l'emploi, du marché du travail et de la formation professionnelle, et les discriminations qui doivent être interdites.

(26) L'interdiction de la discrimination doit se faire sans préjudice du maintien ou de l'adoption de mesures destinées à prévenir ou à compenser des désavantages chez un groupe de personnes d'une religion ou de convictions, d'un handicap, d'un âge ou d'une orientation sexuelle donnés, et ces mesures peuvent autoriser l'existence d'organisations de personnes d'une religion ou de convictions, d'un handicap, d'un âge ou d'une orientation sexuelle donnés lorsque leur objet principal est la promotion des besoins spécifiques de ces personnes.

(27) Le Conseil, dans sa recommandation 86/379/CEE du 24 juillet 1986 sur l'emploi des handicapés dans la Communauté [1], a établi un cadre d'orientation qui énumère des exemples d'actions positives visant à promouvoir l'emploi et la formation des personnes handicapées et, dans sa résolution du 17 juin 1999 sur l'égalité des chances en matière d'emploi pour les personnes handicapées [2], a affirmé l'importance d'accorder une attention particulière notamment au recrutement, au maintien dans l'emploi et à la formation et à l'apprentissage tout au long de la vie des personnes handicapées.

(28) La présente directive fixe des exigences minimales, ce qui donne aux États membres la possibilité d'adopter ou de maintenir des dispositions plus favorables. La mise en œuvre de la présente directive ne peut pas justifier une régression par rapport à la situation existant dans chaque État membre.

(29) Les personnes qui ont fait l'objet d'une discrimination fondée sur la religion ou les convictions, un handicap, l'âge ou l'orientation sexuelle doivent disposer de moyens de protection juridique adéquats. Pour assurer un niveau de protection plus efficace, les associations ou les personnes morales doivent aussi être habilitées à engager une procédure, selon des modalités fixées par les États membres, pour le compte ou à l'appui d'une victime, sans préjudice des règles de procédure nationales relatives à la représentation et à la défense devant les juridictions.

(30) La mise en œuvre effective du principe d'égalité requiert une protection judiciaire adéquate contre les rétorsions.

(31) L'aménagement des règles concernant la charge de la preuve s'impose dès qu'il existe une présomption de discrimination et, dans les cas où cette situation se vérifie, la mise en œuvre effective du principe de l'égalité de traitement requiert que la charge de la preuve revienne à la partie défenderesse. Toutefois, il n'incombe pas à la partie défenderesse de prouver que la partie demanderesse appartient à une religion donnée, possède des convictions données, présente un handicap donné, est d'un âge donné ou d'une orientation sexuelle donnée.

(32) Les États membres peuvent ne pas appliquer les règles concernant la charge de la preuve aux procédures dans lesquelles l'instruction des faits incombe à la juridiction ou à l'instance compétente. Les procédures ainsi visées sont celles dans lesquelles la partie demanderesse est dispensée de prouver les faits dont l'instruction incombe à la juridiction ou à l'instance compétente.

(33) Les États membres doivent encourager le dialogue entre les partenaires sociaux ainsi que, dans le cadre des pratiques nationales, avec les organisations non gouvernementales pour discuter de différentes formes de discrimination sur le lieu de travail et lutter contre celles-ci.

(34) Le besoin de promouvoir la paix et la réconciliation entre les principales communautés d'Irlande du Nord requiert l'insertion de dispositions particulières dans la présente directive.

(35) Les États membres doivent mettre en place des sanctions effectives, proportionnelles et dissuasives applicables en cas de non-respect des obligations découlant de la présente directive.

(36) Les États membres peuvent confier aux partenaires sociaux, à leur demande conjointe, la mise en œuvre de la présente directive, pour ce qui est des dispositions relevant de conventions collectives, à condition de prendre toute disposition nécessaire leur permettant d'être à tout moment en mesure de garantir les résultats imposés par la présente directive.

(37) Conformément au principe de subsidiarité énoncé à l'article 5 du traité CE, l'objectif de la présente directive, à savoir la création, dans la Communauté, d'un terrain d'action en ce qui concerne l'égalité en matière d'emploi et de travail, ne peut pas être réalisé de manière suffisante par les États membres et peut donc, en raison des dimensions et des effets de l'action, être mieux réalisé au niveau communautaire. Conformément au principe de proportionnalité tel qu'énoncé audit article, la présente directive n'excède pas ce qui est nécessaire pour atteindre cet objectif,

A ARRÊTÉ LA PRÉSENTE DIRECTIVE:

CHAPITRE I

DISPOSITIONS GÉNÉRALES

Article premier

Objet

La présente directive a pour objet d'établir un cadre général pour lutter contre la discrimination fondée sur la religion ou les convictions, l'handicap, l'âge ou l'orientation sexuelle, en ce qui concerne l'emploi et le travail, en vue de mettre en œuvre, dans les États membres, le principe de l'égalité de traitement.

Article 2

Concept de discrimination

1. Aux fins de la présente directive, on entend par «principe de l'égalité de traitement» l'absence de toute discrimination directe ou indirecte, fondée sur un des motifs visés à l'article 1er.

2. Aux fins du paragraphe 1:

a) une discrimination directe se produit lorsqu'une personne est traitée de manière moins favorable qu'une autre ne l'est, ne l'a été ou ne le serait dans une situation comparable, sur la base de l'un des motifs visés à l'article 1er;

b) une discrimination indirecte se produit lorsqu'une disposition, un critère ou une pratique apparemment neutre est susceptible d'entraîner un désavantage particulier pour des personnes d'une religion ou de convictions, d'un handicap, d'un âge ou d'une orientation sexuelle donnés, par rapport à d'autres personnes, à moins que:

   i) cette disposition, ce critère ou cette pratique ne soit objectivement justifié par un objectif légitime et que les moyens de réaliser cet objectif ne soient appropriés et nécessaires, ou que

[1] JO L 225 du 12.8.1986, p. 43.
[2] JO C 186 du 2.7.1999, p. 3.

ii) dans le cas des personnes d'un handicap donné, l'employeur ou toute personne ou organisation auquel s'applique la présente directive ne soit obligé, en vertu de la législation nationale, de prendre des mesures appropriées conformément aux principes prévus à l'article 5 afin d'éliminer les désavantages qu'entraîne cette disposition, ce critère ou cette pratique.

3. Le harcèlement est considéré comme une forme de discrimination au sens du paragraphe 1 lorsqu'un comportement indésirable lié à l'un des motifs visés à l'article 1er se manifeste, qui a pour objet ou pour effet de porter atteinte à la dignité d'une personne et de créer un environnement intimidant, hostile, dégradant, humiliant ou offensant. Dans ce contexte, la notion de harcèlement peut être définie conformément aux législations et pratiques nationales des États membres.

4. Tout comportement consistant à enjoindre à quiconque de pratiquer une discrimination à l'encontre de personnes pour l'un des motifs visés à l'article 1er est considéré comme une discrimination au sens du paragraphe 1.

5. La présente directive ne porte pas atteinte aux mesures prévues par la législation nationale qui, dans une société démocratique, sont nécessaires à la sécurité publique, à la défense de l'ordre et à la prévention des infractions pénales, à la protection de la santé et à la protection des droits et libertés d'autrui.

Article 3

Champ d'application

1. Dans les limites des compétences conférées à la Communauté, la présente directive s'applique à toutes les personnes, tant pour le secteur public que pour le secteur privé, y compris les organismes publics, en ce qui concerne:

a) les conditions d'accès à l'emploi, aux activités non salariées ou au travail, y compris les critères de sélection et les conditions de recrutement, quelle que soit la branche d'activité et à tous les niveaux de la hiérarchie professionnelle, y compris en matière de promotion;

b) l'accès à tous les types et à tous les niveaux d'orientation professionnelle, de formation professionnelle, de perfectionnement et de formation de reconversion, y compris l'acquisition d'une expérience pratique;

c) les conditions d'emploi et de travail, y compris les conditions de licenciement et de rémunération;

d) l'affiliation à, et l'engagement dans, une organisation de travailleurs ou d'employeurs, ou toute organisation dont les membres exercent une profession donnée, y compris les avantages procurés par ce type d'organisations.

2. La présente directive ne vise pas les différences de traitement fondées sur la nationalité et s'entend sans préjudice des dispositions et conditions relatives à l'admission et au séjour des ressortissants de pays tiers et des personnes apatrides sur le territoire des États membres et de tout traitement lié au statut juridique des ressortissants de pays tiers et personnes apatrides concernés.

3. La présente directive ne s'applique pas aux versements de toute nature effectués par les régimes publics ou assimilés, y compris les régimes publics de sécurité sociale ou de protection sociale.

4. Les États membres peuvent prévoir que la présente directive ne s'applique pas aux forces armées pour ce qui concerne les discriminations fondées sur l'handicap et l'âge.

Article 4

Exigences professionnelles

1. Nonobstant l'article 2, paragraphes 1 et 2, les États membres peuvent prévoir qu'une différence de traitement fondée sur une caractéristique liée à l'un des motifs visés à l'article 1er ne constitue pas une discrimination lorsque, en raison de la nature d'une activité professionnelle ou des conditions de son exercice, la caractéristique en cause constitue une exigence professionnelle essentielle et déterminante, pour autant que l'objectif soit légitime et que l'exigence soit proportionnée.

2. Les États membres peuvent maintenir dans leur législation nationale en vigueur à la date d'adoption de la présente directive ou prévoir dans une législation future reprenant des pratiques nationales existant à la date d'adoption de la présente directive des dispositions en vertu desquelles, dans le cas des activités professionnelles d'églises et d'autres organisations publiques ou privées dont l'éthique est fondée sur la religion ou les convictions, une différence de traitement fondée sur la religion ou les convictions d'une personne ne constitue pas une discrimination lorsque, par la nature de ces activités ou par le contexte dans lequel elles sont exercées, la religion ou les convictions constituent une exigence professionnelle essentielle, légitime et justifiée eu égard à l'éthique de l'organisation. Cette différence de traitement doit s'exercer dans le respect des dispositions et principes constitutionnels des États membres, ainsi que des principes généraux du droit communautaire, et ne saurait justifier une discrimination fondée sur un autre motif.

Pourvu que ses dispositions soient par ailleurs respectées, la présente directive est donc sans préjudice du droit des églises et des autres organisations publiques ou privées dont l'éthique est fondée sur la religion ou les convictions, agissant en conformité avec les dispositions constitutionnelles et législatives nationales, de requérir des personnes travaillant pour elles une attitude de bonne foi et de loyauté envers l'éthique de l'organisation.

Article 5

Aménagements raisonnables pour les personnes handicapées

Afin de garantir le respect du principe de l'égalité de traitement à l'égard des personnes handicapées, des aménagements raisonnables sont prévus. Cela signifie que l'employeur prend les mesures appropriées, en fonction des besoins dans une situation concrète, pour permettre à une personne handicapée d'accéder à un emploi, de l'exercer ou d'y progresser, ou pour qu'une formation lui soit dispensée, sauf si ces mesures imposent à l'employeur une charge disproportionnée. Cette charge n'est pas disproportionnée lorsqu'elle est compensée de façon suffisante par des mesures existant dans le cadre de la politique menée dans l'État membre concerné en faveur des personnes handicapées.

Article 6

Justification des différences de traitement fondées sur l'âge

1. Nonobstant l'article 2, paragraphe 2, les États membres peuvent prévoir que des différences de traitement fondées sur l'âge ne constituent pas une discrimination lorsqu'elles sont objectivement et raisonnablement justifiées, dans le cadre du droit national, par un objectif légitime, notamment par des

objectifs légitimes de politique de l'emploi, du marché du travail et de la formation professionnelle, et que les moyens de réaliser cet objectif sont appropriés et nécessaires.

Ces différences de traitement peuvent notamment comprendre:

a) la mise en place de conditions spéciales d'accès à l'emploi et à la formation professionnelle, d'emploi et de travail, y compris les conditions de licenciement et de rémunération, pour les jeunes, les travailleurs âgés et ceux ayant des personnes à charge, en vue de favoriser leur insertion professionnelle ou d'assurer leur protection;

b) la fixation de conditions minimales d'âge, d'expérience professionnelle ou d'ancienneté dans l'emploi, pour l'accès à l'emploi ou à certains avantages liés à l'emploi;

c) la fixation d'un âge maximum pour le recrutement, fondée sur la formation requise pour le poste concerné ou la nécessité d'une période d'emploi raisonnable avant la retraite.

2. Nonobstant l'article 2, paragraphe 2, les États membres peuvent prévoir que ne constitue pas une discrimination fondée sur l'âge la fixation, pour les régimes professionnels de sécurité sociale, d'âges d'adhésion ou d'admissibilité aux prestations de retraite ou d'invalidité, y compris la fixation, pour ces régimes, d'âges différents pour des travailleurs ou des groupes ou catégories de travailleurs et l'utilisation, dans le cadre de ces régimes, de critères d'âge dans les calculs actuariels, à condition que cela ne se traduise pas par des discriminations fondées sur le sexe.

Article 7

Action positive et mesures spécifiques

1. Pour assurer la pleine égalité dans la vie professionnelle, le principe de l'égalité de traitement n'empêche pas un État membre de maintenir ou d'adopter des mesures spécifiques destinées à prévenir ou à compenser des désavantages liés à l'un des motifs visés à l'article 1er.

2. En ce qui concerne les personnes handicapées, le principe d'égalité de traitement ne fait pas obstacle au droit des États membres de maintenir ou d'adopter des dispositions concernant la protection de la santé et de la sécurité sur le lieu de travail ni aux mesures visant à créer ou à maintenir des dispositions ou des facilités en vue de sauvegarder ou d'encourager leur insertion dans le monde du travail.

Article 8

Prescriptions minimales

1. Les États membres peuvent adopter ou maintenir des dispositions plus favorables à la protection du principe de l'égalité de traitement que celles prévues dans la présente directive.

2. La mise en œuvre de la présente directive ne peut en aucun cas constituer un motif d'abaissement du niveau de protection contre la discrimination déjà accordé par les États membres dans les domaines régis par la présente directive.

CHAPITRE II

VOIES DE RECOURS ET APPLICATION DU DROIT

Article 9

Défense des droits

1. Les États membres veillent à ce que des procédures judiciaires et/ou administratives, y compris, lorsqu'ils l'estiment approprié, des procédures de conciliation, visant à faire respecter les obligations découlant de la présente directive soient accessibles à toutes les personnes qui s'estiment lésées par le non-respect à leur égard du principe de l'égalité de traitement, même après que les relations dans lesquelles la discrimination est présumée s'être produite se sont terminées.

2. Les États membres veillent à ce que les associations, les organisations ou les personnes morales qui ont, conformément aux critères fixés par leur législation nationale, un intérêt légitime à assurer que les dispositions de la présente directive sont respectées puissent, pour le compte ou à l'appui du plaignant, avec son approbation, engager toute procédure judiciaire et/ou administrative prévue pour faire respecter les obligations découlant de la présente directive.

3. Les paragraphes 1 et 2 sont sans préjudice des règles nationales relatives aux délais impartis pour former un recours en ce qui concerne le principe de l'égalité de traitement.

Article 10

Charge de la preuve

1. Les États membres prennent les mesures nécessaires, conformément à leur système judiciaire, afin que, dès lors qu'une personne s'estime lésée par le non-respect à son égard du principe de l'égalité de traitement et établit, devant une juridiction ou une autre instance compétente, des faits qui permettent de présumer l'existence d'une discrimination directe ou indirecte, il incombe à la partie défenderesse de prouver qu'il n'y a pas eu violation du principe de l'égalité de traitement.

2. Le paragraphe 1 ne fait pas obstacle à l'adoption par les États membres de règles de la preuve plus favorables aux plaignants.

3. Le paragraphe 1 ne s'applique pas aux procédures pénales.

4. Les paragraphes 1, 2 et 3 s'appliquent également à toute procédure engagée conformément à l'article 9, paragraphe 2.

5. Les États membres peuvent ne pas appliquer le paragraphe 1 aux procédures dans lesquelles l'instruction des faits incombe à la juridiction ou à l'instance compétente.

Article 11

Protection contre les rétorsions

Les États membres introduisent dans leur système juridique interne les mesures nécessaires pour protéger les travailleurs contre tout licenciement ou tout autre traitement défavorable par l'employeur en réaction à une plainte formulée au niveau de l'entreprise ou à une action en justice visant à faire respecter le principe de l'égalité de traitement.

Article 12

Diffusion de l'information

Les États membres veillent à ce que les dispositions adoptées en application de la présente directive ainsi que celles qui sont déjà en vigueur dans ce domaine soient portées à la connaissance des personnes concernées par tous moyens appropriés, par exemple sur le lieu de travail, et sur l'ensemble de leur territoire.

Article 13

Dialogue social

1. Conformément à leurs traditions et pratiques nationales, les États membres prennent les mesures appropriées afin de favoriser le dialogue entre les partenaires sociaux en vue de promouvoir l'égalité de traitement, y compris par la surveillance des pratiques sur le lieu de travail, par des conventions collectives, des codes de conduite et par la recherche ou l'échange d'expériences et de bonnes pratiques.

2. Dans le respect de leurs traditions et pratiques nationales, les États membres encouragent les partenaires sociaux, sans préjudice de leur autonomie, à conclure, au niveau approprié, des accords établissant des règles de non-discrimination dans les domaines visés à l'article 3 qui relèvent du champ d'application des négociations collectives. Ces accords respectent les exigences minimales fixées par la présente directive et par les mesures nationales de transposition.

Article 14

Dialogue avec les organisations non gouvernementales

Les États membres encouragent le dialogue avec les organisations non gouvernementales concernées qui ont, conformément aux pratiques et législations nationales, un intérêt légitime à contribuer à la lutte contre les discriminations fondées sur un des motifs visés à l'article 1er, en vue de promouvoir le principe de l'égalité de traitement.

CHAPITRE III

DISPOSITIONS PARTICULIÈRES

Article 15

Irlande du Nord

1. Pour faire face à la sous-représentation de l'une des principales communautés religieuses dans les services de police d'Irlande du Nord, les différences de traitement en matière de recrutement dans ces services, y compris pour le personnel de soutien, ne constituent pas une discrimination, dans la mesure où ces différences de traitement sont expressément autorisées par la législation nationale.

2. Afin de maintenir un équilibre dans les possibilités d'emploi pour les enseignants en Irlande du Nord tout en contribuant à surmonter les divisions historiques entre les principales communautés religieuses qui y sont présentes, les dispositions de la présente directive en matière de religion ou de convictions ne s'appliquent pas au recrutement des enseignants dans les écoles d'Irlande du Nord, dans la mesure où cela est expressément autorisé par la législation nationale.

CHAPITRE IV

DISPOSITIONS FINALES

Article 16

Conformité

Les États membres prennent les mesures nécessaires afin que:

a) soient supprimées les dispositions législatives, réglementaires et administratives contraires au principe de l'égalité de traitement;

b) soient ou puissent être déclarées nulles et non avenues ou soient modifiées les dispositions contraires au principe de l'égalité de traitement qui figurent dans les contrats ou les conventions collectives, dans les règlements intérieurs des entreprises, ainsi que dans les statuts des professions indépendantes et des organisations de travailleurs et d'employeurs.

Article 17

Sanctions

Les États membres déterminent le régime des sanctions applicables aux violations des dispositions nationales adoptées en application de la présente directive et prennent toute mesure nécessaire pour assurer la mise en œuvre de celles-ci. Les sanctions ainsi prévues qui peuvent comprendre le versement d'indemnité à la victime, doivent être effectives, proportionnées et dissuasives. Les États membres notifient ces dispositions à la Commission au plus tard le 2 décembre 2003 et toute modification ultérieure les concernant dans les meilleurs délais.

Article 18

Mise en œuvre

Les États membres adoptent les dispositions législatives, réglementaires et administratives nécessaires pour se conformer à la présente directive au plus tard le 2 décembre 2003 ou peuvent confier aux partenaires sociaux, à leur demande conjointe, la mise en œuvre de la présente directive pour ce qui est des dispositions relevant des accords collectifs. Dans ce cas, ils s'assurent que, au plus tard le 2 décembre 2003, les partenaires sociaux ont mis en place les dispositions nécessaires par voie d'accord, les États membres concernés devant prendre toute disposition nécessaire leur permettant d'être à tout moment en mesure de garantir les résultats imposés par ladite directive. Ils en informent immédiatement la Commission.

Pour tenir compte de conditions particulières, les États membres peuvent disposer, si nécessaire, d'un délai supplémentaire de 3 ans à compter du 2 décembre 2003, soit un total de 6 ans, pour mettre en œuvre les dispositions de la présente directive relatives à la discrimination fondée sur l'âge et l'handicap. Dans ce cas, ils en informent immédiatement la Commission. Tout État membre qui choisit d'avoir recours à ce délai supplémentaire fait rapport annuellement à la Commission sur les mesures qu'il prend pour s'attaquer à la discrimination fondée sur l'âge et l'handicap, et sur les progrès réalisés en vue de la mise en œuvre de la directive. La Commission fait rapport annuellement au Conseil.

Lorsque les États membres adoptent ces dispositions, celles-ci contiennent une référence à la présente directive ou sont accompagnées d'une telle référence lors de leur publication officielle. Les modalités de cette référence sont arrêtées par les États membres.

Article 19

Rapport

1. Les États membres communiquent à la Commission, au plus tard le 2 décembre 2005 et ensuite tous les cinq ans, toutes les informations nécessaires à l'établissement par la Commission d'un rapport au Parlement européen et au Conseil sur l'application de la présente directive.

2. Le rapport de la Commission prend en considération, comme il convient, le point de vue des partenaires sociaux et des organisations non gouvernementales concernées. Conformément au principe de la prise en compte systématique de la question de l'égalité des chances entre les hommes et les femmes, ce rapport fournit, entre autres, une évaluation de l'impact que les mesures prises ont sur les hommes et les femmes. À la lumière des informations reçues, ce rapport inclut, si nécessaire, des propositions visant à réviser et actualiser la directive.

Article 20

Entrée en vigueur

La présente directive entre en vigueur le jour de sa publication au *Journal officiel des Communautés européennes*.

Article 21

Destinataires

Les États membres sont destinataires de la présente directive.

Fait à Bruxelles, le 27 novembre 2000.

Par le Conseil

Le président

É. GUIGOU

Recours introduit le 20 juin 2011 — Commission européenne/République italienne

(Affaire C-312/11)

(2011/C 226/36)

Langue de procédure: l'italien

Parties

Partie requérante: Commission européenne (représentants: J. Enegren et C. Cattabriga, agents)

Partie défenderesse: République italienne

Conclusions

— déclarer qu'en n'imposant pas à tous les employeurs l'obligation de prévoir des aménagements raisonnables applicables à toutes les personnes handicapées, la République italienne a manqué à l'obligation de transposer correctement et complètement l'article 5 de la directive 2000/78/CE du Conseil, du 27 novembre 2000, portant création d'un cadre général en faveur de l'égalité de traitement en matière d'emploi et de travail [1];

— condamner la République italienne aux dépens.

Moyens et principaux arguments

1) En n'imposant pas à tous les employeurs l'obligation de prévoir des aménagements raisonnables applicables à toutes les personnes handicapées, la République italienne a manqué à l'obligation de transposer correctement et complètement l'article 5 de la directive 2000/78/CE, du Conseil du 27 novembre 2000, portant création d'un cadre général en faveur de l'égalité de traitement en matière d'emploi et de travail.

2) La disposition en question impose aux États membres l'obligation de portée générale de prévoir des aménagements raisonnables pour permettre à une personne handicapée d'accéder à un emploi, de l'exercer, d'y progresser, et de recevoir une formation. Ces aménagements doivent concerner — dans le respect du principe de proportionnalité et en fonction des circonstances concrètes — toutes les personnes handicapées, tous les différents aspects de la relation de travail et tous les employeurs.

3) Dans la législation italienne, aucune mesure ne transpose cette obligation générale. Certes, les dispositions de la loi nº 68/1999 existent et offrent, à certains égards, des garanties et des avantages supérieurs à ceux résultant de l'article 5 de la directive, mais ces garanties et avantages ne concernent pas toutes les personnes handicapées, ne s'imposent pas à tous les employeurs, ne portent pas sur tous les différents aspects de la relation de travail ou présentent un contenu purement programmatique.

[1] JO L 303, p. 16.

Demande de décision préjudicielle présentée par la Cour de cassation (Belgique) le 30 juin 2011 — ProRail nv/Xpedys nv e.a.

(Affaire C-332/11)

(2011/C 269/59)

Langue de procédure: néerlandais

Juridiction de renvoi

Cour de cassation (Belgique).

Parties dans la procédure au principal

Partie requérante: ProRail nv.

Partie défenderesse: Xpedys nv

FAG Kugelfischer GmbH

DB Schenker Rail Nederland nv

Nationale maatschappij der belgische spoorwegen nv (Société nationale des chemins de fer belge sa)

Question préjudicielle

Les articles 1er et 17 du règlement (CE) nº 1206/2001 [1] du Conseil du 28 mai 2001 relatif à la coopération entre les juridictions des États membres dans le domaine de l'obtention des preuves en matière civile ou commerciale doivent-ils, eu égard notamment à la réglementation européenne concernant la reconnaissance et l'exécution des décisions judiciaires en matière civile et commerciale ainsi qu'au principe suivant lequel les décisions rendues dans un État membre sont reconnues dans les autres États membres sans autre forme de procès, principe énoncé à l'article 33, paragraphe 1, du règlement sur la compétence [2], être interprétés en ce sens que le juge qui ordonne une enquête judiciaire confiée à un expert dont la mission doit être exécutée pour partie sur le territoire de l'État membre auquel appartient le juge, mais également en partie dans un autre État membre doit, pour l'exécution directe de cette dernière partie, uniquement et donc exclusivement faire usage de la procédure instituée par le règlement précité et visée à l'article 17 ou bien doivent-ils être interprétés en ce sens que l'expert désigné par cet État peut également être, en dehors des dispositions du règlement (CE) nº 1206/2001, chargé d'une enquête qui doit être réalisée partiellement dans un autre État membre de l'Union européenne?

[1] JO L 174, page 1.

[2] Règlement (CE) nº 44/2001 du Conseil du 22 décembre 2000 concernant la compétence judiciaire, la reconnaissance et l'exécution des décisions en matière civile et commerciale (JO 2001, L 12, page 1).

Demande de décision préjudicielle présentée par la Cour de cassation (Belgique) le 30 juin 2011 — Koninklijke Federatie van Belgische Transporteurs en Logistiek Dienstverleners (Febetra)/État belge

(Affaire C-333/11)

(2011/C 269/60)

Langue de procédure: le néerlandais

Juridiction de renvoi

Cour de cassation

Parties dans la procédure au principal

Partie requérante: Koninklijke Federatie van Belgische Transporteurs en Logistiek Dienstverleners (Febetra)

Partie défenderesse: État belge

Questions préjudicielles

1) Les articles 37 de la convention TIR et 454, paragraphe 3, deuxième alinéa, du règlement (CEE) nº 2454/93 [1] de la Commission, du 2 juillet 1993, fixant certaines dispositions d'application du règlement (CEE) nº 2913/92 du Conseil établissant le code des douanes communautaire doivent-ils être interprétés en ce sens que, à défaut de constatation officielle du lieu où l'infraction ou l'irrégularité a été commise et à défaut de preuve contraire apportée dans le délai par le garant, l'État membre où l'existence de l'infraction ou de l'irrégularité est constatée est réputé être celui où l'infraction ou l'irrégularité a été commise, même s'il est possible de déterminer, sur la base du lieu de prise en charge du carnet TIR et du scellement des marchandises, sans recherche supplémentaire, par le territoire de quel État membre situé à la frontière externe de la Communauté les marchandises ont été introduites irrégulièrement dans la Communauté?

2) En cas de réponse négative à la première question, les mêmes articles, lus en combinaison avec les articles 6, paragraphe 1, et 7, paragraphe 1, de la directive 92/12/CEE [2] du Conseil, du 25 février 1992, relative au régime général, à la détention, à la circulation et aux contrôles des produits soumis à accise, doivent-ils être interprétés en ce sens que l'État membre situé à la frontière externe de la Communauté par laquelle les marchandises ont été introduites irrégulièrement est également compétent à poursuivre le recouvrement des accises lorsque les marchandises ont entre-temps été acheminées dans un autre État membre où elles ont été découvertes, saisies et confisquées?

[1] JO L 253, p. 1.

[2] JO L 76, p. 1.

Demande de décision préjudicielle présentée par Sø- og Handelsretten (Danemark) le 1er juillet 2011 — HK Danmark, mandataire de Jette Ring/Dansk almennyttigt Boligselskap DAB

(Affaire C-335/11)

(2011/C 269/61)

Langue de procédure: le danois

Juridiction de renvoi

Sø- og Handelsretten (Danemark).

Parties dans la procédure au principal

Partie requérante: HK Danmark, mandataire de Jette Ring.

Partie défenderesse: Dansk almennyttigt Boligselskap DAB.

Questions préjudicielles

1) a) La notion de «handicap», au sens de la directive, est-elle applicable à toute personne qui, en raison d'atteintes physiques, mentales ou psychiques, ne peut accomplir son travail pendant une période satisfaisant à la condition de durée visée au point 45 de l'arrêt de la Cour du 16 juillet 2006, Navas ([1]), ou ne peut le faire que de façon limitée?

   b) Un état pathologique causé par une maladie médicalement constatée comme incurable peut-il relever de la notion de handicap au sens de la directive?

   c) Un état pathologique causé par une maladie médicalement constatée comme curable peut-il relever de la notion de handicap au sens de la directive?

2) Une incapacité permanente ne nécessitant pas l'utilisation d'équipements spéciaux ou autres et qui se traduit pour l'essentiel par le fait que la personne qui en est atteinte n'est pas en mesure de travailler à plein temps, relève-t-elle de la notion d'handicap au sens de la directive 2000/78/CE du Conseil du 27 novembre 2000 portant création d'un cadre général en faveur de l'égalité de traitement en matière d'emploi et de travail ([2])?

3) La réduction du temps de travail peut-elle constituer l'une des mesures visées par l'article 5 de la directive 2000/78?

4) La directive 2000/78 fait-elle obstacle à l'application d'une loi nationale suivant laquelle un employeur peut mettre fin au contrat de travail avec un préavis réduit si le travailleur, qui doit être considéré comme handicapé au sens de ladite directive, a été en arrêt maladie avec maintien du salaire pendant 120 jours en tout au cours des douze derniers mois lorsque:

   a) les absences du travailleur sont la conséquence de son handicap?

   ou

   b) les absences du travailleur sont imputables au fait que l'employeur n'a pas pris les mesures concrètes nécessaires pour qu'une personne handicapée puisse exercer son emploi?

([1]) Affaire C-13/05, Rec. P. I-6467.
([2]) JO L 303, p. 16.

Demande de décision préjudicielle présentée par la cour d'appel de Lyon (France) le 1er juillet 2011 — Receveur principal des douanes de Roissy Sud, Receveur principal de la recette des douanes de Lyon Aéroport, Direction régionale des douanes et droits indirects de Lyon, Administration des douanes et droits indirects/Société Rohm & Haas Electronic Materials CMP Europe GmbH, Rohm & Haas Europe s.à.r.l., Société Rohm & Haas Europe Trading APS-UK Branch

(Affaire C-336/11)

(2011/C 269/62)

Langue de procédure: le français

Juridiction de renvoi

Cour d'appel de Lyon

Parties dans la procédure au principal

Parties requérantes: Receveur principal des douanes de Roissy Sud, Receveur principal de la recette des douanes de Lyon Aéroport, Direction régionale des douanes et droits indirects de Lyon, Administration des douanes et droits indirects

Parties défenderesses: Société Rohm & Haas Electronic Materials CMP Europe GmbH, Rohm & Haas Europe s.à.r.l., Société Rohm & Haas Europe Trading APS-UK Branch

Question préjudicielle

La nomenclature combinée [figurant à l'annexe I du règlement (CEE) nº 2658/87 du Conseil, du 23 juillet 1987, relatif à la nomenclature tarifaire et statistique et au tarif douanier commun ([1]), telle que modifiée par les règlements (CE) nos 1549/2006 de la Commission, du 17 octobre 2006 ([2]), et 1214/2007 de la Commission, du 20 septembre 2007 ([3])] doit-elle s'interpréter en ce sens que des tampons de polissage, destinés à une machine à polir pour le travail de matériaux à semi-conducteur — relevant en tant que telle de la position tarifaire 8460 — importés séparément de la machine, qui se présentent sous la forme de disques perforés en leur centre, constitués d'une couche dure en polyuréthane, d'une couche de mousse polyuréthane, d'une couche de colle et d'un film de protection en matière plastique, qui ne comportent aucune partie en métal ni aucune substance abrasive et sont utilisés pour le polissage de *wafers*, en association avec un liquide abrasif et doivent être remplacés à une fréquence déterminée par leur taux d'usure, relèvent de la position tarifaire 8466 […] en tant que parties ou accessoires reconnaissables comme étant exclusivement ou principalement destinés aux machines classées dans les rubriques nº 8456 à 8465, ou, selon le régime de leur matière constitutive, à la position tarifaire [3919], en tant que formes plates auto-adhésives en matière plastique?

([1]) JO L 256, p. 1.
([2]) JO L 301, p. 1.
([3]) JO L 286, p. 1.

Demande de décision préjudicielle présentée par le Sø- og Handelsretten (Danemark) le 1er juillet 2011 — HK Danmark, agissant en qualité de mandataire de Mme Lone Skouboe Werge/Pro Display A/S (en faillite)

(Affaire C-337/11)

(2011/C 269/63)

Langue de procédure: le danois

Juridiction de renvoi

Sø- og Handelsretten (Danemark).

Parties dans la procédure au principal

Partie requérante: HK Danmark, agissant en qualité de mandataire de Mme Lone Skouboe Werge.

Partie défenderesse: Pro Display A/S (en faillite).

ARRÊT DE LA COUR (grande chambre)

17 juillet 2008 (*)

«Politique sociale – Directive 2000/78/CE – Égalité de traitement en matière d'emploi et de travail – Articles 1er, 2, paragraphes 1, 2, sous a), et 3, ainsi que 3, paragraphe 1, sous c) – Discrimination directe fondée sur le handicap – Harcèlement lié au handicap – Licenciement d'un employé n'ayant pas lui-même un handicap, mais dont l'enfant est handicapé – Inclusion – Charge de la preuve»

Dans l'affaire C-303/06,

ayant pour objet une demande de décision préjudicielle au titre de l'article 234 CE, introduite par l'Employment Tribunal, London South (Royaume-Uni), par décision du 6 juillet 2006, parvenue à la Cour le 10 juillet 2006, dans la procédure

S. Coleman

contre

Attridge Law,

Steve Law,

LA COUR (grande chambre),

composée de M. V. Skouris, président, MM. P. Jann, C. W. A. Timmermans, A. Rosas, K. Lenaerts et A. Tizzano, présidents de chambre, MM. M. Ilešič, J. Klučka, A. Ó Caoimh (rapporteur), T. von Danwitz et A. Arabadjiev, juges,

avocat général: M. M. Poiares Maduro,

greffier: M^me^ L. Hewlett, administrateur principal,

vu la procédure écrite et à la suite de l'audience du 9 octobre 2007,

considérant les observations présentées:

– pour M^me^ Coleman, par MM. R. Allen, QC, et P. Michell, barrister,

– pour le gouvernement du Royaume-Uni, par M^me^ V. Jackson, en qualité d'agent, assistée de M. N. Paines, QC,

– pour le gouvernement grec, par M. K. Georgiadis et M^me^ Z. Chatzipavlou, en qualité d'agents,

– pour l'Irlande, par M. N. Travers, BL,

– pour le gouvernement italien, par M. I. M. Braguglia, en qualité d'agent, assisté de M^me^ W. Ferrante, avvocato dello Stato,

– pour le gouvernement lituanien, par M. D. Kriaučiūnas, en qualité d'agent,

– pour le gouvernement néerlandais, par M^mes^ H. G. Sevenster et C. ten Dam, en qualité d'agents,

– pour le gouvernement suédois, par M^me^ A. Falk, en qualité d'agent,

– pour la Commission des Communautés européennes, par M. J. Enegren et M^me^ N. Yerrell, en qualité d'agents,

ayant entendu l'avocat général en ses conclusions à l'audience du 31 janvier 2008,

rend le présent

Arrêt

1 La demande de décision préjudicielle porte sur l'interprétation de la directive 2000/78/CE du Conseil, du 27 novembre 2000, portant création d'un cadre général en faveur de l'égalité de traitement en matière d'emploi et de travail (JO L 303, p. 16).

2 Cette demande a été présentée dans le cadre d'un litige opposant M^me^ Coleman, requérante au principal, à Attridge Law, un cabinet d'avocats, ainsi qu'à un associé de ce cabinet, M. Law (ci-après, ensemble, l'«ancien employeur»), au sujet du licenciement implicite dont elle soutient avoir fait l'objet.

Le cadre juridique

La réglementation communautaire

3 La directive 2000/78 a été adoptée sur le fondement de l'article 13 CE. Les sixième, onzième, seizième, dix-septième, vingtième, vingt-septième, trente et unième ainsi que trente-septième considérants de cette directive sont libellés comme suit:

«(6) La charte communautaire des droits sociaux fondamentaux des travailleurs reconnaît l'importance de la lutte contre les discriminations sous toutes leurs formes, y compris la nécessité de prendre des mesures appropriées en faveur de l'intégration sociale et économique des personnes âgées et des personnes handicapées.

[…]

(11) La discrimination fondée sur la religion ou les convictions, un handicap, l'âge ou l'orientation sexuelle peut compromettre la réalisation des objectifs du traité CE, notamment un niveau d'emploi et de protection sociale élevé, le relèvement du niveau et de la qualité de la vie, la cohésion économique et sociale, la solidarité et la libre circulation des personnes.

[…]

(16) La mise en place de mesures destinées à tenir compte des besoins des personnes handicapées au travail remplit un rôle majeur dans la lutte contre la discrimination fondée sur un handicap.

(17) La présente directive n'exige pas qu'une personne qui n'est pas compétente, ni capable, ni disponible pour remplir les fonctions essentielles du poste concerné ou pour suivre une formation donnée soit recrutée, promue ou reste employée ou qu'une formation lui soit dispensée, sans préjudice de l'obligation de prévoir des aménagements raisonnables pour les personnes handicapées.

[…]

(20) Il convient de prévoir des mesures appropriées, c'est-à-dire des mesures efficaces et pratiques destinées à aménager le poste de travail en fonction du handicap, par exemple en procédant à un aménagement des locaux ou à une adaptation des équipements, des rythmes de travail, de la répartition des tâches ou de l'offre de moyens de formation ou d'encadrement.

[…]

(27) Le Conseil, dans sa recommandation 86/379/CEE du 24 juillet 1986 sur l'emploi des handicapés dans la Communauté [JO L 225, p. 43], a établi un cadre d'orientation qui énumère des exemples d'actions positives visant à promouvoir l'emploi et la formation des personnes handicapées et, dans sa résolution du 17 juin 1999 sur l'égalité des chances en matière d'emploi pour les personnes handicapées [JO C 186, p. 3], a affirmé l'importance d'accorder une attention particulière notamment au recrutement, au maintien dans l'emploi et à la formation et à l'apprentissage tout au long de la vie des personnes handicapées.

[…]

(31) L'aménagement des règles concernant la charge de la preuve s'impose dès qu'il existe une présomption de discrimination et, dans les cas où cette situation se vérifie, la mise en œuvre effective du principe de l'égalité de traitement requiert que la charge de la preuve revienne à la partie défenderesse. Toutefois, il n'incombe pas à la partie défenderesse de prouver que la partie demanderesse appartient à une religion donnée, possède des convictions données, présente un handicap donné, est d'un âge donné ou d'une orientation sexuelle donnée.

[…]

(37) Conformément au principe de subsidiarité énoncé à l'article 5 du traité CE, l'objectif de la présente directive, à savoir la création, dans la Communauté, d'un terrain d'action en ce qui concerne l'égalité en matière d'emploi et de travail, ne peut pas être réalisé de manière suffisante par les États membres et peut donc, en raison des dimensions et des effets de l'action, être mieux réalisé au niveau communautaire. Conformément au principe de proportionnalité tel qu'énoncé audit article, la présente directive n'excède pas ce qui est nécessaire pour atteindre cet objectif.»

4 Aux termes de son article 1er, la directive 2000/78 «a pour objet d'établir un cadre général pour lutter contre la discrimination fondée sur la religion ou les convictions, le handicap, l'âge ou l'orientation sexuelle, en ce qui concerne l'emploi et le travail, en vue de mettre en œuvre, dans les États membres, le principe de l'égalité de traitement».

5 Ladite directive énonce, à son article 2, paragraphes 1 à 3, intitulé «Concept de discrimination»:

«1. Aux fins de la présente directive, on entend par 'principe de l'égalité de traitement' l'absence de toute discrimination directe ou indirecte, fondée sur un des motifs visés à l'article 1er.

2. Aux fins du paragraphe 1:

a) une discrimination directe se produit lorsqu'une personne est traitée de manière moins favorable qu'une autre ne l'est, ne l'a été ou ne le serait dans une situation comparable, sur la base de l'un des motifs visés à l'article 1er;

b) une discrimination indirecte se produit lorsqu'une disposition, un critère ou une pratique apparemment neutre est susceptible d'entraîner un désavantage particulier pour des personnes d'une religion ou de convictions, d'un handicap, d'un âge ou d'une orientation sexuelle donnés, par rapport à d'autres personnes, à moins que:

i) cette disposition, ce critère ou cette pratique ne soit objectivement justifié par un objectif légitime et que les moyens de réaliser cet objectif ne soient appropriés et nécessaires, ou que

ii) dans le cas des personnes d'un handicap donné, l'employeur ou toute personne ou organisation auquel s'applique la présente directive ne soit obligé, en vertu de la législation nationale, de prendre des mesures appropriées conformément aux principes prévus à l'article 5 afin d'éliminer les désavantages qu'entraîne cette disposition, ce critère ou cette pratique.

3. Le harcèlement est considéré comme une forme de discrimination au sens du paragraphe 1 lorsqu'un comportement indésirable lié à l'un des motifs visés à l'article 1er se manifeste, qui a pour objet ou pour effet de porter atteinte à la dignité d'une personne et de créer un environnement intimidant, hostile, dégradant, humiliant ou offensant. Dans ce contexte, la notion de harcèlement peut être définie conformément aux législations et pratiques nationales des États membres.

[…]»

6 Aux termes de l'article 3, paragraphe 1, de la directive 2000/78:

«Dans les limites des compétences conférées à la Communauté, la présente directive s'applique à toutes les personnes, tant pour le secteur public que pour le secteur privé, y compris les organismes publics, en ce qui concerne:

[…]

c) les conditions d'emploi et de travail, y compris les conditions de licenciement et de rémunération;

[…]»

7 Ladite directive prévoit à son article 5, intitulé «Aménagements raisonnables pour les personnes handicapées»:

«Afin de garantir le respect du principe de l'égalité de traitement à l'égard des personnes handicapées, des aménagements raisonnables sont prévus. Cela signifie que l'employeur prend les mesures appropriées, en fonction des besoins dans une situation concrète, pour permettre à une personne handicapée d'accéder à un emploi, de l'exercer ou d'y progresser, ou pour qu'une formation lui soit dispensée, sauf si ces mesures imposent à l'employeur une charge disproportionnée. […]»

8 L'article 7 de la même directive, intitulé «Action positive et mesures spécifiques», est libellé comme suit:

«1. Pour assurer la pleine égalité dans la vie professionnelle, le principe de l'égalité de traitement n'empêche pas un État membre de maintenir ou d'adopter des mesures spécifiques destinées à prévenir ou à compenser des désavantages liés à l'un des motifs visés à l'article 1er.

2. En ce qui concerne les personnes handicapées, le principe [de l]'égalité de traitement ne fait pas obstacle au droit des États membres de maintenir ou d'adopter des dispositions concernant la protection de la santé et de la sécurité sur le lieu de travail ni aux mesures visant à créer ou à maintenir des dispositions ou des facilités en vue de sauvegarder ou d'encourager leur insertion dans le monde du travail.»

9 L'article 10 de la directive 2000/78, intitulé «Charge de la preuve», dispose:

«1. Les États membres prennent les mesures nécessaires, conformément à leur système judiciaire, afin que, dès lors qu'une personne s'estime lésée par le non-respect à son égard du principe de l'égalité de traitement et établit, devant une juridiction ou une autre instance compétente, des faits qui permettent de présumer l'existence d'une discrimination directe ou indirecte, il incombe à la partie défenderesse de prouver qu'il n'y a pas eu violation du principe de l'égalité de traitement.

2. Le paragraphe 1 ne fait pas obstacle à l'adoption par les États membres de règles de la preuve plus favorables aux plaignants.»

10 Conformément à l'article 18, premier alinéa, de la directive 2000/78, les États membres devaient prendre les dispositions législatives, réglementaires et administratives nécessaires pour se conformer à celle-ci au plus tard le 2 décembre 2003. Toutefois, aux termes du deuxième alinéa dudit article:

«Pour tenir compte de conditions particulières, les États membres peuvent disposer, si nécessaire, d'un délai supplémentaire de 3 ans à compter du 2 décembre 2003, soit un total de 6 ans, pour mettre en œuvre les dispositions de la présente directive relatives à la discrimination fondée sur l'âge et le handicap. Dans ce cas, ils en informent immédiatement la Commission. Tout État membre qui choisit d'avoir recours à ce délai supplémentaire fait rapport annuellement à la Commission sur les mesures qu'il prend pour s'attaquer à la discrimination fondée sur l'âge et le handicap, et sur les progrès réalisés en vue de la mise en œuvre de la directive. La Commission fait rapport annuellement au Conseil.»

11 Le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord ayant demandé à bénéficier d'un tel délai supplémentaire pour la transposition de ladite directive, celui-ci n'a expiré que le 2 décembre 2006 en ce qui concerne cet État membre.

La réglementation nationale

12 La loi de 1995 relative à la discrimination fondée sur le handicap (Disability Discrimination Act 1995, ci-après la «DDA»), vise essentiellement à rendre illégal l'exercice, à l'encontre des personnes handicapées, de toute discrimination liée, notamment, à l'emploi.

13 La deuxième partie de la DDA, qui réglemente les questions d'emploi, a été modifiée, lors de la transposition de la directive 2000/78 dans l'ordre juridique du Royaume-Uni, par le règlement de 2003 portant modification de la loi de 1995 relative à la discrimination fondée sur le handicap [Disability Discrimination Act 1995 (Amendment) Regulations 2003], entré en vigueur le 1er octobre 2004.

14 Conformément à l'article 3 A, paragraphe 1, de la DDA, telle que modifiée par ledit règlement de 2003 (ci-après la «DDA de 2003»):

«[…] une personne exerce une discrimination à l'encontre d'une personne handicapée si:

a) pour un motif lié au handicap dont souffre la personne handicapée, elle réserve à celle-ci un traitement moins favorable que celui qu'elle réserve ou réserverait à d'autres personnes auxquelles le motif en question ne s'applique pas ou ne s'appliquerait pas, et

b) elle ne peut démontrer que ce traitement est justifié.»

15 L'article 3 A, paragraphe 4, de la DDA de 2003 précise néanmoins que le traitement réservé à une personne handicapée ne peut en aucun cas se justifier s'il est assimilable à une discrimination directe au sens du paragraphe 5 du même article, disposition aux termes de laquelle:

«Une personne exerce une discrimination directe à l'encontre d'une personne handicapée si, en raison du handicap dont souffre la personne handicapée, elle réserve à celle-ci un traitement moins favorable que celui qu'elle réserve ou réserverait à une personne qui ne présente pas ce handicap particulier et dont les caractéristiques pertinentes, y compris les capacités, sont les mêmes que celles de la personne handicapée ou n'en diffèrent pas sensiblement.»

16 La notion de harcèlement est définie comme suit à l'article 3 B de la DDA de 2003:

«1) […] une personne soumet une personne handicapée à un harcèlement si, pour un motif lié au handicap dont souffre la personne handicapée, elle adopte un comportement indésirable qui a pour objet ou pour effet:

a) de porter atteinte à la dignité de la personne handicapée, ou

b) de créer pour elle un environnement intimidant, hostile, dégradant, humiliant ou offensant.

2) Un comportement est réputé avoir l'effet visé au paragraphe 1, sous a) ou b), si, eu égard à toutes les circonstances, et notamment à ce qui est ressenti par la personne handicapée, on doit raisonnablement considérer qu'il a un tel effet.»

17 Aux termes de l'article 4, paragraphe 2, sous d), de la DDA de 2003, il est interdit à un employeur d'exercer une discrimination à l'encontre d'une personne handicapée qu'il emploie en la renvoyant ou en lui faisant subir tout autre préjudice.

18 L'article 4, paragraphe 3, sous a) et b), de la DDA de 2003 prévoit qu'il est également interdit à un employeur, agissant en cette qualité, de soumettre à un harcèlement une personne handicapée qu'il emploie ou qui l'a sollicité pour un emploi.

Le litige au principal et les questions préjudicielles

19 M[me] Coleman a travaillé pour son ancien employeur depuis le mois de janvier de l'année 2001 en qualité de secrétaire juridique.

20 Au cours de l'année 2002, elle a donné naissance à un fils qui souffre de crises d'apnée ainsi que de laryngomalacie et de bronchomalacie congénitales. L'état de son fils exige des soins spécialisés et particuliers. La requérante au principal lui dispense l'essentiel des soins dont celui-ci a besoin.

21 Le 4 mars 2005, M[me] Coleman a accepté une mise en chômage volontaire («voluntary redundancy»), ce qui a mis fin à son contrat avec son ancien employeur.

22 Le 30 août 2005, elle a saisi l'Employment Tribunal, London South, d'un recours dans lequel elle soutient qu'elle a été victime d'un licenciement implicite («unfair constructive dismissal») et d'un traitement moins favorable que celui réservé aux autres employés, en raison du fait qu'elle a la charge principale d'un enfant handicapé. Elle prétend que ce traitement l'a contrainte à cesser de travailler pour son ancien employeur.

23 Il ressort de la décision de renvoi que les circonstances pertinentes de l'affaire au principal n'ont pas encore été établies dans leur intégralité, les questions préjudicielles n'ayant été soulevées qu'à titre préliminaire. En effet, la juridiction de renvoi a sursis à statuer sur la partie du recours concernant le licenciement de M[me] Coleman, mais, le 17 février 2006, elle a tenu une audience préliminaire consacrée à l'examen du moyen tiré de la discrimination.

24 La question préliminaire soulevée devant ladite juridiction est celle de savoir si la requérante au principal peut se fonder sur les dispositions du droit national, notamment celles visant à transposer la directive 2000/78, pour invoquer à l'encontre de son ancien employeur la discrimination dont elle estime avoir fait l'objet, en ce sens qu'elle aurait été victime d'un traitement défavorable lié au handicap dont souffre son fils.

25 Il ressort des termes de la décision de renvoi que, si l'interprétation de la directive 2000/78 par la Cour devait être contraire à celle préconisée par M[me] Coleman, le droit national s'opposerait à ce que la demande présentée par cette dernière devant la juridiction de renvoi soit accueillie.

26 Il ressort également de la décision de renvoi que, conformément au droit du Royaume-Uni, lors d'une audience préliminaire portant sur une question de droit, la juridiction saisie présume que les faits se sont produits de la manière dont ils sont relatés par la partie requérante. Dans l'affaire au principal, les faits du litige sont présumés être les suivants:

– Lors du retour du congé de maternité de M[me] Coleman, l'ancien employeur de cette dernière a refusé de la réintégrer dans l'emploi qu'elle occupait jusqu'alors, dans des circonstances où des parents d'enfants non handicapés auraient été autorisés à retrouver leur ancien poste;

– il a également refusé de lui accorder la même souplesse horaire et les mêmes conditions de travail qu'à ses collègues qui sont des parents d'enfants non handicapés;

– M[me] Coleman a été qualifiée de «paresseuse» lorsqu'elle a demandé à bénéficier de temps libre pour prodiguer des soins à son enfant, alors qu'une telle facilité a été accordée à des parents d'enfants non handicapés;

– la réclamation officielle qu'elle a introduite contre le mauvais traitement qu'elle a subi n'a pas été dûment prise en considération et elle s'est sentie contrainte de la retirer;

– il y a eu des commentaires déplacés et insultants à l'encontre tant d'elle-même que de son enfant. Aucun commentaire de cet ordre n'a été formulé lorsque d'autres employés ont dû solliciter du temps libre ou une certaine flexibilité pour s'occuper de leurs enfants non handicapés, et

– étant parfois arrivée en retard à son bureau, en raison de problèmes liés à l'état de son enfant, il lui a été dit qu'elle serait renvoyée si elle arrivait de nouveau en retard. Aucune menace de cet ordre n'a été proférée contre d'autres employés ayant des enfants non handicapés et qui sont arrivés en retard pour les mêmes raisons.

27 Estimant que le litige dont il est saisi soulève des questions d'interprétation du droit communautaire, l'Employment Tribunal, London South, a décidé de surseoir à statuer et de poser à la Cour les questions préjudicielles suivantes:

«1) Dans le cadre de l'interdiction de toute discrimination fondée sur un handicap, la directive [2000/78] protège-t-elle de la discrimination directe et du harcèlement uniquement les personnes qui sont elles-mêmes handicapées?

2) En cas de réponse négative à la première question, la directive [2000/78] protège-t-elle des employés qui, bien que n'étant pas eux-mêmes handicapés, sont moins favorablement traités ou font l'objet de harcèlement en raison de leur relation avec une personne handicapée?

3) Lorsqu'un employeur traite un employé moins favorablement qu'il ne traite ou traiterait d'autres employés et qu'il est prouvé que la raison du traitement de l'employé est que celui-ci a un fils handicapé dont il prend soin, ledit traitement constitue-t-il une discrimination directe contraire au principe de l'égalité de traitement consacré par la directive [2000/78]?

4) Lorsqu'un employeur harcèle un employé et qu'il est prouvé que la raison du traitement de l'employé est que celui-ci a un fils handicapé dont il prend soin, ce harcèlement est-il contraire au principe de l'égalité de traitement consacré par la directive [2000/78]?»

Sur la recevabilité

28 Tout en considérant que les questions posées par la juridiction de renvoi reposent sur un véritable litige, le gouvernement néerlandais a mis en cause la recevabilité du renvoi préjudiciel en vertu du fait que, étant donné qu'il s'agit de questions préalables soulevées lors d'une audience préliminaire, toutes les circonstances de la cause ne sont pas encore établies. Il fait observer que, lors d'une telle audience préliminaire, le juge national présume que les faits se sont produits de la manière dont ils ont été relatés par la partie requérante.

29 À cet égard, il convient de rappeler que l'article 234 CE établit le cadre d'une coopération étroite entre les juridictions nationales et la Cour, fondée sur une répartition de fonctions entre elles. Le deuxième alinéa de cet article fait ressortir clairement qu'il appartient à la juridiction nationale de décider à quel stade de la procédure il y a lieu, pour cette juridiction, de déférer une question préjudicielle à la Cour (voir arrêts du 10 mars 1981, Irish Creamery Milk Suppliers Association e.a., 36/80 et 71/80, Rec. p. 735, point 5, et du 30 mars 2000, JämO, C-236/98, Rec. p. I-2189, point 30).

30 Dans l'affaire au principal, il convient d'observer que la juridiction de renvoi a constaté que, si la Cour devait interpréter la directive 2000/78 dans un sens ne correspondant pas à celui préconisé par M^{me} Coleman, celle-ci ne pourrait pas obtenir gain de cause sur le fond. La juridiction nationale a donc décidé, ainsi que le permet la législation du Royaume-Uni, d'examiner la question de savoir si cette directive doit être interprétée en ce sens qu'elle est applicable au licenciement d'un employé dans une situation telle que celle de M^{me} Coleman avant d'établir si, en fait, cette dernière a été victime d'un traitement défavorable ou de harcèlement. C'est pourquoi les questions préjudicielles ont été posées en partant de la

présomption que les faits du litige au principal sont tels que résumés au point 26 du présent arrêt.

31 Dès lors que la Cour se trouve ainsi saisie d'une demande d'interprétation du droit communautaire qui n'est pas manifestement sans rapport avec la réalité ou l'objet du litige au principal et qu'elle dispose des données nécessaires pour répondre de façon utile aux questions qui lui sont posées, relatives à l'applicabilité de la directive 2000/78 à ce litige, elle doit y répondre sans avoir à s'interroger elle-même sur la présomption de faits sur laquelle s'est fondée la juridiction de renvoi, présomption qu'il appartiendra à celle-ci de vérifier par la suite si cela s'avère nécessaire (voir, en ce sens, arrêt du 27 octobre 1993, Enderby, C-127/92, Rec. p. I-5535, point 12).

32 Dans ces circonstances, la demande de décision préjudicielle doit être considérée comme recevable.

Sur les questions préjudicielles

Sur la première partie de la première question ainsi que sur les deuxième et troisième questions

33 Par ces questions, qu'il convient d'examiner ensemble, la juridiction de renvoi demande, en substance, si la directive 2000/78 et, notamment, ses articles 1er et 2, paragraphes 1 et 2, sous a), doivent être interprétés en ce sens qu'ils interdisent une discrimination directe fondée sur le handicap uniquement à l'encontre d'un employé qui est lui-même handicapé ou si le principe de l'égalité de traitement et l'interdiction de discrimination directe s'appliquent également à un employé qui n'est pas lui-même handicapé, mais qui, comme dans l'affaire au principal, est victime d'un traitement défavorable en raison du handicap dont est atteint son enfant, auquel il prodigue lui-même l'essentiel des soins que nécessite son état.

34 L'article 1er de la directive 2000/78 identifie l'objet de celle-ci comme étant d'établir, en ce qui concerne l'emploi et le travail, un cadre général pour lutter contre la discrimination fondée sur la religion ou les convictions, le handicap, l'âge ou l'orientation sexuelle.

35 L'article 2, paragraphe 1, de la même directive définit le principe de l'égalité de traitement comme étant l'absence de toute discrimination directe ou indirecte fondée sur l'un des motifs visés audit article 1er, y compris donc le handicap.

36 Conformément au paragraphe 2, sous a), dudit article 2, une discrimination directe se produit lorsqu'une personne est traitée de manière moins favorable qu'une autre ne l'est, ne l'a été ou ne le serait dans une situation comparable, sur la base, notamment, du handicap.

37 En vertu de son article 3, paragraphe 1, sous c), la directive 2000/78 s'applique, dans les limites des compétences conférées à la Communauté, à toutes les personnes, tant pour le secteur public que pour le secteur privé, y compris les organismes publics, en ce qui concerne les conditions d'emploi et de travail, y compris les conditions de licenciement et de rémunération.

38 Dès lors, il ne ressort pas de ces dispositions de la directive 2000/78 que le principe de l'égalité de traitement qu'elle vise à garantir soit limité aux personnes ayant elles-mêmes un handicap au sens de cette directive. Au contraire, celle-ci a pour objet, en ce qui concerne l'emploi et le travail, de lutter contre toutes les formes de discrimination fondées sur le handicap. En effet, le principe de l'égalité de traitement consacré par ladite directive dans ce domaine s'applique non pas à une catégorie de personnes déterminée, mais en fonction des motifs visés à l'article 1er de celle-ci. Cette interprétation est corroborée par le libellé de l'article 13 CE, disposition constituant la base juridique de la directive 2000/78, qui confère une compétence à la Communauté pour prendre les mesures nécessaires en vue de combattre toute discrimination fondée, notamment, sur le handicap.

39 Certes, la directive 2000/78 contient un certain nombre de dispositions applicables, ainsi qu'il ressort de leurs termes mêmes, uniquement aux personnes handicapées. Ainsi, son article 5 précise que, afin de garantir le respect du principe de l'égalité de traitement à l'égard des personnes handicapées, des aménagements raisonnables sont prévus. Cela signifie que l'employeur doit prendre les mesures appropriées, en fonction des besoins dans

une situation concrète, pour permettre à une personne handicapée d'accéder à un emploi, de l'exercer ou d'y progresser, ou pour qu'une formation lui soit dispensée, sauf si ces mesures imposent à l'employeur une charge disproportionnée.

40 L'article 7, paragraphe 2, de ladite directive prévoit également que, en ce qui concerne les personnes handicapées, le principe de l'égalité de traitement ne fait obstacle ni au droit des États membres de maintenir ou d'adopter des dispositions concernant la protection de la santé et de la sécurité sur le lieu de travail ni aux mesures visant à créer ou à maintenir des dispositions ou des facilités en vue de sauvegarder ou d'encourager l'insertion de ces personnes dans le monde du travail.

41 Les gouvernements du Royaume-Uni ainsi que grec, italien et néerlandais soutiennent, à la lumière tant des dispositions mentionnées aux deux points précédents que des seizième, dix-septième et vingt-septième considérants de la directive 2000/78, que l'interdiction de discrimination directe prévue par celle-ci ne peut pas être interprétée comme visant une situation telle que celle de la requérante au principal, dès lors que cette dernière n'est pas elle-même handicapée. Seules pourraient se prévaloir des dispositions de cette directive des personnes qui, dans une situation comparable à celle d'autres personnes, sont traitées de manière moins favorable ou sont placées dans une situation désavantageuse en raison de caractéristiques qui leur sont propres.

42 Toutefois, il convient de relever à cet égard que le fait que les dispositions mentionnées aux points 39 et 40 du présent arrêt visent spécifiquement les personnes atteintes d'un handicap résulte de la circonstance qu'il s'agit soit de dispositions portant sur des mesures de discrimination positive en faveur de la personne handicapée elle-même, soit de mesures spécifiques qui seraient dénuées de toute portée ou qui pourraient s'avérer disproportionnées si elles n'étaient pas limitées aux seules personnes qui sont atteintes d'un handicap. Ainsi qu'il ressort des seizième et vingtième considérants de cette directive, il s'agit de mesures destinées à tenir compte des besoins des personnes handicapées au travail et à aménager le poste de travail en fonction du handicap de ces dernières. De telles mesures visent donc spécifiquement à permettre et à encourager l'insertion des personnes handicapées dans le monde du travail et, pour cette raison, elles ne peuvent concerner que ces personnes ainsi que les obligations incombant à leurs employeurs et, le cas échéant, aux États membres à leur égard.

43 Dès lors, le fait que la directive 2000/78 comporte des dispositions visant à tenir compte spécifiquement des besoins des personnes handicapées ne permet pas de conclure que le principe de l'égalité de traitement qu'elle consacre doit être interprété de manière restrictive, c'est-à-dire comme interdisant uniquement les discriminations directes fondées sur le handicap et visant exclusivement les personnes handicapées elles-mêmes. Par ailleurs, le sixième considérant de cette directive, en visant la charte communautaire des droits sociaux fondamentaux des travailleurs, se réfère tant à la lutte générale contre les discriminations sous toutes leurs formes qu'à la nécessité de prendre des mesures appropriées en faveur de l'intégration sociale et économique des personnes handicapées.

44 Les gouvernements du Royaume-Uni, italien et néerlandais soutiennent également qu'une interprétation restrictive de la portée ratione personae de la directive 2000/78 ressort de l'arrêt du 11 juillet 2006, Chacón Navas (C-13/05, Rec. p. I-6467). Selon le gouvernement italien, dans ledit arrêt, la Cour a retenu une interprétation restrictive de la notion de handicap et de sa pertinence dans la relation de travail.

45 Dans l'arrêt Chacón Navas, précité, la Cour a défini la notion de handicap et, aux points 51 et 52 dudit arrêt, elle a considéré que l'interdiction, en matière de licenciement, de la discrimination fondée sur le handicap, inscrite aux articles 2, paragraphe 1, et 3, paragraphe 1, sous c), de la directive 2000/78, s'oppose à un licenciement fondé sur un handicap qui, compte tenu de l'obligation de prévoir des aménagements raisonnables pour les personnes handicapées, n'est pas justifié par le fait que la personne concernée n'est pas compétente, ni capable, ni disponible pour remplir les fonctions essentielles de son poste. Toutefois, il n'en découle pas pour autant d'une telle interprétation que le principe de l'égalité de traitement défini à l'article 2, paragraphe 1, de cette même directive et l'interdiction de discrimination directe prévue au paragraphe 2, sous a), du même article ne peuvent pas s'appliquer à une situation telle que celle en cause au principal lorsque le traitement défavorable que prétend avoir subi un employé est fondé sur le handicap dont est atteint son enfant, auquel il prodigue l'essentiel des soins que nécessite son état.

46 En effet, si, au point 56 de l'arrêt Chacón Navas, précité, la Cour a précisé que le champ d'application de la directive 2000/78 ne saurait, eu égard au libellé de l'article 13 CE, être étendu au-delà des discriminations fondées sur les motifs énumérés de manière exhaustive à l'article 1er de celle-ci, de sorte qu'une personne qui a été licenciée par son employeur exclusivement pour cause de maladie ne relève pas du cadre général établi par la directive 2000/78, elle n'a toutefois pas jugé que le principe de l'égalité de traitement et la portée ratione personae de cette directive doivent, s'agissant de ces motifs, être interprétés de manière restrictive.

47 S'agissant des objectifs poursuivis par la directive 2000/78, cette dernière tend, ainsi qu'il ressort des points 34 et 38 du présent arrêt, à établir un cadre général pour lutter, en matière d'emploi et de travail, contre la discrimination fondée sur l'un des motifs visés à l'article 1er de cette directive, au nombre desquels figure notamment le handicap, et ce en vue de mettre en œuvre, dans les États membres, le principe de l'égalité de traitement. Il ressort de son trente-septième considérant que cette directive a également pour objectif la création, dans la Communauté, d'un terrain d'action en ce qui concerne l'égalité en matière d'emploi et de travail.

48 Ainsi que le font valoir Mme Coleman, les gouvernements lituanien et suédois ainsi que la Commission, lesdits objectifs, de même que l'effet utile de la directive 2000/78, seraient compromis si un employé se trouvant dans une situation telle que celle de la requérante au principal ne peut pas se fonder sur l'interdiction de discrimination directe prévue à l'article 2, paragraphe 2, sous a), de cette directive lorsqu'il a été prouvé qu'il a été traité de manière moins favorable qu'un autre employé ne l'est, ne l'a été ou ne le serait dans une situation comparable, en raison du handicap de son enfant, et ce alors même que cet employé n'est pas lui-même handicapé.

49 À cet égard, il ressort du onzième considérant de ladite directive que le législateur communautaire a également estimé que la discrimination fondée sur la religion ou les convictions, un handicap, l'âge ou l'orientation sexuelle peut compromettre la réalisation des objectifs du traité, notamment en ce qui concerne l'emploi.

50 Or, si dans une situation telle que celle en cause au principal, la personne qui a fait l'objet d'une discrimination directe fondée sur le handicap n'est pas elle-même handicapée, il n'en demeure pas moins que c'est bien le handicap qui, selon Mme Coleman, constitue le motif du traitement moins favorable dont elle allègue avoir été la victime. Ainsi qu'il ressort du point 38 du présent arrêt, la directive 2000/78, qui vise, dans le domaine de l'emploi et du travail, à lutter contre toutes les formes de discrimination fondées sur le handicap, s'applique non pas à une catégorie de personnes déterminée, mais en fonction des motifs visés à son article 1er.

51 Dès lors qu'il est établi qu'un employé se trouvant dans une situation telle que celle en cause au principal est victime d'une discrimination directe fondée sur le handicap, une interprétation de la directive 2000/78 limitant l'application de celle-ci aux seules personnes qui sont elles-mêmes handicapées serait susceptible de priver cette directive d'une partie importante de son effet utile et de réduire la protection qu'elle est censée garantir.

52 Quant à la charge de la preuve applicable dans une situation telle que celle en cause au principal, il convient de rappeler que, conformément à l'article 10, paragraphe 1, de la directive 2000/78, les États membres doivent prendre les mesures nécessaires, conformément à leur système judiciaire, afin que, dès lors qu'une personne s'estime lésée par le non-respect à son égard du principe de l'égalité de traitement et établit, devant une juridiction ou une autre instance compétente, des faits qui permettent de présumer l'existence d'une discrimination directe ou indirecte, il incombe à la partie défenderesse de prouver qu'il n'y a pas eu violation dudit principe. Conformément au paragraphe 2 dudit article, le paragraphe 1 de celui-ci ne fait pas obstacle à l'adoption par les États membres de règles concernant la charge de la preuve plus favorables aux plaignants.

53 Dans l'affaire au principal, il incombe donc à Mme Coleman, conformément à l'article 10, paragraphe 1, de la directive 2000/78, d'établir, devant la juridiction de renvoi, des faits permettant de présumer l'existence d'une discrimination directe fondée sur le handicap interdite par cette directive.

54 Conformément à cette dernière disposition de la directive 2000/78 et au trente et unième considérant de celle-ci, l'aménagement des règles concernant la charge de la preuve s'impose dès lors qu'il existe une présomption de discrimination. Dans le cas où M^me^ Coleman établirait des faits qui permettent de présumer l'existence d'une discrimination directe, la mise en œuvre effective du principe de l'égalité de traitement exigerait alors que la charge de la preuve pèse sur les défendeurs au principal, qui devraient prouver qu'il n'y a pas eu une violation dudit principe.

55 Dans ce contexte, lesdits défendeurs pourraient contester l'existence d'une telle violation en établissant par toute voie de droit, notamment, que le traitement dont l'employé a fait l'objet est justifié par des facteurs objectifs et étrangers à toute discrimination fondée sur le handicap ainsi qu'à toute relation que cet employé entretient avec une personne handicapée.

56 Eu égard aux considérations qui précèdent, il convient de répondre à la première partie de la première question ainsi qu'aux deuxième et troisième questions que la directive 2000/78 et, notamment, ses articles 1^er^ et 2, paragraphes 1 et 2, sous a), doivent être interprétés en ce sens que l'interdiction de discrimination directe qu'ils prévoient n'est pas limitée aux seules personnes qui sont elles-mêmes handicapées. Lorsqu'un employeur traite un employé n'ayant pas lui-même un handicap de manière moins favorable qu'un autre employé ne l'est, ne l'a été ou ne le serait dans une situation comparable et qu'il est prouvé que le traitement défavorable dont cet employé est victime est fondé sur le handicap de son enfant, auquel il dispense l'essentiel des soins dont celui-ci a besoin, un tel traitement est contraire à l'interdiction de discrimination directe énoncée audit article 2, paragraphe 2, sous a).

Sur la seconde partie de la première question ainsi que sur la quatrième question

57 Par ces questions, qu'il convient d'examiner ensemble, la juridiction de renvoi demande en substance si la directive 2000/78 et, notamment, ses articles 1^er^ et 2, paragraphes 1 et 3, doivent être interprétés en ce sens qu'ils interdisent le harcèlement lié au handicap uniquement à l'encontre d'un employé qui est lui-même handicapé ou si l'interdiction de harcèlement s'applique également à un employé qui n'est pas lui-même handicapé, mais qui, comme dans l'affaire au principal, est victime d'un comportement indésirable constitutif de harcèlement lié au handicap dont est atteint son enfant, auquel il prodigue lui-même l'essentiel des soins que nécessite son état.

58 Le harcèlement étant, en vertu de l'article 2, paragraphe 3, de la directive 2000/78, considéré comme une forme de discrimination au sens du paragraphe 1 de ce même article, il convient de relever que, pour les mêmes raisons que celles exposées aux points 34 à 51 du présent arrêt, cette directive et, notamment, ses articles 1^er^ et 2, paragraphes 1 et 3, doivent être interprétés en ce sens qu'ils ne se limitent pas à interdire le harcèlement à l'encontre de personnes qui sont elles-mêmes handicapées.

59 Lorsqu'il est prouvé que le comportement indésirable constitutif de harcèlement subi par un employé, n'ayant pas lui-même un handicap, est lié au handicap de son enfant, auquel il dispense l'essentiel des soins dont celui-ci a besoin, un tel comportement est contraire au principe de l'égalité de traitement consacré par la directive 2000/78 et, notamment, à l'interdiction de harcèlement énoncée à l'article 2, paragraphe 3, de cette dernière.

60 À cet égard, il convient toutefois de rappeler que, selon les termes mêmes de l'article 2, paragraphe 3, de ladite directive, la notion de harcèlement peut être définie conformément aux législations et pratiques nationales des États membres.

61 En ce qui concerne la charge de la preuve applicable dans une situation telle que celle en cause au principal, il convient de relever que, le harcèlement étant considéré comme une forme de discrimination au sens de l'article 2, paragraphe 1, de la directive 2000/78, les mêmes règles que celles exposées aux points 52 à 55 du présent arrêt s'appliquent au harcèlement.

62 Dès lors, ainsi qu'il ressort du point 54 du présent arrêt, conformément à l'article 10, paragraphe 1, de la directive 2000/78 et au trente et unième considérant de celle-ci, l'aménagement des règles concernant la charge de la preuve s'impose dès lors qu'il existe une présomption de discrimination. Dans le cas où M^me^ Coleman établirait des faits qui permettent de présumer l'existence d'un harcèlement, la mise en œuvre effective du principe de l'égalité de traitement exigerait alors que la charge de la preuve pèse sur les défendeurs

au principal, qui devraient prouver qu'il n'y a pas eu de harcèlement dans les circonstances de l'espèce.

63 Eu égard aux considérations qui précèdent, il convient de répondre à la seconde partie de la première question ainsi qu'à la quatrième question que la directive 2000/78 et, notamment, ses articles 1er et 2, paragraphes 1 et 3, doivent être interprétés en ce sens que l'interdiction de harcèlement qu'ils prévoient n'est pas limitée aux seules personnes qui sont elles-mêmes handicapées. Lorsqu'il est prouvé que le comportement indésirable constitutif de harcèlement dont un employé, n'ayant pas lui-même un handicap, est victime est lié au handicap de son enfant, auquel il dispense l'essentiel des soins dont celui-ci a besoin, un tel comportement est contraire à l'interdiction de harcèlement énoncée audit article 2, paragraphe 3.

Sur les dépens

64 La procédure revêtant, à l'égard des parties au principal, le caractère d'un incident soulevé devant la juridiction de renvoi, il appartient à celle-ci de statuer sur les dépens. Les frais exposés pour soumettre des observations à la Cour, autres que ceux desdites parties, ne peuvent faire l'objet d'un remboursement.

Par ces motifs, la Cour (grande chambre) dit pour droit:

1) La directive 2000/78/CE du Conseil, du 27 novembre 2000, portant création d'un cadre général en faveur de l'égalité de traitement en matière d'emploi et de travail, et, notamment, ses articles 1er et 2, paragraphes 1 et 2, sous a), doivent être interprétés en ce sens que l'interdiction de discrimination directe qu'ils prévoient n'est pas limitée aux seules personnes qui sont elles-mêmes handicapées. Lorsqu'un employeur traite un employé n'ayant pas lui-même un handicap de manière moins favorable qu'un autre employé ne l'est, ne l'a été ou ne le serait dans une situation comparable et qu'il est prouvé que le traitement défavorable dont cet employé est victime est fondé sur le handicap de son enfant, auquel il dispense l'essentiel des soins dont celui-ci a besoin, un tel traitement est contraire à l'interdiction de discrimination directe énoncée audit article 2, paragraphe 2, sous a).

2) La directive 2000/78 et, notamment, ses articles 1er et 2, paragraphes 1 et 3, doivent être interprétés en ce sens que l'interdiction de harcèlement qu'ils prévoient n'est pas limitée aux seules personnes qui sont elles-mêmes handicapées. Lorsqu'il est prouvé que le comportement indésirable constitutif de harcèlement dont un employé, n'ayant pas lui-même un handicap, est victime est lié au handicap de son enfant, auquel il dispense l'essentiel des soins dont celui-ci a besoin, un tel comportement est contraire à l'interdiction de harcèlement énoncée audit article 2, paragraphe 3.

Signatures

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* Langue de procédure: l'anglais.

ARRÊT DE LA COUR (grande chambre)

11 juillet 2006 (*)

«Directive 2000/78/CE – Égalité de traitement en matière d'emploi et de travail – Notion de handicap»

Dans l'affaire C-13/05,

ayant pour objet une demande de décision préjudicielle au titre de l'article 234 CE, introduite par le Juzgado de lo Social n° 33 de Madrid (Espagne), par décision du 7 janvier 2005, parvenue à la Cour le 19 janvier 2005, dans la procédure

Sonia Chacón Navas

contre

Eurest Colectividades SA,

LA COUR (grande chambre),

composée de M. V. Skouris, président, MM. P. Jann, C. W. A. Timmermans, A. Rosas, K. Schiemann et J. Makarczyk, présidents de chambre, M. J.-P. Puissochet, M^me^ N. Colneric (rapporteur), MM. K. Lenaerts, P. Kūris, E. Juhász, E. Levits et A. Ó Caoimh, juges,

avocat général: M. L. A. Geelhoed,

greffier: M. R. Grass,

vu la procédure écrite,

considérant les observations présentées:

– pour Eurest Colectividades SA, par M^e^ M. R. Sanz García-Muro, abogada,

– pour le gouvernement espagnol, par M. E. Braquehais Conesa, en qualité d'agent,

– pour le gouvernement tchèque, par M. T. Boček, en qualité d'agent,

– pour le gouvernement allemand, par M. M. Lumma et M^me^ C. Schulze-Bahr, en qualité d'agents,

– pour le gouvernement néerlandais, par M^me^ H. G. Sevenster, en qualité d'agent,

– pour le gouvernement autrichien, par M^me^ C. Pesendorfer, en qualité d'agent,

– pour le gouvernement du Royaume-Uni, par M^me^ C. White, en qualité d'agent, assistée de M. T. Ward, barrister,

– pour la Commission des Communautés européennes, par M^me^ I. Martinez del Peral Cagigal et M. D. Martin, en qualité d'agents,

ayant entendu l'avocat général en ses conclusions à l'audience du 16 mars 2006,

rend le présent

Arrêt

1 La demande de décision préjudicielle porte sur l'interprétation, en ce qui concerne la discrimination fondée sur un handicap, de la directive 2000/78/CE du Conseil, du 27 novembre 2000, portant création d'un cadre général en faveur de l'égalité de traitement en matière d'emploi et de travail (JO L 303, p. 16), et, subsidiairement, sur une interdiction éventuelle d'une discrimination fondée sur la maladie.

2 Cette demande a été présentée dans le cadre d'un litige opposant M^me^ Chacón Navas à la société Eurest Colectividades SA (ci-après «Eurest») au sujet d'un licenciement intervenu lors d'un arrêt de travail pour cause de maladie.

Le cadre juridique et réglementaire

La réglementation communautaire

3 L'article 136, premier alinéa, CE dispose:

«La Communauté et les États membres, conscients des droits sociaux fondamentaux, tels que ceux énoncés dans la charte sociale européenne signée à Turin le 18 octobre 1961 et dans la charte communautaire des droits sociaux fondamentaux des travailleurs de 1989, ont pour objectifs la promotion de l'emploi, l'amélioration des conditions de vie et de travail, permettant leur égalisation dans le progrès, une protection sociale adéquate, le dialogue social, le développement des ressources humaines permettant un niveau d'emploi élevé et durable et la lutte contre les exclusions.»

4 L'article 137, paragraphes 1 et 2, CE confère à la Communauté des compétences pour soutenir et compléter l'action des États membres en vue de réaliser les objectifs visés à l'article 136 CE, notamment dans les domaines de l'intégration des personnes exclues du marché du travail et de la lutte contre l'exclusion sociale.

5 La directive 2000/78 a été adoptée sur le fondement de l'article 13 CE dans sa version antérieure au traité de Nice qui prévoit:

«Sans préjudice des autres dispositions du présent traité et dans les limites des compétences que celui-ci confère à la Communauté, le Conseil, statuant à l'unanimité sur proposition de la Commission et après consultation du Parlement européen, peut prendre les mesures nécessaires en vue de combattre toute discrimination fondée sur le sexe, la race ou l'origine ethnique, la religion ou les convictions, un handicap, l'âge ou l'orientation sexuelle.»

6 L'article 1^er^ de la directive 2000/78 dispose:

«La présente directive a pour objet d'établir un cadre général pour lutter contre la discrimination fondée sur la religion ou les convictions, [le] handicap, l'âge ou l'orientation sexuelle, en ce qui concerne l'emploi et le travail, en vue de mettre en œuvre, dans les États membres, le principe de l'égalité de traitement.»

7 Cette directive énonce dans ses considérants:

«(11) La discrimination fondée sur la religion ou les convictions, un handicap, l'âge ou l'orientation sexuelle peut compromettre la réalisation des objectifs du traité CE, notamment un niveau d'emploi et de protection sociale élevé, le relèvement du niveau et de la qualité de la vie, la cohésion économique et sociale, la solidarité et la libre circulation des personnes.

(12) À cet effet, toute discrimination directe ou indirecte fondée sur la religion ou les convictions, un handicap, l'âge ou l'orientation sexuelle dans les domaines régis par la présente directive doit être interdite dans la Communauté. [...]

[...]

(16) La mise en place de mesures destinées à tenir compte des besoins des personnes handicapées au travail remplit un rôle majeur dans la lutte contre la discrimination fondée sur un handicap.

(17) La présente directive n'exige pas qu'une personne qui n'est pas compétente, ni capable ni disponible pour remplir les fonctions essentielles du poste concerné ou pour suivre une formation donnée soit recrutée, promue ou reste employée ou qu'une formation lui soit dispensée, sans préjudice de l'obligation de prévoir des aménagements raisonnables pour les personnes handicapées.

[…]

(27) Le Conseil, dans sa recommandation 86/379/CEE du 24 juillet 1986 sur l'emploi des handicapés dans la Communauté [JO L 225, p. 43], a établi un cadre d'orientation qui énumère des exemples d'actions positives visant à promouvoir l'emploi et la formation des personnes handicapées et, dans sa résolution du 17 juin 1999 sur l'égalité des chances en matière d'emploi pour les personnes handicapées, a affirmé l'importance d'accorder une attention particulière notamment au recrutement, au maintien dans l'emploi et à la formation et à l'apprentissage tout au long de la vie des personnes handicapées.»

8 L'article 2, paragraphes 1 et 2, de la directive 2000/78 prévoit:

«1. Aux fins de la présente directive, on entend par 'principe de l'égalité de traitement' l'absence de toute discrimination directe ou indirecte, fondée sur un des motifs visés à l'article 1er.

2. Aux fins du paragraphe 1:

a) une discrimination directe se produit lorsqu'une personne est traitée de manière moins favorable qu'une autre ne l'est, ne l'a été ou ne le serait dans une situation comparable, sur la base de l'un des motifs visés à l'article 1er;

b) une discrimination indirecte se produit lorsqu'une disposition, un critère ou une pratique apparemment neutre est susceptible d'entraîner un désavantage particulier pour des personnes d'une religion ou de convictions, d'un handicap, d'un âge ou d'une orientation sexuelle donnés, par rapport à d'autres personnes, à moins que:

i) cette disposition, ce critère ou cette pratique ne soit objectivement justifié par un objectif légitime et que les moyens de réaliser cet objectif ne soient appropriés et nécessaires, ou que

ii) dans le cas des personnes d'un handicap donné, l'employeur ou toute personne ou organisation auquel s'applique la présente directive ne soit obligé, en vertu de la législation nationale, de prendre des mesures appropriées conformément aux principes prévus à l'article 5 afin d'éliminer les désavantages qu'entraîne cette disposition, ce critère ou cette pratique.»

9 Aux termes de l'article 3 de cette directive:

«1. Dans les limites des compétences conférées à la Communauté, la présente directive s'applique à toutes les personnes, tant pour le secteur public que pour le secteur privé, y compris les organismes publics, en ce qui concerne:

[…]

c) les conditions d'emploi et de travail, y compris les conditions de licenciement et de rémunération;

[…]»

10 L'article 5 de ladite directive dispose:

«Afin de garantir le respect du principe de l'égalité de traitement à l'égard des personnes handicapées, des aménagements raisonnables sont prévus. Cela signifie que l'employeur prend les mesures appropriées, en fonction des besoins dans une situation concrète, pour permettre à une personne handicapée d'accéder à un emploi, de l'exercer ou d'y progresser, ou pour qu'une formation lui soit dispensée, sauf si ces mesures imposent à l'employeur une charge disproportionnée. Cette charge n'est pas disproportionnée lorsqu'elle est compensée de façon suffisante par des mesures existant dans le cadre de la politique menée dans l'État membre concerné en faveur des personnes handicapées.»

11 La charte communautaire des droits sociaux fondamentaux des travailleurs, adoptée lors de la réunion du Conseil européen tenue à Strasbourg le 9 décembre 1989, à laquelle l'article 136, paragraphe 1, CE fait référence, énonce à son point 26:

«Toute personne handicapée, quelles que soient l'origine et la nature de son handicap, doit pouvoir bénéficier de mesures additionnelles concrètes visant à favoriser son intégration professionnelle et sociale.

Ces mesures d'amélioration doivent notamment concerner, en fonction des capacités des intéressés, la formation professionnelle, l'ergonomie, l'accessibilité, la mobilité, les moyens de transport et le logement.»

La réglementation nationale

12 Aux termes de l'article 14 de la Constitution espagnole:

«Les Espagnols sont égaux devant la loi, sans que puisse prévaloir aucune discrimination pour cause de naissance, de race, de sexe, de religion, d'opinion, ou toute autre condition ou circonstance personnelle ou sociale.»

13 Le décret royal législatif n° 1/1995, du 24 mars 1995, portant approbation du texte refondu de la loi portant statut des travailleurs (Estatuto de los Trabajadores, BOE n° 75, du 29 mars 1995, p. 9654, ci-après le «statut des travailleurs»), opère une distinction entre le licenciement irrégulier et le licenciement nul.

14 L'article 55, paragraphes 5 et 6, du statut des travailleurs dispose:

«5. Est réputé nul tout licenciement ayant pour motif l'une des causes de discrimination prohibées par la Constitution ou par la loi, ou entraînant une violation des droits fondamentaux et des libertés publiques reconnus aux travailleurs.

[…]

6. Un licenciement nul a pour effet la réintégration immédiate du travailleur, avec versement des salaires non perçus.»

15 Il découle de l'article 56, paragraphes 1 et 2, du statut des travailleurs que, en cas de licenciement irrégulier, à moins que l'employeur ne décide de le réintégrer, le travailleur perd son travail et une indemnité lui est versée.

16 En ce qui concerne l'interdiction de discrimination dans les relations de travail, l'article 17 du statut des travailleurs, dans sa version modifiée par la loi 62/2003, du 30 décembre 2003, établissant des mesures fiscales, administratives et d'ordre social (BOE n° 313, du 31 décembre 2003, p. 46874), qui vise à transposer la directive 2000/78 en droit espagnol, dispose:

«1. Sont réputés nuls et de nul effet les dispositions réglementaires, les clauses des conventions collectives, les contrats individuels et les décisions unilatérales de l'employeur qui créent directement ou indirectement des discriminations négatives fondées sur l'âge ou un handicap ou bien positives ou négatives en matière d'emploi, de rémunération, de temps de travail et autres conditions de travail fondées sur le sexe, la race ou l'origine ethnique, l'état civil, la situation sociale, la religion ou les convictions, les opinions politiques,

l'orientation sexuelle, l'adhésion ou la non-adhésion à des syndicats et à leurs accords, les liens de parenté avec d'autres travailleurs de l'entreprise et la langue dans l'État espagnol.

[…]».

Le litige au principal et les questions préjudicielles

17 M^me^ Chacón Navas travaillait pour Eurest, société spécialisée dans la restauration collective. Elle a été placée en arrêt de travail pour cause de maladie le 14 octobre 2003 et, selon les services publics de santé qui la suivaient, elle n'était pas en mesure de reprendre son activité professionnelle à court terme. Aucune indication sur la maladie dont souffre M^me^ Chacón Navas n'est donnée par la juridiction de renvoi.

18 Le 28 mai 2004, Eurest a notifié à M^me^ Chacón Navas son licenciement, sans avancer de cause, tout en reconnaissant le caractère irrégulier de celui-ci et en lui offrant une indemnisation.

19 Le 29 juin 2004, M^me^ Chacón Navas a introduit un recours contre Eurest, soutenant que son licenciement était nul en raison de l'inégalité de traitement et de la discrimination dont elle avait fait l'objet, lesquelles résultaient de la situation d'arrêt de travail dans laquelle elle se trouvait depuis huit mois. Elle a demandé la condamnation d'Eurest à la réintégrer dans son poste.

20 La juridiction de renvoi relève que, faute d'autre allégation ou preuve dans le dossier, il résulte du renversement de la charge de preuve que M^me^ Chacón Navas doit être considérée comme ayant été licenciée au seul motif qu'elle était en arrêt de travail pour cause de maladie.

21 La juridiction de renvoi fait observer que, dans la jurisprudence espagnole, il existe des précédents selon lesquels ce type de licenciement est qualifié d'irrégulier et non pas de nul, dès lors que la maladie ne figure pas, en droit espagnol, expressément parmi les motifs de discrimination prohibés dans les relations entre personnes privées.

22 Toutefois, la juridiction de renvoi relève qu'il existe un lien de causalité entre la maladie et le handicap. Pour définir le terme «handicap», il conviendrait de s'en remettre à la classification internationale du fonctionnement, du handicap et de la santé (CIF), établie par l'Organisation mondiale de la santé. Il en ressortirait que le terme «handicap» est un terme générique qui comprend les déficiences et les facteurs limitant l'activité et la participation à la vie sociale. La maladie pourrait entraîner des déficiences qui handicaperont l'individu.

23 Étant donné que la maladie est souvent susceptible d'entraîner un handicap irréversible, la juridiction de renvoi estime que les travailleurs doivent être protégés en temps utile au titre de l'interdiction de la discrimination fondée sur le handicap. Une solution inverse viderait de sa substance la protection voulue par le législateur puisqu'il serait ainsi possible de mettre en œuvre des pratiques discriminatoires incontrôlées.

24 Au cas où l'on considérerait que le handicap et la maladie sont deux concepts différents et que la réglementation communautaire n'est pas d'application directe au dernier de ceux-ci, la juridiction de renvoi suggère de constater que la maladie constitue un signe identitaire non spécifiquement cité qui doit s'ajouter à ceux au titre desquels la directive 2000/78 interdit toute discrimination. Cette constatation découlerait d'une lecture conjointe des articles 13 CE, 136 CE et 137 CE ainsi que des dispositions de l'article II-21 du projet de traité établissant une Constitution pour l'Europe.

25 C'est dans ces circonstances que le Juzgado de lo Social n° 33 de Madrid a décidé de surseoir à statuer et de poser à la Cour les questions préjudicielles suivantes:

«1) En tant que son article [1^er^] établit un cadre général pour lutter contre la discrimination fondée sur le handicap, la directive 2000/78 protège-t-elle une travailleuse qui a été licenciée de son entreprise uniquement parce qu'elle était malade?

2) Subsidiairement, en cas de réponse négative à la première question, s'il était considéré que la maladie n'entre pas dans le cadre protecteur que la directive 2000/78 offre contre les discriminations fondées sur le handicap:

La maladie peut-elle être considérée comme un signe identitaire supplémentaire venant s'ajouter à ceux pour lesquels la directive 2000/78 interdit toute discrimination?»

Sur la recevabilité du renvoi préjudiciel

26 La Commission met en doute la recevabilité des questions posées au motif que les faits décrits dans la décision de renvoi manquent de précision.

27 À cet égard, il y a lieu de relever que, malgré l'absence de toute indication sur la nature et l'évolution éventuelle de la maladie de M^me^ Chacón Navas, la Cour dispose des éléments suffisants pour lui permettre de répondre utilement aux questions posées.

28 En effet, il ressort de la décision de renvoi que M^me^ Chacón Navas, qui a été placée en arrêt de travail pour cause de maladie et qui n'était pas en mesure de reprendre son activité professionnelle à court terme, a, selon la juridiction de renvoi, été licenciée au seul motif qu'elle était en arrêt de travail pour cause de maladie. Il ressort également de cette décision que la juridiction de renvoi estime qu'il existe un lien de causalité entre la maladie et le handicap et qu'un travailleur dans la situation de M^me^ Chacón Navas doit être protégé au titre de l'interdiction des discriminations fondées sur le handicap.

29 La question posée à titre principal porte notamment sur l'interprétation de la notion de «handicap» au sens de la directive 2000/78. L'interprétation que donnera la Cour de cette notion vise à permettre à la juridiction de renvoi d'examiner si M^me^ Chacón Navas était, au moment du licenciement, du fait de sa maladie, une personne handicapée au sens de cette directive, bénéficiant de la protection prévue à l'article 3, paragraphe 1, sous c), de celle-ci.

30 En ce qui concerne la question posée à titre subsidiaire, celle-ci se réfère à la maladie en tant que «signe identitaire» et porte donc sur tout type de maladie.

31 Eurest estime que le renvoi préjudiciel n'est pas recevable dès lors que les juridictions espagnoles, notamment le Tribunal Supremo, auraient déjà décidé dans le passé, en tenant compte de la réglementation communautaire, que le licenciement d'un travailleur en arrêt de travail pour cause de maladie ne constitue pas en tant que tel une discrimination. Toutefois, le fait qu'une juridiction nationale a déjà interprété une réglementation communautaire ne saurait rendre irrecevable un renvoi préjudiciel.

32 En ce qui concerne l'argument d'Eurest selon lequel il y a lieu de considérer que cette entreprise a licencié M^me^ Chacón Navas, indépendamment du fait que cette dernière était en arrêt de travail pour cause de maladie, parce que, à ce moment-là, ses services n'étaient plus indispensables, il convient de rappeler que, dans le cadre d'une procédure visée à l'article 234 CE, fondée sur une nette séparation des fonctions entre les juridictions nationales et la Cour, toute appréciation des faits de la cause relève de la compétence du juge national. Il appartient de même au seul juge national, qui est saisi du litige et qui doit assumer la responsabilité de la décision juridictionnelle à intervenir, d'apprécier, au regard des particularités de l'affaire, tant la nécessité d'une décision préjudicielle pour être en mesure de rendre son jugement que la pertinence des questions qu'il pose à la Cour. En conséquence, dès lors que les questions posées portent sur l'interprétation du droit communautaire, la Cour est, en principe, tenue de statuer (voir, notamment, arrêts du 25 février 2003, IKA, C-326/00, Rec. p. I-1703, point 27, et du 12 avril 2005, Keller, C-145/03, Rec. p. I-2529, point 33).

33 Toutefois, la Cour a également indiqué que, dans des circonstances exceptionnelles, il lui appartient d'examiner les conditions dans lesquelles elle est saisie par le juge national en vue de vérifier sa propre compétence (voir, en ce sens, arrêt du 16 décembre 1981, Foglia, 244/80, Rec. p. 3045, point 21). Le refus de statuer sur une question préjudicielle posée par une juridiction nationale n'est possible que lorsqu'il apparaît de manière manifeste que

l'interprétation du droit communautaire sollicitée n'a aucun rapport avec la réalité ou l'objet du litige au principal, lorsque le problème est de nature hypothétique ou encore lorsque la Cour ne dispose pas des éléments de fait et de droit nécessaires pour répondre de façon utile aux questions qui lui sont posées (voir, notamment, arrêts du 13 mars 2001, PreussenElektra, C-379/98, Rec. p. I-2099, point 39, et du 19 février 2002, Arduino, C-35/99, Rec. p. I-1529, point 25).

34 En l'occurrence, aucune de ces conditions n'étant réunie, la demande de décision préjudicielle est recevable.

Sur les questions préjudicielles

Sur la première question

35 Par sa première question, la juridiction de renvoi demande en substance si le cadre général établi par la directive 2000/78 pour lutter contre la discrimination fondée sur le handicap assure une protection à une personne qui a été licenciée par son employeur exclusivement pour cause de maladie.

36 Ainsi qu'il ressort de l'article 3, paragraphe 1, sous c), de la directive 2000/78, celle-ci s'applique, dans les limites des compétences conférées à la Communauté, à toutes les personnes, en ce qui concerne notamment les conditions de licenciement.

37 Dans ces limites, le cadre général établi par la directive 2000/78 pour lutter contre la discrimination fondée sur le handicap s'applique donc en matière de licenciement.

38 En vue de répondre à la question posée, il convient, premièrement, d'interpréter la notion de «handicap» au sens de la directive 2000/78 et, deuxièmement, d'examiner dans quelle mesure les personnes handicapées sont protégées par celle-ci, en ce qui concerne le licenciement.

Sur la notion de «handicap»

39 La notion de «handicap» n'est pas définie par la directive 2000/78 elle-même. Cette directive ne renvoie pas non plus au droit des États membres pour la définition de cette notion.

40 Or, il découle des exigences tant de l'application uniforme du droit communautaire que du principe d'égalité que les termes d'une disposition du droit communautaire qui ne comporte aucun renvoi exprès au droit des États membres pour déterminer son sens et sa portée doivent normalement trouver, dans toute la Communauté, une interprétation autonome et uniforme qui doit être recherchée en tenant compte du contexte de la disposition et de l'objectif poursuivi par la réglementation en cause (voir, notamment, arrêts du 18 janvier 1984, Ekro, 327/82, Rec. p. 107, point 11, et du 9 mars 2006, Commission/Espagne, C-323/03, non encore publié au Recueil, point 32).

41 Ainsi qu'il ressort de son article 1er, la directive 2000/78 a pour objet d'établir un cadre général pour lutter, en ce qui concerne l'emploi et le travail, contre les discriminations fondées sur l'un des motifs visés à cet article, au nombre desquels figure le handicap.

42 Compte tenu de cet objectif, la notion de «handicap» au sens de la directive 2000/78 doit, conformément à la règle rappelée au point 40 du présent arrêt, faire l'objet d'une interprétation autonome et uniforme.

43 La directive 2000/78 vise à combattre certains types de discriminations en ce qui concerne l'emploi et le travail. Dans ce contexte, la notion de «handicap» doit être entendue comme visant une limitation, résultant notamment d'atteintes physiques, mentales ou psychiques et entravant la participation de la personne concernée à la vie professionnelle.

44 Toutefois, en utilisant la notion de «handicap» à l'article 1er de ladite directive, le législateur a délibérément choisi un terme qui diffère de celui de «maladie». Une assimilation pure et simple des deux notions est donc exclue.

45 Le seizième considérant de la directive 2000/78 énonce que la «mise en place de mesures destinées à tenir compte des besoins des personnes handicapées au travail remplit un rôle majeur dans la lutte contre la discrimination fondée sur le handicap». L'importance accordée par le législateur communautaire aux mesures destinées à aménager le poste de travail en fonction du handicap démontre qu'il a envisagé des hypothèses dans lesquelles la participation à la vie professionnelle est entravée pendant une longue période. Pour que la limitation relève de la notion de «handicap», il doit donc être probable qu'elle soit de longue durée.

46 La directive 2000/78 ne comporte aucune indication laissant entendre que les travailleurs sont protégés au titre de l'interdiction de discrimination fondée sur le handicap dès qu'une maladie quelconque se manifeste.

47 Il résulte des considérations qui précèdent qu'une personne qui a été licenciée par son employeur exclusivement pour cause de maladie ne relève pas du cadre général établi en vue de lutter contre la discrimination fondée sur le handicap par la directive 2000/78.

Sur la protection des personnes handicapées en matière de licenciement

48 Un traitement désavantageux fondé sur le handicap ne va à l'encontre de la protection visée par la directive 2000/78 que pour autant qu'il constitue une discrimination au sens de l'article 2, paragraphe 1, de celle-ci.

49 Selon son dix-septième considérant, la directive 2000/78 n'exige pas qu'une personne qui n'est pas compétente, ni capable, ni disponible pour remplir les fonctions essentielles du poste concerné soit recrutée, promue ou reste employée, sans préjudice de l'obligation de prévoir des aménagements raisonnables pour les personnes handicapées.

50 Conformément à l'article 5 de la directive 2000/78, des aménagements raisonnables sont prévus afin de garantir le respect du principe de l'égalité de traitement à l'égard des personnes handicapées. Cette disposition précise que cela signifie que l'employeur prend les mesures appropriées, en fonction des besoins dans une situation concrète, pour permettre à une personne handicapée d'accéder à un emploi, de l'exercer ou d'y progresser, sauf si ces mesures imposent à l'employeur une charge disproportionnée.

51 L'interdiction, en matière de licenciement, de la discrimination fondée sur le handicap, inscrite aux articles 2, paragraphe 1, et 3, paragraphe 1, sous c), de la directive 2000/78, s'oppose à un licenciement fondé sur un handicap qui, compte tenu de l'obligation de prévoir des aménagements raisonnables pour les personnes handicapées, n'est pas justifié par le fait que la personne concernée n'est pas compétente, ni capable, ni disponible pour remplir les fonctions essentielles de son poste.

52 Il résulte de l'ensemble des considérations qui précèdent qu'il convient de répondre à la première question posée que:

– une personne qui a été licenciée par son employeur exclusivement pour cause de maladie ne relève pas du cadre général établi en vue de lutter contre la discrimination fondée sur le handicap par la directive 2000/78;

– l'interdiction, en matière de licenciement, de la discrimination fondée sur le handicap, inscrite aux articles 2, paragraphe 1, et 3, paragraphe 1, sous c), de la directive 2000/78, s'oppose à un licenciement fondé sur le handicap qui, compte tenu de l'obligation de prévoir des aménagements raisonnables pour les personnes handicapées, n'est pas justifié par le fait que la personne concernée n'est pas compétente, ni capable, ni disponible pour remplir les fonctions essentielles de son poste.

Sur la seconde question

53 Par sa seconde question, la juridiction de renvoi demande si la maladie peut être considérée comme un motif venant s'ajouter à ceux au titre desquels la directive 2000/78 interdit toute discrimination.

54 À cet égard, il convient de constater qu'aucune disposition du traité CE ne contient une interdiction de la discrimination fondée sur une maladie en tant que telle.

55 En ce qui concerne l'article 13 CE ainsi que l'article 137 CE, lu en combinaison avec l'article 136 CE, ils ne comportent qu'une réglementation des compétences de la Communauté. Par ailleurs, au-delà de la discrimination fondée sur un handicap, l'article 13 CE ne vise pas celle fondée sur une maladie en tant que telle et ne saurait donc même constituer un fondement juridique de mesures du Conseil visant à combattre une telle discrimination.

56 Certes, au nombre des droits fondamentaux faisant partie intégrante des principes généraux du droit communautaire figure notamment le principe général de non-discrimination. Celui-ci lie donc les États membres lorsque la situation nationale en cause dans l'affaire au principal relève du champ d'application du droit communautaire (voir, en ce sens, arrêts du 12 décembre 2002, Rodríguez Caballero, C-442/00, Rec. p. I-11915, points 30 et 32, ainsi que du 12 juin 2003, Schmidberger, C-112/00, Rec. p. I-5659, point 75 et jurisprudence citée). Toutefois, il n'en résulte pas que le champ d'application de la directive 2000/78 doive être étendu par analogie au-delà des discriminations fondées sur les motifs énumérés de manière exhaustive à l'article 1er de celle-ci.

57 Il convient, par conséquent, de répondre à la seconde question que la maladie en tant que telle ne peut être considérée comme un motif venant s'ajouter à ceux au titre desquels la directive 2000/78 interdit toute discrimination.

Sur les dépens

58 La procédure revêtant, à l'égard des parties au principal, le caractère d'un incident soulevé devant la juridiction de renvoi, il appartient à celle-ci de statuer sur les dépens. Les frais exposés pour soumettre des observations à la Cour, autres que ceux desdites parties, ne peuvent faire l'objet d'un remboursement.

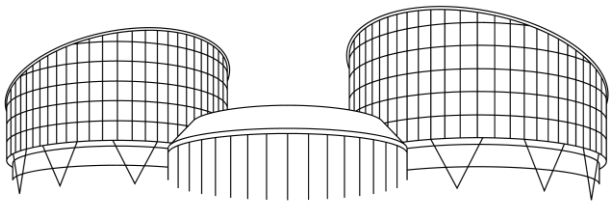
Par ces motifs, la Cour (grande chambre) dit pour droit:

1) Une personne qui a été licenciée par son employeur exclusivement pour cause de maladie ne relève pas du cadre général établi en vue de lutter contre la discrimination fondée sur le handicap par la directive 2000/78/CE du Conseil, du 27 novembre 2000, portant création d'un cadre général en faveur de l'égalité de traitement en matière d'emploi et de travail.

2) L'interdiction, en matière de licenciement, de la discrimination fondée sur le handicap, inscrite aux articles 2, paragraphe 1, et 3, paragraphe 1, sous c), de la directive 2000/78, s'oppose à un licenciement fondé sur le handicap qui, compte tenu de l'obligation de prévoir des aménagements raisonnables pour les personnes handicapées, n'est pas justifié par le fait que la personne concernée n'est pas compétente, ni capable, ni disponible pour remplir les fonctions essentielles de son poste.

3) La maladie en tant que telle ne peut être considérée comme un motif venant s'ajouter à ceux au titre desquels la directive 2000/78 interdit toute discrimination.

Signatures



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF SÝKORA v. THE CZECH REPUBLIC

(Application no. 23419/07)

JUDGMENT

STRASBOURG

22 November 2012

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Sýkora v. the Czech Republic,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Dean Spielmann, *President,*
Mark Villiger,
Karel Jungwiert,
Boštjan M. Zupančič,
Angelika Nußberger,
André Potocki,
Paul Lemmens, *judges,*
and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 23 October 2012,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 23419/07) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Czech national, Mr Milan Sýkora ("the applicant"), on 30 May 2007.

2. The applicant was represented by Mr D. Zahumenský, Ms B. Bukovská, and Mr J. Fiala, lawyers from the Mental Disability Advocacy Center in Brno. The Czech Government ("the Government") were represented by their Agent, Mr Vít A. Schorm, of the Ministry of Justice.

3. The applicant alleged, in particular, that his right to liberty and private life had been violated on account of the removal of legal capacity from him and his subsequent detention in a psychiatric hospital.

4. On 29 June 2010 the application was communicated to the Government.

5. The applicant and the Government each submitted observations on the admissibility and merits. In addition, third-party comments were received from the Harvard Law School Project on Disability, which had been granted leave by the President of the Chamber to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1949 and lives in Brno. He is a person with a psycho-social disability. He has been treated in psychiatric hospitals in the past, most recently in 1995. He has not taken any medication for many years, because he considers that it has an adverse impact on his eyesight, and has used other methods to cope with his illness.

A. Proceedings concerning the removal of the applicant's legal capacity

7. In a judgment of 15 November 2000 the Brno Municipal Court (*městský soud*) deprived the applicant of his legal capacity at the request of the City of Brno, which maintained that the applicant had not collected his pension since 1996 because he did not have an identity card. The court based its decision on an expert report by Dr. H., who had concluded in 1998 that the applicant was suffering from paranoid schizophrenia. The applicant, although aware of the proceedings, was not summoned to appear before the court and the decision was not served on him, the court referring to an opinion of Dr. H., who was heard by the court and did not recommend that this be done. The applicant was represented by Ms. M., an employee of the court, who had never met him, did not participate at the hearing and took no substantive part in the proceedings. The judgment became final on 21 December 2000.

8. On an unspecified date the applicant became aware of the court's judgment and appealed. On 27 August 2001 the Brno Regional Court (*krajský soud*) quashed the first-instance decision and remitted the case to the Municipal Court which, in a judgment of 24 November 2004, again deprived the applicant of his legal capacity and appointed the City of Brno as his guardian.

9. It based its decision on a new expert report drawn up by Dr. H. on 20 May 2004 who, however, had not been able to examine the applicant because of his refusal to have any medical examinations. She concluded that there had been no improvement in the applicant's mental health since the first report. She reiterated her findings in the 1998 report that the applicant was unable to care for himself or to manage any property, and that he was dependent on others even for daily needs. The report further stated that the applicant's presence at the hearing would not be appropriate, because he did not understand the purpose of the proceedings and was denying his mental illness, but a court judgment could be sent to him. At a hearing, the expert stated that the notification of the court judgment to the applicant would not

worsen his health, but he would not understand. She thus recommended that the judgment not be sent to the applicant.

10. The court did not hear the applicant, who continued to be formally represented by a court employee. The judgment was not served on him and became final on 1 January 2005.

11. The applicant became aware of the judgment on 20 June 2006 and appealed on 4 July 2006. He stated that the court had not notified him about the institution and outcome of the incapacitation proceedings and that Dr. H had drawn up her expert opinion without examining him. The applicant was represented by a lawyer from the Mental Disability Advocacy Center ("the MDAC").

12. On 25 October 2006 the Regional Court again quashed the Municipal Court's judgment and sent the case back to it, disputing the relevance of the expert opinion which had been drawn up without the applicant being examined. It suggested that the Municipal Court should appoint a new expert.

13. On 19 September 2007 the Municipal Court decided not to deprive the applicant of his legal capacity, basing its decision on an expert report by Dr. B., who had concluded on 11 May 2007 that the applicant was mentally ill but did not show signs of schizophrenia, was not dangerous or aggressive and was fully capable of making legal assessments. The court heard the expert, the applicant, who was legally represented, and his guardian. The judgment became final on 23 November 2007.

14. In total the applicant was deprived of legal capacity from 21 December 2000 to 27 August 2001 and from 1 January 2005 to 25 October 2006, that is for two years and six months.

B. Proceedings for damages against the State

15. On 15 January 2008, in two separate documents, the applicant requested the Ministry of Justice to award him non-pecuniary damages for the unreasonable length of incapacitation proceedings and violations of other procedural rights.

16. The Ministry joined the two requests of the applicant and on 1 September 2008 awarded him 102,000 Czech korunas (CZK, 4,602 euros (EUR)) in damages for the unreasonable length of proceedings. Regarding the rest of the applicant's claims, the Ministry accepted that the judgments had not been served on the applicant and that his rights had therefore been violated. It stated, however, that a finding of a violation constituted in itself sufficient satisfaction for any non-pecuniary damage he might have sustained.

17. The applicant brought proceedings for damages at the Prague 2 District Court (*obvodní soud*), claiming violations of his procedural rights in the incapacitation proceedings.

18. On 12 November 2008 the District Court rejected the applicant's action. On the basis of established case-law it held that the alleged shortcomings in the incapacitation proceedings could not constitute irregular official conduct for which the State could be held responsible, because there had been a decision. The applicant could have claimed damages only for a decision that became final but was later quashed as illegal. That situation however did not arise in the present case.

19. On 10 December 2009 the Municipal Court upheld the judgment of the lower court.

20. On 16 February 2012 the Constitutional Court (*Ústavní soud*) dismissed a constitutional appeal by the applicant as manifestly ill-founded. It held that the legal opinion of the ordinary courts was not unconstitutional. It noted that by claiming damages for irregular official conduct the applicant had been trying to circumvent the fact that he had not met the conditions for claiming damages for an unlawful decision. Furthermore, the decisions for which the applicant was claiming damages had never become final and so could not have interfered with his rights.

C. The applicant's detention in the Brno-Černovice Psychiatric Hospital and the ensuing proceedings

21. On 9 November 2005 the applicant had a verbal, non-violent argument with his partner, Ms J., who called the police and an ambulance. Although the police found no signs of violence and the applicant's partner confirmed that the applicant had not been aggressive, the ambulance doctor decided to take the applicant to a psychiatric hospital. The applicant disagreed but did not resist.

22. At his admission to the Brno-Černovice Psychiatric Hospital, the applicant was subjected to two specialist medical examinations. They both concluded that the applicant suffered from schizophrenia. The applicant insisted at the examinations that there were no reasons for his detention. Despite his warning that neuroleptic psychiatric medication had a negative effect on his eyesight, he was nevertheless ordered to take the medication, and when he refused it was administered by injection. As a result, according to the applicant, his eyesight deteriorated.

23. On 10 November 2005 the applicant complained about his treatment in a letter to the director of the hospital, but his letter was retained by the staff; he was informed of this on 14 November 2005. He has never received any reply from the director.

24. On 11 November 2005 the hospital notified the Municipal Court of the applicant's involuntary admission so that the court could start to review its lawfulness under Article 191a of the Code of Civil Procedure. On an unspecified date the hospital contacted the applicant's guardian (the City of Brno) which, on 14 November 2005, consented to his detention. The

employee who signed the consent had never met the applicant and did not inform him that consent had been given.

25. On an unspecified date the applicant was moved to a department with a more lenient regime, but was still not allowed to leave.

26. On 14 November 2005 he contacted the MDAC. On the same day, an MDAC lawyer stated to the Municipal Court that the applicant's involuntary detention was unlawful, and requested his release.

27. On 29 November 2005 the applicant was released from the hospital. He stated that he suffered from impaired vision and mental health for almost a year as a consequence of the treatment he received in the hospital.

28. On an unspecified date a judge of the Municipal Court informed the MDAC lawyer that the applicant had been deprived of legal capacity and that a power of attorney therefore had to be signed by his guardian. Due to the applicant's poor health after his release from the hospital, the applicant was able to visit his guardian in an office of the City of Brno only on 8 November 2006. The employee of the City of Brno he approached refused however to sign the power of attorney. On the same day, the applicant himself asked the Municipal Court for a further review of the lawfulness of his involuntary admission to the psychiatric hospital. On 24 November 2006 he was told in a letter that no proceedings in that regard had been instituted.

29. On 2 January 2007 the applicant complained to the President of the Municipal Court about delays in the proceedings. On 5 March 2007 he received a reply that no such proceedings had been instituted because his guardian had consented to his detention.

30. On 31 January 2007 the applicant lodged a constitutional appeal (*ústavní stížnost*) alleging a violation of his rights to liberty, fair hearing, respect for private life and non-discrimination due to his involuntary hospitalisation and removal of his legal capacity.

31. On 8 January 2009 the Constitutional Court dismissed his constitutional appeal for non-exhaustion of ordinary remedies. Regarding the proceedings on the review of the lawfulness of his involuntary hospitalisation, the court held that the applicant had not lodged a complaint under section 174a of the Act on Courts and Judges (no. 6/2002) requesting the court to set a date for action. Regarding the incapacitation proceedings, it held that at the time the constitutional appeal was lodged those proceedings were pending before the Municipal Court.

32. On 6 February 2009 the applicant lodged a new complaint of delays in the proceedings on the review of the lawfulness of his involuntary admission to the psychiatric hospital, and requested the court to set a date for action. On 13 March 2009 the Regional Court refused his request on the grounds that since the applicant was no longer detained no proceedings on lawfulness of his detention had been held, so there were no proceedings in which any delays could be found and which could be expedited.

33. On 21 May 2009 the applicant lodged a constitutional appeal, claiming that his psychiatric detention had never been reviewed by a court.

34. On 11 January 2012 the Constitutional Court dismissed his constitutional appeal as unsubstantiated, holding that the courts had rightly not instituted proceedings to review the applicant's detention, because his guardian had consented to it, and moreover when the applicant had requested the continuation of the proceedings he was no longer detained, which was another reason why the proceedings had had to be abandoned. It added that the applicant could institute civil proceedings for damages against the hospital, in which the lawfulness of its actions could be reviewed.

II. RELEVANT DOMESTIC LAW

A. Civil Code (Act no. 40/1964) in force at the material time

35. Under Article 10 § 1, if a natural person, because of a mental disorder which is not temporary, is totally unable to make legal decisions, the court will deprive him of legal capacity.

36. Under Article 26, if natural persons are legally incapacitated, their guardians act in their name.

B. Code of Civil Procedure (Act no. 99/1963)

37. Under Article 191a a hospital which admits a patient against his or her will must inform an appropriate court within twenty-four hours; the court will review the lawfulness of the person's involuntary admission to the hospital.

C. The Public Health Care Act (Act no. 20/1966) in force at the material time

38. Under section 23(4)(b) a person may be compulsorily medically treated and even hospitalised if he appears to show signs of a mental illness and endangers himself or his surroundings.

D. Act no. 82/1998 on State liability for damage caused in the exercise of public authority by an irregularity in a decision or the conduct of proceedings

39. Under sections 7 and 8 individuals who suffer loss because of a final unlawful decision that is later quashed or changed are entitled to claim just satisfaction.

40. Section 13 provides that the State is also liable for damage caused by an irregularity in the conduct of proceedings, including non-compliance with the obligation to perform an act or to give a decision within the statutory time-limit.

III. RELEVANT INTERNATIONAL INSTRUMENTS

A. Convention on the Rights of Persons with Disabilities, adopted by the United Nations General Assembly on 13 December 2006 (Resolution A/RES/61/106)

41. This Convention entered into force on 3 May 2008. It was ratified by the Czech Republic on 28 September 2009. The relevant parts of the Convention provide:

Article 12
Equal recognition before the law

"1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests. ..."

Article 14
Liberty and security of person

"1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

(*a*) Enjoy the right to liberty and security of person;

(*b*) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in

compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation."

B. Recommendation No. R (99) 4 of the Committee of Ministers of the Council of Europe on principles concerning the legal protection of incapable adults (adopted on 23 February 1999)

42. The relevant parts of this Recommendation read as follows:

Principle 3 – Maximum reservation of capacity

"1. The legislative framework should, so far as possible, recognise that different degrees of incapacity may exist and that incapacity may vary from time to time. Accordingly, a measure of protection should not result automatically in a complete removal of legal capacity. However, a restriction of legal capacity should be possible where it is shown to be necessary for the protection of the person concerned.

2. In particular, a measure of protection should not automatically deprive the person concerned of the right to vote, or to make a will, or to consent or refuse consent to any intervention in the health field, or to make other decisions of a personal character at any time when his or her capacity permits him or her to do so. ..."

Principle 6 – Proportionality

"1. Where a measure of protection is necessary it should be proportional to the degree of capacity of the person concerned and tailored to the individual circumstances and needs of the person concerned.

2. The measure of protection should interfere with the legal capacity, rights and freedoms of the person concerned to the minimum extent which is consistent with achieving the purpose of the intervention. ..."

Principle 9 – Respect for wishes and feeling of the person concerned

"3. [This principle] also implies that a person representing or assisting an incapable adult should give him or her adequate information, whenever this is possible and appropriate, in particular concerning any major decision affecting him or her, so that he or she may express a view."

Principle 13 – Right to be heard in person

"The person concerned should have the right to be heard in person in any proceedings which could affect his or her legal capacity."

Principle 14 – Duration, review and appeal

"1. Measures of protection should, whenever possible and appropriate, be of limited duration. Consideration should be given to the institution of periodical reviews ...

3. There should be adequate rights of appeal. ..."

Principle 16 – Adequate control

"There should be adequate control of the operation of measures of protection and of the acts and decisions of representatives."

Principle 19 – Limitation of powers of representatives

"1. It is for national law to determine which juridical acts are of such a highly personal nature that they can not be done by a representative.

2. It is also for national law to determine whether decisions by a representative on certain serious matters should require the specific approval of a court or other body..."

Principle 22 – Consent

"1. Where an adult, even if subject to a measure of protection, is in fact capable of giving free and informed consent to a given intervention in the health field, the intervention may only be carried out with his or her consent. The consent should be solicited by the person empowered to intervene.

2. Where an adult is not in fact capable of giving free and informed consent to a given intervention, the intervention may, nonetheless, be carried out provided that:

- it is for his or her direct benefit, and

authorisation has been given by his or her representative or by an authority or a person or body provided for by law.

3. ... Consideration should also be given to the need to provide for the authorisation of a court or other competent body in the case of certain serious types of intervention."

C. Report to the Czech Government on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 March to 7 April 2006 and from 21 to 24 June 2006

43. In this report the CPT also assessed the guardianship regime in the Czech Republic in connection with the admission of incapacitated persons to social care institutions and psychiatric hospitals. It noted that guardians have far-reaching powers with respect to their wards, and criticised the fact that they may also decide on the question of admission to a psychiatric hospital or a social care home (§ 149). It recommended that the Czech authorities consider incorporating the Council of Europe's Principles Concerning the Legal Protection of Incapable Adults and, in particular, Principle 19 (2), into the legal norms governing guardianship in the Czech Republic (§ 154).

D. Concluding Observations of the Human Rights Committee on the Czech Republic, 25 July 2007

44. The Committee expressed concern that confinement in psychiatric hospitals can be based on mere "signs of mental illness". It regretted that court reviews of admissions to psychiatric institutions do not sufficiently

ensure respect for the views of the patient, and that guardianship is sometimes assigned to attorneys who do not meet the patient. It concluded:

> "The State party should ensure that no medically unnecessary psychiatric confinement takes place, that all persons without full legal capacity are placed under guardianship that genuinely represents and defends the wishes and interest of those persons, and that an effective judicial review of the lawfulness of the admission and detention of such person in health institutions takes place in each case."

E. Report of the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, Doc. no. E/CN.4/2005/51, 11 February 2005

45. In his report the Special Rapporteur emphasised that human rights must be supported by a system of accountability, and called for the introduction of appropriate safeguards against abuse of the rights of people with mental disabilities. He advocated that an independent review body must be made accessible to individuals with mental disabilities to periodically review cases of involuntary admission and treatment (§ 71). He was further concerned by the fact that guardianship had been overused and abused in the medical, as well as other, contexts, including at the most extreme level the compulsory admission of individuals with learning disabilities in psychiatric institutions (§ 79).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

46. The applicant complained that his admission and detention in the Brno-Černovice Psychiatric Hospital violated his right to liberty. He relied on Article 5 § 1 of the Convention, the relevant part of which reads:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

A. Admissibility

47. The Court first notes that the applicant was confined to a psychiatric hospital from 9 November 2005 to 29 November 2005, that is a total of twenty days, without his consent. While his confinement was confirmed

after five days by the guardian this does not alter the fact that the applicant was deprived of his liberty involuntarily and that his continued hospitalisation against his will constituted a deprivation of liberty within the meaning of that provision (see *Stanev v. Bulgaria* [GC], no. 36760/06, §§ 122-123, ECHR 2012; *D.D. v. Lithuania*, no. 13469/06, § 122, 14 February 2012; and *Shtukaturov v. Russia*, no. 44009/05, § 109, ECHR 2008).

48. The Government maintained that the applicant had lost his status as a victim after the Ministry of Justice had acknowledged that incorrect official procedure had taken place both as a result of delays in the proceedings and as a result of failure to serve courts' decisions on the applicant, and had awarded him CZK 102,000 (see paragraph 16 above). Even though the acknowledgement concerned the proceedings on legal capacity, this must be viewed in the context of the narrow inter-connection of these proceedings and the admission of the applicant to the hospital with the consent of his guardian.

49. The applicant disagreed, arguing that his right to liberty was not an issue in those proceedings, which concerned only his incapacitation.

50. The Court observes that while compensating the applicant for the unreasonable length of the incapacitation proceedings, the Ministry did not acknowledge a violation of the applicant's right to liberty. It cannot therefore be said that the authorities have acknowledged the breach of Article 5 of the Convention and afforded redress for it. As a result, the Government's objection must be dismissed.

51. The Government further argued that the applicant had failed to exhaust domestic remedies, pointing out that his first constitutional appeal had been dismissed for non-compliance with procedural requirements. Moreover, the applicant should have instituted proceedings for damages against the State on the basis that the Brno Municipal Court had failed to decide on the lawfulness of his involuntary admission to the hospital.

52. The applicant disagreed, maintaining that he could not claim compensation from the State for unlawful detention given that his detention had been based on the national law.

53. Regarding the dismissal of the applicant's first constitutional appeal for formal reasons, the Court notes that, subsequently, the applicant's second constitutional appeal was dismissed on the merits (see paragraph 33 above). It cannot therefore be said that the applicant failed to exhaust this remedy in compliance with the procedural requirements.

54. As regards the possibility of bringing an action for damages against the State, the Court recalls that the Constitutional Court, in its decision of 11 January 2012, found the approach of the courts in the applicant's case to have been lawful and constitutional. Moreover, the Government have failed to submit any example of a decision in which an action for damages in comparable circumstances was successful. The Court therefore concludes

that an action for damages was not a remedy which the applicant was required to exhaust, and dismisses the Government's objection of non-exhaustion of domestic remedies.

55. Lastly, the Government requested the Court to apply the admissibility criterion under Article 35 § 3 (b) of the Convention, maintaining that the applicant had suffered no significant disadvantage.

56. The Court does not accept that questions going to the lawfulness of a deprivation of liberty which lasted twenty days could constitute an "insignificant" disadvantage. It accordingly dismisses this objection.

57. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions of the parties and third-party intervener

58. The applicant complained that his detention could not have been justified under Article 5 § 1 (e) of the Convention because he was not a person of unsound mind of a kind or degree warranting compulsory confinement. He stated that his detention had been neither lawful nor in accordance with a procedure prescribed by law. He had been detained on the basis of retrospective consent given by his guardian, who had never met him and had showed no interest in his hospitalisation. In his view, the Convention did not allow guardians to decide on questions of such fundamental importance without court approval and thus his detention could not be lawful as there had been no safeguards against his detention. The guardian's powers were total and unchecked.

59. The Government maintained that the applicant had a serious and long term mental disorder. He had been taken to the health care institution as a result of an emergency call by Ms J., who had reported that the applicant was being aggressive and that she had felt threatened by him. It can therefore be assumed that from the perspective of the medical specialists at the time of the confinement, the applicant's disorder had required hospitalisation, even though the aggressive behaviour had not been confirmed and Ms J. later described it as fabricated.

60. They added that the applicant's hospitalisation had been in compliance with the domestic law. As far as compliance with the procedural criteria in the light of the requirements of the Convention was concerned, the Government left that assessment to the Court's discretion.

61. The Harvard Law School Project on Disability, as third party to the proceedings, referred in their submissions to the Convention on the Rights

of Persons with Disabilities, which the Court should, in their view, take into account in interpreting the Convention.

2. The Court's assessment

62. The Court reiterates that in order to comply with Article 5 § 1, the detention in issue must first of all be "lawful", including the observance of a procedure prescribed by law; in this respect the Convention refers back essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. Moreover, any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness. Furthermore, the detention of an individual is such a serious measure that it is only justified where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public interest which might require that the person concerned be detained. That means that it does not suffice that the deprivation of liberty is in conformity with national law; it must also be necessary in the circumstances (see *Stanev*, cited above, § 143).

The Court has outlined three minimum conditions for the lawful detention of an individual on the basis of unsoundness of mind under Article 5 § 1 (e) of the Convention: he must reliably be shown to be of unsound mind, that is, a true mental disorder must be established before a competent authority on the basis of objective medical expertise; the mental disorder must be of a kind or degree warranting compulsory confinement; and the validity of continued confinement must depend upon the persistence of such a disorder (see *Winterwerp v. the Netherlands*, 24 October 1979, § 39, Series A no. 33; and *Stanev*, cited above, § 145).

63. Moreover, a detention cannot be considered "lawful" within the meaning of Article 5 § 1 if the domestic procedure does not provide sufficient guarantees against arbitrariness (see *H.L. v. the United Kingdom*, no. 45508/99, § 124, ECHR 2004-IX; *Shtukaturov*, cited above, § 113; and *L.M. v. Latvia*, no. 26000/02, § 54, 19 July 2011). In addition, deprivations of liberty must be subject to thorough scrutiny by the domestic authorities (*Ťupa v. the Czech Republic*, no. 39822/07, §§ 37 and 61, 26 May 2011).

64. In the *H.L. v. the United Kingdom* case the Court found that the detention had not been lawful because of the absence of safeguards, understood both in the sense of procedural safeguards and of substantive guarantees to prevent arbitrariness (§ 120).

65. Turning to the present case, the Court first observes that the applicant was admitted to the psychiatric hospital as an emergency case, the doctors acting on the belief that he had been aggressive to his partner. He underwent two independent medical examinations on his admission and both doctors concluded that the applicant suffered from a mental disorder. Therefore, his detention was initially based on an objective medical expertise. However, before deciding whether also the other above

mentioned Winterwerp criteria were complied with in the present case, the Court must establish whether the applicant's detention was "lawful", in particular whether the domestic procedure provided sufficient guarantees against arbitrariness (see *L.M. v. Latvia*, cited above, § 45).

66. The Court notes that no domestic court reviewed the lawfulness of the applicant's detention as would be the normal procedure in cases of involuntary hospitalisations (see § 37 above). The reason was that since the guardian gave consent to the applicant's detention the applicant was considered, as a matter of domestic law, to be in the psychiatric hospital voluntarily. As a result, he was deprived of his liberty for twenty days solely on the basis of the consent of his guardian. The requirements for involuntary hospitalisation, both substantive in section 23(4)(b) of the Public Health Care Act and procedural in the Code of Civil Procedure, did not apply.

67. The Court observes that the opinions and reports issued by the various international bodies indicate a trend in international standards to require that detentions of incapacitated persons be accompanied by requisite procedural safeguards, namely by way of judicial review (see Principles 3, 16, 19 and 22 in paragraph 42 above; the views of the international bodies in paragraphs 42-44 above; and also *Ťupa v. the Czech Republic*, cited above, §§ 37 and 61). Judicial review, instituted automatically or brought about by the ward or some other suitable person, of a guardian's consent to deprivation of liberty of their ward could provide, in view of the Court, a relevant safeguard against arbitrariness. The trend towards such judicial review has not yet found full implementation in most Council of Europe Member States (see the Comparative Law part in *Stanev*, cited above, §§ 91-95), and it is not available in the Czech Republic in circumstances like the present case.

68. The Court observes that the only possible safeguard against arbitrariness in respect of the applicant's detention was the requirement that his guardian, which was the City of Brno, consent to the detention. However, the guardian consented to the applicant's detention without ever meeting or even consulting the applicant. Moreover, it has never been explained why it would have been impossible or inappropriate for the guardian to consult the applicant before taking this decision, as referred to in the relevant international standards (see Principle 9 in paragraph 42 above). Accordingly, the guardian's consent did not constitute a sufficient safeguard against arbitrariness.

69. There were no other substantive safeguards protecting the applicant from detention than the guardian's consent, which was not sufficient as found above. Even the protection of section 23(4)(b) of the Public Health Care Act was inapplicable once the guardian gave his consent.

70. The Court considers that, even after the applicant's detention became voluntary under domestic law, it was not lawful as it was not accompanied

by sufficient guarantees against arbitrariness. It is thus not necessary to consider the other arguments of the applicant.

71. There has accordingly been a violation of Article 5 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

72. The applicant further complained that he did not have any opportunity to seek a judicial review of his detention. He relied on Article 5 § 4 of the Convention:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

73. The Government repeated their objection of inadmissibility already raised under Article 5 § 1 (see paragraphs 48, 51 and 55 above). They further maintained that Article 5 § 4 of the Convention was applicable only when a person was in detention, and that therefore this complaint as far as it concerned proceedings after 29 November 2005 was incompatible *ratione materiae* with the Convention.

74. The applicant disagreed. He challenged the accuracy of the Government's objection *ratione materiae*, and maintained furthermore that it was irrelevant, as his complaint concerned the absence of any opportunity to seek judicial review of his detention.

75. The Court has already rejected the Government's objection as to the victim status of the applicant above (see paragraph 50 above). As to their view that any disadvantage to the applicant was insignificant, the Court does not accept that the absence of an opportunity for the applicant to seek judicial review of his detention, which goes to the essence of Article 5 § 4 of the Convention, can constitute an insignificant disadvantage and, accordingly, dismisses the Government's objection.

76. The Court further agrees with the applicant that the question whether Article 5 § 4 applied to any proceedings after the applicant's release is not relevant to the present complaint.

77. It finally considers that the Government's objection of non-exhaustion of domestic remedies must be joined to the examination of the merits of the complaint (see *Rashed v. the Czech Republic*, no. 298/07, § 46, 27 November 2008).

78. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

79. The applicant complained that having been deprived of his legal capacity he had had no access to any judicial proceedings for a review of the lawfulness of his detention. He argued that Article 5 § 4 guaranteed this right to everyone, and therefore the consent of his guardian could not forfeit this right on his behalf without any safeguards. If that were the case the whole purpose of Article 5, which was to prevent arbitrary detentions, would be compromised.

80. The Government pointed out that under the domestic law the applicant had been admitted to the psychiatric hospital with the consent of his guardian. Moreover, his detention had not been particularly lengthy. Had it been a long-term detention the situation would have been different, as after the quashing of the Municipal Court's judgment depriving the applicant of his legal capacity, the applicant would no longer have been considered a patient detained by consent, and remedies in respect of his detention would have been available to him.

81. Article 5 § 4 of the Convention deals only with those remedies which must be made available during a person's detention with a view to that person obtaining speedy judicial review of the lawfulness of the detention leading, where appropriate, to his or her release (*Slivenko v. Latvia* [GC], no. 48321/99, § 158, ECHR 2003-X).

82. As to the substantive content of the provision, the Court has recently considered the requirements of Article 5 § 4 of the Convention in the case of *Stanev* (cited above). It recalled that Article 5 § 4 entitles detained persons to institute proceedings for a review of compliance with the procedural and substantive conditions which are essential for the "lawfulness" of their deprivation of liberty (§ 168). The remedy must be accessible to the detained person and must afford the possibility of reviewing compliance with the conditions to be satisfied if the detention of a person of unsound mind is to be regarded as "lawful" for the purposes of Article 5 § 1 (e). The Convention requirement for an act of deprivation of liberty to be amenable to independent judicial scrutiny is of fundamental importance in the context of the underlying purpose of Article 5 of the Convention to provide safeguards against arbitrariness; in the case of mental illness, special procedural safeguards may be called for in order to protect the interests of persons who, on account of their mental illness, are not fully capable of acting for themselves (§ 170, with further references). In the case of *Shtukaturov* (cited above), the Court found that a remedy which could only be initiated through the applicant's mother – who was opposed to his release – did not satisfy the requirements of Article 5 § 4 (§ 124).

83. Turning to the present case, the Court notes that the applicant's detention lasted twenty days, which cannot be considered too short to initiate judicial review (compare for example, *a contrario*, *Slivenko*, cited

above, § 158 and *Fox, Campbell and Hartley v. the United Kingdom*, 30 August 1990, § 45, Series A no. 182). Accordingly, Article 5 § 4 is applicable in the present case.

84. The Court observes that the domestic courts were not empowered to intervene in the applicant's psychiatric confinement, the applicant having been considered to be in the psychiatric hospital voluntarily because of the consent of his guardian (see paragraph 66 above), and the Government did not indicate any other adequate remedy available to the applicant.

85. In the light of these considerations, the Court concludes that there were no proceedings in which the lawfulness of the applicant's detention could have been determined and his release ordered.

86. Consequently, it dismisses the Government's objection of failure to exhaust domestic remedies, and finds that there has been a violation of Article 5 § 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

87. The applicant complained that during his detention he had been subjected to medical treatment against his will which had negatively affected his health. He further complained that the total removal of his legal capacity had interfered with his right to private and family life and that the proceedings depriving him of legal capacity suffered from procedural deficiencies. He relied on Articles 6 and 8 of the Convention. The Court considers it appropriate to examine the complaints under Article 8, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

88. The Court first reiterates that under Article 35 § 1 it may only deal with a matter after all domestic remedies have been exhausted. Applicants must have provided the domestic courts with the opportunity, in principle intended to be afforded to Contracting States that have the primary responsibility for implementing and enforcing the guaranteed rights, of preventing or putting right the violations alleged against them. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *McFarlane v. Ireland* [GC], no. 31333/06,

§ 112, 10 September 2010; *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI; and *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V).

89. Regarding the complaint about the medical treatment in the psychiatric hospital, the Court notes that the applicant did not institute proceedings for damages against the hospital as he could have, at the latest from 25 October 2006, when the decision once to deprive him of legal capacity had been quashed. The Court considers that in these proceedings the question of compliance of the involuntary administration of medication with the applicant's rights would have been assessed and the actions of the psychiatric hospital could have been found unlawful and just satisfaction awarded to the applicant (see *Storck v. Germany*, no. 61603/00, §§ 24 and 40, ECHR 2005-V). The instant case, where the forced administration of medication lasted for twenty days, differs from the case of *X v. Finland* (no. 34806/04, § 220, 3 July 2012) where the Court did not consider a compensatory remedy sufficient, and required a preventive remedy because there the forced administration of medication lasted for almost a year. In failing to institute those proceedings, the applicant did not give the State the opportunity to put right the violations alleged against it before those allegations were submitted to the Convention institutions.

90. This part of the application must thus be rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

91. Regarding the applicant's complaint about deprivation of legal capacity the Government maintained that he had lost his victim status. They referred to the decision of the Ministry of Justice acknowledging the violation of the applicant's rights by the failure to notify him of the judgments, which constituted sufficient just satisfaction given the limited time when the applicant had been deprived of his legal capacity and the not very severe consequences for the applicant.

92. The applicant argued that the consequences for him had been serious and that he had been deprived of his legal capacity for a substantial period of time.

93. The Court reiterates that an applicant may lose his victim status if two conditions are met: first, the authorities must have acknowledged, either expressly or in substance, the breach of the Convention and, second, they must have afforded redress for it. The alleged loss of the applicant's victim status involves an examination of the nature of the right in issue, the reasons advanced by the national authorities in their decision and the persistence of adverse consequences for the applicant after the decision. The appropriateness and sufficiency of redress depend on the nature of the violation complained of by the applicant (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, §§ 67 and 70, 2 November 2010).

94. In the instant case the Court observes that the Ministry acknowledged a violation of the applicant's rights because the judgments

depriving him of his legal capacity had not been delivered to him but awarded no just satisfaction for that. The Court takes the view that such redress is only partial and insufficient under the case-law to deprive the applicant of his status of a victim for two primary reasons. First, the lack of delivery of the judgments, even though crucial, is just one of the applicant's complaints. The other alleged violations were thus not acknowledged. Second, a mere acknowledgement of a violation without affording redress is insufficient to deprive the applicant of his status as a victim in the context of deprivation of his legal capacity, which is a serious interference with his rights (see, *mutatis mutandis*, *Radaj v. Poland* (dec.), nos. 29537/95 and 35453/97, 21 March 2002).

95. The Court adds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

96. The applicant complained that the removal of his legal capacity had not been in accordance with the law, which was not sufficiently precise, nor was its application foreseeable. The law also had not provided sufficient procedural guarantees, only requiring that a decision must be based on an opinion of an expert who is, however, not even required to appear before the a court.

97. Furthermore, the interference had not pursued any legitimate aim and was not necessary in a democratic society. The court depriving him of legal capacity had not established any valid reasons for doing so. Moreover, he had not benefited from adequate procedural safeguards: he had not participated in the proceedings, he had not been heard at them or even notified of them, he had not been adequately represented, he could not appeal and the decision had been based only on one opinion of an expert who had not examined him.

98. The Government maintained that the proceedings on legal capacity as a whole, in connection with the compensation proceedings, had resulted in the due protection of the applicant's rights against arbitrary interference and remedy of grievances caused to him. In the end, the proceedings had resulted in an explicit rejection of the application for removal of legal capacity and acceptance of the relevant arguments of the applicant. Any interference with the applicant's rights by the decisions of the first-instance court had been very limited, as for most of the time the applicant had not even been aware that he had been deprived of legal capacity.

99. They added that the applicant was a person with a serious mental illness, and the removal of his legal capacity had also protected his own interests, such as protecting him from entering into disadvantageous or fraudulent legal contracts, or from neglecting contact with social welfare authorities or health care. Moreover, because of his often unknown official and actual place of residence, delivery of documents and contact with him had been objectively very difficult for the authorities. The applicant himself had sometimes refused to give the authorities a usable delivery address. The applicant had generally distrusted and often refused to cooperate with the authorities and especially with the expert in the period before the second judgment of the Municipal Court, which had resulted in elaboration of the expert testimony without direct examination of the applicant.

2. The Court's assessment

100. The Court notes that the applicant in the present case was initially deprived of legal capacity on 15 November 2000, on the request of the City of Brno, as he had not collected his pension for four years. The applicant, represented by a court employee who had never met him, was not summoned or present, although he was aware of the proceedings. The decision was quashed on 27 August 2001, and a fresh decision was taken on 24 November 2004. The new decision was taken on the basis of a fresh report, although the applicant had refused to be examined. The applicant, still nominally represented by a court employee, was not present and did not receive a copy of the judgment. The applicant, now represented by the MDAC, appealed on 4 July 2006, and on 25 October 2006 the first instance decision was quashed as the applicant had not been examined. In September 2007, the court decided not to deprive the applicant of his legal capacity. The applicant was thus deprived of his legal capacity for a total of two years and six months (see § 14 above).

101. The Court considers that the removal of the applicant's legal capacity for two and a half years over a period of six years constituted an interference with his private life within the meaning of Article 8 of the Convention, and notes that indeed there is no dispute between the parties on this point. It recalls that any interference with an individual's right to respect for his private life will constitute a breach of Article 8 unless it was "in accordance with the law", pursued a legitimate aim or aims under paragraph 2, and was "necessary in a democratic society" in the sense that it was proportionate to the aims sought.

102. In such a complex matter as determining somebody's mental capacity the authorities should enjoy a wide margin of appreciation. This is mostly explained by the fact that the national authorities have the benefit of direct contact with those concerned, and are therefore particularly well placed to determine such issues. However, whilst Article 8 of the Convention contains no explicit procedural requirements, the decision-

making process involved in measures of interference must be fair and such as to ensure due respect of the interests safeguarded by Article 8. The extent of the State's margin of appreciation thus depends on the quality of the decision-making process. If the procedure was seriously deficient in some respect, the conclusions of the domestic authorities are more open to criticism (see *Shtukaturov*, cited above, § 87-89). Regarding the procedural guarantees, the Court considers that there is a close affinity between the principles established under Articles 5 § 1 (e), 5 § 4, 6, and 8 of the Convention (see *Shtukaturov*, cited above, §§ 66 and 91).

103. Any deprivation or limitation of legal capacity must be based on sufficiently reliable and conclusive evidence. An expert medical report should explain what kind of actions the applicant is unable to understand or control and what the consequences of his illness are for his social life, health, pecuniary interests, and so on. The degree of the applicant's incapacity should be addressed in sufficient detail by the medical reports (see *Shtukaturov*, cited above, §§ 93-94).

104. The Court takes note of the applicant's contention that the measure applied to him had not been lawful and did not pursue any legitimate aim. However, in its opinion, it is not necessary to examine these aspects of the case, since the decision to remove legal capacity from the applicant was in any event disproportionate to the legitimate aim invoked by the Government for the reasons set out below (see *Shtukaturov,* cited above, § 86). In taking this approach, the Court notes also the fact that the Civil Code on the basis of which the applicant was deprived of his legal capacity will be superseded by a new Civil Code which takes effect on 1 January 2014. Consequently, the effect of any pronouncement by the Court on the current domestic provisions concerning deprivation of legal capacity would be limited.

105. The Court first considers, unlike the Government, that, even though only temporary, the removal of the applicant's legal capacity had serious consequences for him. In particular, once the authorities realised that he was subject to guardianship, he no longer benefitted from the guarantees available in domestic law to persons who were detained under the Public Health Care Act as in domestic law consent had been granted by the guardian without any reference being made to the applicant (see above, § 68).

106. The Court next notes that although the domestic courts ultimately decided not to deprive the applicant of his legal capacity (in the decision of 19 September 2007), the applicant was nevertheless substantially affected by the deprivation of capacity. In the second period, which lasted from 24 November 2004 until 25 October 2006, the applicant was detained, ultimately on the sole ground that the guardian had consented. The Court thus considers, unlike the Constitutional Court (see paragraph 20 above), that the first-instance decisions taken in this respect did seriously interfere with the applicant's rights (see *Berková v. Slovakia*, no. 67149/01, § 175,

24 March 2009 and *Shtukaturov*, cited above, § 90). Furthermore, the applicant was not compensated for the alleged violations of his rights in the subsequent civil proceedings against the State for damages (see paragraph 94 above).

107. The Court observes that the Municipal Court did not hear the applicant, either in the first round or the second round of proceedings, and indeed he was not even notified formally that the proceedings had been instituted (see *Shtukaturov*, cited above, §§ 69-73 and 91). The Court does not accept the Government's argument that the applicant's place of residence was unknown to the authorities and therefore it was difficult to deliver official mail to him. Nowhere in the case file is there anything to indicate that the Municipal Court made an attempt to inform the applicant of the proceedings and summon him to the hearings. In such circumstances it cannot be said that the judge had "had the benefit of direct contact with those concerned", which would normally call for judicial restraint on the part of this Court. The judge had no personal contact with the applicant (see *X and Y v. Croatia*, no. 5193/09, § 84, 3 November 2011).

108. As to the way in which the applicant was represented in the legal capacity proceedings, the Court is of the opinion that given what was at stake for him proper legal representation, including contact between the representative and the applicant, was necessary or even crucial in order to ensure that the proceedings would be really adversarial and the applicant's legitimate interests protected (see *D.D. v. Lithuania*, cited above, § 122; *Salontaji-Drobnjak v. Serbia*, no. 36500/05, §§ 127 and 144, 13 October 2009; and *Beiere v. Latvia*, no. 30954/05, § 52, 29 November 2011). In the present case, however, the representative never met the applicant, did not make any submissions on his behalf and did not even participate at the hearings. She effectively took no part in the proceedings.

109. Moreover, the judgments were not served on the applicant (see *X and Y v. Croatia*, cited above, § 89). The judgments expressly stated that they would not be delivered to the applicant, with a simple reference to the opinion of the court-appointed expert, even though in her second report the expert in fact stated that a judgment could be sent to the applicant. Even at the hearing she did not give any warnings about adverse effects if the applicant received the judgment, but merely recommended not sending it because he would not understand it.

110. The Court, however, considers that being aware of a judgment depriving oneself of legal capacity is essential for effective access to remedies against such a serious interference with private life. Whilst there may be circumstances in which it is appropriate not to serve a judgment on the person whose capacity is being limited or removed, no such reasons were given in the present case and, indeed, in the present case, when the applicant was aware of the judgment and was able to appeal, his appeal was successful. Therefore, had the Municipal Court respected the applicant's

right to receive the judgments, the interference would not have happened at all as the judgments would not have become final.

111. Finally, the Court observes that the 2004 decision was based only on the opinion of an expert who last examined the applicant in 1998 (see paragraph 9 above). In this context the Court cannot lose sight of the fact that development takes place in mental illness, as is also evidenced in the present case by the expert report on the applicant drawn up in 2007, on the basis of which the request to deprive the applicant of legal capacity was refused. Consequently, relying to a considerable extent on the medical examination of the applicant conducted six years earlier cannot form sufficiently reliable and conclusive evidence justifying such a serious interference with the applicant's rights (see, *mutatis mutandis*, *Stanev,* cited above, § 156). The Court notes that the expert attempted to examine the applicant between 2002 and 2004, but he refused to cooperate. Nevertheless, in the absence of strong countervailing considerations, this fact alone is not enough to dispense with a recent medical report involving direct contact with the person concerned.

112. Overall, the Court considers that the procedure on the basis of which the Municipal Court deprived the applicant of legal capacity suffered from serious deficiencies, and that the evidence on which the decision was based was not sufficiently reliable and conclusive.

113. In the light of these considerations, the Court finds that the interference with the applicant's private life was disproportionate to the legitimate aim pursued and there has been a violation of Article 8 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

114. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

115. The applicant claimed EUR 25,000 in respect of non-pecuniary damage.

116. The Government considered the claim excessive.

117. The Court is of the view that as a result of the circumstances of the case the applicant must have experienced considerable anguish and distress which cannot be made good by a mere finding of a violation of the Convention. Having regard to the circumstances of the case seen as a whole and deciding on an equitable basis, the Court awards the applicant EUR 20,000 for non-pecuniary damage.

118. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning Article 5 and 8 as far as it concerns the deprivation of applicant's legal capacity admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

4. *Holds* that there has been a violation of Article 8 of the Convention;

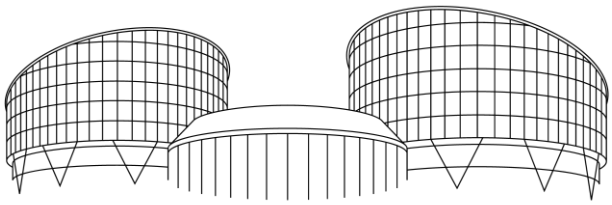
5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Czech korunas at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Dean Spielmann
President



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF BUREŠ v. THE CZECH REPUBLIC

(Application no. 37679/08)

JUDGMENT

STRASBOURG

18 October 2012

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Bureš v. the Czech Republic,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Dean Spielmann, *President,*
Karel Jungwiert,
Boštjan M. Zupančič,
Ann Power-Forde,
Angelika Nußberger,
André Potocki,
Paul Lemmens, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 25 September 2012,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 37679/08) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Czech national, Mr Lukáš Bureš ("the applicant"), on 1 August 2008.

2. The applicant was represented by Ms B. Bukovská, Mr J. Fiala, Ms J. Marečková and Mr M. Matiaško, lawyers from the Mental Disability Advocacy Centre in Brno. The Czech Government ("the Government") were represented by their Agent, Mr V.A. Schorm, of the Ministry of Justice.

3. The applicant alleged that he was ill-treated in a sobering-up centre in violation of Article 3 of the Convention and detained in a psychiatric hospital in violation of Article 5 of the Convention.

4. On 16 June 2010 the application was communicated to the Government.

5. The applicant and the Government each filed observations on the merits. In addition, third-party comments were received from the Harvard Law School Project on Disability, which had been granted leave by the President of the Chamber to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1985 and lives in Brno. He is a violoncello player and has been diagnosed as having a psycho-social disability. At the material time he weighed 64 kg and was 176 cm tall. In the past, he has been treated in Italian psychiatric hospitals as a voluntary patient. At the time of the events at issue, he was using Akineton, a calming psychiatric medication prescribed to him by his psychiatrist.

7. On 9 February 2007 the applicant inadvertently overdosed on Akineton. In the evening, he left his flat and went to buy some food. Being under the influence of the medication, he did not notice that he was wearing only a sweater, but no trousers or underwear. On the way he was stopped by a police patrol that assumed that he was a drug addict and called an ambulance, which took him to Brno-Černovice Psychiatric Hospital. The record drawn up by the ambulance staff states that the applicant was receiving psychiatric treatment and that he was calm during transport.

8. At the hospital he was examined by Dr V., who did not find any injuries on the applicant's body and sent him to the sobering-up centre in the same hospital at about 8 p.m. The applicant was calm during the medical examination. In the sobering-up centre he was again examined by Dr H., who confirmed that there were no injuries on the applicant's body when he was admitted to the centre.

9. On 10 February 2007 at 7:24 a.m. the applicant was transferred to the Intensive Psychiatric Care Unit where, according to the admission record, he had visible abrasions on the front of his neck, both wrists and both ankles, caused probably by friction against textile, and abrasions of an unspecified different type on his knees. He complained about his treatment in the sobering-up centre to the hospital authorities, but they did not take any action.

10. On 15 February 2007 the applicant was examined by a neurologist, who stated that as a result of the use of straps the applicant suffered severe paresis of the left arm and medium to severe paresis of the right arm. He began a course of intensive treatment at the Rehabilitation Unit.

11. The applicant remained in the hospital involuntarily until released on 13 April 2007.

12. However, because of his two-month hospitalisation, he was confused and was not able to fully take care of himself. He voluntarily returned to the hospital on 14 April 2007 and remained there until 1 July 2007.

A. The applicant's treatment in the sobering-up centre

13. The following facts are disputed by the parties.

14. According to the applicant, at 8.10 p.m. on 9 February 2007 he was strapped to a bed with leather straps around his wrists, knees and ankles by two male nurses, Mr M. and Mr H. While strapping him, they kneeled on his chest and verbally abused him. He remained strapped for the whole night, until 6.30 a.m. The staff did not check up on him during that time. As the straps were too tight, he struggled to breathe and as a result of insufficient blood circulation the nerves in his arms were damaged.

15. According to the Government the applicant was strapped to a bed for three intervals, namely, from 8.10 p.m. to 10 p.m., 4.30 a.m. to 5 a.m. and 6.30 a.m. to 7.15 a.m.

16. They submitted a record from the sobering-up centre containing the following information. When brought to the centre the applicant was intoxicated and was put to bed. He was unstrapped at 10 p.m. At 4.30 a.m. he attacked a nurse and was strapped again. Checks were carried out. The applicant was restless. At 6.30 a.m. he was checked on and again strapped. The record noted that he showed destructive behaviour. He was released at 7.15 a.m. and sent to the psychiatric hospital.

17. The version of the record submitted by the applicant and obtained from his medical files contains less information. The information about the release of the applicant at 10 p.m. is illegible. According to the Government, the version submitted by the applicant was an incomplete version sent to the psychiatric hospital as an accompanying document.

B. Review of the lawfulness of the applicant's involuntary admission to the psychiatric hospital

18. On 12 February 2007 the hospital informed the Brno Municipal Court (*městský soud*) that the applicant had been detained because he showed signs of a mental illness and was a danger to himself and his surroundings. He was described as –"restless, aggressive and suspected of intoxication by psycho-stimulants".

19. On 16 February 2007 the court began reviewing the lawfulness of the applicant's involuntary admission under Article 191b of the Code of Civil Procedure. At the same time, it appointed an attorney, Ms P., to represent the applicant in the proceedings. On the same day a court employee visited the hospital and questioned the applicant's treating doctor, Dr V., in the absence of the applicant and his representative. Dr V. testified that the applicant had been admitted to the hospital due to his confusion, restlessness and inappropriate behaviour and that he had been intoxicated when admitted. He further stated that the applicant was only partly able to understand the proceedings. The court employee did not question or even see the applicant because Dr V. told her that contact with him "would not be entirely beneficial".

20. On the same day and without any further evidence the court ruled that the applicant's involuntary admission had been lawful because he suffered from an illness that made him dangerous to himself and his surroundings. The decision was served on the applicant's representative only. The latter did not take part in the proceedings, not being aware of them as the decision on her appointment was sent to her together with the decision on the merits. The applicant never saw her during his detention.

21. After his release in July 2007, the applicant contacted a local office of the Mental Disability Advocacy Center ("the MDAC"). On 10 July 2007 an MDAC lawyer lodged an appeal on his behalf, applying at the same time for a waiver of the deadline for lodging the appeal.

22. On 20 August 2007 the Municipal Court granted the waiver. However, on 31 October 2007, the Brno Regional Court (*krajský soud*), terminated the appeal proceedings without deciding on the merits. It stated that the applicant had been released on 13 April 2007, that on 30 May 2007 the Municipal Court had stayed the proceedings on the applicant's continuing detention and that, therefore, the court did not have the authority to deal with the case.

23. In the meantime, on 23 July 2007, the applicant lodged an action for nullity (*žaloba pro zmatečnost*) under Article 229 § 1 c) of the Code of Civil Procedure seeking to have the Municipal Court's decision of 16 February 2007 quashed on the ground that he had been denied the right to participate in the proceedings and had not been properly represented. On 22 May 2008 the Municipal Court dismissed the applicant's action, finding, *inter alia*, that Ms P. had not been wholly inactive, referring to a letter of 26 February 2007 by which she had allegedly tried to establish contact with the applicant, but which, according to the applicant, had never been delivered to him. On 25 February 2009 the Regional Court upheld the decision.

24. On 5 February 2008 the applicant lodged a constitutional appeal challenging the decision of 31 October 2007 and alleging a violation of his rights to liberty, a fair trial and an effective remedy because the Regional Court had failed to rule on the merits of his appeal and thus the legality of his detention in the psychiatric hospital.

25. On 18 March 2008 the Constitutional Court (*Ústavní soud*) dismissed his appeal on the grounds that he had not exhausted all available remedies. It held that the applicant should have lodged a plea of nullity under Article 229 § 4 of the Code of Civil Procedure against the 31 October 2007 decision of the Regional Court.

C. Review of the lawfulness of the applicant's continuing detention

26. After ruling on the lawfulness of the applicant's involuntary admission to the hospital, the Municipal Court continued proceedings under Article 191d of the Code of Civil Procedure to review the lawfulness of the

applicant's continuing detention. On 6 March 2007 a forensic psychiatric expert was appointed for these purposes. On 30 May 2007 the court terminated the proceedings without deciding on the merits, the applicant having been released in the meantime.

D. Proceedings regarding the applicant's alleged inhuman and degrading treatment

27. On 7 June 2007 the applicant filed a criminal complaint concerning the measure of restraint applied to him and alleged ill-treatment on the night from 9 to 10 February 2007 in the sobering-up centre of the psychiatric hospital.

28. He was questioned by the police on 29 June 2007 and gave a full account of the events. The police then questioned numerous other persons.

29. The male nurses on duty, Mr M. and Mr H., did not recall the applicant at all and were not able to provide any specific information about him. Mr. M noted that during the winter of 2007 checks had been always carried out in accordance with the instructions of the psychiatric hospital management.

30. The third nurse on duty that night, Ms K., stated that the applicant had been strapped to the bed because he had been restless and intoxicated by an unknown substance and had refused to undergo a blood test to identify the substance. She admitted that it was possible that regular checks every twenty minutes might not have been performed due to the high number of patients at the centre that night. She also alleged that the applicant had attacked a male nurse at 4.30 a.m. but she could not remember who exactly.

31. Dr H., who had been on duty at the sobering-up centre that night, confirmed that the applicant had had no injuries when he had been admitted. He noted that the applicant had been strapped to the bed due to his restlessness but that he and other staff had duly checked on him.

32. Nurse P. recalled that while she was taking over patients from Ms K. at around 6 a.m. in the morning of 10 February, the applicant's arms and legs had been strapped. They had tried releasing the straps one by one but because he defended himself each time a limb was released he was strapped again.

33. In his report of 10 December 2007 commissioned by the police, a forensic expert, Dr V., stated that the applicant had suffered bilateral severe paresis of the elbow nerves as a result of compression of the nerves and blood vessels. He confirmed that these injuries corresponded to the cause as described by the applicant. According to him, the injury on the applicant's left arm limited his ability to play the violoncello. He concluded that the injury would have a long-lasting effect which was unlikely to be permanent.

34. On 11 December 2007 the Brno-Komárov Municipal Police Directorate (*městské ředitelství policie*) terminated the criminal proceedings, finding that no criminal offence had been committed regarding the applicant's strapping on the night of 9 to 10 February 2007. It held that the applicant had suffered the injuries partly as a result of the staff's failure to check on him regularly but that the extent of the guilt of individual suspects could not be determined. It also held that the injuries had almost healed and that the applicant was partly responsible for them.

35. The applicant appealed, disputing the conclusions of the police, and requested that the doctors and nurses give evidence again.

36. On 12 February 2008 the Brno Municipal Prosecutors' Office (*městské státní zastupitelství*) dismissed the applicant's appeal. Without examining any additional evidence it stated that the strapping of the applicant on account of his aggressive behaviour at the time of his admission to the sobering-up centre had been in compliance with the law and the hospital's internal rules and he had been checked on every twenty minutes. The applicant had been strapped from 8.10 p.m. to 10 p.m., from 4.30 a.m. to 5 a.m. and from 6.30 a.m.

37. The applicant lodged a constitutional appeal claiming a violation of Articles 3, 6 § 1 and 13 of the Convention. He alleged that the investigation had not been effective because, *inter alia*, he had not been allowed to be present during the questioning of witnesses and put questions to them.

38. On 30 October 2008 the Constitutional Court dismissed his constitutional appeal as manifestly ill-founded. It held that there was no right to have a third person prosecuted so the applicant could claim his rights only in civil proceedings for damages and protection of his personality rights (*ochrana osobnosti*). It further found no violation of procedural obligations as developed by the Court under Article 3 of the Convention. It noted that the police had conducted a number of interviews and examined other evidence and that the investigation had also been independent and prompt. Lastly, it held that it had no jurisdiction to rule on the ill-treatment in the hospital because that was an instantaneous act, whereas it could only rule on interference with rights that was ongoing and that could be remedied by a decision on its part.

E. Proceedings for protection of his personal rights

39. On 8 December 2008 the applicant instituted proceedings for protection of his personality rights against Brno-Černovice Psychiatric Hospital, claiming a violation of his right to liberty, inhuman treatment and interference with his health and physical integrity.

40. On 19 January 2012 the Brno Regional Court rejected his claim, holding that the applicant's internment in the sobering-up centre and the use

of restraints had been necessary for his own protection and that of his surroundings.

41. The applicant appealed and the proceedings are pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Civil Procedure (Act no. 99/1963)

42. Under Article 191a a health-care facility that admits a patient against his or her will must inform the competent court within twenty-four hours.

43. Under Article 191b § 1 a court has to review the lawfulness of an involuntary admission to a health-care facility within seven days. Article 191b § 2 provides that the patient has a right to be represented by counsel of his or her own choosing. If he or she does not have counsel, the court shall appoint him or her an attorney. In accordance with Article 191b § 3, the court shall assess evidence, hear the detained person, his or her treating doctor and other persons at the detained person's request unless it considers it unnecessary.

44. Under Article 191c an appeal can be lodged against a decision taken under Article 191b, but does not have a suspensive effect. The health-care facility can release the patient even if a court has declared that the involuntary admission was lawful.

45. Article 191d § 1 provides that if the court finds that the admission was lawful, it shall continue to review the lawfulness of the continued confinement. Pursuant to paragraph 2, the court shall appoint an expert to assess the necessity of the confinement. That expert must not be working in the health-care facility where the person is detained. In accordance with paragraph 3 the court shall hold a hearing and summon the patient and his or her counsel (provided that according to the treating doctor or written expert opinion the patient is able to follow and understand the meaning of the proceedings). At the hearing, the court shall hear the expert, the treating doctor if needed and the patient and assess any other relevant evidence. Its decision must be issued no later than three months from the decision by which the admission to the health care facility was approved.

46. Under Article 191f the patient, his or her counsel, guardian and other persons close to him may, before the expiration of the time for which his or her admission to the health-care facility was approved, request a new medical examination and release, if there is a reasoned presumption that continued confinement is not necessary.

47. Under Article 229 § 1 c) a final court decision may be challenged by an action for nullity on the ground that a party to the proceedings lacked legal capacity to act or could not attend the court and was not properly represented. Paragraph 4 provides that an action for nullity may also be

lodged against a final decision of an appellate court by which an appeal was dismissed or the appellate proceedings were terminated.

B. The Public Health Care Act (Act no. 20/1996)

48. Under section 23(4)(b) a person can be involuntarily hospitalised if he shows signs of a mental illness and is a danger to himself or his surroundings.

C. Act no. 379/2005, on measures for the protection against damage caused by tobacco products, alcohol and other drugs

49. Section 17(1) defines an alcohol and drug sobering-up centre as a health-care facility established by a regional self-governing unit.

50. Section 17(2) stipulates that should a health-care facility find that a person's life is not endangered by failure of basic vital functions but that he or she is under the influence of alcohol or another drug and cannot control his or her behaviour, thereby directly endangering him or herself or other persons, public order or property, or is causing public annoyance, that person shall undergo treatment and stay at the sobering-up centre for however long is necessary for the acute intoxication to subside.

D. Guideline no. 1/2005 of the Journal of the Ministry of Health, on the use of measures of restraint on patients in psychiatric facilities in the Czech Republic

51. This guideline stipulates, *inter alia*, the following:

> "The use of measures of restraint must be considered as a last resort in cases when it is necessary for the protection of the patient, other patients, the patient's surroundings and staff of psychiatric facilities. They may be used only after all other possibilities have been exhausted. Any decision to restrain the patient must be sufficiently grounded. Restraint cannot be used to facilitate treatment or to deal with a restless patient. Potential causes of problematic behaviour, for example, pain, discomfort, side effects of medicinal products, stress, interpersonal problems between the caregivers and the patient, or other illnesses must always be identified. The use of measures of restraint is justified only if a removable cause of the patient's behaviour cannot be found or in situations when the risk arising from the patient's behaviour is unacceptably high. The benefit of the use of restraining means must outweigh the risks ...
>
> 2. Measures of restraint can be used only exceptionally and only when the patient behaves in a way which endangers himself and his surroundings, and not on an educational or corrective basis. In the case of each individual patient it is necessary to use the most gentle and appropriate means of restraint ...
>
> 5. A patient restrained by these means shall be checked on on a regular basis, intervals between the checks shall be specified, provisions shall be put in place to

prevent the patient hurting himself or suffering from dehydration, malnutrition, hypothermia and pressure ulcers, and to allow for personal hygiene. Measures of restraint should be used for the shortest time possible, and during checks the need for the measures and the possibility of using less restraint should be reassessed ...

6. The doctor shall decide on the use of measures of restraint, and make a record that shall always include: the name of the person who ordered the measure of restraint, the type of restraint used, the reason for using it, the time when restraint was employed and the time when it ended, the frequency of checks by the medical staff and the doctor, a description of the person's physical and mental condition ... A member of the medical staff shall inform the doctor of any change in the patient's symptoms. The record on the use of restraint shall be subsequently signed by the head doctor during the ward round."

E. Psychiatrie, Guidelines for psychiatric treatment issued by the Czech Psychiatric Society, December 2006

52. In its section on the use of restraints the Guidelines contain similar principles as the above-mentioned Guideline no. 1/2005 of the Journal of the Ministry of Health. In particular they state that mechanical restraints should be used only as a matter of last resort. Strapping to a bed should be applied only in cases of serious manifestations of distress endangering surroundings, auto-aggressive manifestations with immediate risk of self-harm or suicide or conditions that will with the highest probability result in these manifestations.

They also state that all circumstances connected with the use of restraints must be transparently and clearly documented. Every use of restraints must be recorded in a concrete way, including, *inter alia*, the time when the restraints were applied and removed and checks on the patient.

F. Opinion of the Civil Law and Commercial Division of the Supreme Court, no. Cpjn 29/2006, as regards proceedings to determine the lawfulness of admission to and detention in a health-care facility

53. On 14 January 2009 the Supreme Court adopted an opinion on this matter, because the courts had not been dealing with cases concerning proceedings to decide on the lawfulness of admission to a health-care facility (Article 191b of the Code of Civil Procedure) and continuing confinement therein (Article 191d of the Code of Civil Procedure) in a uniform manner.

It held, *inter alia*, that if the detained person is released there are no more reasons for continuing the proceedings either under Article 191b or 191d and both should be discontinued.

III. RELEVANT INTERNATIONAL STANDARDS

A. Articles on State Responsibility (noted by the UN General Assembly resolution no. 56/83 of 12 December 2001)

54. The Articles, drawn up by the International Law Commission of the United Nations, are largely considered to contain rules of customary international law. They stipulate, *inter alia*, the following possibilities of attribution of a conduct to a State:

Article 4. Conduct of organs of a State

"1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.

2. An organ includes any person or entity which has that status in accordance with the internal law of the State."

Article 5. Conduct of persons or entities exercising elements of governmental authority

"The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance."

In its commentary to Article 5, the International Law Commission explained that the rule dealt with situations when entities which were not considered organs of a State exercised functions of a public character normally exercised by State organs, and the conduct of the entity was related to the exercise of the governmental authority concerned. It gave the power of detention as an example of such a public function.

B. Recommendation Rec(2004)10 of the Committee of Ministers of the Council of Europe to member states concerning the protection of the human rights and dignity of persons with mental disorders, 22 September 2004

55. Article 27, entitled "Seclusion and restraint" stipulates:

"1. Seclusion or restraint should only be used in appropriate facilities, and in compliance with the principle of least restriction, to prevent imminent harm to the person concerned or others, and in proportion to the risks entailed.

2. Such measures should only be used under medical supervision, and should be appropriately documented.

3. In addition:

i. the person subject to seclusion or restraint should be regularly monitored;

ii. the reasons for, and duration of, such measures should be recorded in the person's medical records and in a register.

4. This Article does not apply to momentary restraint."

C. The CPT Standards (the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) concerning using restraints in psychiatric establishments (CPT/Inf/E (2002) 1- Rev. 2010)

56. The CPT standards contain the following rules on restraining patients in psychiatric establishments:

"Involuntary placement in psychiatric establishments Extract from the 8th General Report [CPT/Inf (98) 12]

47. In any psychiatric establishment, the restraint of agitated and/or violent patients may on occasion be necessary. This is an area of particular concern to the CPT, given the potential for abuse and ill-treatment.

The restraint of patients should be the subject of a clearly-defined policy. That policy should make clear that initial attempts to restrain agitated or violent patients should, as far as possible, be non-physical (e.g. verbal instruction) and that where physical restraint is necessary, it should in principle be limited to manual control.

Staff in psychiatric establishments should receive training in both non-physical and manual control techniques vis-à-vis agitated or violent patients. The possession of such skills will enable staff to choose the most appropriate response when confronted by difficult situations, thereby significantly reducing the risk of injuries to patients and staff.

48. Resort to instruments of physical restraint (straps, strait-jackets, etc.) shall only very rarely be justified and must always be either expressly ordered by a doctor or immediately brought to the attention of a doctor with a view to seeking his approval. If, exceptionally, recourse is had to instruments of physical restraint, they should be removed at the earliest opportunity; they should never be applied, or their application prolonged, as a punishment ...

50. Every instance of the physical restraint of a patient (manual control, use of instruments of physical restraint, seclusion) should be recorded in a specific register established for this purpose (as well as in the patient's file). The entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the doctor who ordered or approved it, and an account of any injuries sustained by patients or staff.

This will greatly facilitate both the management of such incidents and the oversight of the extent of their occurrence."

"Means of restraint in psychiatric establishments for adults Extract from the 16th General Report [CPT/Inf (2006) 35]

43. As a general rule, a patient should only be restrained as a measure of last resort; an extreme action applied in order to prevent imminent injury or to reduce acute agitation and/or violence ...

52. Experience has shown that detailed and accurate recording of instances of restraint can provide hospital management with an oversight of the extent of their occurrence and enable measures to be taken, where appropriate, to reduce their incidence.

Preferably, a specific register should be established to record all instances of recourse to means of restraint. This would be in addition to the records contained within the patient's personal medical file. The entries in the register should include the time at which the measure began and ended; the circumstances of the case; the reasons for resorting to the measure; the name of the doctor who ordered or approved it; and an account of any injuries sustained by patients or staff. Patients should be entitled to attach comments to the register, and should be informed of this; at their request, they should receive a copy of the full entry."

D. Report to the Czech Government on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 March to 7 April 2006 and from 21 to 24 June 2006 (CPT/Inf (2007)32)

57. The CPT visited also Brno-Černovice Psychiatric Hospital and stated, *inter alia*, as follows:

"118. At Brno Psychiatric Hospital ... [t]he restraints would be applied either on the patient's own bed or in a separate room close to the nurses' office. A protocol on the use of immobilisation was in force, but the protocol does not mention the surveillance intervals; it appears that the hospital staff had adopted a practice to monitoring an immobilised patient every twenty minutes.

The delegation was pleased to note that registers recording the use of restraints had been introduced on the wards of Brno Psychiatric Hospital, thus meeting a long-standing CPT recommendation. However, the delegation found that the entries were not always meticulously kept; the release time and, on occasion, the moment of application of the immobilisation were not recorded.

As indicated above (cf. paragraph 114), in the CPT's view, patients who are immobilised should always be subject to continuous, direct personal supervision by a member of staff. However, the delegation was told that a pilot project on ward 12 to have patients accompanied by a member of staff for the full duration of the immobilisation had failed due to a lack of staff. Nevertheless the CPT considers that hospital management should ensure the permanent presence of a staff member whenever a patient is immobilised.

The CPT recommends that in Brno Psychiatric Hospital:

- the register on restraints clearly records the duration of the measure, as well as all other events that occur during the period of restraint;

- the protocol on restraints be amended in order to include a paragraph on supervision of an immobilised patient.

> Further, the CPT recommends that all patients who are immobilised are always subject to continuous, direct personal supervision by a member of staff."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN ITS SUBSTANTIVE ASPECT

58. The applicant complained that he had been ill-treated in the sobering-up centre in violation of Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

59. The Government contested that argument.

A. Admissibility

60. The Government maintained that the applicant had failed to exhaust domestic remedies in that the civil proceedings against the hospital were pending and they constituted a sufficient remedy for the alleged wrongs. They referred to a number of cases of medical malpractice where the Court had required exhaustion of civil remedies.

61. The applicant disagreed, maintaining that he had been wilfully restrained in detention and that in those circumstances a civil claim for compensation was not an adequate remedy.

62. The Court considers that the issue of effectiveness of a civil remedy is closely linked to the substance of the present complaint and should be joined to the merits.

63. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Arguments of the parties

64. The applicant complained that his strapping down for ten hours, with no medical justification and no regular checks, had caused him severe mental and physical suffering with long-lasting effects and had constituted inhuman treatment. Moreover, the use of restraints was not adequately and comprehensively recorded.

65. He maintained that under the applicable international and national legal and medical standards physical restraints could be used only as a matter of last resort and must be fully justified. Yet, as stated in the official reports, he had been calm when he had been transferred to the psychiatric hospital and had no history of aggressiveness. He had not needed to be strapped upon his arrival at the sobering-up centre. Moreover, his alleged restlessness could not justify such treatment, the purpose of which had rather been to ease the hospital staff's workload due to a staff shortage.

66. According to the applicant, the treatment had reached the minimum level of severity required for Article 3 of the Convention to come into play. The straps had been applied to his wrists, knees and ankles and had been so tight that he could not move, resulting in great pain and suffering. At times he had even thought that he would suffocate. The treatment had had a long-term negative effect on his health and he had been unable to finish his studies and pursue his career as a violoncello player.

67. The Government maintained that the acts of the medical staff in the sobering-up centre, who were not state agents, could not be attributed to the State. In any event, according to them, the restraining of the applicant had not reached the minimum threshold of severity required for application of Article 3 of the Convention. They considered that it was more appropriate to examine the complaint under Article 8 of the Convention. Actually, the strapping of the applicant had been necessary for the protection of his own health, it not having been possible to use a less severe measure, such as tranquilisation with medicines, because the applicant had refused to give a blood sample in order for the doctors to be able to identify the substance the influence of which he had been under.

2. The Court's assessment

(a) The relevant facts

68. Before examining the case, the Court will address the factual dispute between the parties concerning the duration of the applicant's strapping.

69. It observes that the police did not ascertain the actual duration of the strapping, referring to the applicant's version of the facts (see paragraph 34 above). However, the Brno Municipal Prosecutor established that the applicant was restrained from 8.10 p.m. to 10 p.m. on 9 February 2007, then on 10 February 2007 from 4.30 a.m. to 5 a.m. and again from 6.30 a.m. until his release from the sobering up-centre. Yet the prosecutor did not mention on what she had based her conclusions or give any reasons why the applicant's version of facts was not credible (see paragraph 36 above).

70. The Court observes that the applicant supported his description of events mainly by the sobering-up centre's record, which does not say that he was released at 10 p.m. but includes two illegible letters instead. Nevertheless, the Court considers plausible the Government's explanation

that this was a typing mistake which was remedied in the later edition of the document. The Court further observes that the document submitted by the applicant does not fully support his version of the facts either, as it states that restraints were applied at 4.30 a.m. In fact, if he had been restrained for the whole night it would not have been necessary to apply the restraints again at 4.30 a.m.

71. The Court notes, on the other hand, that the Government's version of facts is also open to doubt, being considerably undermined by the testimony of nurse P., who remembered that while taking over duty from Ms K. at 6 a.m. on 10 February, the applicant had been strapped to the bed by his arms and legs. This is precisely the time when, according to the Government, the applicant was not restrained.

72. Accordingly, even though the Court has some doubts about the exact duration of the applicant's strapping, and given that his version of the facts was not fully supported by any evidence, it will proceed to the examination of the case on the basis of the Government's description of the duration of the applicant's strapping.

(b) Negative or positive obligations

73. The Court must next consider the objection of the Government that the actions of the medical staff could not be attributed to the State.

74. The events complained of occurred during the applicant's detention in a sobering-up centre, which amounts to a "deprivation of liberty" within the meaning of Article 5 § 1 of the Convention, which is not disputed by the parties (see *Witold Litwa v. Poland*, no. 26629/95, § 46, ECHR 2000-III). A person in a sobering-up centre is within the complete control of its staff.

75. The Court has considered the treatment of persons, including the application of restraints to detainees in sobering-up centres, from the point of view of the negative obligations of the State (see *Wiktorko v. Poland*, no. 14612/02, 31 March 2009, and *Mojsiejew v. Poland*, no. 11818/02, 24 March 2009).

76. Under Czech law, sobering-up centres are public bodies established by regional self-governing units that are entitled by law to hold persons under the influence of alcohol or another drug who cannot control their behaviour, thereby directly endangering themselves or other persons, public order or property, or whose condition causes a public disturbance.

77. Even accepting the Government's contention that the medical staff in the sobering up-centre are not State agents, they nevertheless perform governmental authority of detention (compare § 54 above). The State is responsible for the well-being of detainees (*Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI, and *Moisejevs v. Latvia*, no. 64846/01, § 78, 15 June 2006) and cannot evade its responsibility by delegating its power to other entities.

78. The Court further considers crucial in the present case that what is at stake is not the applicant's injury as an unintended negative consequence of medical treatment, as submitted by the Government, but the use of the restraints itself. The applicant's injury was only incidental to the intentional treatment, which is the issue from the point of view of Article 3 of the Convention. The present case significantly differs from cases where voluntary medical treatment had negative consequences on the health of patients. The Court thus does not consider the string of case-law concerning medical negligence referred to by the Government relevant to the present case. More pertinent to the present case are cases concerning the use of restraints on persons in detention, which the Court has always considered from the point of view of negative obligations (see, for example, *Herczegfalvy*, cited above, § 83; *Istratii and Others v. Moldova*, nos. 8721/05, 8705/05 and 8742/05, 27 March 2007, § 57; and *Kashavelov v. Bulgaria*, no. 891/05, § 40, 20 January 2011).

79. Consequently, the Court considers that the State must be held directly responsible for the use of restraints on the applicant in the sobering-up centre and the Court will consider that treatment in the light of the negative obligations of the State.

80. It further follows from the above that the cases of medical malpractice referred to by the Government are neither relevant to the present case in the context of exhaustion of civil remedies. The application of restraints was not medical treatment that the detainee could refuse. The issue is thus not that the applicant objected to his medical treatment, but that restraints and force were applied to him that would only be allowed by Article 3 of the Convention if made strictly necessary by his own conduct (see *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336).

81. The Court reiterates that in cases where an individual has an arguable claim under Article 3 of the Convention, the notion of an effective remedy entails, on the part of the State, a thorough and effective investigation capable of leading to the identification and punishment of those responsible (see *Selmouni v. France* [GC], no. 25803/94, § 79, ECHR 1999-V, and in the context of a treatment in a psychiatric hospital including application of restraints, *Filip v. Romania* (dec.), no. 41124/02, 8 December 2005). Wilful ill-treatment of persons who are within the control of agents of the State cannot be remedied exclusively through an award of compensation to the victim (see *Krastanov v. Bulgaria*, no. 50222/99, § 60, 30 September 2004, and *Kopylov v. Russia*, no. 3933/04, § 130, 29 July 2010).

82. Accordingly, a criminal complaint was an adequate remedy in the present case for the applicant's complaint that he had been ill-treated in detention (see, *mutatis mutandis*, *Mojsiejew v. Poland*, no. 11818/02, § 41, 24 March 2009, where the Court reached the same conclusion regarding death in a sobering-up centre). Once the criminal proceedings had been

terminated, the applicant was not required under Article 35 § 1 of the Convention to pursue and await the outcome of the civil proceedings instituted by him. The Government's objection of non-exhaustion of domestic remedies must therefore be rejected.

(c) General principles

83. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances or the victim's behaviour (see, for example, *Labita v. Italy* [GC], no 26772/95, § 119, ECHR 2000-IV). Where allegations are made under Article 3 of the Convention, like in the present case, the Court must apply a particularly thorough scrutiny (see *Wiktorko*, cited above, § 48).

84. To fall under Article 3 of the Convention, ill-treatment must attain a minimum level of severity. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the gender, age and state of health of the victim. Further factors include the purpose for which the treatment was inflicted together with the intention or motivation behind it, as well as its context, such as an atmosphere of heightened tension and emotions (see *Gäfgen v. Germany* [GC], no. 22978/05, § 88, ECHR 2010).

85. The Court has recognised the special vulnerability of mentally ill persons in its case-law and the assessment of whether the treatment or punishment concerned is incompatible with the standards of Article 3 has, in particular, to take into consideration this vulnerability (see *Keenan v. the United Kingdom*, no. 27229/95, § 111, ECHR 2001-III, *Rohde v. Denmark*, no. 69332/01, § 99, 21 July 2005 and *Renolde v. France*, no. 5608/05, § 120, ECHR 2008 (extracts)).

86. In respect of persons deprived of their liberty, recourse to physical force which has not been made strictly necessary by their own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004). In the context of detention in a sobering-up centre, it is up to the Government to justify the use of restraints on a detained person. Regarding the use of restraining belts, the Court accepted that aggressive behaviour on the part of an intoxicated individual may require recourse to the use of restraining belts, provided of course that checks are periodically carried out on the welfare of the immobilised individual. The application of such restraints must, however, be necessary under the circumstances and its length must not be excessive (see *Wiktorko*, cited above, § 55).

87. The position of inferiority and powerlessness which is typical of patients confined in psychiatric hospitals calls for increased vigilance in reviewing whether the Convention has been complied with. Nevertheless, it is for the medical authorities to decide, on the basis of the recognised rules of medical science, on the therapeutic methods to be used, if necessary by force, to preserve the physical and mental health of patients who are entirely incapable of deciding for themselves and for whom they are therefore responsible. The established principles of medicine are admittedly in principle decisive in such cases; as a general rule, a measure which is a therapeutic necessity cannot be regarded as inhuman or degrading. The Court must nevertheless satisfy itself that the medical necessity has been convincingly shown to exist (see *Herczegfalvy v. Austria*, 24 September 1992, § 82, Series A no. 244).

(d) Application in the present case of the above-mentioned principles

(i) The severity of the treatment

88. The Court notes that the applicant was a young man of a fragile build, suffering from a mental illness. He was brought to the sobering-up centre in a state of intoxication, as a result of overdosing on medicine that was part of his treatment. He was thus in a particularly vulnerable position. Even though the applicant was calm during transport and admission to the hospital, he was immediately attached by restraining belts to his bed in the sobering-up centre due to his alleged restlessness. He was left in restraints for almost two hours. He was again restrained in the same way for half an hour at night on account of an alleged attack on a male nurse, and lastly for forty-five minutes the next morning for allegedly being destructive to his surroundings.

89. The Court must also take into account the serious consequences the treatment had on the applicant in evaluating whether it reached the minimum level of severity required for application of Article 3 of the Convention. It notes that an expert report commissioned by the police ten months after the treatment concluded that the applicant had suffered very severe bilateral paresis of the elbow nerves caused by the compression of nerves and blood vessels, that this injury still limited his ability to play the violoncello and that it would have a long-lasting effect which was unlikely to be permanent.

90. Accordingly, the Court considers that the strapping of the applicant must have caused him great distress and physical suffering and that Article 3 of the Convention is in principle applicable to the present case (see also the practice of the CPT, which considers the use of physical restraints an area of particular concern given the potential for abuse and ill-treatment).

(ii) The justification of the treatment

91. The Court will turn now to the examination of whether such treatment was justified in the present case and whether periodic checks were carried out.

92. According to the Government, the applicant's restriction was necessary for the protection of his own health although they did not indicate in what way the applicant's health was endangered. The Court notes that the record from the sobering up centre and the testimonies of the medical staff do not specify the extent or indeed existence of the danger the applicant posed to himself. They show that the reason for the applicant's restriction for two hours in the evening of 9 February 2007 was his restlessness. His restraint at night and in the morning was justified by his allegedly aggressive behaviour towards the medical staff.

93. The Court must determine whether the mere restlessness of a patient justifies his or her being restrained by straps to a bed for almost two hours, taking into account the current legal and medical standards on the issue (see *Herczegfalvy*, cited above, § 83).

94. The applicant was detained in a sobering-up centre, a health care facility that was part of a psychiatric hospital, the purpose of which is to treat persons under the influence of drugs. The fact that the applicant was a person suffering from a mental illness was or should have been known to the staff of the centre, as it was already stated in the record drawn up by the ambulance staff who had brought the applicant to the psychiatric hospital. Therefore the Court considers that the rules and standards on using restraints on patients with mental disabilities in psychiatric hospitals are relevant for the interpretation and application of Article 3 of the Convention to the facts of the present case.

95. The Court notes that both the European and national standards (see "Relevant domestic law" and "Relevant international standards" above) are unanimous in declaring that physical restraints can be used only exceptionally, as a matter of last resort and when their application is the only means available to prevent immediate or imminent harm to the patient or others. The Czech Guideline expressly states that restraints cannot be used when the patient is merely restless (see paragraph 51 above).

96. In line with these standards, the Court considers that using restraints is a serious measure which must always be justified by preventing imminent harm to the patient or the surroundings and must be proportionate to such an aim. Mere restlessness cannot therefore justify strapping a person to a bed for almost two hours.

97. The Court further observes that even though restraints should be used as a matter of last resort, no alternatives were tried in the applicant's case. He was restrained immediately on arrival at the sobering-up centre on account of his alleged restlessness, without any methods of calming him

down having been tried. Strapping was applied as a matter of routine. It thus cannot even be said that the domestic guideline was complied with.

98. Regarding the use of restraints as a result of the applicant's alleged aggressiveness at night and in the morning the Court agrees that attacking medical staff can be a sufficient reason for applying restraints. Nevertheless, it is not satisfied that it was conclusively established that the use of restraints was to prevent further attacks and that other means of trying to calm the applicant down, or less restrictive restraints, had been unsuccessfully tried. In this context the Court considers that it is unacceptable to use restraints as a punishment.

99. The Court observes that the two male nurses did not mention the alleged attack by the applicant at 4.30 a.m. to the police and there are no details about the nature of the attack anywhere in the case file. Ms K. only told the police that she did not remember which nurse had been attacked. The only details about any physical force used by the applicant were submitted by nurse P., who went on duty at 6 a.m. on 10 February and who reported that when any of the applicant's limbs had been unstrapped he had immediately started to defend himself and resist being strapped again. The Court, however, considers that using restraints can be hardly justified by the fact that a person resists their application.

100. The Court thus concludes that even though it is up to the Government to justify the use of restraints on a detained person (see *Wiktorko*, cited above, § 55) it has failed to show that the use of restraints on the applicant was necessary and proportionate in the circumstances.

101. In addition to this finding, the Court notes that the CPT recommended to Brno-Černovice Psychiatric Hospital that "patients who are immobilised should always be subject to continuous, direct personal supervision by a member of staff" after it found in its visit in 2005 that this was not the case (see paragraph 57 above).

102. The Court also notes that the domestic police investigation found that checks were not performed at regular intervals. The Court reiterates that restrained patients must be under close supervision. This obviously was not the case, which must have been one of the reasons for the damage to the applicant's health with long-lasting effect. The domestic authorities thus failed in their obligation to protect the health of persons deprived of their liberty (see *Keenan v. the United Kingdom*, no. 27229/95, § 111, ECHR 2001-III, and *Jasinskis v. Latvia*, no. 45744/08, § 60, 21 December 2010).

103. The Court further takes into account the European and national standards requiring proper recording of every use of restraints, which, among other things, facilitates any subsequent review of whether their use was justified. The Court has stressed the need for keeping proper medical notes in its case-law as well (see *Keenan*, cited above, § 114).

104. In the present case the Court finds the record kept about the use of restraints against the applicant very rudimentary. It does not contain any

information on when the restraints were first applied, merely stating that the applicant was released at 10 p.m., and that the restraints were again applied at 4.30 a.m., but not when they were removed. The record only states that the restraints were lastly applied at 6.30 a.m. and finished at 7.15 a.m. The record contains no explicit reasons for applying the restraints, save for the alleged attack on a male nurse at 4.30 a.m., yet even that is not clear from the record. Otherwise, there are only general notes about the applicant being restless, and at 6.30 a.m. as being aggressive towards his surroundings. There is no information about when checks were carried out.

105. In these circumstances the Court cannot but conclude that the records were far from satisfactory and it is evident that they undermined the proper establishment of the facts and hampered the domestic criminal investigation in the case.

106. Having regard to all the circumstances of the present case, the Court is of the view that the applicant has been subjected to inhuman and degrading treatment contrary to Article 3. There has accordingly been a substantive violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN ITS PROCEDURAL ASPECT

107. The applicant maintained that his complaints about his ill-treatment in the sobering-up centre had not been effectively investigated in violation of Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

108. The Government contested that argument.

A. Admissibility

109. The Government maintained that the applicant had failed to exhaust domestic remedies regarding some of his complaints concerning the alleged procedural violation of Article 3 of the Convention. In particular, in his complaint against the police authority's decision on the termination of the investigation, he had failed to mention that the proceedings had failed to satisfy the requirement of promptness and independence and had not been public because he was not allowed to be present during the questioning of witnesses and put questions to them (see paragraph 35 above).

110. The applicant disagreed.

111. The Court notes that the applicant challenged the effectiveness of the investigation before the prosecutor and the Constitutional Court (see paragraphs 35 and 37 above). It further notes that the alleged lack of independence lies not only in the conduct of the police but of the

prosecuting authorities as a whole. Therefore the applicant could not have complained of it in his appeal to the prosecutor; that is, before the alleged deficiency had materialised.

112. Regarding the complaint of lack of promptness, the Court in turn, does not consider that mentioning it in the appeal to the prosecutor could have had any effect. The police had already terminated the investigation and thus the prosecutor could not have remedied any alleged delays in the conduct of the investigation by the police.

113. Lastly, regarding the complaint that the proceedings were not public, the Court notes that in his appeal the applicant requested that the medical staff be questioned again. It also notes that he complained of the lack of their public nature in his subsequent constitutional appeal.

114. Consequently, the Government's plea of non-exhaustion of domestic remedies must be rejected.

115. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Arguments of the parties

116. The applicant complained that the investigation had not been initiated on the authorities' own motion. He had complained to the hospital authorities but they had not forwarded his complaint to the prosecuting authorities. Furthermore, it had not been effective either in law or in practice as the prosecuting authorities had not made a serious attempt to find out what happened and base their decision on established facts. The investigation had concerned only the crime of causing bodily harm and not inhuman treatment, and the investigating authorities had failed to establish the person responsible for his injuries even though the police had found out that the restraints had been used unlawfully. He had been unable to be present when the witnesses had been questioned or to suggest gathering additional evidence. The investigation had not been independent or speedy, as the investigating authorities had heavily relied on the explanations of the hospital staff, the police had taken twenty-two days to question the applicant and it had commissioned a forensic report only three months and nineteen days after the receipt of the criminal complaint.

117. The Government maintained that the investigation had been effective in that the factual circumstances of the case had been clarified to the maximum extent possible and all possible investigative steps had been taken. It was only logical that the complaint had been investigated as the criminal offence of causing bodily harm and not inhuman treatment because

there had been no intentional offence and the offender, if any, could only have been someone from the medical staff and not a State authority, local self-governing authority or a court.

118. They noted that the investigation had been instituted immediately after the police had received the criminal complaint and had proceeded with promptness.

119. In the Government's opinion the observance of the principle of the public nature and transparency of the investigation had been sufficiently secured by the fact that the applicant was able to request to be allowed to inspect the investigation file and lodge a complaint against the police authority's decision on the setting aside of the case. They also noted that in that complaint he had not challenged the content of the depositions of the medical staff at all, nor had he claimed that he should have been able to put questions to them. The Government believed that given the context, this opportunity to participate in the investigation had been sufficient to secure the applicant's rights and that transparency of the investigation and the applicant's legitimate interests had not required that the applicant be present at the questioning of the medical staff.

120. Lastly, they opined that there was no hierarchical, institutional or close working relationship between the medical staff and the police authority that could raise any doubt about the independence and impartiality of the investigation.

2. The Court's assessment

(a) General principles

121. The Court reiterates that Article 3 of the Convention requires States to put in place effective criminal-law provisions to deter the commission of offences against personal integrity, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. The domestic legal system, and in particular the criminal law applicable in the circumstances of the case, must provide practical and effective protection of the rights guaranteed by Article 3 (*Đurđević v. Croatia*, no. 52442/09, § 51, 19 July 2011).

122. Where an individual makes a credible assertion that he has suffered treatment infringing Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV). Even though the scope of the State's positive obligations might differ between cases where treatment contrary to Article 3 has been inflicted through the involvement of State agents and cases where violence is inflicted by private individuals, the requirements as to an official

investigation are similar (see *Denis Vasilyev v. Russia*, no. 32704/04, § 100, 17 December 2009).

123. In its case-law the Court has established that for an investigation to be considered effective it must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see *Mikheyev v. Russia*, no. 77617/01, § 108, 26 January 2006). The investigation must be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (*Denis Vasilyev v. Russia*, no. 32704/04, § 100, 17 December 2009). But the obligation on the States is not to elucidate all facts of the case but only those important for establishing the circumstances of the use of force and to determine whether official responsibility is engaged (see *Anusca v. Moldova*, no. 24034/07, § 40, 18 May 2010).

124. The investigation must further be independent, in that it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence (see *Đurđević,* cited above, § 85).

125. There must be also a sufficient element of public scrutiny of the investigation. The degree of public scrutiny required may well vary from case to case. In all cases, however, the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, § 212-213, 24 February 2005). However, that does not mean that the victim's right to access to investigation in all its stages arises from the Convention, because the interests of other persons or the risk of jeopardising the achievement of the aim of the investigation can prevail over his interest (see, for example, *McKerr v. the United Kingdom*, no. 28883/95, 4 May 2001, § 129).

126. The investigation must also start promptly once the matter has come to the attention of responsible authorities and conducted with reasonable expedition.

127. Lastly, the authorities must act of their own motion once the matter has come to their attention (see *Isayeva and Others*, cited above, § 209).

(b) Application in the present case of the above-mentioned principles

128. The Court firstly observes that the police started the investigation promptly after the applicant had lodged his criminal complaint and it did not suffer from any unnecessary delays. The applicant was interviewed about two weeks after the police had received his criminal complaint. The interviews of other persons, collection of documents and drawing up of an expert report were carried out in the following months. The police closed the investigation within six months. Such length is not unreasonable to an extent that it would make the investigation ineffective. The Court adds that for the purpose of fulfilling the requirement of promptness, the investigation could not have been started when the applicant complained to the hospital staff, because they are not a state authority that could have instituted a criminal investigation.

129. Regarding the alleged lack of independence the Court does not consider that the present case can be compared to the situation in *Ergi v. Turkey* (28 July 1998, § 83, *Reports* 1998-IV) as suggested by the applicant, where the Court criticised the heavy reliance of the prosecuting authorities on a report by the gendarmerie, given that the gendarmes themselves were suspected of shooting the applicant's sister. However, in the present case, the prosecuting authorities based their conclusions on several witness testimonies, documents and an independent expert report.

130. Regarding the level of public scrutiny of the investigation, the Court observes that the applicant had access to the investigation file and could have lodged an appeal against the decision of the police to terminate the investigation. In his appeal, or indeed at any time, he was free to dispute the veracity of any evidence collected by the police or to suggest the taking of further evidence. The Court therefore finds that the applicant was involved in the procedure to the extent necessary to safeguard his legitimate interests and that it was not indispensable that he be present when the police took statements from the witnesses.

131. The Court further reiterates that it is not its task to interpret the domestic law, including the Criminal Code. Therefore, it will not express a view on whether the applicant's ill-treatment should have been investigated as the crime of torture and other inhuman or cruel treatment. It must concentrate on the purpose of the obligation of effective investigation, which is to secure an effective implementation of the domestic laws which protect the right not to be tortured and, in those cases involving State agents or bodies, to ensure their accountability (see *Kelly and Others v. the United Kingdom*, no. 30054/96, § 94, 4 May 2001) and to enable the facts to become known to the public (see *Siemińska v. Poland* (dec.), no. 37602/97, 29 March 2001).

132. It appears from the decision of the police that the main reason for the termination of the investigation was that they considered that no crime had been committed. This is explicitly stated in the decision of the

prosecutor, who considered the treatment of the applicant to have been in compliance with the law. Such conclusions are, however, hardly reconcilable with the obligation of States that the domestic legal system must provide practical and effective protection of the rights guaranteed by Article 3. The Court must take into account that the application of restraining belts on the applicant was a wilful act constituting inhuman and degrading treatment, as it has found above.

133. The Court is further struck by the resolute conclusion of the prosecutor that the applicant was aggressive at the time of his admission to the sobering-up centre and therefore he was restrained. It is not clear on what this statement is based, especially given that there is no single piece of evidence in the case file that would support such a conclusion. The written evidence and the statements mention only that the applicant was restless at the time of his admission, but not that he was aggressive. Furthermore, the prosecutor's conclusion that the applicant was checked on every twenty minutes also lacks any reasoning, which is particularly striking given that the police, on the basis of the same evidence, reached a different conclusion. Both these conclusions were crucial for the legal assessment of the events and had a direct bearing on the effectiveness of the investigation. In consequence, it cannot be said that it was thorough.

134. In view of these considerations, the Court concludes that the investigation in the present case did not provide the applicant with practical and effective protection of his rights guaranteed by Article 3. Consequently, there has been a procedural violation of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

135. The applicant complained that his involuntary admission and detention in Brno-Černovice Psychiatric Hospital violated his right to liberty. He relied on Article 5 § 1 of the Convention, which, in so far as relevant, reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants ..."

136. The Government contested that argument. They argued that the applicant had failed to exhaust domestic remedies and that he had been detained for two unrelated reasons, which had to be considered separately.

137. First, he had been detained in the sobering-up centre overnight from 9 to 10 February 2007. Detention in sobering-up centres involved deprivation of liberty for several hours maximum, and therefore the law did

not envisage any approval by a court. The appropriate legal tool was a subsequent reparatory remedy, namely, an action for the protection of personality rights under the Civil Code against the health care facility concerned, which the applicant had failed to lodge.

138. Secondly, the applicant had been detained in a psychiatric hospital, in which case court proceedings under Article 191b of the Code of Civil Procedure had been automatically instituted. The applicant, however, had failed to lodge a constitutional appeal in compliance with the procedural requirements. They remarked that in the months prior to the lodging of the applicant's constitutional appeal all the chambers of the Constitutional Court had adopted the approach of requiring previous recourse to an action for nullity. That approach had been subsequently confirmed by a decision of the plenary session of the Constitutional Court of 16 December 2008, no. 79/2009.

139. The applicant disagreed. First, he contested the division of his detention into two phases, holding that since 9 February 2007 he had been detained in the same psychiatric hospital, and that he had not been released from the sobering-up centre but transferred to a different unit of the hospital.

140. He then maintained that an action for nullity was not an effective remedy within the meaning of Article 35 of the Convention. Actually, such an action could not remedy the deficiencies alleged by him under Article 5 § 1 of the Convention. Moreover, lodging it would have no chance of success in view of the Opinion of the Supreme Court no. Cpjn 29/2006 (see paragraph 53 above).

141. The Court reiterates that Article 35 § 1 of the Convention requires not merely the use of the requisite remedies but that the complaint intended to be made subsequently to the Court must first have been made – at least in substance – to the appropriate domestic body, and in compliance with the formal requirements laid down in domestic law (see *Sabeh El Leil v. France* [GC], no. 34869/05, § 32, 29 June 2011).

142. The Court finds, and this is not in dispute between the parties, that a constitutional appeal as such was an effective remedy within the meaning of Article 35 § 1 of the Convention. It observes that the applicant's constitutional appeal was dismissed for non-exhaustion of remedies, namely, for failing to lodge an action for nullity, without a decision on its merits.

143. The Court reiterates that it is in the first place for the national authorities, and notably the courts, to interpret domestic law and that the Court will not substitute its own interpretation for theirs in the absence of arbitrariness. This applies in particular to the interpretation by domestic courts of rules of a procedural nature. Although procedural rules governing appeals must be adhered to as part of the concept of a fair procedure, in principle it is for the national courts to police the conduct of their own

proceedings (see *Tejedor García v. Spain*, 16 December 1997, § 31, *Reports* 1997-VIII, and *Matoušek v. the Czech Republic* (dec.), no. 32384/05, 7 September 2010).

144. On the other hand, the Court notes that on numerous occasions it has found a violation of Article 6 of the Convention because of lack of access to court, when a procedural rule was construed in a way that was unpredictable and in variance with the principle of legal certainty (see *Zvolský and Zvolská v. the Czech Republic*, no. 46129/99, §§ 53-54, ECHR 2002-IX), or the domestic court showed excessive formalism (see *Bulena v. the Czech Republic*, no. 57567/00, § 35, 20 April 2004). In these instances, it then dismissed the Government's objection to the admissibility of other complaints (see *Běleš and Others v. the Czech Republic* (dec.), no. 47273/99, 11 December 2001 and *Zvolský and Zvolská v. the Czech Republic* (dec.), no. 46129/99, 11 December 2001).

145. The Court, however, does not consider that such a situation arose in the present case. It notes that the Government extensively referred to the Constitutional Court's case-law, built up before the applicant lodged his constitutional appeal, where it had consistently required the lodging of an action for nullity before lodging a constitutional appeal. Therefore it cannot be said that its decision could not have been foreseen by the applicant (see, *a contrario*, *Faltejsek v. the Czech Republic*, no. 24021/03, § 32, 15 May 2008).

146. The Court also notes that the Opinion of the Supreme Court no. Cpjn 29/2006, relied on by the applicant, was adopted only on 14 January 2009 and thus could not have any relevance to the decision of the Constitutional Court given before.

147. In conclusion, the applicant failed to lodge a constitutional appeal in compliance with the procedural requirements, which were not applied arbitrarily, unforeseeably, or with excessive formalism.

148. Consequently, this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

149. The applicant complained that he did not have access to a proper judicial review of his detention. He relied on Article 5 § 4 of the Convention, which reads as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

150. The Government considered that the case-law on the applicability of Article 5 § 4 of the Convention was inconsistent and asked the Court to

clarify to which proceedings in the context of involuntary hospitalizations in the Czech Republic Article 5 § 4 applied. They maintained, however, that Article 5 § 4 ceased to apply once a person was released and this part of the application was therefore incompatible *ratione materiae* with the Convention.

151. The Government further raised the same inadmissibility plea on the grounds of non-exhaustion of domestic remedies, submitting the same arguments as in the context of Article 5 § 1 of the Convention.

152. The applicant disagreed and maintained that Article 5 § 4 continued to apply even after a detainee's release.

153. Regarding the objection of non-exhaustion of domestic remedies, the applicant referred to his submissions under Article 5 § 1.

154. The Court does not consider it appropriate in the context of the present case to examine the question of applicability of Article 5 § 4 to the appeal proceedings brought by the applicant after his release as the applicant's complaint about deficiencies in the judicial review of the lawfulness of his detention is in any event inadmissible for the following reason.

155. The Court held in *Knebl v. the Czech Republic* (no. 20157/05, § 77, 28 October 2010) that a constitutional appeal was an effective remedy that had to be exhausted for complaints that a procedure under Article 5 § 4 of the Convention did not provide guarantees appropriate to the kind of deprivation of liberty in question. The Court has no reason to hold otherwise in the present case.

156. In view of the conclusions above under Article 5 § 1 of the Convention, the Court concludes that the complaint under Article 5 § 4 must be also rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies since the applicant failed to lodge a constitutional appeal in compliance with the procedural requirements.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

157. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

158. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

159. The Government considered that amount excessive.

160. The Court is of the view that as a result of the circumstances of the case the applicant must have experienced considerable anguish and distress which cannot be made good by a mere finding of a violation of the Convention. Having regard to the circumstances of the case seen as a whole

and deciding on an equitable basis, the Court awards the applicant EUR 20,000 for non-pecuniary damage.

161. The applicant did not claim reimbursement of any costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

162. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection as to the exhaustion of domestic remedies and rejects it;

2. *Declares* the complaints concerning Article 3 of the Convention admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 3 of the Convention under its substantive limb;

4. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb;

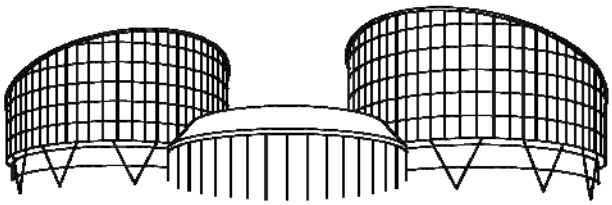
5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Czech korunas at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF D.D. v. LITHUANIA

(Application no. 13469/06)

JUDGMENT

STRASBOURG

14 February 2012

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of D.D. v. Lithuania,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President*,
Danutė Jočienė,
Dragoljub Popović,
Işıl Karakaş,
Guido Raimondi,
Paulo Pinto de Albuquerque,
Helen Keller, *judges*,
and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 24 January 2012,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 13469/06) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Ms D.D. ("the applicant"), on 28 March 2006. The President of the Chamber acceded to the applicant's request not to have her name disclosed (Rule 47 § 3 of the Rules of Court, as in force at the material time).

2. On 8 January 2008 the applicant, who had been granted legal aid, signed a power of attorney in favour of Mr H. Mickevičius, a lawyer practising in Vilnius, giving him authority to represent her before the Court. The Lithuanian Government ("the Government") were represented by their Agent, Ms E. Baltutytė.

3. The applicant complained that her involuntary admission to a psychiatric institution was in breach of Article 5 §§ 1 and 4 of the Convention. She further alleged that she had been deprived of the right to a fair hearing, in breach of Article 6 § 1.

4. On 20 November 2007 the Court decided to give notice of the application to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. Written submissions were received from the European Group of National Human Rights Institutions and from the Harvard Project on Disability, which had been granted leave by the President to intervene as third parties (Article 36 § 2 of the Convention and Rule 44 § 2 of the Rules of Court, as in force at the material time).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1963 and currently lives in the Kėdainiai Social Care Home (hereinafter "the Kėdainiai Home") for individuals with general learning disabilities.

A. The circumstances of the case

7. The facts of the case, as submitted by the parties, may be summarised as follows.

1. The applicant's psychiatric treatment, guardianship and care

8. The applicant has had a history of mental disorder since 1979, when she experienced shock having discovered that she was an adopted child. She is classed as Category 2 disabled.

9. In 1980, the applicant was diagnosed with schizophrenia simplex. In 1984 she was diagnosed with circular schizophrenia. In 1999, the applicant was diagnosed with paranoid schizophrenia with a predictable course. She has been treated in psychiatric hospitals more than twenty times. During her most recent hospitalisation at Kaunas Psychiatric Hospital in 2004, she was diagnosed with continuous paranoid schizophrenia (*paranoidinė šizofrenija, nepertraukiama eiga*). The diagnosis of the applicant remains unchanged.

10. In 2000 the applicant's adoptive father applied to the Kaunas City District Court to have the applicant declared legally incapacitated. The court ordered a forensic examination of the applicant's mental status.

11. In their report (no. 185/2000 of 19 July 2000), the forensic experts concluded that the applicant was suffering from "episodic paranoid schizophrenia with a predictable course" (*šizofrenija/paranoidinė forma, epizodinė liga su prognozuojančiu defektu*) and that she was not able "to understand the nature of her actions or to control them". The experts noted that the applicant knew of her adoptive father's application to the court for her incapacitation and wrote that she "did not oppose it". The experts also wrote that the applicant's participation in the court hearing for incapacitation was "unnecessary".

12. On 15 September 2000 the Kaunas City District Court granted the request by the applicant's adoptive father and declared the applicant legally incapacitated. In a one-page ruling, the court relied on medical expert report no. 185/2000. Neither the applicant nor her adoptive father was present at the hearing. The Social Services Department of the Kaunas City Council was represented before the court.

13. On 17 May 2001 the applicant's adoptive father requested her admission to the Kėdainiai Home for individuals with general learning disabilities. The applicant's name was put on a waiting list.

14. On 13 August 2002 the Kaunas City District Court appointed D.G., the applicant's psychiatrist at the Kaunas out-patient health centre (*Kauno Centro Poliklinika*), as her legal guardian. The applicant was present at the hearing. Her adoptive father submitted that "he himself did not agree with being appointed her guardian because he was in disagreement with his daughter (*jis pats nepageidauja būti globėju, nes su dukra nesutaria*)". Nonetheless, he promised to take care of her in future and to help her financially.

15. By a decision of 24 March 2003, the director of the health care centre dismissed D.G. from her work for a serious violation of her working duties. The decision was based on numerous reports submitted by D.G.'s colleagues and superiors.

16. On 16 July 2003 D.G. wrote to the Kaunas City District Court asking that she be relieved of her duties as the applicant's guardian. She mentioned that she had only agreed to become the applicant's guardian because she had observed a strained relationship between the applicant and her adoptive father. However, D.G. claimed that the applicant's adoptive father had asked her to hand over the applicant's pension to him, even though the applicant had been receiving her pension and had been using the money perfectly well on her own for many years. D.G. also contended that the applicant's adoptive father had attempted to unlawfully appropriate the applicant's property.

17. On 1 October 2003 the Kaunas City District Court relieved D.G. of her duties as the applicant's guardian at her own request. In court D.G. had argued that as she was litigating for unlawful dismissal she could not take proper care of the applicant.

18. By letter of 9 December 2003, the Kaunas City Social Services Department suggested to the district court that the applicant's adoptive father be appointed her guardian, although the Department noted that relations between the two of them were tense.

19. On 21 January 2004 the Kaunas City District Court appointed the applicant's adoptive father as her legal guardian. The court relied on the request by the Kaunas City Council Department of Health, which was represented at the hearing. The applicant's adoptive father did not object to the appointment. The applicant was not present at the hearing.

20. Upon the initiative and consent of the applicant's adoptive father, on 30 June 2004 the applicant was taken to the Kaunas Psychiatric Hospital for treatment. The applicant complained that she had been treated against her will. A letter by the hospital indicates that the applicant's adoptive father had asked the hospital staff to ensure that her contacts with D.G. were limited on the ground that the latter had had a negative influence on the

applicant. However, on 3 September 2004 the prosecutor for the Kaunas City District dismissed the applicant's allegations, finding that she had been hospitalised due to deterioration in her mental state upon the order of her psychiatrist. The applicant had also expressed her consent to being treated.

21. On 8 July 2004 a panel designated by Kaunas City Council to examine cases of admission to residential psychiatric care (*Kauno miesto savivaldybės asmenų su proto negalia siuntimo į stacionarias globos įstaigas komisija*) adopted a unanimous decision to admit the applicant to the Kėdainiai Home.

22. On 20 July 2004 a medical panel of the Kaunas Psychiatric Hospital concluded that the applicant was suffering from "continuous paranoid schizophrenia" (*paranoidinė šizofrenija nepertraukiama eiga*). The commission also stated that it would be appropriate for the applicant to "live in a social care institution for the mentally handicapped".

23. On 28 July 2004 a social worker examined the conditions in which the applicant lived in her apartment in Kaunas city. The report reads that "the applicant is not able to take care of herself, does not understand the value of money, does not clean her apartment, is not able to cook on her own and wanders in the city hungry. Sometimes the applicant gets angry at people and shouts at them without a reason; her behaviour is unpredictable. The applicant does not have bad habits and likes to be in other persons' company". The social worker recommended that the applicant be placed in a social care institution because her adoptive father could not "manage" her.

24. On 2 August 2004 an agreement was concluded between the Kėdainiai Home, the Guardianship Department of Kaunas City Council and the Social Services Department of the Kaunas Regional Administration. On the basis of that agreement, the applicant was transferred from the Kaunas Psychiatric Hospital to the Kėdainiai Home, where she continued her treatment.

25. On 6 October 2004 the applicant signed a document stating that she agreed to be examined by the doctors in the Kėdainiai Home and to be treated there.

26. On 10 August 2004 the applicant's adoptive father wrote to the director of the Kėdainiai Home with a request that during the applicant's settling into the Kėdainiai Home she should be temporarily restricted from receiving visits by other people. The director granted the request. Subsequently, the Kaunas District Administration upheld the director's decision on the ground that the latter was responsible for the safety of patients in the Kėdainiai Home and thus was in a better position to determine what steps were necessary.

27. On 18 August 2004, upon the decision of the Kėdainiai Home director, D.G. was not allowed to visit the applicant. The applicant's medical record, which a treating psychiatrist signed the following day, states that "[the applicant] is acclimatising at the institution with difficulties, as

her former guardian and former doctor [D.G.] keeps calling constantly and telling painful matters from the past (...) [the applicant] is crying and blaming herself for being not good, for not preserving her mother, for having lived improperly. Verbal correction is not effective".

28. According to a document signed by Margarita Buržinskienė on 23 February 2005, she had called the Kėdainiai Home to speak to the applicant but the employees had told her that, on the director's orders, the applicant was not allowed to answer the phone (*vykdant direktorės nurodymą Daivos prie telefono nekviečia*).

29. On 15 June 2006 the applicant's adoptive father removed her from institutional care and taken her to his flat. On 15 July 2006 the applicant left his home on her own. A police investigation was started following a report by the applicant's adoptive father of the allegedly unlawful deprivation of the applicant's liberty. She was eventually found and apprehended by the police on 31 October 2006, and was taken back to the Kėdainiai Home.

30. On 6 September 2007 the applicant left the Kėdainiai Home without informing its management. She was found by the police and taken back to the institution on 9 October 2007.

31. As can be seen from a copy of the record of the Kėdainiai Home's visitors submitted by the Government, between 2 August 2004 and 25 December 2006 the applicant received one or more visitors on forty-two separate occasions. In particular, her adoptive father saw her thirteen times, her friends and other relatives visited her twenty-six times and she was visited by D.G. on twelve occasions.

2. Proceedings regarding the change of the applicant's guardianship

32. On 15 July 2004 the applicant asked the Kaunas Psychiatric Hospital to initiate a change of guardianship from her adoptive father to D.G. The applicant wrote that her adoptive father had had her admitted to the psychiatric hospital by force and deception, thus depriving her of her liberty. The hospital refused her request as it did not have competence in guardianship matters.

33. The applicant states that a similar request was rejected by the Kėdainiai Home.

34. On 2 September 2005, assisted by her former guardian and then friend, D.G., the applicant brought an application before the courts, requesting that the guardianship proceedings be reopened and a new guardian appointed. She submitted that she had been unable to state her opinion as to her guardianship, because she had not been informed of and summoned to the court hearing during which her adoptive father had been appointed her guardian. The applicant relied on Article 507 § 3 of the Code of Civil Procedure and stated that her state of health in the previous year could not have been an obstacle to her expressing her opinion as to the appropriateness of the guardian proposed at the court hearing. She claimed

that in 2004 she had used to visit her friend in a village for a couple of weeks at a time. The applicant also noted that when she returned to Kaunas, her adoptive father had often threatened to have her committed to a mental asylum.

35. The applicant also argued that by appointing her adoptive father to be her guardian without informing her and without her being able to state her opinion as to his prospective appointment, in contravention of Article 3.242 of the Civil Code and Article 507 § 4 of the Code of Civil Procedure, the court had disregarded the strained relationship between the two of them. The applicant drew the court's attention to the ruling of the Kaunas City District Court of 13 August 2002, in which the applicant's adoptive father had himself stated that their relationship had been tense. The applicant drew the court's attention to Article 491 § 2 of the Code of Civil Procedure, stipulating that the court had to take all necessary measures to avoid a possible conflict between the incapacitated person and her potential guardian.

Lastly, she stated that she had only learned of her adoptive father's appointment in April 2004.

36. By a ruling of 29 September 2005 the Kaunas City District Court decided to accept the applicant's request for examination.

37. On 27 October 2005 the applicant wrote to the Chairman of the Kaunas City District Court. She complained of her incapacitation on her adoptive father's devious initiative without having being informed of the incapacitation proceedings. The applicant also pleaded that she had been unlawfully deprived of her liberty and involuntarily admitted to the Kėdainiai Home for an indefinite time and where she had been unable to obtain legal aid.

38. On 7 November 2005 judge R.A. of the Kaunas City District Court held a closed hearing in which the applicant, her guardian (her adoptive father) and his lawyer, and D.G. took part. The relevant State institutions were also represented at the hearing: the Kėdainiai Home, the Kaunas Psychiatric Hospital, the prosecutor and the Social Services Department of Kaunas City Council. The applicant's doctor did not take part in the hearing. The court noted that the doctor had been informed of it and had asked the court to proceed without him.

39. In her application form to the Court, the applicant alleged that at the beginning of the hearing the judge had ordered her to leave her place next to D.G. and to sit next to the judge. The judge had also ordered D.G. "to keep her eyes off the applicant". Given that this was not reflected in the transcript of the hearing, on 19 November 2005 D.G. had written to the court asking that the transcript be rectified accordingly.

40. According to the transcript of the hearing, at the beginning thereof D.G. requested that an audio recording be made. The judge refused the request. The applicant asked to be assisted by a lawyer. The judge refused

her request, deeming that her guardian was assisted by a lawyer before the court. Without the agreement of her guardian, a separate lawyer could not be appointed. The lawyer hired by the applicant's guardian was held to represent both the interests of the applicant and her guardian.

41. As the transcript of the hearing shows, the applicant went on to unequivocally state that she stood by her request that the guardianship proceedings be reopened. She argued that she had neither been informed of the proceedings as to her incapacitation, nor those pursuant to which her guardian had been appointed. The decisions had been taken while she had been in hospital. During the hearing, the applicant expressed her willingness to leave the Kėdainiai Home and stated that she was being kept and treated there by force. She submitted that she would prefer to live at her adoptive father's home and to attend a day centre (*lankys dienos užimtumo centrą*). The applicant also argued that D.G. had been forced to surrender her duties as her guardian and to allow the applicant's adoptive father to become her guardian because of pressure from him with the aim of transferring the applicant's flat to him. The applicant also noted that in the Kėdainiai Home she was cut off from society and had been deprived of the opportunity to make telephone calls. Her friends could not visit her and she was not allowed to go to the cinema. In the Kėdainiai Home "she was isolated and saw only a fence". The other parties to the proceedings opposed the applicant's wish that the guardianship proceedings be reopened.

42. In her application to the Court, the applicant alleged that during a break in the hearing she had been ordered to follow the judge to her private office. When the applicant had refused, she had been threatened with restraint by psychiatric personnel. In private, the judge had instructed her not to say anything negative about her adoptive father and that, should she not comply, her friend D.G. would also be declared legally incapacitated. As stated in D.G.'s letter seeking rectification of the transcript (paragraph 39 above), after the break was announced the applicant had wished to stay in the hearing room. However, she had been taken away and had returned very depressed (*prislėgta*). Responding to a question by the judge as to her guardianship, the applicant replied: "I agree that [my adoptive father] should be my guardian, because God asks that people be forgiving. I just wish that he [would] take me [away] from [the Kėdainiai Home] to Kaunas, to his place... and let me see D.G. and my friends".

43. It appears from the transcript of the hearing that after the break, when giving her submissions to the court, the applicant agreed to keep her adoptive father as guardian, but insisted on being released from institutional care in order to live with her adoptive father. The relevant State institutions – the Kėdainiai Home, the Kaunas Psychiatric Hospital, the prosecutor, the Social Services Department of Kaunas City Council – and the applicant's guardian's lawyer each argued that the applicant's request for reopening was clearly unfounded and should be dismissed.

44. On 17 November 2005 the Kaunas City District Court refused to reopen the guardianship proceedings on the basis of Article 366 § 1 (6) of the Code of Civil Procedure, ruling that there were no grounds to change the guardian (see Relevant domestic law part below). The court noted that before appointing the applicant's adoptive father as her guardian, the Kaunas City Council Department of Health had prepared a report on the proposed appointment of the applicant's guardian and had questioned the applicant, who had not been able to provide an objective opinion about that appointment. The court confirmed that the applicant had not been summoned to the hearing of 21 January 2004, when her guardian was appointed, as the court had taken into consideration the applicant's mental state and, on the basis of the findings of the relevant health care officials, had not considered her involvement in the hearing necessary. The court further noted that the findings had disclosed tense relations between the applicant and her adoptive father. Even so, the applicant's adoptive father had been duly performing his duties. The court also referred to statements of the representatives of the Kaunas Psychiatric Hospital and the director of the Kėdainiai Home to the effect that the applicant's contact with D.G. had had a negative influence on her mental health.

45. The Kaunas City District Court proceeded to fine D.G. 1,000 Lithuanian litai (LTL) (approximately 290 euros (EUR)) for abuse of process. It noted that D.G. had filed numerous complaints before various State institutions and the courts of alleged violations of the applicant's rights. Those complaints had prompted several inquiries which had revealed a lack of substantiation. The court noted:

> "... by such an abuse of rights, [D.G.] caused damage to the State, namely the waste of time and money of the court and the participants in the proceedings. The court concludes that [D.G.] has abused her rights ... and the vulnerability of the incapacitated person".

46. D.G. appealed against the above decision. She noted, *inter alia*, that the 21 January 2004 ruling to appoint the applicant's adoptive father as her guardian had been adopted by judge R.A. The same judge had dismissed the applicant's request that the court proceedings be reopened, although this was explicitly prohibited by Article 370 § 5 of the Code of Civil Procedure.

The applicant also submitted a brief in support of D.G.'s appeal, arguing that persons admitted to psychiatric institutions should have a right to know the reasons for their admission. Moreover, they should be able to contact a lawyer who is independent from the institution to which they have been admitted.

47. The appeal by D.G. was dismissed by the Kaunas Regional Court on 7 February 2006 in written proceedings. The court did not rule on the plea that the district court judge R.A. had been partial.

48. On 11 May 2006 the Supreme Court declared D.G.'s subsequent appeal on points of law inadmissible, as it had not been submitted by a lawyer and raised no important legal issues.

49. By a ruling of 7 February 2007 the Kaunas City District Court, following a public hearing attended by social services representatives and the applicant's legal guardian, granted the guardian's request to be relieved from the duties of guardian and property administrator. The applicant's adoptive father had argued that he was no longer fit to be her guardian because of his old age (seventy-seven years at that time) and state of health. The Kėdainiai Home was appointed temporary guardian and property administrator. The applicant was not present at the hearing.

50. On 25 April 2007, the Kaunas City District Court held a public hearing and appointed the Kėdainiai Home as the applicant's permanent guardian and administrator of her property rights. The applicant was not present at that hearing; the court did not give reasons for her absence.

3. Criminal inquiry

51. On 1 February 2006 a criminal inquiry was opened on the initiative of some of the applicant's acquaintances, who alleged that the applicant had been the victim of Soviet-style classification of illnesses which was designed to repress those who fall foul of the regime. The complainants submitted that, as a result of the persistent diagnoses of schizophrenia, the applicant had been unlawfully deprived of her liberty, had been ill-treated and had been overmedicated in the Kėdainiai Home, and that her property rights had been violated by her guardian.

52. On 31 July 2006 the investigation was discontinued, no evidence having been found of an abuse of the applicant's interests, either pecuniary or personal. It was established that the immovable property belonging to the applicant had been let to a third person, with the proceeds used to satisfy the applicant's needs. The applicant had had a bank account opened in her name on 6 October 2005, and the deposit made on that date had since been left untouched. Moreover, the applicant's guardian had transferred to her account the sum received from the sale of their common property. There was thus no indication that the applicant's adoptive father had abused his position as guardian.

53. As regards the deprivation of the applicant's liberty, the prosecutor noted that the applicant had been admitted to an institutional care facility in accordance with the applicable legislation. The prosecutor acknowledged that the freedom of the applicant "to choose her place of residence [was] restricted (*laisvė pasirinkti buvimo vietą yra ribojama*)", but further noted that she was:

> "... constrained to an extent no greater than necessary in order to take due care of her as a legally incapacitated person. The guardian of [the applicant] can change her place of residence without first obtaining a separate official decision; she is not unlawfully

hospitalised. Therefore, her placement in the Kėdainiai Home cannot be classified as an unlawful deprivation of liberty, punishable under Article 146 § 2 (3) of the Criminal Code".

54. The prosecutor had also conducted an inquiry into an incident which had occurred at the Kėdainiai Home on 25 January 2005. After questioning the personnel of the Home, it was established that on that day the applicant had been placed in the intensive supervision ward (*intensyvaus stebėjimo kambarys*), had been given an additional dose of tranquilisers (2 mg of Haloperidol) and had been tied down (*fiksuota*) for fifteen to thirty minutes by social care staff.

55. The prosecutor noted the explanation of the psychiatrist at the Home, who admitted that the applicant's restraint had been carried out in breach of the applicable rules, without the approval of medical personnel. However, after having read written reports on the incident produced by the social care personnel, he considered the tying down to have been undertaken in order to save the applicant's life and not in breach of her rights.

56. Questioned by the prosecution as witnesses, social workers at the Kėdainiai Home testified that 25 January 2005 had been the only occasion on which the applicant had been physically restrained and placed in isolation. The measures had only been taken because at that particular time the applicant had shown suicidal tendencies.

57. The prosecutor concluded that the submissions made by the complainants were insufficient to find that the applicant's right to liberty had been violated by unnecessary restraint or that she had suffered degrading treatment.

58. On 30 August 2006 the higher prosecutor upheld that decision.

4. Complaints to other authorities

59. With the assistance of D.G., the applicant addressed a number of complaints to various State authorities.

60. On 30 July 2004, in reply to a police inquiry into the applicant's complaint of unlawful detention in the Kėdainiai Home, the Kaunas City Council Social Services department wrote that "[in] the last couple of years, relations between the applicant and her adoptive father have been tense. Therefore, on the wish of both of them, until 21 January 2004 [the applicant's] legal guardian was D.G. and not her adoptive father".

61. The Ministry of Social Affairs also commissioned an inquiry, including conducting an examination of the applicant's living conditions at the Kėdainiai Home and interviews with the applicant and the management of the Home. The commission established that the applicant's living conditions were not exemplary (*nėra labai geros*), but it was promised that the inhabitants would soon move to new premises with better conditions. However, it was noted that the applicant received adequate care. The commission opined that it was advisable not to disturb the applicant, given

her vulnerability and instability. It was also emphasised that the State authorities were under an obligation to be diligent as regards supervision of how the guardians use their rights.

62. On 6 January 2005 D.G. filed a complaint with the police, alleging that the applicant had been unlawfully deprived of her liberty and of contact with people from outside the Kėdainiai Home. By letter of 28 February 2005, the police replied that no violation of the applicant's rights had been found. They explained that, in accordance with the internal rules of the Kėdainiai Home, residents could be visited by their relatives and guardians, but other people required the approval of the management. At the request of the applicant's guardian, the management had prohibited other people from visiting her.

63. On 17 May 2005 upon the inspection performed by food safety authorities out-of-date frozen meat (best before 12 May 2005) was found in the Kėdainiai Home. However, there was no indication that that meat would have been used for cooking. On 20 February 2006 the Kaunas City Governor's office inspected the applicant's living conditions in Kėdainiai and found no evidence that she could have been receiving food of bad quality.

64. On 28 April 2006 the applicant complained to the Ministry of Health about her admission to long-term care. By letter of 12 May 2006, the Ministry noted that no court decision to hospitalise the applicant had been issued, and that she had been admitted to the Kėdainiai Home after her adoptive father had entrusted that institution with her care.

65. On 6 October 2006, the Ministry of Health and Social Services, in response to the applicant's complaints of alleged violations of her rights, wrote to the applicant stating that it was not possible to investigate her complaints because she had left the Kėdainiai Home and her place of living was unknown. Prosecutors were in the middle of a pre-trial investigation into the circumstances of the applicant's disappearance from where she had previously been living.

66. By a decision of 18 December 2006, the Kaunas City District prosecutor discontinued a pre-trial investigation into alleged unlawful deprivation of the applicant's liberty.

II. RELEVANT DOMESTIC LAW AND PRACTICE

67. Article 21 of the Lithuanian Constitution prohibits torture or degrading treatment of persons. Article 22 thereof states that private life is inviolable.

68. The Law on Mental Heath Care provides:

Article 1

"1. Main Definitions

...

5. "Mental health facility" means a health care institution (public or private), which is accredited for mental health care. If only a certain part (a "unit") of a health care institution has been accredited to engage in mental health care, the term shall only apply to the unit. In this Law, the term is also applicable to psychoneurological facilities..."

Article 13

"The parameters of a patient's health care shall be determined by a psychiatrist, seeking to ensure that the terms of their treatment and nursing offer the least restrictive environment possible.

The actions of a mentally ill person may be subject to restrictions only provided that the circumstances specified in section 27 of this Law are manifest. A note to that effect must be promptly made in the [patient's] clinical record."

Article 19

"In emergency cases, in seeking to save a person's life when the person himself is unable to express his will and his life is seriously endangered, necessary medical care may be taken without the patient's consent.

Where instead of a patient's consent, the consent of his representative is required, the necessary medical care may be provided without the consent of such person provided that there is insufficient time to obtain it in cases where immediate action is needed to save the life of the patient.

In those cases when urgent action must be taken in order to save a patient's life, and the consent of the patient's representative must be obtained in lieu of the patient's consent, immediate medical aid may be provided without the said consent, if there is not enough time to obtain it."

69. Article 24 of the Law on Mental Health Care stipulated that if a patient applied with a request to be hospitalised, he or she could be hospitalised only provided that: 1) at least one psychiatrist, upon examining the patient, recommended that he or she had to be treated as an inpatient at a mental health facility; 2) he or she had been informed about his or her rights at a mental health facility, the purpose of hospitalisation, the right to leave the psychiatric facility and restrictions on the right, as specified in Article 27 of the law. The latter provision read that a person who was ill with a severe mental illness and refused hospitalisation could be admitted involuntarily to the custody of the hospital only if there was real danger that

by his or her actions he or she was likely to commit serious harm to his or her health or life or to the health or life of others. When the circumstances specified in Article 27 of that law did exist, the patient could be involuntarily hospitalised and given treatment in a mental health facility for a period not exceeding 48 hours without court authorisation. If the court did not grant the authorisation within 48 hours, involuntary hospitalisation and involuntary treatment had to be terminated (Article 28).

70. As concerns legal incapacity and guardianship, the Civil Code provides:

Article 2.10. Declaration of incapacity of a natural person

"1. A natural person who, as a result of mental illness or imbecility, is not able to understand the meaning of his actions or control them may be declared incapacitated. The incapacitated person shall be placed under guardianship.

2. Contracts on behalf and in the name of a person declared incapacitated shall be concluded by his guardian...

3. Where a person who was declared incapacitated gets over his illness or the state of his health improves considerably, the court shall reinstate his capacity. After the court judgement becomes *res judicta,* guardianship of the said person shall be revoked.

4. The spouse of the person, parents, adult children, a care institution or a public prosecutor shall have the right to request the declaration of a person's incapacity by filing a declaration to the given effect. They shall also have the right to apply to the courts requesting the declaration of a person's capacity."

Article 3.238. Guardianship

"1. Guardianship shall be established with the aim of exercising, protecting and defending the rights and interests of a legally incapacitated person.

2. Guardianship of a person subsumes guardianship of the person's property, but if necessary, an administrator may be designated to manage the person's property."

Article 3.240. Legal position of a guardian or curator

"1. Guardians and curators shall represent their wards under law and shall defend the rights and interests of legally incapacitated persons or persons of limited active capacity without any special authorisation.

2. The guardian shall be entitled to enter into all necessary transactions in the interests and on behalf of the represented legally incapacitated ward..."

Article 3.241. Guardianship and curatorship authorities

"1. Guardianship and curatorship authorities are the municipal or regional [government] departments concerned with the supervision and control of the actions of guardians and curators.

2. The functions of guardianship and curatorship in respect of the residents of a medical or educational institution or [an institution run by a] guardianship (curator) authority who have been declared legally incapacitated or of limited active capacity by a court shall be performed by the respective medical or educational establishment or guardianship (curator) authority until a permanent guardian or curator is appointed..."

Article 3.242. Appointment of a guardian or a curator

"1. Having declared a person legally incapacitated or of limited active capacity, the court shall appoint the person's guardian or curator without delay.

...

3. Only a natural person with legal capacity may be appointed a guardian or a curator, [and] provided he or she gives written consent to that effect. When appointing a guardian or curator, account must be taken of the person's moral and other qualities, his or her capability of performing the functions of a guardian or curator, relations with the ward, the guardian's or curator's preferences and other relevant circumstances..."

Article 3.243. Performance of the duties of a guardian or a curator

"...

6. After the circumstances responsible for the declaration of the ward's legal incapacity or limited active capacity [are no longer in existence], the guardian or curator shall apply to the courts for the cancellation of guardianship or curatorship. Guardianship and curatorship authorities, as well as prosecutors, shall also have a right to apply to the courts for the cancellation of guardianship or curatorship."

Article 3.277. Placing under guardianship or curatorship

"1. An adult person declared legally incapacitated by the courts shall be placed under guardianship by a court judgment."

Article 3.278. Monitoring of the guardian's or the curator's activities

"1. Guardianship and curatorship authorities shall be obliged to monitor whether the guardian/curator is fulfilling his or her duties properly."

71. The Code of Civil Procedure stipulates that rights and interests of [disqualified] natural persons protected by law shall be defended in court by their representatives (parents, foster-parents, guardians) (Article 38 § 2). A

prosecutor has the right to submit a claim to protect the public interest (Article 49).

72. Article 366 § 1 (6) of the Code of Civil Procedure provides that proceedings may be reopened if one of the parties to them was incapacitated and did not have a representative.

Article 370 § 5 stipulates that when deciding upon a request that proceedings be reopened, the judge who took the decision against which the request has been lodged may not participate.

73. An application to declare a person legally incapacitated may be submitted by a spouse of that person, his or her parents or full-age children, a guardianship/care authority or a public prosecutor (Article 463). The parties to the proceedings for incapacitation consist, besides the applicant, of the person whose legal capacity is at issue, as well as the guardianship (care) authority. If it is impossible, due to the state of health, confirmed by an expert opinion, of the natural person whom it has been requested to declare incapacitated, to call and question him or her in court or to serve him or her with court documents, the court shall hear the case in the absence of the person concerned (Article 464 §§ 1 and 2).

74. Article 491 § 2 of the Code of Civil procedure stipulates that the courts are obliged to take all measures necessary to ensure that the rights and interests of persons who need guardianship are protected.

75. Pursuant to Article 507 § 3 of the Code of Civil Procedure, a case concerning the establishment of guardianship and the appointment of a guardian shall be heard by means of oral proceedings. The guardianship authority, the person declared incapacitated, the person recommended to be appointed as guardian and any parties interested in the outcome of the case must be notified of the hearing.

The case is to be heard with the attendance of a representative of the guardianship authority, who is to submit the authority's opinion to the court. The person to be appointed the guardian must also attend.

The person declared incapacitated is entitled to give his or her opinion at the hearing, if his or her health allows, as regards the prospective appointment of the guardian. The court may hold that it is necessary that the person declared incapacitated attend the hearing.

Article 507 § 4 provides that in appointing a guardian his moral and other qualities, his capability to perform the functions of a guardian, his relationship with the person who requires guardianship, and, if possible, the wishes of the person who requires guardianship or care shall be taken into consideration.

76. The Law on Prosecutor's Office provides that prosecutors have the right to protect the public interest, either on their own initiative or if the matter has been brought to their attention by a third party. In so doing, prosecutors may institute civil or criminal proceedings.

77. In a ruling of 9 June 2003 the Supreme Court stated that a public prosecutor could submit an application for reopening of proceedings, if the court's decision had been unlawful and had infringed the rights of a legally incapacitated person having limited opportunity to defend his or her rights or lawful interests.

78. The Law on Social Services provides that the basic goal of social services is to satisfy the vital needs of an individual and, when an individual himself is incapable of establishing such conditions, to create living conditions for him that do not debase his dignity (Article 2 (2)).

79. The Requirements for residential social care institutions and the Procedure for admission of persons thereto, approved by Order No. 97 of the Minister of Social Security and Labour on 9 July 2002 and published in State Gazette (*Valstybės žinios*) on 31 July 2002, regulate the methods of admission to a social care institution. The rules provide that an individual is considered to be eligible for admission to such an institution, *inter alia*, if he or she suffers from mental health problems and therefore is not able to live on his or her own. The need for care is decided by the municipal council of the place of his or her residence in cooperation with the founder of the residential care institution (the county governor). Individuals are admitted to care institutions in the event that the provision of social services at their home or at a non-statutory care establishment is not possible. A guardian who wishes to have a person admitted to a residential care institution must submit a request in writing to the social services department of the relevant municipal council. The reasons for and motives behind admission must be indicated. An administrative panel of the municipal council, comprising at least three persons, is empowered to decide on the proposed admission. Representatives of the institution to which the person is to be admitted as well as the founder (the governor) must participate.

80. The Government submitted to the Court an application by the Kėdainiai Home of 6 October 2009 to the Kaunas City District Court for the restoration of capacity (*dėl neveiksnumo panaikinimo*) of an individual, G.P. The Kėdainiai Home had been G.P.'s guardian. The director of the Kėdainiai Home had noted that after G.P.'s condition had become better and he had become more independent, it had accordingly become necessary for the court to order a fresh psychiatric examination and make an order restoring G.P.'s legal capacity.

81. The Bylaws of the Kėdainiai Home (*Kėdainių pensionato gyventojų vidaus tvarkos taisyklės*), as approved by an order of the director dated 17 March 2003, provide that the institution shall admit adults who suffer from mental health problems and are in need of care and medical treatment. A patient may leave the institution for up to ninety days per year, but only to visit his or her court-appointed guardian. The duration and conditions of such leave must be confirmed in writing. The rules also stipulate that a patient is not allowed to leave the grounds of the facility without informing

a social worker. If a patient decides to leave the Kėdainiai Home on his or her own, the management must immediately inform the police and facilitate finding him or her. A patient may be visited by relatives and guardians. Other visitors are allowed only upon the management's approval. The patients may have personal mobile phones. They may follow a religion, attend church services and receive magazines.

82. In a ruling of 11 September 2007 in civil case No. 3K-3-328/2007, the Supreme Court noted that the person whom it is asked to declare incapacitated is also a party to the proceedings (Article 464 § 1 of the Code of Civil Procedure). As a result, he or she enjoys the rights of an interested party, including the right to be duly informed of the place and time of any hearing. The fact that the case had been heard in the absence of D.L. – the person whom the court had been asked to declare incapacitated – was assessed by the Supreme Court as a violation of her right to be duly informed of the place and time of court hearings, as well as of other substantive procedural rights safeguarding her right to a fair trial. The Supreme Court also found that by failing to hear the person concerned and without making sure that she had been aware of the proceedings, the first-instance court had breached the principle of equality of arms, as well as D.L.'s right to appeal against the decision to declare her incapacitated, because the decision had not been delivered to her. The Supreme Court also referred to Principle no. 13 of Recommendation No. R (99) 4 by the Committee of Ministers of the Council of Europe (see paragraph 85 below), stating that the person concerned should have the right to be heard in any proceedings which could affect his or her legal capacity. This procedural guarantee should be applicable to the fullest extent possible, at the same time bearing in mind the requirements of Article 6 of the European Convention on Human Rights. In this regard, the Supreme Court also referred to the Court's case-law to the effect that a mental illness could result in appropriate restrictions of a person's right to a fair hearing. However, such measures should not affect the very essence of that right (*Golder*, *Winterwerp*, both cited below, and *Lacárcel Menéndez v. Spain*, no. 41745/02, 15 June 2006).

83. In the same ruling, the Supreme Court also emphasised that determining whether the person can understand his or her actions was not only a scientific conclusion, namely that of forensic psychiatry. It was also a question of fact which should be established by the court upon assessing all other evidence and, if necessary, upon hearing expert evidence. Taking into consideration the fact that the declaration of a person's incapacity is a very serious interference into his or her right to private life, one can only be declared incapacitated in exceptional cases.

III. RELEVANT INTERNATIONAL DOCUMENTS

A. Convention on the Rights of Persons with Disabilities, adopted by the United Nations General Assembly on 13 December 2006 (Resolution A/RES/61/106)

84. This Convention entered into force on 3 May 2008. It was signed by Lithuania on 30 March 2007 and ratified on 18 August 2010. The relevant parts of the Convention provide:

Article 12
Equal recognition before the law

"1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property."

Article 14
Liberty and security of person

"1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

(*a*) Enjoy the right to liberty and security of person;

(*b*) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation."

B. Recommendation No. R (99) 4 of the Committee of Ministers of the Council of Europe on principles concerning the legal protection of incapable adults (adopted on 23 February 1999)

85. The relevant parts of this Recommendation read as follows:

Principle 2 – Flexibility in legal response

"1. The measures of protection and other legal arrangements available for the protection of the personal and economic interests of incapable adults should be sufficient, in scope or flexibility, to enable suitable legal response to be made to different degrees of incapacity and various situations.

...

4. The range of measures of protection should include, in appropriate cases, those which do not restrict the legal capacity of the person concerned."

Principle 3 – Maximum reservation of capacity

"1. The legislative framework should, so far as possible, recognise that different degrees of incapacity may exist and that incapacity may vary from time to time. Accordingly, a measure of protection should not result automatically in a complete removal of legal capacity. However, a restriction of legal capacity should be possible where it is shown to be necessary for the protection of the person concerned.

2. In particular, a measure of protection should not automatically deprive the person concerned of the right to vote, or to make a will, or to consent or refuse consent to any intervention in the health field, or to make other decisions of a personal character at any time when his or her capacity permits him or her to do so. ..."

Principle 6 – Proportionality

"1. Where a measure of protection is necessary it should be proportional to the degree of capacity of the person concerned and tailored to the individual circumstances and needs of the person concerned.

2. The measure of protection should interfere with the legal capacity, rights and freedoms of the person concerned to the minimum extent which is consistent with achieving the purpose of the intervention. ..."

Principle 13 – Right to be heard in person

"The person concerned should have the right to be heard in person in any proceedings which could affect his or her legal capacity."

Principle 14 – Duration review and appeal

"1. Measures of protection should, whenever possible and appropriate, be of limited duration. Consideration should be given to the institution of periodical reviews.

...

3. There should be adequate rights of appeal."

C. The 25 June 2009 report on visit to Lithuania by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), visit from 28 to 30 April 2008

86. This report outlines the situation of persons placed by the public authorities in social care homes for people with mental disorders or mental deficiency. Part C of the report (paragraphs 120, 125-132) analyses situation in the Skemai Residential Care Home.

87. The CPT noted that Lithuanian legislation does not provide for an involuntary placement procedure in social welfare establishments. At Skemai Residential Care Home, residents were admitted on their own application or that of their guardian through the competent district authority (Panevėžys District Administration). The decision on the placement was taken by the social affairs unit of Panevėžys District Administration on the basis of a report drawn up by a social worker and a medical certificate issued by a psychiatrist stating that the applicant's mental health permitted his/her placement in a social welfare institution of this type. An agreement was then signed between the applicant and the authorised representative of the local government for an indefinite period.

That said, it appeared that even legally competent residents admitted on the basis of their own application were not always allowed to leave the home when they so wished. The delegation was informed that their discharge could only take place by decision of the social affairs unit of the Panevėžys District Administration. This was apparently due to the need to ascertain that discharged residents had a place and means for them to live in the community; nevertheless, this meant that such residents were *de facto* deprived of their liberty (on occasion for a prolonged period).

88. Specific reference was made to the situation of residents deprived of their legal capacity. Such persons could be admitted to the Skemai Home solely on the basis of the application of their guardian. However, they were

considered to be voluntary residents, even when they opposed such a placement. In the CPT's view, placing incapacitated persons in a social welfare establishment which they cannot leave at will, based solely on the consent of the guardian, entailed a risk that such persons will be deprived of essential safeguards.

89. It was also a matter of concern that all 69 residents who were deprived of their legal capacity were placed under the guardianship of the Home. In this connection, the delegation was surprised to learn that in the majority of these cases, the existing guardianship arrangements had been terminated by a court decision upon admission to the establishment and guardianship of the person concerned entrusted to the Home.

The CPT stressed that one aspect of the role of a guardian is to defend the rights of incapacitated persons *vis-à-vis* the hosting social welfare institution. Obviously, granting guardianship to the very same institution could easily lead to a conflict of interest and compromise the independence and impartiality of the guardian. The CPT reiterated its recommendation that the Lithuanian authorities strive to find alternative solutions which would better guarantee the independence and impartiality of guardians.

90. In the context of discharge from psychiatric institution procedures, the CPT recommended that the Lithuanian authorities took steps to ensure that forensic patients were heard in person by the judge in the context of judicial review procedures. For that purpose, consideration may be given to the holding of hearings at psychiatric institutions

91. Lastly, the CPT found that at the establishment visited the existing arrangements for contact with the outside world were generally satisfactory. Patients/residents were able to send and receive correspondence, have access to a telephone, and receive visits.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. The parties' submissions

92. The Government argued, first, that the present application had been entirely based on knowingly untrue facts and therefore should be declared inadmissible for "abuse of the right of individual petition", pursuant to Article 35 § 3 of the Convention. For the Government, the content of the present application was contrary to the purpose of the right of individual application, as the information provided therein was untrue or insidious. An

appropriate and carefully selected form of social care for the applicant had been portrayed as detention. Appropriate medical care and striving to save her life had been presented as her torture. The facts concerning the reopening of the guardianship proceedings were also untrue, as well as those related to the applicant's complaints of the alleged refusal of the Kėdainiai Home's management to allow the applicant to have personal visits and of the censorship of her communications.

93. Alternatively, the Government submitted that the application had been prepared in its entirety and lodged by D.G. and not by the applicant. They held highly critical views of D.G., claiming that she had been "not only deceiving the Court but also harming a vulnerable, mentally-ill person". The Government contended in the present case that the term "applicant" referred to D.D. only in a formal sense, as in reality the person whose will the application reflected had been D.G., and, moreover, that will had clearly contradicted the interests of D.D., who had been misled and manipulated by D.G. It followed that the application as a whole was incompatible *ratione personae* with the provisions of the Convention.

94. The applicant's lawyer considered that the Government's allegation of factual inaccuracy was best understood by reference to the fact that the parties to this application held diametrically opposed perspectives in relation to the facts presented. Both the applicant and the Government saw the same facts in a totally different light and held incompatible views on the way in which the rights of persons with psychosocial disabilities should be respected under the Convention.

95. As to the Government's second argument, the applicant's lawyer submitted that the application had been lodged with D.D.'s fully-informed consent. D.D. had been keenly aware of the proceedings and had spoken of them frequently. Attention had to be drawn to the vulnerability and isolation of persons in the applicant's position, as well as the fact that domestic legislation had denied her legal standing to initiate any legal proceedings whatsoever. Consequently, it was ironic that the Government had not recognised D.D.'s ability to represent herself in domestic proceedings, requiring by law that she did so via another person, but that before the Court the Government seemed to insist that the applicant should act alone.

Lastly, the applicant's lawyer pointed out that D.G. was the applicant's closest friend, former psychotherapist and her first guardian. Moreover, since 8 January 2008 the applicant had been represented before the Court by a legal team.

B. The Court's assessment

96. The Court first turns to the Government's objection as to the applicant's victim status, and, in particular, their allegation that the application does not express the true will of D.D. In this connection, it

recalls that the existence of a victim of a violation, that is to say, an individual who is personally affected by an alleged violation of a Convention right, is indispensable for putting the protection mechanism of the Convention into motion, although this criterion is not to be applied in a rigid, mechanical and inflexible way throughout the proceedings (see *Poznanski and Others v. Germany*, (dec.), no. 25101/05, 3 July 2007).

97. Having regard to the documents presented, the Court notes that the original application form bears D.D.'s signature, without any indication that that signature could be forged (see, by converse implication, *Poznanski*, cited above). In paragraph 13 of the application, D.D. wrote that back in 2000, on her adoptive father's initiative, she had been unlawfully declared incapacitated and in 2004 admitted to the Kėdainiai Home "for an indefinite duration". She asked that, for the purposes of the proceedings before this Court, her adoptive father not be considered her legal representative, requesting that D.G. take on that role. After the application was communicated to the Government, the applicant was reminded that, in accordance with paragraph 4 (a) of Rule 36 of the Rules of Court, she had to designate a legal representative, which she did by appointing a lawyer, Mr H. Mickevičius. In his observations in reply to those of the Government, the applicant's lawyer followed the initial complaints as presented by D.D. In the light of the above, the Court holds that D.D. has validly lodged an application in her own name and thus has the status of "victim" in respect of the complaints listed in her application. The Government's objection as to incompatibility *ratione personae* should therefore be dismissed.

98. The Court further considers that the Government's objection as to the applicant's alleged abuse of the right to petition, on account of allegedly incorrect information provided in her application form, is closely linked to the merits of her complaints under Articles 3, 5, 6, 8 and 9 of the Convention. The Court thus prefers to join the Government's objection to the merits of the case and to examine them together.

99. Lastly, the Court observes that the applicant submitted several complaints under different Convention provisions. Those complaints relate to the proceedings concerning her involuntary admission to a psychiatric institution, the appointment of her guardian, her inability to receive personal visits, interference with her correspondence, involuntary medical treatment, and so forth. Whilst noting that the complaint as to the initial appointment of a guardian has been raised outside the six months time-limit (see paragraph 19 above), the Court sees fit to start with the complaint related to the court proceedings for a change of her legal guardian and then to examine the applicant's admission to the Kėdainiai Home and the complaints stemming from it.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE PROCEEDINGS FOR A CHANGE OF LEGAL GUARDIAN

100. The applicant complained that she had not been afforded a fair hearing in respect of her application for reopening of her guardianship proceedings and had not been able to have her legal guardian changed. In support of her complaints, the applicant cited Articles 6 § 1 and 8 of the Convention. In addition, relying upon Article 13 of the Convention, the applicant argued that she had not been afforded an effective remedy to complain of the alleged violations.

The Court considers that the applicant's complaints fall to be examined under of Article 6 § 1 of the Convention, which, in so far as relevant, provides:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

A. Submissions by the parties

1. The applicant

101. The applicant submitted that the blanket ban on her right of access to court went to the heart of her right to a fair hearing and had been in breach of Article 6 § 1 of the Convention. She pointed out that on 15 September 2000 she had been declared incapacitated during proceedings that had been initiated by her adoptive father. Solely on the basis of the medical report of 19 July 2000, the Kaunas City District Court had deemed that the applicant was not to be summoned. As a result she had not taken part in those proceedings. The local authority, whose presence had been obligatory, had not made a significant contribution during the hearing and had endorsed the conclusions of the medical report. The Kaunas District Court had not provided any reasons for its decision, other than reiterating the conclusions of the forensic experts. The district court had chosen not to assess other evidence which could have potentially shed light on the applicant's circumstances, such as that which could have arisen by summoning the applicant or other witnesses, or by questioning the authors of the psychiatric report in person. The judge had not found it necessary to examine whether any ulterior reasons had underlain the incapacitation request.

102. The applicant argued, further, that she had not been given the opportunity to participate in any of the guardianship proceedings. She had never been notified of or summoned to any of the four sets of proceedings concerning the appointment or discharge of her guardian/property

administrator. For the applicant, there had been no medical or other reasons relating to her health that would have precluded her from participating. Nonetheless, the courts had invariably based their decisions on the views of the local authority without examining the personal circumstances of the applicant. The proceedings had been very summary in nature, the hearings had been brief and the rationale underpinning judgments had been almost non-existent. On 15 September 2000 the Kaunas City District Court had appointed her adoptive father as her guardian without any involvement on her part. As a result, not only had she been unable to object to his appointment, but she had also been barred from appealing against that decision.

103. The applicant emphasised that the review proceedings in 2005 initiated by her with the assistance of D.G. had been the only opportunity that she had ever had to put her point of view across before a court of law. On this occasion, she had personally addressed the Kaunas City District Court on a number of issues of the utmost importance to her, such as her incapacitation, the identity of her guardian and her admission to an institution. However, the district court had chosen to dismiss her action on narrow procedural grounds.

104. The applicant's main objection with regard to the review proceedings lay in the district court's decision to turn down her express request to be provided with independent legal aid. The explanation that the applicant was already represented by her guardian's lawyer had misunderstood the competing interests of the two parties. The effect had been to severely prejudice the ability of the applicant to engage with the procedural aspects of the hearing on which the district court's decision had turned.

105. Lastly, the applicant argued that she had been financially able to afford to employ a lawyer to represent her at that or any other of the hearings. However, she had been denied access to her own money, and at many of the hearings her interests and those of the person with control over her funds had been divergent. She concluded that in view of her vulnerable position, the procedural complexity of the proceedings and the high stakes thereof, Article 6 § 1 of the Convention had required that she be provided with free legal aid.

2. The Government

106. As to the applicant's complaint that she had not been afforded a fair hearing in relation to her request that the proceedings by which her guardian was appointed be reopened, the Government referred to the Court's case-law to the effect that the right of access to court is not absolute and that the States have a certain margin of appreciation in assessing what might be the best policy in this field (*Golder v. the United Kingdom*, 21 February 1975, § 38, Series A no. 18). That was especially true as regards persons of

unsound mind, and the Convention organs had acknowledged that such restrictions were not in principle contrary to Article 6 § 1 of the Convention, where the aim pursued was legitimate and the means employed to achieve that aim were proportionate (*G.M. v. the United Kingdom*, no. 12040/86, Commission decision of 4 May 1987, Decisions and Reports (DR) 52, p. 269).

107. Turning to the particular situation of the applicant, the Government noted that domestic law did not allow a legally incapacitated person to lodge a petition seeking that his or her guardianship be changed. As the applicant had deemed that her adoptive father was not a suitable person to be her guardian, the authorities responsible for oversight of guardians (the Social Services Department of Kaunas City Council) or a public prosecutor could have submitted an application for reopening of the proceedings. Nevertheless, the Kaunas City District Court had accepted the applicant's request for reopening for examination and on 7 November 2005 had reviewed her case with a high degree of care.

108. The hearing of 7 November 2005 at the Kaunas City District Court had taken place in the presence of the applicant, her guardian (her adoptive father) and his lawyer, and D.G., as well as in the presence of the representatives of the relevant State authorities. Whilst admitting that at that hearing the applicant had asked to be assisted by a separate lawyer, the Government submitted that the court had not been able to grant the applicant's request because of the decision of 15 September 2000 declaring her legally incapacitated. Even so, the applicant's interests had been defended by the representative of the Kėdainiai Home, the representative of the Social Services Department and the public prosecutor.

109. The Government contended that during the hearing of 7 November 2005 the applicant had not sustained her request that D.G. be appointed as her new guardian. Contrary to what the applicant had stated to the European Court, in her submissions at the hearing at issue she had agreed to keep her adoptive father as her guardian, saying that she loved him, but had expressed her wish to be released from the Kėdainiai Home. For the Government, it appeared from the transcript of the hearing that this statement had been made by the applicant before the break, but not after, contrary to her allegation of being "threatened with restraint" for disobedience.

110. The Government pointed out that, pursuant to Article 507 § 3 of the Code of Civil Procedure, the appointment of a guardian required to be heard in the presence of a representative of the authority overseeing guardians, who was required to submit the authority's conclusions to the court, and the person to be appointed as guardian. Given that both of these persons had taken part in the hearing of 21 January 2004, the Kaunas City District Court in its decision of 17 November 2005 had reasonably found that the applicant had been properly represented at the hearing of 21 January 2004, and thus

the provision on which the applicant had based her request to reopen the proceedings had not been breached.

111. Lastly, in their observations of 15 September 2008 the Government noted that as regards incapacitation proceedings the ministries had prepared legislative amendments to the Civil Code and the Code of Civil Procedure, which would be submitted to Parliament. The proposed amendments provide for compulsory representation of a person facing incapacitation proceedings before a court by a lawyer.

In the light of the preceding arguments, the Government considered that the applicant's complaint was manifestly ill-founded.

3. The intervening parties

112. The representatives of Harvard Law School submitted that in all cases a court or other judicial authority must ensure that a representative acts solely in the interests of the incapacitated person. In any case in which it is objectively apparent that the person being represented does not accept or assent to the steps taken by a representative, those matters must be explored by the judicial authorities. The judicial authorities must exercise thorough, additional supervision in all cases in which there is a filter between a person and a court, such as when a person is represented by another individual. This remains true even where the representative was appointed by a court.

113. The European Group of National Human Rights Institutions noted that the European Convention on Human Rights guaranteed rights and freedoms that must be protected regardless of an individual's level of capacity. They also saw it important to mention the Court's judgment in *Winterwerp v. the Netherlands* (24 October 1979, Series A no. 33), where the Court concluded that although mental illness may render legitimate certain limitations upon the exercise of the "right to access to court", it could not warrant the total absence of that right as embodied in Article 6 § 1.

B. The Court's assessment

1. Admisibility

114. The parties did not dispute the applicability of Article 6, under its "civil" head, to the proceedings at issue, and the Court does not see any reason to hold otherwise (see *Winterwerp*, cited above, § 73, and *Matter v. Slovakia*, no. 31534/96, § 51, 5 July 1999).

115. The Court notes that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It

further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

(a) General principles

116. In most of the previous cases before the Court involving "persons of unsound mind", the domestic proceedings concerned their detention and were thus examined under Article 5 of the Convention. However, the Court has consistently held that the "procedural" guarantees under Article 5 §§ 1 and 4 are broadly similar to those under Article 6 § 1 of the Convention (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 232, 17 January 2012 and the case-law cited therein). Therefore, in deciding whether the proceedings in the present case for the reopening of the guardianship appointment were "fair", the Court will have regard, *mutatis mutandis*, to its case-law under Article 5 § 1 (e) and Article 5 § 4 of the Convention.

117. In the context of Article 6 § 1 of the Convention, the Court accepts that in cases involving a mentally-ill person the domestic courts should also enjoy a certain margin of appreciation. Thus, for example, they can make appropriate procedural arrangements in order to secure the good administration of justice, protection of the health of the person concerned, and so forth (see *Shtukaturov v. Russia*, no. 44009/05, § 68, ECHR 2008).

118. The Court accepts that there may be situations where a person deprived of legal capacity is entirely unable to express a coherent view or give proper instructions to a lawyer. It considers, however, that in many cases the fact that an individual has to be placed under guardianship because he lacks the ability to administer his affairs does not mean that he is incapable of expressing a view on his situation and thus of coming into conflict with the guardian. In such cases, when the conflict potential has a major impact on the person's legal situation, such as when there is a proposed change of guardian, it is essential that the person concerned should have access to court and the opportunity to be heard either in person or, where necessary, through some form of representation. Mental illness may entail restricting or modifying the manner of exercise of such a right, but it cannot justify impairing the very essence of the right, except in very exceptional circumstances such as those mentioned above. Indeed, special procedural safeguards may prove called for in order to protect the interests of persons who, on account of their mental health issues, are not fully capable of acting for themselves (see, *mutatis mutandis*, *Winterwerp*, cited above, § 60).

119. The Court reiterates that the key principle governing the application of Article 6 is fairness. Even in cases where an applicant appears in court notwithstanding lack of assistance by a lawyer and manages to conduct his or her case in the face of all consequent difficulties, the question may

nonetheless arise as to whether this procedure was fair (see, *mutatis mutandis*, *McVicar v. the United Kingdom*, no. 46311/99, §§ 50-51, ECHR 2002-III). The Court also recalls that there is the importance of ensuring the appearance of the fair administration of justice and a party to civil proceedings must be able to participate effectively, *inter alia*, by being able to put forward the matters in support of his or her claims. Here, as with other aspects of Article 6, the seriousness of what is at stake for the applicant will be of relevance to assessing the adequacy and fairness of the procedures (see *P., C. and S. v. the United Kingdom*, no. 56547/00, § 91, ECHR 2002-VI).

(b) Application to the present case

120. Turning to the circumstances of the instant case, the Court again notes that it cannot examine the applicant's initial placement under guardianship (see paragraph 99 above). Even so, the Court cannot overlook the fact that back in 2000 the applicant did not participate in the court proceedings for her incapacitation. In particular, nothing suggests that the court notified the applicant of its own accord of the hearing at which her personal autonomy in almost all areas of life was at issue, including the eventual limitation of her liberty (see paragraph 12 above). Furthermore, as transpires from the decision of the Kaunas City District Court of 15 September 2000, it ruled exclusively on the basis of the medical panel's report, without having summoned the medical experts who authored the report for questioning. Neither did the court call to testify any other witnesses who could have shed some light as to the personality of the applicant. Accordingly, the applicant was unable to participate in the proceedings before the Kaunas City District Court in any form. Given that the potential finding of the applicant being of unsound mind was, by its very nature, largely based on the applicant's personality, her statements would have been an important part of the applicant's presentation of her case, and virtually the only way to ensure adversarial proceedings (see, *mutatis mutandis*, *Kovalev v. Russia*, no. 78145/01, §§ 35-37, 10 May 2007; also see Principle 13 of the Recommendation No. R (99) 4 by the Council of Europe).

121. The Court also notes that on 21 January 2004 the Kaunas City District Court appointed the applicant's adoptive father as her legal guardian. The applicant was again not summoned because the court apparently considered her attendance to be unnecessary.

122. Next, the Court turns to the proceedings regarding the change of the applicant's guardianship in 2005. The Court notes that there is no indication that at that moment in time the applicant was suffering from an incapacity of such a degree that her personal participation in the proceedings would have been meaningless. Although health care officials had considered that her involvement in the proceedings relating to her initial placement under

guardianship in 2000 was unnecessary, as she had apparently been unable to provide them with an objective opinion (see paragraph 11 above), she did in fact participate in the hearing relating to the change of guardian on 7 November 2005. Indeed, she not only stated unequivocally that she maintained her request that the guardianship proceedings be reopened and asked to be assisted by a lawyer but also made a number of other submissions about the proceedings and expressed a clear view on various matters. In particular, the applicant emphasised that she had not been summoned to the hearing during which her adoptive father had been appointed her guardian. She also expressed her desire to leave the Kėdainiai Home. Taking into account the fact that the applicant was an individual with a history of psychiatric troubles, and the complexity of the legal issues at stake, the Court considers that it was necessary to provide the applicant with a lawyer.

123. The Government argued that the Kaunas City District Court's finding that the applicant, who lacked legal capacity, had been properly represented by her adoptive father's lawyer had been correct and in compliance with domestic law. However, the crux of the complaint is not the legality of the decision under domestic law but the "fairness" of the proceedings from the standpoint of the Convention and the Court's case-law.

124. As emerges from the materials before the Court, the relationship between the applicant and her adoptive father has not always been positive. Quite the contrary, on numerous occasions the applicant had contacted State authorities claiming that there was a dispute between the two of them, which culminated in her being deprived of legal capacity and her liberty (see paragraphs 32, 33 and 60 above). What is more, the social services had also noted disagreement between the applicant and her adoptive father (see paragraph 18 above). Lastly, on at least one occasion the applicant's adoptive father had himself acknowledged their strained relationship (see paragraph 14 above). Accordingly, the Court finds merit in the applicant's argument that, because of the conflicting interests of her and her legal guardian, her guardian's lawyer could in no way have represented her interests properly. In the view of the Court, the interests of a fair hearing required that the applicant be granted her own lawyer.

125. The Government suggested that a representative of the social services and the district prosecutor attended the hearing on the merits, thus protecting the applicant's interests. However, in the Court's opinion, their presence did not make the proceedings truly adversarial. As the transcript of the hearing of 7 November 2005 shows, the representatives of the social services, the prosecutor, the doctors from the Kėdainiai Home and the Kaunas Psychiatric Hospital clearly supported the position of the applicant's adoptive father – that he should remain D.D.'s legal guardian.

126. Finally, the Court recalls that it must always assess the proceedings as a whole (see *C.G. v. the United Kingdom*, no. 43373/98, § 35, 19 December 2001). In particular, and turning to the spirit in which the hearing of 7 November 2005 was held, the Court notes that the judge refused a request by D.G. that an audio recording be made. Be that as it may, the Court is not able to overlook the applicant's complaint, although denied by the Government, that the judge did not allow her to sit near D.G., the only person whom the applicant trusted. Neither can the Court ignore the allegation that during the break the applicant was forced to leave the hearing room and to go to the judge's office, after which measure the applicant declared herself content (see paragraphs 41 and 42 above). Against this background, the Court considers that the general spirit of the hearing further compounded the applicant's feelings of isolation and inferiority, taking a significantly greater emotional toll on her than would have been the case if she would have had her own legal representation.

127. In the light of the above considerations and taking into account the events that preceded the examination of the applicant's request for reopening of her guardianship proceedings, the Court concludes that the proceedings before the Kaunas City District Court on 7 November 2005 were not fair. Accordingly, the Government's preliminary objection of abuse of application must be dismissed. The Court holds that there has been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

128. Under Article 5 § 1 of the Convention the applicant complained that her involuntary admission to the Kėdainiai Home had been unlawful. Article 5, in so far as relevant, provides:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (e) the lawful detention of persons ... of unsound mind..."

A. Submissions by the parties

1. The applicant

129. The applicant maintained her claims. She alleged that her involuntary admission to the Kėdainiai Home after 2 August 2004 had

amounted to a "deprivation of liberty" within the meaning of Article 5 § 1 of the Convention.

130. With regard to the objective element of her complaint, the applicant argued that her liberty had been restricted on account of her complete confinement and the extreme degree of control over her daily life. The applicant, like other residents, had not been able to leave the grounds of the Kėdainiai Home. If a resident left without permission, the director was bound to inform the police immediately. The applicant had tried to abscond twice, in 2006 and 2007, only to be brought back by the police. Furthermore, the applicant had been entirely under the control of staff at the institution, who had been able to medicate her by force or coercion, place her in isolation or tie her down, as exemplified by the incident of 25 January 2005. According to the findings of the Prosecutor's Office, on that day the applicant had been tied down to a bed in the isolation room and forcibly medicated, in contravention of the internal rules of the institution. It would be plain upon visiting the Kėdainiai Home that the vast majority of residents are heavily medicated.

131. Further, the applicant complained that all aspects of her life are controlled by the staff. Although in theory she is allowed to receive visits from people outside the institution, this right is subject to approval from the director. Upon her admission to the Kėdainiai Home in 2004, all visits other than those from her guardian had been restricted for a lengthy period of time.

The applicant submitted that she cannot decide whether or when to stay in bed, there is a limited range of activities for her to take part in, she is not free to make routine choices like other adults – for example, about her diet, daily activities and social contacts. She is subject to constant supervision.

132. With respect to the subjective element of her complaint, the applicant noted that her case was diametrically opposite to that of *H.M. v. Switzerland* (no. 39187/98, § 47, ECHR 2002-II), where the applicant had agreed to her admission to a nursing home. In the present case, the applicant's views had not been sought, either at the time of her admission or during her continued involuntary placement in the Kėdainiai Home. However, under Lithuanian law it had, in fact, been irrelevant whether she had consented or not to her detention, because an individual lacking legal capacity and placed under guardianship becomes a non-entity under the law and loses the capacity to take any decisions. Even so, whilst she had been incapable *de jure*, she had still, in fact, been capable of expressing her consent. She had expressed strong objections about her continued involuntary admission to the institution, most emphatically by running away twice, in her arguments before the domestic court, in her correspondence with various State authorities and, finally, by submitting a complaint to the Court.

133. In sum, the applicant's involuntary admission to and continued residence in the Kėdainiai Home after 2 August 2004 constituted a "deprivation of liberty" within the meaning of Article 5 § 1 of the Convention.

134. Lastly, the applicant submitted that her admission to the Kėdainiai institution was not lawful. The authorities involved in placing her in a psychiatric institution or those supervising the guardian's activities failed to consider whether other less restrictive community-based arrangements would have been more suitable to address the applicant's mental health problems. Instead they simply acquiesced in the guardian's request to have the applicant placed in an institution. Most importantly, the applicant was excluded from this decision-making process altogether. Consequently, the applicant saw her detention as arbitrary, in contradiction with Article 5 § 1 (e) of the Convention.

2. The Government

135. The Government argued, first, that Article 5 of the Convention was not applicable to the instant case. They submitted that the Kėdainiai Home was an institution for providing social services and not forced treatment under a regime corresponding to that of a psychiatric institution. Whilst admitting that certain medical services continued to be provided in the Kėdainiai Home, the institution at issue was not primarily used for the purposes of hospitalisation or medical treatment. Having regard to the fact that the Kėdainiai Home had to take care of adults suffering from mental health problems, it followed that the limited restrictions on the applicant had corresponded to the nature of the facility and had been no more than normal requirements (*Nielsen v. Denmark*, 28 November 1988, § 72, Series A no. 144).

136. Turning to the particular situation of the applicant, the Government submitted that until September 2007 the applicant had lived in a part of the Kėdainiai Home called "Apytalaukis", which had been an open facility. Although its grounds had been fenced, the gates had not been locked and residents had been able to leave the territory as they wished. The doors of the building had stayed unlocked. The same conditions had remained after the applicant's resettlement, except that the grounds had not even been fenced. According to the personnel of the Kėdainiai Home, the applicant had not always adhered to the internal rules of the institution and had failed to inform the staff before leaving the grounds and going for a walk. Even so, this had neither been considered as absconding, nor had the applicant been sanctioned in any way. Also, similarly to the facts in *H.M. v. Switzerland* (cited above), and with the exception of the incident of 25 January 2005, the applicant had never been placed in a secure ward. Moreover, she had been free to maintain personal contacts, to write and receive letters, to practise her religion and to make phone calls.

137. As to the medical treatment the applicant had received in the Kėdainiai Home, the Government submitted that, except for the incident of 25 January 2005, she had not been forcefully medicated. Each time she had been required to take medicine a psychiatrist had talked to her and had explained the need for treatment. There had been periods when the applicant had refused to take medicine; those periods had always been followed by the deterioration of her mental health. However, after some time the applicant had usually accepted the doctors' arguments and had agreed to continue treatment. The social and medical care she had received in the Kėdainiai Home had had a positive effect on the applicant, because her mental state had stabilised. Since her admission to the Kėdainiai Home she had never been hospitalised, whereas prior to that she had used to be hospitalised at least once a year.

In sum, the limited restrictions to which the applicant had been subjected in the Kėdainiai Home had all been necessary due to the severity of her mental illness, had been in her interests and had been no more than the normal requirements associated with the responsibilities of a social care institution taking care of inhabitants suffering from mental health problems.

138. The Government also noted that the admission of the applicant to the Kėdainiai Home had stemmed from her guardian's decision and not from a decision of the State or the municipal authorities. The applicant's adoptive father, as her guardian, had been empowered to act on her behalf and with the aim of exercising and protecting her rights and interests. In addition, the involvement of the municipal and State authorities in examining the applicant's situation and state of mind had played an important role in verifying the best interests of the applicant and had provided necessary safeguards against any arbitrariness in the guardian's decisions.

139. Turning to the subjective element of the applicant's case, the Government submitted that the applicant was legally incapacitated and had thus lacked the decision-making capacity to consent or object to her admission. Her guardian and not the authorities had been able to decide on her place of residence.

140. In the light of the above considerations, the Government argued that this part of the application was incompatible *ratione materiae* with Article 5 § 1 of the Convention.

141. Alternatively, should the Court find that Article 5 § 1 was applicable to the applicant's complaints, the Government contended that they were not founded. The applicant's admission to the Kėdainiai Home had been lawful, given that it had been carried out in accordance with the procedure established by domestic law. Under the law, a person can be admitted to an institution at the request of the guardian, provided that the person is suffering from a mental disorder. The applicant was admitted to the hospital at the request of her official guardian in relation to a worsening

of her mental condition. Furthermore, in the view of the Government, the involvement of the authorities in the procedure for the applicant's admission had provided safeguards against any possible abuses.

142. In the further alternative, the Government submitted that even if the restrictions on the applicant's movement could be considered as falling within Article 2 of Protocol No. 4 to the Convention, those restrictions had been lawful and necessary.

B. The Court's assessment

1. Admissibility

143. The Government argued that the conditions in which the applicant is institutionalised in the Kėdainiai Home are not so restrictive as to fall within the meaning of "deprivation of liberty" as established by Article 5 of the Convention. However, the Court cannot subscribe to this thesis.

144. It reiterates that in order to determine whether there has been a deprivation of liberty, the starting point must be the concrete situation of the individual concerned. Account must be taken of a whole range of factors arising in a particular case such as the type, duration, effects and manner of implementation of the measure in question (see *Guzzardi v. Italy*, 6 November 1980, § 92, Series A no. 39; and *Ashingdane v. the United Kingdom*, 28 May 1985, § 41, Series A no. 93).

145. The Court further recalls that the notion of deprivation of liberty within the meaning of Article 5 § 1 does not only comprise the objective element of a person's confinement in a particular restricted space for a not negligible length of time. A person can only be considered to have been deprived of his liberty if, as an additional subjective element, he has not validly consented to the confinement in question (see, *mutatis mutandis*, *H.M. v. Switzerland*, cited above, § 46).

146. In the instant case the Court observes that the applicant's factual situation in the Kėdainiai Home is disputed. Be that as it may, the fact whether she is physically locked in the Kėdainiai facility is not determinative of the issue. In this regard, the Court notes its case-law to the effect that a person could be considered to have been "detained" for the purposes of Article 5 § 1 even during a period when he or she was in an open ward with regular unescorted access to unsecured hospital grounds and the possibility of unescorted leave outside the hospital (see *H.L. v. the United Kingdom*, no. 45508/99, § 92, ECHR 2004-IX). As concerns the circumstances of the present case, the Court considers that the key factor in determining whether Article 5 § 1 applies to the applicant's situation is that the Kėdainiai Home's management has exercised complete and effective control by medication and supervision over her assessment, treatment, care, residence and movement from 2 August 2004, when she was admitted to

that institution, to this day (ibid., § 91). As transpires from the rules of the Kėdainiai Home, a patient therein is not free to leave the institution without the management's permission. In particular, and as the Government have themselves admitted in their observations on the admissibility and merits, on at least one occasion the applicant left the institution without informing its management, only to be brought back by the police (see paragraph 29 above). Moreover, the director of the Kėdainiai Home has full control over whom the applicant may see and from whom she may receive telephone calls (see paragraph 81 above). Accordingly, the specific situation in the present case is that the applicant is under continuous supervision and control and is not free to leave (see *Storck v. Germany*, no. 61603/00, § 73, ECHR 2005-V). Any suggestion to the contrary would be stretching credulity to breaking point.

147. Considerable reliance was placed by the Government on the Court's judgment in *H.M.* (cited above), in which it was held that the placing of an elderly applicant in a foster home in order to ensure necessary medical care as well as satisfactory living conditions and hygiene did not amount to a deprivation of liberty within the meaning of Article 5 of the Convention. However, each case has to be decided on its own particular "range of factors" and, while there may be similarities between the present case and *H.M.*, there are also distinguishing features. In particular, it was not established that H.M. was legally incapable of expressing a view on her position. She had often stated that she was willing to enter the nursing home and, within weeks of being there, she had agreed to stay, in plain contrast to the applicant in the instant case. Further, a number of safeguards – including judicial scrutiny – were in place in order to ensure that the placement in the nursing home was justified under domestic and international law. This led to the conclusion that the facts in *H.M.* were not of a "degree" or "intensity" sufficiently serious to justify a finding that H.M. was detained (see *Guzzardi*, cited above, § 93). By contrast, in the present case the applicant was admitted to the institution upon the request of her guardian without any involvement of the courts.

148. As to the facts in *Nielsen*, the other case relied on by the Government, the applicant in that case was a child, hospitalised for a strictly limited period of time of only five and a half months, on his mother's request and for therapeutic purposes. The applicant in the present case is a functional adult who has already spent more than seven years in the Kėdainiai Home, with negligible prospects of leaving it. Furthermore, in contrast to this case, the therapy in *Nielsen* consisted of regular talks and environmental therapy and did not involve medication. Lastly, as the Court found in *Nielsen*, the assistance rendered by the authorities when deciding to hospitalise the applicant was "of a limited and subsidiary nature" (§ 63), whereas in the instant case the authorities contributed substantially to the applicant's admission to and continued residence in the Kėdainiai Home.

149. Assessing further, the Court draws attention to the incident of 25 January 2005, when the applicant was restrained by the Kėdainiai Home staff. Although the applicant was placed in a secure ward, given drugs and tied down for a period of only fifteen to thirty minutes, the Court notes the particularly serious nature of the measure of restraint and observes that where the facts indicate a deprivation of liberty within the meaning of Article 5 § 1, the relatively short duration of the detention does not affect this conclusion (see *X v. Germany*, no. 8819/79, Commission decision of 19 March 1981, DR 24, pp. 158, 161; and *Novotka v. Slovakia* (dec.), no. 47244/99, 4 November 2003).

150. The Court next turns to the "subjective" element, which was also disputed between the parties. The Government argued that the applicant lacked *de jure* legal capacity to decide matters for herself. However, this does not necessarily mean that the applicant was *de facto* unable to understand her situation (see *Shtukaturov v. Russia*, no. 44009/05, § 108, ECHR 2008). Whilst accepting that in certain circumstances, due to severity of his or her incapacity, an individual may be wholly incapable of expressing consent or objection to being confined in an institution for the mentally handicapped or other secure environment, the Court finds that that was not the applicant's case. As transpires from the documents presented to the Court, the applicant subjectively perceived her compulsory admission to the Kėdainiai Home as a deprivation of liberty. Contrary to what the Government suggested, she has never regarded her admission to the facility as consensual and has unequivocally objected to it throughout the entire duration of her stay in the institution. On a number of occasions the applicant requested her discharge from the Kėdainiai Home by submitting numerous pleas to State authorities and, once she was given the only possibility to address a judicial institution, to the Kaunas City District Court (see paragraphs 34 and 37 above). She even twice attempted to escape from the Kėdainiai facility (see, *a fortiori*, *Storck*, cited above, § 73). In sum, even though the applicant had been deprived of her legal capacity, she was still able to express an opinion on her situation, and in the present circumstances the Court finds that the applicant had never agreed to her continued residence at the Kėdainiai Home.

151. Lastly, the Court notes that although the applicant's admission was requested by the applicant's guardian, a private individual, it was implemented by a State-run institution – the Kėdainiai Home. Therefore, the responsibility of the authorities for the situation complained of was engaged (see *Shtukaturov*, cited above, § 110).

152. In the light of the foregoing the Court concludes that the applicant was "deprived of her liberty" within the meaning of Article 5 § 1 of the Convention from 2 August 2004 and remains so to this day.

153. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

154. The Government argued that the applicant had been admitted to the Kėdainiai Home lawfully. The Court accepts that the applicant's involuntary admission was "lawful", if this term is construed narrowly, in the sense of the formal compatibility of the applicant's involuntary admission with the procedural and material requirements of domestic law (see paragraph 79 above). It appears that the only condition necessary for the applicant's admission was the consent of her official guardian, her adoptive father, who was also the person who had initially sought the applicant's admission to the Kėdainiai Home.

155. However, the Court reiterates that the notion of "lawfulness" in the context of Article 5 § 1 (e) has also a broader meaning. The notion underlying the term "procedure prescribed by law" is one of fair and proper procedure, namely that any measure depriving a person of his liberty should issue from and be executed by an appropriate authority and should not be arbitrary (see *Winterwerp*, cited above, § 45).

156. The Court also recalls that in *Winterwerp* (paragraph 39) it set out three minimum conditions which have to be satisfied in order for there to be "the lawful detention of a person of unsound mind" within the meaning of Article 5 § 1 (e): except in emergency cases, the individual concerned must be reliably shown to be of unsound mind, that is to say, a true mental disorder must be established before a competent authority on the basis of objective medical expertise; the mental disorder must be of a kind or degree warranting compulsory confinement; and the validity of continued confinement depends upon the persistence of such a disorder.

157. Turning to the present case, the Court notes that just a few weeks before her placement in the Kėdainiai Home on 2 August 2004, the applicant had been admitted to and examined at the Kaunas Psychiatric Hospital (see, by converse implication, *Stanev*, cited above, § 156). A medical panel of that hospital concluded that at that time the applicant suffered from "continuous paranoid schizophrenia". The doctors' commission deemed it appropriate for the applicant to live in a "social care institution for the mentally handicapped". The Court further observes that soon thereafter a social worker concluded that the applicant was not able to live on her own, as she could not take care of herself, did not understand the value of money, did not clean her apartment and wandered in the city hungry. The Court also notes the social worker's testimony as to the unpredictability of the applicant's behaviour, given that sometimes she would get angry at people and shout at them without a reason (see

paragraphs 22 and 23 above). That being so and recalling the fact that the applicant had a history of serious mental health problems since 1979, the Court is ready to find that the applicant has been reliably shown to have been suffering from a mental disorder of a kind and degree warranting compulsory confinement and the conditions as defined in *Wintertwerp* had thus been met in her case. Furthermore, the Court also considers that no other measures were available in the circumstances. As noted by the social worker, the applicant's adoptive father, who was her legal guardian, could not "manage" her (see paragraph 23 above). On this point the Court also takes notice of the fact that even being removed from institutional care and taken to her adoptive father's apartment, the applicant escaped and was found by the police only three months later (see paragraph 29 above). In these circumstances the Court concludes that the applicant's compulsory confinement was necessary (see *Stanev*, cited above, § 143) and no alternative measures had been appropriate in the circumstances of the case. The Court lastly observes, and it has not been disputed by the applicant, that in situations such as hers the domestic law did not provide that placement in a social care institution would be decided by a court (see, by converse implication, *Gorobet v. Moldova*, no. 30951/10, § 40, 11 October 2011).

158. In the light of the above, the Court cannot but conclude that the applicant's confinement to the Kėdainiai Home on 2 August 2004 was "lawful" within the meaning of Article 5 § 1 (e) of the Convention. Accordingly, there has been no violation of Article 5 § 1.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

159. The applicant complained that she is unable to obtain her release from the Kėdainiai Home. Article 5 § 4, relied on by the applicant, provides as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Submissions by the parties

160. The applicant submitted that she had been admitted to the Kėdainiai Home upon her guardian's request and with the authorisation of an administrative panel. The lawfulness of her involuntary hospitalisation had not been reviewed by a court, either upon her admission or at any other subsequent time. Being deprived of her legal capacity, the applicant submitted that she is prevented from independently pursuing any judicial legal remedy to challenge her continued involuntary hospitalisation. In

relation to the possibility supposedly at the applicant's disposal of asking for a prosecutorial inquiry, this remedy could not be regarded *per se* as judicial review satisfying the requirements of Article 5 § 4. As for the possibilities identified by the Government, namely to ask social services or a prosecutor to initiate a review of the applicant's medical condition, these procedures were discretionary. In any event, the applicant had filed a number of complaints with the prosecutor's office and other authorities, which had unanimously concluded that her hospitalisation in the Kėdainiai Home had been carried out in accordance with the domestic law, thus being disinclined to take any action to override the will of her adoptive father, acting as her legal guardian. Once the Kėdainiai Home had become her guardian, it had been clear that that facility clearly had an interest in stifling any of the applicant's complaints and in keeping her in the institution. The applicant therefore submitted that her rights under Article 5 § 4 of the Convention had been breached.

161. The Government maintained that the applicant had had an effective remedy to challenge her hospitalisation at the Kėdainiai facility. Thus, she had been able to apply for release or complain about the actions of the medical staff through her guardians, who had represented her in dealings with third parties, including the courts. Further, the applicant had been able to ask the social services authorities or a prosecutor to initiate a review of her situation. For the Government, the applicant's complaint was unfounded.

B. The Court's assessment

1. Admissibility

162. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

163. Among the principles emerging from the Court's case-law on Article 5 § 4 concerning "persons of unsound mind" are the following:

(a) a person of unsound mind who is compulsorily confined in a psychiatric institution for an indefinite or lengthy period is in principle entitled, at any rate where there is no automatic periodic review of a judicial character, to take proceedings "at reasonable intervals" before a court to put in issue the "lawfulness" – within the meaning of the Convention – of his detention;

(b) Article 5 § 4 requires that the procedure followed have a judicial character and give to the individual concerned guarantees appropriate to the kind of deprivation of liberty in question; in order to determine whether a proceeding provides adequate guarantees, regard must be had to the particular nature of the circumstances in which such proceeding takes place;

(c) the judicial proceedings referred to in Article 5 § 4 need not always be attended by the same guarantees as those required under Article 6 § 1 for civil or criminal litigation. Nonetheless, it is essential that the person concerned should have access to a court and the opportunity to be heard either in person or, where necessary, through some form of representation. Special procedural safeguards may prove called for in order to protect the interests of persons who, on account of their mental disabilities, are not fully capable of acting for themselves (see *Megyeri v. Germany*, 12 May 1992, § 22, Series A no. 237-A; also see *Stanev*, cited above, § 171).

164. This is so in cases where the original detention was initially authorised by a judicial authority (see *X v. the United Kingdom*, 5 November 1981, § 52, Series A no. 46), and it is all the more true in the circumstances of the present case, where the applicant's placement in the Kėdainiai Home was initiated by a private individual, namely the applicant's guardian, and decided upon by the municipal and social care authorities without any involvement on the part of the courts.

165. The Court accepts that the forms of judicial review may vary from one domain to another and may depend on the type of the deprivation of liberty at issue. It is not within the province of the Court to inquire into what would be the best or most appropriate system of judicial review in this sphere. However, in the present case the courts were not involved in deciding on the applicant's placement in the Kėdainiai Home at any moment or in any form. It appears that, in situations such as the applicant's, Lithuanian law does not provide for automatic judicial review of the lawfulness of admitting a person to and keeping him in an institution like the Kėdainiai Home. In addition, a review cannot be initiated by the person concerned if that person has been deprived of his legal capacity. In sum, the applicant was prevented from independently pursuing any legal remedy of a judicial character to challenge her continued involuntary institutionalisation.

166. The Government claimed that the applicant could have initiated legal proceedings through her guardians. However, that remedy was not directly accessible to her: the applicant fully depended on her legal guardian, her adoptive father, who had requested her placement in the Kėdainiai Home in the first place. The Court also observes that the applicant's current legal guardian is the Kėdainiai Home – the same social care institution which is responsible for her treatment and, furthermore, the same institution which the applicant had complained against on many occasions, including in court proceedings. In this context the Court considers that where a person capable of expressing a view, despite having

been deprived of legal capacity, is deprived of his liberty at the request of his guardian, he must be accorded an opportunity of contesting that confinement before a court, with separate legal representation. Lastly, as to the prospect of an inquiry carried out by the prosecuting authorities, the Court shares the applicant's observation that a prosecutorial inquiry cannot as such be regarded as judicial review satisfying the requirements of Article 5 § 4 of the Convention (see *Shtukaturov*, cited above, § 124).

167. In the light of the above, the Court dismisses the Government's preliminary objection of abuse of application and holds that there has also been a violation of Article 5 § 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLES 3 AND 8 OF THE CONVENTION

168. Relying on Articles 3 and 8 of the Convention, the applicant complained of having been physically restrained on 25 January 2005, when she had been tied to a bed in an isolation room, and of the overall standard of medical treatment in the Kėdainiai Home. She also argued that she had been given poor quality food.

The Court considers that in the particular circumstances of the present case these complaints fall to be examined under Article 3 of the Convention, which reads, in so far as relevant as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. The parties' submissions

169. The applicant submitted that she had been forced to take medication provided by the Kėdainiai Home with little or no information about its use. On occasions she had refused medication, but had generally acquiesced to its administration because of persistent pressure from the staff. The incident of 25 January 2005 had exemplified that pressure at its worst, though the coercion is generally less dramatic and persistent.

170. The applicant also complained that at the Kėdainiai institution she had been given out-of-date products to eat.

171. The Government argued that the measures used in respect of the applicant had been therapeutic and necessary. Turning to the events of 25 January 2005, they submitted that the social workers had decided on their own to tie down the applicant as they had been afraid for her life. Although the exact length of time that the applicant had been tied up for was not clear, it could have lasted for only fifteen to thirty minutes and had not continued any longer than necessary. During the incident the applicant had been forcibly injected with 10 mg of Haloperidol, whilst the average

therapeutic dosage of the said medication is 12 mg. Haloperidol is a common antipsychotic medicament prescribed for individuals suffering from schizophrenia in order to eliminate the symptoms of psychosis. According to the generally accepted principles of psychiatry, medical necessity had fully justified the treatment in issue. The Government also drew the Court's attention to the prosecutor's decision of 31 July 2006 to discontinue the pre-trial investigation in connection with the applicant's forced restraint. They also noted the absence of any other similar incidents at the Kėdainiai Home in respect of the applicant. The Government summed up that even if the treatment of the applicant on 25 January 2005 had had unpleasant effects, it had not reached the minimum level of severity required under Article 3 of the Convention.

172. As to the applicant's complaint that she had been provided poor quality food, the Government submitted that although the authorities had found out-of-date meat in the Kėdainiai Home, the meat had been frozen and had never been used for cooking. A follow-up report of 20 February 2006 did not contain any evidence that the applicant had complained of failure to provide any medical assistance to her in respect of alleged food poisoning. For the Government, the applicant's accusations towards the care institution were unsubstantiated and hence manifestly ill-founded.

B. The Court's assessment

173. Referring to its settled case-law the Court reiterates that the position of inferiority and powerlessness which is typical of patients admitted on an involuntary basis to psychiatric hospitals calls for increased vigilance in reviewing whether the Convention has been complied with. While it is for the medical authorities to decide, on the basis of the recognised rules of medical science, on the therapeutic methods to be used, if necessary by force, to preserve the physical and mental health of patients who are entirely incapable of deciding for themselves and for whom they are therefore responsible, such patients nevertheless remain under the protection of Article 3, whose requirements permit of derogation.

The established principles of medicine are admittedly in principle decisive in such cases; as a general rule, a measure which is a therapeutic necessity cannot be regarded as inhuman or degrading. The Court must nevertheless satisfy itself that the medical necessity has been convincingly shown to exist (see *Herczegfalvy v. Austria*, 24 September 1992, § 82, Series A no. 244).

174. In this case it is above all the applicant's restraint on 25 January 2005 which appears worrying. However, the evidence before the Court is not sufficient to disprove the Government's suggestion that, according to the psychiatric principles generally accepted at the time, medical necessity justified the treatment in issue. Moreover, the applicant's allegations that the

use of restraint measures had been unlawful were dismissed by the prosecutors and the Court sees no valid reason to dispute their findings (see paragraphs 54-58 above). The Court also notes the Government's affirmation that there were no more similar incidents in the Kėdainiai Home in which physical restraint and supplementary medication had been used in respect of the applicant.

175. Turning to the applicant's submission of allegedly poor quality food and food poisoning, the Court notes with concern that out-of-date meat was found at the Kėdainiai Home (see paragraph 63 above). However, that fact alone is not sufficient to substantiate the applicant's accusations of inhuman or degrading treatment, as directed towards the Kėdainiai institution, to such an extent that an issue under Article 3 of the Convention would arise.

176. The Court accordingly finds that the above complaints must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

A. Censorship of correspondence

177. The applicant alleged that the Kėdainiai Home had censored her correspondence, in breach of Article 8 of the Convention, which reads insofar as relevant as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

1. The parties' submissions

178. The applicant argued that her correspondence, including that with the Court, and her telephone conversations, as illustrated by the incident of 18 January 2005, had been censored by the Kėdainiai Home. She also submitted that she had been denied books and newspapers.

179. The Government disputed the applicant's submissions and argued that the residents of the Kėdainiai Home were guaranteed the right to receive periodicals and personal correspondence. There were no requirements that the residents should send or receive their correspondence through the personnel of the facility.

180. As to the particular situation of the applicant, the Government underlined that there had been neither stopping nor censorship of any of her communications, such as telephone conversations or letters, including those with the Court. Such allegations were totally unsubstantiated and there was no proof that any acts of interception of communications had occurred. As regards the only specified incident involving the telephone call from Ms M. Buržinskienė on 18 January 2005, which the applicant had not been invited to answer, the Government noted that in the context of a more intensified deterioration of the applicant's health, the Kėdainiai Home personnel might have decided not to have the applicant temporarily disturbed. Nonetheless, since 2005 the applicant had possessed several of her own mobile phones and had used them at her own convenience and without hindrance. Furthermore, the applicant had not indicated either the addressees of her supposedly intercepted correspondence, or, at least, the approximate dates of such letters. Lastly, the Government submitted that the Kėdainiai Home had a room with newspapers, periodicals and books, to which all the residents, including the applicant, had unrestricted access.

Relying on the above considerations, the Government argued that the applicant's complaint was manifestly ill-founded.

2. The Court's assessment

181. The Court recalls its case-law to the effect that telephone calls made from business premises, as well as from the home, may be covered by the notions of "private life" and "correspondence" within the meaning of Article 8 § 1 (see *Halford v. the United Kingdom*, 25 June 1997, § 44, *Reports of Judgments and Decisions* 1997-III). Turning to the applicant's situation, it observes that on 18 January 2005 the applicant was indeed prevented from receiving a telephone call from Ms Buržinskienė. However, taking into account the applicant's medical diagnosis and the explanations provided by the Government, the Court is not ready to hold that on that occasion the applicant's rights under Article 8 were limited more than was strictly necessary. The Court also notes that this part of the complaint has been raised out of time, as required by Article 35 § 1 of the Convention.

182. Furthermore, having examined the materials submitted by the parties, the Court finds the applicant's other complaints in this part of the application not sufficiently substantiated and therefore rejects them as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

B. Visits

1. The parties' submissions

183. The applicant further argued that her ability to build and sustain relationships had also been limited due to restrictions placed on her capacity to receive visitors and telephone calls. The applicant has had very little contact with members of the community outside the facility. Outsiders' visits are generally limited and most visitors may not be received in private. The director of the Kėdainiai Home had in the past restricted visits from outsiders after the applicant's institutionalisation, upon a request from her guardian. The list of visitors maintained by the Kėdainiai Home showed that between 2 August 2004 and 25 December 2006 only the applicant's adoptive father had visited her, with few exceptions. Before the applicant got her own mobile phone, she had had to use the facilities provided by the institution. At that time, she had only been able to receive calls through the Kėdainiai Home's switchboard. She relied upon the right to respect for private and family life under the above-cited Article 8 of the Convention.

184. The Government pointed out that the applicant, as with the other residents of the Kėdainiai Home, was entitled to unrestricted visits by her relatives and her court-appointed guardians. As to other visitors, such individuals could visit residents upon having obtained the management's permission, which was required in order to protect the interests and the safety of the residents of the institution.

185. The Government submitted that the applicant's adoptive father, as her guardian, had requested that the Kėdainiai Home prevent D.G.'s negative influence over the applicant and restrict her visits in order to avoid the applicant's destabilisation. Only once on 18 August 2004, in accordance with that request and also having the oral consent of the in-house psychiatrist, had D.G.'s permission to visit been denied. In that connection, the Government also referred to a doctor's report concerning the negative influence of D.G. over the applicant. Relying on the record of visitors to the Kėdainiai Home, the Government asserted that, contrary to what had been said by the applicant, she had received visitors. In contrast to what had been suggested by the applicant, it had not been her relatives, but rather her friends who had most often visited her.

186. In the light of the above, the Government submitted that the applicant's complaint was manifestly ill-founded.

2. The Court's assessment

187. The Court reiterates that Article 8 of the Convention is intended to protect individuals from arbitrary interference by the State in their private and family life, home and correspondence. The Court does not consider it possible or necessary to attempt an exhaustive definition of the notion of

"private life". However, it would be too restrictive to limit the notion to an "inner circle" in which the individual may live his own personal life as he chooses and to entirely exclude therefrom the outside world not encompassed within that circle. Respect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings (see *Niemietz v. Germany*, 16 December 1992, § 29, Series A no. 251-B).

188. Turning to the applicant's case, the Court notes that, except for one occasion on which D.G. was not allowed to see her on 18 August 2004, the applicant has not substantiated her pleas of social isolation and restrictions on having people visit her. Even assuming that these matters have been raised in time, the Court is not ready to disagree with the Government's suggestion that that single restriction was aimed at the protection of the applicant's mental health and was thus in compliance with the requirements of Article 8 of the Convention.

189. The applicant complained that by her admission to the Kėdainiai Home she had been segregated from society and cut off from social networks. Whilst acknowledging that because of her involuntary stay in the institution the applicant indeed could have faced certain restrictions in contacting others, the Court nonetheless observes that between 2 August 2004 and 25 December 2006 the applicant received one or more visitors on forty-two separate occasions. Of those visits, her friends, relatives and D.G. saw the applicant thirty-eight times (see paragraph 31 above). Lastly, the applicant had herself admitted that at one point she had got a mobile phone, which helped her to maintain contact with the outside world.

190. In the light of the foregoing, the Court considers that this part of the applicant's complaint is manifestly ill-founded within the meaning of Article 35 § 3 and therefore inadmissible in accordance with Article 35 § 4 of the Convention.

VII. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

191. The applicant complained that she had been prevented from practising her religion whilst resident in the Kėdainiai Home, in breach of Article 9 of the Convention.

192. The Government submitted that the applicant's complaint was purely abstract in nature. It was not indicated in the applicant's complaint when in particular she had been barred or impeded from practising her religion. Pursuant to the Bylaws of the Kėdainiai facility, the residents thereof had the right to practise their chosen religion and to attend a place of worship.

193. The Court has examined the above complaint as submitted by the applicant. However, having regard to all the material in its possession, it finds the complaint wholly unsubstantiated and therefore rejects it as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VIII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

194. Relying upon Article 13 of the Convention, the applicant also complained that she had had no effective domestic remedies at her disposal to seek redress for the alleged violations of which she had complained to the Court. Article 13 of the Convention provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

1. The applicant

195. The applicant submitted at the outset that she is a very vulnerable individual. She is legally incapacitated with a history of mental health problems and has been admitted to a psychiatric institution against her will for an indeterminate period. The applicant's guardian, who has the power to take decisions on all her aspects of life, is the care institution itself. In the applicant's view, on account of her vulnerability, Article 13 of the Convention required that the State take supplementary measures to make sure that she could have benefited from effective remedies for the violations of her rights.

196. The applicant pointed out that she does not have independent standing to initiate any civil proceedings. Only once had she been successful in initiating court proceedings, namely those before the Kaunas District Court in 2005 concerning the change of guardianship. However, even then it had been not possible to pursue that remedy in full, given that the Kaunas District Court had decided to refuse the applicant's request for legal assistance on the grounds that she had been represented by her legal guardian, who already had a lawyer.

197. The applicant further submitted that neither could she exercise her right to an effective domestic remedy through other persons. As concerns her guardian, who was her legal representative in accordance with the law, this remedy had been purely discretionary. More importantly, it was difficult to conceive how this remedy could have worked with regard to complaints challenging decisions taken by the guardian him, her or itself on the applicant's behalf, such as the decision to hospitalise the applicant in the

institution, or the decision by the Kėdainiai Home to restrict visitors' access to the applicant.

198. The applicant also argued that she could not effectively act through the Social Services Department or the public prosecutor either. As concerns the first body, she emphasised the purely discretionary powers of the social services department and doubted the impartiality of an institution which had to a large degree been responsible for the appointment of her guardians and for her hospitalisation in the institution. As concerns the prosecutor, in the applicant's view, his decisions were not binding and, as practice had showed, the prosecutor had invariably rejected the applicant's complaints, mostly deferring to the decisions taken by the guardians or the social service authorities.

199. Lastly, the applicant submitted that decisions to remove incapacitation, although theoretically possible, were exceptional. Most importantly, the ability to bring an action to restore legal capacity did not belong to incapacitated persons themselves, but rather to their guardian. For most people, incapacitation is for life.

2. The Government

200. The Government contested the applicant's arguments. Whilst acknowledging that the applicant had no independent standing in the domestic proceedings, the Government contended that she had been able to effectively act through her guardian, who had been her legal representative. They also pointed to the Kaunas City District Court's decision of 7 November 2007 to accept the applicant's application for change of her guardian for examination. For the Government, it could be presumed that the district court had reviewed the applicant's request to reopen the proceedings with a high degree of care because of the essence of the applicant's request – appointment of a guardian. Even though the court had refused the applicant's request to have separate legal assistance, that refusal had been based on domestic law, pursuant to which a guardian is the legal representative of an incapacitated person. Furthermore, the actions of the applicant's guardian had been supervised by the social services authorities, thus protecting the interests of the applicant.

201. The Government next argued that the protection of the rights and interests of the applicant fell within the notion of public interest. Thus the applicant had been able to apply to the prosecutor, who, in turn, had been entitled to file a civil claim or an administrative complaint. In this context the Government referred to the decisions of 3 September 2004 and 31 July 2006, by which the prosecutors had discontinued the official investigation into the complaints about alleged deprivation of liberty of the applicant. However, having considered the complaints to be unfounded, the prosecutors saw no reason to apply to the domestic courts in order to protect the public interest.

202. As to an effective remedy for the applicant to complain of the alleged violations of Articles 8 and 9 of the Convention regarding her living conditions, the Government contended that, pursuant to the Law on Social Services, the applicant could have complained to social care officials, and, in the event that they dismissed her complaint, to the courts. Various complaints made by the applicant regarding her allegedly inadequate living conditions and ill-treatment in the Kėdainiai Home had been investigated by a number of municipal officials and interdepartmental panels, which had found no violations of the applicant's rights. Moreover, neither a prosecutor nor the applicant's guardian had ever applied to the courts with a claim for damages for any alleged violations of the applicant's rights.

In sum, the applicant had had domestic remedies which were effective, available in theory and in practice, and capable of providing redress in respect of the applicant's complaints and which had offered reasonable prospects of success.

203. Lastly, the Government submitted that declaration of the recovery of a person's legal capacity upon the amelioration of his or her mental health was quite common practice in Lithuania. Such requests could be submitted by a social care institution, acting as a guardian, on its own motion. Moreover, a request to annul an incapacitation decision could also be lodged by a prosecutor in the public interest. Nonetheless, as regards the applicant, the circumstances warranting her incapacitation have never disappeared as no amelioration of her mental state has ever been established that would give her guardian, be it her adoptive father or the Kėdainiai Home, or the prosecutor grounds to apply to a court for the reinstatement of her legal capacity.

B. The Court's assessment

204. The Court finds that this complaint is linked to the complaints submitted under Articles 5 and 6 of the Convention, and it should therefore be declared admissible.

205. The Court recalls its case-law to the effect that Article 5 § 4 provides a *lex specialis* in relation to the more general requirements of Article 13 (see *Chahal v. the United Kingdom*, 15 November 1996, § 126, *Reports of Judgments and Decisions* 1996-V). It also reiterates that the requirements of Article 13 are less strict than, and are here absorbed by, those of Article 6 (see, among many authorities, *Kamasinski v. Austria*, 19 December 1989, § 110, Series A no. 168). The Court further notes that, in analysing the fairness of the civil proceedings concerning the applicant's guardianship and the lawfulness of the applicant's involuntary placement in the Kėdainiai Home, it has already taken account of the fact that the applicant is deprived of legal capacity and thus is not able to initiate any legal proceedings before the domestic courts. When analysing the above

complaints, the Court has also noted that the other remedies suggested by the Government, be it a possibility to act through her guardians or a request by the applicant to complain to a prosecutor or her complaints to the social care authorities, have not been proved to be feasible in the applicant's case. This being so, having regard to its conclusions under Articles 5 § 4 and 6 of the Convention, the Court does not consider it necessary to re-examine these aspects of the case separately through the prism of the "effective remedies" requirement of Article 13.

IX. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

206. Relying upon Article 2 of the Convention, the applicant also complained that, due to overmedication, her life is at risk. Relying on Article 10 of the Convention, the applicant alleged that one of the reasons for her involuntary psychiatric hospitalisation had been her bold poetic expression. Finally, without citing any Article of the Convention or its Protocols, the applicant complained of a violation of her property rights by her State-appointed guardian.

207. Having examined the materials submitted by the parties, the Court finds that the applicant has not provided sufficient evidence to substantiate her claims. It notes that, according to the Government, the applicant had received and had had access to newspapers and reading materials (see paragraph 180 above). It further observes that the applicant's complaints as to alleged breach of her property rights were dismissed by the prosecutors (see paragraph 52 above). The Court therefore rejects this part of the application as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

208. Relying upon Article 3 of the Convention, the applicant complained of her involuntary hospitalisation and treatment in the Kaunas Psychiatric Hospital from 30 June 2004 to 2 August 2004. The Court notes, however, that the applicant submitted this complaint on 28 March 2006. Accordingly, this part of the application has not been lodged within six months of the final effective measure or decision, as required by Article 35 § 1 of the Convention. It must therefore be rejected pursuant to Article 35 § 4.

X. APPLICATION OF ARTICLE 41 OF THE CONVENTION

209. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

210. The applicant claimed 300,000 euros (EUR) in respect of non-pecuniary damage.

211. The Government submitted that the above claim was wholly unsubstantiated.

212. The Court notes that it has found a violation of Article 5 § 4 as well as a violation of Article 6 § 1 in the present case. As regards the non-pecuniary damage already sustained, the Court finds that the violation of the Convention has indisputably caused the applicant substantial damage. In these circumstances, it considers that the applicant has experienced suffering and frustration, for which the mere finding of a violation cannot compensate. Making its assessment on an equitable basis, the Court awards the applicant EUR 8,000 in respect of non-pecuniary damage.

B. Costs and expenses

213. The applicant claimed the sum of EUR 16,609.85 for costs and expenses before the Court, broken down as follows: EUR 62 for secretarial costs; EUR 3,500 in relation to legal fees for preparation of the submissions made by the applicant's lawyer; and EUR 13,047.85 for fees for legal advice from *Interrights*.

214. The Government submitted that the sum was excessive.

215. The Court notes that the applicant was granted legal aid under the Court's legal aid scheme, under which the sum of EUR 850 has been paid to the applicant's lawyer to cover the submission of the applicant's observations and additional expenses.

216. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Ruling on an equitable basis and taking into account the sums already paid to the applicant by the Council of Europe in legal aid, the Court awards the applicant EUR 5,000.

C. Default interest

217. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's objection concerning the applicant's victim status;

2. *Joins to the merits* the Government's preliminary objection of abuse of application and *dismisses* it;

3. *Declares* the complaints under Article 5 § 1 and 4 (concerning involuntary placement in the Kėdainiai Home and the applicant's inability to obtain judicial review of her continuous placement), Article 6 § 1 (concerning the proceedings for change of guardianship), and Article 13 (concerning the absence of effective remedies) admissible, and the remainder of the application inadmissible;

4. *Holds* that there has been no violation of Article 5 § 1 of the Convention as regards the lawfulness of the applicant's involuntary placement in the Kėdainiai Home;

5. *Holds* that there has been a violation of Article 5 § 4 of the Convention as regards the applicant's inability to obtain her release from the Kėdainiai Home;

6. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account the unfairness of the guardianship proceedings;

7. *Holds* that there is no need to examine the applicant's complaint under Article 13 of the Convention;

8. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 8,000 (eight thousand euros) in respect of non-pecuniary damage;

(ii) EUR 5,000 (five thousand euros) in respect of costs and expenses;

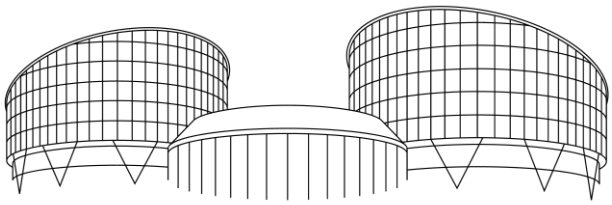
(iii) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

9. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 February 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Registrar	Françoise Tulkens President



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRANDE CHAMBRE

AFFAIRE STANEV c. BULGARIE

(Requête n° 36760/06)

ARRÊT

STRASBOURG

17 janvier 2012

Cet arrêt est définitif. Il peut subir des retouches de forme.

En l'affaire Stanev c. Bulgarie,

La Cour européenne des droits de l'homme, siégeant en une Grande Chambre composée de :

Nicolas Bratza, *président,*
Jean-Paul Costa,
Françoise Tulkens,
Josep Casadevall,
Nina Vajić,
Dean Spielmann,
Lech Garlicki,
Khanlar Hajiyev,
Egbert Myjer,
Isabelle Berro-Lefèvre,
Luis López Guerra,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva,
Ganna Yudkivska,
Vincent A. de Gaetano,
Angelika Nußberger,
Julia Laffranque, *juges,*

et de Vincent Berger, *jurisconsulte*,

Après en avoir délibéré en chambre du conseil les 9 février et 7 décembre 2011,

Rend l'arrêt que voici, adopté à cette dernière date :

PROCÉDURE

1. A l'origine de l'affaire se trouve une requête (n° 36760/06) dirigée contre la République de Bulgarie et dont un ressortissant de cet Etat, M. Rousi Kosev Stanev (« le requérant »), a saisi la Cour le 8 septembre 2006 en vertu de l'article 34 de la Convention de sauvegarde des droits de l'homme et des libertés fondamentales (« la Convention »).

2. Le requérant, qui a été admis au bénéfice de l'assistance judiciaire, a été représenté par M^e^ A. Genova, avocate à Sofia, et par M^mes^ V. Lee et L. Nelson, juristes du Mental Disability Advocacy Center, organisation non gouvernementale basée à Budapest. Le gouvernement bulgare (« le Gouvernement ») a été représenté par ses agentes, M^mes^ N. Nikolova et R. Nikolova, du ministère de la Justice.

3. Le requérant se plaignait de son placement dans un foyer pour personnes atteintes de troubles mentaux et de l'impossibilité d'obtenir l'autorisation de le quitter (article 5 §§ 1, 4 et 5 de la Convention). Invoquant l'article 3, pris isolément et combiné avec l'article 13, il se

plaignait aussi des conditions de vie dans ce foyer. Il dénonçait également l'absence d'accès à un tribunal pour demander la cessation de la curatelle (article 6 de la Convention). Enfin, il alléguait que les restrictions découlant du régime de la curatelle, y compris le placement en foyer, emportaient violation de son droit au respect de sa vie privée au sens de l'article 8, seul et combiné avec l'article 13 de la Convention.

4. La requête a été attribuée à la cinquième section de la Cour (article 52 § 1 du règlement de la Cour – « le règlement »). Le 29 juin 2010, après une audience portant à la fois sur les questions de recevabilité et sur celles de fond (article 54 § 3 du règlement) tenue le 10 novembre 2009, elle a été déclarée recevable par une chambre de ladite section composée de Peer Lorenzen, président, Renate Jaeger, Karel Jungwiert, Rait Maruste, Isabelle Berro-Lefèvre, Mirjana Lazarova Trajkovska et Zdravka Kalaydjieva, juges, ainsi que de Claudia Westerdiek, greffière de section. Le 14 septembre 2010, une chambre de la même section, composée de Peer Lorenzen, président, Renate Jaeger, Rait Maruste, Mark Villiger, Isabelle Berro-Lefèvre, Mirjana Lazarova Trajkovska et Zdravka Kalaydjieva, juges, ainsi que de Claudia Westerdiek, greffière de section, s'est dessaisie au profit de la Grande Chambre, aucune des parties ne s'y étant opposée (articles 30 de la Convention et 72 du règlement).

5. La composition de la Grande Chambre a été arrêtée conformément aux articles 26 §§ 4 et 5 de la Convention et 24 du règlement.

6. Tant le requérant que le Gouvernement ont déposé des observations écrites sur le fond de l'affaire.

7. Des observations ont également été reçues de l'organisation non gouvernementale Interights, que le président avait autorisée à intervenir dans la procédure écrite (articles 36 § 2 de la Convention et 44 § 3 du règlement).

8. Une audience devant la Grande Chambre s'est déroulée en public au Palais des droits de l'homme, à Strasbourg, le 9 février 2011 (article 59 § 3 du règlement).

Ont comparu :

– *pour le Gouvernement*
M^mes^ N. NIKOLOVA, ministère de la Justice,
R. NIKOLOVA, ministère de la Justice, *co-agentes* ;

– *pour le requérant*
M^e^ A. GENOVA, *avocate*,
M^mes^ V. LEE,
L. NELSON, *conseils*.

La Cour les a entendues en leurs déclarations. Le requérant était également présent.

EN FAIT

I. LES CIRCONSTANCES DE L'ESPÈCE

9. Le requérant est né en 1956 à Roussé, où il vécut jusqu'en décembre 2002 et où résident également sa demi-sœur et la seconde épouse de son père, ses seuls proches parents. Le 20 décembre 1990, une commission de médecins du travail avait déclaré le requérant inapte à travailler. Selon la commission, en raison d'une schizophrénie diagnostiquée chez lui en 1975, l'intéressé avait un taux d'incapacité de 90 %, mais n'avait pas besoin d'assistance. Il perçoit une pension d'invalidité à ce titre.

A. La mise sous curatelle du requérant et son placement en foyer social pour personnes atteintes de troubles mentaux

10. A une date non précisée en 2000, à la demande des deux membres de la famille du requérant, le procureur régional de Roussé pria le tribunal régional (*Окръжен съд*) de cette même ville de prononcer l'incapacité juridique totale du requérant. Par un jugement du 20 novembre 2000, le tribunal déclara l'intéressé partiellement incapable au motif qu'il souffrait de schizophrénie simple depuis 1975 et que son aptitude à gérer ses affaires et intérêts ainsi qu'à discerner les conséquences de ses actes était altérée. Il considéra que l'état du requérant n'était pas d'une gravité de nature à exiger une déclaration d'incapacité totale. Il constata en particulier que, pendant la période allant de 1975 à 2000, l'intéressé avait été placé à plusieurs reprises en hôpital psychiatrique. Le tribunal prit en compte une expertise médicale effectuée dans le cadre de la procédure et entendit le requérant. Par ailleurs, selon certains témoignages, l'intéressé avait vendu tout ce qu'il possédait, mendiait, dépensait tout son argent en alcool et devenait agressif lorsqu'il buvait.

11. Ce jugement fut confirmé par un arrêt rendu le 12 avril 2001 par la cour d'appel (*Апелативен съд*) de Veliko Tarnovo, que le requérant avait saisie, puis communiqué le 7 juin 2001 à la municipalité de Roussé afin que celle-ci lui nommât un curateur.

12. Les membres de la famille du requérant ayant refusé d'assumer les responsabilités de la curatelle, le 23 mai 2002, la municipalité désigna une certaine R. P., fonctionnaire municipale, comme curatrice du requérant jusqu'au 31 décembre 2002.

13. Le 29 mai 2002, R. P. demanda aux services sociaux de Roussé de placer le requérant dans un foyer social pour personnes souffrant de troubles mentaux. Elle joignit au formulaire de demande une série de documents, parmi lesquels un diagnostic psychiatrique. Les services sociaux menèrent une enquête sociale au terme de laquelle ils constatèrent, le 23 juillet 2002, que l'intéressé souffrait de schizophrénie, qu'il vivait seul dans une petite annexe presque démolie de la maison de sa demi-sœur et que celle-ci et la seconde épouse de son père avaient déclaré ne pas vouloir assumer la curatelle. Les conditions de placement en foyer social furent donc considérées comme réunies.

14. Le 10 décembre 2002, un contrat de placement en institution sociale fut conclu entre R. P. et le foyer pour adultes atteints de troubles mentaux situé près du village de Pastra (le « foyer de Pastra »), dans la municipalité de Rila, établissement relevant du ministère du Travail et de la Politique sociale. Le requérant ne fut pas informé de ce contrat.

15. Le même jour, le requérant fut conduit en ambulance au foyer de Pastra, à environ 400 km de Roussé. Devant la Cour, il affirme ne pas avoir reçu d'explications sur les raisons et la durée de son placement, ce que le Gouvernement ne conteste pas.

16. Le 14 décembre 2002, à la demande du directeur du foyer de Pastra, le requérant fut enregistré comme étant domicilié dans la municipalité de Rila. Le certificat de domiciliation indiquait que son adresse avait été modifiée aux fins de sa « garde permanente ». D'après les derniers éléments versés au dossier en février 2011, le requérant se trouvait toujours dans le foyer en question à ce moment-là.

17. Le 9 septembre 2005, l'avocate du requérant pria la municipalité de Rila de désigner un curateur pour son client. Par une lettre du 16 septembre 2005, elle fut informée que le 2 février 2005 la municipalité avait décidé de nommer le directeur du foyer social de Pastra comme curateur de l'intéressé.

B. Le séjour du requérant au foyer de Pastra

1. Les dispositions du contrat de placement

18. Le contrat conclu le 10 décembre 2002 entre la curatrice R. P. et le foyer de Pastra (paragraphe 14 ci-dessus) ne mentionnait pas le nom du requérant. D'après ses dispositions, le foyer fournissait la nourriture, les vêtements, les services médicaux et le chauffage et, visiblement, un hébergement, moyennant le versement d'un montant déterminé par la loi. Il apparaît que l'intégralité de la pension d'invalidité du requérant était transférée au foyer pour régler ce montant. Le contrat prévoyait que 80 % de cette somme devaient être affectés au paiement des prestations fournies et que les 20 % restants étaient réservés aux dépenses personnelles. Il ressort

du dossier que la pension d'invalidité du requérant, telle qu'actualisée en 2008, s'élevait à 130 levs (BGN), soit environ 65 euros (EUR). Le contrat ne prévoyait pas la durée des prestations en question.

2. Description des lieux

19. Le foyer de Pastra se trouve dans une partie isolée du massif de Rila, dans le sud-ouest de la Bulgarie. Il est accessible par un chemin de terre depuis le village de Pastra, qui est la localité la plus proche située à 8 km.

20. Construit dans les années 1920, l'établissement se compose de trois bâtiments et accueille des pensionnaires de sexe masculin, qui sont répartis selon leur état de santé mentale. D'après un rapport de l'agence de l'assistance sociale rédigé en avril 2009, le foyer hébergeait soixante-treize personnes, une personne était hospitalisée et deux s'étaient évadées. Parmi les pensionnaires, vingt-trois étaient frappés d'une incapacité juridique totale, deux étaient partiellement privés de capacité et les autres jouissaient d'une capacité juridique pleine. Chaque bâtiment dispose d'une cour entourée d'une haute barrière métallique. Le requérant avait été installé dans le bloc 3 de l'établissement, réservé aux personnes dont l'état de santé était le moins grave, lesquelles pouvaient se déplacer autour du foyer et se rendre seules au village voisin avec une autorisation préalable.

21. Selon le requérant, le foyer était vétuste, sale et rarement chauffé en hiver, de sorte que lui-même et les autres pensionnaires étaient obligés de se coucher vêtus de leurs manteaux en hiver. Le requérant partageait une chambre de 16 m^2 avec quatre autres personnes et les lits se trouvaient pratiquement les uns à côté des autres. Il ne disposait que d'une table de chevet pour ranger ses vêtements, mais il préférait les garder dans son lit pendant la nuit de peur qu'ils fussent volés et remplacés par de vieux habits. En effet, les pensionnaires du foyer n'avaient pas de vêtements personnels car on ne leur restituait pas les mêmes après lavage.

3. Alimentation et conditions d'hygiène et de santé

22. Le requérant affirme que la nourriture au foyer était insuffisante et de mauvaise qualité. Il ne pouvait pas participer au choix des repas, ni à leur préparation.

23. L'accès à la salle de bains était autorisé une fois par semaine et celle-ci était insalubre et délabrée. Les toilettes situées dans la cour, insalubres et en très mauvais état, consistaient en des trous creusés dans le sol, recouverts d'abris délabrés. Il n'y avait qu'un WC pour huit personnes au minimum. Des produits d'hygiène n'étaient disponibles que de manière sporadique.

4. Développements récents

24. Dans son mémoire devant la Grande Chambre, le Gouvernement a indiqué que des travaux de rénovation avaient été réalisés fin 2009 dans la partie du foyer habitée par le requérant, y compris les sanitaires. Le foyer serait désormais doté d'un chauffage central. La nourriture, variée, serait régulièrement composée de fruits et légumes, ainsi que de viande. Les pensionnaires auraient accès à la télévision, à des livres et à des jeux. L'Etat fournirait des vêtements à tous les pensionnaires. Le requérant n'a pas contesté ces affirmations.

5. Les déplacements du requérant

25. La direction de l'établissement avait retenu les papiers d'identité du requérant, qui ne pouvait sortir du foyer qu'avec l'autorisation spéciale du directeur. Le requérant se rendait régulièrement au village de Pastra. Il apparaît qu'à l'occasion de ces visites il aidait essentiellement des villageois pour des travaux domestiques ou rendait des services au restaurant du village.

26. Entre 2002 et 2006, l'intéressé retourna à trois reprises à Roussé lors d'une autorisation de sortie. La durée autorisée de ces voyages était d'une dizaine de jours. Le coût du voyage s'élevait à 60 BGN, soit environ 30 EUR, montant versé au requérant par l'administration du foyer.

27. A l'occasion de ses deux premiers séjours à Roussé, le requérant rentra à Pastra avant la fin de la durée de son autorisation de sortie. Selon une déclaration du directeur du foyer faite devant le parquet à une date non précisée, l'intéressé était rentré en avance car il n'était pas en mesure de gérer ses moyens financiers et n'avait pas de logement.

28. La troisième sortie fut autorisée du 15 au 25 septembre 2006. L'intéressé n'étant pas rentré à la date prévue, le 13 octobre 2006, le directeur du foyer demanda par lettre à la police municipale de Roussé de le rechercher et de le transférer à Sofia, d'où les employés du foyer pourraient le conduire jusqu'à Pastra. Le 19 octobre 2006, la police de Roussé informa le directeur que le requérant avait été localisé, mais que la police ne pouvait assurer son transfert au motif qu'aucun avis de recherche n'avait été émis. L'intéressé fut reconduit au foyer le 31 octobre 2006, apparemment par des employés de l'établissement.

6. Possibilités d'activités culturelles et récréatives

29. L'intéressé avait accès à un poste de télévision, à quelques livres et à un échiquier dans une salle commune du foyer jusqu'à 15 heures, celle-ci étant ensuite fermée à clé. La salle n'était pas chauffée en hiver et les pensionnaires y restaient vêtus de leurs manteaux, chapeaux et gants. Aucune autre activité sociale, culturelle ou sportive ne pouvait être exercée.

7. Correspondance

30. Le requérant expose que le personnel du foyer refusait de lui fournir des enveloppes postales pour sa correspondance et que, dans la mesure où il ne disposait pas de son propre argent, il ne pouvait pas non plus en acheter. Les membres du personnel lui demandaient en effet de leur donner ses feuilles pour les mettre dans des enveloppes et les poster à sa place.

8. Traitement médical

31. Il ressort du certificat médical du 15 juin 2005 (paragraphe 37 ci-après) que, depuis son placement au foyer en 2002, le requérant suivait, sous le contrôle mensuel d'un psychiatre, un traitement antipsychotique (carbamazépine (600 mg)).

32. Par ailleurs, lors de l'audience devant la Grande Chambre, les représentants du requérant ont déclaré que leur client se trouvait dans un état de rémission stable depuis 2006 et qu'il n'avait suivi aucun traitement psychiatrique ces dernières années.

C. L'évaluation des capacités sociales du requérant pendant son séjour à Pastra et les conclusions du rapport psychiatrique établi à la demande de son avocate

33. Une fois par an, le directeur et l'assistant social du foyer établissaient des rapports d'évaluation sur le comportement et les capacités sociales du requérant. Selon ces rapports, le requérant était renfermé, préférait rester seul au lieu de participer aux activités de la collectivité, refusait de prendre ses médicaments et n'avait pas de proches parents chez qui se rendre pendant ses autorisations de sortie. Il était en mauvais termes avec sa demi-sœur et on ne savait pas vraiment s'il avait un logement hors du foyer. Ces rapports concluaient qu'il était impossible pour le requérant de se réinsérer dans la société et fixaient comme objectif l'acquisition par lui des capacités et connaissances nécessaires à sa resocialisation et, à long terme, à sa réintégration dans sa famille. Il apparaît que l'intéressé ne s'est jamais vu proposer une thérapie à ces fins.

34. Il ressort du dossier qu'en 2005 le curateur du requérant sollicita auprès de la municipalité l'octroi d'une allocation sociale en vue de faciliter la réinsertion sociale de l'intéressé. A la suite de cette demande, le 30 décembre 2005, la direction municipale de l'assistance sociale procéda à une « évaluation sociale » (*социална оценка*) du requérant, qui conclut que l'intéressé n'était pas capable de travailler, même en milieu protégé, et n'avait besoin ni d'une formation ni d'une requalification, et que, dans ces conditions, il avait droit à une allocation sociale pour frais de transport, subsistance et médicaments. Le 7 février 2007, la direction municipale de l'assistance sociale accorda au requérant une allocation mensuelle de

16,50 BGN (soit environ 8 EUR). Le 3 février 2009, ce montant fut porté à 19,50 BGN (soit environ 10 EUR).

35. Par ailleurs, à l'initiative de son avocate, le requérant fut examiné le 31 août 2006 par le docteur V. S., un psychiatre autre que celui qui visitait régulièrement le foyer, ainsi que par une psychologue, M^me^ I. A. Le rapport établi à cette occasion concluait que le diagnostic de schizophrénie formulé le 15 juin 2005 (paragraphe 37 ci-après) n'était pas exact, car le patient ne présentait pas tous les symptômes de cette pathologie. Il indiquait que, si l'intéressé avait souffert de cette maladie dans le passé, il avait manifesté au moment de son examen non pas des signes d'agressivité, mais plutôt une attitude suspicieuse et une légère tendance à « l'agressivité verbale », qu'il n'avait pas suivi de traitement pour cette maladie entre 2002 et 2006 et que son état de santé s'était nettement stabilisé. Le rapport précisait qu'aucun risque de détérioration de la santé mentale de l'intéressé n'avait été décelé et indiquait que, de l'avis du directeur du foyer, le requérant était susceptible de se réinsérer dans la société.

36. Selon le rapport, le séjour au foyer de Pastra était très destructeur pour la santé du requérant et il était souhaitable que celui-ci quittât le foyer, faute de quoi il risquait de présenter un « syndrome d'institutionnalisation » au fur et à mesure de son séjour. Le rapport ajoutait qu'il serait plus indiqué pour la santé mentale et le développement social de l'intéressé de lui permettre de s'intégrer dans la vie en société avec le moins de restrictions possibles et que le seul élément à surveiller était sa tendance à abuser de l'alcool, qui s'était manifestée avant 2002. Selon les experts qui avaient examiné le requérant, le comportement d'une personne dépendante de l'alcool pouvait présenter des caractéristiques semblables à celui d'un schizophrène ; dès lors, dans le cas de l'intéressé, il convenait de rester vigilant et de ne pas confondre les deux pathologies.

D. Les tentatives déployées par le requérant pour obtenir la cessation de la curatelle

37. Le 25 novembre 2004, le requérant pria le parquet, par l'intermédiaire de son avocate, de saisir le tribunal régional d'une demande de rétablissement de sa capacité juridique. Le 2 mars 2005, le procureur invita le foyer de Pastra à lui communiquer l'avis d'un médecin et d'autres certificats médicaux concernant les troubles dont le requérant était atteint, en vue d'une éventuelle action judiciaire visant au rétablissement de la capacité juridique de l'intéressé. A la suite de cette demande, celui-ci fut placé en hôpital psychiatrique du 31 mai au 15 juin 2005 pour une évaluation médicale. Par un certificat établi à cette dernière date, les médecins attestèrent que le requérant présentait les symptômes d'une schizophrénie. Son état de santé ne s'étant pas dégradé depuis son placement au foyer en 2002, le régime auquel il y était soumis n'avait pas

été modifié. L'intéressé suivait depuis 2002 un traitement médical d'entretien sous le contrôle mensuel d'un psychiatre. L'examen psychologique avait montré qu'il était excité, tendu et méfiant. Son aptitude à la communication était pauvre et il n'était pas conscient de sa maladie. Il avait dit souhaiter quitter le foyer à tout prix. Les médecins ne se prononcèrent ni sur ses capacités d'intégration ni sur la nécessité de le maintenir au foyer de Pastra.

38. Le 10 août 2005, le procureur régional refusa d'introduire une action en rétablissement de la capacité juridique au motif que, selon les médecins, le directeur et l'assistante sociale du foyer de Pastra, l'intéressé ne pouvait pas s'assumer de manière autonome et que ce foyer, où il pouvait suivre un traitement médical, était la meilleure solution d'accueil pour lui. L'avocate du requérant contesta ce refus, alléguant que l'on devait donner à son client la possibilité d'évaluer tout seul si, compte tenu des conditions de vie au foyer, le fait de continuer à y vivre était ou non dans son intérêt. Elle précisa que le maintien forcé du placement, présenté sous forme d'administration de soins dans l'intérêt du patient, équivalait en pratique à une privation de liberté, ce qui n'était pas admissible. Le placement d'une personne dans une institution ne pouvait être effectué sans l'accord de l'intéressé. Conformément à la législation en vigueur, toute personne placée sous curatelle était libre de choisir son domicile avec l'accord du curateur. Le choix dudit domicile ne relevait donc pas de la compétence du parquet. En dépit de ces contestations, le refus du procureur régional fut confirmé le 11 octobre 2005 par le procureur d'appel puis, le 29 novembre 2005, par le parquet auprès de la Cour suprême de cassation.

39. Le 9 septembre 2005, le requérant demanda au maire de Rila, par l'intermédiaire de son avocate, d'introduire une action judiciaire en cessation de la curatelle. Par une lettre du 16 septembre 2005, le maire de Rila rejeta cette demande au motif qu'une telle action n'était pas fondée, compte tenu du certificat médical du 15 juin 2005, des avis du directeur et de l'assistante sociale, et des conclusions auxquelles était parvenu le parquet. Le 28 septembre 2005, l'avocate du requérant forma contre ce refus auprès du tribunal de district de Dupnitsa un recours fondé sur l'article 115 du code de la famille (paragraphe 49 ci-après). Par une lettre du 7 octobre 2005, le tribunal de district indiqua qu'étant partiellement privé de sa capacité juridique, le requérant devait présenter un pouvoir en bonne et due forme attestant que son avocate le représentait et qu'il convenait de mentionner si le curateur était intervenu dans la procédure. A une date non précisée, l'avocate du requérant soumit une copie du pouvoir signé par le requérant. Elle demanda aussi la constitution du curateur en tant que personne intéressée ou la désignation d'un représentant *ad hoc*. Le 18 janvier 2006, le tribunal tint une audience à laquelle le représentant du maire de Rila excipa de l'invalidité du pouvoir, au motif qu'il n'avait pas été contresigné par le curateur. Présent à cette audience, le curateur déclara

qu'il ne contestait pas le recours du requérant, mais que le montant de la pension de retraite de celui-ci ne suffisait pas à couvrir ses besoins et que, dès lors, le foyer de Pastra représentait la meilleure solution d'accueil pour lui.

40. Le tribunal de district de Dupnitsa rendit son jugement le 10 mars 2006. Sur la recevabilité du recours, il considéra que, bien que mandatée par le requérant, son avocate ne pouvait ester en son nom au motif que le curateur n'avait pas signé le pouvoir. Toutefois, il dit que l'approbation au recours donnée par le curateur en audience publique avait validé tous les actes de procédure de l'avocate et que le recours était dès lors recevable. Quant au fond de l'affaire, le tribunal rejeta la demande, estimant que le curateur n'avait aucun intérêt légitime à contester le refus du maire dans la mesure où il pouvait introduire seul et directement une demande de mainlevée de la curatelle. N'étant pas susceptible d'appel, ce jugement devint définitif.

41. Enfin, le requérant affirme avoir à plusieurs reprises demandé oralement à son curateur d'engager une action en cessation de la curatelle et de l'autoriser à quitter le foyer. Il se serait toutefois toujours heurté à des refus.

II. LE DROIT ET LA PRATIQUE INTERNES PERTINENTS

A. Le statut juridique d'une personne placée sous curatelle et sa représentation devant les tribunaux

42. En vertu de l'article 5 de la loi du 9 août 1949 sur les personnes physiques et morales et la famille, les personnes qui ne peuvent s'assumer en raison d'une maladie mentale ou d'une débilité mentale doivent être totalement privées de leur capacité juridique et déclarées incapables. Un majeur qui présente une pathologie de ce type de moindre gravité doit être déclaré partiellement incapable. En cas de privation totale de la capacité juridique, la personne est placée sous tutelle (*настойничество*), tandis que si l'incapacité est partielle, la personne est placée sous curatelle (*попечителство*). Conformément aux articles 4 et 5 de cette loi, la personne sous curatelle ne peut accomplir d'actes juridiques qu'avec l'accord de son curateur. Elle peut toutefois conclure des actes ordinaires de la vie courante et disposer des ressources obtenues en contrepartie de son travail. Le curateur ne peut donc accomplir seul un acte juridique liant la personne frappée d'une incapacité partielle. Par conséquent, les contrats signés seulement par lui, sans l'accord de la personne partiellement privée de sa capacité juridique, ne sont pas valables.

43. Aux termes de l'article 16, alinéa 2, du code de procédure civile (« le CPC »), une personne placée sous tutelle est représentée devant les juridictions par son tuteur. Une personne placée sous curatelle peut, quant à

elle, ester en justice, mais avec l'accord de son curateur. Celui-ci n'a donc pas le rôle d'un représentant légal. Il ne peut agir au nom de la personne sous curatelle, mais peut marquer son accord ou désaccord avec les actes accomplis par celle-ci (Сталев, Ж., *Българско гражданско процесуално право*, София, 2006 г., стр. 171). En particulier, la personne sous curatelle peut mandater un avocat à condition que le pouvoir soit signé par le curateur (*ibidem*, стр. 173).

B. La procédure de placement sous curatelle

44. La procédure de placement sous curatelle comporte deux phases : la déclaration d'incapacité partielle et la désignation d'un curateur.

1. La déclaration d'incapacité partielle par les tribunaux

45. Cette première phase est une procédure judiciaire, régie à l'époque des faits par les articles 275 à 277 du CPC de 1952, qui, sans être modifiés, sont devenus les articles 336 à 340 du nouveau CPC de 2007. Une déclaration d'incapacité partielle peut être sollicitée par le conjoint, par les proches parents, par le procureur ou par toute autre personne ayant un intérêt à agir. Le tribunal se prononce après avoir entendu la personne concernée en audience publique – ou, à défaut, après s'être forgé une opinion personnelle quant à son état – ainsi que ses proches parents. Si ces dépositions ne sont pas suffisantes, il peut recourir à d'autres moyens de preuve, tels qu'une expertise médicale. Selon la jurisprudence interne, pareille expertise doit être ordonnée lorsqu'aucun autre élément du dossier ne permet au tribunal de conclure que la demande de privation de capacité juridique est mal fondée (Решение на ВС № 1538 от 21.VIII.1961 г. по гр. д. № 5408/61 г ; Решение на ВС № 593 от 4.III.1967 г. по гр. д. № 3218/1966 г.).

2. La désignation d'un curateur par l'administration

46. La deuxième phase est une procédure administrative de désignation d'un curateur qui, à l'époque des faits, était décrite au chapitre X (articles 109 à 128) du code de la famille (« le CF ») de 1985 ; ces dispositions, modifiées sur des points mineurs uniquement, sont devenues les articles 153 à 174 du nouveau CF de 2009. La phase administrative est conduite par un organe nommé « l'organe chargé de la tutelle et de la curatelle », à savoir le maire ou tout autre fonctionnaire municipal désigné par lui.

47. Le curateur est nommé de préférence parmi les membres de la famille de la personne concernée capables de représenter au mieux les intérêts de celle-ci.

C. Le contrôle sur les actes du curateur et le remplacement de celui-ci

48. Les actes du curateur sont soumis au contrôle de l'organe chargé de la tutelle et de la curatelle. En effet, à la demande de ce dernier, le curateur doit rendre compte de ses activités. Lorsque des irrégularités sont constatées, l'organe demande qu'il y soit remédié ou ordonne la suspension des actes en question (voir les articles 126, alinéa 2, et 125 du CF de 1985, ainsi que les articles 170 et 171, alinéas 2 et 3, du CF de 2009). La question de savoir si une personne placée sous curatelle peut seule ou par l'intermédiaire d'un tiers saisir le maire d'une demande de suspension des actes du curateur n'est pas clairement définie en droit interne.

49. Les actes du maire, en sa qualité d'organe chargé de la tutelle et de la curatelle, ainsi que le refus par lui de nommer un curateur ou de prendre d'autres mesures prévues par le CF, sont quant à eux susceptibles de recours devant le juge. Ils peuvent en effet être contestés par les personnes intéressées ou par le procureur devant le tribunal de district, qui statue sur le fond par une décision définitive (article 115 du CF de 1985). Cette procédure permet aux proches parents de demander le changement du curateur en cas de conflit d'intérêts (Решение на ВС № 1249 от 23.XII.1993 г. по гр. д. № 897/93 г). Selon la jurisprudence interne, la personne totalement privée de sa capacité juridique ne figure pas parmi les « personnes intéressées » habilitées à entamer la procédure en question (Определение № 5771 от 11.06.2003 г. на ВАС по адм. д. № 9248/2002). Il n'existe pas de jurisprudence interne démontrant qu'une personne partiellement privée de sa capacité juridique soit autorisée à le faire.

50. De plus, l'organe chargé de la tutelle et de la curatelle peut à tout moment remplacer un curateur qui ne s'acquitterait pas de ses obligations (article 113 du CF de 1985). Selon l'article 116 du CF de 1985, une personne ne peut être désignée curateur en cas de conflit d'intérêts entre elle et la personne sous curatelle. L'article 123 du CF de 1985 prévoit la nomination d'un adjoint au curateur lorsque celui-ci est dans l'impossibilité de s'acquitter de ses obligations ou en cas de conflit d'intérêts. Dans ces deux cas, l'organe chargé de la tutelle et de la curatelle peut aussi nommer un représentant *ad hoc*.

D. La procédure de rétablissement de la capacité juridique

51. Selon l'article 277 du CPC de 1952, cette procédure est identique à la procédure de mise sous curatelle. Elle est ouverte aux personnes habilitées à demander la mise sous curatelle, ainsi qu'à l'organe chargé de la tutelle et de la curatelle et au curateur. Cette disposition est reprise dans l'article 340 du CPC de 2007. Le 13 février 1980, l'assemblée plénière de la Cour suprême a rendu une décision (n° 5/79) visant à élucider certaines

questions relatives à la procédure de privation de la capacité juridique. Le paragraphe 10 de cette décision se rapporte à la procédure de rétablissement de la capacité juridique et se lit comme suit :

> « Les règles applicables à la procédure de rétablissement de la capacité juridique sont les mêmes que pour la procédure de privation de capacité (articles 277 et 275, alinéas 1 et 2, du CPC). Sont constituées parties défenderesses dans cette procédure les personnes ayant sollicité la mesure ou les proches parents. Rien n'empêche la partie demanderesse à la procédure de privation de capacité de demander la cessation de la mesure si les circonstances ont évolué.
>
> La personne sous curatelle peut, seule ou avec l'accord de son curateur, demander la levée de cette mesure. Elle peut aussi demander à l'organe chargé de la tutelle et de la curatelle ou au conseil de tutelle d'introduire une action régie par l'article 277 du CPC devant le tribunal régional ayant prononcé la privation de sa capacité. Elle doit alors justifier de son intérêt en présentant un certificat médical. Dans le cadre de cette action, elle aura la qualité de demanderesse. Lorsque le curateur de la personne partiellement privée de sa capacité juridique, l'organe chargé de la tutelle et de la curatelle ou le conseil de la tutelle de la personne totalement privée de capacité refusent d'introduire une action en rétablissement de capacité, la personne privée de sa capacité peut demander au procureur de le faire (Постановление № 5/79 от 13.II.1980 г., Пленум на ВС). »

52. Par ailleurs, le Gouvernement a soumis un cas dans lequel une procédure de révision du statut juridique d'une personne totalement privée de sa capacité juridique avait été ouverte à la demande du tuteur et la tutelle avait été levée (Решение № 1301 от 12.11.2008 г. на ВКС по гр. Д. № 5560/2007 г., V г.о.).

E. La validité des contrats conclus par les représentants des personnes incapables

53. Aux termes de l'article 26, alinéa 2, de la loi de 1950 sur les obligations et les contrats, les contrats contraires à la loi ou conclus en l'absence de consentement sont entachés de nullité absolue.

54. Conformément à l'article 27 de cette même loi, les contrats conclus par les représentants de personnes privées de leur capacité juridique en méconnaissance des règles applicables sont entachés de nullité relative. La nullité absolue peut être invoquée en toute occasion, tandis que la nullité relative ne peut l'être que par voie d'action judiciaire. Le droit d'invoquer la nullité relative est prescrit dans un délai de trois ans à compter de la levée de la curatelle en l'absence de désignation d'un curateur. Dans les autres cas, ce délai commence à courir à partir de la date de la désignation d'un curateur (article 32, alinéa 2, combiné avec l'article 115, alinéa 1 e) de la loi précitée ; voir aussi Решение на ВС № 668 от 14.III.1963 г. по гр. д. № 250/63 г., I г. о., Решение на Окръжен съд - Стара Загора от 2.2.2010 г. по т. д. № 381/2009 г. на I състав, Решение на Районен съд Стара Загора № 459 от 19.5.2009 г. по гр. д. № 1087/2008).

F. Le domicile des personnes privées de leur capacité juridique

55. En vertu des articles 120 et 122, alinéa 3, du CF de 1985, les personnes privées de leur capacité juridique sont domiciliées à l'adresse du tuteur ou du curateur, sauf si des « raisons exceptionnelles » exigent qu'elles vivent ailleurs. En cas de changement d'adresse sans l'accord du tuteur ou du curateur, ce dernier peut demander au tribunal de district d'ordonner le retour de la personne concernée à son adresse officielle. Selon l'article 163, alinéas 2 et 3, du CF de 2009, avant de se prononcer sur le retour de la personne sous tutelle ou curatelle, le tribunal est tenu d'entendre celle-ci. S'il constate l'existence de « raisons exceptionnelles », il doit refuser d'ordonner le retour et en informer immédiatement la direction municipale de l'assistance sociale de manière à ce qu'elle prenne des mesures de protection.

56. L'ordonnance du tribunal de district est susceptible d'appel auprès du président du tribunal régional, sans possibilité de sursis à son exécution.

G. Le placement des personnes privées de leur capacité juridique dans des foyers pour adultes souffrant de troubles mentaux

57. En vertu de la loi de 1998 sur l'assistance sociale, peuvent bénéficier d'une assistance sociale les personnes qui, pour des raisons médicales et sociales, ne sont pas capables d'assumer de manière autonome leurs besoins essentiels soit en travaillant soit grâce à leur patrimoine ou à l'aide des personnes tenues par la loi de les prendre en charge (article 2 de la loi). L'assistance sociale consiste en l'octroi de diverses allocations, pécuniaires ou en nature, et de prestations sociales, y compris le placement en institution spécialisée. Ces allocations sont accordées sur la base d'une évaluation individuelle des besoins des intéressés et conformément à leurs souhaits et choix personnels (article 16, alinéa 2).

58. Selon le règlement d'application de la loi de 1998 sur l'assistance sociale (*Правилник за прилагане на Закона за социално подпомагане*), trois catégories d'établissements sont considérées comme « institutions spécialisées » pour la fourniture de prestations sociales : 1) les foyers pour enfants (foyers pour enfants privés de soins parentaux, foyers pour enfants souffrant de handicaps physiques, foyers pour enfants souffrant d'un retard mental) ; 2) les foyers pour adultes handicapés (foyers pour adultes souffrant d'un retard mental, foyers pour adultes souffrant de troubles mentaux, foyers pour adultes souffrant de handicaps physiques, foyers pour adultes atteints de troubles sensoriels, foyers pour adultes atteints de démence), et 3) les foyers pour personnes âgées (article 36, alinéa 3). Les prestations sociales sont fournies dans des institutions spécialisées lorsqu'il n'est plus possible de les obtenir dans la communauté (article 36, alinéa 4, du règlement). En droit interne, le placement d'une personne privée de sa

capacité juridique dans un foyer social n'est pas qualifié de mesure privative de liberté.

59. De même, conformément au décret n° 4 sur les conditions d'obtention des prestations sociales, adopté le 16 mars 1999 (*Наредба № 4 за условията и реда за извършване на социални услуги*), les majeurs atteints de déficiences mentales sont placés dans des foyers sociaux spécialisés lorsqu'il n'est pas possible de leur administrer les soins médicaux nécessaires en milieu familial (article 12, point 4, et article 27 du décret). L'article 33, alinéa 1, point 3, du décret exige, lors du placement en foyer social, la présentation d'un certificat médical sur l'état de santé de la personne concernée. Aux termes de l'article 37, alinéa 1, du décret, un contrat de placement en vue de la fourniture de prestations sociales est conclu entre l'institution spécialisée et la personne concernée ou son représentant légal, selon un modèle approuvé par le ministre du Travail et de la Politique sociale. La personne concernée est transférée dans un autre foyer ou quitte l'institution dans laquelle elle est placée : 1) à sa demande ou à la demande de son représentant légal, présentée par écrit auprès du directeur de l'institution ; 2) en cas de changement de son état de santé mentale et/ou physique, qui ne correspond alors plus au profil du foyer ; 3) en cas de non-paiement de la taxe mensuelle pour les prestations sociales pendant plus d'un mois ; 4) en cas de non-respect systématique du règlement intérieur de l'institution ; 5) en cas d'addiction avérée à des substances narcotiques.

60. Par ailleurs, le régime d'internement dans un hôpital psychiatrique en vue d'un traitement médical obligatoire est prévu par la loi sur la santé de 2005, qui a remplacé la loi sur la santé publique de 1973.

H. La désignation d'un représentant ad hoc en cas de conflit d'intérêts

61. D'après l'article 16, alinéa 6, du CPC, en cas de conflit d'intérêts entre une personne représentée et son représentant, le tribunal désigne un représentant *ad hoc*. Selon la jurisprudence interne, cette disposition est appliquée dans certaines situations de conflit d'intérêts entre un mineur et son représentant légal. Il apparaît ainsi que le défaut de désignation d'un représentant *ad hoc* constitue un manquement substantiel aux règles régissant la procédure en matière d'établissement de la paternité (Решение на ВС № 297 от 15.04.1987 г. по гр. д. № 168/87 г., II г. о.), de litiges entre parents adoptifs et parents biologiques (Решение на ВС № 1381 от 10.05.1982 г. по гр. д. № 954/82 г., II г. о.) ou encore de patrimoine (Решение № 643 от 27.07.2000 г. на ВКС по гр. д. № 27/2000 г., II г. о. ; Определение на ОС – Велико Търново от 5.11.2008 г. по в. ч. гр. д. № 963/2008).

I. La responsabilité délictuelle de l'Etat

62. La loi de 1988 sur la responsabilité de l'Etat et des communes pour dommage (*Закон за отговорността на държавата и общините за вреди*, titre modifié en 2006) énonce, en son article 2, alinéa 1, que l'Etat est responsable des dommages causés aux particuliers du fait d'une décision judiciaire dans certaines hypothèses de placement en détention lorsqu'elle est annulée pour défaut de base légale.

63. L'article 1, alinéa 1, de la même loi dispose que l'Etat et les communes sont responsables des préjudices causés aux personnes physiques et morales par les actes, actions ou inactions illégaux de leurs organes ou agents dans l'exercice de leurs fonctions administratives.

64. Dans un certain nombre de décisions, différentes juridictions internes ont considéré que cette disposition était applicable aux préjudices causés aux détenus par les mauvaises conditions de la vie carcérale ou par l'inadéquation des soins médicaux administrés en prison et ont, lorsqu'il y avait lieu, accueilli partiellement ou en totalité les demandes en réparation des intéressés (реш. от 26.01.2004 г. по гр. д. № 959/2003, ВКС, IV г. о. et реш. № 330 от 7.08.2007 г. по гр. д. № 92/2006, ВКС, IV г. о.).

65. Il n'existe aucune décision judiciaire considérant cette jurisprudence comme applicable aux cas allégués de mauvaises conditions de vie dans des foyers sociaux.

66. Par ailleurs, il ressort de la jurisprudence des tribunaux internes que l'article 1, alinéa 1, de la loi en question permet à toute personne dont la santé s'est détériorée au motif que les organes relevant du ministère de la Santé ont manqué à leur obligation de lui fournir régulièrement des médicaments, d'invoquer la responsabilité de l'administration et d'être indemnisée (реш. № 211 от 27.05.2008 г. по гр. д. № 6087/2007, ВКС, V г. о.).

67. Enfin, l'Etat et ses autorités sont assujettis aux règles de droit commun de la responsabilité délictuelle pour les autres préjudices, par exemple ceux occasionnés par le décès d'une personne sous tutelle pendant sa fuite d'un foyer social pour adultes atteints d'arriération mentale, au motif que le personnel du foyer ne s'était pas acquitté de son obligation de surveillance constante (реш. № 693 от 26.06.2009 г. по гр. д. № 8/2009, ВКС, III г. о.).

J. L'arrestation par la police en vertu de la loi de 2006 sur le ministère de l'Intérieur

68. En application de ladite loi, les organes de police sont notamment habilités à arrêter toute personne qui, en raison de troubles mentaux graves et par son comportement, porte atteinte à l'ordre public ou expose sa vie à un danger évident (article 63, alinéas 1-3). La personne concernée peut

contester la légalité de cette arrestation devant un tribunal qui statuera immédiatement (article 63, alinéa 4).

69. Par ailleurs, les organes de police sont chargés, entre autres, de rechercher les personnes disparues (article 139, alinéa 3).

K. Les informations présentées par le requérant au sujet de la recherche de personnes s'étant enfuies d'un foyer social pour adultes atteints de troubles mentaux

70. Le Comité bulgare d'Helsinki a réalisé une étude auprès des postes de police concernant la recherche des personnes s'étant enfuies d'un foyer de ce type. Il en ressort que la pratique n'est pas uniforme. Certains agents de police ont déclaré que, lorsque les employés d'un tel établissement leur demandent de retrouver une personne en fuite, ils recherchent et ramènent celle-ci au poste de police, puis en informent le foyer. D'autres agents de police ont expliqué qu'ils recherchent la personne concernée, mais que, n'ayant pas le droit de l'arrêter, ils préviennent les employés du foyer qui la ramènent eux-mêmes.

L. Les statistiques présentées par le requérant au sujet des procédures judiciaires relatives à la privation de la capacité juridique

71. Le Comité bulgare d'Helsinki a recueilli auprès de huit tribunaux régionaux, pour la période allant de janvier 2002 à septembre 2009, des statistiques sur l'issue des procédures de rétablissement de la capacité juridique. Au cours de cette période, 677 personnes ont été privées de leur capacité juridique, 36 procédures de ce type ont été ouvertes, dont 10 se sont soldées par la levée de la mesure, 8 privations totales de capacité ont été modifiées en privations partielles, 4 demandes ont été rejetées, 7 procédures ont été closes par les tribunaux et les autres affaires sont toujours pendantes.

III. LES TEXTES INTERNATIONAUX PERTINENTS

A. La Convention sur les droits des personnes handicapées, adoptée par l'Assemblée générale des Nations Unies le 13 décembre 2006 (Résolution A/RES/61/106)

72. Cette Convention est entrée en vigueur le 3 mai 2008. Elle a été signée par la Bulgarie le 27 septembre 2007, mais n'a pas encore été ratifiée. Elle se lit comme suit dans ses parties pertinentes :

Article 12

Reconnaissance de la personnalité juridique dans des conditions d'égalité

« 1. Les Etats Parties réaffirment que les personnes handicapées ont droit à la reconnaissance en tous lieux de leur personnalité juridique.

2. Les Etats Parties reconnaissent que les personnes handicapées jouissent de la capacité juridique dans tous les domaines, sur la base de l'égalité avec les autres.

3. Les Etats Parties prennent des mesures appropriées pour donner aux personnes handicapées accès à l'accompagnement dont elles peuvent avoir besoin pour exercer leur capacité juridique.

4. Les Etats Parties font en sorte que les mesures relatives à l'exercice de la capacité juridique soient assorties de garanties appropriées et effectives pour prévenir les abus, conformément au droit international des droits de l'homme. Ces garanties doivent garantir que les mesures relatives à l'exercice de la capacité juridique respectent les droits, la volonté et les préférences de la personne concernée, soient exemptes de tout conflit d'intérêt et ne donnent lieu à aucun abus d'influence, soient proportionnées et adaptées à la situation de la personne concernée, s'appliquent pendant la période la plus brève possible et soient soumises à un contrôle périodique effectué par un organe indépendant et impartial ou une instance judiciaire. Ces garanties doivent également être proportionnées au degré auquel les mesures devant faciliter l'exercice de la capacité juridique affectent les droits et intérêts de la personne concernée.

5. Sous réserve des dispositions du présent article, les Etats Parties prennent toutes mesures appropriées et effectives pour garantir le droit qu'ont les personnes handicapées, sur la base de l'égalité avec les autres, de posséder des biens ou d'en hériter, de contrôler leurs finances et d'avoir accès aux mêmes conditions que les autres personnes aux prêts bancaires, hypothèques et autres formes de crédit financier ; ils veillent à ce que les personnes handicapées ne soient pas arbitrairement privées de leurs biens. »

Article 14

Liberté et sécurité de la personne

« 1. Les Etats Parties veillent à ce que les personnes handicapées, sur la base de l'égalité avec les autres :

a) jouissent du droit à la liberté et à la sûreté de leur personne;

b) ne soient pas privées de leur liberté de façon illégale ou arbitraire ; ils veillent en outre à ce que toute privation de liberté soit conforme à la loi et à ce qu'en aucun cas l'existence d'un handicap ne justifie une privation de liberté.

2. Les Etats Parties veillent à ce que les personnes handicapées, si elles sont privées de leur liberté à l'issue d'une quelconque procédure, aient droit, sur la base de l'égalité avec les autres, aux garanties prévues par le droit international des droits de l'homme et soient traitées conformément aux buts et principes de la présente Convention, y compris en bénéficiant d'aménagements raisonnables. »

B. La recommandation n° R (99) 4 du Comité des ministres du Conseil de l'Europe sur les principes concernant la protection juridique des majeurs incapables (adoptée le 23 février 1999)

73. Cette recommandation est ainsi libellée dans ses parties pertinentes :

Principe 2 – Souplesse dans la réponse juridique

« 1. Les mesures de protection et les autres mécanismes juridiques destinés à assurer la protection des intérêts personnels et économiques des majeurs incapables devraient être suffisamment larges et souples pour permettre d'apporter une réponse juridique appropriée aux différents degrés d'incapacité et à la variété des situations.

(...)

4. Parmi l'éventail des mesures de protection proposées devraient figurer, dans les cas appropriés, des dispositions ne restreignant pas la capacité juridique des intéressés. »

Principe 3 – Préservation maximale de la capacité

« 1. Le cadre législatif devrait, dans toute la mesure du possible, reconnaître que différents degrés d'incapacité peuvent exister et que l'incapacité peut varier dans le temps. Par conséquent, une mesure de protection ne devrait pas automatiquement conduire à une restriction totale de la capacité juridique. Toutefois, une limitation de cette dernière devrait être possible lorsqu'elle apparaît de toute évidence nécessaire à la protection de la personne concernée.

2. En particulier, une mesure de protection ne devrait pas automatiquement priver la personne concernée du droit de voter, de tester, de donner ou non son accord à une quelconque intervention touchant à sa santé, ou de prendre toute autre décision à caractère personnel, ce à tout moment, dans la mesure où sa capacité le lui permet. (...). »

Principe 6 – Proportionnalité

« 1. Lorsqu'une mesure de protection est nécessaire, elle doit être proportionnelle au degré de capacité de la personne concernée et adaptée aux circonstances particulières et aux besoins de cette dernière.

2. La mesure de protection devrait limiter la capacité juridique, les droits et les libertés de la personne concernée seulement dans la limite nécessaire pour atteindre le but de l'intervention auprès de celle-ci. (...). »

Principe 13 – Droit d'être entendu personnellement

« La personne concernée devrait avoir le droit d'être entendue personnellement dans le cadre de toute procédure pouvant avoir une incidence sur sa capacité juridique. »

Principe 14 – Durée, révision et recours

« 1. Les mesures de protection devraient, dans la mesure de ce qui est possible et indiqué, être d'une durée limitée. Il conviendrait d'envisager des révisions périodiques.

(...)

3. Il conviendrait de prévoir des voies de recours appropriées. »

C. Les rapports relatifs aux visites effectuées par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (« le CPT ») en Bulgarie

1. Le rapport du CPT relatif à sa visite du 16 au 22 décembre 2003, publié le 24 juin 2004

74. Ce rapport expose la situation des personnes placées par les autorités publiques dans des foyers pour personnes atteintes de troubles mentaux/d'arriération mentale, établissements qui relèvent de l'autorité du ministère du Travail et de la Politique sociale. La partie II.4 dudit rapport est consacrée au foyer de Pastra.

75. Le CPT a constaté que la capacité officielle du foyer était de 105 personnes : 92 pensionnaires de sexe masculin étaient inscrits, dont 86 étaient présents au moment de la visite. Deux pensionnaires s'étaient enfuis, et les autres avaient une autorisation de sortie dans leur famille. Environ 90 % des pensionnaires étaient atteints de schizophrénie et les autres souffraient d'un retard mental. La majorité d'entre eux avaient passé de nombreuses années dans l'établissement, les sorties étant plutôt rares.

76. Selon les constats du CPT, les locaux du foyer de Pastra étaient dans un état déplorable, les conditions d'hygiène très mauvaises et l'établissement peu chauffé.

77. Plus particulièrement, les bâtiments n'avaient pas d'eau courante. Les pensionnaires se lavaient à l'eau froide dans la cour et ils étaient souvent mal rasés et sales. La salle de bain, à laquelle ils accédaient une fois par semaine, était rudimentaire et délabrée.

78. Les toilettes, situées elles aussi dans la cour, consistaient en des abris délabrés où des trous avaient été creusés à même le sol. Ces installations étaient dans un état déplorable et leur accès dangereux. Par ailleurs, les produits d'hygiène de base étaient rarement disponibles.

79. Le rapport fait état d'insuffisances en ce qui concerne la nourriture. L'alimentation quotidienne consistait en trois repas par jour, dont 750 g de pain. Du lait et des œufs n'étaient jamais proposés et il y avait rarement des fruits et légumes frais. Aucune disposition n'était prise pour les régimes spéciaux.

80. Le seul traitement dispensé dans le foyer consistait à administrer des médicaments. Les pensionnaires, considérés comme des patients psychiatriques chroniques ayant besoin d'une thérapie d'entretien, étaient enregistrés comme malades externes auprès d'un psychiatre à Dupnitsa. Le psychiatre se rendait dans le foyer une fois tous les deux ou trois mois, ainsi que sur demande. Les pensionnaires pouvaient aussi être amenés chez le psychiatre – qui tenait une permanence hebdomadaire dans la ville voisine de Rila – si l'on constatait une modification de leur état mental. Tous les

pensionnaires étaient soumis à un examen psychiatrique deux fois par an, ce qui donnait l'occasion de faire le bilan de leur traitement médicamenteux et, le cas échéant, de l'adapter. Presque tous les pensionnaires prenaient des médicaments psychiatriques, qui étaient inscrits sur une carte spéciale et administrés par les infirmiers.

81. Mis à part l'administration de médicaments, aucune activité thérapeutique n'était organisée pour les pensionnaires, qui menaient une vie passive et monotone.

82. Le CPT a conclu que ces conditions étaient à l'origine d'une situation qui pouvait être qualifiée de traitement inhumain et dégradant. Il a demandé aux autorités bulgares de remplacer d'urgence le foyer de Pastra. Dans leur réponse du 13 février 2004, celles-ci ont reconnu que le foyer n'était pas conforme aux normes européennes en matière de soins. Elles ont indiqué qu'il allait être fermé en priorité et que les pensionnaires seraient transférés dans d'autres établissements.

83. Par ailleurs, le CPT a indiqué, dans la partie II.7 de son rapport que dans la plupart des cas le placement de personnes atteintes de déficiences mentales en institution spécialisée se traduisait par une privation de liberté *de facto*. La procédure de placement devait donc être assortie des garanties appropriées, parmi lesquelles la réalisation d'une expertise médicale, notamment psychiatrique, objective. Il était aussi essentiel que ces personnes aient le droit d'intenter des actions permettant aux tribunaux de statuer rapidement sur la légalité de leur placement. Le CPT a recommandé qu'un tel droit soit garanti en Bulgarie (paragraphe 52 du rapport).

2. Le rapport du CPT relatif à sa visite du 10 au 21 septembre 2006, publié le 28 février 2008

84. Dans ce rapport, le CPT a recommandé à nouveau de prévoir une action judiciaire permettant de contester la légalité du placement dans un foyer social (paragraphes 176 et 177 du rapport).

85. Il a recommandé également que des efforts soient entrepris pour garantir que le placement des pensionnaires dans les foyers pour personnes souffrant de troubles mentaux et/ou de retard mental se fasse en toute conformité avec la lettre et l'esprit de la loi. Les contrats relatifs à la prestation de services sociaux devraient préciser les droits légaux des pensionnaires, notamment les possibilités de déposer des plaintes auprès d'un organe extérieur. En outre, les pensionnaires incapables de comprendre les contrats devraient recevoir une aide appropriée (paragraphe 178 du rapport).

86. Enfin, le CPT a préconisé que les autorités bulgares prennent les mesures nécessaires afin d'éviter les conflits d'intérêts qui surviennent à l'occasion de la désignation d'un employé d'un foyer social comme tuteur ou curateur d'un pensionnaire de la même institution (paragraphe 179 du rapport).

87. Par ailleurs, le CPT s'est rendu à nouveau au foyer de Pastra lors de sa visite périodique en Bulgarie, en octobre 2010.

IV. LE DROIT COMPARÉ

A. L'accès à un tribunal pour demander le rétablissement de la capacité juridique

88. Selon une étude comparative du droit de vingt Etats membres du Conseil de l'Europe, il apparaît que, dans une grande majorité des cas (Allemagne, Croatie, Danemark, Estonie, Finlande, France, Grèce, Hongrie, Luxembourg, Monaco, Pologne, Portugal, Roumanie, Slovaquie, Suède, Suisse et Turquie), les législations accordent à toutes les personnes privées de leur capacité juridique le droit de s'adresser directement aux juridictions pour demander la cessation de la mesure.

89. En Ukraine, une personne partiellement privée de sa capacité peut introduire par elle-même une demande de mainlevée de cette mesure ; il en va autrement pour une personne déclarée totalement incapable, qui peut toutefois contester tout acte de son tuteur devant un tribunal.

90. L'action judiciaire en cessation de la privation de la capacité juridique ne peut être directement ouverte par la personne concernée ni en Lettonie (où la demande peut être introduite par le procureur ou par le conseil des tutelles) ni en Irlande.

B. Le placement en foyer spécialisé d'une personne privée de sa capacité juridique

91. Une étude comparative de la législation de vingt Etats parties à la Convention démontre qu'il n'existe pas en Europe d'approche harmonisée relativement au régime du placement en foyer spécialisé des personnes privées de leur capacité juridique, notamment pour ce qui est de l'autorité compétente pour adopter la décision de placement et des garanties dont bénéfice la personne concernée. On peut toutefois constater que, dans certains pays (Allemagne, Autriche, Estonie, Finlande, France, Grèce, Pologne, Portugal et Turquie), la décision de placer une personne contre sa volonté dans un foyer spécialisé pendant une longue période est prise directement ou homologuée par le juge.

92. D'autres législations (Belgique, Danemark, Hongrie, Irlande, Lettonie, Luxembourg, Monaco et Royaume-Uni) autorisent le curateur, des proches parents ou l'administration à décider du placement en foyer spécialisé sans que l'approbation du juge soit nécessaire. Par ailleurs, il apparaît que, dans tous les pays précités, la mesure de placement est entourée de conditions de fond, notamment quant à l'état de santé de la

personne, à l'existence d'un danger ou d'un risque et/ou à la production de certificats médicaux. De plus, l'obligation d'entendre ou de consulter la personne concernée au sujet de son placement, l'existence d'un délai légal ou judiciaire pour la fin ou la révision de cette mesure, ainsi que la possibilité d'une assistance juridique figurent parmi les garanties fournies dans plusieurs législations nationales.

93. Dans certains pays (Allemagne, Danemark, Estonie, Grèce, Hongrie, Irlande, Lettonie, Pologne, Slovaquie, Suisse et Turquie), la possibilité de contester devant un organe judiciaire la décision initiale de placement est offerte à la personne concernée sans qu'elle soit tenue de solliciter l'accord de son tuteur ou curateur.

94. Enfin, plusieurs Etats (Allemagne, Danemark, Estonie, Finlande, Grèce, Irlande, Lettonie, Pologne, Suisse et Turquie) donnent directement à la personne concernée le droit d'introduire périodiquement un recours judiciaire pour contester la légalité du maintien de la mesure de placement.

95. Il convient de noter par ailleurs que de nombreuses législations relatives à la capacité juridique ou au placement des personnes en institution spécialisée ont été récemment modifiées (Allemagne : 1992 ; Autriche : 2007 ; Danemark : 2007 ; Estonie : 2005 ; Finlande : 1999 ; France : 2007 ; Grèce : 1992 ; Hongrie : 2004 ; Lettonie : 2006 ; Pologne : 2007 ; Royaume-Uni : 2005 ; Ukraine : 2000) ou sont en cours de modification (Irlande). Ces réformes législatives ont pour but de renforcer la protection juridique des personnes privées de leur capacité en leur offrant soit un droit d'accès direct à un tribunal pour faire réviser leur statut, soit des garanties supplémentaires quand elles sont placées en établissement spécialisé contre leur volonté.

EN DROIT

I. SUR LA VIOLATION ALLÉGUÉE DE L'ARTICLE 5 § 1 DE LA CONVENTION

96. Le requérant estime que son placement dans le foyer de Pastra est contraire à l'article 5 § 1 de la Convention.

Cette disposition se lit comme suit :

> « 1. Toute personne a droit à la liberté et à la sûreté. Nul ne peut être privé de sa liberté, sauf dans les cas suivants et selon les voies légales :
>
> a) s'il est détenu régulièrement après condamnation par un tribunal compétent ;
>
> b) s'il a fait l'objet d'une arrestation ou d'une détention régulières pour insoumission à une ordonnance rendue, conformément à la loi, par un tribunal ou en vue de garantir l'exécution d'une obligation prescrite par la loi ;

c) s'il a été arrêté et détenu en vue d'être conduit devant l'autorité judiciaire compétente, lorsqu'il y a des raisons plausibles de soupçonner qu'il a commis une infraction ou qu'il y a des motifs raisonnables de croire à la nécessité de l'empêcher de commettre une infraction ou de s'enfuir après l'accomplissement de celle-ci ;

d) s'il s'agit de la détention régulière d'un mineur, décidée pour son éducation surveillée ou de sa détention régulière, afin de le traduire devant l'autorité compétente ;

e) s'il s'agit de la détention régulière d'une personne susceptible de propager une maladie contagieuse, d'un aliéné, d'un alcoolique, d'un toxicomane ou d'un vagabond ;

f) s'il s'agit de l'arrestation ou de la détention régulières d'une personne pour l'empêcher de pénétrer irrégulièrement dans le territoire, ou contre laquelle une procédure d'expulsion ou d'extradition est en cours. »

A. Remarques préliminaires

97. La Grande Chambre observe que devant elle le Gouvernement maintient l'exception de non-épuisement des voies de recours internes qu'il a soulevée devant la chambre relativement au grief tiré de l'article 5 § 1.

98. Cette exception se fonde sur les éléments suivants. Premièrement, le requérant aurait pu à tout moment saisir en personne le juge, en vertu de l'article 277 du CPC, pour demander le rétablissement de sa capacité juridique, et la levée de la curatelle lui aurait permis de quitter librement le foyer. Deuxièmement, les membres de sa famille proche ne se seraient pas prévalus de la possibilité qu'offraient à certains d'entre eux les articles 113 et 115 du CF de demander le changement du curateur auprès de l'organe chargé de la tutelle et de la curatelle. D'après le Gouvernement, en cas de refus, ils auraient pu introduire un recours auprès d'un tribunal qui aurait statué au fond et éventuellement nommé un nouveau curateur, qui aurait pu ainsi résilier le contrat de placement. Le Gouvernement soutient aussi en substance que les membres de la famille proche du requérant auraient pu également contester le contrat conclu entre la curatrice R. P. et le foyer de Pastra. Enfin, il indique que le requérant lui-même aurait pu demander à l'organe chargé de la tutelle et de la curatelle de désigner un représentant *ad hoc* en soutenant qu'il y avait un conflit d'intérêts avec son curateur, et ce afin de demander son départ du foyer et sa domiciliation à une autre adresse (article 123, alinéa 1, du CF).

99. La Grande Chambre relève que, dans sa décision sur la recevabilité du 29 juin 2010, la chambre a constaté que cette exception soulevait des questions étroitement liées à celles posées par le grief du requérant sur le terrain de l'article 5 § 4 et a par conséquent décidé de la joindre à l'examen au fond de cette disposition.

100. Par ailleurs, considérant que la question de savoir s'il y avait en l'espèce « privation de liberté » au sens de l'article 5 § 1 était étroitement liée au bien-fondé du grief tiré de cette disposition, la chambre a également

joint ce point à l'examen au fond. La Grande Chambre ne voit aucune raison de remettre en cause les conclusions de la chambre à ces égards.

B. Sur la question de savoir si le requérant a été privé de liberté au sens de l'article 5 § 1

1. Arguments des parties

a) Le requérant

101. Le requérant soutient que, bien que la législation nationale qualifie de « volontaire » le placement en foyer social des personnes atteintes de troubles mentaux, son transfert au foyer de Pastra constitue une privation de liberté. Il estime que, comme dans l'arrêt *Storck c. Allemagne* (n° 61603/00, CEDH 2005-V), les éléments objectif et subjectif caractérisant une détention sont présents en l'espèce.

102. Concernant la nature de la mesure, le requérant estime que vivre dans un foyer éloigné et situé dans une zone montagneuse équivalait à être physiquement isolé de la société. Il n'aurait pu se résoudre à partir de son propre chef car, sans papiers d'identité et sans argent, il se serait exposé au risque de se faire arrêter rapidement par la police à l'occasion de contrôles de routine, très courants en Bulgarie.

103. Les sorties du foyer auraient été soumises à un régime d'autorisation. La distance d'environ 420 km séparant le foyer de la ville natale du requérant et l'impossibilité pour lui de disposer de sa pension d'invalidité l'auraient privé de la faculté de se rendre plus de trois fois à Roussé. L'intéressé affirme par ailleurs que de nombreuses demandes de voyage lui ont été refusées par l'administration du foyer. Il ajoute que, selon une pratique dépourvue de base légale, les pensionnaires ne respectant pas la durée de leurs autorisations de sortie sont considérés comme étant en état de fuite et recherchés par la police. Il expose à cet égard que la police l'a arrêté une fois à Roussé et que, même si celle-ci ne l'a pas reconduit au foyer, le fait que le directeur avait demandé sa localisation et son transfert a constitué une restriction déterminante de son droit à la liberté individuelle. Il dit avoir été arrêté et détenu par la police en attendant que des employés du foyer viennent le chercher, sans avoir été informé des raisons justifiant sa privation de liberté. Son transfert ayant été effectué par la contrainte, peu importerait qu'il ait été assuré par des employés du foyer.

104. Le requérant souligne ensuite que la mesure de placement dont il fait l'objet perdure depuis plus de huit ans et que ses espoirs de quitter un jour le foyer sont vains car la décision doit être approuvée par le curateur.

105. S'agissant des conséquences de l'exécution de la mesure de placement, le requérant met en avant la sévérité du régime. Ses occupations, ses soins et ses déplacements auraient fait l'objet d'un contrôle complet et effectif de la part des employés du foyer. Il aurait été soumis à une routine

quotidienne stricte l'obligeant à se lever, se coucher et manger à des heures bien précises. Il n'aurait eu aucune liberté quant au choix de sa tenue vestimentaire, la préparation de ses repas, la participation à des événements culturels ou l'établissement de relations avec d'autres personnes, y compris des relations intimes, car le foyer aurait été exclusivement réservé aux hommes. Il n'aurait pu regarder la télévision que le matin. Ainsi, son séjour au foyer aurait causé une nette dégradation de son bien-être et aurait fait naître chez lui un syndrome d'institutionnalisation, c'est-à-dire l'incapacité de se réinsérer dans la société et d'y mener une vie normale.

106. Pour ce qui est de l'élément subjectif, l'intéressé considère que son cas se distingue de celui examiné dans l'affaire *H.M. c. Suisse* (n° 39187/98, CEDH 2002-II), où la requérante avait consenti à son placement dans un établissement social. Lui-même n'aurait jamais donné un tel consentement en l'espèce. Sa curatrice de l'époque, M^me^ R. P. (paragraphe 12 ci-dessus), ne l'aurait pas consulté au sujet du placement et, du reste, il ne l'aurait même pas connue ; de plus, il n'aurait pas été informé de l'existence du contrat du 10 décembre 2002 (paragraphe 14 ci-dessus), qu'il n'aurait jamais signé. Ces circonstances refléteraient une pratique largement répandue en Bulgarie selon laquelle, une fois privée, même partiellement, de sa capacité juridique une personne serait considérée comme incapable d'exprimer sa volonté. D'ailleurs, il ressortirait des documents médicaux que le souhait du requérant de quitter le foyer a été analysé non pas comme une volonté librement exprimée, mais plutôt comme un symptôme de sa maladie mentale.

107. Enfin, dans l'affaire *H.M. c. Suisse*, précitée, les autorités auraient fondé leur décision de placement sur un examen minutieux démontrant que les conditions de vie au domicile de l'intéressée s'étaient gravement détériorées en raison de son manque de coopération avec un organisme d'aide sociale. En revanche, le requérant ne se serait jamais vu offrir et n'aurait jamais refusé une aide sociale alternative à domicile.

b) Le Gouvernement

108. Dans ses observations écrites devant la chambre, le Gouvernement avait admis que les circonstances de l'espèce s'analysaient en une « privation de liberté » au sens de l'article 5 § 1 de la Convention. Cependant, à l'audience et dans la procédure devant la Grande Chambre, il a soutenu que l'article 5 ne trouvait pas à s'appliquer. A cet égard, il observe que le requérant n'a pas été interné d'office en hôpital psychiatrique par les pouvoirs publics en vertu de la loi sur la santé publique, mais qu'il a été logé dans un foyer d'assistance sociale à la demande de sa curatrice, sur le fondement d'un contrat de droit civil et conformément aux règles de l'assistance sociale. Ainsi, les personnes ayant besoin d'assistance, y compris celles présentant des troubles mentaux, pourraient demander, directement ou par le biais de leurs représentants, le bénéfice de diverses

prestations sociales et médicales en application de la loi sur l'assistance sociale de 1998 (paragraphes 57-60 ci-dessus). Les foyers pour adultes atteints de troubles mentaux proposeraient une vaste gamme de prestations de ce type et le placement dans ces établissements ne pourrait être considéré comme une privation de liberté.

109. Quant aux circonstances concrètes de l'espèce, le Gouvernement avance que le requérant n'a jamais manifesté expressément et consciemment son désaccord avec le placement dans le foyer et qu'on ne peut dès lors conclure que cette mesure revêtait un caractère involontaire. De plus, l'intéressé aurait été libre de quitter le foyer à tout moment.

110. Par ailleurs, l'intéressé aurait été encouragé à travailler au mieux de ses capacités dans le restaurant du village et aurait bénéficié à trois reprises d'une autorisation de sortie. Ses deux retours de Roussé avant la fin de son autorisation de sortie (paragraphe 27 ci-dessus) s'expliqueraient par l'absence de logement. Le Gouvernement souligne en outre que le requérant n'a jamais été reconduit au foyer par la police. Il reconnaît qu'en septembre 2006 le directeur s'est retrouvé dans l'obligation de demander à la police de rechercher l'intéressé car celui-ci n'était pas rentré (paragraphe 28 ci-dessus). Or il ressortirait de l'affaire *Dodov c. Bulgarie* (n° 59548/00, 17 janvier 2008) que l'Etat a l'obligation positive de prendre soin des personnes logées dans des foyers sociaux. D'après le Gouvernement, la démarche du directeur s'inscrivait dans le cadre de cette obligation de protection.

111. Le Gouvernement fait ensuite remarquer que le requérant ne jouissait pas de sa capacité juridique et ne bénéficiait pas d'un environnement familial de soutien, d'un logement ou de ressources suffisantes pour mener une vie autonome. Se référant à cet égard aux arrêts *H.M. c. Suisse*, précité, et *Nielsen c. Danemark* (28 novembre 1988, série A n° 144), il estime que le placement du requérant n'est qu'une mesure de protection visant le seul intérêt de celui-ci et représente une réponse adéquate à une situation sociale et médicale d'urgence qui ne peut être considérée comme involontaire.

c) Le tiers intervenant

112. Interights formule les observations générales suivantes. Elle indique avoir mené une étude sur les pratiques de placement dans des foyers sociaux pour personnes atteintes de troubles mentaux dans des pays d'Europe centrale et orientale. Selon les conclusions de cette étude, dans la plupart des cas, le placement en question s'analyserait en une situation équivalant à une privation de liberté *de facto*.

113. Les foyers sociaux seraient souvent situés dans des zones géographiques rurales ou montagneuses difficiles d'accès. En cas de proximité des localités urbaines, ces foyers seraient entourés de grandes clôtures et fermés à clé. En règle générale, les personnes placées ne

pourraient sortir qu'avec l'autorisation expresse du directeur de l'institution et pendant une durée limitée. En cas d'absence non autorisée, la police aurait le pouvoir de rechercher et de ramener les personnes concernées. Le même régime de vie restrictif s'appliquerait de la même façon à toutes les personnes, sans distinction tenant au statut juridique – capables, incapables ou partiellement incapables, ce que Interights juge déterminant. En effet, le caractère volontaire ou involontaire du placement ne serait aucunement pris en considération.

114. Pour ce qui est de l'analyse de l'aspect subjectif du placement, Interights estime que le consentement des personnes concernées appelle un examen attentif. En effet, il faudrait vérifier sérieusement la véritable volonté de ces personnes, nonobstant leur éventuelle incapacité déclarée sur le plan juridique. Selon Interights, c'est une réalité dans les pays d'Europe centrale et orientale que face au choix de vivre soit sans abri dans la précarité totale soit dans les conditions relativement sécurisées offertes par un foyer, les personnes incapables peuvent opter pour la deuxième solution, tout simplement à défaut de se voir proposer par l'Etat des services alternatifs relevant de l'assistance sociale. Ce ne serait pas pour autant que l'on pourrait dire que ces personnes consentent librement à la mesure de placement.

2. Appréciation de la Cour

a) Principes généraux

115. La Cour rappelle qu'entre privation de liberté et restrictions à la liberté de circuler qui obéissent à l'article 2 du Protocole n° 4, il n'y a qu'une différence de degré ou d'intensité, non de nature ou d'essence. Le classement dans l'une ou l'autre de ces catégories se révèle parfois ardu, car dans certains cas marginaux il s'agit d'une pure affaire d'appréciation, mais la Cour ne saurait éluder un choix dont dépendent l'applicabilité ou l'inapplicabilité de l'article 5 (*Guzzardi c. Italie*, 6 novembre 1980, §§ 92-93, série A n° 39). Pour savoir si une personne a été privée de sa liberté, il faut partir de sa situation concrète et prendre en compte un ensemble de critères propres à son cas particulier comme le genre, la durée, les effets et les modalités d'exécution de la mesure considérée (*Storck*, précité, § 71, et *Guzzardi*, précité, § 92).

116. Dans le contexte de la privation de liberté en relation avec la santé mentale, la Cour a estimé qu'une personne pouvait être considérée comme « détenue » même pendant la période où elle se trouvait dans un service hospitalier ouvert avec la possibilité de se rendre régulièrement sans escorte dans les parties non sécurisées de l'hôpital et de sortir de celui-ci sans escorte (*Ashingdane c. Royaume-Uni*, 28 mai 1985, § 42, série A n° 93).

117. Par ailleurs, dans le domaine du placement des personnes atteintes de troubles mentaux, la notion de privation de liberté ne comporte pas

seulement un aspect objectif, à savoir l'internement d'une personne dans un espace restreint pendant un laps de temps non négligeable. Une personne ne peut passer pour avoir été privée de sa liberté que si – et cela constitue un aspect subjectif – elle n'a pas valablement consenti à son internement (*Storck*, précité, § 74).

118. La Cour a conclu à l'existence d'une privation de liberté notamment dans les circonstances suivantes : a) lorsque le requérant, déclaré totalement incapable et placé à la demande de son représentant légal dans un hôpital psychiatrique, avait tenté sans succès de le quitter (*Chtoukatourov c. Russie*, n° 44009/05, § 108, 27 mars 2008) ; b) lorsque la requérante avait d'abord consenti à son séjour en clinique, mais tenté de s'enfuir par la suite (*Storck*, précité, § 76) ; c) dans un cas où le requérant était un majeur incapable de donner son consentement au placement dans une institution psychiatrique qu'il n'avait cependant jamais tenté de quitter (*H.L. c. Royaume-Uni*, n° 45508/99, §§ 89-94, CEDH 2004-IX).

119. La Cour a également dit que le droit à la liberté occupe une place trop importante dans une société démocratique pour qu'une personne perde le bénéfice de la protection de la Convention du seul fait qu'elle a accepté d'être mise en détention (*De Wilde, Ooms et Versyp c. Belgique*, 18 juin 1971, §§ 64-65, série A n° 12), en particulier lorsque nul ne conteste que cette personne est juridiquement incapable de consentir ou de s'opposer à la mesure proposée (*H.L. c. Royaume-Uni*, précité, § 90).

120. Par ailleurs, la Cour a eu l'occasion de dire que la première phrase de l'article 5 § 1 doit être comprise comme imposant à l'Etat l'obligation positive de protéger la liberté des personnes relevant de sa juridiction. Si tel n'était pas le cas, il en résulterait une lacune assez grande dans la protection contre la détention arbitraire, ce qui ne cadrerait pas avec l'importance que revêt la liberté individuelle dans une société démocratique. L'Etat est donc tenu de prendre des mesures offrant une protection effective aux personnes vulnérables, notamment des mesures raisonnables destinées à empêcher une privation de liberté dont les autorités avaient ou auraient dû avoir connaissance (*Storck*, précité, § 102). Ainsi, ayant égard aux circonstances particulières de ces affaires, la Cour a estimé que la responsabilité des autorités nationales se trouvait engagée s'agissant d'une détention demandée par le tuteur du requérant et exécutée dans un hôpital psychiatrique (*Chtoukatourov,* précité), et par une détention dans une clinique privée (*Storck,* précité).

b) Application de ces principes en l'espèce

121. La Cour souligne d'emblée qu'il n'est pas nécessaire en l'espèce de décider, d'une manière générale, si tout placement d'une personne privée de sa capacité juridique dans un établissement social constitue une « privation de liberté » au sens de l'article 5 § 1. Dans un certain nombre de cas, de tels placements ont lieu à l'initiative des familles qui se trouvent aussi

impliquées dans la tutelle ou la curatelle et sont basés sur des contrats de droit civil conclus avec une institution sociale appropriée. Par conséquent, dans ces cas, les restrictions à la liberté résultent d'actions de particuliers et le rôle des autorités se limite à la supervision. La Cour n'est pas appelée dans la présente affaire à se prononcer sur les obligations qui pourraient incomber aux autorités au regard de la Convention dans de telles situations.

122. Elle constate que les circonstances de la présente affaire sont particulières. En effet, aucun membre de la famille du requérant n'a été engagé dans la curatelle et les fonctions de curateur ont été confiées à une fonctionnaire de l'Etat (M^me^ R. P.). Celle-ci a négocié et conclu le contrat de placement avec le foyer de Pastra, sans prendre contact avec le requérant, qu'elle n'a d'ailleurs jamais rencontré. La mesure de placement a été mise en œuvre par les services sociaux, auxquels le requérant n'a pas non plus été présenté, dans un établissement géré par l'Etat (paragraphes 12-15 ci-dessus). Le requérant n'a jamais été consulté au sujet des choix opérés par sa curatrice, alors qu'il pouvait exprimer un avis valable et que son accord était nécessaire selon la loi de 1949 sur les personnes physiques et morales et la famille (paragraphe 42 ci-dessus). Dans ces conditions, il n'a pas été transféré au foyer de Pastra à sa demande ou sur la base d'un contrat volontaire de droit privé pour le placement dans une institution sociale en vue de l'obtention d'une aide sociale et d'une protection. La Cour estime que les restrictions dont le requérant se plaint sont le résultat de différents actes pris depuis la demande de placement et tout au long de l'exécution de la mesure par des autorités et institutions publiques agissant par l'intermédiaire de leurs agents, et non d'actes ou d'initiatives de personnes privées. Même si en l'espèce rien n'indique que la curatrice a agi de mauvaise foi, ces éléments permettent de distinguer la présente affaire de l'affaire *Nielsen* (précitée), dans laquelle la mère du requérant, agissant de bonne foi, avait confié son fils mineur à une institution psychiatrique, ce qui avait amené la Cour à estimer que la mesure relevait de l'exercice des droits parentaux exclusifs sur un enfant incapable d'exprimer un avis valable.

123. Il convient dès lors de considérer que le placement est imputable aux autorités nationales. Il reste à examiner si les restrictions découlant de cette mesure s'analysent en une « privation de liberté » au sens de l'article 5.

124. Concernant l'aspect objectif, la Cour relève que le requérant était logé dans un bloc du foyer dont il pouvait sortir, mais elle rappelle qu'il n'est pas décisif de savoir si le bâtiment était fermé à clé (*Ashingdane*, précité, § 42). Il est vrai que l'intéressé pouvait se rendre dans le village le plus proche. Il n'en demeure pas moins que ces sorties n'étaient possibles qu'avec une autorisation expresse (paragraphe 25 ci-dessus). Qui plus est, le temps passé en dehors du foyer et les endroits où le requérant pouvait se rendre étaient toujours contrôlés et limités.

125. La Cour note également qu'entre 2002 et 2009 le requérant a été autorisé à trois reprises à se rendre à Roussé pour un séjour de courte durée (une dizaine de jours) (paragraphes 26-28 ci-dessus). La Cour ne saurait spéculer sur les questions de savoir si l'intéressé aurait pu le faire plus fréquemment s'il l'avait demandé. Néanmoins, elle observe que la décision d'octroyer de telles autorisations relevait entièrement de l'administration du foyer, qui retenait les papiers d'identité du requérant et gérait ses moyens financiers, y compris les frais de transport (paragraphes 25-26 ci-dessus). De plus, il apparaît à la Cour que la localisation du foyer dans une zone montagneuse et éloignée de Roussé (environ 400 km) rendait tout voyage difficile et coûteux, compte tenu des revenus du requérant et de sa capacité d'organiser ses déplacements.

126. La Cour estime que ce régime d'autorisation et le fait que l'administration retenait les papiers d'identité du requérant ont constitué des restrictions importantes à la liberté individuelle de l'intéressé.

127. En outre, il n'est pas contesté que lorsque le requérant n'est pas rentré après son autorisation de sortie en 2006, l'administration du foyer a demandé à la police de Roussé de le rechercher et de le ramener (paragraphe 28 ci-dessus). La Cour peut admettre que cette démarche relève de la responsabilité qu'assume l'administration d'un foyer pour personnes atteintes de troubles mentaux à l'égard des individus qui y sont placés. Elle note aussi que la police n'a pas assuré le transfert du requérant et que celui-ci n'a pas prouvé avoir été arrêté dans l'attente de l'arrivée des employés du foyer. Il n'en demeure pas moins que, comme la période de sortie autorisée avait expiré, les représentants du foyer ont ramené le requérant sans se préoccuper de ses souhaits.

128. Ainsi, même si le requérant a pu effectuer certains déplacements, les éléments ci-dessus amènent la Cour à considérer que, contrairement à ce qu'affirme le Gouvernement, l'intéressé se trouvait sous un contrôle constant et n'était pas libre de quitter le foyer sans autorisation à tout moment lorsqu'il le souhaitait. Se référant à l'affaire *Dodov* précitée, le Gouvernement soutient que les restrictions en cause étaient nécessaires, compte tenu des obligations positives des autorités de protéger la vie et la santé du requérant. La Cour note que dans l'affaire en question la mère du requérant souffrait de la maladie d'Alzheimer et qu'en conséquence sa mémoire et ses autres capacités mentales se dégradaient progressivement, si bien que le personnel de la maison de retraite avait reçu pour instruction de ne jamais la laisser seule. En l'espèce, en revanche, le Gouvernement n'a pas démontré que l'état de santé du requérant était de nature à le placer dans une situation de danger immédiat ou à commander l'adoption de restrictions spéciales en vue de protéger sa vie et son intégrité physique.

129. Quant à la durée de la mesure, la Cour relève que celle-ci n'a pas été fixée et est donc indéterminée, puisque le requérant a été inscrit dans les registres municipaux comme ayant son adresse permanente au foyer. Il y

demeure toujours (soit depuis plus de huit ans). Ce laps de temps est suffisamment long pour qu'il ressente pleinement les effets négatifs des restrictions auxquelles il est soumis.

130. Pour ce qui est de l'aspect subjectif de la mesure, il convient de noter que, contrairement aux exigences de la loi interne (paragraphe 42 ci-dessus), l'intéressé n'a pas été invité à exprimer son avis au sujet du placement et n'a jamais explicitement donné son accord à ce propos. Cependant, il a été conduit en ambulance à Pastra et placé dans le foyer sans être informé des motifs et de la durée de cette mesure prise par sa curatrice désignée d'office. La Cour observe à cet égard qu'il existe des situations dans lesquelles la volonté d'une personne dont les capacités mentales sont altérées peut être valablement remplacée par celle d'un tiers agissant dans le cadre d'une mesure de protection et qu'il est parfois difficile de connaître la véritable volonté ou les préférences d'une telle personne. Toutefois, la Cour a déjà eu l'occasion de dire que le fait qu'une personne soit privée de sa capacité juridique ne signifie pas nécessairement qu'elle soit incapable de comprendre quelle est sa situation (*Chtoukatourov*, précité, § 108). En l'espèce, la loi interne accordait un certain poids à la volonté de l'intéressé et il apparaît que celui-ci comprenait bien sa situation. La Cour note qu'au plus tard à partir de 2004 le requérant a exprimé de manière explicite son souhait de quitter le foyer de Pastra devant les psychiatres et dans le cadre des démarches qu'il a entamées auprès des autorités en vue du rétablissement de sa capacité juridique et de la cessation de la curatelle (paragraphes 37-41 ci-dessus).

131. Ces éléments permettent de distinguer le cas d'espèce de l'affaire *H.M. c. Suisse* précitée*,* où la Cour a conclu à l'absence d'une privation de liberté, car la mesure de placement ne visait que la protection des intérêts de la requérante, qui une fois arrivée au foyer, avait accepté d'y rester. A cet égard, le Gouvernement n'a pas démontré que le requérant, à son arrivée à Pastra ou à une date ultérieure, ait accepté de demeurer au foyer. Dans ces circonstances, la Cour n'est pas convaincue que l'intéressé ait consenti au placement ou l'ait accepté de manière tacite plus tard et tout au long de son séjour.

132. Compte tenu des circonstances particulières de l'espèce, et notamment de l'implication des autorités dans l'imposition et la mise en œuvre du placement du requérant, du régime de sortie du foyer, de la durée de la mesure et de l'absence de consentement de l'intéressé, la Cour conclut que la situation examinée s'analyse en une privation de liberté au sens de l'article 5 § 1 de la Convention. Par conséquent, cette disposition trouve à s'appliquer.

C. Sur la compatibilité avec l'article 5 § 1 du placement du requérant au foyer de Pastra

1. Arguments des parties

a) Le requérant

133. Le requérant soutient que, faute pour lui d'avoir consenti à son placement et signé le contrat conclu entre sa curatrice et le foyer de Pastra, ce contrat était contraire à la loi sur les personnes physiques et morales et la famille. Il ajoute qu'il n'a pas été informé de l'existence de ce contrat au moment du placement et qu'il a continué à en ignorer l'existence bien longtemps après cette date. Il n'aurait d'ailleurs pas eu la possibilité de contester cet acte de sa curatrice. Bien que celle-ci eût l'obligation en vertu de l'article 126 du code de la famille de soumettre des rapports sur ses activités à l'organe chargé de la tutelle et de la curatelle (le maire), ce dernier n'aurait eu aucun pouvoir de la sanctionner. En tout cas, aucun rapport n'aurait été établi au sujet du requérant, et ses curateurs n'auraient jamais été appelés à répondre de cette défaillance.

134. Le requérant argue ensuite que son placement dans un foyer pour personnes atteintes de troubles mentaux ne répond à aucun des motifs justifiant une privation de liberté au sens de l'article 5. Cette mesure ne se justifierait ni par un besoin de protection de la sûreté publique ni par l'impossibilité, pour celui qui y est soumis, de s'établir en dehors de l'institution. Le requérant en veut pour preuve le fait que le directeur du foyer l'a jugé capable de s'intégrer dans la société et que des efforts ont été déployés pour le rapprocher de sa famille, mais sans succès. Ainsi, les autorités auraient fondé leur décision de placement sur la simple raison que la famille du requérant n'était pas disposée à prendre soin de lui et qu'il avait besoin d'une aide sociale. Elles n'auraient pas examiné la question de savoir si d'autres mesures moins restrictives pour la liberté individuelle permettaient de fournir l'aide nécessaire. De telles mesures auraient d'ailleurs été envisageables, la législation bulgare prévoyant une large gamme de prestations sociales, par exemple l'assistance personnelle, des centres de réhabilitation, des allocations et des pensions spécifiques. Les autorités n'auraient donc pas ménagé un juste équilibre entre les besoins sociaux de l'intéressé et son droit à la liberté. Il serait arbitraire, et contraire au but de l'article 5, de fonder une détention sur des considérations purement sociales.

135. Dans l'hypothèse où la Cour considérerait que son placement relève du champ d'application de l'article 5 § 1 e), qui prévoit la privation de liberté d'une personne aliénée, le requérant soutient que les autorités nationales n'ont pas rempli les exigences de cette disposition. En effet, en l'absence d'une expertise psychiatrique récente, il serait évident, selon lui, que ledit placement n'avait pas pour but un traitement médical et qu'il était

uniquement fondé sur les documents médicaux produits dans le cadre de la procédure visant la privation de la capacité juridique. Ceux-ci auraient été établis environ un an et demi avant le placement et n'auraient pas eu strictement pour objet le placement en établissement pour individus souffrant de troubles mentaux. Invoquant l'arrêt *Varbanov c. Bulgarie* (n° 31365/96, § 47, CEDH 2000-X), le requérant dit avoir été placé dans le foyer de Pastra sans que son état de santé mentale eût été évalué à ce moment-là.

b) Le Gouvernement

136. Le Gouvernement considère que le placement du requérant est conforme au droit interne car la curatrice a conclu un contrat aux termes duquel l'intéressé recevait, dans son intérêt, des prestations sociales. Ainsi, elle aurait agi dans le cadre de ses fonctions et se serait acquittée de son obligation de protéger la personne sous curatelle.

137. Etant donné que le seul but du placement était de fournir au requérant des prestations à caractère social en vertu de la loi sur l'assistance sociale et non d'effectuer un traitement médical obligatoire, le Gouvernement estime que cette mesure n'est pas régie par l'article 5 § 1 e) de la Convention. A cet égard, les autorités auraient tenu compte de la situation financière et familiale du requérant, à savoir l'absence de ressources et de membres de la famille proche pouvant l'assister au quotidien.

138. Le Gouvernement précise en même temps que l'intéressé peut, en tout état de cause, être considéré comme un « aliéné » au sens de l'article 5 § 1 e). En effet, l'expertise médicale établie dans le cadre de la procédure de privation de la capacité juridique conduite en 2000 démontrerait clairement que le requérant souffrait de troubles mentaux et qu'il était donc légitime pour les autorités de le placer dans un foyer accueillant des individus atteints de ces pathologies. Enfin, se prévalant de l'arrêt *Ashingdane* (précité, § 44), le Gouvernement expose qu'il existe un lien adéquat entre le motif invoqué pour le placement, à savoir l'état de santé de l'intéressé, et l'établissement dans lequel ce placement a été réalisé. Aussi estime-t-il que la mesure litigieuse n'était pas contraire à l'article 5 § 1 e).

c) Le tiers intervenant

139. Se fondant sur l'étude mentionnée aux paragraphes 112-114 ci-dessus, Interights expose que, dans les pays d'Europe centrale et orientale, le placement en foyer social des personnes atteintes de troubles mentaux est envisagé uniquement sous l'angle de la protection sociale et dans le cadre du droit contractuel. Le droit interne ne considérant pas ces placements comme une forme de privation de liberté, les garanties

procédurales prévues en matière d'internement psychiatrique involontaire ne seraient pas applicables.

140. Interights estime que ces situations doivent être rapprochées de celle examinée dans l'affaire *H.L. c Royaume-Uni* précitée. Celle-ci aurait mis en cause le régime selon lequel la théorie de la nécessité définie par la *common law* avant 2007 au Royaume-Uni autorisait la détention « informelle » d'individus incapables et dociles souffrant de troubles mentaux. Or la Cour aurait jugé frappante l'absence de toute réglementation fixant la procédure à suivre pour l'admission et la détention de tels individus. Selon elle, le contraste entre cette pénurie de règles et la large palette de garanties qui accompagnaient les internements psychiatriques formels au titre de la législation sur la santé mentale aurait été significatif. En l'absence d'une procédure d'admission formelle, indiquant qui pouvait la proposer, pour quelles raisons et sur quel fondement, et à défaut de déterminer la durée de la détention, le traitement ou les soins, les professionnels de santé de l'hôpital auraient exercé un contrôle total sur la liberté et le traitement d'un individu incapable et vulnérable en se fondant uniquement sur leurs propres examens cliniques, effectués quand et comme ils l'ont jugé approprié. Sans remettre en cause la bonne foi de ces professionnels ni douter qu'ils ont agi dans l'intérêt supérieur du requérant, la Cour aurait rappelé que le but même des garanties procédurales était de protéger les individus contre les erreurs de jugement et les fautes professionnelles (*H.L. c Royaume Uni*, précité, §§ 120-121).

141. Interights demande à la Cour de rester dans cette ligne de jurisprudence et de constater qu'en l'espèce le caractère informel du placement et de la détention continue en foyer social est en contradiction avec les garanties de l'article 5 contre l'arbitraire. Les juridictions n'auraient été impliquées à aucun stade de la procédure et aucun autre organe indépendant n'aurait été chargé de contrôler les institutions en question. L'absence de réglementation combinée avec le caractère vulnérable des personnes souffrant de troubles mentaux faciliterait les abus en matière de droits fondamentaux, dans un contexte où la supervision serait extrêmement limitée.

142. Le tiers intervenant expose ensuite que, dans la plupart des cas de ce type, le placement est une mesure automatique car il existe peu de possibilités d'assistance sociale alternative. Il estime à cet égard qu'il convient d'imposer aux autorités une obligation effective de mettre en place des mesures appropriées et moins restrictives pour la liberté individuelle, qui soient néanmoins capables d'assurer des soins médicaux et des prestations sociales aux personnes présentant des troubles mentaux. Il s'agirait d'une application du principe selon lequel les droits garantis par la Convention doivent être non pas théoriques ou illusoires, mais concrets et effectifs.

2. Appréciation de la Cour

a) Principes généraux

143. La Cour rappelle que l'article 5 § 1 requiert d'abord la « régularité » de la détention litigieuse, y compris l'observation des voies légales. En la matière, la Convention renvoie pour l'essentiel à la législation nationale et consacre l'obligation d'en respecter les normes de fond comme de procédure, mais elle exige de surcroît la conformité de toute privation de liberté au but de l'article 5 : protéger l'individu contre l'arbitraire (*Herczegfalvy c. Autriche*, 24 septembre 1992, § 63, série A n° 244). De plus, la privation de liberté est une mesure si grave qu'elle ne se justifie que lorsque d'autres mesures, moins sévères, ont été considérées et jugées insuffisantes pour sauvegarder l'intérêt personnel ou public exigeant la détention. Il ne suffit donc pas que la privation de liberté soit conforme au droit national, encore faut-il qu'elle soit nécessaire dans les circonstances de l'espèce (*Witold Litwa c. Pologne*, n° 26629/95, § 78, CEDH 2000-III).

144. Par ailleurs, les alinéas a) à f) de l'article 5 § 1 contiennent une liste exhaustive des motifs autorisant la privation de liberté ; pareille mesure n'est pas régulière si elle ne relève pas de l'un de ces motifs (*ibidem*, § 49, *Saadi c. Royaume-Uni* [GC], n° 13229/03, § 43, 29 janvier 2008, et *Jendrowiak c. Allemagne*, n° 30060/04, § 31, 14 avril 2011).

145. En ce qui concerne la privation de liberté des personnes atteintes de troubles mentaux, un individu ne peut passer pour « aliéné » et subir une privation de liberté que si les trois conditions suivantes au moins se trouvent réunies : premièrement, son aliénation doit avoir été établie de manière probante ; deuxièmement, le trouble doit revêtir un caractère ou une ampleur légitimant l'internement ; troisièmement, l'internement ne peut se prolonger valablement sans la persistance de pareil trouble (*Winterwerp c. Pays-Bas*, 24 octobre 1979, § 39, série A n° 33, *Chtoukatourov*, précité, § 114, et *Varbanov*, précité, § 45).

146. Concernant la deuxième condition citée ci-dessus, la détention d'une personne souffrant de troubles mentaux peut s'imposer non seulement lorsqu'elle a besoin, pour guérir ou pour voir son état s'améliorer, d'une thérapie, de médicaments ou de tout autre traitement clinique, mais également lorsqu'il s'avère nécessaire de la surveiller pour l'empêcher, par exemple, de se faire du mal ou de faire du mal à autrui (*Hutchison Reid c. Royaume-Uni*, n° 50272/99, § 52, CEDH 2003-IV).

147. La Cour rappelle en outre qu'il faut un certain lien entre, d'une part, le motif invoqué pour la privation de liberté autorisée et, de l'autre, le lieu et le régime de la détention. En principe, la « détention » d'une personne comme malade mental ne sera « régulière » au regard de l'article 5 § 1 e) que si elle se déroule dans un hôpital, une clinique ou un autre établissement approprié à ce habilité (*Ashingdane*, précité, § 44, et *Pankiewicz c. Pologne*, n° 34151/04, §§ 42-45, 12 février 2008). Sous

réserve de ce qui précède, le traitement ou régime adéquats ne relèvent pourtant pas, en principe, de l'article 5 § 1 e) (*Ashingdane*, précité, § 44, et *Hutchison Reid,* précité, § 49).

b) Application de ces principes en l'espèce

148. Pour examiner si le placement du requérant dans le foyer de Pastra était régulier au regard de l'article 5 § 1, la Cour doit vérifier si cette mesure était conforme au droit interne, si elle entrait dans le champ d'application de l'une des exceptions à la liberté individuelle prévues aux alinéas a) à f) de cette disposition et, enfin, si elle était justifiée au regard de l'une de ces exceptions.

149. A la lumière des textes internes pertinents (paragraphes 57-59 ci-dessus), la Cour note que le droit bulgare envisage le placement en institution sociale comme une mesure de protection prise à la demande de la personne concernée et non comme une mesure contraignante imposée pour l'un des motifs énumérés aux alinéas a) à f) de l'article 5 § 1. Toutefois, dans les circonstances particulières de l'espèce, cette mesure a engendré des restrictions importantes de la liberté individuelle ayant donné lieu à une privation de liberté, au mépris de la volonté ou des souhaits du requérant (paragraphes 121-132 ci-dessus).

150. Concernant le respect des voies légales, la Cour observe d'emblée que le droit interne énonce qu'un curateur n'a pas le pouvoir d'agir au nom de la personne sous curatelle. En effet, en cas de privation partielle de la capacité juridique, les contrats sont valides uniquement lorsqu'ils sont conclus ensemble par le curateur et la personne sous curatelle (paragraphe 42 ci-dessus). Par conséquent, la Cour conclut que la décision de la curatrice R. P. de placer le requérant dans un foyer social pour personnes atteintes de troubles mentaux sans avoir préalablement obtenu son accord n'était pas valide en droit bulgare. Cette conclusion suffit à elle seule pour permettre à la Cour de constater que la privation de liberté du requérant était contraire à l'article 5.

151. En tout état de cause, la Cour estime que cette mesure n'était pas régulière au sens de l'article 5 § 1 de la Convention car elle n'était justifiée au regard d'aucun des alinéas a) à f) de cette disposition.

152. Le requérant admet que les autorités ont agi principalement dans le contexte des mécanismes de l'assistance sociale (paragraphe 134 ci-dessus). Toutefois, il estime que les restrictions imposées sont constitutives d'une privation de liberté qui n'est prévue par aucune des exceptions à la règle de la liberté individuelle énumérées aux alinéas a) à f) de l'article 5 § 1. Le Gouvernement soutient que le placement avait pour seul but la protection de l'intérêt du requérant à recevoir des soins à caractère social (paragraphes 136-137 ci-dessus). Il a cependant précisé que si la Cour décidait d'appliquer l'article 5 § 1, cette mesure devait être considérée comme

conforme à l'alinéa e) de la disposition en question, compte tenu des troubles mentaux dont souffrait l'intéressé (paragraphe 138 ci-dessus).

153. La Cour note que le requérant pouvait prétendre à l'assistance sociale dans la mesure où il n'avait pas de logement et était incapable de travailler en raison de sa maladie. Elle est d'avis que dans certaines circonstances le bien-être d'une personne atteinte de troubles mentaux peut constituer un facteur additionnel à prendre en compte, en plus des éléments médicaux, lors de l'évaluation de la nécessité de placer cette personne dans une institution. Néanmoins, le besoin objectif d'un logement et d'une assistance sociale ne doit pas conduire automatiquement à l'imposition de mesures privatives de liberté. Aux yeux de la Cour, toute mesure de protection devrait refléter autant que possible les souhaits des personnes capables d'exprimer leur volonté. Le manquement à solliciter l'avis de l'intéressé peut donner lieu à des situations d'abus et entraver l'exercice des droits des personnes vulnérables ; dès lors, toute mesure prise sans consultation préalable de la personne concernée exige en principe un examen rigoureux.

154. La Cour est prête à accepter que le placement du requérant était une conséquence directe de son état de santé mentale, de la déclaration de son incapacité partielle et de la mise en place de la curatelle. En effet, quelque six jours après sa nomination comme curatrice, M^{me} R. P., sans connaître l'intéressé et sans le rencontrer, a décidé sur la base du dossier de demander aux services sociaux le placement du requérant dans un foyer destiné à accueillir des personnes souffrant de troubles mentaux. Les services sociaux, pour leur part, ont également fait référence à la santé mentale du requérant lorsqu'elles ont considéré que pareille demande devait être accordée. Il apparaît évident à la Cour que si le requérant n'avait pas été privé de sa capacité juridique en raison de sa pathologie mentale, il n'aurait pas été privé de sa liberté. Dès lors, il convient d'examiner la présente affaire sous l'angle de l'alinéa e) de l'article 5 § 1.

155. Il reste à savoir si le placement du requérant satisfait aux conditions voulues par la jurisprudence de la Cour en matière de détention des personnes atteintes de troubles mentaux (voir les principes énoncés au paragraphe 145 ci-dessus). A cet égard, la Cour rappelle qu'il faut reconnaître aux autorités nationales une certaine liberté de jugement quand elles se prononcent sur l'internement d'un individu comme « aliéné », car il leur incombe au premier chef d'apprécier les preuves produites devant elles dans un cas donné ; sa propre tâche consiste à contrôler leurs décisions sous l'angle de la Convention (*Winterwerp*, précité, § 40, et *Luberti c. Italie*, 23 février 1984, § 27, série A n^{o} 75).

156. En l'espèce, il est vrai que l'expertise médicale effectuée dans le cadre de la procédure de privation de la capacité juridique faisait état des troubles dont souffrait le requérant. Toutefois, cette expertise a eu lieu avant le mois de novembre 2000, alors que le requérant a été placé au foyer de

Pastra le 10 décembre 2002 (paragraphes 10 et 14 ci-dessus). Plus de deux ans se sont donc écoulés entre l'expertise psychiatrique sur laquelle les autorités se sont appuyées et la mesure de placement, sans que la curatrice n'ait procédé à une vérification de l'éventuelle évolution de l'état de santé du requérant et sans le rencontrer ou le consulter. Contrairement au Gouvernement (paragraphe 138 ci-dessus), la Cour estime que ce laps de temps est excessif et qu'on ne saurait conclure qu'un avis médical formulé en 2000 reflétait de manière probante l'état de santé mentale du requérant à l'époque du placement. Il convient par ailleurs de relever que les autorités nationales n'avaient pas l'obligation légale d'ordonner une expertise psychiatrique au moment du placement. Le Gouvernement explique à cet égard que les dispositions applicables sont celles de la loi sur l'assistance sociale et non celles de la loi sur la santé (paragraphes 57-60, et 137 ci-dessus). Pour la Cour, il n'en demeure pas moins que l'absence d'une évaluation médicale récente suffirait pour conclure que le placement du requérant n'était pas régulier au regard de l'article 5 § 1 e).

157. A titre surabondant, la Cour observe que les autres exigences de l'alinéa e) de l'article 5 § 1 ne sont pas non plus remplies en l'espèce. En effet, concernant le besoin de justifier le placement par l'ampleur des troubles, elle relève que l'expertise médicale de 2000 n'avait aucunement pour but d'analyser la question de savoir si l'état de santé du requérant nécessitait son placement dans un foyer pour personnes atteintes de troubles mentaux, mais seulement la question de sa protection juridique. Il est vrai que l'article 5 § 1 e) autorise le placement d'une personne souffrant de troubles mentaux sans qu'il y ait nécessairement un traitement médical en vue (*Hutchison Reid*, précité, § 52) ; toutefois, une telle mesure doit être dûment justifiée par la gravité de l'état de santé de l'intéressé afin d'assurer sa propre protection ou la protection d'autrui. Or, en l'espèce il n'est pas établi que le requérant était dangereux pour lui-même ou pour les autres, en raison notamment de sa pathologie psychiatrique ; la simple affirmation de certains témoins selon laquelle il devenait agressif lorsqu'il buvait (paragraphe 10 ci-dessus) ne saurait suffire à cet égard. Les autorités ne rapportent pas non plus d'actes de violence de la part du requérant pendant son séjour au foyer de Pastra.

158. La Cour relève également des défaillances dans la vérification de la persistance des troubles justifiant l'internement. En effet, bien que le requérant ait été suivi par un psychiatre (paragraphe 31 ci-dessus), ce suivi n'avait pas pour objectif d'évaluer, à des intervalles réguliers, si le maintien au foyer de Pastra continuait à être nécessaire au regard de l'article 5 § 1 e). En effet, une telle évaluation n'était pas prévue par la législation pertinente.

159. Compte tenu de ce qui précède, la Cour constate que le placement du requérant n'a pas été ordonné « selon les voies légales » et que sa privation de liberté n'était pas justifiée par l'alinéa e) de l'article 5 § 1. Le Gouvernement n'a par ailleurs indiqué aucun des autres motifs énumérés

aux alinéas a) à f) de l'article 5 § 1 qui, en l'espèce, auraient pu autoriser la privation de liberté litigieuse.

160. Il y a donc eu violation de cette disposition.

II. SUR LA VIOLATION ALLÉGUÉE DE L'ARTICLE 5 § 4 DE LA CONVENTION

161. Le requérant se plaint de ne pas avoir pu faire contrôler par un tribunal la légalité de son placement dans le foyer de Pastra.

Il invoque le paragraphe 4 de l'article 5 de la Convention, ainsi libellé :

> « Toute personne privée de sa liberté par arrestation ou détention a le droit d'introduire un recours devant un tribunal, afin qu'il statue à bref délai sur la légalité de sa détention et ordonne sa libération si la détention est illégale. »

A. Arguments des parties

1. Le requérant

162. Le requérant soutient que le droit interne ne prévoit pas de recours spécifiques à sa situation, notamment un contrôle judiciaire périodique de la légalité du placement en foyer pour personnes atteintes de troubles mentaux. Il ajoute que, puisqu'il était considéré comme incapable d'agir seul sur le plan juridique, le droit interne ne lui offrait pas la possibilité de s'adresser à un tribunal pour solliciter l'autorisation de quitter le foyer de Pastra. Il indique qu'il ne pouvait pas non plus demander la résiliation du contrat de placement, compte tenu du conflit d'intérêts existant avec son curateur, qui exerçait en même temps les fonctions de directeur du foyer.

163. L'intéressé précise par ailleurs qu'il n'était pas autorisé à ester en justice pour demander l'ouverture de la procédure prévue par l'article 277 du CPC (paragraphe 51 ci-dessus) et que, de plus, cette action aurait eu pour objet non pas un contrôle de la légalité de sa privation de liberté, mais uniquement un réexamen des conditions justifiant sa curatelle.

164. Il expose par ailleurs que la procédure prévue par les articles 113 et 115 du CF (paragraphes 49-50 ci-dessus) donnait en théorie aux membres de sa famille proche le droit de demander au maire le changement de curateur ou d'obliger le maire à résilier le contrat de placement en foyer. Toutefois, pour le requérant il s'agissait d'un recours indirect et non accessible, car sa demi-sœur et la seconde épouse de son père n'étaient pas disposées à le former.

2. Le Gouvernement

165. Le Gouvernement soutient que dans la mesure où le placement litigieux avait pour but de fournir des services sociaux, le requérant aurait pu à tout moment demander la résiliation du contrat sans qu'il soit

nécessaire d'impliquer les tribunaux. D'après lui, pour autant que le requérant allègue un conflit d'intérêts avec son curateur, il aurait pu se prévaloir de l'article 123, alinéa 1, du CF (paragraphe 50 ci-dessus), et demander à l'organe chargé de la tutelle et de la curatelle la désignation d'un représentant *ad hoc*, qui aurait pu ensuite donner son accord pour un changement de domiciliation.

166. Par ailleurs, le Gouvernement souligne que les membres de la famille proche du requérant ne se sont pas prévalus de la possibilité qu'offraient à certains d'entre eux les articles 113 et 115 du CF de demander auprès de l'organe chargé de la tutelle et de la curatelle le changement du curateur ou de contester les actes de celui-ci. Il indique qu'en cas de refus les intéressés auraient pu introduire un recours auprès d'un tribunal qui aurait statué sur le fond et éventuellement nommé un nouveau curateur, lequel aurait pu ainsi résilier le contrat de placement. Ainsi, selon le Gouvernement, ils auraient pu, en substance, contester le contrat conclu entre M^me^ R. P. et le foyer de Pastra.

167. Le Gouvernement estime enfin que l'action en rétablissement de la capacité juridique (prévue à article 277 du CPC – paragraphe 51 ci-dessus) constituait un recours au sens de l'article 5 § 4 car, s'il s'était avéré que l'état de santé du requérant s'était suffisamment amélioré et si la curatelle avait été levée, l'intéressé aurait pu librement quitter le foyer.

B. Appréciation de la Cour

1. Principes généraux

168. La Cour rappelle que l'article 5 § 4 reconnaît aux personnes détenues le droit d'introduire un recours pour faire contrôler le respect des exigences de procédure et de fond nécessaires à la « légalité », au sens de la Convention, de leur privation de liberté. Le concept de « légalité » doit avoir le même sens au paragraphe 4 de l'article 5 qu'au paragraphe 1, de sorte qu'une personne détenue a le droit de faire contrôler la « légalité » de sa détention sous l'angle non seulement du droit interne, mais aussi de la Convention, des principes généraux qu'elle consacre et du but des restrictions qu'autorise l'article 5 § 1. L'article 5 § 4 ne garantit pas un droit à un contrôle juridictionnel d'une ampleur telle qu'il habiliterait le tribunal compétent à substituer sur l'ensemble des aspects de la cause, y compris des considérations de pure opportunité, sa propre appréciation à celle de l'autorité dont émane la décision. Il n'en veut pas moins un contrôle assez ample pour s'étendre à chacune des conditions indispensables à la « légalité » de la détention d'un individu au regard du paragraphe 1 (E. c. Norvège, 29 août 1990, § 50, série A no 181-A). La « juridiction » chargée de ce contrôle ne doit pas posséder des attributions simplement consultatives, mais doit être dotée de la compétence de « statuer » sur la

« légalité » de la détention et d'ordonner la libération en cas de détention illégale (*Irlande c. Royaume-Uni*, 18 janvier 1978, § 200, série A n° 25 ; *Weeks c. Royaume-Uni*, 2 mars 1987, § 61, série A n° 114 ; *Chahal c. Royaume-Uni*, 15 novembre 1996, § 130, *Recueil des arrêts et décisions* 1996-V ; *A. et autres c. Royaume-Uni* [GC], n° 3455/05, § 202, 19 février 2009).

169. Les formes de contrôle juridictionnel qui satisfont aux exigences de l'article 5 § 4 peuvent varier d'un domaine à l'autre et dépendent du type de privation de liberté en question. Il ne revient pas à la Cour de demander quel pourrait être le système le plus approprié dans le domaine examiné (*Chtoukatourov*, précité, § 123).

170. Il n'en demeure pas moins que l'article 5 § 4 garantit un recours qui doit être accessible à l'intéressé et permettre de contrôler le respect des conditions à remplir pour qu'il y ait, au regard de l'article 5 § 1 e), « détention régulière » d'une personne pour aliénation mentale (*Ashingdane*, précité, § 52). L'exigence de la Convention selon laquelle un acte de privation de liberté doit être susceptible d'un contrôle juridictionnel indépendant revêt une importance fondamentale eu égard à l'objectif qui sous-tend l'article 5 de la Convention, à savoir la protection contre l'arbitraire. Sont en jeu ici la protection de la liberté physique des individus, ainsi que la sûreté de la personne (*Varbanov*, précité, § 58). En cas de détention pour maladie mentale, des garanties spéciales de procédure peuvent s'imposer pour protéger ceux qui, en raison de leurs troubles mentaux, ne sont pas entièrement capables d'agir pour leur propre compte (voir, entre autres, *Winterwerp*, précité, § 60).

171. Parmi les principes concernant les « aliénés » qui se dégagent de la jurisprudence de la Cour sur l'article 5 § 4 figurent notamment les suivants :

a) en cas de détention pour une durée illimitée ou prolongée, l'intéressé a en principe le droit, au moins en l'absence de contrôle judiciaire périodique et automatique, d'introduire « à des intervalles raisonnables » un recours devant un tribunal pour contester la « légalité » – au sens de la Convention – de son internement ;

b) l'article 5 § 4 exige que la procédure appliquée revête un caractère judiciaire et offre à l'individu en cause des garanties adaptées à la nature de la privation de liberté dont il se plaint ; pour déterminer si une procédure offre des garanties suffisantes, il faut avoir égard à la nature particulière des circonstances dans lesquelles elle se déroule ;

c) les instances judiciaires relevant de l'article 5 § 4 ne doivent pas toujours s'accompagner de garanties identiques à celles que l'article 6 § 1 prescrit pour les litiges civils ou pénaux. Encore faut-il que l'intéressé ait accès à un tribunal et l'occasion d'être entendu lui-même ou, au besoin, moyennant une certaine forme de représentation (*Megyeri c. Allemagne*, 12 mai 1992, § 22, série A n° 237-A).

2. Application de ces principes en l'espèce

172. La Cour observe que le Gouvernement n'a indiqué aucun recours interne de nature à donner au requérant la possibilité de contester directement la légalité de son placement dans le foyer de Pastra et le maintien de cette mesure. Elle constate également que les tribunaux bulgares n'ont à aucun moment et sous aucune forme été impliqués dans le placement du requérant et que la législation nationale ne prévoit pas de contrôle judiciaire périodique et automatique du placement d'une personne dans un foyer pour personnes atteintes de troubles mentaux. D'ailleurs, étant donné que le placement du requérant n'est pas reconnu comme une privation de liberté en droit bulgare (paragraphe 58 ci-dessus), celui-ci ne prévoit aucun recours pour contester la légalité de cette mesure en tant que privation de liberté. La Cour note par ailleurs que, selon la pratique des tribunaux internes, l'invalidité du contrat de placement pour absence de consentement aurait pu être invoquée uniquement à l'initiative du curateur (paragraphe 54 ci-dessus)

173. Dans la mesure où le Gouvernement se réfère à la procédure de rétablissement de la capacité juridique prévue par l'article 277 du CPC (paragraphe 167 ci-dessus), la Cour note que cette démarche n'aurait pas eu pour objet d'examiner la légalité du placement du requérant *per se*, mais uniquement de reconsidérer le statut juridique de celui-ci (paragraphes 233-246 ci-après). Le Gouvernement s'appuie ensuite sur les mécanismes de contrôle des actes du curateur (paragraphes 165-166 ci-dessus). La Cour estime qu'il convient de vérifier si ces recours auraient pu donner lieu à un examen judiciaire de la légalité du placement, tel qu'exigé par l'article 5 § 4.

174. A cet égard, elle note que le CF de 1985 permettait aux membres de la famille proche de l'intéressé de contester les actes de l'organe chargé de la tutelle et de la curatelle, qui, à son tour, devait contrôler les actes du curateur – y compris le contrat de placement – et procéder à son remplacement en cas de non-respect par lui de ses obligations (paragraphes 48-50 ci-dessus). Toutefois, la Cour relève qu'il s'agissait de recours non directement accessibles au requérant. De surcroît, aucune des personnes théoriquement habilitées à les exercer n'a montré l'intention d'agir dans les intérêts de M. Stanev, et ce dernier ne pouvait pas agir de sa propre initiative sans leur approbation.

175. On ne sait pas clairement si le requérant pouvait saisir le maire pour lui demander d'exiger des explications du curateur ou de suspendre l'exécution du contrat de placement en raison de son invalidité. En tout état de cause, il apparaît qu'en conséquence de sa privation partielle de capacité la loi ne l'autorisait pas à attaquer de manière autonome les actes du maire auprès des tribunaux (paragraphe 49 ci-dessus), une circonstance que le Gouvernement ne conteste pas.

176. La même conclusion s'impose quant à la possibilité, pour le requérant, de demander au maire de remplacer temporairement son curateur par un représentant *ad hoc* en alléguant l'existence d'un conflit d'intérêts et de solliciter ensuite la résiliation du contrat de placement. La Cour observe à cet égard que le maire a le pouvoir discrétionnaire d'apprécier l'existence d'un conflit d'intérêts (paragraphe 50 ci-dessus). Enfin, il n'apparaît pas que le requérant aurait pu contester de manière autonome un éventuel refus du maire auprès d'un tribunal qui aurait statué sur le fond.

177. Dès lors, la Cour conclut que les recours invoqués par le Gouvernement soit étaient inaccessibles au requérant, soit ne revêtaient pas un caractère judiciaire. De plus, aucun de ces moyens ne permet d'analyser directement la légalité du placement du requérant dans le foyer de Pastra au regard du droit interne et de la Convention.

178. Au vu de ces éléments, la Cour rejette l'exception de non-épuisement des voies de recours internes soulevée par le Gouvernement (paragraphes 97-99 ci-dessus), et dit qu'il y a eu violation de l'article 5 § 4 de la Convention.

III. SUR LA VIOLATION ALLÉGUÉE DE L'ARTICLE 5 § 5 DE LA CONVENTION

179. Le requérant considère qu'il n'a pas eu droit à réparation pour les violations alléguées de ses droits garantis par l'article 5 §§ 1 et 4 de la Convention.

Il invoque à cet égard l'article 5 § 5, ainsi libellé :

> « Toute personne victime d'une arrestation ou d'une détention dans des conditions contraires aux dispositions de cet article a droit à réparation. »

A. Arguments des parties

180. Le requérant estime que les cas dans lesquels une détention irrégulière peut donner lieu à indemnisation sont énumérés de manière restrictive par la loi de 1988 sur la responsabilité de l'Etat (paragraphes 62-67 ci-dessus) et que sa situation ne relève d'aucun d'entre eux. Il dénonce par ailleurs l'absence de voie de droit pour demander réparation pour la violation de l'article 5 § 4.

181. Le Gouvernement soutient que la procédure en indemnisation prévue par la loi de 1988 précitée aurait pu être entamée si le placement dans le foyer avait été considéré comme dépourvu de base légale. Cette mesure ayant été jugée conforme au droit interne et aux intérêts du requérant, celui-ci n'a pas pu engager la procédure en question.

B. Appréciation de la Cour

182. La Cour rappelle que l'article 5 § 5 se trouve respecté dès lors que l'on peut demander réparation du chef d'une privation de liberté opérée dans des conditions contraires aux paragraphes 1, 2, 3 ou 4 (*Wassink c. Pays-Bas*, 27 septembre 1990, § 38, série A n° 185-A, et *Houtman et Meeus c. Belgique*, n° 22945/07, § 43, 17 mars 2009). Le droit à réparation énoncé au paragraphe 5 suppose donc qu'une violation de l'un de ces autres paragraphes ait été établie par une autorité nationale ou par les institutions de la Convention. A cet égard, la jouissance effective du droit à réparation garanti par cette dernière disposition doit se trouver assurée à un degré suffisant de certitude (*Ciulla c. Italie*, 22 février 1989, § 44, série A n° 148, *Sakık et autres c. Turquie*, 26 novembre 1997, § 60, *Recueil* 1997-VII, et *N.C. c. Italie* [GC], n° 24952/94, § 49, CEDH 2002-X).

183. Se tournant vers la présente espèce, la Cour relève que, eu égard à son constat de violation des paragraphes 1 et 4 de l'article 5, le paragraphe 5 de cette disposition trouve à s'appliquer. Elle doit donc rechercher si l'intéressé a disposé au niveau interne d'un droit exécutoire à réparation de son préjudice avant le présent arrêt, ou s'il disposera d'un tel droit après l'adoption de l'arrêt.

184. Elle rappelle à cet égard que, pour qu'elle conclue à la violation de l'article 5 § 5, il doit être établi que le constat de violation d'un des autres paragraphes de l'article 5 ne pouvait, avant l'arrêt concerné de la Cour, ni ne peut après cet arrêt, donner lieu à une demande d'indemnité devant les juridictions nationales (*Brogan et autres c. Royaume-Uni*, 29 novembre 1988, §§ 66-67, série A n° 145-B).

185. A la lumière de cette jurisprudence, la Cour estime qu'il faut d'abord vérifier si la violation de l'article 5 §§ 1 et 4 constatée en l'espèce aurait pu donner lieu, avant le prononcé du présent arrêt, à un droit à réparation devant les tribunaux internes.

186. Pour ce qui est de la violation de l'article 5 § 1, la Cour relève que l'article 2, alinéa 1, de la loi de 1988 sur la responsabilité de l'Etat prévoit une indemnisation pour des dommages causés du fait d'une décision judiciaire dans certaines hypothèses de placement en détention, lorsqu'elle a été annulée pour absence de base légale (paragraphe 62 ci-dessus). Or, tel n'est pas le cas en l'espèce. Il ressort du dossier que les autorités judiciaires bulgares n'ont à aucun moment considéré cette mesure comme illégale ou autrement contraire à l'article 5 de la Convention. La thèse du Gouvernement consiste d'ailleurs à dire que le placement du requérant était conforme au droit interne. Dès lors, la Cour conclut qu'aucune compensation ne pouvait être réclamée par le requérant en vertu de la disposition susmentionnée, faute de reconnaissance de l'irrégularité du placement par les autorités nationales.

187. Quant à la possibilité de demander une indemnité pour des dommages causés par des actes illégaux des autorités en vertu de l'article 1 de la même loi (paragraphe 63 ci-dessus), la Cour observe que le Gouvernement n'a produit aucune décision interne indiquant que cette disposition est applicable à des placements dans des foyers sociaux de personnes atteintes de troubles mentaux sur la base des contrats de droit civil.

188. En outre, aucun recours judiciaire permettant de faire contrôler la légalité du placement n'étant disponible en droit bulgare, le requérant ne pouvait invoquer la responsabilité de l'Etat pour obtenir une réparation pour la violation de l'article 5 § 4.

189. Se pose ensuite la question de savoir si le prononcé du présent arrêt concluant à la violation des paragraphes 1 et 4 de l'article 5 permettra au requérant de demander réparation en droit bulgare. La Cour observe qu'il ne ressort pas de la législation pertinente qu'un tel recours existe ; le Gouvernement n'a d'ailleurs pas présenté d'arguments prouvant le contraire.

190. Il n'a donc pas été démontré que le requérant pouvait se prévaloir, avant l'arrêt de la Cour, d'un droit à réparation, ou qu'il pourra se prévaloir d'un tel droit après le prononcé de l'arrêt, pour la violation de l'article 5 §§ 1 et 4.

191. Par conséquent, il y a eu violation de l'article 5 § 5.

IV. SUR LES VIOLATIONS ALLÉGUÉES DE L'ARTICLE 3 DE LA CONVENTION, SEUL ET COMBINÉ AVEC L'ARTICLE 13

192. Le requérant se plaint des mauvaises conditions de vie dans le foyer de Pastra, ainsi que de l'absence en droit bulgare d'un recours effectif quant à ce grief. Il invoque l'article 3, pris seul et combiné avec l'article 13 de la Convention. Ces dispositions sont libellées comme suit :

Article 3

« Nul ne peut être soumis à la torture ni à des peines ou traitements inhumains ou dégradants. »

Article 13

« Toute personne dont les droits et libertés reconnus dans la (...) Convention ont été violés, a droit à l'octroi d'un recours effectif devant une instance nationale, alors même que la violation aurait été commise par des personnes agissant dans l'exercice de leurs fonctions officielles. »

A. Sur l'exception préliminaire de non-épuisement des voies de recours internes

193. Dans son mémoire devant la Grande Chambre, le Gouvernement soulève, pour la première fois, une exception de non-épuisement des voies de recours internes concernant le grief tiré de l'article 3 de la Convention. Il soutient que le requérant aurait pu obtenir réparation pour les conditions de vie subies au foyer en introduisant un recours en vertu de la loi de 1988 sur la responsabilité de l'Etat.

194. La Cour rappelle qu'aux termes de l'article 55 de son règlement, si la Partie contractante défenderesse entend soulever une exception d'irrecevabilité, elle doit le faire, pour autant que la nature de l'exception et les circonstances le permettent, dans les observations écrites ou orales sur la recevabilité de la requête présentées par elle (*N.C. c. Italie*, précité, § 44). Lorsqu'elle est tardive au sens de cet article, une exception de non-épuisement des voies de recours internes se heurte à la forclusion et doit dès lors être rejetée (*Velikova c. Bulgarie*, n° 41488/98, § 57, CEDH 2000-VI , et *Tanribilir c. Turquie*, n° 21422/93, § 59, 16 novembre 2000).

195. En l'espèce, le Gouvernement n'a pas invoqué de circonstances justifiant que l'exception en question n'ait pas été soulevée au stade de l'examen de la recevabilité de l'affaire par la chambre.

196. Dans ces conditions, la Cour constate que le Gouvernement est forclos à soulever l'exception en question, qui doit donc être rejetée.

B. Sur le fond du grief tiré de l'article 3 de la Convention

1. Arguments des parties

197. Le requérant soutient que les mauvaises conditions de vie au foyer de Pastra, notamment l'insuffisance de la nourriture, les conditions d'hygiène déplorables, l'absence de chauffage, les traitements médicaux forcés, le surpeuplement dans les chambres et l'absence d'activités thérapeutiques et culturelles, s'analysent en des traitements prohibés par l'article 3.

198. Il fait remarquer que le Gouvernement avait déjà reconnu en 2004 que lesdites conditions de vie n'étaient pas conformes aux normes européennes dans ce domaine et s'était engagé à procéder à des améliorations (paragraphe 82 ci-dessus). Toutefois, ces conditions sont restées inchangées, en tout cas jusqu'à fin 2009.

199. Dans ses observations devant la chambre, le Gouvernement a reconnu les déficiences des conditions de vie dans le foyer. Il a expliqué que l'insuffisance des moyens financiers affectés à ce type d'établissement constituait l'obstacle principal au maintien de la qualité de vie minimale requise. Il a indiqué par ailleurs qu'à la suite d'une inspection réalisée par

l'agence pour l'assistance sociale les autorités avaient prévu de fermer le foyer de Pastra et de prendre des mesures afin d'améliorer les conditions de vie de ses pensionnaires. D'après le Gouvernement, les conditions de vie étant les mêmes pour toutes les personnes du foyer et en l'absence d'intention d'infliger des mauvais traitements, le requérant n'a pas fait l'objet d'un traitement dégradant.

200. Devant la Grande Chambre, le Gouvernement a précisé que des travaux de rénovation avaient été réalisés fin 2009 dans la partie du foyer habitée par le requérant (paragraphe 24 ci-dessus).

2. Appréciation de la Cour

a) Principes généraux

201. L'article 3 consacre l'une des valeurs les plus fondamentales des sociétés démocratiques. Il prohibe en termes absolus la torture et les traitements ou peines inhumains ou dégradants, quels que soient les circonstances et les agissements de la victime (voir, parmi d'autres, *Kudła c. Pologne* [GC], n° 30210/96, § 90, CEDH 2000-XI, et *Poltoratski c. Ukraine*, n° 38812/97, § 130, CEDH 2003-V).

202. Pour tomber sous le coup de l'article 3, un traitement doit atteindre un minimum de gravité. L'appréciation de ce minimum est relative par essence ; elle dépend de l'ensemble des données de la cause et notamment de la nature et du contexte du traitement, de ses modalités d'exécution, de sa durée, de ses effets physiques ou mentaux, ainsi que, parfois, du sexe, de l'âge et de l'état de santé de la victime (*Kudła*, précité, § 91, et *Poltoratski*, précité, § 131).

203. La Cour a jugé un traitement « inhumain » au motif notamment qu'il avait été appliqué avec préméditation pendant des heures et qu'il avait causé soit des lésions corporelles soit de vives souffrances physiques ou mentales (*Labita c. Italie* [GC], n° 26772/95, § 120, CEDH 2000-IV). Elle a par ailleurs considéré qu'un traitement était « dégradant » en ce qu'il était de nature à inspirer à ses victimes des sentiments de peur, d'angoisse et d'infériorité propres à les humilier et à les avilir et à briser éventuellement leur résistance physique ou morale, ou à les conduire à agir contre leur volonté ou leur conscience (*Jalloh c. Allemagne* [GC], n° 54810/00, § 68, CEDH 2006-IX). A cet égard, la question de savoir si le but d'un traitement donné était d'humilier et d'avilir la victime est un facteur à prendre en considération, même si l'absence d'un tel but ne saurait exclure le constat de violation de l'article 3 (*Peers c. Grèce*, n° 28524/95, §§ 67, 68 et 74, CEDH 2001-III, et *Kalachnikov c. Russie*, n° 47095/99, § 95, CEDH 2002-VI).

204. La souffrance et l'humiliation infligées doivent en tout cas aller au-delà de celles que comporte inévitablement une forme donnée de traitement ou de peine légitimes. Les mesures privatives de liberté

s'accompagnent ordinairement de pareilles souffrance et humiliation. Toutefois, on ne saurait considérer qu'une privation de liberté pose en soi un problème sur le terrain de l'article 3 de la Convention. Cette disposition impose cependant à l'Etat de s'assurer que tout prisonnier soit détenu dans des conditions qui sont compatibles avec le respect de la dignité humaine, que les modalités d'exécution de la mesure ne soumettent pas l'intéressé à une détresse ou une épreuve d'une intensité qui excède le niveau inévitable de souffrance inhérent à la détention et que, eu égard aux exigences pratiques d'une telle mesure, la santé de l'intéressé est assurée de manière adéquate, notamment par l'administration des soins médicaux requis (*Kudła*, précité, §§ 92-94).

205. Lorsqu'il s'agit d'évaluer les conditions d'une privation de liberté au regard de l'article 3 de la Convention, il y a lieu de prendre en compte leurs effets cumulatifs et la durée de la mesure (*Kalachnikov*, précité, §§ 95 et 102, *Kehayov c. Bulgarie*, n° 41035/98, § 64, 18 janvier 2005, et *Iovtchev c. Bulgarie*, n° 41211/98, § 127, 2 février 2006). A cet égard, un facteur important à prendre en compte, outre les conditions matérielles de détention, est le régime de détention. Pour apprécier si un régime restrictif peut soulever un problème au regard de l'article 3 dans une affaire donnée, il y a lieu d'avoir égard aux conditions particulières de l'espèce, à la sévérité du régime, à sa durée, à l'objectif qu'il poursuit et à ses effets sur la personne concernée (*Kehayov*, précité, § 65).

b) Application de ces principes en l'espèce

206. Dans la présente affaire, la Cour a déjà constaté que le placement du requérant dans le foyer de Pastra, dont les autorités internes doivent être tenues pour responsables, s'analyse en une privation de liberté au sens de l'article 5 de la Convention (paragraphe 132 ci-dessus). Il s'ensuit que l'article 3 trouve à s'appliquer à la situation de l'intéressé. En effet, cette disposition interdit les traitements inhumains et dégradants des personnes qui se trouvent entre les mains des autorités. La Cour tient à souligner que l'interdiction des mauvais traitements faite par l'article 3 s'applique de la même manière à toutes les formes de privation de liberté, et notamment sans aucune différence fondée sur le but de la mesure incriminée ; en effet, peu importe qu'il s'agisse d'une détention ordonnée dans le cadre d'une procédure pénale ou d'un internement visant à protéger la vie ou la santé de l'intéressé.

207. La Cour relève d'emblée que le Gouvernement a indiqué que depuis fin 2009 le bâtiment habité par le requérant avait été rénové, ce qui aurait entraîné une amélioration des conditions de vie de l'intéressé (paragraphe 200 ci-dessus) ; celui-ci ne conteste pas ces affirmations. Dès lors, la Cour estime que le grief du requérant doit être compris comme se référant à la période allant de 2002 à 2009. Le Gouvernement ne conteste pas que durant cette période les conditions de vie étaient celles décrites par

le requérant et admet que, pour des raisons économiques, elles présentaient certaines déficiences (paragraphes 198-199 ci-dessus).

208. La Cour observe que, bien qu'il partageât une chambre d'une surface de 16 m^2 avec quatre autres pensionnaires, le requérant disposait d'une grande liberté de circulation à la fois à l'intérieur et à l'extérieur de l'établissement, ce qui est une circonstance de nature à limiter les effets négatifs d'un espace de nuit restreint (*Valašinas c. Lituanie*, n° 44558/98, § 103, CEDH 2001-VIII).

209. Néanmoins, d'autres aspects des conditions matérielles de vie sont fort préoccupants. En particulier, il apparaît que la nourriture n'était pas suffisante et était de mauvaise qualité. Le bâtiment n'était pas suffisamment chauffé et, en hiver, le requérant devait se coucher avec son manteau. Il pouvait prendre une douche une fois par semaine dans une salle de bain insalubre et délabrée. Les toilettes étaient dans un état déplorable et de plus, il était dangereux d'y accéder selon les constats du CPT (paragraphes 21, 22, 23, 78 et 79 ci-dessus). Enfin, le foyer échangeait les habits entre les pensionnaires après lavage (paragraphe 21 ci-dessus), ce qui était de nature à créer un sentiment d'infériorité chez eux.

210. La Cour ne peut rester insensible au fait que le requérant a été exposé à l'ensemble des conditions en question pendant une durée considérable d'environ sept ans. Elle ne peut non plus ignorer les conclusions du CPT qui, après avoir visité les lieux, a établi qu'à l'époque pertinente les conditions de vie au foyer pouvaient être décrites comme constituant un traitement inhumain et dégradant. Tout en ayant connaissance de ces conclusions, dans la période de 2002 à 2009, le Gouvernement n'a pas donné suite à son engagement de procéder à la fermeture de l'établissement (paragraphe 82 ci-dessus). La Cour considère que l'absence de ressources financières invoquée par le Gouvernement ne constitue pas un argument pertinent pour justifier le maintien du requérant dans les conditions de vie évoquées (*Poltoratski*, précité, § 148).

211. Elle tient néanmoins à préciser que rien ne permet de penser que les autorités nationales avaient l'intention d'infliger des traitements dégradants. Cependant, comme souligné plus haut (paragraphe 203 ci-dessus), l'absence d'un tel but ne saurait exclure de manière définitive le constat de violation de l'article 3.

212. En conclusion, tout en notant les améliorations qui ont, semble-t-il, été apportées au foyer de Pastra à partir de fin 2009, la Cour estime que, considérées dans leur ensemble, les conditions de vie auxquelles a été exposé le requérant pendant environ sept ans constituent un traitement dégradant.

213. Dès lors, il y a eu violation de l'article 3 de la Convention.

C. Sur le fond du grief tiré de l'article 13 combiné avec l'article 3

1. Arguments des parties

214. Le requérant estime qu'aucun recours interne, y compris la voie d'indemnisation prévue par la loi de 1988 sur la responsabilité de l'Etat, ne lui était accessible sans l'accord de son curateur. Il souligne à ce propos qu'il n'a pas eu de curateur pendant plus de deux ans, à savoir durant la période allant de la fin des fonctions de M[me] R. P. (31 décembre 2002 – paragraphe 12 ci-dessus) à la désignation du nouveau curateur, intervenue le 2 février 2005 (paragraphe 17 ci-dessus). De plus, ce dernier aurait exercé aussi les fonctions du directeur du foyer. Dès lors, le requérant se serait trouvé en situation de conflit d'intérêts avec lui quant à un éventuel litige sur les conditions de vie au foyer et n'aurait pu attendre de son curateur qu'il approuvât ses allégations.

215. Selon le Gouvernement, l'action en rétablissement de la capacité juridique (paragraphes 51-52 ci-dessus) constituait un recours qui aurait permis au requérant de faire réviser son statut et, s'il avait été mis fin à la curatelle, de quitter le foyer et de ne plus subir les conditions de vie dont il se plaint.

216. Le Gouvernement ajoute que le requérant pouvait introduire, en vertu de l'article 1 de la loi de 1988 sur la responsabilité de l'Etat (paragraphes 62-67 ci-dessus), un recours mettant directement en cause les mauvaises conditions de vie au foyer de Pastra.

2. Appréciation de la Cour

217. La Cour rappelle sa jurisprudence constante selon laquelle l'article 13 garantit l'existence de recours internes permettant l'examen du contenu d'un « grief défendable » fondé sur la Convention et l'octroi d'un redressement approprié. Les Etats contractants jouissent d'une certaine marge d'appréciation quant à la manière de se conformer aux obligations que leur fait cette disposition. La portée de l'obligation découlant de l'article 13 varie en fonction de la nature du grief que le requérant tire de la Convention. Toutefois, le recours exigé par l'article 13 doit être « effectif » en pratique comme en droit (*McGlinchey et autres c. Royaume-Uni*, n[o] 50390/99, § 62, CEDH 2003-V).

218. Lorsque, comme en l'espèce, la Cour a constaté une violation de l'article 3, une indemnisation pour le dommage moral découlant de cette violation doit en principe être possible et faire partie du régime de réparation mis en place (*ibidem*, § 63, et *Iovtchev,* précité, § 143).

219. Dans le cas présent, la Cour relève qu'il est vrai que l'article 1, alinéa 1, de la loi de 1988 sur la responsabilité de l'Etat a été interprété par les juridictions internes comme étant applicable aux préjudices subis par des détenus en milieu carcéral en raison de mauvaises conditions de détention

(paragraphes 63-64 ci-dessus). Toutefois, selon le Gouvernement, le placement du requérant au foyer de Pastra n'est pas considéré comme une détention en droit interne (paragraphes 108-111 ci-dessus). Dès lors, l'intéressé n'aurait pas pu obtenir réparation pour les mauvaises conditions de vie dans ce foyer. D'ailleurs, il n'existe aucune décision de justice selon laquelle cette disposition serait applicable aux allégations relatives à des mauvaises conditions dans des foyers sociaux (paragraphe 65 ci-dessus), et le Gouvernement n'a pas apporté d'arguments prouvant le contraire. Au vu de ces éléments, la Cour est d'avis que ces recours n'étaient pas effectifs au sens de l'article 13.

220. Dans la mesure où le Gouvernement invoque la procédure de rétablissement de la capacité juridique (paragraphe 215 ci-dessus), la Cour observe qu'à supposer même que l'intéressé eût pu, grâce à ce recours, recouvrer sa capacité juridique et quitter le foyer, aucune réparation pour le traitement subi pendant la période de placement ne lui aurait été octroyée. Dès lors, un tel recours n'assurait pas un redressement approprié.

221. Il y a donc eu violation de l'article 13 de la Convention combiné avec l'article 3.

V. SUR LA VIOLATION ALLÉGUÉE DE L'ARTICLE 6 § 1 DE LA CONVENTION

222. Le requérant allègue que le droit bulgare ne lui donnait pas la possibilité d'introduire une action judiciaire en rétablissement de sa capacité juridique. Il invoque l'article 6 § 1 de la Convention, dont les passages pertinents sont libellés comme suit :

> « Toute personne a droit à ce que sa cause soit entendue équitablement (...) par un tribunal (...), qui décidera, (...) des contestations sur ses droits et obligations de caractère civil (...). »

A. Remarques préliminaires

223. La Grande Chambre constate que le Gouvernement maintient devant elle l'exception de non-épuisement des voies de recours internes qu'il avait soulevée devant la chambre. Cette exception se fonde sur l'article 277 du CPC qui, d'après le Gouvernement, donnait au requérant la possibilité d'introduire personnellement une action judiciaire en rétablissement de sa capacité juridique.

224. La Grande Chambre relève que, dans sa décision sur la recevabilité du 29 juin 2010, la chambre a observé que le requérant contestait l'accessibilité du recours qui, d'après le Gouvernement, aurait permis la révision de son statut juridique, et que cette allégation se trouvait au cœur de son grief tiré de l'article 6 § 1. La chambre a dès lors joint l'exception soulevée par le Gouvernement à l'examen au fond du grief en question. La

Grande Chambre ne voit aucune raison de s'écarter de la conclusion de la chambre.

B. Sur le fond

1. Arguments des parties

225. Le requérant soutient qu'il ne pouvait pas introduire personnellement, en vertu de l'article 277 du CPC, une action visant au rétablissement de sa capacité juridique, et que ce constat se trouve confirmé par la décision n° 5/79 de la Cour suprême (paragraphe 51 ci-dessus). Il en veut pour preuve que le tribunal de district de Dupnitsa a refusé d'examiner son recours contre le refus du maire d'introduire pareille action, au motif que le curateur n'avait pas contresigné le pouvoir (paragraphes 39-40 ci-dessus).

226. Par ailleurs, bien que l'action en rétablissement de sa capacité juridique ne lui fût pas accessible, l'intéressé aurait essayé d'en engager une par l'intermédiaire du parquet, du maire et de son curateur (le directeur du foyer). Cependant, les juridictions n'ayant été saisies d'aucune demande, toutes ces tentatives se seraient soldées par un échec. Aussi le requérant n'aurait jamais eu la possibilité de faire entendre sa cause par un tribunal.

227. Le Gouvernement estime que l'article 277 du CPC offrait à tout moment au requérant un accès direct à un tribunal en vue de l'examen de la question de son statut juridique. Il précise que, contrairement à ce qu'allègue l'intéressé, la décision n° 5/79 de la Cour suprême donne de l'article 277 du CPC une interprétation permettant de conclure qu'une personne partiellement privée de sa capacité juridique a un accès direct aux tribunaux pour soumettre une demande de mainlevée de la curatelle. La seule condition pour ce faire serait la présentation d'éléments prouvant l'amélioration de l'état de santé de l'intéressé. Or, comme le montrerait l'expertise médicale établie à la demande du procureur (paragraphe 37 ci-dessus), qui concluait que la maladie du requérant persistait et que celui-ci n'était pas capable de s'occuper de ses intérêts, il était évident que l'intéressé ne disposait d'aucun élément de ce type. Le Gouvernement considère dès lors que le requérant n'a pas tenté de saisir le tribunal tout seul parce qu'il n'était pas en mesure d'étayer sa demande.

228. Par ailleurs, le Gouvernement expose que les tribunaux examinent couramment des demandes en rétablissement de la capacité juridique, par exemple à la demande d'un tuteur (paragraphe 52 ci-dessus).

2. Appréciation de la Cour

a) Principes généraux

229. La Cour rappelle que l'article 6 § 1 garantit à chacun le droit à ce qu'un tribunal connaisse de toute contestation relative à ses droits et obligations de caractère civil (*Golder c. Royaume-Uni*, 21 février 1975, § 36, série A n° 18). Ce « droit à un tribunal », dont le droit d'accès ne constitue qu'un aspect, est garanti à toute personne qui considère de manière défendable que l'ingérence dans l'exercice de ses droits civils est arbitraire et prétend qu'elle n'a pas eu de possibilité de se plaindre de ce grief auprès d'un tribunal présentant les garanties de l'article 6 § 1 (voir, notamment, *Roche c. Royaume-Uni* [GC], n° 32555/96, § 117, CEDH 2005-X, et *Salontaji-Drobnjak c. Serbie*, n° 36500/05, § 132, 13 octobre 2009).

230. Le droit d'accès aux tribunaux n'étant pas absolu, il peut donner lieu à des limitations implicitement admises car il « appelle de par sa nature même une réglementation par l'Etat, réglementation qui peut varier dans le temps et dans l'espace en fonction des besoins et des ressources de la communauté et des individus » (*Ashingdane,* précité*,* § 57). En élaborant pareille réglementation, les Etats contractants jouissent d'une certaine marge d'appréciation. S'il appartient à la Cour de statuer en dernier ressort sur le respect des exigences de la Convention, elle n'a pas qualité pour substituer à l'appréciation des autorités nationales une autre appréciation de ce que pourrait être la meilleure politique en la matière. Néanmoins, les limitations appliquées ne sauraient restreindre l'accès ouvert à l'individu d'une manière ou à un point tels que le droit s'en trouve atteint dans sa substance même. En outre, elles ne se concilient avec l'article 6 § 1 que si elles poursuivent un but légitime et s'il existe un rapport raisonnable de proportionnalité entre les moyens employés et le but visé (*ibidem*, voir aussi, parmi beaucoup d'autres, *Cordova c. Italie (n° 1)*, n° 40877/98, § 54, CEDH 2003-I ; voir également le rappel des principes pertinents dans *Fayed c. Royaume-Uni*, 21 septembre 1994, § 65, série A n° 294-B).

231. Par ailleurs, la Convention a pour but de protéger des droits non pas théoriques ou illusoires, mais concrets et effectifs. La remarque vaut en particulier pour les garanties prévues par l'article 6, vu la place éminente que le droit à un procès équitable, avec toutes les garanties prévues par cette disposition, occupe dans une société démocratique (*Prince Hans-Adam II de Liechtenstein c. Allemagne* [GC], n° 42527/98, § 45, CEDH 2001-VIII).

232. Enfin, la Cour relève que dans la plupart des affaires concernant des « aliénés » dont elle a été saisie, la procédure interne portait sur la détention des intéressés et a donc été examinée sous l'angle de l'article 5 de la Convention. Cependant, elle a toujours dit que les garanties « procédurales » de l'article 5 §§ 1 et 4 de la Convention étaient pour l'essentiel similaires à celles de l'article 6 § 1 (voir, par exemple,

Winterwerp, précité, § 60 ; *Sanchez-Reisse c. Suisse*, 21 octobre 1986, §§ 51 et 55, série A n° 107 ; *Kampanis c. Grèce*, 13 juillet 1995, § 47, série A n° 318-B ; et *Ilijkov c. Bulgarie*, n° 33977/96, § 103, 26 juillet 2001). Dans l'affaire *Chtoukatourov* précitée, pour déterminer si la procédure de déclaration d'incapacité juridique avait été équitable ou non, la Cour s'est appuyée, *mutatis mutandis*, sur sa jurisprudence relative à l'article 5 §§ 1 e) et 4 de la Convention (*Chtoukatourov*, précité, § 66).

b) Application de ces principes en l'espèce

233. La Cour observe d'emblée qu'en l'espèce aucune des parties ne conteste l'applicabilité de l'article 6 à la procédure de rétablissement de la capacité juridique. Le requérant, qui est partiellement privé de sa capacité juridique, se plaint de l'absence alléguée en droit bulgare d'un accès direct à un tribunal pour introduire une demande en rétablissement de sa capacité. La Cour a eu l'occasion de préciser que les procédures de rétablissement de la capacité juridique sont directement déterminantes pour des « droits et obligations de caractère civil » (*Matter c. Slovaquie*, n° 31534/96, § 51, 5 juillet 1999). L'article 6 § 1 de la Convention trouve donc à s'appliquer en l'espèce.

234. Il reste à déterminer si le requérant s'est vu restreindre l'accès à la justice et, dans l'affirmative, si cette restriction poursuivait un but légitime et était proportionnée à celui-ci.

235. La Cour note d'abord que les parties ne s'accordent pas sur la question de savoir si une personne privée de sa capacité a qualité pour introduire directement devant les tribunaux bulgares une action en rétablissement de sa capacité ; le Gouvernement soutient que tel est le cas, alors que le requérant maintient le contraire.

236. La Cour souscrit à l'argument du requérant selon lequel, pour présenter sa demande devant un tribunal bulgare, une personne sous curatelle est obligée de solliciter le soutien des personnes citées à l'article 277 du CPC de 1952 (devenu l'article 340 du CPC de 2007). En effet, la liste des personnes habilitées en droit bulgare à saisir les tribunaux ne vise pas en termes explicites la personne placée sous curatelle (paragraphes 45 et 51 ci-dessus).

237. En ce qui concerne la décision de la Cour suprême de 1980 (paragraphe 51 ci-dessus), la Cour observe que même si son paragraphe 10, quatrième phrase, lu isolément, donne l'impression que l'individu placé sous curatelle bénéficie d'un accès direct à un tribunal, la Cour suprême précise plus loin que lorsque le curateur de la personne partiellement privée de sa capacité juridique et l'organe chargé de la curatelle refusent d'introduire une action en rétablissement de capacité, la personne concernée peut demander au procureur de le faire. Aux yeux de la Cour, la nécessité de solliciter l'intervention du procureur se concilie mal avec un accès direct à la justice des personnes sous curatelle dans la mesure où la décision

d'intervention est laissée à la discrétion du procureur. Il s'ensuit qu'on ne saurait conclure que la Cour suprême ait, dans sa décision de 1980, affirmé de manière claire l'existence d'un tel accès en droit bulgare.

238. La Cour note en outre que le Gouvernement n'a produit aucune décision de justice démontrant que des personnes mises sous curatelle ont pu accéder de manière autonome à un tribunal pour demander la mainlevée de la mesure ; en revanche, il a montré qu'au moins une demande en rétablissement de capacité a été introduite avec succès par un tuteur (paragraphe 52 ci-dessus)

239. Aussi, la Cour estime-t-elle établi que le requérant ne pouvait pas, sans l'intermédiaire de son curateur ou de l'une des personnes visées à l'article 277 du CPC, demander le rétablissement de sa capacité juridique.

240. La Cour souligne par ailleurs qu'en matière d'accès à un tribunal, le droit interne ne fait aucune distinction entre les personnes déclarées totalement incapables et celles qui, comme le requérant, sont frappées d'une incapacité seulement partielle. Qui plus est, la législation interne ne prévoit aucune possibilité de contrôle périodique automatique des raisons justifiant le maintien de la curatelle. Enfin, dans le cas du requérant, cette mesure n'a pas été limitée dans le temps.

241. Il est vrai que le droit d'accès à un tribunal n'est pas absolu et qu'il requiert, par sa nature, d'accorder aux Etats une certaine marge d'appréciation dans la réglementation du domaine examiné (*Ashingdane,* précité*,* § 57). De plus, la Cour reconnaît que des limitations aux droits procéduraux d'une personne, même frappée d'une incapacité seulement partielle, peuvent être justifiées pour sa propre protection et pour la protection des intérêts d'autrui, ainsi que pour le bon fonctionnement de la justice. Cependant, l'exercice de ces droits a une importance qui varie en fonction de l'objet de l'action que l'intéressé souhaiterait porter en justice. En particulier, le droit de demander à un tribunal de réviser une déclaration d'incapacité s'avère l'un des plus importants pour l'individu concerné car, une fois engagée, une telle procédure est déterminante pour l'exercice de l'ensemble des droits et libertés affectés par la déclaration d'incapacité, y compris pour ce qui est des limites qui peuvent être apportées à la liberté (voir aussi *Chtoukatourov*, précité, § 71). La Cour estime dès lors que ce droit constitue l'un des droits procéduraux essentiels pour la protection des personnes déclarées partiellement incapables. Il s'ensuit que ces personnes doivent en principe bénéficier dans ce domaine d'un accès direct à la justice.

242. L'Etat demeure cependant libre de déterminer les modalités procédurales pour l'exercice de cet accès direct. En même temps, la Cour estime qu'il ne serait pas incompatible avec l'article 6 que la loi nationale prévoie dans ce domaine certaines restrictions à l'accès à la justice dans le seul but d'éviter l'engorgement des tribunaux par des demandes excessives et manifestement mal fondées. Il lui paraît néanmoins évident que des

moyens moins restrictifs qu'une privation automatique de l'accès direct peuvent être appliqués pour résoudre un tel problème, par exemple la limitation de la périodicité des demandes ou la mise en place d'un système d'examen préalable de leur recevabilité sur dossier.

243. La Cour observe par ailleurs que dix-huit des vingt législations nationales étudiées prévoient l'accès direct aux tribunaux pour toute personne partiellement incapable souhaitant obtenir la révision de son statut. Dans dix-sept Etats, cet accès est ouvert même aux personnes déclarées totalement incapables (paragraphes 88-90 ci-dessus). Cela indique qu'il existe aujourd'hui au niveau européen une tendance à accorder aux individus privés de leur capacité juridique un accès direct à un tribunal en vue de la mainlevée de cette mesure.

244. De plus, la Cour se doit de noter l'importance croissante qu'accordent aujourd'hui les instruments internationaux de protection des personnes atteintes de troubles mentaux à l'octroi d'une autonomie juridique optimale à ces personnes. Elle se réfère à cet égard à la Convention sur les droits des personnes handicapées des Nations unies du 13 décembre 2006 ainsi qu'à la recommandation n° R (99) 4 du Comité des ministres du Conseil de l'Europe sur les principes concernant la protection juridique des majeurs incapables, qui préconisent la mise en place de garanties procédurales adéquates afin de protéger au mieux les personnes privées de capacité juridique, de leur offrir une révision périodique de leur statut et des voies de recours appropriées (paragraphes 72-73 ci-dessus).

245. Au vu de ce qui précède, et notamment de l'orientation qui se dégage des droits nationaux et des textes internationaux pertinents, la Cour considère que l'article 6 § 1 de la Convention doit être interprété comme garantissant en principe à toute personne déclarée partiellement incapable, comme c'est le cas du requérant, un accès direct à un tribunal pour demander le rétablissement de sa capacité juridique.

246. En l'espèce, la Cour vient de constater qu'un tel accès direct n'est pas garanti à un degré suffisant de certitude par la législation bulgare pertinente. Ce constat suffit pour conclure qu'il y a eu, dans le chef du requérant, violation de l'article 6 § 1 de la Convention.

247. La conclusion qui précède dispense la Cour d'examiner si les voies de droit indirectes invoquées par le Gouvernement offraient au requérant des garanties suffisantes pour s'assurer que sa cause soit soumise à un tribunal.

248. Ainsi, la Cour rejette l'exception de non-épuisement des voies de recours internes soulevée par le Gouvernement (paragraphe 223 ci-dessus) et conclut à la violation de l'article 6 § 1 de la Convention.

VI. SUR LA VIOLATION ALLÉGUÉE DE L'ARTICLE 8 DE LA CONVENTION, SEUL ET COMBINÉ AVEC L'ARTICLE 13

249. Le requérant allègue que le régime restrictif de la curatelle, y compris son placement dans le foyer de Pastra et les conditions matérielles de vie qui y régnaient, a constitué une ingérence injustifiée dans son droit au respect de sa vie privée et de son domicile. Il soutient que le droit bulgare ne lui a offert aucun recours adéquat et accessible à cet égard. Il invoque l'article 8 de la Convention, seul et combiné avec l'article 13.

L'article 8 se lit comme suit :

> « 1. Toute personne a droit au respect de sa vie privée et familiale, de son domicile et de sa correspondance.
>
> 2. Il ne peut y avoir ingérence d'une autorité publique dans l'exercice de ce droit que pour autant que cette ingérence est prévue par la loi et qu'elle constitue une mesure qui, dans une société démocratique, est nécessaire à la sécurité nationale, à la sûreté publique, au bien-être économique du pays, à la défense de l'ordre et à la prévention des infractions pénales, à la protection de la santé ou de la morale, ou à la protection des droits et libertés d'autrui. »

250. Le requérant précise en particulier que le régime de la curatelle n'a pas été adapté à son cas, mais qu'il s'agissait des limitations automatiquement imposées à toute personne dont l'incapacité était déclarée par le juge. Il ajoute que le fait d'être obligé de vivre dans le foyer de Pastra équivalait pour lui à une interdiction de participer à la vie en société et de nouer des liens avec des personnes de son choix. Les autorités n'auraient pas cherché à trouver d'autres solutions thérapeutiques dans la communauté ni à prendre des mesures moins restrictives pour sa liberté individuelle, si bien qu'il serait atteint du « syndrome » de l'institutionnalisation, c'est-à-dire la disparition des capacités sociales et des particularités de l'individu.

251. Le Gouvernement combat ces allégations.

252. Eu égard à ses conclusions sur le terrain des articles 3, 5, 6 et 13 de la Convention, la Cour estime qu'aucune question distincte ne se pose au regard de l'article 8 de la Convention, pris isolément et/ou combiné avec l'article 13. Il n'est donc pas nécessaire d'examiner ce grief.

VII. SUR LES ARTICLES 46 ET 41 DE LA CONVENTION

A. Sur l'article 46 de la Convention

253. Les parties pertinentes de l'article 46 de la Convention se lisent comme suit :

> « 1. Les Hautes Parties contractantes s'engagent à se conformer aux arrêts définitifs de la Cour dans les litiges auxquels elles sont parties.
>
> 2. L'arrêt définitif de la Cour est transmis au Comité des Ministres qui en surveille l'exécution. (...) »

254. La Cour rappelle qu'en vertu de l'article 46 de la Convention les Parties contractantes se sont engagées à se conformer aux arrêts définitifs de la Cour dans les litiges auxquels elles sont parties, le Comité des Ministres étant chargé d'en surveiller l'exécution. Il en découle notamment que l'Etat défendeur, reconnu responsable d'une violation de la Convention ou de ses Protocoles, est appelé non seulement à verser aux intéressés les sommes allouées à titre de satisfaction équitable, mais aussi à choisir, sous le contrôle du Comité des Ministres, les mesures générales et/ou, le cas échéant, individuelles à adopter dans son ordre juridique interne afin de mettre un terme à la violation constatée par la Cour et d'en effacer autant que possible les conséquences (*Menteş et autres c. Turquie* (article 50), 24 juillet 1998, § 24, *Recueil* 1998-IV ; *Scozzari et Giunta c. Italie* [GC], n^{os} 39221/98 et 41963/98, § 249, CEDH 2000-VIII, et *Maestri c. Italie* [GC], n^{o} 39748/98, § 47, CEDH 2004-I). La Cour rappelle également qu'il appartient au premier chef à l'Etat en cause, sous le contrôle du Comité des Ministres, de choisir les moyens à utiliser dans son ordre juridique interne pour s'acquitter de son obligation au regard de l'article 46 de la Convention (*Scozzari et Giunta*, précité ; *Brumărescu c. Roumanie* (satisfaction équitable) [GC], n^{o} 28342/95, § 20, CEDH 2001-I, et *Öcalan c. Turquie* [GC], n^{o} 46221/99, § 210, CEDH 2005-IV).

255. Toutefois, pour aider l'Etat défendeur à remplir ses obligations au titre de l'article 46, la Cour peut chercher à indiquer le type de mesures, individuelles et/ou générales, qui pourraient être prises pour mettre un terme à la situation constatée (*Broniowski c. Pologne* [GC], n^{o} 31443/96, § 194, CEDH 2004-V, et *Scoppola c. Italie (n^{o} 2)* [GC], n^{o} 10249/03, § 148, CEDH 2009-...).

256. En l'espèce, la Cour considère qu'il est nécessaire, au regard de son constat de violation de l'article 5, d'indiquer des mesures individuelles d'exécution du présent arrêt. Elle rappelle avoir conclu à la violation de cette disposition en raison du non-respect de la condition exigeant que toute privation de liberté soit ordonnée selon les « voies légales » et de l'absence de justification de celle-ci au regard de l'alinéa e) ou des autres alinéas de l'article 5 § 1. Elle a également relevé des défaillances dans l'établissement et la vérification de la persistance de troubles justifiant le placement (paragraphes 148-160 ci-dessus).

257. La Cour estime que, pour effacer les conséquences de la violation des droits du requérant, les autorités devraient vérifier si celui-ci souhaite rester dans le foyer en question. Aucun élément du présent arrêt ne doit en effet être vu comme un obstacle au maintien du placement du requérant dans le foyer de Pastra ou dans un autre foyer pour personnes atteintes de troubles mentaux s'il s'avère établi que celui-ci est consentant à un tel placement. En revanche, dans le cas où le requérant s'y opposerait, il incomberait aux autorités de réexaminer sa situation, sans tarder, à la lumière des conclusions du présent arrêt.

258. La Cour rappelle qu'elle a également conclu à la violation de l'article 6 § 1 en raison de l'absence, pour une personne partiellement privée de sa capacité juridique, d'un accès direct à un tribunal pour demander le rétablissement de sa capacité (paragraphes 233-248 ci-dessus). Compte tenu de ce constat, la Cour recommande à l'Etat défendeur d'envisager les mesures générales nécessaires pour permettre un tel accès de manière efficace.

B. Sur l'article 41 de la Convention

259. Aux termes de l'article 41 de la Convention,

> « Si la Cour déclare qu'il y a eu violation de la Convention ou de ses Protocoles, et si le droit interne de la Haute Partie contractante ne permet d'effacer qu'imparfaitement les conséquences de cette violation, la Cour accorde à la partie lésée, s'il y a lieu, une satisfaction équitable. »

1. Dommage

260. Le requérant ne formule aucune demande pour préjudice matériel. En revanche, il réclame 64 000 EUR pour préjudice moral.

261. Il affirme en particulier avoir souffert des mauvaises conditions de vie au foyer et réclame un montant de 14 000 EUR à cet égard. Quant à son placement dans le foyer de Pastra, il indique avoir éprouvé des sentiments d'angoisse, de désarroi et de frustration depuis le début de la mise en œuvre de la mesure en décembre 2002. De plus, ce placement forcé aurait eu des conséquences importantes sur sa vie car il aurait été privé de son environnement social et soumis à un régime de vie très restrictif, ce qui renforcerait ses difficultés de réintégration dans la société. Il soutient que même s'il n'existe pas de jurisprudence comparable concernant une détention irrégulière dans un foyer pour personnes atteintes de troubles mentaux, il convient de tenir compte de la satisfaction équitable accordée par la Cour dans des affaires de détention irrégulière en hôpital psychiatrique. Il se réfère, par exemple, aux arrêts *Gajcsi c. Hongrie* (n° 34503/03, §§ 28-30, 3 octobre 2006) et *Kayadjieva c. Bulgarie* (n° 56272/00, § 57, 28 septembre 2006), tout en notant que la mesure privative de liberté qui lui a été imposée a eu une durée considérablement plus longue que celles qui étaient à l'origine des affaires précitées. Il estime qu'un montant de 30 000 EUR serait équitable à ce titre. Enfin, il ajoute que l'absence d'accès aux juridictions pour demander la révision de son statut juridique a restreint l'exercice d'un certain nombre de libertés dans la sphère de sa vie privée, ce qui lui a causé un préjudice moral supplémentaire, pouvant être compensé par la somme de 20 000 EUR.

262. Le Gouvernement considère que les prétentions du requérant sont excessives et dénuées de fondement. D'après lui, si la Cour est amenée à accorder un montant pour dommage moral, celui-ci ne devrait pas dépasser

les sommes allouées dans des arrêts rendus en matière d'internement psychiatrique obligatoire contre la Bulgarie. Le Gouvernement renvoie aux arrêts *Kayadjieva* (précité, § 57), *Varbanov* (précité, § 67), et *Kepenerov c. Bulgarie* (n° 39269/98, § 42, 31 juillet 2003).

263. La Cour rappelle avoir conclu à la violation de plusieurs dispositions de la Convention en l'espèce, à savoir les articles 3, 5 (paragraphes 1, 4 et 5), 6 et 13. Elle considère que le requérant doit avoir subi des souffrances du fait de son placement, qui a débuté en décembre 2002 et continue à ce jour, et de l'impossibilité pour lui d'obtenir un contrôle juridictionnel de cette mesure, ainsi que de l'absence d'accès aux tribunaux pour demander la mainlevée de la curatelle. Cette souffrance a sans aucun doute occasionné un sentiment d'impuissance et d'angoisse à l'intéressé. La Cour estime également que le requérant a subi un préjudice moral en raison des conditions de vie dégradantes qui lui ont été imposées pendant plus de sept ans.

264. Statuant en équité, comme le veut l'article 41 de la Convention, la Cour considère qu'il y a lieu d'octroyer au requérant la somme globale de 15 000 EUR pour préjudice moral.

2. Frais et dépens

265. Le requérant n'a formulé aucune demande pour frais et dépens.

3. Intérêts moratoires

266. La Cour juge approprié de calquer le taux des intérêts moratoires sur le taux d'intérêt de la facilité de prêt marginal de la Banque centrale européenne majoré de trois points de pourcentage.

PAR CES MOTIFS, LA COUR

1. *Rejette*, à l'unanimité, les exceptions de non-épuisement des voies de recours internes soulevées par le Gouvernement ;

2. *Dit*, à l'unanimité, qu'il y a eu violation de l'article 5 § 1 de la Convention ;

3. *Dit*, à l'unanimité, qu'il y a eu violation de l'article 5 § 4 de la Convention ;

4. *Dit*, à l'unanimité, qu'il y a eu violation de l'article 5 § 5 de la Convention ;

5. *Dit*, à l'unanimité, qu'il y a eu violation de l'article 3 de la Convention, seul et combiné avec l'article 13 ;

6. *Dit*, à l'unanimité, qu'il y a eu violation de l'article 6 § 1 de la Convention ;

7. *Dit*, par treize voix contre quatre, qu'il n'est pas nécessaire d'examiner s'il y a eu violation de l'article 8 de la Convention, seul et combiné avec l'article 13 ;

8. *Dit*, à l'unanimité,
a) que l'Etat défendeur doit verser au requérant, dans les trois mois, 15 000 EUR (quinze mille euros), à convertir en levs bulgares au taux applicable à la date du règlement, plus tout montant pouvant être dû à titre d'impôt, pour dommage moral ;
b) qu'à compter de l'expiration dudit délai et jusqu'au versement, ce montant sera à majorer d'un intérêt simple à un taux égal à celui de la facilité de prêt marginal de la Banque centrale européenne applicable pendant cette période, augmenté de trois points de pourcentage ;

9. *Rejette*, à l'unanimité, la demande de satisfaction équitable pour le surplus.

Fait en français et en anglais, puis prononcé en audience publique au Palais des droits de l'homme, à Strasbourg, le 17 janvier 2012.

Vincent Berger
Jurisconsulte

Nicolas Bratza
Président

Au présent arrêt se trouve joint, conformément aux articles 45 § 2 de la Convention et 74 § 2 du règlement, l'exposé des opinions séparées suivantes :
– opinion partiellement dissidente commune des juges Tulkens, Spielmann et Laffranque ;
– opinion partiellement dissidente de la juge Kalaydjieva.

N.B.
V.B.

OPINION PARTIELLEMENT DISSIDENTE COMMUNE DES JUGES TULKENS, SPIELMANN ET LAFFRANQUE

Nous avons voté sans hésitation pour la violation de l'article 5 et de l'article 3, seul et combiné avec l'article 13. Nous avons également voté pour la violation de l'article 6 de la Convention et nous sommes d'avis que l'arrêt est de nature à renforcer considérablement la protection de personnes se trouvant dans une situation de vulnérabilité analogue à celle où se trouve le requérant. Mais nous ne sommes pas d'accord avec la décision de la majorité lorsqu'elle estime qu'aucune question distincte ne se pose au regard de l'article 8 de la Convention, pris isolément et/ou combiné avec l'article 13, et qu'il n'est donc pas nécessaire d'examiner ce grief (paragraphe 252 et point 7 du dispositif).

Nous voudrions rappeler que le requérant a allégué que le régime restrictif de la curatelle, y compris son placement dans le foyer de Pastra et les conditions matérielles de vie qui y régnaient, constituait une ingérence injustifiée dans son droit au respect de sa vie privée et de son domicile (paragraphe 249 de l'arrêt). Il a soutenu que le droit bulgare ne lui offrait aucun recours adéquat et accessible à cet égard. En outre, il a précisé que le régime de la curatelle n'était pas adapté à son cas, mais qu'il s'agissait des limitations automatiquement imposées à toute personne dont l'incapacité était déclarée par le juge. Il a encore ajouté que le fait d'être obligé de vivre dans le foyer de Pastra équivalait pour lui à une interdiction de participer à la vie en société et de nouer des liens avec des personnes de son choix. Les autorités n'auraient pas cherché à trouver d'autres solutions thérapeutiques dans la communauté ni à prendre des mesures moins restrictives pour sa liberté individuelle, si bien qu'il serait atteint du « syndrome » de l'institutionnalisation, c'est-à-dire la disparition des capacités sociales et des particularités de l'individu (paragraphe 250 de l'arrêt).

A notre avis, ce sont là des vraies questions qui auraient mérité un examen séparé. Certes, une grande partie des allégations soumises sur le terrain de l'article 8 sont similaires à celles présentées sous l'angle des articles 3, 5 et 6. Elles ne sont pour autant pas identiques et les réponses données dans l'arrêt au regard de ces dispositions ne sont pas de nature à absorber totalement les griefs présentés au titre des articles 8 et 13.

Plus particulièrement, une question qui aurait également mérité un examen séparé concerne l'étendue d'une évaluation régulière de la situation du requérant. Celui-ci a exposé que le droit interne ne prévoyait pas une telle évaluation d'office concernant la nécessité de maintenir une mesure restrictive à la capacité juridique. Il aurait pu être utile de se prononcer sur la question de savoir s'il existait à la charge des Etats une obligation positive au regard de l'article 8 de mettre en place un tel contrôle, surtout dans des situations où les intéressés ne sont pas en mesure de comprendre

les conséquences d'une évaluation régulière et ne peuvent initier eux-mêmes une procédure dans ce sens.

OPINION EN PARTIE DISSIDENTE DE LA JUGE KALAYDJIEVA

(*Traduction*)

Je suis parvenue sans aucune hésitation aux conclusions concernant les griefs formulés par M. Stanev sur le terrain des articles 5, 3 et 6 de la Convention. En revanche, comme les juges Tulkens, Spielmann et Laffranque, je regrette que la majorité, eu égard à ces conclusions, ait estimé qu'il n'y avait pas lieu d'examiner séparément les griefs soulevés par le requérant sur le terrain de l'article 8 concernant « [le] régime de la curatelle, notamment (...) l'absence de contrôle régulier de la justification de cette mesure, (...) la désignation du directeur du foyer de Pastra comme son curateur et (...) l'absence alléguée de contrôle sur les actes de celui-ci, ainsi que [les] restrictions à sa vie privée découlant de son placement au foyer contre sa volonté, incluant l'absence de contact avec le monde extérieur et les conditions de la correspondance. » (paragraphe 90 de la décision sur la recevabilité du 29 juin 2010). A mon avis, les griefs du requérant sur le terrain de l'article 8 de la Convention demeurent le problème majeur en l'espèce.

D'après la jurisprudence de la Cour, la capacité juridique d'un individu est déterminante pour l'exercice de l'ensemble des droits et libertés, en particulier en ce qui concerne les restrictions pouvant être mises à la liberté de la personne (*Chtoukatourov c. Russie*, n° 44009/05, § 71, 27 mars 2008, *Salontaji-Drobnjak c. Serbie*, n° 36500/05, §§ 140 et suiv., 13 octobre 2009, et, récemment, *X et Y c. Croatie*, n° 5193/09, §§ 102–104).

Nul doute que les restrictions à la capacité juridique constituent une ingérence dans l'exercice du droit à la vie privée, qui emporte violation de l'article 8 de la Convention, à moins qu'on établisse que l'ingérence était « prévue par la loi », poursuivait un ou plusieurs buts légitimes et était « nécessaire » pour le ou les atteindre.

A la différence de la situation des requérants dans les affaires susmentionnées, la capacité de M. Stanev à accomplir des actes ordinaires de la vie courante et son aptitude à conclure valablement des actes juridiques avec le consentement de son curateur étaient reconnues. Le droit interne et les décisions des juridictions nationales lui permettaient de demander et d'obtenir un placement dans un foyer social conformément à ses besoins et à ses préférences s'il le souhaitait, ou de refuser un tel placement eu égard à la qualité des services offerts et/ou aux restrictions impliquées qu'il n'était pas prêt à accepter. Ni le droit interne ni la situation personnelle du requérant ne justifiaient d'autres restrictions ni ne permettaient au curateur de substituer son appréciation des intérêts supérieurs du requérant à la volonté de celui-ci.

Toutefois, une fois déclaré partiellement incapable, le requérant a été privé de la possibilité d'agir dans son intérêt et les garanties propres à empêcher qu'il ne fût traité de fait comme s'il était totalement incapable n'étaient pas suffisantes. Il n'est pas contesté que l'intéressé n'a pas été consulté au sujet de son souhait de bénéficier d'un placement dans un foyer et qu'il ne pouvait pas même prendre en toute indépendance une décision concernant la manière de passer son temps et de dépenser le restant de sa pension, ses visite à ses amis et ses proches et d'autres visites, et ses communications avec l'extérieur par courrier ou par d'autres moyens. Aucune justification n'a été fournie quant au fait que M. Stanev a été privé de la capacité d'agir selon ses préférences, contrairement aux décisions des tribunaux et à la loi, et au fait qu'il n'a pas bénéficié de l'assistance voulue de son curateur désigné d'office, mais qu'il était totalement tributaire du bon vouloir ou de la négligence de celui-ci pour la défense de ses intérêts supérieurs. A cet égard, le manque de respect pour l'autonomie personnelle du requérant, qui était reconnue, a emporté violation du droit de celui-ci au respect de sa vie privée et de sa dignité garanti par l'article 8 et n'était pas conforme aux normes contemporaines permettant d'assurer que les souhaits et préférences que l'intéressé était capable d'exprimer fussent dûment pris en compte.

La situation du requérant s'est trouvée aggravée par son incapacité de déclencher un recours pour la protection indépendante de ses droits et intérêts. Toute tentative de la part de l'intéressé de se prévaloir d'un tel recours était subordonnée à l'approbation préalable de son curateur, qui était également directeur et représentant du foyer. A cet égard, la décision de la majorité de ne pas examiner séparément les griefs du requérant sur le terrain de l'article 8 s'analyse en un manquement à soumettre à un contrôle séparé l'absence de garanties pour l'exercice de ces droits face à un conflit d'intérêts potentiel, voire évident, contrôle qui revêt une importance capitale pour la protection requise des individus vulnérables contre un abus éventuel et qui est tout aussi important pour les griefs du requérant sur le terrain de l'article 8 que pour ceux au regard de l'article 6.

Si les deux parties ont soumis des informations indiquant non seulement qu'une procédure en rétablissement de capacité était en principe possible, mais également que pareille action avait abouti dans un nombre raisonnable d'affaires, M. Stanev se plaint à juste titre que l'introduction d'une telle procédure dans son cas était subordonnée à l'approbation de son curateur. Il apparaît que le pouvoir discrétionnaire du curateur de bloquer toute tentative d'action en justice a non seulement compromis l'exercice par le requérant de son droit d'accès à un tribunal aux fins du rétablissement de sa capacité, mais aussi empêché l'intéressé d'introduire une procédure pour faire valoir ses intérêts et droits, y compris ceux protégés par l'article 5 de la Convention. Ainsi que l'ont également soutenu les représentants de M. Stanev devant les autorités nationales, on aurait dû « [donner à celui-ci]

la possibilité d'évaluer tout seul si, compte tenu des conditions de vie au foyer, le fait de continuer à y vivre était ou non dans son intérêt » (paragraphe 38 de l'arrêt).

COMMISSION DES COMMUNAUTÉS EUROPÉENNES

Bruxelles, le 2.7.2008
COM(2008) 426 final

2008/0140 (CNS)

Proposition de

DIRECTIVE DU CONSEIL

relative à la mise en œuvre du principe de l'égalité de traitement entre les personnes sans distinction de religion ou de convictions, de handicap, d'âge ou d'orientation sexuelle

{SEC(2008) 2180}
{SEC(2008) 2181}

(présentée par la Commission)

EXPOSÉ DES MOTIFS

1. CONTEXTE DE LA PROPOSITION

Motivation et objectifs de la proposition

La présente proposition vise la mise en œuvre du principe de l'égalité de traitement entre les personnes sans distinction de religion ou de convictions, de handicap, d'âge ou d'orientation sexuelle, en dehors du marché du travail. Elle définit un cadre pour l'interdiction de toute discrimination fondée sur ces motifs et établit un niveau de protection minimal uniforme à l'intérieur de l'Union européenne pour les personnes victimes de telles discriminations.

La présente proposition complète le cadre juridique communautaire existant, qui ne prohibe la discrimination fondée sur la religion ou les convictions, un handicap, l'âge ou l'orientation sexuelle qu'en ce qui concerne l'emploi, le travail et la formation professionnelle[1].

Contexte général

Dans son programme législatif et de travail adopté le 23 octobre 2007[2], la Commission a annoncé qu'elle allait proposer de nouvelles initiatives afin de compléter le cadre juridique anti-discrimination de l'Union européenne.

La présente proposition est soumise dans le cadre de l'«Agenda social renouvelé: opportunités, accès et solidarité dans l'Europe du XXI[e] siècle»[3] et accompagne la communication intitulée «Non-discrimination et égalité des chances: un engagement renouvelé»[4].

La convention des Nations unies relative aux droits des personnes handicapées a été signée par les États membres et la Communauté européenne. Elle est fondée sur les principes de non-discrimination, de participation, d'intégration dans la société, d'égalité des chances et d'accessibilité. Une proposition de conclusion de la convention par la Communauté européenne a été soumise au Conseil[5].

Dispositions en vigueur dans le domaine de la proposition

Cette proposition se situe dans le prolongement des directives 2000/43/CE, 2000/78/CE et 2004/113/CE[6], qui interdisent la discrimination fondée sur le sexe, la race ou l'origine ethnique, un handicap, l'orientation sexuelle, la religion ou les convictions[7]. La discrimination

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1 Directive 2000/43/CE du 29 juin 2000 relative à la mise en œuvre du principe de l'égalité de traitement entre les personnes sans distinction de race ou d'origine ethnique, JO L 180 du 19.7.2000, p. 22 et directive 2000/78/CE du 27 novembre 2000 portant création d'un cadre général en faveur de l'égalité de traitement en matière d'emploi et de travail, JO L 303 du 2.12.2000, p. 16.

2 COM (2007) 640

3 COM (2008) 412

4 COM (2008) 420

5 [COM (2008) XXX]

6 Directive 2004/113/CE du 13 décembre 2004 mettant en œuvre le principe de l'égalité de traitement entre les femmes et les hommes dans l'accès à des biens et services et la fourniture de biens et services, JO L 373 du 21.12.2004, p. 37.

7 Directive 2000/43/CE du 29 juin 2000 relative à la mise en œuvre du principe de l'égalité de traitement entre les personnes sans distinction de race ou d'origine ethnique (JO L 180 du 19.7.2000); directive

fondée sur la race ou l'origine ethnique est interdite dans le cadre de l'emploi, du travail et de la formation professionnelle, ainsi que dans des domaines extérieurs à l'emploi tels que la protection sociale, les soins de santé, l'éducation et l'accès aux biens et services à la disposition du public, y compris le logement. La discrimination fondée sur le sexe est prohibée dans les mêmes domaines, à l'exception de l'éducation, des médias et de la publicité. La discrimination en fonction de l'âge, de la religion ou des convictions, de l'orientation sexuelle et du handicap est toutefois interdite uniquement dans le contexte de l'emploi, du travail et de la formation professionnelle.

Les directives 2000/43/CE et 2000/78/CE devaient être transposées en droit interne en 2003 au plus tard, à l'exception des dispositions relatives à la discrimination fondée sur l'âge et le handicap, pour lesquelles un délai supplémentaire de trois ans était accordé. Un rapport sur l'application de la directive 2000/43/CE a été adopté par la Commission en 2006[8]. L'adoption du rapport sur la mise en œuvre de la directive 2000/78/CE a eu lieu le 19 juin 2008[9]. Tous les États membres sauf un ont transposé ces deux directives. Quant à la directive 2004/113/CE, elle devait être transposée d'ici fin 2007.

Dans la mesure du possible, les concepts et règles contenus dans la présente proposition s'appuient sur ceux des directives relevant de l'article 13 CE déjà existantes.

Cohérence avec les autres politiques et les objectifs de l'Union

Cette proposition s'inscrit dans la stratégie développée depuis le traité d'Amsterdam en vue de lutter contre la discrimination et concorde avec les objectifs horizontaux de l'Union européenne, notamment la stratégie de Lisbonne pour la croissance et l'emploi et les objectifs du processus de protection sociale et d'inclusion sociale de l'Union européenne. Elle aidera à renforcer les droits fondamentaux des citoyens, dans l'esprit de la Charte des droits fondamentaux de l'Union européenne.

2. CONSULTATION DES PARTIES INTERESSEES ET ANALYSE D'IMPACT

Consultation

Lors de la préparation de cette initiative, la Commission s'est efforcée d'associer toutes les parties potentiellement intéressées et a veillé à ce que celles qui souhaitaient formuler des observations aient la possibilité et le temps de répondre. L'Année européenne de l'égalité des chances pour tous a fourni une occasion unique de mettre l'accent sur ces questions et d'encourager la participation au débat.

Il convient tout particulièrement de mentionner la consultation publique en ligne[10], une enquête sur le monde de l'entreprise[11], ainsi qu'une consultation écrite et des réunions avec les partenaires sociaux et des ONG européennes actives dans le domaine de la lutte anti-discrimination[12]. Les résultats de la consultation publique et du sondage auprès des ONG en

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2000/78/CE du 27 novembre 2000 portant création d'un cadre général en faveur de l'égalité de traitement en matière d'emploi et de travail (JO L 303 du 2.12.2000).

8 COM (2006) 643 final.

9 COM (2008) 225.

10 Les résultats complets de la consultation sont disponibles à l'adresse suivante: http://ec.europa.eu/employment_social/fundamental_rights/news/news_fr.htm

11 http://ec.europa.eu/yourvoice/ebtp/consultations/index_fr.htm

12 http://ec.europa.eu/employment_social/fundamental_rights/org/imass_fr.htm

appelaient à la mise en place d'une législation au niveau communautaire afin de renforcer le niveau de protection contre la discrimination, tandis que certaines personnes interrogées se sont prononcées en faveur de directives spécifiques dans les domaines du handicap et de la discrimination fondée sur le sexe. La consultation du panel d'entreprises européennes a montré que ces dernières estiment qu'il serait utile d'avoir le même niveau de protection contre la discrimination dans toute l'Union européenne. Les partenaires sociaux représentant les employeurs étaient en principe hostiles à une nouvelle législation, estimant qu'elle entraînerait une augmentation de la bureaucratie et des coûts, tandis que les syndicats lui étaient favorables.

Les réponses à la consultation ont fait apparaître des inquiétudes sur le traitement qu'une nouvelle directive réserverait à un certain nombre de domaines sensibles et a également révélé des méprises sur les limites ou l'étendue des compétences de la Communauté. La directive proposée répond à ces inquiétudes et explicite les limites des compétences communautaires. À l'intérieur de ces limites, la Communauté a le pouvoir de statuer (article 13 du traité CE), et elle estime qu'une action au niveau de l'Union européenne constitue la meilleure manière de procéder.

Les réponses ont également mis l'accent sur le caractère spécifique de la discrimination liée au handicap et sur les mesures nécessaires pour y faire face. Celles-ci font l'objet d'un article spécifique.

D'aucuns ont indiqué qu'ils craignaient qu'une nouvelle directive n'entraîne des coûts pour les entreprises, mais il convient de souligner que la présente proposition s'appuie largement sur des concepts utilisés dans les directives existantes et qui sont bien connus des opérateurs économiques. Quant aux mesures visant la discrimination fondée sur le handicap, le concept d'aménagement raisonnable est familier aux entreprises depuis qu'il a été établi par la directive 2000/78/CE. La proposition de la Commission précise les facteurs à prendre en compte pour déterminer ce qui est «raisonnable».

Il a été relevé que, contrairement aux deux autres directives, la directive 2000/78/CE n'oblige pas les États membres à mettre en place des organismes chargés des questions d'égalité. La nécessité de lutter contre la discrimination multiple, par exemple en la définissant en tant que discrimination et en garantissant des voies de recours efficaces, a également été soulignée. Ces questions dépassent le cadre de la présente directive, mais rien n'empêche les États membres de prendre des mesures dans ces domaines.

Enfin, il a été signalé que la directive 2004/113/CE assurait une protection moins étendue contre la discrimination fondée sur le sexe que la directive 2000/43/CE, et qu'une nouvelle législation était donc nécessaire sur ce point. La Commission ne retient pas cette suggestion pour l'instant, étant donné que le délai de transposition de la directive 2004/113/CE vient tout juste d'expirer. Elle rendra toutefois compte de l'application de la directive en 2010 et pourra alors proposer des modifications, le cas échéant.

Obtention et utilisation d'expertise

Une étude[13] réalisée en 2006 a montré que, d'un côté, la plupart des pays garantissent une forme ou une autre de protection juridique qui va au delà des exigences communautaires actuelles dans la plupart des domaines examinés mais que, d'un autre côté, le degré et la nature de cette protection varient fortement entre les pays. Cette étude a également montré

[13] http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/mapstrand1_fr.pdf

que très peu de pays réalisaient des analyses d'impact ex ante en matière de législation anti-discrimination.

Une autre étude[14] a examiné la nature et l'étendue de la discrimination en dehors de la sphère de l'emploi dans l'Union européenne et son coût potentiel (direct et indirect) pour les personnes et la société.

La Commission a en outre utilisé les rapports du Réseau européen des experts indépendants en matière de non-discrimination, notamment le document sur «Le développement de la législation contre les discriminations en Europe»[15], ainsi qu'une étude intitulée «Lutte contre la discrimination multiple: pratiques, politiques et lois»[16]. Les résultats d'un Eurobaromètre spécial[17] et d'un Flash Eurobaromètre réalisé en février 2008[18] ont également fourni des informations utiles.

Analyse d'impact

Le rapport d'analyse d'impact[19] a examiné l'existence de discriminations en dehors du marché du travail. Il est parvenu à la conclusion que, si la non-discrimination est reconnue comme l'une des valeurs fondamentales de l'Union européenne, le niveau de protection juridique en place pour défendre ces valeurs diffère dans la pratique en fonction des États membres et des motifs de discrimination. Il en résulte que les personnes exposées à la discrimination sont souvent moins à même de participer pleinement à la vie sociale et économique, ce qui a des répercussions négatives tant pour les personnes que pour la société en général.

Le rapport définit trois objectifs que toute initiative devrait atteindre:

- améliorer la protection contre la discrimination;
- garantir la sécurité juridique aux acteurs économiques et aux victimes potentielles dans l'ensemble des États membres;
- renforcer l'inclusion sociale et encourager la participation pleine et entière de toutes les catégories de la population à la vie sociale et économique.

Parmi les nombreuses mesures recensées susceptibles d'aider à atteindre ces objectifs, six options ont été soumises à une analyse plus approfondie, consistant notamment dans l'absence de nouvelles mesures au niveau communautaire, l'autorégulation, la formulation de recommandations ou l'adoption d'une ou plusieurs directives interdisant la discrimination en dehors de la sphère de l'emploi.

En tout état de cause, les États membres devront appliquer la convention des Nations unies relative aux droits des personnes handicapées, qui définit le refus de procéder à des aménagements raisonnables comme une discrimination. Toute mesure juridiquement contraignante interdisant la discrimination fondée sur le handicap comporte un coût financier en raison des adaptations nécessaires mais présente également des avantages liés à une

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14 Sera disponible sur http://ec.europa.eu/employment_social/fundamental_rights/org/imass_fr.htm

15 http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/07compan_fr.pdf

16 http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/multdis_fr.pdf

17 Étude Eurobaromètre spéciale n° 296 sur la discrimination dans l'Union européenne: http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_fr.htm et http://ec.europa.eu/public_opinion/archives/eb_special_fr.htm

18 Flash Eurobaromètre n° 232; http://ec.europa.eu/public_opinion/flash/fl_232_fr.pdf

19 Sera disponible sur http://ec.europa.eu/employment_social/fundamental_rights/org/imass_fr.htm

meilleure inclusion économique et sociale des catégories faisant actuellement l'objet d'une discrimination.

Le rapport conclut qu'une directive couvrant l'ensemble des motifs, conçue de manière à respecter les principes de subsidiarité et de proportionnalité, constituerait une réponse appropriée. Si un petit nombre d'États membres disposent déjà d'un arsenal législatif assez complet, la plupart n'offrent qu'une certaine protection, moins étendue. L'adaptation législative requise par de nouvelles règles communautaires serait donc variable.

La Commission a reçu de nombreuses plaintes faisant état de discriminations dans le secteur de l'assurance et de la banque. Mais le fait que les assureurs et les banques utilisent l'âge ou le handicap pour évaluer le profil de risque des clients ne constitue pas nécessairement une discrimination: tout est fonction du produit. La Commission va engager un dialogue avec les secteurs de la banque et de l'assurance et d'autres parties intéressées afin de parvenir à une meilleure compréhension commune des domaines dans lesquels l'âge ou le handicap constituent des facteurs pertinents à prendre en compte dans la conception et le coût des produits proposés par ces secteurs.

3. ASPECTS JURIDIQUES

Base juridique

La présente proposition est fondée sur l'article 13, paragraphe 1, du traité CE.

Subsidiarité et proportionnalité

Le principe de subsidiarité s'applique dans la mesure où la proposition ne relève pas de la compétence exclusive de la Communauté. Les objectifs de la proposition ne peuvent pas être réalisés de manière suffisante par les États membres agissant seuls, car seule une mesure à l'échelle communautaire peut garantir un niveau minimal de protection standard contre la discrimination fondée sur la religion ou les convictions, le handicap, l'âge ou l'orientation sexuelle dans tous les États membres. Un acte juridique communautaire assure la sécurité juridique en ce qui concerne les droits et obligations des acteurs économiques et des citoyens, y compris ceux qui se déplacent entre les États membres. L'expérience a montré que les directives précédemment adoptées en vertu de l'article 13, paragraphe 1, du traité CE avaient eu un effet positif en permettant de parvenir une meilleure protection contre la discrimination. Conformément au principe de proportionnalité, la directive proposée ne va pas au-delà de ce qui est nécessaire pour atteindre les objectifs définis.

De plus, les traditions et les approches nationales dans des domaines tels que la santé, la protection sociale et l'éducation ont tendance à différer davantage qu'en matière d'emploi. Ces domaines sont marqués par des choix de société légitimes dans des secteurs qui relèvent de la compétence nationale.

La diversité de ses sociétés est l'une des forces de l'Europe et doit être respectée conformément au principe de subsidiarité. Il est préférable que l'organisation et le contenu de l'éducation, la reconnaissance du statut marital ou familial, l'adoption, les droits de procréation et d'autres questions similaires soient tranchées au niveau national. La directive n'exige donc d'aucun État membre qu'il modifie ses lois et pratiques actuelles sur ces questions. Elle n'affecte pas non plus les règles nationales relatives aux activités des églises et autres organisations religieuses, ou les relations de celles-ci avec l'État. Les États membres conserveront ainsi leur liberté de décision sur des questions telles que l'autorisation de la sélection à l'entrée des établissements scolaires, l'interdiction ou le droit de porter ou d'exhiber

des symboles religieux à l'école, la reconnaissance des mariages entre personnes du même sexe, et la nature de toute relation entre les religions constituées et l'État.

Choix de l'instrument

Une directive est l'instrument qui assure le mieux un niveau minimal et cohérent de protection contre la discrimination dans toute l'Union européenne, tout en permettant aux États membres désireux d'aller au-delà de ces normes minimales de le faire. Elle leur permet également de choisir les moyens de coercition et les sanctions les plus appropriés. L'expérience passée dans le domaine de la lutte contre la discrimination a montré qu'une directive était l'instrument le plus approprié.

Tableau de correspondance

Les États membres sont tenus de communiquer à la Commission le texte des dispositions nationales transposant la directive ainsi qu'un tableau de correspondance entre ces dispositions et la directive.

Espace économique européen

Ce texte présente de l'intérêt pour l'Espace économique européen et sera applicable aux États tiers membres de cet Espace à la suite d'une décision du comité mixte de l'EEE.

4. INCIDENCE BUDGETAIRE

La proposition n'a pas d'incidence sur le budget de la Communauté.

5. EXPLICATION DETAILLEE DES DIFFERENTES DISPOSITIONS

Article premier: Objet

L'objectif principal de la directive est de lutter contre la discrimination fondée sur la religion ou les convictions, l'âge ou l'orientation sexuelle et de mettre en œuvre le principe de l'égalité de traitement dans d'autres domaines que l'emploi. La directive n'interdit pas les différences de traitement fondées sur le sexe, qui sont couvertes par les articles 13 et 141 du traité CE et la législation dérivée connexe.

Article 2: Concept de discrimination

La définition du principe de l'égalité de traitement est fondée sur celle contenue dans les directives précédemment adoptées en vertu de l'article 13, paragraphe 1, du traité CE [ainsi que dans la jurisprudence de la Cour de justice des Communautés européennes en la matière].

La discrimination directe consiste à réserver un traitement différent à une personne uniquement en raison de son âge, d'un handicap, de sa religion ou de ses convictions ou de son orientation sexuelle. La discrimination indirecte est plus complexe en ceci qu'une règle ou une pratique apparemment neutre désavantage en fait particulièrement une personne ou une catégorie de personnes possédant une caractéristique spécifique. L'auteur de la règle ou de la pratique n'a peut-être aucune idée des conséquences pratiques, et l'intention de discriminer n'entre donc pas en ligne de compte. Tout comme dans les directives 2000/43/CE,

2000/78/CE et 2002/73/CE[20], il est possible de justifier la discrimination indirecte (si «cette disposition, ce critère ou cette pratique [est] objectivement justifié par un objectif légitime et que les moyens de réaliser cet objectif [sont] appropriés et nécessaires»).

Le harcèlement est une forme de discrimination. Le comportement non désiré peut prendre différentes formes allant de réflexions orales ou écrites à des gestes ou un comportement, mais il doit être suffisamment grave pour créer un environnement intimidant, humiliant ou offensant. Cette définition est identique à celles contenues dans les autres directives adoptées en vertu de l'article 13.

Le refus de réaliser des aménagements raisonnables est considéré comme une forme de discrimination, ce qui concorde avec la convention des Nations unies relative au droit des personnes handicapées et avec la directive 2000/78/CE. Certaines différences de traitement fondées sur l'âge peuvent être légales si elles sont justifiées par un but légitime et que les moyens de parvenir à ce but sont appropriés et nécessaires (critère de proportionnalité).

Dans les directives existantes au titre de l'article 13, des exceptions à l'interdiction de la discrimination directe ont été autorisées en cas d'«exigence professionnelle essentielle et déterminante» en ce qui concerne les différences de traitement fondées sur l'âge, la discrimination en fonction du sexe et l'accès aux biens et services. Bien que la proposition actuelle ne couvre pas le domaine de l'emploi, des différences de traitement dans les domaines mentionnés à l'article 3 devront être autorisées. Toutefois, étant donné que les exceptions au principe général d'égalité doivent être étroitement circonscrites, le double critère exigeant à la fois l'existence d'un objectif justifié et des moyens proportionnés d'y parvenir (c'est-à-dire aussi peu discriminatoires que possible) est nécessaire.

Une disposition spéciale est ajoutée à l'intention des services d'assurance et de banque, compte tenu du fait que l'âge et le handicap peuvent constituer un élément essentiel de l'évaluation du risque pour certains produits, et donc du prix. S'il était totalement interdit aux assureurs de tenir compte de l'âge et du handicap, les coûts additionnels seraient entièrement à la charge des autres assurés, ce qui conduirait à des coûts globaux plus élevés et à une offre de couverture plus réduite pour les consommateurs. L'utilisation de l'âge et du handicap dans l'évaluation des risques doit cependant être fondée sur des données et des statistiques précises.

La directive n'affecte pas les mesures nationales concernant la sécurité publique, l'ordre public, la prévention des infractions pénales, la protection de la santé et les droits et libertés d'autrui.

Article 3: Champ d'application

La discrimination en fonction de la religion ou des convictions, du handicap, de l'âge ou de l'orientation sexuelle est interdite tant dans le secteur public que dans le secteur privé, dans les domaines suivants:

- la protection sociale, y compris la sécurité sociale et les soins de santé;
- les avantages sociaux;
- l'éducation;

[20] JO L 269 du 5.10.2002.

- l'accès aux biens et services et la fourniture de biens et services à la disposition du public, y compris en matière de logement.

En termes d'accès aux biens et services, seules les activités professionnelles ou commerciales sont couvertes. En d'autres termes, les transactions entre les personnes privées agissant à titre privé ne sont pas couvertes: il n'y a pas lieu de traiter la location d'une chambre dans une habitation privée de la même manière que la location de chambres dans un hôtel. Les différents domaines sont couverts uniquement dans la mesure où une question relève des compétences de la Communauté. Ainsi, l'organisation du système et des activités scolaires et le contenu de l'enseignement, y compris la manière d'organiser l'enseignement pour les personnes handicapées, relèvent de la compétence des États membres et ces derniers peuvent prévoir des différences de traitement dans l'accès aux établissements d'enseignement religieux. Une école peut par exemple organiser une présentation spécialement réservée aux enfants d'un certain âge, tandis qu'un établissement fondé sur la foi peut être autorisé à organiser des excursions scolaires sur un thème religieux.

Le texte indique clairement que les questions concernant l'état matrimonial ou familial, y compris l'adoption, ne relèvent pas du champ d'application de la directive. Cela inclut les droits en matière de procréation. Les États membres demeurent libres de décider ou non de l'institution et de la reconnaissance de partenariats *officiellement* enregistrés. Toutefois, dès lors que le droit interne reconnaît de telles relations comme étant comparables au mariage, le principe de l'égalité de traitement s'applique[21].

L'article 3 précise que la directive ne couvre ni les lois nationales relatives au caractère laïque de l'État et de ses institutions, ni le statut des organisations religieuses. Les États membres sont donc libres d'autoriser ou d'interdire le port de symboles religieux à l'école. La directive ne couvre pas non plus les différences de traitement fondées sur la nationalité.

Article 4: Égalité de traitement des personnes handicapées

L'accès effectif des personnes handicapées à la protection sociale, aux avantages sociaux, aux soins de santé et à l'éducation, ainsi que l'accès aux biens et services et la fourniture de biens et services à la disposition du public pour ces personnes, y compris en matière de logement, seront prévus à l'avance. Une clause d'exception prévoit l'exemption de cette obligation si celle-ci impose une charge disproportionnée ou des modifications majeures du produit ou du service.

Dans certains cas, des mesures individuelles d'aménagement raisonnable peuvent s'avérer nécessaires pour garantir l'accès effectif d'une personne handicapée en particulier. Là encore, uniquement à condition qu'une telle mesure n'impose pas une charge disproportionnée. Une liste non exhaustive de facteurs susceptibles d'être pris en compte pour déterminer si la charge est disproportionnée est dressée, permettant ainsi de tenir compte de la situation des petites et moyennes entreprises et des micro-entreprises.

Le concept d'aménagement raisonnable existe déjà dans le domaine de l'emploi, au titre de la directive 2000/78/CE, et les États membres et les entreprises ont donc déjà l'expérience de son application. Une mesure appropriée pour une grande compagnie ou un organisme public ne l'est pas forcément pour une petite ou moyenne entreprise. L'obligation de procéder à des aménagements raisonnables ne suppose pas uniquement des modifications matérielles, mais peut également signifier une manière différente de fournir un service.

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[21] Arrêt de la CJCE du 1.4.2008 dans l'affaire C-267/06, *Tadao Maruko*.

Article 5: Action positive

Cette disposition est commune à toutes les directives fondées sur l'article 13. Il est clair que dans de nombreux cas, une égalité formelle n'entraîne pas une égalité dans la pratique. Il peut être nécessaire d'adopter des mesures spécifiques pour prévenir ou corriger des situations d'inégalité. Les États membres ont des traditions et des pratiques différentes en matière d'action positive, et cet article leur permet de prendre des mesures dans ce sens sans toutefois en faire une obligation.

Article 6: Prescriptions minimales

Cette disposition est commune à toutes les directives fondées sur l'article 13. Elle autorise les États membres à assurer un niveau de protection plus élevé que celui garanti par la directive, et confirme qu'il ne doit pas y avoir d'abaissement du niveau de protection contre la discrimination déjà accordé par les États membres lors de l'application de la directive.

Article 7: Défense des droits

Cette disposition est commune à toutes les directives fondées sur l'article 13. Les personnes doivent pouvoir faire respecter leur droit de ne pas être discriminées. Cet article dispose donc que les personnes qui estiment avoir été victimes de discrimination doivent pouvoir avoir recours à des procédures administratives ou judiciaires, même après la cessation de la relation dans le cadre de laquelle la discrimination est censée s'être produite, conformément à la décision de la Cour de justice dans l'affaire Coote[22].

Le droit à une protection juridique efficace est renforcé par le fait d'autoriser les organisations qui ont un intérêt légitime à combattre la discrimination à aider les victimes de discrimination dans le cadre de procédures judiciaires ou administratives. Cette disposition est sans préjudice des règles nationales relatives aux délais impartis pour former un recours.

Article 8: Charge de la preuve

Cette disposition est commune à toutes les directives fondées sur l'article 13. Dans les procédures judiciaires, la règle générale est que toute allégation doit être prouvée. Dans les affaires de discrimination, il est toutefois souvent extrêmement difficile d'obtenir les preuves nécessaires, étant donné que celles-ci se trouvent souvent entre les mains du défendeur. Ce problème a été reconnu par la Cour de justice des Communautés européennes[23] et par le législateur communautaire dans la directive 97/80/CE[24].

Le renversement de la charge de la preuve s'applique à toutes les affaires dans lesquelles une violation du principe de l'égalité de traitement est alléguée, y compris celles qui impliquent des associations et des organisations au sens de l'article 7, paragraphe 2. Tout comme dans les directives précédentes, ce renversement de la charge de la preuve ne s'applique pas aux situations dans lesquelles une discrimination supposée est poursuivie au pénal.

Article 9: Protection contre les rétorsions

Cette disposition est commune à toutes les directives fondées sur l'article 13. Une protection juridique efficace doit inclure une protection contre les représailles. Une victime peut être

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22 Affaire C-185/97, Rec. 1998, p. I-5199.
23 Affaire 109/88, *Danfoss*, Rec. 1989, p. 03199.
24 JO L 14 du 20.1.1998.

dissuadée d'exercer ses droits en raison du risque de représailles, il est donc nécessaire de protéger les personnes contre tout traitement défavorable résultant de l'exercice des droits conférés par la directive. Cet article est identique dans les directives 2000/43/CE et 2000/78/CE.

Article 10: Diffusion de l'information

Cette disposition est commune à toutes les directives fondées sur l'article 13. L'expérience et les sondages montrent que les personnes sont mal ou insuffisamment informées de leurs droits. Plus le système d'information publique et de prévention est efficace, moins les recours individuels seront nécessaires. Cet article reproduit les dispositions correspondantes des directives 2000/43/CE, 2000/78/CE et 2004/113/CE.

Article 11: Dialogue avec les parties intéressées

Cette disposition est commune à toutes les directives fondées sur l'article 13. Elle vise à encourager le dialogue entre les pouvoirs publics concernés et des organismes tels que les organisations non gouvernementales qui ont un intérêt légitime à contribuer à la lutte contre la discrimination fondée sur la religion ou les convictions, le handicap, l'âge ou l'orientation sexuelle. Une disposition similaire est contenue dans les directives anti-discrimination précédentes.

Article 12: Organismes de promotion de l'égalité de traitement

Cette disposition est commune à deux directives fondées sur l'article 13. Elle prévoit que les États membres doivent disposer au niveau national d'un ou plusieurs organismes («Organisme chargé des questions d'égalité») responsables de promouvoir l'égalité de traitement entre toutes les personnes, sans discrimination fondée sur la religion ou les convictions, le handicap, l'âge ou l'orientation sexuelle.

Cet article reproduit les dispositions de la directive 2000/43/CE dans la mesure où celles-ci concernent l'accès aux biens et services et la fourniture de biens et services, et s'appuie sur des dispositions équivalentes contenues dans les directives 2002/73/CE[25] et 2004/113/CE. Il définit les compétences minimales d'organismes au niveau national devant agir de manière indépendante afin de promouvoir le principe de l'égalité de traitement. Les États membres peuvent décider que ces organismes seront les mêmes que ceux déjà établis en application des directives précédentes.

Il est à la fois difficile et coûteux pour les particuliers d'intenter un recours en justice s'ils estiment avoir fait l'objet d'une discrimination. Un des rôles clés des organismes chargés des questions d'égalité est d'apporter une aide indépendante aux victimes de discrimination. Ils doivent également être en mesure de procéder à des études indépendantes sur la discrimination et de publier des rapports et des recommandations sur des questions liées à la discrimination.

Article 13: Conformité

Cette disposition est commune à toutes les directives fondées sur l'article 13. L'égalité de traitement suppose l'élimination de toute discrimination résultant de dispositions législatives,

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[25] Directive 2002/73/CE modifiant la directive 76/207/CEE du Conseil relative à la mise en œuvre du principe de l'égalité de traitement entre hommes et femmes en ce qui concerne l'accès à l'emploi, à la formation et à la promotion professionnelles, et les conditions de travail, JO L 269 du 5.10.2002, p. 15.

réglementaires ou administratives, et la directive impose donc aux États membres de supprimer toute disposition de ce type. Comme dans la législation antérieure, la directive exige également que toute disposition contraire au principe de l'égalité de traitement soit déclarée nulle et non avenue ou modifiée, ou qu'elle puisse l'être en cas de contestation.

Article 14: Sanctions

Cette disposition est commune à toutes les directives fondées sur l'article 13. Conformément à la jurisprudence de la Cour de justice[26], le texte exclut la fixation de tout plafond maximal pour les dédommagements dus en cas de violation du principe de l'égalité de traitement. Cette disposition ne requiert pas l'introduction de sanctions pénales.

Article 15: Mise en œuvre

Cette disposition est commune à toutes les directives fondées sur l'article 13. Elle accorde aux États membres un délai de deux ans pour transposer la directive en droit interne et communiquer les textes de leur législation nationale à la Commission. Les États membres peuvent disposer que l'obligation d'assurer un accès effectif aux personnes handicapées ne s'appliquera que quatre ans après l'adoption de la directive.

Article 16: Rapport

Cette disposition est commune à toutes les directives fondées sur l'article 13. Elle prévoit que la Commission doit soumettre au Parlement européen et au Conseil un rapport sur l'application de la directive, sur la base des informations reçues des États membres. Ce rapport tiendra compte de l'opinion des partenaires sociaux, des ONG concernées et de l'Agence des droits fondamentaux de l'Union européenne.

Article 17: Entrée en vigueur

Cette disposition est commune à toutes les directives fondées sur l'article 13. La directive entrera en vigueur le jour de sa publication au Journal officiel.

Article 18: Destinataires

Cette disposition, commune à toutes les directives fondées sur l'article 13, précise que la directive est destinée aux États membres.

[26] Affaires Draehmpaehl (C-180/95, Rec.1997, p. I-2195) et Marshall (C-271/91, Rec. 1993, p. I-4367).

2008/0140 (CNS)

Proposition de

DIRECTIVE DU CONSEIL

relative à la mise en œuvre du principe de l'égalité de traitement entre les personnes sans distinction de religion ou de convictions, de handicap, d'âge ou d'orientation sexuelle

LE CONSEIL DE L'UNION EUROPÉENNE,

vu le traité instituant la Communauté européenne, et notamment son article 13, paragraphe 1,

vu la proposition de la Commission[27],

vu l'avis du Parlement européen[28],

vu l'avis du Comité économique et social européen[29],

vu l'avis du Comité des régions[30],

considérant ce qui suit:

(1) Conformément à l'article 6 du traité sur l'Union européenne, l'Union européenne est fondée sur les principes de liberté, de démocratie, de respect des droits de l'homme et des libertés fondamentales ainsi que de l'État de droit – principes qui sont communs à tous les États membres – et respecte les droits fondamentaux tels qu'ils sont garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et tels qu'ils résultent des traditions constitutionnelles communes aux États membres, en tant que principes généraux du droit communautaire.

(2) Le droit de tout individu à l'égalité devant la loi et à la protection contre la discrimination constitue un droit universel reconnu par la Déclaration universelle des droits de l'homme, par la Convention des Nations unies sur l'élimination de toutes les formes de discrimination à l'égard des femmes, par la Convention internationale sur l'élimination de toutes les formes de discrimination raciale, par les pactes des Nations unies relatifs aux droits civils et politiques et aux droits économiques, sociaux et culturels, par la Convention des Nations unies relative aux droits des personnes handicapées, par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et par la Charte sociale européenne, signés par [tous] les États membres. En particulier, la Convention des Nations unies relative aux droits des personnes handicapées inclut le refus d'aménagement raisonnable dans sa définition de la discrimination.

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27 JO C , , p. .
28 JO C , , p. .
29 JO C , , p. .
30 JO C , , p. .

(3) La présente directive respecte les droits fondamentaux et observe les principes fondamentaux reconnus, en particulier, par la Charte des droits fondamentaux de l'Union européenne. L'article 10 de cette charte reconnaît le droit à la liberté de pensée, de conscience et de religion; l'article 21 exclut toute discrimination, y compris la discrimination fondée sur la religion ou les convictions, un handicap, l'âge ou l'orientation sexuelle, et l'article 26 reconnaît le droit des personnes handicapées à bénéficier de mesures visant à assurer leur autonomie.

(4) L'Année européenne des personnes handicapées en 2003, l'Année européenne de l'égalité des chances pour tous en 2007 et l'Année européenne du dialogue interculturel en 2008 ont mis en évidence la persistance des discriminations, mais aussi les bienfaits de la diversité.

(5) Le Conseil européen de Bruxelles du 14 décembre 2007 a appelé les États membres à intensifier leurs efforts pour prévenir et combattre les discriminations sur le marché du travail et en dehors[31].

(6) Le Parlement européen a appelé à ce que la législation de l'Union européenne élargisse la protection contre les discriminations[32].

(7) La Commission européenne a affirmé, dans sa communication intitulée «Un Agenda social renouvelé: opportunités, accès et solidarité dans l'Europe du XXI[e] siècle»[33], que dans des sociétés où tous les individus sont considérés comme égaux, aucune barrière artificielle ni discrimination d'aucune sorte ne devrait empêcher les individus d'exploiter les occasions qui s'offrent à eux.

(8) La Communauté a adopté trois instruments juridiques[34] sur la base de l'article 13, paragraphe 1, du traité CE, afin de prévenir et de combattre la discrimination fondée sur le sexe, la race et l'origine ethnique, la religion ou les convictions, le handicap, l'âge et l'orientation sexuelle. Ces instruments ont prouvé l'utilité de la législation dans la lutte contre la discrimination. Plus particulièrement, la directive 2000/78/CE établit un cadre général pour l'égalité de traitement en matière d'emploi et de travail au regard de la religion ou des convictions, du handicap, de l'âge et de l'orientation sexuelle. Toutefois, au-delà du domaine de l'emploi, des différences subsistent entre les États membres en ce qui concerne le degré et la forme de protection contre les discriminations fondées sur ces motifs.

(9) La législation devrait donc interdire la discrimination fondée sur la religion ou les convictions, le handicap, l'âge ou l'orientation sexuelle dans une série de domaines au-delà du marché du travail, tels que la protection sociale, l'éducation, l'accessibilité et la fourniture des biens et services, y compris le logement. Elle devrait prévoir des mesures permettant de garantir l'égalité d'accès des personnes handicapées aux domaines couverts.

(10) La directive 2000/78/CE interdit la discrimination dans l'accès à la formation professionnelle; il est nécessaire de compléter cette protection en étendant

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31 Conclusions de la présidence du Conseil européen de Bruxelles du 14 décembre 2007, point 50.
32 Résolution du 20 mai 2008 P6_TA-PROV(2008)0212.
33 COM(2008) 412.
34 Directives 2000/43/CE, 2000/78/CE et 2004/113/CE.

l'interdiction de discrimination aux formes d'éducation qui ne sont pas considérées comme de la formation professionnelle.

(11) La présente directive devrait être sans préjudice des compétences des États membres en matière d'éducation, de sécurité sociale et de soins de santé. Elle devrait également être sans préjudice du rôle essentiel et du large pouvoir discrétionnaire des États membres pour ce qui est de la fourniture, de la commande et de l'organisation de services d'intérêt économique général.

(12) La discrimination s'entend comme incluant les formes directes et indirectes de discrimination, le harcèlement, les comportements consistant à enjoindre de pratiquer une discrimination ainsi que le refus de procéder à des aménagements raisonnables.

(13) Dans la mise en œuvre du principe de l'égalité de traitement sans distinction de religion ou de convictions, d'âge ou d'orientation sexuelle, la Communauté devrait, conformément à l'article 3, paragraphe 2, du traité CE, tendre à éliminer les inégalités et à promouvoir l'égalité entre les hommes et les femmes, en particulier du fait que les femmes sont souvent victimes de discrimination multiple.

(14) L'appréciation des faits qui permettent de présumer l'existence d'une discrimination directe ou indirecte devrait revenir à l'instance judiciaire nationale ou à une autre instance compétente, conformément au droit national ou aux pratiques nationales, qui peuvent prévoir, en particulier, que la discrimination indirecte peut être établie par tous moyens, y compris les données statistiques.

(15) Des facteurs actuariels et des facteurs de risque liés au handicap et à l'âge sont utilisés dans le cadre des services d'assurance, de banque et d'autres services financiers. Ces facteurs ne devraient pas être considérés comme des discriminations lorsqu'ils s'avèrent déterminants pour l'évaluation du risque.

(16) Toute personne jouit de la liberté contractuelle, y compris de la liberté de choisir un cocontractant pour une transaction. La présente directive ne devrait pas s'appliquer aux transactions économiques réalisées par des particuliers pour lesquels ces transactions ne constituent pas une activité professionnelle ou commerciale.

(17) Tout en interdisant la discrimination, il est important de respecter les autres libertés et droits fondamentaux, notamment la protection de la vie privée et familiale ainsi que les transactions qui se déroulent dans ce cadre, la liberté de religion et la liberté d'association. Cette directive est sans préjudice des législations nationales relatives à l'état matrimonial ou familial, et notamment aux droits en matière de procréation. Elle est également sans préjudice du caractère laïque de l'État, des institutions et organismes publics ou de l'éducation.

(18) Les États membres sont responsables de l'organisation et du contenu de l'éducation. La communication de la Commission intitulée «Améliorer les compétences pour le XXIe siècle: un programme de coopération européenne en matière scolaire» souligne la nécessité d'accorder une attention particulière aux enfants défavorisés et aux enfants présentant des besoins particuliers en matière d'éducation. En particulier, les législations nationales peuvent permettre des différences s'agissant de l'accès aux établissements d'enseignement fondés sur la religion ou les convictions. Les États membres peuvent également autoriser ou interdire le port ou l'exhibition de symboles religieux dans les établissements scolaires.

(19) L'Union européenne a reconnu explicitement dans sa déclaration n° 11 relative au statut des Églises et des organisations non confessionnelles, annexée à l'acte final du traité d'Amsterdam, qu'elle respecte et ne préjuge pas le statut dont bénéficient, en vertu du droit national, les Églises et les associations ou communautés religieuses dans les États membres et qu'elle respecte également le statut des organisations philosophiques et non confessionnelles. Les mesures destinées à permettre aux personnes handicapées de jouir d'un accès effectif et non discriminatoire aux secteurs couverts par la présente directive contribuent largement à assurer la pleine égalité en pratique. Par ailleurs, des mesures individuelles d'aménagement raisonnable peuvent être requises dans certains cas pour garantir un tel accès aux personnes handicapées. En tout état de cause, aucune mesure qui représenterait une charge disproportionnée n'est requise. Afin d'évaluer si la charge est disproportionnée, il convient de tenir compte de plusieurs facteurs, dont la taille, les ressources et la nature de l'organisation. Le principe d'aménagement raisonnable et de charge disproportionnée est établi dans la directive 2000/78/CE et dans la Convention des Nations unies relative aux droits des personnes handicapées.

(20) Des exigences et des normes légales d'accessibilité[35] ont été définies au niveau européen pour certains domaines, tandis que l'article 16 du règlement (CE) n° 1083/2006 du 11 juillet 2006 sur le Fonds européen de développement régional, le Fonds social européen et le Fonds de cohésion, abrogeant le règlement (CE) n° 1260/1999[36], dispose que l'accessibilité pour les personnes handicapées est l'un des critères à respecter lors de la définition d'opérations cofinancées par les Fonds. Le Conseil a également souligné la nécessité d'adopter des mesures pour garantir l'accès des personnes handicapées aux infrastructures et activités culturelles[37].

(21) L'interdiction de discrimination devrait être sans préjudice du maintien ou de l'adoption, par les États membres, de mesures destinées à prévenir ou à compenser les désavantages que connaissent certains groupes du fait de leur religion ou de leurs convictions, de leur handicap, de leur âge ou de leur orientation sexuelle. Ces mesures peuvent autoriser l'existence d'organisations de personnes d'une religion ou de convictions, d'un handicap, d'un âge ou d'une orientation sexuelle donnés lorsque leur objet principal est la promotion des besoins spécifiques de ces personnes.

(22) La présente directive fixe des exigences minimales, laissant aux États membres la liberté d'adopter ou de maintenir des dispositions plus favorables. La mise en œuvre de la présente directive ne devrait pas justifier une régression par rapport à la situation existant dans chaque État membre.

(23) Les personnes qui ont fait l'objet d'une discrimination fondée sur la religion ou les convictions, un handicap, l'âge ou l'orientation sexuelle devraient disposer de moyens de protection juridique adéquats. Pour assurer un niveau de protection plus efficace, les associations, les organisations et les autres entités juridiques devraient être habilitées à engager une procédure, y compris au nom ou à l'appui d'une victime, sans préjudice des règles de procédure nationales relatives à la représentation et à la défense devant les juridictions.

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35 Règlement (CE) n° 1107/2006 et règlement (CE) n° 1371/2007.

36 JO L 210 du 31.7.2006, p. 25. Règlement modifié en dernier lieu par le règlement (CE) n° 1989/2006 (JO L 411 du 30.12.2006, p. 6).

37 JO C 134 du 7.6.2003, p. 7.

(24) L'aménagement des règles concernant la charge de la preuve s'impose dès qu'il existe une présomption de discrimination et, dans les cas où cette situation se vérifie, l'application effective du principe de l'égalité de traitement requiert que la charge de la preuve revienne à la partie défenderesse. Toutefois, il n'incombe pas à la partie défenderesse de prouver que la partie demanderesse adhère à une religion donnée ou possède des convictions données, présente un certain handicap, a un âge spécifique ou une orientation sexuelle donnée.

(25) L'application effective du principe de l'égalité de traitement requiert une protection judiciaire adéquate contre les rétorsions.

(26) Dans sa résolution sur le suivi de l'Année européenne de l'égalité des chances pour tous (2007), le Conseil a appelé à associer pleinement la société civile, notamment les organisations qui représentent les groupes de population exposés à la discrimination, les partenaires sociaux et les parties prenantes, à l'élaboration des politiques et des programmes visant à prévenir la discrimination et à promouvoir l'égalité de traitement et l'égalité des chances, tant au niveau européen qu'au niveau national.

(27) L'expérience acquise dans l'application des directives 2000/43/CE et 2004/113/CE montre que la protection contre la discrimination fondée sur les motifs visés à la présente directive serait renforcée par l'existence, dans chaque État membre, d'un ou de plusieurs organismes ayant compétence pour analyser les problèmes en cause, étudier les solutions possibles et apporter une assistance concrète aux victimes.

(28) En exerçant leurs pouvoirs et en assumant leurs responsabilités au titre de la présente directive, ces organismes devraient agir de manière compatible avec les principes de Paris définis par les Nations unies en ce qui concerne le statut et le fonctionnement des institutions nationales pour la protection et la promotion des droits de l'homme.

(29) Les États membres devraient mettre en place des sanctions effectives, proportionnées et dissuasives applicables en cas de non-respect des obligations découlant de la présente directive.

(30) Conformément au principe de subsidiarité et au principe de proportionnalité tels qu'énoncés à l'article 5 du traité CE, l'objectif de la présente directive, à savoir assurer un niveau commun de protection contre la discrimination dans tous les États membres, ne peut pas être réalisé de manière suffisante par les États membres et peut donc, en raison des dimensions et des effets de l'action envisagée, être mieux réalisé au niveau communautaire. La présente directive n'excède pas ce qui est nécessaire pour atteindre ces objectifs.

(31) Conformément au paragraphe 34 de l'accord interinstitutionnel «Mieux légiférer», les États membres sont encouragés à établir, pour eux-mêmes et dans l'intérêt de la Communauté, leurs propres tableaux illustrant, dans la mesure du possible, la concordance entre la directive et les mesures de transposition, et à les rendre publics.

A ARRÊTÉ LA PRÉSENTE DIRECTIVE:

Chapitre 1
DISPOSITIONS GÉNÉRALES

Article premier
Objet

La présente directive instaure un cadre pour lutter contre la discrimination fondée sur la religion ou les convictions, le handicap, l'âge ou l'orientation sexuelle, en vue de mettre en œuvre, dans les États membres, le principe de l'égalité de traitement dans d'autres domaines que l'emploi et le travail.

Article 2
Concept de discrimination

1. Aux fins de la présente directive, on entend par «principe de l'égalité de traitement» l'absence de toute discrimination directe ou indirecte fondée sur un des motifs visés à l'article 1er.

2. Aux fins du paragraphe 1:

a) une discrimination directe est réputée se produire lorsqu'une personne est traitée de manière moins favorable qu'une autre ne l'est, ne l'a été ou ne le serait dans une situation comparable, sur la base de l'un des motifs visés à l'article 1er;

b) une discrimination indirecte est réputée se produire lorsqu'une disposition, un critère ou une pratique apparemment neutre est susceptible d'entraîner, pour des personnes ayant une religion ou des convictions, un handicap, un âge ou une orientation sexuelle donnés, un désavantage particulier par rapport à d'autres personnes, à moins que cette disposition, ce critère ou cette pratique ne soit objectivement justifié par un objectif légitime et que les moyens de réaliser cet objectif ne soient appropriés et nécessaires.

3. Le harcèlement est considéré comme une forme de discrimination au sens du paragraphe 1 lorsqu'un comportement indésirable lié à l'un des motifs visés à l'article 1er se manifeste, qui a pour objet ou pour effet de porter atteinte à la dignité d'une personne et de créer un environnement intimidant, hostile, dégradant, humiliant ou offensant.

4. Tout comportement consistant à enjoindre à quiconque de pratiquer une discrimination à l'encontre de certaines personnes pour l'un des motifs visés à l'article 1er est considéré comme une discrimination au sens du paragraphe 1.

5. Le refus de réaliser un aménagement raisonnable dans une situation donnée comme le prévoit l'article 4, paragraphe 1, point b), de la présente directive, au bénéfice de personnes handicapées, est considéré comme une discrimination au sens du paragraphe 1.

6. Nonobstant le paragraphe 2, les États membres peuvent prévoir que les différences de traitement fondées sur l'âge ne constituent pas une discrimination lorsqu'elles sont justifiées, dans le cadre du droit national, par un objectif légitime et que les moyens de réaliser cet objectif sont appropriés et nécessaires. En particulier, la présente directive n'exclut pas la

fixation d’un âge spécifique pour accéder aux prestations sociales, à l’éducation et à certains biens ou services.

7. Nonobstant le paragraphe 2, en ce qui concerne la fourniture de services financiers, les États membres peuvent être autorisés à instaurer des différences proportionnées de traitement lorsque, pour le produit en question, l’utilisation de l’âge ou d'un handicap constitue un facteur déterminant pour l’évaluation du risque, sur la base de données actuarielles ou statistiques précises et pertinentes.

8. La présente directive est sans préjudice des mesures générales prévues par la législation nationale qui, dans une société démocratique, sont nécessaires à la sécurité publique, au maintien de l’ordre public et à la prévention des infractions pénales, à la protection de la santé et à la protection des droits et libertés d'autrui.

Article 3
Champ d’application

1. Dans les limites des compétences conférées à la Communauté, l’interdiction de discrimination s'applique à toutes les personnes, tant dans le secteur public que dans le secteur privé, y compris dans les organismes publics, en ce qui concerne:

a) la protection sociale, y compris la sécurité sociale et les soins de santé;

b) les avantages sociaux;

c) l’éducation;

d) l'accès aux biens et aux services et la fourniture de biens et services mis à la disposition du public, y compris en matière de logement.

Le point d) s'applique aux particuliers uniquement dans la mesure où ceux-ci exercent une activité professionnelle ou commerciale.

2. La présente directive est sans préjudice des législations nationales relatives à l’état matrimonial ou familial et aux droits en matière de procréation.

3. La présente directive est sans préjudice des responsabilités des États membres en ce qui concerne le contenu, les activités et l’organisation de leurs systèmes d’éducation, y compris en matière d'éducation répondant à des besoins spécifiques. Les États membres peuvent permettre des différences de traitement s'agissant de l'accès aux établissements d’enseignement fondés sur la religion ou les convictions.

4. La présente directive est sans préjudice de la législation nationale qui garantit la laïcité de l’État, des institutions et organismes publics ou de l’éducation, ou qui concerne le statut et les activités des Églises et autres organisations fondées sur la religion ou sur certaines convictions. Elle est également sans préjudice de la législation nationale qui promeut l’égalité entre hommes et femmes.

5. La présente directive ne couvre pas les différences de traitement fondées sur la nationalité et s'entend sans préjudice des dispositions et conditions relatives à l'admission et au séjour des ressortissants de pays tiers et des apatrides sur le territoire des États membres et de tout traitement lié au statut juridique des ressortissants de pays tiers et des apatrides concernés.

Article 4
Égalité de traitement des personnes handicapées

1. Afin de garantir le respect du principe de l'égalité de traitement à l'égard des personnes handicapées:

a) sont prévues de manière anticipative, entre autres par des modifications et des ajustements appropriés, les mesures nécessaires pour permettre aux personnes handicapées de jouir d'un accès effectif et non discriminatoire à la protection sociale, aux avantages sociaux, aux soins de santé et à l'éducation, ainsi que de l'accès aux biens et services et la fourniture des biens et services mis à la disposition du public, y compris en matière de logement et de transports. Ces mesures ne devraient pas imposer de charge disproportionnée ou nécessiter de modification fondamentale de la protection sociale, des avantages sociaux, des soins de santé, de l'éducation ou des biens et services concernés, ni de substitution de ces biens et services;

b) sans préjudice de l'obligation d'assurer un accès effectif et non discriminatoire et si un cas particulier le requiert, des aménagements raisonnables devront être effectués à moins que cette obligation ne représente une charge disproportionnée.

2. Afin d'évaluer si les mesures nécessaires à l'application du paragraphe 1 représentent une charge disproportionnée, il est en particulier tenu compte de la taille et des ressources de l'organisation, de sa nature, du coût estimé, du cycle de vie des biens et services et des avantages potentiels d'une meilleure accessibilité pour les personnes handicapées. La charge n'est pas disproportionnée lorsqu'elle est compensée de façon suffisante par des mesures s'inscrivant dans le cadre de la politique d'égalité de traitement menée par l'État membre concerné.

3. La présente directive est sans préjudice des dispositions communautaires ou nationales portant sur l'accessibilité de biens ou services spécifiques.

Article 5
Action positive

En vue d'assurer la pleine égalité en pratique, le principe de l'égalité de traitement n'empêche pas un État membre de maintenir ou d'adopter des mesures spécifiques pour prévenir ou compenser des désavantages liés à la religion ou aux convictions, au handicap, à l'âge ou à l'orientation sexuelle.

Article 6
Prescriptions minimales

1. Les États membres peuvent adopter ou maintenir des dispositions plus favorables à la protection du principe de l'égalité de traitement que celles prévues par la présente directive.

2. La mise en œuvre de la présente directive ne peut en aucun cas constituer un motif d'abaissement du niveau de protection contre la discrimination déjà assuré par les États membres dans les domaines régis par la présente directive.

CHAPITRE II
VOIES DE RECOURS ET APPLICATION DU DROIT

Article 7
Défense des droits

1. Les États membres veillent à ce que des procédures judiciaires et/ou administratives, y compris, lorsqu'ils l'estiment approprié, des procédures de conciliation, visant à faire respecter les obligations découlant de la présente directive soient accessibles à toutes les personnes qui s'estiment lésées par le non-respect à leur égard du principe de l'égalité de traitement, même après la cessation de la relation dans laquelle la discrimination est présumée s'être produite.

2. Les États membres veillent à ce que les associations, les organisations ou les autres entités juridiques qui ont un intérêt légitime à assurer le respect des dispositions de la présente directive puissent, pour le compte ou à l'appui du plaignant, avec son approbation, engager toute procédure judiciaire et/ou administrative prévue pour faire respecter les obligations découlant de la présente directive.

3. Les paragraphes 1 et 2 sont sans préjudice des règles nationales relatives aux délais impartis pour former un recours en ce qui concerne le principe de l'égalité de traitement.

Article 8
Charge de la preuve

1. Les États membres prennent les mesures nécessaires, conformément à leur système judiciaire, afin que, dès lors qu'une personne s'estime lésée par le non-respect à son égard du principe de l'égalité de traitement et établit, devant une juridiction ou une autre instance compétente, des faits qui permettent de présumer l'existence d'une discrimination directe ou indirecte, il incombe à la partie défenderesse de prouver qu'il n'y a pas eu violation de l'interdiction de discrimination.

2. Le paragraphe 1 n'empêche pas les États membres d'adopter des règles de la preuve plus favorables aux plaignants.

3. Le paragraphe 1 ne s'applique pas aux procédures pénales.

4. Les États membres peuvent ne pas appliquer le paragraphe 1 aux procédures dans lesquelles la juridiction ou l'instance compétente procède à l'instruction des faits.

5. Les paragraphes 1, 2, 3 et 4 s'appliquent également à toute procédure engagée conformément à l'article 7, paragraphe 2.

Article 9
Protection contre les rétorsions

Les États membres introduisent dans leur système juridique interne les mesures nécessaires pour protéger les personnes contre tout traitement ou toute conséquence défavorable faisant

suite à une plainte ou à une action en justice destinée à faire respecter le principe de l'égalité de traitement.

Article 10
Diffusion de l'information

Les États membres veillent à ce que les dispositions adoptées en application de la présente directive ainsi que celles qui sont déjà en vigueur dans ce domaine soient portées à la connaissance des personnes concernées par des moyens appropriés sur l'ensemble de leur territoire.

Article 11
Dialogue avec les parties intéressées

Afin de promouvoir le principe de l'égalité de traitement, les États membres encouragent le dialogue avec les parties intéressées, en particulier les organisations non gouvernementales qui ont, conformément aux pratiques et législations nationales, un intérêt légitime à contribuer à la lutte contre la discrimination fondée sur les motifs couverts par la présente directive et dans les domaines couverts par celle-ci.

Article 12
Organismes de promotion de l'égalité de traitement

1. Les États membres désignent un ou plusieurs organismes chargés de promouvoir l'égalité de traitement entre toutes les personnes, sans distinction de religion ou de convictions, de handicap, d'âge ou d'orientation sexuelle. Ces organismes peuvent faire partie d'agences chargées, à l'échelon national, de défendre les droits de l'homme ou de protéger les droits des personnes, y compris les droits découlant d'autres actes communautaires, comme les directives 2000/43/CE et 2004/113/CE.

2. Les États membres veillent à ce que ces organismes aient notamment pour compétence:

– d'apporter aux personnes victimes d'une discrimination une aide indépendante pour engager une procédure pour discrimination, sans préjudice des droits des victimes et des associations, organisations ou autres entités juridiques visées à l'article 7, paragraphe 2;

– de mener des études indépendantes sur les discriminations;

– de publier des rapports indépendants et de formuler des recommandations sur toutes les questions liées à ces discriminations.

CHAPITRE III
Dispositions finales

Article 13
Conformité

Les États membres prennent les mesures nécessaires pour faire en sorte que le principe de l'égalité de traitement soit respecté, et en particulier:

a) que les dispositions législatives, réglementaires et administratives contraires au principe de l'égalité de traitement soient supprimées;

b) que les dispositions contractuelles, les règlements intérieurs des entreprises et les règles régissant les associations à but lucratif ou sans but lucratif qui sont contraires au principe de l'égalité de traitement soient ou puissent être déclarés nuls et non avenus ou soient modifiés.

Article 14
Sanctions

Les États membres déterminent le régime des sanctions applicables aux violations des dispositions nationales adoptées en exécution de la présente directive et prennent toute mesure nécessaire pour assurer l'application de ces sanctions. Celles-ci peuvent comprendre le versement d'indemnités, qui ne peuvent pas être limitées à priori par un plafond et doivent être effectives, proportionnées et dissuasives.

Article 15
Mise en œuvre

1. Les États membres adoptent les dispositions législatives, réglementaires et administratives nécessaires pour se conformer à la présente directive au plus tard le … [deux ans après l'adoption]. Ils en informent immédiatement la Commission et lui communiquent le texte de ces dispositions ainsi qu'un tableau de correspondance entre ces dispositions et la présente directive.

Lorsque les États membres adoptent ces dispositions, celles-ci contiennent une référence à la présente directive ou sont accompagnées d'une telle référence lors de leur publication officielle. Les modalités de cette référence sont arrêtées par les États membres.

2. Afin de tenir compte de conditions particulières, les États membres peuvent, s'il y a lieu, disposer que l'obligation d'assurer un accès effectif telle que prévue à l'article 4 doit être respectée au plus tard le... [au plus tard] quatre [ans après l'adoption].

Les États membres qui souhaitent faire usage de ce délai additionnel en informent la Commission au plus tard à la date mentionnée au paragraphe 1, en motivant leur décision.

Article 16
Rapport

1. Les États membres et les organismes nationaux chargés des questions d'égalité communiquent à la Commission, au plus tard le … et ensuite tous les cinq ans, toutes les informations nécessaires à la Commission pour établir un rapport à l'intention du Parlement européen et du Conseil sur l'application de la présente directive.

2. Le cas échéant, le rapport de la Commission tient compte du point de vue des partenaires sociaux et des organisations non gouvernementales concernées, ainsi que de l'Agence des droits fondamentaux de l'Union européenne. Conformément au principe de prise en considération systématique des questions d'égalité entre hommes et femmes, ce rapport fournit, entre autres, une évaluation de l'incidence des mesures adoptées sur les hommes et les femmes. À la lumière des informations reçues, ce rapport inclut, si nécessaire, des propositions visant à réviser et à actualiser la présente directive.

Article 17
Entrée en vigueur

La présente directive entre en vigueur le jour de sa publication au Journal officiel de l'Union européenne.

Article 18
Destinataires

Les États membres sont destinataires de la présente directive.

Fait à Bruxelles, le

Par le Conseil

Le Président

7.1.9.

CODE OF GOOD PRACTICE FOR THE EMPLOYMENT OF PEOPLE WITH DISABILITIES

BUREAU DECISION

OF 22 JUNE 2005

THE BUREAU of the European Parliament

Having regard to the Treaty establishing the European Community, and in particular Article 13 thereof,

Having regard to Article 1d of the Staff Regulations,

Having regard to the Council Directive establishing a general framework for equal treatment in employment and occupation[1],

Having regard to the existing Code of Good Practice for the Employment of People with Disabilities, adopted by the Bureau of the European Parliament in January 2000[2]

Having regard to the Commission Decision of 25 November 2003 on a Revised Code of Good Practice for the Employment of People with Disabilities,

Having regard to the opinion of the Legal Service,

Whereas:

(1) The Commission's *Consultative Document on Improving Working Arrangements and Career Perspectives for People with Disabilities*[3] provides that "a more pro-active approach should be adopted to the implementation, evaluation and monitoring of the Code of Good Practice, with greater involvement of disabled staff",

(2) The Employment Guidelines for 2000 agreed by the European Council at Helsinki on 10 and 11 December 1999 stress the need to foster a labour market favourable to social integration by formulating a coherent set of policies aimed at combating discrimination against groups such as persons with disability,

(3) The Council Directive establishing a general framework for equal treatment in employment and occupation and the Employment Guidelines for 2000 do not apply to the Community Institutions, the Commission has stated in the Reform that it should "offer its staff at least the same opportunities and levels of protection in these areas as apply in Member States"

(4) The European Parliament's resolution of 9 March 2005 on budget guidelines 2006 and on the European Parliament's preliminary draft estimates[4], calls on the institutions to give an

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1 2000/78/EC
2 PE 282.903/BUR
3 SEC (2000) 2084/4
4 A6-0043/2005, paragraph 9

overview by 1 September 2005 of measures taken to overcome obstacles to equal treatment as defined in Article 13 of the EC Treaty, taking account of the possibilities offered by the new Staff Regulations,

ADOPTS THE FOLLOWING CODE OF GOOD PRACTICE:

Article 1 - Introduction

The European Institutions are committed to providing equality of access to employment in the European Public Service. A Public Service that reflects the diversity of the community it serves is better able to deliver quality services to the European citizens. Apart from the objective merits of equality, any organisation that claims to be progressive and forward-looking must seek to optimise the potential contribution of its entire recruitment base by ensuring equal access.

European statistics show that there are too few people with disabilities in employment by comparison with the number of people with disabilities of working age. It is the European Institutions' policy to promote a diverse and skilled workforce, to improve employment access and participation by people with disabilities, to eliminate discrimination in the workplace and to promote a workplace culture based on fair workplace practices and behaviour.

In pursuing this policy, due regard should be given to the Commission Communication "Towards a Barrier Free Europe for People with Disabilities"[5]. The "Design for All" principle must also be applied. "Design for All" is a relatively new approach that consists of designing, developing and marketing mainstream products, services, systems and environments that are accessible by as broad a range of users as possible. Failure to apply the design for all principle and to take peoples' needs into account in the planning, design and adaptation of environments can force people unnecessarily into a situation of dependency and social exclusion.

The purpose of this CODE OF GOOD PRACTICE is to provide a clear statement of the European Institutions' policy in relation to the employment of people with disabilities and ensure that all staff in the European Institutions comply with their legal and statutory obligations under anti-discrimination provisions and carry out their duties in a manner which is consistent with good equal opportunities practice. To this end, adequate resources will be re-allocated, wherever necessary, by all DGs and services in order to ensure the effective implementation of this Code of Good Practice.

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5 COM(2000) 284 final of 12.05.2000

POLICY STATEMENT[6]

The European Institutions are committed to promoting equal treatment, irrespective of gender, race, colour, ethnic or social origin, genetic features, language, religion, convictions, political opinions or any other opinions, membership of a national minority, wealth, birth, age, disability or sexual orientation, by adopting workplace rules, policies, practices and behaviour, where all workers are valued and respected and have opportunities to develop their full potential and pursue a career of their choice. They are entitled to a working environment free from discrimination and harassment and where barriers to participation are identified and removed. These principles help the European Institutions to attract and retain the best people to deliver a high-quality service to European citizens.

In pursuit of these standards, the following provisions relating to the employment of people with disabilities have been inserted into Article 1d (4) of the Staff Regulations[7]:

"… a person has a disability if he has a physical or mental impairment that is, or likely to be, permanent. The impairment shall be determined according to the procedure set out in Article 33.

A person with a disability meets the conditions laid down in Article 28(e) if he can perform the essential functions of the job when reasonable accommodation is made.

"Reasonable accommodation", in relation to the essential functions of the job, shall mean appropriate measures, where needed, to enable a person with a disability to have access to, to participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer."

Article 2 - Scope of the Code

People with disabilities are not only those whose disability is immediately apparent. While many disabilities are not obvious they may, nonetheless, require certain accommodation. It is also recognised that the same disability can vary in its severity and affect the individual to a different degree and at different times and that a disability may be temporary in nature.

This code covers those who have a disability during the recruitment process, those who have a disability at the time of initial appointment and those in whom the disability develops during employment. The European Institutions will seek to adjust to any new circumstances in a supportive and sensitive manner.

The scope of the code does not encompass topics such as the special medical allowance for people with disabilities or the special budget for officials' children who have disabilities and related school allowances.

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6 The 'discriminatory grounds' set out in this Policy Statement are those included in the current Staff Regulations, which entered into force on 1st May 2004.

7 Cf. article 1c of the Staff Regulations: "Any reference in these Staff Regulations to a person of the male sex shall be deemed also to constitute a reference to a person of the female sex, and vice-versa, unless the context clearly indicates otherwise." In consequence, while the Code is drafted in gender-neutral terms, extracts from the Staff Regulations are not.

Article 3 - Work-related accommodation

It is the European Institutions' policy to provide reasonable accommodation in employment in order to meet the needs of people with disabilities and of the Institutions. For the purposes of the present code, it shall be for the Institution to demonstrate that providing the necessary accommodation imposes an unreasonable burden.

It is recognised that the majority of people with disabilities do not require any form of special aid or adaptation to perform their work. However, people can do the same job in different ways to achieve the same result. Enabling a member of staff to perform well in a job by making a work-related accommodation is therefore entirely consistent with the merit principle. In order to ensure and facilitate the provision of accessible accommodation, the Institutions will have to anticipate some fundamental well-known needs following the "Design for All" principles, especially when new infrastructures are being developed.

Directive 2000/78/EC, establishing a general framework for Equal Treatment in Employment and Occupation, states that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This is also the basis of the European Institutions' policy on work-related accommodation.

Accommodation applies to all areas of employment, including:

- recruitment, selection and appointment,
- career development,
- training, and
- promotion, transfers or any other employment benefit
- social relationships within the Institutions.

Accommodation is a way of changing the workplace and may include:

- job redesign,
- purchasing or modifying equipment,
- flexible working arrangements.

The accommodation required is to be determined by the particular needs of the individual and will normally be provided. If providing accommodation would impose a disproportionate burden on them, the European Institutions may decline to offer employment to a person with a disability. Stringent standards, which have to be defined, are to be applied when assessing what is a disproportionate burden for the European Institutions. This is without prejudice to the right of administrative appeal.

Article 4 - Recruitment

The European Institutions have a policy of equality of opportunity and selection on merit by means of fair and open competitions. Recruitment and selection procedures are adapted to ensure that they do not disadvantage candidates with disabilities. People with disabilities are also encouraged to apply by a positive reference to the equal opportunities policy in advertisements for posts and by the dissemination of notices about forthcoming competitions to specialist publications and organisations such as the European Disability Forum, which is representative of NGO disability groups in the Member States and the European Agency for

the Development of Special Needs Education. Positive action shall also be taken in the field of administrative 'stagiaire' recruitment as well as at the level of interim or temporary contracts.

Accordingly, recruitment procedures will include the following:

- **Press publicity** for competitions will include a statement affirming the Institutions' commitment to equality of opportunity for all candidates.

- **The Guide for Candidates** appearing in the Official Journal with the Notice of Competition will contain a paragraph specifically aimed at candidates with disabilities, mentioning the CODE OF GOOD PRACTICE.

- **Application forms** will request candidates with disabilities to detail the accommodation they require to enable them to participate in the tests on an equal basis with other candidates and every effort will be made to satisfy all reasonable requests.

- When a person with a disability is attending for **competition or interview**, the Secretary of the Selection Board, under the authority of the Chairperson, is responsible for ensuring that appropriate arrangements are made for the reception of that person and for the provision of any assistance that may be required, e.g. access to buildings, special equipment, extra time during competitions, etc.

- **Training** given to members of Selection Boards will include a module on disability awareness and the contents of this CODE OF GOOD PRACTICE. .

- A **website** will be set up in accordance with the most up-to-date accessibility standards, to enable access by the widest possible audience.

Article 5 - Careers

Once candidates with disabilities are on a reserve list, they may avail themselves of specialist advice in securing a post. DG Personnel of the European Parliament and EPSO will conduct an ongoing audit of the number of candidates with disabilities in competitions, the number who pass and the number who are subsequently recruited.

Having been recruited, officials with disabilities have the right to fully develop their potential. Care is taken at all stages during the career of an official with disabilities to ensure the avoidance of job requirements that, whether intentionally or otherwise, are not job-related and therefore discriminate against people with disabilities.

- **Initial Appointment and Probation**: The Appointing Authority uses its best endeavours, in co-operation with the Medical Services and/or the Equal Opportunities Service of DG Personnel, to ensure that candidates with disabilities placed on a competition reserve list are offered appropriate posts. In accordance with Staff Regulations, all successful candidates in a competition have their capacity to carry out their duties confirmed by a medical assessment. When appointing a person with a disability or determining their capacity to continue duty, care is taken to avoid discrimination based on disability. The aim is to ensure that the person is qualified for employment and to verify that he/she can perform the essential functions of the job, without prejudice to the obligation of providing reasonable

accommodation and having regard to the kind of disability. If, during the probationary period, it is verified that the job assigned to a successful candidate is incompatible with his/her disability, mobility will be considered.

- **Career Guidance**: The Career Guidance and Counselling Service can play an important role in counselling staff with disabilities on their career development and they should receive the appropriate training. The best approach would be to recruit a counsellor specialised in vocational and rehabilitation counselling, who would link, as appropriate, with other relevant services.

- **Career development**: Every effort is made to ensure that staff with disabilities have the same opportunities as others to increase their experience and develop their career by means of mobility within the Institutions. Providing for career development may include adjusting other posts so that members of staff with a disability can act in different or higher positions to develop new skills.

- **Training**: Staff with disabilities have the same access to training as other staff. The acquisition of new skills and knowledge is an important prerequisite for the career development of all officials. Every effort is made to enable staff with disabilities to participate in training courses and programmes organised by the particular institution. Where in-house training is unavailable or inappropriate, reasonable measures may be taken to provide training externally.

- **Staff assessment and Promotion**: disability does not constitute a reason for assessors and promotion committees to depart from the normal objective criteria used to judge the merits of officials.

- **Retention of Staff**: If a staff member acquires a disability, or an existing disability becomes more severe, the European Institutions take steps to try to enable the staff member to remain in employment. In consultation with the person, accommodation to facilitate their retention is considered, including restructuring that person's job, providing retraining or redeployment to a suitable post. Where necessary, such arrangements can be reviewed. Medical retirement procedures are undertaken in full consultation with the staff member where it is decided that adjustments cannot be made to allow the employee to remain in his/her post and a suitable, alternative, post is not available.

Article 6 - Working environment

The Institutions ensure that all reasonable measures are taken to eliminate physical or technical environmental barriers that may face some staff with disabilities:

- **Buildings**: All new buildings to be occupied by employees of the Institutions have to comply with the relevant national local legislation in respect of the access and utilisation of public buildings by people with disabilities in order to ensure seamless mobility. Buildings without suitable access, or buildings falling below a reasonable level in this respect, are progressively improved, subject to the availability of budgetary provision, or abandoned. Pending the adoption by the Institutions of revised criteria governing the adaptation of their buildings, the principles contained in the latest edition of the Commission document "Immeuble-type" will apply. The Institutions are taking all reasonable measures to ensure that officials with disabilities are allocated office accommodation compatible with their particular

needs, including the provision of designated parking, where necessary. Emergency facilities must be appropriate to all officials with disabilities. The Unit for Prevention and Well-Being at Work will continue to regularly audit buildings to determine improvements that should be made.

- **Office environment**: Care must be taken to ensure that the office environment is suited to a person with specific needs. The European Parliament will designate a specialist who will make an ergonomic appraisal of the office environment prior to newly-recruited staff members with disabilities commencing their employment and whenever a staff member with disabilities moves office.

The specialist will periodically inspect the office of all staff members with disabilities, will recommend appropriate changes, as needed, and will regularly inform the Directorate-General for Personnel, as well as the Interservice Working Party on the Accessibility of People with Disabilities, of the relevant findings.

To ensure the provision of reasonable accommodation, specific technical measures need to be taken as a precondition to an accessible environment. It is essential that information technology tools, including Intranet, applications and databases are developed following "Design for All" principles and accessibility guidelines. Electronic information and data should be available in accessible formats. The purchase of the appropriate tools and the training of personnel is an essential precondition.

Officials with disabilities are consulted about special equipment or furniture that might enhance their efficiency and effectiveness in the performance of their duties. The Institutions accept all reasonable requests for such items.

- **Meetings, etc**.: Care is taken to ensure that people with disabilities can fully participate in meetings or other fora by avoiding the inappropriate use of presentation aids or other media and by ensuring the availability of relevant material in accessible formats.

- **Flexible work**: Where reasonable, flexible working arrangements are made to meet both the Institution's work requirements and the particular needs of an official with a disability. Examples are:

- *flexible starting and finishing times to accommodate the difficulties some people with a disability have getting to and from work using public transport,*

- *regular short breaks to assist people who require periodic medication or rest periods,*

- *part-time work; teleworking, with adequate technological supports provided by the employer.*

Article 7 - Information and Awareness Training

This CODE OF GOOD PRACTICE will be brought to the attention of all staff by the Equal Opportunities Service and by the human resources units of DGs. It is available in all EU languages on the EUROPA web site, on the Intranets of the Institutions and their Offices and Agencies and is distributed to all Human Resources Management staff and to senior and middle management staff. Wherever possible, the Institutions will seek to make information services and documentation accessible to different groups of people with disabilities, taking into account language and cultural needs.

Training courses which deal with the question of disabilities in depth will be targeted at those most particularly involved, e.g. staff with HR responsibilities, local career guidance staff, relevant Heads of Units, and members of Selection Boards.

Article 8 - Monitoring

An essential element in the implementation of this CODE OF GOOD PRACTICE is continuous monitoring of how it is performing, thus ensuring that improved procedures for its better application are introduced at all levels, including the recruitment process and throughout an official's career. In the event of complaints, it will be for DGs to show that they meet the requirements of people with disabilities. The Equal Opportunities Service and the Interservice Working Party on the Accessibility of People with Disabilities will discuss and fix targets to achieve barrier-free conditions.

A disability audit, under which directorates-general conduct a survey of their employees, who will declare if they believe that they have a disability, is conducted regularly and the results reported to DG Personnel. The purpose of collecting this information is to:

- ensure that appropriate consultation takes place with all relevant staff;

- eliminate discrimination and barriers to equal opportunities for staff with disabilities;

- identify what accommodation might need to be provided when interviewing or employing a person with a disability;

- develop the full potential of all staff and ensure equality of opportunity in career development.

The data are used to produce anonymous statistical reports to enable Institutions to assess if the non-discrimination policy and this Code are working effectively and to help frame new initiatives. Having due regard to the provisions of the Data Protection Regulation concerning the processing of personal data by the Community Institutions[8], the information gathered in

8 Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L8, 12.01.2001, p. 1)

the audit will not be used for any other purpose. Statistics regarding the number of staff with disabilities will be published.

The **Interservice Working Party on the Accessibility of People with Disabilities** is also forwarding the direct input received from staff with disabilities in the DGs on questions of working conditions, accessibility, recruitment and career development to DG Personnel.

Additionally, the Equal Opportunities service of DG Personnel may be approached on a confidential basis if matters of dissatisfaction arise in relation to the implementation of this Code in the European Parliament. The Service pursues the issues discreetly, with due regard to the level of confidentiality sought.

I

(Actes législatifs)

RÈGLEMENTS

RÈGLEMENT (UE) Nº 181/2011 DU PARLEMENT EUROPÉEN ET DU CONSEIL

du 16 février 2011

concernant les droits des passagers dans le transport par autobus et autocar et modifiant le règlement (CE) nº 2006/2004

(Texte présentant de l'intérêt pour l'EEE)

LE PARLEMENT EUROPÉEN ET LE CONSEIL DE L'UNION EUROPÉENNE,

vu le traité sur le fonctionnement de l'Union européenne, et notamment son article 91, paragraphe 1,

vu la proposition de la Commission européenne,

vu l'avis du Comité économique et social européen [1],

après consultation du Comité des régions,

statuant conformément à la procédure législative ordinaire, au vu du projet commun approuvé le 24 janvier 2011 par le comité de conciliation [2],

considérant ce qui suit:

(1) L'action de l'Union dans le domaine du transport par autobus et autocar devrait viser, entre autres, à garantir un niveau élevé de protection des passagers, comparable à celui des autres modes de transport, quelle que soit la destination. De plus, il convient de tenir pleinement compte des exigences de la protection des consommateurs en général.

(2) Le passager voyageant par autobus ou autocar étant la partie faible du contrat de transport, il convient d'accorder à tous les passagers un niveau minimal de protection.

(3) Les actions de l'Union visant à améliorer les droits des passagers dans les transports par autobus et autocar devraient prendre en compte les spécificités de ce secteur, essentiellement constitué de petites et moyennes entreprises.

(4) Les passagers et, au minimum, les personnes qu'un passager était ou aurait été légalement tenu d'entretenir devraient bénéficier d'une protection adéquate en cas d'accident résultant de l'utilisation d'un autobus ou autocar, compte tenu de la directive 2009/103/CE du Parlement européen et du Conseil du 16 septembre 2009 concernant l'assurance de la responsabilité civile résultant de la circulation de véhicules automoteurs et le contrôle de l'obligation d'assurer cette responsabilité [3].

(5) En choisissant le droit national applicable à l'indemnisation en cas de décès, y compris un montant raisonnable pour les frais funéraires, ou de lésion corporelle ainsi qu'en cas de perte ou de détérioration de bagages dus à des accidents résultant de l'utilisation d'un autobus ou autocar, il convient de tenir compte du règlement (CE) nº 864/2007 du Parlement européen et du Conseil du 11 juillet 2007 sur la loi applicable aux obligations non contractuelles (Rome II) [4] et du règlement (CE) nº 593/2008 du Parlement européen et du Conseil du 17 juin 2008 sur la loi applicable aux obligations contractuelles (Rome I) [5].

(6) Outre l'indemnisation prévue par le droit national applicable en cas de décès ou de lésion corporelle ou en cas de perte ou de détérioration de bagages dus à des accidents résultant de l'utilisation d'un autobus ou autocar, les passagers devraient pouvoir bénéficier d'une assistance répondant à leurs besoins concrets immédiats à la suite d'un accident. Cette assistance devrait englober, si nécessaire, les premiers secours, l'hébergement, la nourriture, les vêtements et le transport.

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[1] JO C 317 du 23.12.2009, p. 99.

[2] Position du Parlement européen du 23 avril 2009 (JO C 184 E du 8.7.2010, p. 312) et position du Conseil en première lecture du 11 mars 2010 (JO C 122 E du 11.5.2010, p. 1). Position du Parlement européen du 6 juillet 2010 (non encore parue au Journal officiel), décision du Conseil du 31 janvier 2011 et résolution législative du Parlement européen du 15 février 2011 (non encore parue au Journal officiel)

[3] JO L 263 du 7.10.2009, p. 11.

[4] JO L 199 du 31.7.2007, p. 40.

[5] JO L 177 du 4.7.2008, p. 6.

(7) Les services de transport de passagers par autobus et autocar devraient profiter aux citoyens en général. Par conséquent, les personnes handicapées et les personnes à mobilité réduite, que ce soit du fait d'un handicap, de l'âge ou de tout autre facteur, devraient avoir la possibilité d'utiliser les services de transport par autobus et autocar dans des conditions comparables à celles des autres citoyens. Ces personnes ont les mêmes droits que tous les autres citoyens quant à la libre circulation, à la liberté de choix et à la non-discrimination.

(8) À la lumière de l'article 9 de la convention des Nations unies relative aux droits des personnes handicapées et afin de donner aux personnes handicapées et aux personnes à mobilité réduite la possibilité de voyager par autobus et autocar dans des conditions comparables à celles des autres citoyens, il convient d'établir des règles de non-discrimination et d'assistance au cours de leur voyage. Ces personnes devraient par conséquent être acceptées au transport et ne pas se voir opposer un refus de transport au motif de leur handicap ou de leur mobilité réduite, sauf pour des motifs de sécurité ou qui tiennent à la conception du véhicule ou de l'infrastructure. Dans le cadre de la législation applicable en matière de protection des travailleurs, les personnes handicapées et les personnes à mobilité réduite devraient bénéficier d'un droit à une assistance dans les stations et à bord des véhicules. Dans un souci d'intégration sociale, cette assistance devrait être fournie gratuitement aux personnes concernées. Les transporteurs devraient établir des conditions d'accès, en se servant de préférence du système européen de normalisation.

(9) Lorsqu'elles décident de la conception de nouvelles stations, ainsi que dans le cadre de réaménagements importants, les entités gestionnaires de stations devraient s'efforcer de tenir compte des besoins des personnes handicapées et des personnes à mobilité réduite conformément aux exigences de la conception pour tous les usages. Dans tous les cas, les entités gestionnaires de stations devraient indiquer les endroits où ces personnes peuvent annoncer leur arrivée et demander de l'assistance.

(10) De la même manière, sans préjudice de la législation actuelle ou future en matière d'exigences techniques pour les autobus et autocars, les transporteurs devraient tenir compte de ces besoins lorsqu'ils décident de la conception de nouveaux véhicules ou du réaménagement de véhicules.

(11) Les États membres devraient s'efforcer d'améliorer les infrastructures existantes, lorsque cela s'avère nécessaire pour permettre aux transporteurs d'assurer un accès aux personnes handicapées et aux personnes à mobilité réduite ainsi que de fournir une assistance adaptée.

(12) Afin de répondre aux besoins des personnes handicapées et des personnes à mobilité réduite, il convient que le personnel reçoive une formation appropriée. En vue de faciliter la reconnaissance mutuelle des qualifications nationales des chauffeurs, une formation de sensibilisation au handicap pourrait être prévue dans le cadre de la qualification initiale ou de la formation continue visée par la directive 2003/59/CE du Parlement européen et du Conseil du 15 juillet 2003 relative à la qualification initiale et à la formation continue des conducteurs de certains véhicules routiers affectés aux transports de marchandises ou de voyageurs [1]. Afin d'assurer la cohérence entre l'introduction des exigences de formation et les délais fixés par ladite directive, une possibilité de dérogation pendant une période limitée devrait être permise.

(13) Les organisations représentant les personnes handicapées ou les personnes à mobilité réduite devraient être consultées pour l'élaboration du contenu de la formation relative au handicap ou y être associées.

(14) Parmi les droits des passagers dans le transport par autobus et autocar devrait figurer l'obtention d'informations concernant le service avant et pendant le voyage. Toutes les informations essentielles communiquées aux passagers voyageant par autobus et autocar devraient également être fournies, sur demande, sous d'autres formats accessibles aux personnes handicapées et aux personnes à mobilité réduite, comme des informations en gros caractères, en langage clair, en braille, ou des communications sous forme électronique qui peuvent être lues à l'aide de technologies adaptatives, ou sur bande audio.

(15) Le présent règlement ne devrait pas limiter le droit des transporteurs de demander réparation à toute personne, y compris un tiers, conformément à la législation nationale applicable.

(16) Il convient de réduire les désagréments auxquels sont confrontés les passagers en cas d'annulation ou de retard important de leur voyage. À cette fin, les passagers partant de stations devraient bénéficier d'une assistance appropriée et être informés d'une manière accessible à tous. Ils devraient également pouvoir annuler leur voyage et obtenir le remboursement de leur billet ou bien poursuivre leur voyage ou être réacheminés dans des conditions satisfaisantes. Si le transporteur n'apporte pas l'assistance requise aux passagers, ceux-ci devraient avoir droit à une indemnisation financière.

(17) Avec la participation des parties prenantes, d'associations professionnelles et d'associations représentant les clients, les passagers, les personnes handicapées et les personnes à mobilité réduite, les transporteurs devraient coopérer en vue de l'adoption de dispositions à l'échelon national ou européen. Lesdites dispositions devraient viser à améliorer l'information et la prise en charge des passagers ainsi que l'assistance qui leur est fournie en cas d'interruption de leur voyage, en particulier en cas de retards importants ou d'annulation du voyage, priorité étant donnée aux passagers ayant des besoins spécifiques dus à un handicap, à une mobilité réduite, à une maladie, à un âge avancé et à une grossesse, ainsi qu'aux passagers accompagnants et aux passagers voyageant avec de jeunes enfants. Les organismes nationaux chargés de l'application devraient être informés de ces dispositions.

[1] JO L 226 du 10.9.2003, p. 4.

(18) Le présent règlement ne devrait pas porter atteinte aux droits des passagers établis par la directive 90/314/CEE du Conseil du 13 juin 1990 concernant les voyages, vacances et circuits à forfait [1]. Le présent règlement ne devrait pas s'appliquer en cas d'annulation d'un voyage à forfait pour des raisons autres que l'annulation du service de transport par autobus ou autocar.

(19) Les passagers devraient être pleinement informés des droits que leur confère le présent règlement, afin d'être en mesure de les exercer effectivement.

(20) Les passagers devraient pouvoir exercer leurs droits au moyen de procédures de plainte appropriées mises en œuvre par les transporteurs ou, le cas échéant, en déposant une plainte auprès de l'organisme ou des organismes désignés à cette fin par l'État membre concerné.

(21) Les États membres devraient veiller au respect du présent règlement et désigner un ou des organismes compétents chargés de son contrôle et de son application. Cela ne porte pas atteinte aux droits des passagers de saisir une juridiction pour demander réparation conformément au droit national.

(22) Compte tenu des procédures établies par les États membres pour le dépôt de plaintes, il y a lieu qu'une plainte portant sur l'assistance soit adressée de préférence à l'organisme ou aux organismes désignés pour assurer l'application du présent règlement dans l'État membre dans lequel a lieu la montée ou la descente des passagers.

(23) Les États membres devraient promouvoir l'utilisation des transports publics et l'utilisation d'informations et de billets intégrés, afin d'optimiser l'utilisation et l'interopérabilité des différents modes de transport et opérateurs.

(24) Les États membres devraient établir des sanctions applicables en cas de violations du présent règlement et veiller à ce que lesdites sanctions soient appliquées. Ces sanctions devraient être effectives, proportionnées et dissuasives.

(25) Étant donné que l'objectif du présent règlement, à savoir garantir un niveau uniforme de protection et d'assistance pour les passagers dans le transport par autobus et autocar dans tous les États membres, ne peut pas être réalisé de manière suffisante par les États membres et peut donc, en raison de la portée et des effets de l'action, être mieux réalisé au niveau de l'Union, celle-ci peut prendre des mesures, conformément au principe de subsidiarité consacré à l'article 5 du traité sur l'Union européenne. Conformément au principe de proportionnalité tel qu'énoncé audit article, le présent règlement n'excède pas ce qui est nécessaire pour atteindre cet objectif.

(26) Il y a lieu que le présent règlement s'applique sans préjudice de la directive 95/46/CE du Parlement européen et du Conseil du 24 octobre 1995 relative à la protection des personnes physiques à l'égard du traitement des données à caractère personnel et à la libre circulation de ces données [2].

(27) Le contrôle de l'application du présent règlement devrait être fondé sur le règlement (CE) n° 2006/2004 du Parlement européen et du Conseil du 27 octobre 2004 relatif à la coopération entre les autorités nationales chargées de veiller à l'application de la législation en matière de protection des consommateurs («Règlement relatif à la coopération en matière de protection des consommateurs») [3]. Il convient donc de modifier en conséquence ledit règlement.

(28) Le présent règlement respecte les droits fondamentaux et observe les principes consacrés notamment par la charte des droits fondamentaux de l'Union européenne, tels qu'ils sont visés à l'article 6 du traité sur l'Union européenne, gardant également à l'esprit la directive 2000/43/CE du Conseil du 29 juin 2000 relative à la mise en œuvre du principe de l'égalité de traitement entre les personnes sans distinction de race ou d'origine ethnique [4] et la directive 2004/113/CE du Conseil du 13 décembre 2004 mettant en œuvre le principe de l'égalité de traitement entre les femmes et les hommes dans l'accès à des biens et services et la fourniture de biens et services [5],

ONT ADOPTÉ LE PRÉSENT RÈGLEMENT:

CHAPITRE I

DISPOSITIONS GÉNÉRALES

Article premier

Objet

Le présent règlement établit des règles applicables au transport par autobus et par autocar en ce qui concerne:

a) la non-discrimination entre les passagers pour ce qui est des conditions de transport offertes par les transporteurs;

b) les droits des passagers en cas d'accident résultant de l'utilisation d'un autobus ou autocar et entraînant le décès ou une lésion corporelle ou la perte ou la détérioration de bagages;

c) la non-discrimination et l'assistance obligatoire pour les personnes handicapées et les personnes à mobilité réduite;

d) les droits des passagers en cas d'annulation ou de retard;

e) les informations minimales à fournir aux passagers;

f) le traitement des plaintes;

g) les règles générales en matière d'application.

[1] JO L 158 du 23.6.1990, p. 59.

[2] JO L 281 du 23.11.1995, p. 31.
[3] JO L 364 du 9.12.2004, p. 1.
[4] JO L 180 du 19.7.2000, p. 22.
[5] JO L 373 du 21.12.2004, p. 37.

Article 2

Champ d'application

1. Le présent règlement s'applique aux passagers qui voyagent en empruntant des services réguliers destinés à des catégories non déterminées de passagers lorsque la montée ou la descente du passager a lieu sur le territoire d'un État membre et lorsque la distance prévue à parcourir dans le cadre du service est supérieure ou égale à 250 kilomètres.

2. S'agissant des services visés au paragraphe 1, mais lorsque la distance prévue à parcourir dans le cadre du service est inférieure à 250 kilomètres, l'article 4, paragraphe 2, l'article 9, l'article 10, paragraphe 1, l'article 16, paragraphe 1, point b), l'article 16, paragraphe 2, l'article 17, paragraphes 1 et 2, ainsi que les articles 24 à 28, sont applicables.

3. En outre, à l'exception des articles 9 à 16, de l'article 17, paragraphe 3, et des chapitres IV, V et VI, le présent règlement s'applique aux passagers qui voyagent dans le cadre de services occasionnels lorsque la montée initiale ou la descente finale du passager a lieu sur le territoire d'un État membre.

4. À l'exception de l'article 4, paragraphe 2, de l'article 9, de l'article 10, paragraphe 1, de l'article 16, paragraphe 1, point b), de l'article 16, paragraphe 2, de l'article 17, paragraphes 1 et 2, ainsi que des articles 24 à 28, les États membres peuvent, selon des modalités transparentes et non discriminatoires, octroyer une dérogation à l'application du présent règlement en ce qui concerne les services réguliers nationaux. Ces dérogations peuvent être octroyées, à compter de la date d'application du présent règlement, pour une durée maximale de quatre ans renouvelable une fois.

5. Pour une période d'une durée maximale de quatre ans à compter de la date d'application du présent règlement, les États membres peuvent, selon des modalités transparentes et non discriminatoires, octroyer une dérogation à l'application du présent règlement en ce qui concerne certains services réguliers parce qu'une part importante desdits services, y compris au moins un arrêt prévu, est effectuée en dehors de l'Union. Ces dérogations sont renouvelables une fois.

6. Les États membres informent la Commission des dérogations octroyées pour les différents types de services en application des paragraphes 4 et 5. La Commission prend les mesures appropriées si une dérogation n'est pas jugée conforme aux dispositions du présent article. Au plus tard le 2 mars 2018, la Commission soumet au Parlement européen et au Conseil un rapport sur les dérogations accordées conformément aux paragraphes 4 et 5.

7. Aucune disposition du présent règlement ne peut être interprétée comme étant contraire à la législation en vigueur relative aux prescriptions techniques pour les autobus ou les autocars ou les infrastructures ou encore l'équipement des arrêts d'autobus et des stations, ou comme instaurant de nouvelles prescriptions en sus de celles prévues par cette législation.

8. Le présent règlement ne porte pas atteinte aux droits des passagers établis par la directive 90/314/CEE et ne s'applique pas dans les cas où un voyage à forfait visé par ladite directive est annulé pour des motifs autres que l'annulation d'un service régulier.

Article 3

Définitions

Aux fins du présent règlement, on entend par:

a) «services réguliers», les services qui assurent le transport de passagers par autobus ou autocar selon une fréquence et sur un trajet déterminés, les passagers pouvant être pris en charge et déposés à des arrêts préalablement fixés;

b) «services occasionnels», les services qui ne répondent pas à la définition des services réguliers et qui ont pour principale caractéristique de transporter par autobus ou autocar des groupes de passagers constitués à l'initiative d'un donneur d'ordre ou du transporteur lui-même;

c) «contrat de transport», un contrat entre un transporteur et un passager en vue de la fourniture d'un ou de plusieurs services réguliers ou occasionnels;

d) «billet», un document en cours de validité ou toute autre preuve de l'existence d'un contrat de transport;

e) «transporteur», une personne physique ou morale, autre qu'un voyagiste, un agent de voyages ou un vendeur de billet, proposant au public des transports au moyen de services réguliers ou occasionnels;

f) «transporteur exécutant», une personne physique ou morale autre que le transporteur, qui exécute effectivement tout ou partie du transport;

g) «vendeur de billets», tout intermédiaire qui conclut des contrats de transport pour le compte d'un transporteur;

h) «agent de voyages», tout intermédiaire agissant pour le compte d'un passager en vue de la conclusion de contrats de transport;

i) «voyagiste», un organisateur ou un détaillant, autre qu'un transporteur, au sens de l'article 2, points 2) et 3), de la directive 90/314/CEE;

j) «personne handicapée» ou «personne à mobilité réduite», toute personne dont la mobilité est réduite lors de l'usage d'un moyen de transport, en raison de tout handicap physique (sensoriel ou moteur, permanent ou temporaire), d'un retard mental ou d'une déficience intellectuelle, ou de toute autre cause de handicap, ou encore de l'âge, et dont la situation requiert une attention appropriée et l'adaptation à ses besoins particuliers des services mis à la disposition de l'ensemble des passagers;

k) «conditions d'accès», les normes, lignes directrices et informations pertinentes relatives à l'accessibilité des autobus et/ou des stations désignées, y compris en ce qui concerne les équipements destinés aux personnes handicapées ou aux personnes à mobilité réduite;

l) «réservation», la réservation d'une place assise à bord d'un autobus ou d'un autocar pour un service régulier à une heure de départ donnée;

m) «station», une station dotée de personnel, dans laquelle, selon l'itinéraire indiqué, il est prévu qu'un service régulier effectue un arrêt pour la montée ou la descente de passagers, et équipée d'installations telles que des comptoirs d'enregistrement, des salles d'attente ou des comptoirs de vente de billets;

n) «arrêt d'autobus», tout point autre qu'une station auquel, selon l'itinéraire indiqué, il est prévu qu'un service régulier effectue un arrêt pour la montée ou la descente de passagers;

o) «entité gestionnaire de station», une entité organisationnelle dans un État membre chargée de la gestion d'une station désignée;

p) «annulation», la non-exécution d'un service régulier précédemment planifié;

q) «retard», la différence de temps entre l'heure à laquelle le service régulier devait partir d'après l'horaire publié et l'heure de son départ réel.

Article 4

Billets et conditions contractuelles non discriminatoires

1. Les transporteurs émettent un billet au passager, à moins que ne soient prévus d'autres documents établissant le droit au transport. Un billet peut être émis sous forme électronique.

2. Sans préjudice des tarifs sociaux, les conditions contractuelles et les tarifs appliqués par les transporteurs sont proposés au public sans discrimination directe ou indirecte fondée sur la nationalité du client final ou sur le lieu d'établissement des transporteurs ou des vendeurs de billets dans l'Union.

Article 5

Autres parties exécutantes

1. Si l'exécution des obligations prévues par le présent règlement a été confiée à un transporteur exécutant, un vendeur de billets ou toute autre personne, le transporteur, l'agent de voyages, le voyagiste ou l'entité gestionnaire de station qui a délégué lesdites obligations est néanmoins responsable des actes et des omissions de cette partie exécutante.

2. En outre, la partie qui s'est vu confier l'exécution d'une obligation par le transporteur, l'agent de voyages, le voyagiste ou l'entité gestionnaire de station est soumise aux dispositions du présent règlement pour ce qui est de l'obligation qui lui a été confiée.

Article 6

Irrecevabilité des dérogations

1. Les obligations à l'égard des passagers énoncées par le présent règlement ne peuvent être limitées ou levées, notamment par une dérogation ou une clause restrictive figurant dans le contrat de transport.

2. Les transporteurs peuvent offrir des conditions contractuelles plus favorables au passager que celles fixées dans le présent règlement.

CHAPITRE II

INDEMNISATION ET ASSISTANCE EN CAS D'ACCIDENT

Article 7

Décès ou lésion corporelle de passagers et perte ou détérioration de bagages

1. Conformément au droit national applicable, les passagers ont droit à une indemnisation en cas de décès, y compris un montant raisonnable pour les frais funéraires, ou de lésion corporelle ainsi qu'en cas de perte ou de détérioration de bagages dus à des accidents résultant de l'utilisation d'un autobus ou d'un autocar. En cas de décès d'un passager, ce droit s'applique au minimum aux personnes que ce passager était ou aurait été légalement tenu d'entretenir.

2. Le montant de l'indemnisation est calculé conformément au droit national applicable. Le montant maximal prévu par le droit national pour l'indemnisation en cas de décès ou de lésion corporelle ou en cas de perte ou de détérioration de bagages n'est pas inférieur, pour un événement donné, à:

a) 220 000 EUR par passager;

b) 1 200 EUR par bagage. En cas de détérioration de fauteuils roulants, de tout autre équipement de mobilité ou dispositif d'assistance, le montant de l'indemnisation est toujours égal au coût de remplacement ou de réparation de l'équipement perdu ou détérioré.

Article 8

Besoins concrets immédiats des passagers

En cas d'accident résultant de l'utilisation d'un autobus ou d'un autocar, le transporteur fournit une assistance raisonnable et proportionnée portant sur les besoins concrets immédiats des passagers à la suite de l'accident. Cette assistance englobe, si nécessaire, l'hébergement, la nourriture, les vêtements, le transport et la facilitation des premiers secours. L'assistance fournie ne constitue pas une reconnaissance de responsabilité.

Pour chaque passager, le transporteur peut limiter le coût total de l'hébergement à un montant de 80 EUR par nuit et pour deux nuits au plus.

CHAPITRE III

DROITS DES PERSONNES HANDICAPÉES ET DES PERSONNES À MOBILITÉ RÉDUITE

Article 9

Droit au transport

1. Les transporteurs, agents de voyages et voyagistes ne peuvent refuser d'accepter une réservation, d'émettre ou fournir un billet ou de faire monter à bord une personne au motif de son handicap ou de sa mobilité réduite.

2. Aucun supplément n'est demandé aux personnes handicapées et aux personnes à mobilité réduite pour leurs réservations et leurs billets.

Article 10

Exceptions et conditions particulières

1. Nonobstant l'article 9, paragraphe 1, les transporteurs, agents de voyages et voyagistes peuvent refuser d'accepter une réservation, d'émettre ou fournir un billet ou de faire monter à bord une personne au motif de son handicap ou de sa mobilité réduite:

a) afin de respecter les exigences applicables en matière de sécurité prévues par le droit international, le droit de l'Union ou le droit national ou afin de respecter les exigences en matière de santé et de sécurité établies par les autorités compétentes;

b) lorsque la conception du véhicule ou les infrastructures, y compris les arrêts et stations d'autobus, rendent physiquement impossible la montée, la descente ou le transport de la personne handicapée ou de la personne à mobilité réduite dans des conditions sûres et réalisables sur le plan opérationnel.

2. En cas de refus d'accepter une réservation ou d'émettre ou fournir un billet pour les motifs indiqués au paragraphe 1, les transporteurs, agents de voyages et voyagistes informent la personne concernée de tout service de substitution acceptable exploité par le transporteur.

3. Si une personne handicapée ou une personne à mobilité réduite qui dispose d'une réservation ou d'un billet et qui s'est conformée aux exigences de l'article 14, paragraphe 1, point a), se voit néanmoins refuser la permission de monter au motif de son handicap ou de sa mobilité réduite, ladite personne et toute personne l'accompagnant conformément au paragraphe 4 du présent article se voient offrir le choix entre:

a) le droit au remboursement et, s'il y a lieu, un service de transport de retour gratuit dans les meilleurs délais jusqu'au point de départ initial tel qu'établi dans le contrat de transport; ou

b) la poursuite du voyage ou le réacheminement par d'autres services de transport raisonnables jusqu'au lieu de destination, tel qu'établi dans le contrat de transport, excepté dans les cas où cela s'avère impossible.

Le droit au remboursement de la somme versée pour le billet n'est pas affecté par l'absence de notification en vertu de l'article 14, paragraphe 1, point a).

4. Si un transporteur, un agent de voyages ou un voyagiste refuse d'accepter une réservation, d'émettre ou fournir un billet ou de faire monter à bord une personne au motif de son handicap ou de sa mobilité réduite pour les raisons visées au paragraphe 1, cette personne peut demander à être accompagnée par une autre personne de son choix capable de lui fournir l'assistance qu'elle requiert de telle sorte que les raisons visées au paragraphe 1 ne soient plus applicables.

Cet accompagnant est transporté gratuitement et, dans la mesure du possible, une place lui est attribuée à côté de la personne handicapée ou de la personne à mobilité réduite.

5. Lorsque les transporteurs, les agents de voyages ou les voyagistes ont recours au paragraphe 1, ils en communiquent immédiatement les raisons à la personne handicapée ou à la personne à mobilité réduite, et, sur demande, l'en informe par écrit dans un délai de cinq jours ouvrables à compter de sa demande.

Article 11

Accessibilité et information

1. En collaboration avec les organisations représentatives des personnes handicapées ou des personnes à mobilité réduite, les transporteurs et les entités gestionnaires de stations établissent, le cas échéant par l'intermédiaire de leurs organisations, des conditions d'accès non discriminatoires applicables au transport de personnes handicapées et de personnes à mobilité réduite, ou disposent déjà de telles conditions.

2. Les conditions d'accès prévues au paragraphe 1, y compris le texte des législations adoptées aux niveaux international, de l'Union et national fixant des exigences en matière de sécurité et sur lesquelles reposent ces conditions d'accès non discriminatoires, sont portées à la connaissance du public par les transporteurs et les entités gestionnaires de stations directement ou sur l'internet, dans des formats accessibles sur demande, dans les mêmes langues que celles dans lesquelles les informations sont généralement fournies à l'ensemble des passagers. Lors de la fourniture de ces informations, une attention particulière est accordée aux besoins des personnes handicapées et des personnes à mobilité réduite.

3. Les voyagistes mettent à disposition les conditions d'accès prévues au paragraphe 1 qui s'appliquent aux trajets inclus dans les voyages, vacances et circuits à forfait qu'ils organisent, commercialisent ou proposent à la vente.

4. Les informations relatives aux conditions d'accès visées aux paragraphes 2 et 3 sont communiquées sous une forme matérielle à la demande du passager.

5. Les transporteurs, les agents de voyages et les voyagistes veillent à ce que toutes les informations générales pertinentes concernant les trajets et les conditions de transport soient mises à la disposition des personnes handicapées et des personnes à mobilité réduite, dans des formats appropriés et accessibles, y compris, le cas échéant, pour les réservations et les informations en ligne. Les informations sont communiquées au moyen d'un support matériel à la demande du passager.

Article 12

Désignation des stations

Les États membres désignent les stations d'autobus et d'autocar dans lesquelles une assistance est fournie aux personnes handicapées et aux personnes à mobilité réduite. Les États membres en informent la Commission. La Commission diffuse sur l'internet une liste des stations d'autobus et d'autocars ainsi désignées.

Article 13

Droit à une assistance dans les stations désignées et à bord des autobus et des autocars

1. Sous réserve des conditions d'accès prévues à l'article 11, paragraphe 1, les transporteurs et les entités gestionnaires de stations fournissent gratuitement, dans le cadre de leurs compétences respectives, dans les stations désignées par les États membres, au moins l'assistance visée à l'annexe I, point a), aux personnes handicapées et aux personnes à mobilité réduite.

2. Sous réserve des conditions d'accès prévues à l'article 11, paragraphe 1, les transporteurs fournissent gratuitement, à bord des autobus et des autocars, au moins l'assistance visée à l'annexe I, point b), aux personnes handicapées et aux personnes à mobilité réduite.

Article 14

Conditions auxquelles est fournie l'assistance

1. Les transporteurs et les entités gestionnaires de stations coopèrent afin de fournir une assistance aux personnes handicapées et aux personnes à mobilité réduite, à condition que:

a) le besoin d'assistance de la personne soit notifié aux transporteurs, entités gestionnaires de stations, agents de voyages ou voyagistes au plus tard trente-six heures à l'avance; et

b) les personnes concernées se présentent à l'endroit indiqué:

   i) à l'heure fixée à l'avance par le transporteur, qui ne doit pas précéder de plus de soixante minutes l'heure de départ annoncée, à moins que le transporteur et le passager ne se soient mis d'accord sur une période plus courte; ou

   ii) si aucune heure n'a été fixée, au moins trente minutes avant l'heure de départ annoncée.

2. Outre le paragraphe 1, la personne handicapée ou la personne à mobilité réduite informe le transporteur, l'agent de voyages ou le voyagiste de ses besoins particuliers en ce qui concerne la place assise lors de la réservation ou de l'achat à l'avance du billet, pour autant que ce besoin soit connu à ce moment-là.

3. Les transporteurs, entités gestionnaires de stations, agents de voyages et voyagistes prennent toutes les mesures nécessaires pour faciliter la réception des notifications effectuées par des personnes handicapées ou des personnes à mobilité réduite faisant état de leur besoin d'assistance. Cette obligation s'applique dans l'ensemble des stations désignées et de leurs points de vente, y compris à la vente par téléphone et sur l'internet.

4. À défaut de la notification visée au paragraphe 1, point a), et au paragraphe 2, les transporteurs, les entités gestionnaires de stations, les agents de voyages et les voyagistes s'efforcent dans la mesure du possible de fournir à la personne handicapée ou à la personne à mobilité réduite l'assistance nécessaire pour pouvoir monter, obtenir sa correspondance ou descendre pour le service pour lequel elle a acheté un billet.

5. L'entité gestionnaire de la station indique l'endroit, à l'intérieur ou à l'extérieur de la station, où les personnes handicapées ou les personnes à mobilité réduite peuvent annoncer leur arrivée et demander une assistance. Cet endroit est clairement signalé et fournit, dans des formats accessibles, des informations de base sur la station et l'assistance offerte.

Article 15

Transmission d'informations aux tiers

Si un agent de voyages ou un voyagiste reçoit une notification visée à l'article 14, paragraphe 1, point a), il transmet l'information au transporteur ou à l'entité gestionnaire de station dans les meilleurs délais, pendant les heures normales de bureau.

Article 16

Formation

1. Les transporteurs et, le cas échéant, les entités gestionnaires de stations, fixent des procédures de formation au handicap, y compris des consignes, et veillent à ce que:

a) leur personnel, à l'exception des chauffeurs, y compris les personnes employées par toute autre partie exécutante, qui fournit une assistance directe aux personnes handicapées et aux personnes à mobilité réduite, reçoive une formation ou dispose de consignes, conformément à l'annexe II, points a) et b); et

b) leur personnel, y compris les chauffeurs, qui travaille en contact direct avec les voyageurs ou traitent les questions en rapport avec les voyageurs, reçoive une formation ou dispose de consignes, conformément à l'annexe II, point a).

2. Un État membre peut, pour une période maximale de cinq ans à compter du 1er mars 2013, octroyer une dérogation à l'application du paragraphe 1, point b), concernant la formation des chauffeurs.

Article 17

Indemnisation pour les fauteuils roulants et les autres équipements de mobilité

1. Les transporteurs et les entités gestionnaires de stations sont responsables lorsqu'ils ont causé la perte ou la détérioration de fauteuils roulants, de tout autre équipement de mobilité ou de dispositifs d'assistance. La perte ou la détérioration est indemnisée par le transporteur ou l'entité gestionnaire de station qui en est responsable.

2. L'indemnisation visée au paragraphe 1 équivaut au coût de remplacement ou de réparation de l'équipement ou des dispositifs perdus ou endommagés.

3. Le cas échéant, tout est mis en œuvre pour mettre rapidement à disposition un équipement ou des dispositifs de remplacement, à titre temporaire. Les fauteuils roulants, les autres équipements de mobilité ou dispositifs d'assistance présentent, dans la mesure du possible, des caractéristiques techniques et fonctionnelles similaires à ceux qui ont été perdus ou endommagés.

Article 18

Dérogations

1. Sans préjudice de l'article 2, paragraphe 2, les États membres peuvent octroyer une dérogation à l'application de tout ou partie des dispositions du présent chapitre en ce qui concerne les services réguliers nationaux, à condition qu'ils s'assurent que le niveau de protection des personnes handicapées et des personnes à mobilité réduite garanti par leur législation nationale est au moins le même que celui garanti par le présent règlement.

2. Les États membres informent la Commission des dérogations octroyées conformément au paragraphe 1. La Commission prend les mesures appropriées si une dérogation n'est pas jugée conforme aux dispositions du présent article. Au plus tard le 2 mars 2018, la Commission soumet au Parlement européen et au Conseil un rapport sur les dérogations octroyées conformément au paragraphe 1.

CHAPITRE IV

DROITS DES PASSAGERS EN CAS D'ANNULATION OU DE RETARD

Article 19

Poursuite du voyage, réacheminement et remboursement

1. Lorsqu'un transporteur peut raisonnablement s'attendre à ce qu'un service régulier soit annulé ou à ce que son départ d'une station soit retardé de plus de cent vingt minutes ou encore en cas de surréservation, les passagers se voient immédiatement offrir le choix entre:

a) la poursuite du voyage ou le réacheminement vers la destination finale telle qu'établie dans le contrat de transport, sans coût supplémentaire, dans des conditions comparables et dans les meilleurs délais;

b) le remboursement du prix du billet et, s'il y a lieu, un service de transport de retour gratuit, en autobus ou en autocar, dans les meilleurs délais, jusqu'au point de départ initial tel qu'établi dans le contrat de transport.

2. Si le transporteur n'offre pas au passager le choix visé au paragraphe 1, le passager a droit à une indemnisation équivalente à 50 % du prix du billet, en sus du remboursement visé au paragraphe 1, point b). Ce montant est payé par le transporteur dans le mois qui suit le dépôt de la demande d'indemnisation.

3. Lorsque l'autobus ou l'autocar devient inutilisable au cours du voyage, le transporteur propose soit la poursuite du service, dans un autre véhicule, à partir du point où le véhicule est immobilisé, soit le transport entre le point où le véhicule est immobilisé et un point d'attente ou une station adaptés, lieu à partir duquel la poursuite du voyage devient possible.

4. Lorsqu'un service régulier est annulé ou si son départ d'un arrêt d'autobus est retardé de plus de cent vingt minutes, les passagers ont droit à la poursuite du voyage ou au réacheminement ou au remboursement du prix du billet par le transporteur, conformément au paragraphe 1.

5. Le remboursement du billet prévu au paragraphe 1, point b), et au paragraphe 4 s'effectue dans un délai de quatorze jours après que l'offre en a été faite ou que la demande en a été reçue. Le remboursement couvre la totalité du coût du billet au tarif auquel il a été acheté, pour la ou les parties non effectuées du trajet et pour la ou les parties déjà effectuées si le trajet ne présente plus aucun intérêt par rapport au plan de voyage initial du passager. En cas de carte de transport ou d'abonnement, le remboursement équivaut à la proportion que représente le trajet dans le coût total de la carte ou de l'abonnement. Le remboursement s'effectue en espèces, à moins que le passager accepte une autre forme de remboursement.

Article 20

Information

1. En cas d'annulation ou de départ retardé d'un service régulier, les passagers partant de stations sont informés de la situation par le transporteur ou, le cas échéant, par l'entité gestionnaire de station, dans les plus brefs délais et en tout état de cause au plus tard trente minutes après l'heure de départ prévue, ainsi que de l'heure estimée de départ, dès que cette information est disponible.

2. Si des passagers manquent un service de correspondance établi en fonction des horaires en raison d'une annulation ou d'un retard, le transporteur ou, le cas échéant, l'entité gestionnaire de station s'efforce, dans la mesure du raisonnable, d'informer les passagers concernés des autres correspondances disponibles.

3. Le transporteur ou, le cas échéant, l'entité gestionnaire de station, veille à ce que les personnes handicapées et les personnes à mobilité réduite reçoivent, dans des formats accessibles, les informations requises en vertu des paragraphes 1 et 2.

4. Dans la mesure du possible, les informations requises en vertu des paragraphes 1 et 2 sont communiquées par voie électronique à l'ensemble des passagers, y compris les passagers qui partent d'arrêts d'autobus, dans les délais prévus au paragraphe 1, lorsque le passager en a fait la demande et a fourni au transporteur les coordonnées nécessaires.

Article 21

Assistance en cas d'annulation ou de départs retardés

En cas d'annulation ou de départ d'une station retardé de plus de quatre-vingt-dix minutes pour un voyage dont la durée prévue excède trois heures, le transporteur offre gratuitement au passager:

a) des collations, des repas ou des rafraîchissements en quantité raisonnable compte tenu du délai d'attente ou du retard, pour autant qu'il y en ait à bord du bus ou dans la station ou qu'ils puissent raisonnablement être livrés;

b) une chambre d'hôtel ou une autre forme d'hébergement ainsi qu'une aide pour assurer son transport entre la station et le lieu d'hébergement si un séjour d'une nuit ou plus s'avère nécessaire. Pour chaque passager, le transporteur peut limiter à un montant de 80 EUR par nuit et pour deux nuits au plus le coût total de l'hébergement, non compris le transport dans les deux sens entre la station et le lieu d'hébergement.

Lors de l'application du présent article, le transporteur accorde une attention particulière aux besoins des personnes handicapées et des personnes à mobilité réduite, ainsi que de toute personne les accompagnant.

Article 22

Autres voies de recours

Aucune disposition du présent chapitre ne saurait empêcher les passagers de saisir les juridictions nationales pour demander des dommages-intérêts conformément au droit national en réparation du préjudice résultant de l'annulation ou du retard de services réguliers.

Article 23

Dérogations

1. Les articles 19 et 21 ne s'appliquent pas aux passagers munis de billets ouverts pour autant que l'heure de départ ne soit pas indiquée, à l'exception des passagers détenant une carte de transport ou un abonnement.

2. L'article 21, point b), ne s'applique pas lorsque le transporteur prouve que l'annulation ou le retard est dû à des conditions météorologiques sévères ou à des catastrophes naturelles majeures compromettant l'exploitation du service d'autobus ou d'autocar en toute sécurité.

CHAPITRE V

RÈGLES GÉNÉRALES CONCERNANT L'INFORMATION ET LES PLAINTES

Article 24

Droit à l'information sur le voyage

Les transporteurs et les entités gestionnaires de stations, dans leurs domaines respectifs de compétence, fournissent aux passagers des informations adéquates tout au long du voyage. Dans la mesure du possible, ces informations sont fournies sur demande dans des formats appropriés.

Article 25

Informations sur les droits des passagers

1. Les transporteurs et entités gestionnaires de stations veillent, dans leurs domaines respectifs de compétences, à ce que les passagers reçoivent, au plus tard au moment du départ, des informations pertinentes et compréhensibles concernant leurs droits au titre du présent règlement. Ces informations sont communiquées dans les stations et, le cas échéant, sur l'internet. À la demande d'une personne handicapée ou d'une personne à mobilité réduite, les informations sont communiquées, dans la mesure du possible, dans un format accessible. Parmi ces informations, figurent les coordonnées de l'organisme ou des organismes chargés de l'application désignés par l'État membre en vertu de l'article 28, paragraphe 1.

2. Afin de se conformer à l'obligation d'information visée au paragraphe 1, les transporteurs et les entités gestionnaires de stations peuvent utiliser un résumé des dispositions du présent règlement établi par la Commission dans toutes les langues officielles des institutions de l'Union européenne et mis à leur disposition.

Article 26

Plaintes

Les transporteurs établissent un mécanisme de traitement des plaintes concernant les droits et obligations prévus par le présent règlement, ou disposent déjà d'un tel mécanisme.

Article 27

Dépôt des plaintes

Sans préjudice des demandes d'indemnisation en vertu de l'article 7, si un passager visé par le présent règlement souhaite déposer une plainte auprès du transporteur, il l'introduit dans un délai de trois mois à compter de la date à laquelle le service régulier a été exécuté ou aurait dû être exécuté. Dans un délai d'un mois suivant la réception de la plainte, le transporteur informe le passager que sa plainte a été retenue, rejetée ou est toujours à l'examen. La réponse définitive doit lui être donnée dans un délai de trois mois maximum à compter de la date de réception de la plainte.

CHAPITRE VI

APPLICATION ET ORGANISMES NATIONAUX CHARGÉS DE L'APPLICATION

Article 28

Organismes nationaux chargés de l'application

1. Chaque État membre désigne un ou plusieurs organismes, nouveaux ou existants, chargés de l'application du présent règlement en ce qui concerne les services réguliers à partir de lieux situés sur son territoire et les services réguliers en provenance d'un pays tiers à destination de ces lieux. Chaque organisme prend les mesures nécessaires pour assurer le respect du présent règlement.

Chaque organisme est indépendant des transporteurs, voyagistes et entités gestionnaires de stations en ce qui concerne son organisation, ses décisions de financement, sa structure juridique et son processus de prise de décision.

2. Les États membres informent la Commission de l'organisme ou des organismes désignés conformément au présent article.

3. Tout passager peut déposer une plainte pour violation alléguée du présent règlement, conformément à son droit national, auprès de l'organisme compétent désigné en vertu du paragraphe 1 ou auprès de tout autre organisme compétent désigné par un État membre.

Un État membre peut décider que le passager est tenu, dans un premier temps, de déposer une plainte auprès du transporteur, auquel cas l'organisme national chargé de l'application ou tout autre organisme compétent désigné par l'État membre agit en tant qu'instance de recours pour les plaintes n'ayant pas été réglées en application de l'article 27.

Article 29

Rapport sur l'application

Les organismes chargés de l'application désignés en vertu de l'article 28, paragraphe 1, publient, au plus tard le 1er juin 2015 et, par la suite, tous les deux ans, un rapport concernant leurs activités des deux années civiles précédentes, contenant en particulier une description des mesures prises pour faire appliquer le présent règlement, et des statistiques sur les plaintes et les sanctions appliquées.

Article 30

Coopération entre les organismes chargés de l'application

Les organismes nationaux chargés de l'application visés à l'article 28, paragraphe 1, s'échangent, le cas échéant, des informations sur leurs travaux ainsi que sur leurs principes et pratiques de prise de décision. La Commission les assiste dans cette tâche.

Article 31

Sanctions

Les États membres déterminent le régime des sanctions applicables aux violations des dispositions du présent règlement et prennent toutes les mesures nécessaires pour assurer leur application. Les sanctions ainsi prévues sont effectives, proportionnées et dissuasives. Les États membres notifient ce régime de sanctions et ces mesures à la Commission au plus tard le 1er mars 2013 et l'informent sans délai de toute modification ultérieure les concernant.

CHAPITRE VII

DISPOSITIONS FINALES

Article 32

Rapport

La Commission fait rapport au Parlement européen et au Conseil sur le fonctionnement et les effets du présent règlement, au plus tard le 2 mars 2016. Le rapport est assorti, le cas échéant, de propositions législatives destinées à mettre en œuvre de manière plus détaillée les dispositions du présent règlement ou à le modifier.

Article 33

Modification du règlement (CE) nº 2006/2004

À l'annexe du règlement (CE) nº 2006/2004, le point suivant est ajouté:

«19. Règlement (UE) nº 181/2011 du Parlement européen et du Conseil du 16 février 2011 concernant les droits des passagers dans le transport par autobus et autocar (*).

(*) JO L 55 du 28.2.2011, p. 1.»

Article 34

Entrée en vigueur

Le présent règlement entre en vigueur le vingtième jour suivant celui de sa publication au *Journal officiel de l'Union européenne*.

Il est applicable à partir du 1er mars 2013.

Le présent règlement est obligatoire dans tous ses éléments et directement applicable dans tout État membre.

Fait à Strasbourg, le 16 février 2011.

Par le Parlement européen
Le président
J. BUZEK

Par le Conseil
Le président
MARTONYI J.

ANNEXE I

ASSISTANCE AUX PERSONNES HANDICAPÉES ET AUX PERSONNES À MOBILITÉ RÉDUITE

a) **Assistance dans les stations désignées**

Assistance et dispositions nécessaires pour permettre aux personnes handicapées et aux personnes à mobilité réduite:

— de communiquer leur arrivée à la station et leur demande d'assistance aux endroits indiqués,

— de se déplacer de l'endroit indiqué jusqu'au guichet d'enregistrement, à la salle d'attente et à la zone d'embarquement,

— de monter à bord du véhicule, avec mise à disposition d'élévateurs, de fauteuils roulants ou d'autre type d'assistance nécessaire, s'il y a lieu,

— de charger leurs bagages,

— de récupérer leurs bagages,

— de descendre du véhicule,

— de faire monter à bord d'un autobus ou d'un autocar un chien d'assistance reconnu,

— de se rendre jusqu'à leur siège.

b) **Assistance à bord**

Assistance et dispositions nécessaires pour permettre aux personnes handicapées et aux personnes à mobilité réduite:

— d'obtenir, dans des formats accessibles, les informations essentielles concernant un voyage à condition que le passager en fasse la demande,

— de monter et de descendre lors des pauses pendant un voyage si du personnel autre que le chauffeur est présent à bord.

ANNEXE II

FORMATION SUR LE HANDICAP

a) **Formation de sensibilisation au handicap**

La formation du personnel qui s'occupe directement des passagers comprend les éléments suivants:

— une sensibilisation et les réponses appropriées à apporter aux passagers souffrant de handicaps physiques, sensoriels (auditifs et visuels), de handicaps cachés ou de troubles de l'apprentissage, y compris la distinction entre les différentes capacités des personnes dont la mobilité, l'orientation ou la communication peuvent être limitées,

— les obstacles rencontrés par les personnes handicapées et les personnes à mobilité réduite, notamment sur le plan des attitudes, de l'environnement matériel et de l'organisation,

— les chiens d'assistance reconnus, y compris le rôle et les besoins d'un chien d'assistance,

— la gestion des événements imprévus,

— les capacités interpersonnelles et les méthodes de communication avec les personnes sourdes et malentendantes, les personnes malvoyantes et les personnes présentant des troubles de la parole et de l'apprentissage,

— le maniement prudent des fauteuils roulants et autres équipements de mobilité de manière à éviter de les endommager (pour l'ensemble du personnel chargé de la manutention des bagages, le cas échéant).

b) **Formation à l'assistance aux personnes handicapées**

La formation du personnel directement concerné par l'assistance aux personnes handicapées et aux personnes à mobilité réduite comprend les éléments suivants:

— la manière d'aider les utilisateurs de fauteuils roulants à s'asseoir dans un fauteuil roulant et à en sortir,

— l'aptitude à fournir une assistance à des personnes handicapées et des personnes à mobilité réduite accompagnées d'un chien d'assistance reconnu, y compris le rôle et les besoins de ces chiens,

— les techniques d'accompagnement des passagers malvoyants et de prise en charge et de transport des chiens d'assistance reconnus,

— la connaissance des types d'équipement pouvant assister les personnes handicapées et les personnes à mobilité réduite et du maniement de ces équipements,

— l'utilisation des équipements d'assistance à la montée et à la descente employés et la connaissance des procédures appropriées d'assistance à la montée et à la descente permettant d'assurer la sécurité et la dignité des personnes handicapées et des personnes à mobilité réduite,

— une compréhension de la nécessité d'une assistance fiable et professionnelle et la sensibilisation au fait que certains passagers handicapés peuvent ressentir une certaine vulnérabilité au cours du voyage en raison de leur dépendance vis-à-vis de l'assistance fournie,

— une connaissance des premiers secours.

I

(Actes législatifs)

RÈGLEMENTS

RÈGLEMENT (UE) Nº 1177/2010 DU PARLEMENT EUROPÉEN ET DU CONSEIL

du 24 novembre 2010

concernant les droits des passagers voyageant par mer ou par voie de navigation intérieure et modifiant le règlement (CE) nº 2006/2004

(Texte présentant de l'intérêt pour l'EEE)

LE PARLEMENT EUROPÉEN ET LE CONSEIL DE L'UNION EUROPÉENNE,

vu le traité sur le fonctionnement de l'Union européenne, et notamment son article 91, paragraphe 1, et son article 100, paragraphe 2,

vu la proposition de la Commission européenne,

vu l'avis du Comité économique et social européen [1],

après consultation du Comité des régions,

statuant conformément à la procédure législative ordinaire [2],

considérant ce qui suit:

(1) L'action de l'Union dans le domaine du transport maritime et du transport par voie de navigation intérieure devrait viser, entre autres, à assurer un niveau élevé de protection des passagers, comparable à celui des autres modes de transport. En outre, il convient de tenir pleinement compte des exigences de protection des consommateurs en général.

(2) Le passager voyageant par mer ou par voie de navigation intérieure étant la partie faible au contrat de transport, il convient d'accorder à tous les passagers un niveau minimal de protection. Rien ne devrait empêcher les transporteurs d'accorder au passager des conditions contractuelles plus favorables que celles fixées dans le présent règlement. Toutefois, le présent règlement ne vise pas à intervenir dans les relations commerciales d'entreprise à entreprise touchant au transport de marchandises. Plus particulièrement, les accords entre un transporteur routier et un transporteur ne devraient pas s'entendre comme des contrats de transport aux fins du présent règlement et ne devraient dès lors pas conférer au transporteur routier ou à ses employés le droit à une indemnisation en cas de retard, en vertu du présent règlement.

(3) La protection des passagers devrait s'étendre non seulement aux services de transport de passagers entre des ports situés sur le territoire des États membres, mais aussi aux services de transport de passagers entre ces ports et des ports situés hors du territoire des États membres, compte tenu des risques de distorsion de concurrence sur le marché du transport de passagers. Par conséquent, l'expression «transporteur de l'Union» devrait, aux fins du présent règlement, être interprétée le plus largement possible, sans, toutefois, que cela ait une incidence sur d'autres actes juridiques de l'Union, tels que le règlement (CEE) nº 4056/86 du Conseil du 22 décembre 1986 déterminant les modalités d'application des articles 85 et 86 du traité aux transports maritimes [3] et le règlement (CEE) nº 3577/92 du Conseil du 7 décembre 1992 concernant l'application du principe de la libre circulation des services aux transports maritimes à l'intérieur des États membres (cabotage maritime) [4].

[1] JO C 317 du 23.12.2009, p. 89.

[2] Position du Parlement européen du 23 avril 2009 (JO C 184 E du 8.7.2010, p. 293), position du Conseil en première lecture du 11 mars 2010 (JO C 122 E du 11.5.2010, p. 19), position du Parlement européen du 6 juillet 2010 (non encore parue au Journal officiel) et décision du Conseil du 11 octobre 2010.

[3] JO L 378 du 31.12.1986, p. 4.

[4] JO L 364 du 12.12.1992, p. 7.

(4) Le marché intérieur des services de transport de passagers par mer ou par voie de navigation intérieure devrait profiter aux citoyens en général. Par conséquent, les personnes handicapées et les personnes à mobilité réduite, que ce soit du fait d'un handicap, de l'âge ou de tout autre facteur, devraient avoir la possibilité d'utiliser les services de transport de passagers ou de faire une croisière dans des conditions comparables à celles des autres citoyens. Les personnes handicapées et les personnes à mobilité réduite ont les mêmes droits que tous les autres citoyens en matière de libre circulation, de liberté de choix et de non-discrimination.

(5) Les États membres devraient promouvoir le recours au transport public et l'utilisation de billets intégrés de manière à optimiser l'usage et l'interopérabilité des différents modes de transport et de leurs exploitants.

(6) À la lumière de l'article 9 de la convention des Nations unies relative aux droits des personnes handicapées et afin de donner aux personnes handicapées et aux personnes à mobilité réduite la possibilité de voyager par mer et par voie de navigation intérieure dans des conditions comparables à celles des autres citoyens, il convient d'établir des règles en vue d'assurer la non-discrimination et une assistance au cours de leur voyage. Ces personnes devraient, par conséquent, être acceptées à l'embarquement et ne pas se voir opposer un refus de transport, sauf pour des motifs justifiés par des raisons de sécurité et établis par les autorités compétentes. Elles devraient bénéficier d'un droit à une assistance dans les ports, et à bord des navires à passagers. Dans l'intérêt de l'intégration sociale, les personnes concernées devraient bénéficier de cette assistance gratuitement. Les transporteurs devraient établir des conditions d'accès, en se servant, de préférence, du système européen de normalisation.

(7) Lors de l'adoption de décisions concernant la conception de nouveaux ports et terminaux, et dans le cadre de travaux de rénovation majeure, les organismes responsables de ces installations devraient prendre en compte les besoins des personnes handicapées et des personnes à mobilité réduite, notamment en ce qui concerne l'accessibilité, en tenant particulièrement compte des exigences en matière de «conception pour tous». Les transporteurs devraient prendre en compte ces besoins dans les décisions concernant la conception de navires à passagers neufs et rénovés conformément à la directive 2006/87/CE du Parlement européen et du Conseil du 12 décembre 2006 établissant les prescriptions techniques des bateaux de la navigation intérieure [1] et à la directive 2009/45/CE du Parlement européen et du Conseil du 6 mai 2009 établissant des règles et normes de sécurité pour les navires à passagers [2].

(8) L'assistance fournie dans les ports situés sur le territoire d'un État membre devrait, entre autres, permettre aux personnes handicapées et aux personnes à mobilité réduite de se déplacer d'un point d'arrivée donné dans un port vers un navire à passagers et d'un navire à passagers vers un point de départ donné dans un port, embarquement et débarquement compris.

(9) Dans le cadre de l'organisation de l'assistance aux personnes handicapées et aux personnes à mobilité réduite, ainsi que de la formation de leur personnel, les transporteurs devraient coopérer avec les organisations représentatives des personnes handicapées ou des personnes à mobilité réduite. Ce faisant, ils devraient également tenir compte des dispositions pertinentes de la convention internationale et du code sur les normes de formation des gens de mer, de délivrance des brevets et de veille, ainsi que de la recommandation de l'Organisation maritime internationale (OMI) relative à la conception et à l'exploitation des navires à passagers en fonction des besoins spécifiques des personnes âgées et des personnes handicapées.

(10) Les dispositions relatives à l'embarquement de personnes handicapées ou à mobilité réduite devraient s'entendre sans préjudice des règles générales s'appliquant à l'embarquement des passagers, établies par les règles internationales, de l'Union ou nationales en vigueur.

(11) Les actes juridiques de l'Union en matière de droits des passagers devraient tenir compte des besoins des passagers, notamment de ceux des personnes handicapées et des personnes à mobilité réduite, qui doivent utiliser différents modes de transports et disposer de correspondances commodes entre ceux-ci, sous réserve des règles de sécurité applicables à l'exploitation des navires.

(12) Les passagers devraient être informés de manière adéquate en cas d'annulation ou de retard d'un service de transport de passagers ou d'une croisière. Cette information devrait les aider à prendre les dispositions requises et, si nécessaire, à obtenir des informations concernant d'autres correspondances.

(13) Il convient de limiter les désagréments occasionnés aux passagers en raison d'une annulation ou d'un retard important de leur voyage. À cette fin, les passagers devraient bénéficier d'une assistance adéquate et être en mesure d'annuler leur voyage et de se faire rembourser leurs billets ou d'obtenir un réacheminement dans des conditions satisfaisantes. Un hébergement adéquat des passagers n'implique pas nécessairement des chambres d'hôtels mais peut désigner tout autre hébergement adapté disponible, en fonction plus particulièrement des circonstances liées à chaque situation spécifique, des véhicules des passagers et des caractéristiques du navire. À cet égard et dans les cas dûment justifiés de circonstances extraordinaires et urgentes, les transporteurs devraient être en mesure d'utiliser pleinement les installations appropriées disponibles, en coopération avec les autorités civiles.

[1] JO L 389 du 30.12.2006, p. 1.
[2] JO L 163 du 25.6.2009, p. 1.

(14) Les transporteurs devraient, en cas d'annulation ou de retard d'un service de transport de passagers, prévoir le versement aux passagers d'une indemnisation équivalant à un pourcentage du prix du billet, sauf si l'annulation ou le retard intervient en raison de conditions météorologiques compromettant l'exploitation du navire en toute sécurité ou dans des circonstances extraordinaires, qui n'auraient pas pu être évitées même si toutes les mesures raisonnables avaient été prises.

(15) Les transporteurs devraient, conformément aux principes communément admis, avoir la charge de prouver que l'annulation ou le retard sont dus auxdites conditions météorologiques ou circonstances extraordinaires.

(16) Les conditions météorologiques compromettant l'exploitation du navire en toute sécurité devraient inclure, sans s'y limiter, des vents de forte puissance, une mer agitée, des courants de forte intensité, des conditions de gel difficiles et un niveau des eaux extrêmement haut ou bas, les ouragans, tornades et inondations.

(17) Les circonstances extraordinaires devraient inclure, sans s'y limiter, les catastrophes naturelles telles que les incendies et les tremblements de terre, les attentats terroristes, les guerres et les conflits armés militaires ou civils, les insurrections, les confiscations militaires ou illégales, les conflits sociaux, le débarquement de personnes malades, blessées ou décédées, les opérations de recherche et de sauvetage en mer ou sur les voies de navigation intérieure, les mesures nécessaires pour la protection de l'environnement, les décisions prises par les organismes de gestion du trafic ou par les autorités portuaires ou encore les décisions arrêtées par les autorités compétentes en matière d'ordre public et de sécurité publique, ainsi que pour répondre à des besoins de transports urgents.

(18) Les transporteurs devraient coopérer, avec la participation des parties prenantes, d'associations professionnelles et d'associations représentant les consommateurs, les passagers, les personnes handicapées et les personnes à mobilité réduite, en vue de l'adoption de dispositions au niveau national ou européen visant à améliorer la prise en charge des passagers et l'assistance aux passagers en cas d'interruption de leur voyage, notamment en cas de retards importants ou d'annulation du voyage. Les organismes nationaux chargés de l'application devraient être informés de ces dispositions.

(19) La Cour de justice de l'Union européenne a déjà statué sur les problèmes entraînant des annulations ou des retards considérant que ceux-ci peuvent relever de la notion de circonstances extraordinaires seulement s'ils découlent d'événements qui ne sont pas inhérents à l'exercice normal de l'activité du transporteur concerné et qui échappent à la maîtrise effective de ce dernier. Il y a lieu de relever que les conditions météorologiques compromettant l'exploitation du navire en toute sécurité échappent en effet à la maîtrise effective du transporteur.

(20) Le présent règlement ne devrait pas porter atteinte aux droits des passagers établis par la directive 90/314/CEE du Conseil du 13 juin 1990 concernant les voyages, vacances et circuits à forfait [1]. Le présent règlement ne devrait pas s'appliquer lorsqu'un circuit à forfait est annulé pour des raisons autres que l'annulation du service de transport de passagers ou de la croisière.

(21) Les passagers devraient être pleinement informés, dans des formats accessibles à tous, de leurs droits en vertu du présent règlement, de manière à pouvoir exercer ces droits d'une manière effective. Il convient que l'obtention d'informations concernant le service de transport de passagers ou la croisière avant et pendant le voyage figure parmi les droits des passagers. Toutes les informations essentielles fournies aux passagers devraient également être fournies dans des formats accessibles aux personnes handicapées et aux personnes à mobilité réduite permettant à ces passagers d'avoir accès aux mêmes informations grâce, par exemple, aux formats texte, braille, audio, vidéo et/ou électroniques.

(22) Il convient que les passagers soient en mesure d'exercer leurs droits au moyen de procédures de plainte appropriées et accessibles mises en œuvre par les transporteurs et les exploitants de terminaux dans leurs domaines respectifs de compétence, ou, le cas échéant, en déposant une plainte auprès de l'organisme ou des organismes désignés à cette fin par l'État membre concerné. Les transporteurs et les exploitants de terminaux devraient être tenus de répondre dans un délai fixé aux plaintes des passagers, étant entendu que l'absence de réaction pourrait être retenue contre eux.

(23) Compte tenu des procédures mises en place dans un État membre pour le dépôt de plaintes, il y a lieu qu'une plainte relative à l'assistance fournie dans un port ou à bord d'un navire soit adressée de préférence à l'organisme ou aux organismes chargés de l'application du présent règlement dans l'État membre dans lequel est situé le port d'embarquement et, pour les services de transport de passagers en provenance d'un pays tiers, dans l'État membre dans lequel est situé le port de débarquement.

(24) Les États membres devraient veiller au respect du présent règlement et désigner un ou des organismes compétents chargés de son contrôle et de son application. Cela ne porte pas atteinte aux droits des passagers de recourir à une procédure judiciaire devant les tribunaux en vertu du droit national.

(25) L'organisme ou les organismes chargés de l'application du présent règlement devraient être indépendants d'intérêts commerciaux. Chaque État membre devrait désigner au moins un organisme qui, le cas échéant, devrait avoir le pouvoir et la faculté d'examiner les plaintes individuelles et

[1] JO L 158 du 23.6.1990, p. 59.

de faciliter le règlement des litiges. Les passagers devraient pouvoir recevoir une réponse motivée de la part de l'organisme désigné, dans un délai raisonnable. Compte tenu de l'importance que revêtent des statistiques fiables pour le contrôle de l'application du présent règlement, en particulier en vue d'assurer une mise en œuvre cohérente dans toute l'Union, les rapports élaborés par ces organismes devraient inclure, si possible, des statistiques sur les plaintes déposées et leur issue.

(26) Les États membres devraient déterminer les sanctions applicables en cas de violation du présent règlement et veiller à leur application. Ces sanctions devraient être effectives, proportionnées et dissuasives.

(27) Étant donné que les objectifs du présent règlement, à savoir assurer un niveau élevé de protection et d'assistance aux passagers dans l'ensemble des États membres et s'assurer que les acteurs économiques opèrent dans des conditions harmonisées au sein du marché intérieur, ne peuvent pas être réalisés de manière suffisante par les États membres et peuvent donc, en raison des dimensions et des effets de l'action, être mieux réalisés au niveau de l'Union, celle-ci peut prendre des mesures, conformément au principe de subsidiarité consacré à l'article 5 du traité sur l'Union européenne. Conformément au principe de proportionnalité tel qu'énoncé audit article, le présent règlement n'excède pas ce qui est nécessaire pour atteindre ces objectifs.

(28) Il convient de fonder l'application du présent règlement sur le règlement (CE) n° 2006/2004 du Parlement européen et du Conseil du 27 octobre 2004 relatif à la coopération entre les autorités nationales chargées de veiller à l'application de la législation en matière de protection des consommateurs («Règlement relatif à la coopération en matière de protection des consommateurs») [1]. Ledit règlement devrait donc être modifié en conséquence.

(29) Il y a lieu de respecter et d'appliquer strictement la directive 95/46/CE du Parlement européen et du Conseil du 24 octobre 1995 relative à la protection des personnes physiques à l'égard du traitement des données à caractère personnel et à la libre circulation de ces données [2] afin de garantir le respect de la vie privée des personnes physiques et morales, et de s'assurer que les informations et les rapports requis servent uniquement à satisfaire aux obligations établies par le présent règlement et ne sont pas employés au détriment desdites personnes.

(30) Le présent règlement respecte les droits fondamentaux et les principes consacrés notamment par la charte des droits fondamentaux de l'Union européenne, tels que visés à l'article 6 du traité sur l'Union européenne,

ONT ADOPTÉ LE PRÉSENT RÈGLEMENT:

[1] JO L 364 du 9.12.2004, p. 1.
[2] JO L 281 du 23.11.1995, p. 31.

CHAPITRE I

DISPOSITIONS GÉNÉRALES

Article premier

Objet

Le présent règlement établit des règles pour le transport par voie maritime ou voie de navigation intérieure en ce qui concerne:

a) la non-discrimination entre les passagers pour ce qui est des conditions de transport offertes par les transporteurs;

b) la non-discrimination et l'assistance pour les personnes handicapées et les personnes à mobilité réduite;

c) les droits des passagers en cas d'annulation ou de retard;

d) les informations minimales à fournir aux passagers;

e) le traitement des plaintes;

f) les règles générales en matière d'application.

Article 2

Champ d'application

1. Le présent règlement s'applique aux passagers:

a) utilisant des services de transport de passagers lorsque le port d'embarquement est situé sur le territoire d'un État membre;

b) utilisant des services de transport de passagers lorsque le port d'embarquement est situé hors du territoire d'un État membre et que le port de débarquement est situé sur le territoire d'un État membre, pour autant que le service soit exploité par un transporteur de l'Union tel que défini à l'article 3, point e);

c) participant à une croisière lorsque le port d'embarquement est situé sur le territoire d'un État membre. Toutefois, l'article 16, paragraphe 2, les articles 18 et 19 et l'article 20, paragraphes 1 et 4, ne s'appliquent pas à ces passagers.

2. Le présent règlement ne s'applique pas aux passagers voyageant:

a) sur des navires autorisés à transporter jusqu'à douze passagers;

b) sur des navires dont l'équipage chargé de l'exploitation du navire ne comprend pas plus de trois personnes ou lorsque la longueur totale du service de transport de passagers est inférieure à 500 mètres par aller simple;

c) dans le cadre d'excursions ou de visites touristiques autres que des croisières; ou

d) sur des navires qui ne sont pas propulsés par des moyens mécaniques ainsi que sur des navires à passagers historiques originaux ou des copies individuelles de ces navires conçus avant 1965 et construits essentiellement en matériaux d'origine, autorisés à transporter jusqu'à trente-six passagers.

3. Les États membres peuvent, pendant une période de deux ans à partir du 18 décembre 2012, exempter de l'application du présent règlement les navires de mer de moins de 300 tonnes de jauge brute exploités pour le transport national, à condition que le droit national garantisse d'une manière appropriée les droits des passagers en vertu du présent règlement.

4. Les États membres peuvent exempter de l'application du présent règlement les services de transport de passagers visés par des obligations de service public, des contrats de service public ou des services intégrés, à condition que le droit national garantisse d'une manière comparable les droits des passagers en vertu du présent règlement.

5. Sans préjudice de la directive 2006/87/CE et de la directive 2009/45/CE, aucune disposition du présent règlement ne peut être interprétée comme constituant une prescription technique imposant aux transporteurs, aux exploitants de terminaux ou à d'autres entités de modifier ou de remplacer les navires, les infrastructures, les ports ou les terminaux portuaires.

Article 3

Définitions

Aux fins du présent règlement, on entend par:

a) «personne handicapée» ou «personne à mobilité réduite», toute personne dont la mobilité est réduite lors de l'utilisation d'un moyen de transport, en raison de tout handicap physique (sensoriel ou moteur, permanent ou temporaire), ou de tout handicap ou déficience intellectuels, ou de toute autre cause de handicap, ou encore de son âge, et dont la situation requiert une attention appropriée et l'adaptation à ses besoins particuliers du service mis à la disposition de l'ensemble des passagers;

b) «territoire d'un État membre», un territoire auquel s'applique le traité sur le fonctionnement de l'Union européenne, tel que visé à son article 355, selon les conditions qui y sont énoncées;

c) «conditions d'accès», les normes, lignes directrices et informations pertinentes relatives à l'accessibilité des terminaux portuaires et des navires, y compris en ce qui concerne les installations destinées aux personnes handicapées ou aux personnes à mobilité réduite;

d) «transporteur», une personne physique ou morale, autre qu'un voyagiste, un agent de voyage ou un vendeur de billets, proposant au public un transport au moyen de services de transport de passagers ou de croisières;

e) «transporteur de l'Union», un transporteur établi sur le territoire d'un État membre ou proposant un transport au moyen de services de transport de passagers exploités à destination ou à partir du territoire d'un État membre;

f) «service de transport de passagers», un service commercial de transport de passagers par mer ou par voie de navigation intérieure assuré selon un horaire publié;

g) «services intégrés», des services de transport en correspondance dans une zone géographique déterminée comprenant un service unique d'information, de billetterie et d'horaires;

h) «transporteur exécutant», une personne, autre que le transporteur, qui exécute effectivement la totalité ou une partie du transport;

i) «voie de navigation intérieure», une masse d'eau intérieure navigable naturelle ou artificielle ou un système de masses d'eau reliées entre elles, utilisées pour le transport, telles que des lacs, des fleuves ou rivières, des canaux ou toute combinaison de ceux-ci;

j) «port», un lieu ou une zone géographique comportant des aménagements et des installations permettant la réception de navires, à partir duquel des passagers embarquent ou débarquent régulièrement;

k) «terminal portuaire», un terminal doté de personnel par un transporteur ou un exploitant de terminal, situé dans un port comportant des installations, comme des comptoirs d'enregistrement et de vente de billets ou des salons, et du personnel pour l'embarquement ou le débarquement de passagers utilisant des services de transport de passagers ou faisant une croisière;

l) «navire», un bâtiment utilisé pour la navigation en mer ou sur les voies de navigation intérieure;

m) «contrat de transport», un contrat de transport entre un transporteur et un passager en vue de la fourniture d'un ou de plusieurs services de transport de passagers ou de croisières;

n) «billet», un document en cours de validité ou toute autre preuve de l'existence d'un contrat de transport;

o) «vendeur de billets», tout détaillant qui conclut des contrats de transport pour le compte d'un transporteur;

p) «agent de voyages», un détaillant agissant pour le compte d'un passager ou d'un voyagiste en vue de la conclusion de contrats de transport;

q) «voyagiste», un organisateur ou un détaillant, autre qu'un transporteur, au sens de l'article 2, points 2) et 3), de la directive 90/314/CEE;

r) «réservation», la réservation d'un départ donné sur un service de transport de passagers ou une croisière;

s) «exploitant de terminal», un organisme public ou privé sur le territoire d'un État membre chargé de l'administration et de la gestion d'un terminal portuaire;

t) «croisière», un service de transport par mer ou par voie de navigation intérieure exploité exclusivement à des fins de plaisance ou de loisirs, complété par un hébergement et d'autres prestations, consistant en plus de deux nuitées à bord;

u) «événement maritime», le naufrage, le chavirement, l'abordage ou l'échouement du navire, une explosion ou un incendie à bord du navire ou un défaut du navire.

Article 4

Billets et conditions contractuelles non discriminatoires

1. Les transporteurs délivrent un billet au passager, à moins que le droit national ne prévoie d'autres documents établissant le droit au transport. Un billet peut être délivré sous forme électronique.

2. Sans préjudice des tarifs sociaux, les conditions contractuelles et les tarifs appliqués par les transporteurs ou les vendeurs de billets sont proposés au public sans discrimination directe ou indirecte fondée sur la nationalité du client final, ni sur le lieu d'établissement des transporteurs ou des vendeurs de billets au sein de l'Union.

Article 5

Autres parties exécutantes

1. Lorsque l'exécution des obligations en vertu du présent règlement a été confiée à un transporteur exécutant, un vendeur de billets ou toute autre personne, le transporteur, l'agent de voyages, le voyagiste ou l'exploitant de terminal qui a délégué lesdites obligations est néanmoins responsable des actes et des omissions de cette partie exécutante agissant dans le cadre de son travail.

2. Outre le paragraphe 1, la partie qui s'est vu confier l'exécution d'une obligation par le transporteur, l'agent de voyages, le voyagiste ou l'exploitant de terminal est soumise aux dispositions du présent règlement, y compris les dispositions relatives à la responsabilité et aux moyens de s'en exonérer, pour ce qui est de l'obligation qui lui a été confiée.

Article 6

Exclusion de la renonciation

Les droits et les obligations au titre du présent règlement ne peuvent pas faire l'objet d'une renonciation ou d'une limitation, notamment par une dérogation ou une clause restrictive figurant dans le contrat de transport.

CHAPITRE II

DROITS DES PERSONNES HANDICAPÉES ET DES PERSONNES À MOBILITÉ RÉDUITE

Article 7

Droit au transport

1. Les transporteurs, agents de voyages et voyagistes ne peuvent refuser d'accepter une réservation, de délivrer ou fournir un billet ou d'embarquer des personnes au seul motif de leur handicap ou de leur mobilité réduite.

2. Les réservations et les billets sont proposés aux personnes handicapées et aux personnes à mobilité réduite sans supplément et aux mêmes conditions qu'aux autres passagers.

Article 8

Exceptions et conditions spéciales

1. Par dérogation à l'article 7, paragraphe 1, les transporteurs, agents de voyages et voyagistes peuvent refuser d'accepter une réservation, de délivrer ou fournir un billet ou d'embarquer une personne handicapée ou à mobilité réduite:

a) afin de respecter les exigences applicables en matière de sécurité prévues par le droit international, le droit de l'Union ou le droit national, ou afin de respecter les exigences en matière de sécurité établies par les autorités compétentes;

b) si la conception du navire à passagers ou les infrastructures et les équipements du port, y compris les terminaux portuaires, rendent l'embarquement, le débarquement ou le transport de la personne concernée impossible dans des conditions sûres ou réalisables sur le plan opérationnel.

2. En cas de refus d'accepter une réservation ou de délivrer ou fournir un billet pour les motifs visés au paragraphe 1, les transporteurs, agents de voyages ou voyagistes s'efforcent, dans toute la mesure du raisonnable, de proposer à la personne concernée un transport alternatif acceptable par le biais d'un service de transport de passagers ou d'une croisière exploités par le transporteur.

3. Si une personne handicapée ou une personne à mobilité réduite qui dispose d'une réservation ou d'un billet et qui s'est conformée aux exigences visées à l'article 11, paragraphe 2, se voit néanmoins opposer un refus d'embarquement sur la base du présent règlement, celle-ci, et toute personne l'accompagnant visée au paragraphe 4, se voient proposer de choisir entre un remboursement et un réacheminement comme le prévoit l'annexe I. Le droit de choisir entre un trajet retour ou un réacheminement est conditionné par le respect de toutes les exigences de sécurité.

4. En cas de stricte nécessité et dans les mêmes conditions que celles énoncées au paragraphe 1, les transporteurs, agents de voyage et voyagistes peuvent demander qu'une personne handicapée ou une personne à mobilité réduite soit accompagnée par une autre personne capable de fournir l'assistance requise par la personne handicapée ou la personne à mobilité réduite. En ce qui concerne les services de transport de passagers, l'accompagnant est transporté gratuitement.

5. Lorsqu'un transporteur, un agent de voyages ou un voyagiste a recours aux paragraphes 1 ou 4, il en communique immédiatement les raisons précises à la personne handicapée ou à la personne à mobilité réduite. Sur demande, ces raisons sont notifiées par écrit à la personne handicapée ou à la personne à mobilité réduite au plus tard cinq jours ouvrables à partir de la demande. En cas de refus conformément au paragraphe 1, point a), il est fait référence aux exigences applicables en matière de sécurité.

Article 9

Accessibilité et information

1. En collaboration avec les organisations représentatives des personnes handicapées ou des personnes à mobilité réduite, les transporteurs et les exploitants de terminaux établissent, le cas échéant par l'intermédiaire de leurs organisations, ou maintiennent, des conditions d'accès non discriminatoires applicables au transport de personnes handicapées et de personnes à mobilité réduite, ainsi que des personnes qui les accompagnent. Les conditions d'accès sont communiquées, sur demande, aux organismes nationaux chargés de l'application.

2. Les conditions d'accès prévues au paragraphe 1 sont portées à la connaissance du public par les transporteurs et les exploitants de terminaux, directement ou sur l'internet, dans des formats accessibles sur demande et dans les mêmes langues que celles dans lesquelles les informations sont généralement fournies à l'ensemble des passagers. Une attention particulière est accordée aux besoins des personnes handicapées et des personnes à mobilité réduite.

3. Les voyagistes mettent à disposition les conditions d'accès prévues au paragraphe 1 qui s'appliquent aux trajets inclus dans les voyages, vacances et circuits à forfait qu'ils organisent, commercialisent ou proposent à la vente.

4. Les transporteurs, les agents de voyages et les voyagistes veillent à ce que toutes les informations pertinentes, y compris pour les réservations et les informations en ligne, concernant les conditions de transport, les informations sur les trajets et les conditions d'accès soient mises à la disposition des personnes handicapées et des personnes à mobilité réduite, dans des formats appropriés et accessibles. Les personnes ayant besoin d'assistance reçoivent la confirmation de celle-ci par tout moyen disponible, y compris par voie électronique ou par SMS.

Article 10

Droit à une assistance dans les ports et à bord des navires

Sous réserve des conditions d'accès prévues à l'article 9, paragraphe 1, les transporteurs et les exploitants de terminaux fournissent gratuitement, dans leurs domaines respectifs de compétence, aux personnes handicapées et aux personnes à mobilité réduite une assistance, telle que définie aux annexes II et III, dans les ports, y compris lors de l'embarquement et du débarquement, et à bord des navires. Cette assistance est adaptée, si possible, aux besoins particuliers de la personne handicapée ou de la personne à mobilité réduite.

Article 11

Conditions selon lesquelles est fournie l'assistance

1. Les transporteurs et les exploitants de terminaux fournissent, dans leurs domaines respectifs de compétence, aux personnes handicapées et aux personnes à mobilité réduite l'assistance visée à l'article 10 selon les conditions suivantes:

a) le transporteur ou l'exploitant de terminal s'est vu notifier, par tout moyen disponible, y compris par voie électronique ou par SMS, au moins quarante-huit heures à l'avance, le besoin d'assistance de la personne, à moins qu'un délai plus court ne soit convenu entre le passager et le transporteur ou l'exploitant de terminal; et

b) la personne handicapée ou la personne à mobilité réduite se présente elle-même au port ou à l'endroit visé à l'article 12, paragraphe 3:

   i) à une heure fixée par écrit par le transporteur, qui ne doit pas précéder de plus de soixante minutes l'heure d'embarquement annoncée; ou

   ii) si aucune heure n'a été fixée pour l'embarquement, au moins soixante minutes avant l'heure de départ annoncée, à moins qu'un délai plus court ne soit convenu entre le passager et le transporteur ou l'exploitant de terminal.

2. Outre le paragraphe 1, la personne handicapée ou la personne à mobilité réduite notifie au transporteur, lors de la réservation ou de la prévente du billet, ses besoins particuliers en ce qui concerne la cabine, la place assise, les services requis ou la nécessité d'emporter du matériel médical, pour autant que ce besoin soit connu à ce moment-là.

3. Une notification effectuée conformément au paragraphe 1, point a), et au paragraphe 2 peut toujours être soumise à l'agent de voyages ou au voyagiste auprès duquel le billet a été acheté. Lorsque le billet permet d'effectuer plusieurs trajets, une seule notification suffit, pour autant que des informations suffisantes soient fournies sur les horaires des trajets ultérieurs. Le passager reçoit une confirmation indiquant que les besoins d'assistance ont été dûment notifiés conformément au paragraphe 1, point a), et au paragraphe 2.

4. Si aucune notification n'est effectuée conformément au paragraphe 1, point a), et au paragraphe 2, le transporteur et l'exploitant du terminal s'efforcent néanmoins, dans la mesure du raisonnable, de fournir à la personne handicapée ou à la personne à mobilité réduite une assistance qui lui permette d'embarquer sur le navire, de débarquer du navire et de voyager à bord de celui-ci.

5. Si une personne handicapée ou une personne à mobilité réduite est accompagnée d'un chien d'assistance reconnu, celui-ci est accueilli à bord avec la personne, sous réserve que le transporteur, l'agent de voyages ou le voyagiste ait été informé conformément aux règles nationales applicables en matière de transport des chiens d'assistance reconnus à bord des navires à passagers, si de telles règles existent.

Article 12

Réception de notifications et indication des points de rendez-vous

1. Les transporteurs, les exploitants de terminaux, les agents de voyages et les voyagistes prennent toutes les mesures nécessaires afin de faciliter les demandes de notification et les réceptions des notifications effectuées conformément à l'article 11, paragraphe 1, point a), et à l'article 11, paragraphe 2. Cette obligation s'applique dans l'ensemble de leurs points de vente, y compris à la vente par téléphone et par l'internet.

2. Si un agent de voyages ou un voyagiste reçoit les notifications visées au paragraphe 1, il transmet l'information sans retard au transporteur ou à l'exploitant du terminal pendant les heures normales de bureau.

3. Les transporteurs et les exploitants de terminaux indiquent l'endroit, à l'intérieur ou à l'extérieur des terminaux portuaires, où les personnes handicapées ou les personnes à mobilité réduite peuvent annoncer leur arrivée et demander une assistance. Cet endroit est clairement signalé et fournit, dans des formats accessibles, des informations de base sur le terminal portuaire et l'assistance offerte.

Article 13

Normes de qualité applicables à l'assistance

1. Les exploitants de terminaux et les transporteurs exploitant des terminaux portuaires ou des services de transport de passagers ayant totalisé plus de 100 000 mouvements commerciaux de passagers au cours de l'année civile précédente définissent, dans leurs domaines respectifs de compétence, des normes de qualité pour l'assistance prévue aux annexes II et III, et déterminent, le cas échéant par le biais de leurs organisations, les exigences en matière de ressources requises pour respecter ces normes en collaboration avec les organisations représentatives des personnes handicapées ou des personnes à mobilité réduite.

2. Lors de la définition de ces normes de qualité, il convient de tenir pleinement compte des politiques et codes de conduite reconnus au niveau international concernant la simplification du transport des personnes handicapées ou des personnes à mobilité réduite, notamment la recommandation de l'OMI concernant la conception et l'exploitation des navires à passagers en vue de répondre aux besoins des personnes âgées et des personnes handicapées.

3. Les normes de qualité prévues au paragraphe 1 sont portées à la connaissance du public par les exploitants de terminaux et les transporteurs directement ou sur l'internet dans des formats accessibles directement et dans les mêmes langues que celles dans lesquelles les informations sont généralement fournies à l'ensemble des passagers.

Article 14

Formation et consignes

Sans préjudice de la convention internationale et du code sur les normes de formation des gens de mer, de délivrance des brevets et de veille, ni des règlements adoptés au titre de la convention révisée pour la navigation du Rhin et de la convention relative au régime de la navigation sur le Danube, les transporteurs et, le cas échéant, les exploitants de terminaux fixent des procédures de formation, y compris des consignes, sur le handicap, et veillent:

a) à ce que leur personnel, y compris les personnes employées par toute autre partie exécutante, qui fournit une assistance directe aux personnes handicapées et aux personnes à mobilité réduite reçoive une formation ou dispose de consignes conformément à l'annexe IV, parties A et B;

b) à ce que leur personnel chargé de la réservation et de la vente des billets, ainsi que des opérations d'embarquement et de débarquement, y compris les personnes employées par toute autre partie exécutante, reçoive une formation ou dispose de consignes conformément à l'annexe IV, partie A; et

c) à ce que les catégories de personnel visées aux points a) et b) maintiennent leurs compétences, par exemple en disposant de consignes ou en recevant des cours de remise à niveau, le cas échéant.

Article 15

Indemnisation pour l'équipement de mobilité ou tout autre équipement spécifique

1. Le transporteur et l'exploitant du terminal sont responsables du préjudice résultant de la perte ou de la détérioration de l'équipement de mobilité, ou de tout autre équipement spécifique, utilisé par une personne handicapée ou une personne à mobilité réduite, si l'événement générateur du préjudice est imputable à la faute ou à la négligence du transporteur ou de l'exploitant du terminal. Il y a présomption de faute ou de négligence du transporteur en cas de préjudice causé par un événement maritime.

2. L'indemnisation visée au paragraphe 1 correspond à la valeur de remplacement de l'équipement concerné ou, le cas échéant, aux coûts liés à la réparation.

3. Les paragraphes 1 et 2 ne s'appliquent pas lorsque l'article 4 du règlement (CE) n° 392/2009 du Parlement européen et du Conseil du 23 avril 2009 relatif à la responsabilité des transporteurs de passagers par mer en cas d'accident [1] s'applique.

4. En outre, tous les efforts sont déployés pour fournir rapidement un équipement de remplacement temporaire qui constitue une solution de rechange adéquate.

[1] JO L 131 du 28.5.2009, p. 24.

CHAPITRE III

OBLIGATIONS DES TRANSPORTEURS ET DES EXPLOITANTS DE TERMINAUX EN CAS D'INTERRUPTION DE VOYAGE

Article 16

Information en cas de départs annulés ou retardés

1. En cas d'annulation ou de départ retardé d'un service de transport de passagers ou d'une croisière, les passagers partant de terminaux portuaires ou, si possible, les passagers partant de ports, sont informés de la situation par le transporteur ou, le cas échéant, par l'exploitant du terminal, dans les plus brefs délais et, en tout état de cause, au plus tard trente minutes après l'heure prévue de départ, ainsi que de l'heure estimée de départ et de l'heure estimée d'arrivée, dès que ces informations sont disponibles.

2. Si des passagers manquent un service de correspondance dans le cadre du transport en raison d'une annulation ou d'un retard, le transporteur et, le cas échéant, l'exploitant du terminal s'efforcent, dans la mesure du raisonnable, d'informer les passagers concernés des autres correspondances disponibles.

3. Le transporteur ou, le cas échéant, l'exploitant du terminal veille à ce que les personnes handicapées ou les personnes à mobilité réduite reçoivent, dans des formats accessibles, les informations requises en vertu des paragraphes 1 et 2.

Article 17

Assistance en cas de départs annulés ou retardés

1. Lorsqu'un transporteur peut raisonnablement s'attendre à ce que le départ d'un service de transport de passagers ou d'une croisière soit annulé ou retardé de plus de quatre-vingt-dix minutes par rapport à l'heure de départ prévue, les passagers partant de terminaux portuaires se voient offrir gratuitement des collations, des repas ou des rafraîchissements en suffisance compte tenu du délai d'attente, à condition que ceux-ci soient disponibles ou qu'ils puissent raisonnablement être livrés.

2. En cas d'annulation ou de départ retardé, si un séjour d'une nuit ou plus devient nécessaire ou qu'un séjour supplémentaire par rapport à celui prévu par le passager s'impose, si et quand cela est matériellement possible, le transporteur offre gratuitement aux passagers partant de terminaux portuaires un hébergement à bord ou à terre, ainsi que le transport dans les deux sens entre le terminal portuaire et le lieu d'hébergement, outre les collations, repas ou rafraîchissements prévus au paragraphe 1. Pour chaque passager, le transporteur peut limiter à un montant de 80 EUR par nuit, pour un maximum de trois nuits, le coût total de l'hébergement à terre, non compris le transport dans les deux sens entre le terminal portuaire et le lieu d'hébergement.

3. Lors de l'application des paragraphes 1 et 2, le transporteur accorde une attention particulière aux besoins des personnes handicapées et des personnes à mobilité réduite, ainsi qu'aux personnes qui les accompagnent.

Article 18

Réacheminement et remboursement en cas de départs annulés ou retardés

1. Lorsqu'un transporteur peut raisonnablement s'attendre à ce qu'un service de transport de passagers soit annulé ou à ce que son départ d'un terminal portuaire soit retardé de plus de quatre-vingt-dix minutes, le passager se voit immédiatement offrir le choix entre:

a) un réacheminement vers la destination finale, telle qu'établie dans le contrat de transport, sans aucun supplément, dans des conditions comparables et dans les meilleurs délais;

b) le remboursement du prix du billet et, s'il y a lieu, un service de transport de retour gratuit dans les meilleurs délais jusqu'au point de départ initial tel qu'établi dans le contrat de transport.

2. Lorsqu'un service de transport de passagers est annulé ou si son départ d'un port est retardé de plus de quatre-vingt-dix minutes, les passagers ont droit au réacheminement ou au remboursement du prix du billet de la part du transporteur.

3. Le remboursement intégral du billet prévu au paragraphe 1, point b), et au paragraphe 2 s'effectue dans un délai de sept jours en espèces, par virement bancaire électronique, mandat ou chèque bancaires, au tarif auquel il a été acheté, pour la ou les parties non effectuées du trajet ainsi que pour la ou les parties déjà effectuées si le trajet ne présente plus aucun intérêt par rapport au plan de voyage initial du passager. Avec l'accord du passager, le remboursement intégral du billet peut également être fait sous forme de bons et/ou d'autres services d'un montant équivalent au tarif auquel il a été acheté, à condition que les conditions soient flexibles, notamment en ce qui concerne la période de validité et la destination.

Article 19

Indemnisation relative au prix du billet en cas de retard à l'arrivée

1. Les passagers qui subissent un retard à l'arrivée à la destination finale telle qu'établie dans le contrat de transport peuvent, sans perdre leur droit au transport, demander une indemnisation au transporteur. Les indemnisations minimales sont équivalentes à 25 % du prix du billet en cas de retard d'au moins:

a) une heure dans le cas d'un voyage dont la durée prévue est inférieure ou égale à quatre heures;

b) deux heures dans le cas d'un voyage dont la durée prévue est supérieure à quatre heures, mais inférieure ou égale à huit heures;

c) trois heures dans le cas d'un voyage dont la durée prévue est supérieure à huit heures mais n'excède pas vingt-quatre heures; ou

d) six heures dans le cas d'un voyage dont la durée prévue est supérieure à vingt-quatre heures.

Si le retard est supérieur au double des valeurs énoncées aux points a) à d), l'indemnisation est égale à 50 % du prix du billet.

2. Les passagers qui détiennent une carte de transport ou un abonnement et sont confrontés à des retards répétés à l'arrivée pendant sa durée de validité peuvent demander une indemnisation adéquate conformément aux dispositions prises par le transporteur en matière d'indemnisation. Ces dispositions fixent les critères applicables en matière de retard à l'arrivée et de calcul de l'indemnisation.

3. L'indemnisation est calculée par rapport au prix que le passager a réellement payé pour le service de transport de passagers ayant subi un retard.

4. Lorsque le transport porte sur un trajet aller-retour, l'indemnisation en cas de retard à l'arrivée, à l'aller ou au retour, est calculée par rapport à la moitié du prix payé pour le transport effectué au moyen du service de transport de passagers.

5. L'indemnisation est payée dans le mois qui suit le dépôt de la demande d'indemnisation. Elle peut être payée sous la forme de bons et/ou d'autres services à condition que les conditions soient flexibles, notamment en ce qui concerne la période de validité et la destination. Elle est payée en argent à la demande du passager.

6. L'indemnisation relative au prix du billet n'est pas grevée de coûts de transaction financière tels que redevances, frais de téléphone ou timbres. Les transporteurs peuvent fixer un seuil minimal en dessous duquel aucune indemnisation n'est payée. Ce seuil ne dépasse pas 6 EUR.

Article 20

Exemptions

1. Les articles 17, 18 et 19 ne s'appliquent pas aux passagers munis de billets ouverts pour autant que l'heure de départ ne soit pas indiquée, à l'exception des passagers détenant une carte de transport ou un abonnement.

2. Les articles 17 et 19 ne s'appliquent pas si le passager est informé de l'annulation ou du retard avant l'achat du billet ou si l'annulation ou le retard est dû à la faute du passager.

3. L'article 17, paragraphe 2, ne s'applique pas lorsque le transporteur prouve que l'annulation ou le retard sont dus à des conditions météorologiques compromettant l'exploitation du navire en toute sécurité.

4. L'article 19 ne s'applique pas lorsque le transporteur prouve que l'annulation ou le retard sont dus à des conditions météorologiques compromettant l'exploitation du navire en toute sécurité ou à des circonstances extraordinaires empêchant l'exécution du service de transport de passagers, qui n'auraient pas pu être évitées même si toutes les mesures raisonnables avaient été prises.

Article 21

Autres voies de recours

Le présent règlement ne saurait en rien empêcher les passagers de saisir les juridictions nationales pour demander des dommages-intérêts conformément au droit national en réparation du préjudice résultant de l'annulation ou du retard de services de transport, y compris en vertu de la directive 90/314/CEE.

CHAPITRE IV

RÈGLES GÉNÉRALES CONCERNANT L'INFORMATION ET LES PLAINTES

Article 22

Droit à l'information sur les voyages

Les transporteurs et les exploitants de terminaux, dans leurs domaines respectifs de compétence, fournissent aux passagers, tout au long de leur voyage, des informations adéquates dans des formats accessibles à tous et dans les mêmes langues que celles dans lesquelles les informations sont généralement fournies à l'ensemble des passagers. Une attention particulière est accordée aux besoins des personnes handicapées et des personnes à mobilité réduite.

Article 23

Informations relatives aux droits des passagers

1. Les transporteurs, les exploitants de terminaux et, le cas échéant, les autorités portuaires veillent, dans leurs domaines respectifs de compétence, à ce que les informations relatives aux droits des passagers en vertu du présent règlement soient mises à la disposition du public à bord des navires, si possible dans les ports et dans les terminaux portuaires. Les informations sont fournies dans la mesure du possible dans des formats accessibles et dans les mêmes langues que celles dans lesquelles les informations sont généralement fournies à l'ensemble des passagers. Lorsque ces informations sont fournies, une attention particulière est accordée aux besoins des personnes handicapées et des personnes à mobilité réduite.

2. Afin de se conformer à l'obligation d'information visée au paragraphe 1, les transporteurs, les exploitants de terminaux et, le cas échéant, les autorités portuaires peuvent utiliser un résumé des dispositions du présent règlement établi par la Commission dans toutes les langues officielles de l'Union européenne et mis à leur disposition.

3. Les transporteurs, les exploitants de terminaux et, le cas échéant, les autorités portuaires informent les passagers d'une manière appropriée à bord des navires, si possible dans les ports et dans les terminaux portuaires, des coordonnées de l'organisme chargé de l'application désigné par l'État membre concerné conformément à l'article 25, paragraphe 1.

Article 24

Plaintes

1. Les transporteurs et les exploitants de terminaux établissent ou mettent en place un mécanisme accessible de traitement des plaintes concernant les droits et les obligations visés par le présent règlement.

2. Un passager visé par le présent règlement qui souhaite déposer une plainte auprès du transporteur ou de l'exploitant d'un terminal l'introduit dans un délai de deux mois à partir de la date à laquelle le service a été exécuté ou aurait dû être exécuté. Dans un délai d'un mois suivant la réception de la plainte, le transporteur ou l'exploitant de terminal informe le passager que sa plainte a été retenue, rejetée ou est toujours à l'examen. La réponse définitive lui est donnée dans un délai de deux mois au maximum à partir de la date de réception de la plainte.

CHAPITRE V

APPLICATION ET ORGANISMES NATIONAUX CHARGÉS DE L'APPLICATION

Article 25

Organismes nationaux chargés de l'application

1. Chaque État membre désigne un ou plusieurs organismes, nouveaux ou existants, chargés de l'application du présent règlement en ce qui concerne les services de transport de passagers et les croisières à partir de ports situés sur son territoire et les services de transport de passagers en provenance d'un pays tiers à destination de ces ports. Chaque organisme prend les mesures nécessaires pour assurer le respect du présent règlement.

Chaque organisme est indépendant d'intérêts commerciaux en ce qui concerne son organisation, ses décisions de financement, sa structure juridique et son processus de prise de décision.

2. Les États membres informent la Commission de l'organisme ou des organismes désignés conformément au présent article.

3. Tout passager peut déposer une plainte pour infraction alléguée au présent règlement, conformément à son droit national, auprès de l'organisme compétent désigné en vertu du paragraphe 1 ou auprès de tout autre organisme compétent désigné par un État membre. L'organisme compétent fournit aux passagers une réponse motivée à leur plainte dans un délai raisonnable.

Un État membre peut décider:

a) que le passager est tenu, dans un premier temps, de déposer la plainte relevant du présent règlement auprès du transporteur ou de l'exploitant de terminal; et/ou

b) que l'organisme national chargé de l'application ou tout autre organisme compétent désigné par l'État membre agit en tant qu'instance de recours pour les plaintes n'ayant pas été réglées en vertu de l'article 24.

4. Les États membres ayant choisi d'exempter certains services en application de l'article 2, paragraphe 4, assurent la mise en place d'un mécanisme comparable d'application des droits des passagers.

Article 26

Rapport sur l'application

Les organismes chargés de l'application désignés en vertu de l'article 25 publient, au plus tard le 1er juin 2015 et tous les deux ans à partir de cette date, un rapport concernant leurs activités des deux années civiles précédentes, contenant, notamment, une description des mesures prises pour faire appliquer les dispositions du présent règlement, les détails des sanctions appliquées ainsi que les statistiques sur les plaintes et les sanctions appliquées.

Article 27

Coopération entre organismes chargés de l'application

Les organismes nationaux chargés de l'application visés à l'article 25, paragraphe 1, échangent des informations sur leurs travaux ainsi que sur leurs principes et pratiques de prise de décision dans la mesure nécessaire à l'application cohérente du présent règlement. La Commission les assiste dans cette tâche.

Article 28

Sanctions

Les États membres déterminent le régime des sanctions applicables aux violations des dispositions du présent règlement et prennent toutes les mesures nécessaires pour assurer leur application. Les sanctions ainsi prévues sont effectives, proportionnées et dissuasives. Les États membres notifient ce régime et ces mesures à la Commission au plus tard le 18 décembre 2012 et l'informent, sans délai, de toute modification ultérieure les concernant.

CHAPITRE VI

DISPOSITIONS FINALES

Article 29

Rapport

La Commission fait rapport au Parlement européen et au Conseil sur le fonctionnement et les effets du présent règlement, au plus tard le 19 décembre 2015. Le rapport est assorti, le cas échéant, de propositions législatives destinées à mettre en œuvre de manière plus détaillée les dispositions du présent règlement ou à le modifier.

Article 30

Modification du règlement (CE) nº 2006/2004

À l'annexe du règlement (CE) nº 2006/2004, le point suivant est ajouté:

«18. Règlement (UE) nº 1177/2010 du Parlement européen et du Conseil du 24 novembre 2010 concernant les droits des passagers voyageant par mer ou par voie de navigation intérieure (*).

(*) JO L 334 du 17.12.2010, p. 1.»

Article 31

Entrée en vigueur

Le présent règlement entre en vigueur le vingtième jour suivant celui de sa publication au *Journal officiel de l'Union européenne*.

Il est applicable à partir du 18 décembre 2012.

Le présent règlement est obligatoire dans tous ses éléments et directement applicable dans tout État membre.

Fait à Strasbourg, le 24 novembre 2010.

Par le Parlement européen
Le président
J. BUZEK

Par le Conseil
Le président
O. CHASTEL

ANNEXE I

DROIT AU REMBOURSEMENT OU AU RÉACHEMINEMENT POUR LES PERSONNES HANDICAPÉES ET LES PERSONNES À MOBILITÉ RÉDUITE, VISÉ À L'ARTICLE 8

1. Lorsqu'il est fait référence à la présente annexe, les personnes handicapées et les personnes à mobilité réduite se voient offrir le choix entre:

   a) — le remboursement intégral dans un délai de sept jours en espèces, par virement bancaire électronique, mandat ou chèque bancaires, du billet au tarif auquel il a été acheté, pour la ou les parties non effectuées du trajet et pour la ou les parties déjà effectuées si le trajet ne présente plus aucun intérêt par rapport au plan de voyage initial du passager, ainsi que, le cas échéant,

   — un service de transport de retour jusqu'au point de départ initial, dans les meilleurs délais; ou

   b) un réacheminement vers la destination finale telle qu'établie dans le contrat de transport, sans aucun supplément, dans des conditions comparables et dans les meilleurs délais; ou

   c) un réacheminement vers la destination finale telle qu'établie dans le contrat de transport, dans des conditions comparables et à une date ultérieure, à la convenance du passager, sous réserve de la disponibilité de places.

2. Le paragraphe 1, point a), s'applique également aux passagers dont les trajets font partie d'un forfait, à l'exception du droit au remboursement si un tel droit est conféré par la directive 90/314/CEE.

3. Dans le cas d'une localité, d'une ville ou d'une région desservie par plusieurs ports, si un transporteur propose au passager un trajet vers un autre port que celui pour lequel la réservation avait été faite, le transporteur supporte le coût du transfert du passager entre cet autre port et soit le port pour lequel la réservation avait été faite, soit une autre destination proche convenue avec le passager.

ANNEXE II

ASSISTANCE DANS LES PORTS, Y COMPRIS LORS DE L'EMBARQUEMENT ET DU DÉBARQUEMENT, VISÉE AUX ARTICLES 10 ET 13

1. Assistance et dispositions nécessaires pour permettre aux personnes handicapées et aux personnes à mobilité réduite:

   — de communiquer leur arrivée dans un terminal portuaire ou, si possible, dans un port et leur demande d'assistance,

   — de se déplacer entre un point d'entrée et le guichet d'enregistrement (s'il existe) ou le navire,

   — de s'enregistrer et de faire enregistrer leurs bagages, si nécessaire,

   — de rejoindre le navire depuis le guichet d'enregistrement, s'il existe, en passant par les points de contrôle pour la sortie du territoire et la sécurité,

   — d'embarquer à bord du navire, avec mise à disposition, selon le cas, d'ascenseurs, de fauteuils roulants ou d'autre type d'assistance appropriée,

   — de rejoindre leur place ou zone depuis l'entrée du navire,

   — de ranger et de récupérer leurs bagages à bord du navire,

   — de rejoindre l'entrée du navire depuis leur place,

   — de débarquer du navire, avec mise à disposition, selon le cas, d'ascenseurs, de fauteuils roulants ou d'autre type d'assistance appropriée,

   — de récupérer leurs bagages, si nécessaire, et de passer par les points de contrôle pour les douanes et l'entrée sur le territoire,

   — de se rendre du hall de retrait des bagages ou du point de débarquement vers la sortie indiquée,

   — de se rendre si besoin aux toilettes (si elles existent).

2. Si une personne handicapée ou une personne à mobilité réduite est assistée par une personne qui l'accompagne, cette dernière doit, sur demande, être autorisée à lui fournir l'assistance nécessaire dans le port et au moment de l'embarquement et du débarquement.

3. Prise en charge de tout l'équipement de mobilité nécessaire, y compris des équipements tels que les fauteuils roulants électriques.

4. Remplacement temporaire d'un équipement de mobilité endommagé ou perdu par un équipement qui constitue une solution de rechange adéquate.

5. Prise en charge à terre de chiens d'assistance reconnus, le cas échéant.

6. Communication des informations requises pour l'embarquement et le débarquement dans des formats accessibles.

ANNEXE III

ASSISTANCE À BORD DES NAVIRES VISÉE AUX ARTICLES 10 ET 13

1. Transport des chiens d'assistance reconnus à bord du navire, sous réserve des réglementations nationales.

2. Transport de l'équipement médical et de l'équipement de mobilité nécessaire à la personne handicapée ou la personne à mobilité réduite, y compris les fauteuils roulants électriques.

3. Communication des informations essentielles concernant un itinéraire dans des formats accessibles.

4. Prise de toutes les dispositions raisonnables afin de prévoir une place répondant aux besoins des personnes handicapées ou des personnes à mobilité réduite, sur demande et sous réserve du respect des exigences de sécurité et de la disponibilité.

5. Sur demande, assistance pour se rendre aux toilettes (si elles existent).

6. Si une personne handicapée ou une personne à mobilité réduite est assistée par une personne qui l'accompagne, le transporteur s'efforce, dans la mesure du raisonnable, de procurer à cette personne une place ou une cabine à côté de la personne handicapée ou de la personne à mobilité réduite.

ANNEXE IV

FORMATION, Y COMPRIS CONSIGNES, SUR LE HANDICAP, VISÉE À L'ARTICLE 14

A. Formation, y compris consignes, de sensibilisation au handicap

La formation, y compris les consignes, de sensibilisation au handicap porte sur:

— une sensibilisation et les réponses appropriées à apporter aux passagers souffrant de handicaps physiques, sensoriels (auditifs et visuels), de handicaps cachés ou de troubles de l'apprentissage, y compris la distinction entre les différentes capacités des personnes dont la mobilité, l'orientation ou la communication peuvent être limitées,

— les obstacles rencontrés par les personnes handicapées et les personnes à mobilité réduite, notamment sur le plan des attitudes, de l'environnement, les obstacles matériels et liés à l'organisation,

— les chiens d'assistance reconnus, y compris le rôle et les besoins d'un chien d'assistance,

— la gestion des événements imprévus,

— les capacités interpersonnelles et les méthodes de communication avec les personnes malentendantes, les personnes malvoyantes et les personnes présentant des troubles de la parole et de l'apprentissage,

— une sensibilisation générale aux lignes directrices de l'OMI liées à la recommandation relative à la conception et à l'exploitation des navires à passagers en fonction des besoins spécifiques des personnes âgées et des personnes handicapées.

B. Formation, y compris consignes, d'assistance aux personnes handicapées

La formation, y compris les instructions, d'assistance aux personnes handicapées porte sur:

— la manière d'aider les utilisateurs de fauteuils roulants à s'asseoir dans un fauteuil roulant et à en sortir,

— l'aptitude à l'assistance des personnes handicapées et des personnes à mobilité réduite accompagnées d'un chien d'assistance reconnu, y compris le rôle et les besoins de ces chiens,

— les techniques d'accompagnement des passagers malvoyants et de prise en charge et de transport des chiens d'assistance reconnus,

— la connaissance des types d'équipement pouvant assister les personnes handicapées et les personnes à mobilité réduite, et du maniement soigneux de ces équipements,

— l'utilisation des équipements d'assistance employés à l'embarquement et au débarquement, et la connaissance des procédures appropriées d'assistance à l'embarquement et au débarquement permettant d'assurer la sécurité et la dignité des personnes handicapées et des personnes à mobilité réduite,

— une compréhension de la nécessité d'une assistance fiable et professionnelle, et la sensibilisation au fait que certaines personnes handicapées ou personnes à mobilité réduite peuvent ressentir une certaine vulnérabilité au cours du voyage en raison de leur dépendance vis-à-vis de l'assistance fournie,

— une connaissance des premiers secours.

RÈGLEMENT (CE) Nº 1371/2007 DU PARLEMENT EUROPÉEN ET DU CONSEIL

du 23 octobre 2007

sur les droits et obligations des voyageurs ferroviaires

LE PARLEMENT EUROPÉEN ET LE CONSEIL DE L'UNION EUROPÉENNE,

vu le traité instituant la Communauté européenne, et notamment son article 71, paragraphe 1,

vu la proposition de la Commission,

vu l'avis du Comité économique et social européen [1],

vu l'avis du Comité des régions [2],

statuant conformément à la procédure visée à l'article 251 du traité, au vu du projet commun approuvé par le comité de conciliation, le 31 juillet 2007 [3],

considérant ce qui suit:

(1) Dans le cadre de la politique commune des transports, il importe de sauvegarder les droits des voyageurs ferroviaires et d'améliorer la qualité et l'efficacité des services ferroviaires de voyageurs afin d'aider à accroître la part du transport ferroviaire par rapport aux autres modes de transport.

(2) La communication de la Commission intitulée «Stratégie pour la politique des consommateurs 2002-2006» [4] fixe l'objectif d'un niveau élevé de protection des consommateurs dans le domaine des transports, conformément à l'article 153, paragraphe 2, du traité.

(3) Le voyageur ferroviaire étant la partie faible du contrat de transport, il convient de sauvegarder ses droits à cet égard.

(4) Les droits des usagers des services ferroviaires comprennent la réception d'informations concernant le service avant et pendant le voyage. Dans la mesure du possible, les entreprises ferroviaires et les vendeurs de billets devraient fournir ces informations à l'avance et dans les meilleurs délais.

(5) Des exigences plus précises concernant la fourniture d'informations sur les voyages seront définies dans les spécifications techniques d'interopérabilité (STI) visées par la directive 2001/16/CE du Parlement européen et du Conseil du 19 mars 2001 relative à l'interopérabilité du système ferroviaire conventionnel [5].

(6) Le renforcement des droits des voyageurs ferroviaires devrait reposer sur le système de droit international existant à ce sujet qui figure à l'appendice A — règles uniformes concernant le contrat de transport international ferroviaire des voyageurs et des bagages (CIV) de la convention relative aux transports internationaux ferroviaires (COTIF) du 9 mai 1980, telle que modifiée par le protocole portant modification de la COTIF du 3 juin 1999 (protocole de 1999). Il est cependant souhaitable d'étendre le champ d'application du présent règlement afin de protéger non seulement les voyageurs internationaux, mais aussi les voyageurs nationaux.

(7) Les entreprises ferroviaires devraient coopérer en vue de faciliter le transfert des voyageurs ferroviaires d'un opérateur à l'autre par la fourniture de billets directs, dans la mesure du possible.

(8) La fourniture d'informations et de billets aux voyageurs ferroviaires devrait être facilitée par l'adaptation des systèmes informatiques à une spécification commune.

(9) La poursuite de la mise en œuvre des systèmes d'information des voyageurs et de réservation devrait se faire conformément aux STI.

(10) Il convient que les services ferroviaires de transport de voyageurs profitent aux citoyens en général. Par conséquent, les personnes handicapées et les personnes à mobilité réduite, du fait d'un handicap, de l'âge ou de tout autre facteur, devraient accéder aux transports ferroviaires dans des conditions comparables à celles des autres citoyens. Les personnes handicapées et les personnes à mobilité réduite ont le même droit que tous les autres citoyens à la libre circulation, à la liberté de choix et à la non-discrimination. Entre autres, il y a lieu de veiller en particulier à ce que les personnes handicapées et les personnes à mobilité réduite reçoivent des informations sur l'accessibilité des services ferroviaires, les conditions d'accès au matériel roulant et les équipements à bord. Afin de communiquer le mieux possible les informations concernant les retards aux personnes souffrant de handicaps sensoriels, il conviendrait de recourir à des systèmes audio et visuels, en tant que de besoin. Les personnes handicapées et les personnes à mobilité réduite devraient avoir la possibilité d'acheter leur billet à bord des trains sans supplément de prix.

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[1] JO C 221 du 8.9.2005, p. 8.

[2] JO C 71 du 22.3.2005, p. 26.

[3] Avis du Parlement européen du 28 septembre 2005 (JO C 227 E du 21.9.2006, p. 490), position commune du Conseil du 24 juillet 2006 (JO C 289 E du 28.11.2006, p. 1), position du Parlement européen du 18 janvier 2007 (non encore parue au Journal officiel), résolution législative du Parlement européen du 25 septembre 2007 et décision du Conseil du 26 septembre 2007.

[4] JO C 137 du 8.6.2002, p. 2.

[5] JO L 110 du 20.4.2001, p. 1. Directive modifiée en dernier lieu par la directive 2007/32/CE de la Commission (JO L 141 du 2.6.2007, p. 63).

(11) Les entreprises ferroviaires et les gestionnaires des gares devraient tenir compte des besoins des personnes handicapées ou à mobilité réduite, en se conformant aux STI pour les personnes à mobilité réduite, en vue de garantir que, conformément aux règles communautaires pour les marchés publics, tous les bâtiments et tout le matériel roulant soient rendus accessibles en éliminant progressivement les obstacles physiques et fonctionnels lors de l'acquisition de nouveau matériel ou lors de l'exécution de travaux de construction ou de rénovation majeure.

(12) Les entreprises ferroviaires devraient être obligées d'être assurées ou d'avoir pris des dispositions équivalentes pour couvrir leur responsabilité envers les voyageurs ferroviaires en cas d'accident. Le montant d'assurance minimal pour les entreprises ferroviaires devrait être soumis à un réexamen dans le futur.

(13) Le renforcement des droits en matière d'indemnisation et d'assistance en cas de retard, de correspondance manquée ou d'annulation d'un service devrait aboutir à un accroissement des incitations en faveur du marché des services ferroviaires de transport de voyageurs, au bénéfice des voyageurs.

(14) Il est souhaitable que le présent règlement crée un système d'indemnisation pour les voyageurs en cas de retard, qui soit lié à la responsabilité de l'entreprise ferroviaire, sur la même base que le système international prévu par la COTIF et en particulier son appendice CIV relatif aux droits des voyageurs.

(15) Lorsqu'un État membre dispense une entreprise ferroviaire de l'application des dispositions du présent règlement, il devrait, en consultation avec les organisations représentant les voyageurs, encourager ladite entreprise à prendre des dispositions en vue d'octroyer une compensation et une assistance lors d'une perturbation majeure d'un service ferroviaire.

(16) Il est également souhaitable d'aider les victimes d'accident et les personnes à leur charge à faire face à leurs besoins financiers à court terme dans la période qui suit immédiatement un accident.

(17) Il est dans l'intérêt des voyageurs ferroviaires que des mesures adéquates soient prises, en accord avec les autorités publiques, pour garantir leur sécurité personnelle dans les gares ainsi qu'à bord des trains.

(18) Les voyageurs ferroviaires devraient pouvoir déposer auprès de toute entreprise ferroviaire concernée une plainte relative aux droits et aux obligations prévus par le présent règlement et être en droit de recevoir une réponse dans un délai raisonnable.

(19) Les entreprises ferroviaires devraient définir, gérer et contrôler les normes de qualité du service pour les services ferroviaires de transport de voyageurs.

(20) Le contenu du présent règlement devrait être réexaminé en ce qui concerne l'ajustement des montants financiers à l'inflation et les exigences en matière d'informations et de qualité du service à la lumière des évolutions du marché ainsi que des effets du présent règlement sur la qualité du service.

(21) Il y a lieu que le présent règlement s'applique sans préjudice de la directive 95/46/CE du Parlement européen et du Conseil du 24 octobre 1995 relative à la protection des personnes physiques à l'égard du traitement des données à caractère personnel et à la libre circulation de ces données [1].

(22) Les États membres devraient déterminer les sanctions applicables en cas de violation des dispositions du présent règlement et veiller à l'application de ces sanctions. Lesdites sanctions, qui pourraient inclure le paiement d'une indemnisation à la personne concernée, devraient être effectives, proportionnées et dissuasives.

(23) Étant donné que les objectifs du présent règlement, à savoir le développement des chemins de fer communautaires et l'instauration de droits des voyageurs, ne peuvent pas être réalisés de manière suffisante par les États membres et peuvent donc être mieux réalisés au niveau communautaire, la Communauté peut prendre des mesures, conformément au principe de subsidiarité consacré à l'article 5 du traité. Conformément au principe de proportionnalité tel qu'énoncé audit article, le présent règlement n'excède pas ce qui est nécessaire pour atteindre ces objectifs.

(24) Le présent règlement a pour but d'améliorer les services ferroviaires de transport de voyageurs dans la Communauté. Par conséquent, les États membres devraient pouvoir accorder des dérogations pour les services dans les régions où une partie importante du service est effectuée en dehors de la Communauté.

(25) Dans certains États membres, les entreprises ferroviaires pourraient rencontrer des difficultés dans la mise en œuvre de l'ensemble des dispositions du présent règlement, lors de son entrée en vigueur. Par conséquent, les États membres devraient pouvoir temporairement dispenser de l'application des dispositions du présent règlement les services ferroviaires intérieurs de transport de voyageurs à longue distance. La dispense temporaire ne devrait toutefois pas s'étendre aux dispositions du présent règlement relatives à l'accès au voyage ferroviaire des personnes handicapées et des personnes à mobilité réduite, ni aux dispositions concernant le droit pour les personnes qui souhaitent acheter un billet de train de le faire sans difficultés excessives, ni aux dispositions relatives à la responsabilité des entreprises ferroviaires en ce qui concerne les voyageurs et leurs bagages, à l'obligation des entreprises d'être assurées de manière adéquate, et à l'exigence pour ces entreprises de prendre les mesures nécessaires en vue d'assurer la sécurité personnelle des voyageurs dans les gares et les trains ainsi que de gérer les risques.

[1] JO L 281 du 23.11.1995, p. 31. Directive modifiée par le règlement (CE) nº 1882/2003 (JO L 284 du 31.10.2003, p. 1).

(26) Les services ferroviaires urbains, suburbains et régionaux de transport de voyageurs ont un caractère différent des services à longue distance. Par conséquent, à l'exception de certaines dispositions qui devraient s'appliquer à tous les services ferroviaires de transport de voyageurs dans l'ensemble de la Communauté, les États membres devraient pouvoir temporairement dispenser les services ferroviaires urbains, suburbains et régionaux de transport de voyageurs de l'application des dispositions du présent règlement.

(27) Il y a lieu d'arrêter les mesures nécessaires pour la mise en œuvre du présent règlement en conformité avec la décision 1999/468/CE du Conseil du 28 juin 1999 fixant les modalités de l'exercice des compétences d'exécution conférées à la Commission [1].

(28) Il convient en particulier d'habiliter la Commission à arrêter des mesures d'exécution. Ces mesures ayant une portée générale et ayant pour objet de modifier des éléments non essentiels du présent règlement, ou de le compléter par l'ajout de nouveaux éléments non essentiels, elles doivent être arrêtées selon la procédure de réglementation avec contrôle prévue à l'article 5 *bis* de la décision 1999/468/CE,

ONT ARRÊTÉ LE PRÉSENT RÈGLEMENT:

CHAPITRE I

DISPOSITIONS GÉNÉRALES

Article premier

Objet

Le présent règlement établit des règles en ce qui concerne:

a) les informations que doivent fournir les entreprises ferroviaires, la conclusion de contrats de transport, l'émission de billets et la mise en œuvre d'un système informatisé d'information et de réservation pour les transports ferroviaires;

b) la responsabilité des entreprises ferroviaires et leurs obligations en matière d'assurance pour les voyageurs et leurs bagages;

c) les obligations des entreprises ferroviaires envers les voyageurs en cas de retard;

d) la protection des personnes handicapées et des personnes à mobilité réduite voyageant en train et l'assistance à ces personnes;

e) la définition et le contrôle des normes de qualité du service, la gestion des risques pour la sécurité personnelle des voyageurs ainsi que le traitement des plaintes; et

f) les règles générales en matière d'exécution.

[1] JO L 184 du 17.7.1999, p. 23. Décision modifiée par la décision 2006/512/CE (JO L 200 du 22.7.2006, p. 11).

Article 2

Champ d'application

1. Le présent règlement s'applique dans toute la Communauté à tous les voyages et services ferroviaires assurés par une ou plusieurs entreprises ferroviaires ayant obtenu une licence conformément à la directive 95/18/CE du Conseil du 19 juin 1995 concernant les licences des entreprises ferroviaires [2].

2. Le présent règlement ne s'applique pas aux services de transport et aux entreprises ferroviaires qui n'ont pas obtenu une licence au titre de la directive 95/18/CE.

3. À partir de l'entrée en vigueur du présent règlement, les articles 9, 11, 12, et 19, l'article 20, paragraphe 1, et l'article 26 s'appliquent dans l'ensemble de la Communauté à tous les services ferroviaires de transport de voyageurs.

4. Sauf en ce qui concerne les dispositions visées au paragraphe 3, un État membre peut, selon des modalités transparentes et non discriminatoires, octroyer une dérogation pendant une période ne dépassant pas cinq ans, renouvelable deux fois pour une période maximale de cinq ans à chaque fois, à l'application des dispositions du présent règlement en ce qui concerne les services ferroviaires intérieurs de transport de voyageurs.

5. Sauf en ce qui concerne les dispositions visées au paragraphe 3, un État membre peut déroger à l'application des dispositions du présent règlement en ce qui concerne les services ferroviaires urbains, suburbains et régionaux de transport de voyageurs. Afin de faire la distinction entre les services ferroviaires urbains, suburbains et régionaux de transport de voyageurs, les États membres appliquent les définitions figurant dans la directive 91/440/CEE du Conseil du 29 juillet 1991 relative au développement de chemins de fer communautaires [3]. Pour l'application de ces définitions, les États membres utilisent les critères suivants: distance, fréquence des services offerts, nombre d'arrêts prévus, matériel roulant employé, systèmes de billetterie, variations du nombre de voyageurs entre les services en heures de pointe et en heures creuses, codes des trains et horaires.

6. Pour une durée maximale de cinq ans, un État membre peut, selon des modalités transparentes et non discriminatoires, accorder une dérogation, qui peut être renouvelée, à l'application de certaines dispositions du présent règlement à des services ou à des voyages spécifiques, parce qu'une partie importante du service ferroviaire de transport de voyageurs, y compris au moins un arrêt prévu dans une gare, est effectuée en dehors de la Communauté.

7. Les États membres notifient à la Commission les dérogations accordées conformément aux paragraphes 4, 5 et 6. La Commission prend les mesures appropriées si une dérogation n'est pas jugée conforme aux dispositions du présent article. Au plus tard le 3 décembre 2014, la Commission soumet au Parlement européen et au Conseil un rapport sur les dérogations accordées conformément aux paragraphes 4, 5 et 6.

[2] JO L 143 du 27.6.1995, p. 70. Directive modifiée en dernier lieu par la directive 2004/49/CE du Parlement européen et du Conseil (JO L 164 du 30.4.2004, p. 44).

[3] JO L 237 du 24.8.1991, p. 25. Directive modifiée en dernier lieu par la directive 2006/103/CE (JO L 363 du 20.12.2006, p. 344).

Article 3

Définitions

Aux fins du présent règlement, on entend par:

1) «entreprise ferroviaire»: une entreprise ferroviaire au sens de l'article 2 de la directive 2001/14/CE [1] et toute autre entreprise à statut public ou privé, dont l'activité est la fourniture de services de transport de marchandises et/ou de voyageurs par chemin de fer, la traction devant obligatoirement être assurée par cette entreprise; cette expression englobe également les entreprises qui assurent uniquement la traction;

2) «transporteur»: l'entreprise ferroviaire contractuelle avec laquelle le voyageur a conclu le contrat de transport ou une série d'entreprises ferroviaires successives qui sont responsables en vertu de ce contrat;

3) «transporteur de remplacement»: une entreprise ferroviaire qui n'a pas conclu de contrat de transport avec le voyageur, mais à laquelle l'entreprise ferroviaire partie au contrat a confié, en tout ou en partie, l'exécution du transport ferroviaire;

4) «gestionnaire de l'infrastructure»: toute entité ou entreprise chargée en particulier de l'établissement et de l'entretien de l'infrastructure ferroviaire, ou d'une partie de celle-ci, telle qu'elle est définie à l'article 3 de la directive 91/440/CEE, ce qui peut comprendre également la gestion des systèmes de régulation et de sécurité de l'infrastructure; les fonctions du gestionnaire de l'infrastructure sur un réseau ou une partie de réseau peuvent être attribuées à des entités ou à des entreprises différentes;

5) «gestionnaire des gares»: une entité organisationnelle dans un État membre chargée de la gestion de gares ferroviaires et qui peut être le gestionnaire de l'infrastructure;

6) «voyagiste»: un organisateur ou un détaillant, autre qu'une entreprise ferroviaire, au sens de l'article 2, points 2) et 3), de la directive 90/314/CEE [2];

7) «vendeur de billets»: tout détaillant de services de transport ferroviaire qui conclut des contrats de transport et vend des billets pour le compte d'une entreprise ferroviaire ou pour son propre compte;

8) «contrat de transport»: un contrat de transport à titre onéreux ou gratuit entre une entreprise ferroviaire ou un vendeur de billets et le voyageur en vue de la fourniture d'un ou de plusieurs services de transport;

9) «réservation»: une autorisation, sur papier ou dans une version électronique, donnant droit au transport selon des modalités de transport personnalisées ayant fait l'objet d'une confirmation;

10) «billet direct»: un ou plusieurs billets représentant un contrat de transport portant sur la prestation de services ferroviaires successifs par une ou plusieurs entreprises ferroviaires;

11) «service ferroviaire intérieur de transport de voyageurs»: un service ferroviaire de transport de voyageurs dans le cadre duquel le train ne traverse pas la frontière d'un État membre;

12) «retard»: la différence de temps entre l'heure à laquelle le voyageur devait arriver d'après l'horaire publié et l'heure de son arrivée réelle ou prévue;

13) «carte de transport» ou «abonnement»: un billet pour un nombre illimité de voyages, qui permet au détenteur autorisé de voyager par chemin de fer sur un itinéraire ou un réseau particulier durant une période déterminée;

14) «système informatisé d'information et de réservation pour les transports ferroviaires»: un système informatisé contenant des informations sur les services ferroviaires offerts par les entreprises ferroviaires; les informations relatives aux services pour voyageurs stockées dans ce système sont notamment les suivantes:

   a) calendriers et horaires des services pour voyageurs;

   b) disponibilité de sièges sur les services pour voyageurs;

   c) tarifs et conditions particulières;

   d) accessibilité des trains pour les personnes handicapées et les personnes à mobilité réduite;

   e) dispositifs à l'aide desquels il est possible d'effectuer des réservations ou d'émettre des billets ou des billets directs, pour autant qu'une partie ou la totalité de ces dispositifs soient mis à la disposition des usagers;

15) «personne handicapée» ou «personne à mobilité réduite»: toute personne dont la mobilité est réduite, lors de l'usage d'un moyen de transport, en raison de tout handicap physique (sensoriel ou moteur, permanent ou temporaire) ou de tout handicap ou déficience intellectuels, ou de toute autre cause de handicap, ou de l'âge, et dont la situation requiert une attention appropriée et l'adaptation à ses besoins particuliers du service mis à la disposition de tous les voyageurs;

16) «conditions générales de transport»: les conditions du transporteur, qui se présentent sous la forme de conditions générales ou de tarifs juridiquement applicables dans chaque État membre et qui, par la conclusion du contrat de transport, sont devenues partie intégrante de celui-ci;

17) «véhicule»: un véhicule motorisé ou une remorque transporté à l'occasion du transport de voyageurs.

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[1] Directive 2001/14/CE du Parlement européen et du Conseil du 26 février 2001 concernant la répartition des capacités d'infrastructure ferroviaire et la tarification de l'infrastructure ferroviaire (JO L 75 du 15.3.2001, p. 29). Directive modifiée en dernier lieu par la directive 2004/49/CE.

[2] Directive 90/314/CEE du Conseil du 13 juin 1990 concernant les voyages, vacances et circuits à forfait (JO L 158 du 23.6.1990, p. 59).

CHAPITRE II

CONTRAT DE TRANSPORT, INFORMATIONS ET BILLETS

Article 4

Contrat de transport

Sous réserve des dispositions du présent chapitre, la conclusion et l'exécution d'un contrat de transport ainsi que la fourniture d'informations et de billets sont régies par les dispositions des titres II et III de l'annexe I.

Article 5

Bicyclettes

Les entreprises ferroviaires autorisent les voyageurs à emporter leur bicyclette dans le train, si elles sont faciles à manipuler, si cela ne porte pas préjudice au service ferroviaire spécifique et si le matériel roulant le permet, et moyennant un paiement éventuel.

Article 6

Exclusion des exonérations et stipulations de limitations

1. Les obligations envers les voyageurs résultant du présent règlement ne peuvent pas faire l'objet d'une limitation ou d'une exonération, notamment par une dérogation ou une clause restrictive figurant dans le contrat de transport.

2. Les entreprises ferroviaires peuvent offrir des conditions contractuelles plus favorables au voyageur que celles fixées dans le présent règlement.

Article 7

Obligation d'information concernant l'interruption de services

Les entreprises ferroviaires ou, le cas échéant, les autorités compétentes responsables d'un contrat de service public ferroviaire, rendent publiques, par des moyens appropriés et avant leur mise en œuvre, les décisions d'interrompre des services.

Article 8

Informations sur les voyages

1. Sur demande, et sans préjudice de l'article 10, les entreprises ferroviaires et les vendeurs de billets qui proposent des contrats de transport pour le compte d'une ou de plusieurs entreprises ferroviaires fournissent au voyageur au moins les informations mentionnées à l'annexe II, partie I, en ce qui concerne les voyages pour lesquels un contrat de transport est proposé par l'entreprise ferroviaire concernée. Les vendeurs de billets qui proposent des contrats de transport pour leur propre compte, ainsi que les voyagistes, fournissent ces informations lorsqu'elles sont disponibles.

2. Les entreprises ferroviaires fournissent au voyageur, pendant le voyage, au moins les informations mentionnées à l'annexe II, partie II.

3. Les informations visées aux paragraphes 1 et 2 sont communiquées sous la forme la plus appropriée. Une attention particulière est accordée aux besoins des personnes souffrant d'une déficience auditive et/ou visuelle.

Article 9

Disponibilité des billets, des billets directs et des réservations

1. Les entreprises ferroviaires et les vendeurs de billets proposent, pour autant qu'ils soient disponibles, des billets, des billets directs et des réservations.

2. Sans préjudice du paragraphe 4, les entreprises ferroviaires délivrent les billets aux voyageurs via au moins un des canaux suivants:

a) guichets ou guichets automatiques;

b) téléphone, internet ou toute autre technologie de l'information largement disponible;

c) à bord des trains.

3. Sans préjudice des paragraphes 4 et 5, les entreprises ferroviaires délivrent des billets pour les services prévus dans le cadre de contrats de service public via au moins un des canaux suivants:

a) guichets ou guichets automatiques;

b) à bord des trains.

4. Les entreprises ferroviaires offrent la possibilité d'obtenir des billets pour le service concerné à bord du train, à moins que cette possibilité ne soit limitée ou refusée pour des raisons liées à la sécurité ou à la lutte contre la fraude, des raisons de réservation obligatoire ou des motifs commerciaux raisonnables.

5. En l'absence de guichet ou de guichet automatique dans la gare de départ, les voyageurs doivent être informés dans la gare:

a) sur la possibilité d'acheter un billet par téléphone, par l'internet ou à bord du train et les modalités de cet achat;

b) sur la gare ferroviaire ou l'endroit le plus proche où des guichets et/ou des guichets automatiques sont mis à disposition.

Article 10

Systèmes d'information des voyageurs et de réservation

1. Pour fournir les informations et émettre les billets visés par le présent règlement, les entreprises ferroviaires et les vendeurs de billets utilisent le système informatisé d'information et de réservation pour les transports ferroviaires, qui doit être établi selon les procédures visées au présent article.

2. Les spécifications techniques d'interopérabilité (STI) visées dans la directive 2001/16/CE sont appliquées aux fins du présent règlement.

3. Au plus tard le 3 décembre 2010, la Commission adopte, sur proposition de l'Agence ferroviaire européenne, les STI des applications télématiques au service des voyageurs. Les STI permettent la fourniture des informations mentionnées à l'annexe II et l'émission des billets conformément au présent règlement.

4. Les entreprises ferroviaires adaptent leur système informatisé d'information et de réservation pour les transports ferroviaires selon les exigences fixées dans les STI, conformément à un plan de mise en œuvre défini dans les STI.

5. Sous réserve des dispositions de la directive 95/46/CE, une entreprise ferroviaire ainsi qu'un vendeur de billets ne divulguent aucune information à caractère personnel sur des réservations à d'autres entreprises ferroviaires et/ou vendeurs de billets.

CHAPITRE III

RESPONSABILITÉ DES ENTREPRISES FERROVIAIRES RELATIVE AUX VOYAGEURS ET À LEURS BAGAGES

Article 11

Responsabilité relative aux voyageurs et aux bagages

Sous réserve des dispositions du présent chapitre, et sans préjudice du droit national octroyant aux voyageurs une plus grande indemnisation pour les dommages subis, la responsabilité des entreprises ferroviaires relative aux voyageurs et à leurs bagages est régie par le titre IV, chapitres I, III et IV, ainsi que les titres VI et VII de l'annexe I.

Article 12

Assurance

1. L'obligation exposée à l'article 9 de la directive 95/18/CE s'entend, dans la mesure où elle concerne la responsabilité relative aux voyageurs, comme imposant à une entreprise ferroviaire d'être assurée de manière adéquate ou d'avoir pris des dispositions équivalentes pour pouvoir couvrir les responsabilités qui lui incombent en vertu du présent règlement.

2. Au plus tard le 3 décembre 2010, la Commission présente au Parlement européen et au Conseil un rapport sur la fixation d'un montant d'assurance minimal pour les entreprises ferroviaires. Le cas échéant, ce rapport est assorti de propositions ou de recommandations appropriées en la matière.

Article 13

Versement d'avances

1. Si un voyageur est tué ou blessé, l'entreprise ferroviaire visée à l'article 26, paragraphe 5, de l'annexe I verse sans délai, et en tout état de cause au plus tard quinze jours après l'identification de la personne physique ayant droit à une indemnisation, toute avance qui serait nécessaire pour couvrir des besoins économiques immédiats, proportionnellement au préjudice subi.

2. Sans préjudice du paragraphe 1, l'avance n'est pas, en cas de décès, inférieure à 21 000 EUR par voyageur.

3. Le versement d'une avance ne constitue pas une reconnaissance de responsabilité, et l'avance peut être déduite de toute somme payée ultérieurement en vertu du présent règlement, mais elle n'est pas remboursable, sauf lorsque le préjudice a été causé par la négligence ou la faute du voyageur ou que la personne à laquelle l'avance a été versée n'était pas celle ayant droit à une indemnisation.

Article 14

Contestation de responsabilité

Même si l'entreprise ferroviaire conteste sa responsabilité quant au préjudice corporel subi par un voyageur qu'elle transporte, elle s'efforce, dans la mesure du raisonnable, d'assister le voyageur réclamant une indemnisation à des tiers.

CHAPITRE IV

RETARDS, CORRESPONDANCES MANQUÉES ET ANNULATIONS

Article 15

Responsabilité en matière de retards, de correspondances manquées et d'annulations

Sous réserve des dispositions du présent chapitre, la responsabilité des entreprises ferroviaires en ce qui concerne les retards, les correspondances manquées et les annulations est régie par le titre IV, chapitre II, de l'annexe I.

Article 16

Remboursement et réacheminement

Lorsqu'on peut raisonnablement s'attendre à ce qu'un train arrive avec plus de soixante minutes de retard à la destination finale prévue dans le contrat de transport, les voyageurs ont immédiatement le choix entre:

a) le remboursement intégral du billet, au tarif auquel il a été acheté, pour la ou les parties non effectuées de leur voyage et pour la ou les parties déjà effectuées si le voyage ne présente plus aucun intérêt par rapport au plan de voyage initial des voyageurs, ainsi que, s'il y a lieu, un voyage de retour jusqu'au point de départ initial dans les meilleurs délais. Le remboursement s'effectue dans les mêmes conditions que le paiement de l'indemnisation visée à l'article 17; ou

b) la poursuite du voyage ou un réacheminement vers la destination finale, dans des conditions de transport comparables et dans les meilleurs délais; ou

c) la poursuite du voyage ou un réacheminement vers la destination finale, dans des conditions de transport comparables et à une date ultérieure, à leur convenance.

Article 17

Indemnisation relative au prix du billet

1. Lorsque le retard n'a pas donné lieu au remboursement du billet conformément à l'article 16, le voyageur qui subit un retard entre le lieu de départ et le lieu de destination indiqués sur le billet peut, sans perdre son droit au transport, exiger une indemnisation de l'entreprise ferroviaire. Les indemnisations minimales pour cause de retard sont les suivantes:

a) 25 % du prix du billet en cas de retard d'une durée comprise entre 60 et 119 minutes;

b) 50 % du prix du billet en cas de retard de 120 minutes ou plus.

Les voyageurs qui détiennent une carte de transport ou un abonnement et sont confrontés à des retards ou à des annulations récurrents pendant sa durée de validité peuvent demander une indemnisation adéquate conformément aux dispositions des entreprises ferroviaires en matière d'indemnisation. Ces dispositions fixent les critères applicables en matière de retard et de calcul de l'indemnisation.

L'indemnisation d'un retard est calculée par rapport au prix que le voyageur a réellement payé pour le service ayant subi un retard.

Lorsque le contrat de transport porte sur un voyage aller et retour, le montant de l'indemnisation à payer en cas de retard à l'aller ou au retour est calculé par rapport à la moitié du prix payé pour le billet. De la même manière, le montant de l'indemnisation à payer en cas de retard du service dans le cadre de tout autre type de contrat de transport permettant d'effectuer plusieurs voyages ultérieurs est calculé proportionnellement au prix total.

Le calcul de la durée du retard ne tient pas compte des retards dont l'entreprise ferroviaire peut prouver qu'ils se sont produits en dehors des territoires dans lesquels le traité instituant la Communauté européenne est d'application.

2. L'indemnisation relative au prix du billet est payée dans le mois qui suit le dépôt de la demande d'indemnisation. Elle peut être payée sous la forme de bons et/ou d'autres services si les conditions sont souples (notamment en ce qui concerne la période de validité et la destination). Elle est payée en espèces à la demande du voyageur.

3. L'indemnisation relative au prix du billet n'est pas grevée de coûts de transaction financière tels que redevances, frais de téléphone ou timbres. Les entreprises ferroviaires peuvent fixer un seuil minimal au-dessous duquel aucune indemnisation n'est payée. Ce seuil ne dépasse pas 4 EUR.

4. Le voyageur n'a droit à aucune indemnisation s'il a été informé du retard avant d'acheter le billet ou si le retard imputable à la poursuite du voyage à bord d'un autre train ou à un réacheminement reste inférieur à soixante minutes.

Article 18

Assistance

1. En cas de retard de l'arrivée ou du départ, l'entreprise ferroviaire ou le gestionnaire des gares tient les voyageurs informés de la situation ainsi que des heures de départ et d'arrivée prévues, dès que ces informations sont disponibles.

2. En cas de retard visé au paragraphe 1, de plus de soixante minutes, les voyageurs se voient offrir gratuitement:

a) des repas et des rafraîchissements en quantité raisonnable compte tenu du délai d'attente, s'il y en a à bord du train ou dans la gare, ou s'ils peuvent raisonnablement être livrés;

b) un hébergement à l'hôtel ou ailleurs, ainsi que le transport entre la gare et le lieu d'hébergement, si un séjour d'une ou de plusieurs nuits devient nécessaire ou qu'un séjour supplémentaire s'impose, lorsque c'est matériellement possible;

c) si le train est bloqué sur la voie, le transport entre le lieu où se trouve le train et la gare, l'autre point de départ ou la destination finale du service, lorsque c'est matériellement possible.

3. Si le service ferroviaire ne peut plus se poursuivre, les entreprises ferroviaires mettent en place dès que possible d'autres services de transport pour les voyageurs.

4. À la demande du voyageur, l'entreprise ferroviaire certifie sur le billet que le service ferroviaire a été retardé, qu'il a fait manquer une correspondance ou qu'il a été annulé, selon le cas.

5. Lors de l'application des paragraphes 1, 2 et 3, l'entreprise ferroviaire concernée accorde une attention particulière aux besoins des personnes handicapées et des personnes à mobilité réduite et des personnes qui les accompagnent.

CHAPITRE V

PERSONNES HANDICAPÉES ET PERSONNES À MOBILITÉ RÉDUITE

Article 19

Droit au transport

1. Les entreprises ferroviaires et les gestionnaires des gares établissent ou mettent en place des règles d'accès non discriminatoires applicables au transport de personnes handicapées et de personnes à mobilité réduite, avec la participation active d'organisations représentatives des personnes handicapées et des personnes à mobilité réduite.

2. Les personnes handicapées et les personnes à mobilité réduite ne se voient compter aucun supplément pour leurs réservations et leurs billets. Une entreprise ferroviaire, un vendeur de billets ou un voyagiste ne peut refuser d'accepter une réservation ou d'émettre un billet pour une personne handicapée ou une personne à mobilité réduite ou requérir qu'une telle personne soit accompagnée par une autre personne, sauf si cela est strictement nécessaire pour satisfaire aux règles d'accès visées au paragraphe 1.

Article 20

Communication d'informations aux personnes handicapées et aux personnes à mobilité réduite

1. Sur demande, une entreprise ferroviaire, un vendeur de billets ou un voyagiste fournit aux personnes handicapées et aux personnes à mobilité réduite des informations sur l'accessibilité des services ferroviaires ainsi que sur les conditions d'accès au matériel roulant conformément aux règles d'accès visées à l'article 19, paragraphe 1, et informe les personnes handicapées et les personnes à mobilité réduite des équipements à bord.

2. Lorsqu'une entreprise ferroviaire, un vendeur de billets et/ou un voyagiste exerce la dérogation prévue à l'article 19, paragraphe 2, il en communique, sur demande, les raisons par écrit à la personne handicapée ou à mobilité réduite concernée, dans un délai de cinq jours ouvrables à compter de la date à laquelle la réservation ou l'émission du billet a été refusée ou à laquelle la condition d'accompagnement a été imposée.

Article 21

Accessibilité

1. Les entreprises ferroviaires et les gestionnaires des gares veillent, par le respect des STI pour les personnes à mobilité réduite, à assurer l'accès des gares, des quais, du matériel roulant et des autres équipements aux personnes handicapées et aux personnes à mobilité réduite.

2. En l'absence de personnel d'accompagnement à bord d'un train ou de personnel dans une gare, les entreprises ferroviaires et les gestionnaires des gares s'efforcent, dans la mesure du raisonnable, de permettre aux personnes handicapées ou aux personnes à mobilité réduite d'avoir accès au transport ferroviaire.

Article 22

Assistance dans les gares

1. Lorsqu'une personne handicapée ou une personne à mobilité réduite part d'une gare dotée de personnel, y transite ou y arrive, le gestionnaire des gares lui fournit gratuitement l'assistance nécessaire pour embarquer dans le train pour lequel elle a acheté un billet ou débarquer d'un tel train, sans préjudice des règles d'accès visées à l'article 19, paragraphe 1.

2. Les États membres peuvent prévoir une dérogation au paragraphe 1 dans le cas des personnes voyageant au moyen de services faisant l'objet d'un contrat de service public attribué conformément à la législation communautaire, à condition que l'autorité compétente ait pris d'autres mesures ou dispositions qui permettent de garantir la fourniture de services de transport d'un niveau d'accessibilité équivalent ou supérieur.

3. Dans les gares non dotées de personnel, l'entreprise ferroviaire et le gestionnaire des gares veillent à ce que des informations aisément accessibles soient affichées conformément aux règles d'accès visées à l'article 19, paragraphe 1, en ce qui concerne les gares dotées de personnel les plus proches et l'assistance mise directement à la disposition des personnes handicapées et des personnes à mobilité réduite.

Article 23

Assistance à bord

Sans préjudice des règles d'accès visées à l'article 19, paragraphe 1, les entreprises ferroviaires fournissent gratuitement une assistance aux personnes handicapées et aux personnes à mobilité réduite, à bord du train et lors de l'embarquement et du débarquement.

Aux fins du présent article, on entend par assistance à bord les efforts faits, dans la mesure du raisonnable, pour permettre à une personne handicapée ou à une personne à mobilité réduite d'avoir accès aux mêmes services à bord du train que ceux dont bénéficient les autres voyageurs si son handicap est tel ou sa mobilité est réduite à un point tel qu'elle ne peut avoir accès à ces services de façon autonome et sûre.

Article 24

Conditions auxquelles est fournie l'assistance

Les entreprises ferroviaires, les gestionnaires des gares, les vendeurs de billets et les voyagistes coopèrent afin de fournir aux personnes handicapées et aux personnes à mobilité réduite l'assistance prévue aux articles 22 et 23 conformément aux points suivants:

a) l'assistance est fournie à condition que l'entreprise ferroviaire, le gestionnaire des gares, le vendeur de billets ou le voyagiste auprès duquel le billet a été acheté se soit vu notifier, au moins quarante-huit heures à l'avance, le besoin d'assistance de la personne handicapée ou à mobilité réduite. Lorsque le billet permet d'effectuer plusieurs voyages, une seule notification suffit, pour autant que des informations suffisantes soient fournies sur les horaires des voyages ultérieurs;

b) les entreprises ferroviaires, les gestionnaires des gares, les vendeurs de billets et les voyagistes prennent toutes les mesures nécessaires pour la réception des notifications;

c) si aucune notification n'est effectuée conformément au point a), l'entreprise ferroviaire et le gestionnaire des gares s'efforcent, dans la mesure du raisonnable, de fournir à la personne handicapée ou à la personne à mobilité réduite une assistance qui lui permette de voyager;

d) sans préjudice des pouvoirs d'autres entités en ce qui concerne les zones situées en dehors de la gare, le gestionnaire des gares ou toute autre personne autorisée indique les endroits, à l'intérieur et à l'extérieur de la gare, où les personnes handicapées et les personnes à mobilité réduite peuvent annoncer leur arrivée à la gare et, au besoin, demander une assistance;

e) une assistance est fournie à condition que la personne handicapée ou la personne à mobilité réduite se présente à l'endroit indiqué à une heure fixée par l'entreprise ferroviaire ou le gestionnaire de la gare qui fournit l'assistance. L'heure fixée ne doit pas précéder de plus de soixante minutes l'heure de départ annoncée ou l'heure à laquelle tous les voyageurs ont été invités à se présenter à l'enregistrement. Si aucune heure n'a été fixée à la personne handicapée ou à la personne à mobilité réduite, celle-ci se présente à l'endroit indiqué au moins trente minutes avant l'heure de départ annoncée ou avant l'heure à laquelle tous les voyageurs ont été invités à se présenter à l'enregistrement.

Article 25

Indemnisation relative à l'équipement de mobilité ou à un autre équipement spécifique

Si l'entreprise ferroviaire est responsable de la perte ou de l'endommagement, total ou partiel, d'un équipement de mobilité ou d'un autre équipement spécifique utilisé par les personnes handicapées ou les personnes à mobilité réduite, aucune limite financière n'est applicable.

CHAPITRE VI

SÉCURITÉ, PLAINTES ET QUALITÉ DU SERVICE

Article 26

Sécurité personnelle des voyageurs

Les entreprises ferroviaires, les gestionnaires de l'infrastructure et les gestionnaires des gares prennent, en accord avec les autorités publiques, les mesures appropriées dans leurs domaines de compétence respectifs et les adaptent en fonction du niveau de sécurité défini par les autorités publiques pour assurer la sécurité personnelle des voyageurs dans les gares et à bord des trains, ainsi que pour gérer les risques. Ils coopèrent et s'échangent des informations sur les meilleures pratiques en matière de prévention des actes susceptibles de compromettre la sécurité.

Article 27

Plaintes

1. Les entreprises ferroviaires établissent un mécanisme de traitement des plaintes concernant les droits et obligations énoncés dans le présent règlement. Elles informent amplement les voyageurs de leurs coordonnées et de leur(s) langue(s) de travail.

2. Un voyageur peut déposer une plainte auprès de toute entreprise ferroviaire concernée. Dans un délai d'un mois, le destinataire de la plainte donne une réponse motivée ou, lorsque la situation le justifie, informe le voyageur de la date pour laquelle il peut s'attendre à une réponse, laquelle doit lui être donnée dans un délai de moins de trois mois à compter de la date de sa plainte.

3. L'entreprise ferroviaire publie, dans le rapport annuel visé à l'article 28, le nombre et les types de plaintes reçues, les plaintes traitées, les délais de réponse et les éventuelles mesures prises pour améliorer la situation.

Article 28

Normes de qualité du service

1. Les entreprises ferroviaires définissent des normes de qualité du service et mettent en œuvre un système de gestion de la qualité pour maintenir la qualité du service. Les normes de qualité du service couvrent au moins les points énumérés à l'annexe III.

2. Les entreprises ferroviaires évaluent leurs propres activités d'après les normes de qualité du service. Chaque année, elles publient à cet égard un rapport d'évaluation, qui accompagne leur rapport annuel. Les rapports sur la qualité du service sont publiés sur le site internet des entreprises ferroviaires. En outre, ces rapports sont mis à disposition sur le site internet de l'Agence ferroviaire européenne.

CHAPITRE VII

INFORMATION ET APPLICATION

Article 29

Information des voyageurs sur leurs droits

1. Lorsqu'ils vendent des billets de transport ferroviaire, les entreprises ferroviaires, les gestionnaires des gares et les voyagistes informent les voyageurs des droits et des obligations que leur confère le présent règlement. Afin de se conformer à cette obligation d'information, les entreprises ferroviaires, les gestionnaires des gares et les voyagistes peuvent utiliser un résumé des dispositions du présent règlement préparé par la Commission dans toutes les langues officielles des institutions de l'Union européenne et mis à leur disposition.

2. Les entreprises ferroviaires et les gestionnaires des gares informent les voyageurs de manière adéquate, dans la gare et à bord du train, des coordonnées permettant de contacter l'organisme ou les organismes désignés par les États membres en vertu de l'article 30.

Article 30

Application

1. Chaque État membre désigne un ou plusieurs organismes chargés de l'application du présent règlement. Chaque organisme prend les mesures nécessaires pour garantir le respect des droits des voyageurs.

Chaque organisme est indépendant de tout gestionnaire de l'infrastructure, organisme de tarification, organisme de répartition ou entreprise ferroviaire en ce qui concerne son organisation, ses décisions de financement, sa structure juridique et ses décisions.

Les États membres informent la Commission de la désignation d'un ou de plusieurs organismes conformément au présent paragraphe et de ses ou de leurs responsabilités.

2. Chaque voyageur peut porter plainte pour infraction alléguée au présent règlement auprès de l'organisme compétent désigné en vertu du paragraphe 1 ou auprès de tout autre organisme compétent désigné par un État membre.

Article 31

Coopération entre organismes chargés de l'application

Les organismes chargés de l'application visés à l'article 30 s'échangent des informations sur leurs travaux ainsi que sur leurs principes et pratiques de décision aux fins de coordonner leurs principes de décision dans toute la Communauté. La Commission les assiste dans cette tâche.

CHAPITRE VIII

DISPOSITIONS FINALES

Article 32

Sanctions

Les États membres déterminent le régime des sanctions applicables en cas de violation des dispositions du présent règlement et prennent toute mesure nécessaire pour en assurer la mise en œuvre. Les sanctions prévues doivent être effectives, proportionnées et dissuasives. Les États membres notifient ces régime et mesures à la Commission, au plus tard le 3 juin 2010, et lui communiquent sans délai toute modification ultérieure les concernant.

Article 33

Annexes

Les mesures ayant pour objet de modifier des éléments non essentiels du présent règlement en en adaptant les annexes, à l'exception de l'annexe I, sont arrêtées en conformité avec la procédure de réglementation avec contrôle visée à l'article 35, paragraphe 2.

Article 34

Dispositions modificatives

1. Les mesures ayant pour objet de modifier des éléments non essentiels du présent règlement en le complétant et nécessaires à la mise en œuvre des articles 2, 10 et 12 sont arrêtées en conformité avec la procédure de réglementation avec contrôle visée à l'article 35, paragraphe 2.

2. Les mesures ayant pour objet de modifier des éléments non essentiels du présent règlement en adaptant les montants financiers visés dans le présent règlement, autres que ceux visés à l'annexe I, en fonction de l'inflation, sont arrêtées en conformité avec la procédure de réglementation avec contrôle visée à l'article 35, paragraphe 2.

Article 35

Comité

1. La Commission est assistée par le comité institué par l'article 11 *bis* de la directive 91/440/CEE.

2. Dans le cas où il est fait référence au présent paragraphe, l'article 5 *bis*, paragraphes 1 à 4, et l'article 7 de la décision 1999/468/CE s'appliquent, dans le respect des dispositions de l'article 8 de celle-ci.

Article 36

Rapport

La Commission fait rapport au Parlement européen et au Conseil sur la mise en œuvre et les résultats du présent règlement, au plus tard le 3 décembre 2012, et notamment en ce qui concerne les normes de qualité du service.

Le rapport est fondé sur les informations qui doivent être fournies conformément au présent règlement et à l'article 10 *ter* de la directive 91/440/CEE. Il est assorti, le cas échéant, de propositions appropriées.

Article 37

Entrée en vigueur

Le présent règlement entre en vigueur vingt-quatre mois après la date de sa publication au *Journal officiel de l'Union européenne*.

Le présent règlement est obligatoire dans tous ses éléments et directement applicable dans tout État membre.

Fait à Strasbourg, le 23 octobre 2007.

Par le Parlement européen
Le président
H.-G. PÖTTERING

Par le Conseil
Le président
M. LOBO ANTUNES

ANNEXE I

EXTRAIT DES RÈGLES UNIFORMES CONCERNANT LE CONTRAT DE TRANSPORT INTERNATIONAL FERROVIAIRE DES VOYAGEURS ET DES BAGAGES (CIV)

Appendice A

de la convention relative aux transports internationaux ferroviaires (COTIF) du 9 mai 1980, telle que modifiée par le protocole portant modification de la COTIF du 3 juin 1999

TITRE II

CONCLUSION ET EXÉCUTION DU CONTRAT DE TRANSPORT

Article 6

Contrat de transport

1. Par le contrat de transport, le transporteur s'engage à transporter le voyageur ainsi que, le cas échéant, des bagages et des véhicules au lieu de destination et à livrer les bagages et les véhicules au lieu de destination.

2. Le contrat de transport doit être constaté par un ou plusieurs titres de transport remis au voyageur. Toutefois, sans préjudice de l'article 9, l'absence, l'irrégularité ou la perte du titre de transport n'affecte ni l'existence ni la validité du contrat, qui reste soumis aux présentes règles uniformes.

3. Le titre de transport fait foi, jusqu'à preuve du contraire, de la conclusion et du contenu du contrat de transport.

Article 7

Titre de transport

1. Les Conditions générales de transport déterminent la forme et le contenu des titres de transport ainsi que la langue et les caractères dans lesquels ils doivent être imprimés et remplis.

2. Doivent au moins être inscrits sur le titre de transport:

a) le transporteur ou les transporteurs;

b) l'indication que le transport est soumis, nonobstant toute clause contraire, aux présentes règles uniformes; cela peut se faire par le sigle CIV;

c) toute autre indication nécessaire pour prouver la conclusion et le contenu du contrat de transport et permettant au voyageur de faire valoir les droits résultant de ce contrat.

3. Le voyageur doit s'assurer, à la réception du titre de transport, que celui-ci a été établi selon ses indications.

4. Le titre de transport est cessible s'il n'est pas nominatif et si le voyage n'a pas commencé.

5. Le titre de transport peut être établi sous forme d'enregistrement électronique des données, qui peuvent être transformées en signes d'écriture lisibles. Les procédés employés pour l'enregistrement et le traitement des données doivent être équivalents du point de vue fonctionnel, notamment en ce qui concerne la force probante du titre de transport représenté par ces données.

Article 8

Paiement et remboursement du prix de transport

1. Sauf convention contraire entre le voyageur et le transporteur, le prix de transport est payable à l'avance.

2. Les Conditions générales de transport déterminent dans quelles conditions un remboursement du prix de transport a lieu.

Article 9

Droit au transport. Exclusion du transport

1. Dès le commencement du voyage, le voyageur doit être muni d'un titre de transport valable et doit le présenter lors du contrôle des titres de transport. Les Conditions générales de transport peuvent prévoir:

a) qu'un voyageur qui ne présente pas un titre de transport valable doit payer, outre le prix de transport, une surtaxe;

b) qu'un voyageur qui refuse le paiement immédiat du prix de transport ou de la surtaxe peut être exclu du transport;

c) si et dans quelles conditions un remboursement de la surtaxe a lieu.

2. Les Conditions générales de transport peuvent prévoir que sont exclus du transport, ou peuvent être exclus du transport en cours de route, les voyageurs qui:

a) présentent un danger pour la sécurité et le bon fonctionnement de l'exploitation ou pour la sécurité des autres voyageurs;

b) incommodent de manière intolérable les autres voyageurs,

et que ces personnes n'ont droit au remboursement ni du prix de transport ni du prix qu'elles ont payé pour le transport de leurs bagages.

Article 10

Accomplissement des formalités administratives

Le voyageur doit se conformer aux formalités exigées par les douanes ou par d'autres autorités administratives.

Article 11

Suppression et retard d'un train. Correspondance manquée

Le transporteur doit, s'il y a lieu, certifier sur le titre de transport que le train a été supprimé ou la correspondance manquée.

TITRE III

TRANSPORT DE COLIS À MAIN, D'ANIMAUX, DE BAGAGES ET DE VÉHICULES

Chapitre I

Dispositions communes

Article 12

Objets et animaux admis

1. Le voyageur peut prendre avec lui des objets faciles à porter (colis à main) ainsi que des animaux vivants, conformément aux Conditions générales de transport. Par ailleurs, le voyageur peut prendre avec lui des objets encombrants conformément aux dispositions particulières, contenues dans les Conditions générales de transport. Sont exclus du transport les objets ou animaux de nature à gêner ou à incommoder les voyageurs ou à causer un dommage.

2. Le voyageur peut expédier, en tant que bagages, des objets et des animaux conformément aux Conditions générales de transport.

3. Le transporteur peut admettre le transport de véhicules à l'occasion d'un transport de voyageurs conformément aux dispositions particulières contenues dans les Conditions générales de transport.

4. Le transport de marchandises dangereuses en tant que colis à main, bagages ainsi que dans ou sur des véhicules qui, conformément à ce titre, sont transportées par rail, doit être conforme au règlement concernant le transport international ferroviaire des marchandises dangereuses (RID).

Article 13

Vérification

1. Le transporteur a le droit, en cas de présomption grave de non-respect des conditions de transport, de vérifier si les objets (colis à main, bagages, véhicules, y compris leur chargement) et animaux transportés répondent aux conditions de transport lorsque les lois et prescriptions de l'État où la vérification doit avoir lieu ne l'interdisent pas. Le voyageur doit être invité à assister à la vérification. S'il ne se présente pas ou s'il ne peut être atteint, le transporteur doit faire appel à deux témoins indépendants.

2. Lorsqu'il est constaté que les conditions de transport n'ont pas été respectées, le transporteur peut exiger du voyageur le paiement des frais occasionnés par la vérification.

Article 14

Accomplissement des formalités administratives

Le voyageur doit se conformer aux formalités exigées par les douanes ou par d'autres autorités administratives lors du transport, à l'occasion de son transport, d'objets (colis à main, bagages, véhicules, y compris leur chargement) et d'animaux. Il doit assister à la visite de ces objets, sauf exception prévue par les lois et prescriptions de chaque État.

Chapitre II

Colis à main et animaux

Article 15

Surveillance

La surveillance des colis à main et des animaux qu'il prend avec lui incombe au voyageur.

Chapitre III

Bagages

Article 16

Expédition des bagages

1. Les obligations contractuelles relatives à l'acheminement des bagages doivent être constatées par un bulletin de bagages remis au voyageur.

2. Sans préjudice de l'article 22, l'absence, l'irrégularité ou la perte du bulletin de bagages n'affecte ni l'existence ni la validité des conventions concernant l'acheminement des bagages, qui restent soumis aux présentes règles uniformes.

3. Le bulletin de bagages fait foi, jusqu'à preuve du contraire, de l'enregistrement des bagages et des conditions de leur transport.

4. Jusqu'à preuve du contraire, il est présumé que lors de la prise en charge par le transporteur, les bagages étaient en bon état apparent et que le nombre et la masse des colis correspondaient aux mentions portées sur le bulletin de bagages.

Article 17

Bulletin de bagages

1. Les Conditions générales de transport déterminent la forme et le contenu du bulletin de bagages ainsi que la langue et les caractères dans lesquels il doit être imprimé et rempli. L'article 7, paragraphe 5, s'applique par analogie.

2. Doivent au moins être inscrits sur le bulletin de bagages:

a) le transporteur ou les transporteurs;

b) l'indication que le transport est soumis, nonobstant toute clause contraire, aux présentes règles uniformes; cela peut se faire par le sigle CIV;

c) toute autre indication nécessaire pour prouver les obligations contractuelles relatives à l'acheminement des bagages et permettant au voyageur de faire valoir les droits résultant du contrat de transport.

3. Le voyageur doit s'assurer, à la réception du bulletin de bagages, que celui-ci a été émis selon ses indications.

Article 18

Enregistrement et transport

1. Sauf exception prévue par les Conditions générales de transport, l'enregistrement des bagages n'a lieu que sur la présentation d'un titre de transport valable au moins jusqu'au lieu de destination des bagages. Par ailleurs, l'enregistrement s'effectue d'après les prescriptions en vigueur au lieu d'expédition.

2. Lorsque les Conditions générales de transport prévoient que des bagages peuvent être admis au transport sans présentation d'un titre de transport, les dispositions des présentes règles uniformes fixant les droits et obligations du voyageur relatifs à ses bagages s'appliquent par analogie à l'expéditeur de bagages.

3. Le transporteur peut acheminer les bagages avec un autre train ou un autre moyen de transport et par un autre itinéraire que ceux empruntés par le voyageur.

Article 19

Paiement du prix pour le transport des bagages

Sauf convention contraire entre le voyageur et le transporteur, le prix pour le transport des bagages est payable lors de l'enregistrement.

Article 20

Marquage des bagages

Le voyageur doit indiquer sur chaque colis, en un endroit bien visible et d'une manière suffisamment fixe et claire:

a) son nom et son adresse;

b) le lieu de destination.

Article 21

Droit de disposer des bagages

1. Si les circonstances le permettent et les prescriptions des douanes ou d'autres autorités administratives ne s'y opposent pas, le voyageur peut demander la restitution des bagages au lieu d'expédition, contre remise du bulletin de bagages et, lorsque cela est prévu par les Conditions générales de transport, sur présentation du titre de transport.

2. Les Conditions générales de transport peuvent prévoir d'autres dispositions concernant le droit de disposer des bagages, notamment des modifications du lieu de destination et les éventuelles conséquences financières à supporter par le voyageur.

Article 22

Livraison

1. La livraison des bagages a lieu contre remise du bulletin de bagages et, le cas échéant, contre paiement des frais qui grèvent l'envoi.

Le transporteur a le droit, sans y être tenu, de vérifier si le détenteur du bulletin a qualité pour prendre livraison.

2. Sont assimilés à la livraison au détenteur du bulletin de bagages, lorsqu'ils sont effectués conformément aux prescriptions en vigueur au lieu de destination:

a) la remise des bagages aux autorités de douane ou d'octroi dans leurs locaux d'expédition ou dans leurs entrepôts, lorsque ceux-ci ne se trouvent pas sous la garde du transporteur;

b) le fait de confier des animaux vivants à un tiers.

3. Le détenteur du bulletin de bagages peut demander la livraison des bagages au lieu de destination aussitôt que s'est écoulé le temps convenu ainsi que, le cas échéant, le temps nécessaire pour les opérations effectuées par les douanes ou par d'autres autorités administratives.

4. À défaut de remise du bulletin de bagages, le transporteur n'est tenu de livrer les bagages qu'à celui qui justifie de son droit; si cette justification semble insuffisante, le transporteur peut exiger une caution.

5. Les bagages sont livrés au lieu de destination pour lequel ils ont été enregistrés.

6. Le détenteur du bulletin de bagages auquel les bagages ne sont pas livrés peut exiger la constatation, sur le bulletin de bagages, du jour et de l'heure auxquels il a demandé la livraison conformément au paragraphe 3.

7. L'ayant droit peut refuser la réception des bagages, si le transporteur ne donne pas suite à sa demande de procéder à la vérification des bagages en vue de constater un dommage allégué.

8. Par ailleurs, la livraison des bagages est effectuée conformément aux prescriptions en vigueur au lieu de destination.

Chapitre IV

Véhicules

Article 23

Conditions de transport

Les dispositions particulières pour le transport des véhicules, contenues dans les Conditions générales de transport, déterminent notamment les conditions d'admission au transport, d'enregistrement, de chargement et de transport, de déchargement et de livraison, ainsi que les obligations du voyageur.

Article 24

Bulletin de transport

1. Les obligations contractuelles relatives au transport de véhicules doivent être constatées par un bulletin de transport remis au voyageur. Le bulletin de transport peut être intégré dans le titre de transport du voyageur.

2. Les dispositions particulières pour le transport de véhicules contenues dans les Conditions générales de transport déterminent la forme et le contenu du bulletin de transport ainsi que la langue et les caractères dans lesquels il doit être imprimé et rempli. L'article 7, paragraphe 5, s'applique par analogie.

3. Doivent au moins être inscrits sur le bulletin de transport:

a) le transporteur ou les transporteurs;

b) l'indication que le transport est soumis, nonobstant toute clause contraire, aux présentes règles uniformes; cela peut se faire par le sigle CIV;

c) toute autre indication nécessaire pour prouver les obligations contractuelles relatives au transport des véhicules et permettant au voyageur de faire valoir les droits résultant du contrat de transport.

4. Le voyageur doit s'assurer, à la réception du bulletin de transport, que celui-ci a été émis selon ses indications.

Article 25

Droit applicable

Sous réserve des dispositions du présent chapitre, les dispositions du chapitre III relatives au transport des bagages s'appliquent aux véhicules.

TITRE IV

RESPONSABILITÉ DU TRANSPORTEUR

Chapitre I

Responsabilité en cas de mort et de blessures de voyageurs

Article 26

Fondement de la responsabilité

1. Le transporteur est responsable du dommage résultant de la mort, des blessures ou de toute autre atteinte à l'intégrité physique ou psychique du voyageur causé par un accident en relation avec l'exploitation ferroviaire survenu pendant que le voyageur séjourne dans les véhicules ferroviaires, qu'il y entre ou qu'il en sorte et quelle que soit l'infrastructure ferroviaire utilisée.

2. Le transporteur est déchargé de cette responsabilité:

a) si l'accident a été causé par des circonstances extérieures à l'exploitation ferroviaire que le transporteur, en dépit de la diligence requise d'après les particularités de l'espèce, ne pouvait pas éviter et aux conséquences desquelles il ne pouvait pas obvier;

b) dans la mesure où l'accident est dû à une faute du voyageur;

c) si l'accident est dû au comportement d'un tiers que le transporteur, en dépit de la diligence requise d'après les particularités de l'espèce, ne pouvait pas éviter et aux conséquences duquel il ne pouvait pas obvier; une autre entreprise utilisant la même infrastructure ferroviaire n'est pas considérée comme un tiers; le droit de recours n'est pas affecté.

3. Si l'accident est dû au comportement d'un tiers et si, en dépit de cela, le transporteur n'est pas entièrement déchargé de sa responsabilité conformément au paragraphe 2, lettre c), il répond pour le tout dans les limites des présentes règles uniformes et sans préjudice de son recours éventuel contre le tiers.

4. Les présentes règles uniformes n'affectent pas la responsabilité qui peut incomber au transporteur pour les cas non prévus au paragraphe 1.

5. Lorsqu'un transport faisant l'objet d'un contrat de transport unique est effectué par des transporteurs subséquents, est responsable, en cas de mort et de blessures de voyageurs, le transporteur à qui incombait, selon le contrat de transport, la prestation de service de transport au cours de laquelle l'accident s'est produit. Lorsque cette prestation n'a pas été réalisée par le transporteur, mais par un transporteur substitué, les deux transporteurs sont responsables solidairement, conformément aux présentes règles uniformes.

Article 27

Dommages-intérêts en cas de mort

1. En cas de mort du voyageur, les dommages-intérêts comprennent:

a) les frais nécessaires consécutifs au décès, notamment ceux du transport du corps et des obsèques;

b) si la mort n'est pas survenue immédiatement, les dommages-intérêts prévus à l'article 28.

2. Si, par la mort du voyageur, des personnes envers lesquelles il avait ou aurait eu à l'avenir une obligation alimentaire, en vertu de la loi, sont privées de leur soutien, il y a également lieu de les indemniser de cette perte. L'action en dommages-intérêts des personnes dont le voyageur assumait l'entretien sans y être tenu par la loi reste soumise au droit national.

Article 28

Dommages-intérêts en cas de blessures

En cas de blessures ou de toute autre atteinte à l'intégrité physique ou psychique du voyageur, les dommages-intérêts comprennent:

a) les frais nécessaires, notamment ceux de traitement et de transport;

b) la réparation du préjudice causé, soit par l'incapacité de travail totale ou partielle, soit par l'accroissement des besoins.

Article 29

Réparation d'autres préjudices corporels

Le droit national détermine si, et dans quelle mesure, le transporteur doit verser des dommages-intérêts pour des préjudices corporels autres que ceux prévus aux articles 27 et 28.

Article 30

Forme et montant des dommages-intérêts en cas de mort et de blessures

1. Les dommages-intérêts prévus à l'article 27, paragraphe 2, et à l'article 28, lettre b), doivent être alloués sous forme de capital. Toutefois, si le droit national permet l'allocation d'une rente, ils sont alloués sous cette forme lorsque le voyageur lésé ou les ayants droit visés à l'article 27, paragraphe 2, le demandent.

2. Le montant des dommages-intérêts à allouer en vertu du paragraphe 1 est déterminé selon le droit national. Toutefois, pour l'application des présentes règles uniformes, il est fixé une limite maximale de 175 000 unités de compte en capital ou en rente annuelle correspondant à ce capital, pour chaque voyageur, dans le cas où le droit national prévoit une limite maximale d'un montant inférieur.

Article 31

Autres moyens de transport

1. Sous réserve du paragraphe 2, les dispositions relatives à la responsabilité en cas de mort et de blessures de voyageurs ne s'appliquent pas aux dommages survenus pendant le transport qui, conformément au contrat de transport, n'était pas un transport ferroviaire.

2. Toutefois, lorsque les véhicules ferroviaires sont transportés par ferry-boat, les dispositions relatives à la responsabilité en cas de mort et de blessures de voyageurs s'appliquent aux dommages visés à l'article 26, paragraphe 1, et à l'article 33, paragraphe 1, causés par un accident en relation avec l'exploitation ferroviaire survenu pendant que le voyageur séjourne dans ledit véhicule, qu'il y entre ou qu'il en sorte.

3. Lorsque, par suite de circonstances exceptionnelles, l'exploitation ferroviaire est provisoirement interrompue et que les voyageurs sont transportés par un autre moyen de transport, le transporteur est responsable en vertu des présentes règles uniformes.

Chapitre II

Responsabilité en cas d'inobservation de l'horaire

Article 32

Responsabilité en cas de suppression, de retard ou de correspondance manquée

1. Le transporteur est responsable envers le voyageur du dommage résultant du fait qu'en raison de la suppression, du retard ou du manquement d'une correspondance, le voyage ne peut se poursuivre le même jour, ou que sa poursuite n'est pas raisonnablement exigible le même jour à cause des circonstances données. Les dommages-intérêts comprennent les frais raisonnables d'hébergement ainsi que les frais raisonnables occasionnés par l'avertissement des personnes attendant le voyageur.

2. Le transporteur est déchargé de cette responsabilité, lorsque la suppression, le retard ou le manquement d'une correspondance sont imputables à l'une des causes suivantes:

a) des circonstances extérieures à l'exploitation ferroviaire que le transporteur, en dépit de la diligence requise d'après les particularités de l'espèce, ne pouvait pas éviter et aux conséquences desquelles il ne pouvait pas obvier;

b) une faute du voyageur; ou

c) le comportement d'un tiers que le transporteur, en dépit de la diligence requise d'après les particularités de l'espèce, ne pouvait pas éviter et aux conséquences duquel il ne pouvait pas obvier; une autre entreprise utilisant la même infrastructure ferroviaire n'est pas considérée comme un tiers; le droit de recours n'est pas affecté.

3. Le droit national détermine, si et dans quelle mesure, le transporteur doit verser des dommages-intérêts pour des préjudices autres que ceux prévus au paragraphe 1. Cette disposition ne porte pas atteinte à l'article 44.

Chapitre III

Responsabilité pour les colis à main, les animaux, les bagages et les véhicules

SECTION 1

Colis à main et animaux

Article 33

Responsabilité

1. En cas de mort et de blessures de voyageurs, le transporteur est, en outre, responsable du dommage résultant de la perte totale ou partielle ou de l'avarie des objets que le voyageur avait, soit sur lui, soit avec lui comme colis à main; ceci vaut également pour les animaux que le voyageur avait pris avec lui. L'article 26 s'applique par analogie.

2. Par ailleurs, le transporteur n'est responsable du dommage résultant de la perte totale ou partielle ou de l'avarie des objets, des colis à main ou des animaux dont la surveillance incombe au voyageur conformément à l'article 15 que si ce dommage est causé par une faute du transporteur. Les autres articles du titre IV, à l'exception de l'article 51, et le titre VI ne sont pas applicables dans ce cas.

Article 34

Limitation des dommages-intérêts en cas de perte ou d'avarie d'objets

Lorsque le transporteur est responsable en vertu de l'article 33, paragraphe 1, il doit réparer le dommage jusqu'à concurrence de 1 400 unités de compte pour chaque voyageur.

Article 35

Exonération de responsabilité

Le transporteur n'est pas responsable, à l'égard du voyageur, du dommage résultant du fait que le voyageur ne se conforme pas aux prescriptions des douanes ou d'autres autorités administratives.

SECTION 2

Bagages

Article 36

Fondement de la responsabilité

1. Le transporteur est responsable du dommage résultant de la perte totale ou partielle et de l'avarie des bagages survenues à partir de la prise en charge par le transporteur jusqu'à la livraison, ainsi que du retard à la livraison.

2. Le transporteur est déchargé de cette responsabilité dans la mesure où la perte, l'avarie ou le retard à la livraison a eu pour cause une faute du voyageur, un ordre de celui-ci ne résultant pas d'une faute du transporteur, un vice propre aux bagages ou des circonstances que le transporteur ne pouvait pas éviter et aux conséquences desquelles il ne pouvait pas obvier.

3. Le transporteur est déchargé de cette responsabilité dans la mesure où la perte ou l'avarie résulte des risques particuliers inhérents à un ou à plusieurs des faits ci-après:

a) absence ou défectuosité de l'emballage;

b) nature spéciale des bagages;

c) expédition comme bagages d'objets exclus du transport.

Article 37

Charge de la preuve

1. La preuve que la perte, l'avarie ou le retard à la livraison a eu pour cause un des faits prévus à l'article 36, paragraphe 2, incombe au transporteur.

2. Lorsque le transporteur établit que la perte ou l'avarie a pu résulter, étant donné les circonstances de fait, d'un ou de plusieurs des risques particuliers prévus à l'article 36, paragraphe 3, il y a présomption qu'elle en résulte. L'ayant droit conserve toutefois le droit de prouver que le dommage n'a pas eu pour cause, totalement ou partiellement, l'un de ces risques.

Article 38

Transporteurs subséquents

Lorsqu'un transport faisant l'objet d'un contrat de transport unique est effectué par plusieurs transporteurs subséquents, chaque transporteur, prenant en charge les bagages avec le bulletin de bagages ou le véhicule avec le bulletin de transport, participe, quant à l'acheminement des bagages ou au transport des véhicules, au contrat de transport conformément aux stipulations du bulletin de bagages ou du bulletin de transport et assume les obligations qui en découlent. Dans ce cas, chaque transporteur répond de l'exécution du transport sur le parcours total jusqu'à la livraison.

Article 39

Transporteur substitué

1. Lorsque le transporteur a confié, en tout ou en partie, l'exécution du transport à un transporteur substitué, que ce soit ou non dans l'exercice d'une faculté qui lui est reconnue dans le contrat de transport, le transporteur n'en demeure pas moins responsable de la totalité du transport.

2. Toutes les dispositions des présentes règles uniformes régissant la responsabilité du transporteur s'appliquent également à la responsabilité du transporteur substitué pour le transport effectué par ses soins. Les articles 48 et 52 s'appliquent lorsqu'une action est intentée contre les agents et toute autre personne au service de laquelle le transporteur substitué recourt pour l'exécution du transport.

3. Toute convention particulière par laquelle le transporteur assume des obligations qui ne lui incombent pas en vertu des présentes règles uniformes, ou renonce à des droits qui lui sont conférés par ces règles uniformes, est sans effet à l'égard du transporteur substitué qui ne l'a pas acceptée expressément et par écrit. Que le transporteur substitué ait ou non accepté cette convention, le transporteur reste néanmoins lié par les obligations ou les renonciations qui résultent de ladite convention particulière.

4. Lorsque et pour autant que le transporteur et le transporteur substitué sont responsables, leur responsabilité est solidaire.

5. Le montant total de l'indemnité dû par le transporteur, le transporteur substitué ainsi que leurs agents et les autres personnes au service desquelles ils recourent pour l'exécution du transport, n'excède pas les limites prévues aux présentes règles uniformes.

6. Le présent article ne porte pas atteinte aux droits de recours pouvant exister entre le transporteur et le transporteur substitué.

Article 40

Présomption de perte

1. L'ayant droit peut, sans avoir à fournir d'autres preuves, considérer un colis comme perdu quand il n'a pas été livré ou tenu à sa disposition dans les quatorze jours qui suivent la demande de livraison présentée conformément à l'article 22, paragraphe 3.

2. Si un colis réputé perdu est retrouvé au cours de l'année qui suit la demande de livraison, le transporteur doit aviser l'ayant droit, lorsque son adresse est connue ou peut être découverte.

3. Dans les trente jours qui suivent la réception de l'avis visé au paragraphe 2, l'ayant droit peut exiger que le colis lui soit livré. Dans ce cas, il doit payer les frais afférents au transport du colis depuis le lieu d'expédition jusqu'à celui où a lieu la livraison et restituer l'indemnité reçue, déduction faite, le cas échéant, des frais qui auraient été compris dans cette indemnité. Néanmoins, il conserve ses droits à indemnité pour retard à la livraison prévus à l'article 43.

4. Si le colis retrouvé n'a pas été réclamé dans le délai prévu au paragraphe 3 ou si le colis est retrouvé plus d'un an après la demande de livraison, le transporteur en dispose conformément aux lois et aux prescriptions en vigueur au lieu où se trouve le colis.

Article 41

Indemnité en cas de perte

1. En cas de perte totale ou partielle des bagages, le transporteur doit payer, à l'exclusion de tous autres dommages-intérêts:

a) si le montant du dommage est prouvé, une indemnité égale à ce montant sans qu'elle excède toutefois 80 unités de compte par kilogramme manquant de masse brute ou 1 200 unités de compte par colis;

b) si le montant du dommage n'est pas prouvé, une indemnité forfaitaire de 20 unités de compte par kilogramme manquant de masse brute ou de 300 unités de compte par colis.

Le mode d'indemnisation, par kilogramme manquant ou par colis, est déterminé dans les Conditions générales de transport.

2. Le transporteur doit restituer, en outre, le prix pour le transport des bagages et les autres sommes déboursées en relation avec le transport du colis perdu ainsi que les droits de douane et les droits d'accise déjà acquittés.

Article 42

Indemnité en cas d'avarie

1. En cas d'avarie des bagages, le transporteur doit payer, à l'exclusion de tous autres dommages-intérêts, une indemnité équivalente à la dépréciation des bagages.

2. L'indemnité n'excède pas:

a) si la totalité des bagages est dépréciée par l'avarie, le montant qu'elle aurait atteint en cas de perte totale;

b) si une partie seulement des bagages est dépréciée par l'avarie, le montant qu'elle aurait atteint en cas de perte de la partie dépréciée.

Article 43

Indemnité en cas de retard à la livraison

1. En cas de retard à la livraison des bagages, le transporteur doit payer, par période indivisible de vingt-quatre heures à compter de la demande de livraison, mais avec un maximum de quatorze jours:

a) si l'ayant droit prouve qu'un dommage, y compris une avarie, en est résulté, une indemnité égale au montant du dommage jusqu'à un maximum de 0,80 unité de compte par kilogramme de masse brute des bagages ou de 14 unités de compte par colis, livrés en retard;

b) si l'ayant droit ne prouve pas qu'un dommage en est résulté, une indemnité forfaitaire de 0,14 unité de compte par kilogramme de masse brute des bagages ou de 2,80 unités de compte par colis, livrés en retard.

Le mode d'indemnisation, par kilogramme ou par colis, est déterminé dans les Conditions générales de transport.

2. En cas de perte totale des bagages, l'indemnité prévue au paragraphe 1 ne se cumule pas avec celle prévue à l'article 41.

3. En cas de perte partielle des bagages, l'indemnité prévue au paragraphe 1 est payée pour la partie non perdue.

4. En cas d'avarie des bagages ne résultant pas du retard à la livraison, l'indemnité prévue au paragraphe 1 se cumule, s'il y a lieu, avec celle prévue à l'article 42.

5. En aucun cas, le cumul de l'indemnité prévue au paragraphe 1 avec celles prévues aux articles 41 et 42 ne donne lieu au paiement d'une indemnité excédant celle qui serait due en cas de perte totale des bagages.

SECTION 3

Véhicules

Article 44

Indemnité en cas de retard

1. En cas de retard dans le chargement pour une cause imputable au transporteur ou de retard à la livraison d'un véhicule, le transporteur doit payer, lorsque l'ayant droit prouve qu'un dommage en est résulté, une indemnité dont le montant n'excède pas le prix du transport.

2. Si l'ayant droit renonce au contrat de transport, en cas de retard dans le chargement pour une cause imputable au transporteur, le prix du transport est remboursé à l'ayant droit. En outre, celui-ci peut réclamer, lorsqu'il prouve qu'un dommage est résulté de ce retard, une indemnité dont le montant n'excède pas le prix du transport.

Article 45

Indemnité en cas de perte

En cas de perte totale ou partielle d'un véhicule, l'indemnité à payer à l'ayant droit pour le dommage prouvé est calculée d'après la valeur usuelle du véhicule. Elle n'excède pas 8 000 unités de compte. Une remorque avec ou sans chargement est considérée comme un véhicule indépendant.

Article 46

Responsabilité en ce qui concerne d'autres objets

1. En ce qui concerne les objets laissés dans le véhicule ou se trouvant dans des coffres (par exemple, coffres à bagages ou à skis), solidement arrimés au véhicule, le transporteur n'est responsable que du dommage causé par sa faute. L'indemnité totale à payer n'excède pas 1 400 unités de compte.

2. En ce qui concerne les objets arrimés à l'extérieur du véhicule y compris les coffres visés au paragraphe 1, le transporteur n'est responsable que s'il est prouvé que le dommage résulte d'un acte ou d'une omission que le transporteur a commis, soit avec l'intention de provoquer un tel dommage, soit témérairement et avec conscience qu'un tel dommage en résulterait probablement.

Article 47

Droit applicable

Sous réserve des dispositions de la présente section, les dispositions de la section 2 relatives à la responsabilité pour les bagages s'appliquent aux véhicules.

Chapitre IV

Dispositions communes

Article 48

Déchéance du droit d'invoquer les limites de responsabilité

Les limites de responsabilité prévues aux présentes règles uniformes ainsi que les dispositions du droit national qui limitent les indemnités à un montant déterminé ne s'appliquent pas, s'il est prouvé que le dommage résulte d'un acte ou d'une omission que le transporteur a commis, soit avec l'intention de provoquer un tel dommage, soit témérairement et avec conscience qu'un tel dommage en résulterait probablement.

Article 49

Conversion et intérêts

1. Lorsque le calcul de l'indemnité implique la conversion des sommes exprimées en unités monétaires étrangères, celle-ci est faite d'après le cours au jour et au lieu du paiement de l'indemnité.

2. L'ayant droit peut demander des intérêts de l'indemnité, calculés à raison de cinq pour cent l'an, à partir du jour de la réclamation prévue à l'article 55 ou, s'il n'y a pas eu de réclamation, du jour de la demande en justice.

3. Toutefois, pour les indemnités dues en vertu des articles 27 et 28, les intérêts ne courent que du jour où les faits qui ont servi à la détermination du montant de l'indemnité se sont produits, si ce jour est postérieur à celui de la réclamation ou de la demande en justice.

4. En ce qui concerne les bagages, les intérêts ne sont dus que si l'indemnité excède 16 unités de compte par bulletin de bagages.

5. En ce qui concerne les bagages, si l'ayant droit ne remet pas au transporteur, dans un délai convenable qui lui est fixé, les pièces justificatives nécessaires pour la liquidation définitive de la réclamation, les intérêts ne courent pas entre l'expiration du délai fixé et la remise effective de ces pièces.

Article 50

Responsabilité en cas d'accident nucléaire

Le transporteur est déchargé de la responsabilité qui lui incombe en vertu des présentes règles uniformes lorsque le dommage a été causé par un accident nucléaire et qu'en application des lois et des prescriptions d'un État réglant la responsabilité dans le domaine de l'énergie nucléaire, l'exploitant d'une installation nucléaire ou une autre personne qui lui est substituée est responsable de ce dommage.

Article 51

Personnes dont répond le transporteur

Le transporteur est responsable de ses agents et des autres personnes au service desquelles il recourt pour l'exécution du transport lorsque ces agents ou ces autres personnes agissent dans l'exercice de leurs fonctions. Les gestionnaires de l'infrastructure ferroviaire sur laquelle est effectué le transport sont considérés comme des personnes au service desquelles le transporteur recourt pour l'exécution du transport.

Article 52

Autres actions

1. Dans tous les cas où les présentes règles uniformes s'appliquent, toute action en responsabilité, à quelque titre que ce soit, ne peut être exercée contre le transporteur que dans les conditions et limitations de ces règles uniformes.

2. Il en est de même pour toute action exercée contre les agents et les autres personnes dont le transporteur répond en vertu de l'article 51.

TITRE V

RESPONSABILITÉ DU VOYAGEUR

Article 53

Principes particuliers de responsabilité

Le voyageur est responsable envers le transporteur pour tout dommage:

a) résultant du non respect de ses obligations en vertu

   1. des articles 10, 14 et 20;

   2. des dispositions particulières pour le transport des véhicules, contenues dans les Conditions générales de transport; ou

   3. du règlement concernant le transport international ferroviaire des marchandises dangereuses (RID); ou

b) causé par les objets ou les animaux qu'il prend avec lui,

à moins qu'il ne prouve que le dommage a été causé par des circonstances qu'il ne pouvait pas éviter et aux conséquences desquelles il ne pouvait pas obvier, en dépit du fait qu'il a fait preuve de la diligence exigée d'un voyageur consciencieux. Cette disposition n'affecte pas la responsabilité qui peut incomber au transporteur en vertu des articles 26 et 33, paragraphe 1.

TITRE VI

EXERCICE DES DROITS

Article 54

Constatation de perte partielle ou d'avarie

1. Lorsqu'une perte partielle ou une avarie d'un objet transporté sous la garde du transporteur (bagages, véhicules) est découverte ou présumée par le transporteur ou que l'ayant droit en allègue l'existence, le transporteur doit dresser sans délai et, si possible, en présence de l'ayant droit, un procès-verbal constatant, suivant la nature du dommage, l'état de l'objet, et, autant que possible, l'importance du dommage, sa cause et le moment où il s'est produit.

2. Une copie du procès-verbal de constatation doit être remise gratuitement à l'ayant droit.

3. Lorsque l'ayant droit n'accepte pas les constatations du procès-verbal, il peut demander que l'état des bagages ou du véhicule, ainsi que la cause et le montant du dommage, soient constatés par un expert nommé par les parties au contrat de transport ou par voie judiciaire. La procédure est soumise aux lois et aux prescriptions de l'État où la constatation a lieu.

Article 55

Réclamations

1. Les réclamations relatives à la responsabilité du transporteur en cas de mort et de blessures de voyageurs doivent être adressées par écrit au transporteur contre qui l'action judiciaire peut être exercée. Dans le cas d'un transport faisant l'objet d'un contrat unique et effectué par des transporteurs subséquents, les réclamations peuvent également être adressées au premier ou au dernier transporteur ainsi qu'au transporteur ayant, dans l'État de domicile ou de résidence habituelle du voyageur, son siège principal ou la succursale ou l'établissement qui a conclu le contrat de transport.

2. Les autres réclamations relatives au contrat de transport doivent être adressées par écrit au transporteur désigné à l'article 56, paragraphes 2 et 3.

3. Les pièces que l'ayant droit juge utile de joindre à la réclamation doivent être présentées soit en originaux, soit en copies, le cas échéant, dûment certifiées conformes si le transporteur le demande. Lors du règlement de la réclamation, le transporteur peut exiger la restitution du titre de transport, du bulletin de bagages et du bulletin de transport.

Article 56

Transporteurs qui peuvent être actionnés

1. L'action judiciaire fondée sur la responsabilité du transporteur en cas de mort et de blessures de voyageurs ne peut être exercée que contre un transporteur responsable au sens de l'article 26, paragraphe 5.

2. Sous réserve du paragraphe 4, les autres actions judiciaires des voyageurs fondées sur le contrat de transport peuvent être exercées uniquement contre le premier ou le dernier transporteur ou contre celui qui exécutait la partie du transport au cours de laquelle s'est produit le fait générateur de l'action.

3. Lorsque, dans le cas de transports exécutés par des transporteurs subséquents, le transporteur devant livrer le bagage ou le véhicule est inscrit avec son consentement sur le bulletin de bagages ou sur le bulletin de transport, celui-ci peut être actionné conformément au paragraphe 2, même s'il n'a pas reçu le bagage ou le véhicule.

4. L'action judiciaire en restitution d'une somme payée en vertu du contrat de transport peut être exercée contre le transporteur qui a perçu cette somme ou contre celui au profit duquel elle a été perçue.

5. L'action judiciaire peut être exercée contre un transporteur autre que ceux visés aux paragraphes 2 et 4, lorsqu'elle est présentée comme demande reconventionnelle ou comme exception dans l'instance relative à une demande principale fondée sur le même contrat de transport.

6. Dans la mesure où les présentes règles uniformes s'appliquent au transporteur substitué, celui-ci peut également être actionné.

7. Si le demandeur a le choix entre plusieurs transporteurs, son droit d'option s'éteint dès que l'action judiciaire est intentée contre l'un d'eux; cela vaut également si le demandeur a le choix entre un ou plusieurs transporteurs et un transporteur substitué.

Article 58

Extinction de l'action en cas de mort et de blessures

1. Toute action de l'ayant droit fondée sur la responsabilité du transporteur en cas de mort ou de blessures de voyageurs est éteinte s'il ne signale pas l'accident survenu au voyageur, dans les douze mois à compter de la connaissance du dommage, à l'un des transporteurs auxquels une réclamation peut être présentée selon l'article 55, paragraphe 1. Lorsque l'ayant droit signale verbalement l'accident au transporteur, celui-ci doit lui délivrer une attestation de cet avis verbal.

2. Toutefois, l'action n'est pas éteinte si:

a) dans le délai prévu au paragraphe 1, l'ayant droit a présenté une réclamation auprès de l'un des transporteurs désignés à l'article 55, paragraphe 1;

b) dans le délai prévu au paragraphe 1, le transporteur responsable a eu connaissance, par une autre voie, de l'accident survenu au voyageur;

c) l'accident n'a pas été signalé ou a été signalé tardivement, à la suite de circonstances qui ne sont pas imputables à l'ayant droit;

d) l'ayant droit prouve que l'accident a eu pour cause une faute du transporteur.

Article 59

Extinction de l'action née du transport des bagages

1. L'acceptation des bagages par l'ayant droit éteint toute action contre le transporteur, née du contrat de transport, en cas de perte partielle, d'avarie ou de retard à la livraison.

2. Toutefois, l'action n'est pas éteinte:

a) en cas de perte partielle ou d'avarie, si:

   1. la perte ou l'avarie a été constatée conformément à l'article 54 avant la réception des bagages par l'ayant droit;

   2. la constatation qui aurait dû être faite conformément à l'article 54 n'a été omise que par la faute du transporteur;

b) en cas de dommage non apparent dont l'existence est constatée après l'acceptation des bagages par l'ayant droit, si celui-ci:

   1. demande la constatation conformément à l'article 54 immédiatement après la découverte du dommage et au plus tard dans les trois jours qui suivent la réception des bagages; et

   2. prouve, en outre, que le dommage s'est produit entre la prise en charge par le transporteur et la livraison;

c) en cas de retard à la livraison, si l'ayant droit a, dans les vingt et un jours, fait valoir ses droits auprès de l'un des transporteurs désignés à l'article 56, paragraphe 3;

d) si l'ayant droit prouve que le dommage a pour cause une faute du transporteur.

Article 60

Prescription

1. La période de validité des actions en dommages-intérêts fondées sur la responsabilité du transporteur en cas de mort et de blessures de voyageurs est:

a) pour le voyageur, de trois ans à compter du lendemain de l'accident;

b) pour les autres ayants droit, de trois ans à compter du lendemain du décès du voyageur, sans que ce délai puisse toutefois dépasser cinq ans à compter du lendemain de l'accident.

2. La période de validité des autres actions nées du contrat de transport est d'un an. Toutefois, la prescription est de deux ans s'il s'agit d'une action en raison d'un dommage résultant d'un acte ou d'une omission commis soit avec l'intention de provoquer un tel dommage, soit témérairement et avec conscience qu'un tel dommage en résulterait probablement.

3. La prescription prévue au paragraphe 2 court pour l'action:

a) en indemnité pour perte totale: du quatorzième jour qui suit l'expiration du délai prévu à l'article 22, paragraphe 3;

b) en indemnité pour perte partielle, avarie ou retard à la livraison: du jour où la livraison a eu lieu;

c) dans tous les autres cas concernant le transport des voyageurs: du jour de l'expiration de la validité du titre de transport.

Le jour indiqué comme point de départ de la prescription n'est jamais compris dans le délai.

4. […]

5. […]

6. Par ailleurs, la suspension et l'interruption de la prescription sont réglées par le droit national.

TITRE VII

RAPPORTS DES TRANSPORTEURS ENTRE EUX

Article 61

Partage du prix de transport

1. Tout transporteur doit payer aux transporteurs intéressés la part qui leur revient sur un prix de transport qu'il a encaissé ou qu'il aurait dû encaisser. Les modalités de paiement sont fixées par convention entre les transporteurs.

2. L'article 6, paragraphe 3, l'article 16, paragraphe 3, et l'article 25 s'appliquent également aux relations entre les transporteurs subséquents.

Article 62

Droit de recours

1. Le transporteur qui a payé une indemnité en vertu des présentes règles uniformes a un droit de recours contre les transporteurs ayant participé au transport conformément aux dispositions suivantes:

a) le transporteur qui a causé le dommage en est seul responsable;

b) lorsque le dommage a été causé par plusieurs transporteurs, chacun d'eux répond du dommage qu'il a causé; si la distinction est impossible, l'indemnité est répartie entre eux conformément à la lettre c);

c) s'il ne peut être prouvé lequel des transporteurs a causé le dommage, l'indemnité est répartie entre tous les transporteurs ayant participé au transport, à l'exception de ceux qui prouvent que le dommage n'a pas été causé par eux; la répartition est faite proportionnellement à la part du prix de transport qui revient à chacun des transporteurs.

2. Dans le cas d'insolvabilité de l'un de ces transporteurs, la part lui incombant et non payée par lui est répartie entre tous les autres transporteurs ayant participé au transport, proportionnellement à la part du prix de transport qui revient à chacun d'eux.

Article 63

Procédure de recours

1. Le bien-fondé du paiement effectué par le transporteur exerçant un recours en vertu de l'article 62 ne peut être contesté par le transporteur contre lequel le recours est exercé, lorsque l'indemnité a été fixée judiciairement et que ce dernier transporteur, dûment assigné, a été mis à même d'intervenir au procès. Le juge, saisi de l'action principale, fixe les délais impartis pour la signification de l'assignation et pour l'intervention.

2. Le transporteur qui exerce son recours doit former sa demande dans une seule et même instance contre tous les transporteurs avec lesquels il n'a pas transigé, sous peine de perdre son recours contre ceux qu'il n'aurait pas assignés.

3. Le juge doit statuer par un seul et même jugement sur tous les recours dont il est saisi.

4. Le transporteur qui désire faire valoir son droit de recours peut saisir les juridictions de l'État sur le territoire duquel un des transporteurs participant au transport a son siège principal ou la succursale ou l'établissement qui a conclu le contrat de transport.

5. Lorsque l'action doit être intentée contre plusieurs transporteurs, le transporteur qui exerce le droit de recours peut choisir entre les juridictions compétentes, selon le paragraphe 4, celle devant laquelle il introduira son recours.

6. Des recours ne peuvent pas être introduits dans l'instance relative à la demande en indemnité exercée par l'ayant droit au contrat de transport.

Article 64

Accords au sujet des recours

Les transporteurs sont libres de convenir entre eux de dispositions dérogeant aux articles 61 et 62.

ANNEXE II

INFORMATIONS MINIMALES QUE DOIVENT FOURNIR LES ENTREPRISES FERROVIAIRES ET/OU LES VENDEURS DE BILLETS

Partie I: informations préalables au voyage

Conditions générales applicables au contrat

Horaires et conditions pour le voyage le plus rapide

Horaires et conditions pour les tarifs les plus bas

Accessibilité, conditions d'accès et disponibilité à bord d'équipements pour les personnes handicapées et les personnes à mobilité réduite

Accessibilité et conditions d'accès pour les bicyclettes

Disponibilité de sièges en zones fumeur et non fumeur, en première et en deuxième classes, ainsi que de couchettes et de places en wagons-lits

Toute activité susceptible d'interrompre ou de retarder les services

Disponibilité de services à bord

Procédures de réclamation pour les bagages perdus

Procédures de dépôt des plaintes

Partie II: informations pendant le voyage

Services à bord

Gare suivante

Retards

Correspondances principales

Questions relatives à la sécurité et à la sûreté

ANNEXE III

NORMES MINIMALES DE QUALITÉ DU SERVICE

Informations et billets

Ponctualité des services et principes généraux en vue de faire face à des perturbations des services

Annulations de services

Propreté du matériel roulant et des équipements des gares (qualité de l'air dans les voitures, hygiène des équipements sanitaires, etc.)

Enquête de satisfaction de la clientèle

Traitement des plaintes, remboursements et indemnisation en cas de non-respect des normes de qualité du service

Assistance aux personnes handicapées et aux personnes à mobilité réduite

I

(Actes dont la publication est une condition de leur applicabilité)

RÈGLEMENT (CE) Nº 1107/2006 DU PARLEMENT EUROPÉEN ET DU CONSEIL

du 5 juillet 2006

concernant les droits des personnes handicapées et des personnes à mobilité réduite lorsqu'elles font des voyages aériens

(Texte présentant de l'intérêt pour l'EEE)

LE PARLEMENT EUROPÉEN ET LE CONSEIL DE L'UNION EUROPÉENNE,

vu le traité instituant la Communauté européenne, et notamment son article 80, paragraphe 2,

vu la proposition de la Commission,

vu l'avis du Comité économique et social européen ([1]),

après consultation du Comité des régions,

statuant conformément à la procédure visée à l'article 251 du traité ([2]),

considérant ce qui suit:

(1) Le marché unique des services de transport aérien devrait bénéficier à l'ensemble des citoyens. Par conséquent, les personnes handicapées et les personnes à mobilité réduite, que cette réduction résulte d'un handicap, de l'âge ou de tout autre facteur, devraient avoir des possibilités d'emprunter les transports aériens comparables à celles dont disposent les autres citoyens. Les personnes handicapées et les personnes à mobilité réduite ont les mêmes droits que tous les autres citoyens à la libre circulation, à la liberté de choix et à la non-discrimination. Cela s'applique au transport aérien comme aux autres domaines de la vie.

(2) Les personnes handicapées et les personnes à mobilité réduite devraient, par conséquent, avoir accès au transport et ne devraient pas se voir refuser un transport en raison de leur handicap ou de leur manque de mobilité, sauf pour des motifs de sécurité justifiés et imposés par le droit. Avant d'enregistrer des réservations de personnes handicapées ou de personnes à mobilité réduite, les transporteurs aériens, leurs agents et les organisateurs de voyages devraient s'efforcer, dans la mesure du raisonnable, de vérifier s'il existe un motif de sécurité justifié qui empêcherait lesdites personnes d'être embarquées sur les vols concernés.

(3) Le présent règlement ne devrait pas porter atteinte aux autres droits des passagers établis par la législation communautaire, et notamment par la directive 90/314/CEE du Conseil du 13 juin 1990 concernant les voyages, vacances et circuits à forfait ([3]) et le règlement (CE) nº 261/2004 du Parlement européen et du Conseil du 11 février 2004 établissant des règles communes en matière d'indemnisation et d'assistance des passagers en cas de refus d'embarquement et d'annulation ou de retard important d'un vol ([4]). Dans le cas où un même événement donnerait naissance au même droit à remboursement ou à nouvelle réservation en vertu d'un de ces actes législatifs et du présent règlement, la personne concernée ne devrait être admise à exercer ce droit qu'une seule fois, selon son choix.

(4) Afin de donner aux personnes handicapées et aux personnes à mobilité réduite des possibilités de voyages aériens comparables à celles dont disposent les autres citoyens, il convient de leur fournir une assistance adaptée à leurs besoins spécifiques, aussi bien dans les aéroports qu'à bord des aéronefs, à l'aide du personnel et des équipements nécessaires. Dans l'intérêt de l'inclusion sociale, cette assistance devrait être fournie sans frais supplémentaire pour les personnes concernées.

(5) L'assistance dispensée dans les aéroports situés sur le territoire d'un État membre auquel le traité s'applique devrait notamment permettre aux personnes handicapées et aux personnes à mobilité réduite de se rendre d'un point désigné d'arrivée à un aéroport à un aéronef et de cet aéronef à un point désigné de départ de l'aéroport, embarquement et débarquement compris. Ces points devraient être désignés au moins aux entrées principales des bâtiments du terminal, dans les zones des comptoirs d'enregistrement, les gares ferroviaires (grandes lignes et rail léger), les stations de métro et de bus, les stations de taxis et les autres points de débarquement ainsi que dans les parcs de stationnement de l'aéroport. L'assistance devrait être organisée de manière à éviter les interruptions et retards, tout en garantissant le respect de normes élevées et équivalentes dans l'ensemble de la Communauté et en faisant le meilleur usage des ressources, quel que soit l'aéroport ou le transporteur aérien concerné.

([1]) JO C 24 du 31.1.2006, p. 12.

([2]) Avis du Parlement européen du 15 décembre 2005 (non encore paru au Journal officiel) et décision du Conseil du 9 juin 2006.

([3]) JO L 158 du 23.6.1990, p. 59.

([4]) JO L 46 du 17.2.2004, p. 1.

(6) Afin d'atteindre ces objectifs, la fourniture d'une assistance de grande qualité dans les aéroports devrait être de la responsabilité d'un organisme central. Étant donné que les entités gestionnaires d'aéroports jouent un rôle central dans la fourniture de services dans leurs aéroports, c'est à elles que cette responsabilité globale devrait être confiée.

(7) Les entités gestionnaires d'aéroports peuvent fournir elles-mêmes l'assistance aux personnes handicapées et aux personnes à mobilité réduite. D'un autre côté, eu égard au rôle positif joué dans le passé par certains opérateurs et transporteurs aériens, les entités gestionnaires peuvent passer avec des tiers un contrat pour la fourniture de cette assistance, sans préjudice de l'application d'autres dispositions pertinentes du droit communautaire, y compris celles relatives aux marchés publics.

(8) L'assistance devrait être financée de manière à en répartir la charge équitablement entre tous les passagers qui utilisent un aéroport et de manière à éviter de décourager le transport de personnes handicapées et de personnes à mobilité réduite. Une redevance perçue sur chaque transporteur aérien qui utilise un aéroport, proportionnelle au nombre de passagers qu'il transporte au départ ou à destination de celui-ci, semble être le mode de financement le plus efficace.

(9) Afin de s'assurer, en particulier, que les redevances facturées au transporteur aérien sont proportionnées à l'assistance fournie aux personnes handicapées et aux personnes à mobilité réduite et qu'elles ne servent pas à financer des activités de l'entité gestionnaire autres que celles liées à la fourniture de ladite assistance, il convient que la fixation et l'application des redevances se fassent en pleine transparence. La directive 96/67/CE du Conseil du 15 octobre 1996 relative à l'accès au marché de l'assistance en escale dans les aéroports de la Communauté [1], et notamment ses dispositions sur la séparation des comptes, devrait donc s'appliquer, sauf disposition contraire du présent règlement.

(10) Lorsqu'ils organisent la fourniture d'assistance aux personnes handicapées et aux personnes à mobilité réduite, et la formation de leur personnel, les aéroports et les transporteurs aériens devraient tenir compte du document nº 30 de la Conférence européenne de l'aviation civile (CEAC), partie I, section 5, et ses annexes y relatives, notamment le code de bonne conduite sur les services d'assistance en escale pour les personnes à mobilité réduite, figurant à son annexe J au moment de l'adoption du présent règlement.

(11) Lorsqu'elles décident de la conception de nouveaux aéroports et terminaux, ainsi que dans le cadre de réaménagements importants, les entités gestionnaires d'aéroports devraient tenir compte, autant qu'il est possible, des besoins des personnes handicapées et des personnes à mobilité réduite. Il convient de même que les transporteurs aériens prennent ces besoins en compte, autant qu'il est possible, lorsqu'ils décident de la conception d'un nouvel aéronef et du réaménagement d'un aéronef.

(12) La directive 95/46/CE du Parlement européen et du Conseil du 24 octobre 1995 relative à la protection des personnes physiques à l'égard du traitement des données à caractère personnel et à la libre circulation de ces données [2] devrait être strictement appliquée afin de garantir que la vie privée des personnes handicapées et à mobilité réduite est respectée et que les informations requises servent uniquement à remplir les obligations d'assistance établies par le présent règlement et ne sont pas utilisées au détriment des passagers faisant appel à ce service.

(13) Toute information essentielle communiquée aux passagers aériens devrait être fournie sous d'autres formes accessibles aux personnes handicapées et aux personnes à mobilité réduite et devrait l'être au moins dans les mêmes langues que l'information mise à la disposition des autres passagers.

(14) Si un fauteuil roulant ou d'autres équipements de mobilité et d'assistance sont perdus ou endommagés durant leur maniement à l'aéroport ou leur transport à bord de l'aéronef, le passager auquel l'équipement appartient devrait être indemnisé, conformément aux règles du droit international, communautaire et national.

(15) Les États membres devraient superviser l'application du présent règlement, contrôler son application et désigner un organisme approprié chargé de le faire appliquer. Cette supervision ne porte pas atteinte aux droits des personnes handicapées et des personnes à mobilité réduite de demander réparation auprès des tribunaux conformément au droit national.

(16) Il importe qu'une personne handicapée ou une personne à mobilité réduite qui estime que le présent règlement a été enfreint puisse porter la question à l'attention de l'entité gestionnaire de l'aéroport ou à celle du transporteur aérien concerné, selon le cas. Si elle n'obtient pas satisfaction de cette manière, elle devrait avoir la possibilité de porter plainte auprès de l'organisme ou des organismes désignés à cet effet par l'État membre concerné.

(17) Les plaintes relatives à l'assistance fournie dans un aéroport devraient être adressées à l'organisme ou aux organismes désignés, en vue de l'application du présent règlement, par l'État membre sur le territoire duquel l'aéroport est situé. Les plaintes relatives à l'assistance fournie par un transporteur aérien devraient être adressées à l'organisme ou aux organismes désignés, en vue de l'application du présent règlement, par l'État membre qui a délivré la licence d'exploitation au transporteur aérien.

[1] JO L 272 du 25.10.1996, p. 36. Directive modifiée par le règlement (CE) nº 1882/2003 du Parlement européen et du Conseil (JO L 284 du 31.10.2003, p. 1).

[2] JO L 281 du 23.11.1995, p. 31. Directive modifiée par le règlement (CE) nº 1882/2003.

(18) Les États membres devraient établir les sanctions applicables aux infractions au présent règlement et en assurer l'application. Ces sanctions, qui pourraient comprendre l'obligation de verser une indemnité à la personne concernée, devraient être efficaces, proportionnées et dissuasives.

(19) Étant donné que les objectifs du présent règlement, à savoir garantir des niveaux élevés et équivalents de protection et d'assistance dans tous les États membres et assurer que les agents économiques opèrent dans des conditions harmonisées à l'intérieur d'un marché unique, ne peuvent pas être réalisés de manière suffisante par les États membres et peuvent donc, en raison des dimensions ou des effets de l'action, être mieux réalisés au niveau communautaire, la Communauté peut prendre des mesures, conformément au principe de subsidiarité consacré à l'article 5 du traité. Conformément au principe de proportionnalité tel qu'énoncé audit article, le présent règlement n'excède pas ce qui est nécessaire pour atteindre ces objectifs.

(20) Le présent règlement respecte les droits fondamentaux et observe les principes reconnus, en particulier, par la charte des droits fondamentaux de l'Union européenne.

(21) Par une déclaration conjointe de leur ministre des affaires étrangères, faite à Londres le 2 décembre 1987, le Royaume d'Espagne et le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord sont convenus de certains arrangements pour une meilleure coopération dans l'utilisation de l'aéroport de Gibraltar. Lesdits arrangements attendent encore d'être mis en application,

ONT ARRÊTÉ LE PRÉSENT RÈGLEMENT:

Article premier

Objet et champ d'application

1. Le présent règlement établit des règles relatives à la protection et à l'assistance en faveur des personnes handicapées et des personnes à mobilité réduite qui font des voyages aériens, afin de les protéger contre la discrimination et de garantir qu'elles reçoivent une assistance.

2. Les dispositions du présent règlement s'appliquent aux personnes handicapées et aux personnes à mobilité réduite qui recourent à des services commerciaux de transport aérien de passagers, ou ont l'intention de le faire, au départ, à l'arrivée ou en transit dans un aéroport, lorsque celui-ci est situé sur le territoire d'un État membre auquel le traité s'applique.

3. Les articles 3, 4 et 10 s'appliquent aussi aux passagers qui quittent un aéroport situé dans un pays tiers à destination d'un aéroport situé sur le territoire d'un État membre auquel le traité s'applique, si le transporteur aérien effectif est un transporteur aérien communautaire.

4. Le présent règlement ne porte pas atteinte aux droits des passagers établis par la directive 90/314/CEE et en vertu du règlement (CE) nº 261/2004.

5. Dans la mesure où les dispositions du présent règlement sont contraires à celles de la directive 96/67/CE, le présent règlement prime.

6. L'application du présent règlement à l'aéroport de Gibraltar s'entend sans préjudice des positions juridiques respectives du Royaume d'Espagne et du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord au sujet de leur différend relatif à la souveraineté sur le territoire où cet aéroport est situé.

7. L'application du présent règlement à l'aéroport de Gibraltar est suspendue jusqu'à ce que soient mis en application les arrangements prévus dans la déclaration conjointe faite, le 2 décembre 1987, par les ministres des affaires étrangères d'Espagne et du Royaume-Uni. Les gouvernements d'Espagne et du Royaume-Uni informent le Conseil de la date de cette mise en application.

Article 2

Définitions

Aux fins du présent règlement, on entend par:

a) «personne handicapée» ou «personne à mobilité réduite»: toute personne dont la mobilité est réduite, lors de l'usage d'un moyen de transport, en raison de tout handicap physique (sensoriel ou moteur, permanent ou temporaire) ou de tout handicap ou déficience intellectuels, ou de toute autre cause de handicap, ou de l'âge, et dont la situation requiert une attention appropriée et l'adaptation à ses besoins particuliers du service mis à la disposition de tous les passagers;

b) «transporteur aérien»: une entreprise de transport aérien possédant une licence d'exploitation en cours de validité;

c) «transporteur aérien effectif»: un transporteur aérien qui réalise ou a l'intention de réaliser un vol dans le cadre d'un contrat conclu avec un passager ou au nom d'une autre personne, morale ou physique, qui a conclu un contrat avec ce passager;

d) «transporteur aérien communautaire»: un transporteur aérien détenteur d'une licence d'exploitation en cours de validité, octroyée par un État membre conformément au règlement (CEE) nº 2407/92 du Conseil du 23 juillet 1992 concernant les licences des transporteurs aériens [1];

e) «organisateur de voyages»: à l'exclusion d'un transporteur aérien, un organisateur ou un détaillant au sens de l'article 2, points 2) et 3), de la directive 90/314/CEE;

f) «entité gestionnaire de l'aéroport» ou «entité gestionnaire»: une entité qui tient de la législation nationale notamment la mission d'administration et de gestion des infrastructures aéroportuaires ainsi que de coordination et de contrôle des activités des différents opérateurs présents dans l'aéroport ou le système aéroportuaire;

[1] JO L 240 du 24.8.1992, p. 1.

g) «usager d'un aéroport»: toute personne physique ou morale responsable du transport par voie aérienne de passagers, au départ ou à destination de l'aéroport considéré;

h) «comité des usagers de l'aéroport»: un comité composé des représentants des usagers de l'aéroport ou des organisations représentatives de ces usagers;

i) «réservation»: le fait pour un passager d'être en possession d'un billet, ou d'une autre preuve, indiquant que la réservation a été acceptée et enregistrée par le transporteur aérien ou l'organisateur de voyages;

j) «aéroport»: tout terrain spécialement aménagé pour l'atterrissage, le décollage et les manœuvres d'aéronefs, y compris les installations annexes que ces opérations peuvent comporter pour les besoins du trafic et le service des aéronefs, y compris les installations nécessaires pour assister les services commerciaux de transport aérien;

k) «parc de stationnement de l'aéroport»: un parc de stationnement pour véhicules automobiles situé dans le périmètre d'un aéroport ou sous le contrôle direct de l'entité gestionnaire d'un aéroport, qui sert directement aux passagers utilisant ledit aéroport;

l) «service commercial de transport aérien de passagers»: un service de transport de passagers par voie aérienne, assuré par un transporteur aérien sur un vol régulier ou non régulier et proposé au grand public contre rétribution, qu'il s'agisse d'un transport seul ou d'un transport faisant partie d'un voyage à forfait.

Article 3

Interdiction de refuser le transport

Un transporteur aérien ou son agent ou un organisateur de voyages ne peut refuser, pour cause de handicap ou de mobilité réduite:

a) d'accepter une réservation pour un vol au départ ou à destination d'un aéroport auquel le présent règlement s'applique;

b) d'embarquer une personne handicapée ou une personne à mobilité réduite dans un tel aéroport, si cette personne dispose d'un billet et d'une réservation valables.

Article 4

Dérogations, conditions spéciales et information

1. Nonobstant les dispositions de l'article 3, un transporteur aérien, son agent ou un organisateur de voyages peut, pour cause de handicap ou de mobilité réduite, refuser d'accepter une réservation pour une personne handicapée ou pour une personne à mobilité réduite ou refuser d'embarquer cette personne:

a) afin de respecter les exigences de sécurité applicables, qu'elles soient prévues par le droit international, communautaire ou national ou établies par l'autorité qui a délivré son certificat de transporteur aérien au transporteur aérien concerné;

b) si la taille de l'aéronef ou de ses portes rend physiquement impossible l'embarquement ou le transport de cette personne handicapée ou à mobilité réduite.

En cas de refus d'accepter une réservation pour les motifs mentionnés au premier alinéa, points a) ou b), le transporteur aérien, son agent ou l'organisateur de voyages s'efforce, dans les limites du raisonnable, de proposer une autre solution acceptable à la personne concernée.

Une personne handicapée ou une personne à mobilité réduite, à laquelle l'embarquement est refusé sur la base de son handicap ou de sa mobilité réduite, et toute personne qui l'accompagne en application du paragraphe 2 du présent article bénéficient du droit au remboursement ou au réacheminement prévu à l'article 8 du règlement (CE) nº 261/2004. Le droit à un vol retour ou à un réacheminement est subordonné à la réunion de toutes les conditions de sécurité.

2. Dans des conditions identiques à celles énoncées au paragraphe 1, premier alinéa, point a), un transporteur aérien ou son agent ou un organisateur de voyages peut exiger qu'une personne handicapée ou une personne à mobilité réduite se fasse accompagner par une autre personne capable de lui fournir l'assistance qu'elle requiert.

3. Un transporteur aérien ou son agent met à disposition du public, sous des formes accessibles et au moins dans les mêmes langues que l'information mise à la disposition des autres passagers, les règles de sécurité qu'il applique au transport de personnes handicapées et de personnes à mobilité réduite, ainsi que les éventuelles restrictions à leur transport ou à celui de leurs équipements de mobilité en raison de la taille de l'aéronef. Un organisateur de voyages met à disposition ces règles de sécurité et restrictions concernant les vols inclus dans les voyages, vacances et circuits à forfait qu'il organise, vend ou offre à la vente.

4. Lorsqu'un transporteur aérien ou son agent ou un organisateur de voyages fait usage d'une dérogation prévue au paragraphe 1 ou 2, il informe immédiatement la personne handicapée ou la personne à mobilité réduite de ses motifs. Sur demande, le transporteur aérien, son agent ou l'organisateur de voyages communique ces motifs par écrit à la personne handicapée ou à la personne à mobilité réduite dans les cinq jours ouvrables qui suivent la demande.

Article 5

Désignation des points d'arrivée et de départ

1. En coopération avec les usagers de l'aéroport, par l'intermédiaire du comité des usagers de l'aéroport lorsqu'il en existe un, et avec les organisations appropriées représentant les personnes handicapées et les personnes à mobilité réduite, l'entité gestionnaire de l'aéroport désigne, en tenant compte des spécificités locales, les points d'arrivée et de départ, situés dans le périmètre de l'aéroport ou à un point qu'elle contrôle

directement, tant à l'intérieur qu'à l'extérieur des bâtiments du terminal, où les personnes handicapées ou les personnes à mobilité réduite peuvent aisément annoncer leur arrivée à l'aéroport et demander de l'assistance.

2. Les points d'arrivée et de départ visés au paragraphe 1 sont signalés clairement et donnent, sous des formes accessibles, les informations de base concernant l'aéroport.

Article 6

Transmission des informations

1. Les transporteurs aériens, leurs agents et les organisateurs de voyages prennent toutes les mesures nécessaires pour la réception, à tous leurs points de vente sur le territoire des États membres auquel le traité s'applique, y compris la vente par téléphone et par l'internet, des notifications de besoin d'assistance émanant des personnes handicapées ou des personnes à mobilité réduite.

2. Lorsqu'un transporteur aérien, son agent ou un organisateur de voyages reçoit une notification de besoin d'assistance au moins quarante-huit heures avant l'heure de départ publiée du vol, il communique les informations en question au moins trente-six heures avant l'heure de départ publiée du vol:

a) aux entités gestionnaires des aéroports de départ, d'arrivée et de transit; et

b) au transporteur aérien effectif, s'il n'y a pas eu de réservation effectuée auprès de ce transporteur, à moins que l'identité du transporteur aérien effectif ne soit pas connue au moment de la notification, auquel cas les informations sont communiquées dès que cela est faisable.

3. Dans tous les cas autres que ceux visés au paragraphe 2, le transporteur aérien, son agent ou l'organisateur de voyages communique les informations dès que possible.

4. Dès que possible après le départ du vol, le transporteur aérien effectif informe l'entité gestionnaire de l'aéroport de destination, s'il est situé sur le territoire d'un État membre auquel le traité s'applique, du nombre de personnes handicapées et de personnes à mobilité réduite sur ce vol qui ont besoin de l'assistance spécifiée à l'annexe I ainsi que de la nature de cette assistance.

Article 7

Droit à l'assistance dans les aéroports

1. Lorsqu'une personne handicapée ou une personne à mobilité réduite arrive dans un aéroport pour un voyage aérien, il incombe à l'entité gestionnaire de l'aéroport de s'assurer que l'assistance spécifiée à l'annexe I est fournie, de telle manière que la personne soit en mesure de prendre le vol pour lequel elle possède une réservation, à condition que ses besoins particuliers en vue de cette assistance aient été notifiés au transporteur aérien ou à son agent ou à l'organisateur de voyages concerné au moins quarante-huit heures avant l'heure de départ publiée du vol. Cette notification couvre aussi un vol de retour, si le vol aller et le vol de retour ont été réservés auprès du même transporteur aérien.

2. Lorsque l'utilisation d'un chien d'assistance reconnu est requise, il est accédé à cette exigence à condition que notification en ait été faite au transporteur aérien ou à son agent ou à l'organisateur de voyages conformément aux règles nationales applicables au transport de chiens d'assistance à bord des aéronefs, lorsque de telles règles existent.

3. Si aucune notification n'a été effectuée conformément au paragraphe 1, l'entité gestionnaire fait tous les efforts possibles, dans les limites du raisonnable, pour fournir l'assistance spécifiée à l'annexe I de telle sorte que la personne concernée soit en mesure de prendre le vol pour lequel elle possède une réservation.

4. Les dispositions du paragraphe 1 s'appliquent, à condition que:

a) la personne se présente à l'enregistrement:

   i) à l'heure spécifiée à l'avance et par écrit (y compris par voie électronique) par le transporteur aérien, son agent ou l'organisateur de voyages; ou

   ii) si aucune heure n'a été spécifiée, au plus tard une heure avant l'heure de départ publiée; ou

b) la personne arrive à un point situé à l'intérieur du périmètre de l'aéroport et désigné conformément à l'article 5:

   i) à l'heure spécifiée à l'avance et par écrit (y compris par voie électronique) par le transporteur aérien, son agent ou l'organisateur de voyages; ou

   ii) si aucune heure n'a été spécifiée, au plus tard deux heures avant l'heure de départ publiée.

5. Lorsqu'une personne handicapée ou une personne à mobilité réduite transite par un aéroport auquel le présent règlement s'applique ou est transférée par un transporteur aérien ou un organisateur de voyages du vol pour lequel elle possède une réservation vers un autre vol, il incombe à l'entité gestionnaire de s'assurer que l'assistance spécifiée à l'annexe I est fournie, de telle manière que la personne soit en mesure de prendre le vol pour lequel elle possède une réservation.

6. Lorsqu'une personne handicapée ou une personne à mobilité réduite arrive par voie aérienne dans un aéroport auquel le présent règlement s'applique, il incombe à l'entité gestionnaire de l'aéroport de s'assurer que l'assistance spécifiée à l'annexe I est fournie, de telle manière que cette personne soit en mesure d'atteindre le point de départ de l'aéroport, au sens de l'article 5.

7. L'assistance fournie est, dans la mesure du possible, conforme aux besoins particuliers du passager concerné.

Article 8

Responsabilité de l'assistance dans les aéroports

1. Il incombe à l'entité gestionnaire d'un aéroport de s'assurer que l'assistance spécifiée à l'annexe I est fournie sans majoration de prix aux personnes handicapées et aux personnes à mobilité réduite.

2. L'entité gestionnaire peut fournir cette assistance elle-même. Tout en conservant sa responsabilité, et à condition de satisfaire en permanence aux normes de qualité visées à l'article 9, paragraphe 1, elle peut aussi conclure un contrat avec un ou plusieurs tiers pour fournir l'assistance. En coopération avec les usagers de l'aéroport, par l'intermédiaire du comité des usagers de l'aéroport, lorsqu'il en existe un, l'entité gestionnaire peut conclure un ou plusieurs contrats de ce type de sa propre initiative ou sur demande, notamment sur demande d'un transporteur aérien, et en tenant compte des services existant dans l'aéroport concerné. Au cas où elle rejette une telle demande, l'entité gestionnaire fournit une justification écrite.

3. L'entité gestionnaire d'un aéroport peut, pour financer cette assistance, percevoir, sur une base non discriminatoire, une redevance spécifique auprès des usagers de l'aéroport.

4. Cette redevance spécifique doit être raisonnable, être calculée en fonction des coûts, être transparente et être établie par l'entité gestionnaire de l'aéroport en coopération avec les usagers de l'aéroport, par l'intermédiaire du comité des usagers de l'aéroport s'il en existe un ou de toute autre entité appropriée. Elle doit être répartie entre les usagers de l'aéroport en proportion du nombre total de tous les passagers que chacun d'eux transporte au départ et à destination de cet aéroport.

5. L'entité gestionnaire d'un aéroport tient une comptabilité séparée pour ses activités relatives à l'assistance fournie aux personnes handicapées et aux personnes à mobilité réduite et pour ses autres activités, conformément aux pratiques commerciales courantes.

6. L'entité gestionnaire d'un aéroport met à la disposition des usagers de l'aéroport, par l'intermédiaire du comité des usagers de l'aéroport lorsqu'il en existe un ou de toute autre entité appropriée, ainsi que du ou des organismes chargés de l'application du présent règlement visés à l'article 14, un relevé annuel vérifié des redevances perçues et des frais engagés en ce qui concerne l'assistance fournie aux personnes handicapées et aux personnes à mobilité réduite.

Article 9

Normes de qualité pour l'assistance

1. À l'exception des aéroports dont le trafic annuel est inférieur à 150 000 mouvements de passagers commerciaux, l'entité gestionnaire fixe des normes de qualité pour l'assistance spécifiée à l'annexe I et détermine les besoins en ressources pour les atteindre, en coopération avec les usagers de l'aéroport, par l'intermédiaire du comité des usagers de l'aéroport lorsqu'il en existe un, et les organisations représentant les passagers handicapés et les passagers à mobilité réduite.

2. Lors de l'établissement de ces normes, il est pleinement tenu compte des politiques et codes de conduite internationalement reconnus en ce qui concerne la facilitation du transport de personnes handicapées ou de personnes à mobilité réduite, notamment du code de bonne conduite de la CEAC sur les services d'assistance en escale pour les personnes à mobilité réduite.

3. L'entité gestionnaire d'un aéroport publie ses normes de qualité.

4. Un transporteur aérien et l'entité gestionnaire d'un aéroport peuvent convenir que, pour les passagers que le transporteur aérien transporte à destination et au départ de cet aéroport, l'entité gestionnaire fournira une assistance d'un niveau plus élevé que celui prévu dans les normes mentionnées au paragraphe 1, ou fournira des services supplémentaires par rapport à ceux spécifiés à l'annexe I.

5. Afin de financer l'une ou l'autre de ces mesures, l'entité gestionnaire peut percevoir, auprès du transporteur aérien concerné, une redevance s'ajoutant à celle mentionnée à l'article 8, paragraphe 3, et devant être transparente, calculée en fonction des coûts et établie après consultation du transporteur aérien concerné.

Article 10

Assistance de la part des transporteurs aériens

Un transporteur aérien fournit l'assistance spécifiée à l'annexe II sans majoration de prix à une personne handicapée ou à une personne à mobilité réduite qui part d'un aéroport auquel le présent règlement s'applique, qui arrive à un tel aéroport ou qui transite par un tel aéroport, à condition que cette personne remplisse les conditions définies à l'article 7, paragraphes 1, 2 et 4.

Article 11

Formation

Les transporteurs aériens et les entités gestionnaires d'aéroport:

a) s'assurent que l'ensemble de leur personnel, y compris le personnel de tout sous-traitant, qui fournit une assistance directe aux personnes handicapées et aux personnes à mobilité réduite, sait comment répondre aux besoins de ces personnes, en fonction de leur handicap ou de leur réduction de mobilité;

b) fournissent à l'ensemble de leur personnel travaillant à l'aéroport en contact direct avec les voyageurs une formation de sensibilisation au handicap et sur l'égalité face au handicap;

c) s'assurent que, à l'embauche, tous les nouveaux salariés assistent à une formation relative au handicap et que, en temps opportun, le personnel suit des sessions de rappel.

Article 12

Indemnisation pour perte ou dégradation de fauteuils roulants et autres équipements de mobilité et d'assistance

Lorsque des fauteuils roulants ou d'autres équipements de mobilité ou d'assistance sont perdus ou endommagés durant

leur manipulation à l'aéroport ou leur transport à bord d'un aéronef, le passager auquel l'équipement appartient est indemnisé, conformément aux règles du droit international, communautaire et national.

Article 13

Irrecevabilité des dérogations

Les obligations envers les personnes handicapées et les personnes à mobilité réduite qui sont énoncées par le présent règlement ne peuvent être limitées ou levées.

Article 14

Organisme chargé de l'application du présent règlement et ses missions

1. Chaque État membre désigne un organisme ou des organismes chargés de l'application du présent règlement en ce qui concerne les vols au départ d'aéroports situés sur son territoire ainsi que les vols à destination de ces mêmes aéroports. Le cas échéant, cet organisme ou ces organismes prennent les mesures nécessaires au respect des droits des personnes handicapées et des personnes à mobilité réduite, y compris en ce qui concerne le respect des normes de qualité visées à l'article 9, paragraphe 1. Les États membres informent la Commission de l'organisme ou des organismes qui ont été désignés.

2. Les États membres prévoient, s'il y a lieu, que l'organisme ou les organismes désignés en vertu du paragraphe 1 qui sont chargés de l'application du présent règlement s'assurent également de la mise en œuvre satisfaisante de l'article 8, y compris en ce qui concerne les dispositions relatives aux redevances, de manière à éviter une concurrence déloyale. Ils peuvent également désigner un organisme spécifique à cet effet.

Article 15

Procédure relative aux plaintes

1. Une personne handicapée ou une personne à mobilité réduite qui estime que le présent règlement a été enfreint peut porter la question à l'attention de l'entité gestionnaire de l'aéroport ou à celle du transporteur aérien concerné, selon le cas.

2. Si la personne handicapée ou la personne à mobilité réduite n'obtient pas satisfaction de cette manière, les plaintes peuvent être déposées auprès de l'organisme ou des organismes désignés en vertu de l'article 14, paragraphe 1, ou de tout autre organisme compétent désigné par un État membre, pour infraction présumée au présent règlement.

3. Un organisme d'un État membre qui reçoit une plainte sur une question qui relève de la compétence d'un organisme désigné d'un autre État membre transmet la plainte à l'organisme de cet autre État membre.

4. Les États membres prennent des mesures pour informer les personnes handicapées et les personnes à mobilité réduite de leurs droits en vertu du présent règlement et de la possibilité de déposer plainte auprès de cet organisme ou de ces organismes désignés.

Article 16

Sanctions

Les États membres déterminent le régime des sanctions applicables aux violations du présent règlement et prennent toute mesure nécessaire pour assurer la mise en œuvre de ce régime. Les sanctions ainsi prévues doivent être efficaces, proportionnées et dissuasives. Les États membres notifient ces dispositions à la Commission et lui notifient sans délai toute modification ultérieure éventuelle.

Article 17

Rapport

La Commission fait rapport au Parlement européen et au Conseil, au plus tard le 1er janvier 2010, sur le fonctionnement et les effets du présent règlement. Le rapport est assorti, le cas échéant, de propositions législatives destinées à mettre en œuvre de manière plus détaillée les dispositions du présent règlement, ou à le réviser.

Article 18

Entrée en vigueur

Le présent règlement entre en vigueur le vingtième jour suivant celui de sa publication au *Journal officiel de l'Union européenne*.

Il est applicable à partir du 26 juillet 2008, à l'exception des articles 3 et 4, qui s'appliquent à partir du 26 juillet 2007.

Le présent règlement est obligatoire dans tous ses éléments et directement applicable dans tout État membre.

Fait à Strasbourg, le 5 juillet 2006.

Par le Parlement européen	*Par le Conseil*
Le président	*La présidente*
J. BORRELL FONTELLES	P. LEHTOMÄKI

ANNEXE I

Assistance sous la responsabilité des entités gestionnaires des aéroports

Assistance et arrangements nécessaires pour permettre aux personnes handicapées et aux personnes à mobilité réduite de:

— communiquer leur arrivée à un aéroport et leur demande d'assistance aux points désignés à l'intérieur et à l'extérieur des bâtiments du terminal au sens de l'article 5,

— se déplacer d'un point désigné jusqu'au comptoir d'enregistrement,

— procéder à leur enregistrement, ainsi qu'à celui de leurs bagages,

— se rendre du comptoir d'enregistrement jusqu'à l'aéronef, en s'acquittant des formalités d'émigration et douanières et des procédures de sûreté,

— embarquer à bord de l'aéronef, grâce à la mise à disposition d'ascenseurs, de fauteuils roulants ou de toute autre assistance requise, selon le cas,

— se rendre de la porte de l'aéronef jusqu'à leur siège,

— entreposer leurs bagages à bord de l'aéronef et les récupérer,

— se rendre de leur siège jusqu'à la porte de l'aéronef,

— débarquer de l'aéronef, grâce à la mise à disposition d'ascenseurs, de fauteuils roulants ou de toute autre assistance requise, selon le cas,

— se rendre de l'aéronef jusqu'au hall de livraison de bagages et récupérer leurs bagages, en accomplissant les formalités d'immigration et douanières,

— se rendre du hall de livraison de bagages jusqu'à un point désigné,

— obtenir leur correspondance s'ils sont en transit, avec une assistance à bord et au sol, ainsi qu'à l'intérieur des terminaux et entre eux, le cas échéant,

— se rendre aux toilettes sur demande.

Au cas où une personne handicapée ou une personne à mobilité réduite est aidée par un accompagnateur, celui-ci est autorisé à fournir, sur demande, l'assistance nécessaire dans l'aéroport ainsi que pour l'embarquement et le débarquement.

Prise en charge au sol de tout l'équipement de mobilité nécessaire, y compris les fauteuils roulants électriques, moyennant un préavis de quarante-huit heures et sous réserve de l'existence d'un espace suffisant à bord de l'aéronef, et sans préjudice de l'application de la législation relative aux matières dangereuses.

Remplacement temporaire d'équipement de mobilité endommagé ou perdu, mais pas nécessairement à l'identique.

Prise en charge au sol de chiens d'assistance reconnus, le cas échéant.

Communication sous des formes accessibles des informations nécessaires pour prendre les vols.

ANNEXE II

Assistance de la part des transporteurs aériens

Transport de chiens d'assistance reconnus en cabine, sous réserve des réglementations nationales.

Transport, outre l'équipement médical, d'au maximum deux pièces d'équipement de mobilité par personne handicapée ou personne à mobilité réduite, y compris un fauteuil roulant électrique, moyennant un préavis de quarante-huit heures et sous réserve de l'existence d'un espace suffisant à bord de l'aéronef, et sans préjudice de l'application de la législation relative aux matières dangereuses.

Communication sous des formes accessibles des informations essentielles concernant un vol.

Mise en œuvre de tous les efforts possibles, dans les limites du raisonnable, pour attribuer les places de manière à répondre aux besoins des personnes handicapées ou des personnes à mobilité réduite, à leur demande et sous réserve des exigences de sécurité et de la disponibilité.

Assistance pour se rendre aux toilettes sur demande.

Si une personne handicapée ou une personne à mobilité réduite est aidée par un accompagnateur, le transporteur aérien déploie tous les efforts possibles, dans les limites du raisonnable, pour attribuer à celui-ci un siège à côté de la personne handicapée ou de la personne à mobilité réduite.

COMMISSION DES COMMUNAUTÉS EUROPÉENNES

Bruxelles, le 7.8.2008
COM(2008) 510 final

COMMUNICATION DE LA COMMISSION

Communication relative à la portée de la responsabilité des transporteurs aériens et des aéroports en cas de destruction, de dégradation ou de perte d'équipements de mobilité appartenant à des passagers à mobilité réduite lorsqu'ils font des voyages aériens.

Texte présentant de l'intérêt pour l'EEE

COMMUNICATION DE LA COMMISSION

Communication relative à la portée de la responsabilité des transporteurs aériens et des aéroports en cas de destruction, de dégradation ou de perte d'équipements de mobilité appartenant à des passagers à mobilité réduite lorsqu'ils font des voyages aériens.

Texte présentant de l'intérêt pour l'EEE

1. HISTORIQUE

Le 5 juillet 2006, le Conseil et le Parlement européen ont adopté le règlement (CE) n° 1107/2006 concernant les droits des personnes handicapées et des personnes à mobilité réduite lorsqu'elles font des voyages aériens[1] (ci-après dénommé «le règlement»). Ce règlement a pour objectif général de garantir que les passagers handicapés et les personnes à mobilité réduite (ci-après dénommées «PMR») ne fassent l'objet d'aucune discrimination lorsqu'ils font des voyages aériens. Le 30 novembre 2005, dans le cadre du processus de négociation politique portant sur la proposition de la Commission, et concernant le futur article 12 sur l'«indemnisation pour perte ou dégradation de fauteuils roulants et autres équipements de mobilité et d'assistance», la Commission a présenté une déclaration à inscrire au procès-verbal[2] dans laquelle elle s'engageait à lancer une étude sur la possibilité d'améliorer les droits existants, dans le cadre du droit communautaire, national ou international, des passagers aériens dont les fauteuils roulants ou autres équipements de mobilité sont détruits, endommagés ou perdus pendant leur maniement dans un aéroport ou pendant leur transport à bord d'un aéronef, et à présenter un rapport sur cette étude.

La Commission a publié un avis de marché[3] visant à mener une «étude relative aux seuils de compensation fixés en cas de dégradation ou de perte d'équipement et de dispositifs appartenant à des passagers aériens à mobilité réduite» (ci-après dénommée «l'étude»), qui est disponible sur le site internet de la Commission. L'objet de la présente communication est de rendre compte des résultats de l'étude et de la possibilité d'améliorer les droits existants.

2. L'AMPLEUR DU PROBLEME

«La dégradation ou la perte de bagages est un événement contrariant. La dégradation ou la perte d'équipements de mobilité peut gâcher tout un voyage et considérablement compliquer la vie de leurs propriétaires pendant longtemps. Elle entraîne une perte d'indépendance et de dignité[4]*.»*

Une proportion importante de la population actuelle de l'Union européenne présente des problèmes de mobilité qui nécessitent l'utilisation d'un fauteuil roulant ou d'autres équipements de mobilité et d'assistance (ci-après dénommés «équipements de mobilité»). La

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1 JO L 204 du 26.7.2006, p. 1.
2 Document de travail du Conseil n° 15206/05 (2005/0007/COD).
3 Avis de marché 2006/S 111-118193 du 14.6.2006.
4 Tiré d'une réponse d'une association de PMR aux consultants.

proportion de PMR au sein de la population risque d'augmenter avec le vieillissement de la population de l'UE.

La Commission ne désire pas répéter dans cette communication les données déjà fournies dans l'étude, qui devrait être lue parallèlement à la présente communication. Partant de ces données, la Commission constate néanmoins que les passagers à mobilité réduite qui ont besoin d'équipements de mobilité voyagent assurément moins en avion que l'ensemble de la population. La crainte que leur équipement de mobilité soit perdu, endommagé ou détruit contribue très probablement à les dissuader de voyager et, par conséquent, limite leur intégration dans la société. Cette crainte est dominée par plusieurs raisons objectives:

(1) la perte ou la dégradation de fauteuils roulants ou d'autres équipements de mobilité prive les PMR de leur indépendance et a des incidences sur tous les aspects de leur quotidien, jusqu'à ce que le problème soit complètement résolu;

(2) en cas de perte, de dégradation ou de destruction de leur équipement de mobilité, la santé et la sécurité des PMR sont mises en danger car des solutions de remplacement ne sont pas toujours offertes et, même lorsqu'elles le sont, elles ne sont pas toujours adaptées aux besoins de la personne;

(3) compte tenu de l'urgence du besoin, le temps que prennent les compagnies aériennes ou les aéroports pour résoudre des problèmes pratiques dus à la dégradation ou à la perte d'équipements de mobilité est déraisonnable;

(4) les procédures existantes et le niveau moyen de formation du personnel dans la plupart des compagnies aériennes et des aéroports en ce qui concerne la manière d'agir en cas de perte ou de dégradation d'équipements de mobilité sont faibles;

(5) les incidences financières de la perte, de la dégradation ou de la destruction d'équipements de mobilité constituent un risque supplémentaire pour les PMR qui voyagent en avion par rapport aux autres passagers;

(6) l'octroi d'une indemnisation pour dégradation, destruction ou perte d'équipements de mobilité varie d'une compagnie aérienne à l'autre et selon l'aéroport.

3. RESULTAT DE L'ETUDE: LES DEFIS

Le nombre réel d'incidents par an et par compagnie qui surviennent sur des équipements de mobilité est très faible. Le nombre total de réclamations se situe entre 600 et 1 000 affaires par an, par rapport à 706 millions de passagers aériens transportés dans l'Union européenne sur une année[5]. Cela correspond à une proportion se situant entre moins d'une plainte et une plainte et demi maximum par million de passagers.

L'étude analyse l'expérience aux États-Unis d'une part et la situation en Europe d'autre part. Ces deux analyses fournissent une base suffisante qui permet de considérer que cette estimation est proche de la réalité. L'étude a également conclu que certaines questions restent en suspens concernant les aspects à la fois quantitatifs et qualitatifs du problème qu'il convient de souligner:

[5] 705,8 millions de passagers aériens transportés dans l'UE en 2005.

3.1. Objectif quantitatif: réduire le nombre d'incidents

Le nombre d'incidents impliquant la destruction, la dégradation ou la perte d'équipements de mobilité de PMR est lié à la manière dont les équipements de mobilité sont manipulés et entreposés à bord des avions; le rangement dans les aéroports est un élément essentiel des conditions de transport des PMR afin de satisfaire leurs besoins et requiert des compétences pour lesquelles le personnel doit être convenablement formé. L'objectif doit rester de permettre à la PMR d'utiliser son équipement personnel aussi longtemps que possible. Dans tous les cas où la PMR ne peut pas utiliser son propre équipement de mobilité à bord de l'appareil, l'idéal est qu'elle le remette et qu'elle le récupère à la porte de l'avion. D'autres procédures peuvent être mises en place pour des raisons de sécurité ou pour des raisons pratiques.

La pièce jointe à l'engagement des compagnies aériennes à l'égard des services aux passagers (ci-après dénommé «l'engagement des compagnies aériennes») de 2001[6], signé par la majorité des transporteurs aériens nationaux européens, précise que les compagnies aériennes signataires doivent prendre toutes les mesures raisonnables pour éviter la perte ou l'endommagement de tout équipement de mobilité ou autres dispositifs essentiels d'assistance. Chacune d'entre elles élaborera ses propres services en y intégrant l'engagement des compagnies aériennes; les compagnies signataires instaureront des programmes de formation du personnel et introduiront des changements dans leurs systèmes informatiques afin de concrétiser cet engagement. En outre, *«il doit être permis aux PMR de rester indépendantes dans une très large mesure»*.

L'engagement volontaire des aéroports à l'égard des services aux passagers aériens (ci-après dénommé «l'engagement des aéroports»), élaboré par les aéroports européens sous les auspices de «Airports Council International Europe»[7], précise que *«le personnel recevra une formation appropriée sur la compréhension des besoins des PMR et comment y répondre»*. L'objectif visé par les signataires était d'élaborer leurs propres services individuels sur la base de cet engagement et d'incorporer les dispositions appropriées du document 30 (section 5) de la Conférence européenne de l'aviation civile (CEAC)[8], et de l'Organisation de l'aviation civile internationale[9] (Annexe 9, OACI).

Le point 5.2.3.2 du document 30[10] de la CEAC précise: *«Les États membres devraient encourager la diffusion d'un vademecum pour le personnel des compagnies aériennes et des exploitants aéroportuaires relatif aux démarches à effectuer et aux facilités offertes pour assister les PMR, où tous renseignements concernant les conditions de transport et l'assistance offerte seront énumérés ainsi que les démarches qu'ils ont à faire. Ils devraient veiller à ce que les compagnies aériennes prévoient dans leurs manuels toutes procédures concernant les passagers à mobilité réduite»*. Le point 5.5 de ce même document précise que *«Les États membres devraient s'assurer de la présence, dans les aéroports, d'un service*

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6 Engagement des compagnies aériennes à l'égard des services aux passagers: voir le point 8 et la pièce jointe.

7 ACI Europe (2001), Engagement volontaire des aéroports à l'égard des services aux passagers aériens, et son Protocole spécial pour répondre aux besoins des personnes à mobilité réduite.

8 Déclaration de politique de la CEAC dans le domaine de la facilitation de l'aviation civile [ECAC.CEAC DOC N° 30 (Partie I) – 10e édition / décembre 2006]

9 Normes et pratiques recommandées de l'Organisation de l'aviation civile internationale (Annexe 9 de la Convention de Chicago).

10 Voir note de bas de page 8.

d'assistance au sol, pour les PMR, comportant: des personnels formés et qualifiés pour répondre à leurs demandes (…) des équipements appropriés pour les assister.»

Ces engagements volontaires ne sont toutefois pas toujours convenablement respectés. Tout d'abord, peu de compagnies aériennes et d'aéroports dans l'UE ont réellement élaboré leurs propres services ou stratégies à l'égard de la clientèle pour concrétiser ces engagements volontaires. Ensuite, ceux qui l'ont fait ont adopté des programmes ou des stratégies tellement différents qu'il en résulte un large éventail de degrés de protection pour les PMR. Enfin, ces services et stratégies à l'égard de la clientèle ne sont pas toujours publiés. Il est donc très difficile pour les PMR de savoir à l'avance ce qui les attend.

Dans le cadre de l'engagement des aéroports, la majorité des aéroports prêtent spontanément assistance aux passagers à mobilité réduite. Cependant, les procédures qui permettent à une PMR d'arriver à la porte de l'aéronef dans son propre fauteuil roulant ou de récupérer son fauteuil roulant à l'arrivée varient d'un aéroport à l'autre.

3.2. Objectif qualitatif: réduire au minimum les conséquences d'un incident

3.2.1. L'absence, à ce jour, d'une procédure commune qui permettrait la mise en œuvre de solutions immédiates sur place

Les dommages subis par les équipements de mobilité peuvent avoir de graves répercussions qui vont au-delà de l'aspect financier. Le problème concerne également la période pendant laquelle la PMR ne pourra pas utiliser son équipement et la longue attente avant que l'indemnisation ne soit finalement versée. Les difficultés de savoir où déposer les plaintes pour dégradation et où demander une assistance à l'arrivée, dans ce qui est souvent un aéroport inconnu, viennent s'ajouter d'une part au temps passé à trouver une solution, même temporaire, aux problèmes pratiques du quotidien qui se posent lorsqu'une PMR est privée de son équipement de mobilité, et d'autre part au stress que cela engendre.

Il n'existe actuellement aucune législation internationale, communautaire ou nationale qui prévoie de prêter assistance immédiate aux PMR dont les équipements de mobilité ont été perdus, endommagés ou détruits, qui stipule la façon dont l'assistance immédiate devrait être prêtée ou qui définisse les aspects essentiels de cette assistance.

L'engagement des compagnies aériennes ne précise pas la façon dont les demandes d'indemnisation doivent être traitées ou le type de mesure à prendre sur place lorsqu'un fauteuil roulant ou tout autre équipement de mobilité est endommagé ou perdu.

La majorité des aéroports n'ont pas de politique définie concernant les réclamations formulées pour dégradation ou destruction de fauteuils roulants ou d'équipements de mobilité. L'octroi d'une indemnisation et les procédures suivies par les aéroports pour mettre en place une solution de remplacement varient d'un aéroport à l'autre, malgré l'existence de l'engagement des aéroports[11]. Cela peut donner lieu à des lacunes et à des incohérences en matière de solution de remplacement et d'indemnisation d'une PMR dont l'équipement a été détruit ou endommagé pendant la durée de prise en charge par l'aéroport. Cela entraîne certainement incertitude et confusion pour les PMR qui ne savent jamais comment faire ou à qui s'adresser en cas d'incident sur leur équipement de mobilité.

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[11] Voir note de bas de page 6.

3.2.2. La différence entre la nature et les limites de la responsabilité des compagnies aériennes et la responsabilité des aéroports

Il y a traditionnellement une différence entre la nature et les limites de la responsabilité des compagnies aériennes et des aéroports. Cette différence peut être source de confusion pour les parties concernées.

3.2.2.1. Transport d'équipements à bord de l'appareil (responsabilité de la compagnie aérienne)

Actuellement, l'assistance aux PMR est prêtée par les transporteurs aériens dans le cadre du service d'assistance au sol. Les transporteurs aériens peuvent prêter assistance directement, via une société tierce ou encore par l'intermédiaire de l'aéroport lorsque celui-ci agit en tant que prestataire de services pour le transporteur aérien. La responsabilité de la compagnie aérienne est actuellement limitée par une série de conventions internationales[12], par des règlements communautaires mettant en œuvre ces conventions internationales au sein de l'UE[13], et par des procédures juridiques ou administratives que d'autres pays imposent aux sociétés de l'UE qui désirent entrer sur leurs marchés nationaux. Les sociétés peuvent déroger à leur responsabilité limitée et accepter d'indemniser la valeur totale de l'équipement de mobilité perdu ou de rembourser ses coûts de réparation.

Tous ces textes juridiques sont régis par le même mécanisme: la présomption de responsabilité du transporteur aérien en cas de bagages enregistrés[14]. Cela signifie que la PMR ne devra pas prouver que le transporteur aérien a commis une faute pour que la responsabilité de ce dernier soit engagée. La seule chose que la PMR doit prouver est que la dégradation ou la perte est survenue pendant la prise en charge de l'équipement par le transporteur (aussi communément appelée «la période du transport»).

En ce qui concerne les équipements qui ont été enregistrés au comptoir d'enregistrement (toujours par le transporteur aérien ou en son nom), et donc étiquetés comme bagages, il est assez évident que la période du transport commence au moment où la procédure d'enregistrement est engagée. Il en va de même pour les bagages qui sont remis en cabine. Bien que les équipements puissent être étiquetés avant d'être réellement remis au transporteur aérien (à la porte d'embarquement ou à la porte de l'aéronef), la responsabilité du transporteur ne doit être engagée qu'au moment où les équipements lui sont physiquement remis (que ce soit à la porte d'embarquement ou à la porte de l'aéronef).

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12 Ces conventions sont les suivantes: 1. La Convention pour l'unification de certaines règles relatives au transport aérien international, signée à Varsovie en octobre 1929, dite Convention de Varsovie (1929). 2. Le Protocole portant modification de la Convention pour l'unification de certaines règles relatives au transport aérien international signée à Varsovie le 12 octobre 1929, signé à La Haye le 28 septembre 1955, dit Protocole de La Haye (1955). 3. La Convention pour l'unification de certaines règles relatives au transport aérien international, signée à Montréal le 28 mai 1999, dite Convention de Montréal (1999).

13 Règlement (CE) nº 889/2002 du Parlement européen et du Conseil du 13 mai 2002 (JO L 140 du 30.5.2002, p. 2) modifiant le règlement (CE) nº 2027/97 du Conseil relatif à la responsabilité des transporteurs aériens en cas d'accident.

14 Voir article 1, paragraphe 10, du règlement (CE) n° 889/2002.

3.2.2.2. Maniement des équipements dans un aéroport (responsabilité de l'aéroport)

Les aéroports assument la responsabilité de prêter assistance aux PMR depuis le 26 juillet 2008, date à laquelle le règlement est devenu entièrement applicable. La responsabilité des aéroports n'est, en principe, pas limitée[15] et est établie en fonction de la législation nationale en matière de responsabilité et de responsabilité civile. Le fait que le cadre juridique applicable diffère selon les aéroports et les compagnies aériennes donne lieu à deux grandes différences dans la nature de leur responsabilité respective. Tout d'abord, la responsabilité de l'aéroport est, en règle générale, fondée sur une faute prouvée du gestionnaire de l'aéroport. Deuxièmement, tandis que la responsabilité des aéroports n'est pas limitée, celle des compagnies aériennes l'est assurément. Cela signifie que, dans le cas des aéroports, les PMR devront prouver la faute du responsable devant un tribunal si l'aéroport n'admet pas la réclamation (ce qui n'est pas le cas si le transporteur est responsable), mais elles peuvent récupérer des dommages-intérêts complets (ce qui n'est pas le cas si le transporteur aérien est responsable car sa responsabilité est normalement limitée).

3.2.3. Indemnisation: montant et procédure

Longtemps, les organisations représentatives des PMR ont fait pression pour obtenir une responsabilité illimitée en cas d'incidents pendant le maniement des équipements de mobilité dans un aéroport ou pendant leur transfert à bord de l'appareil. Cette approche est motivée par le coût élevé des équipements de mobilité modernes[16] et par la limite relativement basse de la responsabilité actuelle pour les bagages au titre des conventions internationales, notamment la Convention de Montréal[17]. Ceci laisse à penser en effet que le montant de l'indemnisation au titre des conventions internationales n'est probablement pas adapté dans tous les cas.

La plupart des transporteurs aériens indemnisent les passagers conformément à la Convention de Montréal. Les dommages causés aux équipements de mobilité et qui dépassent 1 000 DTS relèvent de la seule responsabilité du passager, sauf déclaration spéciale d'intérêt à la livraison faite par le passager au moment de la remise des bagages enregistrés au transporteur et moyennant le paiement éventuel d'une somme supplémentaire[18]. Seule une minorité de compagnies aériennes, dans un nombre limité d'aéroports, propose une assurance spéciale pour les équipements de mobilité des PMR. La majorité des transporteurs aériens et des aéroports ne proposent pas de couverture d'assurance spéciale pour les fauteuils roulants ou les équipements de mobilité endommagés ou détruits.

Selon l'étude, seule une minorité de compagnies dans l'UE permettent aux PMR de déclarer que la valeur de leur équipement de mobilité est supérieure et qu'elle peut donc être réclamée en conséquence. Certaines de ces compagnies limitent la déclaration d'excédent de valeur à un montant déterminé supérieur au niveau d'indemnisation défini dans la réglementation internationale et communautaire, mais inférieur au coût réel des équipements de mobilité. Plusieurs transporteurs aériens ont indiqué que le fait de déclarer une valeur particulière implique «un supplément à payer par le passager».

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15 La responsabilité des aéroports n'est traitée dans aucune convention internationale ni dans le droit communautaire.

16 Par exemple, les fauteuils roulants électriques peuvent coûter jusqu'à 10 000 euros.

17 Jusqu'à 1 000 DTS (montant approximatif en euros basé sur la valeur du DTS au 10.3.2008 selon la valeur du DTS du FMI: 1 060 euros).

18 Conformément à ce qui est stipulé à l'article 22, paragraphe 2, de la Convention de Montréal et à l'article premier, paragraphe 5, du règlement 889/2002.

Toutes les parties concernées s'accordent à dire que les coûts liés à la couverture des besoins des PMR ne doivent pas être répercutés directement sur les PMR. Toutefois, seule une minorité d'entre elles en a tiré la conclusion logique et indemnise le coût total de la dégradation ou de la perte de l'équipement de mobilité. Le règlement consolide le principe selon lequel l'assistance doit être fournie sans majoration de prix aux PMR[19], mais il ne spécifie pas le montant de l'indemnisation qui doit être fixé conformément aux «règles du droit international, communautaire et national»[20].

Il convient de remarquer que dans le domaine du transport ferroviaire, la législation communautaire impose à une entreprise ferroviaire l'obligation d'indemnisation complète si elle est responsable de la perte, totale ou partielle, ou de l'endommagement, total ou partiel, d'un équipement de mobilité[21].

3.2.4. L'inclusion ou l'exclusion des équipements de mobilité dans la définition de «bagages»

Le point de vue des organisations représentatives des PMR et de la majorité des autorités de l'aviation civile qui ont répondu à l'enquête menée dans le cadre de l'étude est que les équipements de mobilité ne devraient pas être considérés comme bagages. La raison de cette exclusion est que les équipements de mobilité ne devraient pas être soumis aux règles de responsabilité limitée de la compagnie aérienne telles que définies dans les conventions internationales. Par conséquent, les compagnies aériennes et les aéroports devraient indemniser la totalité du coût des équipements de mobilité perdus ou de leurs frais de réparation.

La loi américaine ACAA («Air Carrier Access Act») ne donne pas de définition des équipements de mobilité et ne les exclut pas expressément de sa définition des bagages. Elle impose toutefois une responsabilité complète et objective, sans limite financière, en cas d'incident sur des équipements de mobilité à tous les transporteurs aériens qui désirent exploiter des liaisons intérieures aux États-Unis[22]. Le ministère des Transports des États-Unis envisage de modifier bientôt son règlement mettant en œuvre la loi américaine ACAA pour faire en sorte que les transporteurs aériens étrangers qui effectuent des liaisons au départ ou à destination des États-Unis soient soumis à la plupart des exigences en matière de handicap actuellement imposées aux transporteurs des États-Unis au titre de la partie 382, notamment le traitement des équipements de mobilité et d'assistance.

La législation canadienne relative aux PMR actuellement en vigueur est la *Partie VII du Règlement sur les transports aériens: Conditions de transport des personnes*[23]. L'Office des transports du Canada semble définir les aides à la mobilité comme étant des bagages enregistrés de nature personnelle qui reçoivent un traitement prioritaire, bien que les

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19 Voir article 8 du règlement (CE) n° 1107/2006.

20 Voir article 12 du règlement n° 1107/2006.

21 Article 25 du règlement (CE) n° 1371/2007 du Parlement européen et du Conseil du 23 octobre 2007 sur les droits et obligations des voyageurs ferroviaires, JO L 315 du 3.12.2007, p. 14.

22 La loi ACAA («Air Carrier Access Act») interdit la discrimination à l'égard des passagers aériens handicapés. Le ministère des Transports des États-Unis a publié un règlement (14 CFR, partie 382) mettant en œuvre l'ACAA et qui fait expressément référence au traitement des équipements de mobilité et d'assistance.

23 Les Conditions de transport de personnes publiées en vertu de la Loi sur les transports au Canada. La partie VII de la Loi traite du transport de personnes handicapées. La section 155 de la partie VII explique les dispositions en cas d'aide perdue ou endommagée.

équipements de mobilité ne soient pas exclus de la définition de bagages au sens strict. Ce faisant, l'Office des transports du Canada ne permet pas aux compagnies qui travaillent sur son territoire d'appliquer aux équipements de mobilité les dispositions concernant la limitation de responsabilité prévues dans les conventions internationales en matière de bagages détruits, endommagés ou perdus. Pour atterrir au Canada, il est entendu que le transporteur aérien doit respecter la réglementation canadienne. Aucun transporteur aérien étranger ne semble avoir remis cet accord en question.

4. UNE REPONSE AUX DEFIS: LE REGLEMENT (CE) N° 1107/2006

4.1. Objectif quantitatif: réduire le nombre d'incidents

Comme démontré au point 3.1 de la présente communication, l'absence de procédure spécifique pour manier les fauteuils roulants ou autres équipements de mobilité et le fait qu'une formation pour apprendre à manier ceux-ci n'est pas offerte dans tous les aéroports ou par toutes les compagnies aériennes permettent de conclure que la situation est facilement améliorable. Le règlement (CE) n° 1107/2006 s'est attaqué à cette lacune actuelle en établissant des obligations légales concernant les procédures et la formation du personnel nécessaires pour assurer des normes de qualité pour l'assistance aux PMR[24].

Ces obligations légales comprennent, notamment, le maniement d'équipements de mobilité dans l'aéroport ou leur transport à bord de l'aéronef. Par conséquent, la qualité et l'adéquation de l'assistance fournie par les compagnies aériennes et par les transporteurs aériens devraient s'améliorer sensiblement. Des procédures spécifiques à l'enregistrement et une formation du personnel en matière de maniement des équipements de mobilité permettront de sensibiliser les employeurs et les employés et de réduire davantage le nombre d'incidents et leur gravité, ainsi que les coûts personnels et économiques.

4.2. Objectif qualitatif: réduire au minimum les conséquences d'un incident

Le point 3.2.1 de la présente communication souligne les lacunes dues à l'absence actuelle d'une procédure commune qui aboutirait à des solutions immédiates sur place en cas de dégradation ou de perte d'équipements de mobilité. Le règlement (CE) n° 1107/2006 comble partiellement ce vide juridique. Tout d'abord, l'annexe I du règlement (CE) n° 1107/2006 inclut spécifiquement dans la définition de l'assistance sous la responsabilité des entités gestionnaires des aéroports le *«remplacement temporaire d'équipement de mobilité endommagé ou perdu, mais pas nécessairement à l'identique»*[25]. Deuxièmement, conformément à l'article 9, *«l'entité gestionnaire fixe des normes de qualité pour l'assistance spécifiée à l'annexe I et détermine les besoins en ressources pour les atteindre»*.

En ce qui concerne la différence entre la nature et les limites de la responsabilité des compagnies aériennes et la responsabilité des aéroports mentionnées au point 3.2.2 de la présente communication, l'article 12 du règlement (CE) n° 1107/2006 établit une obligation d'indemnisation *«conformément aux règles du droit international, communautaire et national»*.

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[24] Voir les articles 9 et 11 du règlement.

[25] Voir l'annexe I du règlement n° 1107/2006.

La Commission suivra étroitement la façon dont les aéroports et les compagnies aériennes exercent cette responsabilité dans le nouveau contexte prévu par le règlement afin d'évaluer à l'avenir s'il serait recommandé d'inclure une définition plus précise de la responsabilité des aéroports, à l'instar de ce qui est prévu pour les transporteurs aériens par le règlement (CE) n° 889/2002.

En ce qui concerne le montant de l'indemnisation et la procédure prévue mentionnés au point 3.2.3 de la présente communication, le nombre d'incidents sur des équipements de mobilité est déjà faible et la nouvelle protection prévue par le règlement (CE) n° 1107/2006 devrait permettre de réduire davantage le nombre d'incidents et leurs conséquences. Il semble donc évident que, si les règles actuellement applicables à l'indemnisation devaient être modifiées, toute conséquence économique que ces incidents pourraient avoir pour les compagnies aériennes ou les aéroports n'aurait pas d'incidence économique majeure sur les transporteurs aériens ou les aéroports.

Enfin, le point 3.2.4 de la présente communication aborde la question de savoir si les équipements de mobilité devraient être inclus dans la notion de «bagages». Cette question est judicieuse parce qu'elle est liée au montant de l'indemnisation, étant donné que les limites de responsabilité imposées par les conventions internationales ne concernent que les bagages. Certains des principaux partenaires de la Communauté en matière de transport aérien ont déjà élaboré des procédures administratives concernant les droits des PMR à cet égard. De manière générale, ces procédures administratives imposent une responsabilité objective et une indemnisation complète aux transporteurs aériens et parfois aux aéroports. Les transporteurs aériens européens qui exploitent des liaisons transocéaniques vers le Canada ou des liaisons intérieures aux États-Unis ou au Canada respectent déjà ces règles en dehors des frontières communautaires. Certaines compagnies aériennes ont déjà renoncé à leur responsabilité limitée à travers leurs propres stratégies à l'égard de leur clientèle ou leurs normes de qualité internes.

Comme le montrent ces exemples, différentes options peuvent être envisagées lorsqu'il s'agit d'évaluer le montant de l'indemnisation payée en cas de destruction, de dégradation ou de perte d'équipements de mobilité en fonction de leur valeur réelle. Cet objectif peut être atteint en essayant d'interpréter ou de définir la notion de bagages afin d'exclure les équipements de mobilité tout en continuant à garantir une couverture juridique de ces équipements au titre des conventions internationales applicables ou, autrement, en supprimant ou en révisant les limites de l'indemnisation financière au titre de ces conventions internationales. Enfin, les compagnies aériennes et les aéroports peuvent volontairement renoncer à leur responsabilité limitée actuelle concernant les équipements de mobilité.

La Commission estime qu'il est utile de traiter cette question au sein de l'OACI dans le but de supprimer ou de réviser toute limite financière concernant les équipements de mobilité perdus, endommagés ou détruits prévue dans la Convention de Montréal. La Commission reconnaît les difficultés liées à la renégociation d'une convention internationale. Toutefois, le fait que certains membres de l'OACI aient décidé unilatéralement de modifier leur réglementation et d'imposer une indemnisation complète des équipements de mobilité pour leurs liaisons internes indique qu'une telle initiative de l'UE pourrait bénéficier d'un appui politique.

À moyen terme, la Commission estime que la pleine application du règlement (CE) n° 1107/2006 améliorera d'une part le contrôle et le respect des droits existants des PMR relatifs à l'indemnisation et/ou au remplacement des équipements de mobilité détruits, endommagés ou perdus et d'autre part le type d'assistance à fournir sur place lorsqu'un

incident survient. Avant de décider s'il convient de présenter une proposition législative sur ces questions, la Commission estime prudent de permettre l'entrée en application du règlement (CE) n° 1107/2006, puis d'en évaluer l'incidence sur la baisse probable du nombre d'incidents. Tout en tenant compte des pratiques actuelles dans d'autres pays et compte tenu de la réglementation communautaire régissant le transport ferroviaire, la Commission encourage, à court terme, les compagnies aériennes à renoncer à leur responsabilité limitée à titre volontaire.

5. CONCLUSIONS

(1) La Commission rappelle aux aéroports et aux compagnies aériennes leur obligation de mettre en place les normes de qualité ainsi que la formation et les procédures nécessaires concernant le maniement des équipements de mobilité et les droits des passagers à mobilité réduite en cas d'incident sur leurs équipements de mobilité, en particulier suite au document 30 de la CEAC et à ses annexes.

(2) En ce qui concerne le montant de l'indemnisation et afin de le rapprocher de la valeur réelle des équipements, la Commission proposera au Conseil que la Communauté lance, avec la coopération des États membres, une initiative au sein de l'OACI dans le but de clarifier ou de définir la notion de «bagages» afin d'en exclure les équipements de mobilité ou, autrement, de supprimer ou de réviser toute limitation de responsabilité concernant les équipements de mobilité perdus, endommagés ou détruits, dans le cadre de la Convention de Montréal.

(3) La Commission encourage les compagnies aériennes dans l'UE à renoncer volontairement à leur responsabilité limitée actuelle afin de rapprocher le montant de l'indemnisation de la valeur réelle des équipements de mobilité.

(4) Pendant la période 2008 - 2009, la Commission surveillera le respect du droit communautaire, y compris le règlement (CE) n° 1107/2006, par les États membres, par les transporteurs aériens et par les aéroports.

(5) La Commission encourage les parties concernées à recueillir d'une manière plus fiable et systématique des données relatives aux réclamations concernant les équipements de mobilité.

(6) La Commission inclura dans le rapport prévu à l'article 17 du règlement (CE) n° 1107/2006 un chapitre sur les droits des PMR dont les équipements de mobilité ont été perdus, endommagés ou détruits. La Commission évaluera alors l'évolution réelle de la situation après l'entrée en vigueur du règlement (CE) n° 1107/2006 et les progrès de l'initiative lancée au sein de l'OACI mentionnée au point (2) des présentes conclusions. Si cette évaluation démontre que les améliorations nécessaires n'ont pas été accomplies, la Commission présentera une proposition législative adéquate en vue d'améliorer les droits existants au titre du droit communautaire des passagers aériens dont les fauteuils roulants ou autres équipements de mobilité ont été détruits, endommagés ou perdus pendant leur maniement dans un aéroport ou pendant leur transport à bord de l'aéronef; cette proposition comprendrait aussi la révision du seuil actuel d'indemnisation et une amélioration indispensable de la définition de la responsabilité des aéroports.

EVALUATION OF REGULATION 1107/2006

Final report

Main report and Appendices A-B

June 2010

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Background

1. Regulation 1107/2006, which took full effect in July 2008, introduced new protections for people with reduced mobility when travelling by air. Key provisions included:

   - The right, subject to certain derogations, not to be refused embarkation or reservation.
   - The right to be provided with assistance at airports, at no additional cost, in order to allow access to the flight.
   - Responsibility for provision of assistance to PRMs at airports is placed with the airport management company; previously, these services were usually contracted by airlines.
   - The costs of providing assistance at airports can be recovered from airlines through transparent and cost-reflective charges levied for all passengers.

2. The Regulation also required Member States to introduce sanctions into national law for non-compliance with the Regulation, and create National Enforcement Bodies (NEBs) responsible for enforcement of the Regulation. The Regulation applies to all flights from and within the European Union (EU), as well as to flights to the EU operated by EU-registered carriers.

3. The Regulation requires the Commission to report to the Council and the Parliament on its operation and results, and if appropriate to bring forward new legislative proposals. In order to inform this report, the Commission has asked Steer Davies Gleave to undertake an independent review of the Regulation.

Factual conclusions

4. Our review has gathered evidence on the implementation of the Regulation through in-depth discussions and consultation with stakeholders, supplemented by desk research. Stakeholders included airports, airlines, NEBs and PRM organisations. The evidence gathered shows that most of the airports and airlines examined for the study have implemented the requirements of the Regulation. However, there is significant variation in the quality of service provided by airports, and in the policies of airlines on carriage of PRMs. We also identified relatively little activity by NEBs to monitor the Regulation's implementation, or to promote awareness of the rights it grants.

5. Conclusions regarding each of the groups of stakeholders are set out below.

Airlines

6. The key issue we identified in the study is the lack of consistency in policies on carriage, and the significant variation between carriers. For example, Ryanair permits a maximum of 4 PRMs who require assistance on any flight, and Brussels Airlines permits at most 2 on most aircraft; in contrast, British Airways does not impose any restrictions. There is similar variation in policies on whether PRMs have to be accompanied. Approval of policies is the responsibility of national safety regulators, however typically airlines propose policies which are then approved with little or no challenge by the licensing authority (often the same organisation as the NEB).

Although the rationale for these restrictions is safety, there is limited evidence to justify them. Limitations on carriage of PRMs are specifically prohibited by the equivalent US regulation on carriage of PRMs[1].

7. All airlines in the study sample had published some information on carriage of PRMs, however 13 of the 21 did not publish on their websites all of the restrictions on carriage of PRMs that they imposed. Most stated in their Conditions of Carriage that PRMs would not be refused, but this was usually conditional on pre-notification; this may be an infringement of the Regulation.

8. The Regulation encourages PRMs to pre-notify their requirements for assistance to airlines, which are then required to pass on this information to the relevant airports. In theory this should both ensure that PRMs promptly receive the services they need, and allow airports to minimise resourcing costs through efficient rostering. However, our research found that levels of pre-notification too low to allow this: at 11 of 16 airports for which we were provided with information, pre-notification rates were lower than 60%.

9. PRM representative organisations informed us that loss or damage to mobility equipment could still be a significant issue. The Regulation requires airports to handle mobility equipment but does not introduce any new provisions which reduce the risk of loss or damage, or increase the amount of compensation payable, which is restricted by the limits defined in the Montreal Convention.

Airports

10. All airports in the study sample had implemented the Regulation, although we were informed that the Regulation had not been implemented at all at regional airports in Greece. Most had subcontracted the service through a competitive tender; several informed us that they were considering or were in the process of retendering the service, generally because service quality in the initial period had not been sufficient.

11. The frequency with which the PRM services are used varies considerably between airports: among the airports for which we have been able to obtain data use of services varies by a factor of 15, although in most cases between 0.2% and 0.7% of passengers requested assistance.

12. Most airports in the case study States had published quality standards, typically following the format of the minimum recommended standards in ECAC Document 30. Most undertook some form of internal monitoring of performance, however few used external checks of service such as ‘mystery shoppers’. Most stakeholders informed us that airports were providing an adequate level of service quality.

13. Variability in airport service quality (including safety) was reported by PRM organisations and some airlines, but this is subjective and hard to quantify. Airports reported variation in equipment and facilities provided, and we observed significant

[1] US Department of Transport 14 CFR part 382.

variation in the level of training given to personnel providing services to PRMs. In the sample examined, training varied between 3 and 14 days, ostensibly to provide the same services.

14. Charges levied by airports varied considerably (between €0.16 and €0.90 per departing passenger), and we were unable to identify any apparent link to frequency of service use, price differentials between States or service quality. Airports in Spain and mainland Portugal levied uniform charges across all airports managed by the national airport company; this may be an infringement of the Regulation. Many airlines believed consultation by airports regarding charges was poor; Cyprus, Spain and Portugal were identified as particular issues.

NEBs

15. All States except Slovenia have designated NEBs; in most cases the NEB is the CAA, and is the same organisation as the NEB for Regulation 261/2004. All States except Poland and Sweden have introduced penalties into national law for infringements of the Regulation, although several have not introduced sanctions for all possible infringements. The maximum sanction which can be imposed varies significantly, and in some States may not be at a high enough level to be dissuasive; for example, in Estonia, Lithuania and Romania the maximum sanction is lower than €1,000.

16. Most States have received very few complaints to date; in total 1,110 received to date, compared to a total of 3.2m passengers assisted in 2009 across 21 case study airports. 80% of all complaints regarding infringements of the Regulation had been submitted to the UK NEBs; this may be the result of national law in the UK which permits financial compensation to be claimed under the Regulation. No sanctions have yet been imposed, although the NEBs for France, Portugal and Spain have opened proceedings to impose fines. In a number of States we identified significant practical difficulties in imposing and collecting sanctions, typically in relation to imposing fines on carriers registered in other States. These issues are in most cases equivalent to those that apply in relation to Regulation 261/2004[2].

17. Although most case study NEBs had taken some action to monitor the services provided under the Regulation beyond the monitoring of complaints (14 out of 16 had undertaken at least one inspection of airports), in most cases this was limited. Most inspections focussed on checks of systems and procedures, and did not assess the experience of passengers using the services. Monitoring of PRM charges was also poor: NEBs in 9 of the 16 States had undertaken no direct monitoring of airport charges.

18. Few NEBs had made significant efforts to promote awareness of the Regulation by passengers, as required by the Regulation; only two informed us of national public awareness campaigns they had undertaken. This lack of promotion undermines the claims of some NEBs that reviewing complaints is sufficient to monitor the

[2] See Evaluation of Regulation 261/2004, February 2010: http://ec.europa.eu/transport/passengers/studies/doc/2010_02_evaluation_of_regulation_2612004.pdf.

implementation of the Regulation. Awareness of the NEBs' performance appeared in general to be poor: most stakeholders contacted for the study held no opinion on the effectiveness of enforcement by NEBs, and many informed us that this was because they had had no interaction with them.

Other issues

19. A particular issue raised by stakeholders was the conflict between the Regulation and the equivalent US legislation (14 CFR Part 382), which applies to European carriers operating flights to/from the US, and other flights where these are operated as codeshares with US carriers. The most significant conflict is the allocation of responsibilities for assistance: the Regulation requires airports to arrange the provision of services to PRMs, while under the US legislation it is the airlines that have this responsibility. The US legislation also prohibits airlines from imposing numerical limits on PRMs, and from requiring pre-notification from PRMs. This has caused issues for carriers who are required to comply with pieces of legislation that conflict, although the US legislation does allow carriers to apply for a waiver where there is a conflict of laws.

20. A number of other issues regarding specific Articles are discussed in the section below on recommended changes to the Regulation.

Recommendations

21. We have made a number of recommendations, addressing:

- improvements to the implementation of the Regulation which would not require any legislative changes; and
- further recommendations which could only be implemented through amendment to the text of the Regulation.

Measures to improve the operation of the Regulation

22. Several airlines argued in their submissions to the study that they should be permitted to provide or contract their own PRM assistance services, as they could provide this more cost-efficiently than airports. We believe that this could create an incentive to minimise the service provided and hence would risk a reduction in service quality. Whilst there were initially significant issues with the quality of PRM service provision at certain airports, most stakeholders believed that these issues had now been addressed, and our most important recommendation is therefore that allocation of responsibility for PRM services to airports should not be amended.

23. Many of the concerns raised regarding airports relate to inconsistency of application of the Regulation. To address this, we suggest that the Commission should:

- improve provision of information regarding accessibility of airports, through a centralised website listing factors such as maximum likely walking distance within an airport, means used for access to aircraft, and any facilities available for PRMs;
- develop and share best practice on contracting of PRM service providers, both to improve the content and structure of the contracts used and therefore reduce

the likelihood of unnecessary retendering, and to recommend methods of cooperation; and

- develop and share best practice advice on training of staff providing PRM services, so that a more consistent standard of service is provided.

24. Similarly, many of the concerns raised regarding airlines also relate to inconsistency of application of the Regulation, in particular to inconsistent policies on carriage of PRMs. We therefore suggest that the Commission should:

- work with EASA to determine safe policies on carriage of PRMs, in particular to address the wide and unjustifiable variation in airline policies on carriage of PRMs (in particular on numerical limits and circumstances under which PRMs are required to be accompanied); and
- ensure that the airlines we have identified as not publishing clear policies on carriage of PRMs do so, through actions by the relevant NEBs (which could also review airlines outside the study sample for the same reason).

25. Given the current low rates of rates pre-notification, we suggest that the Commission monitor this issue, through encouraging NEBs to collect rates of pre-notification. In future, the Commission should assess the situation and consider either eliminating the requirement for pre-notification or alternatively retaining it and providing passengers and carriers with more incentive to pre-notify.

26. An additional problem reported with pre-notification is where PRMs had pre-notified their requirements for assistance, but then found that this information had not been passed on to airport or airline staff. To address this, and to provide PRMs with evidence that they can use when making a complaint, we recommend that the Commission encourage airlines to provide PRMs with a receipt for pre-notification.

27. The greatest problem identified by the study regarding NEBs was the lack of pro-active measures taken to monitor or enforce the Regulation. In most cases this has not had significant detrimental effect, as most airports and airlines have implemented the provisions of the Regulation, but could become an issue if the situation changes in the future. We suggest that the Commission should encourage all Member States to:

- designate NEBs and introduce penalties for all infringements of the Regulation;
- take measures to inform PRMs of their rights under the Regulation and of the possibility of complaint to the relevant NEB, for example through national promotional campaigns; and
- pro-actively monitor the application of the Regulation (rather than relying on complaints), for example through increased interaction with PRM organisations, and through direct monitoring of quality of service provided.

28. We also recommend that the Commission should, in consultation with stakeholders, develop a detailed good practice guide regarding implementation of the Regulation. This could include sections regarding recommendations on safety limits, the format and content of policies on carriage, and consultation. It could also specify recommended minimum quality standards covering qualitative aspects of the services provided. Publishing voluntary policies such as these would allow potential future amendments to the Regulation to be tested in practice before adoption.

Changes to the Regulation

29. There are some areas where improvements can only be effected through changes to the text of the Regulation. These include minor amendments which we recommend should be implemented as soon as possible, and more significant amendments to be considered in the longer term.

30. The minor amendments we would suggest are:

- Extend Article 11 to require airlines to ensure that the personnel of their ground handling companies are trained to handle mobility equipment.
- Amend Article 8 to make specific PRM charges obligatory for airports wishing to recover costs from users, and therefore ensure costs are transparent, reasonable and cost-related.
- Amend Article 8 to make clear that that PRM charges are airport-specific and cannot be set at a network level.
- Amend Article 14 to require that NEBs must be independent of any bodies responsible for providing services under the Regulation (at present this is not the case in Greece).
- Amend Article 14 to clarify that NEBs are responsible for flights departing from (rather than both departing from and arriving at) airports in their territory, in addition to flights by Community carriers arriving at airports within the State's territory but departing from a third country.
- Amend Recital 17 to be consistent with Article 14, so that both state that complaints regarding the Regulation should be addressed to the NEB of the State where the flight departed, rather that of the State which issued the operating license to the carrier.

31. These changes would improve the functioning of the Regulation in its current form, without making significant changes to its overall approach.

32. A key issue with the Regulation is its lack of detail when compared to equivalent legislation (in particular, the equivalent US regulations on carriage of PRMs); in our view, as a result of this, it leaves too much scope for interpretation and variation in service provision. We suggest that, to ensure greater consistency, and that PRMs' rights are adequately respected, the Commission should consider making the text more detailed and specific about the requirements for airlines and airports. Some key areas in which we suggest that changes could be made are as follows:

- Specify the circumstances under which carriage of PRMs may be restricted (including any numerical limits) or where PRMs may be required to be accompanied[3].
- Clarify the definitions of 'PRM', 'mobility equipment' and 'cooperation'.

[3] This could be implemented either through amendment to this Regulation or through amendment to Commission Regulation (EC) 859/2008

- Clarify whether airlines may levy additional charges for supply of medical oxygen and for multiple seats where one seat is insufficient for the passenger (for example, in the case of obese or injured passengers).
- Extend the Regulation to include a provision requiring airports to publish information on the rights of PRMs (including the right to complain) at accessible points within the airport.

33. It would be necessary to consult with stakeholders about these changes and to undertake an impact assessment, and therefore these changes could not be introduced immediately.

34. We also suggest that the Commission and the Member States should work with other contracting States to amend the Montreal Convention so as to exclude mobility equipment from the definition of baggage. This would address the problem faced by users of technologically advanced wheelchairs, the values of which often substantially exceed the maximum compensation allowable under the Montreal Convention (1,131 SDRs, or €1,370). Although most airlines we contacted for the study informed us that they waived the Montreal limits in this type of situation, several PRM organisations informed us of cases where they did not, and even in the case that an airline voluntarily waives the limit the PRM is in a position of uncertainty.

1. INTRODUCTION

Background

1.1 Approximately 10% of the EU population has some type of disability[4]. Equal access to air transport services is necessary to enable full and equal participation in modern society. In order to ensure equal treatment as far as possible, Regulation 1107/2006 introduced new protections for people with reduced mobility when travelling by air, including the right, subject to certain derogations, not to be refused embarkation or reservation, and the right to be provided with assistance at airports, at no additional cost, in order to allow access to the flight. Before the introduction of the Regulation, there had been some well-publicised examples of carriers charging passengers for the provision of assistance that was essential in order to travel[5].

1.2 The Regulation creates obligations towards disabled persons and persons of reduced mobility (PRMs) for air carriers and their agents, tour operators, airport management companies, and Member States:

- Airlines are prohibited from refusing carriage (except where necessary to comply with safety regulations or where it is physically impossible) and have to provide certain types of assistance on board the aircraft.
- Airlines, their agents and tour operators have to ensure that they can accept notification of the need for assistance at all points of sale, and transmit this information to the airport and the operating air carrier.
- Airport management companies have to provide assistance at the airport, and develop and publish quality standards for this assistance. The costs of providing this assistance can be recovered through transparent and cost-reflective charges levied for all passengers.
- Member States are required to introduce sanctions into national law for non-compliance with the Regulation, create bodies responsible for enforcement of the Regulation, and promote awareness of the rights created by the Regulation and how to complain about infringements.

The need for this study

1.3 Article 17 of the Regulation requires the Commission, by 2010, to report to the Parliament and the Council on the operation and results of the Regulation. In order to inform this report, the Commission requires an independent evaluation of the operation of the Regulation.

This report

1.4 This report is the Final Report for the study. It sets out the work undertaken over the five month duration of the study, and draws conclusions on the current functioning of the Regulation. The recommendations set out in this report were discussed at the final

[4] ECAC document 30, section 5, annex N

[5] For example, on January 2004 a UK court ruled that Ryanair had acted unlawfully by charging a passenger Bob Ross £18 in each direction for wheelchair hire at London Stansted airport

meeting with the Commission.

Structure of this document

1.5 The rest of this report is structured as follows:

- Section 2 summarises the methodology used for this study;
- Section 3 sets out how the Regulation is being applied by airports;
- Section 4 sets out how the Regulation is being applied by airlines;
- Section 5 describes enforcement and complaint handling by NEBs;
- Section 6 summarises stakeholder views on other policy issues relating to the Regulation;
- Section 7 summarises the factual conclusions; and
- Section 8 summarises the recommendations.

1.6 Further detailed information on the policies of airlines regarding carriage of PRMs is provided in Appendices A and B.

1.7 Case studies have been undertaken of complaint handling and enforcement in 16 Member States. These are provided in Appendix C, which, due to its size, is provided as a separate document.

2. RESEARCH METHODOLOGY

Introduction

2.1 This section provides a summary of the research methodology used. It describes:

- the overall approach used;
- the selection of case studies;
- the scope of the desk research that has been undertaken; and
- the stakeholders that have participated in the study, and how they have provided inputs.

Overview of our approach

2.2 The Commission requested us to collect evidence to address a number of questions, most of which can be categorised as either relating to:

- enforcement and complaint handling undertaken by National Enforcement Bodies (NEBs); and
- application of the Regulation by air carriers, their agents, tour operators and airports.

2.3 In order to address these questions, we developed a research methodology divided into two parts:

- case study research; and
- cross-EU interviews and analysis.

2.4 The rationale for this division is that enforcement and complaint procedures are specific to Member States and are therefore best evaluated through a case study approach. It was agreed to undertake case studies of complaint handling and enforcement in 16 Member States as part of this study. The case studies also describe state-specific aspects of airline and airport implementation of the Regulation.

2.5 Key airlines cover the whole of the EU rather than restricting operations primarily to one State (for example, the Irish-registered carrier Ryanair operates domestic flights in the UK, France, Spain and Italy). In addition, the issues faced by airports in implementing the Regulation are, in most cases, not State-specific. Questions relating to the application of the Regulation by airlines and airports have therefore been addressed through a cross-EU approach. Information from both elements of the research has been used for the conclusions, and will be used in the development of recommendations.

2.6 Both the case study and the cross-EU research use a mixture of stakeholder interviews and desk research. The desk research has been useful to supplement the information provided by stakeholders, particularly regarding the charges levied by airports for services to PRMs.

Selection of case study States

2.7 The 16 case study states were selected in agreement with the Commission, with reference to the following criteria:

- The Member States with the largest aviation markets (measured by passenger numbers these are UK, Spain, Germany, Italy, France, Greece, Netherlands and Ireland);
- At least some of the Member States that, at the time the study commenced, had not introduced sanctions into national law;
- Member States in which the structure of the NEB is unusual (for example, in the UK, the Equality and Human Rights Commission is responsible for complaint handling);
- Member States in which airlines are based with which we identified significant issues of non-compliance with Regulation 1107/2006 in our 2008 review of Conditions of Carriage (carriers with some particularly non-compliant terms were based in Denmark and Italy); and
- States covering a wide geographical scope and variation in sizes.

2.8 The case study states are:

- Belgium;
- Denmark;
- France;
- Germany;
- Greece;
- Hungary;
- Ireland;
- Italy;
- Latvia;
- Netherlands;
- Poland;
- Portugal;
- Romania;
- Spain;
- Sweden; and
- United Kingdom.

2.9 In order to present a thorough analysis of the operation of the Regulation across the EU we conducted a more limited programme of data collection and stakeholder interviews in the remaining 11 Member States.

Stakeholder selection and inputs

2.10 The stakeholders important for the study were:

- NEBs;
- Airlines;
- Airport managing bodies; and
- Organisations representing disabled people, and people with reduced mobility (PRM organisations).

2.11 In addition to these, we spoke to cross-EU bodies which represented these organisations at a European level.

National Enforcement Bodies

2.12 We interviewed (face-to-face or by telephone) the NEB(s) notified to the Commission in every case study State, and obtained written responses from the NEBs of all other States.

2.13 We obtained the following information from each NEB:

- The legal basis for complaint handling and enforcement in the Member State;
- The degree of compliance by airlines;
- The degree of compliance by airports;
- Statistics on the number of complaints and the process for handling them;
- Issues relating to enforcement; and
- Any other issues.

2.14 Non-case study states were provided with a shorter question list which, while addressing the areas listed above, does so at a less detailed level.

2.15 Engagement of the NEBs was obtained through a combination of written responses, meetings and telephone interviews, depending on whether the State concerned is one of the 16 case study states. The approach adopted for case study NEB is listed in Table 2.1, together with the final status of contact as we drafted this Report.

TABLE 2.1 STAKEHOLDER INTERVIEWS: CASE STUDY NEBS

Member State	Organisation	Form of input
Belgium	SPF Mobilité et Transport	Written response and face-to-face interview
Denmark	CAA-Denmark (Staetens Luftfarsvaesen)	Face-to-face interview
France	DGAC Sous-direction du tourisme	Face-to-face interview
Germany	Luftfahrt-Bundesamt (LBA) BM für Verkehr, Bau und Stadtentw	Face-to-face interview
Greece	CAA, Air Transport Economics Section CAA, Airports Division	Written response and telephone interview

Member State	Organisation	Form of input
Hungary	Nemzeti Közlekedési Hatóság (Directorate for Aviation) Egyenlő Bánásmód Hatóság (Equal Treatment Authority)	Face-to-face interview
Ireland	Commission for Aviation Regulation	Face-to-face interview
Italy	ENAC - Direzione Centrale Operazioni	Face-to-face interview
Latvia	Civil Aviation Agency	Written response and telephone interview
Netherlands	Inspectie Verkeer en Waterstaat	Written response and face-to-face interview
Poland	Civil Aviation Office	Face-to-face interview
Portugal	Instituto Nacional de Aviação Civil	Face-to-face interview
Romania	Autoritatea Nationala Pentru Persoanele cu Handicap Romanian Civil Aeronautical Authority	Face-to-face interview
Spain	Servicio de inspección y relaciones con usuarios	Written response and face-to-face interview
Sweden	Swedish Civil Aviation Authority	Written response and telephone interview
United Kingdom	Equality and Human Rights Commission (England) Civil Aviation Authority	Face-to-face interview

2.16 We obtained responses from all NEBs in the non-case study States, as shown in Table 2.2. We requested written responses from all non-case study NEBs and these were followed up with telephone interviews where necessary for clarification.

TABLE 2.2 STAKEHOLDER INTERVIEWS: NON-CASE STUDY NEBS

Member State	Organisation
Austria	Civil Aviation Authority
Bulgaria	Civil Aviation Administration Ministry of Transport, Information Technologies and Communications
Cyprus	Department of Civil Aviation
Czech Republic	Civil Aviation Authority
Estonia	Consumer Protection Body
Finland	Civil Aviation Authority
Lithuania	Civil Aviation Administration
Luxembourg	Direction de l'Aviation Civile
Malta	Department of Civil Aviation
Slovakia	Slovak Trade Inspection Ministry of Transport, Posts and Telecommunications, Directorate General of Civil Aviation and Water Transport, Air Transport Department
Slovenia	Ministry of Transport, Directorate of Civil Aviation

Airlines

2.17 20 airlines have been selected to include a sample with variation across several criteria. These are:

- One key airline with major operations in each case study State;
- At a minimum to include the top 10 European airlines measured in terms of passenger numbers;
- Also to include a mix of different airline types (legacy, low cost and charter), States of registration, and sizes; and
- At least 2 non-EU airlines.

2.18 The airlines selected, and their relevance to each of the criteria, is shown in Table 2.3. We were originally planning to consider Air France-KLM as one airline, but various differences (for example, in its Conditions of Carriage) have meant that it is more logical to consider it as two airlines, meaning there are 11 airlines under the 'Top 10 passenger numbers' criterion. We have consequently excluded the 11th (Austrian) from the interview sample, although the airline still forms part of the desk research.

TABLE 2.3 AIRLINE SELECTION CRITERIA

Airline	Case study State coverage		Airline type				
	Selected for case study state coverage	Case study states	Non-EU	Legacy	Low cost	Charter	Top 10 passenger numbers
Aegean Airlines	✓	Greece			✓		
Air Berlin					✓		✓
Air France	✓	France / Netherlands		✓			✓
AirBaltic	✓	Latvia			✓		
Alitalia	✓	Italy		✓			✓
British Airways	✓	UK		✓			✓
Brussels Airlines	✓	Belgium		✓			
Delta			✓	✓			
EasyJet					✓		✓
Emirates			✓	✓			
Iberia	✓	Spain		✓			✓
KLM	✓	Netherlands		✓			✓
Lufthansa	✓	Germany		✓			✓
Ryanair	✓	Ireland			✓		✓
SAS	✓	Denmark / Sweden		✓			✓
TAP Portugal	✓	Portugal		✓			
TAROM	✓	Romania		✓			
Thomas Cook						✓	
TUI (Thomsonfly)						✓	

Wizzair	✓	Hungary / Poland	✓	

2.19 We approached all 21 case study airlines requesting either a face-to-face or telephone interview. The methods they chose to respond are shown in Table 2.4 below.

TABLE 2.4 STAKEHOLDER INTERVIEWS: AIRLINES

Airline	Form of input
Aegean Airlines	Written response and telephone interview
Air Berlin	Input through IACA only
Air France	Telephone interview
AirBaltic	Did not respond
Alitalia	Written response
British Airways	Declined to participate
Brussels Airlines	Did not respond
Delta	Written response
easyJet	Face-to-face interview
Emirates	Did not respond
Iberia	Telephone interview
KLM	Face-to-face interview
Lufthansa	Declined to participate
Ryanair	Face-to-face interview
SAS	Written response
TAP Portugal	Face-to-face interview
TAROM	Face-to-face interview
Thomas Cook	Face-to-face interview
TUI (Thomsonfly)	Input through IACA only
Wizzair	Did not respond

2.20 We also consulted the five main associations representing airlines operating airlines within the EU, listed in Table 2.5 below.

TABLE 2.5 STAKEHOLDER INTERVIEWS: AIRLINE ASSOCIATIONS

Organisation	Full Name	Type of airline represented	Form of input
IATA	International Air Transport Association	Legacy	Written response and telephone interview
ELFAA	European Low Fares Airline Association	European low cost	Face-to-face interview
AEA	Association of European Airlines	European legacy	Face-to-face interview
ERA	European Regions Airlines Association	European regional	Face-to-face interview
IACA	International Air Carrier Association	Leisure / charter	Face-to-face interview

Airports

2.21 The 21 case study airports were selected according to the following criteria:

- All of the top 10 European airports in terms of passenger numbers;
- The main airport in each of the 16 case study Member States; and
- A sample of smaller airports.

2.22 The airports selected under each criterion, and the methods they chose to respond, are shown in Table 2.6. Note that three of the top 10 airports were excluded from the case study consultation as they were operated by the same organisations as others in the top 10. These comprise Paris Orly, London Gatwick, Zaragoza and Barcelona airports which, at the time the study was planned, were managed by the same companies as Paris CDG, Heathrow and Madrid Barajas respectively[6]. These airports do still form part of the desk research, however.

TABLE 2.6 AIRPORT SELECTION CRITERIA

Airport	State	Main airport in case study State	Top 10 passenger numbers	Smaller airport	Form of input
Amsterdam	Netherlands	✓	✓		Face-to-face interview
Athens	Greece	✓			Written response and telephone interview
Bologna	Italy			✓	Face-to-face interview
Brussels	Belgium	✓			Face-to-face interview
Bucharest Otopeni	Romania	✓			Face-to-face interview
Budapest	Hungary	✓			Face-to-face interview
Brussels Charleroi	Belgium			✓	Face-to-face interview
Copenhagen	Denmark	✓			Written response and telephone interview
Dublin	Ireland	✓			Face-to-face interview
Frankfurt Main	Germany	✓	✓		Face-to-face interview
Lisbon	Portugal	✓			Face-to-face interview
London Heathrow	United Kingdom	✓	✓		Face-to-face interview
London Luton	United Kingdom			✓	Face-to-face interview
Madrid Barajas	Spain	✓	✓		Face-to-face interview*
Munich	Germany		✓		Not able to obtain a response
Paris Charles De Gaulle	France	✓	✓		Face-to-face interview
Riga	Latvia	✓			Written response and telephone interview
Roma Fiumicino	Italy	✓	✓		Written response and telephone interview

[6] Gatwick ceased to be managed by BAA, the operator of Heathrow, on 2 December 2009

Stockholm	Sweden	✓			Written response and telephone interview
Warsaw	Poland	✓			Face-to-face interview
Zaragoza	Spain			✓	Face-to-face interview*

* Interview with AENA covered all State airports in Spain

Selection of PRM organisations and other passenger groups

2.23 In each case study State we selected a PRM organisation representing all disabilities and impairments at a national level. We initially approached the national council organisations that are members of the European Disability Forum (EDF); however in a small number of cases we were unable to obtain a response from this organisation and had to contact an alternative organisation in their place. The table also includes four cross-EU PRM organisations.

TABLE 2.7 PRM AND PASSENGER ORGANISATIONS BY CASE STUDY STATE

State	Organisation	Form of input
Belgium	Belgium Disability Forum	Telephone interview
Denmark	Danske Handicaporganisationer (DH; Disabled Peoples Organisations Denmark)	Face-to-face interview
France	Conseil Français des personnes Handicapées pour les questions Européennes (CFHE ; French Council of Disabled People for European Affairs)	Telephone interview
Germany	Deutscher Behinderten Rat (DBR; German Disability Council)	Unable to obtain a response
Greece	National Confederation of Disabled People (ESAEA)	Written response and telephone interview
Hungary	National Council of Federations of People with Disabilities (FESZT)	Written response and telephone interview
Ireland	People with Disabilities in Ireland (PWDI)	Face-to-face interview
Italy	Forum Italiano sulla Disabilità (FID; Italian Disability Forum)	Face-to-face interview
Latvia	Latvian Umbrella Body for Disability Organisations (SUSTENTO)	Written response and telephone interview
Netherlands	CG-Raad*	Face-to-face interview
Poland	Polskie Forum Osob Niepelnosprawnych (PFON; Polish Disability Forum)	Face-to-face interview
Portugal	Confederação Nacional dos Organismos de Deficientes (CNOD; National Confederation of Organisations of Disabled People)	Unable to obtain a response
Romania	National Disability Council (CNDR)	Face-to-face interview
Spain	Fundación ONCE*, on request of Comité Español de Representantes de Personas con Discapacidad (CERMI)	Face-to-face interview
Sweden	Swedish Disability Federation (HSO)	Written response and telephone interview
United Kingdom	UK Coalition for Disability Rights in Europe (UKCDRE)	Telephone interview

EU	European Disability Forum	Face-to-face interview
EU	European Blind Union	Face-to-face interview
EU	European Union of the Deaf	Written response and telephone interview
EU	Inclusion Europe	Declined to respond

* Not a national council organisation member of EDF

Selection of other organisations

2.24 In addition to the stakeholders listed above, we contacted a number of cross-EU organisations. These comprised:

- **Passenger organisations:** the European Passenger Federation;
- **Travel agent associations:** ECTAA;
- **Airport association:** ACI Europe; and
- **Advisory bodies:** EASA, ECAC.

2.25 At the level of Member States, there were stakeholders which did not correspond to the categories described so far, but which we believed would provide useful information. These organisations were as follows:

- **Wings on Wheels (UK):** This organisation provides package holidays tailored to the needs of disabled people.
- **Thomas Cook, TUI:** Elements of the Regulation apply to travel agents as well as to airlines.
- **Air Transport Users Council (UK):** Prior to the introduction of the Regulation, this organisation had handled complaints from disabled passengers regarding travel by air, and as a result continued to receive some complaints after the Regulation came into force. In addition, the AUC is the only government-funded body in the EU specifically to represent the interests of air passengers

2.26 The form of input adopted by each stakeholder is shown in Table 2.8.

TABLE 2.8 STAKEHOLDER INTERVIEWS: OTHER ORGANISATIONS

State	Association name	Form of input
EU	ECTAA	Written response
EU	EPF	Did not respond
EU	ACI Europe	Face-to-face interview
EU	EASA	Written information provided
EU	ECAC	Face-to-face interview
United Kingdom	Wings on Wheels	Unable to obtain a response
Germany	Thomas Cook	Face-to-face interview
United Kingdom	TUI	Through IACA only
United Kingdom	Air Transport Users Council	Face-to-face interview

Desk research

2.27 The main objectives of the desk research were:

- To evaluate the extent to which air carriers demonstrate compliance with the Regulation through published information, such as Conditions of Carriage and policies on carriage of PRMs; and
- The extent to which airports have complied with the requirement to develop and publish PRM quality standards, as specified in Article 9 of the Regulation, and the content of these standards.

2.28 Conclusions emerging from the desk research were supplemented by the information collected through stakeholder interviews.

Airlines

2.29 The research methodology employed for this part of the study was based on a review of the websites of the 21 case study airlines listed above. Although the focus was on the English language version of the websites, versions in other languages were checked to check whether additional information was provided.

2.30 Three key sources of information were surveyed from each website:

- Conditions of Carriage, with particular regard to the conditions set out for the carriage of PRMs;
- Other policies on the carriage of PRMs: a more detailed search across the airline's website for any policies and relevant information on PRM travel; and
- Options to notify carriers of assistance requirements.

Airports

2.31 Again, the research conducted for this part of the study was internet-based. The websites of each of the case study airports was surveyed against the following criteria:

- whether the airport publishes quality standards;
- how easy these are to find;
- the content of the standards; and
- whether the airport publishes details of its performance against the standards.

Review of relevant legislation and other documentation

2.32 We also reviewed airline and airport policies with reference to other applicable legislation and guidance. The only other EU-wide legislation which relates to the carriage of PRMs by air is EU-OPS 1 (Commission Regulation 859/2008). In addition, many EU carriers which operate flights to the US are also covered by the corresponding US regulation (14 CFR Part 382, Nondiscrimination on the Basis of Disability in Air Travel); this is significantly different from Regulation 1107/2006 and this has an impact on the operating procedures of some carriers.

2.33 Other current guidance includes:

- ECAC Document 30;
- JAR-OPS 1 Section 1;
- JAA Temporary Guidance Leaflet (TGL) No. 44; and
- UK Department for Transport (DfT), *Access to Air Travel for Disabled Persons and Persons with Reduced Mobility – Code of Practice.*

3. APPLICATION OF THE REGULATION BY AIRPORTS

Introduction

3.1 One of the most fundamental changes introduced by the Regulation was the change in responsibility for provision of assistance to PRMs: where previously these services were provided by airlines, the Regulation requires airports to provide them, and permits them to pass on the associated costs to users, provided this is done in a fair and transparent manner. The Regulation also requires airports handling over 150,000 passenger movements per year to develop and publish quality standards for assistance. The detailed requirements are set out in the following section.

3.2 In order to assess how airports are implementing these requirements, we met or sought responses from a sample of airports selected under the criteria set out above (see 2.21). The information gathered was supplemented by tours of the services provided at certain airports, by interviews with other stakeholders who gave their views on service provision, and by desk research. The desk research included analysis of the charges and quality standards set out by the airports in the sample.

Requirements of the Regulation

3.3 As noted above, the Regulation places responsibility for provision of assistance with the airport, whereas previously assistance had been provided by ground handling companies on the basis of contracts with individual airlines. The Regulation requires each airport to provide a uniform service quality for all airlines that it handles (except where an airline requests a higher level of service). The key requirements for the PRM assistance service are summarised below:

- **Designated points:** Airports are required to designate points inside and outside the terminal building at which PRMs can announce their arrival at the airport and request assistance. These must be developed in cooperation with airport users and relevant PRM organisations, must be clearly signed and must offer basic information about the airport in accessible formats.
- **Assistance:** Airports must provide assistance to PRMs so that they are able to take the flight for which they hold a reservation, providing that they have pre-notified their requirements and arrive with sufficient time before the departure of their flight. If they have not pre-notified, the airport must make all reasonable efforts to enable to them to take their flight. For PRMs on arriving flights, the airport must provide assistance to enable them to leave the airport or reach a connecting flight. The assistance provided should be appropriate to the individual passenger. An airport may contract for these services to be provided by another company, in compliance with quality standards (discussed below).
- **Charges:** An airport cannot charge a PRM for this service, but may levy a specific charge on airport users for it. The charge must be reasonable, cost-related and transparent, and the accounts for these services must be separated from its other accounts. The charge must be shared between airport users in proportion to the total number of passengers carried to and from the airport by each. If an airport wishes to contract for services or levy a charge, both must be done in cooperation with airport users through the Airport Users Committee (AUC).

- **Quality standards:** Airports with over 150,000 annual passenger movements must set and publish quality standards for these services, and decide resource requirements to meet them, in cooperation with airport users and PRM organisations. The standards must take account of relevant policies and codes, such as the ECAC Code of Good Conduct in Ground Handling for Persons with Reduced Mobility (ECAC Document 30). An airline can agree with an airport to receive a higher standard of service, for an additional charge.
- **Training:** All employees (including those employed by sub-contractors) providing direct assistance to PRMs should be trained in how to meet their needs. Disability-equality and disability-awareness training should be provided to all airport personnel dealing directly with the travelling public, and all new employees should attend disability−related training.

Categories of PRM defined by carriers and airports

3.4 The Regulation covers passengers with a wide range of impairments for which the needs for assistance are different. Although each individual is different, airlines and airports find it helpful to apply some categorisation when referring to the needs of different passengers. The most commonly used categorisation is the list of Special Service Request (SSR) codes defined by IATA. These categories are:

- **WCHR:** Wheelchair (R for Ramp). Passengers who are able to ascend and descend steps and move about inside the aircraft cabin, but who require a wheelchair or other assistance for longer distances (e.g. between the terminal and the aircraft).
- **WCHS:** Wheelchair (S for Steps): Passengers who cannot ascend or descend steps, but can move about inside the aircraft cabin. They require a wheelchair for the distances to and from aircraft and must be assisted up and down any steps.
- **WCHP:** Wheelchair (P for Paraplegic). Passengers with a disability of the lower limbs who have sufficient personal autonomy to take care of themselves, but who require assistance to embark and disembark and can move about inside the aircraft cabin only with the assistance of an onboard wheelchair.[7]
- **WCHC:** Wheelchair (C for Cabin Seat). Passengers who are completely immobile, and who can move about only with the assistance of a wheelchair or other means, and require this assistance at all points from arrival at the airport to seating (which may be fitted to their specific needs) on board the aircraft, and the reverse process on arrival.
- **BLND:** Blind or visually impaired passengers.
- **DEAF:** Deaf or hearing impaired passengers, and passengers who are deaf without speech.
- **BLND/DEAF:** Passengers who are both visually and hearing impaired, and who can only move about with the assistance of an accompanying person.
- **DPNA:** Disabled passengers with intellectual or developmental disabilities who need assistance.
- **MEDA:** Passengers whose mobility is impaired due to illness or other clinical reasons, and who are authorised to travel by medical authorities.

[7] This code is not widely used or universally recognised at present

- **STCR:** Passengers who can only be transported on a stretcher.
- **MAAS:** Meet and Assist. All other passengers requiring special assistance.

3.5 Some airlines use different categorisations. For example, Ryanair uses a more detailed classification system with 16 categories that also identify, for example, whether the passenger is travelling with their own wheelchair.

3.6 In addition to the codes above which describe the needs of the passenger, when referring to wheelchair users airlines may also add a description of the type of wheelchair which will be carried. The codes used are WCMP for manual power, WCBD for dry cell battery and WCBW for wet cell battery. These codes are useful for planning the type of assistance which will be necessary to transport them, for example if they require preparation or disassembly.

Services actually provided by airports

3.7 All of the case study airports had implemented the Regulation, and were providing the required services in some form. We were given tours of the services provided at several of the airports we visited. From these, and descriptions of services given in interviews, we have drawn together a description of a typical process by which the services required by the Regulation are provided.

Departures

Pre-notification	Almost all airports and airlines have contracted SITA (a company providing aviation information technology) to provide a telex or email service for the purpose of passing notification of the needs of PRMs (see 4.64). For each series of flights for a given aircraft, any assistance required is communicated via a telex which includes a four letter code describing the category of disability of each PRM on each flight (see 3.4). This message is known as the passenger assistance list (PAL); if requirements change prior to the flight this is updated by a change assistance list, or CAL. Where a request for assistance is made by a PRM at least 48 hours before the published departure time for the flight, the airline is obliged to transmit this information to the relevant airports at least 36 hours before the published departure time.
Recording of notification	This information arrives at a telex server in the dispatch office of the airport PRM service provider. The telex describes: the time of the flight, the flight number, the names of passengers on board requiring assistance, and the category of disability of these passengers. The information from this telex is used to update the service provider's task management system, either via an automatic link, or via manual input. The task management system can be purposely developed task management software, or in some airports a piece of paper containing notes on expected assistance. Information regarding requests for assistance may also arrive via email. Airlines and airports may use email for several reasons: some airlines (such as non-EU charter carriers) may not have a SITA terminal; larger groups (such as operators of cruises) may send an off-line message in addition to PAL/CAL messages.
PRM arrives and is assigned an assistant	Each new request for assistance creates a new task; if a passenger arrives without notification, the task is created on their arrival. The task management software lists PRMs requiring assistance as tasks, and sets out expected arrival times and real-time information about their flights. When the passenger announces their arrival (either via a designated point or a check-in desk), the type of assistance they require is confirmed, and the task is assigned to one or more available assistants. At some airports, assistants carry personal digital assistants (PDAs) which record progress on a particular task; if this is the case, information regarding the passenger to be met will be forwarded to the PDA of the selected assistant. At other airports (for example in Spain) the management of tasks is a manual process. More than one assistant may be assigned if the passenger requires more involved assistance, such as carrying into their seat or is in a stretcher.

PRM is met and needs are confirmed	The assistant meets the passenger at the point at which they announced their presence; when they meet the PRM, they update the dispatch office with their action. This update may be via PDA linking through to the software in the dispatch office, or via calling in. Assistants should be trained in how to approach passengers with different requirement. If the PRM has difficulty with long distances, the airport may use electric carts, or may push the passenger in a wheelchair provided by the airport. The electric carts may be capable of carrying a passenger in an airport wheelchair. The extent of the use of electric carts may be dependent on airport design. PRMs who are blind or visually impaired may require someone whose arm they can hold guide them through the airport. A PRM with an intellectual disability may require information about the airport to be presented to them in a simplified manner, or may require check-in and other procedures to be conducted in a particular manner. The assistant will help PRMs with a reasonable amount of baggage, but only as much as any other passenger would take.
PRM is assisted through check-in and security	The passenger is taken through check-in and security. At check-in, there may be lowered desks for passengers in wheelchairs. At security, there may be a track where the security staff are trained in searching PRMs, including searching wheelchairs, and a screen to provide privacy for the search. Usually it is not possible for wheelchairs to be taken through metal detector arches, and therefore wheelchair users are searched manually. The security track is not typically exclusively for PRMs, but they may receive priority. There may be a dedicated PRM lounge; if there is time before their flight leaves, they will have the option of resting there or if there is time may wish to use the facilities in the departure lounge until called for their flight. Some airports are willing to take PRMs to these facilities (such as restaurants and shops), while others require PRMs to remain in the waiting area allocated. Where the airport is willing to provide this, the assistant arranges a time at which to collect the passenger. Some airports allow PRMs to use the business lounge regardless of class of travel.
PRM is assisted through customs and to gate	Once the flight is ready for boarding, the assistant takes the passenger to the gate. Different methods of assisting a PRM into the aircraft will be used depending on the passenger's needs and on the manner in which the aircraft is embarked (e.g. via airbridge or from the apron). Some PRMs will be able to use either stairs or an airbridge and will not require specific assistance at this point.
PRM is assisted on board aircraft with airbridge	Where passengers board via an airbridge, category WCHC and WCHS PRMs are transferred to the onboard wheelchair at the door of the aircraft. If they have remained in their own chair up to this point, their wheelchair is transferred to the hold; otherwise the airport's wheelchair is returned with the assistant. The onboard wheelchair is narrower to allow it to pass down the aisle, and has straps to hold the passenger safely in the chair. Other categories of PRM board the aircraft on foot, without particular assistance. Depending on the policy of the carrier concerned, PRMs may have to board either first or last.
PRM is assisted on board aircraft without airbridge	Where passengers board via steps, category WCHC and WCHS PRMs are transferred to the onboard wheelchair on the apron before entering the aircraft. They are then lifted up to the aircraft either by an Ambulift8, by a motorised stair-climbing chair or at some airports by manual lifting. Other categories of PRM board the aircraft on foot, and may require assistance to ascend the stairs. If the aircraft is boarded away from the terminal building and passengers are brought to the aircraft by bus, a dedicated PRM vehicle may be used to bring the PRM to the aircraft.
PRM is assisted to seat on board aircraft	On board, the assistant provides the assistance necessary for the passenger to get to their seat. This may include lifting the passenger from the on-board wheelchair into the seat and if, as required by certain carriers, the PRM has to be seated in a window seat, transferring across other seats. The assistant may also help the passenger with storing any baggage in the overhead lockers. Once the passenger is installed in their seat, the airport ceases to have responsibility for providing assistance, and it transfers to the airline.

[8] An Ambulift is a vehicle with a hydraulic platform which can be raised to the level of the flight deck to allow wheelchairs to be pushed on board.

Arrivals

Notification arrives	In addition to arriving via PAL or CAL, notification for arriving passengers may arrive by passenger service message (PSM). This is a list of passengers on board the aircraft requiring particular treatment on arrival, dispatched when an aircraft departs. The message states the points of embarkation and disembarkation, the flight number and date, and lists the names of the passengers requiring particular assistance with a description of the assistance. In addition to PRMs, the PSM lists children travelling alone (unaccompanied minors, or UMs), deportees and returned inadmissible passengers. In some circumstances, no PAL or CAL is received for arriving passengers, and the only notification is via PSM; this reduces the period of notification from 36 hours to the duration of the flight. In some cases no notification is received at all.
PRM is met and assisted to disembark	The information from the PSM is input into the task management system in the same manner as the PAL or CAL. When a flight lands, available assistants are assigned to each of the PRMs on board the flight, and dispatched to meet them at the gate. On landing, if a PRM requires assistance to disembark they will typically disembark once all other passengers have disembarked. The PRM is met at the door of the aircraft or within the aircraft by their assigned assistant. Depending on the code included in the PSM the assistant may have equipment such as wheelchairs, or may be accompanied by another member of staff. If the passenger has their own wheelchair, this is removed from the hold, and the passenger may then be assisted to transfer from the aircraft wheelchair into their own. At some airports the passenger's wheelchair is not returned to them until baggage reclaim, for security reasons.
PRM is assisted from aircraft to point of arrival	The passenger is then assisted through passport control (where there may be a dedicated PRM-accessible track) to the baggage hall, where they are assisted to retrieve their bags. They are then assisted through customs, and the assistant accompanies them as far as is required, up to the designated point of arrival outside the terminal. If it is situated close to the arrival point, they may also assist the PRM to their car if requested.

Connections

Connecting flights	Where a PRM requires assistance to make a connecting flight, the assistance offered varies depending on the length of time between arrival and departure. If there is limited time, assistance is offered as described above to disembark, transfer, and embark the passenger onto their next flight. If there is a significant wait between arrival and departure, the passenger may be taken to a PRM lounge or waiting area, until their departing flight is ready for boarding.

Policies on service provision

Provision for non pre-notified passengers

3.8 The Regulation sets out the assistance which must be provided to PRMs where they have notified the air carrier or tour operator at least 48 hours before the published time of departure of their flight. It also requires that where no such notification is made, the airport should make all reasonable efforts to provide this assistance.

3.9 Of the airports we contacted, most stated that there was little or no difference in the service received by passengers who had not pre-notified, and differences in service quality only occurred when the services were busy. Even in the cases where a choice did have to be made between assisting a pre-notified and non-pre-notified passenger, some airports informed us that they would make decisions on the basis of ensuring all passengers could make their flights, rather than on the basis of notification. Some airports informed us that the level of notification was so low that it was not useful to make any distinction on this basis. Only a small minority of the case study airports stated that a slower service was provided to passengers who did not pre-notify (Table 3.1 below).

TABLE 3.1 AIRPORT SERVICE PROVIDED TO NON-PRE-NOTIFIED PRMS

Airport	Service provided to non-pre-notified PRMs
Amsterdam Schiphol	Equivalent service, priority based on ensuring passengers can make their flights
Athens	Slower service than pre-notified for departures, equal service for arrivals
Bologna	Equivalent service is provided
Brussels	Equivalent service as pre-notified, lower priority when busy
Bucharest Otopeni	Equivalent service is provided (some equipment may not be available)
Budapest	Equivalent service is provided (possible delay of a few minutes)
Brussels Charleroi	Equivalent service, priority based on ensuring passengers can make their flights
Copenhagen	Equivalent service as pre-notified, lower priority when busy
Dublin	Slower service
Frankfurt Main	Equivalent service as pre-notified, lower priority when busy
Lisbon	Standards not defined
London Heathrow	N/A
London Luton	Equivalent service is provided
Madrid Barajas	Equivalent service is provided (possible delay on arrival)
Munich	Equivalent service as pre-notified, lower priority when busy
Paris Charles De Gaulle	Equivalent service as pre-notified, lower priority when busy
Riga	Equivalent service is provided
Roma Fiumicino	Slower service
Stockholm	Slower service
Warsaw	Equivalent service as pre-notified, lower priority when busy
Zaragoza	Equivalent service is provided (possible delay on arrival)

3.10 Airports' estimates of the impact of pre-notification rates on staffing and equipment levels varied considerably. Several airports informed us that while an increase in the rate of pre-notification would improve the quality of the service provided, they would not expect it to significantly affect the number of staff they employed. In contrast, Aèroports de Paris believed that improving rates of pre-notification could allow them to reduce the costs of PRM service provision by 30%-40%. In January 2010, London Heathrow introduced a banded charge which varies the amount paid depending on the level of pre-notification of the airline (see 3.34).

Restrictions on service

3.11 Unlike for airlines, the Regulation does not explicitly state any grounds for airports to restrict the services provided. However, there may be national laws which have bearing on the functions which airport staff are permitted to undertake; for example, we were informed that in Denmark national laws on health and safety did not permit people of above a certain weight limit to be carried up stairs and into an aircraft.

Other issues noted

3.12 All of the case study airports provide the services required under the Regulation. The manner and quality of provision varies among the sample, and there have been a number of incidents of significant service failure, but we identified no fundamental problems with service provision at major airports. However, we were informed that the Regulation had not been implemented at Greek airports other than Athens: at these airports, services are provided to PRMs, but the change of responsibility from airline to airport has not yet been effected; provision of and payment for services is agreed between airlines and ground handling companies, as it was prior to the introduction of the Regulation.

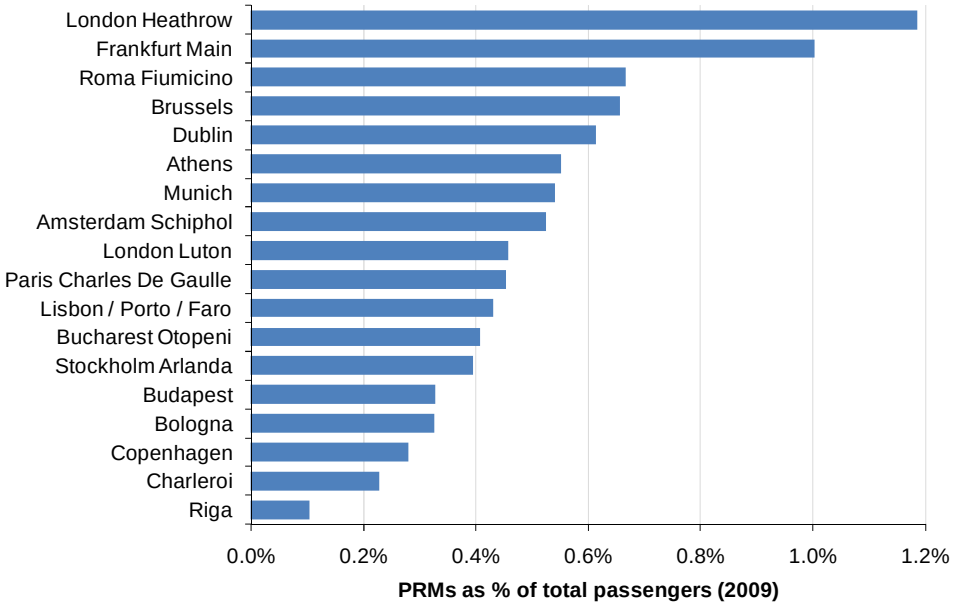
3.13 The views of stakeholders on the provision of services are discussed at the end of this chapter (see 3.76).

Statistical evidence for carriage of PRMs

The proportion of passengers requiring assistance

3.14 The frequency with which PRM assistance services are used varies considerably between airports. Figure 3.1 shows the rate of use at the airports in our sample for which we were provided with data. At London Heathrow 1.2% of passengers are PRMs requiring assistance, while at Riga only 0.1% of passengers require assistance. However, for most airports in the sample, the proportion requiring assistance is between 0.2% and 0.7%. ACI informed us that the higher rates at some airports were the result of the demographics of the passengers flying to these destinations.

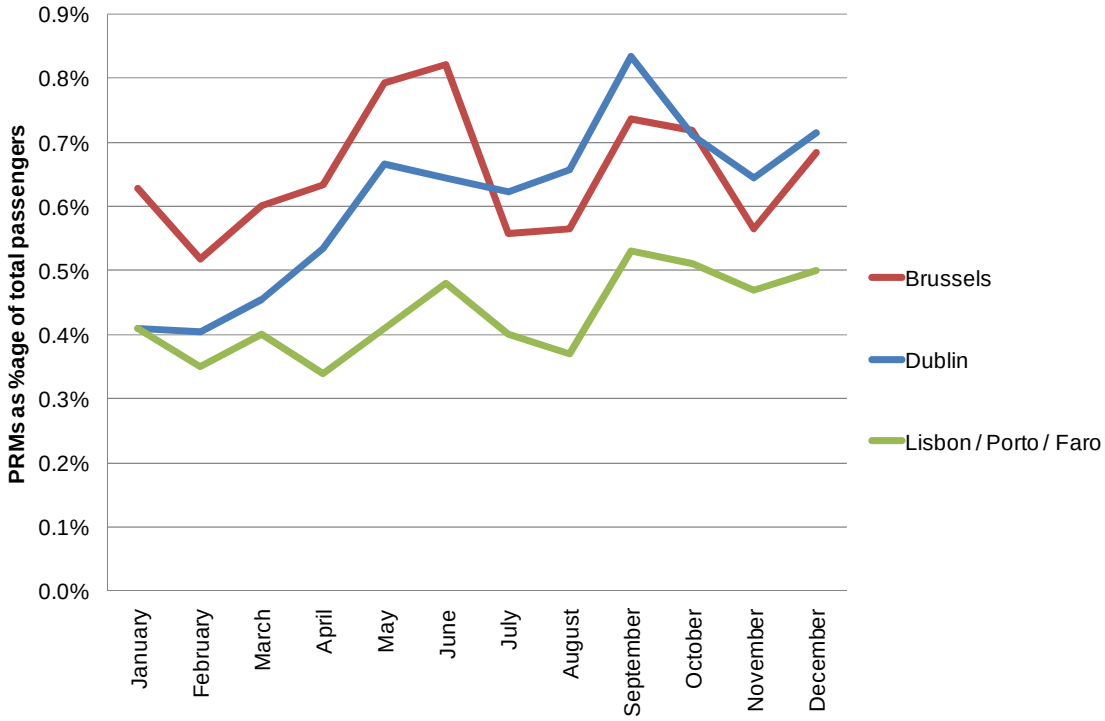
FIGURE 3.1 FREQUENCY OF PRMS REQUESTING ASSISTANCE AT AIRPORTS (2009)



3.15 Some other airports have higher proportions of PRMs requiring assistance, resulting from the demographic profile of passengers using the airports. These include holiday destinations popular with elderly people, such as Alicante, Malaga and Tenerife Sur; and pilgrimage destinations such as Lourdes.

3.16 Based on the information we have received from airports, the profile of PRM travel differs markedly from that of other passengers (see Figure 3.2). Most data indicates that the number of PRMs travelling tends to be lower in relative terms, and at some airports also in absolute terms, during July and August when total air travel is at a peak. At some airports, there appears to be a peak in December and January, however this is not consistent across all the airports for which we have data. Airports informed us that provision of services between April and September can be particularly affected by passengers travelling to cruise ships: these often carry high numbers of PRMs, and since a cruise ship usually disembarks passengers at the same time as it embarks the next load, there is a twofold increase in the number of PRMs travelling through the airport. The winter peak in PRMs is partly due to high rates of injury amongst passengers returning from winter sports holidays.

FIGURE 3.2 FREQUENCY OF PRMS OVER THE YEAR (2009)

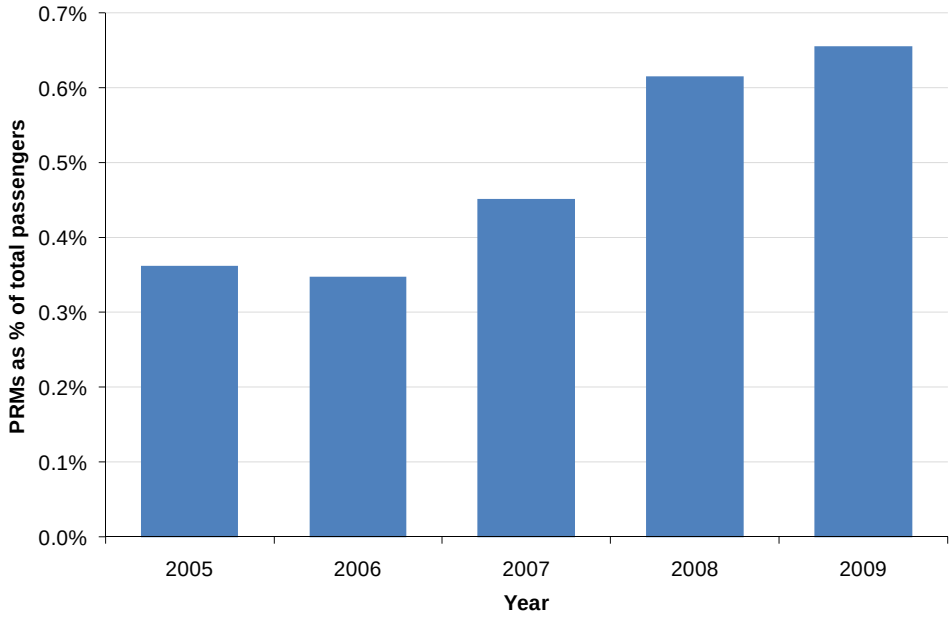


Trend in PRM travel

3.17 Several airports and airlines informed us that the number of PRMs requiring assistance has increased significantly since the introduction of the Regulation. It is difficult to verify this, as airports generally did not provide PRM services before July 2008, and therefore did not have a time series of data available. However, Brussels Zaventum airport introduced a PRM service similar to that required by the Regulation earlier, and as a result was able to provide figures for PRM's travelling between 2005 and 2010. This shows an increasing trend (Figure 3.3): the proportion of passengers

requiring assistance appears stable at approximately 0.35% over 2005 and 2006, and then climbs to 0.66% in 2009. It believed that this was a result of significant abuse of the services.

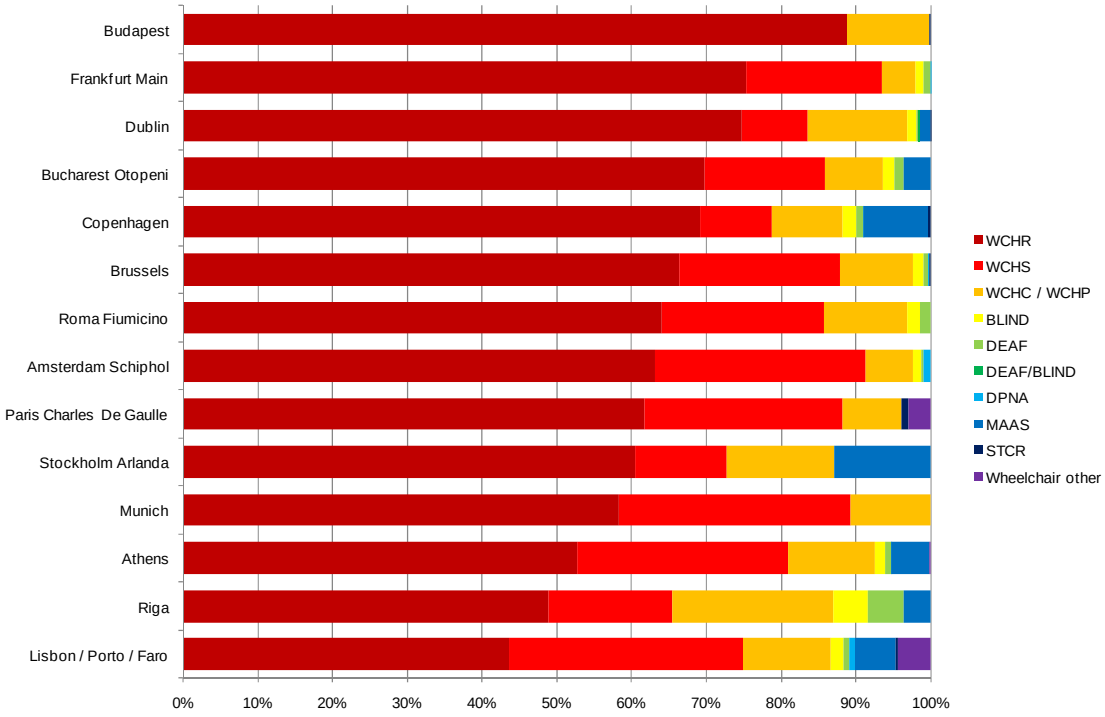
FIGURE 3.3 RATE OF PRMS OBSERVED AT BRUSSELS ZAVENTUM AIRPORT



Types of assistance provided

3.18 Assistance is often divided by airports into WCHC/WCHS (see 3.4), which requires significant time and resources, and others. We requested data on the types of passengers assisted from each of the case study airports and a summary of the data is shown in Figure 3.4. At all airports which provided data, the most frequent category of assistance was WCHR, although the proportion ranged from 44% to 89% (median 64%). The category "Wheelchair other" comprises wheelchair codes which do not fit into the other wheelchair categories: WCMP, manually powered wheelchair; WCBD, dry cell operated wheelchair; and WCBW, wet cell operated wheelchair. We have excluded the codes for medical cases and unaccompanied minors (MEDA and UM respectively) from this analysis, as they are not within the scope of the Regulation.

FIGURE 3.4 VARIATION IN TYPES OF PRMS ASSISTED (2009)



Abuse of services

3.19 Many airports – particularly larger and busier airports – reported that the services they provided for PRMs were sometimes used by passengers who did not appear to have the right to do so under the Regulation. A typical observation was of a passenger who was assisted in a wheelchair from a designated point of arrival through security and customs, and who then walked to the gate unassisted. Several types of passenger who might be motivated to do this were suggested:

- Passengers who feel confused by a large and complex airport, and do not feel that they would able to navigate it successfully;
- Passengers who do not speak the language used for the airport signs and announcements;
- Passengers who have no mobility impairment which prevented them from walking long distances within the airport, but who did not wish to; and
- Passengers (particularly those arrive at the airport with limited time before the departure of their flight) who wish to avoid lengthy queues at emigration, customs and security.

3.20 In addition, some airports reported cases where airlines had requested PRM assistance for passengers such as unaccompanied minors, passengers with excessive cabin baggage, and VIPs. These passengers might previously have been classified ‘meet and assist’ (MAAS) and any assistance required would have been paid for by the airline.

3.21 By its nature, it is hard to establish the true level of this abuse. PRM organisations noted that a passenger's disability may not always be visible. They also noted the perceived stigma attached to travelling in a wheelchair, and believed that many passengers would prefer to avoid this in preference to receiving the services offered under the Regulation.

3.22 The level of abuse reported varied between airports. Copenhagen Airport reported a rate of approximately one passenger per day whom they suspected was not entitled to services under the Regulation, while Brussels reported 20-30 passengers per day. Brussels Airport perceived abuse as a bigger problem than other airports within the sample.

3.23 However, Charleroi Airport informed us that abuse of services had decreased since the introduction of the Regulation, as a result of changes made to procedures. The two changes it identified as having had an impact were:

- requiring passengers who had not pre-notified requirements for assistance to wait; and
- boarding passengers requiring assistance after, rather than before, other passengers, and hence users of the PRM service no longer get first choice of seats on low cost carriers that do not allocate seats in advance.

3.24 These changes had the effect of reducing the number passengers without mobility needs who wished to use the services to avoid queues, and to obtain first choice of seating. However, these policies create some disadvantages for passengers who are entitled to the services.

Organisation of service delivery

3.25 Airport managing bodies may provide the services required under the Regulation themselves, or may contract with other parties to provide the assistance. Any arrangements for assistance to be provided through other parties must be compliant with published quality standards, and must be determined with the cooperation of airport users.

Overview

3.26 15 of the sample of 21 airports provided PRM services through a subcontractor (Table 3.2 below) and, of these, 12 were procured through open tenders. The advantage of procuring this service through an open tender include:

- a specialised provider might more easily be able to provide services of the cost or quality required;
- providing services through subcontractors facilitates the separation of costs of PRM services in an airport's accounts; and
- open tenders allow the airport to demonstrate that the costs are reasonable, as required by the Regulation.

3.27 Some of the largest airports split the tendering of provision into more than one contract, usually through grouping terminals together on a geographical basis.

3.28 In contrast, some of the airports provide the services required under the Regulation through specially trained airport staff. This may be through the creation of new department with this remit, or through extending the remit of a pre-existing department (for example the firefighting department). Airports may also subcontract some services (such as assisting passengers from the gate to the aircraft) to ground handling staff whilst providing other elements of the service themselves.

3.29 We also identified variation in the type of organisation providing services, where this was sub-contracted:

- **Subsidiary company of airport:** This approach is very similar to providing the services in-house, although an advantage is that it is easier for the airport to separate the accounts relating to the provision of PRM services.
- **Ground handling companies:** Airports may be able to realise economies of scope through provision of PRM services by ground handling companies.
- **Specialist PRM contractor:** Among the airports examined for this study, the most frequent type of organisation providing PRM services was a company that specialised in this kind of assistance service. Some such companies provided PRM services only, while a number provide it as part of a range of services. These other services might include cleaning services, facilities management, emergency assistance, and ambulance services.

TABLE 3.2 METHODS OF PROCURING PRM SERVICES AT AIRPORTS

Airport	Approach to procurement	Type of organisation providing PRM services
Amsterdam Schiphol	Open tender	Specialist PRM contractor
Athens	Open tender	3 ground handling companies
Bologna	In-house / non-competitive tender	Airport staff, 2 ground handling companies
Brussels	Open tender	Specialist PRM contractor
Bucharest Otopeni	In-house	Airport staff
Budapest	Open tender	Ground handling company
Brussels Charleroi	In-house	Airport staff
Copenhagen	Open tender	Specialist PRM contractor
Dublin	Open tender	Specialist PRM contractor
Frankfurt Main	Non-competitive tender	Subsidiary of airport
Lisbon	In-house	Airport staff, subcontracted ground handling staff
London Heathrow	Open tender	2 specialist PRM contractors
London Luton	Open tender	Specialist PRM contractor
Madrid Barajas	Open tender	Information not provided at interview
Munich	Open tender	Specialist PRM contractor
Paris Charles De Gaulle	Open tender	2 specialist PRM contractors
Riga	In-house	Airport staff
Roma Fiumicino	Non-competitive tender	Subsidiary of airport

Stockholm Arlanda	In-house	Airport staff
Warsaw	Non-competitive tender	Ground handling company
Zaragoza	Open tender	Information not provided at interview

3.30 Although the PRM service had only been provided by airports for around 18 months at the time of our research, we were informed by a number of airports that they were considering or were in the process of retendering the service. The primary reason given for retendering was that service quality had not been sufficiently high, although some airports cited a higher than expected increase in use of services after the introduction of the Regulation.

3.31 The Regulation also allows[9] for airlines to request a higher level of service than those set out in the quality standards for the airport, and to levy a supplementary charge for this service. However, none of the sample airports or airlines were requesting or providing such a service.

Consultation

3.32 The Regulation requires contracts for the supply of services under the Regulation to be entered into in cooperation with airport users and with organisations representing PRMs. Cooperation with airport users is usually through the airport users committee (AUC). Although this is intended to improve consultation, airlines informed us that in some circumstances it did not do so, citing examples where:

- the proceedings of the AUC were conducted only in the native language of the airport;
- only ground handlers were represented on the committee; and
- one stakeholder has a voting majority on the committee, allowing it to disregard the views of other carriers.

3.33 We were also informed of circumstances where the consultation provided by airports was extensive. London Luton retendered for PRM services in March 2010, and involved airport users (airlines and ground handling companies) at all stages of the tendering process, including the development of the specification, and the evaluation and scoring of bids.

Airport charges

3.34 The Regulation permits airports to fund the provision of assistance through a specific charge on airport users. This charge must be reasonable, cost-related, transparent and established in co-operation with airport users. It must be shared among airport users in proportion to the total number of passengers that each carries to and from the airport (this is typically calculated on the basis of departing passengers). The accounts of the airport relating to provision of PRM services must be separate from its accounts relating to other services, and it must make available to airport users and NEBs an audited annual overview of charges received and costs incurred relating to the provision.

[9] Articles 9 (4) and (5).

3.35 The majority of the case study airports recover costs for PRM assistance through a PRM charge levied on all departing passengers which is specific to the airport and set to fully recover the costs of the PRM service. However, we identified the following key variations in this approach:

- **Uniform charge:** The PRM charges in Spain and Portugal are uniform across the airports operated by AENA and ANA respectively. This approach appears to infringe the Regulation, which requires a specific charge "established by the managing body of the airport", although there is some uncertainty about this due to differences between the English and Spanish language versions of the Regulation. Both AENA and ANA believed that, since the service was provided across a network of airports, it was appropriate that there should be a uniform network charge.
- **Economic regulation:** Many airports are subject to economic regulation of the charges they may levy on airlines. At most of the airports in our sample, the PRM charge is excluded from the regulated price cap, but at Dublin and Brussels Zaventum the PRM charge is included within this. As a result, their flexibility to amend charges (for example to reflect a higher than expected use of PRM services) is constrained: for example, they may require regulatory approval for any changes, or have the level of any increases limited by a charging cap. Charges may also be fixed over the course of a given regulatory period.
- **Pre-existing provision:** Stockholm Arlanda and all other State-owned airports in Sweden provided some elements of the services required under the Regulation prior to its introduction. In Sweden, charges for services for WCHC and WCHS passengers were introduced in 2001 at a rate of 1 SEK (€0.10[10]) per departing passenger; charges have not yet been increased since the Regulation came into force to reflect the wider range of passengers requiring assistance, but we were informed that this is likely to happen in the next year.
- **Non-implementation of the Regulation:** With the exception of Athens, none of the airports in Greece provide assistance for PRMs. Assistance is provided by ground handling companies, and charges are negotiated directly between airlines and ground handling companies, and consequently not made public.

3.36 We were informed by ACI that the proportion of airports which identify this fee separately was 52% across the airports it surveyed, as opposed to 48% which include it in the passenger fee.

3.37 The types of costs which may be recovered using the PRM charge are:

- **Direct assistance costs:** The direct costs of the day-to-day running of the service.
- **Other incidental operating costs:** These may include maintenance, purchase of operating materials, other services, etc.
- **Capital expenditure:** Expenditure to invest in facilities required to provide services, such as mobility equipment and the fitting out of a dispatch office.
- **Administrative expenses:** These may include time spent by airport personnel in running the contract, and project costs such as airport management time in developing the tender.

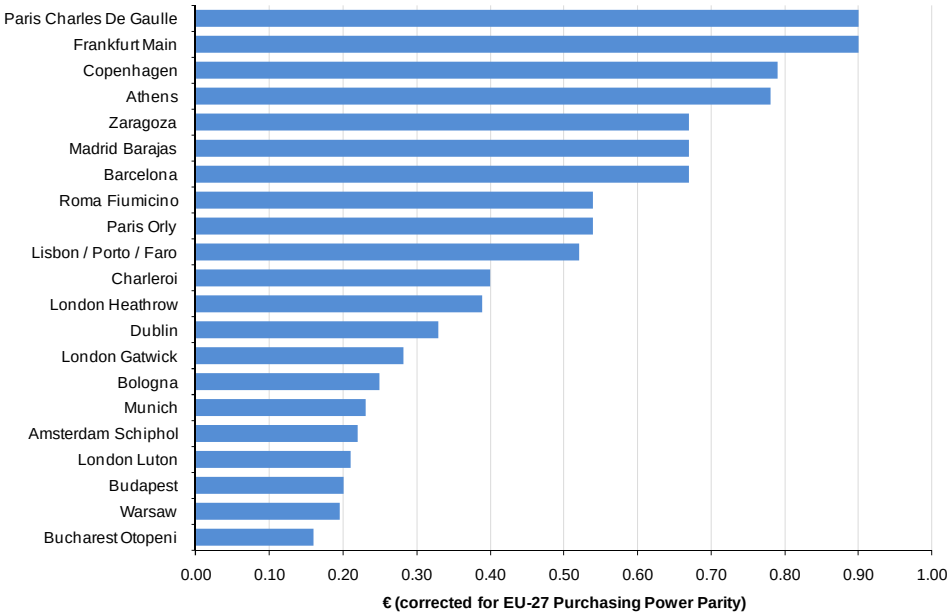
[10] Calculated on the basis of €1 = 9.7 SEK.

- **Other airport fees:** The PRM contractor may have to, for example, rent space from the airport and to pay a fee for doing so. This would also be recovered through the PRM charge.

Level of charges

3.38 Figure 3.5 shows the charges at the case study airports in euros, converted using current (January 2010) exchange rates where required. There is significant variation in the level of the PRM charge between airports, from a minimum of €0.16 in Bucharest to €0.90 at Frankfurt Main and Paris CDG.

FIGURE 3.5 AIRPORT CHARGES PER DEPARTING PASSENGER (€ AT CURRENT EXCHANGE RATES)



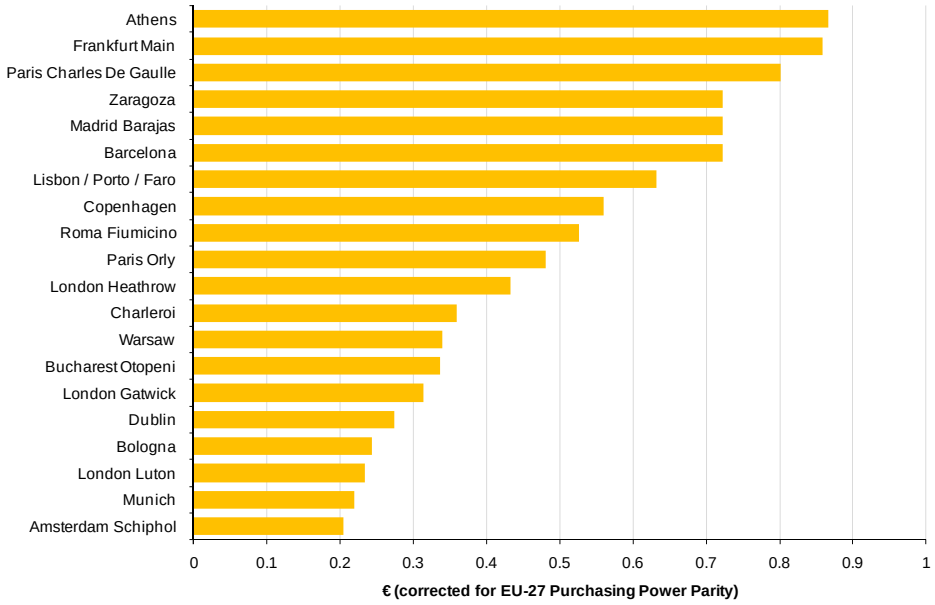
3.39 The variation in charges between airports may result from several factors, including:

- staff cost variation;
- quality standards in place;
- the frequency with which the PRM services are used;
- the proportion of connecting flights; and
- the design of the terminal or airport.

3.40 We discuss each of these possible reasons for variation in turn.

3.41 **Purchasing power parities (PPPs)** can be used to compensate for differences in price levels between States. Figure 3.6 uses Eurostat PPPs for 2008 to convert PRM charges in national currency to euros at average price levels for the EU-27. The harmonisation only very slightly reduces the variation in the charges (measured in terms of standard deviation).

FIGURE 3.6 AIRPORT CHARGES PER DEPARTING PASSENGER, 2009 (€ AT 2008 EU-27 PPP)



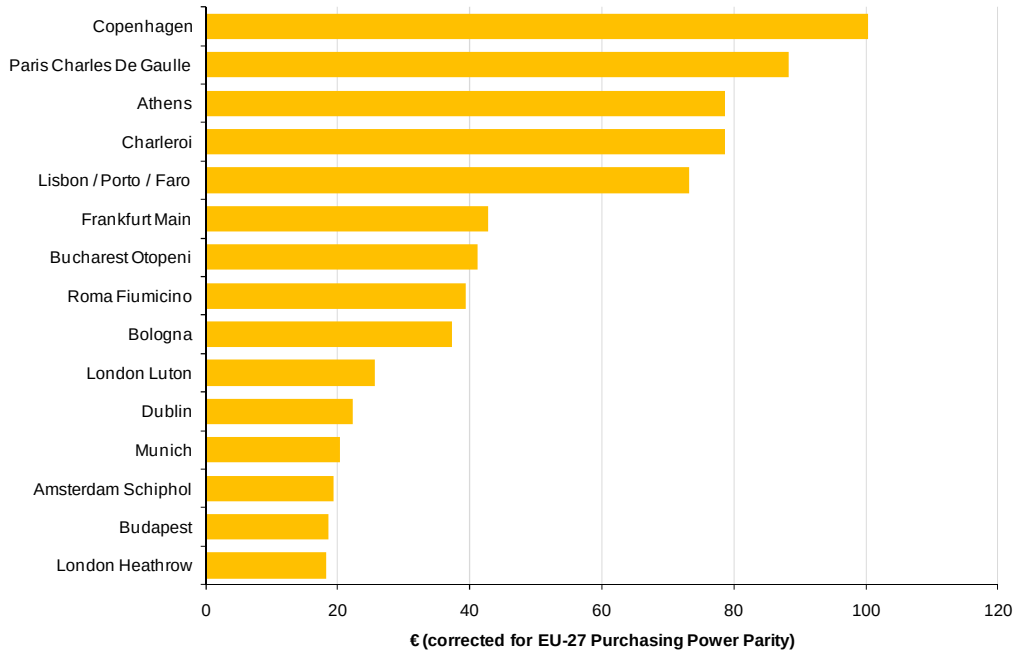
3.42 Although it was not possible to find published data showing the actual **level of service** offered to PRMs at any of the case study airports, the level of service set out in the PRM quality standards might help explain the variation in charges. To test this, we have calculated a weighted average PRM wait time and compared this with the PRM charge at each airport. This analysis suggests little or no correlation: for example, although the London airports state the highest service standards in terms of waiting times, the charges levied are lower than those at many other airports. Similarly, low charges at Bucharest are not reflected in longer proposed waiting times for PRMs requesting assistance.

3.43 It might also be expected that airports with **higher proportions of PRMs** would have higher charges. To examine this we calculated a proxy for the cost of assisting each PRM, for the airports for which we had data. This was obtained by dividing the PRM charge by the proportion of PRMs at each airport, to obtain the revenue gained by the airport for each PRM assisted.

3.44 It should be noted that there are some limitations to this analysis. It calculates revenue per PRM, and for this to be a valid proxy for costs, it must be assumed that charges are accurately cost-reflective, which is not the case in some airports: in Spain and Portugal the charge is uniform across all mainland State-owned airports, and does not therefore reflect local variation in costs; at State-owned airports in Sweden, the charge reflects only the costs of providing services for WCHC and WCHS passengers. For the costs to be cost-reflective it is also necessary that the frequency of use of the service is as forecast when the charges were calculated.

3.45 Figure 3.7 shows the results of the analysis. There is still significant variation between airports; the maximum cost per PRM assisted (€100 at Copenhagen, PPP adjusted) is 5 times the minimum cost (€18 at Bucharest, PPP adjusted). This shows that the variation in the number of PRMs does not fully explain the variation in the charge.

FIGURE 3.7 AIRPORT COSTS PER PRM ASSISTED, 2009 (€ AT 2008 EU-27 PPP)



3.46 The level of variation also does not appear to be accounted for by the **size of the airport**: the charge at London Heathrow is relatively low, while Paris CDG is relatively high.

3.47 Several airports cited **high proportions of connecting passengers** as a factor which increased costs. However, we do not believe that high proportions of connecting passengers would increase the costs of provision: transfer passengers are counted as two passengers in airport statistics and any PRM charge is levied twice, so if the service is less than twice the cost of that for an arriving or departing passenger, such passengers would in fact result in a cost saving relative to other PRMs. This view is supported by the data, where the charge at London Heathrow is relatively low.

3.48 **Terminal design** may impact on the amount of time required to provide assistance, or the efficiency with which it can be provided. For example, Amsterdam Schiphol airport, which has one integrated terminal building and the concourse is generally at the same level, can make extensive use of electric carts to transport multiple passengers together; this is not practical at airports such as CDG.

Changes to charges in 2010

3.49 The charges and costs in this section are based on those current in 2009, as this is the only complete year for which data was available. Where updated charges have been published for 2010[11], we have compared these with those for 2009. Most airports had not made any changes, but Munich and Rome Fiumicino increased charges by 48% and 28% respectively.

[11] IATA Airport, ATC and Fuel Charges Monitor, February revision, published March 2010.

3.50 London Heathrow changed the structure of its PRM charges in 2010. Whereas previously it levied a charge of £0.35 (€0.38) per passenger for all airlines, from 1 January 2010 the charges vary depending on the level of pre-notification. Airlines which pre-notify 85% or more of PRMs are charged £0.42 (€0.46) per departing passenger, while those which pre-notify 45% or less of their passengers are charged £0.83 (€0.91).

Consultation

3.51 Airports are required to determine charges in cooperation with users through airport user committees. The Regulation does not define cooperation further, however, and as a result the form this consultation has taken varies considerably. London Luton informed us that their tender process involved airlines, ground handlers and PRM organisations at all points of the tender process, from developing the specification to evaluating the bids and awarding the contract. In contrast, several airlines informed us that the consultation in Portugal and Spain was limited to the publication of a letter stating the amount the charge per person. We were also informed that consultations on PRM charges were often included in wider general charge negotiations.

3.52 A number of issues were raised regarding this cooperation.

- We were informed by several airports that certain carriers have contested the procedural steps taken by airport managing bodies to establish the charge. This has in at least one case been supported by an NEB taking a strict interpretation of the meaning of 'in cooperation with airport users', as requiring agreement between the airport and the airline both on the tender and the level of the charge. This has led to delays, particularly due to challenges by low-cost airlines, including requests to see cost information, which the airports regarded as unnecessary, after the tender processes were completed.
- Some airlines have blocked the process of approving charges by refusing to participate in the consultation.
- Some airports believed that direct involvement of users in the tender process can be problematic: without signing personal non-disclosure agreements, it may not be possible to share the commercially sensitive information included in tenders; there may also be conflicts of interests between some of the handlers and the tendering parties. However, the example of London Luton discussed above demonstrates that these barriers are not impossible to overcome.

Quality standards

Standards published

3.53 The Regulation requires all airports serving over 150,000 passenger movements per year to set and publish quality standards. Figure 3.8 indicates the proportions of airports publishing quality standards. The following airports had not yet done so:

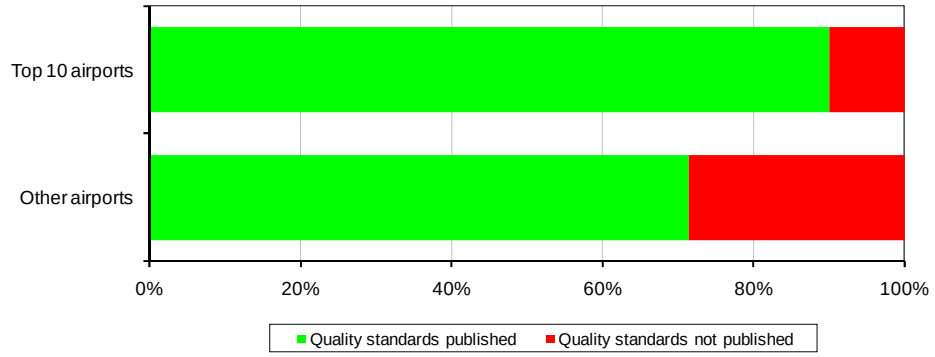
- Amsterdam Schiphol: quality standards are in the process of being re-developed with airlines, and have not been published yet;
- Bologna: standards not yet published;
- Budapest: standards published to airlines and handling companies by letter; and
- Stockholm Arlanda: standards published to airlines but not yet published on its

website; it informed us that the standards would be published soon.

3.54 Three of these airports provided the quality standards to us at interview, but Amsterdam Schiphol and Bologna did not provide any details of their quality standards.

3.55 We found that the largest ten European airports in terms of passenger numbers were more likely to publish quality standards that those outside the top 10.

FIGURE 3.8 PROPORTION OF AIRPORTS PUBLISHING QUALITY STANDARDS



Ease of finding quality standards

3.56 The ease with which the quality standards could be located on airport websites varied considerably. For the airports which published quality standards, some of the main issues encountered were:

- Having to click through an excessive number of links before finding the standards, e.g. the website of Charleroi Airport requires the user to click on five links before the standards can be viewed;
- Locating the standards on the site of the management company rather than within the section or website dedicated to the airport – this was the case for the Spanish airports for which the information is on the main AENA website;
- Using terminology which may not be obvious, avoiding the actual term 'quality standards', e.g. BAA use the term 'Service Level Agreement'; and
- Restrictions on language – Bucharest Otopeni, Brussels Charleroi and the Paris airports only publish quality standards on the local language versions of their websites.

Standards for waiting time

3.57 The standards defined by the case study airports are shown in Table 3.3 and Table 3.4 below. At all of the case study airports for which we were able to obtain standards, these are defined in terms of the percentage of PRMs who should wait for up to a given number of minutes. For example, at Barcelona, 80% of departing passengers who have pre-notified requirements for assistance should wait for 10 minutes or less from the point at which notice is given that they have arrived at the airport. This

approach is consistent with the example standards in Annex 5-C of ECAC Document 30[12], and eight of the airports in the sample (including Copenhagen, Munich and the AENA Spanish airports) follow these exactly.

3.58 There are however variations in both how the standards are structured and the level of the standards. Paris Charles de Gaulle is unusual in that, with the exception of the top 99% bracket, an additional ten minutes is added to the wait time for departing passengers located 'further away'. The published standards do not define how far away this is. Aéroports de Paris also define an additional category, of pre-notification of between 8 and 36 hours, for whom the standards are part-way between those applying to PRMs for which notification was received 36 hours or more before travel ('pre-booked'), and those for which notification was received less than 8 hours beforehand ('non-pre booked'). This is not shown in the table as it is not comparable with the standards offered by the other airports.

3.59 There are also some differences in how the wait time for arriving passengers is measured. At most airports, it is measured from when the aircraft reaches the parking position, but there are the following exceptions:

- From descent of last passenger: Rome Fiumicino;
- From boarding bridge lock: Brussels; and
- Not defined: Athens, Budapest, Lisbon, Stockholm Arlanda.

3.60 The standards proposed for pre-booked departing passengers are generally consistent, at least in terms of the waiting times which percentages are applied to: 10, 20 and 30 minutes are the most commonly used intervals, at 80%, 90% and 100% respectively. For non pre-booked passengers 80%, 90% and 100% apply to 25, 35 and 45 minutes. Better standards are offered by the UK and French airports that we reviewed. This is also reflected in the standards for arriving passengers, with the London and Paris airports targeting zero waiting time for 90-100% of passengers. There is also a clear pattern for arriving passengers, with 80% of pre-notified PRMs waiting no more than 5 minutes, 90% no more than 10 and 100% no more than 20 minutes. Standards are not as high as this for non pre-booked passengers, however.

3.61 Several airports informed us that the standards suggested by ECAC Document 30 for arriving passengers were not short enough to meet airline requirements on turnaround times: if the airports adhered only to these standards, there would be significant operational issues. Some of these airports published standards in line with Document 30, but stated that they actually provided services in much shorter times.

[12] ECAC Policy Statement in the field of Civil Aviation Facilitation, 11th Edition/December 2009.

Other elements of published quality standards

3.62 Some airports define additional standards other than the waiting time targets, generally reflective of the assistance set out in Annex 1 of the Regulation. For example, Charleroi provides detailed information regarding the level of assistance which will be provided for PRMs, for example support for embarking and disembarking the aircraft, or for dealing with customs formalities. Brussels Airport also defines how many assistants will accompany a PRM, depending on their type of disability.

3.63 Some airports also include more general, qualitative targets, less directly related to the assistance offered to an individual PRM. For example, Luton Airport's published standards include responding to 'disabled customer enquiries to offer guidance and advice', and auditing to ensure compliance with all disability legislation. Athens Airport also provides extensive details of the measures it has taken to accommodate PRMs, including disabled-access internet points and a special walkway for partially sighted PRMs.

TABLE 3.3 SCOPE OF QUALITY STANDARDS: DEPARTING PASSENGERS

	Pre-booked / airport informed *% of PRMs who should wait no longer than (minutes)*										Non-pre-booked / airport not informed *% of PRMs who should wait no longer than (minutes)*									
	5	10	15	20	25	30	35	40	45	60	5	10	15	20	25	30	35	40	45	60
Athens		80%		90%		100%							80%		90%		100%			
Barcelona		80%		90%		100%									80%		90%		100%	
Brussels		80%		90%		100%									80%		90%		100%	
Bucharest Otopeni		80%		90%		100%									80%		90%		100%	
Budapest		100%										100%								
Charleroi		80%		90%		100%									80%		90%		100%	
Copenhagen		80%		90%		100%									80%		90%		100%	
Dublin		80%		90%		100%									80%		90%		100%	
Frankfurt Main		80%		90%		100%									Not defined					
Lisbon		80%		90%		100%									Not defined					
London Gatwick	80%	90%	100%									80%	90%	100%						
London Heathrow	80%	90%	100%									80%	90%	100%						
London Luton		90%	95%	100%									90%	95%	100%					
Madrid Barajas		80%		90%		100%									80%		90%		100%	
Munich		80%		90%		100%									80%		90%		100%	
Paris CDG		90%			99%										80%		90%		99%	
Paris Orly		90%			99%				100%			40%			80%				90%	100%
Riga		80%		90%		100%									80%		90%		100%	
Roma Fiumicino		80%				100%									80%			100%		
Stockholm Arlanda		80%		90%		100%									80%		90%		100%	
Warsaw		100%													100%					
Zaragoza		80%		90%		100%									80%		90%		100%	

TABLE 3.4 SCOPE OF QUALITY STANDARDS: ARRIVING PASSENGERS

	Pre-booked / airport informed *% of PRMs who should wait no longer than (minutes)*										Non-pre-booked / airport not informed *% of PRMs who should wait no longer than (minutes)*									
	0	5	10	15	20	25	30	35	40	45	0	5	10	15	20	25	30	35	40	45
Athens		80%	90%		100%									80%		90%		100%		
Barcelona		80%	90%		100%											80%		90%		100%
Brussels		80%	90%		100%									80%		90%		100%		
Bucharest Otopeni		80%	90%		100%										80%		90%			100%
Budapest		100%										100%								
Charleroi		80%	90%		100%											80%		90%		100%
Copenhagen		80%	90%		100%											80%		90%		100%
Dublin		80%	90%		100%									80%		90%		100%		
Frankfurt Main			80%		100%										Not defined					
Lisbon		80%	90%		100%										Not defined					
London Gatwick	100%												80%	90%		100%				
London Heathrow	100%												80%	90%		100%				
London Luton	99%	100%											90%	100%						
Madrid Barajas		80%	90%		100%											80%		90%		100%
Munich		80%	90%		100%											80%		90%		100%
Paris CDG	90%		99%												80%		90%			100%
Paris Orly	90%		99%							100%					80%		90%			100%
Riga			80%	90%	100%											80%		90%		100%
Roma Fiumicino					90%	100%									Not defined					
Stockholm Arlanda		80%	90%		100%											80%		90%		100%
Warsaw		100%														100%				
Zaragoza		80%	90%		100%											80%		90%		100%

Monitoring

3.64 While the Regulation requires larger airports to develop and publish quality standards, it does not require them publish whether they are actually met, and none of the case study airports do so. Nonetheless most airports do undertake some form of monitoring and several provided us with performance statistics. There were a number of approaches to monitoring:

- **Time spent waiting to receive assistance:** This is the most common measure used by airports, as set out above. These times are often measured by time stamps inputted into the personal digital assistants (PDAs) or equivalent devices carried by staff providing assistance to PRMs (discussed earlier). The data recorded can often give wider outputs than solely the time taken to receive assistance, such as time from gate to boarding, or time waiting once disembarked from an aircraft. This approach should give accurate information on the time spent waiting by passengers, but does not address other aspects of quality of service.
- **Spot checks:** Many airports reported that the PRM service manager will undertake frequent unannounced tours of the services and infrastructure provided within the airport. They may check, for example, that the designated points of arrival and departure are functioning correctly. This approach is useful to identify wide-ranging problems but may not be sufficiently systematic to identify all problems.
- **Surveys:** A number of airports reported using surveys to obtain feedback from passengers. Typically, a postcard with survey questions to be completed was given to PRMs at some point during their use of the airport's services, which could be submitted at information desks or at various comment boxes place throughout the airport. These covered questions on the services received, and in some cases assessed the passenger's knowledge of the Regulation. A potential problem with this approach is the lack of accessibility for all passengers.
- **Mystery shoppers:** 'Mystery shoppers' are people (typically PRMs) paid to anonymously receive the service provided by the airport and afterwards give detailed reports or feedback about their experiences. This approach gives a thorough appraisal of the service provided at a particular time.

3.65 Table 3.5 sets out the actions airports have taken to monitor their quality standards. Most airports do not include any external auditing in their monitoring processes; Athens, Bucharest Otopeni, Luton, Madrid Barajas, Zaragoza include some external checks.

TABLE 3.5 AIRPORT ACTIONS TO MONITOR QUALITY STANDARDS

Airport	Measures monitored
Amsterdam Schiphol	Manual checks of numbers of PRMs and service quality
Athens	Audits, including 'mystery PRM' audit; PRM surveys
Bologna	PRM survey; time taken for assistance
Brussels	Time taken for assistance (in real time); passenger complaints
Bucharest Otopeni	Passenger surveys; complaints; external audits by NEB, PRM organisations, Commission, and airlines
Budapest	Monthly reports of time taken for assistance and passenger complaints; daily contact with service provider; 'walk-throughs' of service provided; airline audits

Brussels Charleroi	Passenger complaints received
Copenhagen	Time taken for assistance (in real time)
Dublin	Weekly audits of time taken; annual training audit
Frankfurt Main	Monthly reports of time taken for assistance
Lisbon	Time taken for assistance
London Heathrow	Time taken for assistance; missed flights; flight delays; internal audits; regular meetings with service providers; complaints from passengers and airlines; some of these measures monitored through a 'dashboard'; monthly 'scorecard' review
London Luton	Passenger feedback forms; 'walk-throughs' of service provided; internal and external audit teams of provider; airline and PRM organisation audits
Madrid Barajas	Monthly meetings with service providers and PRM organisation; surveys by service providers; independent surveys; PRM feedback forms
Munich	Monthly reports of time taken for assistance; spot checks; quality service manager as 'mystery shopper'; yearly passenger survey
Paris Charles De Gaulle	Flight delays for which PRM services are responsible; passenger complaints
Riga	Questionnaires to airlines, passengers and others; daily service monitoring by duty managers; internal audits
Rome Fiumicino	Time taken for assistance (in real time); other unspecified monitoring
Stockholm Arlanda	Time taken for assistance; passenger complaints; AOC meetings
Warsaw	Infrequent spot checks of time taken
Zaragoza	Monthly meetings with service providers and PRM organisation; surveys by service providers; independent surveys; PRM feedback forms

3.66 In addition, we found that most NEBs had not undertaken any direct, systematic monitoring of whether airports were meeting quality standards. Table 3.6 sets out the actions NEBs have taken to monitor airport quality standards.

TABLE 3.6 NEB ACTIONS TO MONITOR QUALITY STANDARDS

Member State	Monitoring
Belgium	Inspections of infrastructure and procedures
Denmark	No monitoring, biannual meetings
France	No monitoring
Germany	No monitoring
Greece	Inspections of infrastructure and procedures at Athens, not of regional airports
Hungary	Inspections of infrastructure and procedures, questionnaire on training
Ireland	No monitoring
Italy	Inspections of quality standards including infrastructure, procedures, information, training
Latvia	Inspection of infrastructure, procedures, waiting times, documentation
Netherlands	Inspection of infrastructure and procedures
Poland	No monitoring
Portugal	No monitoring

Member State	Monitoring
Romania	Request annual reports
Spain	Checks of staff training and procedures
Sweden	No monitoring
United Kingdom	Inspections of infrastructure and procedures, attend monthly PRM groups at major airports, less frequently at smaller airports

Complaints to airports

Airport processes for handling complaints

3.67 Most case study airports accepted complaints relating to PRM services in the same way as other complaints. Often airports will accept complaints via email, via information desks at the airport, or via forms which can be filled in and deposited in comment boxes located at various points within the terminals.

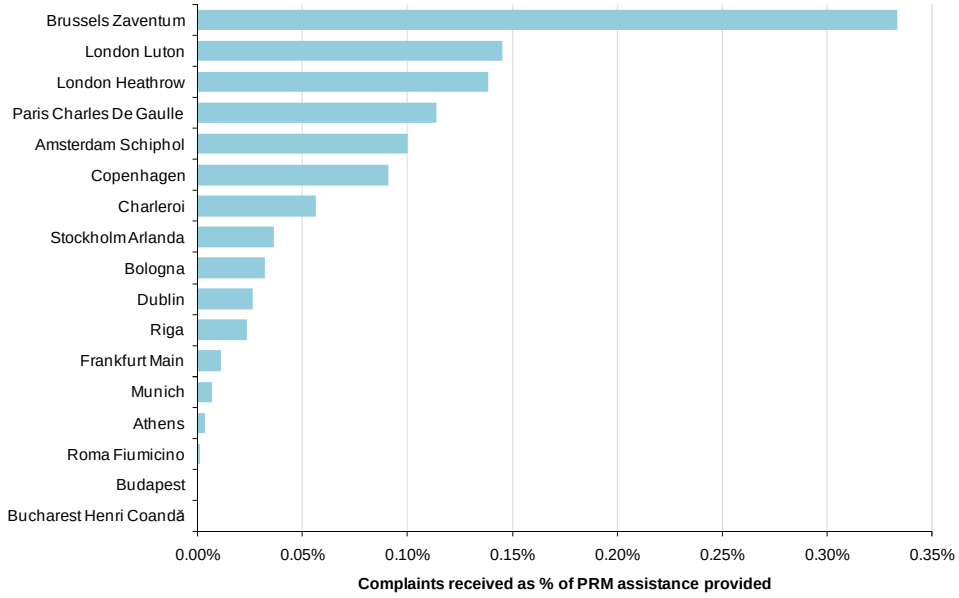
3.68 Typically, complaints are registered in a database which is reviewed by a member of staff on the service quality team. The staff member allocated to the complaint reviews documents relating to the service referred to in the complaint, and talks to the member of staff who provided the service (this member of staff may be employed by either the airport or a contractor). After investigating the complaint, the staff member writes a report including the findings and any response which is sent to the passenger. The service quality manager may review monthly reports on complaints, which will include complaints regarding the PRM service.

3.69 The level of detail to which the complaint handling process is specified varies depending on the volume of complaints received: an airport which handles many complaints may follow clearly defined procedures for handling complaints, while an airport which receives only few complaints may address them on a more ad hoc basis.

Number of complaints received

3.70 For each airport in the case study sample we requested the number of complaints received relating to provision of services to PRMs. We compared the data received with the assistance provided to give a rate of complaints, shown in Figure 3.9. This shows a high level of variation in the number of complaints received. Most of the larger airports have a similar rate of complaints. The highest rate of complaints is at Brussels Zaventum (0.33%, over double the next highest).

FIGURE 3.9 RATE OF COMPLAINTS RECEIVED BY AIRPORTS, 2009



3.71 Some airports note that they have received no complaints regarding the Regulation since its introduction, while during the same period they have received several thousand complaints regarding aspects of their service not covered by the Regulation. This is evidence that their system for receiving complaints is functioning well, but it is not necessarily evidence that there are no problems regarding the implementation of the Regulation. We were informed by several PRM organisations that a mobility-impaired passenger who receives poor service may be reluctant to complain, as they may wish to forget the incident, and since these passengers may face many obstacles during a journey, they may take the view that reporting the more frequent minor incidents is not worthwhile. In addition, the lack of compensation in most Member States means there is little direct incentive to complain.

Training

3.72 The Regulation requires that airports provide training relating to PRMs for their personnel:

- All personnel who provide direct assistance to PRMs, including those employed by subcontractors, must have knowledge of how to meet the needs of various different types of PRMs.
- All airport personnel who have direct contact with the travelling public must have disability-equality and disability-awareness training.
- All new employees must attend disability-related training and personnel must have appropriate refresher training.

3.73 We requested information on the training provided at each of the airports in the sample for the study. As many considered this material confidential, we were not able to obtain many copies of training documents. From the information we have received, the content of the three types of training may typically include the following:

- **Staff assisting PRMs directly:** Most courses described included: theoretical training on rights and obligations under the Regulation, training in awareness of disabilities, and physical training in lifting and other handling of PRMs. Some elements of training may be given to all staff; these could include Ambulift licenses and sign language. It may also include training not directly related to PRMs, such as training in first aid. Not all of the training courses we were given information for included provision for 'soft' elements of interacting with PRMs, such as ensuring that the person providing assistance is at the same height as a wheelchair user when talking to them, or being aware of the type of circumstances which could cause a person with autism to become distressed.
- **Passenger-facing staff:** This training is typically the disability-equality and disability-awareness sections of the training for staff providing direct assistance to PRMs. Several airports ensured that this training was undertaken by all staff working in the airport (including external staff) by making this training a requirement for obtaining the security clearance pass needed to work in the airport. It may include specific training for security staff who perform searches on PRMs, relating for example to how to search a passenger in their own wheelchair, and awareness of the importance to blind passengers of having belongs replaced in exactly the same place within their baggage.
- **Other employees:** The form of this training was often a short video on disability awareness. Some airports did not provide this training, or did not make it compulsory, which appears to be an infringement of the Regulation.

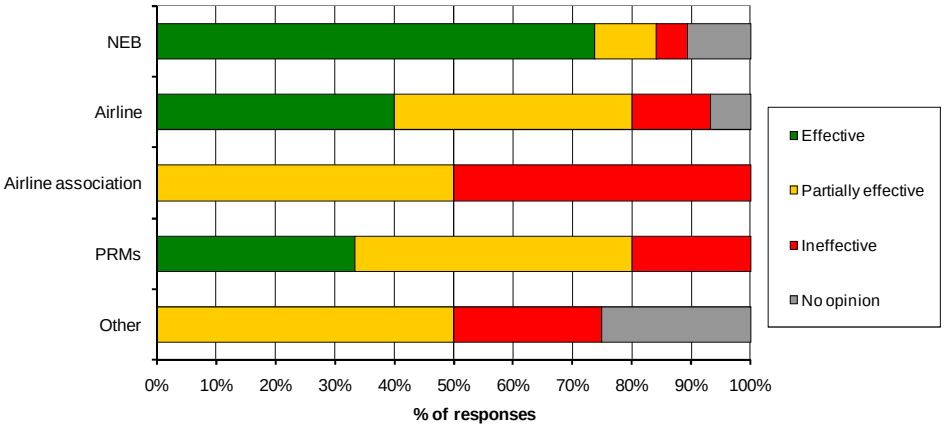
3.74 Training was delivered either internally, by external contractors specialising in training, or by PRM organisations. Several airports informed us that they used a "train the trainer" approach, where employees who have received the training then go on to train other employees. Several airports informed us that their training programmes were compliant with the guidance given in Annex 5-G of ECAC Document 30. A number of airports had involved PRM organisations in their training in some way, including in the development of the training, in its delivery, or through audit and approval. Several airports informed us that they had sought assistance from local PRM organisations but had found this problematic.

3.75 The lengths of the training programmes about which we were given information varied widely. We were given information relating to 6 training programmes for those providing direct assistance to PRMs: of these, 4 lasted 3-6 days, while two lasted 12 days or more. The length of training for passenger-facing staff also varied, with some airports requiring a full day of training whilst others only required the staff member to watch a 20 minute video. Refresher courses also varied considerably in length (between 1 and 4.5 days) and frequency: one airport informed us that it had monthly refresher training, while another required refresher training every 2 years.

Stakeholder views on effectiveness of implementation

3.76 We asked each of the stakeholders we contacted about how effectively they believed airports had implemented the Regulation; views vary considerably between different groups of stakeholders (Figure 3.10 below). Airlines and PRM organisations both believe that there are significant improvements to be made, but over 70% of NEBs believe that the actions of airports are largely sufficient. The rest of this section summarises the views expressed by stakeholders.

FIGURE 3.10 VIEWS OF STAKEHOLDERS ON AIRPORT EFFECTIVENESS



Airports

3.77 Most airports viewed their own actions as effective implementations of the Regulation. The most common problem reported by airports was misuse of the PRM service, however the level of impact of this reported misuse varied considerably between airports. The following other issues were identified by airports:

- Connecting flights: Minimum connection times, while sufficient for other passengers, can be insufficient for a PRM.
- Initial implementation of the Regulation: Several airports informed us that they had had problems with subcontracted service providers; a number had since retendered the service because of unsatisfactory service quality.
- Several airports informed us that they had had difficulty obtaining the cooperation of PRM organisations when developing quality standards.

Airlines and airline associations

3.78 Many airlines reported that quality of service and level of charges varied considerably between airports. This did not necessarily relate to size of airport: some airlines informed us that larger airports tended to provide better assistance, while other airlines informed us that their provision tended to be worse. Few airlines reported significant delays due to PRM services.

3.79 The most common problems with airport implementation of the Regulation reported by airlines related to airport charges. These issues were raised, in particular, by low cost and charter carriers:

- many airlines believed that the method of determining charges was not transparent and that the charges determined by airports were not reasonable or cost reflective;
- many airlines reported that the costs of the PRM service had increased (in some cases significantly) since the introduction of the Regulation, relative to the previous situation when the PRM service was contracted directly by the carrier, generally from its ground handler;

- this increase was believed by several airlines to be a result of overstaffing, or by some as a result of the inclusion of a margin, which they believed to be a contravention of the Regulation;
- at the same time as this perceived increase in cost, many airlines believed the quality of service had decreased, or at best not improved, since the introduction of the Regulation, and that the charges therefore represented poor value for money; and
- some States (in particular Spain and Portugal) have introduced uniform charges for services at State-operated airports, which airlines do not believe are cost-reflective or give value for money.

3.80 Some airlines informed us that they had serious concerns regarding the safety of uses of the PRM assistance services provided by airports, and noted that the airlines have no right to audit or directly influence the service provider.

3.81 Airline associations raised many of the same issues. ELFAA had particularly negative views regarding the assistance provided by airports: it believed that assistance was provided by unskilled staff and that the quality had decreased as a result, and that the cost of provision had tripled at some airports. It also believed that services were poorly synchronised with airline schedules. All of the airline associations from whom we obtained a response raised at least some concerns on all points regarding charges, including whether the costs were reasonable, cost-related and transparent, and whether the cooperation with airlines was sufficient.

NEBs

3.82 Most NEBs believed that airports had implemented the Regulation effectively. Several informed us that they believed there had initially been problems with implementation, but that these were now resolved. Those that believed there were areas which should be improved identified problems with designated points, infrastructure, delays on arrival and provision of information. It is not clear whether the level of supervision by most NEBs would be sufficient to allow an in-depth analysis of airport effectiveness (see 5.42).

PRM organisations

3.83 Most organisations representing disabled people believed there were some issues with the implementation of the Regulation by airports, and identified issues at all points of the process. Most organisations also noted that there was wide variation in the quality of service provided at different airports; several believed that this was a result of variation in the training given. Frequently identified problems included:

- **Mobility equipment is frequently damaged:** Many PRM organisations informed us that understanding of mobility equipment was poor and that training regarding it was insufficient. They believed that this poor understanding amongst airport and ground handling staff contributed to frequent damage. There was an expectation amongst most of the PRMs using wheelchairs that we spoke to that, if they travel by air, there is a high likelihood their chair will be damaged. For disabled people with extremely limited mobility who rely heavily on their wheelchair and may have adaptations particular to their needs, damage to their chair can be extremely distressing.

- **Lengthy waits for disembarkation:** Although the initial disembarking from the plane may be completed within the time set out in the quality standards, the passenger may then have to wait a long period of time in a holding area before the rest of the arrivals procedure is finished.
- **Information provision is poor:** This includes information on the layout of the airport, accessible real-time information on flights, and information on the rights of PRMs.
- **Websites are inaccessible:** We were informed by many organisations that airport websites are frequently inaccessible to visually impaired people.
- **Poor training of staff:** Several organisations reported that the interaction of airport assistance staff with PRMs could be poor. Examples of this included the assumption that all PRMs require a wheelchair, and where the assistance staff talk to a companion of a PRM rather than directly to the PRM.
- **Inability to use own wheelchair:** As discussed above, some wheelchair users with particularly limited mobility may wish to use their own wheelchair for as long as possible. We were informed that many airports do not permit the use of a passengers own chair up to the gate, and that some have a policy of transferring the passenger to an airport chair at check-in.
- **Inadequate provision where connection times are long:** Where there is a wait of several hours between the arrival of one flight and the scheduled departure of the connecting flight, at some airports this may result in a PRM being left unattended for a long period in an area without facilities or assistance.
- **Insufficient time allowed for connections:** The minimum connection time given by airports may not be sufficient to unload, transfer and board a PRM. This is a particular problem at larger, more complex airports with multiple terminals.
- **Parking provision:** A number of issues were raised with the parking spaces made available to PRMs. These included comments on inconvenient location, insufficient capacity, or inappropriate requirements for payment.
- **"Holding areas":** Some airports do not enable PRMs to access departure lounge facilities such as shops or restaurants, and require them to remain in a "holding area" for PRMs. Although such access to facilities is not required by the Regulation, it can significantly improve the experience of air travel of PRMs, and is provided by many airports.
- **Communication of arrival:** Communication of arrival at the airport can be difficult, for example through poor signage for points of communication, or points of communication failing to respond to calls for assistance.
- **Poor provision for the visually impaired:** Many airports do not provide adaptations to allow visually impaired passengers to access the airport independently. These can include tactile surfaces or Braille maps. We were also informed that training on how security staff should search the bags of these passengers was often lacking; it is important that all items are returned to their original location, as otherwise the passenger may have difficulty finding them.

Other organisations

3.84 The other organisations we interviewed raised issues which have been raised by the stakeholder groups already discussed. These included:

- "Teething problems" when the Regulation was first introduced;
- Poor provision of information;

- Variability of training; and
- Falling service levels, in particular falling standards of safety.

Conclusions

3.85 All airports in the sample for this study had implemented the provisions of the Regulation. We were informed that the regional airports in Greece had yet to effect the change from provision by ground handlers to provision by airports, but we were not told of any other airports at which the Regulation has not been implemented. Most of the sample airports had contracted the provision of PRM assistance services to an external company, and several had changed their service provider within 18 months of the Regulation coming into force; this was interpreted by some as a sign that initial procurement and specification had not met actual needs.

3.86 The service provided at the sample airports varies in terms of a number of factors including the resources available to provide the services; the level of training of the assistance staff; the type of equipment used to provide services; the facilities provided to accommodate PRMs (such as PRM lounges). According to the information provided by PRM organisations, there is resulting variability in service quality, although this is difficult to quantify.

3.87 There is also significant variation between airports in the frequency with which PRM services are requested: the level of use of the service varies by a factor of 15 between the airports for which we have been able to obtain data. The type of PRM service requested also varies considerably between airports. Both the frequency of use and the type of service required are likely to be affected by the varying demographics of the passengers using different airports.

3.88 The Regulation requires airports to publish quality standards. Most sample airports had done so, although some had published them only to airlines and other service users. Almost all quality standards followed the example format set out in ECAC Document 30, which defines the percentage of PRMs who should wait for up to given numbers of minutes. Some airports published qualitative measures in addition to these time standards, such as descriptions of the treatment the passenger should expect at all points of the service. However, none of the sample airports had published the results of any monitoring of these quality standards, and whilst most did undertake monitoring in some form, only four had commissioned external checks of the service.

3.89 The Regulation allows airports to levy a specific charge to cover the costs of assistance. All but one of the sample airports had done so. The level of charges varied considerably. We analysed this charge to examine whether variation could be explained by higher frequency of use of the service, differences in price levels between States, or differences in service quality, but there was no evidence that this was the case. The design of the airport may be a further factor influencing the cost of service provision and hence the level of charges.

3.90 Some stakeholders believe that the requirements to select contractors and establish charges in cooperation with users and PRM organisations were not followed thoroughly. Many airlines did not believe that consultation on either element had been sufficient, and this view was shared by some PRM organisations. There were a

number of barriers to effective consultation, including linguistic restrictions and airport user committees which failed to include all interested stakeholders. Consultation with airlines was reported as particularly poor in Spain, Portugal and Cyprus. In contrast to this, we note that several airports stated that they had sought the participation of PRM organisations but had found this difficult to obtain.

3.91 The Regulation requires airports to provide specialised disability training for staff directly assisting PRMs, and whilst all sample airports had done so, there were significant variations in the length and format of this training. The shortest training course among those for which we have data was 3 days long, while the longest lasted 14 days. There was similar variation in the length of training provided for passenger-facing staff who did not provide direct assistance. A number of airports informed us that they did not provide disability-awareness training for staff not in public-facing roles, or only provided it on a voluntary basis.

4. APPLICATION OF THE REGULATION BY AIRLINES

Introduction

4.1 Regulation 1107/2006 also sets out requirements for air carriers relating to their treatment of passengers with reduced mobility (PRMs). This section assesses how airlines are implementing these requirements. Information is drawn from two key sources:

- a detailed review of information published by the case study airline on their websites, against a range of criteria; and
- interviews with representatives of the carriers and other stakeholders.

4.2 This section begins by outlining the obligations imposed on airlines by the Regulation, and evaluates how airlines are implementing these requirements.

Requirements of the Regulation for air carriers

4.3 The Regulation imposes a range of requirements on airlines, which can be summarised as follows:

- **Prevention of refusal of carriage:** The Regulation prohibits airlines from refusing carriage or accepting reservations from PRMs, unless this is necessary to comply with safety requirements, or necessitated by the physical constraints of the aircraft. Where boarding is refused, the provisions of Regulation 261/2004 should apply with regard to refunds or rerouting. Airlines are permitted to require that a PRM be accompanied by a person who is able to provide any assistance that is required (again subject to this being necessary to meet safety requirements), and are required to publish any safety rules which they attach to the carriage of PRMs.
- **Transmission of information:** Airlines are required to take all necessary measures to enable the receipt of PRM assistance requests at all points of sale. Where such requests are received up to 48 hours prior to departure, the airline should transmit the information to the relevant airport(s) at least 36 hours before departure, or as soon as possible if notification is received from the passenger less than 48 hours before departure. Following departure of a flight the airline is also required to provide the destination airport with details of the PRMs requiring assistance on the arriving flight.
- **Assistance:** Annex II specifies the level of assistance which air carriers should provide to PRMs. This comprises carriage of assistance dogs, transport of up to two items of mobility equipment, communication of flight information in accessible formats, making efforts to accommodate seating requests (and seating accompanying persons next to the PRM where possible) and assistance in moving to toilet facilities.
- **Training:** All employees (including those employed by sub-contractors) handling PRMs should have knowledge of how to meet their needs. Disability-equality and disability-awareness training should be provided to all airport personnel dealing directly with the travelling public, and all new employees should attend disability‑related training.

- **Compensation for lost or damaged mobility equipment:** Airlines are required to compensate passengers for lost or damaged mobility equipment or assistive devices, in accordance with national and international law.

Published safety rules

4.4 Article 4(3) requires airlines to publish the safety rules relating to carriage of PRMs. The Regulation does not state in any more detail what these safety rules should cover, but we would expect from the context that this is intended to mean rules relating to where carriers would exercise a derogation under Article 4(1) to allow refusal or limitation of carriage, or for where passengers would have to be accompanied. This would include any rules necessitating limitations on the number of PRMs which can be carried, restrictions on the types of PRM posing specific safety risks, or limitations on their carriage or on that of mobility equipment due to the size of aircraft.

4.5 In some cases the information published by airlines is in the form of a document defined as 'safety rules' or 'information pursuant to Regulation 1107/2006', but more commonly information is provided on a web page (or pages) without these descriptions. The limited use of the 'safety rules' term by airlines may indicate that carriers do not understand what is meant by the term, or that the requirement is open to interpretation. It is also possible that airlines do not have specific PRM safety rules – both KLM and SAS informed us that the same safety rules apply to PRMs as to all other passengers.

4.6 The airlines' Conditions of Carriage may also provide a useful source of information on policy on the carriage of PRMs, and in some cases may provide more detail than dedicated PRM web pages.

4.7 Seven carriers' Conditions of Carriage also refer to other requirements (often described as 'Our regulations' or 'Other regulations') which apply to carriage of PRMs. In the sample we have reviewed, the reference to such regulations does not always specify exactly what the scope of these is or where they are to be found. This may infringe the requirement in Article 4(3) to publish any safety rules affecting PRMs, and may also raise issues of consistency with the Unfair Contract Terms Directive, as the conditions on which bookings are made should be transparent at the time. Whilst some airlines' Conditions state that these regulations are published on their websites, the following case study carriers' Conditions include such references without saying where the information can be found:

- Air Baltic;
- Emirates;
- SAS; and
- TAP Portugal.

4.8 The carriers which provided the most detailed information set out the information listed below, and we would therefore expect a comprehensive PRM web page to provide at least some information on these topics:

- Any limitations on the carriage of PRMs, for example a limit on the number that can be conveyed on a given flight;

- Advance booking requirements for any PRM requiring assistance;
- Conditions under which an accompanying passenger will be required;
- Guidance on the carriage of assistance animals;
- Policies on the carriage of equipment, e.g. wheelchairs, stretchers and oxygen; and
- Any assistance which will be offered on board.

Information actually published by carriers

4.9 Three of the sample airlines (Air Berlin, easyJet and Ryanair) provide either 'safety rules', or a notice specifically stated to be pursuant to Regulation 1107/2006. In a further six cases Regulation 1107/2006 is mentioned in a first sentence of the web page / PRM document, or elsewhere in the text.

4.10 We found that eight of the sample airlines include on their website all the information likely to be required. This was normally in the form of a web page, sometimes with sub-sections, however AirBaltic and KLM provide downloadable documents containing all PRM guidance. Delta also provides a PRM brochure, but this does not contain all the information provided on the PRM web page. In the remainder of cases airlines provide fairly comprehensive web pages, but omit certain items which may appear on other sections of the website (for example in the Conditions of Carriage).

4.11 In some cases we found inconsistencies between the PRM web page and that the information provided in the Conditions of Carriage. For example, Delta's Conditions of Carriage state that 48 hours' advance notice is required for any PRMs who wish to receive special assistance, but the PRM information section states that 48 hours' advance notice is only required if the passenger needs to use oxygen during the flight, requires the packaging of a wheelchair battery for shipment as checked luggage, or is travelling with a group of 10 or more people with disabilities. Austrian Airlines' PRM information emphasises the importance of booking in advance, but does not reflect the stronger wording in the Conditions of Carriage, which state that carriage of PRMs 'is subject to express prior arrangement'. Similarly, the Conditions of Carriage of Alitalia, Brussels Airlines, Delta, Ryanair and Wizzair state that carriage may be refused to PRMs if not arranged in advance; however although the PRM webpage states that assistance should be requested at the time of booking, it is not indicated that failure to do this may result in denial of boarding.

4.12 Some of the rules set out in airlines' Conditions of Carriage do not appear in the PRM information section of the website. For example, Thomsonfly imposes a limit on the number of PRMs or wheelchairs which will be accepted per flight in their Conditions of Carriage, which does not appear on the airline's PRM web page.

Table 4.1 outlines the coverage of the PRM web pages against the criteria set out in paragraph 4.9 above.

TABLE 4.1 INFORMATION AVAILABLE ON CARRIER WEBSITES

Airline	Information provided	Key issues and omissions
Aegean Airlines	'Travel Guide' section of website provides some information on carriage of assistance animals, wheelchairs and oxygen.	No information on advance booking, accompanying passengers or animals Information on wheelchairs is incomplete – conditions of carriage state that spillable batteries cannot be carried. No information on stretchers.
Air Berlin	Information is provided within a section entitled 'Flying barrier-free', and in a safety rules section entitled 'airberlin's safety regulations for the carriage of passengers with restricted mobility (PRMs) in accordance with EC regulation no. 1107/2206' downloadable from the same page. The safety rules discuss the following: • PRM limit • Accompanying persons • Seat allocation • Guide dogs • Information in the event of refusal of carriage	The safety rules do not include advance booking or policies on carriage of equipment. However, with the exception of stretchers this information is provided on the PRM webpage which contains the safety rules.
Air France	Information is provided within a section entitled 'Passengers with reduced mobility'	None
AirBaltic	Detailed information is provided within a document entitled 'Air travel for physically challenged passengers'	None
Alitalia	Limited information across all categories is provided in a section entitled 'No barriers travelling'.	More detailed information on some topics can be accessed only by searching the site for specific terms, e.g. 'stretcher'.
Austrian	Information on most categories is provided in a section entitled 'Barrier-free travel'.	No reference is made to the carriage of stretchers.
British Airways	Information on all categories is provided within a section entitled 'Disability assistance'	None
Brussels Airlines	Reasonably detailed information across all categories is provided in a section entitled 'Special Assistance'.	Information on accompanying passengers, wheelchairs and stretchers is incomplete.
Delta	Detailed information on all categories is provided within a section entitled 'Services for Travelers with Disabilities'. A brochure providing a summary of this information can also be downloaded from the site.	None
easyJet	Detailed information on almost all categories is provided within a notice entitled 'For passengers who are disabled or have reduced mobility (PRM) due to a physical, cognitive (learning) disability or any physical impairment, as defined by current European law, Regulation EC1107/2006 Article 2(a).' In addition detailed information is provided in the 'Carrier's Regulations'.	The information notice on the website is detailed and generally appears complete. There is no reference to provision of oxygen or carriage of stretchers although both are addressed in the Carrier's Regulations.
Emirates	Some information across all categories is provided within the sections 'Health & Travel', 'Special Needs' and 'FAQs'.	The information provided appears to be complete but it is fragmented between these

Airline	Information provided	Key issues and omissions
		three sections, which could be confusing.
Iberia	The website has a general information section entitled 'Passengers with reduced mobility or special needs'. This provides a link to a more detailed information leaflet, downloadable by clicking on a 'No barriers to travel' icon.	The location of the information leaflet is not obvious as it is not listed under 'Information of interest'. Information in the leaflet on accompanying passengers and carriage of mobility equipment appears to be incomplete. There is a document entitled 'Attending to the needs of people with reduced mobility' but this appears to be a general summary of ECAC/ICAO guidance and it is not clear what applies to Iberia.
KLM	Information is provided within a section entitled 'Physically challenged passengers' and in a 'Carefree travel' brochure.	None
Lufthansa	Information on most categories is provided in a section entitled 'Travellers with special needs'.	No information on accompanying passengers or stretchers, although some info is provided in a section on flights to and from the USA.
Ryanair	Detailed information on almost all categories is provided within a notice entitled 'NOTICE PURSUANT TO EC REGULATION 1107/2006 CARRIAGE OF DISABLED PERSONS AND PERSONS WITH REDUCED MOBILITY'.	None
SAS	Information on almost all categories is provided within a section entitled 'Special needs'.	No information on accompanying passengers or stretchers
TAP Portugal	Detailed information on all categories is provided within a section entitled 'Special Assistance'.	None
TAROM	Limited information across all categories is provided in a section entitled 'Persons with disabilities'.	Because the information is not detailed it is not clear whether it is complete, e.g. whether all circumstances where passengers need to be accompanied are listed.
Thomas Cook	Information on all categories is provided within a section entitled 'Medical - passengers with Reduced Mobility'.	None
TUI (Thomsonfly)	Some information on most categories is provided within a section entitled 'Passengers with special needs'.	No information on stretchers or oxygen
Wizzair	Limited information is provided within a section entitled 'Passengers with Special Needs'.	No information on assistance animals or stretchers, although both are referred to in the Conditions of Carriage.

Carrier requirements on carriage of PRMs

Safety requirements defined in law or by licensing authorities

4.13 Article 4(1) allows derogations from Article 3 in order to meet safety requirements defined by national or international law, or to meet safety requirements established by the authority that issued the air operator's certificate to the air carrier concerned. The only EU-wide legislation which applies is EU-OPS1 (Commission Regulation 859/2008), which is aligned with JAR-OPS 1 Section 1 guidance previously produced by the Joint Aviation Authorities.

4.14 National health and safety legislation may also provide safety-related grounds for imposing restrictions on the carriage of PRMs – for example cabin crew may not be permitted to lift passengers between their seat and an on-board wheelchair, which would then necessitate an accompanying passenger if it is expected that they will need to leave their seat at any point during the flight.

4.15 All other restrictions are governed by safety requirements established by licensing authorities, which are often (although not always) the same organisation that has been designated as the NEB for the Regulation. The main guidance material relating to carriage of PRMs that licensing authorities should take into account is that originally defined in Section 2 of JAR-OPS 1. Section 2 was not included in EU-OPS1, but ECAC Document 30 states that, pending the adoption of implementing rules related to operations based on the EASA Regulation (216/2008), Member States are allowed to use the Section 2 guidance material, provided that there is not conflict with EU-OPS. To accompany EU-OPS 1, the JAA published an updated version of Section 2 in the form of Temporary Guidance Leaflet (TGL) 44. The section relating to the carriage of PRMS, ACJ OPS 1.260, remains unchanged from the original JAR-OPS 1 Section 2. It states that:

> *1 A person with reduced mobility (PRM) is understood to mean a person whose mobility is reduced due to physical incapacity (sensory or locomotory), an intellectual deficiency, age, illness or any other cause of disability when using transport and when the situation needs special attention and the adaptation to a person's need of the service made available to all passengers.*
>
> *2 In normal circumstances PRMs should not be seated adjacent to an emergency exit.*
>
> *3 In circumstances in which the number of PRMs forms a significant proportion of the total number of passengers carried on board:*
>
> *a. The number of PRMs should not exceed the number of able-bodied persons capable of assisting with an emergency evacuation; and*
>
> *b. The guidance given in paragraph 2 above should be followed to the maximum extent possible.*

4.16 Licensing authorities may require their carriers to impose more stringent restrictions on carriage of PRMs than the 50% limit defined by TGL 44. However, this is rare: the only example identified amongst the case study States is the Belgian Civil Aviation Authority (BCAA), which has set restrictions on the numbers of certain types of PRM, and minimum numbers of accompanying passengers. The numerical limits, which are outlined in more detail in the case study for Belgium in appendix C, are reflected in the conditions imposed by Brussels Airlines. In contrast, some licensing authorities

(for example the UK CAA) have stated that they will not generally approve limits on carriage of PRMs below the 50% defined in TGL 44.

4.17 In the remainder of cases, licensing authorities do not have any defined policy and will consider any restrictions on carriage of PRMs on a case by case basis. Therefore, more stringent restrictions on carriage of PRMs may be proposed by the airlines themselves, included in their Operations Manuals and submitted for approval by the licensing authority. As a result, there are significant variations between airlines, even where operational models and types of aircraft are similar. For example, whilst Wizzair, easyJet and Ryanair have similar operational models and aircraft types, Ryanair has a limit of 4 PRMs who require assistance per aircraft whilst Wizzair has a limit of 28 PRMs and easyJet 50%. Although the limits imposed by the three airlines are all based on safety, it is difficult to imagine that all three could be 'safe' limits. There does not seem to be an evidence base for these limits and a stakeholder suggested to us that, in the event of an emergency, it is impossible to predict whether even 'able bodied' passengers will be in a physical or psychological state consistent with evacuating the aircraft in the expected time; therefore, it was discriminatory to have a PRM limit.

4.18 The policy adopted by many of the legacy carriers is influenced by the United States Department of Transport Regulation, 14 CFR Part 382 (hereafter described as rule 382). The United States Air Carrier Access Act of 1999 made rule 382 apply to non-US carriers on flights to/from the US, and to all flights which are codeshares with US carriers (even flights not to/from the US), except where there is a specific conflict with non-US law. Despite sharing the same aspiration of ensuring equal access to air travel for all, there are significant differences between the US and EU regulations. Rule 382 specifically prohibits airlines from imposing numerical limits on PRMs, on the basis that this practice is discriminatory. Lufthansa and TAP Portugal are the only case study airlines operating to and from the US to publish PRM limits.

4.19 PRM limits have also been challenged on the basis of national law. In 2009, the Madrid Provincial Court ruled that Iberia must change its Flight Operation Manual because it was indirectly discriminatory against disabled people. The case was brought by three deaf people who were refused boarding because they were unaccompanied.

4.20 The Regulation allows airlines to **request that a passenger be accompanied**, but only on the basis of safety. Three carriers cited the UK Department for Transport's *Access to Air Travel for Disabled Persons and Persons with Reduced Mobility – Code of Practice* as the basis for the criteria they use to determine whether a PRM should be accompanied. The document also supports the Regulation in providing guidance to airlines and airports on best practice approaches to the handling and transit of PRMs. The guidance states that an accompanying passenger should only be required "when it is evident that the person is not self-reliant and this could pose a risk to safety". The document defines this as being as passenger who cannot:

- Unfasten their seat belt;
- Leave their seat and reach an emergency exit unaided;
- Retrieve and fit a lifejacket;
- Don an oxygen mask without assistance; or
- Is unable to understand the safety briefing and any advice and instructions given

by the crew in an emergency situation (including information communicated in accessible formats).

4.21 The document also states that passengers who require a level of personal care which cabin crew cannot provide should be told that they should be accompanied. This includes assistance with the following:

- Breathing (reliance on supplementary oxygen);
- Feeding;
- Toileting; and
- Medicating.

4.22 The guidance implies that a passenger should only be required to be accompanied if they are likely to require such assistance during the course of the flight. This is consistent with rule 382, which states that ”concern that a passenger with a disability may need personal care services…is not a basis for requiring the passenger to travel with a safety assistant”.

4.23 The most significant difference between US and EU law relates to the **48 hour advance notification** requirement in the Regulation for passengers requiring assistance. Rule 382 states that requiring pre-notification from PRMs is discriminatory, given that the same requirement is not imposed on other passengers. It does however allow airlines to require 48 hours pre-notification in circumstances where a passenger:

- Requires oxygen on a domestic flight (72 hours notice can be requested on international flights);
- Is travelling in an incubator;
- Requires a respirator or oxygen concentrator to be connected to the aircraft power supply;
- Is travelling in a stretcher;
- Is travelling in an electric wheelchair on an aircraft with 60 seats or less;
- Requires hazardous material packaging, e.g. for an electric wheelchair;
- Is travelling in a group of 10 or more PRMs;
- Requires an on-board wheelchair on an aircraft with more than 60 seats that does not have an accessible toilet;
- Intends to travel in the cabin with an emotional support animal;
- Intends to travel in the cabin with a service animal on a flight of 8 hours or more; or
- Has both severe vision and hearing impairments.

4.24 The Regulation does not define the circumstances under which **medical clearance** can be reflected from a passenger, but rule 382 prohibits airlines from requesting medical certification unless the passenger’s condition poses a ‘direct threat’, which ‘means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services’.

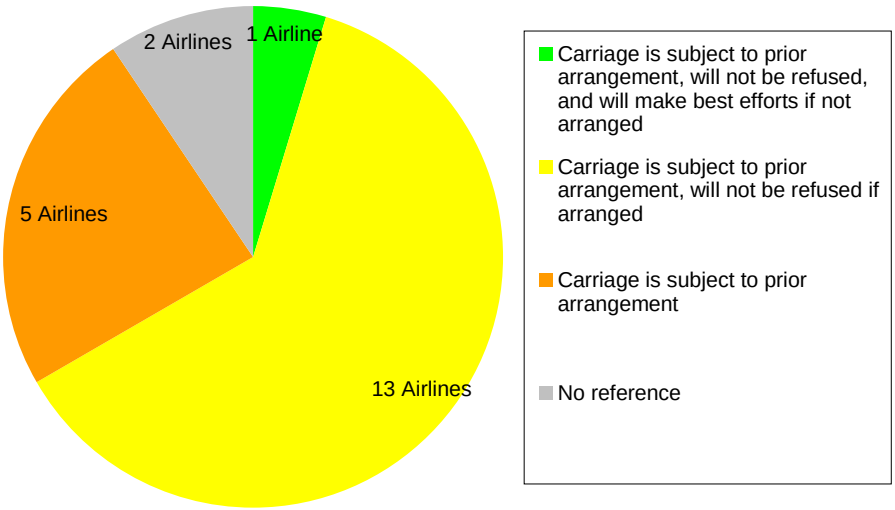
Policy on carriage of PRMs defined in Conditions of Carriage

4.25 The element of carriers' Conditions of Carriage relating to PRMs can be classified into the following six categories:

- **Will not refuse carriage on disability grounds** – all PRMs carried without restriction or requirement for pre-booking;
- **Carriage subject to prior arrangement, but will not be refused if not arranged** – the airline would prefer that advance arrangements are made, but PRMs may nevertheless be carried without this;
- **Carriage subject to prior arrangement and will not be refused if arranged –** PRMs are required to make advance arrangements, and will not be refused carriage on the basis of their disability if advance arrangements have been made;
- **Carriage is subject to prior arrangement** – as above, but without the additional clause on non-refusal of carriage to PRMs who have made arrangements;
- **Non-compliant term** – e.g. airline refuses to carry certain PRMs;
- **No reference** – PRMs not discussed in Conditions of Carriage.

4.26 Figure 4.1 shows the general approach adopted in the Conditions of Carriage of the case study airlines. None of the case study Conditions of Carriage were at the extreme ends of the scale, i.e. explicitly non-compliant terms or carriage of all PRMs without any restriction.

FIGURE 4.1 CONDITIONS ON CARRIAGE OF PRMS



4.27 Most (13) of the Conditions of Carriage of the sample airlines surveyed state a policy of not refusing carriage to PRMs on the grounds of their special requirements subject to arrangements being made in advance, although boarding may still be denied for other reasons. Alitalia adds an additional disclaimer, which states that the PRMs who have made advance arrangements will be carried, unless this is "…impossible due to objective causes of force majeure".

4.28 The advance booking requirement does not necessarily apply to all PRMs. Air Berlin states that the carriage of medical devices and mobility aids can only be guaranteed with up to 48 hours' notice, and visually impaired passengers with guide dogs are also required to make advance arrangements. No reference is made to PRMs not falling within these categories, however.

4.29 Table 4.2 shows the approaches adopted by each of the case study airlines in their Conditions of Carriage. Air Berlin is unusual in that the advance booking requirement appears only to apply to PRMs reliant on mobility aids, medical devices or assistance animals, and it appears that no such requirement exists for other PRMs.

TABLE 4.2 CONDITIONS OF CARRIAGE OF PRMS

Airline	State	General approach
Aegean Airlines	Greece	No reference
Air Berlin	Germany	Carriage of mobility aids, medical devices and assistance animals is subject to prior arrangement
Air France	France	Carriage is subject to prior arrangement, will not be refused if arranged
AirBaltic	Latvia	Carriage is subject to prior arrangement, will not be refused if arranged
Alitalia	Italy	Carriage is subject to prior arrangement, will not be refused if arranged
Austrian	Austria	Carriage is subject to prior arrangement
British Airways	UK	Carriage is subject to prior arrangement, will not be refused, and will make best efforts if not arranged
Brussels Airlines	Belgium	Carriage is subject to prior arrangement, will not be refused if arranged Also state that they will make reasonable efforts even if not arranged.
Delta	Non-EU	Carriage is subject to prior arrangement
EasyJet	UK	Carriage is subject to prior arrangement
Emirates	Non-EU	Carriage is subject to prior arrangement
Iberia	Spain	No reference
KLM	Netherlands	Carriage is subject to prior arrangement, will not be refused if arranged
Lufthansa	Germany	Carriage is subject to prior arrangement, will not be refused if arranged
Ryanair	Ireland	Carriage is subject to prior arrangement, will not be refused if arranged
SAS	Sweden	Carriage is subject to prior arrangement, will not be refused if arranged
TAP Portugal	Portugal	Carriage is subject to prior arrangement, will not be refused if arranged
TAROM	Romania	Carriage is subject to prior arrangement, will not be refused if arranged
Thomas Cook	Germany / UK	Carriage is subject to prior arrangement, will not be

Airline	State	General approach
		refused if arranged
TUI (Thomsonfly)	Germany / UK / Netherlands	Carriage is subject to prior arrangement, will not be refused if arranged
Wizzair	Hungary	Carriage is subject to prior arrangement

Circumstances under which carriage may be refused

4.30 Although all of the case study airlines impose a range of conditions on PRM bookings, only a proportion state explicitly that carriage may be refused if certain conditions are not met. In some cases, an individual PRM travelling cannot control whether the conditions are met, but some conditions can be satisfied if the PRM follows a defined course of action:

- Conditions which individual PRMs cannot control whether they meet include limits on the number of PRMs which can be carried on a given flight, and restrictions posed by the physical size and configuration of specific aircraft
- Conditions which PRMs can take actions to comply with include advance booking (discussed in the preceding section), travelling with an accompanying passenger or obtaining medical clearance.

4.31 The remaining categories are discussed in turn below.

4.32 Under Article 4 of the Regulation carriage can only be refused on safety grounds, or if boarding is physically impossible due to space constraints, a requirement with which most of the case study airlines are compliant. The only condition we have identified which is potentially non-compliant is the requirement for advance booking cited by Alitalia, Brussels Airlines, Delta, Ryanair and Wizz Air.

PRM limits and physical constraints

4.33 Ryanair is the only case study airline to set out numerical limits on carriage of PRMs in its Conditions of Carriage. In addition, Delta's Conditions of Carriage include the vague statement that carriage may be refused to any PRM on the basis of safety.

4.34 Airline PRM web pages provide more information on PRM limits, with several airlines setting out limits:

- Air Berlin;
- AirBaltic;
- Brussels Airlines;
- Lufthansa;
- TAROM (only for PRMs in wheelchairs); and
- Wizz Air.

4.35 Aegean Airlines and TAP Portugal also informed us that they have PRM limits in place, although these are not published. Full details of the PRM limits adopted by each airline are given in Table 4.3. Several of the other case study airlines informed us that they are required to adhere to the limit set out in TGL 44 that the number of PRMs

should not exceed the number of able bodied passengers; this restriction is not included in the table below, although it is possible that some of the unspecified restrictions actually relate to this. Note that other carriers may have unpublished limits which we have not been informed about.

TABLE 4.3 AIRLINE PRM LIMITS

Airline	Published limits	Unpublished limits	Applies to
Aegean Airlines	-	Unspecified restriction	All unaccompanied PRMs
AirBaltic	If number of PRMs exceeds number of cabin crew per flight (typically 3-4 on short haul aircraft)	-	All PRMs, only where PRMs form a large proportion of passengers on flight
Air Berlin	Unspecified limit for safety reasons	-	All PRMs
Brussels Airlines	2 when travelling individually, except on A330-300, where limit of 4. When travelling in group limit ranges from 9 (on BAe 146) to 27 (on A330-300), including escorts.	-	WCHS + WCHC + STCR + BLND + DEAF/BLND, in any combination
Lufthansa	Limit on unaccompanied passengers in wheelchairs: 3 on regional flights (>70 seats); 5 on other flights Limit on no. of wheelchairs per flight: 3 on most intercontinental flights, 2 on continental flights and 1 on regional flights. Also unspecified general limit on limited mobility passengers for care and safety reasons.	-	All unaccompanied PRMs
Ryanair	Limit of 4 per aircraft for safety reasons	-	Passengers with reduced mobility, blind/visually impaired or requiring special assistance.
TAP Portugal	-	Stretcher: 2, except Fokker 100 and Embraer 145; WCHC: 4-10 depending on aircraft; WCHS, blind and deaf: 9, except Fokker 100 and Embraer 145; Incubator: 1, except Fokker 100 and Embraer 145.	See left
TAROM	Limit on passengers requiring wheelchair in		

	cabin: 0 on AT42, 2 on B737 and 6 on A318. No limits on other PRMs		
Wizz Air	Limit of 28 disabled or incapacitated or passengers with reduced mobility, including a maximum of 10 who require a wheelchair from check-in to the cabin seat	-	See left

4.36 Fewer airlines refer to other physical constraints in their Conditions of Carriage, with only AirBaltic and Brussels Airlines indicating that carriage may be refused if the PRM is unable to physically board via the aircraft's doors.

Accompanying passengers

4.37 Article 4(2) of the Regulation allows airlines to require PRMs to be accompanied in order to meet the applicable safety requirements referred to in Article 4(1). As with any numerical PRM limits, requirements for PRMs to be accompanied should be set out in the carriers' Operations Manuals, which again would require the approval of the licensing authority in the relevant Member State.

4.38 Most airlines publish criteria under which a PRM would have to be accompanied. These are again generally safety related, or relate to the level of assistance cabin crew are able to give. Three common themes emerge:

- The PRM has certain specified conditions, e.g. difficulty walking;
- The PRM requires care which the cabin crew are unable to provide (typically this means that the passenger is not self-reliant); or
- The PRM is unable to evacuate the aircraft without assistance.

4.39 Although many airlines make reference to self-reliance criteria there is a difference between those requiring **all** passengers who are not self-reliant to be accompanied; and those which state that passengers who, for example, require help with eating, should be accompanied. In the latter case a passenger could argue that they will not be eating on the flight, and that this criterion is therefore irrelevant. Six of the sample airlines state that all passengers who are not self-reliant must be accompanied, and this is not limited to cases where there is a safety implication. In our view, these airlines may be infringing the Regulation as well as (if they fly to the US) rule 382.

Medical clearance

4.40 The majority of the case study airlines required medical clearance for certain types of PRM, either confirming fitness to travel, or stating a need to carry medical equipment such as syringes or oxygen, although again it is generally not explicitly stated that boarding will be refused if clearance is not obtained. In most cases, the PRM is required to ask their doctor to fill in a medical clearance form, which is then forwarded to the airline's medical department for approval.

4.41 Given the importance of not confusing disability with illness, it might be expected that

the proportion of passengers required to seek clearance before travelling would be minimised. This is the case for most of the case study airlines. Although the types of PRM required to obtain clearance varies, this normally includes those requiring oxygen or stretchers and is not overly restrictive. However, six airlines adopt slightly different policies:

- Lufthansa states that 'In the case of a physical or psychological limitation, you must obtain an assessment of your fitness for air travel from a Lufthansa doctor in advance', although it is stated elsewhere that this does not apply to blind people. Nevertheless, this requirement could potentially encompass many types of PRM, and the requirement to see a Lufthansa doctor is likely to be particularly onerous.
- The policy adopted by Wizz Air, although vague, also has the potential to be quite onerous. The airline reserves the right to require medical clearance in all cases, and will refuse the reservation if this is not obtained.
- Austrian, Iberia (both on the PRM web pages) and Wizzair (in the airline's Conditions of Carriage) all state explicitly that boarding may be refused to passengers on medical grounds if clearance has not been arranged in advance.
- Thomas Cook takes an unusually vague approach in stating that 'Some medical conditions require a fitness to fly certificate'. Passengers who consider themselves to have a condition that will require the authorisation of their doctor are advised to obtain their approval before flying. A telephone number is however provided, where presumably clarification of the conditions requiring medical authorisation can be obtained.

4.42 Policies on denial of boarding, accompanying passengers and medical clearance are summarised in Appendix A. This information is mostly derived from the PRM web pages provided by the airlines, unless explicit reference is made to the conditions of carriage. Any unpublished information provided to us directly by the airline is shown in italics.

Actions to be taken when carriage refused

4.43 Article 4(1) requires that, where a PRM is refused boarding, the airline is required to offer reimbursement or rerouting in line with Regulation 261/2004. Although none of the case study airlines make any references to this in either their PRM web pages or Conditions of Carriage, almost all of the airlines we interviewed confirmed that passengers who have been refused boarding would be offered a refund, rerouting or cost-free cancellation, depending on the circumstances. However, some carriers indicated that this situation would be rare, as refusal would most commonly occur at the booking stage.

4.44 Where boarding is refused, airlines are required under Article 4(4) of the Regulation to immediately inform the PRM of the reasons for the refusal and, on request, should communicate the reasons to the PRM in writing within five working days. Alitalia and Ryanair are the only airlines to refer to this in their Conditions or policies, Alitalia stating in its Conditions of Carriage that in the event of refusal of carriage the passenger may request additional information, and Ryanair stating on its PRM webpage that 'If we are unable to carry a disabled/reduced mobility passenger, we will inform the person concerned of the reasons for refusal of carriage'.

4.45 However, although only two of the case study airlines provide details of the actions

they will take when carriage is refused, again most indicated in their interviews with us that they will provide either written or verbal explanations to passengers who have been refused boarding.

Services provided to PRMs

Requirements defined in law or other guidance

4.46 Annex II of the Regulation requires that airlines provide the following assistance to pre-notified PRMs without additional charge:

- Carriage of recognised assistance dogs in the cabin, subject to national regulations.
- In addition to medical equipment, transport of up to two pieces of mobility equipment per disabled person or person with reduced mobility, including electric wheelchairs (subject to advance warning of 48 hours and to possible limitations of space on board the aircraft, and subject to the application of relevant legislation concerning dangerous goods.
- Communication of essential information concerning a flight in accessible formats.
- The making of all reasonable efforts to arrange seating to meet the needs of individuals with disability or reduced mobility on request and subject to safety requirements and availability.
- Assistance in moving to toilet facilities if required.
- Where a disabled person or person with reduced mobility is assisted by an accompanying person, the air carrier will make all reasonable efforts to give such person a seat next to the disabled person or person with reduced mobility.

4.47 This guidance is reflected in ECAC Document 30 and the UK DfT Code of Practice. The Code of Practice also suggests the following:

- Cabin crew should provide reasonable assistance with the stowage and retrieval of any hand baggage and/or mobility aid whilst in flight.
- Cabin crew should familiarise disabled passengers with any facilities on board designed particularly for disabled passengers. In the case of visually impaired people they should additionally offer more general familiarisation information and such other explanations as may be requested, such as about on-board shopping.
- Other printed material, such as dinner menus, should, where reasonably practicable, be accessible to blind and partially sighted people. Alternatively, cabin crew should explain the material.
- Where video, or similar systems, are used to communicate safety or emergency information, sub-titles should be included to supplement any audio commentary.
- Where possible, films and other programmes should be subtitled for deaf and hard of hearing passengers.
- In selecting catering supplies, air carriers should consider how “user-friendly” the packaging is for disabled people.
- Cabin crew should describe the food, including its location on the tray, to blind and partially sighted passengers.
- During the flight, cabin crew should check periodically to see if PRMs need any

assistance. In the case of those requiring the use of the on-board wheelchair (where one is installed), the staff must be trained in how to assist the passenger to and from the toilet by pushing the on-board wheelchair.

- Passengers' own portable oxygen concentrators should normally be allowed if battery powered, though air carriers will need to check the type of device to ensure it does not pose any technical problems.

4.48 The assistance provided by the case study airlines generally reflects this guidance, although not all provide comprehensive information on the service they provide to PRMs, particularly in terms of general assistance on-board the aircraft.

4.49 Again, there are some conflicts between Regulation 1107/2006 and the US guidance defined in rule 382, which would apply to some flights operated by EU carriers including all flights to/from the US. In particular, the US regulations do not define an upper limit on the number of items of mobility equipment that should be carried. Some additional requirements established by rule 382 include:

- Assistance in moving to and from seats;
- Assistance in preparation for eating;
- All new videos, DVDs, and other audiovisual displays played on aircraft for safety purposes should be high-contrast captioned;
- Passengers should be able to use moveable armrests seats where their condition requires it;
- Seats with additional legroom should be provided for passengers with fused or immobilised legs;

- PRMs should be permitted to use ventilator, respirator, continuous positive airway pressure machine, or portable oxygen concentrator (POC) of a kind equivalent to an FAA-approved POC on all aircraft originally designed to have a maximum passenger capacity of more than 19 seats, unless the equipment does not meet safety requirements or cannot be used or stowed safely in the cabin.

Assistance animals

4.50 Of all the case study airlines which refer to guide dogs, almost all accept them in the cabin free of charge, as required by Annex II of the Regulation, although carriage is also limited by national regulations regarding the transport of animals. However, we identified the following issues with the carriers' published policies:

- Alitalia – assistance dogs are only allowed in the cabin if space is available;
- Emirates – assistance animals can only be carried in the hold;
- TAP Portugal / Thomas Cook / Wizz Air – insufficient information regarding charging and carriage in cabin;
- TUI – assistance dogs carried for a nominal charge. It is not stated whether animals can be carried in the cabin; and
- Air France / EasyJet – not stated whether carriage is free of charge.

4.51 There is some variation in terms of the conditions applied to the carriage of guide dogs; some airlines require a carrying case, muzzle or harness, for example; Austrian,

EasyJet and TAP Portugal require certification of service animal status; and carriage in exit rows is often prohibited. Several airlines state limits on the number of guide dogs that can be carried on a given flight – AirBaltic, British Airways and Ryanair. Other airlines may enforce similar unpublished limits. Full details of airline policies are provided in Appendix B.

4.52 In most cases, the information provided by carriers on which routes service dogs can be carried on is quite vague. Two exceptions are British Airways and Iberia, which include detailed information and links to external websites; in the case of British Airways this is the UK DEFRA (Department for Environment, Food and Rural Affairs) guidance on the Pet Travel Scheme which governs the carriage of assistance animals on flights within and to/from the UK. This includes detailed guidance on travel preparation and a full list of approved routes. The guidance provided by Brussels Airlines is also reasonably detailed, and both Austrian and Thomas Cook provide links to EU and UK regulations respectively, but without detailed supporting explanations.

Mobility equipment

4.53 All the airlines reviewed accept wheelchairs, and in most cases airlines state that there is no charge for this. Three airlines allow at least certain types of personal wheelchair in the cabin, with carriage restricted to the hold or not stated in the remainder of cases. Spillable wet-cell batteries are not accepted by some airlines and where they are accepted this is usually subject to preparation. Where specified, most airlines policies on the carriage of wheelchairs are consistent with the upper limit of two items of mobility equipment per passenger specified in Annex II of the Regulation. Air Berlin is the only one of the case study airlines to define a limit below this.

4.54 Dangerous goods legislation is cited by many airlines as posing a limitation on the range of battery operated wheelchairs which may be carried. However, few airlines provide specific details of the laws and regulations which apply. Austrian does provide references to both Regulation (EC) No 820/2008 and the IATA Dangerous Goods Regulations, the latter accessible via an external link; and Delta provides a link to the US Department of Transportation's Safe Travel information, which provides information to passengers on the carriage of batteries. The Thomas Cook and TUI websites include a reference to the IATA Dangerous Goods Regulations, but without external links. It is worth noting that, although only a fraction of the case study airlines provide this level of detail on their PRM web pages, many may provide such information in their luggage regulations or elsewhere in the Conditions of Carriage.

4.55 Under Article 12 airlines are required to compensate for losses or damage to mobility equipment, up to the limits specified by national and international law, which effectively means the limits defined in the Montreal Convention. This limits any compensation to 1131 SDR (approximately €1260), which would be inadequate for technologically advanced wheelchairs which can cost up to €20,000. However, several airlines have indicated that these limits would be waived in practice, partly to avoid bad publicity associated with provision of insufficient compensation, and also because it is generally agreed that such events are rare. Air France, Iberia, KLM, TAROM, Thomas Cook and TUI informed us that they compensate passengers for the full value of the equipment; with TUI also indicating that all UK airlines have agreed to waive

the Montreal limits. In contrast, one PRM organisation informed us that it was aware of cases where airlines had not waived the limits.

4.56 Almost all stakeholders stated that the Regulation had made no impact on loss or damage to mobility equipment, both in terms of the number of incidents and levels of compensation for loss or damage; although some felt that the training requirements imposed by the Regulation has resulted in improved handling procedures.

Medical equipment

4.57 Oxygen is available on most of the case study airlines, and can either be provided by the airline or the passenger. Where stated, charges range from €100 (Ryanair / Thomas Cook) to €335 (SAS intercontinental flights). Wizzair is the only exception: the airline accepts passengers who need oxygen with medical certification, but does not provide additional oxygen or allow passengers to bring their own onboard. Such restrictions appear to equate to a complete ban on PRMs requiring oxygen.

4.58 Policies on the carriage of stretchers (where stated) tend to be based on aeroplane size, with several operators not accepting stretchers on the smaller planes in their fleet. Most low cost carriers including easyJet, Ryanair, Thomas Cook and Wizzair prohibit carriage of stretchers entirely.

Accessible information

4.59 Only 6 airlines specify the types of accessible information provided for PRMs. This tends to be safety-related, although may also include Braille seat numbers and verbally describing food-related information.

Seating

4.60 Austrian, British Airways, Delta and KLM are the only case study airlines to state on their web pages that PRMs can be allocated any seat most appropriate to their needs, subject to safety regulations restricting access to exit row seats. Where most other airlines discuss their PRM seating policy this is usually in terms of restrictions, again the most frequent being not allowing PRMs to be seated in exit rows. Many airlines provide seats with retractable armrests, although normally only a proportion of the seats on an aircraft are provided with this feature (KLM is the only airline to state that all seats have moveable armrests). British Airways state that passengers will be allocated a bulkhead seat when requested, provided that this is not already allocated to another PRM. Similarly, Delta and Lufthansa also state that customers with service animals (or immobilised legs in the case of Delta) are entitled to bulkhead seats. Again, only a proportion of the airlines (14 out of 21) provide any of this kind of information, so it is unclear what the other case study airlines offer. The results of our analysis are shown in Appendix Table A.2.

4.61 Ryanair requires PRMs to sit in window seats, so that they do not impede the evacuation of other passengers, although this could result in a difficult or uncomfortable transfer to and from the seat for some passengers. Other airlines may adopt similar policies which we were not informed about. Iberia informed us that, although they recommend that PRMs are accommodated in window seats, through

their online booking systems PRMs are able to choose any seat, with the exception of emergency exit rows.

4.62 Several airlines prohibit PRMs from being seated in exit rows 'for safety reasons', but generally do not make a specific reference to the legal basis for this, which in most cases would be EU-OPS1. Air Berlin, Delta and Ryanair are the only airlines to provide details of the regulations on which this prohibition is based – in the case of Delta this is the Exit Seat Regulation, 14 CFR 121.585; and for Air Berlin and Ryanair EU/JAR-OPS 1.260. Thomas Cook and TUI make more vague references to UK CAA regulations as a justification for their seating restrictions.

Restrictions on service

4.63 12 of the case study airlines provide an indication of the level of assistance in-flight provided to PRMs, although mostly in terms of the assistance staff are unable to provide. This generally includes feeding, lifting passengers, administering medication and assisting in personal hygiene or toilet functions. The level of assistance which is provided is generally limited to preparation for eating, assistance in moving around the aircraft and stowing and retrieving luggage.

Pre-notification of requirements

Requirements defined in law or other guidance

4.64 Article 6(1) of the Regulation requires that airlines take all measures necessary to ensure that they are able to receive PRM assistance requests via all normal points of sale. Articles 6(2) and 6(3) state that, where this information is received more than 48 hours before departure it should be transmitted to the relevant airports no later than 36 hours before the flight departs. Requests received after 48 hours should be communicated at the earliest opportunity. Article 6(4) requires that, after departure of a flight, airlines inform the destination airport (if within the EU) of the number of disabled persons and persons with reduced mobility on that flight requiring assistance, and the nature of the assistance required.

Methods by which passengers can pre-notify

4.65 In addition to the requirements of Article 6(1), the Recitals of the Regulation state that all essential information provided to air passengers should be provided "in at least the same languages as the information made available to other passengers". Several airlines do not meet this standard, although the Recitals are in themselves not binding.

4.66 Many of the major airlines provide offices and contact telephone numbers in a number of countries where the official language may not be one of the languages in which the airline website is offered. In most cases it is not possible to assess the languages offered by staff in these offices, and if the website is not offered in this language passengers may in any case have difficulty finding the contact for their country. For these reasons the language category is based on the website languages offered rather than the geographical spread of airline offices.

4.67 Some NEBs highlighted the use of premium rate special assistance telephone numbers as being an issue. Our research indicates that many carriers use phone numbers that do

charge, although rates are usually moderate, with the following exceptions:

- Some carriers, for example AirBaltic, provide international numbers only.
- Ryanair provides national phone numbers in most Member States but the rates in some States are high – for example, €0.50 per minute in Belgium
- Brussels Airlines provides (for calls from the UK) either a Belgian telephone number, or the UK reservations centre which charges £0.40 (€0.44) per minute, although this number centre deals with all reservations, and not just PRM assistance requests.
- SAS provides (for calls from the UK) a UK reservations number, which charges £0.25 (€0.28) per minute, although again this is not PRM-specific.

4.68 Each of these airlines accept notifications online, so passengers could theoretically avoid payment of these charges. However, we are not able to comment on the accessibility of these systems or whether they enable collection of all of the information that would be required in each case – some passengers may still need to use the telephone numbers for these reasons.

4.69 The notification options available to PRMs for the 21 case study airlines are shown in Table 4.4. It should be noted that options presented during the booking process could only be examined up to the point of payment for tickets. Some airlines may provide a notification option after payment has been made, which we would not have identified.

TABLE 4.4 OPTIONS TO NOTIFY CARRIERS OF REQUIREMENTS

Airline	Options provided	Differences between languages of PRM info and main website	Languages for phone calls
Aegean Airlines	Telephone	None	Not stated
Air Berlin	Telephone	None	Not stated
Air France	During online booking process Email / website Telephone	Main site in 15 languages PRM info in 10 languages	Not stated
AirBaltic	Telephone	None	Not stated
Alitalia	Telephone	Main site in 8 languages PRM info in 6 languages	Not stated
Austrian	Email / website Fax	Main site in 22 languages PRM info in 2 languages	Not applicable
British Airways	During online booking process Email / website Telephone	None	Not stated
Brussels Airlines	Email / website Telephone	None	Not stated
Delta	Telephone	None	Not stated
EasyJet	During online booking process Email / website Telephone	None	Telephone numbers only accessible after logging into personal account
Emirates	Email / website Telephone	None	Not stated
Iberia	During online booking process	None	Not applicable
KLM	Email / website Telephone	Main site in 15 languages PRM info in 9 languages	Not stated
Lufthansa	Email / website Telephone	None	Not stated
Ryanair	During online booking process Telephone	None	English French Italian Spanish
SAS	During online booking process Email / website Telephone	Main site in 15 languages PRM info in 12 languages	Not stated
TAP Portugal	Telephone	Main site in 9 languages PRM info in 7 languages	Not stated

Airline	Options provided	Differences between languages of PRM info and main website	Languages for phone calls
TAROM	During online booking process	None	Not applicable
Thomas Cook	During online booking process Telephone	None	Not stated
TUI (Thomsonfly)	Telephone	None	Not stated
Wizzair	During online booking process Telephone	None	Bulgarian Czech English French German Hungarian Italian Polish Romanian Ukrainian

Process for collection and transmission of requests

4.70 Although many case study airlines enable PRMs to make special assistance requests online, this often has to be supplemented by a telephone call to the airline to establish the PRM's exact requirements. Air France informed us that, when notifying online, a 'pop up' window will appear which informs the passenger that they will be contacted by the airline to clarify the assistance required. Similarly, KLM stated that, although they do provide an online notification option, the passenger would still need to call the airline to establish their exact requirements.

4.71 The standard procedure for transmitting assistance requests to the relevant airports is the PAL (Passenger Assistance List), which under Article 6(2) should be sent 36 hours before departure. Additional requests received after this time can be included in the CAL (Change Assistance List) in line with the requirements of Article 6(3). Most requests are transmitted using the standard special assistance codes IATA codes, although some airlines their own codes.

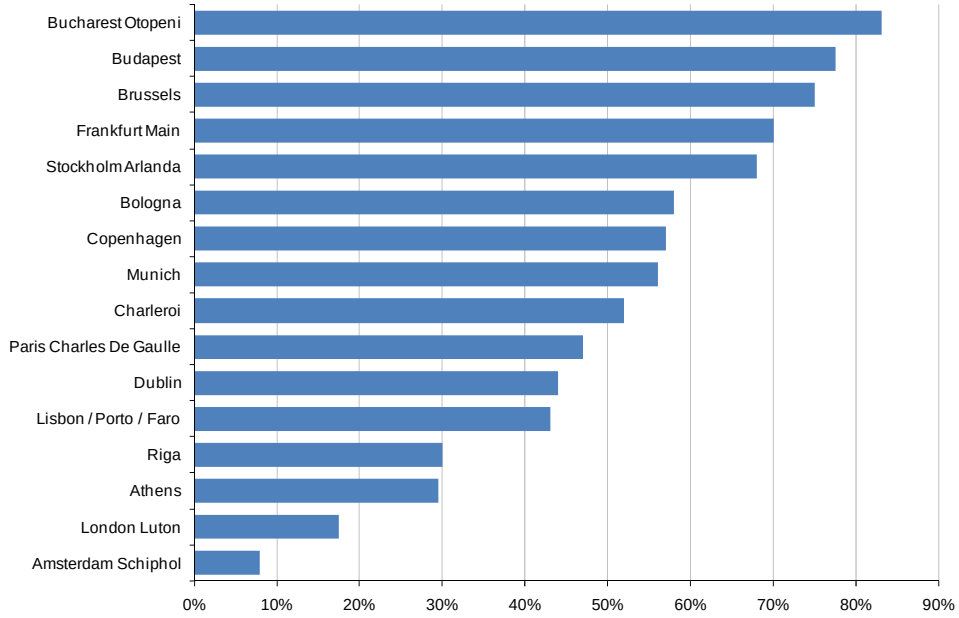
4.72 This information is supported by Passenger Service Messages (PSM) which are automatically generated by all special assistance requests recorded on the Passenger Name List of a given flight (thus complying with Article 6(4) of the Regulation). PSM messages are generated automatically on departure from the origin airport, so can be particularly useful for airports in relation to long haul flights, where there is sufficient time to mobilise staff and equipment before the aircraft arrives. Conversely, PRM messages are of less use in relation to short haul flights, as staffing arrangements cannot be so easily amended at short notice.

Effectiveness of process

4.73 All of the case study airlines interviewed use the standard PAL / CAL / PSM system, although Ryanair informed us that they also have their own system of codes and notifications (discussed in section 3 above).

4.74 Rates of pre-notification vary substantially, as shown in Figure 4.2. It should be noted that the definition of pre-booked assistance may vary between airports – for example Brussels Charleroi airport informed us that its figures for pre-notification includes notification by PSM message, which would not be received prior to the 36 hours specified by the Regulation. A number of other airports did not clarify their definition of pre-notification, including Bucharest and Budapest, which may explain why the percentages here are particularly high.

FIGURE 4.2 PRE-NOTIFICATION RATES BY AIRPORT



4.75 There a number of possible explanations for both the wide divergence of pre-notification rates, and the particularly low values observed at some airports. These include:

- **Passenger factors**, e.g. not being aware of the pre-notification requirement, abuse of the system or not realising that they would need assistance until arriving at the airport;
- **Airline factors**, e.g. not providing sufficient or appropriate means for passengers to pre-notify of their requirements, or failing to transmit assistance requests to airports within the time limits specified in the Regulation;
- **Other factors** – primarily communication and other technological failures.

4.76 Stakeholder views on the possible explanations for pre-notification issues are explored in the relevant section below.

Complaints to airlines

Airline processes for handling complaints

4.77 Most of the case study airlines have dedicated complaint forms and departments for the handling of complaints. Complaints regarding the Regulation do not necessarily require specialised procedures – both easyJet and Ryanair stated that their process for handling complaints was the same as for Regulation 261/2004, and KLM reported that PRM complaints were handled in the same way as all others. The only differences cited by the airlines were that, in the case of easyJet, complaints regarding refusal of boarding were escalated to head office; and KLM informed us that the airline's medical department may need to be involved in more complex cases. Ryanair also informed us that they will amend standard procedures for receipt of complaints where required, for example if a customer needs to complain by phone rather than in writing. KLM stated that to date they have only received complaints by phone, email or letter; and none in Braille / audio tape or other accessible formats.

4.78 Delta reported a more complex procedure, shaped primarily by the requirements of rule 382. The airline is required to designate Complaints Resolution Officials, responsible for providing a 'dispositive response' to customer complaints of an alleged violation, summarising the facts and explaining the airline's determination of the issue. If the complaint relates to the airline's policy and not a specific infringement the airline is still responsible for providing a full and final response and the reasons for its determination.

4.79 The stated time taken by airlines to respond to complaints is variable, and is not related to the airline type or business model.

4.80 Air France, SAS, TAP Portugal reported that they would (at least in theory) be able to accept complaints in any of the languages of the countries which they serve and/or have offices. Aegean Airlines, Ryanair and TAROM reported a more restricted range – despite its destinations including Albania, Egypt, Israel, Serbia, Spain and Turkey, Aegean Airlines stated that it can only accept complaints in Greek, English, German, French and Italian. Likewise, despite both Ryanair and TAROM operating services to 25 countries, the range of languages in which they will accept complaints is limited. Ryanair is only able to accept complaints in English, German, French, Spanish and Italian; and TAROM will only process complaints in Romanian, English, French, German, Spanish and Italian. Thomas Cook stated that, to date, they have only received complaints in English, although they do have a retainer with a language translation service which can be used if required.

Number of complaints received

4.81 Only TAROM and Thomas Cook were able to provide us with PRM complaint statistics. TAROM reported so far receiving no complaints from PRMs; Thomas Cook received 51 complaints in each of 2008 and 2009.

Cost of complying with the Regulation

4.82 The main compliance cost identified by airlines was the airport PRM charge. As discussed in section 3 above, several airlines (mostly low cost and charter carriers)

expressed dissatisfaction with the level of these charges; in contrast, Air France stated that it did not consider the PRM charge to be a real cost, as it was passed directly to passengers. Another legacy carrier stated that the Regulation did not generate any additional costs for it, as it was already complaint with the (generally more onerous) requirements of rule 382.

4.83 An issue raised by Air Berlin and TUI related to the additional costs likely to be associated with providing a cost-neutral special assistance telephone number. The German NEB considers that the special assistance helpline should be free, and the UK DfT Code of Practice also suggests that cost-neutral telephone numbers should be provided for PRMs, which TUI accommodates by requesting that the special assistance helpline calls the passenger back. However, the costs associated with telephone assistance calls are likely to be relatively small, particularly in relation to the staffing costs associated with providing a call centre.

4.84 TUI also highlighted the initial training costs incurred by the Regulation, which have now diminished as the focus shifts to more limited refresher training where required.

Training

4.85 Under Article 11 airlines are required to:

- Ensure that all staff (including those employed by sub-contractors) providing direct assistance to PRMs, have knowledge of how to meet the needs of these persons;
- Provide disability-equality and disability-awareness training to all staff working at airports dealing directly with the travelling public;
- Ensure that, upon recruitment, all new employees attend disability‑related training and that personnel receive refresher training courses when appropriate.

4.86 Most of the case study airlines were able to demonstrate compliance with the training criteria set out in Article 11, although the carriers informed us that training was restricted to passenger-facing staff only. Some examples of the training provided to airline staff are given below.

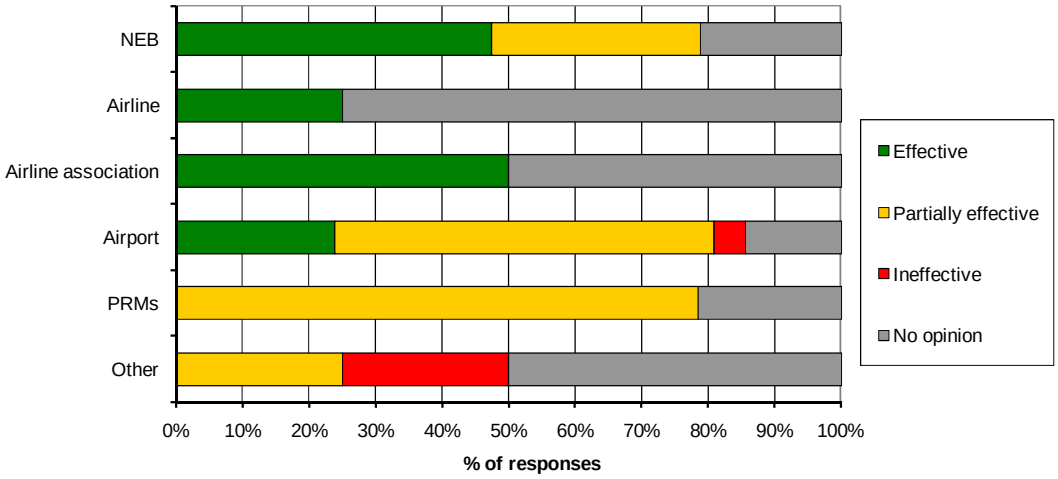
- Major European network carrier: 2.5 hours theory (e.g. responsibilities under the Regulation, how to approach PRMs) and practical (e.g. guiding blind PRMs, lifting to and from wheelchairs) training for crew; 1.5 hours theory for all other passenger-facing personnel.
- US network carrier: annual recurrent training is provided to all Complaint Resolution Officers (CROs); required under 14 CFR Part 382 to ensure effective implementation and to resolve passengers' problems as quickly as possible).
- European low cost carrier: initial and refresher cabin crew training includes PRM training, and the airline has requested that this training should be a requirement in contracts with ground handling staff.
- European low cost carrier: basic training in sign language is included.

4.87 Airlines operating to the US and therefore already compliant with rule 382 stated that few if any changes to their existing training programmes were required to comply with the Regulation.

Stakeholder views on effectiveness of implementation by airlines

4.88 Figure 4.3 summarises stakeholder views on the effectiveness of the implementation of the Regulation by airlines. Although many stakeholders did not express an opinion on this, relatively few stakeholders were dissatisfied. A summary of views of each stakeholder group is given below.

FIGURE 4.3 STAKEHOLDER VIEWS: AIRLINES



Airlines and airline associations

4.89 Unsurprisingly, the majority of airlines did not express an opinion on their own effectiveness in implementing the Regulation, and none felt that implementation was ineffective. Similarly, airline associations either expressed no opinion, or stated that implementation by their members was effective. ELFAA felt that all its members were complying and not refusing carriage. AEA was also generally satisfied that its members were not discriminating against PRMs in any way, but did suggest that there may be issues around the interpretation of the safety rules governing embarkation by PRMs, leading to inconsistencies between its members.

Airports

4.90 Pre-notification was the most frequently cited issue raised by the airports, an issue discussed separately below. The second most common theme emerging across several airports was the alleged non-payment of PRM charges by airlines.

4.91 Alongside the non-payment issue ACI highlighted several other issues relating to agreement of the PRM charges at airports. These included trying to avoid or reduce the charge, for example by requiring excessive levels of detail on the costs of PRM assistance at airports after the tender process had been completed, and refusing to cooperate with consultation meetings. Two airports with high proportions of low cost carrier traffic informed us that some carriers sought to specify the lowest possible levels of service in order to minimise PRM charges.

NEBs

4.92 The majority of NEBs informed us that compliance by airlines was satisfactory.

Although some issues were raised no common themes emerged, suggesting that any issues may be somewhat isolated. The NEBs which stated that implementation by airlines was partially effective were:

- France (DGAC): lack of information, and limited consistency in policies between airlines.
- Germany (BMBVS): use of premium rate telephone numbers by airlines.
- Portugal (INAC): some issues with the explanations provided for refusal of carriage.
- Spain (AESA): notification can incur additional costs for the passenger, airline safety rules are sometimes insufficient, and some airlines claim that passengers with mobility equipment are taking two seats, and charge for this.
- Sweden (CAA): issues around pre-notification (see section below).
- UK (CAA / EHRC / CCNI): lack of consistency in criteria for refusal of carriage. Some airlines charge for reserving specific seats.

PRM organisations

4.93 Satisfaction with implementation by airlines was generally lower among the PRM organisations, although none of the stakeholders informed us that airlines were significantly non-compliant with the Regulation. Inconsistencies in airline policies, accessibility of websites and the level of information provided by airlines emerged as the most frequently cited issues – *Danske Handicaporganisationer* (DH) suggested that less than 5% of airlines' websites were accessible. Two organisations also indicated that they had not seen any PRM safety rules published online.

4.94 Two organisations highlighted issues with medical clearance – this was felt to be requested too frequently, and that an unnecessary level of information was being requested by some airlines. Other issues raised included insufficient training, issues with handling of mobility equipment, seating, and inaccessibility of airport check-in systems. Guide Dogs reported instances where flight crew had not reported allergies which then prevented a passengers with guide dogs from flying, or had not checked that the dog was secure prior to take-off or landing. It was felt that policies of refusing boarding to unaccompanied blind passengers on the basis that they could not evacuate was misguided, given that they were accustomed to not being able to see and could therefore cope more easily in smoky conditions.

4.95 These views were echoed by the European Blind Union (EBU) and the European Disability Forum (EDF). In addition, EBU emphasised continuing difference in the handling of PRM travel between carriers, and felt that booking processes were discriminatory against those without access to a computer (we were informed that requesting assistance by phone can take several hours). The UK PRM organisation informed us that only 30% of the disabled population are online, which would increase this discrimination. EDF also noted that some airlines still only paid up to the Montreal Convention limits in cases of damage or loss of mobility equipment; that insurance for mobility equipment was extremely difficult to obtain; and that establishing liability for damage can be very complex. EDF also believe that the enforcement of numerical limits on PRMs is inappropriate and discriminatory, and that it is unacceptable for carriers to require passengers to be accompanied on self-reliance criteria.

4.96 EDF provided us with some examples of discrimination which had been reported to them. Some examples relating to treatment on-board the aircraft include:

- A blind passenger was not given any safety information in an accessible way, and the cabin crew were unaware of how to assist the passenger when serving a meal, or to communicate with the passenger more generally.
- A passenger was not allowed to check-in online, due to him using a wheelchair. Once on the aircraft he was forced to sit in a window seat at the back of the plane, which he found both discriminatory and difficult, as being tetraplegic meant that it was not easy to access the seat, or to receive assistance in an emergency.
- A passenger was informed that he had to pay extra to bring his prosthetic legs when going on holiday.
- A wheelchair user tried to book a ticket with an airline but noticed on their website that it was clearly indicated that they do not accept passengers using wheelchairs.
- A blind couple travelling with their baby were told that in order to be allowed to travel, they needed to bring an accompanying person, as it was not considered safe that the couple were responsible for their baby on board.
- A blind passenger was asked by a member of cabin crew in a rude manner whether she really was entirely blind.

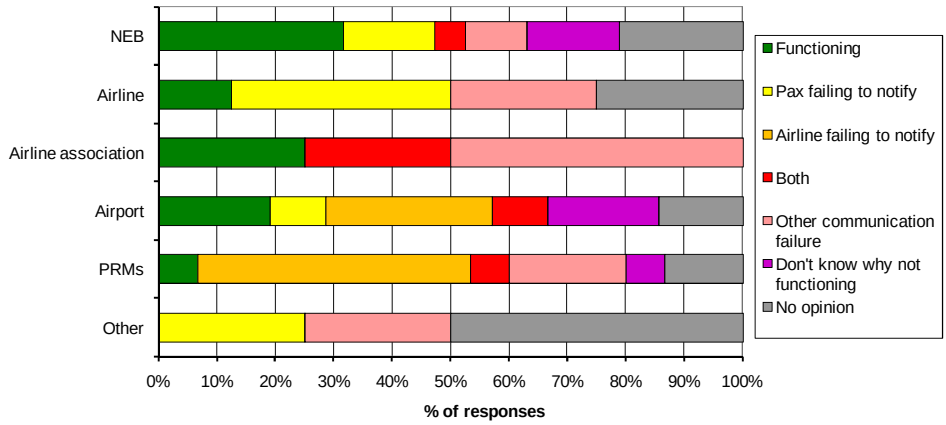
Other organisations

4.97 Key issues raised by other organisations were the application by some carriers of limits on the numbers of PRMs that could be carried, and that these limits could be further reduced based solely on arbitrary decisions by pilots. In addition, ECAC felt that information should be simplified for passengers with learning disabilities. However, ECTAA highlighted the improvements which airlines, tour operators and travel agents had made to their websites and booking procedures to enhance PRM travel.

Stakeholder views on effectiveness of pre-notification systems

4.98 Figure 4.4 shows stakeholder views on the effectiveness of the pre-notification system and reasons cited for low rates of notification. Most stakeholders believed that this system was not functioning well, although the explanations cited by each stakeholder group vary.

FIGURE 4.4 STAKEHOLDER VIEWS: PRE-NOTIFICATION



4.99 The NEBs were generally the most optimistic about how the pre-notification system was working, with fewer than half identifying problems. Where they did express a view on the cause of pre-notification issues it was most commonly that the passenger was the cause. The Irish NEB suggested that awareness of the Regulation and the need to pre-notify to receive assistance was low amongst PRMs who were not members of representative groups. Most of the PRM groups felt that the airlines were the primary cause of problems with the pre-notification system, for a variety of reasons:

- Poor design and accessibility of airline websites makes it difficult for passengers to pre-notify;
- Airlines have been unwilling to make the significant investments required to ensure an effective system; and
- Airlines have been ineffective at transmitting special requests (e.g. dietary needs) between staff and departments.

4.100 The majority of airlines believed that the main issue in terms of pre-notification was that passengers were themselves failing to notify of their assistance needs. Several airlines and airports suggested a possible explanation as being that, although they may not normally consider themselves as being in need of special assistance, some travellers (especially infrequent flyers and the elderly) may find they need this once in the airport and having to walk long distances to reach their flight. Low rates of pre-notification were also attributed partly to abuse of the system, as it was believed that 'genuine' PRMs would usually pre-notify.

4.101 However, the majority of airports stated that the most significant problem was failure by airlines to pass on notifications, or erroneous notifications. Several highlighted the large differences in pre-notification rates between airlines: some airlines are able to achieve high rates of pre-notification (60-80%) whereas others have very low rates

(10% or less). Non-EU airlines were often stated to be worse, with flights from North Africa and India often cited as being particularly problematic, both in terms of the low levels of pre-notification and the high numbers of PRMs on these flights. Aéroports de Paris stated that passengers travelling from some north African airports would be charged for assistance if pre-notifying, even though the European airport provided assistance free of charge. US flights also pose difficulties for airports as US carriers are generally not allowed, under rule 382, to request details of assistance requirements in advance; however, the relative length of these flights means that PSM messages are usually received 7-10 hours in advance of arrival.

4.102 Several airports also indicated that charter carriers had particularly low rates of pre-notification. This was attributed by some carriers to low rates of notification by travel agents – in many cases agents may have an incomplete knowledge of the full range of wheelchair codes, often simply observing that the passenger is using a wheelchair and then allocating the WCHR special assistance code.

4.103 Communication failures were also cited by a number of stakeholders, sometimes a result of the confusion generated by the IATA special assistance codes themselves, particularly unnecessary requests for wheelchairs. Although technological failures may have been a problem when the Regulation was first implemented, these did not emerge as a significant current issue.

Conclusions

4.104 The main obligation that the Regulation places on carriers is that it prohibits refusal of carriage of PRMs, unless this is necessary to meet national or international safety rules or requirements imposed by the carrier's licensing authority, or is physically impossible due to the size of the aircraft or its doors. We found that most carriers comply with this, although some make carriage of PRMs conditional on advance notification, which does not appear to be consistent with the Regulation. In addition, a small number of carriers impose requirements for medical clearance which appear to be excessively onerous.

4.105 There are significant differences in policies relating to carriage of PRMs between carriers – even between carriers with similar aircraft types and operational models. The most significant difference is that some carriers impose a numerical limit on the number of PRMs that can be carried on a given aircraft. These can be quite low: some carriers have limits of 2-4 PRMs on a standard single-aisle aircraft such as an Airbus 319. In most cases, these requirements are defined in carriers' Flight Operations Manuals, which have to be approved by the relevant licensing authority; often, although not always, this is the same organisation that has been designated as the NEB. In some cases the PRM limits are required by the licensing authority, but in most cases, they are proposed by the carrier and approved by the authority. Whilst the rationale for these limits is safety, there does not seem to be an evidence base for them, and they are specifically prohibited by the equivalent US regulation on carriage of PRMs (14 CFR part 382).

4.106 The Regulation also allows carriers to require that PRMs be accompanied, subject to the same safety-based criteria. We found that a number of carriers require PRMs to be accompanied where they are not 'self-reliant', which can mean that the PRM cannot (for example) eat unaided. In our view this may be an infringement of the Regulation because there is no direct link to safety; for those carriers that fly to the US, it is also an explicit breach of the US PRM rules. Other carriers require PRMs to be accompanied where they are not self-reliant **and** this has a safety impact (for example, if the PRM could not exit the aircraft unaided in an emergency); this is consistent with the Regulation.

4.107 The Regulation also requires carriers to publish safety rules relating to the carriage of PRMs, although it does not specifically state what issues these safety rules should cover. We found that carriers all published some PRM-related information but in some cases there appeared to be significant omissions from this information.

4.108 Annex II of the Regulation sets out various requirements for services which have to be provided to PRMs by carriers. Evidence for the extent to which this is provided is limited, and restricts a fair assessment of compliance with these requirements. There is however sufficient evidence to conclude that the vast majority of case study airlines are complying with the requirement to carry up to two items of mobility equipment free of charge. Some PRM representative groups were critical of the effectiveness of airlines in implementing the Regulation, and we were informed of some particularly bad passenger experiences, but it is difficult to assess how common such occurrences are.

5. ENFORCEMENT AND COMPLAINT HANDLING BY NEBS

Introduction

5.1 This section summarises the complaint handling and enforcement process undertaken by National Enforcement Bodies (NEBs). We set out the following information:

- an overview of the NEBs, describing the types of organisations they are and the resources they have available;
- the legal basis for complaint handling and enforcement in each State;
- statistics for the number of complaints received, the nature of the complaints, and the outcomes, and for sanctions that have been issued;
- the typical process for complaint handling and enforcement in each State, and outline a number of common issues and difficulties;
- a summary of the activities of NEBs to monitor the implementation of the Regulation; and
- an overview of other activities undertaken by NEBs in relation to the Regulation, such as interactions with other stakeholders and promotional activity.

5.2 Most of the information within this section is provided for the NEBs in all Member States. The detailed information relating to the complaint handling and enforcement process, and to monitoring and other activities undertaken by the NEB, has been collected for the case study States only. Further detail on complaint handling and enforcement in the 16 case study States is provided in the case studies, in Appendix C.

Requirements of the Regulation relating to States and NEBs

5.3 The Regulation requires each Member State to designate a National Enforcement Body (NEB) responsible for the enforcement of the Regulation regarding flights departing from or arriving at airports within its territory, and to inform the Commission of this designation. This body is required to ensure that the rights of PRMs are respected, and in particular that the quality standards defined by Article 9(1) (see 3.53) are respected. It must also ensure that the provisions of Article 8 are respected. More than one body may be designated. To allow NEBs to enforce the Regulation, Member States must set out penalties for infringements of the Regulation, which must be effective, proportionate and dissuasive.

5.4 These bodies must also accept complaints from PRMs where they are dissatisfied with the service they have received under the Regulation and have been unable to obtain satisfaction by complaining directly to the service provider. If a body receives a complaint for which a body in another State is competent, it must forward the complaint to the other NEB. Other bodies may be designated specifically for the purpose of receiving complaints.

5.5 Member States should also inform PRMs about their rights under the Regulation, and the possibility of complaint to the bodies above.

Overview of the NEBs

5.6 Most of the NEBs (68%) are Civil Aviation Authorities. The other NEBs are government departments, independent statutory bodies or consumer protection authorities. Some Member States have designated more than one NEB. In these States, the responsibilities of the NEBs are divided in two ways:

- according to which type of organisation the enforcement relates to: in France, there are separate bodies for complaints handling and enforcement relating to airlines and airports, and to tour operators; and
- according to task: in the UK, there are separate NEBs for complaints handling and for enforcement.

5.7 In Belgium, there are three NEBs and an additional body responsible for handling complaints; the case of Belgium is unique, as the Flemish- and French-speaking regions are administered separately. For some of the States, there is a body which acts as the NEB but which has not yet been explicitly designated (see 5.13).

5.8 No States have designated a separate body for the enforcement of Article 8.

5.9 Table 5.1 lists the NEBs, the nature of the organisation, and where there is more than one NEB in a State, the role of each organisation. The table is divided into case study and non-case study States.

TABLE 5.1 ENFORCEMENT BODIES

State	Enforcement Body	Nature of organisation	Role
Belgium	Belgian CAA	CAA	Enforcement and sanctions
	Departement Mobiliteit en Openbare Werken	Regional government department	Enforcement and sanctions
	Service public de Wallonie, direction générale opérationnelle de la mobilité et des voies hydrauliques	Regional government department	Enforcement and sanctions
	Passenger Rights Department of Federal Public Service of Mobility and Transport	Federal government department	Complaints handling
Denmark	Statens Luftfartsvæsen (SLV)	CAA	-
France	Direction Générale de l'Aviation Civile (DGAC)	CAA	Airlines and airports
	Ministry of Economy, Industry and Labour, Division on Competition, Industry and Services	Government department	Tour operators
Germany	Luftfahrts-Bundesamt (LBA)	CAA	-
Greece	Hellenic Civil Aviation Authority (HCAA): Airports Division	CAA	Airports
	Hellenic Civil Aviation Authority (HCAA): Air Transport Economics	CAA	Airlines and tour operators

Hungary	Equal Treatment Authority (ETA)	Independent statutory body	Complaint handling, enforcement relating to PRM complaints
	National Transport Authority Directorate for Aviation (NTA)	CAA	Other enforcement
Ireland	Commission for Aviation Regulation	Independent economic regulator	-
Italy	Ente Nazionale Aviazione Civile (ENAC)	CAA	-
Latvia	CAA, Aircraft Operations Division	CAA	-
Netherlands	Transport and Water Management Inspectorate (IVW)	CAA	-
Poland	Civil Aviation Office (CAO) Commission on Passengers' Rights	CAA	-
Portugal	National Institute for Civil Aviation (INAC)	CAA	-
Romania	Autoritatea Naţională pentru Persoanele cu Handicap (ANPH)	Independent statutory body	All Articles except 8
	Autoritatea Areonautică Civilă Română (AACR)	CAA	Article 8
Spain	Agencia Estatal de Seguridad Aérea (AESA)	CAA	-
Sweden	Swedish Transport Agency, Civil Aviation Department	CAA	-
UK	CAA	CAA	Enforcement
	EHRC	Independent statutory body	Complaints handling in UK except Northern Ireland
	CCNI	Consumer protection authority	Complaints handling in Northern Ireland
Austria	Federal Ministry of Transport, Innovation and Technology	CAA	-
Bulgaria	CAA	CAA	-
Cyprus	Department of Civil Aviation	CAA	-
Czech Republic	Civil Aviation Authority	CAA	-
Estonia	Consumer Protection Board	Consumer protection authority	-
Finland	Finnish Transport Safety Agency	CAA	-
Lithuania	Civil Aviation Administration	CAA	-
Luxembourg	Direction de l'Aviation Civile	CAA	-
Malta	Civil Aviation Directorate	CAA	-
Slovak Republic	Slovak Trade Inspectorate	Consumer protection authority	Consumer protection
	Civil Aviation Authority	CAA	Safety aspects
	Ministry of Transport, Post and	Government	Implementation, including airline

	Telecommunications	department	conditions of carriage and aspects of airport operations
Slovenia	Civil Aviation Directorate	CAA	-

5.10 Most of the bodies designated as NEBs under Regulation 1107/2006 are also designated as NEBs under Regulation 261/2004. The States which have different NEBs are shown in Table 5.2.

TABLE 5.2 STATES WHERE NEBS ARE DIFFERENT UNDER REGULATIONS 1107/2006 AND 261/2004

State	NEB(s) under Regulation 1107/2006	NEB(s) under Regulation 261/2004
Finland	Finnish Transport Safety Agency	Consumer Ombudsman & Agency
		Consumer Disputes Board
		Finnish Civil Aviation Authority
Hungary	Equal Treatment Authority (ETA)	Hungarian Authority for Consumer Protection
	National Transport Authority Directorate for Aviation (NTA)	National Transport Authority Directorate for Aviation
Latvia	CAA, Aircraft Operations Division	Consumer Rights Protection Centre
Romania	Autoritatea Naţională pentru Persoanele cu Handicap (ANPH)	National Authority for Consumer Protection
	Autoritatea Areonautică Civilă Română (AACR)	
Slovak Republic	Slovak Trade Inspectorate	Slovak Trade Inspectorate
	Civil Aviation Authority	
	Ministry of Transport, Post and Telecommunications	
Sweden	Swedish Transport Agency, Civil Aviation Department	Konsumentverket
		Allmänna reklamationsnämndens
UK	CAA	CAA
	EHRC	Air Transport Users Council
	CCNI	

5.11 Only BCAA is shown as a notified NEB for Belgium in the list published by the Commission. As a result, we were not made aware of the existence of the other Belgian NEBs until our interview with BCAA, and therefore did not seek responses from them; in addition, at the time of our research for this project, BCAA had not held meetings with the other regional departments. For these reasons, we therefore have only limited information on their operations, and the data relating to Belgian NEBs in this report refers only to BCAA.

Separation of regulation from service provision

5.12 There is no requirement in the Regulation that the NEB be independent from service providers. However, in our view, it is inappropriate for the NEB also to be a service provider, as it would be difficult for it to act independently in undertaking

enforcement in relation to an infringement that it was itself committing. The only case we have identified where an NEB is also a service provider is the Greek NEB, HCAA, which is also the operator of the regional airports in Greece. This is a significant issue because, as identified in section 4 above, the most significant failure to implement the Regulation that we have identified is that it has not been implemented at the HCAA airports.

Legal basis for complaint handling and enforcement

5.13 Most Member States have complied with the obligations set out in Articles 14 and 16 to designate an NEB and introduce sanctions into national law, with the exception of:

- **Poland:** No sanctions have yet been introduced; a proposed amendment which includes fines is before the Polish parliament, but has not yet been passed.
- **Slovenia:** As yet no body has been designated, and no sanctions have been introduced.
- **Spain:** Enforcement relies on a law which predates the Regulation and hence does not refer explicitly to it. As a result, sanctions for infringements of Regulation 261/2004 (which have an equivalent legal basis) have been challenged by airlines. In most cases, the courts have upheld the right of the NEB to impose sanctions, but cases have not as yet reached the Supreme Court, and in one case a court has ruled that the NEB was not competent to impose sanctions. This is discussed in detail in the case study for Spain (appendix C).
- **Sweden:** No sanctions have yet been introduced; a proposed amendment which includes fines is before the Swedish parliament, but has not yet been passed. The proposed amendment does not define the levels of fines.

5.14 There are a number of States where sanctions have not been introduced for all potential infringements of the Regulation:

- Bulgaria, which does not define penalties for Article 8;
- Estonia, where sanctions have only been introduced for carriers;
- Luxembourg, which only defines explicit fines for Article 4; and
- Romania, where the law defining responsibilities makes the CAA responsible for enforcing compliance with Article 8, but does not endow it with the powers to do so.

5.15 In several Member States, enforcement is dependent on more than one law; for example, the law defining how the NEB must operate and the procedure for imposing sanctions may differ from the law introducing sanctions. There may also be other laws – typically defining rights to equal treatment – which may apply at the same time as the Regulation. Table 5.3 below summarises the relevant legislation in the case study States. More detailed information is provided in the case studies in Appendix C.

TABLE 5.3 RELEVANT NATIONAL LEGISLATION

State	Summary of relevant legislation
Belgium	• Articles 32 and 45-52 of Law of 27 June 1937
Denmark	• Air Navigation Act, Articles 149(11) and 149a define sanctions

France	• Article 330-20 of the Civil Aviation Code, as amended by Decree 2008-1445 of 22 December 2008: gives the Minister of Civil Aviation the power to impose sanctions
Germany	• Air Traffic Licensing Regulation (Luftverkehrszulassungsordnung): defines LBA as the NEB and that breaches of the Regulation are considered an offence. • Air Traffic Law (Luftverkehrsgesetz): defines that breach of EU Regulations relating to air traffic is an offence, and defines the fines applying. • Law on Administrative Offences (Gesetz über Ordnungswidrigkeiten): defines the administrative process that must be followed in order to impose sanctions.
Greece	• Letter of 1 December 2006 (reference 6310/A/10909) from Permanent Representation of Greece to Commission designates NEB; National Aviation Law 1815/1988 sets out fines
Hungary	• Act CXXV of 2003 defines role and sanctions of ETA • Act CXXX of 2003, and Article 4 (2) of Government Decree No 362/2004 define complaints handling procedure • Act XCVII of 1995 on Air Traffic, implemented by Government Decree No. 141/1995 defines role and sanctions of NTA • Ministerial Order 97/2005 makes NTA responsible for approving airport charges • Act CXL of 2004 defines procedure for imposing fines and sets out administrative penalties
Ireland	• Section 45(a) of the Aviation Regulation Act 2001 as inserted by the Aviation Act 2006: defines basis for enforcement and sanctions • Statutory Instrument SI 299/2008: transposes the Regulation into law
Italy	• Legislative Decree 24/2009 of 24 February 2009: defines process to be followed by ENAC and fines that can be imposed
Latvia	• Air Navigation Order (2007): designates NEB • Administrative Violations Code: defines fines
Netherlands	• Resolution to set up the Transport and Water Management Inspectorate (Instellingsbesluit Inspectie Verkeer en Waterstaat), Article 2, paragraph 1, item d: sets up the NEB • Civil Aviation Act (Wet luchtvaart), revised December 2009, Article 11.15, section b, item 1 and Article 11.16, paragraph 1.e.3: defines circumstance under which sanctions may be imposed • General Administrative Law Act (Algemene wet bestuursrecht), chapter 4 (process to impose sanctions) and chapter 5 (level of fines).
Poland	• Aviation Act (Article 21.2(3)): designates NEB • Administrative Procedure Code: defines procedures to be followed • No sanctions yet defined - draft amendment to Aviation Act (Articles 205a, 205b, 209a, 209b) will set out fines
Portugal	• Decree Law 241/2008: designates NEB and defines level of fines which can be imposed for each infringement • Decree Law 10/2004: defines standard scale of fines
Romania	• Decree 27/2002: requires all government bodies to be able to receive complaints • Decision 787/2007: defines penalties (except for Article 8) • Decree 2/2001 (approved and modified by Law 180/2002): defines framework for imposing penalties
Spain	• Royal Decree 184/2008: designates NEB • Aviation Security Law (Law 21/2003): basis for enforcement and sanctions • Royal Decree 28/2009: defines inspection regime • Law on Public Administrations and Administrative Procedures (Law 30/1992): defines operational procedures for the NEB

	• Regulation on Procedures for the Imposition of Sanctions (Royal Decree 1398/1993): defines process for imposing sanctions
Sweden	• Förordning (1994:1808) om behöriga myndigheter på den civilia luftfartens område (ordinance on competent authorities in civil aviation): designates the NEB • No sanctions yet defined, but some are set out in a proposed amendment Regeringens proposition 2009/10:95- Luftfartens lagar • Prohibition of Discrimination Act may also apply in some circumstances (e.g. infringements of Articles 3 and 4)
UK	• Statutory Instrument 2007/1895: designates NEBs, defines penalties and introduces a right to compensation for injury to feelings resulting from an infringement • Enterprise Act 2002: defines civil powers for NEB, including power to apply for an injunction ('stop now order') and power to seek binding undertakings
Austria	• Austrian Civil Aviation Law
Bulgaria	• Civil Aviation Act, Art. 81a
Cyprus	• Civil Aviation Act N 213(I)/2002
Czech Republic	• Civil Aviation Act (No 49/1997), § 93 Articles 7 (a) - (l) and 8 • Administrative Code (No 500/2004)
Estonia	• Consumer Protection Act • Aviation Act §58 and §60
Finland	• Finnish Aviation Act (1194/2009) - Section 157 (Conditional fines and conditional orders of execution) • Conditional Fine Act (1113/1990)
Lithuania	• Paragraph 2 of Article 70 of the Act of Aviation No. VIII-2066 (O.J. 2000, No. 94-2918; 2007, No. 59-2279): designates CAA as NEB • Code of Administrative Violations, Article 115: defines penalties
Luxembourg	• Law of 31st January 1948, art 43, modified by the law of June 5, 2009, Article 1 (19)
Malta	• Civil Aviation (rights of Disabled Persons and Persons with Reduced Mobility) Regulations (LN234/07) as amended by (LN 411/07)
Slovak Republic	• Act No 128/2002 (State Inspections Act): defines powers of NEB to conduct inspections, impose preventative measures, and impose sanctions • Act No 250/2007 on Consumer Protection: provides legal framework for NEB's consumer protection activities
Slovenia	• Not yet implemented

Sanctions allowed in national law

5.16 There are significant differences between the States in the maximum sanctions for infringements of the Regulation that can be imposed under national law (Table 5.4). The highest defined maximum sanctions are in Spain (€4.5 million) but in Denmark, Finland, Netherlands and the UK unlimited fines can be imposed, and in Cyprus the maximum fine is 10% of the turnover of the carrier. In Austria, Belgium and Denmark sanctions may also include a prison sentence.

5.17 However, in many States, sanctions are low, and in some States maximum sanctions are close to or below the costs that a service provider may in some circumstances avoid through non-compliance with the Regulation. In these States, it is possible that the sanctions regime may not comply with the requirement in Article 16 for dissuasive

sanctions to be introduced by Member States; however, without data on the costs of compliance we are unable to assess this. Maximum sanctions are particularly low (less than €1,000) in Estonia, Lithuania and Romania.

5.18 In most States, fines are determined by the NEB, taking into account various factors relating to the case, including the circumstances and conditions of the case, any reasons given for non-compliance, its impact on the passenger and the size of the company. In some States, fines may be imposed which relate directly to the financial impact of the alleged infringement:

- in Germany, additional fines may be imposed to recover any financial gains to the service provider which resulted from its non-compliance; and
- in the Netherlands, reparatory fines can be imposed, which require the service provider to make good any financial loss incurred by the passenger.

TABLE 5.4 MAXIMUM FINES

State	Maximum sanction (€)	Explanation/notes
Belgium	€4,000,000 (criminal and administrative)	In addition up to 1 year's imprisonment if a criminal prosecution
Denmark	Unlimited fine	In addition up to 4 months' imprisonment
France	€7,500	Maximum sanction 'per failing', which is not defined. Can be imposed on a per-passenger basis to give a higher total sanction. Can be doubled if repeated within a year.
Germany	€25,000	Additional fines can be imposed to recover the economic advantage that the carrier has obtained from infringement
Greece	€250,000	Minimum sanction is €500. Fines are generic, and do not refer specifically to the Regulation
Hungary	€22,600 (ETA) €11,300 (NTA)	Minimum sanction €189 for ETA. In addition penalty of up to €3,774 for failure to cooperate with an investigation.
Ireland	€150,000	Maximum €5,000 if the case is heard in a District Court. Fines only applicable on failure to comply with a Direction.
Italy	€120,000	Maximum depends on Article infringed and reduced by two thirds if paid within 60 days. Minimum fines of €2,500-€30,000.
Latvia	€2,800	Fine can be applied per passenger that complains. Law makes no direct reference to the Regulation, and it is possible that penalties could be open to legal challenge.
Netherlands	Reparatory fines: unlimited Punitive fines: €74,000	Reparatory fines should be in proportion to the amount of loss and to the severity of the violation. Punitive fines are per infringement and are not multiplied by number of passengers affected. IVW are conducting a study which will define policy on punitive fines.
Poland	Not yet defined, but proposed to be €1,875	Fines vary depending on Article infringed. Fines are variable for infringements of some Articles, but otherwise are fixed. Fines are cumulative per Article and per passenger that complains, so maximum could be a multiple of this. Minimum fines €47-€1,875.
Portugal	€250,000	The maximum and minimum fines depend on the infringement ('light', 'serious' or 'very serious'), the size of the

		company, and whether the infringement was intentional or negligent. Minimum fine €350-4,500.
Romania	€608	Maximum depends on Article infringed. Per Article breached and per passenger. No penalties available for Article 8. Minimum fines €195-€243.
Spain	€4,500,000	For most infringements maximum would be €4,500
Sweden	Not yet defined	Proposed amendment does not define levels of fines
UK	Unlimited fine	Maximum fines depend on Article breached; for many Articles the maximum fine is €5,600. Unlimited fines must be imposed by Crown Court, for serious cases.
Austria	€22,000	In addition up to 6 weeks' imprisonment
Bulgaria	€5,100	No penalties available for Article 8. Minimum fines €1,020.
Cyprus	€8,000 or 10% of operators turnover	-
Czech Republic	€192,000	-
Estonia	€640	Only applies to carriers
Finland	Unlimited fine	Fines are conditional on the period of time during which a condition is unfulfilled, and should be in proportion to company's size, amongst other factors
Lithuania	€870	Minimum sanction €290. Per case, not per passenger.
Luxembourg	€10,000	Fine of €10,000 for violation of Article 4, of €5,000 for failure to provide information, but no other sanctions given.
Malta	€2,300	Criminal procedure
Slovak Republic	€66,000	Depending on number of passengers affected and whether it is repeated
Slovenia	Not yet defined	-

Statistics for complaint handling and enforcement

5.19 Most NEBs had received very few complaints in relation to the Regulation. Of the 27 NEBs, 8 had received no complaints, and 26 had received less than 50. 80% of all complaints to NEBs had been received by the UK NEBs. Although, the UK has the largest aviation market in Europe, and therefore would be expected to receive a higher number of complaints, in 2009 it received over ten times as many complaints as Germany or Spain, the next largest markets. This may be a result of the right in the UK to claim compensation for infringements of the Regulation, discussed below.

5.20 Of those NEBs that had received complaints, most were not able to give a breakdown. Table 5.5 therefore gives a brief description of the types of complaints received.

TABLE 5.5 COMPLAINTS RECEIVED

State	2009	Total	Description/notes
Belgium	1	1	Poor quality of assistance
Denmark	0	0	-
France	5	24	Transport of insulin and other liquids; denied boarding and requirements to be accompanied; damage to mobility equipment
Germany	22	34	Assistance by the carrier (55%), at the airport (18%), refusal of reservation (14%), denial of boarding (14%)
Greece	3	4	Denial of boarding; carriage of oxygen; handling of passengers
Hungary	0	1	Denial of boarding
Ireland	14	18	Conditions imposed on travel e.g. seating or carriage of oxygen.
Italy	36	40	48% refusal to embark PRMs; most of remainder lack of assistance at airports
Latvia	0	0	-
Netherlands	5	6	IVW was only competent for 1 complaint
Poland	2	2	Both related to airports outside Poland
Portugal	16	34	Not provided
Romania	0	0	-
Spain	35	46	Not provided
Sweden	3	5	Denied boarding, assistance dog policy
UK	356	883	Allocation of appropriate seating; timely provision of assistance on landing; and communicating requests for assistance on arrival at the airport.
Austria	1	2	Treatment of injured passengers
Bulgaria	0	0	Denied boarding
Cyprus	1	3	Not provided
Czech Republic	0	0	-
Estonia	0	0	-
Finland	3	4	Seating, oxygen, movement within cabin
Lithuania	0	0	-
Luxembourg	0	1	Boarding denied to deaf passengers
Malta	1	1	Carriage of guide dogs
Slovak Republic	0	0	-
Slovenia	0	1	Denied boarding
Total	499	1110	

5.21 In addition, NEBs in several States had received questions which were not complaints, regarding, for example, airline seating policy.

Sanctions applied

5.22 At the time the interviews for this study were conducted, no sanctions had yet been applied for infringements of the Regulation. At the time of drafting this report, three States were in the process of applying sanctions:

- France had opened proceedings to impose fines in one case;
- Portugal had opened proceedings to impose fines in two cases; and
- Spain had opened proceedings to impose fines in five cases.

5.23 Two other States had taken other actions to encourage compliance:

- Hungary wrote to an airline requiring it to correct its policy, and published this letter; and
- the UK has threatened several organisations with sanctions, and has taken other actions to encourage compliance, including writing to airlines, and setting out its requirements for compliance.

The complaint handling and enforcement process

Overview of the process

5.24 The complaint handling process is broadly similar in each NEB, however, since most NEBs receive very few complaints, the process for handling them is often not defined in detail. A typical process is as follows:

- complaints are recorded (since the number of complaints is frequently very low, this may be in a spreadsheet or a filing system rather than in a database);
- most undertake an initial filter of the complaints, to remove those that are not related to the Regulation, where the passenger has not first sought redress from the service provider, or where there is no *prima facie* case of an infringement;
- complaints relating to flights departing from other States are forwarded to the NEB of the State which is competent to handle the complaint;
- the complaint is investigated through contacting service providers to request information and/or justification for their actions; and
- a decision is made on the complaint.

5.25 The complaint handling process is different for complaints submitted to one of the UK NEBs (see box below). Otherwise, the main differences between the processes in different Member States are in the following areas, which are discussed in more detail below:

- the nature of the ruling or decision issued to the passenger, in particular whether the ruling is binding;
- under what circumstances the investigation of the complaint may lead to sanctions; and
- the process by which sanctions may be imposed and collected.

Complaint handling in the UK (excluding Northern Ireland) by EHRC

The legislation implementing penalties for infringements of the Regulation in the UK also grants a right to compensation for injury to feelings resulting from an infringement. This is in line with UK disability rights legislation in other sectors. As a result of this, the process for complaint handling is structured around conciliation, with a possible civil claim for compensation if conciliation fails. In other States there is no right to compensation and therefore no reason to offer conciliation proceedings.

The EHRC handles complaints relating to incidents which occurred in the UK excluding Northern Ireland. When a complaint is submitted to the EHRC and an initial evaluation shows it to be potentially valid, a letter is sent to the service provider which summarises the complaint and requests comments. This letter also explains the conciliation process, and asks if the service provider would be willing to participate. The responses are evaluated to see whether they appear to justify the actions of the service provider, but there is no technical or operational investigation, for example, to establish whether any claims made by a service provider are true.

If the complaint remains unresolved, the EHRC will consider referring the case for conciliation. If both parties agree, conciliation is provided independently, and may result in a voluntarily binding agreement on both parties. This agreement may include financial compensation, or may include non-financial reparations such as an apology.

If a service provider does not wish to participate in conciliation, the EHRC may suggest to the passenger that they initiate legal proceedings, which may result in payment of compensation. The EHRC may also consider offering litigation support for cases where it believes that the outcome could help clarify the application of the Regulation.

Complaints related to incidents occurring in Northern Ireland are handled by CCNI. This follows a procedure similar to most other NEBs, including an investigation of the facts of the case, but if this procedure fails to resolve the complaint to the passenger's satisfaction, the passenger can seek financial compensation under UK national law.

Languages in which complaints can be handled

5.26 Most NEBs are able to handle and reply to complaints written in the national language and English, but in many cases NEBs were not able to handle complaints in other Community languages. The languages in which NEBs can receive complaints, and respond to passengers, are shown below.

TABLE 5.6 LANGUAGES IN WHICH COMPLAINTS ARE HANDLED

State	Languages in which complaints may be written	Languages in which the NEB will reply to the passenger
Belgium	Flemish, French, English	Flemish, French, English
Denmark	Danish, English, German	Danish, English
France	French, English, Spanish	French only
Germany	German, English	German, English
Greece	Greek, English, French, German, Spanish, Italian	Greek, English
Hungary	Hungarian, English, German, Italian, other languages where possible	Hungarian, English, German, Italian
Ireland	English, French, German, Spanish, Italian	English, Spanish
Italy	Italian, English, French, Spanish, German	Italian, English, French, Spanish

Latvia	Information not provided at interview	Information not provided at interview
Netherlands	Dutch, English; sometimes also French and German	Dutch, English; sometimes also French and German
Poland	Polish, English, German, French	Polish, informal translation to English provided
Portugal	Portuguese, Spanish, English and French	Portuguese, Spanish, English and French
Romania	Romanian, English	Romanian, English
Spain	Spanish, English	Spanish, English
Sweden	Swedish, English	Swedish, English
UK	English, but would make arrangements to handle any other languages	English, but would make arrangements to handle any other languages

Time taken

5.27 Many NEBs informed us that they had received too few complaints to be able to draw conclusions on the average time taken to handle them (see Table 5.7 below). Several other States had received very few complaints, but had a legal limit on time to respond set by national law. Of those that were able to estimate the actual time taken to resolve complaints, most reported wide variation: for example, Italy reported variation between 1 and 6 months. The longest time taken to resolve complaints was reported in the UK, where complaints may take up to 6 months, and there are instances where complaints have taken longer than this to resolve; as a result the passenger has no longer been able to claim for compensation under UK national law (see 5.25).

TABLE 5.7 TIME TAKEN TO RESOLVE COMPLAINTS

State	Average time taken	Explanation/Notes
Belgium	Too few complaints to estimate time	
Denmark	Too few complaints to estimate time	No complaints yet received, but in principle 2-3 months
France	Varies significantly	If the case goes to CAAC, it will take longer. Overall, durations are similar to under Regulation 261/2004
Germany	Too few complaints to estimate time	Complaints are handled faster than for Regulation 261/2004, which take 3-4 months
Greece	30 days	Response time is set by law and is generic across all complaints to HCAA
Hungary	75 days	Response time is set by law and is generic across all complaints to ETA
Ireland	3-4 months	Awaiting responses (from service providers or Commission) lengthens the average time taken, so many cases handled quicker than this
Italy	30 days to 6 months	Depends on investigation required and response of service provider
Latvia	Too few complaints to estimate time	
Netherlands	Too few complaints to estimate time	Same procedure as for Regulation 261/2004: in principle 3-6 months
Poland	Too few complaints to estimate time	Likely to be quicker than for Regulation 261/2004
Portugal	Too few complaints to estimate time	May be faster than for Regulation 261/2004

Romania	30 days	Time limit set by law
Spain	Too few complaints to estimate time	Always less than six months, and delay is due to service providers. Shorter than equivalent complaints under Regulation 261/2004.
Sweden	At most 6 weeks	This is a non-binding target for the CAA; little information at present on how well this has been met.
UK	EHRC: Up to 6 months, can take longer CCNI: Up to 6 weeks	EHRC: Wide variation in time taken. Process is driven by 6 month time limit for court cases for compensation under SI. CCNI: Wide variation in time taken.

Responses issued to passengers

5.28 All of the NEBs in the case study States provide PRMs who complain with an individual response. As there is no right to compensation, the extent to which an NEB can offer assistance to obtain redress is limited; most responses state a decision on whether the NEB considers the Regulation to have been infringed, but do not state whether any payment should be made to the PRM, for example for loss due to denied boarding. The UK is an exception, for the reasons given in above. Most responses from NEBs do not have specific legal status, however in Hungary the response is legally binding, and in the Netherlands non-compliance with a decision may lead to a fine.

5.29 Almost all States would undertake some form of investigation of a complaint. The exception to this is the UK (excluding Northern Ireland), where the body responsible for handling complaints does not take an investigative role, although the CAA does investigate the facts of a proportion of cases. As discussed above, the UK process is structured around claims for compensation and the NEB sees its role as to facilitate conciliation, where the service provider is incentivised to voluntarily provide some form of compensation, or risk having a court award compensation against it.

5.30 Table 5.8 summarises the responses issued to the passenger.

TABLE 5.8 RESPONSES ISSUED TO PASSENGERS

State	Nature of response issued
Belgium	Individual non-binding evaluation sent to both service provider and passenger
Denmark	Non-binding individual evaluation provided to PRM and service provider
France	Individual response provided by DGAC summarising the conclusions of the investigation and its opinion on the case
Germany	Individual response giving the result of the investigation and their conclusions
Greece	Individual response giving the result of the investigation and their conclusions
Hungary	ETA issues legally binding decision to both passenger and service provider
Ireland	CAR writes to each passenger to summarise conclusions and whether incident was an infringement of the Regulation
Italy	ENAC writes to each complainant to inform them of its conclusions
Latvia	No specific procedures established, but passengers would be issued with an official letter communicating the final decision

Netherlands	Formal decision issued to both passenger and carrier. Not legally binding, but non-compliance may lead to a fine.
Poland	Formal decision issued to both passenger and carrier
Portugal	Individual response summarising correspondence with service provider and reasons for decision.
Romania	Individual response is sent to the passenger, setting out any infringements of the Regulation and any corrective measures taken by ANPH
Spain	Individual response, including response from carrier and AESA's view on it, and information on how passenger can obtain redress
Sweden	Individual non-binding response summarising correspondence with service provider and reasons for decision.
UK	EHRC: Does not investigate complaints, and therefore does not have standard format for output. Conciliation process may result in form agreeing actions to be taken. CCNI: Individual opinion letter sent to passengers.

Circumstances in which sanctions may be imposed

5.31 There are also significant differences between the States as to whether and when sanctions are imposed.

5.32 Some NEBs, including one of the Hungarian NEBs, Italy, Portugal, and Romania, always impose sanctions in the case that an infringement is found, even if it is a minor or technical infringement which does not significantly inconvenience passengers. If the amendments to the Aviation Act are passed in their current form, the Polish NEB will in future apply fines for every infringement. The German NEB must also take some action whenever an infringement is identified, although it has discretion to choose between a warning letter and a fine. If it chooses a fine, this has to be proven to the same standard of evidence required for criminal cases, and the NEB is therefore unlikely to impose sanctions if the infringement is 'not significant'.

5.33 In other States, the policy is to impose sanctions far less frequently:

- In two States (Belgium and Greece), a sanction would only be imposed where a service provider fails to take corrective action when required to do so by the NEB. In Ireland, this is the case for infringements of some Articles. In Spain, this is the general policy of the NEB but it could in theory impose sanctions without first warning the service provider.
- Several States have a policy of imposing sanctions where there is evidence of serious or systematic infringements, including Denmark, and the Netherlands.
- The UK will consider prosecution of a service provider where it fails to comply with CAA requests for corrective action, or for wilful non-compliance. Any case to be taken to prosecution must proven to a criminal standard of evidence, despite the due diligence defence available in UK law. The UK NEB believed that this would less difficult than under Regulation 261/2004, as Regulation 1107/2006 is more prescriptive.

5.34 The policies of the case study States on imposition of sanctions are shown in Table 5.9 below.

TABLE 5.9 POLICY ON IMPOSITION OF SANCTIONS

State	Policy on imposition of sanctions	Explanation/Notes
Belgium	Applied for serious or systematic violations (allows opportunity for corrective action first). Public prosecutor decides whether to bring criminal case; if not, BCAA may then decide whether to impose administrative sanctions.	If prosecutor brings criminal case, BCAA may not impose administrative sanctions
Denmark	Applied for serious or systematic offenses; minor offences would receive a caution, which would not be made public	
France	In consultation with CAAC. Ultimate decision made by the Minister responsible for Civil Aviation on the advice of CAAC.	Cases would only be considered by CAAC if referred by DGAC
Germany	If a complaint is upheld, imposes warning letter or sanction; LBA has flexibility to decide which	Procedure is a mix between administrative and criminal procedures: level of proof required is equivalent to a criminal case but case is decided by LBA
Greece	First send a letter of caution; if service provider infringes again, then impose penalty.	
Hungary	Choice of actions (including fines and non-pecuniary measures) which may be applied by ETA, depending on nature of case. NTA has same choice of actions but must take some form of action. Fines also imposed for non-cooperation with cases.	Fines for non co-operation can be imposed even where there was no infringement found
Ireland	CAR would consider prosecuting if a service provider did not comply with a Direction, or if it identified a breach of Articles 3 or 6 (2)	CAR can consider issuing a Direction if issue identified during an inspection, or if a service provider does not rectify a case when required to do so
Italy	Applied in every case of an infringement, identified either by investigation of complaint or inspection	Amount of fine considers facts of the case. Appeals and collection process can be lengthy, up to 7 years
Latvia	At discretion of NEB	More specific policies to be developed when Administrative Violations Code amended.
Netherlands	In principle sanctions could be applied for every violation, but IVW policy is to apply them only for severe or repeated infringements	Appeals process includes several stages, and may take in principle up to 2 years
Poland	When in force, will be applied in every case of an infringement	No sanctions yet in place
Portugal	Applied for every confirmed infringement, identified either through complaint or inspection	
Romania	Applied for every confirmed infringement	Amount of fine considers facts of the case. Any sanctions must be imposed through the Social Inspectorate; specific methodology is in development. AACR cannot impose fines for violations of Article 8.
Spain	Whenever an infringement is identified, the service provider receives warning, with a period in which to rectify the issue; if it fails to	

	do so, AESA can impose a sanction.	
Sweden	Sanctions not yet defined	
UK	Applied when service provider fails to comply with CAA requests for corrective action, or for wilful non-compliance	In addition, standard of evidence required for criminal prosecution, and 'due diligence defence' means that it must be proved that senior management of carrier had intended not to comply

Process to impose sanctions

5.35 In most Member States, the process to impose sanctions is an administrative procedure undertaken by the NEB, and the decision to impose sanctions is made by the NEB alone. Service providers, and in some cases also passengers, can appeal to the courts.

5.36 The exceptions to this are the following States:

- In Germany, the procedure is similar to the administrative procedures applying in other States, but the standard of evidence required is equivalent to that in criminal cases.
- In Slovakia, the procedure is also similar to the administrative procedures in other States, but with the key difference that (as for Regulation 261/2004) an on-site inspection is required before a sanction can be issued. A consequence of this is that sanctions cannot be imposed on carriers that are not based in Slovakia.
- In Denmark, Ireland, Malta and the UK[13], sanctions are imposed under criminal law and therefore a criminal prosecution is required.
- In France, cases are referred by the NEB (DGAC) to an administrative commission (the CAAC) that meets twice per year. This makes a recommendation to the Minister of Civil Aviation, who takes the ultimate decision about whether a sanction should be imposed, and the level of any sanction.
- In Belgium, sanctions can be imposed under criminal law but administrative fines to an equivalent level are also available.
- In Austria, administrative fines can be imposed, but in aggravated cases a prison sentence of up to 6 weeks may also be imposed, under criminal law.

5.37 Some States have administrative fines to encourage compliance, which can be applied when a service provider fails to respond within a certain time; these include Hungary and Latvia.

Application of sanctions to carriers based in other Member States

5.38 A number of NEBs face difficulties in applying sanctions to carriers that are not based in their State. This arises because national law either:

- does not permit application of sanctions to carriers not based in the State; or
- requires administrative steps to be taken in order to impose a sanction, which are

[13] Issues regarding the imposition and collection of fines in the UK are discussed in further detail in the Evaluation of Regulation 261/2004, SDG for European Commission, February 2010.

either difficult or impossible to take if the carrier is not based in, or does not have an office in, the State concerned.

5.39 The problem is particularly significant in relation to carriers based in other EU Member States, as opposed to non-EU carriers. In many Member States where sanctions are imposed through an administrative process, national law requires a notification of a sanction, or the process to start imposition of a sanction, to be served at a registered office of the carrier, or on a specific office-holder within the carrier. Non-EU (long haul) carriers will usually have an office in the each of the States to which they operate, and this can be a condition of the bilateral Air Services Agreements which permit their operation; however there are no such requirements on EU carriers, which are free to operate any services within the Union.

5.40 We discussed this issue in detail in our recent report on Regulation 261/2004, and in most cases the issues are equivalent, because the process to impose the sanction is the same. However, since the research for that report was conducted, there have been changes affecting the imposition of fines on non-national carriers in two States:

- **Greece:** Until 2008, the legal process for serving a fine required that a writ was accepted by a representative in Greece of the company being fined. As a result, HCAA faced difficulties in imposing fines on non-national carriers that had not established an office in Greece. To resolve this problem, in May 2008 HCAA adopted a regulation on airline representation, requiring all non-national airlines to have representation agreements with their local representatives. This was withdrawn shortly after it came into force, as the restrictions it imposed violated Regulation 1008/2008 on common rules for the operation of air services in the Community. The difficulties in imposing sanctions on non-national carriers therefore remain.
- **Germany:** German national law requires LBA to prove that the notification of any sanction had been issued to a named person within the carrier; as these carriers often do not have offices or legal representation in Germany, at the time of the research for the study on Regulation 261/2004 it was often not possible to meet this requirement. LBA now believes that this problem has been resolved and expects to test this application within six months.

5.41 The problems with application of sanctions to carriers not based in the Member State are summarised in Table 5.10. Since no fines have yet been imposed for infringements of the Regulation, many of the procedures and issues described below have not been tested in practice. However, often the procedures for imposing fines are equivalent to those for Regulation 261/2004 and therefore where possible we have drawn conclusions on this basis.

TABLE 5.10 ISSUES WITH APPLICATION OF SANCTIONS TO CARRIERS NOT BASED IN THE STATE

State	Whether it is possible to impose sanctions	Explanation/Notes
Belgium	Yes in principle	In principle there are no problems although this has not been tested as yet as no sanctions have been imposed. BCAA believed the best approach would be through cooperation with other NEBs, but the scope of the Regulation could limit this.
Denmark	Yes, although only if the incident occurred on Danish territory	No sanctions have been imposed and therefore this has not been tested. Restriction to Danish territory means that a small proportion of incidents would not be covered, i.e. incidents occurring mid-flight on board a non-Danish carrier which had departed from or was landing at a Danish airport.
France	Yes	Sanctions have been imposed on foreign carriers without any difficulties for other Regulations, so in principle should not be a problem. Notification can be sent by registered mail, and by fax if it is not possible to obtain a receipt from the registered mail.
Germany	Yes in principle	Sanctions must be served on a named person within the airline, which caused problems when issuing fines for Regulation 261/2004. LBA believe this is now resolved, and that it should be sufficient to obtain a signed receipt either by registered mail or by a courier, or issue the sanction through the German embassy in the State concerned
Greece	Uncertain	In summer 2009 national legislation came into force on airline representation, requiring a representation agreement for all non-national airlines. This allowed HCAA to impose financial penalties on all carriers but has now been repealed. The same difficulties in imposing fines on non-national carriers are now present: the legal process of serving a fine requires that a representative of the airline in Greece accept the writ, and there are therefore difficulties in imposing fines on non-national carriers that have not established an office in Greece.
Hungary	No	ETA is only able to handle discrimination cases regarding companies based in the territory of the Republic of Hungary.
Ireland	Yes in principle	Notification of a Direction can be served at the carrier's registered office, which does not have to be within the State. Any proceedings would require proof of incorporation of an airline which could be accepted by the Irish courts.
Italy	Yes but slower / more complex	ENAC would use the process set out in Regulation 1393/2007 to serve notifications on carriers which do not have offices in Italy, but this is likely to be slow/complex. For fines imposed under Regulation 261/2004, this has been short-cut in some cases by the Italian embassy/consulate in the State serving the notification directly.
Latvia	No	The Latvian Administrative Violations Code only allows for sanctions to be imposed on 'legal persons'. This is defined as including foreign individuals but not foreign companies.
Netherlands	Yes	IVW must prove that the company being fined has been notified, for example by proving receipt of the letter setting out the fine. The law states that if IVW can prove it has sent the fine, it is up to the other party to prove it has not received it.
Poland	Yes	Notifications are sent by registered mail or courier to the head office of the carrier – there is no limitation provided a receipt is obtained. A receipt from a courier company is considered sufficient.

Portugal	Yes	No specific constraints on imposing sanctions. Procedure equivalent to that for national carriers.
Romania	No	Notification of any penalty must be made by mail with a receipt, or by physically presenting it in the presence of a witness. If an airline does not have a legal representation in Romania, this cannot be done.
Spain	Yes	Notifications are sent by registered mail – there is no limitation provided a receipt is obtained. In theory collection of sanctions is problematic if carrier does not have an office in Spain, but this has not yet proved a problem.
Sweden	Sanctions not yet defined	Proposed amendment to Civil Aviation Act is unlikely to allow this, as no other Swedish legislation does so.
UK	Yes in principle	In principle there are no problems although this has not been tested as yet as no sanctions have been imposed. As sanctions could only be imposed through a criminal process, this would be undertaken by the criminal courts system not the NEB.

Monitoring undertaken by NEBs

5.42 While the Regulation does not explicitly require NEBs to undertake monitoring of compliance with the Regulation, it does require them to take measures to ensure that the rights of PRMs are respected, including compliance with the quality standards required by Article 9 (1).

Monitoring of airport quality of service

5.43 Two NEBs, Denmark and Germany, had undertaken no actions to directly monitor airport service quality. Denmark holds biannual meetings with stakeholders including PRM organisations, airport managing bodies and airlines, but does not undertake any first-hand monitoring of service quality at airports.

5.44 NEBs in all but two of the case study States had undertaken some inspections of airports. Many undertook yearly inspections of the major airports, although some inspected airports more frequently: the Hungarian NEB inspects Budapest airport three times per year, and Spain had conducted 152 inspections since the introduction of the Regulation. Some had only undertaken one inspection, when the Regulation came into force; these included France, the Netherlands, Romania and Sweden.

5.45 Most inspections focus on checks of the systems and procedures in place to provide service. These checks included confirming the signage and functioning of the designated points of arrival, training records, and the written procedures followed by staff providing the service. Most did not assess the passenger experience; those that did were Latvia, Sweden and the UK. These checks included site visits accompanied by representatives of PRM organisations to check actual waiting times and infrastructure such as designated points.

5.46 In addition to inspections, there were a number of other approaches to monitoring quality of service, including:

- attending the PRM steering committees of larger airports on a monthly basis (UK);
- holding biannual meetings with stakeholders including PRM organisations (Denmark); and

- sending annual surveys on implementation of the Regulation to airports (Romania).

5.47 Table 5.11 summarises the actions NEBs have taken to monitor airport service quality.

TABLE 5.11 NEB ACTIONS TO MONITOR AIRPORT QUALITY OF SERVICE (EXCLUDING INDIRECT MONITORING)

State	Direct monitoring of airport quality of service
Belgium	Inspection and audit of subcontractors at Brussels Airport, covering part of Regulation
Denmark	Biannual meetings with stakeholders including PRM organisations, airport managing bodies and airlines
France	One inspection of Paris Charles De Gaulle
Germany	None
Greece	Inspections of all airports (including 3 at Athens) for compliance with quality standards (although no quality standards set at any airport other than Athens)
Hungary	Regular inspections (Budapest 3 per year, smaller airports once) covering systems and equipment; questionnaire requesting number of complaints received and training given; approves safety license of PRM service provider, including check of quality standards
Ireland	2 inspections at each airport under jurisdiction
Italy	Regular inspections by staff based at airports, reviewing equipment and procedures, application of quality standards, and provision of training
Latvia	Inspections for compliance with quality standards: checking 'time stamps', site visits to measure actual waiting times. Meetings two times a year to discuss standards.
Netherlands	Audit of systems at major Dutch airports in 2007/2008. Further investigations will be driven by complaints.
Poland	Surveys of all airports, covering: quality standards, training records and programmes, documentation of cooperation with PRM organisations and airport users. Documentation checked by inspections.
Portugal	Yearly inspections of major Portuguese airports, covering designated points and information, but excluding staff training and assistance provided.
Romania	Inspection of Bucharest Otopeni, in cooperation with Social Inspectorate. Annual surveys of airports on several topics, including training, accessible information and procurement.
Spain	152 inspections relating to the Regulation
Sweden	Inspection of Stockholm Arlanda with PRM organisation, including checks of designated points and signage. No such checks of smaller airports.
UK	CCNI: Annual PRM site visits at airports; quarterly meetings with airports. CAA: Physical inspections of airports combined with discussions with service providers. Attends airport-PRM consultative committees monthly for London Heathrow, Gatwick, Luton and Stansted, and for Manchester less frequently.

5.48 For most of the NEBs we spoke to, resource constraints were not an issue: most NEBs received few complaints, and did not undertake significant additional activity which would require additional resources. Where inspections of airports for compliance with the Regulation were undertaken, they were frequently combined with other inspections and did not therefore require significant additional resourcing. The case study States which informed us that they would undertake more inspections if they

had more resources were France and Ireland.

Monitoring of airline quality of service and policy regarding carriage of PRMs

5.49 Most NEBs did not inform us of any monitoring of airline service quality they had undertaken, and stated that they had not investigated or challenged any airline policies on carriage of PRMs.

5.50 The most pro-active approach to airline service quality was that of the Spanish NEB, which in 2009 undertook 409 inspections on passenger rights. The other NEBs which informed us of reviews of airline quality of service took a number of approaches:

- approval of ground handler training (Greece);
- reviewing operating manuals (Latvia, Poland);
- reviewing websites for accessibility (Latvia, Netherlands); and
- annual surveys on airline implementation of the Regulation (Romania).

5.51 Table 5.11 summarises the actions NEBs have taken to monitor airline service quality and policies on carriage of PRMs.

TABLE 5.12 NEB ACTIONS TO MONITOR AIRLINE QUALITY OF SERVICE AND POLICY

State	Monitoring of airline quality of service and policy on carriage of PRMs
Belgium	Developed advisory document which sets limits on PRM carriage by Belgian carriers
Denmark	No review of service quality. Discussion of hypothetical reasons for refusal of embarkation discussed at stakeholder meetings
France	None
Germany	No review of service quality.
Greece	Training of ground handlers is approved by HCAA
Hungary	Reviews requirements and Conditions of Carriage for compliance with Regulation
Ireland	Reviewed airline policies on carriage of PRMs
Italy	None
Latvia	Inspections of both main Latvian airlines: reviewed operating manuals, websites and records. Would use unannounced inspections if infringements identified.
Netherlands	Consultations with EDF to check accessibility of airline websites
Poland	NEB reviewed airline's operating manual as a result of one case
Portugal	None
Romania	Annual surveys of airlines on several topics, including refusal of carriage, training and accessible information
Spain	409 inspections in 2009 on passenger rights, including checks on information provided to passengers and compliance with conditions of carriage
Sweden	Reviewed policies on carriage in cooperation with Swedish Work Environment Authority; awaiting EASA report before defining policy on PRM limits
UK	Requested and reviewed information from airlines on the rationales for their policies

5.52 In addition, many NEBs are also the licensing authority for carriers registered in the State, and therefore have to approve carriers Operating Manuals. Where this is the case, these NEBs have to approve, and therefore could determine, carriers' policies on carriage of PRMs and requirements to be accompanied.

5.53 We have identified that in some cases the licensing authority does have specific policies on carriage of PRMs which must be reflected in carriers Operating Manuals. The stated rationale for these policies is safety, but these policies vary significantly between States, and have not been demonstrated to be evidence-based. In most cases, the licensing authorities do not have specific policies and will approve those proposed by the carriers, subject to these being reasonably based on safety. Most NEBs and licensing authorities have not done anything to challenge policies on carriage of PRMs proposed by carriers, and this has resulted in significant differences in policies between carriers. This issue is discussed in more detail in section 4 above.

Monitoring of airport charges

5.54 As noted previously (see 5.6), no Member State has designated a separate body for enforcement of Article 8 of the Regulation, and several have not yet passed legislation to allow penalties to be imposed for infringements of this Article.

5.55 7 out of 16 case study NEBs had undertaken no direct monitoring of the charges levied by airports for providing services under the Regulation, or of the consultation which airports are also obliged to undertake when setting such charges.

5.56 The NEBs for Hungary and Italy had undertaken audits of the charges levied, while a number of NEBs had undertaken high level reviews of expenses and charges (including Greece, Latvia, Poland and Romania). The Netherlands and Portugal had undertaken benchmarking exercises against other airports.

5.57 Table 5.11 summarises the actions NEBs have taken to monitor airport charges under the Regulation.

TABLE 5.13 NEB ACTIONS TO MONITOR AIRPORT CHARGES (EXCLUDING INDIRECT MONITORING)

State	Direct monitoring of airport service charges
Belgium	None
Denmark	None
France	None
Germany	None
Greece	Annual review of expenses and charges
Hungary	Approves airport charges; in-depth audit of costs and charge for Budapest
Ireland	Charges included within regulated price cap. CAR has investigated level of consultation on charges.
Italy	Charges set by ENAC in cooperation with airports and airlines
Latvia	High-level check of charge
Netherlands	Reviews against other airports with advice of Netherlands Competition Authority.

Poland	Review of charges (by other CAO department)
Portugal	Benchmarking exercise across European countries, but no auditing or analysis of whether charges are cost-reflective
Romania	Checks for: existence of charges; separation of accounts; annual report on expenses and revenues. No checks on whether reasonable or cost-reflective (but in the process of recruiting staff with economic skills).
Spain	None
Sweden	None, but review is planned.
UK	None

Other activities undertaken by NEBs

Interaction between NEBs and with other organisations

5.58 Given the low number of complaints received by NEBs, interaction with other stakeholders is important to maintain an awareness of any issues arising. Table 5.14 summarises the interactions between NEBs and other organisations.

TABLE 5.14 NEB INTERACTION WITH OTHER ORGANISATIONS

State	Form of any interaction between NEB and other organisations
Belgium	None
Denmark	Biannual meetings with stakeholders, including airports, airlines and PRM organisations
France	No information provided at interview
Germany	No information provided at interview
Greece	Meetings with PRM organisations to help define quality standards, joint accessibility reviews of regional airports
Hungary	Biannual meetings with PRM organisations
Ireland	No information provided at interview
Italy	Round table discussions to develop advisory guidance, good relationship with PRM organisation
Latvia	CAA attends quarterly PRM steering committee at Riga Airport with PRM organisations
Netherlands	Consultations with EDF to check accessibility of airline websites
Poland	Worked with PRM organisation to improve CAO understanding of problems faced by PRMs
Portugal	One day seminar for aviation industry stakeholders on Regulations 261/2004 and 1107/2006. Did not include representatives of PRM organisations.
Romania	NEB and PRM organisation cooperated with Bucharest Otopeni to develop quality standards
Spain	No information provided at interview
Sweden	Approximately monthly contact with PRM organisations, including biannual aviation focus group
UK	CCNI: Worked with Equality Commission of Northern Ireland to support introduction. CAA: Attends monthly PRM steering committees at major UK airports with PRM organisations, receives guidance from government advisory committee on disabled travel.

Promotional activity undertaken by NEBs

5.59 The Regulation requires Member States to inform PRMs of their rights and the possibility of complaints to NEBs. Relatively few NEBs have made significant efforts towards this: of the case study NEBs, only Romania and UK had undertaken nationwide campaigns to promote awareness of passengers' rights under the Regulation, and even in the UK, the PRM organisation we spoke to was not aware of the campaign the UK NEB had conducted.

5.60 Other NEBs had undertaken less direct promotional activity, including the following:

- publishing of leaflets to be distributed at airports (Belgium, Germany);
- holding a conference (Germany); and
- actions to promote awareness of the Regulation to PRM organisations and other stakeholders, but which did not directly inform passengers (Denmark, Italy, Netherlands, Poland).

5.61 A number of NEBs had published information on their websites. While such information can be useful, if a passenger is unaware that they have rights, or is aware they have rights but unaware of the role the NEB plays in enforcing them, they are unlikely to find and read NEB websites. Table 5.15 lists the activities undertaken by NEBs.

TABLE 5.15 NEB ACTIVITY TO PROMOTE AWARENESS OF THE REGULATION

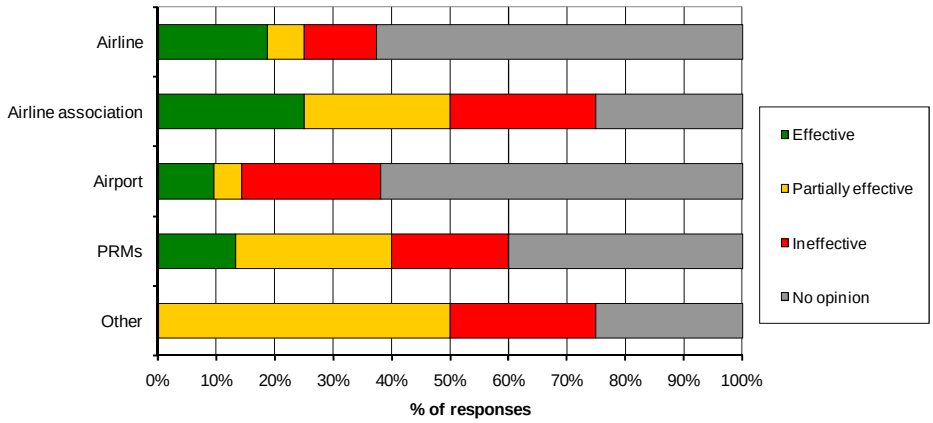
State	Actions taken by NEBs to promote awareness of the Regulation
Belgium	Leaflets sent to Brussels Airport; also available on the BCAA website.
Denmark	Letters to stakeholders on obligations under Regulation sent out when it was passed.
France	No information provided at interview. Section on website with information on Regulation.
Germany	BMBVS published a leaflet on Regulation in 2008 and held a conference with PRM organisations and the association of German air carriers; published information on website.
Greece	Information on the Regulation (including videos) placed on website.
Hungary	Information on the Regulation (including videos) placed on website.
Ireland	No information provided at interview. Section on website with in-depth information on Regulation.
Italy	Guidance on implementing the Regulation developed with and circulated to airports, airlines and PRM organisations. No direct promotional activity to passengers.
Latvia	Published PRM complaint form on website.
Netherlands	Contact with Dutch Association of Travel Agents to improve awareness and ensure correct allocation of IATA codes.
Poland	Provided information regarding the Regulation to PRM organisations.
Portugal	No information provided at interview. Section on website with information on Regulation.
Romania	Public awareness campaign with main PRM organisations, including dedicated website, posters and leaflets distributed throughout the country, through airports, carriers, travel agents and municipal bodies.
Spain	No information provided at interview. Section on website with information on Regulation.

Sweden	No information provided at interview. Section on website with information on Regulation. PRM org states well-publicised initially but not since.
UK	EHRC: distribution of guides on rights under Regulation; advertised in national media CCNI: distribution of guides on rights under Regulation, covered in regional media; advertorial piece in newspapers; exhibitions at relevant events.

Stakeholders views on complaint handling and enforcement

5.62 We asked each of the stakeholders we contacted about how effectively they believed NEBs had enforced the Regulation; there is some variation between different groups of stakeholders (Figure 3.10 below). A high proportion of stakeholders (over 60% of airports and airlines) have no opinion on how well NEBs have been enforcing the Regulation; often, the reason given for this response was that the stakeholder had had no interaction with the NEB in question. The proportion which believes that NEBs have not been enforcing the Regulation effectively is broadly consistent across stakeholder groups, at 20%-25%.

FIGURE 5.1 VIEWS OF STAKEHOLDERS ON NEB EFFECTIVENESS



5.63 In this section, we discuss the particular issues raised by each group of stakeholders.

Airlines and airline associations

5.64 Most airlines did not express strong views on whether NEBs had enforced the Regulation effectively, and did not give specific examples of areas where NEBs were performing well or poorly. One airline expressed frustration with the lack of action taken against airports, in particular relating to excessive charges and to lack of focus on safety.

5.65 Of the airline associations we spoke to, AEA believed that effectiveness of enforcement varied by State. IACA believed that in general NEBs were unfairly targeting airlines and not airports. Regarding specific NEBs, it believed that the UK complaint-handling NEB was bringing cases which were factually inaccurate, and that there was insufficient distinction between NEBs and service providers in Spain and Portugal.

Airports

5.66 A higher proportion of airports than airlines believed that NEBs were ineffective. Two airports believed actions needed to be taken by NEBs to raise the proportion of pre-notifications for assistance. One airport believed that the NEB should take more action to inform passengers of their rights and obligations. Three airports informed us that they had had no interaction with their NEBs, and two stated that their interactions with NEBs had been unsatisfactory: one informed us that the NEB was slow and unresponsive, and the other stated that it was not clear which organisation was their NEB. Only one airport informed us that it had good and close cooperation with its NEB.

NEBs

5.67 As there have been very few complaints received under the Regulation, there have also been very few complaints which have required forwarding to other NEBs. Therefore, the NEBs have no information on the effectiveness of other NEBs via their responses to forwarded complaints.

PRM organisations

5.68 13% of PRM organisations believed that NEBs were enforcing the Regulation effectively. Those that believed that NEBs were functioning ineffectively or only partially effectively believed that too little action was being taken, either through active monitoring of the services provided or through taking actions to remedy poor service. Four of the PRM organisations we spoke to had had little or no interaction with their NEB.

Other organisations

5.69 The other organisations we spoke to noted the following issues with regard to enforcement:

- lack of consistency of approach between NEBs, particularly in terms of whether they believe it is their role to handle complaints;
- unwieldy complaints systems; and
- unreasonable requests made by NEBs.

5.70 One organisation also believed that some NEBs were taking a sensible line between the demands of PRMs and of service providers.

Conclusions

5.71 Member States are required to designate a body responsible for enforcing the Regulation regarding flights from or arriving at its territory. They may also designate separate bodies responsible for handling complaints, and for enforcing Article 8. All Member States except Slovenia have designated an NEB, which in most cases is the Civil Aviation Authority and is the same organisation that is responsible for enforcement of Regulation 261/2004. In a number of States, the Regulation is not explicitly referred to in the law designating the NEB, and in Spain, the imposition of sanctions has been challenged, in one case successfully, on the basis that the NEB was not competent to impose the sanction.

5.72 There is no requirement in the Regulation that the NEB be independent from service providers and we have identified one case where it is not: the Greek NEB, HCAA, is also the operator of the airports other than Athens.

5.73 Member States are also required to introduce penalties in national law for infringements of the Regulation, which must be effective, proportionate and dissuasive. All States except Poland and Sweden have introduced sanctions into national law, although there are a number of States where sanctions have not been introduced for infringements of all Articles. In the UK, national law grants rights additional to those given in the Regulation: passengers who suffer injury to feelings as a result of an infringement of the Regulation may seek financial compensation from the service provider.

5.74 There is significant variation in the level of the maximum sanctions which can be imposed for infringements, and in some States the fines may not be at a high enough level to be dissuasive. While some States allow unlimited fines to be imposed and may also impose a prison sentence, maximum sanctions in Estonia, Lithuania and Romania are lower than €1,000.

5.75 The Regulation allows any passenger who believes that the Regulation has been infringed, and is dissatisfied with the response they have received from the service provider, to make a complaint to the appropriate body (usually an NEB). However, very few complaints have been received under the Regulation: to date, since the introduction of the Regulation, 1,110 complaints have been received, compared to a total of 3.2 million passenger assisted in 2009 across a sample of 21 EU airports. 80% of all complaints were received by the UK NEBs; none of the NEBs in the other 26 Member States has received more than 50 complaints.

5.76 Where an NEB identifies an infringement (through a complaint or other means) it may choose to enforce the Regulation by imposing sanctions. No sanctions have yet been imposed, but France, Portugal and Spain have opened proceedings to impose fines. However, in a number of States, there are likely to be significant practical difficulties in imposing and collecting sanctions, in particular in relation to airlines registered in different States.

5.77 Many NEBs had taken at least some action, other than the monitoring of complaints, to assess whether service providers were complying with the Regulation. NEBs in 14 of the 16 case study States had undertaken at least one inspection of airports for compliance with the Regulation, however most inspections have focused on checks of systems and procedures, and did not assess the actual experience of PRMs using the service provided by the airport. NEBs for 9 of the 16 States had undertaken no direct monitoring of the charges levied by airports for providing PRM services, although Hungary and Italy informed us that they had undertaken in-depth audits of the charges levied at airports.

5.78 Member States are required to take measures to inform PRMs of their rights under the Regulation, and the possibility of complaining to appropriate bodies. Of those that provided information, relatively few NEBs had made significant efforts to promote awareness of the Regulation by passengers; only two informed us of national public awareness campaigns they had undertaken.

5.79 Awareness of the NEBs performance appeared in general to be poor: most stakeholders contacted for the study held no opinion on the effectiveness of enforcement by NEBs, and many informed us that this was because they had had no interaction with them.

6. STAKEHOLDER VIEWS ON POLICY ISSUES

Introduction

6.1 This section summarises views expressed by stakeholders in the course of our consultation exercise on key policy issues, including whether any changes should be made to the scope or content of the Regulation, and what any changes should be.

6.2 Stakeholders also expressed views on the application of the Regulation by airports, carriers, and the complaint handling and enforcement process; these views are summarised in the relevant chapters above.

Whether changes should be made to the Regulation

6.3 We asked all of the stakeholders that we interviewed whether they considered that any changes should be made to the Regulation.

6.4 Half of the airports we interviewed believed that the Regulation should be changed. Several suggested that the definition of PRM was too broad, and that this was contributing to abuse of services. It was also suggested that the Regulation be amended to require proof of disability, and that the Regulation should also be amended to improve the functioning of pre-notification (for example by making it mandatory). ACI supported these positions. The airports which did not believe the Regulation should be amended, or had a neutral opinion, thought that any lack of clarity in the Regulation could be addressed through information from the Commission.

6.5 In addition, around half of the airlines we interviewed also believed that the Regulation should be changed, however this was for different reasons to those given by airports. A number of airlines believed that it should be possible for them to choose to provide the service themselves or that responsibility should lie with airlines, arguing that as customer-focussed organisations they are better able to do this. Of the airline associations, only ELFAA argued for this amendment. One airport strongly agreed with this position, however most believed that the allocation of responsibility should not be revised, as if airlines were to provide their own service, the incentive to reduce costs would result in unacceptable reductions in service quality. Airlines also supported amendments to clarify the definitions of PRM and mobility equipment, and to improve pre-notification.

6.6 Most of the NEBs we interviewed did not have a clear opinion on whether the Regulation should be amended. Seven NEBs believed that the definitions of terms such as PRM and mobility equipment should be clarified, and two of the NEBs in the case study sample supported changes which would allow airlines to opt out of the Regulation and provide the services themselves.

6.7 Slightly over half of the PRM representative organisations we interviewed believed that the Regulation should be amended. Amendments were suggested to address the following issues:

- limits on number of PRMs which can safely be carried;

- allocation of seating;
- requirements on compensation payable for damaged mobility equipment, and improvements to its handling; and
- provision of information.

6.8 EDF suggested that compensation should be introduced, as this would incentivise more complaints and therefore improve service. Those that did not believe the Regulation should be amended either believed that the Regulation had not been in force for long enough to assess its efficacy, or that poor implementation was the cause of any problems identified.

The content and drafting of the Regulation

6.9 We outline below some of the main detailed issues that have been raised by stakeholders. Few stakeholders believed that there were significant issues with the drafting of the Regulation that made it difficult to implement, however many stakeholders outlined issues relating to insufficient definition.

Definition of terms

6.10 The issue most commonly raised, particularly by airports and NEBs, is the definition of PRM set down in the Regulation. Many stakeholders believe this is too broad and opens the service to abuse, both by passengers and by airlines. A number of airports believed that airlines were using the wide definition to allow them to avoid costs: passengers who were previously classified as MAAS (including unaccompanied minors, VIPs and passengers with language issues), and therefore paid for by the airline, are now classified as WCHR and the cost is borne by all airlines. Some airports believed this could be resolved by setting out a clear definition of MAAS.

6.11 The definition in the Regulation could include a wide range of passengers who some stakeholders do not believe were the intended beneficiaries of the Regulation, including:

- obese passengers;
- stretchers;
- medical cases; and
- passengers who had sustained injuries (whose travel is often paid for by their travel insurance).

6.12 Some stakeholders believed that the definition of PRM was so broad that it could be considered to include passengers which the Regulation was clearly not intended to cover, such as passengers whose intellectual and sensory capacities were temporarily impaired by excessive consumption of alcohol.

6.13 Several stakeholders believed this issue could be resolved by requiring some proof of need for assistance in order to receive assistance, for example in the form of a disability ID card. This was opposed by some PRM organisations.

6.14 Stakeholders also considered that a number of other terms were not sufficiently defined. These included:

- **Mobility equipment:** The reference in Annex II to mobility equipment states that it should include electric wheelchairs but does not define the term any further. Stakeholders had differing views on what should be included in this: several airlines believe that it should refer only to equipment that is required to make it possible to travel by air, but a number of PRM organisations believed it should include items which make the *purpose* of the trip possible. This could include, for example, joists for lifting passengers in and out of seats.
- **Medical equipment:** Several stakeholders believed there was insufficient clarity on which items were classified as medical equipment and which as mobility equipment. It was also uncertain whether airlines could any limits (for example on weight) on its carriage.
- **Accessible formats:** It was reported that the requirement for designated points of arrival and departure to offer basic information about the airport in accessible formats did not define what was required, for example, whether all such points should include a map in Braille of the airport.
- **Safety rules:** Article 4(3) requires airlines to make publicly available the safety rules that it applies to the carriage of PRMs, and any restrictions on the carriage of PRMs or mobility equipment. Several stakeholders informed us that such documents were not defined, and it was not clear what this term referred to.

Lack of clarity in the Regulation

6.15 In one case, the requirements of the Regulation appear contradictory. Several NEBs noted that the responsibility for enforcement defined in Article 14 contradicts that specified in Recital 17. Article 14 states that NEBs are responsible for enforcement regarding flights departing from or arriving at airports within their State, while Recital 17 places responsibility on the NEB of the State which issued the carrier's operating license.

6.16 Stakeholders identified a number of other provisions where they considered the description of obligations was insufficiently clear, including:

- **Article 7:** Under this Article, airports are required to provide assistance to PRMs holding reservations so that they able to take their flight, however, it does not define what an airport is required to provide to a PRM who does not hold a valid reservation. In addition, it does not define the airport's liability when a PRM misses their flight, in particular where the passenger has not pre-notified their requirement for assistance.
- **Article 11:** One airport had been the subject of a legal challenge by an airline regarding the inclusion within its PRM service charge of the costs of providing training under Article 11(b) to subcontractors at the airport. The airline contended that since the paragraph did not refer to subcontractors (unlike Article 11(a)) the airport was not obliged to provide such training. Several airports believed that the requirement under this Article to provide disability-related training to all new staff (not just those whose role required them to interact with PRMs) was unnecessary. In contrast, some PRM organisations believed that training should be explicitly extended to Commanders of aircraft, to enable them to make better-informed decisions on whether to embark PRMs. PRM organisations also noted

that it was not clear whether airports were required to provide training on specific procedures for handling mobility equipment; as damage to mobility equipment is perceived to be a significant issue, they believed this requirement should be explicitly included.

- **Article 12:** Several PRM stakeholders raised concerns that the compensation referred to in this Article would be consistent with the Montreal Convention, and that the limits under the Convention were insufficient for some mobility equipment, such as technologically advanced wheelchairs (see 4.55). Although this had not been an issue to date – in almost all cases that we were informed of, airlines waived the limits – it creates uncertainty for wheelchair users travelling by air. This is heightened by the reported difficulties in obtaining insurance for such equipment.
- **Annex I:** A number of airlines raised concerns regarding the allocation of liability when boarding a passenger. For example, they did not believe that liability was clear in the case that an accident occurs on board an aircraft when airport staff are present. Some airports raised concerns regarding liability for damage to wheelchairs while in their care. In addition, the services which should be provided to transfer passengers and the measures which should be taken to accommodate assistance dogs are not defined.

6.17 Regarding training, some stakeholders raised the issue of the legal weight of ECAC Document 30, particularly Annex 5-G which sets out recommended guidance for training regarding PRM services. While this is referred to in the Regulation as a policy which should be considered when developing quality standards, the same reference is not made in Article 11 where training requirements are defined.

Conflicts with 14 CFR Part 382

6.18 As discussed in section 4 above, the US regulations on carriage of PRMs (14 CFR Part 382) apply to European carriers operating flights to/from the US, and other flights where these are operated as codeshares with US carriers. There are a number of differences between these rules and the Regulation, the most significant of which is the allocation of responsibilities for assistance: the Regulation requires airports to arrange the provision of services to PRMs, while under the US legislation it is the airlines that have this responsibility. This has caused difficulties for carriers who are required to comply with legislation that conflicts, although the US legislation does allow carriers to apply for a waiver where there is a conflict of laws.

Pre-notification

6.19 The requirement to pre-notify requests for assistance and problems in doing so were raised by many stakeholders (see 4.98). Stakeholders held differing views on how this should be improved. Several airlines (in particular those with operations to the US, where requiring pre-notification is usually prohibited) believed that the requirement to pre-notify should be removed; they believed that the resulting increases in costs of provision would be marginal, as most resourcing requirements could be planned on the basis of observed variation in demand (over the course of a year, a week or a day as appropriate). This approach was supported by some PRM organisations. In contrast, a number of airports believed that pre-notification should be made compulsory, and

this proposal was opposed by some PRM organisations.

Level of detail

6.20 Almost all stakeholders informed us that there was significant variation in the services provided under the Regulation. This is partly a result of the approach taken by the Regulation, which does not seek to define in detail the services to be provided. In contrast, the equivalent US rules set out in detail all aspects of the services to be provided, in effect setting out procedures to be followed by all service providers.

6.21 Several stakeholders have raised the lack of detail in the Regulation as an issue, and believe that a more prescriptive approach would lead to greater harmonisation of the services provided. In particular, they believed that the services set out in Annexes I and II and the training required under Article 11 should be defined with greater precision.

Conclusions

6.22 We asked each stakeholder we contacted for the study whether they believed that changes should be made to the Regulation. Slightly more thought that there should be changes than did not, but there was not a clear majority in favour of changes. The reasons given for making changes and what those changes should be varied depending on the stakeholder.

6.23 No significant problems were identified with the drafting of the Regulation, although there is a conflict between Recital 17 and Article 14. In general, stakeholders had not found it difficult to follow the provisions of the Regulation. The most common issue raised with regard to the text of the Regulation is that the definitions used are not sufficiently precise; in particular, the definition of PRM is believed by airports and some airlines to be too broad, and this is believed to make it difficult for them to take action to counter abuse. The Regulation is much less precise about the policies and procedures that have to be followed, particularly by air carriers, than the equivalent US regulation on carriage of PRMs, 14 CFR Part 382.

6.24 In addition, many stakeholders pointed out the significant differences between the Regulation and 14 CFR Part 382, which applies to European carriers on flights to/from the US and other flights operated as codeshares with US carriers. One of the most significant is the requirement to pre-notify requirements for assistance was raised as an issue, particularly by airlines operating to the US, and by airports where the rates of pre-notification were low. Two different approaches were proposed to address the perceived problem. Some airlines (primarily those flying to US) proposed removing the requirement to pre-notify, which would resolve the conflict with US legislation; this was opposed by airports on the grounds that it would reduce service quality and increase cost. Some airports proposed making pre-notification compulsory; this was opposed by some PRM organisations on the grounds that it would reduce the freedom of PRMs to travel.

7. FACTUAL CONCLUSIONS

Introduction

7.1 This section summarises our conclusions in relation to how effectively airports and airlines are providing the assistance required by the Regulation, and how effectively Member States and National Enforcement Bodies (NEBs) are undertaking their roles specified in the Regulation.

Implementation of the Regulation by airports

7.2 We selected a sample of 21 airports for detailed analysis for the study, and reviewed how they had implemented the Regulation, through desk research and through interviews with representatives of airport management and other stakeholders.

7.3 Prior to the introduction of the Regulation, assistance at airports was provided by airlines and usually contracted from ground handlers. The Regulation places responsibility for provision of this assistance with the airport management company. We found that all airports in the sample for this study had implemented the provisions of the Regulation, although we were informed by airlines and other stakeholders that the regional airports in Greece had yet to effect the change from provision by ground handlers to provision by airports. We were not informed by stakeholders of any other EU airports at which the Regulation has not been implemented.

7.4 Most of the sample airports had contracted the provision of PRM assistance services to an external company, generally selected through a competitive tender process. However, several airports had changed their service provider within 18 months of the Regulation coming into force; this was interpreted by some as a sign that the service initially specified and procured had been inadequate. One major hub airport acknowledged that it had had significant problems with a PRM service provider.

7.5 The service provided at the sample airports varies in terms of: the resources available to provide the services; the level of training of the staff providing assistance; the type of equipment used to provide services; and the facilities provided to accommodate PRMs (such as PRM lounges). According to the information provided by PRM organisations, this results in variability in service quality. PRM representative organisations, airlines and some airports cited a number of examples of poor quality or even unsafe provision of services at airports, although it is not possible to infer how regular these occurrences are. Overall, most stakeholders believed that the Regulation had been implemented effectively by airports.

7.6 There is also significant variation between airports in the frequency with which PRM services are requested: the level of use of the service varies by a factor of 15 between the airports for which we have been able to obtain data, although in most cases between 0.2% and 0.7% of passengers requested assistance. The type of PRM service requested also varies considerably between airports although in all cases the largest category is WCHR (passengers who cannot walk long distances but can board the aircraft, including using stairs, unaided). Both the frequency of use and the type of service required are likely to be affected by the varying demographics of the passengers using different airports; PRMs account for the highest proportions of

passengers at holiday airports, such as Alicante, and airports serving pilgrimage destinations, such as Lourdes.

7.7 The Regulation requires airports to publish quality standards. Most of the sample airports had done so, although some had published them only to airlines. Almost all quality standards followed the example format set out in ECAC Document 30, which defines the percentage of PRMs who should wait for up to given numbers of minutes. Some airports published qualitative measures in addition to these time standards, such as descriptions of the treatment the passenger should expect at all points of the service. However, none of the sample airports had published the results of any monitoring of these quality standards, and whilst most did undertake monitoring in some form, only four had commissioned external checks of the service.

7.8 The Regulation allows airports to levy a specific charge to cover the costs of assistance. All but one of the sample airports had done so. The level of charges varied considerably: the highest charges of the sample airports were at Paris CDG and Frankfurt. We analysed the charges to examine whether variation could be explained by higher frequency of use of the service, differences in levels of wages and other costs between States, or differences in service quality, but there was no evidence that this was the case. The design of the airport is a further factor influencing the cost of service provision and hence the level of charges: the assistance service can be provided at lower cost at an airport such as Amsterdam Schiphol, which is on a single level and has one integrated terminal building, than at an airport with a more complex configuration such as Paris CDG.

7.9 Some stakeholders believe that the requirements to select contractors and establish charges in cooperation with users and PRM organisations were not followed thoroughly. Many airlines did not believe that consultation on either element had been sufficient, and this view was shared by some PRM organisations. There were a number of barriers to effective consultation, including linguistic restrictions and airport user committees which did not adequately represent all air carriers. Consultation with air carriers was reported as particularly poor in Spain, Portugal and Cyprus. In contrast to this, we note that several airports stated that they had sought the participation of PRM organisations but had found this difficult to obtain.

7.10 The Regulation requires airports to provide specialised disability training for staff directly assisting PRMs, and whilst all sample airports had done so, there were significant variations in the length and format of this training. The shortest training course among those for which we have data was 3 days long, while the longest lasted 14 days. There was similar variation in the length of training provided for passenger-facing staff who did not provide direct assistance. A number of airports informed us that they did not provide disability-awareness training for staff not in public-facing roles, or only provided it on a voluntary basis.

Implementation of the Regulation by air carriers

7.11 We selected a sample of 20 air carriers for the study. We reviewed how they had implemented the Regulation, both through review of their published policies, procedures and Conditions of Carriage, and through interviews with the carriers themselves and with other stakeholders.

7.12 The main obligation that the Regulation places on air carriers is that it prohibits refusal of carriage of PRMs, unless this is necessary to meet national or international safety rules or requirements imposed by the carrier's licensing authority, or is physically impossible due to the size of the aircraft or its doors. We found that air carriers largely comply with this, although some state in their Conditions of Carriage that carriage of PRMs is conditional on advance notification. In our view, this is not consistent with the Regulation, which does not allow for a derogation on the prohibition of refusal of carriage on the basis that the passenger has not provided advance notification. In addition, we found that a small number of carriers impose requirements for medical clearance which appear to be excessively onerous and to be worded to include PRMs as well as passengers with medical conditions.

7.13 We found significant differences in policies relating to carriage of PRMs between carriers – even between carriers with similar aircraft types and operational models. The most significant difference is that some carriers impose a numerical limit on the number of PRMs that can be carried on a given aircraft. These can be quite low: some carriers have limits of 2-4 PRMs on a standard single-aisle aircraft such as an Airbus 319. These limits are not required by any international or European safety rules, although in some cases they are required by the licensing authority for the carrier concerned; often, although not always, this is the same organisation that has been designated as the NEB. However, in most cases, these requirements are defined by carriers in their Flight Operations Manuals; although the licensing authority has to approve this, it appears that in most States, little has been done to challenge the limits proposed by carriers. Whilst the stated rationale for these limits is safety, there does not seem to be a clear evidence base for them, and they are specifically prohibited by the equivalent US regulation on carriage of PRMs (14 CFR part 382).

7.14 The Regulation also allows carriers to require that PRMs be accompanied, subject to the same safety-based criteria. We found that a number of carriers require PRMs to be accompanied where they are not 'self-reliant', which can mean that the PRM cannot (for example) eat unaided. In our view this may be an infringement of the Regulation because there is no direct link to safety; for those carriers that fly to the US, it is also an explicit breach of the US PRM rules. This type of condition is also, in our view, unreasonable for short haul flights for which passengers could decide to (for example) not eat or drink during the flight. Other carriers require PRMs to be accompanied only where they are not self-reliant **and** this has a safety impact (for example, if the PRM could not exit the aircraft unaided in an emergency or put on an oxygen mask without assistance); this is consistent with the Regulation.

7.15 The Regulation also requires carriers to publish safety rules relating to the carriage of PRMs, although it does not specifically state what issues these safety rules should cover. We found that carriers all published some PRM-related information, but few published a notice specifically described as being the safety rules related to carriage of

PRMs. In some cases there appeared to be significant omissions from the information published by carriers: for example, some of the carriers which imposed a numerical limit on the number of PRMs which could be carried did not publish this.

7.16 Annex II of the Regulation sets out various requirements for services which have to be provided to PRMs by carriers. Evidence for the extent to which this is provided is limited, and restricts a fair assessment of compliance with these requirements. There is however sufficient evidence to conclude that the vast majority of case study air carriers are complying with the requirement to carry up to two items of mobility equipment free of charge. Some PRM representative groups were critical of the effectiveness of airlines in implementing the Regulation, and we were informed of some particularly bad passenger experiences, but it is difficult to assess how common such occurrences are.

Enforcement and complaint handling by NEBs

7.17 Member States are required to designate a body responsible for enforcing the Regulation regarding flights from or arriving at its territory. They may also designate separate bodies responsible for handling complaints, and for enforcing Article 8. All Member States except Slovenia have designated an NEB. In the majority of States, the NEB for this Regulation is the same organisation as the NEB for Regulation 261/2004, in most cases the Civil Aviation Authority. In a number of States, the Regulation is not explicitly referred to in the law designating the NEB, and in Spain, the imposition of sanctions has been challenged, in one case successfully, on the basis that the NEB was not competent to impose the sanction.

7.18 Member States are also required to introduce penalties in national law for infringements of the Regulation, which must be effective, proportionate and dissuasive. All States except Poland and Sweden have introduced sanctions into national law, although there are a number of States where sanctions have not been introduced for infringements of all Articles. There is significant variation in the level of the maximum sanctions which can be imposed for infringements, and in some States the fines may not be at a high enough level to be dissuasive. While some States allow unlimited fines to be imposed and may also impose a prison sentence, maximum sanctions in Estonia, Lithuania and Romania are lower than €1,000.

7.19 The Regulation allows any passenger who believes that the Regulation has been infringed, and is dissatisfied with the response they have received from the service provider, to make a complaint to the appropriate body (usually an NEB). However, very few complaints have been received relating to the Regulation: to date, since the introduction of the Regulation, 1,110 complaints have been received, compared to a total of 3.2 million passengers assisted in 2009 across the case study sample of 21 EU airports. There is also a significant disparity in which States had received complaints: 80% of all complaints about infringements of the Regulation were received by the UK NEBs; none of the NEBs in the other 26 Member States had received more than 50 complaints.

7.20 In the UK, national law grants rights additional to those in the Regulation: passengers who suffer injury to feelings as a result of an infringement of the Regulation may seek financial compensation from the air carrier or airport concerned. This is in line with

disability rights legislation applying to other sectors in the UK. A consequence of this is that the process for handling complaints is significantly different in the UK from other Member States, because passengers may have a right to claim compensation from the carrier or airport concerned. At least in part, this also explains the significantly higher number of complaints in the UK compared to the other Member States.

7.21 Where an NEB identifies an infringement (through a complaint or other means) it may choose to enforce the Regulation by imposing sanctions. No sanctions have yet been imposed, but the NEBs for France, Portugal and Spain have opened proceedings to impose fines. In most States, the process to impose sanctions is equivalent to that for Regulation 261/2004. In a number of States, there are likely to be significant practical difficulties in imposing and collecting sanctions, in particular in relation to airlines registered in different Member States. This is due to the same reasons identified in our recent study for the Commission of Regulation 261/2004[14]: either specific limitations in national law on imposition of sanctions on foreign companies, or administrative requirements which cannot be met if the carrier is based outside the State. This means that, in these States, the system of sanctions cannot be considered to be dissuasive as required by the Regulation.

7.22 There is no requirement in the Regulation that the NEB must be separate from the service providers that it has to regulate. The only case we have identified where the NEB is also a service provider is Greece, where HCAA is the operator of the airports other than Athens, as well as the NEB. Although not an infringement of the Regulation, this is a breach of the principle of separation of regulation and service provision. As noted above, the most significant failure to implement the Regulation that we have identified is at the HCAA airports, and HCAA has not imposed a sanction on itself for this failure to implement the Regulation.

7.23 Many NEBs have taken at least some action, other than the monitoring of complaints, to assess whether service providers were complying with the Regulation. NEBs in 14 of the 16 case study States have undertaken at least one inspection of airports for compliance with the Regulation. However, most inspections have focused on checks of systems and procedures, and did not assess the actual experience of PRMs using the service provided by the airport. NEBs for 9 of the 14 States have undertaken no direct monitoring of the charges levied by airports for providing PRM services, although Hungary and Italy informed us that they had undertaken in-depth audits of the charges levied at airports.

7.24 Member States are required to take measures to inform PRMs of their rights under the Regulation, and the possibility of complaining to appropriate bodies. Of those that provided information, relatively few NEBs had made significant efforts to promote awareness of the Regulation by passengers; only two informed us of national public awareness campaigns they had undertaken, and even in one of these States, a key national PRM organisation was not aware that the public campaign had taken place. Awareness of the NEBs performance appeared in general to be poor: most

[14] Evaluation of Regulation 261/2004; Steer Davies Gleave on behalf of European Commission, February 2010

stakeholders contacted for the study held no opinion on the effectiveness of enforcement by NEBs, and many informed us that this was because they had had no interaction with them.

Other issues that have arisen with the Regulation

7.25 Stakeholders also pointed out a number of other issues with the Regulation. Whilst few significant problems have been identified with the drafting of the Regulation, the following issues were identified:

- there is a conflict between Recital 17 and Article 14, regarding which NEB is responsible for enforcing the Regulation in relation to air carriers;
- the definition of PRM used in the Regulation is very broad, and could be interpreted to include some categories of passenger who it might not have been intended to cover (such as obese passengers, or even passengers temporarily incapacitated due to excess alcohol consumption); and
- the Regulation does not specify in detail the policies or procedures that have to be followed by air carriers, particularly if compared to the equivalent US regulations, and this has resulted in significant differences in policies between carriers.

7.26 In addition, stakeholders emphasised the significant differences between the Regulation and the equivalent US regulations on carriage of PRMs (14 CFR part 382). These can cause difficulties for air carriers, as part 382 applies to non-US carriers on flights to/from the US and all other flights that are operated as codeshares with US carriers (even if not to/from the US). The most significant differences are:

- in most circumstances, part 382 does not permit carriers to request pre-notification;
- part 382 does not allow limits on the number of PRMs on an aircraft and limits the circumstances in which an accompanying passenger may be required; and
- part 382 places the responsibility for provision of PRM assistance services on the air carrier, whereas the Regulation places this responsibility on the airport.

Conclusions

7.27 Overall, despite difficulties with service provision at some airports, the services required by the Regulation have been implemented at most European airports and compliance with the Regulation appears to be relatively good. Most stakeholders considered that the quality of service provision had improved since the introduction of the Regulation, although some airlines strongly disagreed with this.

7.28 The key issue we have identified with the implementation of the Regulation is that there are significant differences between carriers in their policies on carriage of PRMs. This arises in part from the fact that the Regulation does not specify in detail the services to be provided and the procedures to be followed, in particular if compared to the equivalent US regulations on carriage of PRMs. The Regulation allows carriers to refuse carriage or require a passenger to be accompanied on the basis of safety requirements, but these requirements are not specified in law, and therefore there are significant differences in interpretation of these requirements.

8. RECOMMENDATIONS

Overview

8.1 This section sets out our recommendations relating to how to improve the operation and enforcement of the Regulation. We present first a number of recommendations which would improve the operation of the Regulation without requiring any changes to be made to the text. However, we believe some changes are necessary which could only be implemented through amendments to the Regulation.

Measures to improve the operation of the Regulation

8.2 This section sets out measures to improve the operation of the Regulation. It covers the following:

- improvement in the operation of PRM services at airports;
- issues relating to the carriage of PRMs by airlines;
- actions to be taken by or in relation to NEBs; and
- guidance on PRM services and carriage which should be produced by the Commission, in consultation with other parties.

Airports

8.3 All airports in the sample for the study had implemented the provisions of the Regulation in some form, although as the Regulation does not precisely specify the quality of service to be provided, PRM organisations have reported this as being variable. We do not recommend any significant changes, and recommend a number of measures which will help airports to move towards consistency of service.

Maintain allocation of responsibility

8.4 Several airlines (primarily those operating low-cost business models) argued in their submissions to the study that they should be permitted to provide or contract their own PRM assistance services, as they could provide it more cost-efficiently than airports. We believe that this could create an incentive to minimise the service provided and hence would risk a reduction in service quality. Whilst there were initially significant issues with the quality of PRM service provision at certain airports, most stakeholders believed that these issues had now been addressed, and therefore we recommend that allocation of responsibility for PRM services to airports should **not** be amended.

Monitor misuse of services

8.5 A number of airports (in particular larger and busier airports) reported that the services they provided for PRMs were sometimes used by passengers who did not appear to have the right to do so under the Regulation. There was no consensus amongst airports about how significant this issue was. This variation in perception of the problem, combined with the nature of the problem itself, makes it difficult to accurately assess its extent. We recommend that the Commission monitor reports of misuse of services, so that it is alerted if the problem becomes more consistently serious.

Improve provision of information

8.6 Several PRM organisations informed us that provision of information on accessibility by airports could be improved. In particular, we were informed that many PRMs would find it helpful to have access to information, in a consistent format, regarding the accessibility of airports to which they were travelling. This could be provided through a webpage on an airport's website included, for example:

- the maximum likely walking distance within the airport;
- locations of any flights of stairs;
- the means used for access to aircraft (airbridge or stairs);
- any facilities available for PRMs;
- appropriate contact details for PRM services both for airlines and the airport[15].

8.7 Whilst some of this information is often available on airport websites, it can be difficult to find and is not always complete. To address this, we suggest that ACI could develop a single website which would either include all of this information or alternatively provide links to the specific pages on airport websites which include this information.

Share best practice on contracting of PRM service providers

8.8 We identified two issues with the process for selection of PRM service providers:

- several airports which had subcontracted PRM services had re-tendered within 18 months of the Regulation entering into force, as there were significant issues with the operation of the service; and
- many airlines informed us that they did not believe the extent of consultation from airports was sufficient.

8.9 To address these issues, we recommend that the Commission, in co-operation with ACI, develop and distribute best practice advice on contracting for services, including:

- **Content and structure of the contract:** This could include the level of detail at which contract terms relating to services should be specified, and any penalties for failure to meet required standards. It could be provided in the form of a sample contract. This would help to reduce the likelihood of issues with the contract leading to retendering.
- **Recommended methods of cooperation:** This could give details of the level and manner of consultation an airport should undertake. It could detail how to involve airport users in consultation at all points of a tendering process, including from drafting of invitation to tender documents, to evaluating and scoring bids, and might include input on the eventual decision. It could also include how to involve PRM organisations in this process. Where implemented, this would improve the perception by airport users and other parties of airport consultation.

[15] London Luton airport provides a good example of this; see http://www.london-luton.co.uk/en/content/3/1427/how-to-book-special-asistance.html.

Share best practice on training

8.10 Our research found that approaches to training of staff to provide PRM services varied significantly. In particular, there was significant variation in length of training (between 3 and 14 days) and method of delivery (videos, classroom-based or practical), to provide what should in principle be the same services. In addition, some airports reported that they had sought assistance on developing training from local PRM organisations, but the PRM organisations were too resource-constrained to be able to provide the required assistance. We therefore recommend that the Commission work with ACI and EDF to develop and distribute best practice advice on training, which would include recommended minimum levels.

Airlines

8.11 A key problem identified in our research is the lack of consistency between airline policies on the carriage of PRMs. These policies are subject to approval by the carriers' licensing authorities (which are often the same organisation as the NEB), but in many cases they approve policies with little or no challenge.

Work with EASA to determine safe policies on carriage of PRMs

8.12 Article 4 of the Regulation permits air carriers to refuse to accept reservations from a PRM, or to require that a PRM be accompanied, in order to meet safety requirements set out in international, Community or national law, or established by the authority that issued the carrier's operating certificate. However, other than minimal requirements in EU-OPS, Community law does not impose specific requirements regarding the safe carriage of PRMs. There is little published research into safety issues regarding carriage of PRMs, so even where licensing authorities do seek to challenge proposed airline policies or impose their own, there is a limited evidence base on which to do this. This results in wide and unjustifiable variation in airline policies.

8.13 Therefore, we recommend that the Commission work with EASA to determine policies on carriage of PRMs which are consistent with safe operation. Such policies should include any limits on the number of PRMs permitted on board an aircraft, where PRMs may be seated, and whether and under what circumstances PRMs must be accompanied. The policies should take into account the type of aircraft and the different safety implications of carriage of different types of PRMs.

Airlines to publish clear policies on carriage of PRMs

8.14 We have identified a number of airlines which are failing to publish clear policies on carriage of PRMs. We recommend that the Commission encourage the relevant NEBs to ensure that the airlines identified in Table 4.1 as not publishing sufficient information do so. The Commission could also encourage NEBs to review the policies of airlines outside the study sample to ensure that these provide sufficient information.

Monitor pre-notification

8.15 Pre-notification of requirements for assistance should have two benefits:

- it should ensure that PRMs are able, on arrival at an airport, to promptly receive the assistance they require to take their chosen flight; and
- it should allow airports to plan their staffing requirements efficiently, minimising the cost of service provision .

8.16 However, at present, as discussed in section 4.74 above, pre-notification is not functioning well. Of the 16 airports which provided us with information on levels of pre-notification, 11 have rates of pre-notification under 60%. The result of this is that at most airports, the rate of pre-notification is too low for the airport to gain efficiency benefits, and the incentive for PRMs to pre-notify is reduced (since at many airports a similar quality of service is provided regardless of pre-notification). Therefore the system as it presently operates requires airlines and airports to incur the costs of enabling pre-notification, but not to realise the benefits of reduced costs or smoother provision of services. We recommend that the Commission monitor the operation of pre-notification (for example by encouraging NEBs to collect appropriate data), and in future assess the situation and consider either eliminating the requirement for pre-notification or alternatively retaining it and providing passengers and carriers with more incentive to pre-notify.

Encourage airlines to provide receipts for pre-notification

8.17 Several PRM organisations reported problems where PRMs had pre-notified their requirements for assistance, but then found that this information had not been passed on to airport or airline staff. To address this, and to provide PRMs with evidence that they can use when making a complaint, we recommend that the Commission encourage airlines to provide PRMs with a receipt for pre-notification. Once this voluntary scheme has been in place for an appropriate length of time, the Commission could consider amending the Regulation to make it compulsory.

Monitor implementation of ECAC Document 30 recommendations on carriage

8.18 Section 5 of ECAC Document 30 contains a number of recommendations regarding on-board provisions for PRMs which it recommends airlines commission in new or significantly refurbished aircraft. These include (depending on the type of aircraft) the provision of on-board wheelchairs, provision of at least one toilet catering for the special needs of PRMs, and ensuring that at least 50% of all aisle seats should have moveable armrests[16]. We recommend that the Commission monitor uptake of these recommendations.

NEBs

8.19 The greatest problem identified by the study regarding NEBs was the lack of pro-active measures taken to monitor or enforce the Regulation. In most cases this has not had significant detrimental effect, as most airports and airlines have implemented the provisions of the Regulation, but could become an issue if the situation changes in the future. In most States few complaints had been received by the NEB, and as a result

[16] See ECAC.CEAC DOC No. 30 (PART I), 11th Edition/December 2009, Section 5.10.5.

the handling of complaints has not been raised as a significant issue.

Encourage all States to implement the Regulation

8.20 We identified in section 5.13 above that some States have not as yet either introduced penalties into national law for all infringements of the Regulation, or designated an NEB. We recommend that the Commission encourage all States to comply with their obligations under the Regulation.

Encourage better promotion of rights under Regulation

8.21 Article 15(4) of the Regulation requires Member States to take measures to inform PRMs of their rights under the Regulation and of the possibility of complaint to the relevant NEB. Of the NEBs which provided information on this point, few had taken direct actions to promote the Regulation. Many had published sections with information on their websites, but unless PRMs are made aware that this website exists and is relevant to them, we do not believe that this is sufficient. Only two case study NEBs informed us that they had commissioned national promotional campaigns relating to the Regulation. We recommend that the Commission takes actions to encourage NEBs to inform PRMs of their rights under the Regulation.

Encourage NEBs to pro-actively monitor application of Regulation

8.22 Article 14 of the Regulation requires Member States to take the measures necessary to ensure that the rights of PRMs are respected. Our research found that most NEBs were taking only limited actions to monitor the application of the Regulation (see 5.42), and few NEBs were directly monitoring whether airports were meeting published quality standards. Many NEBs rely on complaints as a method of monitoring, but without promotion of awareness of rights and of the NEB as the body able to receive complaints (see above), a low number of complaints cannot be interpreted as evidence that there are no issues with the application of the Regulation.

8.23 We therefore recommend that the Commission encourage NEBs to pro-actively monitor the application of the Regulation. This could take a number of forms:

- increased interaction with PRM organisations;
- direct monitoring of quality of service provided, for example through ‘mystery shopping’ and other types of inspections of airports (which could be conducted in cooperation with PRM organisations);
- collection of airline pre-notification data; and
- reviews of airline websites for accessibility.

Guidance to be produced

8.24 We recommend that the Commission should, in collaboration with airlines, airports, PRM representatives and NEBs, develop a detailed good practice guide regarding implementation of the Regulation. This could take the code of practice issued by the

UK Department for Transport[17] as a model, and could form the basis for later detailed revisions of the Regulation. Publishing voluntary policies would allow potential future amendments to the Regulation to be tested in practice before adoption.

8.25 The good practice guide could address the following areas (some of which are discussed in previous sections on recommendations regarding airports and airlines):

- recommendations on safety limits;
- the format and content of policies on carriage (including safety rules);
- detailed training modules implementing the recommendations in Annex 5G of ECAC Document 30, in addition to recommended minimum duration;
- consultation; and
- airport accessibility information.

8.26 A key issue to be addressed in this guidance would be the quality standards to be published by airports. At present, most airports follow the format of the minimum standards recommended in ECAC Document 30[18] (see 3.57). However, these standards are a limited measure of the quality of service received by PRMs. We recommend that the Commission work with ECAC to develop recommended minimum standards which are wider in scope, and cover qualitative aspects of the service received. Airports such as London Luton, which publishes a wide range of quality standards which address all aspects of the service, could provide a model for this approach.

8.27 The guidance should also specify the information which should be included in carriers' published policies on carriage of PRMs, which should cover at least the areas identified in 4.8.

Recommendations for changes to the Regulation

8.28 The measures described above could significantly improve the operation of the Regulation. However, we believe that some issues could only be addressed through amendments to the text, and therefore we also set out:

- Recommendations for some minor amendments to address issues with the text (such as areas where the Regulation is unclear) which we believe should be implemented as soon as possible.
- Suggestions for more significant revisions to be considered in the longer term. These would require consultation with stakeholders and an impact assessment to be undertaken.

Changes to be implemented as soon as possible

Training

[17] *Access to Air Travel for Disabled Persons and Persons with Reduced Mobility – Code of Practice*, UK Department for Transport, July 2008.

[18] See ECAC.CEAC DOC No. 30 (PART I), 11th Edition/December 2009, Annex 5C section 1.6.

8.29 We recommend that Article 11 be extended to require airlines to ensure that the personnel of their ground handling companies are trained to handle mobility equipment. Several PRM organisations informed us that damage to mobility equipment was one of the most serious problems for PRMs travelling by air, and that such damage could cause considerable distress to PRMs.

8.30 We recommend that Article 11 be amended to include the provisions in Recital 10, namely to specify that the provisions regarding training in ECAC Document 30 be taken into account when commissioning and developing training. This could be phrased in the manner of Article 9(2) on quality standards.

8.31 We recommend that Article 11b be amended to clarify that disability-equality and –awareness training is required for passenger-facing subcontractors as well as personnel directly employed by an airport. This would be consistent with Article 11a regarding personnel providing direct assistance. We were informed by one airport that an airline had disputed the level of PRM charges on the basis that the charges recovered the costs of training subcontractors, which the airline believed was not required by the Regulation.

8.32 We recommend that the Commission consider removing the requirement in Article 11c for disability-awareness training for non-passenger facing personnel, as it is not clear why this should be any more necessary in this sector than in others.

Obligatory charges where costs recovered

8.33 Article 8 permits airports to levy specific charges on airport users to fund the assistance provided under the Regulation, which must be reasonable, cost-related, transparent and established in cooperation with airport users. However, it does not *require* airports to levy such charges; several of the airports we researched for the study recovered costs through their general passenger charges, and did not identify the PRM component separately. Where specific charges are not applied, airports are not required to follow the requirements on reasonability, cost-relatedness, transparency and cooperation. We therefore recommend that, for airports above a minimum size, Article 8 be amended to make specific charges obligatory if costs are to be recovered from users.

Airport charges

8.34 We recommend that Article 8 be amended where necessary to make clear that PRM charges are airport-specific and cannot be set at a network level. At present, the translation into some languages (for example Spanish) could be interpreted to permit network charges, which we believe is contrary to the intention of the Regulation.

Independence of NEBs

8.35 We recommend that Article 14 be amended to require that NEBs must be independent of any bodies responsible for providing services under the Regulation.

Scope of Regulation

8.36 We recommend that Article 14 be amended to clarify that NEBs are responsible for

flights departing from (rather than, as is currently stated, both departing from and arriving at) airports in their territory, in addition to flights by Community carriers arriving at airports within State's territory but departing from a third country.

8.37 We also recommend that Recital 17 (which states that complaints regarding assistance given by an airline should be addressed to the NEB of the State which issued the operating license to the carrier) be amended to be consistent with Article 14.

PRMs without a reservation

8.38 Article 7 requires airports to provide assistance to PRMs arriving at an airport so that they are able to take the flight for which they hold a reservation. However, there may be rare occasions where a PRM (like any other passenger) arrives at an airport *without* a reservation, expecting to purchase a ticket at the airport. We therefore recommend that Article 7 be amended to set out the airport's responsibilities to such PRMs.

Longer term changes to the Regulation

8.39 The key issue that we have identified with the Regulation is that the text is much less detailed or specific than other comparable legislation (in particular, the equivalent US regulations on carriage of PRMs) and therefore leaves much more scope for interpretation and variation in service provision. We suggest that, to ensure greater consistency and that PRMs rights are adequately respected, the Commission should consider making the text more detailed and specific about the requirements for airlines and airports. The rest of this section describes key areas in which we suggest that changes could be made.

8.40 It would be necessary to consult with stakeholders about these changes and to undertake an impact assessment, and therefore these changes could not be introduced immediately.

Provisions on safe carriage PRMs

8.41 Once the Commission has established with EASA policies on the safe carriage of PRMs, particularly regarding any permissible limits on carriage and requirements for passengers to be accompanied (see 8.13), we recommend that either the Regulation or EU-OPS be extended to include these policies.

Definitions

8.42 We recommend that the following definitions should be clarified:

- **PRM:** The definition of PRM used in the Regulation is very broad and this has led to disputes as to whether obese passengers or those impacted by temporary injuries (e.g. winter sports) are included; and even that those temporarily incapacitated e.g. due to alcohol consumption might be included. We suggest that, at a minimum, the definition should be amended to clarify this, and ideally (but subject to consultation) a much more precise definition of passengers entitled to assistance should be used, along the lines of that used in the equivalent US Regulations (see below).
- **Mobility equipment:** The Regulation should make clear whether this includes

equipment required by PRMs for the trip but not required for them to be able to take the flight (e.g. joists for assisted lifting of PRMs).

- **Cooperation:** The Regulation should to specify what measures airports must take when required by the Regulation to set out policies and charges in cooperation with airport users and PRM organisations - in particular in Article 8(4).

Definition of disability used in US CFR part 14 rule 382

Individual with a disability means any individual who has a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(a) *Physical or mental impairment* means:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardio-vascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(b) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) Has a record of such impairment means has a history of, or has been classified, or misclassified, as having a mental or physical impairment that substantially limits one or more major life activities.

(d) *Is regarded as having an impairment* means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by an air carrier as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others toward such an impairment; or

(3) Has none of the impairments set forth in this definition but is treated by an air carrier as having such an impairment.

Supplementary charges

8.43 Although we have not been made aware of any incidences of airlines or airports charging for assistance provided under the Regulation, several airlines charge for the supply of medical oxygen, and for multiple seats where one seat is insufficient for the passenger (for example, in the case of obese or injured passengers). Several PRM organisations informed us that they believed these charges were unjust. We recommend that in any amendment of the Regulation it should be clarified whether airlines may levy such additional charges.

Information on rights of PRMs

8.44 Regulation 261/2004 requires airlines to display at check-in a notice informing passengers that they may request information on their rights under the Regulation. To assist the promotion of awareness of rights under Regulation 1107/2006, we recommend that the Regulation be extended to include a provision requiring airports

to publish information on the rights of PRMs (including the right to complain) at accessible points within the airport, for example at check-in desks and help points.

Liability for mobility equipment

8.45 The Montreal Convention allows for compensation for damage to baggage up to 1,131 SDRs (€1,370), however this is insufficient for many technologically advanced electric wheelchairs, which can cost several thousand euros. Although most airlines we contacted for the study informed us that they waived the Montreal limits in this type of situation, several PRM organisations informed us of cases where they did not. Even in the case that an airline voluntarily waives the limit, the PRM is in a position of uncertainty. This is exacerbated by the difficulty of obtaining insurance for such wheelchairs; the high cost combined with the high probability of damage means that the PRM organisations we spoke to had been unable to find any insurers willing to provide coverage.

8.46 We therefore recommend that the Commission work with non-EU States to amend the Montreal Convention to exclude mobility equipment from the definition of baggage.

APPENDIX A

AIR CARRIERS POLICIES ON CARRIAGE OF PRMS

APPENDIX TABLE A.1 POLICY ON DENIAL OF BOARDING, ACCOMPANYING PASSENGERS AND MEDICAL CLEARANCE

Airline	Circumstances for refusal of carriage	Circumstances requiring accompanying passenger	Circumstances requiring medical clearance
Aegean Airlines	Not stated *Unpublished limit on unaccompanied PRMs*	Not stated	• PRM requires oxygen
Air Berlin	May limit number of PRMs on each flight for safety reasons	'Advised' if the following apply (although the use of 'must' in terms of the criteria for the companion suggest that this may not be optional): • PRM has severe walking disability • PRM has severe visual impairment *Also required if:* • *PRM is on stretcher* • *PRM is mentally ill / blind / deaf if unable to follow crew instructions* • *ID states that continuous accompaniment required*	• *PRM has infectious disease* • *PRM is on stretcher* • *PRM requires oxygen*
Air France	Not stated	• PRM cannot safely exit aircraft alone • PRM cannot follow safety instructions • PRM has visual or hearing impairment	• PRM is on stretcher or in incubator • PRM will need extraordinary medical equipment during flight • PRM requires oxygen
AirBaltic	To meet safety requirements If aircraft doors make boarding physically impossible If number of PRMs exceeds number of cabin crew per flight, where PRMs form a large proportion of passengers on flight	PRM requires assistance beyond that provided by cabin crew. Cabin crew will provide additional information to PRMs, but will not: • Assist with eating or personal hygiene; • Administer medication; or • Lift or carry passengers. *Also required if unable to follow safety instructions, e.g. if in stretcher, incubator, of if both blind and deaf*	• PRM has infectious disease • PRM has 'unusual condition' which could affect welfare of crew or other passengers, or could be considered a potential hazard to flight or its punctuality • PRM will require medical attention or special equipment during flight • PRM has medical condition which may worsen during, or because of, flight • PRM cannot use normal seat in upright position

Airline	Circumstances for refusal of carriage	Circumstances requiring accompanying passenger	Circumstances requiring medical clearance
			• Pregnant passengers, except when uncomplicated and with more than 4 weeks until due date.
Alitalia	Conditions of Carriage state that boarding may be denied if advance arrangements have not been made	• PRM uses wheelchair • PRM is blind or deaf • PRM is on stretcher • PRM is not self sufficient	• *PRM will require medical assistance on board*
Austrian	Not stated	• PRM cannot evacuate aircraft alone • PRM cannot follow safety instructions • PRM needs assistance in feeding or using toilet • PRM is deaf and blind • PRM requires assistance beyond that provided by cabin crew	• PRM has chronic illness or disability
British Airways	Not stated	• PRM cannot lift themselves • PRM cannot evacuate aircraft alone • PRM cannot communicate with crew on safety matters • PRM cannot unfasten seat belt • PRM cannot retrieve and fit life jacket • PRM cannot fit oxygen mask.	Not stated
Brussels Airlines	To meet safety requirements If size of doors makes boarding or alighting physically impossible Limit of PRMs of up to 31 per flight depending on aeroplane type Conditions of Carriage state that boarding may be denied if advance arrangements have not been made	• PRM is mentally disabled and does not have prior medical clearance of airline	• PRM is on stretcher or bed • PRM requires oxygen • PRM is under care of a doctor • PRM has unstable medical condition • PRM suffers from illness • PRM has recently been to hospital, or has operation

Airline	Circumstances for refusal of carriage	Circumstances requiring accompanying passenger	Circumstances requiring medical clearance
			• PRM has medical disability and cannot be accompanied • PRM is more than 34 weeks pregnant
Delta	On basis of safety, or if in violation of Federal Aviation Regulations If advance arrangements have not been made (this requirement is more stringent in the Conditions of Carriage)	• PRM requires constant monitoring at departure gate • PRM requires assistance beyond that provided by cabin crew	• PRM has infectious disease • PRM requires oxygen • PRM will require extraordinary medical assistance during flight
EasyJet	If the safety and welfare of the PRM or other passengers may be compromised *In only extreme circumstances, e.g. where special seats or torso restraints are required, or if a passenger's condition makes them potentially violent or disruptive.*	• PRM cannot evacuate aircraft alone • PRM cannot communicate with staff • PRM cannot unfasten seat belt • PRM cannot retrieve and fit life jacket • PRM cannot fit oxygen mask • PRM cannot take care of own personal needs and welfare	• PRM has infectious or chronic illness • PRM has broken limb in plaster • PRM is 28-35 weeks pregnant • PRM is a child with a chronic lung disease • PRM has severe asthma or has recently been prescribed oral steroids.
Emirates	Not stated	• PRM needs to travel in stretcher or incubator • PRM requires medical attention during flight • PRM cannot follow safety instructions • PRM cannot evacuate aircraft alone • PRM has severe hearing and visual impairments and cannot communicate with staff	• PRM is on stretcher • PRM requires oxygen • PRM requires medical escort or in-flight treatment • PRM is carrying medical equipment or instruments • PRM is 29 or more weeks pregnant
Iberia	If PRM poses a risk to themselves and other passengers for medical reasons Limit on number of PRMs per flight *May also refuse carriage for security reasons, e.g. aggression.*	• In order to meet safety requirements • *PRM is considered as a 'medical case'*	Not stated
KLM	Not stated	• PRM requires assistance beyond that provided by	• PRM has infectious disease

Airline	Circumstances for refusal of carriage	Circumstances requiring accompanying passenger	Circumstances requiring medical clearance
	Passenger cannot sit up straight *Wheelchair will not fit through aircraft door.*	cabin crew • PRM cannot move unassisted between wheelchair and seat / toilet • *PRM not compliant with normal safety rules*	• PRM requires medical care or specific equipment in-flight • PRM has medical condition that could result in a life-threatening situation or could require the provision of exceptional medical care for their safety during the flight. • PRM requires in-flight personal care • PRM cannot use normal seat in upright position • PRMs up to 36 weeks pregnant who are expecting complications
Lufthansa	Limit on number of unaccompanied limited mobility PRMs per flight	• Not stated for non-US flights	Stringent medical clearance requirements – see text
Ryanair	Limit on number of disabled or sensory or mobility impaired PRMs per flight. Conditions of Carriage state that failure to advise on special needs will result in denial of boarding. *PRM limit can be overridden at the discretion of the crew on a case-by-case basis*	• PRM cannot use toilet unaided • PRM cannot feed themselves unaided • PRM cannot administer own medication.	• PRM requires oxygen, portable dialysis machine or continuous portable airway pressure machine
SAS	Not stated *When PRMs cannot be safely carried or physically accommodated*	• Not stated • *PRM is blind, deaf; or both* • *PRM is Disabled Passenger with Intellectual or Developmental Disability Needing Assistance* • *PRM is on stretcher*	• PRM requires stretcher or other flat transportation
TAP Portugal	Not stated *Unpublished limit on unaccompanied PRMs*	• PRM is in an incubator • PRM is on trolley / stretcher • PRM requires oxygen • PRM uses wheelchair or has 'great difficulty in mobility'	• PRM uses emotional support dog • PRM is more than 36 weeks pregnant

Airline	Circumstances for refusal of carriage	Circumstances requiring accompanying passenger	Circumstances requiring medical clearance
		• PRM is reliant on others	
TAROM	Not stated	• PRM suffers from a disease • *PRM cannot self-evacuate*	• PRM has disease • PRM requires stretcher • PRM requires oxygen
Thomas Cook	Not stated	• PRM cannot lift themselves • PRM cannot use toilet unaided • PRM cannot feed themselves unaided • PRM cannot administer own medication • PRM cannot communicate or follow instructions • PRM reliant on oxygen.	Unspecified – see text
TUI (Thomsonfly)	Not stated	• PRM cannot lift themselves • PRM cannot use toilet unaided • PRM cannot feed themselves unaided • PRM cannot administer own medication • PRM cannot communicate or follow instructions • PRM reliant on oxygen • PRM requires wheelchair.	• *PRM is unaccompanied and does not meet self-sufficiency requirements* • *PRM has declared medical condition* • *PRM has requested a service for which there is a risk of abuse, e.g. extra legroom seats would normally be chargeable.*
Wizzair	If medical certification is not provided on request If airline is unable to provide for specific medical requirements Limit of 28 PRMs per flight Conditions of Carriage state that boarding may be denied if advance arrangements have not been made	• PRM unable to care for themselves • PRM cannot use toilet unaided.	Unspecified, but could be required in all cases – see text.

APPENDIX B

SERVICES PROVIDED BY AIR CARRIERS

APPENDIX TABLE A.2 SERVICE AND RESTRICTIONS

Airline	Assistance dogs	Wheelchairs and other equipment	Assistance offered	Accessible information	Seating and onboard assistance
Aegean Airlines	Prenotification required Carried free in cabin Case / carrier required Subject to weight restriction Not carried on UK flights	Wheelchairs carried free Not subject to baggage allowance Passenger's oxygen allowed with medical certification Conditions of Carriage state that wet cell batteries are not allowed in cabin	Not stated	Not stated	Not stated
Air Berlin	Carried free in cabin Case / carrier not required Harness required	Wheelchairs carried in hold only Wet cell batteries subject to safety regulations Other medical aids carried free with medical certificate Limit of one wheelchair per passenger defined in Conditions of Carriage	Not stated	Not stated	Free seat reservation for passengers with severe disability pass (or equivalent) for 50% disability or more, and for companion PRMs cannot reserve XL / extra large seats (i.e. in exit rows) Conditions of carriage state that seating may be restricted for safety reasons
Air France	Carried free in cabin Leash required, attached to seat in front Muzzle not required	Up to two wheelchairs carried free of charge Onboard wheelchairs on most flights Stretchers accepted with medical clearance Oxygen allowed on board on payment of fee	Cannot lift passengers Cannot administer medication	Braille seat numbers in new aircraft Safety briefing in French or English Braille Some crew members able to communicate in French sign language	Additional seat may be reserved at discounted rate if needed Seats with retractable armrests Easy access toilets
AirBaltic	Carried free in cabin Excluded from weight	Carried free of charge Only collapsible wheelchairs	Will provide extra information Cannot assist with eating or	Not stated	Depending on aircraft, provide movable aisle armrest seats

Airline	Assistance dogs	Wheelchairs and other equipment	Assistance offered	Accessible information	Seating and onboard assistance
	restrictions Prohibited from exit rows	allowed in cabin Spillable batteries accepted if removed and packed and labelled Stretchers not carried Oxygen provided free with prenotification, doctor's verification and accompanying passenger	personal hygiene Cannot lift or carry passengers Cannot administer medication		PRMs cannot obstruct crew or emergency exits Companion must travel in seat next to PRM
Alitalia	Carried free in hold, or in cabin if space available Leash required Muzzle required	Wheelchairs carried free Stretcher service offered for a fee and with authorisation and accompanying passenger, only one per aircraft. Oxygen must be booked in advance, and not available on all flights	Not stated	Not stated	Not stated
Austrian	Carried free in cabin Leash required Subject to size and weight restriction Proof of status required	Up to two wheelchairs carried free, subject to space and prenotification for electric wheelchairs Onboard wheelchairs available	Preparation for eating Use of on-board wheelchair Accessing lavatory Stowing / retrieving carry-on items	Will communicate effectively as required.	Choice of seat may be limited Some seats with moveable armrests Accessible lavatories on long haul flights
British Airways	Prenotification required Limit on no. of guide dogs per flight Carried free in cabin Carried on all UK and certain international routes	Up to two wheelchairs carried free Preparation required for certain types of electric wheelchair Onboard wheelchairs on some flights Portable Oxygen Concentrators accepted with medical clearance, included in cabin	Cannot assist with breathing apparatus Cannot assist with eating Cannot administer medication Cannot assist with going to toilet Can assist in access to and from toilet when on-board wheelchair is available	Individual safety briefings and subtitles on English safety video Braille cards on some flights	Lifting armrests on some seats Cannot be seated on emergency exit aisle due to safety regulations. Will be allocated bulkhead seat when requested, unless already allocated to PRM. Adapted toilets on 747-operated flights

Airline	Assistance dogs	Wheelchairs and other equipment	Assistance offered	Accessible information	Seating and onboard assistance
		baggage allowance Conditions of carriage state that the airline reserves the right to refuse stretchers on any flight			
Brussels Airlines	Prenotification required Carried free in cabin Leash required Muzzle required Subject to national regulations	Electric wheelchairs carried in hold Spillable batteries accepted under certain conditions In-flight wheelchair on some flights Up to two stretchers on certain planes Can supply oxygen with prenotification and payment of fee in advance	Moving to toilet facilities Cannot lift passengers Cannot assist during visit to lavatory	Not stated	Not stated
Delta	Carried free in cabin Prohibited from exit rows Must occupy space where passenger sits No documentation required Subject to national entry requirements	One wheelchair can be carried in cabin per flight Wet cell batteries accepted with preparation One onboard wheelchair per flight Personal oxygen tanks can be transported but not used in flight Can provide oxygen on many flights, subject to medical certification Conditions of Carriage state that carriage of passengers requiring stretcher kit may be refused	Cannot assist with feeding or personal hygiene and lavatory functions. Cannot lift or carry passengers Cannot provide medical services such as giving injections.	Pre-booked passengers with hearing disabilities can be accompanied by agents who will provide updates on flight information	FAA regulations limit exit seats to certain customers Customers with service animals or immobilised leg are entitled to bulkhead seats On board aircraft with 100 seats or more, Delta provides a stowage location specifically for the first collapsible wheelchair

Airline	Assistance dogs	Wheelchairs and other equipment	Assistance offered	Accessible information	Seating and onboard assistance
EasyJet	Carried free in cabin if space available Must occupy space where passenger sits Harness required Proof of training and status required Only allowed on routes within UK or mainland Europe	Up two to portable mobility items carried free, subject to weight restriction Wet cell batteries not accepted No onboard wheelchairs Allow up to two oxygen cylinders per passenger, with medical certification Conditions of Carriage state that stretchers are not carried	Stowing and retrieving of hand baggage Opening food packages and describing the contents Cannot lift passengers Cannot provide personal care Cannot administer medication Cannot assist with feeding or children	Can provide a verbal explanation of the safety card information and location of emergency exits	Body supports required for passengers who cannot sit upright
Emirates	All animals carried in hold, subject to IATA Live Animals and national regulations	Wheelchairs carried free of charge Do not count towards baggage allowance Battery-powered wheelchairs subject to safeguards Stretcher kit provided Oxygen provided Portable Oxygen Concentrators allowed	Cannot assist with transfer Cannot assist with feeding Cannot assist with toilet functions	Not stated	Not stated
Iberia	Carried free in cabin Must not use seat Muzzle required Does not count towards luggage allowance Deaf passengers will require medical certificate	All wheelchairs carried free in hold Wet cell batteries accepted with preparation Carriage of stretchers may be restricted on smaller aircraft Oxygen allowed in cabin subject to certain conditions	Cannot provide sanitary, hygienic or safety onboard assistance.	Not stated	'The entire fleet has been adapted to carry Passengers with Reduced Mobility, despite the space limitations that air transport normally poses.'
KLM	Carried free in cabin Must be with PRM, but not using seat or blocking aisle of	Up to two pieces of mobility equipment carried free Collapsible wheelchairs allowed	Transporting passengers using on-board wheelchair	Braille safety cards Toilets with Braille attendant call	Seats with moveable armrests Leg rests available

Airline	Assistance dogs	Wheelchairs and other equipment	Assistance offered	Accessible information	Seating and onboard assistance
	exit Leash required Subject to national regulations	in cabin, electric wheelchairs carried in hold Wet cell batteries accepted with preparation Onboard wheelchairs on all flights Stretcher service offered, subject to medically trained companion Oxygen allowed on board on payment of fee Own oxygen not allowed Approved Portable Oxygen Concentrators allowed	Cannot assist with eating Cannot lift or carry passengers Cannot administer medication Cannot assist with personal hygiene	buttons	
Lufthansa	Carried free in cabin Limited number allowed per flight Subject to national regulations	Wheelchairs carried free in hold (small collapsible devices allowed in cabin to/from US) Non leak-proof wet cell batteries not accepted except to/from US Limit on number of wheelchairs per flight Limited oxygen available with advance payment of an unspecified fee	Assistance in boarding / disembarking Stowing hand luggage Opening of food items Getting to / from toilet Cannot provide assistance in toilet Cannot lift or carry passengers Cannot feed passengers Cannot administer medication	Will explain arrangement of meal tray to partially sighted Flights to/from US section of website also includes: Separate safety briefings Separate briefings about delays and other issues Captioning of in-flight video in English and German	Disabled toilets in long-haul aircraft Flights to/from US section of website also includes: Bulkhead seats provided if travelling with service animal Some seats with lifting armrests May not be able to sit near exit
Ryanair	Carried free in cabin Must travel on floor at passenger's feet Max of 4 per flight Not carried on some international routes	Wheelchairs carried free of charge in hold Not subject to weight limit Wet cell batteries not accepted One oxygen request per flight allowed at cost of £100.	Will provide water for taking medication Cannot administer medication Cannot lift passengers Cannot assist with personal hygiene	Not stated	Passengers with reduced mobility, or whose physical size prevents them from moving quickly cannot be seated near exit. Passengers with pre-booked special assistance will be

Airline	Assistance dogs	Wheelchairs and other equipment	Assistance offered	Accessible information	Seating and onboard assistance
		Personal oxygen not allowed on board Conditions of carriage state that stretchers are not carried			boarded after general boarding is completed as seats will be held on board. Conditions of carriage state that seating may be restricted for safety reasons
SAS	Carried free in cabin Case / carrier not required Excluded from weight restriction	One collapsible and one power-driven wheelchair carried free of charge Wet cell batteries accepted as cargo In-flight wheelchair on some flights Personal oxygen allowed if required for transport to/from aircraft Will provide oxygen with payment of fee	Cannot lift passengers Cannot assist during visit to lavatory	Not stated	Not stated
TAP Portugal	Dogs and cats allowed in cabin Leash required Must not occupy a seat Must comply with sanitary regulations Proof of status required	Prenotification of type of wheelchair battery required On-board wheelchair on larger planes Stretchers accepted in economy class subject to medically trained companion Oxygen provided with medical certification Personal oxygen not allowed	Not obliged to provide any on-board assistance contradicting passenger statement of self-reliance, e.g. assistance in toilet, lifting, carrying or feeding.	Not stated	May request an additional seat for greater comfort in coach class only. This seat must be requested when booking and is charged as an occupied place
TAROM	Prenotification required Carried free in cabin Case / carrier not required	Wheelchairs carried free and allowed in cabin on some planes Preparation of some electric	Not stated	Not stated	Not stated

Airline	Assistance dogs	Wheelchairs and other equipment	Assistance offered	Accessible information	Seating and onboard assistance
	Muzzle required	wheelchairs may be required Stretchers not allowed on certain planes. PRM using a stretcher is considered as 'medical case' and is consequently required to obtain a medical certificate, and to be accompanied by a medical professional. Oxygen provided free, subject to limits on no of passengers per flight Personal oxygen not allowed			
Thomas Cook	Carried on many routes	Wheelchairs carried free in hold Electric wheelchairs accepted subject to IATA Dangerous Goods Regulations Limit on no of wheelchairs Stretchers not carried One oxygen request per flight allowed at cost of £100. Personal oxygen not allowed on board	Can assist in opening food containers	Will describe catering arrangements to blind people In-flight safety video includes subtitles Also offer separate briefing about safety procedures for passengers with hearing impairments	PRMs cannot be seated near exits
TUI (Thomsonfly)	Carried on many routes Conditions of Carriage state that this will incur 'a nominal charge'	Wheelchairs carried free in addition to normal baggage allowance Electric wheelchairs accepted subject to IATA Dangerous Goods Regulations Passengers may bring their own oxygen supply onboard if authorised to do so by Special	Not stated	Not stated	Not stated

Airline	Assistance dogs	Wheelchairs and other equipment	Assistance offered	Accessible information	Seating and onboard assistance
		Assistance Team.			
Wizzair	Not stated	Wheelchairs carried subject to weight limit Spillable batteries not accepted Do not provide additional oxygen, and passengers cannot carry their own supply Conditions of carriage state that stretchers are not carried	Free 'Meet and Assistance Service' provided to deaf and blind passengers on request	Not stated	PRMs cannot be seated on exit rows

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«Vers une société de l'information accessible»

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«Vers une société de l'information accessible»

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1. RESUME

La société actuelle étant en train de devenir une «société de l'information», les produits et services informatiques conditionnent de plus en plus directement notre vie quotidienne. Toutefois, à cause d'une faible e-accessibilité, nombre d'Européens souffrant d'un handicap sont toujours dans l'impossibilité de tirer profit de la société de l'information.

Récemment, il a été accordé une grande attention au problème de l'e-accessibilité qui y a gagné une forte visibilité politique. Dans leur «déclaration de Riga» de 2006, les ministres européens ont fixé des objectifs pour que des progrès significatifs soient accomplis d'ici à 2010. En 2007, l'analyse comparative des performances a montré que les progrès étaient encore trop lents et qu'il fallait faire plus d'efforts pour atteindre les objectifs de Riga. Vu l'importance croissante d'internet dans la vie de tous les jours, l'accessibilité du web, notamment des sites web de l'administration publique, s'est imposée comme une priorité absolue.

La Commission estime qu'il est maintenant urgent d'adopter une **approche commune plus cohérente et efficace de l'e-accessibilité, en particulier de l'accessibilité du web**, pour accélérer l'avènement d'une société de l'information accessible comme annoncé dans l'agenda social renouvelé[1]. Dans la présente communication, la Commission décrit la situation actuelle, expose les motifs d'une action au niveau européen et les principales mesures à prendre.

Pour parvenir à une **approche de l'e-accessibilité** commune et cohérente:

- les organismes européens de normalisation (OEN) doivent **entreprendre de plus larges activités de normalisation de l'e-accessibilité** pour limiter le morcellement du marché et faciliter l'adoption des biens et services liés aux TIC;

- les États membres, les acteurs concernés et la Commission doivent **œuvrer en faveur d'un niveau accru d'innovation et de déploiement** en matière d'e-accessibilité, notamment par le recours aux programmes de recherche et d'innovation de l'UE et aux Fonds structurels;

- tous les acteurs concernés doivent **exploiter pleinement** les possibilités de traiter la question de l'e-accessibilité offertes par **la législation européenne existante**. La Commission veillera à inclure des exigences appropriées en matière d'e-accessibilité dans les révisions ou les nouvelles propositions législatives;

- la Commission **encouragera les activités de coopération des acteurs concernés** pour renforcer la cohérence, la coordination et l'impact des actions. En particulier, un nouveau groupe ad hoc à haut niveau sera mandaté pour donner des orientations sur une approche globale cohérente de l'e-accessibilité (et de l'accessibilité du web) et proposer des actions prioritaires afin de lever les obstacles à l'e-accessibilité.

[1] COM(2008) 412.

Pour permettre des progrès plus rapides dans le cas particulier de l'**accessibilité du web**:

- les OEN doivent **rapidement adopter des normes européennes** concernant l'accessibilité du web, dans le prolongement des orientations actualisées du consortium World Wide Web en la matière (WCAG 2.0);

- les États membres **doivent intensifier les travaux** consistant à rendre **accessibles** les sites web publics et **préparer ensemble l'adoption rapide** de normes européennes sur l'accessibilité du web;

- la Commission **suivra les progrès, en rendra compte dans une publication** et, ultérieurement, pourra y donner suite par des mesures législatives.

2. E-ACCESSIBILITE

Par **e-accessibilité**, on entend la possibilité de surmonter les obstacles et difficultés techniques auxquels se heurtent les personnes handicapées, dont nombre de personnes âgées, lorsqu'elles essaient de s'intégrer, sur un pied d'égalité, dans la société de l'information.

Dès lors qu'il faut donner à tous les mêmes chances de jouer un rôle dans la société actuelle, la gamme complète de biens, produits et services TIC doit être accessible. Cela comprend les ordinateurs, les téléphones, les téléviseurs, l'administration en ligne, les achats en ligne, les centres d'appel, les terminaux en libre-service comme les guichets automatiques de banque (GAB) et les distributeurs de billets.

2.1. Situation actuelle

Le défi que constitue l'accessibilité est d'une ampleur considérable et sans cesse croissante: environ 15 % de la population européenne souffre d'un handicap et jusqu'à un Européen sur cinq en âge de travailler est atteint d'une incapacité exigeant une solution en termes d'accès. En tout, l'e-accessibilité devrait être bénéfique à trois personnes sur cinq dans la mesure où elle accroît la facilité d'utilisation globale[2].

L'e-accessibilité a des conséquences socio-économiques tant pour les individus que pour l'Europe dans son ensemble. Par exemple, les solutions d'accessibilité offertes par les TIC peuvent aider les travailleurs âgés à rester en activité et faciliter l'adoption de services publics en ligne, comme l'administration et la santé. L'insuffisance d'e-accessibilité a pour effet d'exclure des catégories entières de la population et les empêche d'exercer pleinement leurs activités professionnelles, éducatives, récréatives, civiques et sociales. Développer l'e-accessibilité contribuera donc à la réalisation des objectifs d'insertion économique et sociale.

De nombreux pays ont au moins pris des mesures législatives ou d'aide pour promouvoir l'e-accessibilité et certaines entreprises du secteur des TIC déploient des efforts notables pour améliorer l'accessibilité de leurs produits et services[3].

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2 The Demographic Change – Impacts of New Technologies and Information Society.

3 Voir les détails dans le document de travail des services de la Commission accompagnant la présente communication.

L'e-accessibilité est aussi un volet essentiel de la politique européenne en faveur de la participation de tous à la société de l'information[4]. Dans un contexte plus général, les TIC entrent dans le champ d'application de la proposition de directive sur l'égalité de traitement qui fait référence à l'accès aux biens et services à la disposition du public et à leur fourniture[5]. La Communauté européenne et les États membres doivent aussi remplir leurs obligations, au titre de la convention des Nations unies relative aux droits des personnes handicapées, en ce qui concerne l'accessibilité des biens et services TIC. Enfin, certaines parties de la législation de l'UE abordent déjà, directement ou indirectement, les problèmes d'e-accessibilité.

2.2. Nouvelles raisons d'agir

En dépit des avantages que l'e-accessibilité est censée procurer et de l'intérêt politique qui lui est porté, les progrès enregistrés en la matière sont encore insuffisants. Le manque d'accessibilité peut être illustré par plusieurs exemples frappants. Ainsi, les services de relais textuels, indispensables aux sourds et malentendants, ne sont disponibles que dans la moitié des États membres; les services d'urgence directement accessibles par textophone n'existent que dans sept États membres; les émissions télévisées avec audiodescription, sous-titrées et en langage des signes restent marginales; seuls 8 % des GAB installés par les deux principales banques de dépôt européennes offrent une assistance vocale[6].

L'acquis communautaire concernant l'e-accessibilité est limité. Au niveau des États membres, l'e-accessibilité est traitée de façon extrêmement diverse, qu'il s'agisse des problèmes abordés (services de téléphonie fixe, programmes de télévision et accessibilité des sites web publics le plus souvent) ou du degré d'achèvement des instruments politiques employés. Le secteur des TIC, confronté à des exigences contradictoires et des incertitudes, pâtit de ce morcellement du marché et il lui est difficile de réaliser les économies d'échelle nécessaires à l'innovation et à la croissance économique. Certaines entreprises du secteur se sont résolument engagées et coopèrent avec les utilisateurs (par exemple sur l'accessibilité de la télévision numérique), mais un trop grand nombre d'entre elles restent spectatrices.

Ce qui pose surtout problème dans l'e-accessibilité, c'est que les efforts actuellement déployés donnent trop peu de résultats, en raison d'un manque de cohérence et de clarté dans l'établissement des priorités et d'un soutien législatif et financier insuffisant.

Une approche européenne commune et cohérente de l'e-accessibilité est donc essentielle pour obtenir des progrès significatifs.

2.3. Actions proposées

(1) Provoquer le changement – renforcer les priorités politiques, la coordination et la coopération des acteurs concernés

Au niveau européen, plusieurs activités ont été entreprises ces dernières années. Il est maintenant temps de développer les synergies entre ces activités et de renforcer certains domaines d'action particuliers pour produire un impact plus marqué et plus cohérent.

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4 Communication sur l'initiative i2010 COM(2005) 229, communication sur l'e-accessibilité COM(2005) 425, et communication sur la participation de tous à la société de l'information COM(2007) 694.

5 COM(2008) 426.

6 Pour plus de détails, voir l'étude MeAC «Mesurer les progrès de l'e-accessibilité en Europe».

Les États membres, les utilisateurs et les entreprises doivent redoubler d'efforts et tenter, par une coopération accrue au niveau européen et un meilleur usage des instruments politiques européens existants, d'avoir plus d'impact. Afin d'accroître la cohérence et l'efficacité d'une approche commune et de contribuer à l'établissement des priorités, la Commission instituera un **groupe ad hoc à haut niveau sur l'e-accessibilité** qui rendra compte au groupe à haut niveau sur l'initiative i2010 et réunira des associations de consommateurs, des représentants des utilisateurs handicapés et âgés, des entreprises du secteur des TIC, des technologies d'assistance et des services, des représentants du monde universitaire et des autorités compétentes.

Au début de 2009, la Commission instituera un **groupe ad hoc à haut niveau** chargé de donner des orientations sur les priorités et une approche plus cohérente en matière d'e-accessibilité. Les acteurs concernés sont invités à s'investir dans cette coopération.

La Commission **renforcera son soutien en faveur de la coopération** avec et entre les acteurs concernés. En particulier, les groupes chargés de superviser la mise en œuvre de l'initiative i2010, les questions de normalisation, les problèmes de télécommunications et le plan d'action en faveur des personnes handicapées doivent utiliser les orientations du groupe à haut niveau pour étayer leurs priorités. Il est également important que les utilisateurs, les autorités compétentes et les entreprises s'engagent et coopèrent davantage sur les questions d'e-accessibilité.

Il faut établir des priorités en matière d'e-accessibilité. La première est l'accessibilité du web à laquelle l'approche commune et cohérente proposée peut s'appliquer. Viennent ensuite l'accessibilité de la télévision numérique et des communications électroniques, y compris l'accessibilité du numéro d'urgence européen unique. À cet égard, la coopération des utilisateurs et des entreprises doit être renforcée et, avec l'aide du groupe à haut niveau, mieux associée aux mesures de soutien prises au niveau de l'UE dans le domaine législatif et de l'innovation.

Les terminaux en libre-service et les services bancaires électroniques constituent une autre priorité[7]. La coopération plus étroite des acteurs concernés permettra d'avoir des orientations sur les priorités futures et de définir un programme commun des travaux à mener.

La Commission a déjà abordé la question de l'e-accessibilité dans sa proposition de nouvelle version du cadre d'interopérabilité européen pour l'administration en ligne[8], et le fera aussi à l'occasion du suivi de l'initiative i2010 et du plan d'action en faveur des personnes handicapées.

La Commission veillera à ce que l'e-accessibilité reste une **priorité politique** dans le cadre du suivi de l'initiative i2010 et du plan d'action en faveur des personnes handicapées.

Ces coordination et coopération plus étroites seront encore renforcées par l'intensification des activités ci-après.

(2) Suivre les progrès et renforcer les bonnes pratiques

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7 Voir le rapport sur la consultation publique.

8 http://ec.europa.eu/idabc/en/document/7728

Dans le prolongement des études réalisées en 2006-2008[9], la Commission lancera, en 2009, une étude pour continuer à suivre les progrès et la mise en œuvre de l'e-accessibilité générale et de l'accessibilité du web.

Au titre du programme pour la compétitivité et l'innovation (PCI) de 2009, la Commission proposera un nouveau réseau thématique sur l'e-accessibilité et l'accessibilité du web afin de développer encore la coopération des acteurs concernés, l'acquisition d'expérience et la collecte de bonnes pratiques. Elle visera aussi à développer le réseau *ePractice* d'échange de bonnes pratiques en matière d'administration en ligne, de santé en ligne et de participation à la société de l'information, qui a déjà de grandes compétences concernant l'e-accessibilité.

La Commission suivra les progrès et la mise en œuvre de l'accessibilité du web et de l'e-accessibilité et soutiendra la coopération et l'échange de bonnes pratiques par des **études** et un **réseau thématique PCI** qui seront lancés en 2009.

(3) Soutenir l'innovation et le déploiement

La recherche et l'innovation en matière d'e-accessibilité bénéficient déjà d'un large soutien. En 2008, 13 nouveaux projets ont été financés à hauteur de 43 millions d'euros sur le budget du programme de recherche de l'UE. Dans le cadre de ces programmes de recherche, la Commission continuera, par un nouvel appel de propositions en 2009, à soutenir activement l'e-accessibilité et les TIC pour l'autonomie des personnes âgées.

La Commission veillera à ce que **l'e-accessibilité soit une priorité absolue de la recherche et de l'innovation** en 2009 et au-delà.

Les États membres et la Commission auront recours au programme commun de recherche «Assistance à l'autonomie à domicile» (AAD), lancé en 2008, pour promouvoir des solutions innovantes, fondées sur les TIC, concernant l'autonomie ainsi que la prévention et la gestion des affections chroniques des personnes âgées.

Pour accélérer le déploiement technologique, la Commission a financé, au titre du PCI 2008, un projet pilote sur l'accessibilité de la télévision et des pilotes sur les TIC en faveur des personnes âgées. En 2009, la Commission financera un projet pilote sur la «conversation totale» (combinaison de communications sonore, textuelle et visuelle pour aider les personnes handicapées) qui permettra aux personnes ayant des difficultés d'audition et d'élocution d'utiliser le «112», numéro d'urgence européen.

Les États membres et les acteurs concernés sont vivement encouragés à **favoriser l'innovation et le déploiement en matière d'e-accessibilité** par l'intermédiaire des Fonds structurels, du 7e PC, du programme AAD et des programmes nationaux.

Le règlement sur les Fonds structurels[10] exige des États membres qu'ils considèrent l'accessibilité pour les personnes handicapées comme l'un des critères pour bénéficier d'un cofinancement. Dans ce contexte, la Commission fournira, en 2009, une boîte à outils «handicap» applicable aux TIC, et incitera les États membres et les régions à faire en sorte

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9 Étude MeAC et étude sur l'accessibilité des produits et services TIC pour les personnes handicapées et âgées.

10 Règlement (CE) n° 1083/2006 du Conseil.

que l'accessibilité des TIC soit l'un des critères d'octroi des marchés publics et des financements.

En 2009, la Commission fournira une **boîte à outils «handicap»** applicable aux TIC et destinée à être utilisée dans les Fonds structurels et d'autres programmes.

(4) Faciliter les activités de normalisation

La Commission continue à soutenir résolument l'e-accessibilité dans son programme de travail de normalisation. En particulier, le mandat 376 confié aux organismes européens de normalisation constitue une importante activité de normalisation pour promouvoir l'e-accessibilité[11]. La Commission œuvrera à promouvoir l'exploitation des résultats de ce travail de normalisation et tentera de donner rapidement suite au mandat 376 pour disposer des normes effectives et des systèmes correspondants d'évaluation de la conformité. Ce processus sera complété et étayé par le dialogue entre acteurs concernés, l'échange de bonnes pratiques et des projets pilotes de déploiement, comme indiqué dans les propositions d'action de la présente communication.

Au titre du mandat 376, les OEN doivent **rapidement élaborer des normes européennes** concernant l'e-accessibilité, en coopération avec les acteurs concernés, au cours de l'année 2009 et au-delà.

(5) Tirer parti de la législation actuelle et en envisager une nouvelle

Au niveau national, il y a une corrélation évidente entre l'existence d'une législation et les progrès effectifs en matière d'e-accessibilité[12]. Les études soulignent les risques de morcellement juridique dans l'UE en raison de dispositions législatives divergentes. À partir de ce constat, et sur la base des communications de 2005 et 2007, la Commission a commencé à rechercher une approche législative plus générale de l'e-accessibilité.

Toutefois, étant donné l'ampleur, la complexité et le caractère évolutif de la question, aucun consensus ne s'est encore nettement dégagé sur une éventuelle législation européenne spécifique à l'e-accessibilité[13], par exemple sur des aspects comme le champ d'application, les normes, les mécanismes de mise en conformité et les rapports avec la législation actuelle. En outre, même s'il y a un consensus clair quant à la nécessité d'agir conjointement pour améliorer l'e-accessibilité, les opinions divergent en ce qui concerne les questions à aborder en priorité. La Commission en a donc conclu que le moment n'était pas opportun pour faire une proposition législative spécifique à l'e-accessibilité mais, à la lumière des progrès accomplis dans ce domaine, elle continuera à évaluer la faisabilité et la pertinence d'une telle proposition.

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[11] Le but du mandat 376 est de permettre le recours aux marchés publics et aux bonnes pratiques en matière de TIC de façon à lever les obstacles à la participation des personnes handicapées et âgées à la société de l'information. Le mandat 376 a été confié par la Commission européenne aux OEN qui doivent proposer une solution concernant des exigences communes (par exemple relativement à la taille des textes, au contraste d'écran, à la taille des claviers, etc.) et l'évaluation de la conformité.

[12] Voir l'étude MeAC et l'étude sur l'accessibilité des produits et services TIC pour les personnes handicapées et âgées.

[13] Lors de la consultation publique, 90 % des associations d'utilisateurs, contre 33 % des entreprises et des pouvoirs publics, ont considéré l'instauration d'une législation contraignante comme une priorité élevée.

Néanmoins, la législation européenne actuelle contient des dispositions qui restent sous-exploitées, notamment en ce qui concerne les équipements de radiotélécommunications, les communications électroniques, les marchés publics, le droit d'auteur dans la société de l'information, l'égalité de traitement en matière d'emploi, la taxe sur la valeur ajoutée et les exemptions dans le domaine des aides d'État[14]. Tirer pleinement parti de ces dispositions contribuerait déjà à améliorer considérablement l'e-accessibilité dans les États membres. La Commission encourage donc les États membres à les exploiter autant que possible avant qu'une nouvelle législation ne soit envisagée.

Plusieurs des textes législatifs européens ci-dessus font, ou feront bientôt, l'objet d'un réexamen[15]. La Commission œuvrera à faire en sorte que les exigences d'e-accessibilité soient, le cas échéant, prises en compte et renforcées à l'occasion de ces révisions. En outre, les propositions législatives en matière de communications électroniques renforcent considérablement les dispositions qui, dans le cadre actuel, concernent les utilisateurs handicapés. La Commission suivra également de près la transposition et l'application de la directive sur les médias audiovisuels[16], en particulier de son article 3 quater qui prévoit que les États membres encouragent les fournisseurs de services de médias qui relèvent de leur compétence à veiller à ce que les services qu'ils offrent deviennent progressivement accessibles aux personnes souffrant de déficiences visuelles ou auditives.

La Commission **veillera à ce que les révisions** de la législation européenne **comportent des dispositions appropriées en matière d'e-accessibilité**. Les États membres, les acteurs concernés et la Commission doivent **exploiter pleinement les possibilités** de renforcer l'e-accessibilité **offertes par la législation actuelle**.

3. ACCESSIBILITE DU WEB

Aspect important de l'e-accessibilité, l'**accessibilité du web** est la possibilité offerte aux personnes handicapées de connaître et de comprendre le web, d'y naviguer, d'interagir avec et d'y contribuer. Elle profite également aux personnes ayant des déficiences visuelles, de dextérité ou cognitives, comme les personnes âgées. L'accessibilité du web est devenue particulièrement importante en raison de l'essor des services d'information en ligne et interactifs: banque, achats, administration, services publics, communication à distance avec les parents ou amis.

3.1. Situation actuelle

Malgré son importance, l'accessibilité du web reste globalement à un faible niveau dans l'UE. Plusieurs études nationales et européennes, réalisées au cours des dernières années, ont montré que la majorité des sites web, publics et privés, ne respectent même pas les orientations de base internationalement reconnues en matière d'accessibilité. Une étude récente a montré que seulement 5,3 % des sites web de l'administration publique étaient conformes aux orientations de base en matière d'accessibilité[17] et que pratiquement aucun des

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14 Directives 2000/78/CE, 2002/21/CE, 1999/5/CE, 2004/18/CE, 2001/29/CE, 2007/65/CE.

15 Par exemple, la directive 1999/5/CE concernant les équipements terminaux de télécommunications fait l'objet d'un réexamen: dans ce contexte, la Commission veillera à conserver la possibilité de faire appliquer l'article 3, paragraphe 3, point f), de la directive.

16 Directive 2007/65/CE.

17 Étude MeAC.

sites commerciaux étudiés ne l'était. Cela explique pourquoi tant de gens jugent d'importants sites web difficiles à utiliser, ce qui a pour effet de les exclure partiellement ou totalement de la société de l'information.

Récemment, l'accessibilité des sites web publics a suscité un intérêt politique accru dans les États membres[18]. Au niveau européen, une communication de 2001 sur l'accessibilité du web encourageait les États membres à approuver les orientations pour l'accessibilité du contenu du web WCAG (Web Content Accessibility Guidelines)[19]. Dans deux résolutions[20], le Conseil a souligné la nécessité d'accélérer l'accessibilité du web et de son contenu. En 2002, le Parlement européen a proposé que tous les sites web publics soient totalement accessibles aux personnes handicapées à la fin de 2003[21]. En 2006, la déclaration ministérielle de Riga sur une société de l'information intégratrice comportait l'engagement que 100 % des sites web publics soient accessibles d'ici à 2010.

Au niveau international, la version 1 des WCAG a été adoptée en 1999 par le consortium World Wide Web (W3C). Toutefois, en raison d'ambiguïtés, les WCAG 1.0 n'ont pas été appliquées de façon uniforme par les États membres et, compte tenu de la récente évolution d'internet, sont désormais dépassées. Depuis plusieurs années, le W3C travaille sur une nouvelle version des spécifications (WCAG 2.0) qui a désormais atteint la phase finale d'adoption. Cette fois, le défi consiste à en éviter l'application disparate.

3.2. Nouvelles raisons d'agir

Dans certains cas, rendre les sites web plus accessibles peut s'avérer une gageure, impliquer des coûts et demander des compétences. Toutefois, il y a de plus en plus d'éléments et d'exemples connus qui démontrent que rendre accessible un site web procure de réels avantages non seulement aux utilisateurs handicapés, mais aussi aux propriétaires de site et à l'ensemble des utilisateurs. Les services deviennent plus faciles à utiliser, plus simples à entretenir et accessibles à davantage d'utilisateurs[22]. En conséquence, accroître l'accessibilité des sites web améliore la situation des personnes handicapées, mais aussi de toute la population, et peut donc renforcer la compétitivité des entreprises européennes.

Étude de cas: avantages d'un site web accessible

Une société britannique de services financiers ayant rendu son site web plus accessible en a tiré les avantages suivants:

- Les clients ont trouvé l'information plus rapidement et sont restés sur le site plus longtemps.

- De nouveaux clients ont utilisé le service et les ventes en ligne ont augmenté.

- La maintenance du site web a été plus simple, plus rapide et moins onéreuse.

- Le site web est nettement remonté dans le classement des moteurs de recherche.

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18 Voir le document de travail des services de la Commission à ce sujet.
19 COM(2001) 529.
20 2002/C 86/02 et 2003/C 39/03.
21 C5-0074/2002-2002/2032(COS).
22 Document de travail des services de la Commission.

- Les problèmes de compatibilité ont été éliminés et l'accès par dispositif mobile a été amélioré.

- Un retour sur investissement de 100 % a été obtenu en moins de 12 mois.

Malgré tout, les divergences persistantes entre législations nationales, combinées à l'absence d'initiative législative claire au niveau européen, constituent toujours une entrave au marché intérieur, des obstacles pour le consommateur et le citoyen dans un environnement transnational, et un frein au développement des entreprises. La convention des Nations unies relative aux droits des personnes handicapées prévoit des obligations, en ce qui concerne internet, que les États parties doivent remplir. Il convient donc d'agir au niveau européen.

3.3. Actions proposées

C'est aux États membres et aux prestataires de services qu'il appartient, en premier lieu, d'améliorer l'accessibilité du web. Cependant, il y a des actions, que la Commission peut entreprendre ou faciliter, qui contribueront à accélérer l'amélioration de l'accessibilité du web en Europe, même sans dispositions législatives spécifiques. Le succès global de l'initiative sera conditionné par une approche commune et cohérente dont les principales lignes d'action sont les suivantes:

(1) Faciliter l'adoption et l'application rapides des orientations internationales en Europe

Il est largement admis que les WCAG 2.0 constituent les spécifications techniques à respecter scrupuleusement en matière d'accessibilité du web. Une fois que le W3C sera parvenu à un accord sur ces orientations, attendu prochainement, les organismes visés par le mandat 376 pourront achever leur travail d'harmonisation au niveau européen. Entre-temps, les États membres doivent entreprendre des actions pour faire en sorte que soit atteint l'objectif, fixé à Riga, de rendre accessibles les sites web publics et préparer l'intégration rapide de nouvelles spécifications en matière d'accessibilité du web dans leur réglementation nationale de façon conjointe et cohérente:

– en publiant, en 2009-2010, les orientations techniques actualisées et, le cas échéant, en traduisant les spécifications applicables du W3C;

– en recensant, en 2009, les sites web publics et les intranets[23] concernés et en assurant leur accessibilité d'ici à 2010.

La Commission poursuivra ses travaux pour améliorer l'accessibilité de ses propres sites web et actualisera ses orientations internes pour tenir compte des nouvelles spécifications.

Les prestataires de services non publics, en particulier les propriétaires de site web fournissant des services d'intérêt général[24] et les fournisseurs de sites web commerciaux qui sont essentiels pour participer à la vie économique et sociale, sont également encouragés à améliorer l'accessibilité du web (à partir de 2008).

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[23] Conformément à la directive 2000/78/CE sur l'égalité de traitement en matière d'emploi.

[24] Comme indiqué dans le COM(2007) 725.

Les États membres doivent assurer l'**accessibilité totale** des sites web publics d'ici à 2010 et préparer, **de façon conjointe et cohérente**, la transition rapide vers des spécifications actualisées en matière d'accessibilité du web.

Les propriétaires de site web fournissant des services d'intérêt général et les propriétaires d'autres sites web pertinents doivent en améliorer l'accessibilité.

Les organismes européens de normalisation, en coopération avec les acteurs concernés, doivent rapidement élaborer, sur la base des WCAG 2.0, **des normes européennes concernant l'accessibilité du web**.

La Commission s'attache à améliorer l'accessibilité de ses sites web et à actualiser ses orientations internes pour tenir compte des nouvelles spécifications.

La Commission suivra et soutiendra cette évolution en encourageant les États membres à prendre rapidement des mesures relativement aux principaux aspects de la mise en œuvre et en facilitant la collecte et l'échange d'expériences pratiques, essentiellement par l'intermédiaire de la plateforme *ePractice*[25]. Une fois les normes instaurées, la Commission déterminera, en fonction des progrès accomplis, s'il faut des orientations européennes communes, y compris des mesures législatives[26].

La Commission suivra les progrès, en rendra compte dans une publication et déterminera s'il faut des orientations européennes communes, y compris des mesures législatives (à partir de 2009).

(2) Mieux comprendre et promouvoir l'accessibilité du web

Il est absolument nécessaire de voir plus clairement quels sont les besoins et solutions en matière d'accessibilité du web, de mieux les comprendre et d'y être davantage sensibilisés. Pour y parvenir, les États membres doivent jouer un rôle prééminent:

– en promouvant largement l'accessibilité des sites web, en fournissant des informations et orientations claires à ce sujet, y compris sur les technologies d'assistance[27], et en encourageant le recours aux déclarations d'accessibilité[28];

– en soutenant des programmes de formation, le partage des connaissances et l'échange de bonnes pratiques;

– en faisant l'acquisition, dans le cadre des marchés publics, d'outils et de sites web accessibles;

– en désignant, en 2009, un point de contact national (par exemple un site web) pour l'accessibilité du web;

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25 www.epractice.eu.

26 Voir l'analyse d'impact du COM(2007) 694.

27 Dispositifs TIC prenant en charge les capacités fonctionnelles des personnes handicapées.

28 Consistant à fournir des informations complémentaires sur la politique d'accessibilité du site web, la conformité aux spécifications applicables, la prise en charge des personnes handicapées, les mécanismes de réclamation.

– en suivant les progrès accomplis dans le domaine de la conformité, de la satisfaction des usagers et du coût de mise en œuvre de l'accessibilité du web sur les sites publics et autres, et en en rendant compte au groupe à haut niveau proposé et au grand public.

Les États membres doivent **jouer un rôle prééminent**, cohérent et efficace, **pour ce qui est de sensibiliser davantage** à l'accessibilité du web **et de mieux** la **comprendre** et **rendre compte des progrès accomplis** au groupe à haut niveau.

4. CONCLUSION

Pour garantir l'e-accessibilité, une action commune et cohérente s'impose sur plusieurs fronts. Il est notamment indispensable d'accomplir des progrès immédiats et rapides. Tous les acteurs concernés ont un rôle décisif à jouer pour que soit atteint l'objectif commun d'une société de l'information réellement intégratrice.

La Commission invite le Conseil, le Parlement européen, le Comité des régions et le Comité économique et social européen à donner leur avis sur les mesures à prendre pour rendre la société de l'information accessible à tous.

Annexe – Résumé des actions

E-accessibilité

Actions	Date	Responsable
Instituer un **groupe** ad hoc **à haut niveau** chargé de donner des orientations sur les priorités et une approche plus cohérente en matière d'e-accessibilité. Les acteurs concernés sont invités à s'investir dans cette coopération.	Début 2009	CE, acteurs concernés
Veiller à ce que l'e-accessibilité reste une **priorité politique** dans le cadre du suivi de l'initiative i2010 et du plan d'action en faveur des personnes handicapées.	2009-	CE
Suivre les progrès et la mise en œuvre de l'accessibilité du web et de l'e-accessibilité, soutenir la coopération et l'échange de bonnes pratiques par des **études** et un **réseau thématique PCI**.	2009-	CE, entreprises et acteurs concernés
Veiller à ce que l'e-accessibilité soit une **priorité absolue de la recherche et de l'innovation**.	2009 -	CE
Favoriser **l'innovation et le déploiement en matière d'e-accessibilité** par l'intermédiaire des Fonds structurels, du 7e PC, du programme AAD et des programmes nationaux.	2009 -	EM, autres acteurs concernés
Fournir une **boîte à outils «handicap»** applicable aux TIC et destinée à être utilisée dans les Fonds structurels et d'autres programmes.	2009	CE
Au titre du mandat 376, **élaborer rapidement des normes européennes** concernant l'e-accessibilité, en coopération avec les acteurs concernés.	2009-	OEN
Veiller à ce que **les révisions** de la législation européenne **comportent des dispositions appropriées en matière d'e-accessibilité**.	2008-	CE
Exploiter pleinement les possibilités de renforcer l'e-accessibilité **offertes par la législation actuelle**.	2008-	EM, CE, entreprises et acteurs concernés

Accessibilité du web

Assurer l'**accessibilité** totale **des sites web publics** et préparer, **de façon conjointe et cohérente**, la transition rapide vers des spécifications actualisées en matière d'accessibilité du web.	2009-2010	EM
Élaborer rapidement, sur la base des WCAG 2.0, des **normes européennes concernant l'accessibilité du web**.	2009-	OEN (et acteurs concernés)
Améliorer l'accessibilité des **sites web de la Commission** et actualiser les orientations internes de celle-ci pour tenir compte des nouvelles spécifications.	2009-	CE

Les propriétaires de site web fournissant des services d'intérêt général et les propriétaires d'autres sites web pertinents doivent en améliorer l'accessibilité.	2009-	Autres acteurs concernés
Suivre les progrès, en rendre compte dans une publication et déterminer s'il faut des orientations européennes communes, y compris des mesures législatives.	2009-	CE
Jouer un rôle prééminent, cohérent et efficace, pour ce qui est de **sensibiliser davantage** à l'accessibilité du web **et** de **mieux** la **comprendre** et rendre compte des progrès accomplis au groupe à haut niveau.	2008-	EM

COMMISSION DES COMMUNAUTÉS EUROPÉENNES

Bruxelles, le 13.9.2005
COM(2005)425 final

COMMUNICATION DE LA COMMISSION AU CONSEIL, AU PARLEMENT EUROPÉEN, AU COMITÉ ÉCONOMIQUE ET SOCIAL EUROPÉEN ET AU COMITÉ DES RÉGIONS

L'e-accessibilité

[SEC(2005)1095]

COMMUNICATION DE LA COMMISSION AU CONSEIL, AU PARLEMENT EUROPÉEN, AU COMITÉ ÉCONOMIQUE ET SOCIAL EUROPÉEN ET AU COMITE DES REGIONS

L'e-accessibilité

L'accessibilité des technologies de l'information et de la communication (TIC) améliorera significativement la qualité de vie des personnes handicapées. Dans le même temps, l'absence d'égalité des chances dans l'accès aux TIC peut constituer une source d'exclusion. Dans la présente communication, la Commission propose un ensemble d'actions stratégiques favorisant l'e-accessibilité. Elle invite les États membres et les intervenants à s'associer à des actions volontaires concrètes visant à accroître considérablement, à l'échelle européenne, la mise à disposition de produits et services accessibles dans le domaine des TIC.

La présente communication sur l'e-accessibilité contribue à la mise en œuvre de la récente initiative "**i2010 - Une société de l'information pour la croissance et l'emploi**"[1], qui présente un nouveau cadre stratégique et de grandes orientations politiques visant à promouvoir une économie numérique ouverte et compétitive, soulignant le rôle des TIC comme moteur d'insertion et de qualité de vie. La Commission a l'objectif ambitieux d'instaurer une "société de l'information pour tous", favorisant une société numérique ouverte à tous qui offre des possibilités à tous les citoyens et réduise autant que possible le risque d'exclusion.

1. INTRODUCTION

Les personnes handicapées représentent environ 15% de la population européenne et nombre d'entre elles rencontrent des difficultés lorsqu'elles utilisent des produits ou services liés aux TIC. Les personnes âgées sont, dans certains cas, confrontées aux mêmes problèmes. L'accessibilité des produits et services liés aux TIC est devenue une priorité en Europe en raison de l'évolution démographique: en 1990, les personnes de plus de 60 ans constituaient 18% de la population européenne; en 2030, ce chiffre devrait atteindre 30% de la population[2].

Une récente étude américaine[3] a conclu que 60% des adultes en âge de travailler pouvaient tirer parti de l'utilisation des technologies accessibles, car ils éprouvent des difficultés ou sont confrontés à des troubles mineurs lorsqu'ils se servent des technologies actuelles.

Une étude de 2002[4] a fait apparaître que plus de 48% des personnes de plus de 50 ans vivant en Europe estiment que leurs besoins ne sont pas correctement pris en considération par les fabricants lors de la conception de leurs produits. Pourtant, dix à douze millions de ces personnes sont des acheteurs potentiels de nouveaux téléphones mobiles, ordinateurs et de services sur Internet.

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1 COM(2005) 229 final du 1er juin 2005.

2 Perspectives d'avenir de la population mondiale des Nations unies (révision de 2002) et projections démographiques d'Eurostat.

3 *The Wide Range of Abilities and Its Impact on Computer Technology* – Forrester Research Inc., 2003.

4 Seniorwatch IST-1999-29086 www.seniorwatch.de

Les implications sont claires: **permettre au plus grand nombre de profiter des avantages des TIC constitue un impératif social, éthique et politique**. Cela créerait en outre des marchés d'une importance économique croissante.

La levée des obstacles et difficultés techniques auxquels sont confrontées, entre autres, les personnes handicapées qui s'efforcent de participer pleinement à la société de l'information (SI) porte le nom d'"***e-accessibilité***". Cette démarche s'inscrit dans la notion plus vaste d'e-inclusion, qui concerne également d'autres types d'obstacles, notamment de nature financière, géographique ou éducative.

La présente communication repose sur les travaux antérieurs relatifs à l'e-accessibilité entrepris dans le contexte des deux plans d'action e-Europe et sur les conclusions et résultats des projets de RDT. Elle tient également compte des principaux résultats de la **consultation en ligne**[5] organisée au début de 2005, dont les répondants accordent un soutien massif (à plus de 88%) à des initiatives à prendre par les institutions européennes et visant à remédier à une situation perçue par une grande majorité (plus de 74%) comme manquant de cohérence dans le domaine de l'accessibilité des produits et services liés aux TIC en Europe. En outre, 84% des répondants estiment nécessaire d'élargir la palette de produits et services accessibles.

Le principal objectif de la présente communication consiste à promouvoir une démarche cohérente à l'égard des initiatives d'e-accessibilité entreprises dans les États membres sur une base volontaire, ainsi qu'à favoriser l'autorégulation de l'industrie.

2. LES PROBLEMES CONCRETS

Les nouvelles technologies fournissent déjà clairement une aide pour les personnes handicapées en leur permettant de réaliser de manière autonome des activités qui leur étaient impossibles auparavant sans assistance humaine. Cependant, en dépit des efforts de l'industrie, les personnes handicapées font encore état d'un grand nombre de problèmes lorsqu'elles tentent d'utiliser des produits et services liés aux technologies de l'information, par exemple:

- le manque de solutions harmonisées, notamment l'impossibilité d'accéder au numéro d'urgence 112 à partir de téléphones à texte dans de nombreux États membres;
- le manque de solutions interopérables pour des TIC accessibles;
- l'incompatibilité des logiciels avec les dispositifs d'assistance: les narrateurs de lecture d'écran destinés aux aveugles sont souvent inutilisables après la mise en service de nouveaux systèmes d'exploitation;
- l'interférence entre les produits usuels et les dispositifs d'assistance, par exemple entre les GSM et les appareils auditifs;
- l'absence de normes à l'échelle européenne: il existe par exemple sept systèmes de téléphone à texte, incompatibles entre eux, destinés aux sourds et aux malentendants;

[5] Les résultats peuvent être consultés à l'adresse suivante: http://europa.eu.int/information_society/policy/accessibility/com_ea_2005/a_documents/com_consult_res.html#_Toc97028181

- le manque de services adéquats: de nombreux sites web, par exemple, sont d'une trop grande complexité pour les utilisateurs inexpérimentés ou ayant des difficultés cognitives ou sont impossibles à lire et à parcourir pour les malvoyants;
- l'absence de produits et services pour certains groupes, par ex. les communications téléphoniques pour les utilisateurs des langues des signes;
- la conception physique des appareils, qui constitue une source de difficultés, par exemple pour l'utilisation des claviers et écrans de nombreux appareils;
- le manque de contenus accessibles;
- le choix restreint des services de communication électronique, leur qualité et leur prix.

La plupart de ces problèmes pourraient, en théorie, être résolus facilement d'un point de vue technique, mais cela nécessite coopération, coordination et détermination au niveau européen, car, à ce jour, l'action seule des forces du marché semble ne pas avoir suffi.

Dans un proche avenir, voici quelques exemples de nouvelles technologies dont les aspects relatifs à l'accessibilité doivent être pris en compte précocement:

- la télévision numérique, par exemple en ce qui concerne les normes et la compatibilité ainsi que la conception des services et du matériel;
- les téléphones mobiles de troisième génération, par exemple en ce qui concerne la conception du matériel, des logiciels et des services;
- les communications à large bande, par exemple en faisant appel aux possibilités des présentations multimodales de manière à renforcer l'accessibilité plutôt que de la réduire.

La prise en compte de ces aspects, qui étaient précédemment considérés comme intéressant uniquement un groupe cible spécifique de la population, aura en réalité des retombées positives pour la majorité des utilisateurs des technologies.

3. ASPECTS COMMERCIAUX ET ECONOMIQUES

La recherche dans le domaine des TIC et le marché ont proposé des solutions novatrices à plusieurs de ces problèmes. Les principaux obstacles à leur diffusion à grande échelle sont les suivants:

- à ce jour, ces solutions ne visent qu'un marché restreint (principalement les personnes handicapées et, dans certains cas, les personnes âgées), essentiellement par l'intermédiaire de PME actives au niveau national ou régional;
- la rareté des normes techniques applicables et des cahiers des charges;
- la législation européenne n'a que récemment envisagé explicitement la possibilité d'utiliser les exigences d'accessibilité dans les cahiers des charges pour la passation des marchés publics;
- les différences significatives entre certains États membres quant au mode d'élaboration de leurs propres solutions.

En conséquence, le marché des produits et services accessibles liés aux TIC se trouve encore en phase de développement initial; il est fortement fragmenté aux frontières nationales et souffre de l'absence d'une législation harmonisée et de normes techniques applicables. Ces facteurs ne facilitent pas le fonctionnement d'un marché unique et représentent une charge de

travail supplémentaire pour l'industrie qui doit se conformer à des exigences variant d'un État membre à l'autre.

On considère de moins en moins que ces produits s'adressent exclusivement aux personnes handicapées ou, dans certains cas, aux personnes âgées, mais bien à l'ensemble de la population. Cette prise de conscience implique une modification du marché qui commence juste à se faire sentir, du fait que les grands acteurs industriels européens s'intéressent désormais à ce secteur. Il faudra toutefois attendre un certain temps avant que leur influence ne soit significative.

C'est également le cas du secteur des télécommunications – la prolifération des produits et services de télécommunications est désormais telle que même ce créneau du marché (encore relativement restreint aujourd'hui) constitue un élément distinctif important et un générateur de croissance significatif qui attire l'attention des grands acteurs du marché.

En conclusion, l'e-accessibilité et les produits et services des technologies d'assistance afférents figurent aujourd'hui parmi les objectifs à moyen terme des plus grands fabricants européens de technologies courantes, ainsi que ceux d'autres régions du monde.

4. ASPECTS JURIDIQUES ET STRATEGIQUES

À plusieurs occasions, le Conseil a encouragé une action au niveau de l'UE en invitant les États membres et la Commission à *"exploiter le potentiel de la société de l'information au profit des personnes handicapées et, en particulier, s'attacher à lever les obstacles techniques, juridiques et autres à leur participation effective à la société de la connaissance"* [6]. Le Parlement européen est également favorable à une action en ce sens[7].

En particulier, les politiques et la législation européennes ont reconnu l'importance cruciale de l'emploi et du travail pour garantir l'égalité des chances pour tous, contribuer fortement à la pleine participation des citoyens à la vie économique, culturelle et sociale et permettre à ceux-ci de concrétiser leur potentiel. Les retombées éventuelles plaident manifestement pour une plus large diffusion de produits et services TIC accessibles et de qualité, qui favorisera la capacité d'insertion professionnelle, une meilleure intégration sociale et permettra aux individus de vivre plus longtemps de manière autonome.

Les institutions européennes ont formulé la nécessité d'intégrer la totalité des Européens dans la société de l'information dans de nombreux contextes. La Commission a entrepris des initiatives dans le cadre des deux plans d'action eEurope de manière à instaurer une société de l'information plus accessible. Le plan d'action de 2002 comprenait une ligne d'action distincte s'occupant de ces questions. Il recommandait l'adoption des instructions de l'initiative pour l'accessibilité du web (*Web Accessibility Inititiative, WAI*)[8], la mise au point d'un programme d'études européen de conception pour tous (*Design for All, DFA*) ainsi que le renforcement des technologies d'assistance et la normalisation de la DFA. Le plan d'action eEurope 2005

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6 Résolution du Conseil sur l'"e-accessibilité pour les personnes handicapées", 2-3 décembre 2002, http://register.consilium.eu.int/pdf/fr/02/st14/14892f2.pdf

7 Résolution du PE sur "eEurope 2002: Accessibilité des sites web publics et de leur contenu" (2002 (0325)).

8 «eEurope 2002: Accessibilité des sites web publics et de leur contenu», COM(2001) 529 final, http://europa.eu.int/eur-lex/fr/com/cnc/2001/com2001_0529fr01.pdf

visait à tenir compte de l'e-inclusion dans toutes les lignes d'action. Il proposait en outre d'introduire des exigences en matière d'accessibilité des TIC dans les marchés publics.

Le Conseil "Télécommunications", souscrivant à ces initiatives, a indiqué la nécessité d'améliorer l'e-accessibilité en Europe[9]. De plus, la déclaration ministérielle sur l'e-inclusion[10] propose de prendre toutes les mesures nécessaires à la mise en place d'une société de la connaissance ouverte, favorisant l'intégration et accessible à tous les citoyens.

En outre, le Conseil "Affaires sociales" a invité les États membres, dans sa résolution de 2003 sur l'e-accessibilité[11], à s'attaquer à la suppression des obstacles techniques, juridiques et autres à la participation effective des personnes handicapées à la société et l'économie de la connaissance.

Dans ce contexte, le Parlement européen, dans sa résolution de 2002 sur l'accessibilité des sites web[12], "*réitère la nécessité d'éviter toute forme d'exclusion de la société et, partant, de la société de l'information et souhaite en particulier l'intégration des handicapés et des personnes âgées*". Par ailleurs, une autre résolution mentionne l'utilisation du langage gestuel dans les télécommunications en Europe[13].

De manière générale, l'article 13 du traité instituant la Communauté européenne prévoit l'adoption des mesures nécessaires en vue de combattre toute forme de discrimination, notamment fondée sur un handicap.

En vertu de cet article, la directive 2000/78/CE du Conseil, du 27 novembre 2000[14], se fixe clairement l'objectif (à l'article 1er) "(...) *d'établir un cadre général pour lutter contre la discrimination fondée sur la religion ou les convictions, l'handicap, l'âge ou l'orientation sexuelle, en ce qui concerne l'emploi et le travail, en vue de mettre en oeuvre, dans les États membres, le principe de l'égalité de traitement*". La directive indique en particulier qu'"*Il convient de prévoir des mesures appropriées, c'est-à-dire, des mesures efficaces et pratiques destinées à aménager le poste de travail en fonction du handicap, par exemple en procédant à un aménagement des locaux ou à une adaptation des* ***équipements****,(…).*"

Par ailleurs, un certain nombre de directives européennes en rapport avec la société de l'information contiennent des clauses relatives à l'intégration des personnes handicapées et des personnes âgées. Il s'agit notamment des directives sur les communications électroniques, en particulier la directive-cadre[15] et la directive "service universel"[16], de la directive sur les équipements hertziens et les équipements terminaux de télécommunications[17], de la directive

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9 Résolution du Conseil sur le plan d'action eEurope 2002: Accessibilité des sites web publics et de leur contenu, JO C 86 du 10.4.2002.

10 Déclaration ministérielle sur l'e-inclusion du 11 avril 2003: http://www.eu2003.gr/en/articles/2003/4/11/2502/

11 Résolution du Conseil 14892/02.

12 Résolution du PE sur le Plan d'action eEurope 2002: Accessibilité des sites web publics et de leur contenu (2002 (0325)).

13 Résolution du PE sur le langage gestuel - Résolution B4/0985/98.

14 Voir à l'adresse http://europa.eu.int/comm/employment_social/fundamental_rights/pdf/legisln/2000_78_fr.pdf.

15 Directive 2002/21/CE.

16 Directive 2002/22/CE.

17 Directive 1999/5/CE.

sur les procédures de passation des marchés publics[18] et de la directive sur l'égalité de traitement en matière d'emploi et de travail[19].

Un des quatre domaines d'intervention du plan d'action de la Commission[20] de décembre 2003 consacré au suivi de l'Année européenne des personnes handicapées réside dans l'accès aux nouvelles technologies et à leur utilisation. Le plan décrit les actions entreprises pour améliorer l'accessibilité à la société de l'information en utilisant les instruments existant à l'échelle de l'UE.

Les actions entreprises par la Communauté ont une valeur ajoutée, car plusieurs États membres élaborent des législations, des réglementations, des normes ou des instructions dans le but de remédier à ces problèmes à l'échelon national. Ces actions débouchent sur des exigences similaires, mais néanmoins différentes, en matière d'e-accessibilité des produits et services, ce qui constitue une grande menace pour l'industrie européenne qui risque en effet d'être contrainte d'opérer sur un marché fragmenté, avec la perte de compétitivité et d'efficacité que cela implique.

Le risque est encore plus élevé pour les consommateurs, notamment pour les personnes handicapées et les personnes âgées: un marché fragmenté sous-entend des produits plus onéreux, plus rares et incompatibles, une plus grande difficulté à accéder aux informations et à les diffuser par-delà les frontières, etc.

Les actions de l'UE tiennent également compte de l'expérience internationale telle que les mesures adoptées aux États-Unis et au Canada, avec lesquels la Commission européenne a noué un dialogue, notamment en ce qui concerne le recours aux dispositions législatives dans le contexte des marchés publics, qui représentent un puissant effet de levier.

Dès lors, les conditions de base sont réunies pour l'adoption d'initiatives à l'échelle de l'UE – tel est le point de vue exprimé par la grande majorité (84%) des personnes ayant pris part à la consultation publique.

5. ACTIVITES EN COURS A L'ECHELLE EUROPEENNE

Plusieurs mesures sont déjà en cours à l'échelle européenne. Elles seront renforcées et poursuivies.

Exigences et normes en matière d'accessibilité

Les normes constituent un outil stratégique pour l'industrie et le secteur public ainsi qu'un catalyseur essentiel de nouvelles possibilités commerciales. Bien que la production et la mise en application des normes se déroulent sur une base volontaire, celles-ci représentent un outil important d'appui à la mise en œuvre des actions stratégiques. L'adoption de normes européennes en matière d'e-accessibilité contribuerait au bon fonctionnement du marché unique européen et favoriserait, par conséquent, le développement de nouveaux marchés, de la compétitivité et de l'emploi. La Commission continuera donc à accorder un soutien financier aux activités spécifiques proposées par les organismes européens de normalisation

[18] Directives 2004/17/CE et 2004/18/CE.
[19] Directive 2000/78/CE.
[20] Égalité des chances pour les personnes handicapées: un plan d'action européen, COM(2003) 650 final.

(OEN) dans le cadre du plan d'action européen en matière de normalisation, ou à mandater les OEN pour établir des normes[21].

Les exigences en matière d'accessibilité définies par les normes doivent répondre aux besoins de l'industrie, des concepteurs et des fournisseurs des produits et services de manière à éviter d'entraver la créativité ou l'innovation. Ces exigences doivent, dans le même temps, répondre aux besoins des utilisateurs; la participation de ces derniers à l'élaboration des normes est donc essentielle: il convient de trouver le juste milieu entre les intérêts du public et ceux de l'industrie. Les normes devraient pouvoir être aisément applicables et référencées dans la législation, la réglementation et les autres instruments favorisant l'accessibilité. Leur mise à disposition sans frais ou à faible coût encouragerait leur utilisation, en particulier par les PME disposant de moyens limités pour en faire l'acquisition ainsi que par les utilisateurs souhaitant y accéder.

Il convient d'éviter, tout en encourageant l'interopérabilité, que des technologies brevetées dépourvues d'une licence d'exploitation raisonnable et non discriminatoire ne deviennent des solutions normatives.

Conception pour tous (DFA)

La méthodologie DFA désigne la conception des produits et services de manière telle qu'ils soient accessibles au plus grand nombre d'utilisateurs possible[22]. La DFA est aujourd'hui bien établie, quoique peu mise en pratique. Par conséquent, il est primordial de continuer à œuvrer à la sensibilisation et à la promotion de la DFA en Europe. À cette fin, la Commission a mis sur pied un réseau de centres d'excellence portant le nom d'EDEAN[23], qui compte plus d'une centaine de membres.

La DFA permet non seulement une **prise en considération plus exhaustive des exigences en matière d'accessibilité lors de la conception d'un produit ou d'un service**, mais entraîne également d'importantes **économies en évitant des frais élevés de nouvelle conception ou d'adaptation technique** après la commercialisation du produit ou du service.

La structure de base d'un programme d'études européen de DFA destiné aux ingénieurs et aux concepteurs a été définie et plusieurs cours pilotes ont été dispensés dans les États membres. Son utilisation plus fréquente dans l'enseignement supérieur et professionnel constitue un moyen de mettre en place une future société de l'information accessible[24]. La présence d'un expert en DFA responsable de l'accessibilité dans les organisations appropriées pourrait constituer un moyen de professionnaliser l'e-accessibilité.

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21 Ce processus est régi par la directive 98/34. http://europa.eu.int/eur-lex/pri/fr/oj/dat/1998/l_204/l_20419980721fr00370048.pdf.

22 La DFA s'articule principalement autour de trois stratégies: 1) la conception pour la plupart des utilisateurs, sans modifications; 2) la conception permettant une adaptation aisée aux différents utilisateurs (par ex. au moyen d'interfaces ajustables); 3) la conception permettant de connecter sans difficulté des dispositifs d'assistance.

23 Site web de l'EDEAN (*European Design for All e-Accessibility Network*, réseau pour l'e-accessibilité par la conception pour tous), http://www.e-accessibility.org/.

24 Rapport du projet IDCnet sur le programme d'études en DFA.

Accessibilité des sites web

Une communication de 2001 de la Commission[25] sur l'accessibilité des sites web publics a été suivie de résolutions du Conseil et du Parlement en 2002. En conséquence, les États membres se sont engagés à rendre leurs sites web publics accessibles conformément aux instructions internationales[26].

Le groupe d'experts sur l'e-accessibilité permet à la Commission et aux États membres de contrôler les initiatives entreprises, dont la mise sur pied de nouvelles procédures et méthodes d'évaluation[27], l'élaboration de critères d'évaluation comparative, la collecte de données et la définition de bonnes pratiques. **L'accessibilité des sites web est un catalyseur** de services d'intérêt public en ligne accessibles. Pour faciliter ce processus, il importe d'encourager le développement d'outils de création intégrant les principes d'accessibilité[28].

Plusieurs États membres disposant d'une législation contraignante régissant l'accessibilité et imposant l'évaluation de la conformité, la mise sur pied de systèmes de certification de l'accessibilité s'impose. Un groupe de travail du Comité européen de normalisation (CEN)[29] se penche actuellement sur les solutions appropriées.

Points de référence et suivi

Plusieurs États membres sont en train d'introduire des points de référence de l'accessibilité et du suivi dans leur législation nationale. À l'échelle communautaire, la surveillance de l'accessibilité des sites web a été demandée par le Conseil et le Parlement européen. Le Parlement européen a également demandé le suivi de la présence de sous-titrage et de description audio pour la télévision numérique.

Pour pouvoir poursuivre le développement de politiques européennes adéquates dans le domaine de l'e-accessibilité, **il est essentiel de disposer de données européennes comparables entre les États membres**. La Commission s'inspirera des activités de surveillance en cours au niveau européen, en tenant compte de la stratégie de Lisbonne révisée.

La Commission entretient un dialogue avec les offices statistiques dans le but d'élaborer des indicateurs utiles et de les améliorer, en particulier pour incorporer les aspects liés à l'accessibilité dans les indicateurs existants.

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25 COM(2001) 529 final.

26 W3C/WAI/WCAG 1.0: Instructions pour l'accessibilité des contenus web (*Web Content Accessibility Guidelines*) 1.0. La deuxième version est en préparation. Elle portera sur l'évolution des technologies web intervenues depuis la première version et facilitera l'analyse de conformité.

27 Groupe *Web Accessibility Benchmarking* (WAB).

28 W3C/WAI/ATAG: Instructions concernant l'accessibilité pour les outils de création de contenu (*Authorising Tools Accessibility Guidelines*, *ATAG*).

29 http://www.cenorm.be/cenorm/businessdomains/businessdomains/isss/activity/ws-wac.asp

Recherche

La recherche et le développement technologique (RDT) sont une composante fondamentale des efforts entrepris en faveur d'une société de l'information accessible. Près de 200 projets européens de RDT entrepris depuis 1991, représentant un cofinancement communautaire d'environ 200 millions d'euros[30], ont déjà contribué à améliorer l'accessibilité grâce à une connaissance accrue des problèmes d'accessibilité et des solutions requises.

Des résultats spécifiques ont mis en évidence des solutions possibles, telles que des services à domicile accessibles à distance pour les personnes âgées (dont des services d'alarme et d'urgence). Des solutions ont été mises au point pour améliorer l'accès des aveugles et des malvoyants à l'information numérique (textes, graphismes, images tridimensionnelles, musique codée, programmes de télévision). Des systèmes destinés à faciliter la mobilité des handicapés moteurs, la manipulation et la commande d'objets ont été testés, de même que des services visant à améliorer les possibilités de communication des malentendants, dont la langue des signes et la lecture labiale. D'autres exemples peuvent encore être cités: la mise au point d'environnements informatiques facilitant l'enseignement intégré des enfants handicapés ou l'emploi des adultes handicapés et les contributions à la formulation des politiques (eEurope, c'est-à-dire l'accessibilité des sites web et la conception pour tous).

Les résultats de nombreux projets communautaires ont trouvé leur concrétisation sous la forme de produits mis sur le marché. Dans d'autres cas, les connaissances ainsi acquises ont contribué à l'amélioration de l'accessibilité des produits et services liés aux TIC.

Les technologies poursuivant leur évolution rapide en offrant de nouvelles solutions techniques, il est essentiel d'investir dans la recherche de manière à exploiter l'important potentiel qu'elles recèlent pour les personnes handicapées et les personnes âgées. La proposition actuelle de 7^{e} programme-cadre prend en compte la **nécessité de poursuivre, voire d'étendre la RDT dans le domaine de l'e-accessibilité** afin de développer davantage l'industrie européenne des technologies d'assistance[31] et de faire de l'accessibilité une préoccupation quotidienne de l'industrie traditionnelle.

6. AMELIORER L'E-ACCESSIBILITE DES PRODUITS ET SERVICES LIES AUX TIC EN EUROPE – TROIS NOUVEAUX MOYENS D'ACTION

Outre la promotion des mesures en cours énumérées ci-dessus, la Commission encouragera l'utilisation de trois moyens d'action qui ne sont pas encore exploités à grande échelle en Europe: les exigences en matière d'accessibilité dans la passation des marchés publics, la certification de l'accessibilité et la meilleure utilisation de la législation existante.

Deux ans après la publication de la présente communication, la Commission évaluera le résultat de ces actions. Dans le contexte du principe de meilleure réglementation[32], la Commission s'entretiendra avec les États membres et, en fonction des conclusions d'une

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30 Des exemples de projets peuvent être consultés aux adresses suivantes: http://www.cordis.lu/ist/so/einclusion/home.html et http://www.cordis.lu/ist/directorate_f/einclusion/previous-research.htm

31 "L'accès aux technologies d'assistance dans l'Union européenne", rapport de la DG EMPL, CE-V/5-03-003-EN-C.

32 "La gouvernance européenne – Un livre blanc" de la Commission européenne, COM(2001) 428 final.

évaluation d'impact complète, pourra envisager la possibilité de prendre des mesures supplémentaires, y compris, au besoin, de nature législative.

1. Marchés publics

Les marchés publics représentent, en Europe, quelque 16% du produit intérieur brut. Les pouvoirs publics à tous les niveaux sont habilités à exiger des critères d'accessibilité dans les biens et services dont ils font l'acquisition. En réalité, les directives européennes concernant les marchés publics mentionnent explicitement la possibilité d'inclure des exigences relatives à la conception pour tous et à l'accessibilité dans les conditions de l'offre (cahier des charges).

Une telle démarche sous-entend un engagement clair envers **une politique d'intégration mettant les produits et services à la disposition d'un plus grand nombre d'utilisateurs, de citoyens et de travailleurs**. Cette politique encourage les entreprises industrielles à faire de l'accessibilité une caractéristique standard de leurs produits et accroît le marché des TIC accessibles. Ces effets ont été constatés aux États-Unis[33], où la législation impose des exigences d'accessibilité dans la passation des marchés publics fédéraux.

Plus de 90% des répondants à la consultation en ligne sont favorables au principe selon lequel les agences publiques doivent exiger l'accessibilité de tous les produits et services liés aux TIC qu'elles achètent. Certains États membres font déjà figurer des exigences d'accessibilité dans la passation de leurs marchés publics. L'établissement d'exigences d'accessibilité communes au niveau européen peut réduire la fragmentation du marché et favoriser l'interopérabilité.

Il est impératif d'harmoniser les exigences d'accessibilité inscrites dans la passation des marchés publics en Europe. À cet effet, la Commission prépare un mandat à l'intention des organisations européennes de normalisation dans le but de mettre au point des exigences d'accessibilité européennes pour la passation des marchés publics de produits et services dans le domaine des TIC. Ce mandat est actuellement soumis aux États membres pour consultation. Il est prévu de le transmettre aux organisations européennes de normalisation avant la fin de 2005.

La Commission encouragera le débat sur ce thème avec les États membres dans le cadre du groupe d'experts sur l'e-accessibilité[34]. Elle continuera à rassembler les résultats des actions entreprises en Europe et à encourager un dialogue au niveau international, en particulier avec les États-Unis, par l'intermédiaire du partenariat économique transatlantique concernant l'harmonisation des exigences d'accessibilité pour la passation des marchés publics.

2. Certification

Il n'est pas toujours aisé de savoir, lors de l'acquisition de produits liés aux TIC, les exigences qu'ils respectent. Cet aspect est particulièrement important en cas d'achat de TIC accessibles. Plusieurs normes définissant la façon de rendre les produits et services accessibles existent ou sont en préparation. À l'heure actuelle, il n'existe toutefois pas de moyen fiable d'évaluer la conformité des produits avec ces normes d'accessibilité. La mise en place de mécanismes adéquats de certification de l'accessibilité des produits, des processus organisationnels et des

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[33] Article 508 de la "Rehabilitation Act", modifiée par la "Workforce Investment Act" de 1998.

[34] Le groupe d'experts sur l'e-accessibilité coordonne les experts des États membres qui accompagnent l'exécution du plan d'action eEurope.

professionnels (fondés sur le "Keymark" européen[35] et sur les normes européennes) permettrait d'orienter les consommateurs et clients souhaitant des produits et services accessibles et offrirait aux fabricants et aux prestataires de services une reconnaissance méritée de leurs efforts. Les mécanismes de certification faciliteraient en outre le contrôle du respect des réglementations imposant l'accessibilité.

Dans sa résolution de janvier 2003 relative à l'e-accessibilité, le Conseil demande la création d'un "label d'e-accessibilité" pour les biens et services. La déclaration ministérielle de 2002 sur l'e-inclusion indique que la création d'un label européen d'accessibilité au web qui certifie le respect des instructions WAI du W3C[36] pourrait être envisagée de manière à éviter la fragmentation du marché.

La Commission examinera, en concertation avec les principaux intervenants, **les perspectives en matière de mise au point, d'introduction et d'application de systèmes de certification des produits et services accessibles**, comprenant la définition du contrôle des critères et les méthodes d'évaluation. Les options de l'autocertification et de la certification par un tiers seront également étudiées et l'efficacité des différentes options fera l'objet d'une comparaison[37]. La Commission lancera une étude sur ce thème au cours du dernier trimestre de 2005[38].

3. Meilleure utilisation de la législation existante

Plusieurs directives renferment des dispositions pouvant être utilisées pour imposer l'e-accessibilité (telles que la directive sur l'égalité de traitement en matière d'emploi[39], la directive sur les équipements hertziens et les équipements terminaux de télécommunications et les directives concernant les marchés publics). Il importe de coopérer avec les États membres afin de mettre au point un moyen concret d'utiliser ces directives pour faire progresser l'e-accessibilité.

En particulier, la mise en pratique des propositions de l'*Inclusive Communications Group* (INCOM)[40] permettrait de résoudre certains problèmes rencontrés actuellement en Europe, par exemple en garantissant l'accès des utilisateurs handicapés aux services d'urgence grâce au numéro unique européen 112, en harmonisant les fréquences des systèmes d'assistance sans fil au niveau européen, en assurant les communications en temps réel par texte et par signes entre les États membres et en facilitant l'acquisition, par les pouvoirs publics, de produits

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35 http://www.cenorm.be/conf_assess/keymark/keymarktext.htm

36 Initiative pour l'accessibilité du web (*Web Accessibility Initiative, WAI*) du Consortium World Wide Web (*World Wide Web Consortium, W3C*).

37 Les répondants à la consultation en ligne se sont exprimés nettement (plus de 72%) en faveur de la certification et de l'étiquetage des produits et services accessibles liés aux TIC. On relève toutefois d'importantes différences d'un groupe cible à l'autre (seulement 61,4% d'opinion favorable chez les *fabricants, fournisseurs ou revendeurs de produits et services d'e-accessibilité).* Par ailleurs, parmi les partisans de la certification et de l'étiquetage des produits, les groupes "*particuliers présentant un handicap*" et "*organismes publics*" privilégient clairement les systèmes obligatoires, tandis que les "*fabricants, fournisseurs ou revendeurs de produits et services d'e-accessibilité*" préfèrent les procédures à caractère volontaire, les autres groupes cibles se situant entre les deux.

38 Voir le chapitre "Conclusions et suivi".

39 La directive 2000/78/CE du Conseil du 27 novembre 2000 interdit la discrimination des personnes handicapées, en particulier sur le lieu de travail, et prévoit des aménagements raisonnables, notamment en ce qui concerne les TIC.

40 Groupe constitué en 2003 et composé de représentants des États membres, d'opérateurs de télécommunications, d'organisations de consommateurs et d'organismes de normalisation.

accessibles. Les obstacles éventuels à l'exécution de la législation existante devraient être examinés.

Dans le cadre de son dialogue sur la politique audiovisuelle, la Commission encouragera les solutions communes ou interopérables dans le domaine, par exemple, de l'amélioration de l'accès aux programmes de télévision numérique. Ces solutions communes permettront de réaliser des économies d'échelle.

Le "potentiel d'e-accessibilité" de la législation européenne existante doit être pleinement exploité. La Commission lancera une étude[41] en 2005 visant à déterminer les bonnes pratiques et à établir un dialogue avec les États membres et les principaux intervenants par l'intermédiaire des groupes chargés de l'application des directives.

7. CONCLUSIONS ET SUIVI

La présente communication et les résultats de la consultation en ligne démontrent et appuient la détermination de la Commission européenne à s'attaquer aux problèmes d'e-accessibilité et à trouver des solutions (i) qui fassent part aux États membres de l'urgence d'élaborer ensemble une stratégie cohérente en matière d'e-accessibilité, (ii) qui incitent l'industrie à mettre au point des solutions accessibles pour les produits et services liés aux TIC, et (iii) qui montrent aux utilisateurs souffrant d'un handicap l'engagement résolu de la Commission à améliorer l'accessibilité dans la société de l'information.

Dans les deux prochaines années (2005-2007), la Commission continuera à faire œuvre de sensibilisation, à promouvoir l'utilisation des instruments proposés, à rassembler des éléments d'information et à consulter les intervenants de manière à prendre des décisions éclairées dans le domaine de l'e-accessibilité.

À cet effet, la Commission entend mener une étude se proposant de *"Mesurer les progrès de l'e-accessibilité en Europe"* dans le but de déterminer et d'évaluer les options stratégiques visant à améliorer l'e-accessibilité en Europe. Les premiers résultats de l'étude, qui débutera au cours du dernier trimestre de 2005, seront connus au début de 2007.

Deux ans après la publication de la présente communication, la situation dans le domaine de l'e-accessibilité fera l'objet d'un réexamen. Ce suivi comprendra une évaluation des résultats des stratégies proposées dans le présent document, compte tenu du principe de meilleure réglementation[42] et, en fonction des conclusions d'une évaluation d'impact complète, la Commission pourra envisager la possibilité d'adopter des mesures supplémentaires, y compris, au besoin, de nature législative. Les travaux dans le domaine de l'e-accessibilité contribueront, pour leur part, à l'Initiative européenne en matière d'e-inclusion déjà annoncée pour 2008[43].

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41 Voir le chapitre "Conclusions et suivi".

42 "Gouvernance européenne - Un livre blanc" de la Commission européenne, COM(2001) 428 final.

43 COM(2005) 229: "i2010 – Une société de l'information pour la croissance et l'emploi".

In this list, the items in blue are still proposals, the ones marked with a "+" are instruments implementing the main legislation.

Dans cette liste, les entrées en bleu sont encore à l'état de proposition, celles marquées avec un "+" sont des instruments qui mettent en œuvre la législation principale.

Bei den blau markierten Einträgen dieser Liste handelt es sich noch um Vorschlaege. Die Instrumente zur Politikumsetzung sind mit einem "+" gekennzeichnet.

List of secondary legislation relevant to "disability"

1) **Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation**

2) **Directive 2001/85/EC (relating to special provisions for vehicles used for the carriage of passengers comprising more than eight seats in addition to the driver's seat)**

3) **Directive 1999/5/EC (on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity)**

4) **Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and the free movement of such data**

5) **Directive 95/16/EC of the European Parliament and of the Council of 29 June 1995 on the approximation of the laws of the Member States relating to lifts (OJ L 312, 7.9.1995, p.1)**

6) **Commission Regulation (EC) No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment**

7) **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 Text with EEA relevance. OJ L 204, 26.7.2006 p.1-9**

8) **Regulation of the European Parliament and of the Council on rail passengers' rights and obligations**

9) **Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)**

10) **Regulation (EC) N° 1177/2003 of the EP and Council of 16 June 2003 concerning Community statistics on income and living conditions (EU-SILC)**

+ Commission Regulation (EC) N° 1981/2003 of 21 October 2003 implementing Regulation (EC) 1177/2003 of the EP and Council concerning Community statistics on income and living conditions (EU-SILC) as regards definitions and updated definitions.

+ Commission Regulation (EC) N° 1982/2003 of 21 October 2003 implementing Regulation (EC) 1177/2003 of the EP and Council concerning Community statistics on income and living conditions (EU-SILC) as regards the sampling and tracing rules.

+ Commission Regulation (EC) N° 1983/2003 of 7 November 2003 implementing Regulation (EC) 1177/2003 of the EP and Council concerning Community statistics on income and living conditions (EU-SILC) as regards the list of target primary variables.

+ Commission regulation (EC) N° 28/2004 of 5 January 2004 implementing Regulation (EC) 1177/2003 of the EP and Council concerning Community statistics on income and living conditions (EU-SILC) as regards the detailed content of intermediate and final quality reports.

+ Regulation (EC) N° 1553/2005 of the EP and Council of 7 September 2005 amending Regulation (EC) N° 1177/2003 of the EP and Council of 16 June 2003 concerning Community statistics on income and living conditions (EU-SILC).

+ Commission Regulation (EC) N° 698/2006 of 5 May 2006 amending Commission Regulation (EC) N° 1981/2003 implementing Regulation (EC) 1177/2003 of the EP and Council concerning Community statistics on income and living conditions (EU-SILC) as regards definitions and updated definitions.

11) **Council Regulation (EC) 577/98 of 9 March on the organisation of the Labour Force Sample Survey in the Community (LFS):**

+ **Commission Regulation (EC) N° 1571/98 of 20 July 1998 implementing Council Regulation (EC) N° 577/98 on the organisation of a labour force sample survey in the Community (OJ L 205, 22.7.98, p.40)**

+ Commission Regulation (EC) N° 1924/1999 of 8 September 1999 implementing Council Regulation (EC) 577/98 as regards the 2000 to 2002 programme of ad hoc modules to the LFS

+ **Commission Regulation (EC) N° 1566/2001 of 12 July 2001 implementing Council Regulation (EC) N° 577/98 on the organisation of a labour force sample survey in the Community concerning the specification of the 2002 ad hoc module on employment of disabled people** *

+ **Commission Regulation (EC) N° 1575/2000 of 19 July 2000 implementing Council Regulation (EC) N° 577/98 on the organisation of a labour force sample survey in the Community concerning the codification to be used for data transmission from 2001 onwards (OJ L 181, 20.7.2000, p.16)**

+ Commission Regulation (EC) N° 1626/2000 of 24 July 2000 implementing Council Regulation (EC) N° 577/98 on the organisation of a labour force sample survey in the Community as regards the 2001 to 2004 program of ad hoc modules to the labour force survey.

+ Regulation (EC) N° 1991/2002 of the EP and of the Council of 8 October 2002 amending Council Regulation (EC) N° 577/98 on the organisation of a labour force sample survey in the Community.

+ Regulation (EC) N° 2257/2003 of the EP and of the Council of 25 November 2003 amending Council Regulation (EC) N° 577/98 on the organisation of a labour force sample survey in the Community to adapt the list of survey characteristics.

+ **Commission Regulation (EC) N° 430/2005 of 15 March 2005 implementing Council Regulation (EC) N° 577/98 on the organisation of a labour force sample survey in the Community concerning the codification to be used for data transmission from 2006 onwards and the use of a sub-sample for collection of data on structural variables (OJ L 71, 17.3.2006, p.36).**

12) **Regulation (EC) No 458/2007 of the European Parliament and of the Council of 25 April 2007 on the European system of integrated social protection statistics (ESSPROS)**

13) **Proposal for a Regulation of the European Parliament and of the Council on Community statistics on public health and health and safety at work – COM(2007) 46 final**

14) **Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax**

15) **Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty**

16) **Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes" (as amended by "Council Directive 96/97/EC of 20 December 1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes")**

17) **Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)**

18) **Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors**

19) **Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts**

20) **Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medical product s for human use, as amended by Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 (OJ L 136, 30.4.2004, p.34)**

21) **Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22)**

22) **Directive 2003/24/EC of the European Parliament and of the Council of 14 April 2003 amending Council Directive 98/18/EC on safety rules and standards for passenger ships - OJ L 123, 17.5.2003, p. 18-21)**

23) **Directive 96/48/EC on the interoperability of the trans-European high-speed rail system (O J L 235, 17.09.1996, p. 6-24) as amended by Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 (O J L 164, 30.4.2004, p. 114-163)**

24) **Directive 2001/16/EC of the European Parliament and of the Council on the interoperability of the trans European conventional rail system (O J L 110, 20.04.2001, p. 1-27) -as amended by Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 (O J L 164, 30.4.2004, p. 114-163)**

25) **Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (Text with EEA relevance)(O J L 263, 9.10.2007, p 1)**

26) **Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (Text with EEA relevance) (OJ L 332, 18.12.2007, p. 27)**

27) **Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999**

28) **Decision 1720/2006/EC of the European Parliament and of the Council of 15 November 2007 establishing an action programme in the field of lifelong learning**

29) **Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)**

30) **Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services ("Framework Directive").**

31) **Council Decision 2005/600/EC of 12 July 2006 on guidelines for the employment policies of the Member States**

+ Council Decision 2006/544/EC of 18 July 2006 on guidelines for the employment policies of the Member States

32) **Regulation (EC) No 1889/2006 of the European Parliament and of the Council of 20 December2006on establishing a financing instrument for the promotion of democracy and human rights worldwide**

33) **Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society**

34) **Directive 2001/20/EC of the European Parliament and of the Council of 4 April 2001 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the implementation of good clinical practice in the conduct of clinical trials on medicinal products for human use**

35) **Proposal for a Regulation of the European Parliament and of the Council concerning the production and development of statistics on education and lifelong learning – COM(2005)625 final.**

36) **Directive 97/67/EC of the European Parliament and of the Council of 15 December on common rules for the development of the internal market of Community postal services and the improvement of quality of services**(OJ L15 of 21.01.1998), page 14) as amended by Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services (OJ, L176 of 05.07.2002, page 21).

37) **Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 -2013)**

38) **Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin**

39) **Decision 2119/98 of the European Parliament and of the Council of 24 September 1998 setting up a network for the epidemiological surveillance and control of communicable diseases in the Community**

40) **Directive 2004/23/EC of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissue and cells**

41) **Directive 2002/98/EC of the European Parliament and of the Council of 27 January 2003 setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood components and amending Directive 2001/83/EC**

ARRÊT DE LA COUR (deuxième chambre)

6 décembre 2012 (*)

«Égalité de traitement en matière d'emploi et de travail – Directive 2000/78/CE – Interdiction de toute discrimination fondée sur l'âge et sur un handicap – Indemnité de licenciement – Plan social prévoyant la réduction du montant de l'indemnité de licenciement versée aux travailleurs handicapés»

Dans l'affaire C-152/11,

ayant pour objet une demande de décision préjudicielle au titre de l'article 267 TFUE, introduite par l'Arbeitsgericht München (Allemagne), par décision du 17 février 2011, parvenue à la Cour le 28 mars 2011, dans la procédure

Johann Odar

contre

Baxter Deutschland GmbH,

LA COUR (deuxième chambre),

composée de M. A. Rosas, faisant fonction de président de la deuxième chambre, MM. U. Lõhmus, A. Ó Caoimh, A. Arabadjiev (rapporteur) et C. G. Fernlund, juges,

avocat général: Mme E. Sharpston,

greffier: M. K. Malacek, administrateur,

vu la procédure écrite et à la suite de l'audience du 18 avril 2012,

considérant les observations présentées:

– pour M. Odar, par Mes S. Saller et B. Renkl, Rechtsanwälte,

– pour Baxter Deutschland GmbH, par Me C. Grundmann, Rechtsanwältin,

– pour le gouvernement allemand, par MM. T. Henze, J. Möller et N. Graf Vitzthum, en qualité d'agents,

– pour la Commission européenne, par MM. J. Enegren et V. Kreuschitz, en qualité d'agents,

ayant entendu l'avocat général en ses conclusions à l'audience du 12 juillet 2012,

rend le présent

Arrêt

1 La demande de décision préjudicielle porte sur l'interprétation des articles 2 et 6, paragraphe 1, second alinéa, sous a), de la directive 2000/78/CE du Conseil, du 27 novembre 2000, portant création d'un cadre général en faveur de l'égalité de traitement en matière d'emploi et de travail (JO L 303, p. 16).

2 Cette demande a été présentée dans le cadre d'un litige opposant M. Odar à son ancien employeur, Baxter Deutschland GmbH (ci-après «Baxter») au sujet du montant de l'indemnité de licenciement qu'il a perçu conformément au plan de prévoyance sociale (ci-après le «PPS»), conclu entre cette société et son comité d'entreprise.

Le cadre juridique

Le droit de l'Union

3 Les considérants 8, 11, 12 et 15 de la directive 2000/78 sont libellés comme suit:

«(8) Les lignes directrices pour l'emploi en 2000, approuvées par le Conseil européen de Helsinki les 10 et 11 décembre 1999, soulignent la nécessité de promouvoir un marché du travail favorable à l'insertion sociale en formulant un ensemble cohérent de politiques destinées à lutter contre la discrimination à l'égard de groupes tels que les personnes handicapées. Elles soulignent également la nécessité d'accorder une attention particulière à l'aide aux travailleurs âgés pour qu'ils participent davantage à la vie professionnelle.

[…]

(11) La discrimination fondée sur la religion ou les convictions, un handicap, l'âge ou l'orientation sexuelle peut compromettre la réalisation des objectifs du traité CE, notamment un niveau d'emploi et de protection sociale élevé, le relèvement du niveau et de la qualité de la vie, la cohésion économique et sociale, la solidarité et la libre circulation des personnes.

(12) À cet effet, toute discrimination directe ou indirecte fondée sur la religion ou les convictions, un handicap, l'âge ou l'orientation sexuelle dans les domaines régis par la présente directive doit être interdite dans la Communauté. […]

[…]

(15) L'appréciation des faits qui permettent de présumer l'existence d'une discrimination directe ou indirecte appartient à l'instance judiciaire nationale ou

à une autre instance compétente, conformément au droit national ou aux pratiques nationales, qui peuvent prévoir, en particulier, que la discrimination indirecte peut être établie par tous moyens, y compris sur la base de données statistiques.»

4 Aux termes de son article 1er, ladite directive «a pour objet d'établir un cadre général pour lutter contre la discrimination fondée sur la religion ou les convictions, le handicap, l'âge ou l'orientation sexuelle, en ce qui concerne l'emploi et le travail, en vue de mettre en œuvre, dans les États membres, le principe de l'égalité de traitement».

5 L'article 2 de la même directive, intitulé «Concept de discrimination», prévoit à ses paragraphes 1 et 2:

«1. Aux fins de la présente directive, on entend par 'principe de l'égalité de traitement' l'absence de toute discrimination directe ou indirecte, fondée sur un des motifs visés à l'article 1er.

2. Aux fins du paragraphe 1:

a) une discrimination directe se produit lorsqu'une personne est traitée de manière moins favorable qu'une autre ne l'est, ne l'a été ou ne le serait dans une situation comparable, sur la base de l'un des motifs visés à l'article 1er;

b) une discrimination indirecte se produit lorsqu'une disposition, un critère ou une pratique apparemment neutre est susceptible d'entraîner un désavantage particulier pour des personnes d'une religion ou de convictions, d'un handicap, d'un âge ou d'une orientation sexuelle donnés, par rapport à d'autres personnes, à moins que:

i) cette disposition, ce critère ou cette pratique ne soit objectivement justifié par un objectif légitime et que les moyens de réaliser cet objectif ne soient appropriés et nécessaires, ou que

ii) dans le cas des personnes d'un handicap donné, l'employeur ou toute personne ou organisation auquel s'applique la présente directive ne soit obligé, en vertu de la législation nationale, de prendre des mesures appropriées conformément aux principes prévus à l'article 5 afin d'éliminer les désavantages qu'entraîne cette disposition, ce critère ou cette pratique.»

6 L'article 3 de la directive 2000/78, intitulé «Champ d'application», dispose à son paragraphe 1:

«Dans les limites des compétences conférées à la Communauté, la présente directive s'applique à toutes les personnes, tant pour le secteur public que pour le secteur privé, y compris les organismes publics, en ce qui concerne:

[…]

c) les conditions d'emploi et de travail, y compris les conditions de licenciement et de rémunération;

[…]»

7 L'article 6 de la même directive, intitulé «Justification des différences de traitement fondées sur l'âge», prévoit à son paragraphe 1:

«Nonobstant l'article 2, paragraphe 2, les États membres peuvent prévoir que des différences de traitement fondées sur l'âge ne constituent pas une discrimination lorsqu'elles sont objectivement et raisonnablement justifiées, dans le cadre du droit national, par un objectif légitime, notamment par des objectifs légitimes de politique de l'emploi, du marché du travail et de la formation professionnelle, et que les moyens de réaliser cet objectif sont appropriés et nécessaires.

Ces différences de traitement peuvent notamment comprendre:

a) la mise en place de conditions spéciales d'accès à l'emploi et à la formation professionnelle, d'emploi et de travail, y compris les conditions de licenciement et de rémunération, pour les jeunes, les travailleurs âgés et ceux ayant des personnes à charge, en vue de favoriser leur insertion professionnelle ou d'assurer leur protection;

[…]»

8 L'article 16 de ladite directive énonce:

«Les États membres prennent les mesures nécessaires afin que:

a) soient supprimées les dispositions législatives, réglementaires et administratives contraires au principe de l'égalité de traitement;

b) soient ou puissent être déclarées nulles et non avenues ou soient modifiées les dispositions contraires au principe de l'égalité de traitement qui figurent dans les contrats ou les conventions collectives […]»

Le droit allemand

La législation allemande

9 La directive 2000/78 a été transposée dans l'ordre juridique allemand par la loi générale relative à l'égalité de traitement (Allgemeines Gleichbehandlungsgesetz), du 14 août 2006 (BGBl. 2006 I, p. 1897, ci-après l'«AGG»). Cette loi prévoit à son article 1er, intitulé «Objectif de la loi»:

«La présente loi a pour objectif d'empêcher ou d'éliminer tout désavantage fondé sur la race ou l'origine ethnique, le sexe, la religion ou les croyances, un handicap, l'âge ou l'orientation sexuelle.»

10 L'article 10 de l'AGG, intitulé «Licéité de certaines différences de traitement fondées sur l'âge», énonce:

«Nonobstant l'article 8, une différence de traitement en raison de l'âge est également autorisée lorsqu'elle est objectivement et raisonnablement justifiée et qu'elle est fondée sur un objectif légitime. Les moyens mis en œuvre pour réaliser cet objectif doivent être appropriés et nécessaires. Ces différences de traitement peuvent notamment comprendre:

[…]

6. Des différences dans les prestations versées dans le cadre de plans sociaux au sens de la loi sur l'organisation des entreprises [Betriebsverfassungsgesetz] lorsque les parties ont mis en place une réglementation différenciée de l'indemnisation en fonction de l'âge ou du nombre d'années accomplies dans l'entreprise et en mettant l'accent sur les chances des intéressés de retrouver du travail sur le marché de l'emploi, lesquelles dépendent pour l'essentiel de leur âge, ou que des travailleurs ont été exclus du bénéfice des prestations du plan social au motif qu'ils bénéficient d'une couverture économique puisqu'ils ont droit à une pension de retraite, après avoir, le cas échéant, perçu des allocations de chômage.»

11 La loi sur l'organisation des entreprises, dans sa version du 25 septembre 2001 (BGBl. 2001 I, p. 2518), exige, à ses articles 111 à 113, l'adoption de mesures pour atténuer les effets négatifs sur les travailleurs d'une opération de restructuration d'une entreprise. Les employeurs et les comités d'entreprise sont tenus de conclure des plans sociaux à cet effet.

12 L'article 112 de la loi sur l'organisation des entreprises, intitulé «Accord sur les modifications structurelles dans l'entreprise et plan social», prévoit à son paragraphe 1:

«Si la direction et le comité d'entreprise parviennent à un accord d'équilibrage des intérêts s'agissant d'une modification structurelle envisagée dans l'entreprise, l'accord est rédigé par écrit et signé des deux parties. Il en va de même en cas d'accord permettant de compenser ou d'atténuer les conséquences économiques résultant pour les salariés de la modification envisagée dans l'entreprise (plan social). Le plan social produit l'effet d'un accord d'entreprise […]»

13 Conformément à l'article 127 du code social, qui figure dans le livre III de celui-ci, le versement des indemnités normales de chômage est effectué pour une durée limitée, déterminée en fonction de l'âge du travailleur et de la durée de ses cotisations. Un travailleur a droit à une indemnité de chômage

correspondant à 12 mois de salaire avant l'âge de 50 ans accomplis, à 15 mois après l'âge de 50 ans accomplis, à 18 mois après l'âge de 55 ans accomplis et à 24 mois à l'âge de 58 ans accomplis.

Le plan de prévoyance sociale et le plan social complémentaire

14 Baxter a conclu, le 30 avril 2004, un PPS avec le comité central de cette entreprise. L'article 6, paragraphe 1, points 1.1 à 1.5, de ce plan est libellé comme suit:

«1. Indemnités versées dans les cas où il est mis fin à la relation de travail (outre les cas de 'retraite anticipée')

1.1 Les travailleurs de l'entreprise auxquels, en dépit de tous les efforts déployés, il ne peut être offert un emploi acceptable dans l'entreprise Baxter [établie en] Allemagne, dont il n'est pas possible de résilier prématurément le contrat de travail au titre de l'article 5 et qui quittent l'entreprise (soit parce qu'ils ont été licenciés pour motif économique, soit parce qu'il a été mis fin à leur relation de travail d'un commun accord entre l'entreprise et le travailleur) perçoivent une indemnité de fin de relation de travail dont le montant brut avant impôt est calculé en euros, selon la formule suivante:

Indemnité = facteur d'âge x nombre d'années dans l'entreprise x rémunération mensuelle brute [ci-après la 'formule standard']

1.2 Tableau en fonction du facteur d'âge

Âge

Facteur d'âge

Âge

Facteur d'âge

Âge

Facteur d'âge

Âge

Facteur d'âge

Âge

Facteur d'âge

0,35

28

0,60

38

1,05

48

1,30

58

1,70

19

0,35

29

0,60

39

1,05

49

1,35

59

1,50

20

0,35

30

0,70

40

1,10

50

1,40

60

1,30

21

0,35

31

0,70

41

1,10

51

1,45

61

1,10

22

0,40

32

0,80

42

1,15

52

1,50

62

0,90

23

0,40

33

0,80

43

1,15

53

1,55

63

0,60

24

0,40

34

0,90

44

1,20

54

1,60

64

0,30

25

0,40

35

0,90

45

1,20

55

1,65

26

0,50

36

1,00

46

1,25

56

1,70

27

0,50

37

1,00

47

1,25

57

1,70

[…]

1.5 Pour les travailleurs qui ont dépassé l'âge de 54 ans et qui sont licenciés pour motif économique ou à la relation de travail desquels il est mis fin d'un commun accord entre l'entreprise et le travailleur, l'indemnité calculée conformément à l'article 6, paragraphe 1, point 1.1, est comparée au calcul suivant:

nombre de mois avant la première date possible de départ à la retraite x 0,85 x rémunération mensuelle brute [ci-après la 'formule alternative']

Si le montant de l'indemnité qui résulte de [la formule standard] devait être plus important que la somme qui résulte de la [formule alternative], c'est la somme la moins importante qui est versée. Cette somme ne doit cependant pas être inférieure à la moitié de l'indemnité calculée conformément à [la formule standard].

Si le résultat de la [formule alternative] est égal à zéro, il y a lieu de verser la moitié de l'indemnité calculée conformément à [la formule standard]».

15 Le 13 mars 2008, Baxter a conclu avec le comité d'entreprise du groupe un plan social complémentaire (ci-après le «PSC»). L'article 7 de ce plan, qui concerne les indemnités, est rédigé comme suit:

«Les travailleurs qui relèvent du présent [PPS] et dont le contrat de travail prend fin en raison de modifications dans l'entreprise perçoivent les prestations suivantes:

7.1 Indemnité: Les travailleurs perçoivent une indemnité unique qui résulte de l'article 6, paragraphe 1, du [PPS].

7.2 Précision: En ce qui concerne l'article 6, point 1.5, du [PPS], les parties conviennent ce qui suit. Par première date possible de départ à la retraite, on entend la date à laquelle le travailleur peut prétendre au bénéfice d'une pension de vieillesse, même s'il s'agit d'une pension comportant une minoration des droits du fait qu'elle a été activée de manière anticipée.

[…]»

Le litige au principal et les questions préjudicielles

16 Le requérant au principal, M. Odar, est un ressortissant autrichien né en 1950. Il est marié, a deux enfants à charge et a été reconnu gravement handicapé, son taux d'invalidité étant de 50 %. M. Odar a occupé un emploi depuis le 17 avril 1979 auprès de Baxter ou de la société à laquelle Baxter a succédé, en dernier lieu en qualité de responsable du marketing.

17 Baxter a mis fin à la relation de travail de M. Odar par lettre du 25 avril 2008 et lui a proposé de poursuivre cette relation de travail sur le site de Munich-Unterschleißheim (Allemagne). M. Odar a accepté cette proposition et a par la suite décidé de démissionner le 31 décembre 2009 après que les parties eurent convenu que cette démission ne diminuerait pas son droit à indemnité.

18 Ainsi qu'il ressort de la décision de renvoi, M. Odar peut faire valoir à l'égard du régime allemand d'assurance retraite un droit à une pension de vieillesse ordinaire à l'âge de 65 ans, à savoir à partir du 1er août 2015, ainsi qu'un droit au bénéfice d'une pension pour handicap grave à l'âge de 60 ans accomplis, à savoir à partir du 1er août 2010.

19 Baxter a versé à M. Odar une indemnité au titre du PPS d'un montant brut de 308 253,31 euros. En application de la formule standard, l'indemnité susceptible de lui être versée se serait élevée à 616 506,63 euros brut. En se fondant, conformément à la formule alternative, sur l'hypothèse d'un départ à la retraite à la première date possible, à savoir au 1er août 2010, Baxter a calculé une indemnité s'élevant à 197 199,09 euros brut. Elle lui a donc versé le montant minimal garanti, lequel correspond à la moitié de 616 506,63 euros.

20 Par lettre du 30 juin 2010, M. Odar a introduit un recours devant l'Arbeitsgericht München. Il a demandé à ce dernier de condamner Baxter à lui verser une indemnité supplémentaire d'un montant brut de 271 988,22 euros. Cette somme correspond à la différence entre l'indemnité qui lui a été versée et la somme qu'il aurait perçue, avec la même ancienneté dans l'entreprise, s'il avait été âgé de 54 ans lorsque sa relation de travail avec celle-ci a pris fin. M. Odar estime que le calcul de l'indemnité prévue par le PPS le désavantage en raison de son âge et de son handicap.

21 La juridiction de renvoi s'interroge sur la compatibilité avec la directive 2000/78 de l'article 10, troisième phrase, point 6, de l'AGG et de la règle figurant à l'article 6, paragraphe 1, point 1.5, du PPS. Elle relève que, si la première de ces deux dispositions nationales n'est pas conforme au droit de l'Union et, par conséquent, ne s'applique pas, il y a lieu de faire droit au recours introduit devant elle par M. Odar. En effet, la règle énoncée dans la seconde disposition ne pourrait pas se fonder sur une norme incompatible avec cette même directive.

22 Dans ces conditions, l'Arbeitsgericht München a décidé de surseoir à statuer et de poser à la Cour les questions préjudicielles suivantes:

«1) Une réglementation nationale qui prévoit qu'une différence de traitement fondée sur l'âge peut être licite lorsque, dans le cadre d'un régime de prévoyance sociale propre à une entreprise, les partenaires sociaux ont exclu du bénéfice des prestations du plan social des travailleurs qui disposent d'une couverture économique au motif qu'ils ont droit au versement d'une pension de vieillesse, le cas échéant après avoir perçu des allocations de chômage, est-elle contraire à l'interdiction de discrimination fondée sur l'âge, édictée aux articles

1er et 16 de la directive [2000/78], ou une telle discrimination est-elle justifiée conformément à l'article 6, paragraphe 1, [second alinéa], sous a), de [cette directive]?

2) Une réglementation nationale qui prévoit qu'une différence de traitement fondée sur l'âge peut être licite lorsque, dans le cadre d'un régime de prévoyance sociale propre à une entreprise, les partenaires sociaux ont exclu du bénéfice des prestations du plan social des travailleurs qui disposent d'une couverture économique au motif qu'ils ont droit au versement d'une pension de vieillesse, le cas échéant après avoir perçu des allocations de chômage, est-elle contraire à l'interdiction de discrimination fondée sur le handicap édictée aux articles 1er et 16 de la directive [2000/78]?

3) Une réglementation relevant d'un régime de prévoyance sociale propre à une entreprise qui prévoit pour les travailleurs de ladite entreprise, âgés de plus de 54 ans et licenciés pour motif économique, un calcul du montant de leur indemnité en fonction de la première date possible de départ à la retraite, contrairement à la méthode habituelle de calcul, laquelle tient notamment compte de l'ancienneté dans l'entreprise, de sorte que l'indemnité versée est inférieure tout en étant au moins égale à la moitié de l'indemnité habituelle, est-elle contraire à l'interdiction de discrimination fondée sur l'âge telle qu'elle figure aux articles 1er et 16 de la directive [2000/78] ou une telle discrimination est-elle justifiée conformément à l'article 6, paragraphe 1, [second alinéa], sous a), de [cette directive]?

4) Une réglementation relevant d'un régime de prévoyance sociale propre à une entreprise qui prévoit pour les travailleurs de ladite entreprise, âgés de plus de 54 ans et licenciés pour motif économique, un calcul du montant de leur indemnité en fonction de la première date possible de départ à la retraite, contrairement à la méthode habituelle de calcul, laquelle tient notamment compte de l'ancienneté dans l'entreprise, de sorte que l'indemnité versée est inférieure tout en étant au moins égale à la moitié de l'indemnité habituelle, et qui prend en considération pour cette autre méthode de calcul une pension de retraite versée en raison d'un handicap est-elle contraire à l'interdiction de discrimination fondée sur le handicap édictée aux articles 1er et 16 de la directive [2000/78]?»

Sur les questions préjudicielles

Sur les deux premières questions

23 Par ses deux premières questions, qu'il convient d'examiner ensemble, la juridiction de renvoi demande, en substance, si les articles 2, paragraphe 2, et 6, paragraphe 1, de la directive 2000/78 doivent être interprétés en ce sens qu'ils s'opposent à une réglementation nationale prévoyant qu'une différence de traitement fondée sur l'âge peut être licite lorsque, dans le cadre d'un régime de prévoyance sociale propre à une entreprise, les partenaires sociaux ont exclu du bénéfice des prestations du plan social des travailleurs qui disposent d'une

couverture économique au motif qu'ils ont droit au versement d'une pension de vieillesse, le cas échéant après avoir perçu des allocations de chômage.

24 À cet égard, il convient de rappeler d'emblée la jurisprudence constante de la Cour selon laquelle les questions relatives à l'interprétation du droit de l'Union posées par le juge national dans le cadre réglementaire et factuel qu'il définit sous sa responsabilité, et dont il n'appartient pas à la Cour de vérifier l'exactitude, bénéficient d'une présomption de pertinence. Le refus de la Cour de statuer sur une demande formée par une juridiction nationale n'est possible que s'il apparaît de manière manifeste que l'interprétation sollicitée du droit de l'Union n'a aucun rapport avec la réalité ou l'objet du litige au principal, lorsque le problème est de nature hypothétique ou encore lorsque la Cour ne dispose pas des éléments de fait et de droit nécessaires pour répondre de façon utile aux questions qui lui sont posées (voir, notamment, arrêts du 22 juin 2010, Melki et Abdeli, C-188/10 et C-189/10, Rec. p. I-5667, point 27; du 29 mars 2012, SAG ELV Slovensko e.a., C-599/10, non encore publié au Recueil, point 15, ainsi que du 12 juillet 2012, VALE Építési, C-378/10, non encore publié au Recueil, point 18).

25 Force est de constater que tel est précisément le cas en l'espèce.

26 En effet, les deux premières questions sont fondées sur la prémisse, envisagée par l'article 10, troisième phrase, point 6, de l'AGG, selon laquelle les partenaires sociaux excluent du bénéfice des prestations du plan social des travailleurs qui disposent d'une couverture économique au motif qu'ils ont droit au versement d'une pension de retraite, le cas échéant après avoir perçu des allocations de chômage.

27 Or, rien dans la décision de renvoi n'indique que le litige au principal concerne une telle hypothèse. Au contraire, la juridiction de renvoi a relevé que, à la différence de la faculté prévue à ladite disposition de l'AGG, le PPS ne permet pas l'exclusion du bénéfice de l'indemnité de licenciement des travailleurs proches de la retraite et ne prévoit pas non plus la prise en compte du droit du travailleur aux allocations de chômage. Ainsi qu'il ressort du dossier, M. Odar a perçu une indemnité de licenciement, mais celle-ci a été réduite conformément à l'article 6, paragraphe 1, point 1.5, du PPS, lu en combinaison avec l'article 7, point 7.2, du PSC, ce qu'il conteste par son recours devant ladite juridiction.

28 Il apparaît ainsi de manière manifeste que la question de la compatibilité de l'article 10, troisième phrase, point 6, de l'AGG avec la directive 2000/78 présente un caractère abstrait et purement hypothétique au regard de l'objet du litige au principal.

29 Dans ces conditions, il n'y a pas lieu de répondre aux première et deuxième questions posées par la juridiction de renvoi.

Sur la troisième question

30 Par sa troisième question, la juridiction de renvoi demande, en substance, si les articles 2, paragraphe 2, et 6, paragraphe 1, de la directive 2000/78 doivent être interprétés en ce sens qu'ils s'opposent à une réglementation relevant d'un régime de prévoyance sociale propre à une entreprise qui prévoit, pour les travailleurs de celle-ci âgés de plus de 54 ans et faisant l'objet d'un licenciement pour motif économique, que le montant de l'indemnité à laquelle ils ont droit est calculé en fonction de la première date possible de départ à la retraite, contrairement à la méthode standard de calcul, selon laquelle une telle indemnité est fondée notamment sur l'ancienneté dans l'entreprise, de sorte que l'indemnité versée à ces travailleurs est inférieure à l'indemnité résultant de l'application de cette méthode standard tout en étant au moins égale à la moitié de cette dernière.

31 S'agissant, dans un premier temps, de la question de savoir si la réglementation nationale en cause au principal relève du champ d'application de la directive 2000/78, il convient de souligner qu'il ressort tant de l'intitulé et des considérants que du contenu et de la finalité de cette directive que celle-ci tend à établir un cadre général pour assurer à toute personne l'égalité de traitement «en matière d'emploi et de travail», en lui offrant une protection efficace contre les discriminations fondées sur l'un des motifs visés à l'article 1er de la même directive, au nombre desquels figure l'âge.

32 Plus particulièrement, il découle de l'article 3, paragraphe 1, sous c), de la directive 2000/78 que celle-ci s'applique, dans les limites des compétences conférées à l'Union européenne, «à toutes les personnes, tant pour le secteur public que pour le secteur privé, y compris les organismes publics», en ce qui concerne, notamment, «les conditions d'emploi et de travail, y compris les conditions de licenciement et de rémunération».

33 En prévoyant la réduction du montant de l'indemnité de licenciement des travailleurs âgés de plus de 54 ans, l'article 6, paragraphe 1, point 1.5, du PPS affecte les conditions de licenciement de ces travailleurs au sens de l'article 3, paragraphe 1, sous c), de la directive 2000/78. Dès lors, une telle disposition nationale relève du champ d'application de cette directive.

34 Ainsi qu'il ressort de la jurisprudence constante de la Cour, lorsqu'ils adoptent des mesures entrant dans le champ d'application de la directive 2000/78, laquelle concrétise, dans le domaine de l'emploi et du travail, le principe de non-discrimination en fonction de l'âge, les partenaires sociaux doivent agir dans le respect de cette directive (arrêts du 13 septembre 2011, Prigge e.a., C-447/09, non encore publié au Recueil, point 48, ainsi que du 7 juin 2012, Tyrolean Airways Tiroler Luftfahrt, C-132/11, non encore publié au Recueil, point 22).

35 S'agissant de la question de savoir si la réglementation en cause au principal contient une différence de traitement fondée sur l'âge au sens de l'article 2, paragraphe 1, de la directive 2000/78, il y a lieu de relever que l'article

6, paragraphe 1, point 1.5, du PPS a pour effet, à l'égard des travailleurs qui ont dépassé l'âge de 54 ans et font l'objet d'un licenciement pour motif économique ou pour lesquels il est mis fin à la relation de travail d'un commun accord entre l'entreprise et le travailleur, que l'indemnité calculée conformément à la formule standard est comparée à celle obtenue selon la formule alternative. Le montant le plus faible est octroyé au travailleur concerné, celui-ci ayant toutefois la garantie de percevoir un montant correspondant à la moitié de celui qui résulte de l'application de la formule standard.

36 Conformément à ces dispositions, il a été versé à M. Odar un montant de 308 357,10 euros, correspondant à la moitié de l'indemnité résultant de l'application de la formule standard. S'il avait eu 54 ans lors de son licenciement, M. Odar aurait eu droit, toutes choses égales par ailleurs, à une indemnité qui se serait élevée à 580 357,10 euros. Le fait d'avoir plus de 54 ans a donc entraîné l'application de la méthode comparative et le versement d'un montant inférieur à celui auquel il aurait été en droit de prétendre s'il n'avait pas dépassé cet âge. Il apparaît ainsi que la méthode de calcul prévue par le PPS en cas de licenciement pour motif économique est constitutive d'une différence de traitement directement fondée sur l'âge.

37 Il convient d'examiner si cette différence de traitement est susceptible d'être justifiée au regard de l'article 6, paragraphe 1, premier alinéa, de la directive 2000/78. Cette disposition énonce en effet qu'une différence de traitement fondée sur l'âge ne constitue pas une discrimination lorsqu'elle est objectivement et raisonnablement justifiée, dans le cadre du droit national, par un objectif légitime, notamment par des objectifs légitimes de politique de l'emploi, du marché du travail et de la formation professionnelle, et que les moyens pour réaliser cet objectif sont appropriés et nécessaires.

38 S'agissant de l'objectif des mesures nationales en cause au principal, la juridiction de renvoi fait observer que les termes de l'article 6, paragraphe 1, point 1.5, du PPS ne fournissent aucune information relative aux objectifs poursuivis. Il ressort toutefois du dossier soumis à la Cour que ces derniers se confondent avec l'objectif de la règle qui figure à l'article 10, troisième phrase, point 6, de l'AGG. Ainsi que le relève la juridiction de renvoi, les modalités choisies dans le cadre du plan social par les partenaires sociaux doivent être de nature à promouvoir effectivement l'objectif visé à cette disposition de l'AGG et à ne pas nuire de manière disproportionnée aux intérêts des groupes d'âge désavantagés.

39 Selon l'article 112 de la loi sur l'organisation des entreprises, dans sa version du 25 septembre 2001, le sens et la finalité d'un plan social seraient de compenser ou de réduire les conséquences des modifications structurelles dans l'entreprise concernée. Dans ses observations écrites, le gouvernement allemand a précisé à cet égard que les indemnités versées au titre d'un plan de prévoyance sociale ne visent pas spécifiquement à faciliter la réinsertion dans la vie professionnelle.

40 Une différenciation fondée sur l'âge des indemnités versées au titre d'un plan de prévoyance sociale poursuivrait un objectif fondé sur la constatation selon laquelle, puisqu'il s'agit de désavantages économiques pour l'avenir, certains salariés qui ne seront pas confrontés à de tels désavantages résultant de la perte de leur emploi, ou qui n'y seront confrontés que de manière atténuée par rapport à d'autres, peuvent de manière générale être exclus de ces droits.

41 Le gouvernement allemand relève à cet égard qu'un plan social doit prévoir une répartition de moyens limités de telle sorte que celui-ci puisse remplir sa «fonction de transition» à l'égard de l'ensemble des travailleurs et non pas seulement des plus âgés de ceux-ci. Un tel plan ne peut pas en principe conduire à mettre en péril la survie de l'entreprise ou les emplois restants. L'article 10, troisième phrase, point 6, de l'AGG permettrait également de limiter les possibilités d'abus consistant, pour un travailleur, à bénéficier d'une indemnité destinée à le soutenir dans la recherche d'un nouvel emploi alors qu'il va partir à la retraite.

42 Ladite disposition nationale aurait ainsi pour objet l'octroi d'une compensation pour l'avenir, la protection des travailleurs plus jeunes et l'aide à leur réinsertion professionnelle, tout en tenant compte de la nécessité d'une juste répartition des moyens financiers limités d'un plan social.

43 De tels objectifs sont susceptibles de justifier, à titre de dérogation au principe de l'interdiction des discriminations fondées sur l'âge, des différences de traitement liées, notamment, «à la mise en place de conditions spéciales […] d'emploi et de travail, y compris les conditions de licenciement et de rémunération, pour les jeunes, les travailleurs âgés […], en vue de favoriser leur insertion professionnelle ou d'assurer leur protection», au sens de l'article 6, paragraphe 1, second alinéa, de la directive 2000/78.

44 En outre, doit être considéré comme légitime l'objectif d'éviter qu'une indemnité de licenciement ne bénéficie à des personnes qui ne cherchent pas un nouvel emploi, mais vont percevoir un revenu de substitution prenant la forme d'une pension de vieillesse (voir, en ce sens, arrêt du 12 octobre 2010, Ingeniørforeningen i Danmark, C-499/08, Rec. p. I-9343, point 44).

45 Dans ces conditions, il y a lieu d'admettre que des objectifs tels que ceux poursuivis par l'article 6, paragraphe 1, point 1.5, du PPS doivent, en principe, être considérés comme étant de nature à justifier «objectivement et raisonnablement», «dans le cadre du droit national», ainsi que le prévoit l'article 6, paragraphe 1, premier alinéa, de la directive 2000/78, une différence de traitement fondée sur l'âge.

46 Encore faut-il vérifier si les moyens mis en œuvre pour réaliser ces objectifs sont appropriés et nécessaires et s'ils n'excèdent pas ce qui est requis pour atteindre l'objectif poursuivi.

47 Il convient de rappeler à cet égard que les États membres et, le cas échéant, les partenaires sociaux au niveau national disposent d'une large marge d'appréciation dans le choix non seulement de la poursuite d'un objectif déterminé en matière de politique sociale et de l'emploi, mais également dans la définition des mesures susceptibles de le réaliser (voir, en ce sens, arrêt du 5 juillet 2012, Hörnfeldt, C-141/11, non encore publié au Recueil, point 32).

48 S'agissant du caractère approprié des dispositions en cause du PPS et du PSC, il y a lieu de relever que la réduction du montant de l'indemnité de licenciement octroyée aux travailleurs qui, à la date de leur licenciement, bénéficient d'une couverture économique n'apparaît pas déraisonnable au regard de la finalité de tels plans sociaux, consistant à apporter une protection plus importante aux travailleurs pour lesquels la transition vers un nouvel emploi s'avère délicate en raison de leurs moyens financiers limités.

49 Dès lors, il convient de considérer qu'une disposition telle que l'article 6, paragraphe 1, point 1.5, du PPS n'apparaît pas manifestement inappropriée pour atteindre l'objectif légitime d'une politique de l'emploi telle que celle poursuivie par le législateur allemand.

50 En ce qui concerne le caractère nécessaire de ces dispositions, il y a lieu, certes, de relever que l'article 7, point 7.2, du PSC prévoit que la première date possible de départ à la retraite, au sens de l'article 6, paragraphe 1, point 1.5, du PPS, correspond à la date à laquelle le travailleur peut prétendre au bénéfice d'une pension de vieillesse, même s'il s'agit d'une pension comportant une minoration des droits en raison du fait qu'elle a été activée de manière anticipée.

51 Toutefois, comme il a été constaté au point 27 du présent arrêt, le PPS ne prévoit que la réduction du montant de l'indemnité de licenciement octroyé à ces travailleurs.

52 À cet égard, il y a lieu de relever, d'une part, que l'article 6, point 1.5, du PPS prévoit que l'indemnité octroyée au travailleur concerné correspond au montant, calculé selon la formule standard ou selon la formule alternative, qui est le moins élevé, le bénéficiaire ayant toutefois la garantie que le montant qui lui sera effectivement versé sera au moins égal à la moitié de celui obtenu en application de la formule standard. En outre, ainsi qu'il ressort du tableau reproduit au point 14 du présent arrêt, le facteur d'âge, qui constitue l'un des coefficients de la formule standard et de la formule alternative, augmente progressivement depuis l'âge de 18 ans (0,35) jusqu'à celui de 57 ans (1,70). Ce n'est qu'à 59 ans que ce facteur commence à régresser (1,50) pour atteindre son taux minimal à l'âge de 64 ans (0,30). D'autre part, ainsi que le prévoit le troisième alinéa de cette disposition, même si l'application de la formule alternative aboutit à un résultat égal à zéro, le travailleur concerné aura droit au versement d'une indemnité égale à la moitié de celle calculée conformément à la formule standard.

53 Au regard des appréciations de la juridiction de renvoi, il convient de relever que l'article 6, paragraphe 1, point 1.5, du PPS est le fruit d'un accord négocié entre les représentants des employés et ceux des employeurs qui ont ainsi exercé leur droit de négociation collective reconnu en tant que droit fondamental. Le fait de laisser ainsi aux partenaires sociaux le soin de définir un équilibre entre leurs intérêts respectifs offre une flexibilité non négligeable, chacune des parties pouvant, le cas échéant, dénoncer l'accord (voir, en ce sens, arrêt du 12 octobre 2010, Rosenbladt, C-45/09, Rec. p. I-9391, point 67).

54 Eu égard à ce qui précède, il convient de répondre à la troisième question que les articles 2, paragraphe 2, et 6, paragraphe 1, de la directive 2000/78 doivent être interprétés en ce sens qu'ils ne s'opposent pas à une réglementation relevant d'un régime de prévoyance sociale propre à une entreprise qui prévoit, pour les travailleurs de celle-ci âgés de plus de 54 ans et faisant l'objet d'un licenciement pour motif économique, que le montant de l'indemnité à laquelle ils ont droit est calculé en fonction de la première date possible de départ à la retraite, contrairement à la méthode standard de calcul, selon laquelle une telle indemnité est fondée notamment sur l'ancienneté dans l'entreprise, de sorte que l'indemnité versée à ces travailleurs est inférieure à l'indemnité résultant de l'application de cette méthode standard tout en étant au moins égale à la moitié de cette dernière.

Sur la quatrième question

55 Par sa quatrième question, la juridiction de renvoi demande, en substance, si l'article 2, paragraphe 2, de la directive 2000/78 doit être interprété en ce sens qu'il s'oppose à une réglementation relevant d'un régime de prévoyance sociale propre à une entreprise qui prévoit, pour les travailleurs de celle-ci âgés de plus de 54 ans et faisant l'objet d'un licenciement pour motif économique, que le montant de l'indemnité à laquelle ils ont droit est calculé en fonction de la première date possible de départ à la retraite, contrairement à la méthode standard de calcul, selon laquelle une telle indemnité est fondée notamment sur l'ancienneté dans l'entreprise, de sorte que l'indemnité versée est inférieure à l'indemnité résultant de l'application de cette méthode standard tout en étant au moins égale à la moitié de cette dernière, et qui prend en considération, lors de la mise en œuvre de cette autre méthode de calcul, la possibilité de percevoir une pension de retraite anticipée versée en raison d'un handicap.

56 S'agissant, en premier lieu, de la question de savoir si l'article 6, paragraphe 1, point 1.5, du PPS, lu en combinaison avec l'article 7, point 7.2, du PSC, contient une différence de traitement fondée sur le handicap au sens de l'article 2, paragraphe 1, de la directive 2000/78, il y a lieu de relever que le montant de l'indemnité de licenciement versé au salarié concerné est réduit, conformément à cet article 7, point 7.2, en tenant compte de la première date possible de départ à la retraite. Or, l'admission au bénéfice d'une pension de retraite est soumise à une condition d'âge minimal et cet âge est différent pour les personnes gravement handicapées.

57 Comme l'a relevé Mme l'avocat général au point 50 de ses conclusions, le premier élément de la méthode de calcul selon la formule alternative sera toujours inférieur, dans le cas d'un travailleur gravement handicapé, à celui applicable à un travailleur valide ayant le même âge. En l'espèce, le fait que ce calcul est fondé, d'une manière apparemment neutre, sur l'âge de départ à la retraite a pour résultat que les travailleurs gravement handicapés, qui bénéficient de la possibilité de partir à la retraite à un âge moins élevé, à savoir 60 ans et non pas 63 ans comme c'est le cas pour les travailleurs valides, perçoivent une indemnité de licenciement moins importante, et cela en raison de leur handicap grave.

58 Ainsi qu'il ressort des observations de M. Odar et comme l'a admis Baxter lors de l'audience, le montant de l'indemnité de licenciement qu'il aurait perçu, s'il ne souffrait pas d'un handicap grave, se serait élevé à 570 839,47 euros.

59 Il s'ensuit que l'article 6, paragraphe 1, point 1.5 du PPS, lu en combinaison avec l'article 7, point 7.2, du PSC, dont l'application a pour effet que le montant de l'indemnité de licenciement versé à un travailleur gravement handicapé est inférieur à celui perçu par un travailleur valide, entraîne une différence de traitement indirectement fondée sur le critère du handicap au sens des dispositions combinées des articles 1er et 2, paragraphe 2, sous a), de la directive 2000/78.

60 Il convient, en second lieu, d'examiner si, dans un contexte tel que celui régi par la disposition en cause au principal, les travailleurs souffrant d'un handicap grave et appartenant à une tranche d'âge proche de la retraite se trouvent dans une situation comparable, au sens de l'article 2, paragraphe 2, sous a), de la directive 2000/78, à celle des travailleurs valides appartenant à la même tranche d'âge. Le gouvernement allemand fait en effet valoir que ces deux catégories de travailleurs se trouvent dans des situations de départ objectivement différentes en ce qui concerne leur droit à percevoir une pension.

61 Il y a lieu de souligner, à cet égard, que les travailleurs appartenant à des tranches d'âge proches de la retraite se trouvent dans une situation comparable à celle des autres travailleurs concernés par le plan social puisque leur relation de travail avec leur employeur cesse pour le même motif et dans les mêmes conditions.

62 En effet, l'avantage accordé aux travailleurs gravement handicapés, qui consiste à pouvoir prétendre à une pension de retraite à partir d'un âge inférieur de trois ans à celui fixé pour les travailleurs valides, ne saurait les placer dans une situation spécifique par rapport à ces travailleurs.

63 Conformément à l'article 2, paragraphe 2, sous b), de la directive 2000/78, il convient d'examiner si la différence de traitement existant entre ces deux catégories de travailleurs est objectivement et raisonnablement justifiée par un objectif légitime, si les moyens mis en œuvre pour réaliser celui-ci sont

appropriés et s'ils n'excèdent pas ce qui est nécessaire pour atteindre l'objectif poursuivi par le législateur allemand.

64 À cet égard, d'une part, il a déjà été constaté, aux points 43 à 45 du présent arrêt, que des objectifs tels que ceux poursuivis par l'article 6, paragraphe 1, point 1.5, du PPS doivent, en principe, être considérés comme étant de nature à justifier «objectivement et raisonnablement», «dans le cadre du droit national», ainsi que le prévoit l'article 6, paragraphe 1, premier alinéa, de la directive 2000/78, une différence de traitement fondée sur l'âge. D'autre part, ainsi qu'il ressort du point 49 du présent arrêt, une telle disposition nationale n'apparaît pas manifestement inappropriée pour atteindre l'objectif légitime d'une politique de l'emploi telle que celle poursuivie par le législateur allemand.

65 Afin d'examiner si l'article 6, paragraphe 1, point 1.5, du PPS, lu en combinaison avec l'article 7, point 7.2, du PSC, excède ce qui est nécessaire pour atteindre les objectifs poursuivis, il convient de replacer cette disposition dans le contexte dans lequel elle s'inscrit et de prendre en considération le préjudice qu'elle est susceptible d'occasionner aux personnes visées.

66 Baxter et le gouvernement allemand font en substance valoir que la réduction du montant de l'indemnité de licenciement perçue par M. Odar est justifiée par l'avantage accordé aux travailleurs gravement handicapés, qui consiste à pouvoir prétendre à une pension de retraite à partir d'un âge inférieur de trois ans à celui fixé pour les travailleurs valides.

67 Ce raisonnement ne saurait toutefois être admis. En effet, d'une part, il y a discrimination sur le fondement du handicap lorsque la mesure litigieuse n'est pas justifiée par des facteurs objectifs étrangers à une telle discrimination (voir, par analogie, arrêts du 6 avril 2000, Jørgensen, C-226/98, Rec. p. I-2447, point 29; du 23 octobre 2003, Schönheit et Becker, C-4/02 et C-5/02, Rec. p. I-12575, point 67, ainsi que du 12 octobre 2004, Wippel, C-313/02, Rec. p. I-9483, point 43). D'autre part, un tel raisonnement reviendrait à compromettre l'effet utile des dispositions nationales prévoyant ledit avantage, dont la raison d'être est, en général, de tenir compte des difficultés et des risques particuliers que rencontrent les travailleurs atteints d'un handicap grave.

68 Il apparaît ainsi que les partenaires sociaux, en poursuivant l'objectif légitime d'une répartition équitable des moyens financiers limités affectés à un plan social et proportionnée aux besoins des travailleurs concernés, ont omis de tenir compte d'éléments pertinents qui concernent, en particulier, les travailleurs gravement handicapés.

69 Ils ont en effet méconnu tant le risque encouru par les personnes atteintes d'un handicap grave, lesquelles rencontrent en général davantage de difficultés que les travailleurs valides pour réintégrer le marché de l'emploi, que le fait que ce risque croît à mesure qu'elles se rapprochent de l'âge de la retraite. Or, ces

personnes ont des besoins spécifiques liés tant à la protection que requiert leur état qu'à la nécessité d'envisager une aggravation éventuelle de celui-ci. Ainsi que l'a relevé Mme l'avocat général au point 68 de ses conclusions, il convient de tenir compte du risque que les personnes atteintes d'un handicap grave soient exposées à des besoins financiers incompressibles liés à leur handicap et/ou que, en vieillissant, ces besoins financiers augmentent.

70 Il s'ensuit que, en aboutissant au versement d'une indemnité de licenciement pour motif économique à un travailleur gravement handicapé d'un montant inférieur à celle perçue par un travailleur valide, la mesure en cause au principal a pour effet de porter une atteinte excessive aux intérêts légitimes des travailleurs gravement handicapés et excède ainsi ce qui est nécessaire pour atteindre les objectifs de politique sociale poursuivis par le législateur allemand.

71 Dès lors, la différence de traitement résultant de l'article 6, paragraphe 1, point 1.5, du PPS ne saurait être justifiée au titre de l'article 2, paragraphe 2, sous b), i), de la directive 2000/78.

72 Eu égard aux considérations qui précèdent, il y a lieu de répondre à la quatrième question que l'article 2, paragraphe 2, de la directive 2000/78 doit être interprété en ce sens qu'il s'oppose à une réglementation relevant d'un régime de prévoyance sociale propre à une entreprise qui prévoit, pour les travailleurs de celle-ci âgés de plus de 54 ans et faisant l'objet d'un licenciement pour motif économique, que le montant de l'indemnité à laquelle ils ont droit est calculé en fonction de la première date possible de départ à la retraite, contrairement à la méthode standard de calcul, selon laquelle une telle indemnité est fondée notamment sur l'ancienneté dans l'entreprise, de sorte que l'indemnité versée est inférieure à l'indemnité résultant de l'application de cette méthode standard tout en étant au moins égale à la moitié de cette dernière, et qui prend en considération, lors de la mise en œuvre de cette autre méthode de calcul, la possibilité de percevoir une pension de retraite anticipée versée en raison d'un handicap.

Sur les dépens

73 La procédure revêtant, à l'égard des parties au principal, le caractère d'un incident soulevé devant la juridiction de renvoi, il appartient à celle-ci de statuer sur les dépens. Les frais exposés pour soumettre des observations à la Cour, autres que ceux desdites parties, ne peuvent faire l'objet d'un remboursement.

Par ces motifs, la Cour (deuxième chambre) dit pour droit:

1) Les articles 2, paragraphe 2, et 6, paragraphe 1, de la directive 2000/78/CE du Conseil, du 27 novembre 2000, portant création d'un cadre général en faveur de l'égalité de traitement en matière d'emploi et de travail, doivent être interprétés en ce sens qu'ils ne s'opposent pas à une réglementation relevant d'un régime de prévoyance sociale propre à une entreprise qui prévoit, pour les travailleurs de celle-ci âgés de plus de 54 ans et faisant l'objet d'un licenciement

pour motif économique, que le montant de l'indemnité à laquelle ils ont droit est calculé en fonction de la première date possible de départ à la retraite, contrairement à la méthode standard de calcul, selon laquelle une telle indemnité est fondée notamment sur l'ancienneté dans l'entreprise, de sorte que l'indemnité versée est inférieure à l'indemnité résultant de l'application de cette méthode standard tout en étant au moins égale à la moitié de cette dernière.

2) L'article 2, paragraphe 2, de la directive 2000/78 doit être interprété en ce sens qu'il s'oppose à une réglementation relevant d'un régime de prévoyance sociale propre à une entreprise qui prévoit, pour les travailleurs de celle-ci âgés de plus de 54 ans et faisant l'objet d'un licenciement pour motif économique, que le montant de l'indemnité à laquelle ils ont droit est calculé en fonction de la première date possible de départ à la retraite, contrairement à la méthode standard de calcul, selon laquelle une telle indemnité est fondée notamment sur l'ancienneté dans l'entreprise, de sorte que l'indemnité versée est inférieure à l'indemnité résultant de l'application de cette méthode standard tout en étant au moins égale à la moitié de cette dernière, et qui prend en considération, lors de la mise en œuvre de cette autre méthode de calcul, la possibilité de percevoir une pension de retraite anticipée versée en raison d'un handicap.

Signatures

* Langue de procédure: l'allemand.

CONCLUSIONS DE L'AVOCAT GÉNÉRAL Mme
JULIANE KOKOTT
présentées le 6 décembre 2012 (1)
Affaires jointes C‑335/11 et C‑337/11

HK Danmark, handelnd für Jette Ring
contre
Dansk Almennyttigt Boligselskab DAB

et

HK Danmark, handelnd für Lone Skouboe Werge
contre
Pro Display A/S in Konkurs
(demande de décision préjudicielle formée par le Sø- og Handelsretten [Dänemark])
«Égalité de traitement en matière d'emploi et de travail – Directive 2000/78/CE – Interdiction des discriminations en raison d'un handicap – Notion de handicap – Distinction entre maladie et handicap – Aménagements raisonnables en faveur des personnes handicapées – Discrimination indirecte – Justification »

I – Introduction

1. Quand peut-on parler de handicap au sens de la directive 2000/78/CE portant création d'un cadre général en faveur de l'égalité de traitement en matière d'emploi et de travail (2) et comment la notion de handicap peut-elle être distinguée de la maladie ? Ces questions sont au coeur de la procédure préjudicielle qui nous intéresse ici. La Cour est donc appelée à préciser la définition de la notion de handicap qui ressort de son arrêt Chacón Navas (3).

2. Il est en outre question de ce que recouvre la notion d'aménagements raisonnables en faveur des personnes handicapées, que l'employeur est tenu de prévoir en application de l'article 5 de la directive 2000/78. Enfin, la juridiction de renvoi souhaite savoir si la réduction du délai de préavis de licenciement motivée par des absences pour cause de maladie peut constituer une discrimination en raison d'un handicap.

II – Le cadre juridique

A – Le droit international

3. On peut lire ce qui suit dans le préambule de la Convention des Nations unies du 13 décembre 2006 relative aux droits des personnes handicapées (4), sous e): «Reconnaissant que la notion de handicap évolue et que le handicap résulte de l'interaction entre des personnes présentant des incapacités et les barrières comportementales et environnementales qui font obstacle à leur pleine et effective participation à la société sur la base de l'égalité avec les autres».

4. L'article 1er, deuxième alinéa de la convention, énonce la définition suivante :

«Au sens de la Convention des Nations Unies, on entend par personnes handicapées des individus qui présentent des incapacités physiques, mentales, intellectuelles ou sensorielles durables dont l'interaction avec diverses barrières peut faire obstacle à leur pleine et effective participation à la société sur la base de l'égalité avec les autres».

B – Le droit de l'Union

5. Selon le vingtième considérant de la directive 2000/78 :

«Il convient de prévoir des mesures appropriées, c'est-à-dire, des mesures efficaces et pratiques destinées à aménager le poste de travail en fonction du handicap, par exemple en procédant à un aménagement des locaux ou à une adaptation des équipements, des rythmes de travail, de la répartition des tâches ou de l'offre de moyens de formation ou d'encadrement».

6. Conformément à l'article 2, paragraphe 2, sous b), de la directive 2000/78, une discrimination indirecte se produit «lorsqu'une disposition, un critère ou une pratique apparemment neutre est susceptible d'entraîner un désavantage particulier pour des personnes d'une religion ou de convictions, d'un handicap, d'un âge ou d'une orientation sexuelle donnés, par rapport à d'autres personnes, à moins que:

i) cette disposition, ce critère ou cette pratique ne soit objectivement justifié par un objectif légitime et que les moyens de réaliser cet objectif ne soient appropriés et nécessaires, ou que

…»

7. L'article 5 de la directive 2000/78 prévoit ce qui suit sous l'intitulé «Aménagements raisonnables pour les personnes handicapées»:

«Afin de garantir le respect du principe de l'égalité de traitement à l'égard des personnes handicapées, des aménagements raisonnables sont prévus. Cela signifie que l'employeur prend les mesures appropriées, en fonction des besoins dans une situation concrète, pour permettre à une personne handicapée d'accéder à un emploi, de l'exercer ou d'y progresser, ou pour qu'une formation

lui soit dispensée, sauf si ces mesures imposent à l'employeur une charge disproportionnée. Cette charge n'est pas disproportionnée lorsqu'elle est compensée de façon suffisante par des mesures existant dans le cadre de la politique menée dans l'État membre concerné en faveur des personnes handicapées».

C – Le droit national

8. La directive 2000/78 a été transposée en droit danois par la Forskelsbehandlingslov(5). L'article 7 de cette loi prévoit la possibilité de demander une réparation en cas de non-respect de l'interdiction de discrimination ou lorsque l'employeur n'a pas pris les mesures requises.

9. La Funktionærlov (6) régit la relation juridique entre employeurs et travailleurs/employés.

10. Son article 5, paragraphe 2 contient une disposition spéciale s'agissant du licenciement pour cause de maladie du salarié ; il prévoit que :

«Le contrat de travail écrit peut toutefois prévoir que la durée du préavis ne sera que d'un mois à effet du dernier jour du mois suivant si, au cours des douze derniers mois, le travailleur salarié a été absent pour cause de maladie avec maintien de la rémunération pendant 120 jours. Le licenciement est valable s'il intervient immédiatement à l'issue de la période de 120 jours d'absence pour cause de maladie et que le travailleur salarié est toujours en arrêt maladie; le fait que le travailleur salarié retourne sur son lieu de travail après la décision de licenciement est sans incidence sur sa validité».

III – Les faits et la procédure au principal

11. Les procédures préjudicielles présentement soumises à la Cour ont pour origine deux recours introduits en 2006 par le Handels- og Kontorfunktionærernes Forbund Danmark (HK)(7) agissant au nom des salariées Jette Ring et Lone Skouboe Werge, réclamant une réparation conformément à la loi danoise anti-discrimination, pour discrimination en raison d'un handicap. L'application de l'article 5, paragraphe 2 de la FL avait été convenue pour les deux contrats de travail.

A – L'affaire C-335/11

12. Dans l'affaire Ring, la procédure au principal a pour origine les faits suivants:

13. Mme Ring était employée depuis 2000 par l'entreprise Dansk Almennyttigt Boligselskab (DAB) en tant qu'employée chargée de l'accueil des clients. Entre juin 2005 jusqu'à son licenciement en novembre 2005, elle a été absente à plusieurs reprises pour maladie; les périodes d'absence représentaient au total plus de 120 jours. Les certificats médicaux produits pour justifier les

absences font état de douleurs chroniques au niveau du dos dues notamment à un développement d'arthrose au niveau des lombaires, se traduisant par des douleurs lombaires constantes. Les médecins traitants étant partis du principe d'une rigidification des vertèbres lombaires par un processus naturel de soudure, il n'y avait pas d'autres possibilités de traitement. Aucune mesure destinée à soulager ces douleurs, telle l'achat d'un bureau ajustable en hauteur pour son poste de travail ou l'offre d'un emploi à temps partiel, n'a été prise pendant la période au cours de laquelle Mme Ring a travaillé pour DAB, et ce bien que DAB propose en principe des postes à temps partiel.

14. En raison de la durée cumulée de ses absences, Mme Ring a été licenciée avec un préavis réduit en application de l'article 5, paragraphe 2 de la FL. Immédiatement après le licenciement de Mme Ring, DAB a fait passer une annonce d'offre d'emploi à temps partiel, pour des fonctions comparables à celles qu'elle exerçaient, dans un bureau régional situé à proximité. Mme Ring a commencé un nouveau travail en qualité d'hôtesse d'accueil auprès d'une autre société, laquelle a mis à sa disposition une table de travail ajustable en hauteur et fixé son temps de travail hebdomadaire à 20 heures. Elle a été embauchée à temps plein suivant le régime danois des horaires flexibles avec une compensation de 50% de son salaire (8).

B – Affaire C-337/11

15. Dans l'affaire Skouboe Werge, le Sø- og Handelsret a exposé les éléments de fait suivants:

16. Mme Skouboe Werge travaillait depuis 1998 en tant qu'assistante de direction pour la société Pro Display. Après avoir été victime en décembre 2003 d'une entorse cervicale à la suite d'un accident de la circulation, après lequel elle avait été en arrêt maladie pendant trois semaines, elle a tout d'abord repris son activité à temps plein chez Pro Display. Lorsqu'il est apparu, à la fin de l'année 2004, que Mme Skouboe Werge souffrait encore des séquelles de son entorse cervicale, elle a été mise en arrêt maladie pour quatre semaines, période où elle ne devait travailler que quatre heures par jour environ. En janvier 2005, Mme Skouboe Werge s'est mise en arrêt maladie à temps plein, en raison de douleurs persistantes. Elle a ensuite été informée de son licenciement avec un préavis d'un mois prenant fin le 31 mai 2005, en application de la règle des 120 jours de l'article 5, paragraphe 2, de la FL.

17. Les troubles de Mme Skouboe Werge se manifestaient par différents symptômes, en particulier des douleurs à la nuque irradiant vers les épaules et les avants-bras, des problèmes à la mâchoire, un état d'asthénie, des troubles de la concentration et des pertes de mémoire, des difficultés d'élocution, une hypersensibilité aux bruits, une faible résistance au stress et des pertes de connaissance. À compter de juin 2006, après que sa capacité à travailler eut été évaluée à environ huit heures par semaine à un rythme lent, Mme Skouboe Werge a bénéficié d'une pension de retraite anticipée. En outre, par une

décision de l'autorité compétente en matière d'accidents du travail et de maladies professionnelles, le taux de lésion de Mme Skouboe Werge a été fixé à 10 % et le taux de perte de revenus à 65 %.

18. Dans la procédure au principal, HK a fait valoir que ces salariées ne pouvaient valablement être licenciées avec un préavis réduit en vertu de l'article 5, paragraphe 2, de la FL, au motif qu'il s'agissait d'une discrimination en raison du handicap prohibée par la directive 2000/78. La juridiction de renvoi s'interroge donc sur la définition de la notion de «handicap» au sens de la directive 2000/78.

IV – Les questions préjudicielles et la procédure devant la Cour

19. Par ordonnances du 29 juin 2011, parvenues à la Cour le 1er juillet 2011, le Sø- og Handelsret a sursis à statuer et saisi la Cour des questions suivantes:

1a) La notion de «handicap», au sens de la directive, est-elle applicable à toute personne qui, en raison d'atteintes physiques, mentales ou psychiques, ne peut accomplir son travail pendant une période satisfaisant à la condition de durée visée au point 45 de l'arrêt de la Cour du 16 juillet 2006, Navas, ou ne peut le faire que de façon limitée?

1b) Un état pathologique causé par une maladie médicalement constatée comme incurable peut-il relever de la notion d'handicap au sens de cette directive?

1c) Un état pathologique causé par une maladie médicalement constatée comme curable peut-il relever de la notion d'handicap au sens de cette directive?

2) Une incapacité permanente ne nécessitant pas l'utilisation d'équipements spéciaux ou autres et qui se traduit pour l'essentiel par le fait que la personne qui en est atteinte n'est pas en mesure de travailler à plein temps, relève-t-elle de la notion d'handicap au sens de la directive 2000/78?

3) La réduction du temps de travail peut-elle constituer l'une des mesures visées par l'article 5 de la directive 2000/78?

4) La directive 2000/78 fait-elle obstacle à l'application d'une loi nationale suivant laquelle un employeur peut mettre fin au contrat de travail avec un préavis réduit si le travailleur, qui doit être considéré comme handicapé au sens de ladite directive, a été en arrêt maladie avec maintien du salaire pendant 120 jours en tout au cours des douze derniers mois lorsque:

a. les absences du travailleur sont la conséquence de son handicap?

ou que

b. les absences du travailleur sont imputables au fait que l'employeur n'a pas pris les mesures concrètes nécessaires pour qu'une personne handicapée puisse exercer son emploi?

20. Par ordonnance du Président de la Cour du 4 août 2011, les affaires C-335/11 et C-337/11 ont été jointes aux fins de la procédure écrite et orale, ainsi que de l'arrêt.

21. Outre les parties au principal, les gouvernements du Danemark, de l'Irlande, de la Pologne et du Royaume-Uni ainsi que Commission européenne ont participé à la procédure écrite orale devant la Cour. Par ailleurs, les gouvernements de Belgique et de Grèce ont présenté des observations écrites.

V – Appréciation

22. Il convient de répondre conjointement à la première et à la deuxième questions du Sø- og Handelsret, dans la mesure où elles concernent toutes deux la définition de la notion de handicap (ci-après sous A.). La troisième question porte sur les modalités et l'ampleur des aménagements que l'employeur doit prévoir conformément à l'article 5 de la directive 2000/78 (ci-après sous B). Pour finir, il conviendra d'aborder la quatrième question et donc d'examiner si la réduction du délai de préavis en raison d'absences pour maladie est une disposition discriminatoire (ci-après sous C.).

A – La première et la deuxième questions

1. Définition de la notion de handicap

23. La directive 2000/78 ne fournit elle-même aucune définition de la notion de handicap.

24. La Cour a déjà été appelée, dans l'arrêt Chacón Navas, à donner une définition de cette notion propre au droit de l'Union. Selon cet arrêt, la notion de handicap doit être entendue comme visant «une limitation, résultant notamment d'atteintes physiques, mentales ou psychiques et entravant la participation de la personne concernée à la vie professionnelle» (9). Il doit en outre être probable que cette limitation soit de longue durée (10).

25. En 2010 – soit quelques années après l'arrêt Chacón Navas – l'Union européenne a ratifié la Convention des Nations unies relative aux droits des personnes handicapées. La convention de l'ONU précise tout d'abord dans son préambule que la notion de handicap n'est pas figée et que la définition du handicap évolue en permanence (11). L'article 1er de la convention définit ensuite cette notion. Selon ce texte, on entend par «personnes handicapées des individus qui présentent des incapacités physiques, mentales, intellectuelles ou sensorielles durables dont l'interaction avec diverses barrières peut faire obstacle à leur pleine et effective participation à la société sur la base de l'égalité avec les autres».

26. Il découle de l'article 216, paragraphe 2, TFUE que les accords conclus par l'Union lient les institutions de l'Union et les États membres. Les accords internationaux conclus par l'Union font partie intégrante de l'ordre juridique de l'Union à compter de leur entrée en vigueur(12). Pour cette raison, les dispositions du droit de l'Union dérivé doivent faire l'objet, si possible, d'une interprétation conforme aux obligations de droit public de l'Union (13).

27. La notion de handicap au sens de la directive 2000/78 ne devrait donc pas être en retrait par rapport à l'étendue de la protection offerte par la convention de l'ONU. Selon la définition de la convention de l'ONU, l'obstacle à la participation à la société de la personne handicapée résulte de «l'interaction avec diverses barrières». Il se pourrait donc, dans certains cas de figure, que la définition de l'arrêt Chacón Navas soit en retrait par rapport à la définition de la convention de l'ONU et qu'il y ait lieu de l'interpréter conformément au droit international.

28. Dans les affaires qui nous intéressent ici, le noeud du problème ne se rapporte toutefois pas aux «barrières» dont il est question dans cette définition. La juridiction de renvoi souhaite savoir si un état pathologique causé par une maladie médicalement constatée comme incurable ou curable peut relever de la notion de handicap. Ni la définition qui ressort de l'arrêt Chacón Navas ni celle de la convention de l'ONU ne permettent par elles-mêmes de répondre aux questions de la juridiction de renvoi. En effet, mise à part l'exigence d'une limitation de longue durée, ces deux définitions n'exposent aucun critère explicite permettant de distinguer le handicap de la maladie.

29. Pour répondre aux questions de la juridiction de renvoi, il convient par conséquent d'aborder maintenant la question de la distinction entre maladie et handicap.

2. La distinction entre maladie et handicap

30. Dans son arrêt Chacón Navas, la Cour a constaté que la directive 2000/78 ne protège déjà pas les travailleurs atteints d'une maladie quelconque (14). La Cour opère donc une distinction entre maladie et handicap. En effet, la «maladie» n'est pas évoquée dans la directive comme un motif de discrimination propre.

31. Cependant, la Cour n'a exclu du champ d'application de la directive que la «maladie en tant que telle» (15). On ne saurait déduire de l'arrêt Chacón Navas qu'une maladie, cause de handicap, fait obstacle à la qualification de handicap. Enfin, dans son deuxième arrêt concernant une discrimination en raison d'un handicap, la Cour a également précisé que l'arrêt Chacón Navas ne saurait être interprété en ce sens que la portée ratione personae de cette directive devrait être interprétée de manière restrictive (16).

32. En particulier, il n'apparaît pas que la directive 2000/78 vise à couvrir uniquement les handicaps de naissance ou d'origine accidentelle. Il serait arbitraire que la directive puisse s'appliquer en fonction de l'origine du handicap, sans compter que cela irait à l'encontre de l'objectif même de la directive qui est de mettre en œuvre l'égalité de traitement.

33. Il convient donc de distinguer entre la maladie comme possible cause d'incapacité et l'incapacité qui en résulte. La limitation permanente résultant d'une maladie et faisant obstacle à la participation à la vie professionnelle relève également de la protection de la directive.

34. Les affaires dont il est ici question concernent des atteintes ou incapacités physiques, qui se manifestent notamment par des douleurs et une certaine immobilité. La distinction entre maladie et handicap est donc ici plus aisée que dans l'affaire soumise à la Cour suprême des États-unis, dans laquelle celle-ci a constaté que, même en l'absence de tout symptôme, une infection au virus HIV pouvait constituer un handicap au sens de l'Anti-Discrimination Act (17). La question de savoir si les troubles dont souffre une personne constituent concrètement une limitation relève de l'appréciation de la juridiction de l'État membre.

35. Le libellé de la directive 2000/78 ne contient aucun élément qui permettrait de limiter son champ d'application à un certain degré de gravité du handicap (18). Cette question n'ayant toutefois ni été posée par la juridiction de renvoi, ni discutée entre les parties à la procédure, elle n'a pas à être résolue ici de manière définitive.

36. L'existence d'un handicap suppose en outre que la limitation soit probablement de «longue durée» (19). La convention de l'ONU évoque à cet égard la nécessité d'incapacités «durables» (20). Nous n'y voyons aucune différence quant au contenu.

37. Dans le cas d'une limitation ayant pour origine une maladie incurable, cette condition de longue durée sera en général remplie. Cependant, même une maladie en principe curable peut nécessiter un laps de temps tellement long avant la guérison complète qu'elle implique une limitation de longue durée. De surcroît, même une maladie en principe curable peut avoir pour séquelle une limitation durable. Dans le cas précis des maladies chroniques, le passage d'une maladie (susceptible d'être traitée) à une limitation probablement permanente – qui prendra alors le caractère d'un handicap – peut être à peine perceptible. Ce n'est qu'une fois que cette limitation permanente est diagnostiquée que l'on peut parler d'un handicap.

38. La seule constatation du caractère intrinsèquement curable ou non, permanent ou provisoire d'une maladie n'autorise donc aucune conclusion définitive quant à l'existence ultérieure d'une limitation de longue durée.

3. Le besoin d'équipements spéciaux

39. La juridiction de renvoi demande en outre si la reconnaissance d'un handicap est subordonnée à la nécessité pour l'intéressé d'utiliser des équipements spéciaux ou s'il suffit qu'il ne soit plus en mesure de travailler à plein temps.

40. La notion de handicap au sens de la directive n'est pas subordonnée à la nécessité d'utiliser des équipements spéciaux.

41. Il ressort clairement de l'article 5 de la directive 2000/78 que l'existence d'un handicap doit d'abord être constatée pour que les mesures appropriées requises soient prises. Le vingtième considérant livre un certain nombre d'éléments sur ce qu'il convient d'entendre par mesures raisonnables, et précise notamment qu'il convient d'aménager «le poste de travail en fonction du handicap». La nécessité d'installations et d'équipements spéciaux est donc une conséquence de la constatation du handicap et non un élément de sa définition.

42. Le sens et la finalité de la directive ne semblent pas non plus suggérer que le besoin d'équipements spéciaux serait un élément de la définition du handicap. Les handicaps au sens de la directive peuvent avoir pour origine des atteintes physiques, psychiques ou mentales. Cette insistance sur le besoin d'équipements spéciaux semble toutefois correspondre uniquement à l'image de la personne souffrant d'atteintes physiques. En exigeant l'utilisation d'équipements spéciaux comme élément nécessaire de la notion de handicap, les atteintes mentales ou psychiques explicitement évoquées dans la directive seraient d'emblée exclues, car elles ne nécessitent pas en règle générale d'équipements spéciaux. Une telle exigence aurait également pour effet de désavantager précisément les personnes dont le handicap ne peut être compensé ou atténué par un équipement spécial et qui, ne serait-ce que pour cette raison, sont plutôt plus gravement touchées que d'autres.

43. En définitive, tout dépend donc uniquement de la question de savoir s'il existe une entrave à la participation à la vie professionnelle.

44. DAB et Pro Display ont fait valoir que seule une personne totalement exclue de la vie professionnelle peut être considérée comme handicapée, de sorte qu'une simple réduction de la capacité de travail n'est pas suffisante aux fins de la qualification de handicap. Un tel raisonnement ne parvient pas à nous convaincre. Ne serait-ce que d'après son sens généralement admis, l'idée d'une «entrave à la participation à la vie professionnelle» recouvre également des limitations simplement partielles et non pas seulement une «exclusion» pure et simple de la vie professionnelle.

45. Le dix-septième considérant de la directive tend également à plaider pour une application de la directive aux personnes ne pouvant participer à la vie professionnelle parce qu'elles ne sont pas en mesure de travailler à temps plein. Ce considérant expose que la directive protège les travailleurs qui seraient en principe «compétent[s], …capable[s] [ou] disponible[s] pour remplir les fonctions

essentielles du poste concerné». La directive vise donc précisément à protéger des personnes qui peuvent en principe participer à la vie professionnelle - ne serait-ce que dans une mesure limitée ou moyennant des aménagements spécifiques. L'application de la directive n'est donc pas subordonnée à l'exclusion de l'intéressé de toute vie professionnelle.

46. Il convient donc de considérer à titre de conclusion intermédiaire que la notion de «handicap» doit être entendue comme visant une limitation, résultant notamment d'atteintes physiques, mentales ou psychiques et entravant la participation de la personne concernée à la vie professionnelle. Peu importe, aux fins de la définition du handicap, que cette atteinte ait pour origine une maladie; la seule question décisive est de savoir si la limitation est de longue durée. Une incapacité de longue durée ne nécessitant pas l'utilisation d'équipements spéciaux et qui se traduit pour l'essentiel par le fait que la personne qui en est atteinte n'est pas en mesure de travailler à plein temps relève également de la notion d'handicap au sens de la directive 2000/78.

B – Troisième question

47. Par sa troisième question, le Sø- og Handelsret souhaite savoir si la réduction du temps de travail peut également constituer un aménagement raisonnable en faveur des personnes handicapées.

48. L'article 5, paragraphe 1, de la directive 2000/78, prévoit que des aménagements raisonnables sont prévus afin de garantir le respect du principe de l'égalité de traitement à l'égard des personnes handicapées. Cela signifie que l'employeur doit prendre «les mesures appropriées, en fonction des besoins dans une situation concrète», pour permettre à une personne handicapée d'accéder à un emploi, de l'exercer ou d'y progresser, ou pour qu'une formation lui soit dispensée. L'employeur n'est dispensé de cette obligation que si ces mesures lui imposeraient une charge disproportionnée.

49. Cette disposition n'a pas seulement pour objectif que la personne handicapée soit traitée de manière égale mais également qu'elle soit mise sur un pied d'égalité, et donc qu'elle puisse ainsi exercer un métier.

50. L'article 5 de la directive 2000/78 énonce simplement que les mesures doivent être appropriées, en fonction des besoins dans une situation concrète, pour permettre à l'intéressé d'accéder à un emploi, etc.

51. Le vingtième considérant de la directive précise cependant cette disposition. Il convient en effet selon lui de prévoir «des mesures efficaces et pratiques» «destinées à aménager le poste de travail en fonction du handicap, par exemple en procédant à un aménagement des locaux ou à une adaptation des équipements, des rythmes de travail, de la répartition des tâches ou de l'offre de moyens de formation ou d'encadrement».

52. La réduction du temps de travail pourrait correspondre à l'exemple explicitement évoqué de «l'adaptation des rythmes de travail». DAB et Pro Display sont toutefois d'avis que les rythmes de travail ne visent précisément pas le temps de travail mais simplement la prestation de travail et sa cadence ou encore la répartition des tâches entre employés.

53. Même si l'on admettait que la réduction du temps de travail ne correspond pas à l'adaptation des rythmes de travail, nous sommes d'avis que la réduction du temps de travail relève des mesures visées à l'article 5 de la directive.

54. En effet, il ressort du libellé du vingtième considérant que celui-ci énumère simplement un certain nombre d'exemples, dont la liste ne saurait être considérée comme exhaustive. On ne saurait déduire du seul fait que la réduction du temps de travail n'y est pas expressément mentionnée qu'une telle mesure ne relève pas de l'article 5 de la directive.

55. DAB et Pro Display font en outre observer que la directive n'évoque pas le temps de travail et que cette notion n'a pas été discutée dans le cadre des travaux préparatoires à la directive. Ils estiment que la discussion sur la notion de réduction du temps de travail, en raison de son lien si étroit avec la directive sur le temps de travail (21), doit également nécessairement être examinée sur le fondement de celle-ci.

56. Cependant, le législateur de l'Union a conçu largement le libellé de l'article 5. Ce texte évoque de façon générale des mesures permettant aux personnes handicapées d'accéder à un emploi. Il ne fait aucun doute qu'une réduction du temps de travail peut permettre à une personne handicapée de pouvoir exercer un métier.

57. Le vingtième considérant de la directive plaide également en faveur d'une interprétation large de son article 5. Il en ressort en effet que, contrairement à la thèse de DAB et Pro Display, les mesures envisagées ne sont pas seulement d'ordre matériel mais également d'ordre organisationnel. L' «aménagement des locaux» ou l'«adaptation des équipements» visent à éliminer les limitations physiques tandis que l' «aménagement des rythmes de travail, de la répartition des tâches ou de l'offre de moyens de formation ou d'encadrement» relève plutôt des mesures d'organisation. Cela correspond notamment à la notion de handicap telle qu'elle ressort de la convention de l'ONU, qui considère que la limitation peut résulter non seulement de barrières physiques, mais également d'autres barrières, notamment sociales.

58. Le sens et la finalité de la directive 2000/78 plaident également pour la prise en compte de l'activité à temps partiel. La directive réclame des mesures individualisées afin d'assurer l'égalité et donc une meilleure participation des personnes handicapées à la vie professionnelle (22) Le point déterminant sera donc l'aptitude d'une mesure déterminée à permettre à une personne handicapée d'exercer un métier ou de continuer à l'exercer. Dans ces conditions,

il est tout à fait conforme au sens et à la finalité de la directive de ne pas exclure totalement du marché du travail des travailleurs handicapés capables de travailler au moins une partie du temps, mais au contraire de leur permettre de participer de façon appropriée à la vie professionnelle en leur offrant un emploi à temps partiel. Il n'apparaît pas que la directive exige uniquement des mesures telles que l'installation d'un ascenseur ou d'installations sanitaires accessibles en fauteuil roulant – ce qui peut également être lourd et coûteux – mais que des mesures telles que la réduction du temps de travail seraient exclues.

59. L'objection de DAB et Pro Display, selon laquelle une activité à temps partiel constitue, dans certaines circonstances, une grave ingérence dans les rapports juridiques entre employeur et salarié et peut s'avérer une charge pour l'employeur, n'est certes pas sans fondement. Mais cela vaut également pour l'adaptation des locaux citée à titre d'exemple. C'est pourquoi l'article 5, deuxième phrase, subordonne toutefois cette obligation de l'employeur à la condition également que les mesures ne constituent pas pour lui une charge disproportionnée. La directive exige à cet égard un équilibre approprié entre les intérêts du travailleur handicapé à bénéficier de mesures de soutien et ceux de l'employeur qui ne peut être tenu d'accepter sans condition toute ingérence dans l'organisation de son entreprise ou un préjudice économique.

60. Il convient donc de conclure à ce stade qu'une réduction du temps de travail peut faire partie de mesures visées à l'article 5 de la directive 2000/78. Il appartient à la juridiction nationale de constater au cas par cas si une telle mesure peut impliquer une charge disproportionnée pour l'employeur.

C – Quatrième question

1. Première partie de la quatrième question

61. Dans la première partie de sa quatrième question, le Sø- og Handelsret souhaite savoir dans quelle mesure une disposition nationale prévoyant qu'un employeur peut mettre fin au contrat de travail avec un préavis réduit en cas d'absences pour maladie, dès lors qu'elle s'applique également lorsque ces absences sont la conséquence du handicap, est incompatible avec la directive 2000/78.

62. La directive 2000/78 prohibe, conformément aux dispositions combinées de son article 1er et de son article 2, paragraphe 2, la discrimination directe ou indirecte fondée sur un handicap, en matière d'emploi et de travail. Selon ce texte, il y a discrimination directe lorsqu'une personne, en raison d'un handicap, est traitée de manière moins favorable qu'une autre dans une situation comparable. Une discrimination indirecte se produit lorsqu'une disposition, un critère ou une pratique apparemment neutre est susceptible d'entraîner un désavantage particulier pour des personnes handicapées par rapport à d'autres personnes, à moins que cela puisse être justifié. Le champ d'application matériel de la directive comprend explicitement, conformément à son article 3, paragraphe 1, sous c), les conditions de licenciement. Il convient par conséquent

d’examiner tout d’abord ci-après la question de savoir si la réduction du délai de préavis peut être qualifiée de discrimination directe ou indirecte et, le cas échéant, si elle peut être justifiée.

a) Le désavantage

63. Il nous faut cependant avant toutes choses préciser l’objet de notre analyse: la juridiction de renvoi pose uniquement la question de la conformité au droit de l’Union de la disposition prévoyant la réduction du délai de préavis en cas d’absences pour maladie.

64. Une autre question qui pourrait se poser au regard des faits au principal serait de savoir dans quelle mesure les périodes d’absence liées à un handicap ou à une maladie elle-même liée à un handicap peuvent en tout état de cause constituer un motif valable de licenciement. La Cour a déjà constaté que la directive s’oppose à un licenciement qui, compte tenu de l’obligation de prévoir des aménagements raisonnables pour les personnes handicapées, n’est pas justifié par le fait que la personne concernée n’est pas disponible pour remplir les fonctions essentielles de son poste (23). On pourrait en déduire à l’inverse que le licenciement est admis lorsque les aménagements nécessaires pour adapter le poste de travail représenteraient une charge disproportionnée pour l’employeur ou que le salarié, du fait de ses absences, n’est pas disponible pour remplir les fonctions essentielles de son poste. Nous sommes d’avis que cette constatation de la Cour n’a toutefois pas encore éclairci de façon définitive la question de l’admissibilité d’un licenciement motivé par des absences en raison d’une maladie elle-même liée à un handicap. Cependant, pour répondre à la question posée, nous nous intéresserons maintenant uniquement à la réduction du délai de préavis de licenciement.

65. En cas d’absence d’un travailleur handicapé ayant pour cause une «maladie ordinaire», la prise en compte des périodes d’absence pour maladie pour réduire le délai de préavis n’est pas un désavantage par comparaison à une personne sans handicap. En effet, en règle générale, la probabilité d’attraper une maladie telle que la grippe n’est pas liée au handicap et concerne de la même manière les travailleurs handicapés ou non.

66. Il est toutefois question en l’occurrence d’absences liées à un handicap. L’article 5, paragraphe 2, de la FL est à première vue neutre, car il concerne tous les travailleurs ayant été absents plus de 120 jours pour maladie. Il ne crée donc pas de discrimination directe au détriment des personnes handicapées. En effet, ce texte ne se réfère pas directement au critère distinctif prohibé du handicap et ne prévoit pas non plus une différence de traitement sur la base d’un critère qui serait indissociablement lié au handicap. Un handicap, en effet, n’entraîne pas nécessairement des maladies et des absences pour maladie, de sorte que l’on ne peut parler d’un tel lien indissociable.

67. On peut toutefois y voir une discrimination indirecte. En effet, dès lors que la maladie est liée à un handicap, des situations non comparables sont

traitées de la même manière. En règle générale, les travailleurs handicapés sont plus exposés au risque d'une maladie liée à leur handicap que les travailleurs qui n'ont aucun handicap. Ces derniers peuvent souffrir uniquement d'une maladie «ordinaire». Les travailleurs handicapés peuvent toutefois en outre être aussi atteints d'une telle maladie. La disposition prévoyant la réduction du délai de préavis de licenciement est donc une disposition qui désavantage indirectement les travailleurs handicapés par rapport aux travailleurs qui ne le sont pas.

68. L'objection, soulevée par certaines des parties, selon laquelle, en raison du droit du travailleur de ne pas divulguer la nature de sa maladie, il ne serait pas possible de distinguer entre les maladies «ordinaires» et les maladies liées au handicap, ne nous convainc pas. Il est en effet possible de concilier ces deux aspects, en ayant recours par exemple à un médecin-conseil.

b) Justification

69. En vertu de l'article 2, paragraphe 2, sous b), point i) de la directive, une disposition telle que l'article 5, paragraphe 2, de la FL est justifiée lorsqu'elle poursuit un objectif légitime et que les moyens de réaliser cet objectif sont appropriés et nécessaires. Cette formulation reprend les conditions, généralement admises en droit de l'Union, de justification d'une inégalité de traitement (24).

70. La réglementation doit donc être apte à réaliser un objectif légitime. Elle doit en outre être nécessaire, c'est-à-dire que l'objectif légitime visé ne doit pas pouvoir être atteint par un moyen plus modéré, tout aussi approprié. Enfin, la réglementation doit également être proportionnée au sens le plus strict, c'est-à-dire qu'elle ne doit entraîner aucun inconvénient qui serait démesuré par rapport aux buts visés (25).

71. Il convient de ne pas perdre de vue dans la vérification de ces critères qu'il est admis dans la jurisprudence que les États membres disposent d'une marge d'appréciation importante dans le choix des mesures permettant d'atteindre leurs objectifs dans le domaine de la politique sociale et de l'emploi (26).

72. L'ordonnance de renvoi ne donne aucun élément sur les objectifs poursuivis par l'article 5, paragraphe 2 de la FL. Il est donc difficile de se prononcer. Il appartiendra dès lors au juge de renvoi d'apprécier de manière définitive la réglementation litigieuse.

73. Le gouvernement danois a fait valoir que l'article 5, paragraphe 2, de la FL s'efforçait d'établir un juste équilibre entre les employeurs et les travailleurs en cas de longues absences pour maladie. Il servirait en définitive plus particulièrement les intérêts du travailleur. Le délai de préavis réduit en cas de longue absence pour maladie est censé inciter l'employeur à ne pas licencier le travailleur malade dès que possible mais d'abord à continuer à l'employer,

l'employeur sachant qu'en cas d'absence de très longue durée le délai de préavis est en contrepartie réduit.

74. Ces objectifs sont légitimes et la réglementation n'est pas non plus, compte tenu de la marge d'appréciation des États membres, manifestement inappropriée (27), pour réaliser ces objectifs. Une mesure alternative mais moins restrictive devrait pouvoir s'insérer dans la globalité du régime juridique applicable aux relations de travail. L'existence d'une telle possibilité, en l'absence d'éléments supplémentaires, est donc difficile à évaluer.

75. La question décisive est de savoir si les inconvénients liés au délai de préavis réduit dans sa forme actuelle que subit le travailleur handicapé sont proportionnés aux objectifs poursuivis, c'est-à-dire s'ils n'entraînent pas une restriction excessive pour les intéressés. Pour cela, il faut trouver un juste équilibre entre les différents intérêts en présence.(28) On peut se demander à cet égard si une réglementation appropriée ne devrait pas également tenir compte du degré de gravité du handicap et des chances pour le travailleur concerné de retrouver un emploi. Plus le handicap sera sévère et plus la recherche d'un nouvel emploi sera difficile, plus la durée du délai de préavis sera importante pour le travailleur. Il appartient à la juridiction de renvoi d'en décider concrètement.

76. Pour conclure sur cette première partie de la quatrième question, il convient donc de constater que la directive 2000/78 doit être interprétée en ce sens qu'elle s'oppose à une réglementation nationale prévoyant que l'employeur peut licencier avec un préavis réduit un travailleur en cas d'absences pour maladie, lorsque la maladie est liée au handicap. Il en va différemment si ce désavantage, conformément à l'article 2, paragraphe 2, sous b), i) de la directive, peut être objectivement justifié par un objectif légitime et que les moyens de réaliser cet objectif sont appropriés et nécessaires.

2. Deuxième partie de la quatrième question

77. Par la deuxième partie de sa quatrième question, la juridiction de renvoi souhaite savoir, pour finir, si la directive 2000/78 s'oppose à la réduction du délai de préavis lorsque les absences du travailleur sont imputables au fait que l'employeur n'a pas pris les mesures visées à l'article 5 de la directive pour qu'une personne handicapée puisse exercer son emploi.

78. Pour déterminer quels aménagements sont raisonnables au sens de l'article 5 de la directive, on procède déjà à un examen de la proportionnalité. Dans ce cadre et moyennant la mise en balance des intérêts du travailleur handicapé et de son employeur, on répond à la question de savoir si l'on peut raisonnablement attendre de l'employeur qu'il prenne les mesures requises. Si l'employeur ne procède pas à ces aménagements que l'on peut attendre de lui, il ne s'acquitte pas des obligations qui lui incombent en vertu de l'article 5 de la directive et ne saurait en tirer aucun avantage juridique. L'obligation qui découle de l'article 5 de la directive serait vide de sens si le fait de ne pas

prendre des mesures proportionnées pouvait justifier le désavantage qui en découle pour la personne handicapée. Il résulte du sens et de la finalité de cette disposition que les absences du travailleur qui sont liées à ce défaut de mesures ne sauraient justifier une réduction du délai de préavis de licenciement.

79. Il s'ensuit que si l'application du délai de préavis réduit est fondée sur des absences du travailleur qui s'expliquent par le fait que l'employeur n'a pas procédé aux aménagements raisonnables requis à l'article 5 de la directive 2000/78, un tel désavantage ne peut être justifié.

VI – Conclusion

80. À la lumière de ces considérations, nous proposons à la Cour de répondre comme suit aux questions préjudicielles:

1a) La notion de handicap au sens de la directive 2000/78/CE portant création d'un cadre général en faveur de l'égalité de traitement en matière d'emploi et de travail vise une limitation résultant notamment d'atteintes physiques, mentales ou psychiques et entravant la participation de la personne concernée à la vie professionnelle.

1b) Peu importe, aux fins de la définition du handicap, que l'atteinte ait pour origine une maladie; la seule question décisive est de savoir s'il est probable que cette limitation soit de longue durée.

1c) Une incapacité de longue durée ne nécessitant pas l'utilisation d'équipements spéciaux et qui se traduit pour l'essentiel par le fait que la personne qui en est atteinte n'est pas en mesure de travailler à plein temps, relève également de la notion d'handicap au sens de la directive 2000/78.

2. La réduction du temps de travail peut constituer l'une des mesures visées par l'article 5 de la directive 2000/78. Il appartient à la juridiction nationale de vérifier concrètement si une telle mesure impose à l'employeur une charge disproportionnée.

3. La directive 2000/78 doit être interprétée en ce sens qu'elle s'oppose à une réglementation nationale prévoyant que l'employeur peut licencier avec un préavis réduit un travailleur en cas d'absences pour maladie, lorsque la maladie est liée au handicap. Il en va différemment si ce désavantage, conformément à l'article 2, paragraphe 2, sous b), i) de la directive, peut être objectivement justifié par un objectif légitime et que les moyens de réaliser cet objectif sont appropriés et nécessaires. Cependant, si l'application du délai de préavis réduit est fondée sur des absences du travailleur qui s'expliquent par le fait que l'employeur n'a pas procédé aux aménagements raisonnables requis par l'article 5, paragraphe 2, de la directive 2000/78, un tel désavantage ne peut être justifié.

1 – Langue originale: l'allemand.

2– Directive 2000/78/CE du Conseil, du 27 novembre 2000, portant création d'un cadre général en faveur de l'égalité de traitement en matière d'emploi et de travail, JO L 303, p. 16, ci-après la «directive 2000/78».

3– Arrêt du 11 juillet 2006, Chacón Navas, (C-13/05, Rec. p. I-6467).

4 – Convention ratifiée par l'Union européenne le 23 décembre 2010, ci-après la «convention de l'ONU»; voir la décision 2010/48/CE du Conseil du 26 novembre 2009 concernant la conclusion, par la Communauté européenne, de la convention des Nations unies relative aux droits des personnes handicapées, JO 2010, L 23, p. 35.

5 – Lov om forbud mod forskelsbehandling på arbejdsmarkedet (loi relative au principe de non-discrimination sur le marché du travail).

6 – Lov om retsforholdet mellem arbejdsgivere og funktionærer Funktionærlov (loi relative aux employés, ci-après la «FL»).

7 – Syndicat des employés de commerce et employés de bureau du Danemark.

8 – Ce régime de travail flexible est un dispositif danois de subventions salariales versées par l'État pour l'emploi de personnes atteintes d'une incapacité durable.

9– Arrêt Chacón Navas (précité, note 3, point 43).

10– Ibidem, point 45.

11 – Voir également dans le même sens les conclusions de l'avocat général Geelhoed sur l'affaire Chacón Navas (précitée, note 3, point 66).

12– Voir, en ce sens, arrêts du 10 septembre 1996, Commission/Allemagne (C-61/94, Rec. p. I-3989, point 52), du 12 janvier 2006, Algemene Scheeps Agentuur Dordrecht (C-311/04, Rec. p. I‑609, point 25), du 3 juin 2008, Intertanko e. a. (C‑308/06, Rec. p I-4057, point 42), et du 3 septembre 2008, Kadi et Al Barakaat International Foundation/Conseil et Commission (C-402/05 P et C-415/05 P, Rec. p. I-6351, point 307, et du 21 décembre 2011, Air Transport Association of America e. a. (C‑366/10, non encore publié au Recueil, point 50).

13– Arrêts Commission/Allemagne (précité note 12, point 52), du 14 juillet 1998, Bettati (C-341/95, Rec. p. I-4355, point 20), du 9 janvier 2003, Petrotub et Republica (C‑76/00 P, Rec. p. I‑79, point 57), et du 14 mai 2009, Internationaal Verhuis- en Transportbedrijf Jan de Lely (C-161/08, Rec. p. I-4075, point 38).

14– Arrêt Chacón Navas (précité, note 3, point 46).

15– Ibidem, point 57.

16– Arrêt du 17 juillet 2008, Coleman (C‑303/06, Rec. p. I‑5603, point 46).

17 – US Supreme Court, Bragdon v. Abbott, 524 US 624 [1998], une situation de "physical . . . impairment that substantially limits one or more of [an individual's] major life activities" relève du handicap au sens de l'article 12102, paragraphe 1 (A) de l'ADA 1990.

18 – La Cour européenne des droits de l'homme a également considéré comme un handicap, aux fins de l'interdiction des discriminations, la pathologie du diabetes mellitus de type I, affection qualifiée de mineure par les autorités nationales, CEDH, arrêt du 30 avril 2009 (Glor/Suisse, n° 13444/04) concernant l'article 14 de la CEDH, dans lequel le diabète a été considéré comme un handicap.

19– Arrêt Chacón Navas (précité, note 3, point 45).

20 – Dans la version anglaise: «long-term [...] impairments» dans la version française: «incapacités […] durables».

21– Directive 97/81/CEE du Conseil, du 15 décembre 1997 concernant l'accord-cadre sur le travail à temps partiel conclu par l'UNICE, le CEEP et la CES, JO L 14, p. 9.

22 – Voir les huitième, neuvième, onzième et seizième considérants de la directive 2000/78.

23– Arrêt Chacón Navas (précité, note 3, point 51).

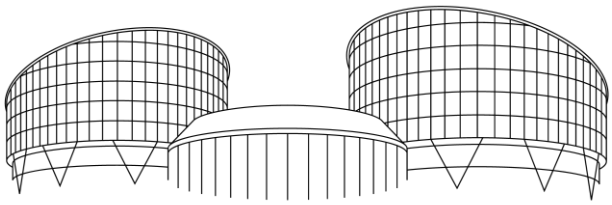
24– Voir déjà dans le même sens nos conclusions du 6 mai 2010, Andersen (C-499/08, Rec. p. I-9343, point 42).

25 – Arrêts du 12 juillet 2001, Jippes e. a. (C‑189/01, Rec. p. I‑5689, point 81), du 7 juillet 2009, S.P.C.M. e. a. (C‑558/07, Rec. p. I‑5783, point 41), et du 8 juillet 2010, Afton Chemical (C‑343/09, Rec. p. I‑7023, point 45 et la jurisprudence citée).

26 – Voir, dans le domaine de la discrimination en raison de l'âge, arrêts du 16 octobre 2007, Palacios de la Villa (C‑411/05, Rec. p. I‑8531, point 68), et du 12 octobre 2010, Rosenbladt (C-45/09, Rec. p. I-9391, point 41).

27 – Voir sur ce point arrêts Palacios de la Villa (précité, note 26, point 72) et du 12 janvier 2010, Petersen (C‑341/08, Rec. p. I‑47, point 70).

28 – Voir sur ce points nos conclusions dans l'affaire Andersen (précitée, note 24, point 68) et nos conclusions du 2 octobre 2012 dans l'affaire Commission/Hongrie (C-286/12, non encore publiées au Recueil, point 78).



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF LASHIN v. RUSSIA

(Application no. 33117/02)

JUDGMENT

STRASBOURG

22 January 2013

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Lashin v. Russia,

The European Court of Human Rights (Chamber), sitting as a Chamber composed of:

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Nina Vajić,
Anatoly Kovler,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 18 December 2012,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 33117/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Aleksandr Petrovich Lashin ("the applicant"), on 29 July 2002.

2. The applicant, who had been granted legal aid, was represented by Mr D. Bartenev, a lawyer practising in St Petersburg. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained, in particular, about his status as a legally incapacitated person, his non-voluntary commitment to a psychiatric hospital and his inability to marry.

4. By a decision of 6 January 2011, the Court declared the application partly admissible.

5. The applicant and the Government each filed further written observations on the merits (Rule 59 § 1 of the Rules of Court). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1960 and lives in Omsk.

A. Deprivation of legal capacity

7. The applicant suffers from schizophrenia, which was first diagnosed in 1987. In the 1980s and early 1990s he was employed as a bus driver, but in 1995 he stopped working. The applicant kept writing nonsensical letters to state officials and lodged numerous administrative complaints and lawsuits. At some point he started giving money and clothes to strangers and invited them to his house, explaining it by religious considerations. Such behaviour led to recurrent conflicts with his wife. The applicant became irritable, aggressive and once in 1996 tried to strangulate her. As a result, they divorced. In 1998 the applicant was officially given the "2nd degree disability" status due to his mental disorder.

8. Between 1989 and 17 July 2000 the applicant was hospitalised nine times in the Omsk Regional Psychiatric Hospital. As follows from the opinion of the Serbskiy Institute of 19 August 1999 (a leading State psychiatric research centre based in Moscow) during that period the applicant considered himself as a "defender of justice", believed that he knew important State secrets, and claimed that there was a conspiracy against him. Amongst other things, he challenged his diagnosis, complained of his confinement to the hospital, threatened the doctors who had been treating him in the Omsk Regional Psychiatric Hospital, and tried to institute criminal proceedings against them. The report did not mention any incidence of violence or self-destructive behaviour after 1996, and it was not alleged that during that period the applicant was unable to take care of himself in everyday life. However, it is clear that his mental condition had a persistent character, and that he kept harassing doctors from the Omsk Regional Psychiatric Hospital with complaints and litigations.

9. On 5 April 2000 the applicant underwent an examination in the Omsk Regional Psychiatric Hospital by a panel of doctors, who confirmed the previous diagnosis and the opinion by the Serbskiy Institute and concluded that the applicant was "incapable of understanding the meaning of his actions and was unable to control them".

10. On 16 June 2000, following an application by the public prosecutor, the Kuybyshevskiy District Court of Omsk declared the applicant legally incapacitated because of his illness. The hearing took place in the absence of the applicant. On 30 August 2000 the Omsk Regional Court upheld the decision of the District Court.

11. On an unspecified date the Omsk Municipal Public Health Department appointed the applicant's father as his guardian.

B. Attempts to restore legal capacity

1. First request

12. On 2 October 2000 the applicant's daughter brought court proceedings seeking to restore his legal capacity. Her request was supported by the applicant's father as guardian. The plaintiffs claimed that the applicant's mental state had significantly improved and requested that the court conduct a new psychiatric examination of his health. As the plaintiffs did not trust doctors from the Omsk Regional Psychiatric Hospital, they insisted that the process of the psychiatric examination of the applicant be recorded on a videotape.

13. On 27 October 2000 the court commissioned a psychiatric examination of the applicant, but refused to order a video recording of it. The expert examination was entrusted to the Omsk Regional Psychiatric Hospital. However, the applicant failed to submit himself for an examination at the hospital, so the examination was not conducted.

14. On 19 March 2001 the Sovetskiy District Court of Omsk decided to confirm the status of legal incapacity and maintain the applicant's guardianship. It is unclear whether the applicant was present at the hearing. The court noted that because the new expert examination could not be conducted due to the applicant's failure to cooperate, the results of the examination of 5 April 2000 were still applicable. It appears that the decision of 19 March 2001 was not appealed against.

2. Second request

15. On 9 July 2001 the applicant's father (as guardian) instituted court proceedings challenging the medical report of 5 April 2000 by the Omsk Regional Psychiatric Hospital which had served as grounds for declaring the applicant legally incapacitated. He also sought restoration of the applicant's legal capacity. Since the plaintiffs did not trust doctors from the Omsk Regional Psychiatric Hospital they requested that the court commission a panel of experts from the Independent Psychiatric Association of Russia, a non-State professional association of psychiatrists, based in Moscow, to assess the applicant's mental capacity.

16. On 26 February 2002 the Kuybyshevskiy District Court held a hearing in the applicant's absence, having decided in particular that:

> "... [the applicant's] mental condition prevented him from taking part in the hearing, and, moreover, [his] presence would be prejudicial to his health".

The court further refused to commission a new expert examination by a non-State psychiatric association, on the ground that only State-run

institutions were allowed by law to conduct such examinations and issue reports. The relevant part of the District Court judgment reads as follows:

> "... under section 1 of the Psychiatric Care Act ... State forensic examination activity in judicial proceedings is carried out by State forensic examination institutions, and consists of organising and implementing the forensic examination".

In conclusion the court found that the expert report of 5 April 2000 was still valid, that the applicant continued to suffer from a mental disorder and that, therefore, his status as a legally incapacitated person should be maintained.

17. The applicant's father (as his guardian) appealed to the Omsk Regional Court, which on 15 May 2002 upheld the judgment of 26 February 2002.

C. Confinement of the applicant in the psychiatric hospital

18. Some time later the applicant's father solicited an opinion from Dr S., a psychiatrist not affiliated with the Omsk Regional Psychiatric Hospital, concerning the applicant's mental condition. Dr S. examined the applicant and on 1 July 2002 he submitted a report according to which the applicant's mental illness was not as serious as claimed by the doctors at the Omsk Regional Psychiatric Hospital.

19. On an unspecified date in 2002 the applicant's father, as his guardian, delivered a power of attorney to a third person, mandating that person to act in the applicant's name. However, a notary public refused to certify the power of attorney, on the basis that under the law a guardian should represent his ward personally and could not confer his duties on a third person. The applicant's father brought proceedings against the notary public in court, but to no avail: on 10 October 2002 the Sovetskiy District Court of Omsk confirmed the lawfulness of the refusal.

20. On 2 December 2002 the applicant and his fiancée, Ms D., requested that the municipality register their marriage. According to the applicant, they received no reply from the municipality.

21. On 4 December 2002 a district psychiatrist (*uchastkovyi psikhiatr*) examined the applicant and concluded that the latter suffered from "paranoid schizophrenia with paraphrenic delusion of reformism". The psychiatrist delivered a hospitalisation order, which relied strongly on the "nonsensical complaints" lodged by the applicant's representatives.

22. On 6 December 2002 the Guardianship Council of the Omsk Region decided to strip the applicant's father of his status as the applicant's guardian. The decision was taken by the Guardianship Council without the applicant or his father being heard.

23. By virtue of the hospitalisation order the applicant was placed in the Omsk Regional Psychiatric Hospital on 9 December 2002. According to the

applicant, he and his father unambiguously opposed this provisional placement in the hospital.

24. On the same day a panel of three doctors from the Omsk Regional Psychiatric Hospital examined the applicant and concluded that he should stay in the hospital. They mostly based themselves on the medical history of the applicant that had led to the deprivation of legal capacity. The report stated that the worsening of the applicant's mental condition was demonstrated by the numerous complaints by which he had tried to recover his legal capacity and challenge the actions of the hospital.

25. On 10 December 2002 the Omsk Municipal Public Health Authority approved the decision taken by the Guardianship Council on 6 December 2002. From that moment on the applicant's father ceased to be his guardian and, according to the Government, the functions of the applicant's guardian were performed by the municipal authorities, namely the Omsk Public Health Authority.

26. On 11 December 2002 the Omsk Regional Psychiatric Hospital requested that the Kuybyshevskiy District Court authorise the applicant's further confinement. On the same day the judge, in accordance with section 33 of the Psychiatric Care Act, ordered that the applicant be held in the hospital for such time as was necessary for the examination of his case. The provisional order issued by the judge was a one-sentence annotation on the hospitalisation order of 4 December 2002: "I hereby authorise detention [in hospital] pending the examination [of the case] on the merits".

27. Having been informed of that ruling, the applicant asked the hospital staff to release him for home treatment. The hospital staff refused, however, and prohibited him from seeing his relatives or talking to them.

28. On 15 December 2002 the applicant lodged an application with the court for his release from the Omsk Regional Psychiatric Hospital. However, the judge informed the applicant by letter that such a provisional placement of a patient in a psychiatric hospital for a period necessary for the examination of the case on the merits was not subject to judicial review.

29. On 17 December 2002 the District Court held a hearing in the presence of the applicant, the applicant's father, the public prosecutor, and a representative of the hospital. From the case file it appears that the participants and the judge himself were not aware that the applicant's father was no longer the applicant's guardian.

30. At that hearing the applicant and his father claimed that the applicant's condition did not require hospitalisation. They insisted that the hospital had not proved the medical necessity of such a measure. The applicant and his father referred to the report by Dr. S. of 1 July 2002 (see paragraph 18 above). In order to clarify the matter, the applicant asked the court to commission a fresh medical examination of his mental health, in order to establish whether there had been any deterioration. The court rejected the request, while at the same time admitting the applicant's

medical record in evidence. At the end of the day the hearing was adjourned to 24 December 2002.

31. On 20 December 2002 the Guardianship Council appointed the administration of the Omsk Regional Psychiatric Hospital as the applicant's guardian and delivered an authorisation for his extended confinement in the hospital.

32. On 24 December 2002, without holding a hearing, the District Court closed the proceedings because the hospital, as the applicant's only legitimate guardian, had revoked its request for authorisation of his confinement. The applicant's confinement was thus considered to be "voluntary", and therefore did not require court approval.

33. On the same day, the applicant's father and fiancée asked the court to give them a copy of the decision, so that they could lodge an appeal. The judge refused because the applicant's father, who was no longer his guardian, could not act on behalf of the applicant. The court also denied a request to consider the applicant's fiancée to be his representative.

34. On 27 January 2003, the applicant's fiancée wrote a letter to the Guardianship Council where she requested that the council appoint her as the guardian of "her husband, Mr. Lashin". There is no information whether she received any reply.

35. On an unspecified date the applicant's father lodged an appeal against the decision of 24 December 2002. On 10 February 2003 the Regional Court refused to examine the appeal on the grounds that the applicant's father had no right to represent his son and that no decision on the merits of the case had been taken by the first-instance court.

36. On 2 February 2003 the applicant's fiancée lodged a supervisory review appeal, which was returned to her without examination on 13 February 2003 on the basis that she had no power to represent the applicant.

37. In the following months the applicant's father and fiancée lodged several criminal-law complaints against the hospital and its doctors. Their complaints were addressed to various state authorities and the courts. It appears that none of those complaints was successful.

38. On an unspecified date the applicant's father challenged the decision of the Guardianship Council of 6 December 2002, as approved by the municipal authorities on 10 December 2002, stripping him of his status as the applicant's guardian. On 16 July 2003 the Kuybyshevskiy District Court of Omsk upheld the decision of the Guardianship Council. The District Court found that the applicant's father had neglected his duties on many occasions and had tried to entrust the guardianship to a third party, referring in particular to the episode concerning the power of attorney (see paragraph 19 above). The court also noted that the applicant's father had failed to secure appropriate medical treatment for the applicant as prescribed by the doctors, as a result of which the applicant's condition had

worsened. According to the applicant, he lodged an appeal against that decision.

39. In their letters to the Court of 28 July 2002 and 25 July 2003 the applicant and his fiancée informed the Court of their desire to marry.

40. On 10 October 2003 the Guardianship Council decided to appoint the applicant's daughter as his guardian. That decision was approved by the municipality on 17 October 2003.

41. On 10 December 2003 the applicant was released from the town hospital. The medical report issued in connection with the applicant's discharge indicated that his mental health during his confinement had been predominantly characterised by "litigious" ideas similar to those he had presented at the time of his admission.

42. It appears that in 2006 the applicant's relatives brought court proceedings seeking to restore the applicant's full legal capacity. The Court has not been provided with any information about the outcome of those proceedings.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

A. Legal capacity

1. Substantive provisions

43. Under Article 21 of the Civil Code of the Russian Federation of 1994, any individual aged 18 or more has, as a rule, full legal capacity (*дееспособность*), which is defined as "the ability to acquire and enjoy civil rights, [and] create and fulfil civil obligations by his own acts". Under Article 22 of the Civil Code, legal capacity can be limited, but only on the grounds defined by law and within a procedure prescribed by law.

44. According to Article 29 of the Civil Code, a person who cannot understand or control his or her actions as a result of a mental disease may be declared legally incapacitated by a court and placed in the care of a guardian (*опека*). All legal transactions on behalf of the incapacitated person are concluded by his guardian. In practical terms this means that the guardian ensures mandatory representation of the incapacitated person in all matters concerning his property, income, work relations, travel and residence, social contacts and so on. The incapacitated person can be declared fully capable if the grounds on which he or she was declared incapacitated cease to exist.

45. Article 30 of the Civil Code provides for the partial limitation of legal capacity. If a person's addiction to alcohol or drugs is creating serious financial difficulties for his family, he can be declared partially incapacitated. That means that he is unable to conclude large-scale

transactions. He can, however, dispose of his salary or pension and make small transactions, under the control of his guardian.

46. Under Article 35 (4), where a person deprived of legal capacity is placed under the supervision of a medical institution, that medical institution must take on the functions of the guardian.

47. It follows from Article 39 (3) of the Civil Code that the guardianship authority may revoke the authority of a guardian who neglects his duties.

2. Incapacitation proceedings

48. Article 258 of the Code of Civil Procedure of 1964, as in force at the material time (hereinafter "the old CCP"), established that members of the family of the person concerned, a prosecutor, a guardianship authority or a psychiatric hospital, as well as "trade unions and other organisations", might apply to a court seeking to deprive a person of his legal capacity. The court, if there was evidence of a mental disorder, was required to commission a forensic psychiatric examination of the person concerned (Article 260). The case was required to be heard in the presence of the person concerned, provided that his presence was compatible with his state of health, and also in the presence of the prosecutor and a representative of the guardianship authority (*орган опеки и попечительства*, Article 261 paragraph 2 of the old CCP). Under Article 263 of the old CCP it was possible for legal capacity to be restored by a court decision upon the application of the guardian or the persons listed in Article 258, but not based on the application of the person declared incapacitated.

49. Article 32 of the old CCP provided that a person declared incapacitated could not bring an action before the courts. The guardian was entitled to do so in order to protect the rights of the incapacitated person.

B. Confinement to a psychiatric hospital

50. The Psychiatric Care Act of 1992, as amended (hereinafter "the Act"), stipulates that any recourse to psychiatric aid must be voluntary. However, a person declared fully incapacitated may be subjected to psychiatric treatment at the request or with the consent of his official guardian (section 4 of the Act).

51. Section 5 (3) of the Act provides that the rights and freedoms of persons with mental illnesses cannot be limited solely based on their diagnosis or the fact that they have undergone treatment in a psychiatric hospital.

52. Under section 5 of the Act a patient in a psychiatric hospital can have a legal representative. However, pursuant to section 7 (2) the interests of a person declared fully incapacitated are represented by his official guardian or, in absence of an officially appointed guardian, the administration of the psychiatric hospital where the patient is confined.

53. Section 28 (1) of the Act ("Grounds for hospitalisation") provides that a person suffering from a mental disorder may be placed in a psychiatric hospital for further examination or treatment on the basis of a decision by a psychiatrist or on the basis of a court order. Section 28 (3) and (4) states that a person declared incapacitated can be placed in a psychiatric hospital at the request or with the consent of his guardian. This hospitalisation is regarded as voluntary and, unlike non-voluntary hospitalisation, does not require court approval (sections 29 and 33 of the Act).

54. Section 29 sets out the grounds for non-voluntary placement in a psychiatric hospital in the following terms:

> "A mentally disturbed individual may be hospitalised in a psychiatric hospital against his will or the will of his legal representative and before a court decision [on the matter] has been taken, if the individual's examination or treatment can only be carried out in in-patient care, and the mental disorder is severe enough to give rise to:
>
> a) a direct danger to the person or to others, or
>
> b) the individual's helplessness, i.e. inability to take care of himself, or
>
> c) a significant health impairment as a result of a deteriorating mental condition, if the affected person were to be left without psychiatric care."

55. Section 32 of the Act specifies the procedure for the examination of patients compulsorily confined in a hospital:

> "1. A person placed in a psychiatric hospital on the grounds defined by section 29 of the present Act shall be subject to compulsory examination within 48 hours by a panel of psychiatrists of the hospital, who shall take a decision as to the need for hospitalisation. ...
>
> 2. If hospitalisation is considered necessary, the conclusion of the panel of psychiatrists shall be forwarded to the court having territorial jurisdiction over the hospital, within 24 hours, for a decision as to the person's further confinement in the hospital."

56. Sections 33-35 set out the procedure for judicial review of applications for the non-voluntary in-patient treatment of mentally ill persons:

Section 33

> "1. Non-voluntary hospitalisation for in-patient psychiatric care on the grounds laid down in section 29 of the present Act shall be subject to review by the court having territorial jurisdiction over the hospital.
>
> 2. An application for the non-voluntary placement of a person in a psychiatric hospital shall be filed by a representative of the hospital where the person is detained ...
>
> 3. A judge who accepts an application for review shall simultaneously order the person's detention in a psychiatric hospital for the term necessary for that review."

Section 34

"1. An application for the non-voluntary placement of a person in a psychiatric hospital shall be reviewed by a judge, on the premises of the court or hospital, within five days of receipt of the application.

2. The person shall be allowed to participate personally in the hearing to determine whether he should be hospitalised. If, based on information provided by a representative of the psychiatric hospital, the person's mental state does not allow him to participate personally in the hearing, the application shall be reviewed by the judge on the hospital's premises. ..."

Section 35

"1. After examining the application on the merits, the judge shall either grant or refuse it. ..."

57. On 5 March 2009 the Constitutional Court of Russia adopted Ruling No. 544-*O-P* in which it examined the compatibility of sections 32 and 34 (1) and (2) of the Psychiatric Care Act with Article 22 of the Constitution of the Russian Federation, which provides that a person can be arrested without a court order for a maximum period of forty-eight hours. The Constitutional Court found that the Psychiatric Care Act did not allow non-voluntary hospitalisation in a mental clinic for more than fourty-eight hours without a court order (point 2.3 of the Ruling). It appears from the last paragraph of point 2.2 of the Ruling that the Constitutional Court did not consider that an interim decision taken by a judge by virtue of section 33 (3) of the Act qualified as a "court order" within the meaning of Article 22 of the Constitution, since the judge in such a situation did not examine the reasons for the confinement and had no power to release the person concerned. However, the Constitutional Court did not declare the relevant provisions of the Psychiatric Care Act unconstitutional.

58. Section 36 (3) of the Act provides for the courts to verify every six months whether the patient's non-voluntary confinement continues to be necessary.

59. Section 37 (2) establishes the rights of a patient in a psychiatric hospital. In particular, the patient has the right to communicate with his lawyer without censorship. However, under section 37 (3) the doctor may limit the patient's rights to correspond with other persons, have telephone conversations and meet visitors.

60. Section 47 of the Act provides that the doctors' actions are open to appeal before a court. Section 48 stipulates *inter alia* that the person whose rights are affected by the actions of the psychiatric institution must participate in the court proceedings if it is compatible with his or her mental condition.

C. State and private expert institutions

61. The State Forensic Expert Activities Act of 2001 (no. 73-FZ) defines the basic principles of the functioning and organisation of the State forensic institutions, which are supposed to assist judges, prosecutors and investigators in their professional activities where technical or scientific knowledge in a particular field is needed. Section 41 of that Act provides that forensic examination may be conducted by experts not belonging to the State forensic institutions, in accordance with Russia's procedural laws.

62. Article 75 of the old CCP provided that an expert examination had to be entrusted to "experts of the appropriate expert institutions or to other specialists appointed by the court. Any person having the appropriate knowledge [to give expert evidence] might be called [to testify before the court]."

D. Family Code

63. Article 14 of the Family Code of the Russian Federation of 1995 (Federal Law No. 223-FZ) makes it impossible to marry if at least one of the would-be spouses has been declared incapable by a court because of a mental illness.

64. Under Article 16 of the Family Code a marriage may be dissolved at the request of the guardian of a spouse who has been declared incapable by the court.

E. International instruments concerning legal capacity and confinement to a psychiatric institution

65. On 23 February 1999 the Committee of Ministers of the Council of Europe adopted "Principles concerning the legal protection of incapable adults", Recommendation No. R (99) 4. The relevant provisions of these Principles read as follows:

Principle 2 – Flexibility in legal response

"1. The measures of protection and other legal arrangements available for the protection of the personal and economic interests of incapable adults should be sufficient, in scope or flexibility, to enable suitable legal responses to be made to different degrees of incapacity and various situations. ...

4. The range of measures of protection should include, in appropriate cases, those which do not restrict the legal capacity of the person concerned."

Principle 3 – Maximum reservation of capacity

"1. The legislative framework should, so far as possible, recognise that different degrees of incapacity may exist and that incapacity may vary from time to time. Accordingly, a measure of protection should not result automatically in a complete

removal of legal capacity. However, a restriction of legal capacity should be possible where it is shown to be necessary for the protection of the person concerned.

2. In particular, a measure of protection should not automatically deprive the person concerned of the right to vote, or to make a will, or to consent or refuse consent to any intervention in the health field, or to make other decisions of a personal character at any time when his or her capacity permits him or her to do so. ..."

Principle 6 – Proportionality

"1. Where a measure of protection is necessary it should be proportionate to the degree of capacity of the person concerned and tailored to the individual circumstances and needs of the person concerned.

2. The measure of protection should interfere with the legal capacity, rights and freedoms of the person concerned to the minimum extent which is consistent with achieving the purpose of the intervention. ..."

Principle 13 – Right to be heard in person

"The person concerned should have the right to be heard in person in any proceedings which could affect his or her legal capacity."

Principle 14 – Duration review and appeal

"1. Measures of protection should, whenever possible and appropriate, be of limited duration. Consideration should be given to the institution of periodical reviews. ...

3. There should be adequate rights of appeal."

66. The United Nations Convention on the Rights of Persons with Disabilities (the "CRPD"), which Russia signed on 24 September 2008 (but has not yet ratified), provides in Article 12 (3) that "persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life". Article 12 (4) stipulates:

"States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity ... are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests. ..."

Article 23 (a) of the CRPD establishes that "the right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognised."

F. Comparative law

67. A comparative law research concerning the law of persons with mental disabilities to marry and covering 25 member States of the Council of Europe demonstrated that in approximately one half (13/25) of the States

an incapacitation decision automatically leads to the loss of the right to marry. In approximately one third (9/25) of them a guardian's consent to the conclusion of marriage of an incapacitated person is needed. An express ban on the right to marry for mentally disabled persons is in place in six of the 25 member States. The language and procedures used to verify the legal consequences of the mental insufficiency in the marital sphere vary considerably from one member State to another.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

68. The applicant complained about his inability to have his legal incapacity reviewed. The Court will examine this complaint under Article 8, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The parties' submissions

1. The Government

69. The Government started by summarising provisions of the Russian legislation on legal capacity. They admitted that deprivation of legal capacity would constitute an interference with the private life of the person concerned. However, in the applicant's case it had been necessary in view of his diagnosis – schizophrenia, twice confirmed by doctors at the Serbskiy Institute in Moscow and the Omsk Regional Psychiatric Hospital, in 1999 and 2000 respectively. In particular, the psychiatric examination report prepared in 2000 concluded that the applicant was incapable of understanding the meaning of his actions and unable to control them. The incapacitation decision had thus been taken in order to protect the interests of other people, as well as his own interests. Such a limitation of his rights was provided for by Article 29 of the Civil Code and had therefore been "lawful". The decision to deprive him of legal capacity had been taken in the applicant's absence because he was in a psychiatric hospital at that time and his appearance before the court could therefore have been prejudicial to his health. The option of taking a decision without seeing the person

concerned was provided for under Article 261 of the Code of Civil Procedure. The case had been heard by courts at two levels of jurisdiction, which had both concluded that the applicant's illness warranted the deprivation of his legal capacity.

70. The Government further indicated that the applicant's father had ceased to be his guardian on 10 December 2002, when the Public Health Authority approved the decision of the Guardianship Council. Between 10 and 20 December 2002 the applicant had no guardian.

2. The applicant

71. The applicant argued that the decision of 26 February 2002 had been procedurally flawed. The judge conducted the hearing in the applicant's absence without giving any explanation as to why the latter's mental health prevented him from attending the hearing. The applicant acknowledged that he had suffered from some psychiatric problems, but there had been no indication that the applicant was aggressive or incapable of understanding the proceedings. It was therefore important for the judge responsible for deciding whether to restore the applicant's legal capacity to form a personal opinion about his mental capacity.

72. During the 2002 proceedings the applicant's representatives had requested that the District Court commission an independent medical body (a panel of experts from the Independent Psychiatric Association of Russia) to assess his mental capacity. This application was dismissed because in the court's view the law did not allow private entities to perform such assessments. However, Section 41 of the State Forensic Expert Activities Act explicitly stated the contrary. Moreover, Article 75 of the old CCP had provided for expert assessments to be performed by experts from the relevant institutions or by other specialists appointed by the court.

73. The applicant also stressed that, having rejected the request to commission an independent panel of experts, the District Court had not made arrangements for any other expert assessment of his mental capacity. The only State expert psychiatric institution in the Omsk Region was the Omsk Regional Psychiatric Hospital whose actions the applicant had challenged in the proceedings in question, and which had previously sought the incapacity in 2000 by applying to the prosecutor's office. It would have been contrary to the principle of equality of arms to appoint experts from the respondent hospital to assess the applicant's mental capacity.

74. The applicant also complained that after the transferral of the guardianship on 20 December 2002 to the Omsk Regional Psychiatric Hospital he had lost any possibility to have his legal capacity reviewed.

75. As to the substance of the domestic decisions, the applicant recalled that he had been entirely deprived of his legal capacity in accordance with Article 29 of the Civil Code, that is to say on the sole basis that he suffered from a mental disorder. In 2002 the judge had simply reiterated the

conclusion of the 2000 expert report and of the incapacity judgment, without establishing the actual mental capacity of the applicant at the time of the hearing. Thus, in the court's view, the mere diagnosis of a mental disability had been enough to strip the applicant of all his fundamental rights. The judge had not examined the applicant's actual capacity in any meaningful way in order to establish whether his mental health still prevented him from understanding the meaning of his actions and from controlling them. In any event, the existing legislative framework had not left the judge any other choice than to declare the person concerned fully incapacitated. The Russian Civil Code distinguished between full capacity and full incapacity, but did not provide for any borderline situation, except for drug or alcohol addicts.

B. The Court's assessment

76. The Court notes that the applicant's complaint is two-fold. First, he complained that his Article 8 rights had been breached in the 2002 proceedings seeking the restoration of his legal capacity. Second, he complained that after 20 December 2002 he had no possibility to have his legal incapacity reviewed. The Court will start its analysis by addressing the first limb of the applicant's complaint.

1. The applicant's attempts to recover his legal capacity until 20 December 2002

77. The Court recalls that deprivation of legal capacity may amount to an interference with the private life of the person concerned (see *Matter v. Slovakia,* no. 31534/96, § 68, 5 July 1999, and *Shtukaturov v. Russia*, no. 44009/05, § 83, ECHR 2008). The Government in the present case did not contest that the applicant's incapacitation had amounted to such an interference, and the Court does not see any reason to hold otherwise, especially in view of various serious limitations to the applicant's personal autonomy which that measure entailed.

78. Under the six-month rule in Article 35 of the Convention the Court is precluded from examining the original incapacitation proceedings of 2000. That being said, the Court may examine the applicant's situation under Article 8 of the Convention insofar as his attempts to have his capacity restored in 2002 are concerned (see the admissibility decision of 6 January 2011 in the present case).

79. An issue arises as to whether the applicant's inability to obtain the review of his status must be examined in terms of the interference by the State with his Article 8 rights or rather in view of the positive obligations of the State under that provision. The Court recalls in this respect that whether the case is analysed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicant's rights under

paragraph 1 of Article 8 or in terms of an interference by a public authority to be justified in accordance with paragraph 2, the applicable principles are broadly similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole (see *Oluić v. Croatia*, no. 61260/08, § 46, 20 May 2010, with further references). This approach is fully applicable in the case at hand: the Court will examine whether a fair balance was struck between his Article 8 rights and any other legitimate interest, private or public, which may have been at stake in the 2002 proceedings.

80. The Court accepts that depriving someone of his legal capacity and maintaining that status may pursue a number of legitimate aims, such as to protect the interests of the person affected by the measure. In deciding whether legal capacity may be restored, and to what extent, the national authorities have a certain margin of appreciation. It is in the first place for the national courts to evaluate the evidence before them; the Court's task is to review under the Convention the decisions of those authorities (see, *mutatis mutandis*, *Winterwerp v. the Netherlands*, 24 October 1979, § 40, Series A no. 33; *Luberti v. Italy*, 23 February 1984, Series A no. 75, § 27; and *Shtukaturov v. Russia*, cited above, § 67).

81. That being said, the extent of the State's margin of appreciation in this context depends on two major factors. First, where the measure under examination has such a drastic effect on the applicant's personal autonomy as in the present case (compare *X. and Y. v. Croatia*, no. 5193/09, § 102, 3 November 2011), the Court is prepared to subject the reasoning of the domestic authorities to a somewhat stricter scrutiny. Second, the Court will pay special attention to the quality of the domestic procedure (see *Shtukaturov v. Russia*, cited above, § 91). Whilst Article 8 of the Convention contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to ensure due respect of the interests safeguarded by Article 8 (see *Görgülü v. Germany*, no. 74969/01, § 52, 26 February 2004).

(a) Procedural aspects

82. As to the procedural aspect of the domestic decisions, the Court first of all observes that on 26 February 2002 the domestic court refused to restore the applicant's legal capacity. The court made this decision without seeing or hearing him (see paragraph 16 above). The Court recalls that in such cases the individual concerned is not only an interested party but also the main object of the court's examination (see *X. and Y.*, cited above, § 83, with further references; see also *mutatis mutandis, Winterwerp,* cited above, § 74). There are possible exceptions from the rule of personal presence (see, as an example, *Berková v. Slovakia*, no. 67149/01, §§ 138 et seq., 24 March 2009); however, departure from this rule is possible only where the domestic court carefully examined this issue. In the present case, however,

the District Court merely stated that the applicant's personal presence would be "prejudicial to his health", and there is no evidence that the court ever sought a doctor's opinion on that particular question, namely what effect appearing in court might have had on the applicant. The Court is not aware of any other obstacles to the applicant's personal appearance in court. The Court considers that a simple assumption that a person suffering from schizophrenia must be excluded from the proceedings is not sufficient.

83. The second aspect of the domestic proceedings of concern to the Court is the refusal of the domestic court to commission a new psychiatric examination of the applicant (see paragraphs 14 and 16 above). The Court recalls its findings in *Stanev v. Bulgaria* [GC] (no. 36760/06, § 241), ECHR 2012) where it held, in the context of the right of access to court under Article 6 § 1, that "the right to ask a court to review a declaration of incapacity is one of the most important rights for the person concerned".

84. The Court observes that in February 2002 more than a year and a half had elapsed since the original incapacitation decision had been taken in June 2000 (see paragraph 10 above). Nothing in the case file indicates that the applicant's condition was irreversible, or that the time elapsed since his incapacitation was too short for the question to be examined again. The Court concludes that in these circumstances the applicant was entitled to a full review of his status, which, as a matter of principle, should have included some sort of fresh expert assessment of his condition.

85. The applicant asked for a fresh examination of his mental condition and asked the court to entrust it to a non-State medical institution. However, the court refused on the sole ground that it was prohibited by law. The Court is not aware of any norm in Russian law that would prohibit a court from seeking an expert opinion from a clinic or a doctor not belonging to the State system of public health institutions. The Government did not refer to any such norm either. The fact that there is a State-run system of forensic institutions (see the domestic court's reasoning in paragraph 16 above) does not mean that they have a monopoly on providing expert opinions to the courts. On the contrary, Russian law at the time explicitly permitted examinations by experts not belonging to the State forensic institutions (see paragraph 61 above). The domestic court's decision in this respect appears to have no basis in the domestic law.

86. Further, the Court does not see what prevented the domestic court from seeking a fresh expert opinion from experts not directly affiliated with the Omsk Regional Psychiatric Hospital. The Court observes that one of the reasons for the applicant's many hospitalisations in the Omsk Regional Psychiatric Hospital were his numerous complaints about the doctors of that institution. His incapacitation was also based on the opinion of the doctors from that hospital. Nevertheless, when the applicant sought to restore his legal capacity (see paragraphs 12 et seq. above), the District Court entrusted his examination to the same hospital. In such circumstances the applicant's

demand was not frivolous: first, he refused to submit himself for an examination in the Omsk Regional Hospital, and then he asked for an examination by the doctors from the Independent Psychiatric Association of Russia (see paragraph 15 above).

87. The Court reiterates that where the opinion of an expert is likely to play a decisive role in the proceedings, as in the case at hand, the expert's neutrality becomes an important requirement which should be given due consideration. Lack of neutrality may result in a violation of the equality of arms guarantee under Article 6 of the Convention (see, *mutatis mutandis*, *Sara Lind Eggertsdóttir v. Iceland*, no. 31930/04, § 47, 5 July 2007, with further references). In the Court's opinion an expert's neutrality is equally important in the context of incapacitation proceedings, where the person's most basic rights under Article 8 are at stake.

88. The Court notes that the applicant never categorically refused to submit himself to an examination, and that he doubted the neutrality of the doctors from the Omsk Regional Psychiatric Hospital. Without taking a position as to whether his doubts were well-founded, the Court considers that in such circumstances it was the District Court's duty to make arrangements for a fresh examination of the applicant by an independent psychiatric institution – not necessarily private, but lacking direct affiliation to the Omsk Regional Psychiatric Hospital. The Government have not referred to any serious considerations that might have prevented the court from seeking such an examination.

89. The Court recalls that according to the judgment of 26 February 2002 the applicant continued to suffer from a mental disorder which had warranted his incapacitation in 2000. However, in a situation where the court did not see the person concerned personally and did not obtain a fresh assessment of his mental condition, such a conclusion cannot be regarded as reliable.

(b) Substantive aspects

90. As to the substance of the domestic decisions, the Court observes that the judgment of 26 February 2002 relied on the medical report prepared in 2000. The Court does not cast doubt on the findings of that report, in particular that in 2000 the applicant suffered from schizophrenia. However, the Court recalls that in the *Shtukaturov* case, cited above, § 94, it held that "the existence of a mental disorder, even a serious one, cannot be the sole reason to justify full incapacitation. By analogy with cases concerning deprivation of liberty, in order to justify full incapacitation the mental disorder must be "of a kind or degree" warranting such a measure". In *Shtukaturov* the Court found that in the domestic proceedings the issue of "the kind and degree" of the applicant's mental illness remained unresolved.

91. In the present case the Court faces essentially the same situation as in *Shtukaturov*. On the one hand, it is clear that the applicant suffered from a

serious and persistent mental disorder: he had delusory ideas, was a vexatious litigant, etc. On the other hand, the Serbskiy Institute report of 1999 did not refer to any particular incident of violent, self-destructive or otherwise grossly irresponsible behaviour on the part of the applicant since 1996, and did not allege that the applicant was completely unable to take care of himself (see paragraph 8 above).

92. The Court is ready to admit that some measure of protection in respect of the applicant might have been advisable. However, the Russian Civil Code did not provide for any intermediate form of limitation of legal capacity for mentally ill persons – this existed only in respect of drug or alcohol addicts (*ibid.*, § 95). Therefore, the domestic court in the present case, as in *Shtukaturov*, had no other choice than to apply and maintain full incapacity – the most stringent measure which meant total loss of autonomy in nearly all areas of life. That measure was, in the opinion of the Court and in the light of materials of the case, disproportionate to the legitimate aim pursued.

(c) Conclusion

93. In sum, the confirmation of the applicant's incapacity status in 2002 based on the report of 2000 was not justified for at least two reasons: first, because no fresh assessment of the applicant's mental condition was made (either by the doctors, or by the court itself) and the applicant was not personally present in court, and, second, because it is doubtful whether the applicant's mental condition, as described in the report of 2000, required full incapacitation. Therefore, there was a breach of Article 8 of the Convention on that account.

2. The applicant's inability to restore his legal capacity after 20 December 2002

94. The Court will now turn to the applicant's situation after 20 December 2002, when the guardianship was transferred to the Omsk Regional Psychiatric Hospital (see paragraph 31 above). The Court recalls that before that date the applicant's guardian (his father) supported the applicant's attempts to restore legal capacity. Afterwards, the situation changed when the guardianship was transferred to the hospital administration. It is clear from the materials of the case that the hospital sought the applicant's confinement and was opposed to his attempts to recover his legal capacity. Thus, from 20 December 2002 onwards, the applicant had no opportunity of challenging his status.

95. Subsequently, the applicant's father tried to reinstate himself as the applicant's guardian (see paragraph 38 above). If successful, he would have been able to challenge the applicant's status again. However, the attempt failed with the judgment of 16 July 2003 by the Kuybyshevskiy District Court, which appears to have been the final decision on that matter. From

that date onwards the applicant was fully dependant on the psychiatric hospital.

96. The Court recalls its findings in the *Shtukaturov* case, cited above, § 90, where it criticised the Russian law on incapacitation in the following terms:

> " [T]he Court notes that the interference with the applicant's private life was very serious. As a result of his incapacitation the applicant became fully dependant on his official guardian in almost all areas of life. Furthermore, "full incapacitation" was applied for an indefinite period and could not, as the applicant's case shows, be challenged otherwise than through the guardian, who opposed any attempts to discontinue the measure ..."

In the present case the situation was identical: the applicant could only challenge his status through the guardian, who opposed any attempts to discontinue the measure. That situation continued at least until 10 October 2003, when the applicant's daughter was appointed as his guardian (see paragraph 40 above). It is unclear whether she wished to restore the applicant's status: the Court does not have sufficient information about the proceedings allegedly initiated in 2006 by the applicant's relatives (see paragraph 42 above). Be that as it may, it is clear that at least during the time when the role of the applicant's guardian was assumed by the psychiatric hospital the applicant was unable to institute any legal proceedings to challenge his status.

97. The Court reiterates that in the vast majority of cases where the ability of a person to reason and to act rationally is affected by a mental illness, his situation is subject to change. This is why the Principles concerning the legal protection of incapable adults of 1999 (see paragraph 65 above, Principle 14), recommend a periodical re-assessment of the condition of such persons. A similar requirement follows from Article 12 (4) of the CPRD (see paragraph 66 above). In *Stanev*, cited above, the Court observed that "there is now a trend at European level towards granting legally incapacitated persons direct access to the courts to seek restoration of their capacity" (§ 243). In Russia at the time the law neither provided for an automatic review nor for a direct access to the court for an incapacitated person, so the latter was fully dependant on his guardian in this respect (see, *mutatis mutandis*, *Salontaji-Drobnjak v. Serbia*, no. 36500/05, § 134, 13 October 2009). Where, as in the present case, the guardian opposed the review of the status of his ward, the latter had no effective legal remedy to challenge the status. Having regard to what was at stake for the applicant, the Court concludes that his inability for a considerable period of time to assert his rights under Article 8 was incompatible with the requirements of that provision of the Convention. Consequently, there was a violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

98. The applicant complained that his confinement in a psychiatric hospital in 2002-2003 was contrary to Article 5 §§ 1 (e) and 4 of the Convention, which read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (e) the lawful detention of persons ... of unsound mind ...;
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. The parties' submissions

1. The Government

99. The Government claimed that the applicant's rights under Article 5 of the Convention had not been violated. As to the placement of the applicant in a psychiatric hospital in December 2002, the Government indicated that he had been taken there at the request of the district psychiatrist. Upon his arrival at the hospital the applicant had been immediately examined by a doctor on duty. In the ensuing forty-eight hours he had been examined by a panel of three psychiatrists. Following that examination the hospital had sent a hospitalisation request to the court. Consequently, his confinement had been requested and authorised in accordance with the domestic procedural rules established in the Psychiatric Care Act of 1992.

100. Subsequently, his further hospitalisation had been ordered in connection with the state of his health. The applicant's mental illness had been diagnosed on many occasions. Thus, according to the letter of the Ministry of Public Health and Social Development, the applicant suffered from severe schizophrenia. He had thus been incapable of understanding his actions or controlling them. Occasionally he had been in remission, but without any stable improvement in his health. Towards the end of 2002 the applicant had suffered yet another deterioration of his mental condition. He had stopped taking his medicine and visiting the district psychiatrist regularly. As a result, without proper medical supervision and treatment, there had been a risk of further deterioration of his health. In such circumstances the doctors, in accordance with the Psychiatric Care Act of 1992, had ordered the applicant's confinement against his will.

101. As to the legal remedies in force at the material time, the Government submitted that the applicant's father had been stripped of his guardianship in accordance with the law. The applicant's further

hospitalisation had been requested by the hospital, which, from 20 December 2002, had been appointed to act as his guardian. The proceedings concerning the applicant's confinement had been terminated because, after the appointment of the hospital as his guardian, his confinement had become, in domestic law, voluntary. The first-instance court had examined the case on the merits because the judge had not been informed by the parties of the decision of the Guardianship Council stripping the applicant's father of his guardianship. Under the domestic law, the applicant had been able to act, including before the courts, albeit only through his guardian.

2. The applicant

102. The applicant maintained that he had been admitted to the mental hospital against his own and his guardian's will. His psychiatric confinement in 2002 had probably been formally lawful, but his disorder had not been of a kind or degree warranting the confinement. It appears from the hospitalisation order that the psychiatrist had decided to confine the applicant in order to prevent him from lodging complaints. The Government had provided no explanation as to why the applicant's "reformist" behaviour indicated any real threat of further worsening of his state, if left without the prescribed treatment. The hospital's psychiatric report had never considered less restrictive measures such as out-patient treatment. The applicant had been detained in the mental hospital for a year, and upon his discharge his mental health remained the same as at the time of his admission.

103. The applicant noted that from 11 December 2002 his confinement had been authorised by the provisional detention order. However, in its decision of 5 March 2009 the Constitutional Court of the Russian Federation had held that a provisional detention order was not a judicial decision required in constitutional terms (see paragraph 57 above). Furthermore, in the present case the court had issued the order without hearing the applicant or his representative. Lastly, under Russian law its validity had been limited to five days, whereas the applicant had been detained pursuant to that provisional order at least until 20 December 2002, when his further confinement had been authorised by the Guardianship Council.

104. As regards the applicant's detention from 20 December 2002 onwards, the applicant noted that, formally speaking, his hospitalisation had become voluntary: the consent of the hospital – his new guardian and at the same time the detaining authority – had been considered sufficient under the domestic law for his indefinite detention without court order. In other words, he was detained on the basis of an administrative decision which was issued without the applicant being heard, and his objection to the hospital placement had been ignored. In the applicant's opinion, such consent was

no substitute for a judicial decision. His subsequent detention was therefore arbitrary.

105. The applicant further submitted that, under Russian law, the courts were required to verify every six months whether the patient's non-voluntary confinement continues to be necessary (see paragraph 58 above). It was not evident from the Government's submissions and from the documents appended thereto that the applicant had been regularly examined by a panel of psychiatrists in order to decide on the need for his continued confinement, and thus that the procedure prescribed by domestic law had been followed in this regard.

106. The applicant noted that the only way he could have applied for release from the hospital was through his guardian. However, since the detaining authority had become the applicant's guardian by virtue of law, it obtained unrestricted discretion to decide on the continuation of his detention. Thus, judicial review provided by Section 47 of the Psychiatric Care Act could not have been regarded as an effective remedy.

B. The Court's assessment

1. Compliance with Article 5 § 1

107. Insofar as the applicant's complaint under Article 5 § 1 of the Convention is concerned, his confinement in the mental hospital can be divided into two periods: between 9 and 20 December 2002, and after 20 December 2002, when the hospital became his guardian.

108. At the outset, the Court notes that it is not disputed by the parties that the applicant's confinement in the mental hospital constituted "deprivation of liberty" within the meaning of Article 5. The Government also conceded that the applicant had been confined against his will, even though subsequently the newly appointed guardian had approved that measure.

(a) General principles

109. The Court reiterates that in order to comply with Article 5 § 1, the detention in issue must comply with two major requirements. First of all, it must be "lawful" in domestic terms, including the observance of a procedure prescribed by law; in this respect the Convention refers back essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. Secondly, the Court's case-law under Article 5 requires that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness (see *Creangă v. Romania* [GC], no. 29226/03, § 84, 23 February 2012; *Herczegfalvy v. Austria*, 24 September 1992, § 63, Series A no. 244; see also *Venios v. Greece*, no. 33055/08, §§ 48, 5 July 2011, and

Karamanof v. Greece, no. 46372/09, §§ 40 et seq., 26 July 2011). That means that it does not suffice that the deprivation of liberty is in conformity with national law; it must also be necessary in the circumstances (see *Witold Litwa v. Poland*, no. 26629/95, § 78, ECHR 2000-III).

110. As to the second of the above conditions, an individual cannot be deprived of his liberty as being of "unsound mind" unless the following three minimum conditions are satisfied: firstly, he must reliably be shown to be of unsound mind; secondly, the mental disorder must be of a kind or degree warranting compulsory confinement (i.e. where the person needs therapy, medication or other clinical treatment to cure or alleviate his condition, or where he needs control and supervision to prevent him, for example, causing harm to himself or other persons - see *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 52, ECHR 2003-IV); thirdly, the validity of continued confinement depends upon the persistence of such a disorder (see *Winterwerp*, cited above, § 39; *Shtukaturov*, cited above, § 114; and *Varbanov v. Bulgaria*, no. 31365/96, § 45, ECHR 2000-X).

(b) The period between 9 and 20 December 2002

111. The Court will first examine whether the applicant's detention between 9 and 20 December 2004 was lawful under domestic law. The Court observes that the parties involved in the proceedings at that moment seemed to be uncertain about the legal framework in which they operated. Thus, the Guardianship Council decided to strip the father of his status as guardian on 6 December 2002. It is difficult to say whether that decision became effective in its own right, or only upon further confirmation by the Public Health Authority (which was obtained on 10 December 2002). Be that as it may, during that period the hospital and the court acted as if the father was still the applicant's guardian and, therefore, as if the confinement in the mental hospital was "non-voluntary".

112. In this assumption, the provisions of Sections 32 et seq. of the Psychiatric Care Act of 1992 (see paragraphs 55 and 56 above) concerning non-voluntary confinement must have applied. According to the Act, the authorities may place a person in the "preliminary confinement" for eight days in order to decide whether his further confinement is necessary. Thus, the hospital has forty-eight hours to examine the patient (Section 32 (1) of the Act), and then twenty-four hours to submit a hospitalisation request to a competent judicial authority (Section 32 (2) of the Act), which, in turn, has five days to decide on that request (Section 34 (1) of the Act).

113. The Court notes that in 2009 the Constitutional Court examined the compatibility of those provisions with Article 22 of the Constitution (see paragraph 57 above). While the Psychiatric Care Act was not declared unconstitutional, the Ruling can reasonably be construed as requiring that a person confined in a psychiatric hospital obtain full judicial review of his situation not within eight days, as provided by the Act, but within forty-

eight hours – the maximum period of detention without a court order provided for by the Constitution. The Court observes, however, that the Ruling of the Constitutional Court was formulated in indecisive terms, and the validity of the Act was finally confirmed. In any event, nothing suggests that the 2009 Ruling should have had a retroactive effect and apply to the applicant's situation. The Court concludes, therefore, that the "lawfulness" of the applicant's confinement in 2002 must be established in terms of the provisions of the Psychiatric Care Act, as it could have reasonably be interpreted at the time of the events.

114. The applicant's initial admission to the Omsk Regional Psychiatric Hospital was ordered by a district psychiatrist on 4 December 2002 (see paragraph 21 above). It appears that at that stage the requirements of the law were respected: the applicant was suffering from a mental disorder and there was a decision of a psychiatrist to conduct his further examination in the hospital (see paragraph 53 above). After the applicant's placement in the hospital on 9 December 2002, the hospital, under Section 32 of the Act, had forty-eight hours to conduct a further assessment of the applicant's mental health and twenty-four hours to seek a hospitalisation order from the court (see paragraph 55 above). Although the panel examined the applicant on the same day, which was within the time-limits, the request for further detention was received by the court only on 11 December 2002, that is more than twenty-four hours. The court then had five days under the Act to examine the request and authorise further detention or order the applicant's release (see paragraph 56 above). That time-limit was not observed either – the first hearing on was held on 17 December 2002, and at the end of that hearing the judge, without taking any decision on the substance of the case, adjourned the hearing until 24 December 2002, although the Act did not provide for such a possibility (see *Rakevich v. Russia*, no. 58973/00, § 35, 28 October 2003). The Court concludes that the applicant's detention during this first period was not authorised in accordance with the procedure prescribed by the Psychiatric Care Act.

(c) The period after 20 December 2002

115. On 20 December 2002 the hospital, which had earlier requested the applicant's confinement, became the applicant's guardian by virtue of the decision of the Guardianship Council and in accordance with Article 35 (4) of the Civil Code. According to Section 28 of the Psychiatric Care Act, if the guardian consented to the hospitalisation it was deemed "voluntary", regardless of the actual wishes of the ward, and no court authorisation for the hospitalisation was required (see paragraph 53 above). The court proceedings concerning the applicant's confinement were consequently terminated.

116. The applicant's situation during the second period closely resembles the one examined by the Court in the *Shtukaturov* case (cited

above, § 21). The Court reiterates that confinement in a psychiatric hospital does not necessarily become "voluntary" in Convention terms because the consent of the guardian was obtained. Although it is sometimes difficult to discern the genuine will of a mentally ill person (see, for example, *Storck v. Germany*, no. 61603/00, § 74, ECHR 2005-V), the Court is confident that in the present case the applicant did not agree to the hospitalisation. This is clearly demonstrated by the fact that his confinement was originally regarded as non-voluntary by all the parties involved. Despite that, from 20 December 2002 it became possible to keep him confined without a court order. As a result, the applicant was unable to enjoy the safeguards associated with the judicial process. This factor alone is sufficient, in the Court's view, to conclude that the applicant's detention was incompatible with Article 5 § 1 of the Convention.

117. Moreover, the guardian was the same medical institution which had initiated the hospitalisation, which was responsible for the patient's further treatment and which had previously been attacked in court proceedings by the applicant. In other words, the impartiality of the newly appointed guardian vis-à-vis the applicant were open to doubt.

118. Finally, in the absence of a judicial decision on the substance of the applicant's situation, it is difficult to say whether his confinement was justified in the light of the criteria set out in the *Winterwerp* case, cited above, § 39. Having examined the reports prepared by the district psychiatrist on 4 December 2002 and by the panel of three doctors inform the Omsk Regional Psychiatric Hospital on 9 December 2002, the Court notes that the applicant did indeed suffer from schizophrenia. However, those reports mostly referred to the history of the applicant's illness and did not mention recent instances of aggressive or self-destructive behaviour. It appears that the major reason for the confinement in 2002 were his numerous complaints to various State bodies, in particular his complaints against his doctors, but those incidents were clearly not such as to warrant his confinement (cf. *Stanev v. Bulgaria*, cited above, § 157).

119. The Court reiterates that normally it would not review the opinion of a doctor whose impartiality and qualifications were not called into question and who had the benefit of direct contact with the patient. In the present case, however, the Court is prepared to take a critical view of the findings of the psychiatrists, mostly because (a) their conclusions were not submitted to judicial scrutiny at the domestic level, (b) their neutrality was open to doubt, and (c) their reports were not specific enough on points which are crucial for deciding whether compulsory hospitalisation was necessary.

(d) Conclusion

120. The above elements are sufficient for the Court to conclude that the applicant's hospitalisation between 9 December 2002 and 10 December 2003 was contrary to Article 5 § 1 of the Convention.

2. Compliance with Article 5 § 4 of the Convention

121. The Court reiterates the principle established in § 39 of the *Winterwerp* judgment to the effect that the validity of a person's continued confinement depends upon the persistence of mental illness of a kind or degree warranting compulsory confinement. The Psychiatric Care Act contains similar requirements, providing that the court should consider this issue every six months. However, its provisions concern only those who are confined to a hospital against their will. In domestic terms the applicant's detention was "voluntary" (see paragraph 53 above). Therefore, while the hospital remained the applicant's guardian, there was no possibility of automatic judicial review. In addition, the applicant himself, as an incapacitated person, was unable to seek release from the hospital. In a nearly identical situation the Court found that the inability of a patient of a psychiatric hospital to seek release from it otherwise than through his guardian, where there was no periodic judicial review of the lawfulness of his confinement, amounted to a violation of Article 5 § 4 of the Convention (see *D.D. v. Lithuania*, (no. 13469/06, §§ 164 et seq., 14 February 2012).

122. The Court concludes that in this situation the applicant was unable to "take proceedings by which the lawfulness of his detention [would] be decided ... by a court". There was, therefore, a breach of Article 5 § 4 of the Convention on this account.

III. ALLEGED VIOLATION OF ARTICLES 12 OF THE CONVENTION

123. The applicant complained that he had not been able to register a marriage with his fiancée. He referred to Article 12 of the Convention (right to marry), which reads as follows:

> "Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."

124. The Court observes that the applicant's inability to marry was one of many legal consequences of his incapacity status. The Court has already found that the maintenance of that status (the only measure of protection applicable under the Russian Civil Code to mentally ill persons) was in the circumstances disproportionate and violated Article 8 of the Convention (see paragraph 97 above). In other words, the applicant was unable to marry primarily because of the same two major factors analysed under Article 8, namely the deficiencies in the domestic decision-making process and the rigidity of the Russian law on incapacity. In view of its findings under

Article 8 of the Convention, the Court considers that there is no need for a separate examination under Article 12 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

125. The applicant also complained that he did not have effective remedies under Article 13 of the Convention in connection with his complaints under Articles 8 and 12, set out above. Article 13 reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

126. The Court notes that in analysing the proportionality of the measure complained of under Article 8 it took account of the fact that the applicant had been unable to challenge that measure independently from his guardian, and that the applicant had not obtained an effective review of his status even when his guardian had sought it. In these circumstances the Court does not consider it necessary to re-examine the issue of effective remedies under Article 13 of the Convention separately (see *Shtukaturov*, cited above, §§ 132-133).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

127. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

128. The applicant claimed EUR 30,000 (thirty thousand euros) under the head of non-pecuniary damages. The Government disputed that figure as excessive and considered that the mere finding of a violation would constitute sufficient just satisfaction. The Court, taking into account the cumulative effect of the violations of the applicant's rights, their duration, and the fact that the applicant, who suffered from a mental disorder, was in a particularly vulnerable situation, and ruling on an equitable basis, awards the applicant EUR 25,000 in respect of non-pecuniary damage.

129. If, at the moment of payment of the award, the applicant is legally incapacitated, the Government should ensure that the amount awarded is transferred to the guardian, on the applicant's behalf and in his best interest.

B. Costs and expenses

130. The applicant did not ask for reimbursement of costs and expenses incurred in connection with the proceedings. The Court therefore does not award anything under this head.

C. Default interest

131. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 8 of the Convention on account of the maintenance of the applicant's status as an incapacitated person and his inability to have it reviewed in 2002 and 2003;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's hospitalisation in the psychiatric hospital in 2002-2003;

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the applicant's inability to obtain a review of the lawfulness of his detention in the psychiatric hospital;

4. *Holds* that it is not necessary to examine separately the applicant's complaint under Article 12 of the Convention;

5. *Holds* that it is not necessary to examine separately the applicant's complaint under Article 13 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 25,000 (twenty-five thousand euros) in respect of non-pecuniary damage, to be converted into the Russian Roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate

equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 January 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President

Neutral Citation 2012 [IEHC] 491

THE HIGH COURT
[2011 No. 9548P]

BETWEEN

M.X. [APUM]
PLAINTIFF
AND
HEALTH SERVICE EXECUTIVE

DEFENDANT
AND
BY ORDER

THE ATTORNEY GENERAL

NOTICE PARTY
AND
IRISH HUMAN RIGHTS COMMISSION

AMICUS CURIAE

JUDGMENT of Mr. Justice John MacMenamin delivered on Friday, the 23rd day of November, 2012

1. The unfortunate factual background to the proceedings to date has already been set out in a previous judgment in this matter, namely, HSE v X. [APUM] [2011] IEHC 326. Since that time, new proceedings have been initiated on behalf of the plaintiff, M.X. (hereinafter referred to as "X"). On her behalf, her counsel seeks to challenge a number of aspects of the procedure which have been adopted in her care regime. It is now claimed that the medical decisions, made in the context of her incapacity by reason of treatment-resistant paranoid schizophrenia, fail to have regard to her equal rights before the law as a citizen; and that she should be entitled to have the decision that she lacks capacity to decide whether or not to receive treatment subject to an independent review, ideally by an independent tribunal or court. While not fully alluded to in the pleadings, it is claimed that she is entitled to have the medical options concerning her treatment made on an "assisted decision-making" basis, which would give proper weight to her own wishes as to that treatment. It is contended that the plaintiff is being treated under s. 57 of the Mental Health Act 2001 ("the Act"), and that this provision is repugnant to the Constitution, incompatible with the European Convention on Human Rights ("ECHR"), and also fails to have due regard for the provisions of the United Nations

Convention on the Rights of Persons with Disabilities ("UNCRPD"). The Attorney General and the Irish Human Rights Commission have been joined as notice parties to the proceedings. As this judgment outlines, the law in this area is evolving, and this case must be decided on its very unusual, if not unique, facts. It is essential to bear in mind the nature of the treatment being administered against the plaintiff's will. It involves the regular administration of the drug Clozapine, together with the necessary involuntary abstraction by a syringe of blood samples from the plaintiff's veins. This is itself an invasion of the plaintiff's bodily integrity – a constitutionally protected right.

Issues to be considered

2. This judgment, first, considers how the plaintiff's assessment was carried out in the context of the Act of 2001, and in particular the precise provisions of that Statute which are applicable.

3. Second, in cases like the present, where challenges are brought to the constitutionality of legislation, and declarations as to the incompatibility of legislation with the European Convention on Human Rights are also sought, the sequencing approach which a court should follow has been set out in a number of decisions of the Supreme Court. The guiding principle regarding determinations of constitutionality was set out by Henchy J. in The State (Woods) v. Attorney General [1969] I.R. 385 at p. 400 where he stated "… that a court should not enter upon a question of constitutionality unless it is necessary for the determination of the case before it". Similarly, in Murphy v. Roche [1987] I.R. 106, Finlay C.J. stated at p. 110:-

"… where the issues between the parties can be determined and finally disposed of by the resolution of an issue of law other than constitutional law, the Court should proceed to determine that issue first and, if it determines the case, should refrain from expressing any view on the constitutional issue that may have been raised."

Therefore, a court must initially seek to resolve an issue by a means other than through constitutional reference. Here, counsel for the plaintiff contends, in a novel argument, that the UNCRPD is directly applicable within this jurisdiction, by virtue of the fact that the European Union is a signatory to that Convention. As will be explained later, the Court is not of the view that this Convention has direct effect in this jurisdiction at this time. That is not to say however that the provisions of that Convention are entirely immaterial, however.

4. Therefore, it will then be necessary to consider the other aspects of the plaintiff's claim, namely that the impugned provisions are unconstitutional, and/or incompatible with the ECHR. In accordance with the judgment in Carmody v. Minister for Justice [2010] 1 I.R. 635, this judgment will first assess questions of constitutionality before turning to consider the compatibility of the legislation with the ECHR. At p. 650 of Carmody, Murray C.J. pointed out:-

"… when a party makes a claim that an Act or any of its provisions is invalid for being repugnant to the Constitution and at the same time makes an application for a declaration of incompatibility of such Act or some of its provisions with the State's obligations under the Convention, the issue of constitutionality must first be decided.

If a court concludes that the statutory provisions in issue are incompatible with the Constitution and such a finding will resolve the issues between the parties as regards all the statutory provisions impugned, then that is the remedy which the Constitution envisages the party should have. Any such declaration means that the provisions in question are invalid and do not have the force of law. The question of a declaration pursuant to s. 5 concerning such provisions cannot then arise. If, in such a case, a court decides that the statutory provisions impugned are not inconsistent with the Constitution then it is open to the court to consider the application for a declaration pursuant to s. 5 if the provisions of the section including the absence of any other legal remedy, are otherwise met."

5. As will be explained, the Court does not conclude that any of the statutory provisions impugned are inconsistent with the Constitution. The conclusion is, rather, that procedures which have been adopted in purported compliance with s. 60 of the Act of 2001 are to be applied in a constitutional manner, which process, in this specific category of cases, involves a right to independent review and assisted (rather than substituted) decision making. The incursion into the plaintiff's constitutional rights is very significant. It involves medical treatment against her will. The conclusion is that it is only in this manner can the rights of the plaintiff under the Constitution be vindicated "as far as practicable" (Article 40.3 of the Constitution). I do not think such vindication can take place unless the steps outlined here are an integral part of the process and, allow for remedies commensurate with the protection of rights. To decide whether the plaintiff is entitled on a mandatory basis to an independent tribunal or court to determine the issues as to her treatment, and in light of the connections between rights identified in the Charter of Fundamental Rights in European Union jurisprudence and the ECHR, it will then be necessary to outline some current jurisprudence of the Strasbourg Court. The judgment follows the following sequence therefore. Having outlined the statute law and the evidence, it asks first can the issues be decided and finally disposed of by an issue of law other than constitutional law (section 1) (see The State (Woods) v. Attorney General and Murphy v. Roche). This question is answered in the negative. Section 2 addresses the constitutional issues (see Carmody). Section 3 addresses whether the plaintiff is entitled to a declaration regarding an independent tribunal or court under s. 5 of the European Convention of Human Rights Act 2003, in the absence of any other legal remedy.

6. Finally, the judgment addresses the issue of the plaintiff's locus standi (section 4). While parts of this judgment may overlap with the earlier judgment relating to the same plaintiff, for completeness it is necessary to outline certain of the statutory provisions in detail.

The provisions of the Mental Health Act 2001

7. Section 2 of the Act provides:-

"2(1) In this Act, save where the context otherwise requires— …
'treatment', in relation to a patient, includes the administration of physical, psychological and other remedies relating to the care and rehabilitation of a

patient under medical supervision, intended for the purposes of ameliorating a mental disorder;"

…

Section 4 provides:-

"4(1) In making a decision under this Act concerning the care or treatment of a person (including a decision to make an admission order in relation to a person), the best interests of the person shall be the principal consideration with due regard being given to the interests of other persons who may be at risk of serious harm if the decision is not made.

(2) Where it is proposed to make a recommendation or an admission order in respect of a person, or to administer treatment to a person, under this Act, the person shall, so far as is reasonably practicable, be notified of the proposal and be entitled to make representations in relation to it and before deciding the matter due consideration shall be given to any representations duly made under this subsection.

(3) In making a decision under this Act concerning the care or treatment of a person (including a decision to make an admission order in relation to a person) due regard shall be given to the need to respect the right of the person to dignity, bodily integrity, privacy and autonomy."

Part 4 of the Act deals with the question of consent to treatment. For present purposes ss. 56-60 must be read together. They provide as follows:-

"56. In this Part 'consent', in relation to a patient, means consent obtained freely without threats or inducements, where—
(a) the consultant psychiatrist responsible for the care and treatment of the patient is satisfied that the patient is capable of understanding the nature, purpose and likely effects of the proposed treatment; and

(b) the consultant psychiatrist has given the patient adequate information, in a form and language that the patient can understand, on the nature, purpose and likely effects of the proposed treatment."

Section 57 of the Act provides:

"57(1) The consent of a patient shall be required for treatment except where, in the opinion of the consultant psychiatrist responsible for the care and treatment of the patient, the treatment is necessary to safeguard the life of the patient, to restore his or her health, to alleviate his or her condition, or to relieve his or her suffering, and by reason of his or her mental disorder the patient concerned is incapable of giving such consent.

(2) This section shall not apply to the treatment specified in sections 58, 59 or 60."

8. It is important to point out, therefore, that s. 57 does not apply in relation to forms of treatment specified in s. 60. The latter section deals with a position where it is necessary to administer medicine for a continuous period of three months. The evidence now clearly establishes that the treatment regime adopted in the case of the plaintiff is that identified in s. 60, and, contrary to what is asserted on behalf of the plaintiff, not under s. 57 of the Act. Sections 58 and 59 of the Act are not relevant. However, s. 60 provides:-
"60. Where medicine has been administered to a patient for the purposes of ameliorating his or her mental disorder for a continuous period of 3 months, the administration of that medicine shall not be continued unless either—
(a) the patient gives his or her consent in writing to the continued administration of that medicine, or

(b) where the patient is unable or unwilling to give such consent—

(i) the continued administration of that medicine is approved by the consultant psychiatrist responsible for the care and treatment of the patient, and
(ii) the continued administration of that medicine is authorised (in a form specified by the Commission) by another consultant psychiatrist following referral of the matter to him or her by the first-mentioned psychiatrist,

and the consent, or as the case may be, approval and authorisation shall be valid for a period of 3 months and thereafter for periods of 3 months, if, in respect of each period, the like consent or, as the case may be, approval and authorisation is obtained."
9. During the four day hearing, a number of witnesses testified regarding the treatment regime. I would emphasise that all the evidence indicates that the greatest care has been taken by each of the practitioners involved in the plaintiff's care in a unique and very difficult situation.
The evidence on capacity

Dr. Paul O'Connell
10. Dr. Paul O'Connell is employed as Consultant Forensic Psychiatrist in the Central Mental Hospital. Earlier in the case, he set out the nature of his first involvement in the provision of care to the plaintiff. He is the primary treating psychiatrist responsible for her care. He gave a detailed account of the course of her treatment, along with her medical and forensic history dating from 2007.

11. The plaintiff's diagnosis is one of treatment resistant paranoid schizophrenia, the salient symptoms of which include auditory hallucinations, which take the form of mocking voices, which are at different times attributed to members of the staff or laughter of small children. Associated with these hallucinations, the plaintiff has reported the delusional belief that she has been

controlled by the voices or, more often, by members of staff. When acutely psychotic, the plaintiff admits to urges to assault or kill members of staff. At times, she exhibits various behaviours including agitated pacing, facial expression of excitement and fixed staring at those she believes are mocking her. At such times she has made efforts to, and has assaulted, members of staff. As was pointed out earlier, prior to being placed in the Central Mental Hospital, she harboured urges to harm, or even to kill small children.

12. In the course of the hearing of these proceedings, Dr. O'Connell gave further testimony on the question of capacity. He was satisfied, as the treating consultant that the plaintiff was not capable of fully understanding the nature, purpose and likely risks of the proposed treatment. He concluded the plaintiff's understanding was made up of different components. His clinical view has remained consistently, that the plaintiff could not form a balanced judgment in relation to the treatment being afforded to her. She saw both the staff and himself as a threat to her. She was delusional, and while she would not admit to hallucinating, he was of the strong clinical conclusion that she was hallucinating. He was also of the firm clinical opinion that the plaintiff lacked capacity because of her mental disorder and therefore was, to quote him, "unable to consent to, or refuse, either the administration of anti-psychotic medication, or the ancillary and necessary blood tests associated with that treatment course".

13. The witness went on to conclude that the plaintiff's illness has the effect of impairing her reasoning, emotional regulation, and judgment. Although she is able to register and retain information with respect to her care and treatment, she remains unable to exercise her judgment in coming to a balanced decision about that treatment, insofar as she lacks insight and fails to appreciate the nature of her mental illness and the need to receive treatment. She fails to appreciate that her illness, if untreated, would represent a serious and immediate risk to herself and others, and would inevitably deteriorate, exacerbating that risk.

Professor Harry Kennedy

14. Professor Harry Kennedy, Consultant Forensic Psychiatrist and Executive Clinical Director of the National Mental Health Service at the Central Mental Hospital testified that his function was as leader of the team of psychiatrists working in the hospital. He described his responsibility for clinical governance and for the planning of modernised services. He testified that when ill, the plaintiff has homicidal preoccupations which focus particularly on children, or on the children of those who come into contact with her. He said that the plaintiff loses insight, and her capacity to give or withhold consent to treatment, is at its lowest. He, too, testified that when the plaintiff became agitated, she attacked doctors and nurses causing significant injuries. On such occasions, it was necessary that she be secluded for her own safety, and that of others. At times, this seclusion has had to be for prolonged periods which have been monitored by the Mental Health Commission Inspectorate of Mental Health Services.

15. Professor Kennedy pointed out, importantly, that capacity can fluctuate, and that many patients in the hospital experience differing levels of capacity at different times. He considered that it would be profoundly wrong to assume that all patients in the hospital lack capacity. Where a patient has capacity, they are encouraged to take their full role in the therapeutic decision making regarding their care and treatment. Professor Kennedy has a particular professional interest in this issue. He has led a research team that has published learned articles on the assessment of mental capacity to consent to treatment, and that subject forms part of his teaching responsibilities. He too, was of the strong professional opinion that the plaintiff lacked capacity to give or withhold consent to treatment. She does not understand the information about her mental health and the treatment options, lacks the ability to reason about these options, and is unable to compare such choices. She is unable to reason about the possible or potential side effects or consequences of the treatment. He testified that she is unable to appreciate the importance of information about mental health and mental illness for herself. She does not believe information because of her paranoia, her delusions, and her impaired capacity to reflect on her situation.

16. Professor Kennedy highlighted a number of the procedural safeguards in place in the Central Mental Hospital. All patients in the hospital are subjected to regular multi-disciplinary review. A treating doctor in a situation such as this does not act alone. He pointed out that there is in being, a process of obtaining second opinions from a consultant psychiatrist who is not attached to the hospital. This is not unique to this case but is rather a consistent feature of treatment in the hospital since the commencement of the Act of 2001.

17. The witness took issue with a typification of the treatment regime as being one "imposed against the plaintiff's will". He stated that, rather, treatment is provided in the absence of her capacity to make decisions, and subject always to independent review and safeguards. Second, he testified that it was the plaintiff's illness, and not the views of her treating doctors, that deprived her of the ability to consent to, or refuse treatment. Every effort is made to engage a patient in the decision-making process. If, and when, a patient such as the plaintiff regained sufficient mental capacity, she will then be again empowered to make decisions regarding her treatment including the then regained ability to give or withhold consent. Professor Kennedy also expressed the view that the UNCRPD, to which reference was made earlier, did not contain any explicit condemnation of "paternalism", which he summarised as being an ethical principle of protecting the best interests of vulnerable persons and which, he claimed, was not in conflict with a rights based respect for disabled people as persons. This part of the testimony is particularly relevant, and I will return to it later.

18. The witness took issue with a contention that disability was seen through medical criteria as a deviation from the norm which he characterised as a polemic "straw man". He distinguished between "disability" (not an inherently

medical categorisation being a qualitative term defining status in society before the law), and, on the other hand, medical measurements of impairment due to disorder which are quantitative. The former "qualitative" approach is inherently more reductive, and hence lends itself to ease of definition and legal convenience; as opposed to the latter quantitative medical approach which recognises degrees of impaired and restored mental capacity. He entirely rejected any suggestion that the plaintiff had been subjected to inhuman or degrading treatment. In fairness, it must be pointed out that any such suggestion was withdrawn by the plaintiff's legal advisers. Professor Kennedy's view was that it was the plaintiff's own lack of capacity which constituted an infringement on her rights and rendered her unable to exercise those rights. He described it as unhelpful and damaging to therapeutic relationships to imply that a "finding" by psychiatrists, rather than the absence of capacity of itself, was what was important.

Dr. Ian Bownes

19. It is important here to re-emphasise that the defendant, (the HSE), assisted in the retention of an independent psychiatrist to testify on behalf of the plaintiff. Dr. Ian Bownes is a Consultant Forensic Psychiatrist with the South Eastern Health and Social Trust in Northern Ireland. He is a Forensic Psychiatrist with the Northern Ireland Prison Service. His report was furnished to the Court and admitted in evidence. He examined the plaintiff on behalf of her solicitors, and presented a report to the court with his assessment of her condition. That assessment is largely, if not entirely corroborative of the views of Dr. O'Connell and Professor Kennedy.

Dr. Brendan Kelly's evidence – the "Form 17" procedure

20. Dr. Brendan Kelly is a Consultant Psychiatrist at the Mater Misericordiae University Hospital and Senior Lecturer in Psychiatry at University College, Dublin. He was retained by the HSE on a national panel of consultants who are in a position to carry out assessments for the purposes of s. 60 of the Act of 2001. He explained that the function of the independent psychiatrist, carrying out a s. 60 assessment, is to exercise a fully independent clinical judgment in appraising the situation. He noted that, in the past, he had had occasion to disagree with responsible consultant psychiatrists, and had no difficulty in so doing. On a number of occasions in this case, Dr. Kelly completed the Mental Health Commission forms recording his decisions pursuant to s. 60 authorising the continued administration of medicine without consent to the plaintiff. These forms are referred to as "Form 17".

21. In evidence, Dr. Kelly described the number of occasions when he carried out examinations in pursuance of the Form 17 procedure. He described the structure of such an examination as follows. First, the clinician considers whether a patient suffers from a mental disorder as understood in the 2001 Act. Second, that clinician considers the question of capacity and insight. This includes a consideration of whether the patient has any understanding of his or her illness, (including whether they accept that they are in fact ill), the proposed treatment, and the purposes of that treatment. Third, if the patient has capacity or is found to so have, the question of whether the patient is willing to undergo the treatment is next considered. Fourth, the proposed medication regime is

considered, and particularly, whether it will likely benefit the patient. Finally, the clinician records his notes in writing in accordance with the structured mental state examination structure. In doing so he summarises the key issues, before forming a view on the entire examination which is then reflected on the completed Form 17, which is checked and then signed.

22. Dr. Kelly was satisfied that each time he was requested to authorise the continuance of medication to the plaintiff without her consent, he carried out an independent examination and assessment, and concluded that, first, the plaintiff was unable to consent to treatment, and second, that she would benefit from the continuation of the treatment with the medication in question. He had examined the plaintiff on at least six occasions between November 2010 and December 2011. Finally, he agreed with an analysis of the plaintiff's doctors regarding the taking of blood samples in conjunction with the administration of the anti-psychotic medication in question, and noted that, to date, and to the best of his knowledge, nobody in the State had died from Agranulocytosis resulting from the administration of Clozapine following the introduction of a mandatory blood testing requirement.

Findings on the section 60 procedure

23. I am satisfied that each of the doctors faithfully complied with the procedure laid down under Form 17, which, itself, forms part of treatment under section 60. The evidence established conclusively that the situation which existed is not one where the treatment regime was being administered under s. 57 which, among other areas, deals with treatment which is required urgently to safeguard a patient's life or to restore him or her to health. Section 57 treatment arises when the patient is "incapable" of giving consent. The evidence clearly establishes that here the medicine has been, to use the terms deployed in s. 60 of the Act, "administered to a patient for the purposes of ameliorating … her mental disorder for a continuous period of 3 months" and where "the patient is unable or unwilling to give consent".

24. Some idea of the extent of the difficulty in this case can be derived from Dr. Bownes reports, where he described visiting X on a number of occasions. On those occasions her mood fluctuated. On the first occasion, she was pacing backwards and forwards, muttering to herself relentlessly for the duration of the interview. She became increasingly agitated on questioning, and her narrative became tangential, poorly structured, contradictory and internally inconsistent.

25. On a later visit, on 26th February, 2012 the plaintiff welcomed him warmly with a handshake using his correct name and recalled the previous examination. She was able to sit at peace during the session. Nevertheless, during the course of the interview, her mood became increasingly low, irritable, and perplexed, and she evinced extraordinarily hostile and homicidal attitudes towards her doctors. She felt that her doctors were poisoning her, and were administering her medication which was in some sense being kept a secret from her. She also showed suicidal ideation, and stated that she would kill herself "at the first opportunity". She stated that her family never visited her, but that her

children were well looked after and there was now no need for her to stay alive. It is difficult, therefore, to exaggerate the extremely tragic nature of the plaintiff's illness.

26. Section 60 of the Act addresses the limited circumstances in which a finding of incapacity takes place. It requires that two decisions be made, the first on the appropriateness of the medicine proposed, and the second on the issue of consent by the responsible consultant. These decisions must then be approved by the independent consultant psychiatrist before the treatment can be authorised. All this was done in the plaintiff's case. The case, insofar as it relates to a challenge to the constitutionality of s. 57 of the Act is unsustainable. I am unable to conclude that the provisions of s. 57(1) are engaged at all. Moreover, I think it would be inconsistent with the earlier judgment in these proceedings to adopt anything but a broad and purposive approach to the concept of "treatment". As such, any treatment which is ancillary to principal "treatment" administered pursuant to s. 60 of the Act must benefit from the same protections and prescriptions as that principal treatment. This does not absolve the Court from a consideration of the issues arising from the treatment regime however.

The procedural safeguards under s. 60 of the Act

27. The focus of analysis in this judgment must be confined to the terms of s. 60 on the administration of medicine and the safeguards identified in that section. This is not a case where there is a dispute in relation to the correctness of the treatment. It is clear that the responsible treating consultant psychiatrist, and the independent consultant, Dr. Kelly, at an early stage clinically assessed the plaintiff's capacity to consent to the proposed treatment as part of their respective functions. Dr Bownes agreed with this diagnosis and proposed treatment.

Matters not addressed in Form 17

28. It is important also to emphasise, however, that the contents of Form 17 are set out in what might be termed "box" form. After a description of the patient, her location, the treating psychiatrist, the medication intended, and how it will benefit the patient, the form simply sets out options for the independent consultant to identify whether the patient is unable or unwilling to give consent to the treatment. Dr. Kelly indicated that the plaintiff was unable to give such consent. The form, thereafter, identifies the name of the independent consultant psychiatrist and how the details of the treatment will benefit the patient. However, it goes no further. The form does not address the patient's views at all. This has consequences which are addressed later in the judgment. I now turn to consider whether the UNCRPD is directly effective in the State.

Section 1 – Can the issues be decided and finally disposed of by an issue of law other than constitutional law?

The United Nations Convention on the Rights of Persons with Disabilities

29. The European Union acceded to the UNCRPD through Council Decision 2010/48/EC, formally adopted on 26 November, 2009. The instrument of ratification on behalf of the EU was then deposited in December 2010. This was

the first occasion that the EU became a party to an international human rights treaty, and that an intergovernmental organization had joined with a United Nations human rights treaty. Although a signatory to the UNCRPD, Ireland has not, as yet, itself ratified the Convention.

30. The Convention specifies rights and obligations with regard to persons with disabilities. Of particular relevance to the present case are Articles 12(1) and (2) which provide:

"1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life."

It is right to say that the values enunciated in the Convention constitute a "paradigm-shift" in the manner in which persons with disabilities are to be treated by, and before, the law. However, the Convention, in its preamble, also acknowledges the diversity of persons with disabilities. Therefore, in considering the applicability and the interpretation of the Convention, due regard must be had to the individual circumstances of each individual. What is the legal status of the Convention within the State?

31. Article 300(7) of the Treaty for the Establishment of the European Community ("TEC") provides that international treaties, once concluded by the EU, are binding on European institutions and Member States, provided that they relate to areas of EU competence. The European Court of Justice ("ECJ") has adopted a "monist" approach to international agreements, whereby such agreements have legal effect without the requirement for further active implementation (see the decision in Haegemen v. Belgium [1974] E.C.R. 449). Under certain conditions, international agreements can, in principle, be invoked before a national court by an individual, if there is direct effect (see Demirel v. Stadt Schwabish Gmund [1987] ECR I-3719). In order for there to be such effect, the provisions sought to be relied on must be clear, precise and unconditional. It is argued that the terms of Article 12 come within these criteria.
32. Counsel for the plaintiff contends that the main objective of the UNCRPD is the equal treatment of, and the prohibition of discrimination against, disabled persons. It is important to the argument now made, to state that it is the plaintiff's contention that this area is also covered in 'large measure' by Community law – for example, Directive 2000/43/EC, which governs non-discrimination on the grounds of ethnic origin; Directive 2000/78/EC, which establishes a general framework for equal treatment in employment and occupation; Directive 2002/73/EC, which governs the equal treatment of men and women in the employment sphere; and Directive 97/80/EC, which governs matters of proof in sexual discrimination cases. The plaintiff argues that as a Member State of the European Union, Irish law must give force to Article 12 as part of their obligations under the EU's legal order.

33. Two questions arise from these contentions. First, this Court must consider whether the principles set out in the UNCRPD, despite Ireland's non-ratification, have the force of law in this jurisdiction. In order to establish her case, the plaintiff would be required to establish (a) that the relevant provision of the UNCRPD falls within a community competence which had been exercised to a "large degree" or was an "integral part of Community law"; and, also, (b) that the provision sought to be enforced is sufficiently clear, concise and unconditional as to be capable of itself directly regulating the legal position of individuals. Alternatively, the Court is asked to consider whether the UNCRPD is a "guiding instrument" in respect of the interpretation of the plaintiff's constitutional rights, or her rights under the European Convention of Human Rights.

(a) Community competence

34. The UNCRPD is a mixed international agreement where the EU, its member states, and other third party states are contracting parties. As a mixed agreement, the UNCRPD does, in fact, cover fields that, in part, fall within the competence of the EU; in part within the competence of member states; and in part within the shared competence of the EU and its member states. This issue will be explained in greater detail later. However, it is not the case that, once the EU ratifies an international convention, its subject matter automatically falls within its competence, and is thus directly enforceable in its member states. Nor is such convention enforceable simply by virtue of the fact that the EU has legislated in some of the areas which the Convention addresses.

35. Member states, when participating in mixed agreements, are subject to a duty of loyal cooperation between one another and the EU, deriving from Article 4(3) of the TFEU. This duty of loyal co-operation embraces two sets of obligations. First, member states must take appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the TFEU, or resulting from action taken by EU institutions. Second, member states must facilitate the achievement of the EU's tasks, and abstain from any measures which could jeopardise the attainment of the objectives of the TFEU.

36. The plaintiff relies on principles enunciated in Commission v. France [2004] E.C.R. I-09352, in which the issue was whether France, in failing to take all appropriate measures to prevent, abate and combat heavy pollution of the lagoon area known as the Étang de Berre, had breached its obligations under Articles 4(1) and 8 of the Convention for the Protection of the Mediterranean Sea Against Pollution and its Protocol, which had been signed and approved on behalf of the European Economic Community by two Council Decisions. The European Court of Justice held that the fact that there had been no EEC legislation covering the nature of the breach committed by France did not release that state from its obligations under the Convention. The breach fell within Community law, because the Convention and Protocol was a mixed agreement in a field in "a large measure covered by Community law". Thus, in such cases, there was "a Community interest in compliance by both the Community and its Member States with commitments entered into". Therefore, a member state must implement such a mixed agreement, provided the

measure to be implemented falls within the competence of the EU, either by way of being covered by Community legislation, or, where the particular issue was "covered in large measure" by Community legislation.

37. At Article 44(1), the UNCRPD requires regional integration organisations such as the EU, who accede to the Convention to declare the extent of their competence in their instruments of formal confirmation or accession. The Council Decision sets out the legal basis under the Treaties by which the EU has ratified the UNCRPD, and also lists EU instruments that demonstrate its competence. The Council Decision also provided that the extent of the EU's competence must be assessed by reference to the precise provisions of each measure, and in particular, the extent to which the provisions establish common rules. The Decision goes on to say that the scope and the exercise of EU competence are subject to continuous development, and that the EU will complete or amend its declaration, if necessary in accordance with Article 44(1) of the UNCRPD. It is thus possible to identify which areas of the UNCPRD fall under EU competence, and which do not.

38. Despite a Commission proposal to use a number of legal bases (Articles 13, 26, 47(2), 55, 71(1), 80(2), 89, 93, 95 and 285 EC in conjunction with Article 300(2), and the first subparagraph of Article 300(3) EC), in fact the Council selected only two substantive legal bases, namely Article 13 and Article 95 EC, in conjunction with the (procedural) provisions of Article 300(2) EC and Article 300(3) EC, as authorising the EU to conclude the UNCRPD. This has some legal significance, in that the ECJ has ruled that the legal basis cited gives an indication to the other contracting parties of the extent of EU competence, and the division of competence between the EU and its member states (see Commission v. Council [2006] E.C.R I-00001). However, although the choice of legal basis for the decision is of some significance, it is not decisive for implementation, as the ECJ has also held that it is not necessary for the same provisions to be used as the legal basis for the adoption of the measures intended to implement the agreement at Community level (see Commission v. Parliament [2006] E.C.R. I-00107).

39. The Court has been referred to a report compiled by the European Foundation Centre in response to a request by the European Commission in 2010 to carry out a study in relation to the implementation of the UNCRPD. The aim of the study was to analyse in detail the obligations set out there, and to gather information about the various practices relating to the implementation of the Convention by the EU and its member states. This study was designed to support the objectives of the current EU Disability Acton Plan; which, too, emphasised full participation and equal opportunities for all people with disabilities, and which was intended to contribute to the preparation of the new EU Disability Strategy, based more explicitly on the UNCRPD. The project team carrying out the study included a wide range of experts in the field of disability law and policy, including many persons who took part in the negotiations of the UNCRPD, and who made submissions to the ad hoc committee of the UNCRPD as to the drafting of the Convention. This report has

been admitted into the case without any dispute. I am prepared, therefore, to admit it as being a useful reference work and as an aid to interpretation. The plaintiff's submissions face an immediate difficulty here.

40. In a table provided therein at p. 40, the Article in question here, Article 12 is stated to fall solely within the competence of Member States. It is not within EU competence, or the shared competence of the EU and Member States.

41. The report also notes that before the Council Decision issued, the High Level Group on Disability (HLGD), in its first report on UNCRPD, identified nine areas of interest for the EU, considering both the EU, and its member states, with regard to implementation. These areas included legal capacity under Article 12. The Report points out that some of the matters addressed by the HLGD were beyond the EU competence to act. Notwithstanding this, in 2008, member states confirmed that collaboration at European level would be of added value in implementing the UNCRPD, and that the EU would become the "platform" to facilitate this collaboration. However, the only clear inference from this is that, as matters stand, Article 12 lies outside the EU competence. The Report also points out that some member states expressed reservations in relation to Article 12.

42. By way of distinction, the ECJ recent addressed the direct applicability of international agreements in Lesoochranarske Zoskupenie, C-240/09, 8th March 2011, where the issue at stake was Article 9(3) of the Aarhus Convention dealing with access to administrative or judicial procedures. There, the ECJ specifically held that the objective of the Aarhus Convention was consistent with the objectives of the Community's environmental policy listed in Article 174 of the EC Treaty. This was found to be an area in which the Community did share competence with its member states, and where a comprehensive body of legislation was evolving and contributing to the achievement of the objective of the Convention, not only by its institutions, but also by public bodies within its member states.

43. As matters stand, however, the same cannot be said of the law relating to mental capacity, an area in which to date, the EU has not assumed any large or appreciable jurisdiction. Furthermore, the measures to which the plaintiff referred, do not support the assertion that, at present, the EU has legislated or exercised a large degree of competence in the matters governed by Article 12. I am not convinced that Directive 2000/43/EC, Directive 2002/73/EC, nor Directive 97/80/EC are, in the relevant particulars, comparable to the questions of legal capacity, or to the detention and treatment of persons in the category of the plaintiff. I must accept the submission made on behalf of the Attorney General that the Commission v. France case is distinguishable as that case concerned a shared competence between the EU and member states.

44. There being no such competence here, I must conclude, therefore, that as the law stands, the plaintiff's argument on this point cannot succeed.

(b) Direct applicability

45. The question also arises as to whether Article 12 is capable of being directly applicable. It is contended on behalf of the Attorney General that the Article constitutes a "principle not a rule" and is dependent on subsequent measures to identify a particular manner in which the principle may be respected. It is not necessary for this Court to express a view on this point. For the reasons outlined earlier, the court does not consider that the UNCRPD can, as yet, be seen as a rule in the interpretation of an application of EHCR jurisprudence or, through that avenue, to E.U. rights law. This does not, however, prevent the UNCRPD being a guiding principle in the identification of standards of care and review of persons in this category.

46. As matters stand, the realm of EU law has not yet extended to the area of mental health law, nor to the issue of legal capacity. However, the rights of equal treatment and non-discrimination are core values in the EU legal order. As far as the present case goes, it has not been shown the right to equal treatment, as enshrined in the UNCRPD, is presently part of the EU's legal order such that Article 12 UNCRPD creates directly enforceable rights or obligations.

47. The law in this area is evolving, both in the legislative and judicial realm. It is of interest that a recent judgment, R. (on the application of NM) v. the London Borough of Islington and Northamptonshire County Council and Others [2012] EWHC 414, Sales J. observed at para. 102 that:-

"In principle, a point might be reached when the [UN]CPRD has been ratified by sufficient European states, or when sufficient European states have brought their domestic law and practice into line with the standards set out in the CPRD, that the CPRD or the practice flowing from it could be taken to amount to a relevant European consensus to inform the interpretation and application of the Convention rights. Also, though the position is less clear, a point might be reached where the CPRD is taken to be a leading international instrument establishing an appropriate standard against which to judge the conduct of member states of the Council of Europe, as in relation to other international instruments…"

48. However, that judge expressed reservations as to whether the Convention has yet acquired this significance for the purposes of interpretation in light of the significant number of member states which have yet to ratify it. Sales J. observed that none of the Strasbourg authorities cited to him in that case went as far as to say that an individual could, in substance, rely on the provisions of UNCRPD under the guise of relying on ECHR rights. If the rights asserted here are not to be found in EU law which is directly effective in the State, can they be found elsewhere and if so, precisely which rights?

Section 2 – Decision as to the constitutionality of the impugned provisions

Constitutional requirements

49. What are the applicable constitutional and legal principles? The facts of the present case from two legal authorities where the question of consent has been very comprehensively considered. These were Fitzpatrick & Anor. v. K. [2009] 2 I.R. 7 and Re Ward of Court (Withholding Medical Treatment) (No. 2)

[1996] 2 I.R. 79. By way of distinction from Fitzpatrick, we are not dealing, here, with a person, who was, at least prima facie, of full capacity although as was held, there, that the patient's capacity had been affected by the influence of others. Nor are we considering a situation such as that which arose in Re Ward of Court (No. 2), where the ward was in a condition known as P.V.S. or persistent vegetative state. But what is involved here is involuntary medication, together with the invasive taking of blood samples by a syringe on a regular basis. The plaintiff strongly objects to the procedure. The invasive nature of the treatment results in a loss of bodily integrity and dignity. (see the judgment of Denham J. in Re Ward of Court, cited above, at p.158 of the report)

50. In the latter case, the High Court, at first instance, had the opportunity of considering evidence from family members of the ward as to what her wishes would have been had she been in a position to speak about her tragic situation. By virtue of the ward's legal status, the court was vested with jurisdiction over all matters relating to her person and estate, and in the exercise of its jurisdiction, was subject only to the provisions of the Constitution. The High Court, and on appeal the Supreme Court, held that, in the exercise of that jurisdiction, the prime and paramount consideration must be the best interests of the ward. Both Courts found that, although the views of the committee and family of the ward were factors to be taken into consideration, they could not prevail over the court's view as to what was in the ward's best interests. The Supreme Court upheld the finding of the trial judge that the court should approach from the standpoint of a prudent, good and loving parent in deciding what course should be adopted, and held that the treatment being afforded by means of a gastrostomy tube, surgically inserted into the stomach was an intrusive interference with the ward's bodily integrity, and could not be regarded as a "means of nourishment". The care and treatment being afforded constituted medical treatment and not merely medical care. The Supreme Court held that the nature of the right to life, and its importance, imposed a strong presumption in favour of taking all steps capable of preserving it, save in exceptional circumstances. However, it concluded that, if the ward had been mentally competent, she would have had the right to forego or discontinue her treatment, and the exercise of that right would be lawful in the pursuance of her constitutional right to self determination implicit in her right to bodily integrity and privacy. However, this right did not include the right to have life terminated, or death accelerated, and was confined to the natural process of dying. The court decided that the loss by the ward of her mental capacity did not result in any diminution of her personal rights recognised by the Constitution, including the right to life, bodily integrity, privacy (including self determination), or the right to refuse medical treatment.

51. At the statutory level, s. 60 provides for a mechanism whereby the plaintiff's rights, and those of the community, can be balanced and protected. That is not to say, of course, that her rights could not also be vindicated under the inherent jurisdiction of this court, that jurisdiction having been invoked in this case. But there are constitutional dimensions to this case which cannot be ignored. In the next paragraphs, the main emphasis is on the concept of

decision making. It logically follows that the observations which are made here, also apply to a right of independent review, a statutory right provided by s. 60 itself.

52. The plaintiff's complaint is that the review procedure, as outlined earlier, insufficiently vindicates her constitutional rights, and fails to give recognition to rights identified in the jurisprudence of the European Court of Human Rights. Her counsel contends that the effect of the current procedure results in what is termed "substituted decision-making" (bearing the hallmarks of a paternalistic approach to the treatment of mental health patients), rather than "assisted decision-making" which better vindicates the range of rights engaged. For brevity, the range of values and rights involved will be collectively referred to as "personal capacity rights". These comprise the Article 40.3 values of self-determination, bodily integrity, privacy, autonomy and dignity, all unenumerated, but identified in case-law, as well as the explicit right to equality before the law, as identified in, and qualified by, Article 40.1 of the Constitution. For the purposes of consideration here, these are all, whether characterised as values or rights, capable of vindication in the courts. The case is now made that both the treatment regime, and the protections therein, fail properly to reflect the changes and provisions under the United Nations Convention on the Rights of Persons with Disabilities which, by contrast, aims at encouraging assisted decision-making and seeks to vindicate the interests of disabled persons.

53. Prior to a consideration of those rights, it is worthwhile recollecting the observations of Costello J. in R.T. v. Director of the Central Mental Hospital [1995] 2 I.R. 65, where he drew attention to the concept that, in considering the safeguards necessary to protect the rights of vulnerable people, regard should be had to the standards set by the recommendations and conventions of international organisations of which this country is a member. The superior courts have resorted to international human rights instruments in order to interpret appropriate constitutional standards in a number of cases. In The State (Healy) v. Donoghue [1976] I.R. 325, the Supreme Court had regard to Article 6 of the European Convention of Human Rights and also to the United States Constitution. In O'Leary v. The Attorney General [1993] 1 I.R. 102, Costello J. referred to Article 6(2) ECHR; Article 11 of the United Nations Universal Declaration on Human Rights; Article 8 (2) of the American Convention on Human Rights; and Article 7 of the African Charter of Human Rights in holding that the presumption of innocence in a criminal trial was one which enjoyed "universal recognition". Are these principles of interpretation applicable here?

54. Article 40.1 of the Constitution provides:-

"1.All citizens shall, as human persons, be held equal before the law.
This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function…."

At Article 40.3 it is provided:-

"1. The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.
2. The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen."

55. Hitherto, arising from the facts in each case, decisions of the Superior Courts in this area have tended to lay emphasis on a paternalistic intent of legislation concerning persons with incapacity. This approach, very much in line with long-established decided authority, was most recently reiterated by the Supreme Court in E.H. v. Clinical Director of St. Vincent's Hospital [2009] 3 I.R. 774.
56. By way of illustration of the approach, in Gooden v. St. Otteran's Hospital [2005] 3 I.R. 617, McGuinness J. pointed out, at p.633, that:-

"In Re Philip Clarke [1950] I.R. 235 the former Supreme Court considered the constitutionality of s. 165 of the Act of 1945. O'Byrne J. who delivered the judgment of the court described the general aim of the Act of 1945 at pp. 247-248 thus:-

'The impugned legislation is of a paternal character clearly intended for the care and custody of persons suspected to be suffering from mental infirmity and for the safety and wellbeing of the public generally. The existence of mental infirmity is too widespread to be overlooked and was, no doubt, present to the minds of the draftsmen/draughtsmen when it was proclaimed in Article 40.1 of the Constitution that though all citizens as human persons are to be held equal before the law, the State, may, nevertheless in its enactments, have due regard to differences of capacity, physical and moral, and of social function. We do not see how the common good would be promoted or the dignity and freedom of the individual assured by allowing persons, alleged to be suffering from such infirmity to remain at large to the possible danger of themselves and others.'" (emphasis added)
57. In E.H., Kearns J., speaking on behalf of the Supreme Court, observed that the same principle should be adopted in interpreting the provisions of the Mental Health Act 2001, again, in issues concerning personal liberty. He stated:-
"I do not see why any different approach should be adopted in relation to the Mental Health Act 2001, nor, having regard to the Convention, do I believe that any different approach is mandated or required by Article 5 of the European Convention on Human Rights 1950."
58. However, it is noteworthy that these observations, very understandably on the facts, deal with the interpretation and application of the statutes predominantly in the context of the right to liberty and the right to fair trial. The position here is distinct. The case before this Court does not concern the right to liberty or fair trial, but rather, the plaintiff's entitlements while being treated in involuntary care.

59. I do not think there is anything inconsistent with the avowedly paternalistic nature of the legislation or that jurisprudence, insofar as they concern liberty, in also ensuring that the wishes and choices of a person suffering from a disability, while under such care, should be guaranteed in a manner which, "as far as practicable" (to use the phrase adopted in Article 40.3.1 of the Constitution), vindicates his or her personal capacity rights. The interpretation of the Constitution in this area of the law should be informed by, and have regard to international conventions. This principle of interpretation, of course, applies a fortiori in relation to the regard which, as a matter of law, must be had to decisions of the European Court of Human Rights (see ss. 2-5 of the European Convention on Human Rights Act 2003).

60. That the Constitution is a living instrument which adapts to protect rights that develop over time cannot be controverted. In The State (Healy) v. Donoghue [1976] I.R. 325, O'Higgins C.J. observed of the values espoused in the preamble to the Constitution that:-

"The judges must therefore, as best they can from their training and their experience interpret these rights in accordance with their ideas of prudence, justice and charity. It is but natural that from time to time the prevailing ideas of these virtues may be conditioned by the passage of time; no interpretation of the Constitution is intended to be final for all time. It is given in the light of prevailing ideas and concepts…"

61. Should this Court then have reference to the UNCRPD if not as a rule, then at least as a guiding principle? The values in question here are in no sense contrary to any provision of the Constitution. The UN Convention affirms the contemporary existence of fundamental rights for persons with a mental disorder. Although the UN Convention itself is not part of our law, it can form a helpful reference point for the identification of "prevailing ideas and concepts", which are to be assessed in harmony with the constitutional requirements of what is "practicable" in mind. A court will, of course, (subject to the qualification pronounced in McD. v L. [2010] 2 I.R. 199) also "have regard" to the jurisprudence of the European Court of Human Rights to which Ireland also adheres on the basis of an international convention. As well as the UNCRPD itself, are there also relevant principles, ideas and concepts identified in Strasbourg case law? By virtue of ss. 2-5 of the European Convention on Human Rights Act 2003, this court is required to interpret laws of this State in compliance with the State's obligation under the ECHR provisions. Judicial notice is to be taken of decisions of the ECHR and the principles contained therein. This allows a court in an appropriate case to consider whether those principles may inform present day interpretation of "prevailing ideas and concepts" provided such principles accord with the Constitution.

62. Shtukaturov v. Russia, (Application no. 44009/05, ECHR, 27th June 2008) concerned the issue of capacity in mental health. There, the ECtHR had regard to "Principles concerning the legal protection of incapable adults", Recommendation No. R (99) 4, adopted by the Council of Europe on the 23rd February 1999. The Court referred in its judgment to Principle 3 of the Recommendation which stipulates that legislative frameworks relating to

persons suffering from incapacity should as far as possible recognise that different degrees of capacity may exist and that incapacity may vary from time to time. Accordingly, measures of protection should not result automatically in a complete removal of legal capacity. Principle 3.2 specifically provides that measures of protection should not automatically deprive a person of "… the right to consent or refuse consent in the health field…"

63. While it was suggested in argument in this case that the European Court of Human Rights had not specifically approved the United Nations Convention on the Rights of Persons with Disabilities, I do not think this is so. The judgment of the ECtHR in Glor v. Switzerland (Application No. 13444/04, ECHR, 30th April 2009), is noteworthy for pointing out that the UNCRPD signalled the existence of a European and universal consensus on the need to protect persons with disabilities from discriminatory treatment.

64. In Kiss v. Hungary (Application No. 38832/06, ECHR, 20th May, 2010) the ECtHR pointed out:-

"The court further considers that the treatment as a single class of those with intellectual or mental disabilities is a questionable classification, and the curtailment of their rights must be subject to strict scrutiny. This approach is reflected in other instruments of international law …"

65. More immediately relevant is the decision of the ECtHR in X v. Finland (Application no. 34806/04, ECHR, 3rd July 2012). That judgment of the Court will now be analysed. The applicant complained that her involuntary confinement in a mental hospital following psychiatric examination was in breach of her right to liberty conferred by Article 5, particularly in the absence of an independent second opinion. The Court agreed with this contention. It stated at paras. 169-171:-

"169. The Court first draws attention to the fact that, in the present case, the decisions to continue the applicant's involuntary confinement after the initial care order were made by the head physician of the Vanha Vaasa hospital after having obtained a medical observation statement by another physician of that establishment. In the Finnish system the medical evaluation is thus made by two physicians of the same mental hospital in which the patient is detained. The patients do not therefore have a possibility to benefit from a second, independent psychiatric opinion. The Court finds such a possibility to be an important safeguard against possible arbitrariness in the decision-making when the continuation of confinement to involuntary care is concerned. In this respect the Court also refers to the CPT's recommendation that the periodic review of an order to treat a patient against his or her will in a psychiatric hospital should involve a psychiatric opinion which is independent of the hospital in which the patient is detained (see paragraph 133 above). This covers all of the criteria in section 8 of the Mental Health Act.

170. Secondly, the Court notes that the periodic review of the need to continue a person's involuntary treatment in Finnish mental hospitals takes place every six months. Leaving aside the question whether a period of six months can be

considered as a reasonable interval or not, the Court draws attention to the fact that, according to section 17(2) of the Mental Health Act, this renewal is initiated by the domestic authorities. A patient who is detained in a mental hospital does not appear to have any possibilities of initiating any proceedings in which the issue of whether the conditions for his or her confinement to an involuntary treatment are still met could be examined. The Court has found in its earlier case-law that a system of periodic review in which the initiative lay solely with the authorities was not sufficient on its own (see mutatis mutandis Rakevich v. Russia, no. 58973/00, §§ 43-44, 28 October 2003; and Gorshkov v. Ukraine, no. 67531/01, § 44, 8 November 2005). In the present case this situation is aggravated by the fact that in Finland a care order issued for an involuntary hospitalisation of a psychiatric patient is understood to contain also an automatic authorisation to treat the patient, even against his or her will. A patient cannot invoke any immediate remedy in that respect either.

171. The Court considers, in the light of the above considerations, that the procedure prescribed by national law did not provide in the present case adequate safeguards against arbitrariness. The domestic law was thus not in conformity with the requirements imposed by Article 5 § 1 (e) of the Convention and, accordingly, there has been a violation of the applicant's rights under that Article in respect of her initial confinement to involuntary care in a mental hospital."

66. The ECtHR further examined claims that the forced administration of medication was in breach of the applicant's rights under Article 8 of the ECHR. The Court noted that under Finnish law, an involuntary care order also included an automatic authorisation to treat such a patient, even against his or her will. It also found that the decisions of a treating doctor are not subject to appeal. In those circumstances, it concluded, at paras. 220-222:-
"220. The Court considers that forced administration of medication represents a serious interference with a person's physical integrity and must accordingly be based on a "law" that guarantees proper safeguards against arbitrariness. In the present case such safeguards were missing. The decision to confine the applicant to involuntary treatment included an automatic authorisation to proceed to forced administration of medication when the applicant refused the treatment. The decision-making was solely in the hands of the treating doctors who could take even quite radical measures regardless of the applicant's will. Moreover, their decision-making was free from any kind of immediate judicial scrutiny: the applicant did not have any remedy available whereby she could require a court to rule on the lawfulness, including proportionality, of the forced administration of medication and to have it discontinued.
221. On these grounds the Court finds that the forced administration of medication in the present case was implemented without proper legal safeguards. The Court concludes that, even if there could be said to be a general legal basis for the measures provided for in Finnish law, the absence of sufficient safeguards against forced medication by the treating doctors deprived the applicant of the minimum degree of protection to which she was entitled under the rule of law in a democratic society (see Herczegfalvy v. Austria, cited

above, § 91; and, mutatis mutandis, Narinen v. Finland, no. 45027/98, § 36, 1 June 2004).

222. The Court finds that in these circumstances it cannot be said that the interference in question was "in accordance with the law" as required by Article 8 § 2 of the Convention. There has therefore been a violation of Article 8 of the Convention." (emphasis added)

67. The emphasised part of the passages quoted leave it unclear whether access to a court is thought to be mandatory, or, as I believe, whether there must be a right of access capable of vindication other than just by State initiative. This is considered in section 3 of this judgment.
68. The Article 13 contention, that the applicant was denied an effective remedy to challenge the forced administration of medication, was not examined on the basis of the findings in relation to Article 8.

"229. The Court reiterates that the applicant complained in essence about the lack of an effective remedy to challenge the forced administration of medication.
230. In view of the submissions of the applicant in the present case and of the grounds on which it has found a violation of Article 8 of the Convention, the Court considers that there is no need to examine separately the complaint under Article 13 of the Convention."

69. The issues raised are relevant to the instant case. The decision clearly establishes that adequate safeguards must be placed in legislation apparently permitting a patient's involuntary detention and involuntary treatment. It was held that these safeguards were not present in the Finnish legislation. In the instant case, the detention procedures are not being questioned. Therefore, this aspect of the case has limited application.
70. How then should these concepts and principles be applied here? Under the provisions of s. 60 itself, the right to independent review and independent determination of capacity are already, in effect, recognised statutory procedural rights; the provisions give effect to the duty of the State to vindicate the plaintiff's personal capacity rights. Professor Kennedy's evidence establishes that the proper vindication of these rights is "practicable".

71. But what is at issue here are truly fundamental constitutional rights in more than just name. What is at stake is truly, in the words of Kenny J. in Ryan v. Attorney General [1965] I.R. 294 at p. 313, the right to the "integrity of the person". Each of the rights affected under s. 60 fall within that category, should be policed and monitored by the courts, and are susceptible to judicial supervision, where necessary. Do they necessitate ancillary rights, analogous to the right to legal aid in defence of a serious criminal charge, which itself derives from the constitutional right under Article 38.1 to a criminal trial "in due course of law"?

72. As in the Irish and ECtHR authorities identified, I believe the broader range of constitutional "personal capacity rights" identified earlier, now fall to be informed by the United Nations Convention on the Rights of Persons with Disabilities, as well as the principles enunciated in the judgments of the European Court of Human Rights. The vindication of these rights to a sufficiently high level is necessary because of the serious incursion into bodily integrity and the other personal capacity rights which arises in the case of persons who are subject to orders made under s. 60 of the Act of 2001. Decisions of this type, involving the continued administration of an involuntary drug regime and the taking of blood samples require, in the words of the European Court of Human Rights, "heightened scrutiny".

73. I believe a constitutional reading of s. 60 of the Act of 2001 now requires that this range of rights must be recognised at the constitutional as well as the legal level, especially if the present application of that legal provision does not vindicate those rights "as far as practicable". The constitutional protections must act as an appropriate counterweight to the nature of the incursion into fundamental constitutional rights. Professor Kennedy's evidence establishes that every effort is made to engage a patient in the decision-making process, and that when a patient regains sufficient mental capacity, they will again be empowered to make decisions regarding their treatment, including the then regained ability to give or withhold consent. Why then should the voice of a patient not be heard, and if not by the patient, then through a representative? This was not a situation, unfortunately, where the plaintiff had family members to speak for her. Such a situation may arise in other cases. What is necessary is to achieve the maximum protection which is "practicable". If a patient lacks capacity, does it not follow that, in order to vindicate these rights, the patient should, where necessary, be assisted in expressing their view as part of the decision-making process? It cannot be said that such a process is impractical. I think the constitutional duty involved here is a positive one. I do not think even a retrospective declaration of incompatibility under the European Convention on Human Rights Act 2003 could be a sufficient protection. A sub-constitutional, and possibly retrospective, remedy is not commensurate with the nature of the rights engaged, and the extent of the possible incursion into such rights.

74. There is, of course, the irony that in this case, on its unique facts, the entire process involved in this extensive court hearing may already be seen as a vindication of each one of the rights claimed, including that of assisted decision-making. The function of counsel for the plaintiff in this case has been nothing less than to put forward, in as comprehensive a manner as is practicable, the views and choices of the plaintiff regarding her treatment regime under s. 60.

75. But the unique nature of the case gives rise to an obstacle from the plaintiff's point of view. Decision-making, even assisted decision-making, does not predetermine the outcome of the deciding process. The nature of this case necessitated that it went to court because of the unusual legal issues which arose. The plaintiff has a right of access to court under the Constitution. As discussed at other points in this judgment, I do not envisage that a court

procedure will be necessary or mandatory in the vast range of other such cases involving patients subject to s. 60 of the Act. In my view, it would require a truly exceptional case to necessitate a court application. What I think is constitutionally necessary is a right of access to the courts, independent of any State agency, should the need arise. I do not think that an assisted decision-making process of this type need necessarily involve lawyers. The views of the patient might be expressed by carers, social workers or, perhaps most appropriately, by family members. Very frequently, such decisions are ones in which the courts will have little expertise. I would also observe that the evidence of Professor Kennedy indicates that, at least in part, these entitlements are already observed as a matter of course in the hospital where, as he testified, patients are asked to participate in decisions regarding their own treatment. This begs the question as to why this participation process cannot be performed on behalf of the incapacitated patient by another, suitably qualified, person. The case has not been made that assisted decision-making is not practicable; the contrary is so. To judge from experience in neighbouring jurisdictions, and in light of legislative proposals on mental capacity here, such a form of decision making must be seen as "practicable".

76. But, here, the plaintiff indisputably does not have capacity to make decisions. There is no controversy on the point. Therefore, having heard the parties, it fell to this court to make decisions as to her treatment, applying the best interest test identified in Re Ward of Court (No. 2). This test has been applied, having examined whether the choices made are the least restrictive, and involve the minimum practical incursion into the plaintiff's rights.

77. Having made that determination, however, it should not be thought that what is involved here is the application of what is termed a "status" approach. This involves making an "across the board" assessment of a person's capacity or views capacity in "all or nothing terms". A "once and for all" status approach in cases in this narrow category does not, I think, vindicate rights as far as practicable. It would not take into account patients whose capacity fluctuates, or those who have episodic mental illness. It may also not take into account the actual capacity of otherwise incapacitated individuals to make decisions in a particular sphere. However, here, there is the real problem that the patient wished to make a decision, which would be not only detrimental to her own health, but would place her life, and the life of others, at risk.

78. In adopting the best interest test, it might be suggested that what was applied then was an "outcome approach" involving the court assessing the patient's wishes, based on an assessment of the outcome of the process. Failure to make what might be a "prudent" decision will not always, of itself, be an indicator of want of decision making capacity. Here, one must look at not only the decision itself, but the quality of the plaintiff's decision making capacity. Unavoidably in this instance, the nature of the decision and the dangerous nature of the plaintiff's wishes must be a factor. The court cannot disregard that it has constitutional duties toward the plaintiff and the public.

79. As the ECtHR judgments point out, however, such decision-making in this area should seek to apply a "functional" approach" to capacity, involving both an issue-specific and time-specific assessment of the plaintiff's decision-making ability. One determination should not be permanent; the process must refer to "differences in capacity" (Article 40.3 of the Constitution). This involves analysing, not only differences in capacity between patients, but also variations in each patient's capacity at particular times. Only in that manner can their rights be properly vindicated in accordance with the constitutional requirement.

80. In all this, there must be both trust and commonsense. Every decision cannot be made by a court. This case is one where, sadly, on the indications so far, the plaintiff has an ongoing condition. While her capacity fluctuates, the evidence does not show that, at any point since the initiation of these proceedings, she has reached a point where she is capable of making a decision independently. It has not been suggested that any decisions have been made which were not in the plaintiff's best interests, or at a time, when she actually had capacity to make decisions as to her treatment.

Conclusion

81. In summary, I conclude that the plaintiff is entitled to both an independent review and to an assisted decision-making process in vindication of her rights. But the entire process here involved a vindication of other rights. It has been necessary for this Court to make the ultimate decision because of her incapacity. In the strict sense, therefore, the plaintiff cannot be entitled to the reliefs she claims. It has not been shown that s. 60 of the Act of 2001, constitutionally interpreted, is repugnant to the Constitution. Applying the principle of double construction what then is necessary for a constitutional interpretation and application of the section? What is required is that it should be applied in a constitutional manner, giving effect to rights to be found within the Constitution itself (see East Donegal Co-operative Ltd v Attorney General [1970] I.R. 319). The constitutional application of that section should have regard to international norms and conventions identified in this part of the judgment.

82. For the future, I think it will be necessary to review the Form 17 procedure, adopted under s. 60. This can be done in a manner so as to ensure that the range of "personal capacity rights" of a patient objecting to treatment under s. 60 of the Act are vindicated, not only in form but in substance. There should be independent review and the patient's decision or choice, albeit whether assisted or not, should be recorded and due regard given to it. The patient's choice, however conveyed, will not always be determinative, but must always be part of the balance. But the role of the consultant psychiatrists remains pivotal. I turn now to another aspect of the relief claimed.

83. The plaintiff, at paragraph 1 of the statement of claim has sought also a declaration that the finding in respect of capacity must be subject to independent tribunal or court review. In this case, I think that right has already been vindicated to date, and will continue to be. But then the claim goes rather

deeper. Does a s. 60 treatment-decision necessitate ongoing court review on a mandatory basis?
Section 3 – Is the plaintiff entitled to a declaration of incompatibility under the ECHR Act and is there an ECHR right to an independent court or tribunal to consider future treatment?
84. It is now contended that, if the HSE should continue to administer treatment on the basis that the plaintiff lacks capacity, that defendant must convincingly show that such treatment is necessary before an independent tribunal or court. I would observe here that because of the highly unusual nature of this case it was proper that the matter should be dealt with by the Court. Can a genuine right to a court or tribunal hearing in all cases of this type be found? Do the constitutional rights, to be vindicated in each case, necessitate a mandatory ongoing court involvement in every such case? I am not persuaded that a mandatory engagement, even in a narrow category of cases involving difficult clinical decisions, can be seen as "practicable". In my view, it would involve a degree of legal involvement in the field of psychiatry, which would be unprecedented, and, I believe, often impractical. Even on this basis alone, it would be very difficult to give recognition to such a right. Does such a right nonetheless exist under the ECHR? Is the plaintiff, therefore, entitled to a declaration that s. 60 is incompatible with the provisions of the ECHR under s. 5 of the Act of 2003?

85. Even having regard to the decision in X v. Finland, I am not persuaded that such a right exists in ECHR jurisprudence. That case must be seen as still pending as at present an application for admission to a Grand Chamber hearing remains to be considered. I think the passages cited earlier lack clarity as to whether what is in question is a right to a court hearing as alleged, or, rather a right of access to a court. The rights identified in the cases which follow lay particular emphasis on review of detention procedures. Clearly, at a minimum, there must be a right of court access. Decisions as to involuntary medical treatment must be subject to the rule of law, and must be independently reviewed. They must be capable of being assessed by a court, and cannot be arbitrary. The case of Storck v Germany (Application 61603/00, ECHR, 16th September 2005), addresses involuntary treatment and detention but is based on very different facts. There was a real question there as to the plaintiff's incapacity, and as to the lawfulness of her detention. The ECtHR held that under Article 5 and Article 8 ECHR, there were positive obligations to ensure that an involuntary deprivation of liberty was carried out in accordance with a procedure prescribed by a rule of law. Significantly, it held that special procedural safeguards may be necessary to protect the interests of persons not fully capable of acting for themselves; that even a minor interference with the physical integrity of an individual was to be regarded as an interference with the respect for private life, if carried out against that person's will; and that the State had a positive obligation to protect the applicant against interference with her private life guaranteed by Article 8 of the Convention. By way of distinction with that case, there is no question here that the plaintiff has been wrongly diagnosed, or as to her decision-making capacity. The detention process, here, is in accordance with law. The treatment has been independently

assessed by Dr. Kelly, Dr. Bownes and by this Court. It cannot be said that any part of the process is arbitrary therefore.

86. Earlier, in Winterwerp v. The Netherlands [1979 – 80] 2 E.H.R.R. 387, the applicant had been compulsorily detained pursuant to successive court orders, was not allowed to appear or be represented at proceedings and was not notified when such proceedings were in progress. As a consequence of his detention, the applicant also automatically lost the capacity to administer his property. There, the ECtHR unanimously held that the applicant's ability to have his detention reviewed by a court and the failure to hear him constituted a violation of Article 5(4) of the Convention. I do not think this case is on point here.

87. Three further decisions of the ECtHR were cited to this Court. All must now be seen in light of the decision in X v. Finland. The first, Shtukaturov, has already been briefly referred to. The applicant there suffered from a mental disorder but despite this was a relatively autonomous person. His mother lodged an application with the District Court of St. Petersburg seeking to deprive him of his legal capacity. An expert team assessed the applicant and concluded that he was suffering from "simple schizophrenia". A hearing then occurred, of which the applicant was neither notified nor present, where the judge declared the applicant to be legally incapable and his mother was appointed to be a legal guardian. The hearing lasted only ten minutes. At his mother's request he was then placed in a psychiatric institution where he was prohibited from having contact with the outside world. Unsurprisingly, the European Court of Human Rights in that case held that although domestic courts had a certain margin of appreciation, there had been a breach of the applicant's right to fair trial, as guaranteed under Article 6 of the Convention. This arose because, in assessing whether or not a particular measure such as the exclusion of the applicant from a hearing was necessary, relevant factors had to be taken into account including the nature and complexity of the issue which had been before the domestic courts, what had been at stake for the applicant and whether the applicant's appearance in person represented any threat to others or to himself. It was held that the domestic court proceedings had been unfair. The court observed that the applicant had played a double role in the proceedings, that of interested party and also the main object of the court's examination. His participation was therefore necessary not only so that he could present his own case but so as to afford the judge the opportunity to form an opinion about the applicant's mental capacity. The court also held that the declaration of the domestic court with the effect that the applicant was regarded as having full incapacity for an indefinite period which could not be challenged otherwise than through the guardian constituted a breach of Article 8 of the Convention.

88. It is significant in the context of this case that the ECtHR laid emphasis on the right of a person, the subject matter of an order, to representation and participation in the proceedings concerning a very significant incursion in their right to liberty and to private life.

89. Similar observations were made by the court in Stanev. v. Bulgaria (Application no. 36760/06, ECHR, 17th January 2012), where, in national court proceedings on capacity, the applicant was denied the right to have a lawyer of his choice. This had not been authorised by his guardian. He could not perform legal transactions or take part in court proceedings without his guardian's consent; although the guardian's decisions were subject to review by an authority, there was no clarity as to whether the applicant as a partially incapacitated person could challenge the decisions of that authority by way of judicial review. As a consequence, the court held that there were breaches of Article 5(4) involving an entitlement to institute proceedings reviewing a decision and a denial of direct access to courts in violation of Article 6(1) of the Convention. Again, the facts are very different from those in the instant case.
The Wilkinson case
90. In the earlier judgment, I made reference to the decision in R. (On the Application of Wilkinson) v. Broadmoor Special Hospital Authority and Others [2002] 1 W.L.R 419. As well as pursuing remedies in domestic legislation, the plaintiff in that case, also sought to pursue his rights in the European Court of Human Rights in Wilkinson v. United Kingdom, (Application No. 14659/02, 28th February, 2006).

91. The applicant had been detained in a psychiatric institution under the Mental Health Act 1983 in England following conviction for rape of a minor in 1969. Though a clinical consensus existed at the relevant time that he suffered from psychopathic personality disorder, opposing views had been expressed as to whether he suffered from a recognised mental illness. In 1999, his treating doctor sought to administer antipsychotic medication without consent, on the basis that it was necessary to relieve the applicant of 'paranoid ideation'. The treatment was administered moments after an independent doctor approved it under s. 58(3) of the 1983 Act, without notice to the applicant (due to the prospect that he would respond violently). The applicant resisted the injections and had to be physically restrained. On the first occasion, he suffered an angina attack and had to be secluded. The medication was administered on one further occasion, and thereafter he engaged solicitors to contest the treatment.

92. Wilkinson is significant because the provisions at issue were broadly akin to those which arise in these proceedings. Section 63 of the 1983 United Kingdom Act removed the general requirement for obtaining a patient's consent for any treatment given to him for his mental disorder so long as the treatment was approved by the clinician in charge of his treatment subject to special requirements stipulated in the case of long term medication, ECT and psychosurgery, equivalent to ss. 58, 59 and 60 of the Act of 2001. However, I think that the observations of the ECtHR must now be seen in the light of the Glor, Kiss and X v. Finland judgments referred to earlier.

93. At the time of the hearing, I was not referred to any of the ECHR jurisprudence involving a right to ongoing court or tribunal engagement as to ongoing treatment decisions. However, counsel subsequently brought to my

attention the case of X v. Finland (Application no.34806/04, 3 July, 2012), where a request to the Grand Chamber is pending. The findings of the ECtHR have been set out earlier.

94. I fully agree that the interference with a patient's rights, in cases like the present, is so serious to require adequate safeguards against arbitrariness. What is necessary is a clearly defined procedure, in accordance with law, which vindicates ECHR rights to privacy and autonomy involving proper clinical decision-making procedures. I believe such safeguards are to be found in s. 60 through the requirement for a second opinion from an independent consultant, in relation to the proposed treatment, at regular three month intervals, together with such charges as may be necessitated by this judgment. I would add that a further consequence of assisted decision-making is that it enhances the right of access to the court on behalf of a s. 60 patient. But I do not think any of the ECtHR case law goes further than the rights identified here under the Constitution. In short, I do not understand the law, whether national or under the ECHR, presently to require a mandatory court hearing in every case. I note the X. v Finland case remains pending before the Grand Chamber. I should re-iterate that, in the instant case, the plaintiff here was, thanks both to the HSE and to her lawyers, able to have the legality of her treatment procedure reviewed by this Court. But the plaintiff is not, in my view, entitled to a declaration of incompatibility under s. 5. The provisions of s. 60 are of course to be interpreted and applied in a manner compatible with the State's obligations under the ECHR. On my understanding of the ECHR jurisprudence, this objective is achieved by virtue of the adherence to the constitutionally compliant procedures under s. 60 of the Act, outlined earlier in this judgment.

Section 4 - Locus Standi

95. It is necessary finally to address the question of the plaintiff's locus standi. This case directly arose from questions which were raised in the earlier case wherein the plaintiff in these proceedings was the defendant. The questions directly related to the proper interpretation of the Act of 2001. The plaintiff was directly concerned with how Part 4 of the Act applied to her. It must be recollected also that the HSE, the plaintiff in the original proceedings, as an alternative to the statutory argument, advanced the contention that the Court would be entitled to grant the reliefs sought, pursuant to its inherent jurisdiction. The issues in this case, in my view could only properly have been resolved by court proceedings.

96. Even though it cannot be said that the plaintiff has succeeded on the issues, this case comes within one of the exceptions identified by Henchy J. in Cahill v. Sutton [1980] I.R. 269, as being one where the legal provisions involved were directed to, or operable against a group which includes the plaintiff and where the plaintiff may be said to have a common interest, albeit in circumstances where it may be difficult to segregate the plaintiff's own position from the rights of other persons similarly affected. The law in this area is in a state of evolution and the issues here required judicial determination. In an area where the law required clarification, I therefore conclude that the plaintiff did have locus standi.

97. Having regard to all the circumstances, I must find that the plaintiff is not entitled to relief under the headings identified in the claim.

98. I would like to express appreciation to counsel for the parties and the notice parties whose submissions helped to chart the way through the shoals of this difficult area of jurisprudence. It is to be hoped their efforts have resulted in the arrival at a destination which best protects the interests and rights of the plaintiff and those in similar situations.