

419DV20



Speakers' presentations

EQUAL PARTICIPATION IN SOCIETY OF PERSONS WITH DISABILITIES

SEMINAR FOR NATIONAL CIVIL SERVANTS AND STAFF OF NGOs

Trier, 24-25 October 2019



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http://ec.europa.eu/justice/grants1/programmes-2014-2020/rec/index_en.htm

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The information contained in this publication does not necessarily reflect the position or opinion of the European Commission.

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ERA Academy of European Law

Equal Participation in Society of Persons with Disabilities

“The UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES”

24-25 October 2016 Trier- Germany

Nadia Hadad

Co-Chair of the Board

European Network on Independent Living – ENIL



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STIL
Personlig assistans och politisk påverkan

GIL



Who is and what does ENIL?

The European Network on Independent Living (ENIL) is a non-governmental organization working in the disability field promoting independent living through human and civil rights.

- ENIL supports the Independent Living Movement in since 1989.
- The IL principles: Self-determination, Self-representation, Choice and Control, Deinstitutionalisation
- An IL cross-disability network from Grassroots organisation
- Work on Access to society - social services, personal assistance, barrier-free environment, housing options, technical aids, paradigm-shift

Disabled people protest for more rights

30/09 16:10 CET | updated at 30/09 - 17:41



The goal is to improve full participation of people with disabilities in society and to increase involvement of disabled people within the Independent Living Movement throughout Europe and wider.

What does Independent Living means?

Independent Living is

- the daily demonstration of human rights-based disability policies.
- possible through the combination of various environmental and individual factors that allow disabled people to have control over their own lives.
- Dr Adolf Ratzka's definition: Independent Living is having the same range of options and same degree of self-determination taken for granted by non-disabled.

This includes the opportunity to make choices and decisions regarding where to live, with whom to live and how to live.

➔ The right to just be ordinary!

UNITED NATIONS (CRPD)

**The CONVENTION on the
RIGHTS of PERSONS
with DISABILITIES**



The UN CRPD:

1) Purpose of the Convention:

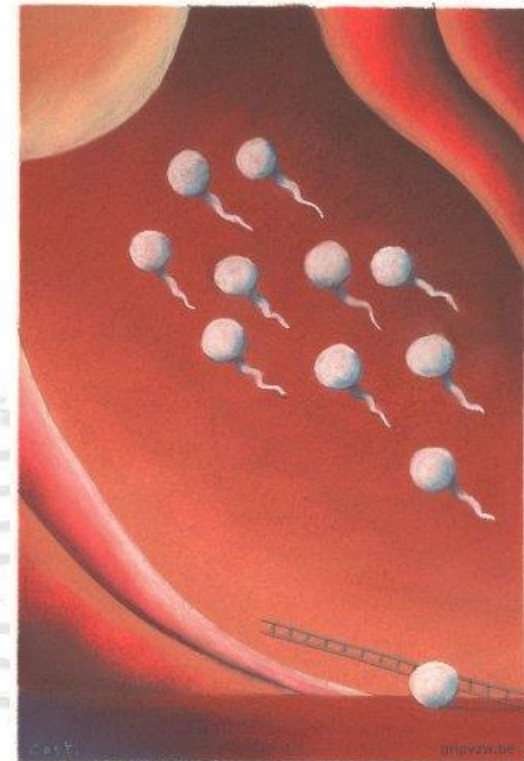
Article 1 of the Convention is “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.”

- The Convention **promotes and protects** the human rights of persons with disabilities in economic, social, political, legal and cultural life.
- It **calls for non-discriminatory treatment and equality** in access, in treatment, in undertaking administrative tasks, in education, in health care, in the work-place, in family life, in cultural and sporting activities, and when participating in political and public life.
- The Convention **ensures that all persons with disabilities are recognized before the law** .
- It also **prohibits** torture, exploitation, violence and abuse, and protects the life, liberty and security of persons with disabilities, their freedom of movement and expression, and respect for their privacy.

The UN CRPD:

2) General principles

- **Respect for the inherent dignity, autonomy**, including the freedom to make one's own decisions, and independence of persons
- **Non-discrimination**
- Full and effective **participation and inclusion** in society
- **Respect for difference and acceptance of** PwD as part of human diversity and humanity
- **Equality** of opportunity between men & women
- **Accessibility**
- **Respect for the evolving capacities** of children with disabilities and for their rights to preserve their identities



The UN CRPD:

3) The Rights enumerated:

- Equality before the law without discrimination
- Right to life, liberty and security of the person
- Equal recognition before the law and legal capacity
- Freedom from torture
- Freedom from exploitation, violence and abuse
- Right to respect physical and mental integrity
- Freedom of movement and nationality
- Right to live in the community
- Freedom of expression and opinion
- Respect for privacy, for home and the family
- Right to education, Right to health, Right to work
- Right to an adequate standard of living
- Right to participate in political and public life
- Right to participate in cultural life

4) International cooperation

The Convention obliges States parties to cooperate with other States and/or with relevant international and regional organizations and civil society in:

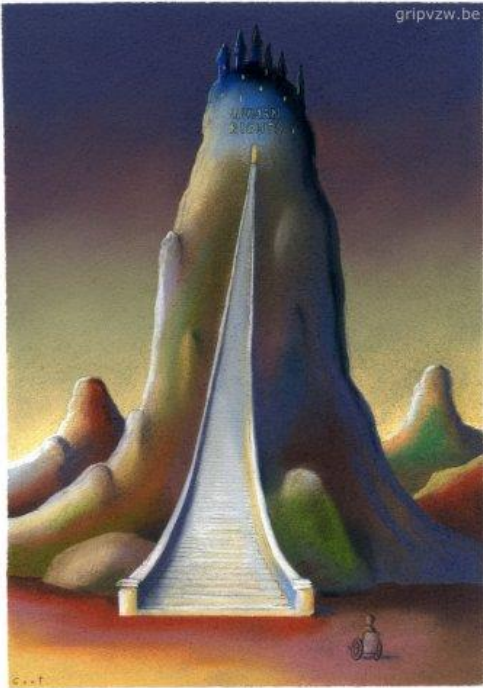
- Building capacity, including through the exchange and sharing of information, experiences, training programmes and best practices
- Research programmes and facilitating access to scientific knowledge
- Technical and economic assistance, including facilitating the use of accessible and assistive technologies

Obligations of States parties under CRPD

1) Duties of States parties

The Convention obliges States parties to provide the appropriate enabling environment so that persons with disabilities can fully enjoy their rights on an equal basis with others.

These provisions relate to **raising awareness & accessibility**



Implicit in the Convention are 3 distinct duties of all States parties:

1. The obligation to **respect**
2. The obligation to **protect**
3. The obligation to **fulfil**

Obligations of States parties under CRPD

2) General obligations

- **Adopt legislation and administrative measures** to promote the human rights of persons with disabilities
- Adopt legislative and other measures to abolish discrimination
- **Protect and promote** the rights of persons with disabilities in all policies and programmes.
- **Stop any practice** that breaches the rights of persons with disabilities
- **Ensure that the public sector** respects the rights of persons with disabilities
- **Ensure that the private sector** and individuals respect the rights of persons with disabilities

Obligations of States parties under CRPD

3) Concrete obligations

- **Undertake research and development** of accessible goods, services and technology for persons with disabilities and encourage others to undertake such research
- **Provide accessible information** about assistive technology to persons with disabilities
- **Promote training on the rights of the convention** to professionals and staff who work with persons with disabilities
- **Consult with and involve persons with disabilities** in developing and implementing legislation and policies and in decision-making processes that concern them

Monitoring mechanism:

1) At national level

- 1) States parties must appoint one or more focal points within government to handle matters relating to implementation
- 2) Consider establishing or designating a coordinating body within government to facilitate implementation
- 3) Maintain, strengthen or establish an **independent institution**, such as a national human rights institution, **to promote, protect and monitor** the Convention.

Monitoring mechanism

2) At international level

The Convention provides for monitoring through the creation of a committee of 18 independent experts, called the **Committee on the Rights of Persons with Disabilities**. They are representatives from different countries, voted in for maximum two mandates of four years,

This **Committee reviews reports submitted periodically** by States parties, their independent mechanism and civil society organisations DPO's,

On the basis of these reports, **the Committee works with the States parties concerned and makes concluding observations and recommendations** to those States parties.

Reporting to The CRPD Committee

1) State Reporting: initial report

Each State party to the Convention must submit to the Committee an initial comprehensive report on measures taken to implement the Convention after the two first years.

The initial report should:

- **Establish** the constitutional, legal and administrative **framework** for the implementation of the Convention
- **Explain the policies and programmes** adopted to implement each of the Convention's provisions
- **Identify any progress** made in the realization of the rights of persons with disabilities as a result of the ratification and implementation of the Convention

Reporting to The CRPD Committee

2) State reporting: follow periodical reports

Each State party must submit subsequent reports at least every 4 years or whenever the Committee requests one.

Subsequent reports should:

- **Respond to the concerns** and other issues highlighted by the Committee in its concluding observations in previous reports
- **Indicate progress** made in the realization of the rights of persons with disabilities over the reporting period
- **Highlight any obstacles** that the Government and other actors might have faced in implementing the Convention over the reporting period

Reporting to The CRPD Committee

3) Purpose of periodic reporting

- **Provides an instrument** through which Governments, national human rights institutions and civil society can better understand the objectives and rights included in the Convention;
- **Raises awareness** about the Convention and the country-situation
- Allows the Government to **benefit from the expertise** of an independent, international committee to improve it's implementation
- **Highlights good practices** and experiences in the country
- Allows Governments to **benefit from the good practices** and experiences of other Governments, as all periodic reports and concluding observations by the committees are public documents
- **Provides authoritative guidance** to Governments, national human rights institutions and civil society for future action, including legislation, policies and programmes
- **Indicates areas** where international cooperation, particularly through the United Nations, might be desirable

Reporting to The CRPD Committee

4) The Conference of States parties

States that have ratified the Convention **will meet yearly in a Conference of States parties:**

- To consider any matter relating to the implementation of the Convention.
- To adapt New resolutions
- To discuss in details at each meeting a yearly chosen topic
- To give a short “state of art” on their progress
- To meet and exchange

Civil society organisations organizes during these meeting a lot of side events to raise awareness on their concerns or share good practices and networking

Reporting to The CRPD Committee

5) Other mechanisms to monitor the rights of PwD

- The National Independent monitoring mechanism, under her controlling role, realizes an alternative report based on the official state report
- Civil society organisations, DPO's also allowed to submit shadow-reports to reflect their concerns and highlight the barriers they are confronted with.

Under the “**Nothing about us without us**” principle

- **All human rights treaties protect the rights of persons with disabilities**, which means that the independent committees of experts established under other United Nations human rights treaties also have a role in monitoring the rights of persons with disabilities within the scope of each specific treaty.

Reporting to The Committee

6) Reporting process



1. State report
2. List of issues
3. Pre-sessional preparation meeting
4. Constructive dialogue to consider the report
5. Concluding observations
6. Follow-up

Difference between signing, ratifying, formally confirming and acceding

- **Signing** indicates the intention of a state to take steps to express its consent to be bound by the convention and/or optional protocol at a later date. signing also creates an obligation, in the period between signing and consent to be bound, to refrain from acts that would defeat the object and purpose of the treaty
- **Ratification** legally binds a State to implement the convention and /or optional protocol, subject to valid reservations, understandings and declarations.
- **Formal confirmation** legally binds a regional integration organization to implement the convention and/or optional protocol
- **Accession** legally binds a state or regional integration organization to implement the convention and/or optional protocol.

Optional protocol to the Convention

The **Optional Protocol to the Convention**, if ratified separately by a State, enables the Committee to undertake two additional forms of monitoring:

- 1) an individual complaint procedure, through which the Committee receives complaints from an individual claiming that the State breached his/her rights under the Convention;
 - If admissible, the Committee will formulate its views and recommendations to the State Party in question.
 - It can also ask the State Party to report on measures it has taken to remedy human rights violations that have been committed.
 - In addition, the CRPD Committee can ask the State Party to take urgent interim measures “to avoid possible irreparable damage to the victim or victims of the alleged violation” (Article 4 of the OP).

Optional protocol to the Convention

2) an *inquiry (audit) procedure*: individuals or organisations can bring a complaint to the CRPD Committee alleging “grave or systematic violations by a State Party of rights set forth in the Convention” (Article 6 of the OP).

The Committee can decide :

- to launch an inquiry, consisting of checking and collecting information,
- asking the State Party to submit observations,
- possibly conducting a mission to the country, and
- issuing a report with recommendations.

Findings are also included in the Committee’s report to the General Assembly. This inquiry is confidential and has to be carried out with full cooperation of the State Party in question.

Optional protocol to the Convention

Examples of complaint

An inquiry under the CRPD has been triggered by ENIL's member Disabled People Against Cuts (DPAC), against the United Kingdom.

- Inquiry was realized
- A field visit with interviews was done by committee members
- the CRPD Committee published a report in October 2016:
 - finding that the UK has indeed violated the CRPD.
 - They concluded that “there is reliable evidence that the threshold of grave or systematic violations of the rights of persons with disabilities has been met in the State Party”
 - issued a number of recommendations for the UK Government to act on as a matter of priority

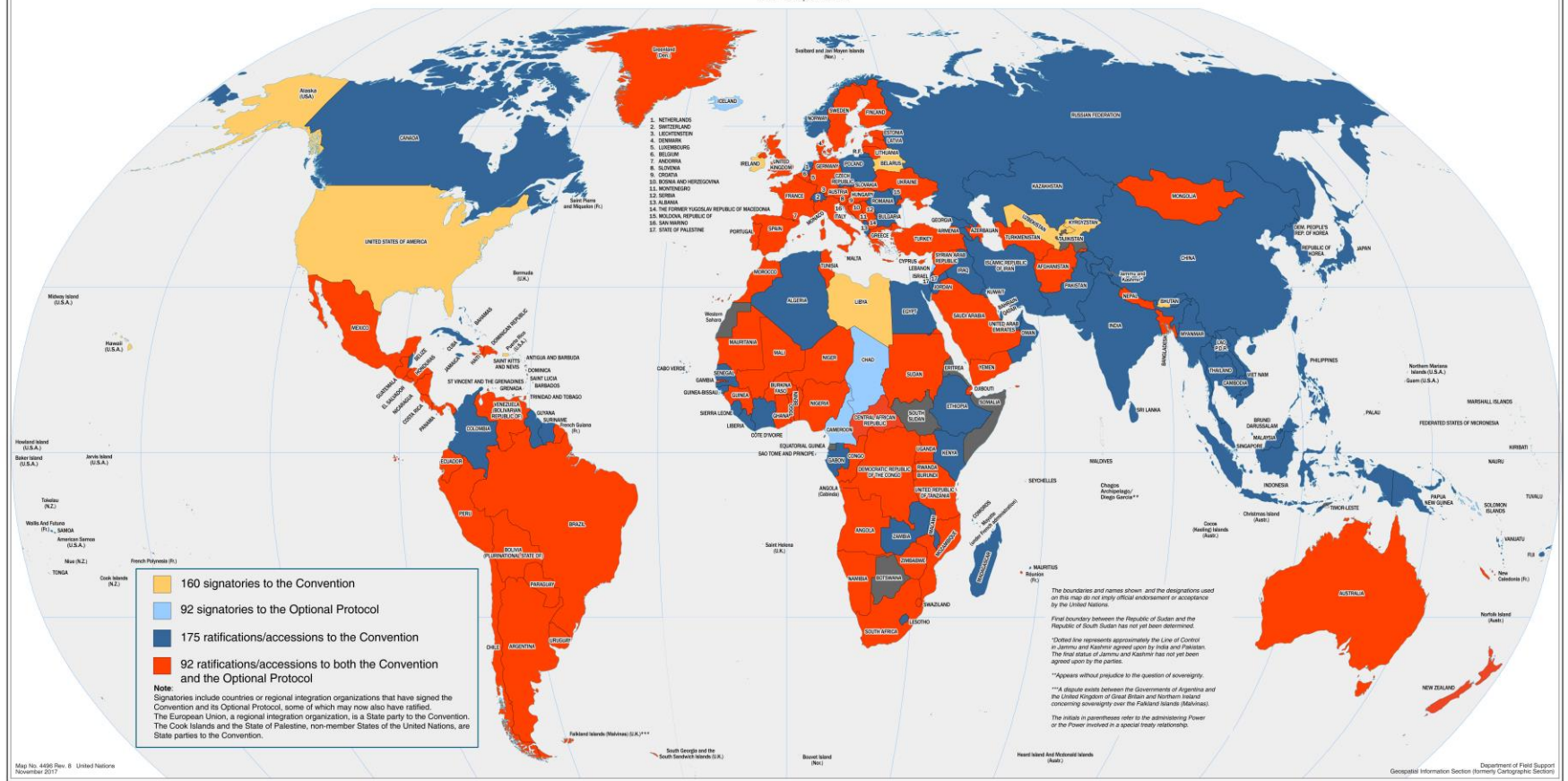
A full list of the CRPD Committee jurisprudence (cases) can be found using this search tool.



CRPD and Optional Protocol Signatures and Ratifications

■ Not Signed ■ Signed Convention ■ Signed Convention & Protocol ■ Ratified Convention ■ Ratified Convention & Protocol

As of 19 September 2017



Ratifications: 175
Signed the Convention and its Optional Protocol: 92

The importance of involving the DPO'S

Article 4.3:

“In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to PwD, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.”



“Nothing about us without us!”

CHALLENGES to implement the UN CRPD

- Problems
 - Translation of concepts
 - Need of legislation change – HR legislation
 - Meaning of Independent Living
 - Lack of funding for the implementation (monitoring bodies)
- Convention in our work
- Cuts = situation going backwards
- Article 19 and institutions: Choice of where to live With whom
- PA – people with intellectual impairment living at home
- Highest level of unemployment
- Lowest level of education
- Worse health conditions

CHALLENGES to implement the UN CRPD in EU

- Transmit key information on the CRPD, etc (via newsletters, or at events)
- Campaigning on the human rights of PwD in society
- Informing PwD on their rights
- Establish and promote an accessible control mechanism
- Investigating individual complaints
- Creating EU resolutions in order to implement the CRPD
- Making enquiries into the rights of persons with disabilities
& Including persons with disabilities into general enquiries
- Role of the ombudsman of EU is different in relation to the CRPD depending on national context
- Contact & inform the Ombudsman and communicate about what the DPOs do and participate on request in his work
- Transmit individual cases of discrimination

The sources used and important links:

- WHO – World Bank publications
- www.enable.org;
- <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>;
 - CRPD -- Handbook for parliamentarians – State reports
- www.enil.eu;
- www.mhe-sme.org;
- www.edf.eu;
- www.fra.europe.eu;
- <http://www.disabilityaction.org>

Thank you for your attention & see you in the movement!

www.enil.eu



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EUROPEAN NETWORK
ON INDEPENDENT LIVING (ENIL)
Secretariat

Académie de droit européen de l'ERA

Participation égale à la société des personnes handicapées

"La Convention des Nations Unies sur les droits des personnes handicapées"

24-25 octobre 2016 Trèves - Allemagne

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Coprésident du conseil d'administration
Réseau européen sur la vie autonome - ENIL

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P 2014-2020 de l'Union européenne. Le contenu de cette publication relève de la seule responsabilité de son auteur ?
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programme REC



EUROPEAN NETWORK
ON INDEPENDENT LIVING (ENIL)
Secretariat

Qui est et que fait ENIL ?

L'European Network on Independent Living (ENIL) est une organisation non gouvernementale qui travaille dans le domaine du handicap en promouvant l'autonomie de vie par le biais des droits humains et civils.

- ENIL soutient le mouvement de la Vie Autonome depuis 1989.
- Les principes de la VA : Autodétermination, Auto-représentation, Choix et contrôle, désinstitutionnalisation
- Un réseau de personnes ayant des incapacités croissantes dans le domaine de la VA au sein d'une organisation de base 
- Travail sur l'accès à la société - services sociaux, assistance personnelle, environnement sans obstacle, options de logement, aides techniques, changement de paradigme

L'objectif est d'améliorer la pleine participation des personnes handicapées à la société et d'accroître la participation des personnes handicapées au sein du mouvement de la Vie autonome, les textes

Que signifie Vie autonome ?

La Vie autonome est

- la démonstration quotidienne de politiques en faveur des personnes handicapées fondées sur les droits de l'homme.
- possible grâce à la combinaison de divers facteurs environnementaux et individuels qui permettent aux personnes handicapées d'avoir le contrôle de leur propre vie.
- Définition du Dr Adolf Ratzka : La Vie autonome, c'est avoir le même éventail d'options et le même degré d'autodétermination que les personnes non handicapées tiennent pour acquis.

Cela inclut la possibilité de faire des choix et de prendre des décisions concernant l'endroit où vivre, avec qui vivre et comment vivre.

Le droit d'être ordinaire !

NATIONS UNIES (CRPD)

La CONVENTION sur les RICHTS des PERSONNES avec des HANDICAPÉS



La CDPH de l'ONU :

1) Objet de la Convention :

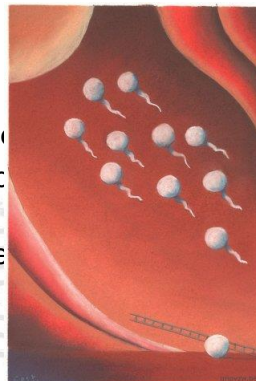
L'article premier de la Convention est **"de promouvoir, protéger et assurer la pleine et égale jouissance de tous les droits de l'homme et de toutes les libertés fondamentales par toutes les personnes handicapées, et de promouvoir le respect de leur dignité inhérente."**

- La Convention **promeut et protège les** droits fondamentaux des personnes handicapées dans la vie économique, sociale, politique, juridique et culturelle.
- Elle **appelle à un traitement non discriminatoire et à l'égalité d'accès**, de traitement, d'exercice des tâches administratives, d'éducation, de soins de santé, de travail, de vie familiale, d'activités culturelles et sportives, de participation à la vie politique et publique.
- La Convention **garantit que toutes les personnes handicapées sont reconnues devant la loi**.
- Elle **interdit** également la torture, l'exploitation, la violence et les mauvais traitements et protège la vie, la liberté et la sécurité des

La CDPH de l'ONU :

2) Principes généraux

- **Respect de la dignité inhérente, de l'autonomie**, y compris la liberté de prendre ses propres décisions, et de l'indépendance des personnes
- **Non-discrimination**
- **Participation et inclusion** pleines et effectives dans la société
- **Le respect de la différence et l'acceptation de la diversité**
Les personnes handicapées en tant qu'éléments de la diversité humaine et de l'humanité
- **Égalité des chances** entre les hommes et les femmes
- **Accessibilité**
- **Respect des capacités évolutives**
des enfants handicapés et pour leurs droits pour préserver leur identité



La CDPH de l'ONU :

3) Les droits énumérés :

- Égalité devant la loi sans discrimination
- Droit à la vie, à la liberté et à la sécurité de la personne
- Égalité de reconnaissance devant la loi et capacité juridique
- Droit de ne pas être soumis à la torture
- Droit d'être à l'abri de l'exploitation, de la violence et des mauvais traitements
- Droit au respect de l'intégrité physique et mentale
- Liberté de circulation et nationalité
- Droit de vivre dans la communauté
- Liberté d'expression et d'opinion
- Respect de la vie privée, de la maison et de la famille
- Droit à l'éducation, Droit à la santé, Droit au travail
- Droit à un niveau de vie suffisant
- Droit de participer à la vie politique et publique
- Droit de participer à la vie culturelle

La CDPH de l'ONU :

4) Coopération internationale

La Convention oblige les États parties à coopérer avec d'autres États et/ou avec les organisations internationales et régionales compétentes et la société civile dans le domaine :

- Renforcement des capacités, notamment par l'échange et le partage d'informations, d'expériences, de programmes de formation et de meilleures pratiques
- Programmes de recherche et facilitation de l'accès au savoir scientifique
- Assistance technique et économique, notamment pour faciliter l'utilisation de technologies accessibles et d'assistance

Convention relative aux droits des personnes handicapées

1) Obligations des États parties

La Convention oblige les États parties à créer les conditions propices appropriées pour que les personnes handicapées puissent jouir pleinement de leurs droits sur la base de l'égalité avec les autres.

Ces dispositions ont trait à la **sensibilisation et à**



La Convention prévoit implicitement trois distincts pour tous les

1. L'obligation de **respecter**
2. L'obligation de **protéger**
3. L'obligation de **mettre en œuvre**

la Convention relative aux droits des personnes handicapées

2) Obligations générales

- **Adopter des mesures législatives et administratives** pour promouvoir les droits fondamentaux des personnes handicapées
- Adopter des mesures législatives et autres pour abolir la discrimination
- **Protéger et promouvoir les** droits des personnes handicapées dans toutes les politiques et tous les programmes.
- **Mettre fin à toute pratique** qui viole les droits des personnes handicapées
- **Veiller à ce que le secteur public** respecte les droits des personnes handicapées
- **Veiller à ce que le secteur privé** et les individus respectent les droits des personnes handicapées

Obligations des Etats parties en vertu de la Convention relative aux droits des personnes handicapées

3) Obligations concrètes

- **Entreprendre la recherche et le développement de** biens, de services et de technologies accessibles aux personnes handicapées et encourager d'autres personnes à entreprendre de telles recherches.
- **Fournir de l'information accessible** sur la technologie d'assistance aux personnes handicapées.
- **Promouvoir la formation sur les droits de la convention** auprès des professionnels et du personnel qui travaillent avec des personnes handicapées.
- **Consulter les personnes handicapées et les faire participer** à l'élaboration et à la mise en œuvre des lois et des politiques et aux processus décisionnels qui les concernent.

Mécanisme de suivi :

1) Au niveau national

- 1) Les États parties doivent désigner un ou plusieurs points focaux au sein du gouvernement pour s'occuper des questions relatives à la mise en œuvre.
- 2) Envisager d'établir ou de désigner un organisme de coordination au sein du gouvernement pour faciliter la mise en œuvre.
- 3) Maintenir, renforcer ou établir une **institution indépendante**, telle qu'une institution nationale des droits de l'homme, **promouvoir, protéger et surveiller la Convention.**

Mécanisme de suivi

2) Au niveau international

La Convention prévoit un suivi par la création d'un comité de 18 experts indépendants, appelé le **Comité des droits des personnes handicapées**. Ce sont des représentants de différents pays, élus pour deux mandats maximum de quatre ans,

Ce **Comité examine les rapports soumis périodiquement** par les États parties, leurs mécanismes indépendants et les organisations de la société civile,

Sur la base de ces rapports, le **Comité** travaille avec les États parties concernés et leur adresse des **observations finales et des recommandations**.

Rapport au Comité CDPH

1) Rapports des États : rapport initial

Chaque État partie à la Convention doit soumettre au Comité un rapport initial complet sur les mesures prises pour mettre en œuvre la Convention après les deux premières années.

Le rapport initial devrait :

- **Établir** le **cadre** constitutionnel, juridique et administratif de la mise en œuvre de la Convention
- **Expliquer les politiques et programmes** adoptés pour mettre en œuvre chacune des dispositions de la Convention
- **Identifier tout progrès** réalisé dans la réalisation des droits des personnes handicapées à la suite de la ratification et de la mise en œuvre de la Convention.

Rapport au Comité CDPH

2) Rapports des États : suivre les rapports périodiques

Chaque État partie doit présenter des rapports ultérieurs au moins tous les quatre ans ou chaque fois que le Comité en fait la demande.

Les rapports ultérieurs devraient :

- **Répondre aux préoccupations** et autres questions soulevées par le Comité dans ses observations finales dans ses précédents rapports.
- **Indiquer les progrès** accomplis dans la réalisation des droits des personnes handicapées au cours de la période considérée.
- **Mettre en évidence les obstacles** que le Gouvernement et d'autres acteurs ont pu rencontrer dans la mise en œuvre de la Convention au cours de la période considérée

Rapport au Comité CDPH

3) Objet des rapports périodiques

- **Il s'agit d'un instrument** permettant aux gouvernements, aux institutions nationales des droits de l'homme et à la société civile de mieux comprendre les objectifs et les droits énoncés dans la Convention ;
- **Sensibilise** à la Convention et à la situation du pays
- Permet au gouvernement de **bénéficier de l'expertise d'un comité international indépendant** pour améliorer sa mise en œuvre.
- **Souligne les bonnes pratiques** et les expériences dans le pays
- Permet aux gouvernements de **tirer parti des bonnes pratiques** et de l'expérience d'autres gouvernements, puisque tous les rapports périodiques et les observations finales des comités sont des documents publics.
- **Fournit** aux gouvernements, aux institutions nationales de défense des droits de l'homme et à la société civile des **orientations faisant autorité pour l'action future**, notamment en matière de législation, de politiques et de programmes.
- **Indique les domaines dans lesquels une coopération internationale**, en particulier par l'intermédiaire de l'Organisation des Nations Unies, pourrait

Rapport au Comité CDPH

4) La Conférence des États parties

Les États qui ont ratifié la Convention **se réuniront chaque année en Conférence des États parties** :

- Examiner toute question relative à la mise en œuvre de la Convention.
- Pour adapter Nouvelles résolutions
- Discuter en détail à chaque réunion d'un sujet choisi chaque année.
- Donner un bref "état de l'art" sur leur progression
- Pour se rencontrer et échanger

Les organisations de la société civile organisent lors de ces rencontres de nombreuses manifestations parallèles pour sensibiliser le public à leurs préoccupations ou partager les bonnes pratiques et le travail en réseau.

Rapport au Comité CDPH

5) Autres mécanismes de surveillance des droits des personnes handicapées

- Le mécanisme national indépendant de suivi, sous son rôle de contrôle, réalise un rapport alternatif basé sur le rapport officiel de l'Etat.
- Les organisations de la société civile, les OPH sont également autorisées à soumettre des rapports alternatifs pour refléter leurs préoccupations et souligner les obstacles auxquels elles sont confrontées.

Selon le principe "**Rien sur nous sans nous**"

- **Tous les traités relatifs aux droits de l'homme protègent les droits des personnes handicapées**, ce qui signifie que les comités d'experts indépendants créés en vertu d'autres traités des Nations Unies relatifs aux droits de l'homme ont également un rôle de surveillance des droits des personnes handicapées dans le cadre de chaque traité spécifique.

Rapports au Comité

6) Processus d'établissement de rapports



1. Rapport de l'État
2. Liste des points à traiter
3. Réunion préparatoire de présession
4. Un dialogue constructif pour examiner le rapport
5. Observations finales
6. Suivi de la mise en œuvre

Différence entre la signature, la ratification, la confirmation formelle et l'adhésion

- **La signature** indique l'intention d'un État de prendre des mesures pour exprimer ultérieurement son consentement à être lié par la convention et/ou le protocole facultatif. La signature crée également une obligation, entre la signature et le consentement à être lié, de s'abstenir d'actes qui iraient à l'encontre de l'objet et du but du traité
- **La ratification engage juridiquement un État à mettre en œuvre la convention et/ou le protocole facultatif**, sous réserve de réserves, d'accords et de déclarations valables.
- **La confirmation officielle** lie juridiquement une organisation d'intégration régionale à la mise en œuvre de la convention et/ou du protocole facultatif.
- **L'adhésion** oblige juridiquement un État ou une organisation d'intégration régionale à mettre en œuvre la convention et/ou le protocole facultatif.

Protocole facultatif se rapportant à la Convention

Le **Protocole facultatif à la Convention**, s'il est ratifié séparément par un État, permet au Comité d'entreprendre deux formes supplémentaires de suivi :

- 1) une *procédure de plainte individuelle*, par laquelle le Comité reçoit les plaintes d'une personne qui prétend que l'État a violé les droits que lui confère la Convention ;
 - Si recevable, le Comité formulera ses vues et recommandations à l'État partie en question.
 - Il peut également demander à l'État partie de rendre compte des mesures qu'il a prises pour remédier aux violations des droits de l'homme qui ont été commises.
 - En outre, le Comité CDPH peut demander à l'Etat partie de prendre des mesures provisoires urgentes " pour éviter que la ou les victimes de la violation alléguée ne subissent un préjudice irréparable " (article 4 du PO).

Protocole facultatif se rapportant à la Convention

2) une *procédure d'enquête (audit)* : les individus ou les organisations peuvent déposer une plainte auprès du Comité CDPH alléguant " des violations graves ou systématiques par un Etat partie des droits énoncés dans la Convention " (article 6 du PO).

Le Comité peut décider.. :

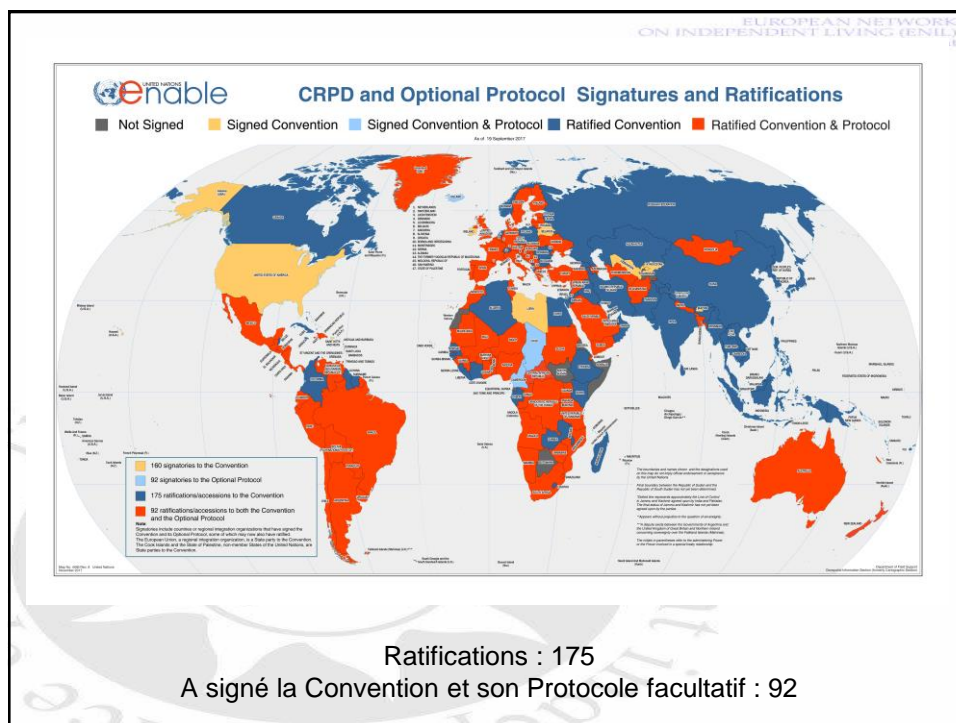
- d'ouvrir une enquête, consistant à vérifier et à recueillir des informations,
- demandant à l'Etat partie de soumettre des observations,
- la possibilité d'effectuer une mission dans le pays, et
- la publication d'un rapport contenant des recommandations.

Les conclusions figurent également dans le rapport du Comité à l'Assemblée générale. Cette enquête est confidentielle et doit être menée avec l'entière coopération de l'État partie en question.

Protocole facultatif se rapportant à la Convention Exemples de plaintes

Une enquête au titre de la CDPH a été déclenchée par le membre de l'ENIL, Disabled People Against Cuts (DPAC), contre le Royaume-Uni.

- L'enquête a été réalisée
- Une visite sur le terrain avec entrevues a été effectuée par les membres du comité.
- le Comité CDPH a publié un rapport en octobre 2016 :
 - la constatation que le Royaume-Uni a effectivement violé la CDPH.
 - Ils ont conclu qu'"il existe des preuves fiables que le seuil des violations graves ou systématiques des droits des personnes handicapées a été atteint dans l'Etat partie".
 - a formulé un certain nombre de recommandations à l'intention du gouvernement britannique pour qu'il agisse en priorité sur les points suivants



L'importance de l'implication des OPH

Article 4.3 :

"Dans l'élaboration et la mise en œuvre de la législation et des politiques visant à mettre en œuvre la présente Convention, et dans d'autres processus décisionnels

concernant les questions relatives à la maladie de von Willebrand,

Les États parties se consultent étroitement avec des personnes et les faire participer activement

les personnes handicapées, y compris les enfants

handicapés, par l'entremise de leur organisations représentatives. "



"Rien sur nous sans nous !"

DEFIS pour la mise en œuvre de la CDPH de l'ONU

- Problèmes
 - Traduction de concepts
 - Nécessité d'une modification de la législation - législation RH
 - Signification de la Vie autonome
 - Manque de financement pour la mise en œuvre (organes de suivi)
- La convention dans notre travail
- Coupures = situation rétrograde
- Article 19 et institutions : Choix de l'endroit où vivre Avec qui
- PA - personnes ayant une déficience intellectuelle vivant à la maison
- Taux de chômage le plus élevé
- Niveau d'éducation le plus bas
- Pire état de santé

DÉFIS pour la mise en œuvre de la CDPH des Nations Unies dans l'UE

- Transmettre l'information clé sur la PCDP, etc. (par le biais de bulletins d'information ou lors d'événements)
 - Campagne sur les droits humains des personnes handicapées dans la société
 - Informer les personnes handicapées sur leurs droits
 - Établir et promouvoir un mécanisme de contrôle accessible
 - Enquêter sur les plaintes individuelles
 - Créer des résolutions de l'UE afin de mettre en œuvre la CDPH
 - Enquêter sur les droits des personnes handicapées
- Inclure les personnes handicapées dans les demandes de renseignements généraux
- Le rôle du médiateur de l'UE est différent par rapport à la CDPH selon le contexte national.
 - Contacter et informer le Médiateur et communiquer sur ce que font les OPH et participer sur demande à son travail.

Les sources utilisées et les liens importants :

- OMS - Publications de la Banque mondiale
- www.enable.org
- <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>
 - CDPH -- Guide à l'intention des parlementaires - Rapports des États
- www.enil.eu
- www.mhe-sme.org
- www.edf.eu
- www.fra.europe.eu
- <http://www.disabilityaction.org>

**Je vous remercie de votre
attention.
et on se voit dans le
mouvement !**

www.enil.eu



ENIL Brussels Office at Mundo J,
Rue de l'Industrie 10, 1000 Bruxelles, Belgique
Tel : 0032 (0)2 893 25 83



STIL
Förstärkt samhälle och bättre vardag

GIL

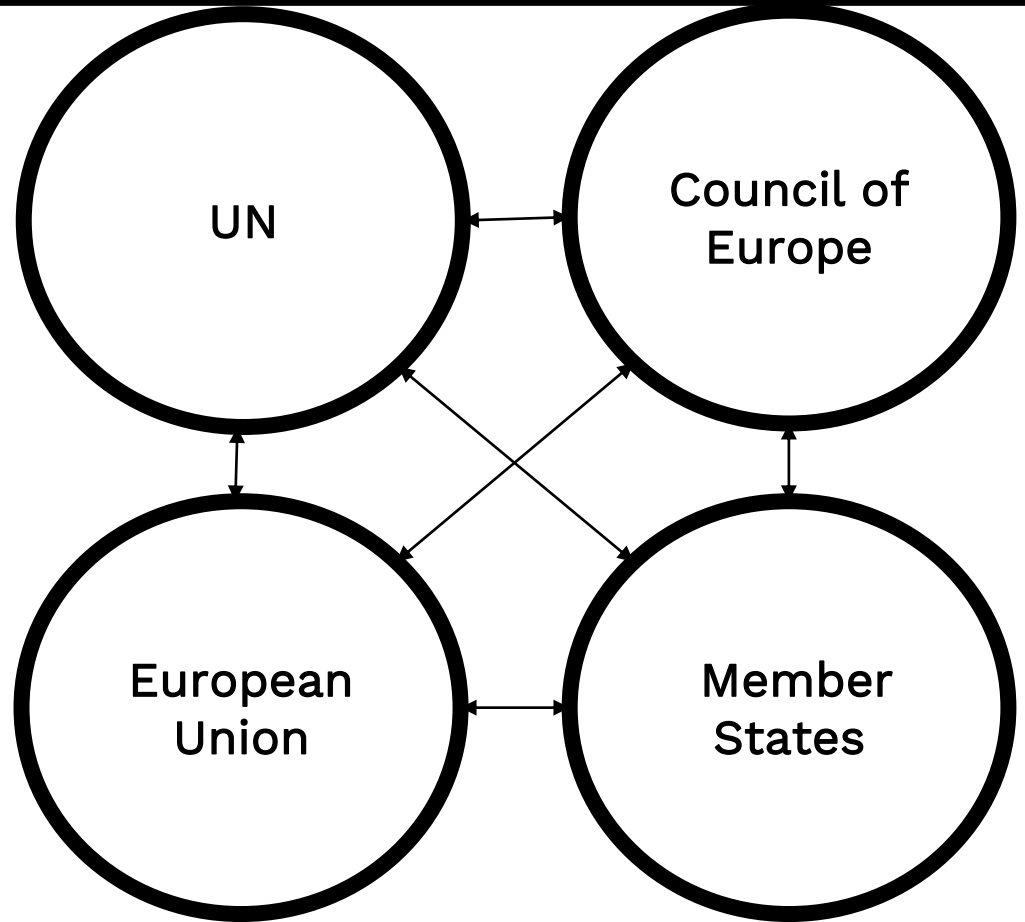


The UNCRPD in European Union Law

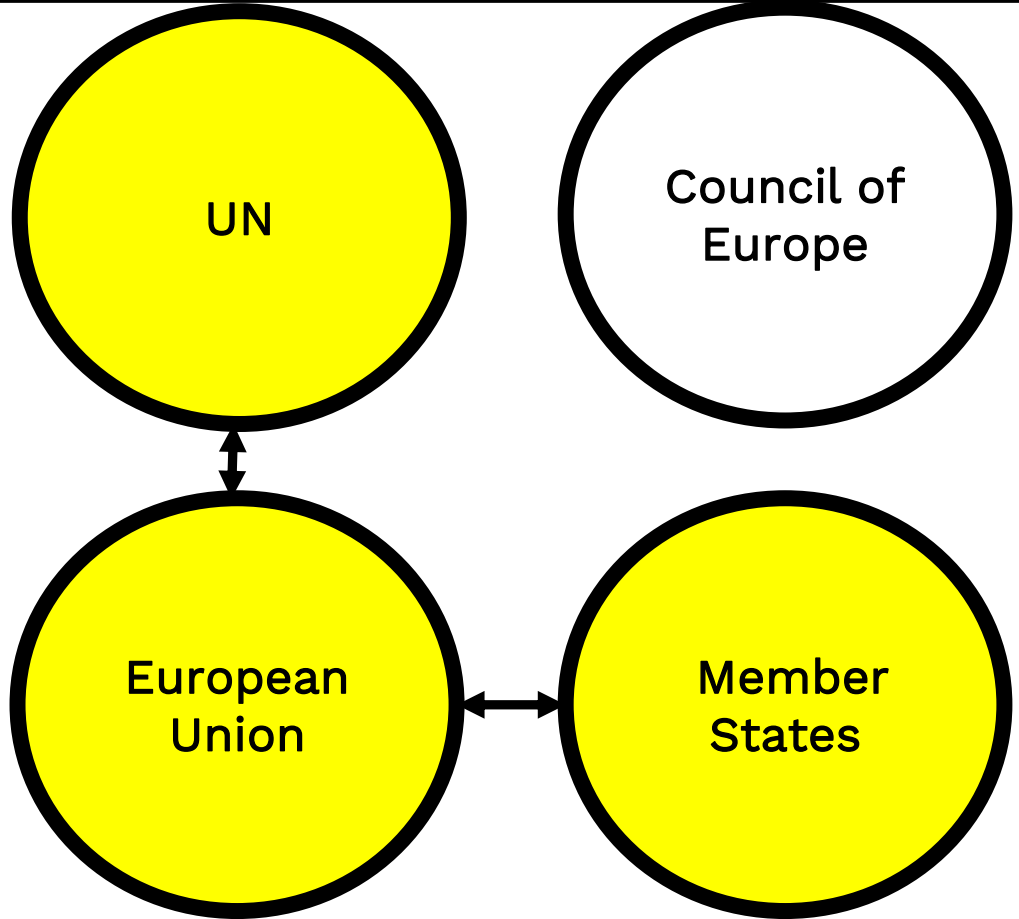


The protection of the
human rights of persons
with disabilities in the
European Union

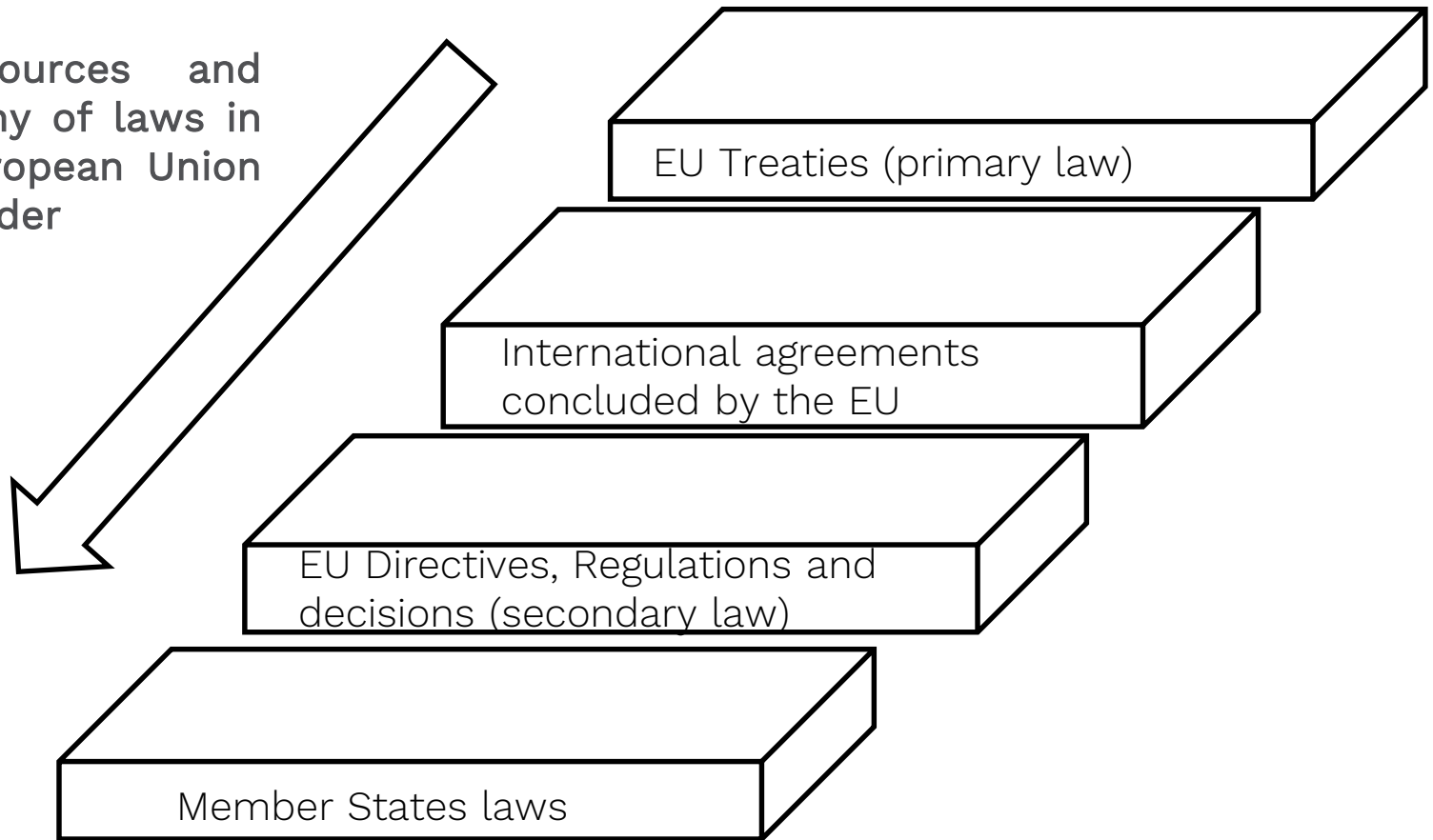
Disability rights now in Europe : a continuous dynamic of mutual reinforcement between different legal orders



The UNCPRD in EU Law
/ EU law and Member
States law



The sources and hierarchy of laws in the European Union legal order



The principle of primacy of EU law

- In case of conflict between national law and EU law, the ECJ established the «hierarchy» of prevalence between EU law and national law from the Member State (Costa v. E.N.E.L - 1964)
- Primacy is a precondition for the very existence of EU law . (which cannot be subordinated to the different laws of the Member States).
- The law stemming from the Treaty is thus never overridden by domestic legal provisions
- ...and a national judge must refuse to apply (or disapply) any national norm contrary to EU law.



The rights of persons with disabilities in the European Union treaties



The Treaty on the
European Union
(TEU)

The Treaty on the
Functioning of the
European Union
(TFEU)

The Charter of the
Fundamental Rights
of the European
Union
(CFR)

*It sets out the
aims and the
objectives of the
EU*

*It organises the
functioning and the
areas of
competence of the
EU*

*It provides a human
rights framework
for developing and
implementing EU
law and policy*



Human Rights in the Treaty on the European Union

Article 2 Values

Article 3 Aims

Article 6 Fundamental rights

Article 7 Sanctions

Article 9 Equality

Article 21 External cooperation

Disability in the Treaty on the Functioning of European Union

Art 10. In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, **disability**, age or sexual orientation.



Art 19. Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, **disability**, age or sexual orientation.”

The Charter of the Fundamental Rights

Dignity

Solidarity

Freedom

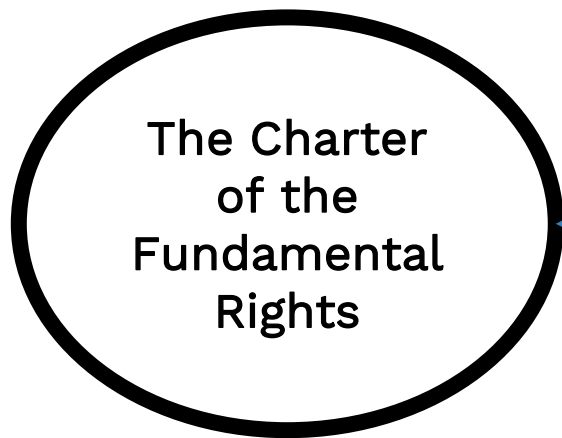
My fundamental
rights
in the
European Union

Citizen's rights

Equality

Justice





Insofar as the rights set out in the Charter correspond to rights in the ECHR, the meaning and scope of those rights shall be the same (Article 52).

Disability in the Charter

Article 21. Non-discrimination

Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

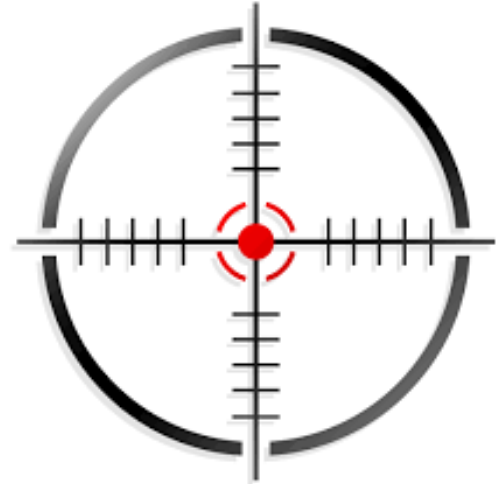


Article 26 - Integration of persons with disabilities

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

When does the Charter apply ?

- To institutions and bodies of the EU
- To the national authorities *only when they are implementing EU law.*
- Individuals are not be able to take a Member state to Court for failing to uphold the rights in the Charter *unless the Member state in question is implementing EU law.*





Glatzer v Freistaat
Bayern. Case C356/12
(2014)



Does the Annex III to Directive 2006/126, which sets minimum acuity standards for the drivers of heavy goods vehicles violates the Articles 20, 21 and 26 of the Charter concerning equality before the law, non-discrimination on grounds of disability, and the integration of persons with disabilities ?

A difference in treatment applied to a person with a visual disability to drive power-driven vehicles **is not contrary to the prohibition on discrimination** based on disability within the meaning of Article 21 **in so far** as by laying down the provision, the EU has weighed the requirements of road safety and the right of persons affected by a visual disability to non-discrimination **in a manner which cannot be regarded as disproportionate in relation to the objectives pursued.**



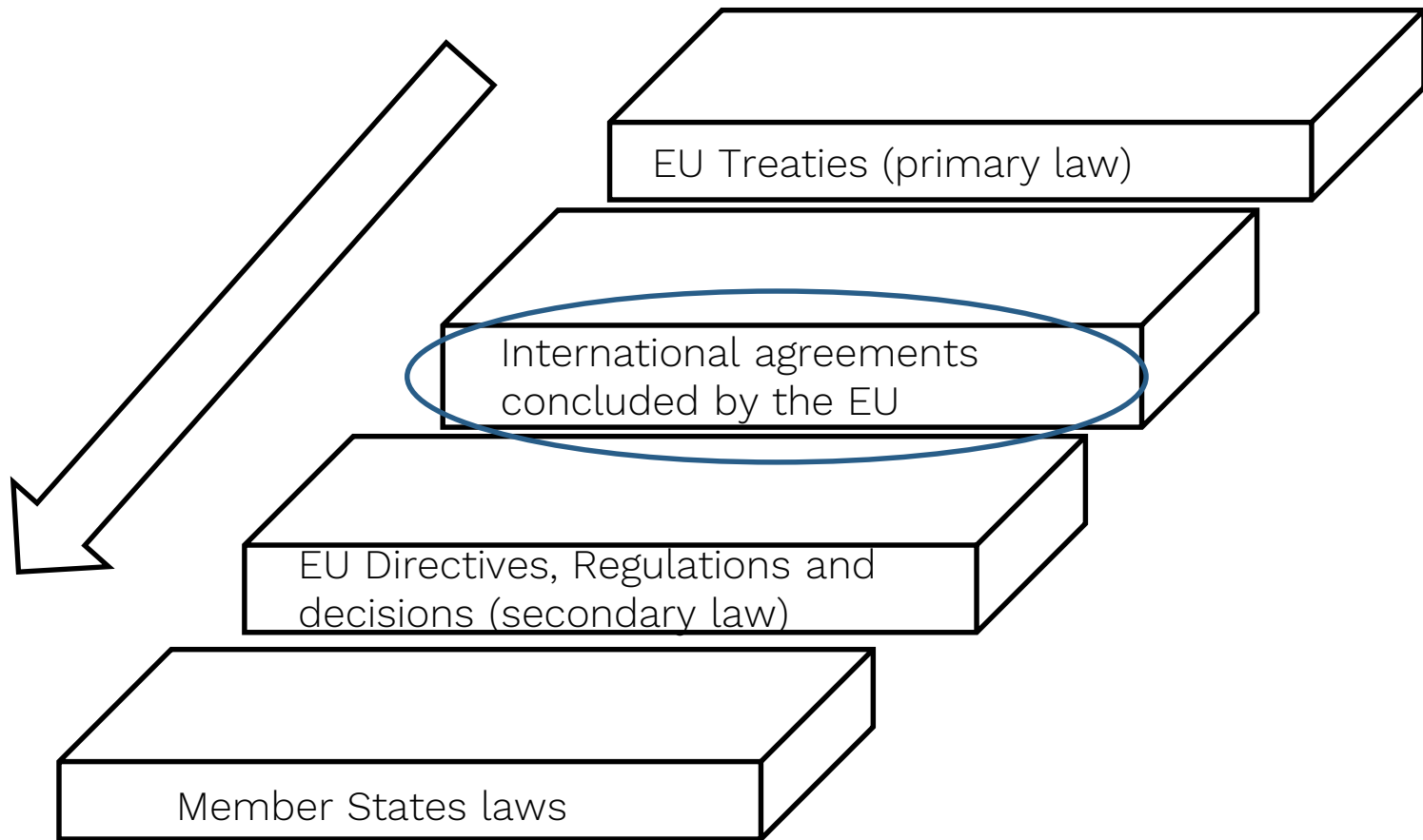
Article 26 of the Charter **does not require the EU to adopt any specific measure.** In order for that article to be fully effective, it must be given more specific expression in European Union or national law. Accordingly, that article cannot by itself confer on individuals a subjective right.

....and does constitute the fact that Mr Glatzel has not received the driving licence applied for a discrimination within the meaning of Article 2 of the UNCRPD ?



The United Convention on
the Rights of Persons
with Disabilities
(UNCRPD) as part of the
EU legal order







The EU becomes a party to an international human rights treaty

An intergovernmental organization joins a United Nations human rights treaty.

IV

(Acts adopted before 1 December 2009 under the EC Treaty, the EU Treaty and the Euratom Treaty)

COUNCIL DECISION

of 26 November 2009

concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities

(2010/48/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 13 and 95 in conjunction with the second sentence of the first paragraph of Article 300(2) and the first subparagraph of Article 300(3) thereof,

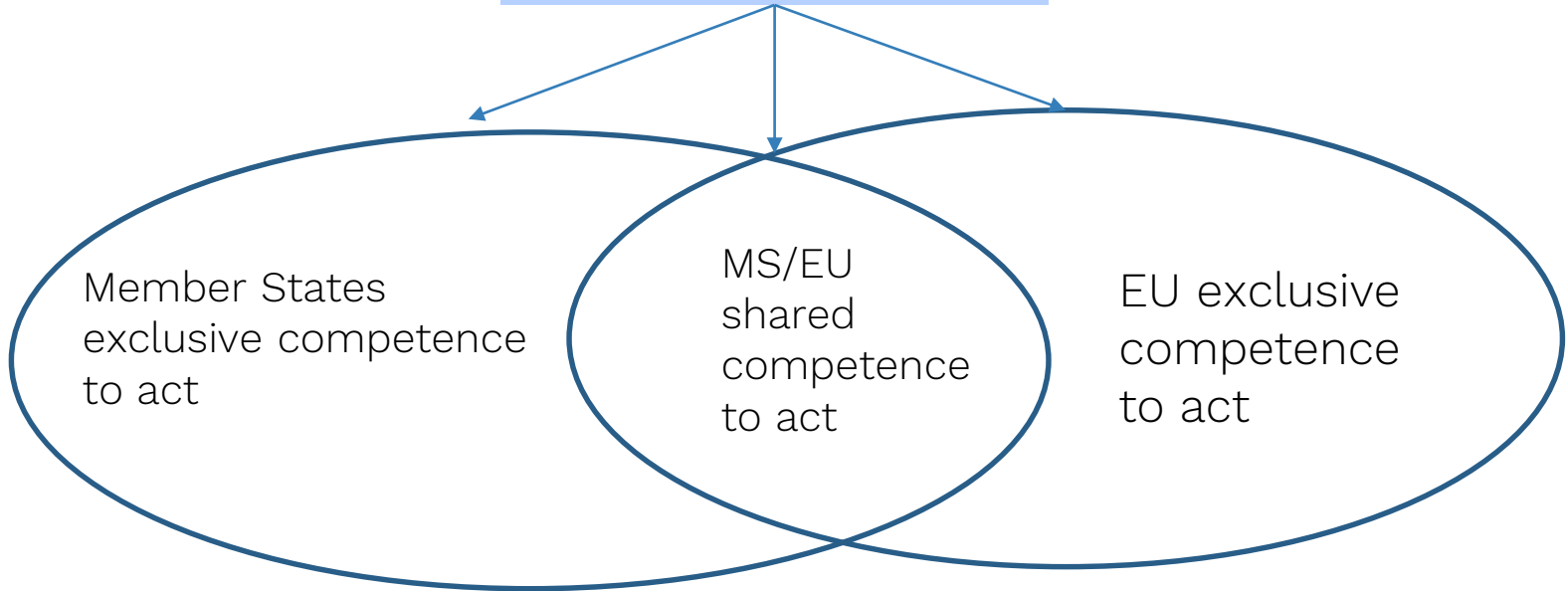
- (6) Such approval should, however, be accompanied by a reservation, to be entered by the European Community, with regard to Article 27(1) of the UN Convention, in order to state that the Community concludes the UN Convention without prejudice to the Community law-based right, as provided under Article 3(4) of Council Directive 2000/78/EC⁽¹⁾, of its Member States not to apply to armed forces the principle of equal treatment on the grounds of disability.

The UNCRPD is
a “mixed”
agreement





CONVENTION on the RIGHTS of
PERSONS with DISABILITIES



Exclusive competences

(Article 3 of the TFEU) areas in which the EU alone is able to legislate and adopt binding acts. EU countries are able to do so themselves only if empowered by the EU to implement these acts. The EU have exclusive competence in the following areas:

- customs union
- the establishing of the competition rules necessary for the functioning of the internal market
- monetary policy for the member states whose currency is the euro
- conservation of marine biological resources under the common fisheries policy
- common commercial policy
- concluding international agreements, subject to certain conditions

Shared competences

(Article 4 of the TFEU): the EU and EU countries are able to legislate and adopt legally binding acts. EU countries exercise their own competence where the EU does not exercise, or has decided not to exercise, its own competence. Shared competence between the EU and EU countries applies in the following areas:

- social policy, but only for aspects specifically defined in the Treaty
- Internal market
- economic, social and territorial cohesion (regional policy)
- agriculture and fisheries (except conservation of marine biological resources)
- environment
- consumer protection
- transport
- trans-European networks
- energy
- area of freedom, security, justice
- shared safety concerns in public health matters, limited to the aspects defined in the TFEU
- research, technological development, space
- development cooperation and humanitarian aid

Supporting competences

(Article 6 of the TFEU): the EU can only intervene to support, coordinate or complement the action of EU countries. Legally binding EU acts must not require the harmonisation of EU countries' laws or regulations. Supporting competences relate to the following policy areas:

- protection and improvement of human health
- industry
- culture
- tourism
- education, vocational training, youth and sport
- civil protection
- administrative cooperation

**DECLARATION CONCERNING THE COMPETENCE
OF THE EUROPEAN COMMUNITY WITH REGARD
TO MATTERS GOVERNED BY THE UNITED
NATIONS CONVENTION ON THE RIGHTS OF
PERSONS WITH DISABILITIES**

**COMMUNITY ACTS WHICH REFER TO MATTERS GOVERNED BY
THE CONVENTION**

- Accessibility
- Independent living and social inclusion, work and employment
- Personal mobility
- Access to information
- Statistics and data collection
- International cooperation



Effects of the ratification of the UNCRPD by the EU

- ⇒ The UNCRPD is **directly applicable** in the EU legal order
- ⇒ Any secondary EU legislation must be in **conformity** with the UNCRPD
- ⇒ Any EU conflicting rule may be **annulled** by the ECJ
- ⇒ The Commission might bring an **infringement** case against a Member State not properly implementing the UNCRPD (insofar it is a EU competence)
- ⇒ Disability rights derived from the accession of the EU to the UNCRPD can be judicially enforced at EU level

The judicial enforcement of disability rights at EU level

The European Court of Justice :

- reviews the legality of the acts of the institutions of the EU;
- interprets EU law at the request of the national courts and tribunals;
- cooperates with the courts and tribunals of the MS - ensures the uniform application and interpretation of EU law;

Types of proceedings

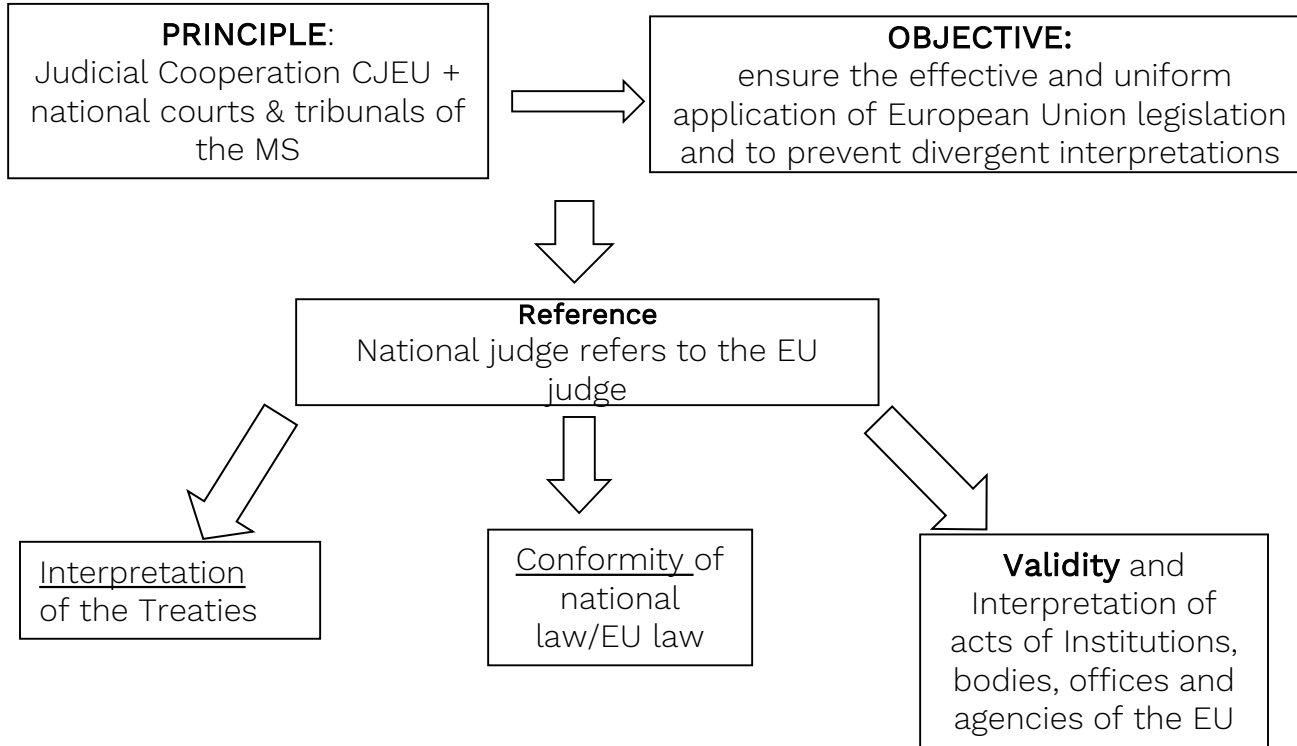
- Reference for a preliminary ruling (Art.267 TFEU)
- Actions for failure to fulfil obligations – infringement (Art.258-260 TFEU)
- Actions for annulment (Art.263 TFEU)
- Actions for failure to act (Art.265 TFEU)
- Appeals

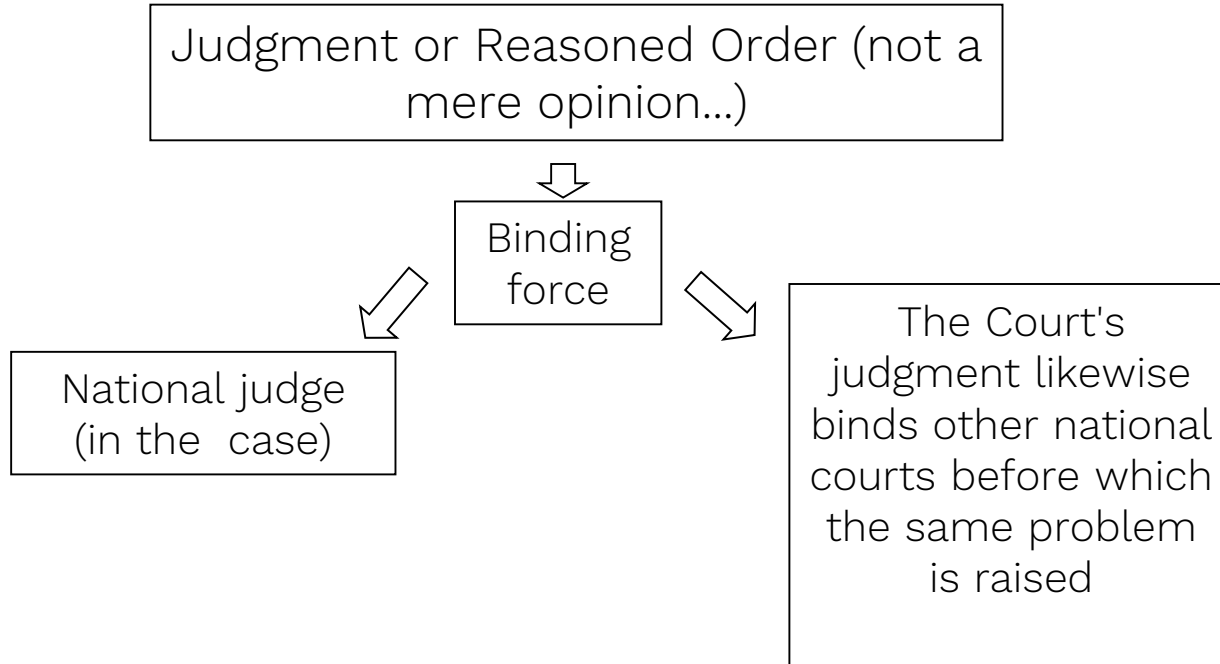
Reference for a preliminary ruling

Doubt concerning a norm
of EU law...
(interpretation/validity)

The national judge
can/must
refer the question to the
CJEU and request
clarification / interpretation





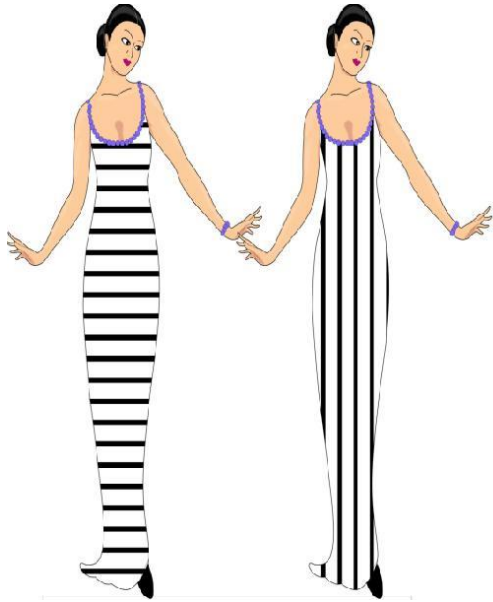


Reference can be made **only** by a national court (not by individuals) - all the parties to the proceedings before that court, the MS and the institutions of the EU may take part in the proceedings before the Court of Justice

Direct effect enables individuals to immediately invoke a European provision before a national or European court.



DIRECT EFFECT



Vertical
Direct
Effect



Allows an **individual** to
invoke a
provision
against **the
state**

Horizontal Direct Effect



Allows **individuals**
to invoke a
provision against
another **individual**
or a **private
company**.

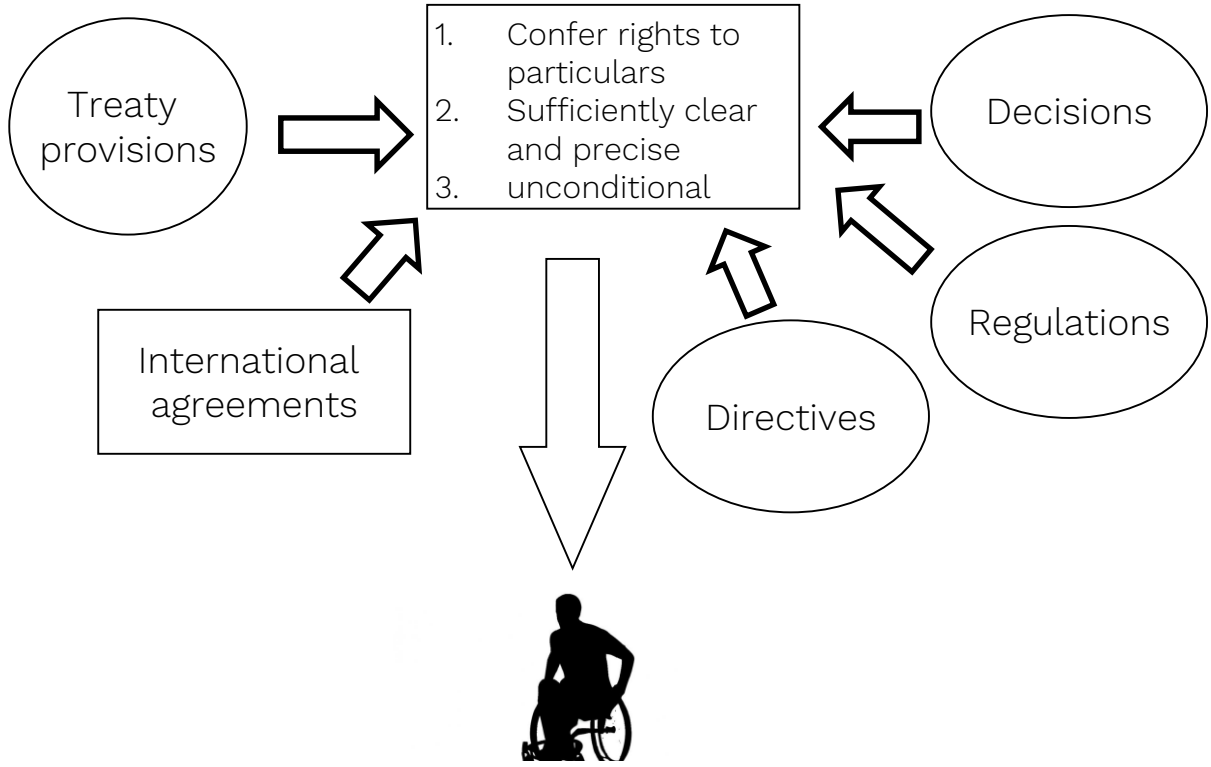
The CJEU has identified three situations necessary to establish the direct effect of EU law.



1. The provision must be sufficiently clear and precisely stated

2. The provision must be unconditional and not dependent on any other legal provision;

3. The provision must confer a specific right upon which a citizen can base a claim





Glatzer v Freistaat Bayern. Case C356/12 (2014)

The directive 2006/126 is a legal act of the European Union which falls under the matters governed by the UNCRPD.

However, the provisions of that convention do not constitute, from the point of view of their content, **unconditional** and sufficiently **precise** conditions which allow a review of the validity of the measure of EU law in the light of the provisions of that convention

The provisions of the UNCRPD are not, as regards their content, provisions that are unconditional and sufficiently precise and therefore **do not have direct effect** in European Union.



Z v The Board of management of a community school (C-363/12)



Glatzer v Freistaat Bayern. Case C356/12 (2014)

The directive 2006/126 is a legal act of the European Union which falls under the matters governed by the UNCRPD.

However, the provisions of that convention do not constitute, from the point of view of their content, **unconditional** and sufficiently **precise** conditions which allow a review of the validity of the measure of EU law in the light of the provisions of that convention

However, the fact remains that, according to the case-law of the Court, the primacy of international agreements concluded by the European Union over provisions of secondary legislation means that such provisions must, so far as is possible, be interpreted in a manner that is consistent with those agreements (

The provisions of secondary Community legislation must, so far as is possible, be interpreted in a manner that is consistent with the UNCRPD (Ring vs Dansk almennyttigt Boligselskab DAB – ECJ Case C2335/11).



The Council Directive 2000/78/EC of 27 November 2000
establishing a general framework for equal treatment in
employment and occupation



The “general” framework Directive entails “specific” provisions regarding disability :

- Recitals (17), (20) and (21)
- Art 2. (1) (b) - Indirect discrimination
- Art 5. - Reasonable accommodation
- Art 7 (2) – Positive action



“

Art 5. In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, **reasonable accommodation shall be provided.** This means 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.”

Reasonable accommodation or translating a new approach to disability into rights

The concept of reasonable accommodation emerged in response to barriers erected by the physical or social environment resulting in an inability to perform a function in a conventional manner.

Aart Hendriks

Instead of requiring disabled people to conform to existing norms, the aim is to develop a concept of equality which requires adaptation and change.

Sandra Fredman



Chacon Navas C13-05

Coleman C303-06

Jette Ring e.a C335-11

Glatzel C356-12

Kaltoft C354-13

Daouidi C395-15

Ruiz Conejero C270-16

What do you
mean by
“Disability” ?

The definition of the
protected group

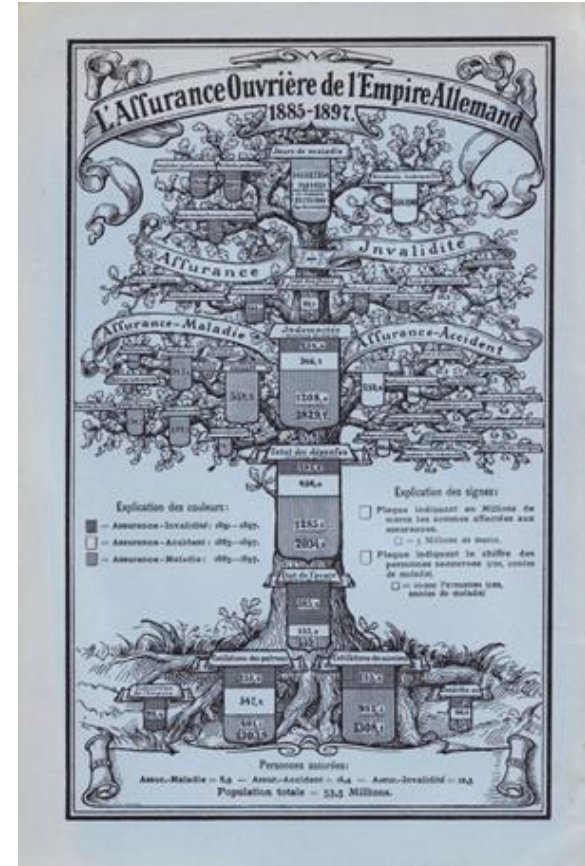




A disabled person is someone who :

“because of his physical or mental condition is neither in a position to perform regularly his previous work, nor to earn the minimum invalidity pension through other work corresponding to his strengths and capabilities”

German Invalidation and Pension Law 1889



ECJ Ruling on Chacon Navas (2006)

Disability must be understood as referring to a **limitation which results in particular from physical, mental or psychological impairments** and which hinders the participation of the person concerned in professional life



- The Court seemed to assume that medical impairments themselves, not the work environment, hinder professional life
- The Court's reasoning seemed markedly uninformed by the historical, political and normative debate regarding the meaning of disability in Europe and abroad



ECJ Ruling on Ring

The concept of 'disability' must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments **which in interaction with various barriers** may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers.



Preamble

*Recognising that disability is an evolving concept and that disability results from the **interaction** between persons with **impairments** and attitudinal and environmental **barriers** that hinders their full and effective participation in society on an equal basis with others.*

Art. 1

*“Persons with disabilities include those who have long-term physical, mental, intellectual or sensory **impairments** which in **interaction** with various **barriers** may hinder their full and effective participation in society on an equal basis with others”.*



Typology of approaches of disability

(Marcia Rioux)

The individual model

Disability as an individual pathology (locating the problem inside the individual)

- Medical approach
- Functional approach

The social model

Disability as a social pathology (locating the problem outside the individual)

- Environmental approach
- Human rights approach





Directive 2000/78 must, as far as possible, be interpreted in a manner consistent with the Convention.



The ECJ definition of disability after Ring

Disability must be understood as referring to limitations which result from :

- (i) **long-term...**
- (ii) **physical, mental or psychological** impairments
- (iii) which in **interaction with various barriers**
- (iv) **may hinder** the full and effective participation of the person in professional life
- (v) on an **equal basis** with other workers

This definition covers not only disabilities that are congenital or result from accidents, but also those caused by illness.

Nothing in the wording of Directive 2000/78 indicates that its scope of application is limited to a certain **degree of severity** of disability.

**Secondary EU
legislation
protecting the
rights of persons
with disabilities**

- Regulation 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air
- Regulation 1371/2007 (train)
- Regulation 1177/2010 (sea and inland waterway)
- Regulation 181/2011 (bus and coach transport).



Travelling is a right for all

Your passenger rights at hand
EUROPEAN COMMISSION

Disabled? Reduced mobility?
Have you been discriminated against when travelling by plane or train?
Have you not been assisted before and during your journey?
Airports, airlines and railway companies have a legal obligation to assist you and to inform you about your rights and where to complain*
EU legislation protects your interests wherever you travel across Europe

More information at
ec.europa.eu/passenger-rights
or via Europe Direct 00 800 6 78 9 10 11**

* For air transport depending on national legislation.
** Certain mobile satellite services do not always work in all EU Member States. These calls may be charged.

EUROPEAN COMMISSION

Since the EU laws on passengers rights is framed in regulations, they directly applicable.

They are also vertically and horizontally directly effective : they can be used as a piece of law in a Member state court against a company



The European Disability Strategy 2010-2020

- The European accessibility act, EU directive 2019/882 on the accessibility requirements of products and services
- The regulations on the Rights of Passengers with Reduced mobility in main modes of transport
- The EU directive 2016/2102 on the accessibility of website and mobile applications of public sector bodies
- The EU disability card
- The EU parking card
- The EU directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation
- The implementation of the UNCRPD through the European Semester and with EU funds.

The UNCRPD in European Union Law



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Overview of the presentation

1. Disability rights in the European Union
2. The European Charter of Fundamental Rights and disability
3. The United Convention on the Rights of Persons with Disabilities (UNCRPD) as part of the EU legal order
4. Secondary EU legislation protecting the rights of persons with disabilities
5. Issues of primacy, direct and indirect effect
6. Definition of disability and reasonable accommodation under EU law

1. Disability rights in the European Union treaties

- The European Union legal system is structured and hierarchical. Therefore, the starting point for considering the legal framework protecting disability rights within the European Union are the two core functional treaties, namely the Treaty on European Union (TEU), originally signed in Maastricht in 1992, and the Treaty on the Functioning of the European Union (TFEU), originally signed in Rome in 1957.
- The protection of human rights is firmly embedded in the TEU :
 - Article 2 TEU, states that “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail”.
 - Article 3 TEU pledges the Union to “combat social exclusion and discrimination” and to “promote social justice and protection, equality between men and women, solidarity between generations and protection of the rights of the child”.
 - Article 6(1) TEU states that : “The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties. The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties”.

- Article 6(2) TEU states that: “The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms...”
- Article 6(3) TEU states that: “Fundamental Rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union’s law”.
- Article 7 sets out procedure for dealing with a “clear risk of a serious breach” by a Member State of the values referred to in Article 2.
- Article 9 TEU mandates the EU institutions to afford all citizens equal attention, and Article 21 TEU sets forth the requirement that the EU be guided by the principle of equality in EU external action.
- Although these articles do not create any rights, their prominent position in the TEU shows that the EU is committed to human rights and allows for more substantive forms of protection to be developed in the future.
- The TFEU contains a horizontal clause on non-discrimination provides the EU with a legal basis for the EU non-discrimination legislation.
 - Article 10 TFEU specifies that “in defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, **disability**, age or sexual orientation”.
 - Article 19 TFEU (former Article 13 EC) allows the EU to take action to combat discrimination on the named grounds his provides: “Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, **disability**, age or sexual

2. The European Charter of Fundamental Rights

- Since the entry into force of the Lisbon Treaty in December 2009, the Charter has acquired the same legal value as the EU Treaties and binds the EU institutions and member states when their action falls under the scope of application of EU law.
- The Charter incorporates a binding set of principles bringing together in one place all of the personal, civic, political, economic and social rights enjoyed by people within the European Union. The Charter includes the social and economic rights recognised as general principles of EU law, but also the fundamental rights adopted by the EU from the European Convention on Human Rights (ECHR) and the constitutional traditions common to the member states.
- Article 21(1) of the Charter provides for an all-embracing prohibition on discrimination states that: “Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited”.
- Article 26 of the Charter states that the “Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community”. These measures may concern education, vocational training, ergonomics, accessibility, mobility, means of transport and housing as well as access to cultural and leisure activities.

- Article 51 sets out the **scope of application** of the Charter:
 - Article 51(1) states that the provisions of the Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties. Thus the Charter binds also Member states whenever they act within the scope of EU law.
 - Article 51(2) reiterates the article 6(1) provision of the TEU: “The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties”. This means that the Charter cannot enter new policy domain and only attaches to EU law which is the expression of agreement between Member states that the EU has competence in conformity with the subsidiarity principle.
- Since its adoption, the ECJ mainly relied on the on the Charter :
 - to give broad interpretation to human rights: Case C-391/09 *Runevi-Vardyn v. Vilnius* and Case C-159/10 *Fuchs and Köhler v Land Hessen*.
 - to invalidate EU secondary legislation which breaches a Charter principle: Case C-92/09 *Volker v Land Hessen*, and Case C-236/09 *Association Belge des Consommateurs Test-Achats ASBL v Conseil des Ministres*.

- In the **case C356/12** *Glatzel v Freistaat Bayern*, the ECJ for the first time had to assess the compatibility of EU provisions with the disability provisions of the Charter. The ECJ had to assess whether physical conditions for drivers settled in the Directive 2006/16 constitute discrimination on the grounds of disability and, hence, violate the principle of equal treatment (Article 20 of the Charter), and more specifically, the principle of non-discrimination on the grounds of discrimination (Article 21(1)) as well as the principle of integrating of integrating persons with disabilities (Article 26).
- The ECJ eventually concluded that it did not have sufficient information to conclude that the Directive should be invalidated but there are several interesting elements to notice in its judgment :
 - a) the ECJ considered that Article 26 of the Charter “does not require the EU legislature to adopt any specific measure” for persons with disabilities and that “in order for that article to be fully effective, it must be given more specific expression in EU law or national law”.
 - b) the reference to the UN Convention on the Rights of Persons with Disabilities as an integral part of the European Union legal order and the Directive 2006/126 as regard personal mobility considered as one of the legal acts of the European Union which refer to matters governed the UNCRPD.
 - c) the way in which the ECJ carefully examined whether there is an objective justification for different treatment of some disabled drivers (suitability , necessity and proportionality)
 - d) the lack of necessity to determine whether a diminished visual acuity should be considered to amount to a disability within the meaning of the Charter since a difference in treatment consisting in not issuing a driving licence for vehicles on the ground of insufficient visual acuity may be objectively justified in the light of overriding considerations of road safety.

3. The United Convention on the Rights of Persons with Disabilities (UNCRPD) as part of the EU legal order

- The European Union has acceded to the UNCRPD with Council Decision 2010/48/EC. The instrument of ratification was deposited in December 2010, after the adoption of a Code of Conduct by the Council. The Council Decision has 2 substantive legal bases, namely Article. 19 TFEU (non discrimination) and article 114 TFEU (measures aiming to improve the conditions for the establishment and functioning of the internal market) , in conjunction with the procedural provision of article 218 TFEU (agreements between the Union and third countries or international organisations).
- It was the first time ever that the EU becomes a party to an international human rights treaty and it was also the first time that an intergovernmental organization join a United Nations human rights treaty.
- The UNCRPD, as other multilateral agreements that make provision for participation by regional organisations such as the EU alongside its Member States, provides for a Declaration of competence specifying which areas of the agreement fall within the competence of the Regional organization and which within that of its Member States. This Declaration is intended to specify to third Countries the distribution of competences between the European Union and the Member States and is also is relevant to determine the ultimate international responsibility for the implementation of the UNCRPD.

- The UNCRPD is a **mixed agreement**. Mixed agreements are signed and concluded by the EU and its Member States on the one hand, and by a Third Party on the other hand. The mixed nature is due to the fact that part of an international agreement falls within the scope of the EU powers and part within the scope of the powers of the Member States.
- An international agreement has legal effect in the EU legal order and does not require further acts of implementation at EU level such as a regulation or a directive. Moreover, in the hierarchy of sources of EU law, international agreements concluded between the EU and third countries or international organisations are situated below primary sources and general principles of EU law, but above secondary sources. The ECJ held that international agreements and all acts of the EU institutions adopted in relation to their conclusion prevail over secondary sources of EU law.
- As a result, all EU unilateral measures such as regulations, directives and decisions must be in conformity with international agreements in so far as their provisions fall within the scope of Community competence. Any conflicting secondary legislation may be annulled by the ECJ by virtue of Article 263 TFEU.
- The primacy of international agreements concluded by the Community over provisions of secondary Community legislation means that such provisions must, so far as is possible, be interpreted in a manner that is consistent with those agreements (ECJ Case C-61/94). The accession to the UNCRPD creates therefore an obligation to interpret EU law in manner that is consistent with the Convention (Ring vs Dansk almennyttigt Boligselskab DAB – ECJ Case C2335/11).

- Under certain conditions (see *infra*), international agreements can be invoked before the court by an individual; there is direct effect (Demirel - Case 12/86).
- In ensuring compliance with commitments arising from an agreement concluded by the Community institutions, the Member States fulfil, within the Community system, an obligation in relation to the Community, which has assumed responsibility for the due performance of the agreement (Case C-239/03, Etang de Berre). Therefore, the Commission might bring an infringement case against Member State not properly implementing the UNCRPD insofar as its provisions are within the scope of the EU competence.

4. Secondary EU legislation protecting the rights of persons with disabilities

- There is a very broad and diverse legislation at the European level dealing with disability related issues. Disability is part of the non-discrimination EU policy together with gender, ethnic origin, religion or belief, age and sexual orientation. Disability related issues are also covered by EU legislation and programmes in the field of education, employment and training, health and safety at work, social protection, social inclusion, public procurement, state aids, transport, telecommunications, consumer protection, health services and bioethics, assistive technologies etc.
- Article 19 TFEU has been the legal basis for the Council Directive 2000/78/EC of 27 November 2000, known as the Employment Equality Directive. As provided for in Article 1, the purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation a regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.
- This directive bans both direct discrimination (differential treatment based on a specific characteristic) and indirect discrimination (any provision, criterion or practice which is apparently neutral, but is liable to adversely affect one or more specific individuals or incite discrimination). Harassment, which creates a hostile environment, is also deemed to be a form of discrimination.

- Among the substantive provisions of the Directive figures an article on reasonable accommodation. As defined by Article 2 of the UNCRPD, reasonable accommodation means that the employer has a legal duty to take measures to adapt to working place to an employee with disabilities, such as removing physical barriers by installing ramps, facilitating access of visually impaired employees to information technologies, or altering working times to accommodate the needs of workers with disabilities. Failure to provide reasonable accommodation constitutes discrimination for the purpose of the Directive.
- The Employment Equality Directive requires Member States to provide for effective judicial remedies, embed legal rules on shifting the burden of proof to the respondent where a prima facie case of discrimination is established, and provide for sanctions. Notably, the Employment Equality Directive imposes only minimum requirements, and allows Member States to apply provisions which are more favourable to the protection of equal treatment than those laid down in the Directive.
- In 2008, the Commission presented a Proposal for a new Equal Treatment Directive aiming at extending the EU's non-discrimination legislation beyond the sphere of employment and occupation, addressing discrimination in the fields of social protection, social advantages, education, and access to and supply of public goods and services. However, this proposed Directive is still subject to an ongoing discussion and negotiation in Council. As yet, it has not been possible to achieve the unanimous agreement of all Member States that is required for the adoption of directives based on Article 19 TFEU, meaning the directive is far from being approved.

- On 2 December 2015, the European Commission also adopted a proposal for a European Accessibility Act, namely a directive aiming at prescribing common accessibility requirements covering products and services across the EU. Discussions among the Member states in the European Council and in the Parliament are still underway and it is too early to say when the final adoption of the proposal could be expected.
- Article 153 of the Treaty on the Functioning of the European Union gives the EU the authority to adopt directives in the field of safety and health at work. Reference is made in the Framework Directive and individual directives to the protection of the health and safety of workers with disabilities – for instance through the provision in Directive 89/654/EEC on the minimum safety and health requirements for the workplace stipulating that employers are required to organise workplaces “to take account of handicapped workers, if necessary”. In 2015, the ECJ concluded the Fenoll case (C-316/13) that the concept of “worker” as stipulated in of Directive 2003/88 on working time and Article 31 of the Charter of Fundamental Rights must be interpreted in such a way that a person in a sheltered workplace, performing work which was not entirely marginal, should be covered by the definition of worker.
- Disability is also addressed to some extent in EU consumer law, most notably in the Unfair Commercial Practices Directive (2005/29), the Product Safety Directive (2001/95) and the Consumer Rights Directive ((2011/83). However, the conceptualisation of vulnerability under EU consumer law remains inadequate to provide the adequate protection for persons who are disadvantaged on grounds of their disability.

- Disabled passengers rights are protected at European level by an set of comprehensive regulations which covers all means of transportation: planes, trains, ships and buses or coaches.
- The Regulation 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air establishes a set of specific rights for passengers with disabilities. The basic principles of this regulation are:
 - persons with disabilities should not be discriminated against when booking a ticket or boarding an airplane;
 - persons with disabilities have the right to receive assistance at the airport at no additional charge;
 - all staff dealing directly with the traveling public must receive relevant training, including disability awareness training.
- Regulation 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, establishes rules for compensation but also regarding the liability of airlines for damaged, lost, or destroyed mobility equipment.
- Similar to the air- passengers’ rights regulations, disabled passenger’s rights are addressed in :
 - the Regulation 1371/2007 when travelling by train;
 - the Regulation 1177/2010 when travelling by sea and inland waterway;
 - the Regulation 181/2011 when traveling in bus and coach transport.

- Since the EU law on passengers rights is framed in regulations, it is **directly applicable**. They do not need any other acts of parliament in the member state to make them into law. These regulations are also **vertically and horizontally directly effective** : they can be used as a piece of law in a member state court against the state or another individual.

5. Issues of primacy, direct and indirect effect

- The primacy of European Union law (sometimes referred to as supremacy) is an EU law principle that when there is conflict between European law and the law of Member States, European law prevails; the norms of national law have to be set aside. This principle was developed by the European Court of Justice, and, as interpreted by that court, it means that any norms of European law always take precedence over any norms of national law, including the constitutions of Member states.
- Direct effect is another principle of the EU law developed by the ECJ. It enables individuals to immediately invoke a European provision before a national or European court. This is significant because of the consequences both within the legal order of the European Union and for its member states.
- For example, if the provisions of the UNCRPD would be directly effective in the EU legal order, they will also have direct effect within the legal orders of all member states and, as EU law, enjoy supremacy over national law. EU law thus could act as a door opener for the UNCRPD in the member states' legal orders and provides an enforcement mechanism and potentially also an hierarchical boost : the UNCRP provisions could be enforced by all mechanisms used to enforce EU law, in particular by national courts, and it will benefit from the doctrine of supremacy of EU law according to which it enjoys a higher rank than member states' legislation.

- The term 'direct effect' was first used by the Court of Justice of the European Union (CJEU) in a judgement on 5 February 1963 when it attributed, to specific treaty articles, the legal quality of direct effect in the case of *NV Algemene Transporten Expeditie Onderneming van Gend en Loos v. Nederlandse Administratie der Belastingen* (Case 26/62). In this case, the CJEU identified three situations necessary to establish the direct effect of primary EU law. These are that:
 - the provision must be sufficiently clear and precisely stated
 - it must be unconditional and not dependent on any other legal provision;
 - it must confer a specific right upon which a citizen can base a claim.
- Taken together, the principles of direct effect and primacy mean that treaty provisions may be used to make claims before domestic courts and override domestic law. Probably the best-known example is *Defrenne v. Sabena* (Case 43/75), where the CJEU decided that the principle that women and men should receive equal pay, which is laid down by Article [141 EC now 157 TFEU], may be relied on before the national courts. These courts have a duty to ensure the protection of the rights, which that provision vests in individuals.
- "Vertical" effect applies when provisions have direct effect between citizen and public bodies. "Horizontal" effect' applies when the provisions have direct effect between citizen and citizen.

- The principle of direct effect also applies to the EU secondary legislation :
 - decisions are binding in their entirety upon those to whom it is addressed (not general, but specific)
 - regulations are directly applicable in all member states. They are self-executing.
 - directives are not directly applicable-no self-executing character. Their Transposition in domestic law is in principle required but they are exceptions (non implementation by the member States, precise and clear provisions).
- The principles of direct effect also applies to mixed agreements s (Case 12/86 *Demirel*) insofar as the provisions of the agreement at stake:
 - address areas already largely covered by Community law (Case C-239/03 *Commission v France -Etang de Berre*)
 - are sufficiently clear, precise and unconditional (Case C-192/89 *Sevince*)
- In the case *Z v The Board of management of a community school* (C-363/12), the ECJ held that the provisions of the UNCRPD are not, as regards their content, provisions that are unconditional and sufficiently precise and therefore **do not have direct effect** in European Union.

6. Definition of disability and reasonable accommodation under EU law

- In HK Danmark, acting on behalf of Ring v Dansk Almennyttigt Boligselskab and another case (C-335/11 and C-337/11) the ECJ gave guidance on the scope of "disability" and "reasonable accommodation" under the Equal Treatment Framework Directive, taking account of the EU's obligations under the UN Convention on the Rights of Persons with Disabilities.
- The ECJ recalled that the primacy of international agreements concluded by the European Union over instruments of secondary law and made it clear that the EU concept of 'disability' must be interpreted in a manner consistent with the UNCRPD.
- In order to be consistent with the Convention, the ECJ adopted a new definition of disability. Disability must be understood as referring to limitations which result from :
 - (i) long-term
 - (ii) physical, mental or psychological impairments
 - (iii) which in interaction with various barrier
 - (iv) may hinder the full and effective participation of the person in professional life
 - (v) on an equal basis with other workers.

- The ECJ definition covers not only disabilities that are congenital or result from accidents, but also those caused by illness. The ECJ also stated that there was nothing in the wording of Directive 2000/78 to indicate that its scope of application is limited to a certain degree of severity of disability.
- The ECJ emphasised that a reduction in working hours may be a reasonable accommodation under the Directive but that it is for the national courts to assess whether such a measure places a disproportionate burden on the employer.

National law strategies for combating discrimination on the grounds of disability

Case study

This case study aims to trigger a reflection and a discussion on how to identify and address a wide range of issues during the design and the implementation of national law strategies to combat discrimination on the grounds of disability.

The case study will be based on high-quality legal research paper that explore and analyze potential issues with national law strategies for combating discrimination. The author considers solutions for addressing these issues and advocates for a new approach for national law strategies focusing on positive duties. .

Note that the purpose of the exercise is not to critique the case study article or the author choice.

When reading the legal research paper, the participants are invited to think about the following questions:

1. What are the issues with traditional law strategies for combatting disability discrimination ?
2. What are the causes of the problem?
3. How could the problem be avoided?
4. What are the solutions to the issues ?
5. What can you learn from this lecture with regard to your experience in your own national context ?

Discrimination law : the limits of the law

Extracts from 'Discrimination Law' by Sandra Fredman

Discrimination and equality law have become increasingly sophisticated in recent decades. However, while initial successes fuelled early optimism, deeper structures of discrimination have proved remarkably resilient. This raises doubts about the role of law in effecting social change. Is law inevitably limited? Or can we refashion legal tools in such a way as to play a major part in achieving substantive equality?

The traditional primary channel for enforcement of anti-discrimination law is by individual complaint to a judicial court. However, the record of courts in discrimination cases has been disappointing. Compared to the scale of discrimination in society, the number of complaints to tribunals is small, and the amount of successes minuscule. As well as the low success rate, tribunals have not lived up to the expectation of a quick and affordable procedure.

Several factors contribute to the discouraging performance of courts in the discrimination arena. First, like the ordinary courts, the tribunals depend wholly on the individual plaintiff to initiate the case bring the evidence, and make the legal arguments. Not only is such a procedure premised on the assumption that discrimination complaints are purely individual, it also places an excessive burden on an individual victim of discrimination who must muster the courage to face an employer or ex-employer with a discrimination claim, as well as finding the personal and financial resources to pursue it. Respondents are also more likely to be successful if they are legally represented. Moreover, the increasing role of lawyers in tribunal hearings means that some of the speed, informality, and inexpensiveness of the tribunal system are inevitably sacrificed.

The second and related difficulty concerns the obstacles to obtaining evidence. Direct discrimination is particularly difficult to prove, since most relevant evidence is in the hands of the respondent.

A third factor contributing to the limited impact of the court system is that, the procedure is essentially adversarial, processing the case as a bipolar dispute between two individuals, diametrically opposed, to be resolved on a winner-takes-all basis. This all-or-nothing response leaves no room for compromise or synthesis.

There are several ways in which these difficulties could be overcome. First, wider standing rules can significantly ameliorate the burden on individual complainants by permitting institutional litigators, non-governmental organizations (NGO), and trade unions to bring proceedings. Such rules entail a recognition that discrimination is not just a question of individual justice. Social discrimination necessarily affects a group of individuals, and there should be legal mechanisms to permit remedial action to be taken on the part of the whole group.

A second possibility is the representative action. This would give the power to a trade union or NGO to bring an action on behalf of a class of persons, all of whom would benefit from the litigation of common issues.

One step further would be a fully fledged class action. Class actions aim to assist plaintiffs in cases in which an injury simultaneously affects many individuals, and involves law so complex that for any one individual to sue entails disproportionate expense. The class suit is a particularly flexible type of joint action because any member of the injured group may sue on behalf of the whole group. There is no need to organize all the victims before the trial or to prove that the spokesperson is representative. Instead, participation of all plaintiffs is deferred until after the trial: all members of the group are entitled to participate in the end result and, by the same token, all share the burden of expenses

All the solutions canvassed thus far are premised on finding an individual victim. However, given the institutional nature of discrimination, it is particularly important to be in a position to challenge a discriminatory rule even if it is not possible to identify a specific victim. For example, women and ethnic minorities may be deterred from applying for certain types of jobs because of indirect discrimination; yet such practices should still be open to challenge. It is thus of great importance that the ECJ has recognized that discrimination can be committed even if no victim has been identified. In *Firma Feryn*,

an employer publicly let it be known that, under its recruitment policy, it would not recruit any employees of a certain ethnic or racial origin. The Court recognized that a public declaration of this type would dissuade members of these groups from applying in the first place, hindering their access to the labour market.

A further problem with discrimination law identified above was the difficulty of obtaining evidence. A helpful approach has been to shift the burden of proof to the respondent once the applicant has made out a prima facie case of discrimination. Such a principle, first developed by the ECJ, was initially given statutory endorsement in relation to sex discrimination,²³ and then extended to race for the purposes of the Race Directive and to sexual orientation, disability, age, and religion and belief for the purposes of the Employment Directive

Probably the most serious failing of discrimination is in the nature of its remedies. As with the adversarial system as a whole, remedies are limited by their focus on the individual. Instead of engaging actively in forward-looking reform of the type essential to achieve comprehensive restructuring, the primary remedy available complaints to tribunals is in the form of monetary compensation. Courts are seldom entrusted with an injunctive remedy nor do they have the power of ordering reinstatement or reengagement in discrimination cases, despite having such power in unfair dismissal cases.

This may be contrasted with the mandatory injunction, used in the US in many of the important equal treatment cases. Unlike compensation, which is retrospective, individualized, and all-or-nothing, the mandatory injunction operates as a continuing constraint on future action. This challenges the adversarial system in several fundamental ways. First, the court is actively involved in balancing the interests not only of the parties before it but those of others who are inevitably affected. Secondly, because the focus shifts away from past conduct such as fault and intention, onto future consequences, the nature of the relevant evidence changes. Evidence on social facts is required, and wider interest representation necessitated. Thirdly, the prospective nature of the remedy creates the incentive for parties to reach a compromise. Finally, the judge is no longer a passive arbiter, but an active participant in the process. Most importantly, the judge maintains a continuing role in mediating, supervising, and even managing the operation of the decree. The result is radical. Instead of litigation functioning as a private dispute settlement, it operates as a manner of carrying out a policy. The use of mandatory injunctions in the US in this context has been far from uncontroversial, raising questions both about the suitability of judges in making policy decisions of this type, and the legitimacy and accuracy of social science information. Nevertheless, it forms an important attempt to surmount the restrictions of the adversarial approach.

It is arguable that discrimination law, by its nature, requires a departure from the traditional adversarial structure. Legislation which explicitly modifies and regulates basic social and economic realities challenges the traditional adversarial model.⁶⁸ The bipolar structure is particularly inappropriate for public and private interactions which are not bilateral transactions between individuals, but have wide social implications. This in turn requires a transformation of the adjudicative structure from a 'dispute resolution' model to a model of 'structural reform'.

In the dispute-resolution model, the victim, spokesperson, and beneficiary are automatically combined in one plaintiff. In the newer model, the victim is not an individual but a group; and the spokesperson is not necessarily one of the group. In addition, because a beneficiary need not prove individual damage, the class of beneficiaries may well be wider than the victims. Thus, all members of a particular group might benefit from the institution of prohibitions on harassment, even though not everyone has individually suffered from harassment. A similar analysis applies to the defendant. Whereas in the dispute-resolution model, the defendant is both the wrongdoer and the provider of a remedy, in the model of structural reform, the wrongdoer disappears, and instead the focus is on the body able to achieve reform. In the result, the individualism of the adversarial system is supplanted by a group-based model. Thus the individual no longer bears the burden of enforcing her own equality rights.

There are two radical possibilities to move away from a dispute-resolution model altogether. The first is enforcement by an agency, and the second is the use of positive duties to promote equality.

Some of the weaknesses of an adjudicative structure can be addressed by giving powers given to an enforcement agency to initiate and conduct a 'formal investigation' into cases of suspected unlawful discrimination. The formal investigation departs from adversarialism in several key respects. As a start, it is an active rather than passive process. The Agency would have the power to initiate the investigation, thus inviting a strategic approach instead of an ad hoc series of actions. Moreover, it has strong information-gathering powers, including the ability to demand written or oral evidence and the production of documents. The formal investigation also deviates significantly from the individualism of the court procedure. The power is specifically directed at a practice of discrimination rather than at a particular discriminatory act

against an individual. Nor is the situation characterized as an all-or-nothing bipolar dispute. Instead, the investigation is intended to be an interactive process, during which the Agency aims to secure a change in discriminatory practices through discussion, negotiation, and conciliation.

Its remedial powers are therefore essentially forward-looking. Thus the Agency has the power to issue an 'unlawful act notice', which can include a requirement that the respondent prepare and act on an action plan to avoid a repetition of the unlawful act. Judicial remedies are harnessed as a last resort.

Such formal investigation process has the potential to stimulate significant change in structures of discrimination. Its aim was not simply to enforce the law, but to uncover structural discrimination and trigger wider policy and procedural change.

The most important response to the individualized, retrospective, and passive enforcement and remedial structure should take the form of positive duties to promote equality. Positive duties are proactive rather than reactive. They aim to identify and redress unlawful discrimination even if there has been no complaint by an individual victim. But they go further. Proactive measures are also preventative. Duty-holders should consider the impact on equality of any new or established policies or legislation and adjust them accordingly. Equally importantly, proactive measures aim to promote equality, for example by introducing measures to facilitate the entry of under-represented groups or through family friendly measures.

Positive duties have the potential to overcome the central deficiencies of the complaints-led model identified above. Most importantly, the initiative lies with policy-makers and implementers, service providers, or employers. This relieves individual victims of the burden and expense of litigation: instead, the duty to bring about change lies with those with the power and capacity to do so. Secondly, change is systematic, instead of consisting in reactions to ad hoc claims brought by individuals. The institutional and structural causes of inequality can be diagnosed and addressed collectively and institutionally. This means that the right to equality is available to all, not just those who complain. Thirdly, there is no need to prove a breach of the law or find a named perpetrator.

Rather than determining fault and punishing conduct, the focus is on systemic discrimination and the creation of institutional mechanisms for their elimination. This also avoids the adversarial attitudes of the parties. Rather than viewing equality as a site of conflict and resistance, equality should be regarded as a common goal, to be achieved cooperatively. Finally, proactive models ideally broaden the participatory role of civil society, both in norm-setting and in norm-enforcing. This participatory dimension fundamentally influences the nature of the norms themselves. Given that they are to be implemented programmatically over a period of time, proactive models tend to produce norms which are dynamic and renegotiable.

The imposition of positive duties changes the whole landscape of discrimination law. The focus is no longer on the perpetrator of a discriminatory act. Instead, the spotlight is on the body in the best position to promote equality. Individual fault becomes irrelevant. One consequence of this is that the respondent is not identifiable simply from the definition of discrimination.

Legislation must explicitly define and justify the choice of bodies upon whom to place the obligation. Similarly, the nature of the duty changes. Under the traditional model, individuals are required to refrain from discriminating. If they breach this duty, they are required to pay compensation to the victim. By contrast, the trigger for the duty to promote equality is not self-defining. Legislation must specify both when the duty arises, and its content.

To whom does the duty apply ?

The key to the advances represented by positive duties is that they fall not upon the perpetrator of a discriminatory act but upon the body in the best position to take action to address structural inequalities and to ensure that new policies promote equality rather than exacerbate inequalities. The question of who has such responsibility is therefore of central importance. There are a range of possible responsible bodies. It may be thought appropriate to confine the duties to public bodies, with a possible extension to private bodies with public functions. If the function is extended into the private sector, this might also include private employers, private service providers, and trade unions.

A survey of proactive duties among EU Member States demonstrated a wide variety of uses of such bodies. Public bodies had responsibility for taking proactive measures in 13 Member States. This might include members of the executive, from ministers, down to regional public authorities as well as public employers.

With regard to the nature of the duty, traditional anti-discrimination legislation requires the victim to identify an act of discrimination in order to attract a compensatory remedy. Positive duties, by contrast, place the onus of identifying patterns of inequality on the body on whom the duty to promote equality lies. There are at least three levels at which proactive duties operate.

The first is to provide more effective means of ensuring that existing antidiscrimination laws are fulfilled. Instead of responding only to individuals with the courage and resources to bring a complaint to a court or tribunal, the employer or public body should take the initiative in seeking out instances of unlawful discrimination and rectifying them. Moreover, rather than redressing unlawful discrimination only for the benefit of a particular individual, such an approach seeks to find collective solutions, covering all affected individuals.

A second function of proactive measures is to look beyond existing anti-discrimination law and seek to promote equality. Examples might be the institution of quotas or family friendly measures.

Thirdly, proactive measures aim to prevent inequality arising in the first place. This requires decisionmakers to assess new policy or legislative measures to determine their impact on the protected characteristics and to adjust them if necessary ('impact assessment').

Because proactive duties require the responsible body both to diagnose the problem and to set in place a process of addressing it, it is useful to isolate the elements of the duty. As a start, there should be a process of diagnosing the problem, through the collection of statistics, impact assessments, pay reviews, and other similar diagnostic devices. Arising from this diagnosis should be the formulation of a plan, optimally with full consultation of those affected. Implementation of the plan should be continually monitored and reviewed to assess whether a proactive measure is effective, to review its progress, and to readjust it if necessary.

What should be the aims and objectives of the duty ?

The radical nature of positive duties makes it tempting to view their introduction as an end in itself. Yet it is crucially important to consider what each strategy is aiming to achieve. In particular, which conception of equality is being utilized?

The following four 'dimensions of equality' should be specified :

- (i) Addressing disadvantage—taking steps to counter the effects of disadvantage experienced by groups protected by discrimination law, so as to place people on an equal footing with others;
- (ii) Promoting respect for the equal worth of different groups, and fostering good relations within and between groups—taking steps to treat people with dignity and respect and to promote understanding of diversity and mutual respect between groups, which is a pre-requisite for strong, cohesive communities;
- (iii) Meeting different needs while promoting shared values—taking steps to meet the particular needs of different groups, while at the same time delivering functions in ways which emphasise shared values rather than difference and which provide opportunities for sustained interactions within and between groups;
- (iv) Promoting equal participation—taking steps to involve excluded or under-represented groups in employment and decision making structures and processes and to promote equal citizenship.

The specification of these dimensions of equality functions as an important counterweight to the increasing tendency within the justificatory rhetoric of positive duties to stress their role in improving efficiency of government. A further strength of a multi-dimensional set of objectives is that it facilitates a holistic view. As well as the participative dimension, it is necessary to consider the redistributive, transformative, and recognition dimensions of equality.

The nature of the positive duty in the discrimination field is such that the process of decision-making is as important as the outcome. One approach is to institute a highly centralized scheme, with government or a public agency dictating in detail the steps to be taken and enforcing standards through legal proceedings. However, it has been shown that the effectiveness of equality strategies depends on convincing those who implement the plan of its appropriateness and value; and ultimately changing the culture itself. More can be achieved by enlisting the selfinterest of employers and providers than through unilateral control.

But harnessing the energies of the employer or provider is not sufficient. It has been shown that the quality of regulation improves significantly by incorporating those affected both into the decision making process and its implementation. In

this way participation to some extent fills the gap left by departing from reliance on victim initiative, preventing the process from being a top-down exercise imposed from above. As well as improving its effectiveness, the participatory dimension of proactive models arguably deepens the democratic legitimacy and reach of equality. Ideally this is done by incorporating civil society such as trade unions, community organizations, and public interest groups as well as relevant stakeholders into both the process of norm-setting and its implementation. At their most ambitious, proactive models aim to move beyond conflict and interest-based bargaining to a form of deliberative democracy, whereby interests are not taken as fixed or predetermined, but are themselves moulded by the process of decision-making to achieve a new public-regarding synthesis. Norms are set in a dynamic and responsive way, and implementation and norm setting interact.

The participatory dimension of the positive model therefore assumes a high degree of organization, commitment, and knowledge among potential participants. However, consultation can impose significant resource demands on already stretched NGOs or interest groups. The effect of this has been referred to as 'consultation fatigue'. One way forward is to incorporate capacity-building as part of the positive duty, making resources available for this purpose

As a far as compliance mechanisms are concerned, departing from the traditional complaints-led mechanism raises many challenges for enforcement and regulation of positive strategies. Placing the onus of change on policy-makers, while a key strength of proactive models, is also problematic. This is particularly evident in respect of mainstreaming. A recent study demonstrated it is difficult to sustain positive action strategies without strong political and managerial support

Thus the key challenge is to achieve compliance without undermining the proactive character of such models. Indeed, unless the impetus is found internally, in voluntary and motivated compliance, these models will not achieve their aim of ultimately transforming the organizational culture. Real change in organizational culture therefore depends on the interplay between the enlightened self-interest of public or private managers, on the one hand, and the drive and energy of affected participants, on the other.

However, it is well established that a system based entirely on self-regulation will have little effect. Employers who consider that equal opportunities to advance their business needs will do so in any event; those who do not will safely ignore them. Moreover, the formal adoption of equal opportunities policy may simply be 'an excuse for complacency. Research has consistently demonstrated that, while it is important to harness the positive goodwill and energy of major actors, some enforcement mechanism must be available.

The ideal model in this context would be a pyramid of enforcement. The first tier is one of encouragement and support, to promote a cooperative rather than adversarial approach. Training and other support is given to responsible bodies to achieve compliance in ways which work best for the institution itself. At this stage, then, the regulatory body should assist with training and expert advice. For example, providing reasonable accommodations may require expert advice.

If compliance is not achieved voluntarily, the next tier would involve negotiation and discussion initiated by the regulatory body. If this is unsuccessful, the recalcitrant respondent could be subject to an order to comply issued by that body. Only if this further step fails do fines or other judicially enforced sanctions come into play.

An important way of embedding proactive measures into the organizational culture is to make the duty as specific as possible. This is most effectively achieved through requiring an equality plan. This in turn raises the question of whether the regulatory body should be involved in scrutinizing such plans.

Stratégies juridiques nationales de lutte contre la discrimination fondée sur le handicap

Étude de cas

Cette étude de cas vise à déclencher une réflexion et une discussion sur la manière d'identifier et de traiter un large éventail de questions lors de la conception et de la mise en œuvre de stratégies législatives nationales de lutte contre la discrimination fondée sur le handicap.

L'étude de cas s'appuiera sur un document de recherche juridique de haute qualité sur la vie qui explore et analyse les problèmes potentiels liés aux stratégies juridiques nationales de lutte contre la discrimination. L'auteur examine des solutions pour aborder ces questions et plaide en faveur d'une nouvelle approche des stratégies juridiques nationales axées sur les obligations positives. .

Notez que le but de l'exercice n'est pas de critiquer l'article de l'étude de cas ou le choix de l'auteur.

En lisant le document de recherche juridique, les participants sont invités à réfléchir aux questions suivantes :

1. Quels sont les enjeux des stratégies juridiques traditionnelles de lutte contre la discrimination fondée sur le handicap ?
2. Quelles sont les causes du problème ?
3. Comment le problème pourrait-il être évité ?
4. Quelles sont les solutions aux problèmes ?
5. Que pouvez-vous apprendre de cette conférence en ce qui concerne votre expérience dans votre propre contexte national ?

Droit en matière de discrimination : les limites de la loi

Extraits de "Discrimination Law" par Sandra Fredman

La discrimination et le droit à l'égalité sont devenus de plus en plus sophistiqués au cours des dernières décennies. Toutefois, si les premiers succès ont alimenté un optimisme précoce, les structures plus profondes de la discrimination se sont avérées remarquablement résistantes. Cela soulève des doutes quant au rôle du droit dans le changement social. La loi est-elle inévitablement limitée ? Ou pouvons-nous remodeler les outils juridiques de manière à jouer un rôle majeur dans la réalisation de l'égalité réelle ?

Le principal moyen traditionnel d'application de la législation antidiscrimination est la plainte individuelle auprès d'un tribunal judiciaire. Toutefois, le bilan des tribunaux dans les affaires de discrimination a été décevant. Par rapport à l'ampleur de la discrimination dans la société, le nombre de plaintes déposées devant les tribunaux est faible et le nombre de succès minuscules. En plus du faible taux de succès, les tribunaux n'ont pas été à la hauteur de l'attente d'une procédure rapide et abordable.

Plusieurs facteurs contribuent à décourager la performance des tribunaux dans le domaine de la discrimination. Tout d'abord, comme les tribunaux ordinaires, les tribunaux dépendent entièrement du demandeur individuel pour initier l'affaire, apporter la preuve et présenter les arguments juridiques. Non seulement une telle procédure est fondée sur l'hypothèse que les plaintes de discrimination sont purement individuelles, mais elle impose aussi un fardeau excessif à une personne victime de discrimination qui doit avoir le courage d'affronter un employeur ou un ex-employeur avec une plainte de discrimination, et de trouver les ressources personnelles et financières pour y donner suite. Les répondants ont également plus de chances de réussir s'ils sont représentés par un avocat. De plus, le rôle croissant des avocats dans les audiences des tribunaux signifie qu'une partie de la rapidité, de l'informalité et du manque de sensibilité du système judiciaire est inévitablement sacrifiée.

La deuxième difficulté, et la difficulté connexe, concerne les obstacles à l'obtention de preuves. La discrimination directe est particulièrement difficile à prouver, car la plupart des preuves pertinentes sont entre les mains de l'intimé.

Un troisième facteur qui contribue à l'impact limité du système judiciaire est que la procédure est essentiellement contradictoire, traitant l'affaire comme un différend bipolaire entre deux individus, diamétralement opposés, qui doit être résolu sur la base du gagnant qui prend tout. Cette réponse tout ou rien ne laisse aucune place au compromis ou à la synthèse.

Il y a plusieurs façons de surmonter ces difficultés. Premièrement, des règles permanentes plus larges peuvent alléger considérablement le fardeau des plaignants individuels en permettant aux plaideurs institutionnels, aux organisations non gouvernementales (ONG) et aux syndicats d'intenter des poursuites. De telles règles impliquent la reconnaissance du fait que la discrimination n'est pas seulement une question de justice individuelle. La discrimination sociale affecte nécessairement un groupe d'individus, et il devrait y avoir des mécanismes juridiques pour permettre à l'ensemble du groupe de prendre des mesures correctives.

Une deuxième possibilité est l'action représentative. Cela donnerait le pouvoir à un syndicat ou à une ONG d'intenter une action au nom d'un groupe de personnes, qui bénéficieraient toutes du règlement de questions communes.

Une autre étape serait un recours collectif à part entière. Les recours collectifs visent à aider les demandeurs dans les cas où un préjudice touche simultanément de nombreuses personnes et implique un droit si complexe que toute poursuite entraîne des frais disproportionnés pour une personne. Le recours collectif est un type d'action conjointe particulièrement souple parce que tout membre du groupe lésé peut intenter une poursuite au nom de l'ensemble du groupe. Il n'est pas nécessaire d'organiser toutes les victimes avant le procès ni de prouver que le porte-parole est représentatif. Au lieu de cela, la participation de tous les plaignants est reportée jusqu'à la fin du procès : tous les membres du groupe ont le droit de participer au résultat final et, par la même occasion, tous partagent le fardeau des dépenses.

Toutes les solutions envisagées jusqu'à présent reposent sur la recherche d'une victime individuelle. Toutefois, étant donné la nature institutionnelle de la discrimination, il est particulièrement important d'être en mesure de contester une règle discriminatoire même s'il n'est pas possible d'identifier une victime spécifique. Par exemple, les femmes et les minorités ethniques peuvent être dissuadées de postuler à certains types d'emplois en raison d'une discrimination indirecte, mais ces pratiques devraient quand même pouvoir être contestées. Il est donc très important que la CJCE ait reconnu que la discrimination peut être commise même si aucune victime n'a été identifiée. Dans l'affaire *Firma Feryn*, un employeur a fait savoir publiquement qu'en vertu de sa politique de recrutement, il ne recruterait aucun employé d'une certaine origine ethnique ou raciale. La cour reconnaît qu'une telle déclaration publique dissuaderait les membres de ces groupes de présenter une demande, ce qui entraverait leur accès au marché du travail.

La difficulté d'obtenir des éléments de preuve constitue un autre problème lié à la législation sur la discrimination identifiée plus haut. Une approche utile a consisté à transférer la charge de la preuve à l'intimé une fois que le demandeur a établi une preuve *prima facie* de discrimination. Un tel principe, d'abord élaboré par la CJCE, a d'abord été approuvé par la loi en ce qui concerne la discrimination fondée sur le sexe²³, puis étendu à la race aux fins de la directive sur la race et à l'orientation sexuelle, au handicap, à l'âge, à la religion et aux convictions au sens de la directive sur l'emploi.

L'échec le plus grave de la discrimination réside probablement dans la nature de ses remèdes. Comme c'est le cas pour l'ensemble du système accusatoire, les recours sont limités par le fait qu'ils sont axés sur l'individu. Au lieu de s'engager activement dans une réforme tournée vers l'avenir du type essentiel à la réalisation d'une restructuration globale, le principal recours dont disposent les tribunaux est l'indemnisation monétaire. Les tribunaux se voient rarement confier une injonction et n'ont pas non plus le pouvoir d'ordonner la réintégration ou le réengagement dans les affaires de discrimination, bien qu'ils aient ce pouvoir dans les affaires de licenciement abusif.

Cela peut être comparé à l'injonction obligatoire, utilisée aux États-Unis dans de nombreuses affaires importantes d'égalité de traitement. Contrairement à l'indemnisation, qui est rétrospective, individualisée et tout ou rien, l'injonction obligatoire agit comme une contrainte permanente sur l'action future. Cela remet en question le système accusatoire de plusieurs façons fondamentales. Premièrement, le tribunal s'emploie activement à concilier les intérêts non seulement des parties qui comparaissent devant lui, mais aussi ceux d'autres personnes qui sont inévitablement touchées. Deuxièmement, étant donné que l'accent est mis sur les conséquences futures plutôt que sur la conduite passée, comme la faute et l'intention, la nature de la preuve pertinente change. Il faut des preuves sur des faits sociaux, et une représentation plus large des intérêts est nécessaire. Troisièmement, la nature prospective de la mesure corrective incite les parties à trouver un compromis. Enfin, le juge n'est plus un arbitre passif, mais un participant actif dans le processus. Plus important encore, le juge continue de jouer un rôle de médiateur, de superviseur et même de gestionnaire de l'application du décret. Le résultat est radical. Au lieu de fonctionner comme un mécanisme privé de règlement des différends, il fonctionne comme une façon d'appliquer une politique. Le recours aux injonctions obligatoires aux États-Unis dans ce contexte est loin d'être sans controverse, ce qui soulève des questions à la fois sur l'aptitude des juges à prendre des décisions stratégiques de ce type et sur la légitimité et l'exactitude des renseignements en sciences sociales. Néanmoins, il s'agit d'une tentative importante pour surmonter les restrictions de l'approche accusatoire.

On peut soutenir que le droit de la discrimination, de par sa nature, exige de s'écarter de la structure accusatoire traditionnelle. La structure bipolaire est particulièrement inappropriée pour les interactions publiques et privées qui ne sont pas des transactions bilatérales entre individus, mais qui ont de vastes implications sociales. Pour ce faire, il faut transformer la structure juridictionnelle d'un modèle de "règlement des différends" en un modèle de "réforme structurelle".

Dans le modèle de règlement des différends, la victime, le porte-parole et le bénéficiaire sont automatiquement réunis en un seul demandeur. Dans le nouveau modèle, la victime n'est pas un individu mais un groupe, et le porte-parole n'est pas nécessairement un membre du groupe. En outre, étant donné qu'un bénéficiaire n'a pas besoin de prouver un dommage individuel, la catégorie des bénéficiaires peut très bien être plus large que celle des victimes. Ainsi, tous les membres d'un groupe particulier pourraient bénéficier de l'institution d'interdictions de harcèlement, même si tout le monde n'a pas été individuellement victime de harcèlement. Une analyse similaire s'applique au défendeur. Alors que dans le modèle de règlement des différends, le défendeur est à la fois l'auteur de l'acte répréhensible et le fournisseur d'une réparation, dans le modèle de la réforme structurelle, l'auteur de l'acte répréhensible disparaît et l'accent est plutôt mis sur le corps capable de réaliser la réforme. Par conséquent, l'individualisme du système accusatoire est supplanté par un modèle fondé sur le groupe. Ainsi, l'individu n'a plus le fardeau de faire respecter ses propres droits à l'égalité.

Il y a deux possibilités radicales de s'éloigner complètement du modèle de règlement des différends : la première est l'application de la loi par un organisme et la deuxième est l'utilisation d'obligations positives pour promouvoir l'égalité.

Certaines des faiblesses d'une structure juridictionnelle peuvent être comblées en donnant à un organisme chargé de l'application de la loi le pouvoir d'ouvrir et de mener une " enquête formelle " sur les cas de discrimination illégale présumée. L'enquête formelle s'écarte de l'antagonisme à plusieurs égards clés. Pour commencer, il s'agit d'un processus actif plutôt que passif. L'Agence aurait le pouvoir d'ouvrir l'enquête, ce qui donnerait lieu à une approche stratégique plutôt qu'à une série de mesures ponctuelles. En outre, elle dispose de pouvoirs importants en matière de collecte d'informations, notamment la possibilité d'exiger des preuves écrites ou orales et la production de documents. La procédure formelle d'examen s'écarte également sensiblement de l'individualisme de la procédure judiciaire. Le pouvoir vise spécifiquement une pratique discriminatoire plutôt qu'un acte discriminatoire particulier à l'égard d'une personne. La situation n'est pas non plus caractérisée comme un conflit bipolaire tout ou rien. L'enquête se veut plutôt un processus interactif au cours duquel l'Office cherche à obtenir un changement dans les pratiques discriminatoires par la discussion, la négociation et la conciliation.

Ses pouvoirs réparateurs sont donc essentiellement tournés vers l'avenir. L'Agence a donc le pouvoir d'émettre un " avis d'acte illégal ", qui peut inclure l'obligation pour le défendeur de préparer et de mettre en œuvre un plan d'action pour éviter que l'acte illégal ne se reproduise. Les recours judiciaires sont utilisés en dernier recours.

Un tel processus d'enquête formel peut stimuler des changements significatifs dans les structures de discrimination. Son but n'était pas simplement d'appliquer la loi, mais de mettre au jour la discrimination structurelle et de déclencher un changement de politique et de procédure plus large.

La réponse la plus importante à la structure individualisée, rétrospective et passive d'application et de réparation devrait prendre la forme d'obligations positives de promouvoir l'égalité. Les tâches positives sont proactives plutôt que réactives. Elles visent à identifier et à remédier à la discrimination illégale même si aucune plainte n'a été déposée par une victime individuelle. Mais ils vont plus loin. Les mesures proactives sont également préventives. Les détenteurs de devoirs devraient tenir compte de l'impact sur l'égalité de toute politique ou législation nouvelle ou établie et les ajuster en conséquence. Il est tout aussi important de noter que les mesures proactives visent à promouvoir l'égalité, par exemple en introduisant des mesures visant à faciliter l'entrée des groupes sous-représentés ou par des mesures favorables à la famille.

Les obligations positives peuvent permettre de surmonter les principales lacunes du modèle fondé sur les plaintes décrit ci-dessus. Plus important encore, l'initiative incombe aux décideurs et aux responsables de la mise en œuvre des politiques, aux fournisseurs de services ou aux employeurs. Les victimes individuelles sont ainsi soulagées du fardeau et des frais des litiges : c'est plutôt à ceux qui ont le pouvoir et la capacité de le faire qu'incombe l'obligation d'apporter des changements. Deuxièmement, le changement est systématique, au lieu de consister en des réactions à des réclamations ad hoc introduites par des individus. Les causes institutionnelles et structurelles de l'inégalité peuvent être diagnostiquées et traitées collectivement et institutionnellement. Cela signifie que le droit à l'égalité est accessible à tous, pas seulement à ceux qui se plaignent. Troisièmement, il n'est pas nécessaire de prouver qu'il y a eu violation de la loi ou de trouver un auteur désigné.

Plutôt que de déterminer la faute et de punir la conduite, l'accent est mis sur la discrimination systémique et la création de mécanismes institutionnels pour son élimination. Cela permet également d'éviter les attitudes conflictuelles des parties. Plutôt que de considérer l'égalité comme un lieu de conflit et de résistance, l'égalité devrait être considérée comme un objectif commun, à atteindre en coopération. Enfin, les modèles proactifs élargissent idéalement le rôle participatif de la société civile, tant dans l'établissement des normes que dans leur application. Cette dimension participative influence fondamentalement la nature des normes elles-mêmes. Étant donné qu'ils doivent être mis en œuvre dans le cadre de programmes sur une certaine période de temps, les modèles proactifs tendent à produire des normes dynamiques et renégociables.

L'imposition d'obligations positives change tout le paysage du droit en matière de discrimination. L'accent n'est plus mis sur l'auteur d'un acte discriminatoire. Au lieu de cela, l'accent est mis sur le corps le mieux placé pour promouvoir l'égalité. La faute individuelle devient sans importance. L'une des conséquences de cette situation est que l'intimé n'est pas identifiable simplement à partir de la définition de la discrimination.

La législation doit explicitement définir et justifier le choix des organismes auxquels l'obligation doit être imposée. De même, la nature du droit change. Selon le modèle traditionnel, les individus sont tenus de s'abstenir de toute discrimination.

S'ils manquent à cette obligation, ils sont tenus de verser une indemnisation à la victime. En revanche, le déclencheur de l'obligation de promouvoir l'égalité n'est pas autodéfini. La législation doit préciser à la fois le moment où l'obligation prend naissance et son contenu.

A qui s'applique l'obligation ?

La clé des avancées que représentent les devoirs positifs réside dans le fait qu'ils n'incombent pas à l'auteur d'un acte discriminatoire, mais à l'organe le mieux placé pour prendre des mesures visant à remédier aux inégalités structurelles et à faire en sorte que les nouvelles politiques favorisent l'égalité plutôt qu'elles n'exacerbent les inégalités. La question de savoir qui a cette responsabilité est donc d'une importance capitale. Il existe toute une série d'organes responsables possibles. Il peut être jugé approprié de limiter les obligations aux organismes publics, avec une extension possible aux organismes privés ayant des fonctions publiques. Si la fonction est étendue au secteur privé, cela pourrait également inclure les employeurs privés, les prestataires de services privés et les syndicats.

Une enquête sur les fonctions proactives des États membres de l'UE a mis en évidence une grande variété d'utilisations de ces organismes. Les organismes publics ont la responsabilité de prendre des mesures proactives dans 13 États membres. Il peut s'agir de membres de l'exécutif, des ministres aux autorités publiques régionales, en passant par les employeurs publics.

En ce qui concerne la nature de l'obligation, la législation antidiscrimination traditionnelle exige que la victime identifie un acte de discrimination afin d'obtenir un recours compensatoire. Les devoirs positifs, en revanche, font peser le fardeau d'identifier les modèles d'inégalité sur l'organisme qui a l'obligation de promouvoir l'égalité. Il y a au moins trois niveaux auxquels les fonctions proactives s'exercent.

La première consiste à fournir des moyens plus efficaces de veiller à ce que les lois antidiscriminatoires existantes soient respectées. Au lieu de répondre uniquement aux personnes qui ont le courage et les ressources nécessaires pour porter plainte devant une cour ou un tribunal, l'employeur ou l'organisme public devrait prendre l'initiative de rechercher les cas de discrimination illégale et d'y remédier. En outre, plutôt que de remédier à une discrimination illégale au seul profit d'une personne en particulier, une telle approche cherche à trouver des solutions collectives, couvrant toutes les personnes concernées.

Une deuxième fonction des mesures proactives est d'aller au-delà de la législation antidiscrimination existante et de chercher à promouvoir l'égalité. Il peut s'agir, par exemple, de l'institution de quotas ou de mesures en faveur de la famille.

Troisièmement, des mesures proactives visent à prévenir les inégalités. Pour ce faire, les décideurs doivent évaluer les nouvelles mesures politiques ou législatives afin de déterminer leur impact sur les caractéristiques protégées et de les adapter si nécessaire ("analyse d'impact").

Étant donné que les tâches proactives exigent de l'organisme responsable qu'il diagnostique le problème et qu'il mette en place un processus pour le régler, il est utile d'isoler les éléments de la tâche. Pour commencer, il devrait y avoir un processus de diagnostic du problème, par le biais de la collecte de statistiques, d'évaluations d'impact, d'examen des salaires et d'autres dispositifs de diagnostic similaires. Ce diagnostic devrait déboucher sur l'élaboration d'un plan, de manière optimale et avec la pleine consultation des personnes concernées. La mise en œuvre du plan devrait faire l'objet d'un suivi et d'un examen continu afin de déterminer si une mesure proactive est efficace, d'examiner ses progrès et de l'ajuster au besoin.

Quels devraient être les buts et objectifs de l'obligation ?

La nature radicale des devoirs positifs rend tentant de considérer leur introduction comme une fin en soi. Pourtant, il est d'une importance cruciale d'examiner ce que chaque stratégie vise à réaliser. En particulier, quelle conception de l'égalité est utilisée ?

Les quatre " dimensions de l'égalité " suivantes devraient être précisées :

- (i) Lutter contre les désavantages - prendre des mesures pour contrer les effets des désavantages subis par les groupes protégés par la loi sur la discrimination, de manière à placer les personnes sur un pied d'égalité avec les autres ;
- (ii) Promouvoir le respect de la valeur égale des différents groupes et favoriser de bonnes relations au sein des groupes et entre eux - en prenant des mesures pour traiter les personnes avec dignité et respect et pour

- promouvoir la compréhension de la diversité et le respect mutuel entre les groupes, qui est une condition préalable à des communautés fortes et cohésives ;
- (iii) (Répondre à des besoins différents tout en promouvant des valeurs communes - prendre des mesures pour répondre aux besoins particuliers de différents groupes, tout en remplissant des fonctions qui mettent l'accent sur des valeurs communes plutôt que sur la différence et qui offrent des possibilités d'interactions durables au sein des groupes et entre eux ;
 - (iv) iv) Promouvoir l'égalité de participation - prendre des mesures pour faire participer les groupes exclus ou sous-représentés aux structures et processus d'emploi et de prise de décisions et promouvoir l'égalité de citoyenneté.

La spécification de ces dimensions de l'égalité constitue un contrepoint important à la tendance croissante, dans la rhétorique justificatrice des devoirs positifs, à souligner leur rôle dans l'amélioration de l'efficacité du gouvernement. Un autre point fort d'un ensemble multidimensionnel d'objectifs est qu'il facilite une vision holistique. Outre la dimension participative, il est nécessaire de considérer les dimensions redistributive, transformatrice et de reconnaissance de l'égalité.

La nature de l'obligation positive dans le domaine de la discrimination est telle que le processus décisionnel est aussi important que le résultat. Une approche consiste à mettre en place un système très centralisé, le gouvernement ou un organisme public dictant en détail les mesures à prendre et appliquant les normes au moyen de procédures judiciaires. Cependant, il a été démontré que l'efficacité des stratégies d'égalité dépend de la capacité de convaincre ceux qui mettent en œuvre le plan de sa pertinence et de sa valeur, et finalement de changer la culture elle-même. On peut faire plus en faisant appel à l'intérêt personnel des employeurs et des fournisseurs qu'en exerçant un contrôle unilatéral.

Mais il ne suffit pas de mobiliser l'énergie de l'employeur ou du fournisseur. Il a été démontré que la qualité de la réglementation s'améliore considérablement en intégrant les personnes concernées tant dans le processus décisionnel que dans sa mise en œuvre. De cette façon, la participation comble dans une certaine mesure le vide laissé par le fait de s'écarter du recours à l'initiative de la victime, empêchant ainsi que le processus ne soit un exercice descendant imposé d'en haut. En plus d'améliorer son efficacité, la dimension participative des modèles proactifs renforce sans doute la légitimité démocratique et la portée de l'égalité. L'idéal serait d'associer la société civile, notamment les syndicats, les organisations communautaires et les groupes d'intérêt public, ainsi que les parties prenantes concernées, au processus d'établissement de normes et à sa mise en œuvre. Dans leurs modèles les plus ambitieux et les plus proactifs, les modèles proactifs visent à passer de la négociation fondée sur les conflits et les intérêts à une forme de démocratie délibérative, dans laquelle les intérêts ne sont pas considérés comme fixes ou prédéterminés, mais sont eux-mêmes façonnés par le processus décisionnel pour réaliser une nouvelle synthèse qui concerne le public. Les normes sont établies de manière dynamique et réactive, et la mise en œuvre et l'établissement de normes interagissent.

La dimension participative du modèle positif suppose donc un degré élevé d'organisation, d'engagement et de connaissances parmi les participants potentiels. Toutefois, la consultation peut imposer des exigences importantes en matière de ressources aux ONG ou aux groupes d'intérêt déjà surchargés. L'effet de cette situation a été qualifié de "lassitude de la consultation". L'un des moyens d'aller de l'avant consiste à intégrer le renforcement des capacités dans le cadre de l'obligation positive, en mettant des ressources à disposition à cette fin.

En ce qui concerne les mécanismes de conformité, le fait de s'écarter du mécanisme traditionnel fondé sur les plaintes soulève de nombreux défis en matière d'application et de réglementation des stratégies positives. Il est également problématique de faire reposer la responsabilité du changement sur les décideurs, bien qu'il s'agisse là d'un des principaux points forts des modèles proactifs. Cela est particulièrement évident en ce qui concerne l'intégration. Une étude récente a démontré qu'il est difficile de maintenir des stratégies d'action positive sans un soutien politique et de gestion solide.

Le principal défi consiste donc à assurer le respect des normes sans compromettre le caractère proactif de ces modèles. En effet, à moins que l'impulsion ne se trouve à l'interne, dans la conformité volontaire et motivée, ces modèles n'atteindront pas leur objectif de transformation ultime de la culture organisationnelle. Un véritable changement dans la culture organisationnelle dépend donc de l'interaction entre l'intérêt personnel éclairé des gestionnaires publics ou privés, d'une part, et le dynamisme et l'énergie des participants touchés, d'autre part.

Toutefois, il est bien établi qu'un système entièrement fondé sur l'autorégulation aura peu d'effet. Les employeurs qui considèrent que l'égalité des chances pour faire progresser leurs besoins commerciaux le feront en tout état de cause ; ceux qui ne le font pas les ignoreront en toute sécurité. En outre, l'adoption formelle d'une politique d'égalité des chances peut

être simplement " une excuse pour se reposer sur ses lauriers ". La recherche a constamment démontré que, bien qu'il soit important d'exploiter la bonne volonté et l'énergie positives des principaux acteurs, un mécanisme d'application doit être disponible.

Le modèle idéal dans ce contexte serait une pyramide d'exécution. Le premier niveau en est un d'encouragement et de soutien, pour promouvoir une approche coopérative plutôt que contradictoire. Une formation et d'autres formes d'aide sont fournies aux organes responsables pour assurer la conformité de la manière la plus efficace pour l'institution elle-même. ce stade, l'organisme de réglementation devrait donc contribuer à la formation et aux conseils d'experts. Par exemple, des mesures d'adaptation raisonnables peuvent nécessiter l'avis d'un expert.

Si la conformité n'est pas obtenue volontairement, l'étape suivante comprendrait des négociations et des discussions amorcées par l'organisme de réglementation. En cas d'échec, le défendeur récalcitrant pourrait faire l'objet d'une ordonnance d'exécution délivrée par cet organisme. Ce n'est qu'en cas d'échec de cette nouvelle étape que des amendes ou d'autres sanctions judiciaires entrent en jeu.

Une façon importante d'intégrer des mesures proactives dans la culture organisationnelle consiste à rendre le devoir aussi précis que possible. La meilleure façon d'y parvenir est d'exiger un plan d'égalité. Cela soulève à son tour la question de savoir si l'organisme de réglementation devrait participer à l'examen de ces plans.



Digital accessibility of the public sector in France

Trier, October 2019

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History of the event

The accessibility obligations for public sites in France predate the intervention of the 2016 accessibility directive. The principle is laid down in article 47 of the Act of 11 February 2005 on equal rights and opportunities, participation and citizenship of persons with disabilities. It stated: "The online public communication services of the State services, local authorities and the public institutions that depend on them must be accessible to people with disabilities.

The accessibility of online public communication services concerns access to all types of information in digital form regardless of the means of access, content and method of consultation. International recommendations for Internet accessibility should be applied to online public communication services.

"Section 47 refers its enforcement actions to a decree that was delayed because it was issued on May 14, 2009. This decree gave the State services two years and the local authorities three years to make their websites accessible. So since 2012, all public sites must be accessible.

The only sanction provided for by the decree, in the event of a breach, was to publish the list of services that were not accessible. It must be acknowledged that this sanction has never been applied.

The 2016 Directive and the Digital Republic Act amended Article 47 in two ways:

- accessibility obligations have been extended to companies entrusted with a public service mission or a service of general interest. The French legislator went further than the Directive required by adding companies with a turnover of at least 250 million.
- The new version of Article 47 confirms that the accessibility obligations apply to intranet, extranet, mobile applications, software packages and street furniture sites in accordance with the requirements of the Directive.

The new version of Article 47 requires, in accordance with the Directive, the publication of an accessibility declaration and the indication of the accessibility status on the home page. In addition to what the directive requires, it adds the publication of a multiannual accessibility plan over a period of 3 years, divided into an annual plan.

What does this Scheme contain?

The multiannual plan, which may last up to three years, sets out the policy of the entity concerned on digital accessibility. As such, it contains information on:

- the inclusion of digital accessibility in the entity's digital strategy and in its policy for the integration of people with disabilities;
- the functional position and missions of the entity's digital accessibility referent;
- the human and financial resources allocated to digital accessibility;
- the consideration of the required skills or knowledge in job descriptions and recruitment processes;
- training and awareness-raising activities for agents;
- the use of external resources and expertise, if any, to manage and test digital accessibility, including technical resources and tools;
- the internal organisation to implement the obligations to make communication services accessible to the public online, including the procedures for monitoring digital services and for organising the processing of users' requests;
- the integration of digital accessibility into contractual clauses (calls for tenders and specifications), criteria for rating and selection of service providers and acceptance procedures and, where applicable, into agreements established with their operators, delegates or partners.

It also presents the work to bring the entity's online public communication services into compliance, including:

- the consideration of digital accessibility in new projects;
- taking into account people with disabilities in user tests;
- conformity assessments (or audits) planned for all communication services;
- the corrective measures that will be taken to deal with non-accessible content, including a timetable for the implementation of these measures, taking into account the priority nature of the most accessed content and services used;
- non-mandatory accessibility measures, in particular access to audio and video content in sign language, translation of certain content into simplified language and any other measure making it possible to take into account the triple AAA level criteria, international standards, listed in the annex to the reference standard;
- the assessment of the annual action plans.

The new version of Article 47 and its implementing decree published on 24 July 2019 go beyond the requirements of the Directive by providing for financial penalties in the event of failure to comply

with the reporting obligations: accessibility declaration, multiannual accessibility scheme and mention of the level of accessibility. These penalties are 2000 Euros for local authorities with less than 5000 inhabitants and 20000 Euros for other persons subject to the accessibility obligation.

RGAA, a French originality

The decree of 24 July 2019 provides for the publication by ministerial decree of a general reference framework for improving accessibility in place of the Administration's general reference framework for accessibility provided for in the previous decree.

What is the RGAA?

The RGAA is an **operational document** [<https://numerique.gouv.fr/publications/rgaa-accessibilite/>] intended for administrations and certain private actors, which makes it possible to know its accessibility obligations and to verify their proper implementation.

It consists of two parts:

1. The first section details the **obligations to be respected**. It is aimed at decision-makers, lawyers, managers, communication departments, disability policy makers, as well as all web and accessibility professionals.
2. The second defines the **list of control criteria and tests** that make it possible to **verify the conformity** of a web page with the reference standard. It is intended for RGAA auditors and was carried out collaboratively, as part of a public consultation in June 2019, involving experts from the public and private sectors [<https://numerique.gouv.fr/actualites/accessibilite-numerique-participez-a-levolution-du-rgaa/>]

Measure and test accessibility

Pool of disabled users

The Interministerial Directorate for Digital Technology has just created a pool of disabled users to test the accessibility of public mobile sites and applications. It currently includes about thirty users from all categories: blind and partially sighted, mobile and cognitive disabled. It is still intended to welcome a larger number of disabled Internet users.

These users are not experts in accessibility, but have in common that they are used to surfing the Internet and have the necessary hardware and software for this purpose, either professionally or personally. The tests thus carried out do not replace those carried out using test software or those carried out by professionals with expertise in accessibility. They can, however, be very useful in demonstrating the degree of effectiveness of the audiences concerned on the sites and applications tested, in a concrete way, without necessarily referring to the rate of compliance to be determined with the standards in force.

E-accessible label

<http://references.modernisation.gouv.fr/e-accessible>

As part of the digital accessibility programme financed by the Fonds d'insertion des personnes handicapées dans la fonction publique (FIPHFP), the Interministerial Directorate for Digital Technology has set up a label designed to promote the consideration of digital accessibility within

public websites and applications. This "e-accessible" label is one of the measures accompanying the RGAA since June 2015. It has two advantages. On the one hand, it is a valuation instrument that highlights a virtuous commitment. On the other hand, although it is backed by the RGAA, it can be obtained without respecting the legal level (i.e. all criteria A and AA). "e-accessible" offers 5 different levels. While the fourth corresponds to legal compliance (the fifth goes beyond that), the first three attest to an ongoing process and above all to an internal organization focused on accessibility.

The "e-accessible" label is awarded for a period of three years. However, a control visit is carried out at 18 months to ensure that the site or web application has maintained its level of "RGAA compliance". It is in the process of evolution.

Pidila

The Pidila Checklist is a tool developed by the team of the Internet Pole (Pi) of the Directorate of Legal and Administrative Information (Dila) to manage the quality of its websites during their design (legifrance.gouv.fr, service-public.fr, vie-public.fr, etc.).

Co-managed by Dila and the Interministerial Directorate for Digital Technology (Dinsic), it is made available to administrations on the website pidila.gitlab.io.

It includes mandatory general repositories for public and government sites as well as a set of good web practices: General Accessibility Improvement Framework (GFRP), Digital Cerfa criteria, State Internet Charter, General Interoperability Framework (GIF), Opquast good practices, eco-design ([see the complete presentation page of these repositories](#)). Duplications have been eliminated by grouping them together to achieve, as far as possible, criteria that are coherent, objective, measurable, realistic and universal.

The checklist is a reminder to integrate quality into each step of the development of an online service. It is presented in the form of a single list that can be filtered by business profiles, referentials and themes: each actor (project manager, graphic designer, integrator...) can thus operate filters on the criteria to build his own list.

The search engine allows you to find precisely the items you want based on their title, number and/or description. When printed, each criterion is preceded by a checkbox to allow for tracking.

A button at the top of the page provides a permanent link to a filtered list.

Support and finance accessibility projects

FIPHFP

The Fonds d'insertion pour les personnes handicapées dans la Fonction publique supports public employers in making their internal and external "Internet" websites and/or business applications accessible by providing financial support for accessibility audits that may be requested by public employers, including, if necessary, support for improvements (technical support in accessibility), by a specialised service provider.

It should be noted that the FIPHFP does not intervene for newly created sites, which must necessarily comply with the RGAA standard, and limits its intervention to making existing sites/applicants accessible.

Interdepartmental market

The interdepartmental accessibility market includes different types of services to help administrations comply with their accessibility obligations:

- **Internal organization to take into account accessibility**
 - Batch 1. UO1 - Support Multi-year scheme
 - Batch 1. UO2 - Support Listening to internal users
 - Batch 1. UO7 - Rapid diagnosis of one or more services
- **Consideration of accessibility at different stages of a project**
 - Batch 1. UO3 - Graphic models and specifications
 - Batch 1. UO4 - Code development, integration
 - Batch 1. UO5 - Recipe framing
 - Batch 1. UO6 - Revenue Operations
- **Audit of compliance with the RGAA and publication of a declaration of compliance**
 - Batch 1. UO8 - Initial audit
 - Batch 1. UO9 - Control audit
 - Batch 1. UO9 - Accompanied audit
- **Skills upgrading and training**
 - Lot 2. UO1 - Awareness raising
 - Lot 2. UO2 - Design and development training (level 1 and level 2)
 - Lot 2. UO3 - Ergonomist training
 - Lot 2. UO3 - Training on writing accessible editorial content
 - Lot 2. UO5 - RGAA Auditor Training

Train and raise awareness of accessibility

Distance learning

As part of its partnership with the FIPHFP, the Centre National d'Enseignement à Distance (CNED) has carried out a 14-hour free "e-learning" course for digital project managers to enable them to include aspects related to digital accessibility in their project approach. This self-study includes video content, text activities and quizzes to test your knowledge during the learning process.

It can be accessed by clicking on the following link: <http://bit.ly/1Xm03En>

OPQUAST

The Interministerial Directorate for Digital Technology finances and encourages its agents to obtain OPQUAST certification on WEB quality. This certification is registered in the National Register of Professional Certifications (RNCP) and includes digital accessibility. Registration for certification provides access to an online training platform with explanatory documents, videos and a large number of tests. The test allows you to obtain a level of web quality control, this level is certified and can be referred to on a CV.

Demonstrations

The Interministerial Directorate for Digital Technology also organizes accessibility demonstrations for its agents and external partners during which a disabled user shows how he or she uses WEB sites and applications, what advantages they bring and what difficulties they encounter. These demonstration sessions are also broadcast live on Twitter. See for example this article: <https://entrepreneur-interet-general.etalab.gouv.fr/blog/2019/08/30/demonstrations-accessibilite-numerique.html>



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L'accessibilité numérique du secteur public en France

Trêves, octobre 2019

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Historique

Les obligations d'accessibilité pour les sites publics en France sont bien antérieures à l'intervention de la directive accessibilité de 2016. Le principe est posé par l'article 47 de la loi du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées. Il disposait : « Les services de communication publique en ligne des services de l'Etat, des collectivités territoriales et des établissements publics qui en dépendent doivent être accessibles aux personnes handicapées.

L'accessibilité des services de communication publique en ligne concerne l'accès à tout type d'information sous forme numérique quels que soient le moyen d'accès, les contenus et le mode de consultation. Les recommandations internationales pour l'accessibilité de l'internet doivent être appliquées pour les services de communication publique en ligne.

« L'article 47 renvoie ses mesures d'application à un décret qui a tardé à venir puisqu'il a été pris le 14 mai 2009. Ce décret laissait un délai de deux ans aux services de l'Etat et de 3 ans aux collectivités territoriales pour rendre accessibles leurs sites internet. Donc depuis 2012, tous les sites publics doivent être accessibles.

La seule sanction prévue par le décret, en cas de manquement, était de publier la liste des services non accessibles. Il faut reconnaître que cette sanction n'a jamais été appliquée.

La directive de 2016 et la loi sur la République numérique ont modifié l'article 47 dans deux sens :

- les obligations d'accessibilité se sont étendues aux entreprises chargées d'une mission de service public ou d'un service d'intérêt général. Le législateur français a été plus loin que ce qu'exigeait la directive en y ajoutant les entreprises réalisant au moins 250 millions de chiffre d'affaires.
- L'article 47 nouvelle version confirme que les obligations d'accessibilité s'appliquent aux sites intranet, extranet, applications mobiles, progiciels et mobiliers urbains conformément aux exigences de la directive.

L'article 47 nouvelle version impose conformément à la directive la publication d'une déclaration d'accessibilité et de la mention de l'état d'accessibilité en page d'accueil. Il ajoute en plus de ce que demande la directive la publication d'un schéma pluriannuel d'accessibilité sur une période de 3 ans et décliné en plan annuel.

Que contient ce Schéma ?

Le schéma pluriannuel, d'une durée maximum de trois ans, présente la politique de l'entité concernée en matière d'accessibilité numérique. A ce titre, il contient des informations sur :

- la prise en compte de l'accessibilité numérique dans la stratégie numérique de l'entité et dans sa politique en faveur de l'intégration des personnes en situation de handicap ;
- la position fonctionnelle et les missions du référent accessibilité numérique de l'entité ;
- les ressources humaines et financières affectées à l'accessibilité numérique ;
- la prise en compte des compétences ou connaissances requises dans les fiches de poste et dans les processus de recrutement ;
- les actions de formation et de sensibilisation des agents ;
- la mise en œuvre des ressources et expertises externes auxquelles il est, le cas échéant, fait appel, des moyens techniques et de l'outillage pour gérer et tester l'accessibilité numérique ;
- l'organisation interne pour mettre en œuvre les obligations d'accessibilité des services de communication au public en ligne, y compris les modalités de contrôle des services numériques et d'organisation pour le traitement des demandes des usagers ;
- l'intégration de l'accessibilité numérique dans les clauses contractuelles (appels d'offres et devis), des critères de notation et de sélection des prestataires et les procédures de recette et, le cas échéant, dans les conventions établies avec leurs opérateurs, délégataires ou partenaires.

Il présente également les travaux de mise en conformité des services de communication au public en ligne de l'entité, notamment :

- la prise en compte de l'accessibilité numérique dans les nouveaux projets ;
- la prise en compte des personnes en situation de handicap dans les tests utilisateurs ;
- les évaluations (ou audits) de conformité prévus pour l'ensemble des services de communication ;
- les mesures correctives qui seront prises pour traiter les contenus non accessibles, y compris un calendrier de mise en œuvre de ces mesures, tenant compte du caractère prioritaire des contenus les plus consultés et des services les plus utilisés ;
- les mesures d'accessibilité non obligatoires, notamment l'accès aux contenus audios et vidéos en langue des signes, la traduction de certains contenus en langage simplifié et tout autre mesure permettant de prendre en compte des critères de niveau triple AAA, des normes internationales, listés en annexe de la norme de référence ;
- le bilan des plans d'actions annuels.

L'article 47 nouvelle version et son décret d'application publié le 24 juillet 2019 dépassent les exigences de la directive en prévoyant des sanctions financières en cas de manquement aux obligations déclaratives : déclaration d'accessibilité, schéma pluriannuel de mise en accessibilité et la mention du niveau d'accessibilité. Ces sanctions sont de 2000 Euros pour les collectivités territoriales de moins de 5000 habitants et de 20000 Euros pour les autres personnes assujetties à l'obligation d'accessibilité.

RGAA, une originalité française

Le décret du 24 juillet 2019 prévoit la publication par arrêté ministériel d'un référentiel général d'amélioration de l'accessibilité à la place du référentiel général d'accessibilité de l'Administration prévu par le décret précédent.

Qu'est-ce que le RGAA ?

Le RGAA est un **document opérationnel** [<https://numerique.gouv.fr/publications/rgaa-accessibilite/>] destiné aux administrations et à certains acteurs privés, qui permet de connaître ses obligations d'accessibilité et de vérifier leur bonne mise en pratique.

Il est constitué de deux parties :

1. La première détaille les **obligations à respecter**. Elle s'adresse aux décideurs, juristes, managers, directions de la communication, responsables de la politique du handicap, ainsi qu'à tous les professionnels du web et de l'accessibilité.
2. La deuxième définit la **liste des critères de contrôle et des tests** qui permettent de **vérifier** la conformité d'une page web avec la norme de référence. Elle s'adresse aux auditeurs RGAA et a été réalisée de façon collaborative, dans le cadre d'une consultation publique en juin 2019, associant des experts des secteurs public et privé [<https://numerique.gouv.fr/actualites/accessibilite-numerique-participez-a-levolution-du-rgaa/>]

Mesurer et tester l'accessibilité

Vivier d'utilisateurs handicapés

La Direction interministérielle du numérique vient de créer un vivier d'utilisateurs handicapés pour tester l'accessibilité des sites et applications mobiles publics. Il inclut actuellement une trentaine d'utilisateurs de toutes catégories : non-voyants et mal voyants, handicapés mobiles et handicapés cognitifs. Il a encore vocation à accueillir un plus grand nombre d'internautes handicapés.

Ces utilisateurs ne sont pas des experts en accessibilité, mais ont pour point commun d'avoir l'habitude de naviguer sur internet et de posséder à titre professionnel ou personnel les matériels et logiciels nécessaires à cette fin. Les tests ainsi effectués ne remplacent ni ceux réalisés à l'aide des logiciels de test, ni ceux réalisés par des professionnels experts en accessibilité. Ils peuvent avoir, néanmoins, une grande utilité pour montrer le degré d'efficacité des publics concernés sur les sites et applications testés, d'une façon concrète, sans nécessairement se référer au taux de conformité à déterminer aux normes en vigueur.

Label E-accessible

<http://references.modernisation.gouv.fr/e-accessible>

Dans le cadre du programme accessibilité numérique financé par le Fonds d'insertion des Personnes Handicapées dans la Fonction Publique (FIPHFP), la Direction interministérielle du numérique a mis en place un label destiné à valoriser la prise en compte de l'accessibilité numérique au sein des sites et applications web publics. Ce label « e-accessible » est une des mesures accompagnant le RGAA depuis juin 2015. Il présente deux avantages. D'une part, il est un instrument de valorisation mettant en lumière un engagement vertueux. D'autre part, il a beau être adossé au RGAA, il peut être obtenu sans pour autant respecter le niveau légal (à savoir l'ensemble des critères A et AA). « e-accessible » propose en effet 5 niveaux différents. Si le quatrième correspond à une mise en conformité légale (le cinquième allant au-delà), les trois premiers attestent d'une démarche en cours et surtout d'une organisation interne tournée vers l'accessibilité.

Le label « e-accessible » est attribué pour une période de trois ans. Une visite de contrôle est cependant menée à dix huit mois afin de s'assurer que le site ou l'application web a bien maintenu son niveau sur le volet « conformité RGAA ». Il est en cours d'évolution.

Pidila

La Checklist Pidila est un outil élaboré par l'équipe du Pôle internet (Pi) de la Direction de l'information légale et administrative (Dila) pour gérer la qualité de ses sites internet lors de leur conception (legifrance.gouv.fr, service-public.fr, vie-publique.fr, etc.).

Copilotée par la Dila et la Direction interministérielle du numérique (Dinsic), elle est mise à disposition des administrations sur le site internet pidila.gitlab.io.

Elle regroupe les référentiels généraux obligatoires pour les sites publics et gouvernementaux ainsi qu'un ensemble de bonnes pratiques web : Référentiel général d'amélioration de l'accessibilité (RGAA), critères du Cerfa numérique, Charte internet de l'État, Référentiel général d'interopérabilité (RGI), bonnes pratiques Opquast, écoconception ([voir la page de présentation complète de ces référentiels](#)). Les doublons ont été supprimés en procédant à des regroupements pour aboutir autant que possible à des critères cohérents, objectivables, mesurables, réalistes et universels.

La checklist est un mémento pour intégrer la qualité à chaque étape de développement d'un service en ligne. Elle se présente sous forme de liste unique filtrable par profils métier, référentiels et thématiques : chaque acteur (directeur de projet, graphiste, intégrateur...) peut ainsi opérer des filtres sur les critères pour construire sa propre liste.

Le moteur de recherche permet de trouver précisément les items désirés à partir de leur intitulé, de leur numéro et/ou de leur description. À l'impression, chaque critère est précédé d'une case à cocher pour permettre un suivi.

Un bouton situé en haut de page permet d'obtenir le lien permanent vers une liste filtrée.

Soutenir et financer les projets d'accessibilité

FIPHFP

Le Fonds d'insertion pour les personnes handicapées dans la Fonction publique accompagne les employeurs publics dans la mise en accessibilité de leurs sites « web » et/ ou applicatifs métiers « internet », internes et externes, par une prise en charge financière des audits d'accessibilité pouvant être sollicités par les employeurs publics, intégrant si besoin un accompagnement des améliorations (support technique en accessibilité), par un prestataire spécialisé.

A noter que le FIPHFP n'intervient pas pour les sites nouvellement créés, qui doivent nécessairement répondre au référentiel RGAA, et limite son intervention à la mise en accessibilité des sites/applicatifs existants.

Marché interministériel

Le marché interministériel d'accessibilité comporte différents types de prestations destinés à aider les administrations à se conformer à leurs obligations en matière d'accessibilité :

- **Organisation interne pour prendre en compte l'accessibilité**
 - Lot 1. UO1 – Accompagnement Schéma pluriannuel
 - Lot 1. UO2 – Accompagnement Ecoute usagers internes
 - Lot 1. UO7 – Réalisation diagnostic rapide d'un ou plusieurs services
- **Prise en compte de l'accessibilité à différentes étapes d'un projet**
 - Lot 1. UO3 – Maquettes graphiques et spécifications
 - Lot 1. UO4 – Développement, intégration du code
 - Lot 1. UO5 – Cadrage de la recette
 - Lot 1. UO6 – Opérations de recette
- **Audit de conformité au RGAA et publication d'une déclaration de conformité**
 - Lot 1. UO8 – Audit initial
 - Lot 1. UO9 – Audit de contrôle
 - Lot 1. UO9 – Audit accompagné
- **Montée en compétence et formation**
 - Lot 2. UO1 – Sensibilisation
 - Lot 2. UO2 – Formation conception et développement (niveau 1 et niveau 2)
 - Lot 2. UO3 – Formation ergonomie
 - Lot 2. UO3 – Formation sur la rédaction de contenus éditoriaux accessibles
 - Lot 2. UO5 – Formation auditeur RGAA

Former et sensibiliser à l'accessibilité

Formation à distance

Dans le cadre de son partenariat avec le FIPHFP, le Centre National d'Enseignement à Distance (CNED) a réalisé une « e-formation » gratuite de 14 heures à destination des chefs de projets numériques afin de leur permettre d'inclure dans leur démarche projet les aspects liés à l'accessibilité numérique. Cette autoformation comporte des contenus vidéos, des activités textes et des quizz pour vérifier ses connaissances en cours d'apprentissage.

Elle est accessible en cliquant sur le lien suivant : <http://bit.ly/1Xm03En>

OPQUAST

La Direction interministérielle du numérique finance et encourage ses agents à obtenir la certification OPQUAST sur la qualité du WEB. Cette certification est inscrite au répertoire national des certifications professionnelles (RNCP) et intègre l'accessibilité numérique. L'inscription à la certification donne accès à une plate-forme d'entraînement en ligne avec des documents explicatifs, des vidéos et un grand nombre de tests. L'épreuve permet d'obtenir un niveau de maîtrise de la qualité web, ce niveau est certifié et peut faire référence sur un CV.

Démonstrations

La Direction interministérielle du numérique organise aussi des démonstrations d'accessibilité à l'intention de ses agents et des partenaires externes au cours desquelles un utilisateur handicapé montre comment il se sert des sites et applications WEB, quels avantages en retire et quelles sont les difficultés rencontrées. Ces séances de démonstrations sont également diffusées en direct sur Twitter. Voir par exemple cet article : <https://entrepreneur-interet-general.etalab.gouv.fr/blog/2019/08/30/demonstrations-accessibilite-numerique.html>

European Accessibility Act

Audio-visual Media Service Directive

Accessibility following a Design for All approach

Mia Ahlgren, The Swedish Disability Rights Federation

Trier, 24 October 2019

**Funktionsrätt
Sverige** 



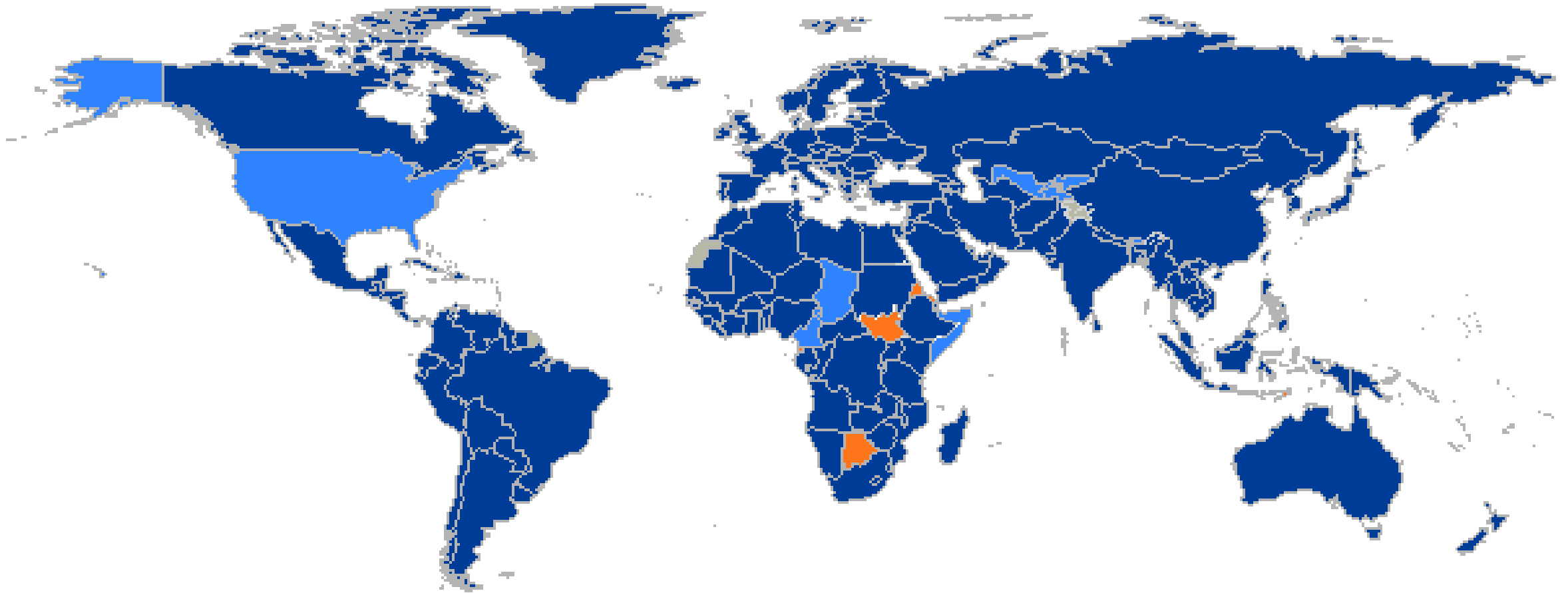
This publication has been produced with the financial support of the European Union's REC Programme 2014-2020. The contents of this publication are the sole responsibility of the author and can in no way be taken to reflect the views of the European Commission.



The Swedish Disability Rights Federation

- National umbrella for 44 organisations of persons with disabilities
- Member of European Disability Forum
- UN Convention on the Rights of Persons with disabilities

Co-designed – the Convention on the Rights of Persons with Disabilities



179 ratifications Source [UN](#)



Twin track approach to legislation mainstream products and services

Accessibility specific legislation

1 European Accessibility Act

Web Accessibility Directive Both based on Single Market Approach

Mainstreaming disability rights in sector legislation

2 Audiovisual Media Services Directive

European Electronic Communication Code

Public Procurement Directive

European standards

3 Accessibility following a Design for All approach EN17161

European standards for accessibility requirements in ICT EN301549 and
upcoming EN17210 for built environment for use in procurement

Part 1 European Accessibility Act

UN CRPD Article 9 Accessibility:

“State Parties shall also take appropriate measures (...) to ensure that **private entities** that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities”

Recommendation from the UN committee to the European Union in 2015:

“The Committee recommends that the prompt adoption (...) of an amended European Accessibility Act that is aligned to the Convention, **as developed in the Committee’s general comment No. 2 (2014) on accessibility**, including effective and accessible enforcement and complaint mechanisms.

The Committee also recommends that the European Union ensure the **participation of persons with disabilities**, through their representative organizations, in the adoption process.

Source: UN convention and [recommendation 29 from 2015](#)

UNIVERSAL DESIGN accessibility and reasonable accommodation

De

Universal design for all new products, facilities, technologies and services

For ALL
“pro futuro”

Gradual removal of existing barriers for accessibility, change legislation, standards

Persons with disabilities
“ex ante”

Deo

Reasonable accommodation right for an individual in a particular situation

Individual
“ex nunc”

Source [General comment 2](#) Accessibility UNCRPD

European Accessibility Act - timeline

First EU law (directive – with flexibility for member states to go further) on accessibility of mainstream (ICT) products and services.

Harmonized approach across the EU single market with minimum accessibility requirements for a limited range of products and services

Background: Public consultation, Eurobarometer, studies

Proposal presented: 2015

Entry into force: June 2019

Transposition in Member States: 28 June 2022

Apply provisions 2025, Member States reports every 5 years

[Full text](#)

Source: [European Commission](#)T

European Accessibility Act - scope



Scope “ placed on the market after 28 June 2025” (article 2)

- Computers and operating systems
- ATMs, ticketing and check-in machines
- Payment terminals
- Telephony services and smartphones
- Emergency calls to 112
- TV, equipment and services* to access audiovisual media services
- Consumer Banking services
- e-books and e-readers
- e-commerce
- Certain elements of transport services



Complementing other EU legislations:

- Public Procurement Directive, other union acts

Definitions Persons with disabilities etc (article 3)
Universal Design (Design for All) (recital 50)

*Online, set-top-box and mobile apps, TV:s, EPG:s



European Accessibility Act - requirements

Products and services (article 4) Built environment optional

Sections of Annex I:

General requirements for products, e.g.:

“made available by more than one sensory channel”

“presented to users in ways they can perceive”

Specific requirements, e.g. audiovisual media services

“ensuring that the accessibility components (access services) of the audiovisual media services such as subtitles for the deaf and hard of hearing, audio description, spoken subtitles and sign language interpretation are fully transmitted with adequate quality for accurate display, and synchronized with sound and video, while allowing for user control of their display and use”

European Accessibility Act - stakeholders

Obligations for Economic Operators

Manufacturers, authorized representatives, importers, distributors and service providers.

Fundamental alterations and disproportionate burden (art 14, Annex VI)

(Self)assessment whether compliance requires a significant change in a product or service or results in the imposition of a disproportionate burden on the economic operators concerned.

Assessment in relation to the estimated costs and benefits for the economic operators in relation to the estimated benefit for persons with disabilities, taking into account the frequency and duration of use of the specific product or service.”

...documentation has to be kept and provided upon request **market surveillance authority**.

Microenterprises does not have to document assessment but must supply facts upon request

There is no disproportionate burden if public or private funding from other sources have been compensating (article 14.6)

Lack of priority, time or knowledge should not be considered to be legitimate reasons. (Recital 66)

European Accessibility Act

conformity, monitoring and other union acts

Conformity and CE-marking

Harmonised standards, new mandates or implementing acts

EU declaration of conformity of products [annex III regulation 768/2008](#)

CE marking as in [article 30 of regulation 765/2008](#)

Market surveillance authorities shall:

Check assessment, review results and check compliance

Non-compliance: corrective action, inform commission, withdrawal from market

Accessibility under other union acts

For products and services in article 2, Annex I shall constitute mandatory accessibility requirements in public procurement intended for use by persons, **whether general public or staff** of the contracting authority or contracting entity.

Public procurement [article directive 42 2014/24](#) [Article 60\(1\) 2014/25](#)

Any product or service, which comply with the accessibility requirements in Annex I section VI shall be presumed to fulfil the relevant obligations **in other Union acts**.

Compliance with harmonised standards and technical specifications

European Accessibility Act

– delegated acts and enforcement

Adoption of delegated acts

A delegated act adopted pursuant to Article 4(9), Article 12(3) and Article 14(7) shall enter into force if no objection by the European Parliament or by the Council within a period of two months

Committee and working group

Exchange information, best practice, foster cooperation, provide advice to the commission

Enforcement and penalties

Individuals, public bodies or private associations may take legal action

Penalties shall be effective, proportionate and dissuasive

Does not apply to public procurement

European Accessibility Act – annexes

- Annex I: Accessibility requirements
- Annex II: Non-binding examples for Annex I
- Annex III: Non-binding requirements for the built environment
- Annex IV: Conformity assessment procedure
- Annex V: Information on services meeting requirements
- Annex VI: Criteria to assess disproportionate burden.

European Accessibility Act

– advice for national transposition

- Encourage multistakeholder dialogue with national government about the transposition process, including disability organisations
- Check against relevant national recommendations from CRPD committee during transposition
- Raise awareness of accessibility following a design for all approach, and general comment 2 on accessibility
- Be prepared for new standardisation mandates or delegated acts from the European Commission
- Be prepared for European standard for built environment EN17210

Part 2 Audiovisual Media Services

Background: Revision of directive from 2010

UN recommendation: 2015, article 21

Adoption: 14 November 2018

Transposition deadlines: 19 September 2020 laws, regulations etc

19 December 2022 first report to European Commission, every 3 years

19 December 2026 evaluation by the European Commission

Member States may implement provisions earlier

[Full text of the revised audiovisual media service directive](#)

Audiovisual Media Services - CRPD



UN CRPD Articles: 8, 9, 21 and 30 and general comment 2.

“State parties (...) shall take all appropriate measures to ensure that persons with disabilities: (...) enjoy access to **television programmes**, films, theatre and other cultural activities, in accessible formats”.

Audiovisual Media Services - scope



- **Audiovisual media service** – editorial responsibility of programme provider, for example TV broadcast

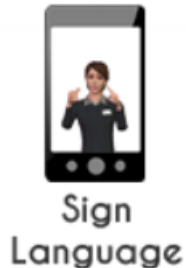
Audiovisual commercial communication, TV ads etc
Article 9 no discrimination on the grounds of disability

- **On-demand audiovisual media service (non-linear)** service provided for viewing of programmes at a moment chosen by the user and at their individual request For examples Netflix, HBO etc
- Video sharing platforms
- User protection and prohibition of hate speech and discrimination, protection of minors
- Operators in EU, Promote EU audiovisual content

Audiovisual Media Services - access



Recital 23: “The means to achieve the accessibility of audiovisual media services should **include, but need not be limited to, sign language, subtitling for the deaf and hard of hearing, spoken subtitles, and audio description.**”



Example: [Portugal live sign language](#)

What other access services are there?

Clean audio, enhanced dialogue, personalized size, colour

Cognitive accessibility needs

Quality of access services

Audiovisual Media Services - access

Article 7 Member states...

1. shall ensure, **without undue delay**, that services provided by media service providers under their jurisdiction are made **continuously and progressively** more **accessible** to persons with disabilities through proportionate measures.
2. shall ensure that media service providers **report on a regular basis** to the national regulatory authorities or bodies
3. encourage media service providers **to develop accessibility action plans** in respect of **continuously and progressively** making their services more accessible to persons with disabilities (communicated to NRA)
4. shall designate **a single, easily accessible, (...) online point of contact for providing information and receiving complaints** regarding any accessibility issues referred to in this Article.
5. shall ensure that **emergency information, including public communications** (...) which is made available to the public through audiovisual media services, is (...) accessible to persons with disabilities

Audiovisual Media Services - ERGA

National regulators and role of ERGA

[national regulatory authority or body see ERGA website](#)

“**Independent** and consistent implementation of the EU audiovisual regulatory framework, first and foremost the AVMS Directive, to the benefit of Europe and its **citizens**”

Source [ERGA](#)

See also [EPRA](#) update on accessibility expected 2019

Part 3 Accessibility following a Design for All approach

Background: EU standardisation mandate 473 Design for all
UN CRPD general comment 2, Agenda 2030 No one left behind
Published: 6 March 2019

The European standard [EN 17161:2019 'Design for All - Accessibility following a Design for All approach in products, goods and services - Extending the range of users'](#) aims to help organisations align with a consistent approach to address accessibility for persons with disabilities. It specifies requirements that can enable an organisation to design, develop and provide products, goods and services that can be **accessed, understood and used** by the widest range of users including persons with disabilities.

No one left behind Who is missing?

Sustainable development goals 4, 8, 10, 11, 12, 16

Global goals

Recognize diversity and uniqueness, art 3 CRPD
Respect for difference and acceptance of persons with disabilities
as part of human diversity and humanity art 3

For ALL

Inclusive process and tools, art 4.3 CRPD

Co design

Broader beneficial impact, general comments 2, 7

From outset

Source: Three dimensions [Inclusive Design Research Center](#)

Co-design along the end to end chain



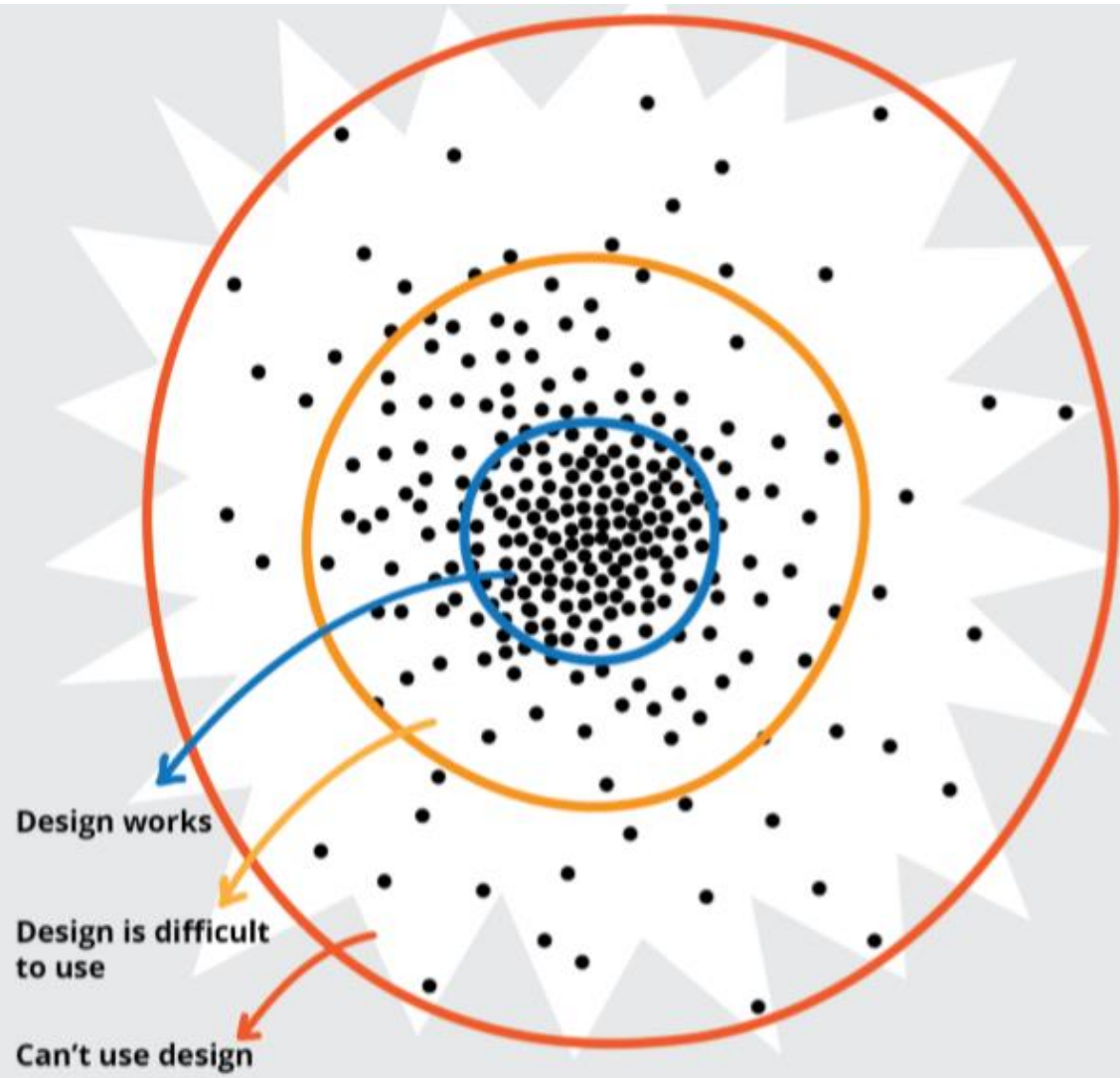
Leadership enabling the organisation
Stakeholder cooperation

Identify "non-users" and find out why

Actively involve potential users from the outset through the whole process.
Allow **multiple ways for co-design.**

Analyse needs in relation to each specific context and along the **end to end chain.**

Design process emerging technology



”Unrestricted application of Universal design”
All new products and services

Design based on data and AI

Risk for exclusion

Source: Image from presentation by Jutta Treviranus.
[ITU Accessible Europe 2018](#)

Equal Participation in Society of Persons with Disabilities



Trier, 24-25 October 2019

European Electronic Communications Code and end-users with disabilities

Dónal Rice

NUI Galway
Centre for Excellence in Universal Design, NDA
Expert, International Telecommunications Union



This publication has been produced with the financial support of the European Union's REC Programme 2014-2020. The contents of this publication are the sole responsibility of the author and can in no way be taken to reflect the views of the European Commission.

Agenda

- What are the EECCs?
- Who is responsible for their implementation?
- What provisions do they contain for end-users with disabilities?
- What practically can they achieve?

- Senior Design Advisor, ICT, Centre for Excellence in Universal Design, National Disability Authority Ireland

Standards – Awareness – Education



- Mandate 376: CEN PT European ICT Accessibility Procurement Toolkit



- ITU/G3ict e-Accessibility Policy Toolkit for Persons with Disabilities
- ITU Academy course developer
- ITU-D expert



- ComReg Consumer Advisory Panel



Commission for
Communications Regulation

Recent technological developments in telecoms (products)

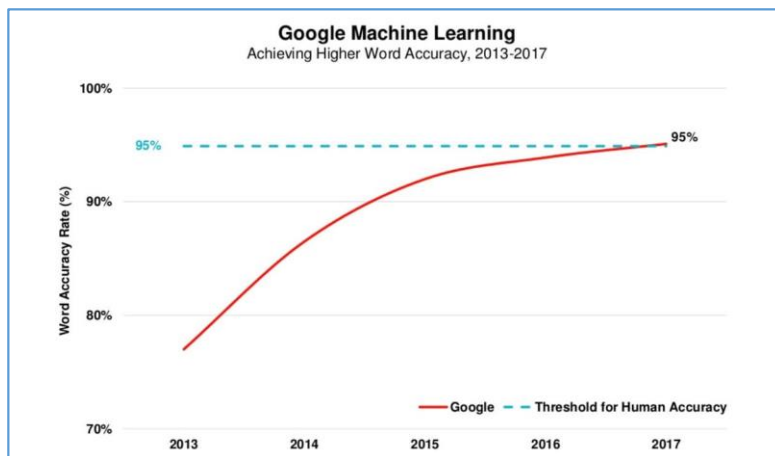




An advertisement for WWDC19. On the left, a smartphone displays the "Voice Control" interface with a list of commands: "call", "next track", "dial", "pause music", "FaceTime", "what group is this song by?", "call", and "play". On the right, a stylized brain icon is surrounded by various white icons representing different tools and functions like a hammer, wrench, gears, and arrows. At the bottom, the text reads "Apple WWDC19 San Jose, CA, June 3-7".



“There has been more progress in speech recognition technology in the last 30 months than in the first 30 years.”





Universal Design



Accessibility



Assistive Technology

DIRECTIVE (EU) 2018/1972 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2018 establishing the European Electronic Communications Code

• <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1972&from=EN>

DIRECTIVES

DIRECTIVE (EU) 2018/1972 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 11 December 2018

establishing the European Electronic Communications Code

(Recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁽¹⁾,

Having regard to the opinion of the Committee of the Regions⁽²⁾,

Acting in accordance with the ordinary legislative procedure⁽³⁾,

Whereas:

- (1) Directives 2002/19/EC⁽⁴⁾, 2002/20/EC⁽⁵⁾, 2002/21/EC⁽⁶⁾ and 2002/22/EC⁽⁷⁾ of the European Parliament and of the Council have been substantially amended. Since further amendments are to be made, those Directives should be recast in the interests of clarity.
- (2) The functioning of the five Directives which are part of the existing regulatory framework for electronic communications networks and services, namely Directives 2002/19/EC, 2002/20/EC, 2002/21/EC and 2002/22/EC, and Directive 2002/58/EC of the European Parliament and of the Council of 7 March 2002 on the protection of electronic communications networks and services (Directive 2002/58/EC), is subject to periodic review by the Commission, with a view, in particular, to determining the need for modification in light of technological and market developments.
- (3) In its communication of 6 May 2015 setting out a Digital Single Market Strategy for Europe, the Commission stated that its review of the telecommunications framework would focus on measures that aim to provide incentives for investment in high-speed broadband networks, bring a more consistent internal market approach to radio spectrum policy and management, deliver conditions for a true internal market by tackling regulatory fragmentation, ensure effective protection of consumers, a level playing field for all market players and consistent application of the rules, as well as provide a more effective regulatory institutional framework.

⁽¹⁾ OJ C 121, 21.4.2017, p. 56.

⁽²⁾ OJ C 207, 30.9.2017, p. 67.

⁽³⁾ Position of the European Parliament of 14 November 2018 (not yet published in the Official Journal) and decision of the Council of 4 December 2018.

⁽⁴⁾ Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) (OJ L 108, 24.4.2002, p. 7).

⁽⁵⁾ Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorization of electronic communications networks and services (Authorization Directive) (OJ L 108, 24.4.2002, p. 11).

⁽⁶⁾ 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) (OJ L 108, 24.4.2002, p. 1).

⁽⁷⁾ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and user rights relating to electronic communications networks and services (Universal Service Directive) (OJ L 108, 24.4.2002, p. 10).

⁽⁸⁾ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 17.7.2002, p. 15).

EU policy on accessibility



- **Disability specific** (vertical)
 - Web Accessibility Directive
 - European Accessibility Act
- **Sector-specific** (mainstreaming disability)
 - Audiovisual Media Services Directive
 - European Electronic Communication Code (Directive)
- **Horizontal**
 - Procurement

“Accessibility should be a core aspect of the ICT like privacy, data protection or security” - EDF

Main aspects

- Amends and merges in one single Directive the 2009 Telecoms Package
- Removes legacy universal services (e.g. public payphones, telephony directories) and focuses on:
 - Voice communication
 - Functional internet connection (list of online services)
 - Keeps obligations in regards to affordability
 - Emergency communications





Body of European Regulators
for Electronic Communications
BEREC
OFFICE

Main players involved in implementation

- **Commission**
- **BEREC** was established in 2009 and started work in 2010. Its main goal is to ensure the consistent implementation of telecoms rules across the EU and provide technical expertise to national regulators and the EU institutions.
- **Telecommunications national regulatory authorities**
 - <https://ec.europa.eu/digital-single-market/en/national-regulatory-authorities-member-states>
 - Statutory Consumer Panel

Timeline for implementation

- **20 December 2018** - entered into force
- **21 December 2020** - EU member states will have to transpose the EECC into national legislation
- 21 December 2019 – **Contract Summary Template**
- 21 June 2021 - **Public warning systems** - Member states to ensure that providers of mobile number-based interpersonal communications send warnings to end users in case of emergency
- 21 December 2021 - **End user rights** – review by the Commission
- 21 December 2022 - Commission delegated acts on caller location information, **access for end-users with disabilities** and routing to the most appropriate public safety answering point (PSAP)

EECC and BEREC Regulation 2018 Implementation Calendar: <https://www.cullen-international.com/news/2019/01/New-EECC-implementation-calendar.html>

e.g. Contract
summary
template for
electronic
communications
service providers

- An implementing act that will specify a contract summary template as required by the European Electronic Communications Code.
- The summary must be made available to all consumers by providers of electronic communications services. It sets out the main terms of the service offer in a clear and understandable form.
- It should also enable consumers to more easily compare services offered by different providers.
 - https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-4821885_en
- NDA's feedback:
 - https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-4821885/feedback/F473231_en?p_id=5734103

European Electronic Communication Code (EECC) 2018 Recast



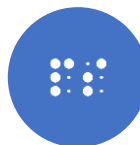
Universal Services:



Affordable adequate broadband internet access and voice communications to all consumers (**Art 84**).



Art 85: Affordability measures for low-income or special social needs consumers: if retail prices are not affordable: support or tariff options.



Art 85: availability and affordability of related terminal equipment, specific equipment and specific services for consumers with disabilities, including where necessary total conversation and relay services.

European Electronic Communication Code (EECC) 2018 Recast

Art 102 Information requirements for contracts: in an accessible format for end-users with disabilities; to include information on the extent to which the products and services are designed for end-users with disabilities.

Art 103 Transparency: information to be published in an accessible format for end-users with disabilities.

Art 104 Quality of service: information on the quality, including on measures taken to ensure equivalence in access;

European Electronic Communication Code (EECC) 2018 Recast

Art 109:Emergency communications: access for end-users with disabilities to emergency services through emergency communications available and equivalent in accordance with ... the Accessibility Act.

Art 111: Equivalent access and choice for end-users with disabilities: requirements to be met by providers of electronic communications services

Art 114: Must carry obligations: may be imposed by MSs (requirements) on providers of ECN or ECS used for the transmission of radio and TV broadcast ... in particular services to enable appropriate access for end-users with disabilities

EECC	EAA
Availability & affordability of special equipment and mainstream equipment	Accessibility requirements for mainstream products (smartphones). E.g. able to support Total Conversation
Availability & affordability of Universal Services obligations + Total Conversation + TRS and VRS Accessible 112 services across EU	Harmonised functional accessibility requirements for those
Interoperability for RTT and video call through NRA joint action	Interoperability for RTT through Harmonised Standards (preferred)
NRA's tasks regarding equal access and choice for end-users with disabilities	Accessible Information, websites and mobile apps of electronic communication providers



Advice to advocacy organisations



Get involved with your NRA



Use the UN CRPD as your framework



Be specific – EECCs mention disabilities 41 times on 29 pages.

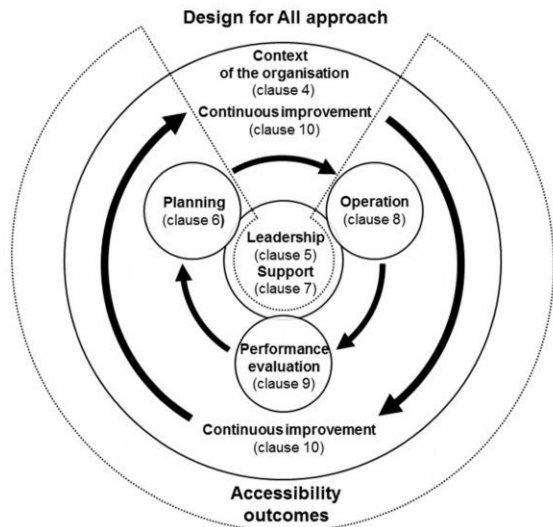


Take a Universal Design approach – e.g. electronic billing by default in accessible formats.

Defining accessibility requirements

- The accessibility needs for persons with disabilities can be summarised as a series of statements, called **Functional Performance Statements:**

- Usage without vision
- Usage with limited vision
- Usage without perception of colour
- Usage without hearing
- Usage with limited hearing
- Usage without vocal capability
- Usage with limited manipulation or strength
- Usage with limited reach
- Minimize photosensitive seizure triggers
- Usage with limited cognition
- Privacy



ITUEvents

Accessible Europe

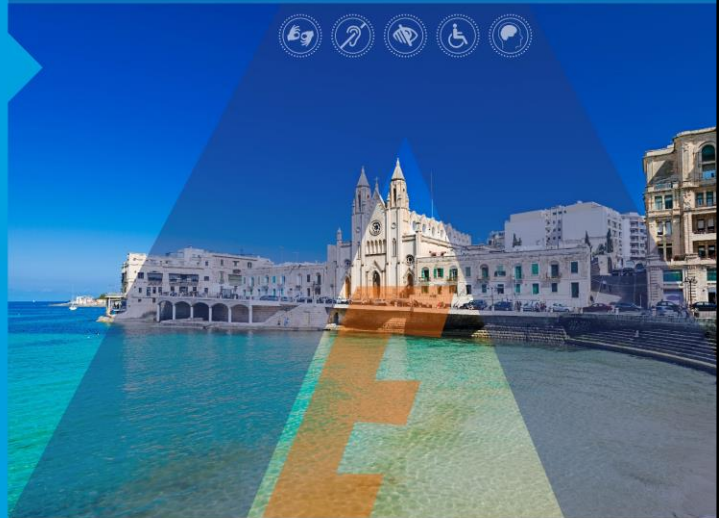
ICT 4 ALL - 2019

4 - 6 December 2019
St Julian's, Malta

Follow us on twitter @ITU_EUR
<http://itu.int/go/Accessible-Europe-19>

Organized within the framework of the ITU Regional Initiative for Europe on accessibility, affordability and skills development for all to ensure digital inclusion and sustainable development

ICT ACCESSIBILITY ARTIFICIAL INTELLIGENCE WEB ACCESSIBILITY TV AND VIDEO PROGRAMMING ACCESSIBLE PROCUREMENT UNIVERSAL DESIGN INNOVATION & EMERGING ISSUES GOOD PRACTICES



Hosted by



Coordinated by



Contributing to



Co-organized by



Equal participation of people with disabilities in society
and measures to improve their access

24 October 2019 Trier



ICT Accessibility Standards

Case study of the project

Soraya Kompany

Consultant

Accessibility Advisor



This publication has been produced with the financial support of the EU programme "Rights, Equality and Citizenship" (2014-2020). The views expressed are those of the author alone and do not necessarily reflect those of the European Commission.

ICT and accessibility standards

Different forms of disability

EU Directives

ICT in everyday life

Case study

Discussion

A reminder

- 80 million people live with a disability in the European Union
- 98 million people are over 65 years old (147m in 2080)

A strong demand for accessible products and services for people with disabilities, the elderly or temporarily disabled

Different forms of disability

Person with a disability



Due to its deficiencies

Person in a situation of disability



Due to its inaccessible environment

In an inaccessible environment
everyone can be in a situation of disability

ICTs present in all aspects of life

Information and communication technologies

A process facilitator for all or an exclusion tool for people with disabilities?

- Stay in touch with your network, get information, access your rights, complete your administrative procedures, travel, learn, entertain yourself or simply do your shopping.
- Essential to support people with disabilities, provided that

the digital tool, its interfaces and services are accessible to all.

Disability and communication

Without technical aids, people with hearing, visual, mental or motor impairments may find themselves with a disability to



Communicate
Alert
Participate
To be informed

The communication tool can compensate for the handicap if it is accessible.

Disability and technical aids

- Voice synthesis to listen the written content
- The Braille tool to read the screen content with your fingers
- Subtitling of audiovisual content
- The finger guide for the keys
- Customization of gestural commands or selection control
- An adapted writing
- Accessible applications,...

Accessible information and communication technologies

Legal frameworks and ICTs

- CRPD
- Directive 2016/2102 (EU) of 26 October 2016 on the accessibility of websites and mobile applications of public sector bodies
- Directive 2019/882 (EU) of 17 April 2019 on accessibility requirements for products and services

CRPD

Article 4(1)(g)

- Undertake or promote research and development;
- Development of the supply and use of new technologies - including ICT, mobility aids, devices and assistive technologies - that are adapted to people with disabilities. The Convention also calls for a focus on affordable technologies.

CRPD

Article 4(1)(h)

- Provide accessible information to people with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities.

CRPD

Article 9

In order to enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure, on an equal basis with others, that they are

- access to information, communications and other services, including electronic services and emergency services.

Web accessibility

Directive 2016/2102 (EU) :

- Its objective is to make the websites and mobile applications of public sector bodies accessible to users, in particular people with disabilities.
- The principle of accessibility applies when designing, building, maintaining and updating websites and mobile applications.

Principles of digital accessibility

- **Perceptibility:** Information and components of user interfaces must be perceived by users with disabilities;
- **Operability:** the use of user interface components and navigation must be accessible;
- **Understandability:** the information and use of user interfaces must be understandable for all;
- **Robustness:** content must be capable of being reliably interpreted by a wide variety of user agents, including assistive technologies.

These accessibility principles are verifiable by the European standard EN 301 549 V1.1.2 on “Accessibility requirements for public procurement of ICT products and services in Europe”.

Accessibility of products and services

Directive 2019/882 (EU)

- Harmonise the legal and administrative provisions of the Member States for the accessibility of certain products and services;
- Remove barriers to the free movement of accessible products and services;
- Increase the availability of accessible products and services within the internal market;
- Improve the accessibility of relevant information.

Objective

Ensure the full and effective participation of persons with disabilities on an equal basis, by improving their access to mainstream products and services which, as a result of their initial design or subsequent adaptation, meet their specific needs.

Definition of "a person with a disability" according to the CRPD and European Directives

- Any person with physical, mental, intellectual or sensory disabilities, age-related disabilities or any other limitation of the performance of the human body, permanent or temporary, whose interaction with various obstacles may limit access to products and services and lead to a situation requiring the products and services to be adapted to their particular needs.

Products and services affected by accessibility

- Ticket dispensers and automatic check-in kiosks;
- Cash dispensers and other payment terminals;
- Computers and their operating systems;
- Smartphones, tablets;
- Telephone services and related equipment;
- TV and equipment related to digital TV;
- Audio-visual media services, such as TV;
- Consumer banking services;
- Road, air and sea passenger transport services, including real-time travel information;
- E-books and dedicated software;
- E-commerce.

Case study

For work, education, leisure, access to healthcare, justice, warning in case of danger or fulfilling one's duties as a citizen,...

in all aspects of life, people with disabilities can be helped by ICT tools and interfaces as long as they have accessible tools.



Attention

ICT can become a means of exclusion if their accessibility is not ensured for different disability situations.

Considering that:

- Each user must be able to perceive, understand, navigate and interact easily.
- Each person must be able to watch TV or, when they need to reach emergency services, if they so wish.

As a reminder, the CRPD and the EU Accessibility Directive call for the provision and use of information and communication technologies to be adapted to the needs of people with disabilities

If ICTs are not accessible,
there is no access to:

- Phones, smartphones, smartphones
- Computers, tablets
- TV
- Automations
- Vending machines
- Applications
- Interfaces
- Software
- Etc.

For the record

- The telephone was originally invented in 1876 by Alexander Graham Bell to communicate with his hearing impaired wife.
- The remote control was invented in 1950 to help people with disabilities. Five years later, it was marketed to the general public.

Accessibility is the comfort of use for all

Case study

I propose that you study two cases:

- How to use TV and access its programs?
- How, in case of an emergency, to contact the police, fire brigade or emergency doctors?
 - What are the issues facing people with disabilities?
 - What are the solutions envisaged?
 - What improvements should be made?

Equal participation of people with disabilities in society
and measures to improve their access
October 24, 2019 Sort



Thank you for your attention

Soraya Kompany
Consultant
Accessibility Advisor



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Participation égale des personnes handicapées à la société
et mesures visant à améliorer leur accès
24 octobre 2019 Trèves



Normes d'accessibilité des TIC

Etude de cas

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TIC et normes d'accessibilité

Différentes formes de handicap

Directives EU

Les TIC dans la vie quotidienne

Etude de cas

Echanges

Un rappel

- 80 millions de personnes vivent avec un handicap dans l'Union européenne
- 98 millions de personnes ont plus de 65 ans (147m en 2080)

Une forte demande de produits et services accessibles pour les personnes handicapées, âgées ou momentanément en situation de handicap

Différentes formes de handicap

Personne handicapée



En raison de ses déficiences

Personne en situation de handicap



En raison de son environnement
inaccessible

Dans un environnement non accessible
Chacun peut se trouver en situation de handicap

TIC présent dans tous les aspects de la vie

Technologies d'information et de communication

Un facilitateur de démarche pour tous ou un outil d'exclusion pour les personnes handicapées?

- Rester en contact avec son réseau, se renseigner, accéder à ses droits, accomplir ses démarches administratives, se déplacer, se cultiver, se distraire ou tout simplement faire ses courses.
- Indispensables pour seconder les personnes handicapées, à condition que

l'outil numérique, ses interfaces et ses services soient accessibles pour tous.

Handicaps et communication

Sans aides techniques, les personnes atteintes d'une déficience auditive, visuelle, mentale ou motrice peuvent se trouver handicapées pour



Communiquer
Alerter
Participer
S'informer

L'outil de communication peut pallier le handicap s'il est accessible.

Handicaps et aides techniques

- La synthèse vocale pour écouter le contenu écrit
- L'outil braille pour lire avec les doigts le contenu de l'écran
- Le sous-titrage des contenus audiovisuels
- Le guide doigts pour les touches
- La personnalisation des commandes gestuelles ou le contrôle de sélection
- Une écriture adaptée
- Des applications accessibles, ...

Des technologies d'information et de communication accessibles

Cadres légales et TIC

- CIDPH
- Directive 2016/2102 (UE) du 26 octobre 2016 relative à l'accessibilité des sites internet et des applications mobiles des organismes du secteur public
- Directive 2019/882 (UE) du 17 avril 2019 relative aux exigences en matière d'accessibilité applicables aux produits et services

CIDPH

Article 4-g

- Entreprendre ou encourager la recherche et le développement ;
- Développement de l'offre et de l'utilisation de nouvelles technologies – y compris les TIC, les aides à la mobilité, les appareils et accessoires et les technologies d'assistance – qui soient adaptées aux personnes handicapées. La convention invite également à privilégier les technologies abordables.

CIDPH

Article 4-*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.

CIDPH

Article 9

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

Accessibilité numérique

Directive 2016/2102 (UE) :

- Il a pour objectif de rendre accessibles les sites internet et les applications mobiles d'organismes du secteur public aux utilisateurs, en particulier les personnes handicapées.
- Le principe d'accessibilité s'applique lors de la conception, de la construction, du maintien et de la mise à jour de sites internet et d'applications mobiles.

Principes de l'accessibilité numérique

- **La perceptibilité** : les informations et composants des interfaces utilisateurs doivent pouvoir être perçus par les utilisateurs handicapés;
- **L'opérabilité** : l'utilisation des composants des interfaces utilisateurs et la navigation doit être accessible ;
- **La compréhensibilité** : les informations et l'utilisation des interfaces utilisateurs doivent être compréhensibles pour tous ;
- **La solidité** : le contenu doit pouvoir être interprété de manière fiable par une grande diversité d'agents utilisateurs, y compris des technologies d'assistance.

Ces principes d'accessibilité sont vérifiables par la norme européenne EN 301 549 V1.1.2 sur les «exigences d'accessibilité applicables aux marchés publics des produits et services liés aux TIC en Europe».

Accessibilité des produits et services

Directive 2019/882 (UE)

- Harmoniser les dispositions légales et administratives des États membres pour l'accessibilité de certains produits et services ;
- Éliminer des obstacles à la libre circulation des produits et services accessibles ;
- Augmenter la disponibilité des produits et services accessibles au sein du marché intérieur ;
- Améliorer l'accessibilité des informations pertinentes.

Objectif

Assurer la participation pleine et effective des personnes handicapées sur un pied d'égalité, en améliorant leur accès aux produits et services courants qui, du fait de leur conception initiale ou de leur adaptation ultérieure, répondent à leurs besoins spécifiques.

Définition "personne handicapée" selon CIDH et Directives européennes

- Toute personne avec des incapacités physiques, mentales, intellectuelles ou sensorielles, des incapacités liées à l'âge ou toute autre limitation des performances du corps humain, permanente ou temporaire, dont l'interaction avec divers obstacles peut limiter l'accès à des produits et services et conduire à une situation nécessitant une adaptation desdits produits et services à leurs besoins particuliers.

Produits et services impactés par l'accessibilité

- Distributeurs de titres de transport et bornes d'enregistrement automatiques;
- Distributeurs automatiques de billets et autres terminaux de paiement;
- Ordinateurs et leurs systèmes d'exploitation;
- Smartphones, tablettes;
- Services téléphoniques et équipements liés ;
- TV et équipements liés aux TV numériques;
- Services des média audio-visuels, comme la TV ;
- Services bancaires aux consommateurs;
- Services de transport routier, aérien et maritime de passagers, notamment les informations en temps réel sur le voyage ;
- E-livres et logiciels dédiés;
- E-commerce.

Etude de cas

Pour le travail, l'éducation, les loisirs, pour accéder aux soins, à la justice, alerter en cas de danger ou accomplir ses devoirs de citoyen, ... dans tous les actes de la vie, les personnes en situation de handicap peuvent être aidées par les outils et interfaces de TIC à condition d'avoir des outils accessibles.



Attention

Les TIC peuvent devenir des moyens d'exclusion, si leur mise en accessibilité n'est pas assurée pour différentes situations de handicaps.

Considérant que :

- Chaque utilisateur doit pouvoir percevoir, comprendre, naviguer et interagir aisément.
- Chaque personne doit pouvoir, si elle le souhaite, regarder la TV ou, lorsqu'elle a besoin de joindre les services d'urgence.

Pour mémoire, la CIDH et la Directive accessibilité EU demandent que l'offre et l'utilisation des technologies d'information et de communication soient adaptés aux besoins des personnes handicapées

Si les TIC ne sont pas accessibles, il n'y pas d'accès aux :

- Téléphones, smartphones
- Ordinateurs, tablettes
- TV
- Automates
- Distributeurs automatiques
- Applications
- Interfaces
- Logiciels
- Etc.

Pour mémoire

- Le téléphone a été inventé en 1876 par Alexander Graham Bell à l'origine pour communiquer avec sa femme déficiente auditive.
- La télécommande a été inventé en 1950 pour aider les personnes handicapées. Cinq ans plus tard, elle est commercialisée pour tout public.

L'accessibilité est le confort d'usage pour tous

Etude de cas

Je vous propose d'étudier deux cas:

- Comment utiliser la TV et accéder à ses programmes ?
- Comment, en cas d'urgence, contacter la police, les pompiers ou les médecins d'urgence ?
 - Quels sont les problèmes auxquels sont confrontés les personnes handicapées ?
 - Quelles sont les solutions envisagées ?
 - Quelles améliorations faudrait-il apporter ?

Participation égale des personnes handicapées à la société
et mesures visant à améliorer leur accès
24 octobre 2019 Trier



Merci pour votre attention

Soraya Kompany
Consultante
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Equal participation of people with disabilities in society
and measures to improve their access

25 October 2019 Trier



Accessible public procurement

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A legal framework for European public procurement



Repealed Directives 2004/17/EC and 2004/18/EC

The areas concerned

EU rules on public procurement cover the following areas:

- Carrying out work,
- Acquisition of supplies
- Supply of services for consideration

In these areas, the use of a public contract is mandatory for all contractual procedures such as purchase, leasing,...

An inclusive strategy

Use of public procurement: a means to take into account the "Europe 2020 Strategy for smart, sustainable and inclusive growth"

The revision of Directives 2004/17/EC and 2004/18/EC has also provided an opportunity to take better account of the United Nations Convention on the Rights of Persons with Disabilities when awarding contracts, in particular with regard to:

- the choice of means of communication,
- technical specifications,
- the award criteria
- the conditions of performance of the contract.

CRPD and public procurement

On the basis of equality with others and to promote and protect the rights of persons with disabilities, public procurement rules are impacted by three articles of the CRPD:

- Article 9, Accessibility
- Article 21, Access to information
- Article 27, Employment

To enable persons with disabilities [...] to participate fully in all aspects of life, States Parties shall take appropriate measures to ensure [...], on an equal basis with others, access to information and communications, including information and communication technologies and systems, and other facilities and services open or provided to the public, both in urban and rural areas. These measures, which include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia (...) information, communications and other services, including electronic services and emergency services.

Article 9, Accessibility

Article 21, access to information

- States Parties shall provide information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost,

Article 27, Employment

- States Parties shall recognize the right of persons with disabilities to work on an equal basis with others [...] and shall take appropriate measures, including measures to promote the employment of persons with disabilities in the private sector by implementing appropriate policies and measures, including, where appropriate, affirmative action programmes, incentives and other measures.

EU Disability Strategy 2010- 2020

- 1. Accessibility:** to make goods and services accessible to people with disabilities and to promote the market for assistive devices;
- 2. Participation:** to enable people with disabilities to enjoy all the benefits of European citizenship, to remove barriers to their full participation in public life and leisure and to promote the provision of quality local services;
- 3. Equality:** to combat discrimination on the grounds of disability and promote equal opportunities;
- 4. Employment:** increase the participation of people with disabilities in the labour market, where they are currently under-represented;

EU Disability Strategy 2010- 2020 (continuation)

5. **Education and training:** promote inclusive education and lifelong learning for pupils and students with disabilities. Through equal access to quality education and lifelong learning, people with disabilities can participate fully in society and improve their quality of life;
6. **Social protection:** promoting decent living conditions and combating poverty and social exclusion;
7. **Health:** promote equal access to health services and the institutions that provide them;
8. **External action:** promote the rights of people with disabilities in the context of the EU's enlargement policy and international development programmes.

Disability and public procurement

- Promotion of employment of people with disabilities in procurement
- Consideration of accessibility in the submission of projects
- Accessibility of public procurement to people with disabilities



The means of communication
Technical specifications

The award criteria
The conditions of performance of the
contract

Accessibility measures

Reserved contracts

- Protected workshops
 - Economic operators involved in the social and professional integration of disabled or disadvantaged people
 - Protected employment programmes, provided that at least 30% of the staff of such workshops, economic operators or programmes are disabled or disadvantaged workers.
-
- Article 20 - Directive 2014/24/EU "conventional sectors" and
 - Article 38 - Directive 2014/25/EU "Water, energy, transport and postal services sectors".

Public procurement communication

Electronic means of information and communication make it possible to considerably simplify the advertising of public contracts and to make procurement procedures more efficient and transparent. They should become the usual means of communication and information exchange in procurement procedures. Unless this use would require specialized tools or file formats that are not commonly available. (Article 22)

Access to public procurement

- Contracting authorities should, except in certain specific situations, use electronic means of communication that are non-discriminatory, commonly available and compatible with the ICTs generally used and that do not restrict economic operators' access to the procurement procedure. The use of these means of communication should also take due account of accessibility for people with disabilities.

Accessibility for all

For all works contracts, supplies or services intended for use by natural persons, whether by the general public or the contracting authority's staff, the technical specifications shall be drawn up, except in duly justified cases, in such a way as to take into account the criteria for accessibility for persons with disabilities or the concept of design for all users (Article 42).

Accessibility, a necessity

- Member States shall ensure that contracting authorities can take into account the need to ensure the quality, continuity, **accessibility**, affordability, availability and exhaustiveness of services, the specific needs of different categories of users, including disadvantaged and vulnerable categories, user participation and involvement, and innovation.

Accessibility, and technical specifications

In the event of an accessibility obligation laid down by a Union legal act, the technical specifications shall be defined by reference to those standards as regards accessibility criteria for disabled persons or the concept of design for all users.

Accessibility a social requirement

- Contracting authorities may include in the technical specifications social requirements directly characterising the product or service concerned, such as **accessibility for** people with disabilities or design for all users.
- Economic operators may be excluded from the tendering procedure if they have proved unreliable, for example for failure to comply with environmental or social obligations, including **accessibility rules for** people with disabilities.

Accessibility and quality certificate

- Where contracting authorities require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain quality assurance standards, including accessibility for people with disabilities, they shall refer to quality assurance systems based on the series of European standards in this field and certified by accredited bodies. (Article 62)

Award of the contract and consideration of accessibility

The most economically advantageous bid is evaluated on the basis of price, cost and criteria such as:

- quality,
- the technical value,
- aesthetic and functional characteristics,
- **accessibility, design for all users,**
- social, environmental and innovative characteristics,
- marketing and its conditions.

Thank you for your attention

Any questions?

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Participation égale des personnes handicapées à la société
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25 octobre 2019 Trèves



Marchés publics accessibles

Soraya Kompany

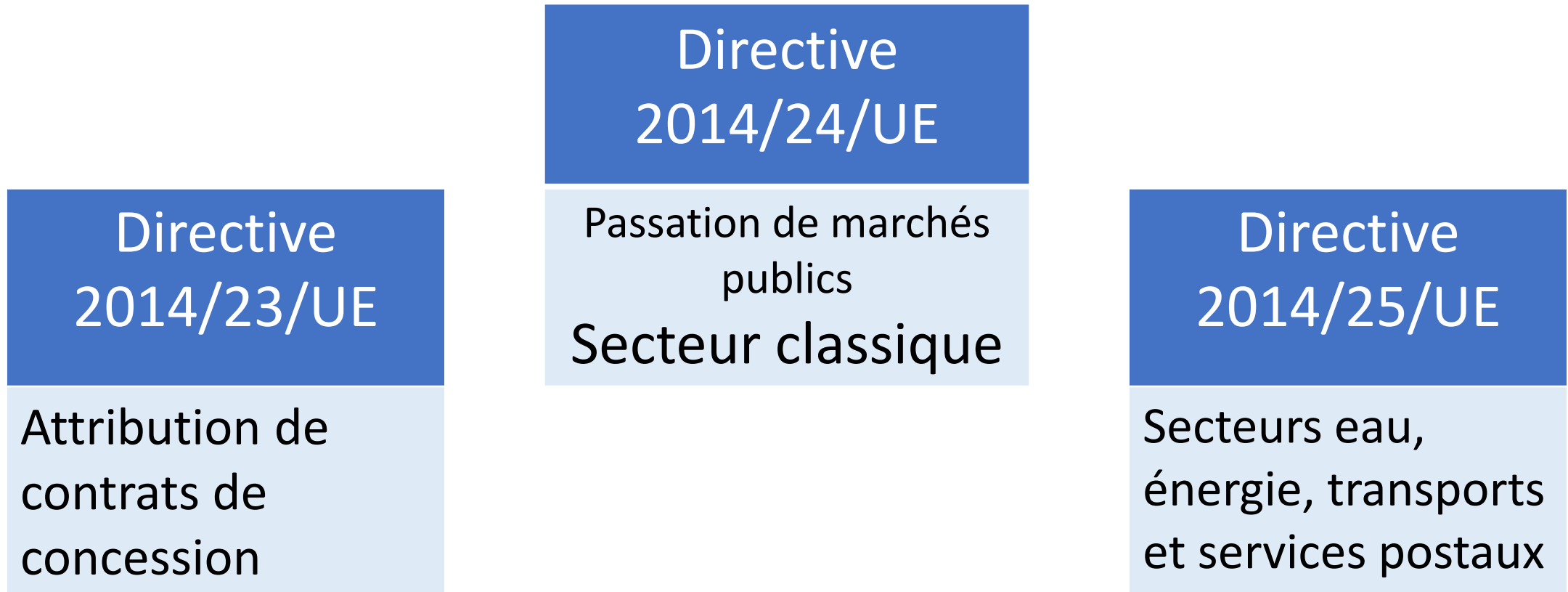
Architecte - urbaniste

Consultante accessibilité



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Un cadre légal pour les marchés publics européens



Les directives 2004/17/CE et 2004/18/CE abrogées

Les domaines concernés

Les règles de l'UE relatives à la passation des marchés publics concernent les domaines suivants :

- Réalisation de travaux,
- Acquisition de fournitures
- Prestation de services à titre onéreux

Dans ces domaines, le recours à un marché public est obligatoire pour toutes démarches contractuelles comme achat, crédit-bail,...

Une stratégie inclusive

Recours aux marchés publics : un moyen pour tenir compte de la « Stratégie Europe 2020 pour une croissance intelligente, durable et inclusive »

La révision des directives 2004/17/CE et 2004/18/CE a été aussi l'occasion de mieux tenir compte, lors de passation de marchés, de la Convention des Nations unies relative aux droits des personnes handicapées, notamment en ce qui concerne :

- le choix des moyens de communication,
- les spécifications techniques,
- les critères d'attribution
- les conditions d'exécution du marché.

CIDPH et marchés publics

Sur la base de l'égalité avec les autres et pour promouvoir et protéger les droits des personnes handicapées, les règles des marchés publics sont impactées notamment par trois articles de la CIDPH :

- Article 9, Accessibilité
- Article 21, Accès à l'information
- Article 27, Emploi

Afin de permettre aux personnes handicapées (...) 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'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 (...) aux services d'information, de communication et autres services, y compris les services électroniques et les services d'urgence.

Article 9, Accessibilité

Article 21, accès à l'information

- Les États Parties 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

Article 27, emploi

- Les États Parties reconnaissent aux personnes handicapées, sur la base de l'égalité avec les autres, le droit au travail (...) et prennent des mesures appropriées, notamment pour 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.

Stratégie UE 2010-2020 en faveur des personnes handicapées

- 1. Accessibilité:** rendre les biens et les services accessibles aux personnes handicapées et promouvoir le marché des dispositifs d'assistance;
- 2. Participation:** permettre aux personnes handicapées de bénéficier de tous les avantages liés à la citoyenneté européenne, supprimer les obstacles à leur pleine participation à la vie publique et aux loisirs et promouvoir la fourniture de services de proximité de qualité;
- 3. Égalité:** combattre la discrimination fondée sur le handicap et promouvoir l'égalité des chances;
- 4. Emploi:** accroître la participation des personnes handicapées au marché du travail, où elles sont actuellement sous-représentées;

Stratégie UE 2010-2020 en faveur des personnes handicapées (suite)

- 5. Education et formation:** promouvoir l'éducation inclusive et l'apprentissage tout au long de la vie pour les élèves et les étudiants handicapés. Grâce à l'égalité d'accès à une éducation de qualité et à un apprentissage tout au long de la vie, les personnes handicapées peuvent participer pleinement à la société et améliorer leur qualité de vie;
- 6. Protection sociale:** promouvoir des conditions de vie décentes et lutter contre la pauvreté et l'exclusion sociale;
- 7. Santé:** promouvoir l'égalité d'accès aux services de santé et aux établissements qui les délivrent;
- 8. Action extérieure:** promouvoir les droits des personnes handicapées dans le cadre de la politique d'élargissement de l'UE et des programmes de développement internationaux.

Le handicap et la commande publique

- Promotion de l'emploi des personnes handicapées lors de passation de marchés
- Prise en compte de l'accessibilité dans la soumission des projets
- Accessibilité des marchés publics aux personnes handicapées



Les moyens de communication
Les spécifications techniques

Les critères d'attribution
Les conditions d'exécution du marché

Les mesures relatives à l'accessibilité

Marchés réservés

- Ateliers protégés
 - Opérateurs économiques intervenant pour l'intégration sociale et professionnelle de personnes handicapées ou défavorisées
 - Programmes d'emplois protégés, à condition qu'au moins 30 % du personnel de ces ateliers, opérateurs économiques ou programmes soient des travailleurs handicapés ou défavorisés.
-
- Article 20 - Directive 2014/24/UE «secteurs classiques » et
 - Article 38 - Directive 2014/25/UE « secteurs eau, énergie, transports et des services postaux »

Communication des marchés publics

Les moyens électroniques d'information et de communication permettent de simplifier considérablement la publicité des marchés publics et de rendre les procédures de passation de marché plus efficaces et transparentes. Ils devraient devenir les moyens de communication et d'échange d'informations usuels dans les procédures de passation de marchés. Sauf si cette utilisation nécessiterait des outils spécialisés ou des formats de fichiers qui ne sont pas communément disponibles. (article 22)

Accès aux marchés publics

- Les pouvoirs adjudicateurs devraient, sauf dans certaines situations spécifiques, utiliser des moyens électroniques de communication qui ne sont pas discriminatoires, qui sont communément disponibles et compatibles avec les TIC généralement utilisées et qui ne restreignent pas l'accès des opérateurs économiques à la procédure de passation de marché. L'utilisation de ces moyens de communication devrait également tenir dûment compte de l'accessibilité pour les personnes handicapées.

Accessibilité pour tous

Pour tous les marchés de travaux, fournitures ou services destinés à être utilisés par des personnes physiques, qu'il s'agisse du grand public ou du personnel du pouvoir adjudicateur, les spécifications techniques sont élaborées, sauf dans des cas dûment justifiés, de façon à tenir compte des critères d'accessibilité pour les personnes handicapées ou de la notion de conception pour tous les utilisateurs (article 42).

Accessibilité, une nécessité

- Les États membres veillent à ce que les pouvoirs adjudicateurs puissent prendre en compte la nécessité d'assurer la qualité, la continuité, **l'accessibilité**, le caractère abordable, la disponibilité et l'exhaustivité des services, les besoins spécifiques des différentes catégories d'utilisateurs, y compris des catégories défavorisées et vulnérables, la participation et l'implication des utilisateurs, ainsi que l'innovation.

Accessibilité, et spécifications techniques

En cas d'obligation d'accessibilité fixée par un acte juridique de l'Union, les spécifications techniques sont définies par référence à ces normes en ce qui concerne les critères d'accessibilité pour les personnes handicapées ou la notion de conception pour tous les utilisateurs.

Accessibilité une exigence sociale

- Les pouvoirs adjudicateurs peuvent prévoir dans les spécifications techniques des exigences sociales caractérisant directement le produit ou service concerné, telles que **l'accessibilité** des personnes handicapées ou la conception destinée à tous les utilisateurs.
- Peuvent être exclus de la procédure d'adjudication des opérateurs économiques qui se seraient avérés non fiables, par exemple pour manquement à des obligations environnementales ou sociales, y compris aux **règles d'accessibilité** pour les personnes handicapées.

Accessibilité et certificat de qualité

- Lorsque les pouvoirs adjudicateurs demandent la production de certificats établis par des organismes indépendants, attestant que l'opérateur économique se conforme à certaines normes d'assurance de la qualité, y compris en ce qui concerne l'accessibilité pour les personnes handicapées, ils se réfèrent aux systèmes d'assurance de la qualité basés sur les séries de normes européennes en la matière et certifiés par des organismes accrédités. (Article 62)

Attribution du marché et prise en compte de l'accessibilité

L'offre économiquement la plus avantageuse est évaluée sur la base du prix, du coût et de critères comme:

- la qualité,
- la valeur technique,
- les caractéristiques esthétiques et fonctionnelles,
- **l'accessibilité, la conception pour tous les utilisateurs,**
- les caractéristiques sociales, environnementales et innovantes,
- la commercialisation et ses conditions.

Merci pour votre attention

Des questions?

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Availability and access to EU funding and financial instruments in line with the UNCRPD

Carmen Arroyo de Sande, EASPD Development Manager

ERA Seminar - Trier, 24-25 October 2019

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Introduction

EASPD: who we are

- European Non-governmental umbrella organisation
- Active in the disability sector since 1996
- Representing over 17.000 European social and health support services for persons with disabilities from 33 different countries
- EASPD plays a key role at European level as a representative of disability service providers

Objective: to promote effective and high quality service systems, to empower people with disabilities so they:

- can take part in society on an equal basis;
- get equal access to health, education, employment, economic and cultural environments;
- live independently and have the freedom to make their own choices.

Accessibility
Availability
Adaptability
Affordability

*“Improving
Services,
Improving
lives”*

EASPD: working areas

TOPICS:

- Work and employment
- Inclusive education
- Independent living & Community-based services
- Early Intervention
- Person Centred Technology
- Arts
- Workforce Development and Human resources

TRANSVERSALS:

- User's involvement
- High-quality support systems
- New ways of funding services

EASPD: fundamental Pillars

INFORMATION

Service provision to members: networking; exchange of information and good practices at European, national, regional and local level

INNOVATION

Research and Development: projects and research as basis for innovation and improvement of service provision

IMPACT

Policy influence; offering service providers a voice in Europe (Political Representation towards EU Institutions, Council of Europe and UN)

EASPD: services for members

1. Up to date information about relevant activities and policies at European level regarding social service provision.
2. Information about funding opportunities and tailored advisory services for the development of European projects.
3. Opportunity to networking with others organisations in Europe with the main objective of exchanging good practices, experiences and knowledge.
4. Big impact of the opinions & messages of our members at European level.
5. Promotion of members' actions, projects and events among our networks and members.

EASPD: our work related to EU funds

PROJECTS

- Research: data, mapping and innovative elements
- Exchange of best practices
- New methodologies & tools
- Policy recommendations
- Exploitation of project results (scaling-up)

WORKSHOPS, ACTIVITIES AND EVENTS

- Project Development Workshop
- Training sessions on EU funding and project management (off-line & on-line)
- Peer-learning activities
- Provider Fora national/regional/local level
- Network of potential partners
- Cooperation with key actors

POLICY: EU funding programmes and financial instruments - compliance with UN CRPD

UN CRPD & EU FUNDS

UN CRPD & funding I : Article 4 - General obligations

1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

(a) To adopt **all appropriate** legislative, administrative and other measures for the **implementation** of the rights recognized in the present Convention;

(c) To take into account the protection and promotion of the human rights of persons with disabilities **in all policies and programmes**;

(d) **To refrain** from engaging in any **act or practice that is inconsistent** with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;

(f) And (g) To undertake or promote **research and development**...

(h) To provide **accessible information**...

(i) To promote the **training of professionals and staff working with persons with disabilities** in the rights recognized in the present Convention so as to better provide the assistance and services guaranteed by those rights.

2. With regard to economic, social and cultural rights, each State Party undertakes to take measures **to the maximum of its available resources**...

UN CRPD & funding II: CRPD General Comments I

Article 4.3 and 33.3 Participation of persons with disabilities in the implementation and monitoring of the Convention.

- States parties should support and fund the strengthening of capacity within civil society, in particular organizations of persons with disabilities, to ensure their effective participation in the processes of the independent monitoring frameworks...The support and funding ... in relation to article 33 (3) complement States parties' obligations under article 4 (3) of the Convention and do not preclude them.
- States parties should ensure accessibility for persons with disabilities to all facilities and procedures related to public decision-making and consultation...and must provide support, funding ... as appropriate and requested
- States parties should strengthen the capacity of organizations of persons with disabilities to participate in all phases of policymaking...including through independent funding... In addition, States parties should provide guidance on how to access funding and diversify their sources of support
- Distributing funds on an equal basis among different organizations of persons with disabilities, including sustainable core institutional funding, instead of being limited to project-based funding
- Ensuring the autonomy of organizations of persons with disabilities in deciding their advocacy agenda, despite the funding received
- Distinguishing between funding for the running of organizations of persons with disabilities and the projects carried out by such organizations

UN CRPD & funding II: CRPD General Comments II

Article 4.3 and 33.3 Participation with persons with disabilities in the implementation and monitoring of the Convention.

- Making funding available to all organizations of persons with disabilities...
- Adopting and implementing application processes for funding in accessible formats
- States parties should guarantee appropriate and sufficient funding for organizations of persons with disabilities, through the establishment of a responsible legally recognized formal mechanism, for example trust funds at the national and international levels
- States parties should increase public resources for the establishment and strengthening of organizations of persons with disabilities that represent all kinds of impairments. They should also ensure their access to national funding ... States parties should promote and facilitate the access of organizations of persons with disabilities to foreign funding as part of international cooperation and development
- Encourage and support the ... funding and effective participation of organizations of persons with disabilities or groups of persons with disabilities, including parents and families of persons with disabilities in their supportive role, at all levels of decision-making
- Ensure that organizations of persons with disabilities can receive and/or seek funding and other forms of resources from national and international sources, including private individuals and companies, civil society organizations, States parties and international organizations, including access to tax exemptions, and the national lottery

UN CRPD & funding II: CRPD General Comments III

Article 5 Equality and non-discrimination

- Examples of specific measures include outreach and support programmes, allocation and/or reallocation of resources...
- Provide resources to systems of supported decision-making to assist persons with disabilities to navigate existing legal systems
- allocating resources for independent living support services, accessible and affordable housing, support services for family carers and access to inclusive education

Article 6 Women with disabilities

- In the light of the normative content and obligations..., States parties should take the steps set out below to ensure full implementation of article 6 and provide adequate resources in that regard

UN CRPD & funding II: CRPD General Comments IV

Article 9 Accessibility

- It is unacceptable to use public funds to create or perpetuate the inequality that inevitably results from inaccessible services and facilities
- States parties should also strengthen their monitoring mechanisms in order to ensure accessibility and they should continue providing sufficient funds to remove barriers to accessibility and train monitoring staff
- It is unacceptable to use public funds to perpetuate new inequalities. All new objects, infrastructure, facilities, goods, products and services must be fully accessible for all persons with disabilities
- States parties should establish definite time frames and allocate adequate resources for the removal of existing barriers
- States parties should adopt action plans and strategies to identify existing barriers to accessibility, set time frames with specific deadlines and provide both the human and material resources necessary to remove the barriers
- To ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources

Article 12 Equal recognition before the law

- In order to comply with the requirement, set out in article 12, paragraph 3, of the Convention, for States parties to take measures to “provide access” to the support required, States parties must ensure that support is available at nominal or no cost to persons with disabilities and that lack of financial resources is not a barrier to accessing support in the exercise of legal capacity
- The Committee encourages States parties to undertake or devote resources to the research and development of best practices respecting the right to equal recognition of the legal capacity of persons with disabilities and support in the exercise of legal capacity

Article 19 Living independently and being included in the community

- allocate sufficient resources for deinstitutionalisation, including by adequately financing deinstitutionalisation strategies;
- reduce investment in institutions and ensuring sufficient funding for the development of community based services, including redirecting funding from institutional services to community-based services;
- ensure adequate investment in personal assistance;
- allocate sufficient funding to support families of children with disabilities and prevent the institutionalisation of children.

Article 24 Education

- The Committee urges States parties to transfer resources from segregated to inclusive environments. States parties should develop a funding model that allocates resources and incentives for inclusive educational environments to provide the necessary support to persons with disabilities
- Inclusive education is incompatible with institutionalization. States parties must engage in a well-planned and structured process of de-institutionalization of persons with disabilities. Such a process must address ... the re-direction of funds and the introduction of multidisciplinary frameworks to support and strengthen community-based services
- Education ministries must ensure that all resources are invested in advancing inclusive education and in introducing and embedding the necessary changes in institutional culture, policies and practices
- States parties must commit sufficient financial and human resources throughout the development of an education sector plan and of cross-sectoral plans to support the implementation of inclusive education
- Authorities at all levels must have the capacity, commitment and resources to implement laws, policies and programmes to support inclusive education

The role of EU funding programmes I

The European Union and all its Member States are party to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). Therefore, there is a need to:

- Ensure that a maximum amount of EU funds is dedicated to Social Cohesion and Social Inclusion in Europe
- Ensure that (all aspects of) EU funds are not creating new barriers for persons with disabilities
- Ensure that proper monitoring takes place at both the EU and the national level, with the involvement of representative organisations of persons with disabilities
- Ensure that EU funds contribute to positive developments for disability services

The role of EU funding programmes II

- The European Commission supports Member States in the implementation of the UNCRPD with EU funds.
- The European structural and investment funds (ESIF) are the EU main funding and financial instruments to strengthen economic and social cohesion. They help ensure social inclusion of the most vulnerable citizens, including those with disabilities.
- The European Commission also publicises the implementation of the UNCRPD (e.g. training for legal and policy practitioners on EU disability policy and legislation)
- The EU provides financial support through an annual grant to a number of EU-level disabled people's organisations (DPOs) and NGOs to make their participation in EU-level processes easier.

*** (2014) Report on the implementation of the UN CRPD by the European Union ***

The role of EU funding programmes III

(2015) EDF Alternative report on the implementation of the UN CRPD

- The main strategy on which the EU relies is the European Disability Strategy 2010-2020 which ... **lacks funding for its implementation**
- We call for the EU to fund services which make it possible for all persons with disabilities, including persons with psychosocial disabilities to live independently in the community, and to **withdraw funding for projects which perpetuate the institutionalisation and segregation** of persons with disabilities
- The EU to include persons with disabilities and to ensure compliance with the UN CRPD when undertaking and funding training seminars for professionals and staff working with persons with disabilities in the EU
- EU funding mechanisms to be used to **build the capacity of these representative organisations**; to ensure that persons with disabilities and their representative organisations are partners on an equal basis with others in EU research initiatives; this should include additional funds to cover disability-related costs, and must require that all information and communication is accessible for persons with disabilities
- the EU must ensure that all ... funding programmes are fully accessible to all persons with disabilities and the information is public and provided in **accessible formats**

The role of EU funding programmes III

(2015) EDF Alternative report on the implementation of the UN CRPD

- Supporting **European research, comparable data collection** and exchange about the transition from substituted decision-making to supported decision-making and investment in projects introducing supported decision-making through relevant funding programmes. This includes the research framework programme as well as programmes in the areas of social innovation, justice, health, education and training.
- EU funding that goes to **prison and detention centres**, to be used to make them accessible for persons with disabilities and ensure that disabled prisoners receive the necessary support and reasonable accommodations when being detained
- The Commission to support EU countries in developing **inclusive education systems** by promoting the use of European funding instruments to fund both the training of staff and accessibility. The Commission should fund research on accessible pedagogical material and reasonable accommodation in education, paying special attention to children in need of high level support
- The EU funding that is granted to support the activities and projects of civil society organisations does not require them to **organise their events, meetings, information and communication in accessible ways**. As a result, persons with disabilities face difficulties in participating in the work of these organisations.

The role of EU funding programmes III

(2015) EDF Alternative report on the implementation of the UN CRPD

- The EU to provide funding to support **civil society organisations to become inclusive and accessible**
- One of the specific objectives of Creative Europe, the new EU funding programme for the cultural and creative sector which follows the Culture Programme and the MEDIA Programme, is to make culture and **creative works more accessible** to persons with disabilities, amongst others. This commitment should be taken seriously and its practical implementation monitored.
- A non-discriminative and inclusive approach to the **accessibility of culture, leisure and sports** by making accessibility a condition to the distribution of funding via the relevant programmes

The role of EU funding programmes III

(2015) EASPD Alternative report on the implementation of the UN CRPD

- The **Structural and Investment Funds** have been sometimes used to build or renovate residential institutions. These funds should be used only to promote equality, non-discrimination, social inclusion and accessibility for persons with disabilities. The EU needs to encourage the use of Structural and Investment Funds to promote the transition from segregating/institutional type settings to community-based ones
- Promote **training and lifelong learning programmes for staff** to support the full inclusion of pupils and students with disabilities and developing the Individual Education Plan (IEP) (i.e. through “Erasmus +” and the Structural and Investment Funds)
- Promote usage of Structural and Investment Funds to provide **accessible equipment and technical devices** for health facilities
- the Erasmus + Programme should tackle the promotion and the development of **vocational training opportunities** for people with disabilities, particularly aiming at a better match of skills and requirements.

The role of EU funding programmes III

(2017) REPORT of the European Parliament on the implementation of the European Disability Strategy 2010 – 2020

- Calls on the EU to ensure that all funding programmes are accessible, that they follow a **universal design approach** and include a separate budget for accessibility
- Urges the Commission to ensure that EU funded projects are in line with the **UNCRPD's human rights approach**, by not funding any projects that would create results that are not accessible, that exclude persons with disabilities, or do not respect accessibility standards
- Recalls that the UNCRPD Committee has expressed its deep concern with the precarious situation of persons with disabilities in the current **migration crisis in the EU**; strongly urges the Commission to mainstream disability in its migration and refugee policies and to ensure that all EU funding directed towards tackling this humanitarian crisis is disability-inclusive

The role of EU funding programmes III

(2017) REPORT of the European Parliament on the implementation of the European Disability Strategy 2010 – 2020

- Welcomes the pilot **EU Disability Card** and encourages the Member States to sign up to the initiative; calls on the Commission to mobilise the necessary funding for the development of the project across the EU
- Encourages the Commission to follow up on the proposals to mobilise structural funding so as to **train health professionals on disability awareness** and specific gaps in knowledge about associated conditions
- Recommends that European structural funding for **healthcare and other services** be consistently steered to promote deinstitutionalisation and independent living in the community, as well as the involvement and consultation of patient organisations
- Calls for proper funding and support for **monitoring progress** as well as for the scrutiny of current and future Union legal acts in respect of CRPD obligations

OVERVIEW OF EU FUNDS

Types of funding

1. **GRANTS:** direct financial contributions of the Commission in support of projects or organisations which further the interests of the EU or contribute to the implementation of an EU programme or policy. These are awarded usually following a public announcement known as a 'call for proposals'. The EU rarely finances projects up to 100%. Rather, grants are a form of complementary financing, and the beneficiary organisation will also put up a percentage of the funding for their project
2. **LOANS, GUARANTEES AND EQUITY:** the EU provides loans, guarantees and equity as forms of financial assistance to support its policies and programmes. It also provides guarantees to help beneficiaries to obtain loans more easily or at better conditions from banks and other lenders
3. **SUBSIDIES:** subsidies are managed directly by EU national governments, not by the European Commission. For instance, agricultural subsidies are awarded to support farmers
4. **PRIZES:** prizes are rewards to winners of contests on different topics. The winner of a contest will receive cash, publicity coverage or promotion as reward.
5. **PUBLIC CONTRACTS:** the Commission uses public contracts to buy services, works and goods from the market for its internal use. They are selected via calls for tenders and not considered a form of EU funding

Management of EU Funding

- 1. DIRECT MANAGEMENT:** the European Commission has ultimate political responsibility for ensuring that all money from the EU budget is spent correctly. Programmes covering the whole EU or seeking the common interest of the Community are typically managed by the Commission through its Departments - directorates-general- and executive agencies (also known as **EU competitive programmes**). Around 20 percent of the budget is allocated to direct support managed at European level. In these cases, competition is at EU-level.
- 2. SHARED MANAGEMENT:** EU funding managed under programmes jointly administered by the European Commission and national authorities in the EU countries. If money is allocated to a country, a national authority is responsible for implementation, from issuing the calls, to evaluation, grant agreement negotiation, payment and audits. This is the case for the **European Structural and Investment Funds (ESIF)**, agricultural support and some parts of the IPA. Indirect support accounts for around 80 percent of the budget. In case of indirect/shared support, competition is on a national level and interested proposers should contact the implementing authority to get information on application procedures and priorities.

Geographical coverage

1. Essentially, under certain conditions, EU funding may be **available for the world at large**. Each funding programme contains a list of eligible countries and their rules for funding. Participating countries which can apply for projects are usually divided into two groups: Programme Countries and Partner Countries.
 1. **Programme Countries** include the 28 Member States and their overseas departments, the European Free Trading Association Countries/European Economic Area – EFTA/ EEA (Iceland, Liechtenstein, Norway) and Candidate Countries under Framework Agreement.
 2. **Partner Countries** include third countries that are contributing financially to the programmes' budget and have signed in this respect a Memorandum of Understanding.
2. A special instrument has been created for the **Candidate Countries and Potential Candidate Countries**, IPA II, with which the EU offers its support with regard to the technical and financial assistance that is necessary for improving the situation and developing sustainability with the emphasis on political, institutional, legal, administrative, social, and economic reforms that will align their practices to EU standards.
3. **Neighbouring countries** to the EU such as countries of South East Europe, countries from Eastern Europe and the Southern Caucasus and Mediterranean partner countries can benefit from the European Neighbourhood Policy and can also potentially receive funding.

Who is eligible for funding?

1. **Non-governmental and civil society non-profit organisations:** are eligible for EU funding where their areas of activity relate to EU policies.
2. **Small and medium-sized businesses:** micro, small and medium-sized enterprises (SMEs) can apply for grants, loans and guarantees. They can also bid for contracts to provide goods and services.
3. **Researchers/academia:** research and innovation are so important to the EU's long-term strategy that special programmes and other sources of support are available for researchers across Europe.
4. **Young people/youth organisations/stakeholders working with young people:** the EU budget includes specific programmes to support young people to gain work experience or study abroad. There are also programmes targeting unemployment among young people.
5. **Farmers or land managers:** they are eligible to receive direct payments under the common agricultural policy (CAP).
6. **Public bodies:** public bodies - whether local, regional or national - can benefit from many EU funding opportunities, including investments to support the development of institutional capacity and efficiency, and local infrastructure projects.

EU FUNDING PROGRAMMES: GRANTS

Basic principles

1. Grants are a form of **complementary** financing. The EU does not (normally) finance projects up to 100%. The aim of the co-financing principle is to ensure that European funds do not act as a complete replacement for national investment and that Member States see it as a supplementary source of funding to support key areas or gaps in their national systems;
2. Enable a given operation to break even financially and **cannot lead to a profit** for their beneficiaries;
3. They **cannot be awarded retroactively** for actions that are already completed;
4. They are **non-cumulative**: Each beneficiary may not get more than one grant per action, neither more than one operating grant per financial year.
5. Light documentation requirements apply to small grants (up to **60 000 EUR**);
6. To obtain significant payments at the outset of their project (pre-financing), certain beneficiary organisations, may be required to provide **financial guarantees**;
7. Organisations must provide an audit report if applying for grants of **750 000 EUR** or more for specific projects, or for grants of 100 000 EUR or more to finance their operating costs;

Basic principles

8. The **work programme, the call for proposals and the awarded grants** have to be published in order to guarantee transparency. This **publicity** keeps EU taxpayers informed on how and with whom the Commission spends its money and the beneficiaries on the possibilities of applying for a grant;
9. Before applying, organisations seeking EU funding should **identify the programme** and the responsible authority managing it. The European Commission's departments and agencies as well as the regional and national managing authorities regularly publish information about the funding opportunities they offer;
10. Every programme has its own **guidelines and rules**. Essentially, calls for proposals contain all information which allows the applicant to submit a successful application: eligibility criteria, where and how to submit the preproposal/application, evaluation and selection criteria.
11. For some programmes, the submission procedure can be divided into **two separate stages**, making it possible to reject proposals which have no chance of success at an early stage on the basis of a short description of the project. Applicants thus need to prepare a full proposal only if they have a chance of obtaining a grant.

EU FUNDING PROGRAMMES: GRANTS

EU competitive programmes 2014-2020

EU competitive programmes 2014-2020

Thematic Categories	Programme
Audiovisual Sector and Media	Creative Europe
Consumer Safety	Consumer Programme 2014-2020
Culture	Creative Europe
Democracy and Civic Participation	Europe for Citizens
Economic growth and competitiveness	Competitiveness of Enterprises and SMEs (COSME) Horizon 2020
Education and Training	Consumer Programme 2014-2020 Customs 2020 Erasmus+ Fiscalis 2020 Hercule III Internal Security Fund Component for Police Cooperation Pericles 2020
Youth	Erasmus+ Horizon 2020

EU competitive programmes 2014-2020

Energy	Connecting Europe Facility (CEF) Horizon 2020
Entrepreneurship	Employment and Social Innovation Programme (EASI)
Environment	Baltic Sea Research and Development Programme (BONUS) Horizon 2020 LIFE Programme
European Citizenship	Europe for Citizens Rights and Citizenship Programme 2014-2020
Health	Ambient Assisted Living Joint Programme (AAL JP) Consumer Programme 2014-2020 Health for Growth Horizon 2020
Industry	Horizon 2020

EU competitive programmes 2014-2020

Information and Communication Technologies	Ambient Assisted Living Joint Programme (AAL JP) Competitiveness of Enterprises and SMEs (COSME) Fiscalis 2020 Galileo and Egnos (European Geostationary Navigation Overlay Service) Programmes Horizon 2020
Internal Market	Consumer Programme 2014-2020 Customs 2020 Fiscalis 2020 Hercule III Pericles 2020
Justice and Security	Horizon 2020 Internal Security Fund – Component for Police Cooperation Pericles 2020
Labour Market	Employment and Social Innovation Programme (EASI) Rights and Citizenship Programme 2014-2020

EU competitive programmes 2014-2020

Law Enforcement	Customs 2020 Hercule III Internal Security Fund – Component for Police Cooperation Pericles 2020
Social Affairs and Human Rights	Employment and Social Innovation Programme (EASI) Horizon 2020 Rights and Citizenship Programme 2014-2020
Space	Galileo and Egnos (European Geostationary Navigation Overlay Service) Programmes Horizon 2020
Sports	Erasmus+
Telecommunications	Connecting Europe Facility (CEF) Horizon 2020
Trade and Commerce	Competitiveness of Enterprises and SMEs (COSME)
Transport	Connecting Europe Facility (CEF) Horizon 2020

EU competitive programmes: implementing UN CPRD

1. Which ones? ALL OF THEM!!!

2. Where to start?

1. Erasmus + / Creative Europe

2. EaSI

3. Health Programme & Consumers Programme

4. Horizon 2020

5. (EuropeAid)

EU FUNDING PROGRAMMES: GRANTS

European Structural and Investment Funds (ESIF) 2014-2020

1. **European regional development fund (ERDF)*** – promotes balanced development in the different regions of the EU.
2. **European social fund (ESF)*** - supports employment-related projects throughout Europe and invests in Europe's human capital – its workers, its young people and all those seeking a job.
3. **Cohesion fund (CF)** – funds transport and environment projects in countries where the gross national income (GNI) per inhabitant is less than 90% of the EU average. In 2014-20, these are Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia and Slovenia.
4. **European agricultural fund for rural development (EAFRD)*** – focuses on resolving the particular challenges facing EU's rural areas.
5. **European maritime and fisheries fund (EMFF)** – helps fishermen to adopt sustainable fishing practices and coastal communities to diversify their economies, improving quality of life along European coasts.

- All these funds are managed by the EU countries themselves, by means of **partnership agreements**.
- Each country prepares an agreement, in collaboration with the European Commission, setting out how the funds will be used during the current funding period 2014-20.
- Partnership agreements lead to a series of investment programmes channelling the funding to the different regions and projects in policy areas concerned.

Partnership agreements on the European structural and investment funds

European Code of Conduct on Partnership

- A common set of standards to improve consultation, participation and dialogue with partners during the planning, implementation, monitoring and evaluation of projects financed by all European Structural and Investment Funds (ESIF).
- Partners: public authorities, trade unions, employers, NGOs and bodies responsible for promoting social inclusion, gender equality and non-discrimination.
- WHY IT IS IMPORTANT?
 - To ensure that funds are spent where they are most needed, and in the best way possible.
 - To promote job creation, competitiveness, economic growth, improved quality of life and sustainable development.
 - To foster innovative responses to address the complex and intertwined social, economic and environmental challenges.
 - To promote democracy and policy coherence at different levels of governance.

ESIF: implementing UN CPRD

1. ESF*: “software”

2. ERDF*: “hardware”

- ESIF have huge potential to be a vehicle for progress in achieving the aspirations towards independent living and inclusion for vulnerable children, disabled people, people with mental health problems and older people.
- The ESF and the ERDF played a pivotal role in changing attitudes and shifting systems of care and support from institutions to community services, thus contributing in bringing about structural reforms and creating new jobs.

EU FINANCIAL INSTRUMENTS: LOANS

Before starting...what role for private investment?

1. Incomplete transition to Community-based social care and Support across Europe

Institutional Care	Community-based Care & Support
<ul style="list-style-type: none">• Isolation from broader community	<ul style="list-style-type: none">• Inclusion in the community
<ul style="list-style-type: none">• No sufficient control over their life	<ul style="list-style-type: none">• Involvement of users in all decisions
<ul style="list-style-type: none">• Paternalistic relationships	<ul style="list-style-type: none">• Flexibility
<ul style="list-style-type: none">• Routine & block treatment	<ul style="list-style-type: none">• Individual approach
<ul style="list-style-type: none">• Staff engaging with users & families only	<ul style="list-style-type: none">• Staff engaging with users & broader community (employers, housing providers, etc)

2. Why is this transition so important?

- Individuals demand to enjoy rights
- Services are accountable to society
- Traditional models of support no longer meet individual needs and wishes
- Keep up with trends & developments (economic, demographic, digitalisation, ...)

Before starting...what role for private investment?

3. Social Services are very staff intensive (av. 80% of their expenses); the most significant investment needs are to ensure the sector can attract, recruit and retain enough **well-trained professionals** in the future.
 - Getting access to cheaper loans or private investment instruments is not the solution here
4. Social Services also need **Social Infrastructure and Innovation**. Getting access to cheaper loans/investment could help the sector invest in
 - The creation, transformation, renovation, retrofitting or refurbishment of buildings
 - Energy efficiency, digitalization and accessibility measures of their buildings & services
 - Testing innovative forms of services
5. Access to cheaper loans & investment can help finance the investment needs of social service providers & provide more options to authorities by sharing the risk with private investors.

Before starting...what role for private investment?

6. Providing sufficient funding for quality community-based social care and support provision **is the responsibility of public authorities**
 - Only way to guarantee that such services are available, accessible, adaptable and affordable for all persons with support needs
 - There is little to no evidence that the marketisation of social services leads to an improvement in the quality of service provided, as well as in the wages and working conditions of staff
7. Equally true that governments have **constraints** on their public expenditure
 - Governments can and should invest more by prioritizing their expenditure and managing public impact
 - Yet also important to recognize the impact of ageing on European society and economy will place pressure on government spending, even in the best of worlds
8. To prepare for this context, we must be smarter in knowing why, when and **how private investment can play a role.**

EU Investment Plan

EU Investment Plan aimed to unlock public & private investment into the real economy of at least €315 billion over 3 years

- European Fund for Strategic Investment (EFSI) (a guarantee)
- European Investment Advisory Hub
- Structural Reform

How does EFSI Work

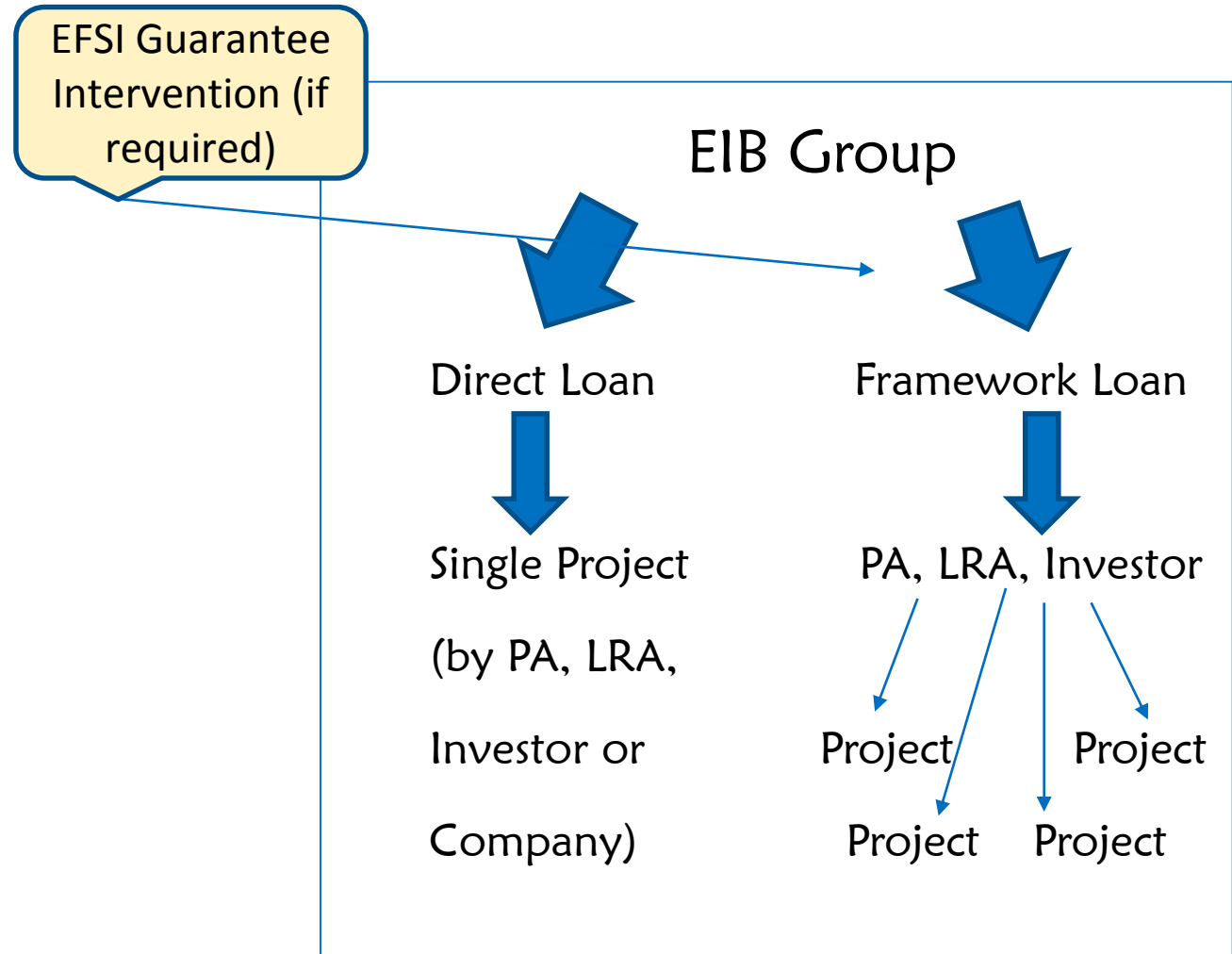
1. Implemented via the European Investment Bank has always provided loans
2. By using EU&EIB money as a guarantee, the European Fund for Strategic Investments (EFSI) **allows the EIB to**
 - **provide better quality loans**
 - **support national investors** in providing better quality loans
3. The Guarantee is the added value of EFSI

- EaSI Guarantee aims to facilitate
 - Access to microloans
 - Access to loans of up to €500,000 for Social Enterprises
(annual turnover max €30 mln)

How does EFSI Work: Infrastructure Window

➤ Infrastructure & Innovation Window

- Supports loans for projects >€25 million
- Implemented through the EIB directly
- Can help to attract other investors



EFSI: What are the advantages for you?

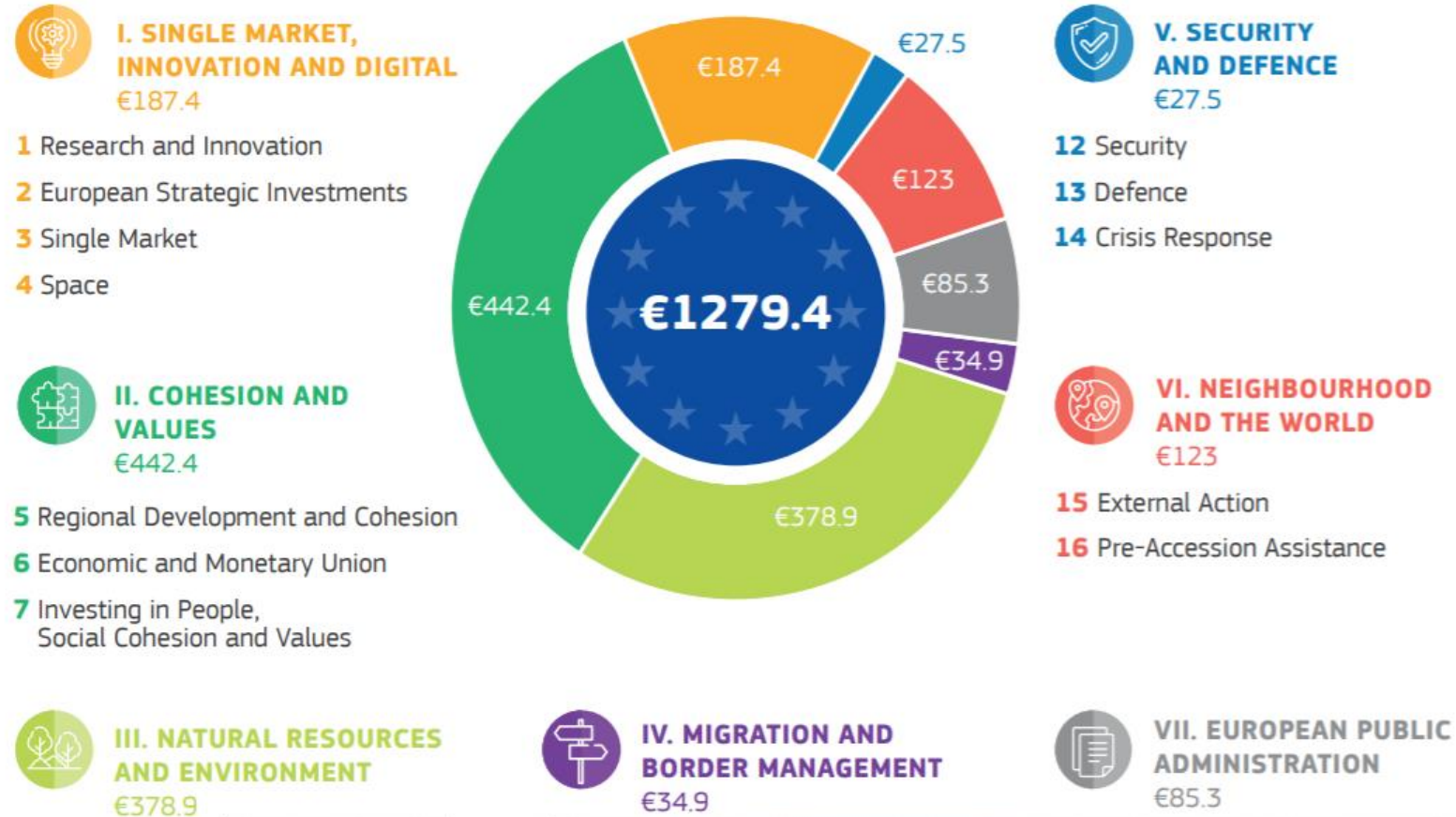
- EFSI would allow you to get a **better quality deal for your loan**
- The measurement of interest rates -and more generally the loan agreements- are made on a **case-by-case basis**. Such measurements are based on a series of factors: income/revenue structures, sustainable business plans, good governance, et cetera
- However, as the overall objective of EFSI is to help you get access to better loans, it is clear that **interest rates for EFSI-supported projects would tend to be lower than without such interventions** or, alternatively, that the project is financed instead of no progress being made

NEXT MULTIANNUAL FINANCIAL FRAMEWORK 2021-2017

The future EU budget

THE NEW MULTIANNUAL FINANCIAL FRAMEWORK 2021 - 2027 A BUDGET FOR A UNION THAT PROTECTS, EMPOWERS AND DEFENDS

In billion euro, current prices



Investing in People

- The Commission proposes to **concentrate available resources** within a new single, comprehensive instrument, bringing together the European Social Fund, the Youth Employment Initiative, the Fund for European Aid to the Most Deprived, the Employment and Social Innovation programme and the Health programme
- The Commission proposes a stronger focus on **youth**. This will be achieved by doubling the size of Erasmus+ to €30 billion and the European Solidarity Corps to €1,26 billion budgets to give opportunities to more young people to study, train and volunteer abroad, and by earmarking funding for addressing youth unemployment within the European Social Fund

This comprehensive instrument will form together with the Erasmus+ programme, the European Solidarity Corps, the new Creative Europe and the new Justice, Rights and Values Programmes a new cluster dedicated to Investing in People, Social Cohesion & Values with a budget of €139,5 billion

- The proposals upgrade the European Social Fund into a **European Social Fund+** with an overall budget of €101.2 billion, simplifying and increasing its effectiveness by overcoming the current fragmentation of funding instruments in the social policy area
- Building on its successful 30-year history, the Commission proposes a **substantially strengthened, inclusive and extended Erasmus+ programme**, further promoting learning mobility across the EU
- A reinforced **European Solidarity Corps** will integrate the existing EU Aid Volunteers programme. This will offer European citizens a unique opportunity to engage in solidarity activities within and outside Europe

Investing in People

- Existing actions supporting European culture and creativity will be integrated into a **new Creative Europe Programme** (including MEDIA). The aim is to promote European culture and values that contribute to the identity of our Union. The new programme will also empower citizens through the promotion and protection of fundamental rights and values and to create opportunities for engagement and democratic participation in political and civil society. This programme will include a strong MEDIA strand with funding to further promote European cinema and creative and audiovisual sectors in general.
- Investing in people is an overarching priority for the entire EU budget and is therefore covered by many of the Commission proposals. Examples include the following:
 - The **Cohesion Policy** supports regional and local development by co-financing investment and provides support to small businesses.
 - The **InvestEU** Fund will focus on investing in people notably through a separate funding window for social skills and human capital.
 - The **Reform Support Programme** will provide financial incentives for key reforms identified as part of the European Semester, including in the areas of education and training and labour market policies helping to create jobs, fight poverty and promote social inclusion.
 - The Commission also proposes a revamped **European Globalisation Adjustment Fund** to demonstrate solidarity with displaced workers and self-employed persons whose activity has ceased in the course of unexpected major restructuring events.

Next steps

DEPARTURE DEMANDS DEPARTURES EXPECTED ARRIVALS ON HOLD ARRIVED DERAILED CLOSE

LEGISLATIVE TRAIN SCHEDULE

NEW BOOST FOR JOBS, GROWTH AND INVESTMENT

MFF - 2021-2027 MFF / 2018-02

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52

NEW SKILLS AGENDA FOR EUROPE 2016

REGULATION ON MINIMUM REQUIREMENTS FOR THE RE-USE OF WASTEWATER 2017

REVISION OF THE DRINKING WATER DIRECTIVE FEBRUARY 2018

ECODESIGN FOR CIRCULAR ECONOMY BEFORE 2017

Departed

<http://www.europarl.europa.eu/legislative-train/theme-new-boost-for-jobs-growth-and-investment/file-mff-2021-2027-mff>

THANK YOU FOR YOUR ATTENTION

ANY QUESTIONS?



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With the financial support of the European Union Programme for Employment and Social Innovation
"EaSI" (2014-2020)

EASPD – European Association of Service providers for Persons with Disabilities
www.easpd.eu



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Case study - Good practices on the use of Structural and Investment Funds in line with the right to independent living and to be included in the community

Carmen Arroyo de Sande, EASPD Development Manager

ERA Seminar - Trier, 24-25 October 2019

TABLE OF CONTENTS

- The right to independent living and to be included in the community
- European Structural and Investment Funds
- Other EU funding programmes
- Case study
- Discussion and exchange of national & transnational practices

**THE RIGHT TO INDEPENDENT LIVING AND
TO BE INCLUDED IN THE COMMUNITY**

ARTICLE 19 - Living independently and being included in the community

States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

a) Persons with disabilities have the opportunity **to choose their place of residence and where and with whom they live** on an equal basis with others and are not obliged to live in a particular living arrangement;

b) Persons with disabilities have access to a range of **in-home, residential and other community support services**, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;

c) **Community services and facilities for the general population** are available on an equal basis to persons with disabilities and are responsive to their needs

.

ARTICLE 26 – Habilitation and rehabilitation

1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and **full inclusion and participation in all aspects of life**. To that end, States Parties shall organize, strengthen and extend **comprehensive habilitation and rehabilitation services and programmes**, particularly in the areas of **health, employment, education and social services**, in such a way that these services and programmes:
 - a) Begin at the earliest possible stage, and are based on the **multidisciplinary assessment of individual needs and strengths**;
 - b) Support **participation and inclusion in the community and all aspects of society**, are voluntary, and are available to persons with disabilities **as close as possible to their own communities**, including in **rural areas**.
2. States Parties shall promote the development of initial and continuing **training for professionals and staff working in habilitation and rehabilitation services**.
3. States Parties shall promote the availability, knowledge and use of **assistive devices and technologies**, designed for persons with disabilities, as they relate to habilitation and rehabilitation.

From care to support

- Care provided as shelter and means of survival
→ *Not in line with the Convention*
- Care with medical approach
→ *Not in line with the Convention*
- Care with mixed medical and social rights approach
→ *Not in line with the Convention*
- Support where individualised support is provided and choice and control are made possible

De-institutionalisation (DI)

The DI process:

- It is NOT about replacing large buildings with smaller buildings
- We need to de-institutionalise the system, not the people living in institutions, the way that:
 - people are perceived and treated
 - support is provided
 - support is funded
- Requires community based and person-centred services: Education, Employment & Day to day support
- Key issues:
 - Training and retraining of staff
 - Twin-track approach (DI & CBC)
 - Development of these services
 - Development of person-centred support

Good community-based care

- ✓ Involvement of all actors from the very beginning
 - Users at the centre
 - Stakeholder cooperation
- ✓ Sound planning and monitoring
 - Focus on persons with high support needs
- ✓ Staff training and development
- ✓ Quality of support
 - Needs assessment tools
 - Throughput approach
 - Quality of life indicators

Examples of new services

- Early intervention
- Distance support and distance learning
- Family support systems
- ICT and assistive technology
- Mediation
- Buddy services
- Legal advice (supported decision-making)
- Respite care

Characteristics of poor support services

- Services that are far away from families
- Low quality human and structural settings
- Size of centres
- Cross-border service provision
- Low expertise of staff
- Waiting lists
- Inadequate funding of services
- Legal capacity rules that undermine human rights & the UNCRPD

Towards Community Living I

1. The Frog Phenomenon – Inertia. We need to:

- Focus on needs and needs assessment
- Develop and show alternatives
- Explain importance of legal & social change
- Training in change management
- Train first line staff in new skills
- Identify bottlenecks in legislation and existing processes
- Assist unsuitable staff to find new employment

2. Family Support. We need to:

- Socio-economic support mechanism for poor families
- Communication support
- Recognition of different roles: parents/brothers, sisters

Towards Community Living II

3. Service Spectrum. We need to provide:

- Information
- Skilled and trained staff in maternity hospitals
- Early intervention
- Personal assistants in day care & schools
- Respite care & temporary care
- Family support & support for persons with disabilities
- Support in mainstream education and health care
- Help through transition in life stages

4. Develop Partnerships. We need to:

- Invest in stakeholder cooperation and involvement of people with disabilities
- Recognise different roles
- ensure commitment of all partners
- Mainstream support wherever possible

Towards Community Living III

5. Cut the supply line. We need to:

- Secure flexible time frames for services (e.g. pre-school programs)
- Identify number of persons living in institutions
- Stop investment in institutional buildings
- Ensure there are time limited services for emergencies
- Block admissions to institutions

6. Creating momentum. We need to:

- Structural involvement of persons with disabilities
- Identify and remove barriers from generic legislation
- Include quality of life in quality of services instruments

Threats to Successful DI

- 'They' like it here... 'they' are safe
- 'The families don't want them back'
- 'The community don't want them here'
- Poor strategy & lack of detailed person-centred plans
- Absence of 'bridging' finance to allow old & new services to run in parallel
- Opposition from community bureaucracies & services
- Investment in current institutions
- Closure of institutions without community alternatives
- 'New' services that are institutional
- A market approach to identifying new service providers

Conclusions

- Recognise that cash spent on institutional services gives NO meaningful benefit
- Seek co-production with people with disabilities to build better services
- Move away from a 'one-size fits all' approach
- Put person centred planning at the heart of all service planning
- Build a spectrum of community-based services
- Install Quality Assurance mechanisms
- Remember that securing an inclusive society is an ongoing process

EUROPEAN STRUCTURAL AND INVESTMENT FUNDS (ESIF)

What are ESI Funds / ESIF?

- The "European Structural and Investment Funds" or "ESI Funds" is a common designation for five European funds: the **European Regional Development Fund (ERDF)**, the **European Social Fund (ESF)**, the Cohesion Fund (CF), the **European Agricultural Fund for Rural Development (EAFRD)** and the European Maritime and Fisheries Fund (EMFF), which operate under a common framework (i.e. the CPR) as well as under fund-specific regulations.
- ESI Funds are some EUR 450 billion of EU funding over the 2014-2020 programming period, allocated to Member States and delivered through nationally co-financed multiannual programmes to develop and support actions related to the **key Union priorities of smart, sustainable and inclusive growth** in line with the objectives of each Fund. National co-financing constitutes an integral and obligatory part of these programme resources and is covered by a **common set of rules** applicable to all ESI Funds and further defined in the **fund-specific provisions**.
- ESI Funds programmes support focuses on 11 thematic objectives: 1) Research and innovation, 2) Information and communications technology (ICT), 3) SME competitiveness , 4) Low carbon economy, 5) Climate change adaptation and risk management, 6) Environment and resource efficiency, 7) Sustainable transport and network bottlenecks, 8) Employment and labour mobility, 9) **Social inclusion and poverty**, 10) Education and 11) Institutional capacity.
- ESI Funds programme support is mainly delivered either in the form of grants or through financial instruments in the form of loans, guarantees and equity investments.

Legal provisions supporting the transition to community living I

Common provisions regulation (CPR)

- Objective 9 “Promoting social inclusion and combating poverty” and earmarked percentage of ESF allocation(25,5 %)
- **Ex-ante conditionalities**: UN Convention Rights of Persons with Disabilities; measures to promote the shift from institutional to community-based care within the anti-poverty Strategies
- Partnership principle (Article 5) and European Code on Conduct on Partnership

ESF regulation

- Preamble (whereas 11): the ESF should promote the transition from institutional to community-based care
- Article 2 (Missions): The ESF shall benefit ...people with disabilities... including systems and structures with a view to facilitating their adaptation to new challenges
- Article 8: specific actions with a view to facilitating the transition from institutional to community-based care

Legal provisions supporting the transition to community living II

ERDF regulation

- Preamble (whereas 15): taking account of the specific needs of persons with disabilities and the elderly
- Preamble (whereas 16): Community-based services should cover all forms of in-home, family-based, residential and other community services which support the right of all persons to live in the community, with an equality of choices, and which seek to prevent isolation or segregation from the community.
- Article 5 (Investment priorities): investing in health and social infrastructure ...reducing inequalities in terms of health status, promoting social inclusion through improved access to social, cultural and recreational services and the transition from institutional to community-based services

EAFRD Regulation

- Article 5 (Union priorities for rural development): promoting social inclusion

Legal provisions supporting the transition to community living III

These provisions obliged Member States to address the issue in a more systemic way, and to plan structural reforms rather than intervene on an ad-hoc basis. These structural reforms were encouraged by the allocation of appropriate resources during the negotiations of the programming documents for the period 2014–2020. This exercise was facilitated and further enhanced through the Common European Guidelines on the Transition from Institutional to Community-based Care.

<https://deinstitutionalisation.com/>

What the ESF can do

- Development of integrated network of community-based services such as: personal assistance, family counselling, day care, financial assistance, job search assistance, therapeutic services, services at home, substitute family care (foster care), respite care
- Improving the quality and increasing capacity of existing community-based services
- Staff training and curriculum development for posts in the community-based services
- Improving the status and professionalisation of social workers
- Development of a communication strategy aimed at raising public awareness on the right to live independently in the community
- Activities to facilitate user involvement
- Supporting people with disabilities' integration into the labour market

What the ERDF can do

- Social, health, education and housing infrastructure
 - Small group homes
 - Assisted housing (integrated housing & support)
 - Accessibility measures (access to high-quality services in the community)
- Design new services to support family and community-based living (e.g. integrated approach to domiciliary care that includes medical and social care services)

But also ...

- ESIF used to reorganise or downsize institutions, rather than transition to family and community-based living
- ESIF and energy efficiency: in some cases the funds have been used to meet other targets such as improving accessibility or energy efficiency. And some countries have use this as a justification to renovate institutions.

Community Living for Europe: Structural Funds Watch

<https://communitylivingforeurope.org/>

Combination of ESI Funds and EFSI I

- ESIF programmes should contribute to the achievement of the objectives of the Investment Plan in complementarity with EFSI support, in a way which brings demonstrable added value and also ensures coordination and synergies.
- Combination of ESI Funds and EFSI is possible either at individual project or at financial instrument level in cases where the respective applicable eligibility criteria are satisfied. EFSI and ESI Funds programmes may cover different risks and may support different or same parts of the capital structure of a project or layered investment platform provided that the rules on double funding and preferential remuneration are complied with.
- This may be the case in certain countries or sectors, where the associated risks would make it unlikely for granting EFSI support without the presence of ESI Funds programme contributions.

Combination of ESI Funds and EFSI II

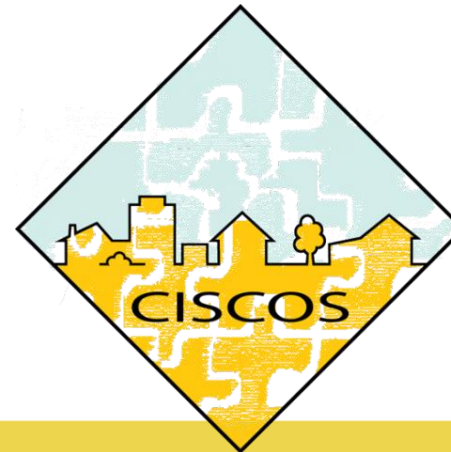
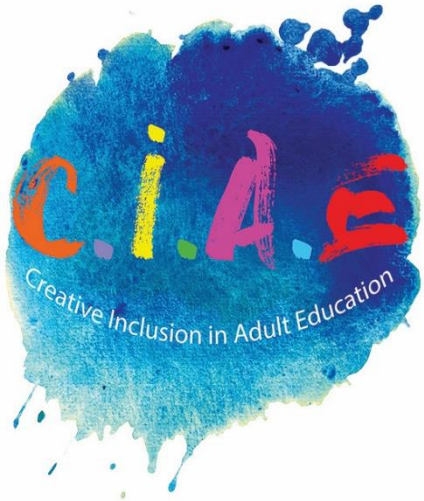
- An operation may receive support from one or more ESI Funds or from one or more programmes and from other Union instruments, provided that the expenditure item included in a request for payment for reimbursement by one of the ESI Funds does not receive support from another fund or Union instrument, or support from the same fund under another programme.
- EFSI support to the project cannot count as national co-financing of ESI Funds programme and the EFSI supported part of the project consequently cannot be declared as eligible expenditure for ESI Funds' support. In such a case national co-financing of an ESI Funds programme could still be provided through another EIB/EIF financial product, either through a Structural Programme Loan or through intervention at project level.

<http://www.socialinvestment.eu/en>

OTHER EU FUNDING PROGRAMMES

- **Thematic Categories:** Education and Training, Youth, Sport
- **Beneficiaries:** Private Sector, Public Sector, Non-Profit Organizations, Academic institutions and research centers
- **Actions:**
 - Key Action 1- Mobility for students, young people, teachers and staff
 - Key Action 2 – focus on strengthening innovative partnerships between educational institutions and businesses; Cooperation for Innovation and the Exchange of Good Practices: Strategic partnerships, Knowledge Alliances, Sector Skills Alliances, Capacity Building projects
 - Key Action 3 – Support for Policy Reforms
 - Jean Monnet Activities
 - Sport
- **Useful for:**
 - Supporting education, youth, sport and culture for young people
 - Training and work experience
 - human capital – opportunities for staff training and education
 - higher quality standards –the framework for qualitative standards can be used to improve quality

Erasmus +: examples



EU Programme for Employment and Social Innovation (EaSI)

- **Thematic Categories:** Social Affairs and Human Rights, Labour Market, Entrepreneurship
- **Beneficiaries:** Public Sector Bodies, Non-Profit Organizations, Academic institutions and research centers
- **Objective:** to promote a high level of quality and sustainable employment, guaranteeing adequate and decent social protection, combating social exclusion and poverty and improving working conditions.
- **Useful for:**
 - Develop and disseminate high-quality comparative analytical knowledge.
 - Facilitate effective and inclusive information-sharing, mutual learning and dialogue.
 - Provide financial support to test social and labour market policy innovations.
 - Provide organisations with financial support to increase their capacity to develop, promote and support the implementation of EU instruments and policies
- **Examples of project:**
 - *PESSIS + - Promoting Employer's Social Services in Social Dialogue*
 - *UNIC - Towards User-centred funding models for Long Term Care*

Rights Equality and Citizenship Programme – REC

- **Thematic Categories:** European Citizenship, Social Affairs and Human Rights, Labour Market
- **Beneficiaries:** Private Sector, Public Sector, Non-Profit Organizations
- **Objectives:**
 - Promote non–discrimination
 - Combat racism, xenophobia, homophobia and other forms of intolerance
 - Promote rights of persons with disabilities
 - Promote equality between women and men and gender mainstreaming
 - Prevent violence against children, young people, women and other groups at risk
 - Promote the rights of the child
 - Ensure the highest level of data protection
 - Promote the rights deriving from Union citizenship
 - Enforce consumer rights
- **Example of project:** *Responsive services to address gender-based violence against women and girls with disabilities*



Justice Programme

- **Thematic Categories:** Human Rights, Justice & Security, Law Enforcement
- **Beneficiaries:** Private Sector, Public Sector, Non-Profit Organizations
- **Objectives**
 - Promoting judicial cooperation
 - Training legal staff on all levels
 - Facilitate access to the judicial system
- **Example of project:** JUST4ALL (*Promoting full access to justice for persons with disabilities through the training of legal practitioners in the European Union*)



Just4All

- **Thematic Categories:** Energy, Environment, Health, Industry, Information and Communication, Technologies, Justice, Security, Social Affairs and Human Rights, Space, Telecommunications, Transport, Youth, Economic growth and competitiveness
- **Beneficiaries:** Private Sector, Public Sector Bodies, Non-Profit Organizations, Academic institutions and research centers
- **Overall objective:** building a society and an economy based on knowledge and innovation across the EU by promoting research, development and innovation
- Three mutually reinforcing priorities:
 1. **Excellent Science:** supports world-class science research talent and support development of state-of-the-art research infrastructure
 2. **Industrial Leadership:** speed up the development of technologies and help innovative European SMEs to grow
 3. **Societal Challenges:** focus on health, demographic change and wellbeing; inclusive and innovative societies
- **Example of project:** *Integrated Technology Systems for ProACTIVE Patient Centred Care*



- **Thematic Categories:** funding for sustainable economic development
- **Objective** “Eradicate poverty and achieve sustainable development worldwide”
- **Eligibility:** non-EU countries
- **Example of project:** *Advancing and monitoring the rights of people with mental disabilities in neuro-psychiatric residential institutions*

CASE STUDY

You have been requested to draft a strategic plan for your organisation, focusing of activities that facilitate the transition towards community living.

1. Please think individually about ideas to design community-based services (inspired to your own experience or own projects).
2. Now share your ideas with the person next to you. Give each other a feedback on the strengths and weaknesses of the ideas.
3. Turn around and form groups of 10 persons. Present your ideas and discuss. Try also to bring your ideas into a transnational collaboration activity (project)
4. Choose the 2 best ones and fill in the matrix (next slide)
5. Appoint a spokesperson to present the 2 project ideas during the discussion time

Project outline

Topic & needs analysis

Objectives

Target group/s

Beneficiaries

Proposed activities

Partners required

DISCUSSION AND EXCHANGE

THANK YOU FOR YOUR ATTENTION

ANY QUESTIONS?



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Étude de cas - Bonnes pratiques sur l'utilisation des fonds structurels et des fonds d'investissement en accord avec le droit à une vie autonome et à être inclus dans la communauté

Carmen Arroyo de Sande, Responsable du développement de l'EASPD

Séminaire ERA - Trèves, 24-25 octobre 2019

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- Le droit à une vie autonome et le droit d'être inclus dans la communauté
- Fonds structurels et d'investissement européens
- Autres programmes de financement de l'UE
- Étude de cas
- Discussion et échange sur les pratiques nationales et transnationales

**LE DROIT À UNE VIE AUTONOME ET LE
DROIT D'ÊTRE INCLUS DANS LA
COMMUNAUTÉ**

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 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

Des soins au soutien

- Soins fournis en tant qu'abri et moyens de survie
Non conforme à la Convention
- Soins avec approche médicale
→ *Non conforme à la Convention*
- Prise en charge avec une approche mixte des droits médicaux et sociaux
Non conforme à la Convention
- Un soutien où un soutien individualisé est fourni et où le choix et le contrôle sont rendus possibles.

Désinstitutionnalisation (DI)

Le processus DI :

- Il ne s'agit PAS de remplacer de grands bâtiments par des bâtiments plus petits.
- Nous devons désinstitutionnaliser le système, pas les personnes vivant dans des institutions, de cette façon:
 - les gens sont perçus et traités
 - un soutien est fourni
 - est financé
- Nécessite des services communautaires et centrés sur la personne : Éducation, emploi et soutien quotidien
- Questions clés :
 - Formation et recyclage du personnel
 - Approche à deux voies (DI et CBC)
 - Développement de ces services
 - Développement d'un soutien centré sur la personne

De bons soins communautaires

- ✓ Implication de tous les acteurs dès le début
 - Les utilisateurs au centre
 - Coopération des parties prenantes
- ✓ Une planification et un suivi judicieux
 - Mettre l'accent sur les personnes ayant des besoins de soutien élevés
- ✓ Formation et perfectionnement du personnel
- ✓ Qualité de l'appui
 - Outils d'évaluation des besoins
 - Approche par le débit
 - Indicateurs de la qualité de vie

Exemples de nouveaux services

- Intervention précoce
- Soutien à distance et apprentissage à distance
- Systèmes de soutien à la famille
- TIC et technologies d'assistance
- Médiation
- Services de copains
- Conseils juridiques (aide à la décision)
- Soins de relève

Caractéristiques des services de soutien médiocres

- Services éloignés des familles
- Milieux humains et structurels de faible qualité
- Taille des centres
- Prestation de services transfrontaliers
- Faible expertise du personnel
- Listes d'attente
- Financement inadéquat des services
- Les règles de capacité juridique qui portent atteinte aux droits de l'homme et à la Convention des Nations Unies sur les droits des personnes handicapées

Vers l'intégration communautaire I

1. Le phénomène des grenouilles - Inertie. Nous devons le faire :

- Mettre l'accent sur les besoins et l'évaluation des besoins
- Élaborer et présenter des solutions de rechange
- Expliquer l'importance du changement juridique et social
- Formation en gestion du changement
- Former le personnel de première ligne à de nouvelles compétences
- Identifier les goulets d'étranglement dans la législation et les processus existants
- Aider le personnel inapte à trouver un nouvel emploi

2. Soutien à la famille. Nous devons le faire :

- Mécanisme de soutien socio-économique pour les familles pauvres
- Support de communication
- Reconnaissance des différents rôles : parents/frères, frères, sœurs

Vers l'intégration communautaire II

3. Spectre de service. Nous devons fournir :

- Renseignements
- Personnel qualifié et formé dans les maternités
- Intervention précoce
- Assistantes personnelles dans les garderies et les écoles
- Soins de relève et soins temporaires
- Soutien familial et soutien aux personnes handicapées
- Appui à l'enseignement général et aux soins de santé
- Aide à la transition au cours des étapes de la vie

4. Établir des partenariats. Nous devons :

- Investir dans la coopération des parties prenantes et la participation des personnes handicapées
- Reconnaître les différents rôles
- s'assurer de l'engagement de tous les partenaires
- Soutien général dans la mesure du possible

Vers l'intégration communautaire III

5. Coupez la conduite d'alimentation. Nous devons :

- Assurer des horaires flexibles pour les services (p. ex. programmes préscolaires).
- Identifier le nombre de personnes vivant en institution
- Arrêter les investissements dans les bâtiments institutionnels
- Veiller à ce que les services d'urgence soient limités dans le temps
- Admissions en bloc dans les établissements

6. Créer une dynamique. Nous devons :

- Participation structurelle des personnes handicapées
- Identifier et éliminer les obstacles de la législation générique
- Inclure la qualité de vie dans les instruments de qualité des services

Menaces à la réussite de l'AI

- Ils se plaisent ici.... Ils sont en sécurité.
- Les familles ne veulent pas qu'ils reviennent.
- La communauté ne veut pas d'eux ici.
- Mauvaise stratégie et absence de plans détaillés axés sur la personne
- Absence de financement " relais " pour permettre aux anciens et nouveaux services de fonctionner en parallèle.
- Opposition des bureaucraties et des services communautaires
- Investissements dans les institutions actuelles
- Fermeture d'institutions sans alternatives communautaires
- De " nouveaux " services qui sont institutionnels
- Une approche de marché pour identifier de nouveaux fournisseurs de services

Conclusions

- Reconnaître que l'argent dépensé pour les services institutionnels n'apporte AUCUN avantage significatif.
- Rechercher des coproductions avec des personnes handicapées pour améliorer les services.
- S'éloigner d'une approche " taille unique ".
- Placer la planification centrée sur la personne au cœur de toute planification des services
- Établir un éventail de services communautaires
- Installer des mécanismes d'assurance de la qualité
- Rappelez-vous que la garantie d'une société inclusive est un processus continu

FONDS STRUCTURELS ET D'INVESTISSEMENT EUROPÉENS (ESIF)

Que sont les fonds ESI / ESIF ?

- Le "Fonds structurel et d'investissement européen" ou "Fonds ESI" est une dénomination commune à cinq fonds européens : le **Fonds européen de développement régional (FEDER)**, le **Fonds social européen (FSE)**, le **Fonds de cohésion (FC)**, le **Fonds européen agricole pour le développement rural (FEADER)** et le Fonds européen maritime et de la pêche (FEMP), qui fonctionnent selon un cadre commun (à savoir le RPC) ainsi que selon une réglementation par fonds.
- Les fonds de l'ISE représentent quelque 450 milliards d'euros de financement de l'UE pour la période de programmation 2014-2020, alloués aux États membres et mis en œuvre par le biais de programmes pluriannuels cofinancés au niveau national pour élaborer et soutenir des actions liées aux **priorités clés de l'Union en matière de croissance intelligente, durable et inclusive** conformément aux objectifs de chaque Fonds. Le cofinancement national fait partie intégrante et obligatoire de ces ressources du programme et est couvert par un **ensemble commun de règles** applicables à tous les fonds ESI et définies plus en détail dans les **dispositions spécifiques des fonds**.
- L'appui des programmes du Fonds ESI se concentre sur 11 objectifs thématiques : 1) Recherche et innovation, 2) Technologies de l'information et de la communication (TIC), 3) Compétitivité des PME, 4) Économie à faibles émissions de carbone, 5) Adaptation au changement climatique et gestion des risques, 6) Environnement et efficacité des ressources, 7) Transport durable et goulets d'étranglement des réseaux, 8) Emploi et mobilité de la main-d'œuvre, 9) **Inclusion sociale et pauvreté**, 10) Éducation et 11) Capacité institutionnelle.
- L'appui au programme ESI Funds est principalement fourni sous la forme de subventions ou d'instruments financiers sous la forme de prêts, de garanties et de prises de participation.

Dispositions juridiques favorisant la transition vers l'intégration communautaire I

Règlement sur les dispositions communes (RPC)

- Objectif 9 "Promouvoir l'inclusion sociale et lutter contre la pauvreté" et pourcentage réservé de la dotation du FSE (25,5 %)
- **Conditionnalités ex ante** : Convention des Nations Unies relative aux droits des personnes handicapées ; mesures visant à promouvoir le passage des soins en institution aux soins de proximité dans le cadre des stratégies de lutte contre la pauvreté.
- Principe de partenariat (article 5) et code de conduite européen en matière de partenariat

règlement FSE

- Préambule (considérant 11) : le FSE devrait promouvoir la transition des soins en institution vers les soins de proximité
- Article 2 (Missions) : Le FSE bénéficie aux personnes handicapées, y compris les systèmes et structures visant à faciliter leur adaptation aux nouveaux défis.
- Article 8 : actions spécifiques visant à faciliter la transition des soins en institution vers les soins de proximité

Dispositions juridiques favorisant la transition vers la vie en société II

règlement FEDER

- Préambule (considérant 15) : prise en compte des besoins spécifiques des personnes handicapées et des personnes âgées
- Préambule (considérant 16) : Les services communautaires devraient couvrir toutes les formes de services à domicile, familiaux, résidentiels et autres services communautaires qui soutiennent le droit de toutes les personnes à vivre dans la communauté, avec une égalité de choix, et qui visent à prévenir l'isolement ou la ségrégation de la communauté.
- Article 5 (Priorités d'investissement) : investir dans les infrastructures sanitaires et sociales...réduire les inégalités en termes d'état de santé, promouvoir l'inclusion sociale par un meilleur accès aux services sociaux, culturels et récréatifs et la transition des services institutionnels aux services communautaires.

règlement FEADER

- Article 5 (Priorités de l'Union en matière de développement rural) : promouvoir l'inclusion sociale

Dispositions juridiques favorisant la transition vers la vie en société III

Ces dispositions obligent les États membres à aborder la question d'une manière plus systémique et à planifier des réformes structurelles plutôt qu'à intervenir de manière ponctuelle. Ces réformes structurelles ont été encouragées par l'allocation de ressources appropriées lors des négociations des documents de programmation pour la période 2014-2020. Cet exercice a été facilité et encore renforcé par les lignes directrices européennes communes sur la transition des soins en institution vers les soins de proximité.

<https://deinstitutionalisation.com/>

Ce que le FSE peut faire

- Développement d'un réseau intégré de services communautaires tels que : aide personnelle, counselling familial, garderie, aide financière, aide à la recherche d'emploi, services thérapeutiques, services à domicile, soins à domicile, soins familiaux de remplacement (placement familial), soins de relève
- Améliorer la qualité et accroître la capacité des services communautaires existants
- Formation du personnel et élaboration de programmes d'études pour les postes des services communautaires
- Améliorer le statut et la professionnalisation des travailleurs sociaux
- Élaboration d'une stratégie de communication visant à sensibiliser le public au droit de vivre de façon autonome dans la communauté.
- Activités visant à faciliter la participation des utilisateurs
- Soutenir l'intégration des personnes handicapées sur le marché du travail

Ce que le FEDER peut faire

- Infrastructures sociales, sanitaires, éducatives et de logement
 - Foyers pour petits groupes
 - Logement assisté (logement et soutien intégrés)
 - Mesures d'accessibilité (accès à des services de qualité dans la communauté)
- Concevoir de nouveaux services pour soutenir la vie familiale et communautaire (p. ex. une approche intégrée des soins à domicile qui comprend des services médicaux et sociaux).

Mais aussi

- L'ESIF avait l'habitude de réorganiser ou de réduire les institutions, plutôt que de passer à la vie familiale et communautaire.
- ESIF et efficacité énergétique : dans certains cas, les fonds ont été utilisés pour atteindre d'autres objectifs tels que l'amélioration de l'accessibilité ou de l'efficacité énergétique. Et certains pays s'en sont servis pour justifier la rénovation de leurs institutions.

Vie communautaire pour l'Europe : Veille des Fonds structurels

<https://communitylivingforeurope.org/>

Combinaison des fonds ESI et EFSI I

- Les programmes du FSE devraient contribuer à la réalisation des objectifs du plan d'investissement en complémentarité avec le soutien de l'EFSI, d'une manière qui apporte une valeur ajoutée démontrable et assure également la coordination et les synergies.
- La combinaison des fonds ESI et de l'EFSI est possible soit au niveau du projet individuel, soit au niveau de l'instrument financier dans les cas où les critères d'éligibilité respectifs applicables sont remplis. Les programmes de l'EFSI et des fonds ESI peuvent couvrir des risques différents et soutenir des parties différentes ou identiques de la structure du capital d'un projet ou d'une plateforme d'investissement à plusieurs niveaux, à condition que les règles de double financement et de rémunération préférentielle soient respectées.
- Tel peut être le cas dans certains pays ou secteurs, où les risques associés rendraient improbable l'octroi d'un soutien de l'EFSI sans la présence des contributions du programme ESI Funds.

Combinaison des fonds ESI et EFSI II

- Une opération peut bénéficier du soutien d'un ou de plusieurs Fonds ESI ou d'un ou de plusieurs programmes et d'autres instruments de l'Union, à condition que le poste de dépense inclus dans une demande de remboursement par l'un des Fonds ESI ne bénéficie pas du soutien d'un autre fonds ou d'un autre instrument de l'Union, ou du même fonds au titre d'un autre programme.
- Le soutien de l'EFSI au projet ne peut pas être considéré comme un cofinancement national du programme ESI Funds et la partie du projet soutenue par l'EFSI ne peut donc pas être déclarée comme dépense éligible au soutien d'ESI Funds. Dans ce cas, le cofinancement national d'un programme des fonds ESI pourrait encore être assuré par un autre produit financier de la BEI/FEI, soit par un prêt-programme structurel, soit par une intervention au niveau du projet.

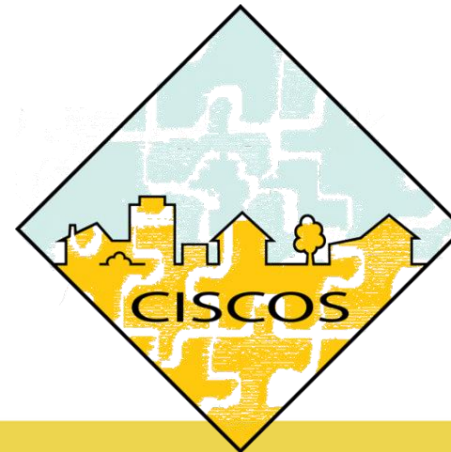
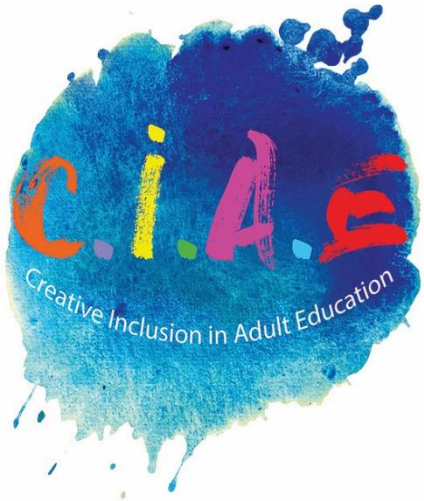
<http://www.socialinvestment.eu/en>

AUTRES PROGRAMMES DE FINANCEMENT DE L'UE

Erasmus + Erasmus

- **Catégories thématiques** : Éducation et formation, Jeunesse, Sport
- **Bénéficiaires** : Secteur privé, secteur public, organismes sans but lucratif, établissements d'enseignement et centres de recherche
- **Actions** :
 - Action clé 1- Mobilité des étudiants, des jeunes, des enseignants et du personnel
 - Action clé 2 - mettre l'accent sur le renforcement des partenariats innovants entre les établissements d'enseignement et les entreprises ; coopération pour l'innovation et l'échange de bonnes pratiques : Partenariats stratégiques, alliances du savoir, alliances des compétences sectorielles, projets de renforcement des capacités
 - Action clé 3 - Soutien aux réformes politiques
 - Activités Jean Monnet
 - Sport
- **Utile pour** :
 - Soutenir l'éducation, la jeunesse, le sport et la culture pour les jeunes
 - Formation et expérience professionnelle
 - capital humain - possibilités de formation et d'éducation du personnel
 - des normes de qualité plus élevées - le cadre des normes qualitatives peut être utilisé pour améliorer la qualité

Erasmus + : exemples



Programme de l'UE pour l'emploi et l'innovation sociale (EaSI)

- **Catégories thématiques** : Affaires sociales et droits de l'homme, Marché du travail, Entrepreneuriat
- **Bénéficiaires** : Organismes du secteur public, organisations à but non lucratif, établissements universitaires et centres de recherche
- **Objectif** : promouvoir un niveau élevé d'emploi de qualité et durable, en garantissant une protection sociale adéquate et décente, en luttant contre l'exclusion sociale et la pauvreté et en améliorant les conditions de travail.
- **Utile pour** :
 - Développer et diffuser des connaissances analytiques comparatives de haute qualité.
 - Faciliter le partage efficace et inclusif de l'information, l'apprentissage mutuel et le dialogue.
 - Fournir un soutien financier pour tester les innovations en matière de politique sociale et de politique du marché du travail.
 - Fournir aux organisations un soutien financier pour accroître leur capacité à développer, promouvoir et soutenir la mise en œuvre des instruments et des politiques de l'UE.
- **Exemples de projets** :
 - *PESSIS + - Promouvoir les services sociaux des employeurs dans le dialogue social*
 - *UNIC - Vers des modèles de financement centrés sur l'utilisateur pour les soins de longue durée*

Programme Droits, Égalité et Citoyenneté - REC

- **Catégories thématiques** : Citoyenneté européenne, affaires sociales et droits de l'homme, marché du travail
- **Bénéficiaires** : Secteur privé, secteur public, organismes sans but lucratif
- **Objectifs** :
 - Promouvoir la non-discrimination
 - Combattre le racisme, la xénophobie, l'homophobie et les autres formes d'intolérance
 - Promouvoir les droits des personnes handicapées
 - Promouvoir l'égalité entre les femmes et les hommes et l'intégration de la dimension
 - Prévenir la violence contre les enfants, les adolescents, les femmes et les autres
 - Promouvoir les droits de l'enfant
 - Garantir le plus haut niveau de protection des données
 - Promouvoir les droits découlant de la citoyenneté de l'Union
 - Faire respecter les droits des consommateurs
- **Exemple de projet** : *Services réactifs pour lutter contre la violence sexiste à l'égard des femmes et des filles handicapées*



Programme Justice

- **Catégories thématiques** : Droits de l'homme, Justice et sécurité, Application de la loi
- **Bénéficiaires** : Secteur privé, secteur public, organismes sans but lucratif
- **Les objectifs**
 - Promouvoir la coopération judiciaire
 - Formation du personnel juridique à tous les niveaux
 - Faciliter l'accès au système judiciaire
- **Exemple de projet** : JUST4ALL (*Promouvoir le plein accès des personnes handicapées à la justice par la formation des praticiens du droit dans l'Union européenne*)



Just4All

- **Catégories thématiques** : Énergie, Environnement, Santé, Industrie, Technologies de l'information et de la communication, Technologies, Justice, Sécurité, Affaires sociales et droits de l'homme, Espace, Télécommunications, Transport, Jeunesse, Croissance économique et compétitivité
- **Bénéficiaires** : Secteur privé, organismes du secteur public, organisations à but non lucratif, établissements universitaires et centres de recherche
- **Objectif global** : construire une société et une économie fondées sur la connaissance et l'innovation dans toute l'UE en promouvant la recherche, le développement et l'innovation
- Trois priorités qui se renforcent mutuellement :
 1. **Excellente science** : appuie les chercheurs scientifiques de calibre mondial et soutient le développement d'une infrastructure de recherche à la fine pointe de la technologie.
 2. **Leadership industriel** : accélérer le développement des technologies et aider les PME européennes innovantes à se développer
 3. **Défis sociétaux** : mettre l'accent sur la santé, l'évolution démographique et le bien-être des sociétés inclusives et innovantes.
- **Exemple de projet** : *Systemes technologiques intégrés pour des soins centrés sur le patient*
ProACTIVE



- **Catégories thématiques** : financement du développement économique durable
- **Objectif** "Réduire la pauvreté et parvenir à un développement durable dans le monde entier".
- **Eligibility** : pays non membres de l'UE
- **Exemple de projet** : *Promouvoir et surveiller les droits des personnes handicapées mentales dans les établissements résidentiels de neuropsychiatrie.*

ÉTUDE DE CAS

On vous a demandé d'élaborer un plan stratégique pour votre organisation, en mettant l'accent sur les activités qui facilitent la transition vers la vie communautaire.

1. Réfléchissez individuellement à des idées pour concevoir des services communautaires (inspirés de votre propre expérience ou de vos propres projets).
2. Partagez maintenant vos idées avec la personne à côté de vous. Donnez à chacun un retour d'information sur les forces et les faiblesses des idées.
3. Retournez-vous et formez des groupes de 10 personnes. Présentez vos idées et discutez. Essayez également d'intégrer vos idées dans une activité de collaboration transnationale (projet).
4. Choisissez les 2 meilleurs et remplissez la matrice (diapositive suivante)
5. Désigner un porte-parole pour présenter les 2 idées de projet pendant le temps de discussion

Aperçu du projet

Sujet et analyse des besoins

Les objectifs

Groupe(s) cible(s)

Bénéficiaires

Activités proposées

Partenaires requis

DISCUSSION ET ÉCHANGE

THANK YOU FOR YOUR ATTENTION

ANY QUESTIONS?



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EASPD – European Association of Service providers for Persons with Disabilities

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