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# The obligations of the EU public administration under the UN Convention on the Rights of Persons with Disabilities

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European Implementation  
Assessment

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IN-DEPTH ANALYSIS

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# The obligations of the EU public administration under the UN Convention on the Rights of Persons with Disabilities

## In-depth Analysis

*On 29 July 2015, the Committee on Employment and Social Affairs (EMPL) requested authorisation to draw up an implementation report on the Implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD) with special regard to the Concluding Observations of the UN CRPD Committee. Once adopted in plenary, the ensuing resolution will constitute Parliament's position on the UN Committee's recent recommendations to the EU ('Concluding Observations'), made in the wake of the review process of the Convention's implementation.*

*Parliamentary implementation reports are routinely accompanied by European Implementation Assessments. This analysis has been carried out by the Ex-Post Impact Assessment Unit of the Directorate for Impact Assessment and European Added Value within the European Parliament's Directorate-General for Parliamentary Research Services. It looks into the obligations of the EU administration under the CRPD, both as an employer and in its interaction with the public, on the basis of the recommendations the CRPD Committee addressed to the EU institutions as the EU's public administration.*

*This analysis complements the European Implementation Assessment [EU Implementation of the UN Convention on the Rights of Persons with Disabilities \(CRPD\)](#).*

### Abstract

As parties to the UN Convention on the Rights of Persons with Disabilities (CRPD), both the European Union and its Member States are obliged to implement and safeguard the set of fundamental rights enshrined in the Convention. Full compliance with the Convention is required also by the state parties' public administrations, including the EU public administration, made up of its institutions, bodies and agencies.

The UN CRPD Committee's 'Concluding Observations' of September 2015, which marked the end of the first round of the review process, include a number of recommendations addressed to the EU public administration, touching upon employment, reasonable accommodation, accessibility, access to justice, the European Schools and the Community health insurance scheme. The CRPD Committee calls on the EU institutions to become a role model, both with regard to employment of persons with disabilities, and in its interaction with the public.

This paper analyses the legal framework and policies the EU institutions have in place with regard to disability rights, and which have been to some extent prompted, or at least influenced, by the CRPD. It also assesses the progress made in the institutions' compliance with the CRPD, notably in the areas addressed in the UN 'Concluding Observations'.

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## Executive summary

Both the European Union and its Member States<sup>1</sup> are parties to the UN Convention on the Rights of Persons with Disabilities (CRPD) and thus obliged to implement and safeguard the set of fundamental rights enshrined in the Convention. Implementing the CRPD is a complex process, since the Convention's principles and objectives entail mainstreaming of disability rights across all policies. Full compliance with the Convention is required also by the state parties' public administrations, including the EU public administration made up of its institutions, bodies and agencies.

Pursuant to the Convention's implementation reporting mechanism laid down in Articles 35 and 36, the UN CRPD Committee scrutinised the degree and quality of the EU's compliance with its obligations under the Convention. The Committee's 'Concluding Observations' of September 2015 marked the end of the first round of the review process. The Committee addressed a number of issues, upon which the EU is required to act. Six of these recommendations specifically target the EU public administration. They touch upon:

- Employment
- Recruitment
- Accessibility
- Access to justice
- the European Schools
- and the Community health insurance scheme.

Two additional recommendations, relating to the implementation mechanism and the involvement of civil society organisations, concern both EU policy making and the EU administration.

Guided by these recommendations, this in-depth-analysis describes the obligations of the EU institutions as public administration under the CRPD. It first discusses the legal framework the EU institutions have in place in respect of civil servants with disabilities (or staff with disabled dependent family members). Particular attention is paid to the last two reforms of the EU Staff Regulations (2004 and 2014), which mark an evolving awareness of disability rights, notably by introducing the key concept of reasonable accommodation. The question of how the employment rate of persons with disabilities could rise is closely linked to recruitment. EPSO, the EU office in charge of staff selection, has developed a disability policy which promotes the principle of inclusion by granting all applicants with special needs reasonable accommodation at every step of a selection procedure. Parliament appears to be the only institution making use of positive action programmes in favour of laureates with disabilities, which are explicitly allowed under the CRPD.

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<sup>1</sup> By 29 February 2016, with the exception of Finland, Ireland and the Netherlands, all Member States had ratified the Convention. The remaining three are reportedly well advanced in their ratification process.

Accessibility of the institutions is of major concern for persons with disabilities. Already the European Disability Strategy 2010-2020, which is the EU's operational tool for the implementation of the CRPD and, in this regard, the EU's disability related policy framework, contains a commitment to improved accessibility of the institutions' built environment, websites, events and meetings, documents and communications means. This analysis looks into the progress made so far, with particular emphasis on web accessibility. Despite the institutions' compliance since 2010 with international web accessibility standards (WCAG 2.0), at least at level A, some issues remain. Prompted by its specific role in interacting with the public – for example, through committee meetings, hearings or petitions – Parliament has started to explore innovative ways to make meetings or the petitions process more accessible. Successful examples do exist; however, to date, meetings in conformity with accessibility standards are rather the exception than the norm.

With regard to the implementation mechanism enshrined in Article 33 of the Convention, the CRPD Committee recommended the setting up of an inter-institutional cooperation mechanism and the designation of focal points in each EU institution, agency and body, in addition to the existing overall EU Focal Point. The example of the European Parliament, where a number of actors play a role in respect of disability rights and policies, shows that a local focal point at high level may indeed ensure policy coherence.

The Convention obliges its parties to closely consult with, and involve, persons with disabilities and their representative organisations when developing and implementing legislation and policies, and in decision-making processes that concern them. Despite a traditionally close cooperation with disability organisations, there are calls for a more structured dialogue.

The chapter on the European Schools – which, legally speaking are not part of the EU public administration – evidences the fundamental paradigm shift the Convention entails. It puts the focus on inclusiveness instead of segregation, and promotes a social approach, as opposed to what has long been a predominantly medical approach. The CRPD Committee backs the view of many parents of children with disabilities or learning difficulties that the European Schools need to step up their efforts with regard to inclusion.

The discussion about the EU health insurance scheme is of a similar nature. Based on an overtly medical approach, the rules in force for reimbursement of health-related expenses do not recognise disabilities as grounds *per se* for an increased reimbursement rate, unless this disability is assessed as constituting a serious illness, the criteria for which comprise *inter alia* a shortened life expectancy. Staff with disabilities perceive these rules as discriminatory, and in breach of Article 25 CRPD.

The analysis shows that the EU institutions have achieved progress in some areas, but to become a role model with regard to employment of persons with disabilities, and in its interaction with the public – as encouraged by the CRPD Committee – they need to take the Concluding Observations seriously and deliver concrete results by the time the next report is due in January 2021.

## **1. The EU institutions' obligations under the Convention and the CRPD Committee's recommendations to the EU public administration**

The UN Convention on the Rights of Persons with Disabilities is a legally binding instrument that sets out minimum standards for protecting the rights of people with disabilities. It promotes a fundamental rights approach towards persons with disabilities, which overrides what has long been a predominantly medical or welfare approach. In that vein, it aims to address and subsequently remove the barriers persons with disabilities are facing in their daily lives and which virtually prevent them from enjoying their basic rights on an equal level with others.

The Convention is part of the nine core international human rights treaties; of these, it is the only one which is not only open to sovereign states, but also to regional integration organisations (Articles 42 and 44 CRPD). To date, the EU is the sole such regional/supranational body to have acceded to the UN CRPD. After Council Decision 2010/48/EC had paved the way for ratification, the Convention entered into force for the EU on 22 January 2011. Since then, all EU legislation, policies and programmes must comply with the Convention's established obligations. Similarly, the EU public administration, which is made up of the EU's more than 50 institutions, bodies and agencies, is bound by the Convention. Moreover, it is expected to act as a role model in handling disability issues – internally, as employer vis-à-vis its staff and their families, as well as externally, in its interaction with the public.<sup>2</sup>

In this regard, the Convention's basic principles – such as accessibility, respect for dignity and individual autonomy, non-discrimination, full inclusion, as well as equal opportunities and equal treatment – must be fully respected and implemented by the EU administration. This concerns a number of areas, such as accessibility of the institutions' built environment (e.g. for persons with reduced mobility, including wheelchair users), accessibility of information and events to persons with disabilities (e.g. sign language interpretation, Braille printed and easy-to-read documents, accessible websites), non-discrimination in recruitment and employment, and individual reasonable accommodation for persons with disabilities.

The implementation by the State Parties is subject to regular reporting, as laid down in Articles 35 and 36 of the Convention. All reports exchanged between the EU and the UN's CRPD Committee in the framework of the review process contained a section on how the EU as public administration complies with the Convention. These are notably the following:

- European Commission: Report on the implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD) by the European Union. SWD(2014) 182, 5.6.2014.

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<sup>2</sup> Concluding Observations to the initial report of the European Union / UN Committee on the Rights of Persons with Disabilities. CRPD/C/EU/CO/1. 2.10.2015, section D.



- UN Committee on the Rights of Persons with Disabilities: List of issues in relation to the initial report of the European Union. CRPD/C/EU/Q/1, 15.5.2015.
- European Commission: Reply of the European Union to the list of issues in relation to the initial report of the European Union on the implementation of the UN Convention on the Rights of Persons with Disabilities. SWD(2015) 127, 19.6.2015.
- UN Committee on the Rights of Persons with Disabilities: Concluding Observations on the initial report of the European Union. CRPD/C/EU/CO/1, 2.10.2015.

The Concluding Observations of the CRPD Committee include six recommendations which are specifically directed to the EU institutions and bodies, in their capacity as EU public administration. They cover a variety of issues, from recruitment and employment conditions to accessibility (of the built environment as well as to information), access to justice, health insurance and inclusive schooling for children of EU staff with disabilities. Two additional recommendations, relating to the implementation mechanism and the involvement of civil society organisations, concern both EU policy making and the EU administration.

These recommendations are subject to the general follow-up: the EU is required to implement all recommendations made in the 'Concluding Observations' within the next few years and to report back to the CRPD Committee on their implementation by 23 January 2021.<sup>3</sup> Under the Committee's simplified reporting procedure,<sup>4</sup> which was established for periodic reports on the Convention in order to facilitate its effective and timely implementation by the State Parties, the Committee invited the EU to consider submitting its implementation report one year prior to the deadline.

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<sup>3</sup> Three areas require immediate action: 1. Updating the Declaration of Competence ; 2. Adopting the European Accessibility Act ; and 3. Aligning the composition of the EU Monitoring Framework with the 'Paris Principles'. Reporting on these three recommendations is due within 12 months following the Concluding Observations.

<sup>4</sup> See <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Simplifiedreportingprocedure.aspx>

## The UN CRPD recommendations to the EU public administration

<b>Art. 5 Equality and non-discrimination</b>	All EU employees with disabilities, or those who have family members with disabilities, should receive the reasonable accommodation they need to enjoy their rights from the labour and related relationships on an equal basis with others. (Point 79 Concluding Observations)
<b>Art. 13 Access to justice</b>	The EU should guarantee full access to justice and eliminate all barriers, including physical and procedural barriers, and those relating to legal capacity, in EU courts. (Point 81)
<b>Art. 21 Freedom of expression and opinion, and access to information</b>	The EU should ensure full application of web accessibility standards to the websites of all EU institutions and offer information in sign language, Braille, augmentative and alternative communication, and other accessible means, modes and formats of communication for persons with disabilities, including easy-to-read formats, in official interactions. (Point 83)
<b>Art. 24 Education</b>	The EU should ensure that all students with disabilities receive the reasonable accommodation needed to enjoy their right to inclusive quality education in European schools. The European Schools should implement a non-rejection policy on the grounds of disability and ensure inclusive, quality education for all students with disabilities. (Point 85)
<b>Art. 25 Health</b>	The EU's Joint Sickness and Insurance Scheme should be revised so as to cover disability-related health needs in a manner that is compliant with the Convention. (Point 87)
<b>Art. 27 Work and employment</b>	The EU should act as role model and increase employment of persons with disabilities across all EU institutions. (Point 89)
<b>Art. 33 Implementation and monitoring</b>	The EU should consider the establishment of an inter-institutional cooperation mechanism and the designation of focal points in each European Union institution, agency and body. (Point 77)
<b>Art. 4(3) General obligations</b>	'In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organisations.' <sup>1</sup> (cross-cutting issue)

## 2. Disability rights in the EU institutions: the legal framework

### 2.1. Primary law

The fundamental principle of non-discrimination on grounds of disability is part of the EU's core values and enshrined in the EU's primary law, notably in Article 10 TFEU (*'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'*) and the Charter of Fundamental Rights, which contains a number of references to disability and non-discrimination (e.g. Article 26 on 'Integration of persons with disabilities'). The EU-wide application of the Charter is closely monitored by the Commission, which makes its findings public in the form of an annual report.<sup>5</sup>

The CRPD is an integral part of EU law, as was confirmed by the ECJ in its landmark ruling on the joined cases C-335/11 and C-337/11 *HK Danmark*.<sup>6</sup> In its preliminary observations on the same case, the Court reaffirms the binding effect of the CRPD, and recalls its primacy over the EU's secondary law: *'by virtue of Article 216(2) TFEU, where international agreements are concluded by the European Union they are binding on its institutions, and consequently they prevail over acts of the European Union'*. Moreover, it argues that the *'primacy of international agreements concluded by the European Union over instruments of secondary law means that those instruments must as far as possible be interpreted in a manner that is consistent with those agreements'*.

### 2.2. European Disability Strategy 2010-2020 and secondary law

Since 2010, the EU's conclusion of the CRPD has had substantial influence on formulating EU disability policies; this trend is expected to continue. The European Disability Strategy 2010-2020, adopted in November 2010, ahead of the EU's accession to the CRPD, constitutes the operational framework tool to ensure implementation of the Convention on EU level. Its subtitle – 'a renewed commitment for a barrier-free Europe' – sets high ambitions. Many of its eight key areas for action (accessibility, participation, equality, employment, education and training, social protection, health and external action) and its general implementation instruments (awareness-raising, financial support, statistics/data collection and monitoring) touch *inter alia* directly upon the EU institutions as public administration.

With regard to the EU institutions, the Disability Strategy emphasises their obligations under the CRPD and makes a number of commitments, many of which point to the institutions' accessibility (e.g. explore ways of facilitating the use of sign language and Braille in dealing with the EU institutions).

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<sup>5</sup> The most recent was the 2014 report: European Commission, 2014 report on the application of the EU Charter of Fundamental Rights.

<sup>6</sup> *'The provisions of that convention are thus, from the time of its entry into force, an integral part of the European Union legal order.'*

The Strategy's accompanying action plan for 2010-2015 addresses four specific actions relating to the EU public administration:<sup>7</sup>

- address employment matters of persons with disabilities in the EU institutions
- recruitment: improving accessibility of test centres, IT tools, selection procedures and granting reasonable accommodation
- improve accessibility of EU buildings, websites, events, ICT tools, applications and documents
- create an inter-institutional group to coordinate the implementation of the EU Convention.

A number of acts in the EU's secondary law expressly stipulate the right of persons with disabilities to equal treatment, non-discrimination and full accessibility. These acts and provisions are addressed to, and hence binding on, the Member States. Nonetheless, even if they are not legally binding on the EU administration, their content can reflect principles that are also shared by the EU institutions as public administrations. A good example of this is the Employment Equality Directive (EED), which is binding only for the Member States.<sup>8</sup> However, as outlined in chapter 2.3.1, the EU institutions took over almost verbatim the EED's definition of 'reasonable accommodation' for the EU Staff Regulations.

With the proposed Directive on accessibility of public sector bodies' websites<sup>9</sup>, Parliament seeks to go one step further. In its first reading position voted on 26 February 2014,<sup>10</sup> Parliament adopted an amendment introducing a new recital, where it invites the EU institutions to comply voluntarily with the obligations under the Directive, to set a good example: '*Although this Directive does not apply to websites of Union institutions, those institutions should comply with the requirements contained in this Directive and set an example of good practice.*' (Amendment 5; Recital 2b (new)).<sup>11</sup>

Furthermore, worth mentioning in this context is the Public Procurement Directive 2014/24/EU,<sup>12</sup> which addresses the question of the scope of application beyond Member States: '*Being addressed to Member States, this Directive does not apply to procurement carried out by international organisations on their own behalf and for their own account. There is, however, a need to clarify to what extent this Directive should be applied to procurement governed*

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<sup>7</sup> Initial Plan to implement the European Disability Strategy 2010-2020 : list of actions 2010-2015. SEC(2010) 1324. 15.11.2010, p. 20.

<sup>8</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. OJ L 303, 2.12.2000. Cf. Art. 21: 'This Directive is addressed to the Member States.'

Applicable to the public and private sectors in the EU Member States, the EED sets out minimum rules for protection against (direct and indirect) discrimination on the grounds of, *inter alia*, disability with regard to employment (including recruitment) and vocational training.

<sup>9</sup> COM(2012)0721.

<sup>10</sup> European Parliament legislative resolution of 26 February 2014 on the proposal for a directive of the European Parliament and the Council on the accessibility of public sector bodies' websites. P7\_TA(2014)0158.

<sup>11</sup> While the Council position is still pending at the time of writing, the Commission made already clear in its response to the EP Resolution that it does not intend to accept this amendment.

<sup>12</sup> Directive 2014/24/EU of the European Parliament and the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC. OJ L 94. 28.3.2014, pp. 65 ff.

by *specific international rules*' (Recital 21). The procurement Directive is highly relevant in the context of disability rights, since it comprehensively addresses accessibility requirements for people with disabilities in the area of public procurement and serves as a good example for compliance with the CRDP Convention.

## 2.3. EU Staff Regulations

### 2.3.1. Strengthened disability rights through the 2004 and 2014 reforms of the Staff Regulations

In its Concluding Observations, the CRPD Committee recommends to the EU to ensure that all employees of the European Union who are persons with disabilities, or who have family members with disabilities, receive the reasonable accommodation they need to enjoy their rights from the labour and related relationships on an equal basis with others (point 79).

Recruitment and employment conditions for the staff of the more than 50 EU institutions, bodies and agencies that constitute the 'EU public administration' are laid down in the EU Staff Regulations. As part of their general principles, they contain a commitment to equal treatment and non-discrimination, prohibiting '*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*'. The aforementioned non-discrimination principle was introduced by the 2004 reform of the Staff Regulations,<sup>13</sup> which meant a major step forward with regard to the rights of persons with disabilities. Prior to that, the disability-related entitlements were largely limited to specific supplementary family and orphans allowances for civil servants' children with disabilities.

Aside from the explicit commitment to non-discrimination, the 2004 reform introduced the following disability-related provisions:

- Unpaid leave on personal grounds can be granted to a staff member 'to assist his spouse, a relative in the ascending line, a relative in the descending line, a brother or a sister in the case of medically certified serious illness or disability' (Art. 40(2)iii).
- Family leave can be requested to take care of a seriously ill or disabled relative (child, parent or sibling). This entitlement is limited to nine months maximum throughout an official's career, during which period the official receives no salary, but a small allowance (Art. 42b).
- Staff members are entitled to work part-time to care for a seriously ill or disabled spouse, relative in the ascending line, relative in the descending line, brother or sister (Art. 55a(2)e)).

<sup>13</sup> Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities. OJ L 124, 27.4.2004, pp. 1ff.

- Maternity leave entitlements are extended to 24 weeks (instead of 20) in case a baby is born with a disability or serious illness (Art. 58).
- By analogy, special leave entitlements for adoption of a child are extended to 24 weeks (instead of 20), if the adopted child has a disability (Annex V, Art. 6).
- The reform also introduced the concept of reasonable accommodation (Art. 1d(4)).

The insertion of the concept of **reasonable accommodation** for persons with disabilities marked a novelty in the Staff Regulations. It obliges the employer to adjust the work environment for a person with disabilities so as to enable this person to perform his job under equal conditions with non-disabled peers. It can take the form of physical/material or organisational/administrative measures, such as rendering the existing infrastructure accessible or adjusting working equipment or work schedules. Since 2011, the EU general budget has made explicit reference to the CRPD; it provides a specific budget for accommodating needs of staff, trainees and visitors, and for disability-friendly services.

The Staff Regulations stipulate that a person with a disability is considered fit for work 'if he can perform the essential functions of the job when reasonable accommodation is made' (Art. 1d(4)). Some EU institutions (e.g. the Commission and the Parliament) adopted specific implementing rules and/or practical guidelines<sup>14</sup> for the provisions laid down in Article 1d(4) of the Staff Regulations, with the aim of systematizing their approach through procedures, e.g. to obtain recognition for a disability, to request reasonable accommodation, or to define what would constitute a disproportionate burden to the employer in the context of reasonable accommodation.

Even if the concept of reasonable accommodation was new to the EU's administrative law, when it was first introduced into the Staff Regulations, it did however already exist in other EU legislation: notably the Employment Equality Directive (EED), adopted in 2000, contains such provision (Art. 5 EED). And even before the EED, adjustments to the workplace (to the built environment and infrastructure) to meet the individual needs of employees with a disability had been addressed by Council Directive 89/654/EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace.<sup>15</sup>

In fact the Staff Regulations took inspiration from the EED to define 'reasonable accommodation' and also the limits of this legal obligation (*'unless such measures would impose a disproportionate burden on the employer'*), as illustrated in the comparison below.

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<sup>14</sup> European Commission: DG Human Resources and Security: Guidance on the duty to reasonable accommodation for people with disabilities. February 2015.

European Parliament: Internal rules implementing Article 1d(4) of the Staff Regulations (Persons with a disability). 1.4.2015.

<sup>15</sup> Its provision 20 in Annex I stipulates that *'Workplaces must be organized to take account of handicapped workers, if necessary. This provision applies in particular to the doors, passageways, staircases, showers, washbasins, lavatories and workstations used or occupied directly by handicapped persons'*.

Definition of reasonable accommodation	
<b>Staff Regulations Art. 1d(4)</b>	<i>"Reasonable accommodation", in relation to the essential functions of the job, shall mean appropriate measures, where needed, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer'</i>
<b>EED Art. 5</b>	<i>'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.'</i>
<b>CRPD Art. 2</b>	<i>"Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.'</i>

The 2013 reform of the EU Staff Regulations,<sup>16</sup> which entered into force on 1 January 2014, led to some further improvements for staff members with disabilities and staff with disabled family members. These provisions had in fact been prompted by the EU's accession to the CRPD. In particular, they

- aligned the definition of persons with disabilities with the CRPD;
- included provisions allowing for positive actions for persons with disabilities; and
- added provisions in favour of EU civil servants who have family members with disabilities.

	<b>EU Staff Regulations (2014)</b>	<b>CRPD</b>
<b>Definition of disability</b>	<i>'a person has a disability if he has a long-term physical, mental, intellectual or sensory impairment which, in interaction with various barriers, may hinder his full and effective participation in society on an equal basis with others' (Art. 1d(4))</i>	<i>'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.'</i> (Art. 1)  This is <i>stricto sensu</i> only an indication, since the CRPD considers 'disability' an 'evolving concept' (Preamble (e)) and therefore refrains from a binding definition.

<sup>16</sup> Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union. OJ L 287, 29.10.2013, pp. 15 ff.

<b>Positive action</b> <sup>17</sup>	<i>'The principle of equal treatment shall not prevent the appointing authorities of the institutions from maintaining or adopting measures providing for specific advantages in order to make it easier for persons with disabilities to pursue a vocational activity or in order to prevent or compensate for disadvantages in their professional careers'</i> (Art. 1d(4))	<i>'Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.'</i> Art. 5(4)
<b>Family members with disabilities</b>	The 2014 Staff Regulations provide for additional measures with regard to family members: <ul style="list-style-type: none"> <li>• <b>Parental leave</b> entitlements are doubled for parents of dependent children with a disability, and their parental leave allowance is slightly higher (Art. 42a)</li> <li>• In cases of <b>serious hardship</b> a staff member can be allowed to work 95% with no salary reductions, to care for a dependent child until the age of 14 (Art. 55a(2)d)</li> </ul>	<i>'persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities'</i> (Preamble (x))

Apart from the Staff Regulations, which are binding on the entirety of the EU public administration, some institutions and bodies have adopted internal guidelines, implementing rules and practices for governing their disability-related obligations towards staff members and towards the public.

To complete the set of rules concerning disabled (or severely ill) family members of EU staff, Council Decision 2006/6/EC<sup>18</sup> should be mentioned. It provides for financial support to an EU civil servant's surviving spouse if the latter has a disability or suffers from a protracted illness.

### 2.3.2. The principle of equal treatment in recruitment and employment

The CRPD calls on the public sector to employ persons with disabilities (Art 27(1)g). In its Concluding Observations, it urges the EU to act as a role model in this regard and to consequently increase employment of persons with disabilities across all EU institutions. (Point 89)

<sup>17</sup> The concept of 'positive action' already existed before in EU legislation: the EED explicitly allows for 'positive action' in the labour market, in order to establish equality between persons with disabilities and to compensate for the disadvantages experienced by persons with disabilities.

<sup>18</sup> Council Decision of 12 December 2005 adopting the rules laying down the procedure for granting financial aid to supplement the pension of a surviving spouse who has a serious or protracted illness or who is disabled (2006/6/EC, Euratom). OJ L 5, 10.1.2006, p. 15.



With regard to recruitment and employment, the EU institutions pursue an equal treatment policy. Several institutions have adopted specific 'Codes of good practice for the employment for persons with disabilities'.<sup>19</sup>

### **2.3.2.1. Lack of statistics with regard to disabled staff members**

It appears that there are no statistics available on how many active EU staff members are disabled. This is linked to data protection, but also to the fact that any data collection method would depend on staff's willingness to disclose an impairment. And even in case of voluntary self-declaration, data collection needs to be based on a robust methodology. Staff surveys conducted in several EU institutions did not produce reliable figures, partly due to the low response rate, and partly due to the phrasing of some questions. Art. 31 CRDP sets out that an effective implementation of the Convention encompasses collecting disaggregated data as a basis for informed policy making. A lack of specific statistical data renders it difficult to measure any increase of employment of persons with disabilities.

Reliable data could possibly only be obtained from requests with regard to reasonable accommodation, and from requests for official recognition of a disability by the administration. Such recognition entitles staff members with disabilities (or with disabled dependent family members) to request reimbursement of costs related to the disability, which are not covered by the health insurance scheme.<sup>20</sup> The Staff Regulations (Art. 1d(4)) stipulate that an 'impairment shall be determined in accordance with the procedure set out in Article 33', which provides for an examination by the institution's medical officer. It should be noted, however, that this definition maintains the medical definition of disability, despite the social model approach promoted by the CRPD.

### **2.3.2.2. Recruitment**

In general, officials may be appointed only if they are physically fit to perform their duties (Art. 28(e) of the Staff Regulations). In line with Article 4 of the Staff Regulations, a person with a disability can be recruited 'if he can perform the essential functions of the job when reasonable accommodation is made', provided he meets the requirements of Art. 28(e).

All specific job openings by individual EU institutions or bodies and all selection procedures carried out by the European Personnel Selection Office (EPSO)<sup>21</sup> expressly respect the principles of equality and non-discrimination. EPSO has developed a disability policy, which is set out in the 'General rules governing open competitions'.<sup>22</sup>

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<sup>19</sup> European Parliament: Bureau decision of 22 June 2005; European Commission: Commission decision C(2003) 4362 of 25 November 2003; European Court of Justice code adopted in October 1999; European Economic and Social Committee code adopted in September 1998.

<sup>20</sup> For more details on the 'Supplementary aid for the disabled', see chapter 6.

<sup>21</sup> EPSO is responsible for selecting permanent and contractual staff for EU institutions and agencies.

<sup>22</sup> OJ 2015/070 A, 27.2.2015, pp. 1-31.

These rules are an integral part of each competition notice and they contain a detailed section on special needs (section 2.1.5.) All applicants with special needs are provided with customised reasonable accommodation at every step of the selection process. According to EPSO, it receives over 300 requests per year for reasonable accommodation due to a disability or a medical condition.<sup>23</sup> It has taken on an internal expert in accommodation issues who ensures that the procedure is evolving based on best practices. Examples for reasonable accommodation provided by EPSO include: support and assistance; extra time; sign language interpretation for deaf candidates; compensational software (e.g. Braille keyboard, screen reader); Braille printed tests. Moreover, the test centres for the computer-based tests meet criteria of physical accessibility.

In line with its policy of inclusion, EPSO does not run separate competitions for candidates with disabilities. All candidates sit the same tests. However, to attract more applicants with disabilities, EPSO intends to reach out by targeted communication, in collaboration with the European Disability Forum (EDF).

With regard to the CRPD, EPSO submitted a specific action plan to the Commission as Focal Point for the implementation of the Convention.

### **2.3.2.3. Positive action programmes**

Positive action programmes favouring the recruitment of persons with disabilities are controversially discussed. Some prefer inclusion to positive action programmes, arguing that a purely merit-based selection procedure is fairer for all, and in particular for persons with disabilities, as long as reasonable accommodation is provided. Others believe that solely positive action could make a real difference with regard to increasing the level of employment of people with disabilities.

Under the CRPD, Art. 5(4), positive action is explicitly allowed as 'specific measures to accelerate or achieve de facto equality of persons with disabilities'. The EU Staff Regulations contain a provision for positive action measures; however, its wording suggests that such measures refer to staff already employed by the EU institutions rather than to recruitment, by defining positive actions as '*measures providing for specific advantages in order to make it easier for persons with disabilities to pursue a vocational activity or in order to prevent or compensate for disadvantages in their professional careers*' (Art. 1d(4)).

Positive action programmes are rare in the institutions; it appears that only the European Parliament makes use of them. Based on Parliament's 2005 'Code of good practice for the employment of people with disabilities', it has two programmes in place, one for contractual staff and one for trainees with disabilities. Both programmes are meant to offer persons with disabilities a meaningful work experience and to raise awareness of disability among Parliament staff, and hence to be an experience of mutual learning.

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<sup>23</sup> E-mail correspondence with EPSO, 7.3.2016.

With regard to trainees, the five-month paid internship for persons with disabilities has been in place since 2007, first as a separate programme. Since autumn 2015 it has been mainstreamed into the general Schuman Traineeship Programme. To date, Parliament has accommodated over 130 trainees under this scheme. To ensure public awareness of the programme amongst the target group, the EDF helps to promote it.

The other positive action programme aims at the recruitment of contractual agents with a disability. It targets persons with disabilities who have passed a CAST selection procedure and have not previously worked for an EU institution or body. A specific budgetary provision allows for their recruitment as contractual agents, for a period of one year. This scheme is based on the 'Action plan for the promotion of equality and diversity (2009-2013)',<sup>24</sup> and was included again in the subsequent Action plan for the period 2014-2019.

### **2.3.3. Relevant case-law and complaints to the Ombudsman**

A number of disability-related staff cases have been brought to the European Ombudsman or the European Court of Justice. They illustrate that the EU administration has a certain degree of discretion when taking decisions regarding the individual rights of staff. Such decisions must be in conformity with the administrative rules in force while at the same time respecting the duty to have regard for the official's welfare. These cases mainly concern the double child allowance, health insurance coverage and accessibility. Cases related to accessibility and health care will be discussed in the relevant chapters. In general, cited cases serve as examples and do not constitute an exhaustive listing.

As regards the aforementioned statutory rights, most cases relate to the double dependent child allowance, which, under Art. 67(3) of the Staff Regulations, '*may be doubled, by special reasoned decision of the appointing authority based on medical documents establishing that the child concerned has a disability or a long-term illness which involves the official in heavy expenditure*'. The double child allowance is meant to ease to some degree the financial burden brought on by the disability or illness of the civil servant's child.

In the two first cases cited below, the Court overruled an institution's decision to reject the (continued) entitlement to the double child allowance.

- In its ruling on Case F-130/12 *CI v European Parliament* of 22 May 2014, the Civil Service Tribunal annulled the administration's decision not to renew the double child allowance for the plaintiff's disabled child. Before bringing the case to court, the civil servant had filed a complaint with the Ombudsman. The Tribunal found that the institution's '*administration did not remain within reasonable limits when assessing the interests of the service in relation to those of the official concerned, and used its discretion in a manifestly incorrect manner when implementing the amicable settlement*

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<sup>24</sup> This action plan was adopted by the Bureau on 9 March 2009. Under heading II.3 'Launch/pursue positive action measures to further the employment of persons with disabilities' it advocates under lit. b) to put in place positive action measures for the recruitment of persons with disabilities as contractual staff.

*proposed by the Ombudsman and accepted by the parties, thereby infringing its duty to have regard for the official's welfare.'*

- In Case T-33/04 *Weißenfels vs European Parliament*, an EU civil servant challenged the institution's decision to deduct from the EU's double dependent child allowance the amount of a special additional allowance paid by the Luxembourg mutual aid fund for children with disabilities, arguing that the two allowances were not of the same nature. The Court of First Instance rejected the application. However, the Court of Justice, to which the plaintiff appealed, ruled on 18 December 2007 in favour of the civil servant and his disabled child, by annulling the judgment under appeal (Case C-135/06 P).
- Case 1953/2008/MF, a complaint of an official to the European Ombudsman, is similar to the *Weißenfels* Case. Again, the disputed subject is the allowance paid by Luxembourg for children with disabilities. In this case, the Ombudsman found the institution's refusal to grant the complainant the double dependent child allowance an instance of maladministration. It considered that the institution's refusal to '*compensate the complainant for the illegal deduction of the Community allowance, thereby denying financial assistance to an already heavily burdened parent of a handicapped child, is not in conformity with the principles of good administration*'.
- Case 899/2011/TN concerns an official whose child has been 100% disabled since birth. The official was granted the double dependent child allowance as from the date of his request, which was, due to his unawareness of the provision in the Staff Regulations, only a few years after he took up his duties. Following the Ombudsman's inquiry, the institution concerned accepted the Ombudsman's reasoning and concluded that the complainant should have received the doubled allowance since he started working as an EU official.
- Case 118/2013/AN relates to professional mobility. An official who was posted in an office in a Member State had been granted a derogation from professional mobility on account of her severely disabled child, for as long as a change of post – which would necessarily have entailed moving abroad – remained incompatible with the child's health condition. The institution revoked the derogation after a few years, despite the fact that the child's condition was unchanged. The Ombudsman found imposing mobility under the given circumstances to be disproportionate, even more so because the official's compulsory mobility would become effective only shortly before she would reach the age limit for mobility (60 years). Eventually, the institution concerned accepted the Ombudsman recommendation to extend the derogation.

### 3. Accessibility of the EU institutions: buildings, websites, and public meetings

In its Concluding Observations, the CRPD Committee urged the EU to ensure full application of web accessibility standards to the websites of all EU institutions and offer information in sign language, Braille, augmentative and alternative communication, and other accessible means, modes and formats of communication for persons with disabilities, including easy-to-read formats, in official interactions. (Point 83)

Already the European Disability Strategy 2010-2020 – the EU's disability related policy framework – addresses accessibility of the EU institutions' facilities and services as a major issue. The commitment made in the accompanying 'action plan' aims at improved accessibility of EU buildings, websites, events, ICT tools, applications and documents to the benefit of both EU staff and the public in its interaction with the EU institutions.

#### 3.1. Accessibility of EU buildings

For a long time, the concept of accessibility had a strong emphasis on the built environment. The EU institutions have strived to make their buildings barrier-free for staff and visitors alike, by ensuring compliance with relevant local accessibility legislation and standards. These standards cover issues such as general access, mobility within the building, reserved parking spaces, lighting and signposting in buildings, sanitary installations, or emergency evacuation.

However, given that the EU administration occupies a great number of different buildings, barrier-free access is more easily achieved in some buildings than in others. This becomes obvious from a related Ombudsman case from 2007.<sup>25</sup> In this case, a Commission official, who was a wheelchair user, complained that the premises of his workplace – the Beaulieu building – were not directly accessible to persons with disabilities and/or reduced mobility. With regard to the complaint, the necessary adjustments were eventually made in the building in question. Moreover, this Ombudsman inquiry prompted the Commission to map the accessibility of all buildings it occupies, and to commit to rendering them fully accessible to persons with disabilities.

One tool that can help in identifying gaps are accessibility audits. The European Parliament undertook a first accessibility audit in 2003, which, as a matter of interest, coincided with the European Year of People with Disabilities. Another audit of all parliamentary buildings is currently ongoing on all three sites plus the information offices in the Member States.

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<sup>25</sup> Case 2631/2007/(JMA)MHZ.

Adapting older existing buildings can be difficult and costly, whereas in the case of new buildings, it is, for obvious reasons, much easier to meet accessibility standards. The preferred architectural solution in this context is often the 'universal design' (also called 'design for all'), which, from the outset, allows for the broadest possible use, including by people with disabilities.<sup>26</sup> For example, Parliament has adopted the principle of 'design for all' for the fitting-out of buildings, and the planning and acquisition of new buildings.

However, despite all efforts the institutions have put in place to render their buildings more accessible, getting to these EU buildings – from the metro, train station or the airport, for example – often remains a challenge for people with reduced mobility. The accessibility of the environment is obviously outside the remit of the EU institutions.

### **3.2. Accessibility of the websites of the EU institutions**

Web accessibility means that everyone, including people with disabilities, can perceive, understand, navigate and interact with the Internet.<sup>27</sup> The term refers to principles and techniques for creating websites, in order to render their content accessible to all users, notably those with disabilities. For this user group, it is important that websites are designed in a way that allows for interoperability with their assistive technologies (e.g. screen readers), for subtitles and easy-to-read texts.

The Digital Agenda for Europe, which was launched in May 2010 as one of the flagship initiatives of the Europe 2020 Strategy, contained a commitment to align public websites and online services with the internationally recognised web accessibility standards Web Content Accessibility Guidelines (WCAG) 2.0.<sup>28</sup> It should be noted, however, that this Commission communication does not make any reference to the EU public administration with regard to web accessibility.

A first explicit commitment to improved accessibility of EU websites is enshrined in the European Disability Strategy 2010-2020. However, with a few notable exceptions, there are to date no rules in place that would be common to all institutions and set out the practicalities. As outlined in chapter 2.2, Parliament made an attempt to move towards this aim, by adopting an amendment to the Commission proposal on the accessibility of public sector bodies' websites (COM(2012) 721), whereby it invites the EU institutions to comply voluntarily with the obligations under the Directive (which is addressed to the Member States, as an internal market measure). The legislative procedure is still pending, and it remains to be seen whether this amendment from Parliament's first reading will be retained in the final act.

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<sup>26</sup> The CRPD promotes such a universal design in general, beyond the built environment. Cf. Art. 9(h) CRPD, in which it calls on State Parties to '*promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost*'.

<sup>27</sup> [Definition](#) taken from the World Wide Web Consortium W3C.

<sup>28</sup> A Digital Agenda for Europe. COM(2010)0245 of 19.5.2010, p. 26.

At present there are few regulated areas with regard to accessibility of EU websites. Council Regulation 216/2013 concerning the electronic publication of the EU Official Journal<sup>29</sup> sets a good example. Explicitly recalling the EU's obligations under the CRPD concerning accessibility of information (Recital 11), it stipulates accessibility compliance of the EUR-Lex website, whereby the Publications Office shall be responsible for 'implementing and extending the technical facilities to ensure accessibility for all users to the electronic edition of the Official Journal' (Art. 4). Another example, though not of a binding nature, are the new Commission guidelines for stakeholder consultation on proposals for new legislation (or for revising existing acts), which are part of the Commission's Better Regulation Agenda. These take account of accessibility requirements, to allow persons with disabilities to have their say in consultations.<sup>30</sup>

In November 2014, The European Blind Union (EBU), an NGO representing the interests of all blind and partially-sighted people in Europe, launched a report assessing the accessibility of the websites of the Commission, Parliament and the Council, and more specifically to what extent these websites met the standards of WCAG 2.0 Levels A and AA.<sup>31</sup> The detailed findings were published as annexes to their report 'Access denied!'<sup>32</sup> The EBU argued that the EU institutions 'are routinely failing to make their information accessible' to blind and visually impaired people and concluded: '*The EU institutions have not ensured that their own publications, consultations, websites and apps are accessible to us, despite our repeated calls for this to happen. This makes it very hard, or sometimes even impossible, for us to have our say in the legislative process*' This assessment is somewhat striking, given that since 2010, all new websites on the Europa server should have been created in compliance with the WCAG 2.0 standards.<sup>33</sup>

With regard to the Parliament, the EBU report identified only a few accessibility issues. The assessment of the tested websites of the European Commission and Council was more critical; these websites were considered 'extremely inaccessible'.

Since then, however, the Council has revamped its *Consilium* website, whereby great emphasis was put on accessibility and usability features. Since January 2015, the website meets the WCAG 2.0, level AA standard. Its current accessibility features include *inter alia* compatibility with accessibility tools, notably screen readers (e.g. Jaws, NVDA,

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<sup>29</sup> Council Regulation (EU) No 216/2013 of 7 March 2013 on the electronic publication of the *Official Journal of the European Union*. OJ L 69. 13.3.2013, pp. 1-3.

<sup>30</sup> European Commission: Better Regulation Guidelines. SWD(2015) 111. 19.5.2015, p. 76. Participation of stakeholders with disabilities in consultations is spelled out more in detail in the accompanying 'Toolbox', p. 315. These guidelines are non-binding.

<sup>31</sup> In the meantime, the highest level is AAA.

<sup>32</sup> European Blind Union: [Access denied! How blind people struggle to access everyday goods, services and information and what the EU can do about it](#). November 2014.

[Annex I - Overview of the accessibility European Commission website](#)

[Annex II- Overview of the accessibility European Council website](#)

[Annex III - Overview of the accessibility European Parliament website](#)

<sup>33</sup> 'As from January 2010, all new EUROPA websites have to be created in compliance with the Web Content Accessibility Guidelines 2.0, level AA.' Cf. Web accessibility policy of the European Commission at [http://ec.europa.eu/ipg/standards/accessibility/index\\_en.htm](http://ec.europa.eu/ipg/standards/accessibility/index_en.htm).

Windows Eyes, VoiceOver), website navigation using keyword only, or the 'honeypot' method instead of 'captcha' in forms protected against spamming.

The Commission is also working on bringing its website into conformity with WCAG 2.0, level AA.<sup>34</sup> In its new web presence, the first elements of which are planned for 2016, it even aims to achieve, where possible, level AAA.<sup>35</sup> A recent letter<sup>36</sup> addressed by the Ombudsman to the Commission regarding web accessibility of sites and tools managed by the Commission, may prompt even more efforts in this respect.

The EESC website is 90% compliant with WCAG 2.0 AA; it is currently being revamped to achieve full compliance.

One Ombudsman case dealt with accessibility of a specific EU web tool.<sup>37</sup> A citizen complained about the poor accessibility of the Europass CV for visually impaired persons. Cedefop, the EU agency in charge of the Europass web portal, responded swiftly by aligning the web portal with WCAG 2.0 standards and by enhancing accessibility of downloadable templates. For the latter improvement, it involved persons with disabilities, by cooperating with the school for blind people in Thessaloniki. The Ombudsman found no maladministration in this case due to Cedefop's swift follow-up.

### **3.3. Other aspects of accessibility: communication with citizens and public meetings**

The public interacts with the EU institutions in other ways than only EU websites, e.g. via print information material or events, such as conferences or press conferences, parliamentary committee meetings or hearings. In this context, the CRPD Committee urged the EU to 'offer information in sign language, Braille, augmentative and alternative communication, and other accessible means, modes and formats of communication for persons with disabilities, including easy-to-read formats, in official interactions.' Some EU institutions and bodies have demonstrated efforts in this respect. All good practices and initiatives by institutions or bodies would be equally worthy of reference. However, due to time constraints in the drafting of this analysis, examples given are largely limited to the European Parliament.

With regard to parliamentary committee meetings and public hearings, documentation can be made available in alternative formats (e.g. Braille, large print, easy-to-read). Moreover, Parliament allows for provision of sign language interpretation and speech-to-text reporting, and has successfully done so in a few instances. This positive experience raises the question whether in future all committee meetings should be made accessible to persons with disabilities.

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<sup>34</sup> See [http://ec.europa.eu/ipg/accessibility\\_help/index\\_en.htm](http://ec.europa.eu/ipg/accessibility_help/index_en.htm).

<sup>35</sup> SWD(2015) 127, p. 39.

<sup>36</sup> [Letter by the European Ombudsman to Commission President Juncker](#). 16.2.2016.

<sup>37</sup> Case 2228/2013/TN.



Improved accessibility is also an issue for petitions. The PETI Committee is currently looking into the viability of accepting petitions submitted in sign language and the use of Braille in communication with petitioners, in conformity with Article 21 CRPD. Admitting petitions in sign language would however require amending Parliament's Rules of Procedure. Rule 215(5) stipulates that petitions be 'written in an official language of the European Union'. Accepting petitions in sign language would necessarily raise the question of recognition of sign languages at EU level, as the study by Mark Priestly *et. al.* rightly points out.<sup>38</sup>

Awareness of sign languages may have increased in Parliament due to the presence of two deaf MEPs in the current (and one in the previous) legislative term. An interest in the use of sign languages in Parliament is also reported by Parliament's Citizens' Enquiries Unit (AskEP), which received several questions from citizens relating to sign languages, touching upon interpretation in committee meetings, the status of sign languages, and its use in Parliament's Visitors' Centre, the *Parliamentarium*, the media guides of which are equipped with sign language videos in four languages.<sup>39</sup> In general, the *Parliamentarium* strives for high accessibility standards. It provides tactile maps in four languages and Braille keyboards for visually impaired visitors. Moreover, for visitors with hearing impairments, the Centre is fitted with induction loops to provide assistance to hearing-aid users.

NGO Inclusion Europe, an association of persons with intellectual disabilities and their Families, developed easy-to-read guidelines,<sup>40</sup> a standard framework for improving access to information and education for persons with intellectual disabilities. The Ombudsman has started to set an example by developing an easy-to-read summary of its mandate and complaints procedure in cooperation with Inclusion Europe.

### 3.4. Accessibility of the European Court of Justice

The CRPD Committee expressed concern about the lack of access to justice for persons with disabilities in European courts. It recommended that the EU guarantee full access to justice and eliminate all barriers, including physical and procedural barriers, and those relating to legal capacity, in European courts. (Point 81 CRPD Concluding Observations)

<sup>38</sup> Mark Priestley, Meredith Raley and Gauthier de Beco: 'The protection role of the Committee on Petitions in the context of the implementation of the UN Convention on the Rights of Persons with Disabilities'. EP Policy Department C, September 2015, p. 41.

<sup>39</sup> While acknowledging the fact that sign languages are considered, some disability organisations (e.g. European Union of the Deaf - EUD) would welcome seeing all sign languages provided, or at least some form of international sign language.

<sup>40</sup> Inclusion Europe : [European guidelines on making information easy to read and understand](#).

This CRPD recommendation addresses accessibility of the built environment as well as procedural barriers which persons with disabilities may face before the European Court of Justice (ECJ). With regard to physical accessibility, all Court buildings comply with the national accessibility standards in force in Luxembourg; older buildings have been adapted accordingly, as has been confirmed by the administration.<sup>41</sup>

The need or possibility for individuals to appear before the Court is less frequent than in national jurisdictions. Apart from the Civil Service Tribunal for EU staff cases, private individuals can bring a case either indirectly, through national courts which can refer a case to the Court of Justice for preliminary ruling, or directly before the General Court, if a decision by an EU institution has affected them directly and individually. However, representation in cases brought before the Court is mandatory: according to the Court's Statute and the Article 51 of the General Court's Rules of Procedure, individuals ('parties') must be represented by a lawyer who is entitled to practice before a court of a Member State.

Due to this obligation to be represented, a person with disabilities has in principle the same access to the Court as persons without disabilities. However, even if represented by a lawyer, a disabled complainant may still require accessible proceedings, e.g. written documentation in alternative formats (e.g. Braille) or a need for reasonable accommodation during the oral hearing. Likewise, a disabled lawyer pleading before the Court should be provided reasonable accommodation. In this vein, the Commission reported to the CRPD Committee that the Court 'services are examining measures to allow lawyers with disabilities to more easily perform their tasks before the Court'.<sup>42</sup> Neither the Court's Rules of Procedure nor the implementing rules of the latter address this issue.

Academics Eilionóir Flynn and Anna Lawson explain the concept of 'reasonable accommodation' in the context of court proceedings and provide some examples which apply to both, the disabled lawyer and the disabled complainant: '*A reasonable accommodation, in this context, requires an adjustment to standard practice or procedure in order to remove a particular disadvantage at which a specific disabled person would otherwise be placed in their attempt to access justice. Examples might include the timetabling of a case (for instance by avoiding an early morning start for a person taking certain types of medication); allowing more frequent breaks for a person with a physical impairment which requires this; allowing a sign language interpreter or reader to accompany a person with sensory impairments.*'<sup>43</sup>

Article 13(1) CRPD does not explicitly mention 'reasonable accommodation', but uses the similar concept 'provision of procedural and age-appropriate accommodations': '*State*

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<sup>41</sup> Information obtained orally from the ECJ on 10.3.2016. For a planned new building which is expected to be ready by 2019, the institution aims at level 'excellent' of the BREEAM certification.

<sup>42</sup> SWD(2015) 127, p. 18.

<sup>43</sup> Eilionóir Flynn and Anna Lawson: Disability and access to justice in the European Union: implications of the United Nations Convention on the Rights of Persons with Disabilities. In: European yearbook of disability law. Vol. 4 (2013), p. 7-44; here p. 25.

This article is of general nature and does not take the specific ECJ jurisdiction into account. The cited examples refer to complainants, but might by analogy also be valid for lawyers.

*Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.'*

## 4. Inter- and intra-institutional coordination

One important recommendation by the CRPD Committee concerns the implementation mechanism (Article 33 CRPD), as discussed in detail in the complementary EPRS analysis.<sup>44</sup> A part of this recommendation touches *inter alia* on the internal CRPD implementation in the EU public administration:

'The Committee also notes the lack of coordination and coherence among European Union institutions and the lack of disability focal points' (Point 74). It therefore recommends the EU 'to consider the establishment of an inter-institutional cooperation mechanism and the designation of focal points in each European Union institution, agency and body' (Point 77 CRPD Concluding Observations).

Article 33 provides for a three-tier mechanism, encompassing

- one or more focal point(s)
- a coordination mechanism
- and an independent framework.

### 4.1. Focal point

The designation of one or more focal point(s) is mandatory for every State Party. A focal point bears the central responsibility for the implementation of the CRPD. In the case of the EU, Council Decision 2010/48 EC mandated the Commission to act as focal point. In this capacity it ensures cross-sectorial coordination on three levels: within the Commission's DGs, between all EU bodies, and with the Member States. The Focal Point is established in the Unit 'Disability and Inclusion' in DG Employment, Social Affairs and Inclusion.

The CRPD Committee recommends the EU to establish specific disability focal points in every single EU institution, agency or body, in addition to the role the Commission fulfils as the EU's overall Focal Point. It can be argued that the complexity of the CRPD implementation on EU level justifies the set-up of a focal point in every EU institution, since it requires mainstreaming of disability rights (and, in the spirit of the Convention, a

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<sup>44</sup> Irmgard Anglmayer: EU implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD): European Implementation Assessment. European Parliament. February 2016, pp. 8-15 and 21.

fundamental rights approach towards disability rights) across all policies, and *across* and *within* all institutions, including their administrations. With regard to the administration, this may entail a change of attitude in areas where a medical concept of disability still prevails.

## 4.2. Coordination mechanism

Whilst focal point(s) and the framework are compulsory for the implementation of the Convention by the State Parties, the coordination mechanism is not a legal obligation. Article 33(1) CRPD stipulates that the State Parties 'shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels'. The coordination mechanism is meant to enhance cooperation between the different governmental actors in charge of disability issues in order to ensure an overall consistent disability policy in a given country (or at EU level in case of the EU as State Party). Gauthier de Beco, expert on the implementation of Article 33 CRPD, argues that the coordination mechanism should ideally be established at the highest level of government, in a department that can take the lead.<sup>45</sup>

To date, the EU has not designated any formal coordination facility. As outlined in the complementary EPRS analysis, this gap is *de facto* filled to some extent by the Council Working Party on Human Rights (COHOM) and the Disability High Level Group (DHLG), neither of which involves Parliament.

In its Concluding Observations, the CRPD Committee emphasises the necessity to establish a formal mechanism to govern inter-institutional cooperation on a horizontal level, to ensure a maximum of coherence and coordination among the various EU institutions. This quasi-obligation may, at first glance, seem contradictory to the somewhat flexible wording of Article 33(1). However, if the EU institutions follow the recommendation to establish focal points in every institution, body and agency, the coordination mechanism will become necessary. De Beco analysed the implementation in federal states, which often made use of the option to have several focal points, and concluded: 'States that have designated several focal points or sub-focal points might in particular need a coordination mechanism.'<sup>46</sup>

## 4.3. The case of the European Parliament

The case of the European Parliament evidences a certain complexity in respect of the number and remit of actors dealing with disability issues at the political and administrative levels.

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<sup>45</sup> Gauthier de Beco: Article 33 of the UN Convention on the Rights of Persons with Disabilities in Europe : practice and evaluation. In : European yearbook of disability law, Vol. 5(2014), pp. 9-42, here p. 12.

<sup>46</sup> Ibid.

Within Parliament's general secretariat, these actors are the following:

- The Bureau Working Group on Equality and Diversity was set up to supervise all administrative measures.
- The Equality and Diversity Unit in DG Personnel devises, implements and monitors equality and diversity policies (incl. the action plan) and ensures that the human resources policy reflects the EU's fundamental values with regard to equal opportunities and diversity. It coordinates projects that favour the inclusion of persons with disabilities, e.g. positive action programmes or the Equality Award.
- The Prevention and Wellbeing at Work Unit in DG Personnel is responsible for physical aspects of reasonable accommodation.
- The Inter-Service Working Group on Accessibility (ISWG) was set up in 2004 to follow-up the first accessibility audit. It gathers representatives of all DGs and specific disability groups (see below), and observers from the offices of the President and the Secretary-General. It issued a comprehensive booklet on all aspects of accessibility of the EP buildings.
- COPEC is a statutory advisory committee appointed by the Secretary-General, established in 1987.
- Parliament's Disability Support Group is an informal and independent group of staff members with disabilities or with disabled family members. Set up in 2003, it addresses disability issues to the relevant bodies in Parliament's general secretariat.

In addition to the administrative entities, Parliament has a number of political bodies dealing with disability issues:

- Parliamentary committees (notably, but not exclusively EMPL, LIBE and PETI)
- The inter-committee CRPD Network, composed of leading Members of committees which regularly deal with disability issues and chaired by EMPL, promotes the public debate on disability issues and the political role the EP plays in the implementation of the CRPD. It does so by scrutinizing documents (legislative and other) for their CRPD compliance and by awareness-raising activities.
- The Disability Intergroup, which is an informal cross-party group made up by Members from all EU Member States supporting and promoting rights of people with disabilities.

The complexity of the structure is due to the size of the institution, and to Parliament's combined political and administrative role. The establishment of an EP internal focal point at high level could ensure a maximum of coherence in the work of all the aforementioned groups and entities on disability issues, notably with regard to the implementation of the Convention.

## 5. Involvement of civil society organisations

Under the Convention's general obligations, the State Parties are required to closely consult with and involve persons with disabilities and their representative organisations in developing and implementing legislation and policies and in decision-making processes that concern them (Article 4(3) CRPD). They play also a vital role in the monitoring process of the CRPD implementation (Art. 33(3)).

In line with these obligations, disability organisations are closely involved in the development and implementation of EU disability policies and the monitoring of the implementation of the CRPD on EU level. In this capacity, they provide valuable expert advice. They are consulted through different channels and tools, such as consultations or participation in expert groups. Representatives of civil society and in particular of EU-level disability organisations are invited to the meetings members of the Disability High Level Group (DHLG).

The European Disability Forum (EDF), an umbrella organisation representing European citizens with disabilities and European disability organisations, is part of the Monitoring Framework, as the representative of civil society. The EDF and other European disability organisations contribute significantly to EU decision-making by scrutinizing legislative proposals for their impact on people with disabilities, and notably their compliance with the Convention, and by means of position papers or contributions e.g. in exchanges with stakeholders at parliamentary committee meetings or public hearings.

Disability organisations are also important partners for the EU institutions in raising awareness about disability issues and in promoting disability rights and policies, and in helping convey the human rights approach towards persons with disabilities which is core to the Convention. Examples of good practice are major events the Commission or Parliament have organised jointly with the EDF:

- The 'European Day of Persons with Disabilities', a big conference the Commission organises every December jointly with the EDF, to mark the International Day of Persons with Disabilities on 3 December. The conference is part of the EU's efforts to promote the mainstreaming of disability issues in line with the CRPD.
- The 'European Parliament of People with Disabilities', which meets once in a decade. This large-scale event at high level, co-organised by the EP and the EDF, has the format of an EP Plenary session. Delegates from local, national and European disability organisations discuss disability issues with MEPs, and adopt a resolution. This event has taken place three times so far, in 1993, 2003 and in 2012. The focus of the last session was on the CRPD implementation in the wake of the economic crisis. Reflections are ongoing with a view to organising this event every five years in future.

However, there are calls for a more structured dialogue with disability organisations. In particular the EDF considers the consultation process in place to be ad hoc, unclear and lacking rules. In line with the popular slogan of disability activists, 'Nothing about us without us', and with Article 4(3) of the Convention, the EDF calls on the EU institutions to develop a code of conduct for consultation and involvement of persons with disabilities and their representative organisations in all decision-making processes of the EU institutions.<sup>47</sup>

The general obligation to consult with and involve persons with disabilities and their representative organisations in developing and implementing legislation and policies and in decision-making processes that concern them applies also to the EU institutions in their capacity as public administration. This concerns individual staff members and the Disability Support Groups set-up by staff members with disabilities or with disabled children. The latter are informal and independent groups that are recognised and heard by the administration. Such support groups exist in the Parliament, the Commission and the Council.

## 6. Inclusive education for children of EU staff: the case of the European Schools

In Points 84 and 85 of the Concluding Observations, the CRPD Committee criticises *'that not all students with disabilities receive the reasonable accommodation needed to enjoy their right to inclusive quality education in European Schools in line with the Convention, and that the schools do not comply with the non-rejection clause'*. Moreover, it argues that the European Schools are not fully accessible. It therefore recommends the implementation of a 'non-rejection policy on the grounds of disability and [to] ensure inclusive, quality education for all students with disabilities'.

Article 24 CRPD proclaims the right to inclusive education in mainstream schools. It obliges State Parties to ensure that children with disabilities can access inclusive, quality and free primary and secondary education on an equal basis with others, while receiving individualised reasonable accommodation and support required within the general education system. It is generally estimated that as many as 80 to 90% of children with specific educational needs, including children with intellectual disabilities, can be integrated into mainstream schooling, as long as there is adequate support provided for their inclusion.<sup>48</sup>

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<sup>47</sup> European Disability Forum: Alternative report to the UN Committee on the Rights of Persons with Disabilities. Adopted on 8-9 November 2014, p. 19 and 64. The EDF reiterates this call in its Initial response to the Concluding Observations and recommendations of the UN CRPD Expert Committee to the EU, key recommendation 1(e).

<sup>48</sup> From exclusion to equality. Realizing the rights of persons with disabilities. Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional

The UN CRPD Committee expressed general concern that in various EU Member States many children with disabilities do not have access to inclusive education (point 60 Concluding Observations). The obligation to inclusive education entails, in addition to reasonable accommodation for each individual disabled pupil, a system of support measures to allow pupils with disabilities to participate in regular schooling. These measures affect both the environment and the content of education.<sup>49</sup>

A high proportion of children of EU civil servants - and also some children of MEPs - attend European Schools, which were set up in 1953 to provide mother tongue education to the children of EU staff. Legally speaking, the European Schools are not an EU body and, as such, are not part of the EU administration, but they are set up by EU Member States and financed by the EU budget. Furthermore, the Commission is represented on the governing board of the European Schools.

This school system provides a curriculum for children from kindergarten to baccalaureate, hence covering the age group between 4 and 18. It offers a single type of general academic education. The European Schools have a policy programme in place for educational support and children with special educational needs (SEN) and are facing an increasing demand for intensive SEN support, which affects 3.44% of pupils.<sup>50</sup> However, the European Schools do not consider themselves inclusive: '*An inclusive school offers access and an appropriate education to all children, regardless of their level of ability, disability or special educational need. The European Schools are not able to offer fully inclusive educational provision.*'<sup>51</sup> Accordingly, they admit pupils with special needs and offer them intensive support, provided that their special educational needs allow them to follow a mainstream or specially adapted course of study.<sup>52</sup>

Consequently, families having children with specific educational needs and/or disabilities often perceive a lack of support from the European Schools and an inconsistent application of the policies in place. This issue has been repeatedly addressed, including by the European Parliament. In its resolution on the European Schools

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Protocol / UN Department of Economic and Social Affairs, Office of the UN High Commissioner for Human Rights (OHCHR) and Inter-Parliamentary Union. 2007, p. 85.

<sup>49</sup> For a discussion of the right to inclusive education, see Gauthier de Beco: The right to inclusive education according to Article 24 of the UN Convention on the Rights of Persons with Disabilities: background, requirements and (remaining) questions. In: Netherlands quarterly of human rights, Vol. 32(2014), issue 3, pp. 263-287. In this article, De Beco concludes that inclusive education would be more advantageous for every single child, since education should go beyond transferring knowledge and enhance learning capacities. He argues that instead of focusing on deficiencies, diversity should be valued.

<sup>50</sup> The European Schools' new educational support policy entered into force on 1 September 2013. During the school year 2014/15, out of a total of 25 402 in all 14 schools, 874 pupils made use of the SEN programme, compared to 640 (out of 23 367) in 2011/12. For over a quarter of SEN pupils, dyslexia was the reason for SEN support, followed by ADHD, ADD and combinations of different psychomotor disorders. Cf. European Schools: Statistical report on the integration of pupils with special education needs in the European Schools in the year 2014-15. 2016-01-D-9-en-1.

<sup>51</sup> European Schools: [Provision of Educational Support in the European Schools - Procedural document](#). May 2012, p 44.

<sup>52</sup> Idem, p. 29 (Article 2 of SEN agreement).



system,<sup>53</sup> adopted on 27 September 2011, it urges the Schools to 'do everything possible to improve their capacity for educating students with disabilities' and asks the Board of Governors of the European Schools 'to ensure full integration of such students' (point 45). Moreover, it stresses '*that provision for students with special educational needs must continue to be a priority, particularly as the European Schools still offer only one type of school-leaving certificate and therefore need to ensure that maximum support is provided with a view to preventing academic failure insofar as possible, so that students do not then risk finding themselves without other options if, for language or other reasons, they cannot take alternative courses in their host country's national education system*' (point 50).

The lack of inclusiveness and accessibility of the European School system was also the subject of a petition<sup>54</sup> to the European Parliament, and of several parliamentary questions to the Commission, by individual MEPs. For example, MEP Ádám Kósa addressed the issues of barrier-free accessibility of the European Schools<sup>55</sup> and the applicability of the CRPD to the European Schools,<sup>56</sup> criticizing them for their non-compliance with Article 24 CRPD, 'as they do not provide all necessary adaptations (including adapted learning programmes) for all kinds of learning disabilities'.

Beyond accessibility and additional support (including adapted curricula, for example), Mr Kósa also addressed the rejection of children with disabilities by the European Schools. He argued that excluding children with learning disabilities from the European Schools system is discriminatory to the families concerned, and costly to both the EU institutions (which usually cover a large part of the – often particularly high – costs of alternative schooling) and the families, who usually are not reimbursed the full costs of alternative schooling by the EU institutions. Moreover, owing to the mother tongue education principle at European Schools, alternative solutions for pupils who have to leave their European School might impact heavily on the pupils' family situation, since these alternatives may be far away<sup>57</sup> or even abroad and hence entail boarding school arrangements or removal of (some members of) the family.

Indeed the European Schools do not feel bound by the principle of non-exclusion of children with disabilities as enshrined in the CRPD. They argue that a school '*may declare itself incompetent to admit a pupil whose special educational needs are such that it is unable to offer the support required. In that case, the School may refuse admission or continuation of integration into a mainstream school environment.*'<sup>58</sup> Drawing on the Complaints Board's

<sup>53</sup> European Parliament resolution of 27 September 2011 on the European Schools system. P7\_TA(2011)0402. This resolution was based on a report by MEP Jean-Marie Cavada.

<sup>54</sup> Petition 1402/2009 concerning the absence of support to pupils in the European Schools suffering from physical or mental handicaps.

<sup>55</sup> E-001155/2013. The subject matter of point 9 of the INI Report in relation to inclusive education.

<sup>56</sup> E-6008/2010. Applicability of the UN Convention on the Rights of Persons with Disabilities to the European Schools.

<sup>57</sup> This is the case in petition 1402/2009.

<sup>58</sup> European Schools: [Provision of Educational Support in the European Schools – Procedural document](#). May 2012, p 29. (Article 2 of SEN agreement).

Similar provisions are contained in the 'Policy on the provisions of educational support in the European Schools', approved by the Board of Governors on 3-5 December 2012, p. 7: '*The school is entitled to declare itself non to be able to meet the needs of the pupil and to recommend that the parents seek*

jurisdiction, Commissioner Maroš Šefčovič argues, on behalf of the Commission, in his answer to EP question E-6008/2010, that the European School system cannot be compared to a national education system, since it only provides a general academic education leading to the baccalaureate:

*'Nonetheless, the European Schools do not constitute a complete general education system that can be compared to a national system. They are schools which provide a standard academic education leading to the European baccalaureate and allowing access to further education. The European Schools take all reasonable measures to integrate children but they cannot, due to their structure and their purpose, respond to the needs of every situation and, therefore, sometimes have to declare themselves incompetent in this respect. Moreover, this has been underlined in an opinion of the European Schools' Complaints Board which ruled that "...the European Schools system is not a complete or closed education system which is obliged to provide every possible means of offering the fundamental right to education for the children of the staff of the Communities...." [reference to Complaint 09/14 of 31 August 2009]*

There are no statistical data available as to how many children with disabilities were denied admission to the European Schools. The case-law database of the Complaints Board of the European Schools<sup>59</sup> - the schools' sole jurisdiction in the first and last instance - which includes only the most relevant decisions, lists only a few cases. Case-law would in any case not provide a full picture, since it would not give any indication about the number of cases of parents who did not challenge a negative decision, or those who refrain from enrolling their children to the European Schools in the first place, since they consider the system inappropriate for their children's needs.

In addition to the European Parliament, the European Ombudsman has also found the European Schools to be in non-compliance with the principles of the CRPD. Most recently, in January 2016, the Ombudsman addressed a letter<sup>60</sup> to the Commission, which is represented - together with the 28 EU Member States - on the European Schools' Board of Governors. In this letter, which was prompted by correspondence received from concerned parents, Ombudsman Emily O'Reilly asks what steps the Commission would take in order to address the shortcomings the CRPD Committee had identified and to ensure compliance with the Convention.

The Ombudsman had already in November 2003 opened an own-initiative inquiry on the inclusion of children with disabilities by the European Schools,<sup>61</sup> and concluded that the schools' policy was insufficient. He expressed concerns that a high percentage of SEN pupils left the European Schools and opted for another schooling (43%) or were

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*an alternative solution for their child's education, in an establishment better suited and equipped to meet his/her special needs.'*

<sup>59</sup> Pursuant to their statute, the European Schools fall outside the jurisdiction of EU law and have their own dispute settlement mechanism, the 'Complaints Board of the European Schools'.

<sup>60</sup> [Letter by the European Ombudsman to Commission Vice-President Kristalina Georgieva](#), who is in charge of the Commission's administration, dated 26.01.2016.

<sup>61</sup> This was a follow-up inquiry to case OI/3/2003/JMA concerning the integration of persons with disabilities by the European Commission. The own-initiative inquiry was closed on 4 July 2007.

recommended by the European School to find another school that was better suited to their needs (27%).<sup>62</sup>

Disability Support Groups in the institutions are concerned that the European Schools, beyond their non-compliance with relevant CRPD provisions, do not uphold the UN Convention on the Rights of the Child and specifically its Article 28(1).

## 7. Health care: the Joint Sickness Insurance Scheme (JSIS)

EU staff and their dependent family members are covered by the JSIS health care scheme. The CRPD Committee argues that EU staff (or their family members) with disabilities are discriminated against by the EU health insurance schemes and requires compliance with the Convention, recommending the EU administration to revise the JSIS so that it comprehensively covers disability-related health needs (points 86 and 87 of the Concluding Observations).

Art. 72(1) of the Staff Regulations foresees a health insurance standard reimbursement rate of 80% or 85% of the costs, which are subject to pre-defined ceilings in force. In exceptional cases (e.g. cancer, mental illness or 'other serious illness'), the reimbursement rate can be increased to 100%, upon decision by the Appointing Authority to recognise a serious illness. The decision granting extended insurance coverage is subject to a time limit and to continuous review, and may be renewed. The practical arrangements and procedures for reimbursement are set out in the JSIS General Implementing Provisions (GIP).<sup>63</sup>

The GIP provide for reimbursement for all kinds of medical expenses, including expenses that are of potential relevance to persons with disabilities (e.g. permanent or long-term residence in paramedical and other establishments, medical auxiliaries, prostheses, orthopaedic appliances and other medical equipment). However, neither the health care provisions in the Staff Regulations nor the GIP contain specific provisions of disability as grounds for reimbursement for medical expenses. This implies that no specific rules apply to persons with disabilities, whose medical expenses can however be substantial. Notably, there are no specific rules granting medical reimbursement at a 100% rate to persons with disabilities, unless the health impact of their disability meets the criteria established for the recognition of a serious illness, which are as follows:

- a shortened life expectancy;
- an illness which is likely to be drawn-out;
- the need for aggressive diagnostic and/or therapeutic procedures; and

<sup>62</sup> Data referring to the school year 2006/07.

<sup>63</sup> Commission Decision laying down general implementing provisions for the reimbursement of medical expenses.

- the presence or risk of a serious handicap.

The illness must involve all four elements, to varying degrees. Staff members concerned and their representative groups, such as the Disability Support Groups in individual EU institutions, consider this definition discriminatory. They argue that many kinds of disabilities do not constitute a serious illness *per se*, nor do they necessarily negatively impact on life expectancy; nonetheless, they may cause high expenses in terms of treatment, medication or special devices/equipment. Moreover, they criticise the purely medical approach, which is opposed to the fundamental rights or social model approach promoted by the CRPD. Similarly, the EDF calls on the EU institutions to 'apply a human rights based approach to disability in EU health care coverage'.<sup>64</sup>

The view that serious illness and disability should not be confused is supported by the jurisprudence of the ECJ.<sup>65</sup> In Case C-13/05 *Chacón Navas vs Eurest Colectividades* concerning the interpretation of Directive 2000/78/CE (Equality Employment Directive), and notably discrimination on grounds of disability the Court held that '*by using the concept of "disability" in Article 1 of that directive, the legislature deliberately chose a term which differs from "sickness". The two concepts cannot therefore simply be treated as being the same.*'

In a later judgment from 2013, on the joined cases C-335/11 and C-337/11 *HK Danmark*, the ECJ clarified that '*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*'. This interpretation is clearly influenced by the social-contextual model of disability promoted by the CRPD.

In this respect, the ECJ will continue to influence the discussion, and likely contribute to the assessment of the compliance of the JSIS implementing provisions with the CRDP through a new case which is currently pending before the Tribunal, F-87/15 (*ZZ vs Commission*). In this case, brought on 15 June 2015, the applicant is seeking annulment of the decision of the JSIS Settlement Office not to extend recognition that his daughter, who is disabled, suffers from a serious illness. The applicant invokes the Convention on the Rights of Persons with Disability, claiming, amongst other things, that the GIP is unlawful with regard to Art. 21 and 26 of the CRPD and infringement of Art. 7(2) CRPD.

Aside from the aforementioned case F-87/15 *ZZ vs Commission*, several other cases relating to different aspects of the health insurance coverage of JSIS members with disabilities are pending before the Tribunal, seeking annulment of decisions by the institutions:

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<sup>64</sup> European Disability Forum: EDF initial response to the Concluding Observations and recommendations of the UN CRPD Expert Committee to the EU. November 2015. See key recommendation 15.

<sup>65</sup> For a critical discussion of the ECJ's interpretation of disability versus illness see: Lisa Waddington: Saying all the right things and still getting it wrong: the Court of Justice's definition of disability and non-discrimination law. In: Maastricht journal of European and comparative law, Vol. 22(2015), issue 4, pp. 576-591.

- Case F-76/15 *ZZ vs Council*: Annulment of the decision of the Brussels Settlements Office rejecting the application for extension of the recognition of the illness suffered by the applicant's son as a serious illness and for the medical expenses connected therewith to be reimbursed at 100%.
- Case F-111/15 *ZZ vs Commission*: Annulment of the Commission's decision to refuse the applicant and his spouse reimbursement of the costs concerning three invoices for medical treatment and treatment relating to the cancer from which she is suffering.
- Case F-38/15 *FJ vs Parliament*: Annulment of the decision rejecting the applicant's request to cover certain non-medical costs incurred for the applicant's son, who has a disability, and, in the alternative, order the appointment of an expert in accordance with Article 75 of the Rules of Procedure in order to determine the rate of incapacity resulting from the disability.

The JSIS implementing provisions have been in force since 1 July 2007 - which explains their continued use of the term 'handicap' - and have so far not been aligned with the obligations under the CRPD. This is why Parliament's Disability Support Group advocates a thorough revision of the JSIS rules, in favour of a modern, CRPD-compatible health insurance system that covers disability appropriately, fairly, and reasonably in the spirit of the Convention's Article 25, which promotes a human rights approach. It appears that the Commission is working on a new strategy on diversity, which may address the issue.<sup>66</sup>

However, to cover at least partly certain expenses resulting from a disability which are not reimbursed by the JSIS scheme, the EU institutions have a separate budget line in place entitled 'Supplementary aid for the disabled'.<sup>67</sup> It is governed by the interinstitutional 'Provisional guidelines for implementation of the budget heading "Supplementary aid for the disabled" concerning welfare appropriations for persons with disabilities'. Staff (or their family members) are eligible to request aid under this fund under the condition that they have been assessed as having a physical disability of at least 30% and/or a mental disability of at least 20%, on the basis of the scale laid down by the Interinstitutional Medical Board. This budget line covers, *inter alia*, costs related to residence in an approved institution or home; education or specific training; care costs e.g. by a home nurse; transport expenses; aids and appliances such as ramps, text vocalisation scanner etc.

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<sup>66</sup> At the time of writing, no further information was available on this forthcoming document.

<sup>67</sup> This supplementary aid fund's coverage amounts to maximum 45% to 95% of costs, depending on the family income.





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As parties to the UN Convention on the Rights of Persons with Disabilities (CRPD), both the European Union and its Member States are obliged to implement and safeguard the set of fundamental rights enshrined in the Convention. Full compliance with the Convention is required also by the state parties' public administrations, including the EU public administration made up of its institutions, bodies and agencies.

The UN CRPD Committee's 'Concluding Observations' of September 2015, which marked the end of the first round of the review process of the Convention's implementation, include a number of recommendations addressed to the EU public administration, touching upon employment, reasonable accommodation, accessibility, access to justice, the European Schools and the Community health insurance scheme. The CRPD Committee calls on the EU institutions to become a role model, both with regard to employment of persons with disabilities, and in its interaction with the public.

This paper analyses the legal framework and policies the EU institutions have in place with regard to disability rights, and which have been to some extent prompted, or at least influenced, by the CRPD. It also assesses the progress made in the institutions' compliance with the CRPD, notably in the areas addressed in the UN 'Concluding Observations'.

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