



Implementation of the Employment Equality Directive in light of the UN CRPD

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Assessment

STUDY

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European Implementation Assessment

On 2 April 2020, the Conference of Committee Chairs approved a request by the Committee on Employment and Social Affairs (EMPL) to draw up an implementation report to assess the implementation of the Employment Equality Directive 2000/78/EC in light of the UN Convention on the Rights of Persons with Disabilities (CRPD) and the employment-related recommendations of the UN CRPD Committee (rapporteur: Katrin Langensiepen, Greens/EFA, Germany). This European Implementation Assessment seeks to support the scrutiny work of the EMPL committee and to accompany the preparation of the aforementioned implementation report.

Twenty years have passed since the EU adopted the Employment Equality Directive 2000/78/EC (EED), generally considered a cornerstone of EU disability law. It established the framework for prohibiting discrimination, inter alia on grounds of disability, in the field of employment and occupation, setting EU-wide minimum standards. The European Court of Justice has clarified that the EED must be interpreted in line with the UN Convention on the Rights of Persons with Disabilities (CRPD), which became an integral part of the EU legal order in 2011. This study, based on desk research, examines the implementation of the EED in light of the CRPD. Particular focus is placed on implementation issues relating to reasonable accommodation, positive action, sanctions and equality bodies, and also to employment-related data regarding persons with disabilities.

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Executive summary

Twenty years have passed since the Employment Equality Directive 2000/78/EC (EED) was adopted. This directive constitutes the EU framework for prohibiting discrimination in the field of employment, occupation and vocational training, outlawing direct and indirect discrimination, harassment and instructions to discriminate, inter alia on grounds of disability. It is generally considered a cornerstone of EU disability law.

Ten years ago, the EU concluded the UN Convention on the Rights of Persons with Disabilities (CRPD), which embraces a human rights approach to disability. The CRPD forms an integral part of the EU legal order. The primacy of international agreements over EU secondary law means that the Employment Equality Directive must be interpreted in a manner that is consistent with the meaning of the convention, as has been confirmed by the European Court of Justice (ECJ). The CRPD is a mixed agreement, meaning that competences are shared between the EU and its Member States, all of which have now ratified the convention.

This study examines the practical application of the EED in light of the CRPD. It is based on desk research, drawing on a plethora of sources, including:

- reports and data of the European institutions and agencies, including statistical evidence;
- case law;
- official comments on the interpretation of the CRPD and scholarly commentaries;
- research work of the academic expert networks funded by the Commission;
- further academic research papers;
- and, last but not least, publications by stakeholders, including disability organisations.

The first chapter sketches out the main characteristics of the EED and the CRPD, two sources of law that are closely intertwined. Broadly speaking, they have similar objectives, however, on closer reading, there are also certain discrepancies (beyond aspects of material scope). These differences can be explained by the simple fact that the EED preceded the CRPD, and that the EU's accession to the CRPD did not prompt a revision of the directive.

The study depicts the main inconsistencies between the EED and the CRPD concerning, inter alia, the conceptualisation of disability, reasonable accommodation and data collection, and then goes on to compare them with the respective provisions of the proposed horizontal equal treatment directive (2008). The latter proposal was meant to extend protection against discrimination beyond the field of employment. However, as no agreement has been reached in Council, it has remained pending for 12 years now. The study finds that certain differences between the EED and the CRPD (e.g. the establishment of equality bodies) are addressed in the proposed horizontal directive, which – if adopted – would therefore bring progress in aligning EU disability law with CRPD requirements.

Chapter 2 looks into the implementation of the Employment Equality Directive. At this point, all EU Member States have successfully transposed the provisions of the Employment Equality Directive into their national legislation. The transposition phase did prove challenging, however, partly on account of the innovative nature of certain concepts, such as reasonable accommodation. Dozens of infringement procedures were opened at the time by the Commission, against nearly all Member States, the latest case being closed in 2015. Six infringement cases were brought before the European Court of Justice.

Directive 2000/78/EC has yet to undergo an in-depth ex-post evaluation by the European Commission. Against this backdrop, the present analysis examines the implementation assessments the European Commission, the European Parliament and other actors have put forward. Close

attention is also paid to ECJ case law. To date, national courts have referred 12 court proceedings related to discrimination on grounds of disability for preliminary ruling. Not only has the ECJ helped to clarify certain aspects of the scope and application of the EED in light of the CRPD, it has also developed equality law further through its purposive interpretation of specific concepts, such as 'discrimination by association'. The Court has already dealt with cases of direct and indirect discrimination, harassment, reasonable accommodation, multiple discrimination and, recently, also with a positive action measure. It has not so far been asked to interpret the concepts instruction to discriminate and victimisation of persons with disabilities.

This chapter on the operation of the directive is rounded up with a citizens' perspective. To this end, the study looks into topical complaints citizens have lodged with the Commission and petitions submitted to the European Parliament. Although it is only in rare cases that complaints and petitions reveal a breach of EU law, they are nonetheless an indicator for perceived grievances and discrimination. Specific Eurobarometer surveys dedicated to discrimination provide further useful insights, demonstrating slightly encouraging trends over time.

Chapter 3 looks in greater depth into a set of challenges Member States are facing in the implementation and enforcement of the EED. These concern in particular the understanding and practical application of the reasonable accommodation duty and positive action measures; the pivotal role equality bodies play at national level, though without as yet reaching their full potential; and the effectiveness of sanctions. A particular focus is placed on disability data, which are essential for monitoring and policymaking purposes. Contrary to the CRPD, data collection is not mandated by the EED. This paper examines the nature and availability of existing data, points at limitations of data compared with CRPD requirements (an issue the CRPD Committee addressed in its concluding observations) and then briefly describes the progress recently achieved with the revision of the integrated European social statistics framework, which is expected to generate more disaggregated data in future.

Finally, the starting point of **Chapter 4** is the recommendation of the CRPD Committee to increase the employment rate of people with disabilities EU-wide in the open labour market. This part of the study examines relevant statistical data relating to key labour market indicators (employment rate, unemployment rate and activity rate of persons with disabilities). The data show an overall positive trend for the period 2008-2018, which generally correlates with the economic recovery after the financial crisis of 2008. Despite this encouraging trend, however, the gap between persons with and persons without disabilities remains disproportionately large across all indicators. For instance, the employment rate of people with disabilities remains low (at 52 %, compared to 76.2 % for persons without disabilities), and the economic activity rate of people with disabilities amounts to 62.4 %, compared with 82.9 % for their non-disabled peers. In addition, many people (and especially women) with disabilities work part time, which puts them at an increased risk of poverty and social exclusion. It is hard to predict the exact consequences of the 2020 pandemic, but it is to be expected that the crisis will have a negative impact on the employment situation of persons with disabilities, notably on those who work in the open labour market. Future statistics will quantify this impact.

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Acronyms

ANED	Academic Network of European Disability Experts
CRPD	UN Convention on the Rights of Persons with Disabilities
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
EDF	European Disability Forum
EED	Employment Equality Directive (Directive 2000/78/EC)
EESC	European Economic and Social Committee
EIGE	European Institute for Gender Equality, Vilnius
EMPL	European Parliament Committee on Employment and Social Affairs
EQLS	European Quality of Life Survey
ESF	European Social Fund
ESIF	European structural and investment funds
EU-EHIS	European Health Interview Survey
EU-LFS	Labour Force Survey
EU-SILC	Statistics on Income and Living Conditions
FEMM	European Parliament Committee on Women's Rights and Gender Equality
FRA	EU Fundamental Rights Agency, Vienna
FTE	Full-time equivalent
GALI	Global Activity Limitation Indicator
IESS	Integrated European Social Statistics
MEP	Member of the European Parliament
NGO	Non-governmental organisation
OJ	Official Journal of the European Union
PETI	European Parliament Committee on Petitions
RED	Racial Equality Directive (Directive 2000/43/EC)
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

1. Directive 2000/78/EC and the CRPD

Key findings

The Convention on the Rights of Persons with Disabilities (CRPD) embraces a human rights approach to disability. It is binding on the EU and its Member States, all of which have now ratified it. Consequently, EU and national disability policies and legislation need to be in compliance with the CRPD. Member States are bound by the meaning and spirit of the CRPD when they implement and apply the Employment Equality Directive at national level, as has been confirmed by the European Court of Justice. This is noteworthy because discrepancies exist between the EED and the CRPD, owing to the fact that the former predates the latter but was not amended when the EU ratified the CRPD in 2010.

Inconsistencies between the EED and the CRPD concern inter alia the definition of disability, the forms of disability, the personal scope of application, reasonable accommodation, positive action measures, multiple discrimination, equality bodies and data collection. Some of the differences, in particular whether denial of reasonable accommodation amounts to discrimination and whether the designation of equality bodies is required, were addressed in the proposed, horizontal, equal treatment directive (2008). This proposal was meant to extend protection against discrimination beyond the field of employment, but as no agreement has been reached in Council, the proposal has remained pending for 12 years. If adopted, the horizontal directive would bring EU disability law more in line with the CRPD.

1.1. The context: the EU disability framework

The **Treaty of Amsterdam** conferred on the EU the power to combat discrimination based on sex, race or ethnic origin, religion or belief, disability, age and sexual orientation, and thus provided the legal basis for the two subsequent EU anti-discrimination directives, the Racial Equality Directive 2000/43/EC¹ and the Employment Equality Directive 2000/78/EC.² Taken together, they established a general – and enforceable – framework for equality and non-discrimination across the EU.

The **Employment Equality Directive** (EED) prohibits discrimination, inter alia on grounds of disability, in the field of employment and occupation. Its scope is comprehensive, covering the entire work life cycle from job application and recruitment through to dismissal. In force since 2 December 2000, this directive is generally considered a milestone for the development of EU disability law; the requirement of reasonable accommodation in particular constituted a conceptual novelty.

At around the same time, the EU reinforced its commitment to equality, non-discrimination and respect for the rights of people with disabilities through the **EU Charter of Fundamental Rights**. Initially non-binding, the Charter was proclaimed in December 2000, but was later incorporated into EU primary law (Lisbon Treaty). The Charter, setting out rights and principles, contains specific provisions on equality before the law (Article 20), non-discrimination (Article 21) and the integration

¹ Council [Directive 2000/43/EC](#) of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. OJ L 180, 19.07.2000, pp. 22-26.

² 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, pp. 16-22.

of persons with disabilities (Article 26). The Charter's provisions are addressed to the EU institutions and bodies, and to EU Member States only when they are implementing EU law (Article 51).³

A decade later, EU disability law was further – and sustainably – shaped by the **UN Convention on the Rights of Persons with Disabilities** (CRPD),⁴ which the EU concluded in December 2010 as a regional integration organisation.⁵ With its entry into force on 22 January 2011 (for the EU), the CRPD became part of the EU legal order. It is a mixed agreement, meaning the EU and its Member States share competences and responsibility for implementing the provisions of the convention. The convention is legally binding on the EU within the extent of its competences, and also on its Member States, all of which have now ratified it.⁶ In light of its status, the CRPD has been termed 'the benchmark for European Union disability policy'.⁷

EU disability policy has since been further developed by the **2010-2020 EU disability strategy**,⁸ which aims to secure an inclusive, barrier-free Europe. The strategy has prompted the adoption of a range of specific acts of secondary legislation and other actions within the ambit of its eight priority areas.⁹ These include accessibility, equality, education and employment.

Moreover, the social and labour inclusion of persons with disabilities is addressed in the **European Pillar of Social Rights**, launched in November 2017 as a (legally non-binding) reform compass for economic and social convergence. The Pillar's Principle 17 reads: 'People with disabilities have the right to income support that ensures living in dignity, services that enable them to participate in the labour market and in society, and a work environment adapted to their needs'.¹⁰

Lastly, the **European structural and investment funds** (ESI funds) provide funding for people with disabilities. The most relevant fund in the context of this study is the European Social Fund (ESF), which supports employment-related projects fostering integration in the labour market and improving the accessibility of workplaces.¹¹ Under the Common Provisions Regulation (common to all ESI funds) Member States must not discriminate against persons with disabilities and they need

³ The [Charter of Fundamental Rights](#) establishes the link with the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, 1950), stipulating that for rights under the Charter that correspond to rights granted by the ECHR, 'the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection'. (Article 52(3)).

⁴ The [UN Convention on the Rights of Persons with Disabilities](#) was adopted on 13 December 2006 by the United Nations General Assembly. It was opened for signature on 30 March 2007 and entered into force on 3 May 2008.

⁵ The accession was enabled by Council [Decision 2010/48/EC](#) of 26 November 2009 concerning the conclusion, by the European Community, of the UN CRPD. OJ L 23, 27.1.2010, pp. 35-61.

⁶ The last EU Member States to ratify the CRPD were Ireland (in 2018), Finland and the Netherlands (both in 2016).

⁷ L. Waddington and A. Broderick, [The Post-2020 European Disability Strategy](#), Policy Department, Directorate-General for Internal Policies, European Parliament, 2020, p. 26.

⁸ European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe, [COM\(2010\) 636](#), accompanied by [SEC\(2010\) 1324](#) (list of actions) and [SEC\(2010\) 1323](#) (background). For an overview see: I. Anglmayer, [The European Disability Strategy 2010-2020](#), EPRS, European Parliament, 2017.

⁹ A comprehensive list of EU acts triggered by the Disability Strategy is expected to be included in the forthcoming Commission evaluation of the Strategy. An interim picture was presented in the Commission's 2017 progress report on the implementation of the European disability strategy (2010-2020), [SWD\(2017\) 29](#).

¹⁰ Progress in the implementation of the [European Pillar of Social Rights](#) is tracked through the associated [social scoreboard](#). For a comprehensive analysis of the Pillar from a disability perspective see: ANED, [Mainstreaming disability rights in the European Pillar of Social Rights: a compendium](#), 2018.

¹¹ For details see e.g. C. van Lierop, [Cohesion policy and disability](#), EPRS, European Parliament, 2017; and M. Lecerf, [Employment and disability in the European Union](#), EPRS, European Parliament, 2020, pp. 4-5.

to 'ensure accessibility for persons with disabilities throughout the preparation and implementation of programmes'.¹²

1.2. Brief outline of the Employment Equality Directive

Employment is considered a pivotal element of social inclusion, and this is especially true for the integration of persons with disabilities in the open labour market. Employment is also deemed a key factor for people to realise their potential.¹³ The objective of Directive 2000/78/EC was the creation of a 'level playing-field as regards equality in employment and occupation', as is specified in Recital 37 EED. To attain this objective, the directive prohibits discrimination on grounds of religion or belief, disability, age and sexual orientation. It explicitly outlaws four forms of discrimination, namely:

- **direct discrimination:** when a person is treated less favourably than others in a comparable situation. An example would be an employer who refuses to recruit anyone who has a disability;
- **indirect discrimination:** when an ostensibly neutral provision, criterion or practice puts a person (in the context of this study: a person with a disability) at a particular disadvantage compared with others; it is to be noted that what counts is not the intention, but the discriminatory effect. In practice, indirect discrimination is often much harder to prove than direct discrimination. An example of indirect discrimination would be a provision in national law that allows for dismissal of (any) employee after reaching a certain threshold of absences due to sickness. If an employee with a disability is frequently absent due to an illness connected with their disability and subsequently dismissed, the legal provision might indirectly discriminate against them, as workers with a disability have an increased risk of being absent (see ECJ Case C-270/16 *Ruiz Conejero*);
- **harassment:** when unwanted conduct takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. An example of harassment would be that someone imitates a specific behaviour of a person with a disability or makes jokes about it;
- **instructions to discriminate:** an example would be when the boss of a company instructs a personnel recruitment agency not to hire anyone with a disability.

¹² [Regulation \(EU\) No 1303/2013](#), Article 7. OJ L 347, 20.12.2013, pp. 320–469.

¹³ Directive 2000/78/EC, Recital 9.

Regarding the scope definition, Article 3 EED states that the directive is applicable to all aspects of employment, occupation and vocational training, in both the private and the public sectors.

Article 3 EED - Scope

1. Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

(a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;

(b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;

(c) employment and working conditions, including dismissals and pay;

(d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

Recital 17 deserves special mention, as – while stressing the obligation to provide reasonable accommodation – it underlines that the principle of non-discrimination set out by the directive does not require the employment of persons who are 'not competent, capable and available to perform the essential functions'.

The directive allows for positive action to prevent or compensate for disadvantages. Therefore, within the meaning of the directive, Member States are free to maintain existing positive action measures or adopt new ones. In this regard, Recital 27 points out that positive action measures are not an innovation of the directive, as Council acts of 1986 and 1999¹⁴ already recommended their use to Member States in order to boost employment of persons with disabilities.

Article 5 EED regulates the provision of reasonable accommodation for persons with disabilities, placing employers under obligation to provide adjustments of the workplace, if needed. The directive defines the concept of reasonable accommodation as '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'. The wording 'where needed in a particular case' underlines the individual nature of this measure. However, there is no absolute obligation to provide reasonable accommodation, as the provision contains a limitation concerning the costs/burdens of the measures, spelled out as 'unless such measures would impose a disproportionate burden on the employer'.

Further provisions in the directive relate to awareness, and notably Member States' obligation to inform people concerned about the protection granted under the directive, and to remedies and enforcement. With regard to the latter, the directive requires Member States to provide for remedies and 'effective, proportionate and dissuasive sanctions' in cases of breach of the obligations under the directive, while respecting Member States' competence for regulating administrative and

¹⁴ [Council recommendation 86/379/EEC](#) on the employment of disabled people in the Community, OJ L 225, 12.8.1986, pp. 43-47; and [Council resolution of 17 June 1999](#) on equal employment opportunities for people with disabilities, OJ C 186, 2.7.1999, pp. 3-4.

judicial proceedings. For judicial proceedings, the EED prescribes the principle of shifting the burden of proof.

Furthermore, the directive requires Member States to introduce adequate judicial protection in national law against victimisation, so as to protect victims of discrimination who complain against any form of retaliation (e.g. adverse treatment, dismissal, refusal of career advancement).

It is important to stress that the directive merely lays down minimum requirements, hence leaving Member States the option to grant more favourable provisions and thus a higher level of protection (Article 8 EED).¹⁵

1.3. Brief outline of the CRPD

1.3.1. Embracing a human-rights approach to disability

The CRPD is a UN human rights treaty that aims to protect the rights and dignity of persons with disabilities. Its overall objective is the equality and full inclusion in society of persons with disabilities, on an equal basis with others. The convention presents a comprehensive catalogue of rights of persons with disabilities; in particular, it sets out minimum standards for protecting and safeguarding the civil, social, political, economic, legal and cultural rights of persons with disabilities. State parties to the convention are under a legal obligation to ensure these rights.¹⁶

The CRPD does not in principle create any new rights, but rather reaffirms and codifies existing ones. In terms of disability rights, it sees disability as a social construct and accordingly places the focus on the societal barriers people with disabilities face in their everyday lives. It thereby overrides the formerly typical medical or welfare approach, which would put a person's disability centre stage as a medical issue.¹⁷ In this respect, the CRPD's pronounced social and human rights approach to disability marks a paradigm shift, as evidenced by the key principles enshrined in the CRPD, comprising non-discrimination, self-determination and unconditional equal treatment of persons with and without disabilities.¹⁸

1.3.2. Article 27 CRPD: work and employment

While the CRPD covers all areas of life, this study focuses on the convention's general principles and provisions relating to employment in the wider sense, first and foremost Article 27 on work and employment. Article 27 CRPD builds on the fundamental human right to work and the free choice of employment that was already enshrined in the Universal Declaration of Human Rights of 1948 (Article 23). It requires an open, inclusive and accessible labour market in which persons with disabilities have the same rights and the same 'opportunity to gain a living' as others.

The provision is based on two concepts, first, the general prohibition against discrimination on grounds of disability, and second, the obligation to protect the right of persons with disabilities to 'just and favourable' working conditions that cover all aspects of work, in particular access to the job

¹⁵ For an analysis of the emergence, rationale and scope of the EED see: J. Tymowski, [The Employment Equality Directive](#), EPRS, European Parliament, 2016.

¹⁶ See Article 4 CRPD on general obligations.

¹⁷ For an explanation of the social model of disability and its further development into a human rights model see: CRPD Committee, General Comment No 6 on Equality and Non-Discrimination, [CRPD/C/GC/6](#), 2018, paras. 8-11; and T. Degener, 'A new human rights model of disability', in V. Della Fina et al. (eds.), *The United Nations Convention on the Rights of Persons with Disabilities: a commentary*, 2017, pp. 41-59.

¹⁸ For an analysis of the CRPD in the EU context see: I. Anglmayer, [EU Implementation of the UN Convention on the Rights of Persons with Disabilities \(CRPD\)](#): European implementation assessment, EPRS, European Parliament, 2016.

market and recruitment, job retention, career advancement, protection from dismissal, working tasks, remuneration, working hours, leave, safety and health, mental and physical conditions of work and vocational training. The personal scope of Article 27 CRPD is not limited to employees in the private sector, but includes also the public sector, as well as self-employment and entrepreneurship.

Two concepts enshrined in Article 27 are key for boosting the participation of persons with disabilities in the open labour market: **positive action measures**¹⁹ and **reasonable accommodation**. While the former serves to promote and incentivise the employment of persons with disabilities and remains optional, the latter provides for individual adjustment of the workplace and is compulsory for employers.

When the CRPD Committee reviewed the EU's progress in implementing the convention, one of its main concerns was the employment situation of persons with disabilities across the EU, and especially of women with disabilities. It recommended that the EU take effective action in this respect (see text box).

The full text of Article 27 CRPD given below will serve as a useful reference for the chapter comparing the Employment Equality Directive with the CRPD.

UN recommendations to the EU regarding the employment of persons with disabilities

'The Committee is concerned about the high unemployment rates for persons with disabilities, especially women with disabilities and persons with intellectual and/or psychosocial disabilities, in comparison with other population groups in the European Union.'

'The Committee recommends that the European Union take effective action to measure the employment of persons with disabilities and to increase their employment rate in the open labour market, including by providing training for member States on reasonable accommodation and accessibility in the context of employment.'

CRPD Committee, Concluding observations, 2015, paras. 64-65.

¹⁹ The CRPD uses the term 'affirmative action', a synonym for 'positive action', the term used in the EED.

Article 27 CRPD - Work and employment

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

(a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;

(b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;

(c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;

(d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;

(e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;

(f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;

(g) Employ persons with disabilities in the public sector;

(h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;

(i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;

(j) Promote the acquisition by persons with disabilities of work experience in the open labour market;

(k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

1.3.3. The Optional Protocol to the CRPD

The CRPD is accompanied by an optional protocol, a common feature of UN human rights treaties. This optional protocol offers additional safeguards for citizens by providing for a complaints mechanism for individuals and groups of individuals. Although not specified in the legal text, it is commonly understood that this wording includes persons and representative organisations acting on behalf of victims of discrimination, such as disability organisations.²⁰ Individual claims can be

²⁰ O. Ferrajolo, 'Optional Protocol to the Convention on the Rights of Persons with Disabilities', in V. Della Fina et al. (eds.), *The United Nations Convention on the Rights of Persons with Disabilities: a commentary*, 2017, pp. 709 and 712.

lodged before the CRPD Committee in the event of a State party's violation of convention rights, provided the national system of remedies has been exhausted. The findings of the CRPD Committee under the individual claims procedure, labelled 'views' and 'recommendations', are not legally binding. In addition, the optional protocol provides for an inquiry procedure to examine alleged 'grave or systemic violations' of convention rights by state parties.

The EU has not yet concluded the optional protocol, despite a favourable Commission proposal from 2008,²¹ to which the European Parliament swiftly gave its consent at the time.²² However, approval requires a unanimity vote in Council, which has as yet been out of reach. Parliament has addressed the lack of progress on this matter repeatedly in resolutions and written questions directed to the Council and the Commission.²³ Further encouragement for EU ratification of the optional protocol came from the CRPD Committee itself,²⁴ along with the European Economic and Social Committee (EESC),²⁵ the EU Fundamental Rights Agency (FRA)²⁶ and academia.²⁷

As long as the EU has not concluded the optional protocol, individual complaints against the EU are inadmissible. The CRPD Committee can however hear complaints by citizens from any of the 21 EU Member States that have to date ratified the optional protocol (see Annex 1), for matters of exclusive national or shared competence. According to the UN human rights database,²⁸ the optional protocol has already been invoked in a number of cases. At the time of writing, it lists 14 complaint procedures against EU Member States, four of which relate to employment matters (Article 27 CRPD).²⁹ In two cases the CRPD Committee established a breach of the convention by the state party concerned and recommended specific mitigation measures, while in another two cases it found no infringement had taken place.

It has been argued that the future conclusion of the CRPD optional protocol by the EU might entail significant changes – not to say challenges – for the European Parliament's Petitions Committee (PETI). To recap, the optional protocol provides for individual complaints against a state party. The CRPD Committee accepts individual complaints under the precondition that in the first instance the national system of remedies has been exhausted. In view of PETI's current CRPD protection function at EU level, this system of remedies might be assigned to PETI, meaning that individual complaints against the EU to the CRPD Committee would first need to be channelled through PETI.³⁰

²¹ [COM\(2008\) 530/2](#).

²² European Parliament resolution [P6_TA\(2009\)0313](#), adopted by an overwhelming majority of 388:0:8.

²³ e.g. European Parliament resolution [P9_TA\(2020\)0156](#) on the European Disability Strategy post-2020, point 61; and resolution [P8_TA\(2017\)0474](#) on the implementation of the European Disability Strategy 2010-2020, point 112. Written questions E-2841/10 by Ádám Kósa (EPP) to the Council, asking whether the Council will give its consent to the signature of the Optional Protocol 'in the very near future'; E-14071/15 Helga Stevens (ECR) and Ádám Kósa (EPP) to the Commission, asking to explain the delay in the ratification; E-2423/18 Martina Anderson (GUE/NGL) to the Commission, arguing a failure to ratify the protocol prevents individuals from seeking redress.

²⁴ CRPD Committee, [Concluding observations](#) on the initial report of the European Union, CRPD/C/EU/CO/1. 2.10.2015, para. 6 and 7.

²⁵ EESC opinion, Shaping the EU agenda for disability rights 2020-2030, 11 December 2019, [SOC/616](#) (Rapporteur: Ioannis Vardakastanis), point 1.6.

²⁶ FRA's opinion on this issue is included in every FRA Fundamental Rights Report, including the [2020 issue](#) (p. 223).

²⁷ e.g. Waddington and Broderick, The Post-2020 European Disability Strategy, 2020, p. 131.

²⁸ <https://juris.ohchr.org/search/results>.

²⁹ These cases concerned Germany, Italy, Spain and Sweden.

³⁰ M. Priestley, The protection role of the Committee on Petitions in the context of the implementation of the UN CRPD, Policy Department, Directorate-General for Internal Policies, European Parliament, [update 2016](#), pp. 53 ff.

1.3.4. EU reporting duties vis-à-vis the CRPD Committee

The present study examines the operation of the EED in light of the CRPD and the employment-related recommendations of the CRPD Committee. In this framework, it makes repeated reference to the Committee's 'concluding observations'. It appears therefore essential to briefly outline the reporting dialogue the EU maintains with the Geneva-based CRPD Committee and to flag up the associated deadlines (see Figure 1).

One of the core responsibilities of the CRPD Committee is to review the progress made by state parties on giving effect to the convention. This review process consists of reports and bilateral meetings. In line with the CRPD reporting duties (Articles 35 and 36 CRPD), the first EU-UN reporting round ended with the concluding observations issued by the CRPD Committee in October 2015. In the second round – currently in preparation –, the EU will report on the progress it has achieved on the Committee's numerous recommendations spelled out in the concluding observations.

The normal deadline for the EU's combined second and third reports would be 23 January 2021.³¹ However, under the UN's simplified reporting procedure it is first up to the CRPD Committee to come up with a 'list of issues', which is expected in the course of 2021. The European Commission then has one year to respond, and this written response will then constitute the EU's state party report. In addition, stakeholders and disability organisations may submit shadow reports. Following a 'constructive dialogue' between Brussels and Geneva, the CRPD Committee will complete the second reporting round with another set of concluding observations, meant to assess the progress made by the EU and to convey further recommendations. The following graph presents the timeline of the EU-CRPD dialogue.

Figure 1 – EU-CRPD reporting timeline



Source: EPRS, based on UN, FRA and European Commission information

³¹ CRPD Committee, Concluding observations EU, 2015, para. 94.

1.4. Inconsistencies between the EED and the CRPD

The binding nature of the CRPD entails that all EU legislation, policies and programmes must comply with the convention's established obligations. In this respect, the Employment Equality Directive must be in compliance with the CRPD, in particular with its employment-related provisions (Article 27) and the provisions setting out general principles. Furthermore, the European Court of Justice (ECJ) must consider the CRPD when interpreting EU law, and has effectively done so in many cases. Academics consider the CRPD 'one of the most influential human rights instruments on the case law of the ECJ'.³²

The EED and the CRPD have similar objectives and are strongly intertwined. On closer reading however, a few inconsistencies between the two sources of law become apparent. These result from the fact that the EED preceded the CRPD and was not amended after the EU concluded the convention. This chapter highlights the main inconsistencies.³³ It is to be noted that the coherence gap has to a certain extent been filled by the ECJ, which has reasoned that due to the primacy of international agreements over EU instruments of secondary law,³⁴ EU disability law must be interpreted in a manner that is consistent with the meaning of the convention.³⁵ This interpretation corresponds to the hierarchy of EU norms, which places the legal force of international agreements between EU primary law (i.e. the Treaties) and secondary law (e.g. directives and regulations).

Table 1 – Main differences between the EED and the CRPD

Subject	EED	CRPD
Definition of disability	No definition provided	Open-ended 'non-definition'; understands disability as an 'evolving concept'
Forms of discrimination covered	Explicit prohibition of four forms of discrimination: - direct discrimination - indirect discrimination - harassment - instructions to discriminate	Prohibits <u>all</u> forms of discrimination, including denial of reasonable accommodation and harassment (in the context of employment) Instructions to discriminate are only implicitly covered
Personal scope	EED implicitly covers: - discrimination by association (clarified by ECJ); - persons with assumed disabilities (recognised in Commission document)	CRPD implicitly covers: - discrimination by association - persons with assumed disabilities - persons with present, past and future disabilities

³² K. Liu and C. O'Cinneide, [The ongoing evolution of the case-law of the Court of Justice of the European Union on Directives 2000/43/EC and 2000/78/EC](#): a legal analysis of the situation in EU Member States, European Commission, 2019, pp. 7 and 44.

³³ This chapter draws largely on an external Commission study: L. Waddington and A. Broderick, [Combating disability discrimination and realising equality](#): A comparison of the UN Convention on the Rights of Persons with Disabilities and EU equality and non-discrimination law, European Network of Legal Experts in Gender Equality and Non-Discrimination, European Commission, 2018.

³⁴ Article 216(2) TFEU.

³⁵ The first instance where the ECJ adjudicated on the relationship between the EED and the CRPD was the ruling of 11 April 2013 in joined cases C-335/11 and C-337/11 *HK Danmark*. On the primacy of international law more generally, see for instance F. Martines, ['Direct Effect of International Agreements of the European Union'](#), *European Journal of International Law*, Vol. 25(1), 2014, pp. 129–147.

Reasonable accommodation	Duty to provide reasonable accommodation is an obligation. Limitation: disproportionate burden on the employer. Assessment of undue burden is predominantly focused on cost aspects.	Denial of reasonable accommodation counts as discrimination. Limitation: disproportionate or undue burden Assessment of undue burden appears to be broader, even if costs play a role.
Positive action	Allows for positive action measures	Allows for positive action measures; in the employment context they are considered mandatory
Multiple discrimination	Recognition of women as victims of multiple forms of discrimination (only in recitals)	Broad recognition of multiple discrimination (an open-ended list of grounds) in the preamble. CRPD contains specific provisions protecting women and children with disabilities. Promotes an overall gender perspective
Equality bodies	Not provided for	Article 33(2) provides for an independent mechanism to promote, protect and monitor the implementation of the CRPD
Data collection	Not provided for	Article 31 sets out detailed data collection requirements

1.4.1. Definition of disability

The Employment Equality Directive does not attempt to define disability as a ground of discrimination, despite 29 occurrences of the term 'disability'/'disabled' throughout the text of the directive. In a similar vein, the EED provides no definition of who precisely falls under the scope of the protection afforded by the directive, leaving it for the Court to fill this lacuna.

A different path was chosen for the CRPD. Strictly speaking, the Convention does not contain a definition of disability either, at least not in its Article 2 devoted to the definitions of terms. Instead, both the preamble and Article 1 provide 'a sort of open-ended conceptualization of disability',³⁶ suggesting a fairly wide coverage. The preamble characterises disability as 'an evolving concept'; it evokes the social model of disability by explaining 'that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others'. Article 1 (on the purpose of the treaty) provides further clarification by setting out that 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'.

The ECJ drew closely on this wide conceptualisation, holding that disability is to be understood as a 'limitation which results in particular from long-term physical, mental or psychological impairments

³⁶ S. Favalli and D. Ferri, 'Defining disability in the European Union non-discrimination legislation: Judicial activism and legislative restraints', *European Public Law*, Vol. 22(3), 2016, p. 548.

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'. The Court applied this reasoning for the first time in its ruling on *HK Danmark* (joined cases C-335/11 and C-337/11) and has reiterated it in a growing number of cases.

Reportedly, the preparations of the CRPD were marked by controversy as to whether or not to include a definition of the concept of disability in the convention text. Both approaches were found to have their merits. Eventually, it was decided to refrain from a definition because of fears that a definition – even a broad one – could lead to a too restrictive interpretation of the convention or might be so vague that it could make it difficult for state parties to implement it.³⁷

1.4.2. Forms of discrimination covered

Article 2 EED outlaws four forms of discrimination: direct and indirect discrimination, harassment and instructions to discriminate.

By comparison, the conceptualisation of disability in the CRPD is less enumerative. Instead, it 'includes all forms of discrimination, including denial of reasonable accommodation', and subsumes under discrimination on the basis of disability 'any distinction, exclusion or restriction on the basis of disability' (Article 2(3) CRPD). Thus, while the wording 'all forms of discrimination' already covers any kind of discrimination implicitly, only two forms of discrimination are explicitly mentioned: the denial of reasonable accommodation in Article 2 CRPD (definitions), and, in addition, harassment in Article 27 CRPD (work and employment). Interestingly, with regard to protection from harassment, the CRPD Committee's authoritative guidance also makes reference to modern types of harassment, stressing that bullying and its online form, cyberbullying and cyberhate, also constitute particularly violent and harmful forms of hate crimes'.³⁸

The CRPD Committee points out that international human rights practice knows four main forms of discrimination, namely direct and indirect discrimination, denial of reasonable accommodation and harassment, and that these forms of discrimination can occur alone or simultaneously.³⁹ While the concept of 'instruction to discriminate' is not mentioned anywhere in the CRPD or in the associated authoritative general comments, it can be assumed that it is implicitly covered by the CRPD. Academics have argued on this point that the EED goes beyond the requirements of the CRPD.⁴⁰

1.4.3. Personal scope

Discrimination by association

Neither the EED nor the CRPD explicitly mention the concept of 'discrimination by association', although both sources of law are to be read in such a way as to cover, beyond persons with disabilities, also persons who are associated with them.

With regard to the EED, in 2008 in case C-303/06 *Coleman* the ECJ ruled that protection from discrimination and harassment under the EED is not limited to people who themselves have a disability, but applies also to employees who are associated with persons with a disability, such as primary carers of a disabled child. The Court endorsed the in-depth reasoning of the Advocate

³⁷ R. Cera, 'Article 2 – Definitions', V. Della Fina et al. (eds.), *The United Nations Convention on the Rights of Persons with Disabilities: a commentary*, 2017, p. 109.

³⁸ CRPD Committee, [General Comment No 6](#), para. 18.

³⁹ *ibid.*

⁴⁰ Waddington and Broderick, *Combating disability discrimination*, 2018, p. 66.

General, who recalled the purpose and intended effect of the directive, which is to combat all forms of discrimination in employment and occupation.⁴¹ Subsequently, in case C-83/14 *CHEZ*, the Court reaffirmed the prohibition of discrimination by association also on grounds of racial or ethnic origin.⁴²

In a similar vein, the CRPD Committee confirms that protection under the CRPD extends implicitly also to 'those who are associated with a person with a disability',⁴³ citing the example of parents of a child with disabilities. In this context, the CRPD Committee observes that national equality laws and frameworks mostly lack a recognition of discrimination by association.⁴⁴

Present, past, future and assumed disability

The CRPD Committee explains that discrimination on the grounds of disability can be against persons 'who have a disability at present, who have had a disability in the past, who have a disposition to a disability that lies in the future, [and] who are presumed to have a disability'.⁴⁵

The Employment Equality Directive is silent on these aspects, nor has the ECJ examined the question to date. However, the European Commission stated in an implementation report of 2014 that it considers the EED also prohibiting 'a situation where a person is directly discriminated against on the basis of a wrong perception or assumption of protected characteristics'.⁴⁶ Moreover, in a Belgian court case from 2013 a worker was dismissed because his employer assumed a change in the employee's commitment to work when the latter became father to a child with disabilities. In its ruling, the court established 'discrimination on the basis of supposition and bias'.⁴⁷

1.4.4. Reasonable accommodation

Reasonable accommodation facilitates the integration of people with disabilities into the open labour market and is therefore a key feature of both the EED and the CRPD. As highlighted above, the CRPD states black on white that denial of reasonable accommodation accounts for discrimination (Article 2). By comparison, the EED establishes a duty of reasonable accommodation in Article 5, but is silent on whether an infringement of the accommodation duty would be rated as discrimination. However, in ECJ Case C-270/16 *Ruiz Conejero*, Advocate General Eleanor Sharpston reasoned in 2017 that a dismissal resulting from a failure to respect

Reasonable accommodation

Reasonable accommodation is any change to a job or a work environment that is needed to enable a person with a disability to apply, to perform and to advance in job functions, or undertake training.

Reasonable accommodation is aimed at any employee with a disability. The right to reasonable accommodation extends to all work-related activities covered by EU law, from the job application process through to termination, and includes working conditions and fringe benefits.

European Commission, [website](#).

⁴¹ ECJ, Case C-303/06 *Coleman* is described in Chapter 2.3.4.

⁴² Waddington and Broderick, *Combating disability discrimination*, 2018, pp. 75-76.

⁴³ CRPD Committee, General Comment No 6, paras. 17 and 20.

⁴⁴ CRPD Committee, General Comment No 6, para. 18.

⁴⁵ CRPD Committee, General Comment No 6, para. 20.

⁴⁶ COM(2014) 2, p. 10.

⁴⁷ Leuven Employment Tribunal (*Arbeidsrechtbank*), 10 December 2013, AR 12/1064/1. This case is briefly described in Chapter 2.3.4.

an accommodation obligation 'will amount to unlawful discrimination for the purposes of Directive 2000/78'.⁴⁸

Recital 16 EED recalls the importance of providing reasonable accommodation measures at the workplace 'for combating discrimination on grounds of disability'. Article 5 defines the concept of reasonable accommodation as appropriate measures taken by the employer, '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'.

The same EED provision allows also for an exemption, worded 'unless such measures would impose a disproportionate burden on the employer'. Anticipating that such exemption may give rise to uncertainty, Article 5 offers some guidance, according to which a burden is not disproportionate 'when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned'. Recital 21 adds that to determine whether or not measures constitute an undue burden, account should be taken 'of the financial and other costs entailed, the scale and financial resources of the organisation or undertaking and the possibility of obtaining public funding or any other assistance'.

In comparison, reasonable accommodation is a central theme of the CRPD. Article 5(3) CRPD on equality and non-discrimination stipulates that 'States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided'. The provision of reasonable accommodation is required in particular in the areas of employment and education. Given its preeminent role in work and employment, Article 27(1) CRPD reiterates the accommodation obligation in the workplace.

The convention describes reasonable accommodation as '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'. (Article 2). The CRPD Committee provides some guidance by drawing the boundaries of undue burdens at 'possible excessive or unjustifiable burden on the accommodating party'. The determining factor of undue burdens 'requires an assessment of the proportional relationship between the means employed and its aim, which is the enjoyment of the right concerned'. The CRPD Committee includes the consideration of cost aspects in this assessment: 'Potential factors to be considered include financial costs, resources available (including public subsidies), the size of the accommodating party (in its entirety), the effect of the modification on the institution or the enterprise, third-party benefits, negative impacts on other persons and reasonable health and safety requirements', however, placing the burden of proof on the duty bearer (employer).⁴⁹

It appears that when it comes to assessing disproportionate burdens the EED pays greater attention to the cost factor than intended by the CRPD, an approach followed by the ECJ in its reasoning in *HK Danmark*. Academics have flagged up the EED approach and the Court's cost-focused reasoning as an area where the EU is not fully in compliance with the CRPD.⁵⁰

1.4.5. Positive action

Positive action measures are allowed under the EED. To that end, Article 7(1) EED states that 'the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to any of the grounds'

⁴⁸ [Opinion](#) of Advocate General Sharpston in Case C-270/16, para. 41.

⁴⁹ CRPD Committee, General Comment No 6, paras. 25 and 26.

⁵⁰ Waddington and Broderick, *Combating disability discrimination*, 2018, p. 94.

covered. Article 7(2) specifies that positive action measures targeted specifically at disabled persons are permitted if they are aimed at 'protecting their health and safety at work' or 'promoting their integration into the working environment'.

Thus, while the EED takes a permissive approach to positive action, it does not impose any obligation on Member States to apply positive action measures. This interpretation was confirmed by the ECJ in *C-406/15 Milkova*, in which it held that Member States are not required, but have discretion to maintain or adopt positive action measures.

By way of comparison, the CRPD provisions concerning positive action are understood as placing no concrete obligation on state parties to take positive action, although, in circumstances where structural discrimination cannot be eliminated, positive action may be required.⁵¹ The CRPD contains two specific provisions mentioning positive action. A general provision in Article 5(4) establishes that positive action is in principle permitted: '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'.

The second mention of positive action, in the context of employment (Article 27), appears more assertive. It sets out that 'States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation'. What follows, is an open-ended list ('inter alia') of possible options for such steps, including positive action measures: 'Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures'. At this point, the CRPD Committee lists the following (non-exhaustive) examples of possible positive measures: outreach and support programmes, allocation and/or reallocation of resources, targeted recruitment, hiring and promotion, quota systems, advancement and empowerment measures, as well as respite care and technological aids.⁵² The responsibility to take positive action measures where required under the CRPD would in any case fall on the state parties.

1.4.6. Multiple discrimination

Multiple discrimination occurs at the intersection of different grounds of discrimination, meaning when a person is subject to discrimination on more than one ground. The Employment Equality Directive recognises the existence of multiple discrimination in its preamble (Recital 3), albeit only with regard to gender ('women are often the victims of multiple discrimination'). The body of the directive does not however return to this concept. It does not outlaw multiple discrimination explicitly, nor does it explicitly promote specific positive measures for persons facing discrimination based on several grounds (e.g. a black woman with disabilities).

⁵¹ Waddington and Broderick, *Combating disability discrimination*, 2018, pp. 78-80.

⁵² CRPD Committee, General Comment No 6 on Equality and Non-Discrimination, [CRPD/C/GC/6](#), 2018, para. 28.

Article 6 CRPD - Women with disabilities

1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.
2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

Compared with the EED, the CRPD evidences much greater awareness of multiple discrimination. In the preamble, the convention expresses concerns 'about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status', and then goes on to single out two groups of persons who are particularly affected by multiple discrimination, namely women and children. Each of the two groups are protected in the text of the convention by a specific horizontal provision. For women, this provision is Article 6 CRPD.

In the concluding observations, the CRPD Committee recommended that the EU ensure prohibition of multiple and intersectional discrimination,⁵³ thereby placing great emphasis on women and girls with disabilities. In concrete terms, it recommended to the EU three courses of action:

- to mainstream a disability perspective in its gender equality strategy and vice versa, a gender perspective in its disability strategies;
- to develop affirmative actions to advance the rights of women and girls with disabilities; and
- to establish a mechanism to monitor progress and fund data collection and research on women and girls with disabilities.

With specific regard to employment, the CRPD Committee expressed concerns about the high unemployment rate for women with disabilities. These issues will presumably be addressed in the forthcoming 2020-2030 EU disability strategy.

The European Parliament, highly aware of the compounding effect of the intersection of gender and disability, has twice adopted resolutions specifically dedicated to the situation of women with disabilities, most recently in 2018. The 2018 resolution was based on an oral question posed to the Commission. In her reply in plenary, then-Commissioner Marianne Thyssen announced that the evaluation of the 2010-2020 European disability strategy would cover, inter alia, 'the situation of women and girls with disabilities and the challenges stemming from inter-sectional discrimination'.⁵⁴ An earlier topical resolution was endorsed in 2013,⁵⁵ based on a parliamentary own-initiative report drawn up by the FEMM committee. In addition, Parliament has explored the

⁵³ CRPD Committee, Concluding observations EU, 2015, paras. 19, 21 and 64.

⁵⁴ European Parliament resolution [P8_TA\(2018\)0484](#) on the situation of women with disabilities. [Debate](#) in plenary on 29 November 2018, based on oral question [O-000117/2018](#) tabled by the FEMM Committee.

⁵⁵ European Parliament resolution [P7_TA\(2013\)0579](#) on women with disabilities.

multiple and crosscutting dimension of discrimination against women with disabilities in an external study⁵⁶ and in a number of parliamentary questions.⁵⁷

1.4.7. Equality bodies

The Employment Equality Directive does not require Member States to establish an equality body for the implementation and enforcement of the directive. This is in sharp contrast to other EU equality directives relating to racial and gender discrimination. In practice however, most Member States have an equality body that covers – inter alia – discrimination on grounds of disability, as is analysed in greater depth in Chapter 3.4.

By way of comparison, Article 33(2) CRPD states that State parties must have a framework, which needs to include 'one or more independent mechanisms' to promote, protect and monitor the implementation of the convention. It is generally understood that such mechanisms may involve national equality bodies, ombudsmen, and national human rights institutions. There is no explicit reference to equality bodies in the text of the convention, though, in its authoritative guidance the CRPD Committee evokes the role of 'national human rights institutions and other relevant stakeholders, such as equality bodies'.⁵⁸

1.4.8. Data collection

The Employment Equality Directive does not provide for data collection. Conversely, Article 31 CRPD contains quite detailed requirements for state parties regarding data collection and analysis. The CRPD Committee observes that data collection obligations should be understood in a broad sense and cover 'statistics, narratives and other forms of data, such as indicators'.⁵⁹

The purpose of data collection is twofold: data are necessary to monitor implementation of anti-discrimination law and policies, and at the same time, they help to identify the barriers people with disabilities face, which informs further policy actions for the effective implementation of the convention. Therefore, the data collected should provide information on all forms of discrimination. Disability data should be disaggregated and comply with international standards and data protection rules. The design, collection and analysis of data should be participatory, i.e. undertaken in close and meaningful consultation with representative organisations of persons with disabilities.⁶⁰

1.5. The horizontal equal treatment directive in deadlock

1.5.1. Scope and sticking points

While the CRPD covers virtually every aspect of life, the scope of application of the Employment Equality Directive is less comprehensive, since it is limited to employment, occupation and vocational training. To expand the protection against discrimination on the grounds of disability, age, religion/belief and sexual orientation beyond the narrow sphere of employment, the

⁵⁶ [Discrimination and access to employment for female workers with disabilities](#), Policy Department, Directorate-General for Internal Policies, European Parliament, 2017.

⁵⁷ E.g. [E-005771/17](#), [E-005617/16](#) and [E-005404/16](#).

⁵⁸ CRPD Committee, General Comment No 6, para 73.

⁵⁹ CRPD Committee, General Comment No 6, para. 71.

⁶⁰ *ibid.*

Commission put forward a legislative proposal in 2008, generally referred to as the horizontal equal treatment directive.⁶¹

This proposal sought to widen the EED's scope of application by aligning it with that of the Racial Equality Directive 2000/43/EC (RED),⁶² thus covering also education, social protection, health care, access to goods and services and housing. At the same time, the proposal also addressed some of the existing inconsistencies between the EED and the CRPD (described in Chapter 1.4.). The proposed horizontal directive has its roots in the European Council conclusions of December 2007, which invited Member States to increase their efforts to prevent and combat discrimination inside and outside the labour market.⁶³

Unlike the EED and the RED, which were both swiftly adopted in 2000, the 2008 proposal for a horizontal directive faced strong resistance in the Council and continues to do so. To date, well over a dozen Council discussions on the file have taken place – most recently in 24 October 2019 – but consent does not appear to be within reach. As a result, the proposal, requiring unanimity in Council,⁶⁴ has remained blocked now for 12 years. Reportedly, suggestions of using the enhanced cooperation procedure to advance the file were also 'overwhelmingly rejected' in the Council.⁶⁵ Although some progress has been achieved over the years, the procedure is still pending. Reservations brought forward by certain Member States touch mainly upon the following issues:⁶⁶

- **subsidiarity and division of competences:** some Member States deem their current national anti-discrimination legislation 'appropriate' and do not see a need for further EU action; a highly controversial issue in this regard is the inclusion of social protection and education in the directive;
- potential **legal uncertainty** regarding the obligations of some provisions in the proposed text;
- and the **cost effect** of the directive, with regard, in part, to reasonable accommodation.

1.5.2. The position of Parliament and the Commission

Unlike Council, Parliament has been strongly supportive of the proposed horizontal directive. However, Parliament's say in this dossier, which is subject to a special legislative procedure (Article 19 TFEU), is limited to giving its consent. Parliament adopted its position on 2 April 2009, suggesting a number of amendments relating to multiple discrimination, discrimination by assumption and sanctions.⁶⁷

⁶¹ Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, [COM\(2008\) 426](#).

⁶² The RED and the EED are very similar in their approach, purpose and structure – and even in their wording. The most obvious asymmetry between the two directives lies in the material scope of their application.

⁶³ European Council, [Presidency conclusions](#) of 14 December 2007, point 50.

⁶⁴ The proposal was presented in July 2008. Following the entry into force of the Lisbon Treaty on 1 December 2009, the proposal falls now under Article 19 TFEU and consequently, to be adopted it requires unanimity in Council and Parliament's consent.

⁶⁵ European Commission, More efficient decision-making in social policy: Identification of areas for an enhanced move to qualified majority voting, [COM\(2019\)186](#), p. 8.

⁶⁶ Council of the European Union, Enhancing anti-discrimination in the European Union: steering note by the Finnish Presidency, [ST-12907-2019-INIT](#), October 2019; see also Council progress report on COM(2008) 426, [14867/17](#), November 2017.

⁶⁷ European Parliament resolution [P6_TA\(2009\)0211](#). For details, see OEIL procedure [2008/0140\(APP\)](#).

Countless parliamentary activities have since sought to break the deadlock in Council, such as debates in committee and plenary,⁶⁸ calls on Council expressed in resolutions⁶⁹ and parliamentary questions.⁷⁰ In this context, the complementary impact assessment Parliament undertook in 2014 'to facilitate agreement on the proposal'⁷¹ deserves special mention. It looked specifically into the estimated costs for businesses and the public sector, including costs arising from mandatory provision of reasonable accommodation.

The European Commission has 'provided assistance to every Council Presidency since 2008 to fine-tune the proposal and accommodate the concerns of Member States', but has recognised that advancement of the directive is difficult, because the 'remaining barriers are neither technical nor economic, but political'.⁷² Towards the end of the Juncker term, the Commission issued a communication⁷³ that identified gaps in EU equality law and explored ways to facilitate decision-making through the use of qualified majority voting and the ordinary legislative procedure, through application of the passerelle clauses set out in the Treaties.⁷⁴

The Commission has repeatedly stated that it considers the horizontal equal treatment directive a political priority. Under Commission President von der Leyen, equality remains high on the agenda, as has been affirmed by the appointment of a first-ever 'Commissioner for equality' (Helena Dalli) and the commitment to strive for a 'Union for equality'. In the latter context, the Commission envisages proposing new anti-discrimination legislation.⁷⁵ All this might help to revive the horizontal equal treatment directive. Indeed, most recently, the file reappeared in the Commission's 2021 work programme, under 'priority pending proposals' (Annex III).⁷⁶

Calls to adopt the horizontal directive have also come from various other actors, in particular the CRPD Committee,⁷⁷ the EESC⁷⁸ and non-governmental organisations (NGOs).⁷⁹ Moreover, the Fundamental Rights Agency has stressed that non-adoption would leave the 'EU's non-discrimination legal framework incomplete'.⁸⁰

⁶⁸ The most recent topical plenary debate was held on 22 October 2019 ('[Taking forward the horizontal anti-discrimination directive](#)').

⁶⁹ Most recently in Parliament resolutions [P9_TA\(2020\)0156](#), point 64; [P8_TA\(2019\)0111](#), point 37, and [P8_TA\(2019\)0032](#), point 32.

⁷⁰ e.g. [O-000071/2018](#), [E-000601-16](#), [E-002746/16](#), [E-005779/16](#), [E-001025/17](#).

⁷¹ [Implementing the principle of equal treatment between persons](#): complementary impact assessment of the proposed horizontal directive on equal treatment, EPRS and Policy Department for Internal Policies, European Parliament, 2014, p. 3.

⁷² Commission answer [SP\(2018\)292](#) to EP resolution P8_TA(2018)0056 on the situation of fundamental rights in the EU in 2016.

⁷³ [COM\(2019\)186](#); see also Commission [press release](#) of 16 April 2019, Commission launches debate on more efficient decision-making in EU social policy.

⁷⁴ Article 48(7) TEU provides a general passerelle clause, and Article 153(2) TFEU, last subparagraph, contains a specific passerelle clause for the area of social policy.

⁷⁵ Ursula von der Leyen, [A Union that strives for more](#): My agenda for Europe; political guidelines for the next European Commission 2019-2024, pp. 11-12.

⁷⁶ COM(2020) 690, [Annex 1-4](#).

⁷⁷ CRPD Committee, Concluding observations EU, 2015, para. 19.

⁷⁸ e.g. EESC Opinion, Shaping the EU agenda for disability rights 2020-2030, 2019, point 4.1.2.

⁷⁹ [Joint NGO Statement](#) on the 10th Anniversary of the Horizontal Directive: Ten years on and nothing to show for it, July 2018.

⁸⁰ FRA, [Fundamental rights report 2020](#), p. 35.

1.5.3. Inconsistencies between the EED and the CRPD addressed in the proposal for a horizontal directive

It is important to mention that the 2008 proposal for a horizontal equal treatment directive addressed some of the inconsistencies between the EED and the CRPD (discussed in Chapter 1.4.) Once adopted, the horizontal directive would be more in compliance with the CRPD than the (older) EED. Concrete areas concerned are outlined below and are also illustrated in a table.

While the proposal on the horizontal directive leaves **disability undefined**, it adds – under the influence of the CRPD – the **denial of reasonable accommodation** as a fifth recognised form of discrimination. In a later compromise version of the proposal (dating from 2018, and never adopted to date), a sixth form of discrimination was inserted, namely 'direct discrimination and harassment **by association**'.⁸¹ This later version includes an additional provision regarding discrimination based on assumptions about a person's belief, disability, age or sexual orientation.

With regard to whether **burdens** relating to the provision of reasonable accommodation are disproportionate, the proposal makes reference to the principles established in both the EED and the CRPD and provides further guidance in the preamble and explanatory memorandum, specifying that the situation of small and medium sized enterprises needs to be taken into account.

As in the EED, **multiple discrimination** is addressed in a recital, but not in the body of the directive. The explanatory memorandum to the 2008 proposal reports that the need to tackle multiple discrimination was expressed in the stakeholder consultation, but that the Commission found this would go beyond the scope of the directive, though leaving Member States the discretion to act ('nothing prevents Member States taking action in these areas').

However, the compromise text from 2018 includes major amendments with regard to multiple discrimination, arguing that 'multiple discrimination should be recognised in order to reflect the complex reality of discrimination cases, as well as to increase the protection of the victims thereof. Consequently, multiple discrimination is added as a fifth ground of discrimination in Article 1 ('combating discrimination on the grounds of religion or belief, disability, age, or sexual orientation, or on multiple grounds').

Furthermore, the 2008 proposal places a requirement on Member States to designate an **equality body**. The draft provision replicates the provisions of other equality directives (2000/43/EC, 2002/73/EC and 2004/113/EC), and thus sets out minimum competences.

Finally, with regard to **data collection**, the 2008 proposal does not add any requirements. However, the 2018 compromise version inserts a provision on the mandatory collection of equality data: 'Member States shall promote the collection of data on equal treatment and discrimination. Data shall be collected in accordance with national legislation and practice and in accordance with the applicable Union law [...]' The preamble provides detailed guidance on data collection, citing monitoring and evaluating the effectiveness of the measures as the main aim for data collection. Data may include 'baseline data, such as demographic and socio-economic data, data on material and experienced inequalities, data which allows for the assessment of current policies or data based on human rights indicators'.

⁸¹ Version of 14 February 2018, Council document [6073/18](#).

Table 2 – Differences between the EED and the CRPD taken up in the horizontal directive

Subject	EED	Draft horizontal directive COM(2008) 426
Definition of disability	No definition provided	No changes
Forms of discrimination covered	Four forms: - direct discrimination - indirect discrimination - harassment - instructions to discriminate	<u>2008 proposal</u> Fifth form added: denial of reasonable accommodation
		<u>2018 compromise version</u> Sixth form added: direct discrimination and harassment by association
Personal scope	EED implicitly covers: - discrimination by association (clarified by ECJ); - persons with assumed disability (recognised by the European Commission)	<u>2018 compromise version</u> adds: - discrimination by association - discrimination based on assumption and perceived discrimination
Reasonable accommodation	Duty to provide reasonable accommodation is an obligation	<u>2008 proposal</u> Denial of reasonable accommodation counts as discrimination Assessment of undue burdens to follow principles established in EED and CRPD Some guidance provided on disproportionality burden test
Positive action	Positive action measures generally permitted	No changes
Multiple discrimination	Recognition of women as victims of multiple discrimination (in recitals)	<u>2008 proposal</u> : no changes <u>2018 compromise version</u> adds multiple discrimination as fifth ground of discrimination in Article 1 ('to reflect complex reality of discrimination cases')
Equality bodies	No specific provision in EED	<u>2008 proposal</u> : provision inserted in analogy to other EU equality directives
Data collection	No specific provision in EED	<u>2018 compromise version</u> : data collection requirements inserted for equal treatment and discrimination

2. Implementation and application of the directive

Key findings

The transposition of the Employment Equality Directive proved challenging in the early years, with **infringement procedures** opened against nearly all Member States; the latest case closed in 2015. Six cases were referred to the European Court of Justice. All EU Member States have now successfully transposed the provisions of the Employment Equality Directive into their national legislation.

The directive has never been **evaluated** by the European Commission. **Reports on its application** were issued in 2008 and 2014, with a third one set to follow in 2021. Thanks to academic networks of disability experts funded by the European Commission, certain aspects of the directive are well researched. The European Parliament has examined the directive's application twice, in 2008 and in 2016 through dedicated reports. Parliament ensured scrutiny also by means of topically related resolutions (notably on the CRPD and the European disability strategy) and numerous written and oral questions (170 disability-related questions alone since 2016), directed predominantly to the Commission. Moreover, evidence regarding the implementation and functioning of the EED and the intertwined CRPD is available from disability organisations and other stakeholders.

ECJ case law has helped to interpret and clarify certain aspects in the scope and application of the directive, mostly in response to requests for a preliminary ruling lodged by national courts. Importantly, the ECJ has reaffirmed the CRPD's status in the legal order of the EU and contributed to the definition of disability in light of the CRPD, thereby embracing a social approach to disability. Moreover, the Court has further developed equality law by means of a purposeful interpretation of specific concepts in the EED, such as discrimination by association (C-303/06 *Coleman*).

To date, 12 cases concerning the interpretation of the EED with regard to discrimination based on disability have been brought before the Court of Justice (two of which are still pending). So far the Court has dealt with direct and indirect discrimination, harassment, reasonable accommodation, multiple discrimination and also recently with a positive action measure, while the interpretation of instruction to discriminate and victimisation, for instance, have yet to be subject to court proceedings.

Although remedies for discrimination in individual cases are available only under national law and can be claimed only through national judicial procedures, the public may also turn to the European Commission and the European Parliament if they suspect flaws in the application of EU law. A number of the **complaints** lodged with the Commission and **petitions** submitted to the European Parliament concern disability rights. Even if complaints and petitions reveal a breach of EU law in rare cases only, they nonetheless provide a flavour of public perception regarding disability-based discrimination.

Finally, dedicated **Eurobarometer** surveys conducted at regular intervals monitor public attitude over time with regard to certain aspects of EU equality law, including the disability-employment nexus. These questions examine the perception of how widespread discrimination on the basis of disability is both generally and specifically in recruitment practices; whether citizens are aware of victims' rights; and whether people would feel at ease working with a person who has a disability. Here, slightly encouraging trends can be observed over the years across all categories.

2.1. The transposition of Directive 2000/78/EC

2.1.1. Introduction

Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation entered into force on 2 December 2000. Member States had three years to transpose the directive into national law.⁸² An extra time period of up to three years was granted for aligning age and disability-related provisions, an option Denmark, France and the UK made use of with regard to disability.⁸³ This extended transposition deadline ended on 2 December 2006.

When the Employment Equality Directive was adopted, Member States were already under an obligation to transpose and implement the Racial Equality Directive (2000/43/EC), in force since June 2000. Therefore, some Member States chose to adopt one equality act covering all grounds of discrimination. Other Member States enacted different equality acts for different grounds of discrimination, while in a few countries, provisions of the Employment Equality Directive are scattered across labour law, civil law, administrative law and criminal law.⁸⁴

Prior to 2000, the anti-discrimination legislation of most Member States was largely limited to gender equality; only few countries already had legislation in place that also prohibited discrimination on other grounds. The countries concerned needed to review and amend their existing legislation in order to align it with the standards required by the EED. With specific regard to disability, it appears that prior to Directive 2000/78/EC, only three Member States had enacted dedicated anti-discrimination legislation, namely the UK, Ireland and Sweden.⁸⁵

As Directive 2000/78/EC lays down minimum requirements, the protection afforded in national anti-discrimination law can go beyond the scope of the EU directive, and does so in many jurisdictions. In particular, protection against discrimination on the basis of age, disability, religion or belief and sexual orientation is in many countries broader, extending beyond the field of employment.⁸⁶

2.1.2. Infringement cases

All EU Member States have now successfully transposed the Employment Equality Directive into their national legislation. Nevertheless, initially, Member States had difficulties with the timely and correct transposition of the directive, as is evident from the high number of infringement procedures the Commission opened. These concerned virtually all EU-25 Member States (hence not Romania, Bulgaria and Croatia).⁸⁷ The Commission database of infringement decisions documents

⁸² The transposition deadline of 2 December 2003 applied to the EU-15. With a view to enlargement, the EU-10 countries had to transpose the directive by 1 May 2004; Bulgaria and Romania by 1 January 2007, and Croatia by 1 July 2013 (i.e. their respective accession dates).

⁸³ European Commission, Implementation of the age and disability discrimination provisions of Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, [SEC\(2005\)1176](#), p. 2.

⁸⁴ A first overview of transposition measures was provided in [SEC\(2008\)524](#).

⁸⁵ D. Ferri and A. Lawson, [Reasonable accommodation for disabled people in employment](#): A legal analysis of the situation in EU Member States, Iceland, Liechtenstein and Norway, European Network of Legal Experts in Gender Equality and Non-Discrimination, European Commission, 2016, p. 37.

⁸⁶ European Network of Legal Experts in Gender Equality and Non-Discrimination, [A comparative analysis of non-discrimination law in Europe 2019](#), European Commission, 2020, pp. 11 ff. Further grounds of discrimination protected in national legislation include e.g. birth, nationality, language, pregnancy and political opinion.

⁸⁷ Information extracted from the Commission's annual reports on monitoring the application of Community law (including annexes) and the Commission [database](#) on infringement decisions. It is to be noted that some of the

at least 32 infringement cases of non-compliance with Directive 2000/78/EC, initiated between 2003 and 2013. While most cases were resolved at an early stage of the infringement procedure, i.e. in the pre-litigation phase, six were brought before the European Court of Justice. Referrals to the Court concerned the following Member States:

- **Germany** and **Luxembourg** for failure to transpose the directive;⁸⁸
- **Austria** for failure to transpose the disability-related provisions of the directive at federal level and for failure to transpose the entire directive at regional level;⁸⁹
- **Italy** for failure to transpose the provisions regarding the duty of employers to provide reasonable accommodation for persons with disabilities concerning all aspects of employment;⁹⁰ and
- **Hungary** for significantly lowering the mandatory retirement age for judges, prosecutors and public notaries in a discriminatory manner.⁹¹

In the five cases cited the Court ruled that Member States had breached EU law. Proceedings were also opened against **Finland**,⁹² but withdrawn as soon as Finland notified its compliance. The last EU-15 Member State to transpose the directive was Luxembourg, adopting its national equality legislation in December 2006.

Similarly, some Member States of the EU-10 enlargement round struggled somewhat with the transposition of the directive. For instance, Slovenia had transposed the EU anti-discrimination directives in 2004, with the adoption of the 'Implementing the Principle of Equal Treatment Act'. But the European Commission found Slovenia's transposition inadequate, in part because of an ineffective protection system, and consequently launched infringement proceedings. Eventually, Slovenia replaced the faulty law with a new act (the 'Protection from Discrimination Act'), which entered into force in May 2016.⁹³

The number of infringement procedures decreased substantially after 2010, as Member States gradually brought their legislation in line with the directive. According to the European Commission's infringement database, the most recent case to date was a procedure against Czechia regarding non-conformity of transposition with regard to the protection of persons with disabilities in employment; that case was closed in 2015. At present, there are no pending infringement procedures concerning Directive 2000/78/EC, but this does not preclude future cases, as the Commission is still monitoring the application of the directive in the Member States.

2.1.3. Issues encountered

Transposition issues encountered during the early years of implementation were mainly due to 'the novelty' of Directive 2000/78/EC and 'the complexity of transposing highly complex notions', as the

infringement procedures cited concern the entire directive, while others relate to specific aspects. The database does not allow the results to be filtered for disability-related cases.

⁸⁸ ECJ Case C-43/05 *Commission v Germany*, judgment issued on 23 February 2006 and C-70/05 *Commission v Luxembourg*, judgment issued on 20 October 2005.

⁸⁹ ECJ Case C-133/05 *Commission v Austria*, judgment issued on 23 February 2006.

⁹⁰ ECJ Case C-312/11 *Commission v Italy*, judgment issued on 4 July 2013. Italy amended the act in question the same year.

⁹¹ ECJ Case C-286/12 *Commission v Hungary*, judgment issued on 6 November 2012.

⁹² ECJ Case C-99/05 *Commission v Finland*.

⁹³ Case described in [European equality law review, 2016/2](#), pp. 132-133: 'Slovenia: new legislation transposing Directives 2000/78/EC and 2000/43/EC'. It is fairly possible that, following Slovenia's ratification of the CRPD in 2008, the incorporation of the convention into national legislation played also a role in the passing of new legislation; this is not further explored in the source cited.

Commission put it.⁹⁴ They concerned all grounds of discrimination (age, disability, religion and belief, and sexual orientation) as well as certain horizontal concepts such as direct/indirect discrimination, harassment, victimisation, shifting the burden of proof, and sanctions.

With specific regard to discrimination on grounds of disability, in some Member States the scope of protection was too narrow, granting protection only to employees or people with severe disabilities, while leaving out other groups such as civil servants and the self-employed. Furthermore, a few Member States had difficulties transposing the concept of reasonable accommodation. In some cases, the accommodation duty was entirely lacking in the transposed legislation, while in other cases the concept was transposed in too restrictive a fashion, e.g. taking into account only persons with severe disabilities.⁹⁵ Problems in the application of the reasonable accommodation duty are explored in greater detail in Chapter 3.1.

Several infringement procedures concerned faulty definitions of disability in national law, a definition that is not provided in the directive itself. Therefore, unsurprisingly, soon after the directive's entry into force, a national court referred the question of whether the protection afforded under the directive extended to a person who was ill to the European Court of Justice for a preliminary ruling. The Court's judgment in this case – C-13/05 *Chacón Navas* – was the first in a series of rulings that contributed substantially to the interpretation of certain provisions of Directive 2000/78/EC. An analysis of the evolving case law in the area of discrimination on grounds of disability is presented in Chapter 2.3.

2.2. Reports on the application of the directive

2.2.1. Commission reports

The review clause embedded in the directive (Article 19 EED) required Member States to inform the Commission by 2 December 2005 about the implementation and application of the directive. Subsequent reports by national governments are due every five years. Based on Member States' reporting, the Commission draws up periodic reports to Parliament and Council, thereby duly taking into account the views of the social partners and relevant NGOs.⁹⁶ To date, the Commission has issued two such reports, one in 2008 and a further one in 2014.⁹⁷ A third report on the application of the Employment Equality Directive is currently in preparation, set to be published in the first half of 2021. External studies and reports aiming to inform this third Commission report are starting to be published (e.g. by Eurofound).

The 2008 report

The focus of the fairly succinct 2008 report was on the transposition of the directive by the Member States and the main issues that had arisen in that process. This report stressed that because of the minimum harmonisation nature of the EED and its material scope, limited to the fields of employment and occupation, a number of Member States had exceeded the level of protection required under the EED. Indeed, some countries had opted for a 'single equality approach', and

⁹⁴ [SEC\(2009\) 1684/2](#), p. 72.

⁹⁵ See Commission press release [MEMO/08/68](#) of 31 January 2008 relating to a number of infringement procedures and [COM\(2008\) 225 final/2](#), p. 8.

⁹⁶ Council Directive 2000/78/EC, Article 19.

⁹⁷ European Commission, The application of Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, [COM\(2008\) 225 final/2](#).

aligned the level of protection under the EED with that of the Racial Equality Directive (2000/43/EC), thus going well beyond the requirements of the EED.

In a parallel move, some Member States extended the remit of the equality bodies they had established in respect of the RED, to the discrimination grounds set out by the EED. The Commission commented favourably on this, recognising the key role equality bodies played in the protection of victims. A table annexed to the 2008 Commission report provided a snapshot of national legislation transposing the directive. In its outlook, the Commission concluded that the major challenge was not the transposition, but rather the implementation and enforcement, conceding that 'legislation alone is not enough to prevent discrimination and to promote equality'.⁹⁸ A core issue the report addressed was the low awareness of anti-discrimination law in the early years. In this regard, a 2007 Eurobarometer survey revealed that only half of the respondents (51 %) knew that a national law existed to prohibit disability-based discrimination in employment.⁹⁹

The 2014 report

The Commission's second implementation report,¹⁰⁰ published in January 2014, took a different approach. It covered both anti-discrimination directives adopted in 2000 (the EED and the RED) in one joint report. This was justified by the similarity of both directives regarding their regulatory approach and scope, and also by the fact that most Member States had transposed both directives into one single act. For the report, the Commission had complemented the information received from governments by consulting national equality bodies, the EU Fundamental Rights Agency, social partners and civil society organisations, as required by the directives.

The report identified a range of issues, including a lack of awareness of EU equality law and the rights of individuals; a lack of equality data; a low level of reporting of discrimination cases; poor access to effective and swift justice; and inadequate sanctions and remedies. With regard to the latter, the Commission observed that 'national courts appear to have a tendency to apply the lower scale of sanctions'. The Commission concluded 'that legislation is not enough to ensure full equality', therefore it must be combined with appropriate policy action.

The annex to the report comprised three elements:

- guidelines for victims of discrimination;
- a summary of ECJ case law, relating mainly to age discrimination;
- and, directly linked to this, a comparative overview of national provisions prohibiting discrimination on grounds of age.

Other means of Commission monitoring

The Commission has never yet carried out an in-depth evaluation to assess whether the EED has attained its objectives and whether it has remained fit for purpose. However, it has set up structures to monitor and analyse the application of equality rights in the Member States closely, in particular through expert groups (the high-level group on disability; and the high-level group on non-discrimination, equality and diversity, including its subgroup on equality data).

⁹⁸ COM(2008) 225/2, p. 9.

⁹⁹ Eurobarometer 263, Discrimination in the European Union, 2007, pp. 30-31. The question asked was: In your opinion, is there in your country a law which prohibits discrimination based on disability when hiring new employees?

¹⁰⁰ European Commission, Joint Report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('Racial Equality Directive') and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive'), [COM\(2014\) 2](#).

In addition, the Commission secures independent expertise through expert networks, in particular the 'European Network of Legal Experts in the Non-discrimination Field' and the 'Academic Network of European Disability Experts' (ANED), which advise the Commission on all aspects of anti-discrimination and disability law. The networks comprise country experts from across the EU (and even beyond) as well as renowned academics, and produce, upon the Commission's request, a wide range of detailed studies, statistical data, reports and periodic law reviews, often from a comparative perspective. The wealth of publications compensates somewhat for the fact that the Commission has to date not undertaken a fully-fledged evaluation of the EED. The present study draws partially on these expert publications.¹⁰¹

2.2.2. Parliament's scrutiny of the application of the directive

CRPD network, disability intergroup and monitoring framework

The European Parliament has shown a high degree of engagement with regard to disability rights, addressing virtually every aspect of it, including employment. At the political level, alongside the competent standing committees, the advancement and mainstreaming of disability issues across all policy areas is actively pursued by the CRPD network (set up in 2015) and the informal disability intergroup (in existence since 1980).¹⁰²

In addition, the European Parliament is a member of the EU's independent CRPD monitoring framework¹⁰³ and assumes therefore a dedicated function in the implementation of the CRPD. This formal framework was set up under Article 33 of the Convention to promote, protect and monitor the implementation of the convention for disability-related matters within EU competence, encompassing EU equality legislation and policy on the one hand, and the EU's public administration on the other. Three European Parliament committees with key competence for disability issues are involved in the framework: the Committee on Employment and Social Affairs (EMPL) in the lead, the Committee on Civil Liberties, Justice and Home Affairs (LIBE) as associated committee, and PETI in view of its specific role in petitions.

European Parliament resolutions

In the course of the past two decades, Parliament has drawn up numerous reports – both legislative and own-initiative – relating to disability in the work context, and, in addition, endorsed several topical ad-hoc resolutions to wind up plenary debates.¹⁰⁴ This long list of resolutions is presented in Annex 4. Two of the aforementioned resolutions, adopted in 2008 and 2016 respectively, specifically examined the progress achieved in the implementation of the Employment Equality Directive and therefore deserve closer attention.

The 2008 resolution

In the 2008 resolution,¹⁰⁵ Parliament recognised employment as 'one of the basic requirements of social inclusion' and highlighted in this context the 'unacceptably high' level of unemployment of persons with disabilities. It expressed particular concern about the 'even higher' unemployment

¹⁰¹ These expert publications are available in full text in the EU's publications database <https://op.europa.eu/>.

¹⁰² Anglmayer, EU implementation of the CRPD, 2016, pp. 13-14.

¹⁰³ The other members of the EU monitoring framework are the European Ombudsman, the EU Agency for Fundamental Rights and the European Disability Forum (EDF), the latter representing civil society. The monitoring framework also contributes to the review process with the CRPD Committee.

¹⁰⁴ European Parliament, Rules of procedure, Rules [132](#) and [136](#).

¹⁰⁵ European Parliament resolution [P6_TA_\(2008\)0212](#) on progress made in equal opportunities and non-discrimination in the EU (based on the report by Liz Lynne, ALDE, UK).

among persons suffering from multiple discrimination, early evidence of sensibility towards the issue of multiple discrimination. Furthermore, Parliament called for improved awareness regarding the rights of victims of discrimination and the need to ensure they have access to remedies. Finally, it invited the Commission and the Council to agree on a broad definition of disability to prevent 'some categories of disabled people' from being excluded from the legal protection of Directive 2000/78/EC.

The 2016 resolution

Parliament's 2016 resolution on the EED implementation report¹⁰⁶ took a fairly comprehensive approach, calling for adequate support throughout all phases of employment: recruitment, retention and career progression. Again, it emphasised that people with disabilities are often victims of multiple and intersectional discrimination.

Moreover, it recalled the supremacy of the CRPD. In this context, it encouraged Member States to overcome the medical definition of disability and instead interpret EU law in line with the CRPD, thereby referring to the first ECJ rulings that examine the concepts of disability and reasonable accommodation. The resolution noted that under the CRPD, denial of reasonable accommodation amounts to disability-based discrimination. Moreover, it reminded Member States to make use of the structural funds for workplace adjustments.

Reflecting on the direct relationship between employment and education, it called for improved education and training of persons with disabilities, with a view to increasing their participation in the open labour market and combating unemployment, poverty and social exclusion. The resolution then advocated 'inclusive approaches to the labour market that guarantee security and rights for people with disabilities and for people suffering from serious, chronic or incurable diseases'. In this context, it called on the Commission and the Member States 'to encourage smart working models' that would enable telework for people with disabilities.

Furthermore, the resolution encouraged Member States to consider 'the benefits of introducing positive action measures' and to implement a framework concerning measures that facilitate access to quality employment. It advocated fines for failure to comply with anti-discrimination legislation and use of these fines to finance inclusion in the open labour market and related actions. Finally, Parliament took the view that the use of socially responsible public procurement could foster the integration of people with disabilities into the labour market.

Parliamentary questions

In the exercise of its Treaty-based scrutiny prerogatives, Parliament also has the possibility to put written and oral questions to the Commission and the Council, and it has made ample use of this scrutiny tool. MEPs frequently pose written questions to the Commission on behalf (or in the interest) of their constituents.

In the time frame between January 2016 and July 2020, 170 questions have been identified in Parliament's database that address disability rights in general or specific issues regarding employment.¹⁰⁷

¹⁰⁶ European Parliament resolution [P8_TA\(2016\)0360](#) on the application of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive'), based on the report tabled by Renate Weber, ALDE, Romania.

¹⁰⁷ A keyword search identified 47 relevant questions in 2016, 51 in 2017, 26 in 2018, 21 in 2019 and 25 in the first half of 2020.

In their parliamentary questions, MEPs stress that people with disabilities have 'inalienable rights to full participation in society, equal treatment and a dignified existence'¹⁰⁸ and urge the Commission to take steps towards improving their levels of social inclusion. In this sense, the backbone for the protection of diversely-abled people are the EED, the CRPD and the EU disability strategy. The CRPD is the subject of numerous MEP questions, relating in particular to the convention's full implementation at the level of the EU and Member States and the ratification of the Optional Protocol. In a similar vein, MEPs have repeatedly asked the Commission about the 2010-2020 European disability strategy, addressing issues of implementation and compliance by Member States and, since December 2019, increasingly also about the future disability strategy (post 2020).¹⁰⁹ A leitmotiv in Parliament's questions is the request to mainstream disability policies across all European policies.

Employment of persons with disabilities and safeguarding their rights in this respect has received considerable attention, with 43 related questions posed in the reporting period. A good number of questions broach the need to generally increase efforts to promote inclusion in the workforce, for instance in relation to people with specific impairments (e.g. mental disabilities, dyslexia, chronic illnesses and rare diseases, hearing impairments, deafblind and autism). MEPs urge the Commission to take action to increase and/or modify incentives for companies to hire people with disabilities and to protect the jobs of those already in employment. MEPs also recognise the potential of entrepreneurship and self-employment as a means for people with disabilities to become economically independent, and thus ask the Commission to take action in promoting entrepreneurial skills and to intervene to remove discriminations in access to finance. Furthermore, MEP questions have touched upon the need to ensure quality employment, also in connection with the European Pillar of Social Rights and the topic of an EU-defined minimum wage.

In the context of the current pandemic, MEPs are pushing for Commission action to protect the jobs of people with disabilities, thus preventing the economic crisis from having 'a negative impact on the employment situation of persons with disabilities'¹¹⁰ and to put forward an updated EU framework for teleworking, as this has potential for 'the integration of disabled persons in the job market'.¹¹¹ Attention has also been paid to areas adjacent to employment, such as education, accessibility and access to justice, social services, transport and digitalisation.

Of particular concern to MEPs is also the use of EU funds (the ESI funds). MEPs have called for effective monitoring to prevent abuse, notably in the context of deinstitutionalisation. With regard to EU funding, MEPs have proposed the creation of a dedicated 'European accessibility fund'.¹¹² Finally, a further recurring issue, addressed in a dozen or so questions since 2016, is the lack of progress in the extension of the disability framework beyond the work context by means of the horizontal equal treatment directive, which 'would have plugged the gaps and harmonised protection against discrimination across the EU'.¹¹³

¹⁰⁸ [E-001731/16](#).

¹⁰⁹ [E-004530/2019](#), [E-004530/2019](#), [O-000046/2019](#), [E-000017/2020](#).

¹¹⁰ [E-002774/2020](#).

¹¹¹ [E-004125/2020](#).

¹¹² [E-001893/16](#) and [E-001684/17](#).

¹¹³ [O-000071/2018](#).

2.2.3. Other topical reports

Fundamental Rights Agency

FRA's annual fundamental rights report systematically traces progress achieved in the implementation of both the EED and the CRPD. Each annual edition includes dedicated chapters assessing the most important developments at the EU and national level.

With regard to the EED, by way of example, the 2020 report¹¹⁴ features the effectiveness and independence of equality bodies, the collection and use of equality data and the latest Special Eurobarometer survey on discrimination in the EU. Three FRA opinions recommend that

- the EU disability strategy post-2020 should address all the recommendations the CRPD Committee made in its concluding observations;
- the disbursement of the ESI funds should fully respect the CRPD and the EU Charter of Fundamental Rights, notably with regard to support independent living; and
- the optional protocol to the CRPD should be ratified by the EU and the six Member States that have not yet done so.

European Economic and Social Committee

Over the years, the EESC has adopted a number of opinions relating to the disability-employment nexus, both on its own initiative and upon request. The EESC, 'firmly convinced of the advantages of funding employment rather than unemployment benefit, and of the value of encouraging [persons with disabilities] to want to obtain employment, employers to recruit them, and self-employment among [persons with disabilities]',¹¹⁵ promotes employment of persons with disabilities. Like Parliament, it places great emphasis on the role adequate education plays for the inclusion of persons with disabilities in the labour market.

The EESC called for the investment of EU funds in training, employment and job mobility for persons with disabilities, 'including support for social entrepreneurship and social economy enterprises, promoting all types of inclusive employment in line with the Convention'.¹¹⁶ It has repeatedly stressed the supporting role of social partners and disability organisations in ensuring the rights of workers and employees with disabilities. Furthermore, the EESC is a proponent of a 'disability rights guarantee' as a tool to help persons with disabilities enter the labour market, to be modelled on the EU Youth Guarantee – an idea the European Parliament echoed in its resolution of June 2020.¹¹⁷

Moreover, against the background of a high inactivity rate of persons with disabilities and in response to a Commission report,¹¹⁸ the EESC has drawn up an opinion on opportunities to get economically inactive people into employment. This report identifies as one of the key challenges the 'need to facilitate, support and promote, with specific and effective measures, the integration of people with disabilities who require more specific employment plans and support schemes'.¹¹⁹

¹¹⁴ FRA, [Fundamental rights report 2020](#).

¹¹⁵ EESC opinion, People with disabilities: employment and accessibility by stages for people with disabilities in the EU, Post-2010 Lisbon Strategy, 17 March 2010, [SOC/363](#), (Rapporteur: Miguel Ángel Cabra de Luna), points 4.18 and 4.19.

¹¹⁶ EESC opinion, Shaping the EU agenda for disability rights 2020-2030, 2019, point 4.4.3.2. ff.

¹¹⁷ European Parliament resolution [P9_TA\(2020\)0156](#) on the European disability strategy post 2020, 18 June 2020, point 29.

¹¹⁸ SWD(2017) 257.

¹¹⁹ EESC opinion, Employment opportunities for economically inactive people; (Rapporteur: José Custódio Leirião), 20 March 2019, [SOC/575](#), point 4.4.

European Disability Forum (EDF)

In 2010, the EDF, the umbrella NGO representing national and European disability organisations, examined the application of the Employment Equality Directive, thereby adding the perspective of those most concerned, namely persons with disabilities and their representative organisations.¹²⁰ The report was based on a survey among member organisations in the Member States.

One of the report's main concerns touched upon the narrow scope of the directive. It was argued that discrimination in employment is typically intertwined with other areas – such as access to education, transport, communication technologies and personal assistance –, however, those areas are not afforded protection at EU level.

Disability organisations found major shortcomings in awareness of disability rights and noted a lack of civil dialogue. The report was rather critical towards the provision of reasonable accommodation in practice. Furthermore, it saw the effectiveness of protection undermined by the difficulties victims of discrimination face in seeking redress, due to:

- financial, procedural and informational barriers;
- inadequate procedures for victim support and representation; and
- fear of victimisation.

2.3. The case-law of the European Court of Justice

In response to requests for preliminary ruling lodged by national courts, the European Court of Justice has helped to interpret and clarify the scope and application of the directive in the light of the CRPD. In this way, as has been argued in the academic literature, the Court has further developed equality law through a 'purposive and expansive interpretation'¹²¹ of specific concepts in the Employment Equality Directive. This chapter summarises the ECJ rulings relating to discrimination on grounds of disability in the work environment, 10 in total. Two further cases are currently pending before the Court (C-16/19 and C-824/19).

- C-13/05 Chacón Navas v Eurest Colectividades SA
- joined cases C-335/11 and C-337/11 *HK Danmark* (also known as *Ring and Skouboe Werge*)
- C 363/12 *Z v A Government department*
- C-303/06 *Coleman v Attridge Law and Steve Law*
- C-354/13 *Kaltoft* (also known as *FOA*)
- C-152/11 *Odar v Baxter Deutschland*
- C 312/17 *Bedi v Bundesrepublik Deutschland*
- C-406/15 *Milkova*
- C-270/16 *Ruiz Conejero*
- C-397/18 *DW v Nobel Plastiques Ibérica SA*
- C-824/19 *TC, UB v Komisija za zashtita ot diskriminatsia, VA*
- C-16/19 *VL v Szpital Kliniczny im. dra J. Babińskiego*

¹²⁰ European Disability Forum, [Ten years on: practical impact of the Employment Equality Directive on persons with disabilities in employment](#), 2010.

¹²¹ E. Howard, 'EU anti-discrimination law: Has the CJEU stopped moving forward?', *International Journal of Discrimination and the Law*, Vol. 18(2-3), 2018, p. 61.

The Court has so far dealt with cases of direct and indirect discrimination, harassment, reasonable accommodation, multiple discrimination and also, recently, with a positive action measure, whereas the interpretation for instance of an instruction to discriminate or victimisation of persons with disabilities has not yet been the subject of court proceedings.

2.3.1. C-13/05 *Chacón Navas*: a first attempt to define disability

As stated above, Directive 2000/78/EC does not define the concept of 'disability', but left it up to the Court to adjudicate as to what constitutes a disability within the meaning of the directive. In its ruling of 11 July 2006 on C-13/05 *Chacón Navas*, thus several years before the CRPD entered into force for the EU, the ECJ provided a first definition of disability. The court gave a restrictive, medical interpretation of disability, explicitly distinguishing disability from sickness and thus interpreting the directive's scope of protection very narrowly. It argued that the 'concept of "disability" must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life'.

The plaintiff, an employee of a catering company who was dismissed by her employer following longer periods of sickness, invoked the disability provisions of Directive 2000/78/EC (as transposed into Spanish law) to seek reinstatement. The ECJ reasoned 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.' As sickness as such is not covered by the directive, the Court rejected the applicability of the directive in this case.

The Court's narrow medical interpretation of disability in the judgment *Chacón Navas* was heavily criticised by disability organisations and academics alike.¹²² Indeed, the ECJ had defined an individual's impairment as the hindering factor for participation in professional life, rather than understanding disability as the result of a hindering environment, as is commonly accepted by now.

2.3.2. *HK Danmark*: revisiting disability

A few years later, the ECJ revisited its interpretation of disability in the landmark ruling in *HK Danmark* (joined cases C-335/11 *Ring* and C-337/11 *Skouboe Werge*).¹²³ This was the first time the Court interpreted disability in light of the CRPD, following the EU's conclusion of the convention in 2010. Compared to *Chacón Navas*, the ECJ embraced a broader definition of disability, which includes long-term work incapacity (one plaintiff suffered from constant lumbar pain, the other from whiplash injuries due to an accident). In its ruling, the Court defined disability as a long-time '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'. Thus, the Court interpreted disability in a manner that may include long-term limitations caused by an illness, irrespective of whether they are curable or not.

The ruling in *HK Danmark* is remarkable for other reasons too. First, the ECJ used the opportunity to clarify the status of the CRPD, reasoning that international agreements are an integral part of EU law and as such binding. The Court affirmed the primacy of international agreements concluded by the

¹²² e.g. European Disability Forum, [EDF analysis of the first decision of the European Court of Justice on the disability provisions of the Framework Employment Directive](#), Case C-13/05 Chacon Navas v Eures Colectividades SA, 2006. For the academic discussion, see e.g. L. Waddington, 'Saying all the right things and still getting it wrong: the Court of Justice's definition of disability and non-discrimination law', *Maastricht Journal of European and Comparative Law*, Vol. 22(4), 2015, pp. 576-591.

¹²³ ECJ joined cases C-335/11 and C-337/11 *HK Danmark* (*Ring* and *Skouboe Werge*).

EU over instruments of secondary law in accordance with Article 216(2) TFEU, holding that Directive 2000/78/EC 'must, as far as possible, be interpreted in a manner consistent' with the convention.

Second, the ECJ offered some guidance on the concept of reasonable accommodation in the light of the convention. In this context, the Court noted that also organisational adjustments, such as a reduction in working hours, would fall under reasonable accommodation. It made it clear that accommodation measures are 'the consequence, not the constituent element, of the concept of disability'. Third and finally, *HK Danmark* was the first case where the Court explored the concept of indirect discrimination in the context of disability.

The ECJ's ruling in *HK Danmark* has been widely discussed in legal literature. It is considered to be a 'particularly rich and important judgment for understanding how the Employment Equality Directive addresses disability discrimination, and, more generally, the relevance of the CRPD for the interpretation of EU law in the context of disability'.¹²⁴

Subsequently, the Danish court that had referred the case to the ECJ for preliminary ruling concluded that, in the one case, the physical adaptation of the workplace (adjustable desk) and in the second case, part-time employment corresponded to reasonable accommodation. In one of the cases the ruling was later overturned by the Danish Supreme Court, acquitting the employer. The Supreme Court held that the employer had not been informed about the disability (caused by an illness), which would however be a precondition for the employer's duty to provide reasonable accommodation.¹²⁵

2.3.3. C-363/12 *Z v A Government department*: medical limitations as disability?

In case C-363/12 *Z v A Government department* the Court further explored the boundaries of disability. Recalling *HK Danmark*, the ECJ held that a medical limitation may constitute a disability within the meaning of Directive 2000/78/EC only if it hinders a person's 'full and effective participation in professional life on an equal basis with other workers'.

In the case at stake, a woman with a medical condition preventing her from becoming pregnant had a child from a surrogate mother. When the woman requested paid leave in analogy with maternity or adoption leave, this was refused on the grounds that she had neither been pregnant nor adopted the child. She challenged the decision, claiming discrimination on basis of disability. The ECJ concluded that the plaintiff's inability to give birth did not prevent her 'from having access to, participating in or advancing in employment' and that, therefore, her medical limitation did not constitute a disability within the meaning of Directive 2000/78/EC.

2.3.4. C-303/06 *Coleman*: coining the concept of discrimination by association

Landmark Case C-303/06 *Coleman* established the concept of 'discrimination by association' in EU equality law. The plaintiff, the mother and primary carer of a child with special needs, claimed to be harassed at work due to her son's disability. Moreover, she felt less favourably treated than her colleagues with regard to absences and flexibility in working hours. Despite the fact that it was not the employee herself, but her son who had a disability, the Court ruled in favour of the mother. It held that Directive 2000/78/EC was applicable in this case for protecting the mother against discrimination encountered on the ground of her child's disability.

¹²⁴ L. Waddington, '*HK Danmark (Ring and Skouboe Werge)*: Interpreting EU Equality Law in Light of the UN Convention on the Rights of Persons with Disabilities', *European Anti-Discrimination Law Review*, Vol.17, 2013, p. 13.

¹²⁵ A comparative analysis of non-discrimination law in Europe 2019, p.29.

In its line of argumentation, the Court recalled the directive's purpose, which is to combat all forms of discrimination in employment and occupation. The Court observed that the principles of equal treatment and non-discrimination within the meaning of Directive 2000/78/EC may be extended to associated persons (e.g. a primary carer). It argued that limiting the directive's application to people who are themselves disabled would 'deprive that directive of an important element of its effectiveness and to reduce the protection which it is intended to guarantee'.

In his opinion, Advocate General Miguel Poiares Maduro reasoned that the concept of discrimination by association is not restricted to disability, but applicable to all grounds of discrimination covered by the directive. The ECJ ruling in *Coleman* is generally deemed groundbreaking. In academic literature it has even been referred to as 'one of the most important decisions in European Community equality law'.¹²⁶

The *Coleman* ruling of 2008 had a direct influence on jurisprudence in the Member States. For example, a Flemish court case from 2013¹²⁷ dealt with an employee who was dismissed straight after he had informed his employer that his newborn child had a severe disability. With reference to the ECJ ruling in *Coleman*, the local court found the employer guilty of direct discrimination by association on the grounds of disability. This case is particularly interesting, because the discrimination was based on assumptions rather than facts: the dismissal was made under the assumption that the disabled child would negatively impact on the employee's dedication to work and would make him prone to absence. In its judgment, the court emphasised that the 'parents of children requiring specific care could not be discriminated on the basis of supposition and bias'.¹²⁸

2.3.5. C-354/13 *Kaltoft*: obesity as disability?

The ECJ Case C-354/13 *Kaltoft* related to a Danish childminder who was severely obese. He was made redundant, although the employer denied that the dismissal was related to the childminder's obesity. The national court sought to explore whether EU law prohibits discrimination on basis of obesity and whether obesity discrimination falls within the scope of disability discrimination under Directive 2000/78/EC.

The ECJ observed that no general prohibition of obesity discrimination can be derived from EU law. Building on its judgment *Chacón Navas* it stated that the discrimination grounds set out in Article 1 of Directive 2000/78/EC are exhaustive, since based on Article 19 TFEU as enabling provision, and can therefore not be expanded to other grounds. Nonetheless, the Court concluded, that even if obesity as such does not constitute a disability, Directive 2000/78/EC must be interpreted as meaning a worker's obesity might constitute a disability if it results in a limitation that meets the definition laid out in *HK Danmark*, i.e. if it hinders the person's full and effective participation in personal and professional life on an equal basis with other workers.

The opinion of Advocate General Niilo Jääskinen on the case at hand is particularly interesting as it explores the interplay between the EU Treaties and the EU Charter of Fundamental Rights (paragraphs 16-21). The Advocate General recalls disability being addressed in Articles 10 and 19

¹²⁶ T. Connor, 'Case C-303/06 *Coleman v Attridge Law* and *Steve Law* Judgment of the ECJ 17 July 2008: Discrimination by Association: A Step in the Right Direction', *Journal of Social Welfare and Family Law*, Vol. 32(1), 2010, p. 59.

¹²⁷ Leuven Employment Tribunal (*Arbeidsrechtbank*), 10 December 2013, AR 12/1064/1. For a summary of the case, see 'First conviction for discrimination by association in Belgium', *European Anti-Discrimination Law Review*, Issue 18, 2014, p. 49.

¹²⁸ E. Bribosia and I. Rorive, Report on measures to combat discrimination; Directives 2000/43/EC and 2000/78/EC; [country report 2014, Belgium](#), European Network of Legal Experts in the Non-discrimination Field, 2014, pp. 35-36.

TFEU as well as in the Charter of Fundamental Rights (Articles 21 and 26). However, while the TFEU provides for an exhaustive list of discrimination grounds – namely sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation –, the wording of Article 21 of the Charter is open-ended ('discrimination based on any grounds *such as...*'). It might therefore theoretically allow for expansion, to cover for instance obesity. However, any such expansion is precluded in EU law by Article 6(1) TEU, which stipulates that recourse to the Charter must not extend in any way EU competences. In this regard, the Advocate General argued, the Treaty provision sets out 'an outer-boundary of EU fundamental rights law'.¹²⁹

2.3.6. C-152/11 *Odar*: examining multiple and indirect discrimination

Landmark case C-152/11 *Odar* relates to multiple discrimination, namely age and disability. The claimant, a severely disabled employee in a management position, was put on his company's redundancy scheme, which was part of a collective agreement. The calculation method of the redundancy compensation was based on age, the length of service and the gross monthly salary; furthermore, it set out a decrease in compensation for workers close to retirement age. It appears from the case that under German national law, a lower retirement age applies to people with disabilities (60 instead of 65). For the calculation of Mr Odar's compensation entitlements, the company took the disability-related retirement age into account, with the effect that the amount of the compensation payment was substantially lower than it would have been under the standard compensation formula. Mr Odar brought an action against his employer to challenge the calculation, thereby claiming direct discrimination on grounds of age and indirect discrimination on grounds of disability.

In its judgment, the ECJ saw no unlawful age discrimination. Conversely, with regard to the alleged discrimination on grounds of disability, the Court argued that the calculation method had an 'excessive adverse effect on the legitimate interests of severely disabled workers' if it resulted in a compensation that is lower than the amount that would have been paid to a non-disabled worker. Therefore, the Court concluded that the different treatment applied in the calculation method of the occupational social security scheme indeed constituted an indirect discrimination. Such discrimination is incompatible with the purpose of Directive 2000/78/EC.

Noteworthy in this case is the Court's general reasoning: it acknowledged the higher risks of people with severe disabilities 'who generally face greater difficulties in finding new employment, as well as the fact that those risks tend to become exacerbated as they approach retirement age. Severely disabled people have specific needs stemming both from the protection their condition requires and from the need to anticipate possible worsening of their condition.'¹³⁰

2.3.7. C-312/17 *Bedi*: another case of indirect discrimination

Like *Odar*, Court case C-312/17 *Bedi* also relates to indirect discrimination in the area of social security. The claimant had lost his job and received a 'bridging allowance', which was meant to secure his subsistence until retirement. However, as Mr Bedi was recognised as having a severe disability, he qualified for an early retirement pension on grounds of his disability. His entitlement to the bridging allowance ended when the early retirement pension for persons with disabilities became applicable, with the effect that Mr Bedi's monthly income decreased considerably, because the pension was lower than the allowance.

¹²⁹ Opinion of Advocate General Jääskinen in ECJ Case C-354/13, para. 19.

¹³⁰ This argument was taken up in the ECJ's [press release](#) on the case in point, dated 6 December 2012.

Mr Bedi argued that not granting him continued pay of the bridging assistance would put him on a disadvantage compared with non-disabled workers and discriminate him on grounds of disability, as non-disabled workers could benefit much longer from the higher allowance. The Court reasoned that no direct discrimination had occurred, since any worker taking early retirement – whether disabled or not – would lose the entitlement to the bridging allowance. However, recalling its judgment in *Odar*, the Court concluded that also *Bedi* amounted to indirect discrimination, as the different treatment between persons with disabilities and those without led to an 'excessive adverse effect on the legitimate interests of severely disabled workers'. It concluded that the different treatment of persons with a disability 'cannot be justified' under Directive 2000/78/EC.

2.3.8. C-406/15 *Petya Milkova*: exploring the protection of civil servants against discrimination

Case C-406/15 *Milkova* explored the question of whether a specific protective provision that is granted to employees with disabilities under national law applies also to civil servants with disabilities, even if the national legal framework applicable to civil servants does not contain any similar provision.

The claimant was a Bulgarian civil servant with an intellectual disability who was made redundant by her employer, a government agency. She appealed against the dismissal, claiming that despite the difference in contract status she should have been granted the same protection an employee with a disability would have enjoyed. The national court asked the European Court of Justice to adjudicate on whether the CRPD, the EU Charter of Fundamental Rights and Directive 2000/78/EC should be interpreted as allowing a difference in treatment between civil servants with disabilities and employees with disabilities.

The ECJ noted that the protection afforded to employees with disabilities constituted a positive action measure, permitted under the Employment Equality Directive. However, as the Court went on, any positive action measures under national law are subject to compliance with the general principles of EU law, including the principle of equal treatment. The ECJ left it for the national court to determine whether this infringed the principle of equal treatment under national law. Eventually, the referring national court ruled in favour of the claimant.¹³¹

2.3.9. C-270/16 *Ruiz Conejero*: absenteeism versus protection of persons with disabilities

A provision in the Spanish labour law allows employees to be dismissed after accumulated sickness absences. This provision, aimed at combating absenteeism, which is reportedly a major cause for concern in Spain, is phrased neutrally in the sense that it applies to all workers, with or without disabilities. When the plaintiff, who had an officially recognised disability, was dismissed following intermittent periods of sick leave, he challenged the decision, arguing that his absences were directly linked to his disability and that his dismissal constituted discrimination based on disability. It should be noted that the employer was not aware of the disability at the moment of the dismissal. The Spanish court referred the case to the ECJ for preliminary ruling, asking whether the provision in the Spanish law was in conformity with Directive 2000/78/EC.

The Court held that combating absenteeism at work may in principle be regarded as a legitimate aim, instancing also the direct and indirect costs absenteeism entails for companies. However, it argued that it was for the referring court to assess the appropriateness of the measures

¹³¹ *European Equality Law Review*, Vol. 1, 2018, pp. 67-68.

implemented and to ascertain that these did not go beyond what was necessary to attain the aim pursued.

The Court found that the provision in question was liable to 'place workers with a disability at a disadvantage and so to bring about a difference of treatment indirectly based on disability' within the meaning of Directive 2000/78/C', arguing that workers with a disability have the additional risk of being absent by reason of an illness connected with the disability. In this respect, the ECJ cited its earlier *HK Danmark* ruling.

The Court held that the directive must be interpreted as 'precluding national legislation under which an employer may dismiss a worker on the grounds of his intermittent absences from work, even if justified, in a situation where those absences are the consequence of sickness attributable to a disability'. The referring Spanish court subsequently ruled that the challenged dismissal of Mr Ruiz Conejero was null and void, on the basis that it constituted indirect disability discrimination.

2.3.10. C-397/18 *DW v Nobel Plásticos Ibérica*: occupational illness and disability

In this case, the European Court of Justice further explored the boundaries of disability by examining whether an occupational illness constitutes a disability. A Spanish labour court had asked the ECJ to clarify whether a worker who is categorised under national law as being particularly susceptible to occupational risks (due to a recognised occupational disease) falls under the concept of disability within the meaning of Directive 2000/78/EC, and if so, whether a dismissal on grounds of 'objective reasons' amounts to direct or indirect discrimination against a person with a disability.

The proceedings were about a plastic pipes manufacturing company that laid off 10 workers on seemingly neutral criteria (low productivity rate, poor multiskilling, and high absenteeism). One of the workers concerned suffered from a recognised occupational illness (epicondylitis) and challenged her dismissal on that ground before court, claiming discrimination based on disability.

To clarify the first question for preliminary ruling, the Court reasoned that it 'does not appear that Directive 2000/78 is intended to cover only disabilities that are congenital or result from accidents, to the exclusion of those caused by illness' and that 'it would run counter to the very aim of the directive [...] to define its scope by reference to the origin of the disability'. Therefore, the Court held that occupational illness can indeed be qualified as a disability if it meets the conditions of the disability definition it established in case *HK Danmark*. In the case at hand, the ECJ left it for the national court to determine whether the complainant satisfied these conditions.

Regarding the other question, whether dismissal for 'objective reasons' constitutes indirect discrimination on grounds of disability, the Court made the fact of discrimination dependent on whether the employer had beforehand fulfilled his reasonable accommodation duty. Again, the ECJ left it for the national court to determine whether this had been the case, i.e. whether the adjustments made (namely assigning the worker to tasks that were less hazardous to her health) would qualify as reasonable accommodation. The Court recalled in this context Recital 17 EED, pursuant to which the directive does not require employment of persons who are 'not competent, capable and available to perform the essential functions of the post concerned', without prejudice to the obligation to provide reasonable accommodation.

2.3.11. Pending ECJ cases

From the Curia website it appears that two further preliminary reference procedures pertaining to disability discrimination in the workplace are currently pending before the Court of Justice.

Case C-824/19 TC, UB v Komisija za zashtita ot diskriminatsia was referred to the ECJ in December 2019 by a Bulgarian court. It seeks clarification on whether it is permissible under the CRPD and Directive 2000/78/EC for a permanently blind person to work as a court assessor and participate in criminal proceedings. Furthermore, it asks whether the disability in this specific case would justify 'a difference of treatment' that does not constitute discrimination.

And finally, in **Case C-16/19 VL** the ECJ is asked to clarify whether an employer's practice of granting an allowance to those employees with disabilities who provided a disability certificate by a certain date while refusing the same allowance to other employees who had already submitted their disability certificates in the past represents a discrimination under Directive 2000/78/EC. Advocate General Giovanni Pitruzzella observed that the 'differing treatment of situations within a group defined by a protected characteristic (disability) may constitute a breach of the principle of equal treatment, namely indirect discrimination'.

2.4. Public perception

Remedies for discrimination in individual cases are only available under national law. Therefore, individual cases of discrimination are mostly dealt with at national level, involving ombudsmen, trade unions, equality bodies and national courts, or problem-solving platforms (e.g. SOLVIT). Notwithstanding, citizens may also turn to the European Parliament and the European Commission if they suspect EU law to have been violated by national authorities. Under certain circumstances, this can trigger an infringement procedure. In the event of (perceived) maladministration by an EU institution, EU body or agency, citizens may lodge a complaint with the European Ombudsman.¹³² Complaints and petitions give a flavour of public perception regarding disability-based discrimination. The chapter is rounded up by results of Eurobarometer surveys specifically dedicated to discrimination, which provide further insights into the perception of citizens.

2.4.1. Petitions lodged with the European Parliament

The European Parliament's Petitions Committee plays a double role in the protection of disability rights. First, EU citizens and residents may petition the European Parliament on any matter falling within (exclusive or shared) EU competence, provided they are directly affected.¹³³ This may include matters relating to disability issues. And second, PETI has a special protective role with regard to disability, pertaining to its function in the monitoring framework for the implementation of the CRPD at the EU level.¹³⁴ Parliament's protection role refers to violations of CRPD rights in the Member States, insofar as they implement EU law.¹³⁵ Possible implications for PETI in the event of the EU's conclusion of the CRPD Optional Protocol have already been discussed in Chapter 1.3.3.

¹³² This study does not cover the EU institutions. For complaints before the Ombudsman see: S. Kotanidis, [The European Ombudsman: Reflections on the role and its potential](#), EPRS, European Parliament, 2018; specifically on disability-related complaints before the Ombudsman see: I. Anglmayer, [The obligations of the EU public administration under the UN Convention on the Rights of Persons with Disabilities](#): European implementation assessment, EPRS, European Parliament, 2016.

¹³³ Petitions to the European Parliament are governed by Article 227 TFEU and Rules 226-230 of Parliament's [Rules of Procedure](#) (version February 2020).

¹³⁴ Anglmayer, EU implementation of the CRPD, 2016, pp. 11-15.

¹³⁵ Priestley, The protection role, update 2016, p. 23.

PETI receives on average between 1 200 and 1 600 petitions a year,¹³⁶ of which roughly two thirds are deemed admissible. Although petitions relating to disability issues form only a tiny fraction of the annual total, they have a 'high significance for Parliament's responsibility to promote, monitor and protect disability rights and equality' under both EU and international law.¹³⁷

Typically, they are submitted by persons with disabilities themselves or, on their behalf, by disability organisations. The table below indicates how many petitions relating to disability issues PETI has dealt with in recent years. The figures are purely indicative, since PETI's classification is not fully coherent with the CRPD, as was rightly observed in an externally commissioned analysis.¹³⁸

Table 3 – Number of disability-related petitions (2013-2020)

Year	Petitions received	Petitions declared admissible
2020*	12	12
2019	12	10
2018	23	15
2017	13	11
2016	37	23
2015	28	19
2014	37	24
2013	45	32

* until 31 October 2020.

Source: PETI and Priestley (2018).

Employment is a constant feature within disability-related petitions, alongside accessibility, social protection and adequate standard of living, inclusive education, and independent living. A recent analysis suggests that out of 137 petitions Parliament received between 2013 and 2018 relating to alleged discrimination on grounds of disabilities, 20 addressed work and employment in the sense of Article 27 CRPD.¹³⁹

By way of example, recent cases have concerned:

- national quotas to promote employment of persons with disabilities (petition 1127/2018);
- discrimination against persons with disabilities working in the public sector (petition 1190/2017);
- the re-integration into the labour market of persons suffering from a mental illness (petition 1038/2016); and

¹³⁶ Precise annual data are provided in the explanatory statement of PETI's draft report on the deliberations of the Committee on Petitions during 2019, [2020/2044\(INI\)](#). (Rapporteur: Kosma Złotowski, ECR, Poland).

¹³⁷ M. Priestley, [2018 Update](#) of the Study on 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. Policy Department, Directorate-General for Internal Policies, European Parliament, 2018, p. 9.

¹³⁸ Priestley, The protection role, update 2018, pp. 2-3.

¹³⁹ Priestley, The protection role, update 2018, p. 5.

- the difficulties faced by people with disabilities in finding employment (petitions 0103/2016 and 1303/2015).

In the process of examining petitions, PETI typically involves other Parliament committees and/or consults with the European Commission. PETI may ask the Commission to instigate an enquiry, which could, in principle, result in an infringement procedure against a Member State.

2.4.2. Complaints brought before the European Commission

In addition to petitioning the European Parliament, citizens can also turn to the European Commission to signal issues in the application of EU law. In fact, the Commission receives several hundred complaints a year from the public, submitted by individual citizens, businesses and NGOs. In addition, also other EU institutions or bodies can forward complaints to the Commission, including the European Ombudsman and the European Parliament.

The role of the Commission is not to directly intervene in individual discrimination cases, but rather to scan complaints systematically for hints regarding incorrect transposition or application of EU law by Member States (by national, regional or local authorities). If the Commission establishes non-compliance with EU law, a citizen's complaint may lead to infringement proceedings.

Interestingly, a relatively high number of complaints relate to disability issues. According to Commission data, of the 612 complaints it received in 2015, 53 (hence nearly 9 %) concerned 'disability and equal treatment in employment and occupation'.¹⁴⁰ Data for 2019 suggest that 58 (out of 390, thus 15 % of) complaints related to 'disability and inclusion'.¹⁴¹ Even if in practice only few cases entail formal proceedings, the high number of complaint cases suggests that people feel equal treatment is being denied them.

2.4.3. Eurobarometer surveys

Public perception is also captured in Eurobarometer surveys. Since 2003, the periodically conducted 'Discrimination in Europe' survey has been seeking to track people's perception of discrimination on all grounds covered by the EU's equality framework, including disability. The survey was initially part of an EU anti-discrimination action programme that also comprised non-legislative measures, as the Commission was well aware that 'laws themselves are not enough' to stamp out unfair treatment, but there must also be a change in people's attitudes and behaviour.¹⁴²

Recurring questions show how public opinion evolves over time. This subchapter draws on Eurobarometer data from the years 2007 to 2019.¹⁴³ In particular, it looks at the general perception of discrimination and awareness of rights and, more specifically, into discrimination at the workplace. Across all questions, a slightly encouraging trend can be noted.

¹⁴⁰ [SWD\(2016\) 230](#), Monitoring the application of EU law, 2015 annual report, annex, part 1: policy areas, p. 25.

¹⁴¹ Monitoring the application of EU law, [2019 annual report, annex, part 2: policy areas](#), p. 12.

¹⁴² Eurobarometer 57, Discrimination in Europe, 2003. Cited from the foreword by Anna Diamantopoulou, then-Commissioner for Employment and Social Affairs.

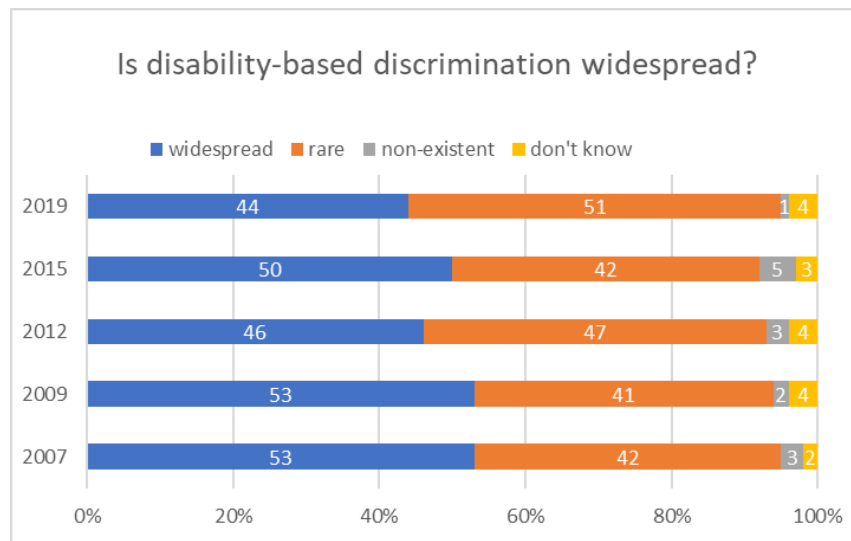
¹⁴³ [Eurobarometer references](#) 263 (2007), 317 (2009), 393 (2012), 437 (2015) and 493 (2019).

Perceived spread of disability-based discrimination

In 2019, 44 % of respondents thought discrimination on the basis of disability was widespread, while 51 % perceived it as rare. The perception that disability-based discrimination was widespread had declined slightly over the years, from 53 % in 2007 to 44 % in 2019.

(Question: In your opinion, is discrimination on the basis of disability widespread?)

Figure 2 – Spread of disability-based discrimination (2007-2019)



Data source: Eurobarometer.

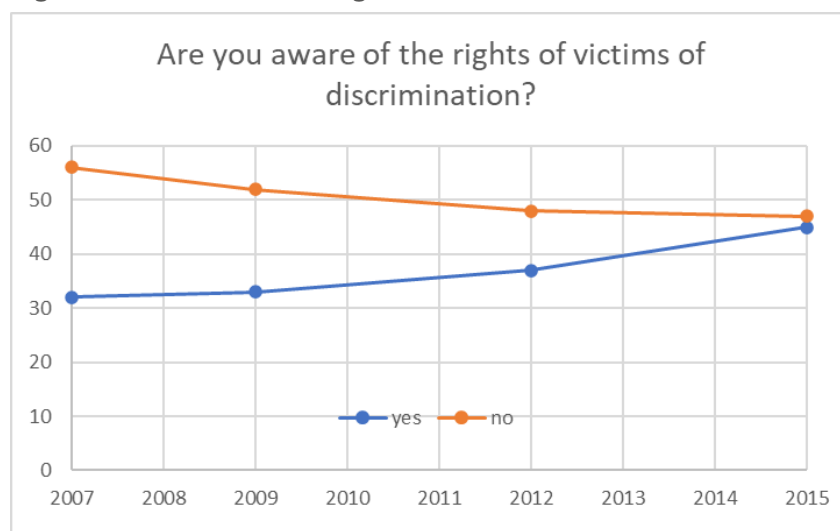
Awareness of rights

According to Eurobarometer people are increasingly aware of the rights of victims of discrimination. In 2015,¹⁴⁴ 45 % of respondents indicated they would know their rights if they became a victim of discrimination or harassment, by comparison, in 2007 just one third (32%) said so. However, despite this positive trend, the share of people who did not know their rights still formed the majority (47 %), as illustrated in the graph below.

(Question: Would you know your rights if you were the victim of discrimination/harassment?)

¹⁴⁴ This question was not included in the 2019 survey.

Figure 3 – Awareness of rights of victims of discrimination (2007-2015)



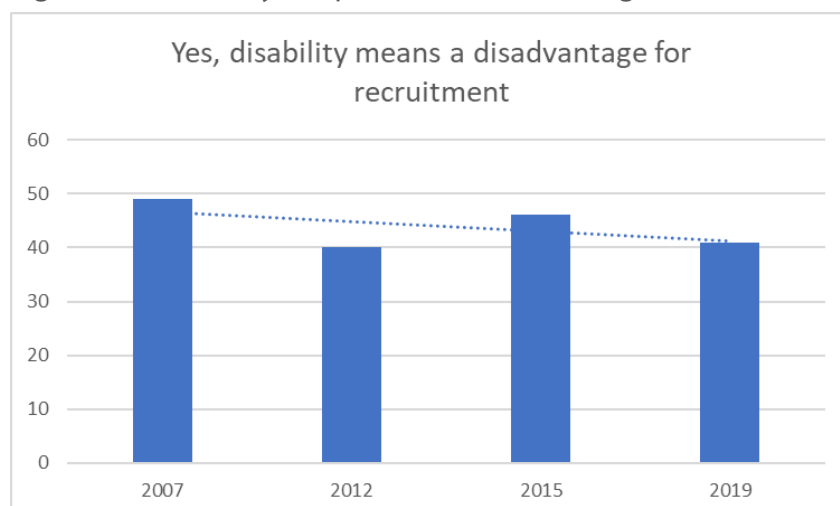
Data source: Eurobarometer.

Discrimination in recruitment

Another question looked into the perceived existence of discrimination in recruitment. In 2019, 41 % of respondents believed that a candidate's disability constituted a disadvantage for being hired. Over the years, a slight downwards trend can be observed, from 49 % in 2007 to 41 % in 2019.

(Question: When a company wants to hire someone and has the choice between two candidates with equal skills and qualifications, would, in your opinion, disability put one candidate at a disadvantage?)

Figure 4 – Disability as a perceived disadvantage in recruitment (2007-2019)

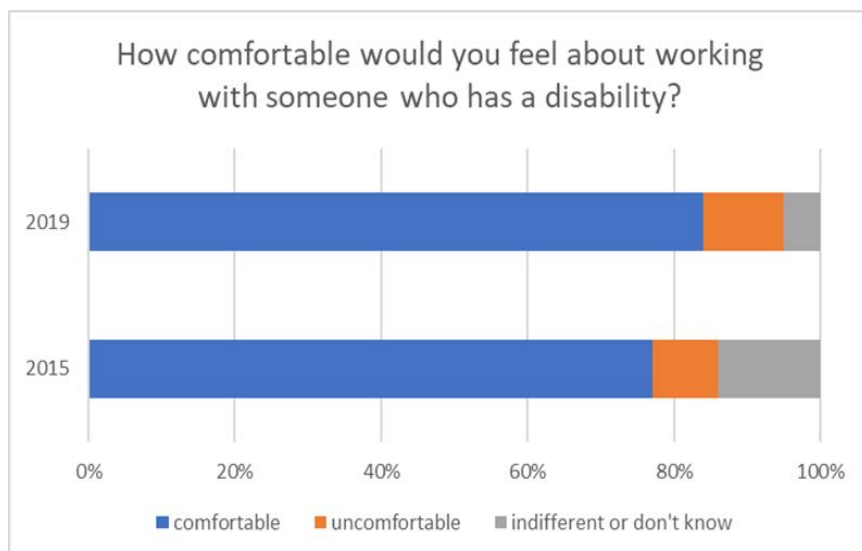


Data source: Eurobarometer.

Working with a person with disabilities

Despite the fact that disability continues to be perceived as posing a disadvantage in recruitment situations, an overwhelming majority of respondents (84 %) said they would feel perfectly at ease working with someone who had a disability. In 2015, only 77 % said so. Just 11 % expressed some discomfort (of whom 4 % strong discomfort) in 2019, compared to 9 % in 2015.

Figure 5 – Feeling at ease working with a person who has a disability (2015-2019)



Data source: Eurobarometer.

3. Particular challenges in the application of the directive in light of the CRPD

Key findings

After initial difficulties, all EU Member States have now transposed the duty of **reasonable accommodation** into national law, a concept enshrined in both the EED and the CRPD. However, national law and practice vary greatly, not least with regard to the personal scope (e.g. self-employed, unpaid workers). It appears that there is still a lack of understanding of the accommodation concept of among employers, paired with insufficient funding for workplace adaptations (or a lack of awareness of funding options). Stakeholders consider the undue burdens clause an issue of concern and advocate EU-level guidance to ensure a more uniform interpretation. Overall, the impact of reasonable accommodation measures seems to be under-researched, not least due to a lack of data on national accommodation practices (including litigation and remedies).

Positive action measures are permitted under the EED, but are not a requirement. Most EU Member States have quota systems in place for the employment of people with disabilities, in some countries these are paired with mechanisms for supported employment. In certain countries, quotas are limited to the public sector. Countries with mandatory quotas typically operate 'penalty schemes' in parallel for employers who fail to meet the quota targets (fines, fees or taxes). These funds are commonly earmarked for job inclusion programmes. However, despite the widespread use of quotas, positive action measures do not appear to be systematically implemented and sanctions for failure are often said to be not sufficiently dissuasive. Moreover, persons with disabilities find it sometimes a difficult choice to take up a paid job, since they tend to lose their disability benefits when entering the labour market; thus, a paid job may lead to in-work poverty. Quantitative and qualitative monitoring data would help to improve the tailoring of positive action measures.

The EED leaves Member States some leeway with redress mechanisms and **sanctions** in case of infringements. It states that sanctions must be 'effective, proportionate and dissuasive' and that Member States ensure sanctions are applied. However, concerns with national sanction practices apparently continue to persist. In particular, sanctions tend to be too low to be dissuasive, and non-monetary sanctions appear to be rare, despite the fact that complainants reportedly set great store by the recognition and termination of discrimination, and not only by monetary compensation.

Although not mandated by the EED, **equality bodies** assume a central role in the implementation and enforcement of the directive at the level of Member States. Their competences and spectrum of activities vary considerably from one country to another, ranging from awareness raising to litigation. Despite their recognised function, equality bodies are deemed to have not yet attained their full potential. Although the Commission recommendation of June 2018, setting out minimum standards for equality bodies, was welcomed, nonetheless calls have emerged for legally binding standards.

The EED does not contain any provisions on **data collection**. This lacuna is somewhat compensated for by the fact that the collection of disability data is compulsory under the CRPD. Currently available disability data (based on Eurostat) have certain limitations: they only partly correspond with the social model of disability; they are not sufficiently disaggregated; and they exclude people living in institutions. The recently revised IESS framework (Regulation 2019/1700 and implementing rules) is expected to improve the collection of EU-wide disability data and to generate better data in future.

3.1. Reasonable accommodation

3.1.1. Distinguishing reasonable accommodation from accessibility

Reasonable accommodation is a concept that bears certain similarities with accessibility, as both provide for adjustments aimed at mitigating (or at least lowering) the barriers persons with disabilities face. Broadly speaking, accessibility is – unless already granted through universal design – an adaptation that is directed towards a particular group of people. Examples of accessibility would include elevators in buildings or metro stations for people with mobility impairments and specific internet standards to render websites accessible for people with visual impairments.

Conversely, reasonable accommodation is an adjustment targeted at – and tailored to – individuals. It is prompted by a specific situation where such adjustment is needed to compensate for inequalities/disadvantages, so that a person with a disability is on par with others. In this sense, accessibility has been described by the CRPD Committee as an ex-ante duty, and reasonable accommodation as an ex-nunc (or reactive) duty.¹⁴⁵

Recital 20 EED gives some guidance by listing examples of accommodation measures; these include 'adapting premises and equipment, patterns of working time, the distribution of tasks or the provision of training or integration resources.' Worthwhile mentioning in this context is also the rapidly evolving area of assistive technologies, which bears considerable potential.¹⁴⁶ A study¹⁴⁷ commissioned by the European Parliament attempts a categorisation of different accommodation measures per:

- type of accommodation: technical measures or social/organisational support measures, one-off investments or measures requiring continuous effort;
- target of accommodation: person with disabilities or the working environment;
- type of disability: different impairments require different measures.

3.1.2. Transposition into national law

The duty to provide reasonable accommodation for persons with disabilities is considered a key element of the Employment Equality Directive, as it effectively helps persons with disabilities to enter the labour market and to remain in employment. At the same time, reasonable accommodation is 'one of the most significant innovations'¹⁴⁸ brought in by the directive. As a consequence, the European Commission paid close attention to how Member States transposed the concept of reasonable accommodation into their national laws.

The transposition phase proved challenging, as the European Commission's 2014 implementation report describes. Initially, the transposition measures of nine Member States fell short of the EED accommodation requirements.¹⁴⁹ In some countries the accommodation duty was limited to certain groups, such as employees already under contract (which excludes the recruitment stage and thus prevents persons with disabilities from entering the labour market), persons with a severe disability,

¹⁴⁵ CRPD Committee, General Comment No 2 on Accessibility, [CRPD/C/GC/2](#), 2014, paras. 25 and 26.

¹⁴⁶ [Assistive technologies for people with disabilities](#), EPRS, European Parliament, 2015.

¹⁴⁷ [Reasonable accommodation and sheltered workshops for people with disabilities: costs and returns of investments](#), Policy Department, Directorate-General for Internal Policies, European Parliament, 2015, pp. 36-37.

¹⁴⁸ COM(2008) 225/2, p. 6.

¹⁴⁹ COM(2014) 2, p. 14.

or persons included on an official disability register (which in again reflects a medical approach to disability).¹⁵⁰

Italy introduced the corresponding reasonable accommodation provisions into national law in 2013 only, after a ruling of the European Court of Justice found Italy to be in breach of the directive for failure to fully transpose the provisions of Article 5 EED.¹⁵¹ The Court reasoned that it is not sufficient for Member States to provide support and incentives, instead, it is mandatory for all employers to adopt effective measures as needed in particular cases. Regarding the Italian accommodation provision, doubts have been raised as to whether its current wording is in line with the CRPD, as it reportedly includes a public sector clause mandating budget neutrality, stating that public employers must implement the accommodation duty 'without new or increased burdens on public finances and human resources'.¹⁵²

All EU Member States have now transposed the duty of reasonable accommodation enshrined in both the EED and CRPD. The above-mentioned comparative Commission study¹⁵³ examining the provisions and concepts of reasonable accommodation in national legislation identified considerable variations across the EU. This degree of variation has a direct impact on the scope of protection granted under national law. One of the differences between the EED and the CRPD (discussed in Chapter 1.4.) is that under the CRPD, the denial of reasonable accommodation counts as discrimination. It seems that all but two EU Member States comply with the CRPD in this respect: only Estonian and Latvian legislation do not classify such denial as discrimination.¹⁵⁴

In line with the EED, in all EU Member States the accommodation duty extends to both public and private sectors.¹⁵⁵ However, there is no uniform approach among Member States regarding the personal scope of reasonable accommodation. While employees and civil servants fall generally within the scope of reasonable accommodation duties, this is not necessarily the case for self-employed people, unpaid trainees and other people who engage in unpaid work, e.g. volunteers. Similarly, national discrepancies exist as to whether an employer's duty to provide reasonable accommodation extends to persons who are associated with a disabled person (e.g. family members or carers).¹⁵⁶

The comparative study argues further that the lack of a legal definition of disability (in both the EED and the CRPD) led Member States to apply different definitions in their national legislation for the purpose of establishing who is entitled to reasonable accommodation.¹⁵⁷ According to this study, some countries have provisions in place that are implicitly based on a medical definition of disability in the sense that they make accommodation measures conditional upon medical recognition of a certain 'degree' or 'percentage' of disability. This, as the study authors argue, is inconsistent with the CRPD.

According to the same study, national provisions regarding the disproportionality clause also differ. This reflects a differential understanding of what constitutes a 'disproportional burden'. The study

¹⁵⁰ Ferri and Lawson, *Reasonable accommodation*, 2016, pp. 37-38.

¹⁵¹ ECJ Case C-312/11 *Commission v Italy*, judgment issued on 4 July 2013. See also Court [press release no 83/13](#).

¹⁵² Ferri and Lawson, *Reasonable accommodation*, 2016, p. 78.

¹⁵³ Ferri and Lawson, *Reasonable accommodation*, 2016.

¹⁵⁴ Ferri and Lawson, *Reasonable accommodation*, 2016, p. 13.

¹⁵⁵ Ferri and Lawson, *Reasonable accommodation*, 2016, p. 59.

¹⁵⁶ Ferri and Lawson, *Reasonable accommodation*, 2016, p. 60.

¹⁵⁷ Ferri and Lawson, *Reasonable accommodation*, 2016, pp. 61-67.

sees much emphasis being placed on the cost aspects of reasonable accommodation measures. It appears that some countries have a complex proportionality test in place for weighing the accommodation duty against undue burdens. Accommodation thresholds based on company size are common in most countries.¹⁵⁸ Furthermore, it has been observed that reasonable accommodation measures that do not entail financial costs may also be subject to a proportionality test. This is reflected in Recital 21 EED, which refers to 'financial and other costs', albeit without defining 'other costs'. An example of other costs may include direct impacts upon other employees, for instance when they have to work more night shifts if an employee with a disability is exempt from night shifts as a means of reasonable accommodation.¹⁵⁹

3.1.3. Practical application

In its concluding observations, the CRPD Committee recommended that the EU provide Member States with training on reasonable accommodation and accessibility in the context of employment.¹⁶⁰ This recommendation can be read as an indication that there is a gap between the law on the books and reality in practice with regard to reasonable accommodation, and evidence suggests that this is indeed the case. Issues have been observed on a range of aspects, spanning from understanding and awareness of reasonable accommodation to rights enforcement.

In 2010, the European Disability Forum reported a lack of awareness among employers of disability rights and reasonable accommodation duties.¹⁶¹ Ten years on, an Equinet report¹⁶² holds that levels of knowledge and awareness of rights are still low and the practice of reasonable accommodation 'seriously underdeveloped'. Shortcomings notably concern areas beyond adaptation for physical access to a job, such as adjustments in the conditions and organisation of work and accommodating the needs of people with intellectual disabilities.

Moreover, great variation across Member States can be found in national practices regarding the trigger point of reasonable accommodation duties, meaning at what point reasonable accommodation action is prompted, an issue neither the EED nor the CRPD touch upon. The aforementioned comparative Commission study identifies three different practices at national level:¹⁶³

- when an employer knows (or ought to know) about a person's disability;
- when the person with a disability makes a specific request of the employer;
- when the employer has been informed of the need for reasonable accommodation by a competent public authority.

Particularly noteworthy in this context is the reasoning of Advocate General Sharpston in the *Ruiz Conejero* case, where she reflected on precisely the question of when an employer's obligations

¹⁵⁸ Ferri and Lawson, *Reasonable accommodation*, 2016, pp. 74-78.

¹⁵⁹ M. Bell, 'Adapting work to the worker: The evolving EU legal framework on accommodating worker diversity', *International Journal of Discrimination and the Law*, Vol. 18(2-3), 2018, p. 132.

¹⁶⁰ CRPD Committee, *Concluding observations EU*, 2015, para. 65. In fact, the EU does provide regular training courses on the CRPD and EU equality law (including reasonable accommodation and accessibility) via the [Academy of European Law](#) (Trier).

¹⁶¹ European Disability Forum, *Ten years on*, 2010, pp. 5 ff.

¹⁶² N. Crowley, [Taking stock](#): A perspective from the work of equality bodies on European equality policy strategies, equal treatment directives, and standards for equality bodies, Equinet, 2020.

¹⁶³ Ferri and Lawson, *Reasonable accommodation*, 2016, pp. 67-69.

under Article 5 EED are triggered, especially in a case where the employee concerned has not disclosed their disability to their employer.¹⁶⁴

Turning to public funding, it appears that in most countries state funding mechanisms are available to subsidise (in full or in part) the costs of reasonable accommodation measures incurred by employers. Such direct subsidies are typically subject to a financial ceiling or a maximum duration; some countries have also systems of tax incentives in place.¹⁶⁵ In many countries public funds are channelled through employment agencies. Some Member States determine that funds gathered from penalties for non-compliance with quotas should be used for reimbursement of reasonable accommodation measures.¹⁶⁶

A major issue of concern is the application of the disproportionate burden clause. When the first Commission proposal for the Employment Equality Directive (COM(1999) 565) was negotiated, the European Parliament insisted on the need for an accurate definition of the terms 'reasonable accommodation' and 'disproportionate burdens'.¹⁶⁷ In this way Parliament sought to mitigate the risk that employers would shy away from their obligations by claiming undue burdens, if the provisions remained too vague.¹⁶⁸ Parliament's amendment eventually fed into the recitals of the directive. Nonetheless, according to Equinet, the exemption clause has in practice 'been applied in an overly liberal manner, effectively limiting the rights of people with disabilities'.¹⁶⁹

On basis of the CRPD Committee's authoritative guidance it is argued that the undue burden clause in the CRPD is effectively conceived as a two-step test: first, a reasonable test that assesses if a measure is effective for the purpose it aims to achieve, namely to promote equality and eliminate discrimination; financial burdens should not be considered at this stage; and second, the proportionality test, which looks at the financial burdens associated with the duty.¹⁷⁰ Given the practical difficulties, Equinet advocates EU-level guidance on the disproportionality clause. EDF shares that view, arguing that the directive leaves the reasonableness and proportionality of a required accommodation open to wide interpretation by employers.¹⁷¹

In the case of denied reasonable accommodation, the comparative Commission study notes that in many countries the only possible remedy is payment of damages. In only a few countries does the law also provide for the possibility for courts to order the effective carrying out of adjustments.¹⁷² Furthermore, more often than not, victims of discrimination do not have access to injunctive relief, i.e. a court order to stop the discriminating situation or behaviour. In this context the CRPD

¹⁶⁴ [Opinion](#) of Advocate General Sharpston in Case C-270/16, para 36 ff.

¹⁶⁵ Ferri and Lawson, *Reasonable accommodation*, 2016, pp. 89-91.

¹⁶⁶ Ferri and Lawson, *Reasonable accommodation*, 2016, p. 45.

¹⁶⁷ In the original proposal, disproportionate burdens were termed 'undue hardship', a term borrowed from the US Americans with Disabilities Act.

¹⁶⁸ European Parliament report [A5-0264/2000](#), rapporteur: Thomas Mann, EPP, Germany (consultation procedure). See in particular the explanatory statement, Chapter 3 – Protection of people with disabilities.

¹⁶⁹ Crowley, *Taking stock*, 2020, p. 20.

¹⁷⁰ T. Degener, 'The impact of the UN Convention on the Rights of Persons with Disabilities on EU Anti-Discrimination Law', T. Giegerich (ed.), *The European Union as Protector and Promoter of Equality*, Springer, 2020, p. 355.

¹⁷¹ EDF, *Ten years on*, 2010, p. 7.

¹⁷² Ferri and Lawson, *Reasonable accommodation*, 2016, p. 11. This issue is also broached more generally in the subchapter on sanctions (3.3.)

Committee noted that in cases of systemic discrimination, 'the mere granting of compensation to an individual may not have any real effect in terms of changing the approach'.¹⁷³

Tellingly, a recent survey-based Eurofound report¹⁷⁴ lists 14 remaining challenges linked to disability discrimination at the workplace, four of which relate to reasonable accommodation:***

- lack of knowledge and understanding of the concept of 'reasonable accommodation';
- discrimination at the recruitment stage linked to the perceived costs of workplace adaptation (and employers lacking access to public support for adaptation);
- low levels of access to material and immaterial workplace adaptation (including spatial flexibility);
- lack of government funding (or knowledge of such funding) for workplace adaptation.

The Commission study notes that binding or official (governmental) guidance on reasonable accommodation is not very common across the EU. Even if in many countries equality bodies and disability organisations have filled this gap, their guidance remains largely informal. One of the conclusions the Commission study drew was that EU-level guidance and best practices on reasonable accommodation could add considerable clarity with regard to the adequate implementation of reasonable accommodation in employment. A good practice example in this respect is the guidance provided by the US Equal Employment Opportunity Commission for the 'Americans with Disabilities Act',¹⁷⁵ which clarifies the rights and responsibilities of employers and persons with disabilities, also regarding reasonable accommodation.

Overall, it seems that the effect of reasonable accommodation measures is under-researched, also on account of a lack of data at the level of Member States. This is actually another key finding of the cited Commission study: the data available on the implementation of the provisions for reasonable accommodation, on the number of discrimination cases brought to trial and the nature of remedies awarded are 'extremely limited'.¹⁷⁶ Nonetheless, it is mandatory under the CRPD to collect data in relation to Article 5 CRPD (which includes, inter alia, the duty to provide reasonable accommodation) 'in order to identify inequalities, discriminatory practices and patterns of disadvantage, and analyse the effectiveness of measures promoting equality'. The CRPD Committee considers the collection and analysis of such data to be 'of paramount importance for developing effective anti-discrimination and equality measures'.¹⁷⁷

¹⁷³ CRPD Committee, General Comment No 6, para. 22.

¹⁷⁴ Eurofound, [Role of social partners in tackling discrimination at work](#), 2020.

¹⁷⁵ US Equal Employment Opportunity Commission, [Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA](#), October 2002.

¹⁷⁶ Ferri and Lawson, Reasonable accommodation, 2016, pp. 103, 108 and 109.

¹⁷⁷ CRPD Committee, General Comment No 6, para. 34.

3.2. Positive action

The rationale for positive action – to ensure full equality in practice and to compensate for disadvantages – is set out in Article 157(4) TFEU with regard to gender discrimination. The rationale for positive action measures other than gender is much the same, albeit not enshrined in the TFEU.

Positive action: the Irish case

Ireland is reported to have met and even exceeded its target of 3 % of public sector employees being persons with disabilities. Consequently, the bar was doubled to 6 %, to be reached by 2024.

Source: [A comparative analysis of non-discrimination law in Europe 2019](#), p. 80.

The EU Charter of Fundamental Rights – part of EU primary law – stipulates that the EU 'recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community' (Article 26).

As discussed in Chapter 1.4.5., the Employment Equality Directive explicitly allows for positive action measures, inter alia on basis of disability, but does not place Member States under any obligation in this

respect. In practice, most EU Member States do have quota systems in place for the employment of persons with disabilities. In some countries these are paired with mechanisms for supported employment, such as work assistance, job coaching or job qualification programmes.¹⁷⁸ In a few EU countries specific national legislation providing for positive action is limited to the public sector (e.g. Belgium, Cyprus), while in most other countries, disability quotas exist also for the private sector. Such quotas are commonly subject to a threshold, taking into account the size of an enterprise (e.g. in the Netherlands a quota is applicable for companies with more than 25 staff).

Countries with mandatory quota systems typically also operate 'penalty schemes' in parallel for those employers who fail to meet the quota targets. The EDF has observed that in some countries, companies tend to prefer the payment of a one-off fine to recruiting and retaining workers with a disability, and cited the 'rarely dissuasive' level of fines as one reason for this common practice.¹⁷⁹

Under such alternative schemes, funds are collected in form of fines, fees or taxes. In some countries (such as Austria, France, Germany, Italy and Poland) these funds are earmarked for programmes or activities that foster the inclusion of persons with disabilities in the labour market (including reasonable accommodation measures), while in others such funds feed directly into the state budget (e.g. Bulgaria, Croatia, Czechia, Romania and Slovakia). Moreover, some countries operate non-binding quota schemes, with no consequences for employers if they do not meet the set targets. Both the European Parliament and the EESC have urged Member States to establish an

¹⁷⁸ Different national practices are sketched out in: *A comparative analysis of non-discrimination law*, 2019, pp. 78-80; and also in: M. V. Liisberg, 'Article 27 – Work and employment', in V. Della Fina et al. (eds.), *The United Nations Convention on the Rights of Persons with Disabilities: a commentary*, 2017, p. 506.

¹⁷⁹ EDF, *Ten years on*, p. 12.

employment quota system for persons with disabilities for both public and private sectors.¹⁸⁰ In addition to quota systems, other types of positive action scheme exist in national practice, e.g. social public procurement, which 'can also boost the employment' of persons with disabilities, as an EESC opinion emphasised.¹⁸¹

The European Court of Justice has delivered a number of rulings on positive action questions, although these are almost exclusively related to age discrimination. Case C-406/15 *Milkova* was the first positive action case concerning disability. Here the Court was asked to examine whether a distinction made between civil servants and employees is in compliance with EU law.¹⁸²

A comparative Equinet report from 2014 argues that despite a wide range of positive action measures in place in EU Member States, 'positive action is generally not well understood or systematically implemented'.¹⁸³ Furthermore, sanctions for failure to meet disability quotas are assessed as being ineffective.¹⁸⁴ Eurofound shares this concern, arguing that sanctions for employers who fail to fulfil quotas are either non-existent or, where they do exist, lacking in dissuasiveness.¹⁸⁵ Eurofound observes that funds collected from non-observance of quotas are not always used for adaptation measures for persons with disabilities. In the light of these concerns, the EESC recently called on the European Commission to study the effectiveness of Member States' quota systems, 'with a view to promoting best practices and potentially introducing such a system for the EU administration'.¹⁸⁶

Positive action: the Czech case

In Czechia, employers with more than 25 staff can choose between three options:

1. adhere to quota of 4 % of employees with disabilities;
2. commission goods or services from employers who employ at least 50 % of staff with disabilities;
3. pay a fee into the state budget.

According to a Commission study, most employers choose the payment option, which counters the objective of bringing more people with disabilities into the labour market.

Source: [A comparative analysis of non-discrimination law in Europe 2019](#), p. 80.

¹⁸⁰ European Parliament resolution [P8_TA\(2016\)0360](#) on the application of Council Directive 2000/78/EC, point 40; EESC opinion, Employment opportunities for economically inactive people, 2019, point 1.6.

¹⁸¹ EESC opinion, People with disabilities: employment and accessibility, 2010, point 4.17.

¹⁸² This case is briefly outlined in Chapter 2.3.8.

¹⁸³ Equinet, [Positive action measures: The experience of equality bodies](#), 2014, p. 6.

¹⁸⁴ Equinet, Positive action measures, 2014, p. 56.

¹⁸⁵ Eurofound, [Role of social partners in tackling discrimination at work](#), 2020, p. 30.

¹⁸⁶ EESC opinion, Shaping the EU agenda for disability rights 2020-2030, 2019, point 4.4.3.1.

An issue not directly linked to positive action as such, but often the result of it, is that persons with disabilities risk losing certain disability benefits as soon they start a paid job. This can lead to in-work poverty and therefore discourage those concerned from entering the labour market at all. This problem was picked up by the EESC: it asked the European Commission to urge Member States to be more flexible and allow persons with disabilities 'to retain allocations when they enter the labour market, to balance disproportionate outgoings, reduce the risk of in-work poverty, and incentivise employment'.¹⁸⁷ This position is supported by the CRPD Committee, which calls on State parties to ensure 'that persons with disabilities are paid no less than the minimum wage and do not lose the benefit of disability allowances when they start work'.¹⁸⁸

Loss of disability benefits

'Disability benefits are typically tied to income, meaning that the amount of financial assistance received begins to drop once people with disabilities start earning a salary. Many participants highlighted that this process begins very quickly, undermining the financial incentive to work and creating a so-called "welfare to work" trap'.

Source: FRA, [From institutions to community living for persons with disabilities](#): perspectives from the ground, 2018, p. 67.

At a horizontal level, for all grounds of discrimination, Equinet underscores the importance of data – quantitative and qualitative – to justify and tailor positive action measures. To that end, Equinet advocates 'mandatory, systematic and cyclic monitoring, publishing of and follow up on results'.¹⁸⁹

3.3. Enforcement and sanctions

3.3.1. Requirements under the EED and CRPD

The Employment Equality Directive leaves Member States some leeway for the enforcement of obligations under the EED. Pursuant to Article 9 EED, redress can be sought through judicial or administrative procedures, or both, including conciliation procedures, which would seek to negotiate a solution acceptable to both the victim and the employer. Given that the directive sets merely minimum standards, Member States are free to have criminal law procedures in place as well, aimed at the criminal punishment of the perpetrator/discriminator. Article 17 EED stipulates that Member States provide for 'effective, proportionate and dissuasive sanctions' in the event of infringements and that they should 'take all measures necessary to ensure that they are applied'. Article 17 specifies that sanctions may comprise the payment of compensation to the victim. The wording 'effective, proportionate and dissuasive' hints at the deterrent purpose of sanctions, however, it is the discretion of the Member States to decide how to give effect to this provision.

The objective of the CRPD is similar: state parties must 'guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds' (Article 5(2)). Guidance by the CRPD Committee on this provision makes reference to 'appropriate and effective legal remedies and sanctions', although there is no such wording in the text of the convention itself. To this end, state parties need to grant persons with disabilities access to effective judicial, administrative and criminal procedures, including effective and accessible complaint mechanisms and appropriate and affordable quality legal aid.

¹⁸⁷ EESC opinion, Shaping the EU agenda for disability rights 2020-2030, 2019, point 4.6.1.2.

¹⁸⁸ CRPD Committee, General Comment No 6, para. 67.

¹⁸⁹ Equinet, Positive action measures, 2014, p. 43.

With regard to sanctions, the CRPD Committee uses the same wording as the EED, requiring state parties to put in place 'effective, proportionate and dissuasive sanctions for breach of the right to equality' and adequate remedies. It is worthwhile mentioning that the CRPD Committee recognises that in certain cases sanctions may not be effective, for instance when there is systemic discrimination. For such cases, it recommends that Member States provide for 'forward-looking, non-pecuniary remedies' in national law that effectively lead to a change of approach.¹⁹⁰ Further guidance and specifications on the types of remedies to be put in place can be found in a number of concluding observations to individual state parties. For example, in the case of Belgium, the Committee recommended that complainants should also be able to seek injunctions.¹⁹¹

3.3.2. Issues in the practical application

Both Commission EED implementation reports commented on the application of sanctions in the Member States. While the 2008 report deemed the level of protection afforded 'uneven' across Member States,¹⁹² the 2014 report pointed at issues with remedies and raised concerns regarding the compliance of certain imposed sanctions with the directives.¹⁹³ It notably found a tendency among Member States towards low sanctions for discriminators on the one side and low compensation for victims on the other. It also cited ECJ case C-81/12 *ACCEPT*, where the Court held that purely symbolic sanctions would not be 'compatible with the correct and effective implementation of Directive 2000/78'. Against this backdrop, the Commission announced that it would monitor the standards applied in Member States' use of sanctions and remedies closely.

Yet, recent evidence suggests that issues with national sanction practices and mechanisms persist. A 2020 Equinet report identifies a number of items as hampering the effectiveness of sanctions in the one or other Member State:

- sanctions are too low or too narrowly framed in national legislation;
- sanctions are capped at an upper limit;
- sanctions tend to be kept at the lower end of an allowed spectrum;
- there is a lack of provision for non-monetary sanctions;
- there is a lack of provision for punitive damages and for non-monetary orders;
- sanctions are not applied in absence of an identifiable complainant; and finally,
- there is a lack of compensation for economic loss when discrimination occurs in situations of job applications or promotions.

The report cites a number of Member States as examples of sanctions being too low or too narrowly drawn. For instance, it finds that in Austria the level of damages in equal treatment cases is 'too low to have a deterrent effect within the meaning of the Directives'. In Slovenia, a legal act (the Minor Offence Act) stipulates that the lowest possible sanction must be issued, unless the supervisory authority decides otherwise. And in Sweden, the law reportedly does not provide for sanctions if there is no individually identifiable victim (for instance in case of a discriminatory job advertisement).¹⁹⁴ This practice appears inconsistent with European case law: the ECJ has clarified

¹⁹⁰ CRPD Committee, General Comment No 6, paras. 22 and 31.

¹⁹¹ Cited after: Waddington and Broderick, *Combatting disability discrimination*, 2018, p. 44.

¹⁹² COM(2008) 225/2, p. 8.

¹⁹³ COM(2014) 2, p. 7.

¹⁹⁴ Crowley, *Taking stock*, 2020, pp. 17-18.

in case C-54/07 *Feryn*¹⁹⁵ – that 'the existence of such direct discrimination is not dependent on the identification of a complainant who claims to have been the victim' and that the provisions on sanctions are applicable 'even where there is no identifiable victim'. On this account, organisations with a legitimate interest in the case can bring proceedings in the general interest of a group (e.g. equality body, disability organisation).¹⁹⁶

The EDF has expressed concerns about the direct link between a lack of dissuasive sanctions and under-reporting, as victims of discrimination might feel demotivated from seeking redress at all.¹⁹⁷ Limitations in accessing legal protection were in general described as 'a weak point all over Europe'. Apart from the reported ineffectiveness of sanctions, a multitude of other factors have been identified that make victims of discrimination hesitate to report their cases. These include complexity, lengthiness and cost of procedures, prospects of success, the non-binding nature of decisions, fear of retaliation, weak enforcement of sanctions once imposed and, not least, 'a lack of suitable tools beyond penalties and compensation'.¹⁹⁸

Zooming in on non-monetary sanctions, a study by the EU Fundamental Rights Agency held that, according to a survey, complainants in discrimination cases attach greater importance to the recognition, termination and prevention of discrimination than to monetary compensation.¹⁹⁹ In practice however, remedies typically take the form of an economic compensation (damages), which may be complemented by fines in serious cases.²⁰⁰

To mitigate the persisting challenges around sanctions it has been suggested that specialised equality tribunals should be shored up, by vesting them with the power to issue legally binding decisions (which is currently the case only for some equality bodies and tribunals); and that wider use should be made of alternatives to monetary sanctions (e.g. injunctions, annulment of a discriminatory act/provision, and reinstatement of an employee after unlawful dismissal). Furthermore, it was argued that strategic litigation could render sanctions more effective.²⁰¹ In addition, Equinet advocates European-level guidance so as to ensure that sanctions are EU-wide and effective, proportionate and dissuasive, as set out in the EED.²⁰²

3.4. Equality bodies

3.4.1. Role of equality bodies

Equality bodies are independent statutory bodies that play a central role in implementing, applying and enforcing EU equality law at the level of Member States. They combat discrimination, promote

¹⁹⁵ ECJ Case C-54/07 *Feryn* is actually not related to disability, but to racial discrimination under Directive 2000/43/EC. However, given the identical wording of the provisions on remedies and sanctions in the two equality directives 2000/43/EC and 2000/78/EC, the ECJ reasoning in case *Feryn* should also be applicable to the EED.

¹⁹⁶ K. Wladasch, 'Making Antidiscrimination Law Effective: Burden of Proof, Remedies and Sanctions in Discrimination cases', in T. Giegerich (ed.), *The European Union as Protector and Promoter of Equality*, Springer, 2020, pp. 238-239.

¹⁹⁷ EDF, Ten years on, 2010, p. 12

¹⁹⁸ Wladasch, Making Antidiscrimination Law Effective, 2020, pp. 236, 242-243.

¹⁹⁹ Fundamental Rights Agency, [Access to justice in cases of discrimination in the EU: steps to further equality](#), 2012, p. 8.

²⁰⁰ Waddington and Broderick, Combatting disability discrimination, 2018, p. 87.

²⁰¹ Wladasch, Making Antidiscrimination Law Effective, 2020, p. 243.

²⁰² Crowley, Taking stock, 2020, p. 17.

equality, and generally act as 'watchdogs for equality', as the Commission once put it.²⁰³ Moreover, they operate as a 'hub' that connects civil society organisations and supports mutual learning.²⁰⁴

Before EU anti-discrimination law required them, only a few EU Member States had an equality body in place (e.g. Austria, Belgium and the Netherlands). In most other countries, they emerged in the 2000s, when EU law – first and foremost the Racial Equality Directive (2000/43/EC) and then three gender-related equality directives²⁰⁵ – required the establishment of equality bodies at national level. The directives cited equipped them with three competences:

- providing victims of discrimination with independent assistance in pursuing their complaints about discrimination;
- conducting independent surveys concerning discrimination; and
- publishing independent reports and making recommendations on any issue relating to such discrimination in practice.

However, the aforementioned directives merely laid down minimum standards and left much discretion to Member States regarding the bodies' structure, power and functioning. This ultimately led to a highly diverse pattern of equality bodies across Europe in every respect (mandate, competences, structures, resources and operational functioning).²⁰⁶ Effectively, many of these bodies have competences that go beyond the requirements of the EU equal treatment directives.

The spectrum of activities national equality bodies assume may encompass awareness raising, monitoring of equality legislation, reporting, research, providing legal and policy advice, commenting on draft legislation, and not least, providing victims of discrimination with assistance. Some equality bodies pursue individual complaints and represent victims of discrimination in litigation. Some also engage in strategic litigation.²⁰⁷ Yet others are vested with quasi-judicial powers, entitling them to render binding decisions and issue sanctions.²⁰⁸

Compared with law enforcement through courts, equality bodies are 'low-threshold and expert complaint bodies',²⁰⁹ in the sense that they provide easy access (physically and online), have simple complaint procedures, handle complaint cases swiftly and do not charge legal fees for their proceedings. Typically, the low threshold entails a high caseload. While a low threshold helps to fight underreporting, a high caseload may put equality bodies under strain, especially if resources do not match.

3.4.2. The Employment Equality Directive and equality bodies

Unlike the aforementioned racial and gender directives, the Employment Equality Directive does not require Member States to designate a dedicated equality body. This gap has been flagged as an

²⁰³ COM(2014) 2, p. 15.

²⁰⁴ N. Crowley, [Equality bodies making a difference](#), European network of legal experts in gender equality and non-discrimination, European Commission, 2018, p. 8.

²⁰⁵ These are notably Directive 2004/113/EC (Gender Goods and Services Directive); Directive 2006/54/EC (Gender Recast Directive); and Directive 2010/41/EU (Self-Employed Directive).

²⁰⁶ Differences are described in great detail in: A comparative analysis of non-discrimination law in Europe 2019, Chapter 5: Equality bodies, pp. 104-117.

²⁰⁷ In a recent communication, the European Commission even encouraged Member States to enable equality bodies engaging in strategic litigation. See [A Union of equality: EU anti-racism action plan 2020-2025](#), COM(2020) 565, p. 4.

²⁰⁸ A comparative overview is provided on the [Equinet website](#).

²⁰⁹ T. Kádár, ['Equality bodies: A European phenomenon'](#), *International Journal of Discrimination and the Law*, Vol. 18(2-3), 2018, p. 147.

issue in light of the central role equality bodies play in the implementation of EU anti-discrimination law.²¹⁰ As explained in Chapter 1.4.7, the European Commission sought to mitigate the gap with the 2008 proposal for a horizontal equal treatment directive, where it proposed the compulsory designation of equality bodies for discrimination matters relating to age, disability, religion and belief, and sexual orientation. However, as stressed above, the file has to date remained blocked in Council, and therefore equality bodies for the aforementioned grounds remain optional. A recent Commission recommendation (2019)²¹¹ proposes that all Member States should consider designating an equality body to cover discrimination within the scope of application of Directive 2000/78/EC, including disability, but as a recommendation it has no binding force.

In practice, however, most Member States have extended the mandate of their (gender and racial) equality bodies towards multi-ground equality bodies, to cover also age, disability (either limited to the workplace or beyond), religion or belief, and sexual orientation – even if this is not currently required by EU law. A number of equality bodies cover also further grounds, including for example birth, nationality, language, pregnancy and political opinion,²¹² or have opted for an open-ended list of discrimination grounds (e.g. Finland). On the whole, there is great variation in material scope.

3.4.3. Equality bodies and discrimination on grounds of disability

Focusing on disability, with the exception of Portugal and Spain, all Member States have a national equality body dealing – either exclusively or among other grounds – with disability-based discrimination. In the majority of Member States, disability-based discrimination lies within the remit of a multi-ground equality body; only three Member States (Austria, Croatia and Malta) have chosen to set up a dedicated disability equality body (e.g. a disability ombudsman). There are pros and cons for both settings. While a single-ground body can give high visibility to its dedicated ground of discrimination, a clear advantage of a multi-ground equality body is that it is in theory better suited to deal with multiple and intersectional discrimination.²¹³ Although intersectional issues are currently not the focus of any equality body, a recent report identified some preliminary activities in this regard.²¹⁴

A factor that has favoured the widespread coverage of disability issues by national equality bodies is the CRPD. Article 33(2) CRPD requires the designation of an independent mechanism to promote, protect and monitor national implementation of the convention. In a number of Member States, this function lies with equality bodies. However, even in countries where the CRPD mechanism is entrusted to other actors than an equality body, equality bodies may assume certain responsibilities with regard to the CRPD. That way, an overwhelming majority of national equality bodies deal with CRPD matters.²¹⁵ This facilitates a high awareness among equality bodies of rights and obligations under the CRPD and ensures that disability protection under the EED is interpreted in line with the CRPD.

²¹⁰ Crowley, Taking stock, 2020, p. 16.

²¹¹ Commission recommendation on standards for equality bodies, 22.6.2018, [C\(2018\) 3850](#).

²¹² For details regarding discrimination grounds covered by the various national equality bodies see: A comparative analysis of non-discrimination law in Europe 2019, Annex 3. National specialised bodies, pp. 141-152.

²¹³ Kádár, Equality bodies, 2018, p. 147.

²¹⁴ Crowley, Equality bodies, 2018, pp. 81-82.

²¹⁵ See the [European Directory of Equality Bodies](#) compiled by Equinet.

Annex 3 provides a list of all national equality bodies that deal – either exclusively as single-ground bodies, or among others, as a multi-ground bodies – with disability issues.²¹⁶ It also indicates whether the body has specific responsibility for the CRPD.

The European Directory of Equality Bodies does not provide any details as to how evenly balanced multi-ground bodies cover the different grounds of discrimination, or what the proportion of disability cases is. However, by way of example, the latest annual report from the Czech equality body (Public Defender of Rights) gives some indication, suggesting that complaints based on disability are indeed numerous. Long-term data for the 2009-2019 period show that disability was the most commonly claimed discrimination ground of all, representing roughly one third of established discrimination cases.²¹⁷ It should be noted however that not all complaints necessarily constitute discrimination: for instance, the Czech equality body found that discrimination had occurred in only 8 % of cases (2019 data). The data cited should be read with caution, as it is not clear to what extent the Czech case mirrors the EU average. This would require further research.

National equality tribunals help to ensure the correct application of EU equality law and help victims of discrimination to enforce their rights. While the cases handled by national equality bodies are numerous, they rarely receive greater public attention. The two cases below aim to illustrate the significance of national equality tribunals in enforcing equality rights (provided the national equality body is vested with the power to issue decisions). They draw on the rich case section presented in the semi-annual European Equality Law Review.²¹⁸ Countless further examples can be found in the annual reports of national equality bodies.

Case 1 – Equal treatment under positive action measures

The Cypriot equality body investigated a case lodged by a person with a severe mobility impairment. The claimant argued that a national law privileging the employment of blind telephonists in the public sector was discriminatory against persons with other disabilities. The Equality Body held that although Directive 2000/78/EC allows for positive action measures, the Cypriot law did violate the equality principle, since exclusion from the labour market was equally painful for persons with a severe disability other than blindness. Consequently, the law was referred to the Attorney General for revision.

Source: [European Anti-Discrimination Law Review](#), No 10, 2010, p. 49.

Case 2 – Reasonable accommodation

A deaf Irish job seeker asked a company to reschedule his job interview, so as to allow him to arrange for a sign language interpreter. His request was denied. Subsequently the applicant suggested holding the interview with the aid of a computer, which was also rejected. The Irish equality officer found this to be a case of denied reasonable accommodation, arguing that the job seeker's requests for accommodation were not disproportionate, and sanctioning the company to pay a compensation to the applicant.

Source: [European Anti-Discrimination Law Review](#), No 8, 2009, p. 52.

²¹⁶ For a standardised and therefore comparable description of these bodies' mandates, remits and activities see the [European Directory of Equality Bodies](#).

²¹⁷ Public Defender of Rights (Czechia), [2019 Annual report on protection against discrimination](#), p. 9. In absolute figures: over a period of 10 years, 78 out of 242 established discrimination cases related to disability.

²¹⁸ The [European Equality Law Review](#) (until 2014: European Anti-Discrimination Law Review) is edited by the independent European Network of Legal Experts in the Non-Discrimination Field, which receives funding from the European Commission.

3.4.4. Effectiveness of equality bodies

Concerns have arisen regarding the functioning and effectiveness of national equality bodies. The Commission shares these concerns, arguing that these bodies have not yet reached their full potential.²¹⁹ A Commission study identified two external factors for the effectiveness of equality bodies, namely the resources made available to them and the range of competences afforded to them, as well as two internal factors: strategic planning and stakeholder engagement. It concluded that 'few [equality bodies] have a level of funding that is adequate to make a real impact'. Moreover, the study found that certain equality bodies lack independence and are equipped with too limited competences, e.g. they cannot issue binding decisions, impose (adequate) sanctions or effectively follow up their decisions.²²⁰

3.4.5. Commission recommendation on standards for equality bodies

Standards are considered a key tool for protecting equality bodies from external interference, securing their independence and enabling them to work effectively.²²¹ Equinet has been a key driver in the debate on common standards and carried out some preparatory work in this respect.²²² The European Parliament supported this endeavour, echoing the calls for common standards for national equality bodies.²²³

In response to these demands, the Commission put forward a recommendation on minimum standards for equality bodies in June 2018.²²⁴ The recommendation addresses issues such as mandate, independence and effectiveness. Reiterating the important role of equality bodies in 'implementing Union legislation effectively and enforcing it comprehensively and consistently', it recommends that Member States ensure that they:

- have an adequate level of independence (administrative structure) and adequate human, technical and financial resources;
- provide effective and comprehensive legal assistance (handling of individual and collective complaints, representing victims and organisations in court);
- engage effectively in coordination and cooperation with other equality bodies at national, EU and international levels, so as to ensure that equality bodies function in an equivalent way across the EU;
- and, finally, are consulted on policy and legislative proposals.

Member States are to report back to the Commission on their compliance with the recommendation. An assessment of the effect of the recommendation should factor in the next (i.e. third) Commission report on the application of Directive 2000/78/EC, which is currently being prepared.

²¹⁹ COM(2014) 2, p. 15.

²²⁰ Crowley, *Equality bodies*, 2018, pp. 11-12, 89 ff. and 104 ff.

²²¹ In this context it is also worthwhile noting that the Council of Europe (or, more precisely, its Commission against Racism and Intolerance) has issued a recommendation for equality bodies: [ECRI General Policy Recommendation No 2](#), *Equality Bodies to combat racism and intolerance at national level*, adopted on 13 June 1997 and revised on 7 December 2017.

²²² Equinet, [Developing Standards for Equality Bodies](#): working paper, 2016.

²²³ European Parliament resolution [P8_TA\(2015\)0351](#) on equal opportunities and equal treatment of men and women in matters of employment and occupation, point 39 ('calls on the Commission to introduce common standards and checks to ensure the independence and effectiveness of national equality bodies'); reiterated in resolution [P8_TA\(2017\)0417](#) on combating sexual harassment and abuse in the EU, point 4.

²²⁴ European Commission, [Recommendation on standards for equality bodies](#), 22.6.2018, C(2018) 3850.

Equinet welcomed the Commission recommendation in principle. It recently launched a project that aims to examine how the recommendation is implemented in the Member States by developing indicators. However, given that a recommendation has political weight, but no binding force,²²⁵ calls have emerged for a legally binding instrument that would have more clout to trigger change. The European Commission has recently announced its intention to look into 'the potential need for new legislation to strengthen the role' of equality bodies.²²⁶

3.5. Employment-related disability data

3.5.1. Disability data requirements under the EED and CRPD

Equality data under the EED

'Statistical data and indicators are the backbone of responsible evidence-based policies.'²²⁷ This statement, taken from the preamble of a recently enacted EU regulation, reflects the common understanding that robust data and indicators facilitate the shaping of policies and the monitoring of their implementation. Notwithstanding this, the Employment Equality Directive does not contain any provisions on data collection. Therefore, no EU-wide statistical data are generated on basis of the directive. This lack of equality data constitutes an obstacle in assessing the implementation of the directive²²⁸ and in quantifying instances of discrimination. However, as the directive lays down minimum standards, Member States have discretion to provide for equality data collection at the national level. According to a Commission report, some countries do gather data (e.g. Finland and the Netherlands); in these cases, the collection duty seems to fall mainly on national equality bodies, and to a lesser extent on employers.²²⁹

Disability data

With regard to disability, already in 2008, a Council resolution on the situation of persons with disabilities²³⁰ deemed the lack of EU-wide disability data a gap, and called on the Commission and the Member States to take action. It argued that 'statistical and research data allow informed disability policies to be formulated and implemented at the different levels of governance'.

Despite the gap in Directive 2000/78/EC, the collection of disability data has become mandatory for the EU and its Member States through another instrument: the CRPD, ratified by the EU and by all 27 Member States between 2007 and 2018. Therefore, of the four discrimination grounds within the ambit of Directive 2000/78/EC – religion/belief, disability, age and sexual orientation –, disability is the only one for which data collection is compulsory. Article 31 CRPD establishes detailed requirements regarding the collection and analysis of statistical and research data, stipulating that disability data be disaggregated, to allow discriminatory practices to be identified and addressed.

²²⁵ Article 288 TFEU: 'Recommendations and opinions shall have no binding force.'

²²⁶ COM(2020) 565, p. 4.

²²⁷ Recital 1 of [Regulation \(EU\) 2019/1700](#).

²²⁸ Tymowski, The implementation of the EED, 2016, p. 57.

²²⁹ European Commission, [Analysis and comparative review of equality data collection practices in the European Union: Legal framework and practice in the EU Member States](#), 2017.

²³⁰ [Resolution](#) of the Council of the European Union and the representatives of the Governments of the Member States, meeting within the Council of 17 March 2008 on the situation of persons with disabilities in the European Union. OJ C 75, 26 March 2008, pp. 1-4.

Article 31 CRPD - Statistics and data collection

1. States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information shall:

- (a) Comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities;
- (b) Comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics.

2. The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties' obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights.

3. States Parties shall assume responsibility for the dissemination of these statistics and ensure their accessibility to persons with disabilities and others.

Obviously, data collected under CRPD obligations need to reflect the social model of disability. In this respect, the data focus should be on the existence of societal barriers in the widest possible sense (including physical, communicative and attitudinal barriers) that might hinder a person's full participation on an equal footing with others, rather than solely on the person having a disability.²³¹

Important authoritative guidance on the collection of adequate data can be derived from the CRPD Committee's general comments. General comment No 6 is particularly informative in this respect, setting out that data collected should:

- be broad and cover statistics, narratives and other forms (e.g. indicators);
- serve for identifying inequalities and discriminatory practices;
- provide information on all forms of discrimination;
- be disaggregated on the basis of disability and of intersectional categories (gender, sex, gender identity, ethnicity, religion, age or other layers of identity);
- include the number of discrimination claims based on disability and provide information about cases that are settled out of court, in court and adjudicated, and the number of judgments that lead to compensation or sanctions;
- systematically include people living in institutional settings; and
- allow analysis of the effectiveness of measures promoting equality.²³²

On a horizontal level, the CRPD Committee also stresses the participatory nature of disability data, meaning that the design, collection and analysis of data should be undertaken in close and meaningful consultation with disability organisations.

²³¹ M. Pedersen, 'Article 31: Statistics and data collection', in V. Della Fina et al. (eds.), *The United Nations Convention on the Rights of Persons with Disabilities: a commentary*, 2017, p. 561.

²³² CRPD Committee, General Comment No 6, paras. 34, 71 and 73.

3.5.2. Aligning EU disability data with CRPD requirements

Concluding observations

In its concluding observations, the CRPD Committee expresses concerns about the lack of consistent, comparable EU-wide data and human rights indicators.²³³ It recommends that the EU 'develop a human rights-based indicators system' as well as a 'comparable comprehensive data collection system, with data disaggregated by gender, age, rural or urban population and impairment type'. Types of impairment include all kinds of disability: physical, sensory, intellectual and mental.²³⁴

With specific regard to work and employment, the CRPD Committee voices concerns about the high unemployment rates for persons with disabilities in the EU, and especially for women with disabilities and people with intellectual and/or psychosocial disabilities. It recommends the EU 'take effective action to measure the employment of persons with disabilities and to increase their employment rate in the open labour market, including by providing training for member States on reasonable accommodation and accessibility in the context of employment'. Finally, concerning women and girls, the CRPD Committee recommends that the EU develop 'affirmative actions to advance the rights of women and girls with disabilities, establish a mechanism to monitor progress and fund data collection and research'.

European Parliament resolutions

The European Parliament has picked up on the data recommendation and on a number of occasions has insisted on the need to collect disaggregated disability data in line with CRPD requirements. It did so most recently in its resolution of 18 June 2020 on the post-2020 European disability strategy, where it called for the 'collection (with legally established safeguards) of robust disaggregated data, broken down by type of disability, age, gender and factors that are relevant to the monitoring of progress in the implementation of the CRPD and to addressing the barriers faced by persons with disabilities in exercising their rights'. In this resolution, Parliament also touched upon an intersectional approach to disability data.²³⁵

The quest for more adequate disability data – 'measurable and comparable quantitative and qualitative indicators'²³⁶ – has become a recurring feature in Parliament's resolutions. Parliament has called for the development, in cooperation with Eurostat, of a human rights-based indicator system and for measures to 'harmonise data collection on disability through EU social surveys in line with Article 31 of the CRPD'.²³⁷ In addition, Parliament has advocated the inclusion of persons living in

²³³ CRPD Committee, Concluding observations EU, 2015, paras. 21, 64, 65, 72, 73, 88 and 89. It is worthwhile noting that the recommendation to raise the rate of employment of persons with disabilities also targeted the EU institutions as employers.

²³⁴ Pedersen, Article 31, 2017, p. 561.

²³⁵ European Parliament resolution [P9_TA\(2020\)0156](#) on the European disability strategy post 2020, 18 June 2020, points 19 and 15.

²³⁶ European Parliament resolution [P8_TA\(2017\)0474](#) on the implementation of the European Disability Strategy, 30 November 2017, point 143.

²³⁷ European Parliament resolution [P8_TA\(2016\)0318](#) on the implementation of the UN Convention on the Rights of Persons with Disabilities, 7 July 2016, points 140-141.

institutions in EU disability statistics,²³⁸ as they are currently not taken into account in the EU-SILC data by default. Similar calls have come from the EESC²³⁹ and the European Disability Forum.²⁴⁰

3.5.3. Existing Eurostat data

The 2010-2020 European disability strategy – the EU's principal instrument when it comes to implementing the CRPD – recognised the need for data collection for the various priority areas of the strategy, including employment. It contains a commitment to streamline disability data gathered through European social surveys, in particular EU-SILC, EU-LFS and EU-EHIS.²⁴¹

Table 4 – EU surveys collecting disability data

Acronym	Full title	Thematic coverage	Age coverage	Frequency
EU-SILC ²⁴²	Statistics on Income and Living Conditions	Microdata on income, poverty and social exclusion, housing and health	Persons aged 16+ living in private households	Annual
EU-LFS	Labour Force Survey	Statistics on employed and unemployed persons ('labour force') and economically inactive persons	Persons aged 15+ living in private households	Quarterly
EU-EHIS	European Health Interview Survey	Data on health status, health care use, health determinants and socio-economic background; including activity limitations	Persons aged 15+ living in private households	Every five years

Source: Eurostat.

In addition to these periodic household surveys, thematic ad-hoc modules relating to disability are conducted occasionally. One example would be the dedicated Labour Force Survey module on people with disabilities in employment, conducted in 2011. Through their greater depth, such ad-hoc modules enhance the knowledge base considerably. However, on the negative side, they are – typically – one-off undertakings, they are fast out of date and, lastly, they do not generate comparative data over time (i.e. time series), which is vital for tracking developments or trends.

The European Commission draws mainly on EU-SILC data to inform EU disability policy relating to the Europe 2020 targets (i.e. employment, education, poverty and social exclusion). Eurostat data are based on national EU-SILC survey data, which gather data on 'long-standing activity limitation due to health problems', considered an adequate proxy for disability.

²³⁸ European Parliament resolution [P8_TA\(2017\)0474](#) on the implementation of the European Disability Strategy, 30 November 2017, point 142.

²³⁹ EESC opinion, Shaping the EU agenda for disability rights 2020-2030, 2019, point 5.10.

²⁴⁰ European Disability Forum, [European human rights report 2020](#), p. 69, and EDF [Resolution on employment of persons with disabilities](#), 19 February 2017.

²⁴¹ The relevance of these surveys for disability data and their methodological differences are examined in S. Grammenos, [European comparative data on Europe 2020 & people with disabilities](#), ANED, December 2018.

²⁴² EU-SILC contains a small module on health. The health-related questions are: 1. perceived health; 2. chronic (longstanding) illnesses or conditions; and 3. limitation in activity due to health problems.

However, the Eurostat data available have their limitations.

- First and foremost, they only correspond partially to the social model of disability, as their focus lies on personal impairments rather than 'interactions with barriers', although they do consider activity limitations.
- Second, the periodic EU household surveys are fairly general in scope and have not been specifically designed for collecting disability data (and even less so from a human-rights perspective). Therefore, Eurostat disability data obtained through household surveys are neither very detailed nor sufficiently disaggregated.
- Third, they exclude two groups of people: children under the age of 16 and, of even greater relevance in the context of this study, people living outside private households (e.g. people living in institutions, retirement homes, prisons, etc.) As mentioned above, the omission of persons living in institutions was addressed by the CRPD Committee.

The European Commission has underlined the importance of disability data on a number of occasions, for example in its 2017 progress report on the implementation of the European disability strategy. There, the Commission highlighted the essential role data collection plays when it comes to monitoring the situation of people with disabilities and adequately addressing the barriers they face by means of policymaking. The same Commission report mentioned plans to further harmonise disability data by introducing the Global Activity Limitation Indicator (GALI), – which is already used in EU-SILC and EU-EHIS – into all relevant social surveys, and in particular into the EU-LFS once every two years. This would create 'a reliable monitoring tool on the employment of people with disabilities'.²⁴³

This reform has in the meantime been realised, through revision of the framework for Integrated European Social Statistics (IESS).²⁴⁴ Regulation (EU) 2019/1700 was adopted on 10 October 2019, complemented by a number of implementing regulations.²⁴⁵ Hence, even if current survey data do not yet allow for comprehensive, systematic and regular monitoring of the situation of people with disabilities, the revised IESS framework should improve the collection of EU-wide disability data in future surveys and thus generate more adequate data.

With regard to disability data, Parliament had high ambitions for this file. Its report²⁴⁶ on the Commission proposal,²⁴⁷ drawn up by the EMPL Committee, strived for the insertion of novel disability indicators. With particular regard to employment, the report suggested including indicators such as 'People with disabilities on the labour market', 'Reasonable accommodation provided for people with disabilities' and 'Participation of people with disabilities in education and vocational training'. Ultimately, however, these amendments were not retained in the final compromise text of Regulation 2019/1700, reached over several trilogue rounds.

A specific point raised by the CRPD Committee was the statistical inclusion of persons with disabilities living in institutions. Actually, the new regulation does not consider persons living outside private households in regular surveys. Instead, it provides for feasibility studies and pilots,

²⁴³ European Commission, Progress Report on the implementation of the European Disability Strategy (2010-2020), [SWD\(2017\) 29](#), pp. 17-18.

²⁴⁴ [Regulation \(EU\) 2019/1700](#) of 10 October 2019 establishing a common framework for European statistics relating to persons and households, based on data at individual level collected from samples.

²⁴⁵ The most relevant implementing act in the ambit of this study is: [Commission Implementing Regulation \(EU\) 2019/2240](#), (technical specifications for LFS), adopted on 16 December 2019.

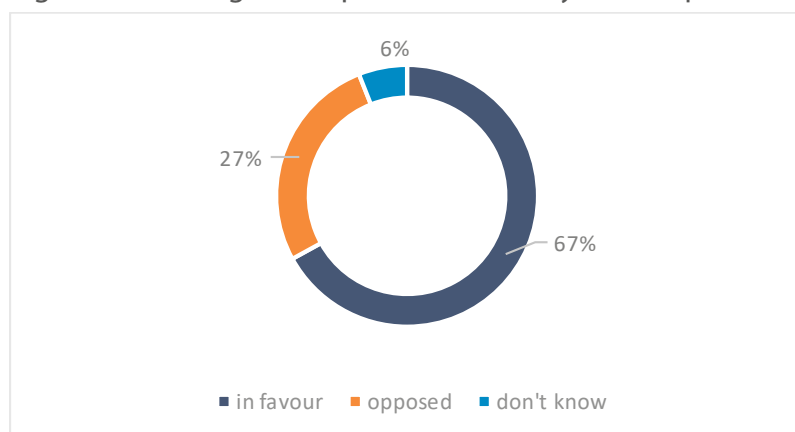
²⁴⁶ European Parliament, report [A8-0247/2017](#), rapporteur Tamás Meszerics (Greens, Hungary).

²⁴⁷ [COM\(2016\) 551](#).

aimed at developing alternative methodologies, 'to improve the efficiency of data collection instruments in order to allow full participation of people with disabilities'.

Finally, Article 31 CRPD mentions compliance of data collection with data protection law and international standards, to ensure confidentiality and respect for privacy. Eurobarometer data²⁴⁸ disperse any possible concerns that citizens might perhaps not be willing to disclose sensitive personal information regarding disabilities, suggesting a large majority of the general population (two in three) are in principle ready to provide, on an anonymous basis, such data if this could help to combat discrimination. Only around 27 % of respondents expressed a certain degree of resistance (2019). People's attitudes towards this question have remained broadly unchanged since 2007.

Figure 6 – Willingness to provide disability-related personal data (2019)



Data source: Eurobarometer 493.

²⁴⁸ The question is formulated as follows: Are you in favour or opposed to providing anonymous information about any disability you may have as part of a census or statistical survey, if that could help to combat discrimination? This is a recurring question asked in the periodic Eurobarometer survey 'Discrimination in Europe'. Latest data from 2019, Eurobarometer 493.

4. Statistical key indicators for employment of persons with disabilities

Key findings

The CRPD Committee recommended that the EU increase the employment rate of people with disabilities EU-wide in the open labour market. This matched one of the key objectives of the 2010-2020 European disability strategy. This endeavour yielded some success: the key labour market indicators – employment rate, unemployment rate and activity rate – for the working age population show slightly positive trends for the 2008-2018 period. These positive trends were favoured by the economic recovery following the financial crisis of 2008.

Nonetheless, major challenges persist. First, there are blatant differences ('gaps') between people with and without disabilities; and second, data are silent about the nature and quality of jobs, e.g. they do not distinguish between the jobs in the open labour market and sheltered workshops, nor do they reflect part-time employment.

According to 2018 data (ANED computation based on EU-SILC 2018), EU-wide:

- 25 % of the population aged 16+ report having some kind of disability (severe disability **prevalence**: 7.6 %, moderate disability prevalence: 17.4 %). Among the working age population (age 16-64), the disability prevalence rate is estimated at 17.9 %.
- The employment rate of persons with disabilities remains disproportionately low: 52 % of persons with disabilities are in **employment**, compared to 76.2 % for persons without disabilities. The resulting employment gap of 24.2 % corresponds to the long-term trend, which has been oscillating around 25 % over the past decade.
- The **unemployment rate** of people with disabilities is double that of people without disabilities (16.7 % versus 8 %).
- The **economic activity rate** of people with disabilities amounts to 62.4 %, compared with 82.9 % for persons without disabilities. This leaves more than double as many people with disabilities economically inactive than people without disabilities. However, some progress could be achieved over time: the activity rate of persons with disabilities shows a steady rise from 55.1 % in 2008 to 62.4 % in 2018.
- Persons with disabilities tend to work more often part-time than their non-disabled peers. This is particularly true for **women with disabilities**, whose employment rate expressed in full-time equivalents remains at 21 % (compared with 29 % for men with disabilities and 48 % for women without disabilities). This high proportion of part-time work is one of several factors that put women with disabilities at an increased risk of poverty and social exclusion.

The 2020 pandemic and ensuing economic crisis will likely have a negative impact on the employment situation of persons with disabilities, notably on those who work in the open labour market. Future statistics will be able to quantify this impact.

4.1. Introduction and methodological note

The starting point of this chapter is the recommendation of the CRPD Committee to increase the employment rate of people with disabilities EU-wide in the open labour market. This part of the study examines and presents relevant statistical data relating to key labour market indicators

(employment rate, unemployment rate and activity rate of persons with disabilities), depicting the trend for the 2008-2018 period. A gender perspective is added as appropriate.

The EU-wide data used in this chapter are not directly extracted from Eurostat. Instead, they are aggregated estimates the Academic Network of European Disability Experts (ANED) extrapolated from EU-SILC data, upon the request of the European Commission. ANED's computation of data serves the purpose of monitoring the evolution of the Europe 2020 targets for people with disabilities, and thus covers the areas of employment; education; and poverty and social exclusion. ANED's latest full report, published in 2018 and drawing on EU-SILC 2016 data, gives detailed methodological explanations. Subsequently, statistical updates for a limited number of key indicators were presented for the years 2017 and 2018.²⁴⁹ This explains why in this chapter some data refer to 2018 and others to 2016.

As explained above, EU-SILC data are based on self-reporting, collected in household surveys in the Member States. EU-SILC data do not fully match with the CRPD's human rights approach to disability. However, they distinguish between 'chronic illness' and 'limitation in activity' (which is considered an adequate proxy for the concept of barriers), whereby the limitation is defined as longer-term (i.e. minimum six months). It is noteworthy that data presented in this chapter are EU-wide aggregates of national survey data computed by Eurostat. These data may vary considerably from one country to another for any of the indicators. According to Eurostat, EU-SILC data are also used for monitoring the implementation of the social protection and inclusion dimension of the European Pillar of Social Rights.

While ANED forms the main data source for this chapter, complementary data was obtained from the Gender Equality Index – which is also based on EU-SILC – and Eurofound (in particular, but not exclusively, the European Quality of Life Survey).

4.2. Disability prevalence

There are no exact data on how many people living in the EU have a disability, and figures vary depending on the methodology and definition of disability used. The most recent ANED estimates²⁵⁰ (based on EU-SILC 2018) suggest that, EU-wide, 25 % of people aged 16+ have a disability. Moderate limitations (17.4 %) prevail over severe disability (7.6 %).²⁵¹ Overall, disability prevalence is higher among women than men (women: 27.3 % and men: 22.6 %).

If the spotlight is placed on the working age population (defined here as the 16 to 64 age cohort), the disability prevalence rate is estimated at 17.9 %. Disability prevalence rises with age, as older people are more prone to impairment: for the 65 and over age group, the disability rate is estimated at 48.5 %.

²⁴⁹ Unless otherwise indicated, statistical data in this chapter are taken from: S. Grammenos, [European comparative data on Europe 2020 & people with disabilities](#) (based on EU-SILC 2016), ANED, December 2018. Updates for selected key indicator tables were published in March 2019 for [2017 data](#) (based on EU-SILC-2017) and in September 2020 for [2018 data](#) (based on EU-SILC 2018).

²⁵⁰ ANED [update 2020](#) (based on EU-SILC 2018).

²⁵¹ 'Severe disability' is not further defined.

Table 5 – EU-wide disability prevalence (2018)

	No limitations	Some limitations		Men	Women	Working age (16-64)	65+
EU average	75 %	25 %		22.6 %	27.3 %	17.9 %	48.5 %
		severe	moderate				
		7.6 %	17.4 %				

Data source : ANED, based on EU-SILC 2018.

The latest available **absolute figures** have been computed by ANED on the basis of 2016 data – hence for a pre-Brexit EU –, and suggest a disability prevalence rate of 24.4 % (working population), translating to 99 million people with disabilities.²⁵²

However, the aforementioned limitations inherent in household surveys mean that this figure excludes two groups, namely children under 16 and people living outside a private household. ANED computes the missing figures as follows:

- for persons with disabilities living in institutions, 1 percent point is to be added for persons aged under 65 and 5 % for persons aged 65+; and
- for children under the age of 16, a disability prevalence of 4.3 % is indicated.

As a result, the overall disability rate in the EU, covering all ages, was estimated at 21.1 % of the total population for the year 2016.²⁵³ If only the working age population is taken into account, the disability rate is 17 %.

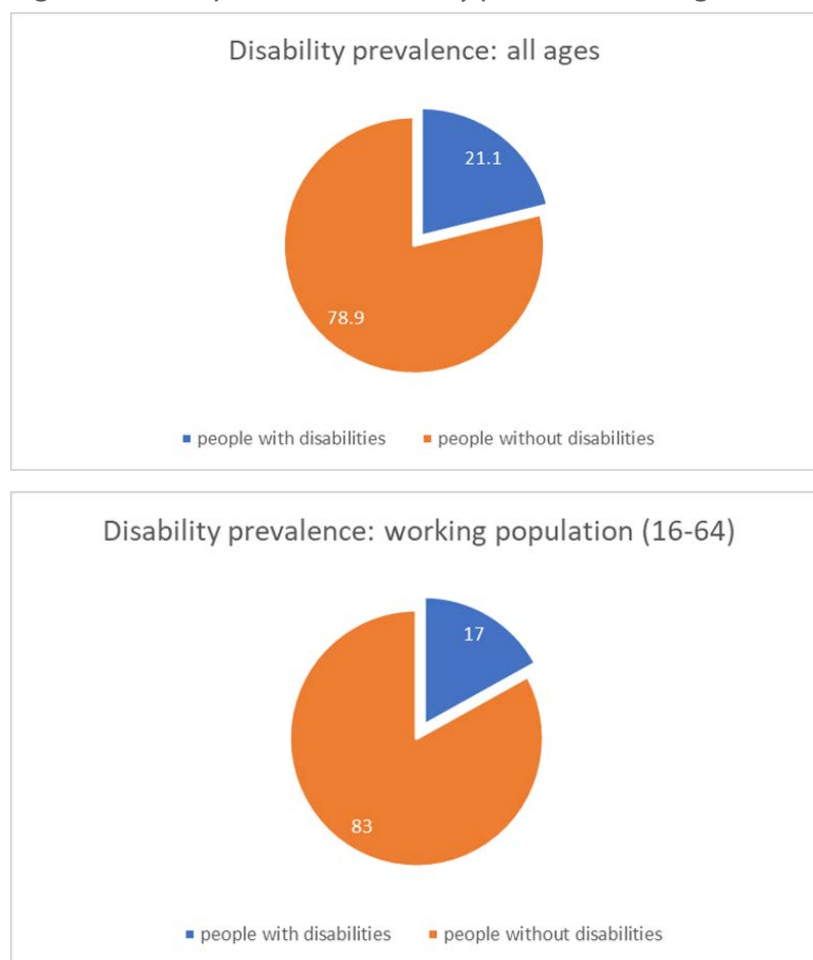
In a recent statement made during the European Parliament's debate on the future EU disability strategy, Commissioner Dalli likely referred to these ANED figures when she said: 'According to the latest figures available to the Commission, approximately 100 million persons in Europe have a disability. They represent a very important share of the EU population, and they must by no means be left behind'.²⁵⁴

²⁵² ANED study 2018, p. 18.

²⁵³ ANED study 2018, p. 25

²⁵⁴ Statement Commissioner Helena Dalli, European Parliament [plenary debate](#) of 17 December 2019. The 100 million figure was also cited in the European Parliament resolution on the post-2020 European disability strategy (recital B).

Figure 7 – Comparison of disability prevalence: all ages versus working population (2016)



Data source: ANED.

4.3. Key employment indicators

ANED provides data for employment, unemployment and the activity rate for the 2008-2018 period for the working age population (i.e. 20 to 64). It compares the situation between people with disabilities and people without disabilities, at the general level and also broken down by gender, age group and degree of disability (severe and moderate).

According to the latest available statistical EU-wide data (for the year 2018, based on EU-SILC 2018), 52 % of people of working age (20-64) with disabilities are in employment (including self-employment), while 16.7 % are unemployed. In the same period, the rate of economic activity among people with disabilities amounts to 62.4 %. These key labour market data reveal striking differences between people with and without disabilities: more than double as many people with disabilities are economically inactive, and their unemployment rate is also twice as high.

Table 6 – Key employment data (2018)

Indicator	Persons with disabilities	Persons without disabilities	Resulting gap
Employment rate %	52	76.2	24.2
Unemployment rate %	16.7	8	8.7
Activity rate %	62.4	82.9	20.5

Source: ANED, based on EU-SILC 2018.

The EU 2020 Joint Employment Report deems the low employment and activity rates of persons with disabilities 'an untapped potential'.²⁵⁵ According to this report, the high activity gap suggests 'that significant barriers exist for persons with disabilities in accessing the labour market'.

It needs to be noted that the prevalence of a disability (activity limitation) of the working age population (20 to 64) does not correlate with the percentage of persons receiving a disability benefit. Both indicators are collected in the EU-SILC survey, but figures differ considerably for a number of reasons, partly because moderate activity limitation may be below the disability degree threshold recognised in national legislation.²⁵⁶

4.3.1. Employment rate

Available data

The employment rate of people with disabilities remains disproportionately low. The most recent ANED data (based on EU-SILC 2018) indicate that EU-wide 52 % of disabled persons aged 20 to 64 are in employment, compared to over 76 % for people without disabilities. Thus, the employment gap (i.e. the difference in the employment rate of people with and people without disabilities) remains significant, amounting to 24.2 percentage points.

Definition of employment rate

The employment rate is the percentage of employed persons in relation to the total population of the same age bracket (here: 20 to 64). It takes into account employed and self-employed persons working either full-time or part-time.

The aforementioned figure of 52 % constitutes the computed EU-average, which somewhat conceals that the employment rate of persons with disabilities varies considerably across Member States, ranging from just above 30 % in some countries (Greece: 31.1 %; Croatia: 34.4 %; Bulgaria: 35.5 %) to well over 60 % in others (Denmark, Estonia, Latvia, Netherlands).

Taking a closer look at the gender perspective, women with disabilities are worse off than men: only 49.3 % of women with disabilities are in employment, compared with 55.1 % of men.

In general, level of education plays a significant role in chances on the labour market; this also applies to people with disabilities. Based on the European Quality of Life Survey (EQLS-2016), a recent Eurofound study²⁵⁷ indicates that 72 % of people with disabilities who completed tertiary education are in employment. The ratio drops sharply to 46 % for those with secondary education,

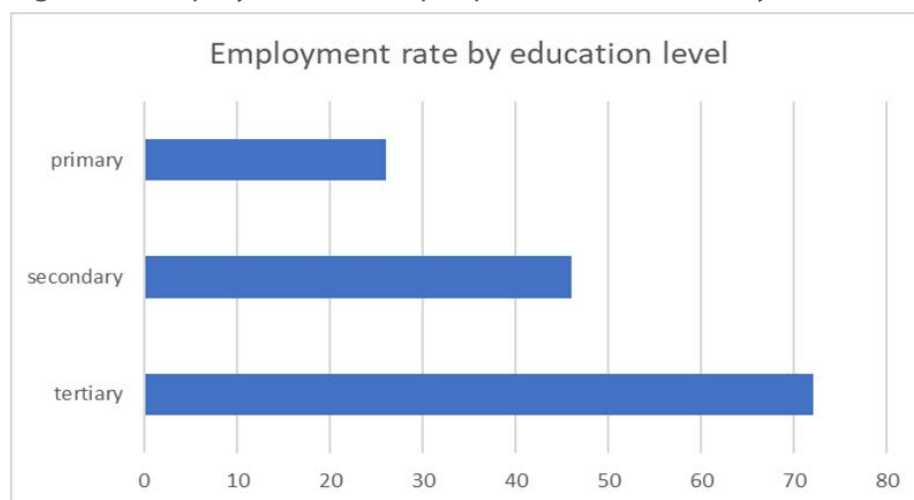
²⁵⁵ European Commission and Council, [Joint Employment Report 2020](#), p. 63. The Joint Employment Report by the European Commission and the Council is mandated by Article 148 TFEU and a key element in EU economic governance. It provides an annual overview of the main employment and social developments in the EU as a whole, as well as EU countries' reform actions. In addition, it monitors Member States' performance in relation to the social scoreboard set up in the context of the European Pillar of Social Rights.

²⁵⁶ See ANED study 2018, p. 36.

²⁵⁷ Eurofound, [The social and employment situation of people with disabilities](#), 2018.

and shrinks to 26 % for those having completed primary education only. As mentioned in Chapter 2, both the European Parliament and the EESC have pointed at the interconnectedness between education and employment, calling for quality education for persons with disabilities as precondition for their inclusion in the (open) labour market.

Figure 8 – Employment rate of people with disabilities by level of education (2016)



Data source: Eurofound.

The breakdown by age group uncovers major differences. The employment rate is highest in the 35 to 44 age bracket, namely 64.7 %. Furthermore, people with disabilities aged between 25 and 54 do relatively well. Conversely, employment prospects are rather grim for the young (29.7 %) and those aged 55 and over. High drop-out rates from schools exacerbate the problem. ANED provides data for 2016, indicating that 23.6 % of young people with disabilities (aged 18-24) are early school leavers, compared with 11 % for non-disabled young people.²⁵⁸

Table 7 – Employment rate as a percentage: breakdown by age group, EU-average (2018)

Age group	16-24	25-34	35-44	45-54	55-64
Persons with disabilities	29.7	59.8	64.7	60.8	38.9
Persons without disabilities	31.7	77.8	86.2	86.5	65.4
Employment gap	2	18	21.5	21.8	26.5

Data source: ANED, based on EU-SILC 2018.

Hidden factors in the employment rate for people with disabilities

The employment rate is an important indicator for the inclusion of persons with disabilities in the labour market. However, the above-mentioned EU-wide employment rate of 52 % (2018) does not tell the full story, as it needs to be looked at in conjunction with the activity rate (Chapter 4.3.3.) of persons with disabilities, which remains disproportionately low. Furthermore, the employment rate does not distinguish between jobs in the open labour market and sheltered workshops, nor does it distinguish between full-time and part-time employment. This was also observed by the European Parliament in 2017, stating 'the number of persons with disabilities in employment might be lower

²⁵⁸ ANED study 2018, p. 172.

than data indicates, considering many fall into the category of "not employable", or work in the sheltered sector'.²⁵⁹

In practice, reportedly, the jobs of persons with disabilities do often not correspond to the requirements of Article 27 CRPD, which provides for access to a 'labour market and work environment that is open, inclusive and accessible to persons with disabilities'. A study commissioned by the European Parliament concluded that no EU-wide data exist concerning the sheltered sector. Even if some countries gather data concerning persons in sheltered workshops, their comparability is hampered by the fact that there is no common definition at national level as to what constitutes a sheltered workshop. This is mainly due to 'the differences that exist in the names, structures and legal frameworks which implement sheltered workshops in the Member States'.²⁶⁰

Sheltered workshops are deemed discriminatory

Depending on the Member State, persons with disabilities working in the sheltered sector are often not granted employee status, which deprives them from entitlement to a minimum wage. Instead, low remuneration is common, which raises the risk of in-work poverty. Without employee status people with disabilities do not have independent social security or employment protection. In some countries (e.g. Austria), persons working in sheltered workshops are not included in the labour market statistics, which renders them statistically invisible.

(Source: [Equinet](#)).

The same study found that there is great variation in terms of employment status and remuneration of sheltered employees, and that only few Member States grant sheltered workers employee status. The study also mentioned the existence of transitional sheltered workshops which aim at preparing people with disabilities for integration in the open labour market.²⁶¹ It is worth noting that the CRPD Committee invites state parties to 'facilitate the transition away from segregated work environments for persons with disabilities and support their engagement in the open labour market, and in the meantime also ensure the immediate applicability of labour rights to those settings'.²⁶²

One conclusion of this chapter is that, with regard to the main employment objectives of the 2010-2020 European disability strategy, namely raising the share of persons with disabilities in the open labour market (addressed also by the CRPD Committee in its concluding observations), the data available do not allow any progress to be measured, as EU-wide data do not cover the protected and open labour markets separately and coherently.

It appears that Eurofound is currently preparing a study examining the open labour market for people with disabilities in the EU Member States and the policies supporting their employment,²⁶³ which might be able to give more clarity.

Finally, with regard to work schedules, persons with disabilities are in general more likely to work part-time than those without disabilities. ANED highlights that the over-representation of persons

²⁵⁹ European Parliament resolution [P8_TA\(2017\)0474](#) on the implementation of the European Disability Strategy, 30 November 2017, Recital X.

²⁶⁰ Reasonable accommodation and sheltered workshops, 2015, p. 21.

²⁶¹ Reasonable accommodation and sheltered workshops, 2015, p. 31.

²⁶² CRPD Committee, General Comment No 6, para. 67.

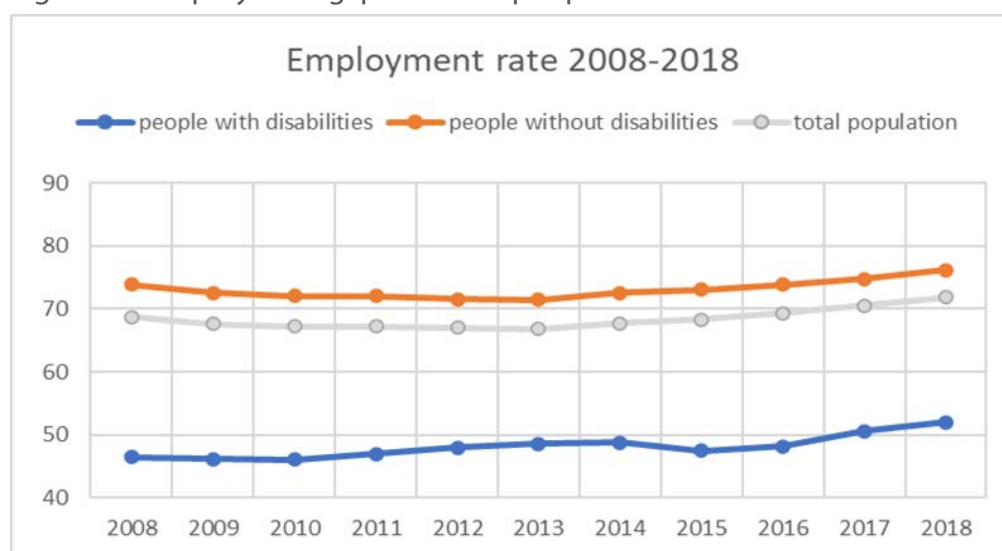
²⁶³ Eurofound, [How to use the surge in teleworking as a real chance to include people with disabilities](#), blogpost, 17 August 2020. The study findings are expected in spring 2021.

with disabilities in part-time employment allows for different interpretations. While persons with disabilities may find part-time jobs attractive and not aim at full-time employment, it is also necessary to consider that they may not always be considered for a full-time job or not be granted the necessary work accommodations on the side of the employer.²⁶⁴

Employment rate: development from 2008 to 2018

Figure 9 seeks to capture the longer-term trend, by comparing the employment rate of people with disabilities, people without disabilities and the total working population over a full decade. The curve for persons with disabilities shows a steady upwards trend since 2008, which was certainly favoured by economic recovery. The employment rate rose from 46.4 % in 2008 to 52 % in 2018. Concurrently, the employment gap narrowed slightly, from 27.5 percentage points in 2008 to 24.2 percentage points in 2018. Nonetheless, the gap remains substantial.

Figure 9 – Employment gap between people with and without disabilities (2008-2018)



Data source: ANED based on SILC-2018.

The social and economic consequences of COVID-19

It is to be expected however that the positive employment trend described above will be heavily disrupted by the coronavirus crisis. Obviously, the pandemic has wide economic and social implications and is already leading to widespread loss of employment, whereby certain sectors are harder hit than others. In general, people with temporary contracts and vulnerable people in the precarious job segment are presumed to be at greater risk of losing their jobs. Therefore, in its recent resolution on the consequences of the pandemic, the European Parliament insisted that persons with disabilities 'should be included in all income protection measures'.²⁶⁵

It is hard to predict how the Covid-19 pandemic will pan out. Only future statistics will be able to capture the full scale of the impact. However, the first reports are emerging and giving an idea of the pandemic's effect on the labour market. Eurofound, which has recently published an initial survey-based assessment, believes that the crisis 'may well squeeze out jobs held by people with

²⁶⁴ ANED study 2018, p. 68.

²⁶⁵ European Parliament resolution [P9_TA\(2020\)0054](#) on EU coordinated action to combat the COVID-19 pandemic and its consequences, 17 April 2020, points 13 and 36.

disabilities, who may then face more difficulties and competition to re-enter the labour market'.²⁶⁶ First-hand evidence comes from Inclusion Europe, a civil society organisation representing people with intellectual disabilities and their families. A report from November 2020 affirms that many people with intellectual disabilities have indeed lost their employment in the open labour market during the pandemic, and that only in some countries they could benefit from governmental income support schemes. The report stressed that while persons with intellectual disabilities face a particular risk of job loss in certain sectors (e.g. the hospitality industry/horeca sector), it is feared that a potential recession will exacerbate the employment situation still further. In addition, people working in sheltered workshops felt 'left behind', as many of these workshops have closed.²⁶⁷

Commissioner Dalli has publicly recognised the fact that persons with disabilities are among the groups particularly affected by the pandemic.²⁶⁸ In this context, the Commissioner has called on Member States to duly consider the European Pillar of Social Rights, and notably its chapter on 'social protection and social inclusion'.

Despite the presumably larger-scale consequences of the pandemic on the employment of persons with disabilities, interestingly, Eurofound also sees some opportunities in the current upswing of teleworking: 'As companies revisit their work practices and embrace telework, the potential it offers for change could prove a useful angle in making society in general and work specifically disability-inclusive'. While Eurofound acknowledges that telework is not possible in all jobs, it argues that for people with disabilities, telework could remove obstacles such as unsuitable workspaces and commuting to work. The latter point seems substantial against the background of the EU-EHIS 2014 survey, which suggested that people with mobility problems had the lowest employment rates.²⁶⁹

Some caution is however warranted. Eurofound recognises that telework could be a 'double-edged sword', when used as an excuse to avoid reasonable accommodation measures and accessibility of the workplace. Furthermore, it touches upon another important aspect when stressing that telework entails a risk of 'isolation, loneliness and social exclusion'. Therefore, Eurofound insists, inclusive and non-discriminatory telework needs to be voluntary: 'Working remotely, or from the office, should be an option, a facilitator and not a condition for access to work or retention'.²⁷⁰

²⁶⁶ Eurofound, [Living, working and COVID-19](#), September 2020.

²⁶⁷ Inclusion Europe, [Neglect and discrimination. Multiplied](#). How Covid-19 affected the rights of people with intellectual disabilities and their families, November 2020, pp. 13 and 50-52.

²⁶⁸ Helena Dalli, [Speech](#) on the impact of the coronavirus outbreak on persons with disabilities, 30 April 2020. In her speech, the Commissioner targeted social and health implications rather than employment.

²⁶⁹ ANED study 2018, p. 8.

²⁷⁰ Eurofound, [How to use the surge](#), 2020.

4.3.2. Unemployment rate

According to the latest ANED estimates for 2018, the unemployment rate of people with disabilities (20-64 age group) is more than double the rate of people without disabilities (16.7 % and 8 % respectively). This resulting 'unemployment gap' – the difference in the unemployment rate of people with and people without disabilities – amounts to 8.7 percentage points. That broadly corresponds to the average unemployment gap over 10 years (8.2 %), meaning that the gap, despite some minor ups and downs, has remained wide.

Figure 10 depicts the trend over time, by comparing the unemployment rates for people with disabilities, people without disabilities and the total working population for the decade 2008-2018. While the long-term trend is not very encouraging, pointing slightly upwards, a reverse trend has been observed since 2015. Since then, the unemployment rate for people with disabilities has dropped from a peak of 20.2 % to 16.7 % in 2018.

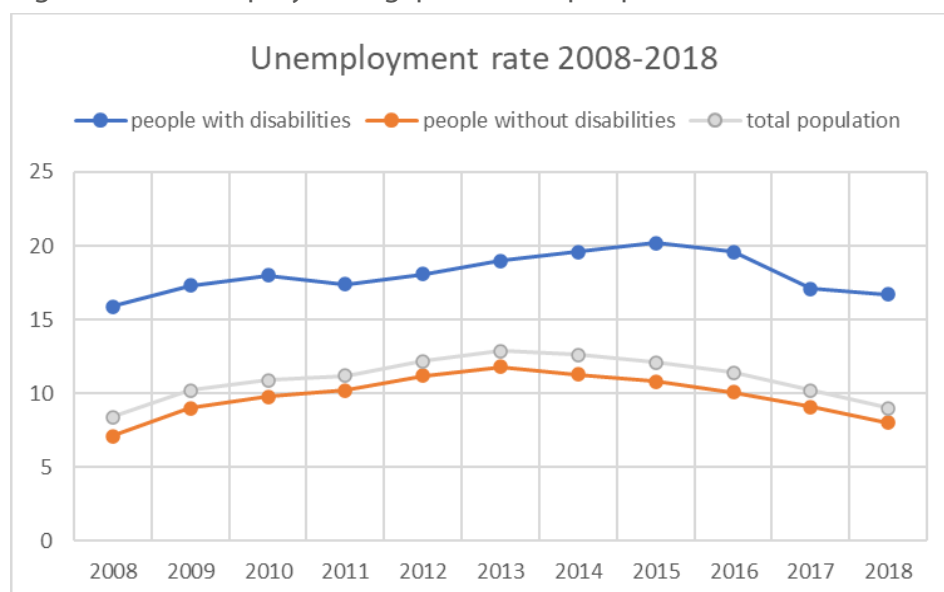
However, as sketched out above, the outbreak of the pandemic in 2020 is shaking up labour markets on an unprecedented scale, and a long recovery period is to be expected. This will weigh heavily on unemployment statistics across Europe – in general and for people with disabilities.

Definition of unemployment rate

The unemployment rate is the ratio of unemployed (i.e. job seeking) persons to the labour force. The labour force itself is defined as the economically active population, comprising the employed and the unemployed.

Unemployment figures in this chapter are based on ANED analysis of EU-SILC data. As ANED highlights, these unemployment data might differ from official unemployment statistics drawn from administrative records, because EU-SILC data are based on self-declaration and established in a different way than administrative data. (ANED study 2018, p. 137)

Figure 10 – Unemployment gap between people with and without disabilities (2008-2018)



Source: ANED based on SILC-2018

4.3.3. Activity rate

The activity rate describes the workforce. Conversely, people count as economically inactive if they are neither in employment nor unemployed (nor seeking employment), for whatever reason. In this respect, economic inactivity includes quite heterogeneous groups, such as students, retired, those fulfilling domestic tasks, and also those considered permanently unfit for work ('non-employable').

One particular subgroup of the economically inactive population are persons with disabilities. As a survey-based Eurofound report illustrates, many in this group declared themselves as able and willing to work. Reportedly, as many as half of inactive people with disabilities would like to work 32 hours or more a week.²⁷¹ A particular problem often intertwined with inactivity is the feeling of social exclusion, something one in two inactive persons with disabilities report experiencing.²⁷²

Like the ANED data provided for employment and unemployment, the data regarding the EU-wide activity rate target people of working age (aged 20 to 64). The data show a significant discrepancy between the activity rate of people with disabilities their non-disabled peers: in 2018, 62.4 % of people with disabilities participated in the labour market, compared with 82.2 % of people without disabilities. This means an activity rate gap of 19.8 percentage points.

Furthermore, ANED data suggest that people with disabilities have an overall higher risk of poverty and social exclusion than their non-disabled peers. This applies across all categories – economically active (i.e. employed or unemployed) and inactive – and across all levels of education.²⁷³ Among the employed, one main poverty factor is that persons with disabilities are disproportionately represented in the group working part time.

Figure 11 displays the economic activity trend over the years, by comparing the activity rate of people with disabilities, people without disabilities and the total working population for the 2008-2018 period. The 10-year trend in the activity rate points slightly upwards, from 55.1 % in 2008 to 62.4 % in 2018 for people with disabilities. Moreover, the increase was steeper than for their non-disabled peers (79.5 % in 2008 and 82.2 % in 2018). An encouraging trend can also be observed in the activity rate gap, which narrowed somewhat from 24.4 % in 2008 to 19.8 % in 2018.

Definition of activity rate

The activity rate is defined as the ratio of economically active people (i.e. the sum of employed and unemployed persons) to the total population of the same age group.

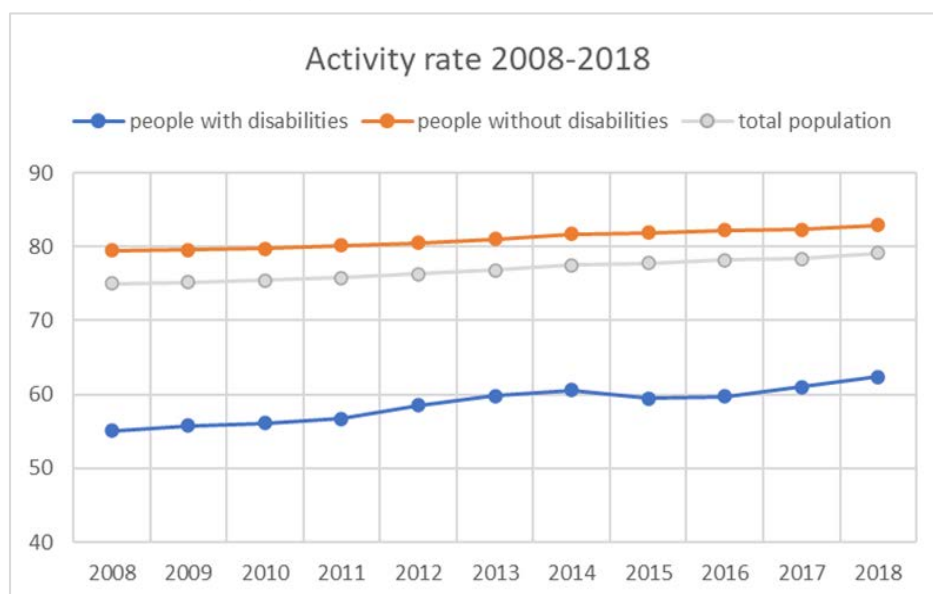
Economically inactive persons are not reflected in unemployment statistics.

²⁷¹ Eurofound, Reactivate: [Employment opportunities for economically inactive people](#), 2017, p. 30.

²⁷² Eurofound, Reactivate, 2017, p. 37.

²⁷³ ANED study 2018, pp. 320-321.

Figure 11 – Activity gap between people with and without disabilities (2008-2018)



Data source: ANED based on SILC-2018.

Bringing economically inactive people (including people with disabilities) into employment is a major preoccupation for the EU. Already in 2008, the European Commission adopted a recommendation on the active inclusion of people excluded from the labour market,²⁷⁴ which was subsequently endorsed by Parliament and Council. This recommendation was aimed at securing adequate social protection for those unable to work and at bringing those who were able to work into quality employment through income support, inclusive labour markets and access to quality services. The latest Commission implementation report (2017) considers that the Active Inclusion Recommendation 'has acted as a driver for structural reforms and has yielded encouraging results', but success 'depends on the commitment and full involvement of national, regional and local partners'.²⁷⁵ Overall, the progress Member States have made varies enormously. Worthwhile mentioning in this context is that active inclusion policies are also monitored within the European Semester and addressed in the country-specific recommendations to the Member States.

The aforementioned Eurofound report, which builds on the Active Inclusion Recommendation, describes national measures and incentives to bring persons with disabilities into the labour market, some of them reportedly quite successful.²⁷⁶ Good national practices in this respect are also included in the EU Joint Employment Report.²⁷⁷

²⁷⁴ [Commission recommendation of 3 October 2008 on the active inclusion of people excluded from the labour market](#), OJ L 307, 18.11.2008, pp. 11–14.

²⁷⁵ Commission report on the implementation of the 2008 Commission Recommendation on the active inclusion of people excluded from the labour market, [SWD\(2017\) 257](#), pp. 8 and 25.

²⁷⁶ Eurofound, *Reactivate*, 2017, pp. 50-55.

²⁷⁷ Commission and Council, *Joint Employment Report 2020*, p. 72; *Joint Employment Report 2018*, p. 48.

4.4. The gender aspect: women with disabilities in employment

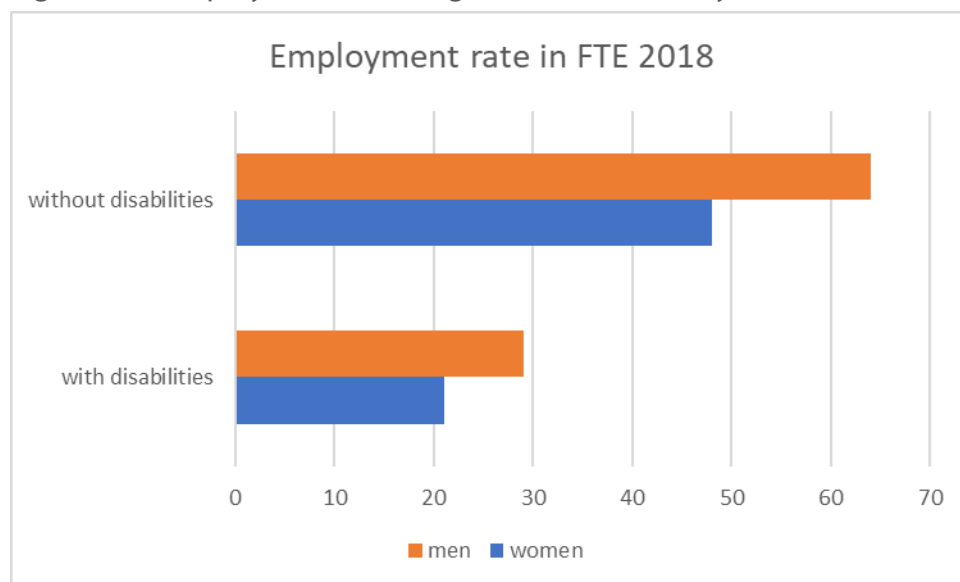
When the gender dimension is examined more closely, there is statistical evidence that access to the labour market is more difficult for women with disabilities than for men with disabilities. As already mentioned, ANED data point at a gender gap in the employment rate: only 49.3 % of women with disabilities are in employment, compared with 55.1 % of men with disabilities. A similar pattern can be observed with regard to the activity rate of women with disabilities, which is almost six percentage points lower than that of men with disabilities (2018: women 58.9 % and men 66.5 %).

The Gender Equality Index of the European Institute for Gender Equality (EIGE) adds a dimension by calculating the employment rate of persons with disabilities in full-time equivalents (FTE), based on Eurostat data (EU-SILC).²⁷⁸ It finds that the FTE employment rate remains very low for men with disabilities, namely 29 %, compared with 64 % for their non-disabled peers) and is even lower for women with disabilities, namely 21 % (compared with 48 % for women without disabilities). Even if ANED and EIGE data are not fully coherent because of discrepancies in the sampled age group (EIGE: 15 to 64; ANED: 20 to 64), the comparison between ANED and EIGE data leads to the following conclusions:

- women in general are more likely to work part-time than men;
- part-time work is widespread among people with disabilities;
- the share of women with disabilities working part-time is particularly high.

Unsurprisingly, EIGE finds that around one third of women with disabilities are at risk of poverty and social exclusion.

Figure 12 – Employment rate for gender and disability in FTE (2018)



Data source: EIGE based on SILC-2018.

In general, employment is considered to be an important factor when it comes to pulling people out of poverty, provided the salary level allows for a decent standard of living. Evidence suggests that the risk of poverty and social exclusion is higher among people with a low level of education

²⁷⁸ EIGE, [Gender Equality Index 2020](#), 2020, pp. 29-30.

and among persons with disabilities. The Gender Equality Index argues that an increased risk of poverty and social exclusion is 'often associated with a combination of unemployment or inactivity, low work intensity at household level, low educational attainment, poor working conditions, insufficient financial resources, material deprivation and/or discrimination'.²⁷⁹ It appears that the risk of poverty is compounded for women with disabilities who have a low level of education and a part-time job.

A study²⁸⁰ commissioned by the European Parliament looked into the reasons for multiple and intersectional discrimination on the grounds of gender and disability. It found that progress was hampered by:

- a lack of awareness of the existence of multiple discrimination;
- a lack of consideration of gender issues in EU and national disability strategies and vice versa, a lack of consideration of disability issues in gender strategies (disability and gender mainstreaming);
- and a lack of political representation of women with disabilities.

Overall, the study found that discrimination and access to employment for women remains significantly under researched.

²⁷⁹ EIGE, [Gender Equality Index 2020](#), 2020, pp. 36-37.

²⁸⁰ [Discrimination and access to employment for female workers with disabilities](#), Policy Department, Directorate-General for Internal Policies, European Parliament, 2017.

5. Conclusions

The Employment Equality Directive (EED), adopted in November 2000, outlaws discrimination in the field of employment, occupation and vocational training, including on grounds of disability. The primacy of international agreements over EU secondary law means that the directive must comply with the CRPD, a UN treaty that the EU concluded in 2010. While the EED is by and large in line with the CRPD, certain discrepancies exist, in particular regarding the definition of disability, forms of disability, reasonable accommodation, equality bodies and data collection.

Some of these discrepancies – notably the classification of denied reasonable accommodation as discrimination and the mandatory establishment of equality bodies – would have been mitigated by the horizontal equal treatment directive that the European Commission proposed in 2008. However, this proposal has faced strong resistance in Council and, despite some progress over the years, an agreement in the near future still appears to be out of reach.

The EED has yet to undergo a fully-fledged evaluation by the European Commission. However, some evidence on the operation of the directive is available, encompassing reports by the Commission, the European Parliament, the EESC, EU agencies, Member States, Equinet, disability NGOs and, not least, substantial research work contracted by the Commission from academic disability networks (substantial in terms of both quality and quantity).

In addition, the ECJ has contributed significantly to clarifying the scope and application of the directive in the light of the CRPD, inter alia by exploring the boundaries of the concept of disability, and it has even developed equality law further through a 'purposive and expansive interpretation' of the EED. To date, and with regard to discrimination on grounds of disability, ECJ case law has examined direct and indirect discrimination, harassment, reasonable accommodation, multiple discrimination and recently also positive action, while the interpretation of instruction to discriminate and victimisation of persons with disabilities have not yet been the subject of court proceedings.

The legal transposition of the directive into national law initially proved challenging, resulting in dozens of infringement procedures against virtually all Member States. Academics argue that the way certain provisions and concepts are transposed into national law might require further Commission monitoring, as they are not yet deemed fully compliant. Attention would need to be paid not only to national provisions, but also to their application, since 'legislation alone is not enough to ensure full equality' and must be combined with appropriate policy action, as the Commission put it in its 2014 implementation report on the EED. Indeed, national law and practices vary greatly concerning certain aspects of the directive, and there is much potential to render the EED more effective. The following issues seem to be of particular concern:

- **Reasonable accommodation:** Evidence suggest that levels of knowledge and awareness of reasonable accommodation continue to be low, and that its practice is still underdeveloped. Stakeholders believe that EU-level guidance to could foster a more uniform interpretation of the concept of reasonable accommodation and in particular the proportionality test ('disproportional burdens'). In general, data appear to be lacking with regard to national accommodation practices (including litigation and remedies).

- **Positive action:** Various reports suggest that positive action measures for the employment of people with disabilities are EU-wide common practice. Most Member States have quota systems in place, however, doubts have arisen regarding their effectiveness. Quotas do not seem to be systematically implemented. Moreover, penalties for failure to comply with quotas have been

described as not sufficiently dissuasive. Hence, employers can easily to circumvent quotas by paying a fee rather than recruiting and retaining persons with disabilities.

- **Sanctions:** Also with regard to sanctions for infringing equality law, a lack of dissuasive sanctions was observed, which renders national sanctions mechanisms ineffective. The EED states that sanctions must be 'effective, proportionate and dissuasive', but in practice this does not systematically seem to be the case. In practice, sanctions are often too low or too narrowly drawn; consequently, they neither compensate victims adequately nor do they have a deterrent effect. Major issues are also the lack of alternatives to monetary sanctions (e.g. injunctions, annulment of a discriminatory act/provision and reinstatement of an employee) and the weak enforcement of sanctions once imposed.

- **Equality bodies:** The establishment of equality bodies is not mandated by the EED. Nonetheless, they are vital in the implementation and enforcement of equality law at national level. All but two Member States have equality bodies in place that deal (inter alia) with disability discrimination. However, there is considerable variation in their competences and activities. For instance, only some equality bodies are vested with the power to engage in litigation and/or issue binding decisions. A recent Commission recommendation provides guidance, setting out minimum standards for equality bodies. This guidance was much welcomed, but at the same time it was argued that to be effective, standards would need to be legally binding.

- **Data collection:** Contrary to the CRPD, data collection is not mandated under the EED. Currently available disability data have been criticised as being too limited: they only correspond partially with the social model of disability; they are not sufficiently disaggregated; they exclude people living in institutions; and for a number of aspects no EU-wide data are gathered (e.g. discrimination cases, reasonable accommodation, positive action, sanctions, sheltered workshops). The recently revised IESS framework (Regulation 2019/1700 and implementing rules) is expected to improve the EU-wide disability data gathered through household surveys.

The CRPD Committee's main employment-related recommendation to the EU was to increase the number of persons with disabilities in employment, an objective also pursued by the EU disability strategy. This objective has been attained to some extent: the key labour market indicators (employment rate, unemployment rate and activity rate) for the working age population show a slightly positive trend for the 2008-2018 period, favoured by the economic recovery after the 2008 financial crisis. Notwithstanding, the gap between people with and people without disabilities has remained wide. Of particular concern in this respect is the employment of women with disabilities. Equality measures such as reasonable accommodation in the workplace and positive action measures do have some potential to boost employment. However, there is reason to fear that the economic impact of the pandemic will have a considerable impact on the employment of persons with disabilities.

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Annex 1: CRPD ratification by the EU and Member States

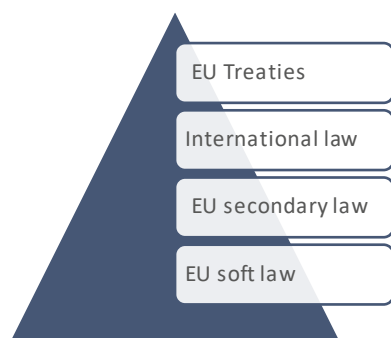
While the EU and all of its Member States have by now ratified the CRPD, this is not the case for the Optional Protocol. The table below shows the state of play as per 31 October 2020.

State party	Convention		CRPD Optional Protocol	
	signature	ratification	signature	ratification
EU	√	√		
Austria	√	√	√	√
Belgium	√	√	√	√
Bulgaria	√	√	√	
Croatia	√	√	√	√
Cyprus	√	√	√	√
Czechia	√	√	√	
Denmark	√	√	n/a	√
Estonia	√	√	n/a	√
Finland	√	√	√	√
France	√	√	√	√
Germany	√	√	√	√
Greece	√	√	√	√
Hungary	√	√	√	√
Ireland	√	√		
Italy	√	√	√	√
Latvia	√	√	√	√
Lithuania	√	√	√	√
Luxembourg	√	√	√	√
Malta	√	√	√	√
Netherlands	√	√		
Poland	√	√		
Portugal	√	√	√	√
Romania	√	√	√	
Slovakia	√	√	√	√
Slovenia	√	√	√	√
Spain	√	√	√	√
Sweden	√	√	√	√

Source: CRPD.

Note: Countries may become parties to the Convention and the Optional Protocol either by signing and subsequent ratification, or directly by ratifying without prior signing ('accession'). The latter is the case for Denmark and Estonia in view of the Optional Protocol.

Annex 2: The hierarchy of norms in EU disability law



EU Treaties

Treaty on European Union

Article 2 TEU

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Article 3 TEU

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
3. [...] It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

Treaty on the Functioning of the European Union

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.

Article 19 TFEU

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

Charter of Fundamental Rights of the European Union

Article 20 - Equality before the law

Everyone is equal before the law.

Article 21 - Non-discrimination

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

Article 26 - Integration of persons with disabilities

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

International law

UN Convention on the Rights of Persons with Disabilities

EU secondary law: main instruments

Employment Equality Directive (2000)

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, pp. 16-22.

European Accessibility Act (2019)

[Directive \(EU\) 2019/882](#) of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services. OJ L 151, 7.6.2019, pp. 70–115.

European Pillar of Social Rights (2017)

Principle 3 – Equal opportunities

Regardless of gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation, everyone has the right to equal treatment and opportunities regarding employment, social protection, education, and access to goods and services available to the public. Equal opportunities of under-represented groups shall be fostered.

Principle 17 – Inclusion of people with disabilities

People with disabilities have the right to income support that ensures living in dignity, services that enable them to participate in the labour market and in society, and a work environment adapted to their needs.

EU soft law: main instruments

European Disability Strategy 2010-2020

European Disability Strategy 2010-2020: A renewed commitment to a barrier-free Europe, [COM\(2010\) 636](#)

- Initial plan to implement the European Disability Strategy, [SEC\(2010\) 1324](#)
- Background document, [SEC\(2010\) 1323](#)

European Disability Strategy post-2020

Due in 2021 (according to the Commission's 2021 work programme 2021, Annex I)

Annex 3: Equality bodies dealing with discrimination on grounds of disability

This table provides a list of all national equality bodies that deal – either exclusively (as a single-ground body) or among others (as a multi-ground body) – with disability issues. It indicates also whether the body has a specific mandate to deal with the CRPD. Bodies assuming an Article 33(2) function for promoting, protecting and monitoring the implementation of the CRPD are marked with an asterisk (*). To be noted, such national Article 33(2) frameworks may be composed of one or several bodies.²⁸¹

Member State	Equality body	Website	Multi-ground	Single-ground	Mandate to deal with CRPD
Austria	Austrian Disability Ombudsman	www.behindertenanwalt.gv.at		x	
Belgium	Interfederal Centre for Equal Opportunities (Unia)	www.unia.be	x		x*
Bulgaria	Commission for Protection against Discrimination	www.kzd-nondiscrimination.com	x		x
Croatia	Ombudsman for Persons with Disabilities	www.posi.hr		x	x*
Cyprus	Commissioner for Administration and the Protection of Human Rights	www.ombudsman.gov.cy	x		x*
Czechia	Public Defender of Rights	www.ochrance.cz	x		x*
Denmark	Danish Institute for Human Rights	www.humanrights.dk	x		x*
	Board of Equal Treatment	www.ligebehandlingsnaevnet.dk	x		
Estonia	Gender Equality and Equal Treatment Commissioner	www.volinik.ee	x		x
Finland	Non-Discrimination Ombudsman	www.syrjinta.fi	x		x
France	Defender of Rights	www.defenseurdesdroits.fr	x		x*
Germany	Federal Anti-Discrimination Agency	www.antidiskriminierungsstelle.de	x		

²⁸¹ A comprehensive overview of national structures in charge of implementing and monitoring the CRPD is provided by FRA on its [website](http://fra.europa.eu).

Greece	Office of Greek Ombudsman	www.synigoros.gr	x		x*
Hungary	Equal Treatment Authority	www.egyenlobanasmod.hu	x		
	Office of the Commissioner for Fundamental Rights	www.ajbh.hu	x		x
Ireland	Irish Human Rights and Equality Commission	www.ihrec.ie	x		x*
Italy	National Office against Racial Discrimination	www.unar.it	x		
Latvia	Ombudsman	www.tiesibsargs.lv	x		x*
Lithuania	Office of the Equal Opportunities Ombudsperson	www.lygybe.lt	x		x
Luxembourg	Centre for Equal Treatment	www.cet.lu	x		x*
Malta	Commission for the Rights of Persons with Disability	www.crpdp.org.mt		x	x*
Netherlands	Human Rights Institute	www.mensenrechten.nl	x		x*
Poland	Commissioner for Human Rights	www.rpo.gov.pl	x		x*
Portugal	n/a				
Romania	National Council for Combating Discrimination	www.cncd.org.ro	x		x
Slovakia	Slovak National Centre for Human Rights	www.snslp.sk	x		
Slovenia	Advocate of the Principle of Equality	www.zagovornik.si	x		x
Spain	n/a				
Sweden	Equality Ombudsman	www.do.se	x		

Source: [Equinet](#), [FRA](#) and websites of national equality bodies.

Annex 4: European Parliament resolutions relating to people with disabilities and employment (since 2000)

year	resolution title	procedure reference	adopted text
2021	Implementation of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation in light of the UNCRPD	2020/2086(INI)	forthcoming
2020	European Parliament resolution of 18 June 2020 on the European Disability Strategy post-2020	2019/2975(RSP)	P9_TA(2020)0156
2019	European Parliament legislative resolution on the proposal for a regulation of the European Parliament and of the Council establishing a common framework for European statistics relating to persons and households, based on data at individual level collected from samples	2016/0264(COD)	P8_TA(2019)0387
2018	European Parliament resolution on the situation of women with disabilities	2018/2685(RSP)	P8_TA(2018)0484
2018	European Parliament resolution on pathways for the reintegration of workers recovering from injury and illness into quality employment	2017/2277(INI)	P8_TA(2018)0325
2017	European Parliament resolution on implementation of the European Disability Strategy	2017/2127(INI)	P8_TA(2017)0474
2017	European Parliament resolution on a European Pillar of Social Rights	2016/2095(INI)	P8_TA(2017)0010
2016	European Parliament resolution on sign languages and professional sign language interpreters	2016/2952(RSP)	P8_TA(2016)0442
2016	European Parliament resolution on the implementation of the UN Convention on the Rights of Persons with Disabilities, with special regard to the Concluding Observations of the CRPD Committee	2015/2258(INI)	P8_TA(2016)0318
2016	European Parliament resolution on application of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive')	2015/2116(INI)	P8_TA(2016)0360
2015	European Parliament resolution of 20 May 2015 on the List of Issues adopted by the United Nations Committee on the Rights of Persons with Disabilities in relation to the initial report of the European Union	2015/2684(RSP)	P8_TA(2015)0208
2013	European Parliament resolution on women with disabilities	2013/2065(INI)	P7_TA(2013)0579
2011	European Parliament resolution on mobility and inclusion of people with disabilities and the European Disability Strategy 2010-2020	2010/2272(INI)	P7_TA(2011)0453
2009	European Parliament resolution of 6 May 2009 on the active inclusion of people excluded from the labour market	2008/2335(INI)	P6_TA(2009)0371
2009	European Parliament legislative resolution on the proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (horizontal directive)	2008/0140(APP)	P6_TA(2009)0211

2009	European Parliament legislative resolution on the proposal for a Council decision concerning the conclusion, by the European Community, of the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities	2008/0171(NLE)	P6_TA(2009)0313
2009	European Parliament legislative resolution on the proposal for a Council decision concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities	2008/0170(NLE)	P6_TA(2009)0312
2008	European Parliament resolution on progress made in equal opportunities and non-discrimination in the EU	2007/2202(INI)	P6_TA(2008)0212
2006	European Parliament resolution on the situation of people with disabilities in the enlarged European Union: the European Action Plan 2006-2007	2006/2105(INI)	P6_TA(2006)0527
2006	European Parliament resolution on non-discrimination and equal opportunities for all - a framework strategy	2005/2191(INI)	P6_TA(2006)026
2005	European Parliament legislative resolution on the proposal on the European Year of Equal Opportunities for All (2007) - Towards a Just Society (COM(2005)0225)	2005/0107(COD)	P6_TA(2005)0489
2004	European Parliament legislative resolution on the Communication from the Commission; Equal opportunities for people with disabilities: A European Action Plan (COM(2003) 650)	2004/2004(INI)	P5_TA(2004)0292
2001	European Parliament legislative resolution on the proposal for a Council decision on the European Year of People with disabilities 2003 (COM(2001) 271)	2001/0116(CNS)	P5_TA(2001)0622
2001	European Parliament resolution on the Communication from the Commission: Towards a barrier-free Europe for people with disabilities (COM(2000) 284)	2000/2296(COS)	P5_TA(2001)0188
2000	European Parliament legislative resolution on the proposal for a Council decision establishing a Community Action Programme to combat discrimination	1999/0251(CNS)	P5_TA(2000)0437
2000	European Parliament legislative resolution on the proposal for a Council directive establishing a general framework for equal treatment in employment and occupation	1999/0225(CNS)	P5_TA(2000)0438

Resolutions directly linked to Directive 2000/78/EC and the CRPD are highlighted in bold.

Twenty years have passed since the EU adopted the Employment Equality Directive 2000/78/EC (EED), generally considered a cornerstone of EU disability law. It established the framework for prohibiting discrimination, inter alia on grounds of disability, in the field of employment and occupation, setting EU-wide minimum standards. The European Court of Justice has clarified that the EED must be interpreted in line with the UN Convention on the Rights of Persons with Disabilities (CRPD), which became an integral part of the EU legal order in 2011. This study, based on desk research, examines the implementation of the EED in light of the CRPD. Particular focus is placed on implementation issues relating to reasonable accommodation, positive action, sanctions and equality bodies, and also to employment-related data regarding persons with disabilities.

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