

# Implementing the United Nations Convention on the Rights of Persons with Disabilities (CRPD)

An overview of legal reforms in EU Member States

FRA FOCUS

Many people with disabilities often face legal and societal barriers that prevent them from taking an active and full part in society. The UN Convention on the Rights of Persons with Disabilities (CRPD) has helped galvanise efforts to advance the rights of people with disabilities across the EU since it entered into force in 2008.

A new Focus paper by the EU Agency of Fundamental Rights (FRA) outlines how Member States across the EU have reformed their laws and policies to meet their obligations under the CRPD. By bringing together examples of such reforms, it also highlights how the adoption of international commitments can drive wide-ranging processes of change at the national level.

## Key facts

- To date, the CRPD has been ratified by 25 EU Member States and the EU itself.
- The CRPD is driving wide-ranging legislative changes in and across the EU, and this momentum is likely to continue thanks to the convention's in-built monitoring mechanism.
- Despite lack of progress on the proposed equal treatment Directive, some EU countries have extended protection against discrimination on the grounds of disability beyond employment and occupation, the areas already covered by EU law.
- Legal capacity remains one of the areas with the largest number of reforms at the national level linked to CRPD ratification.
- Many Member States are taking steps towards more inclusive education systems.
- Legal reforms have also affected legislation on involuntary placement and involuntary treatment with most Member States reforming their legal frameworks before, and after, the CRPD entered into force.
- European and national jurisprudence is increasingly drawing on the CRPD, acting as an additional driver of reform.

## Introduction

The UN Convention on the Rights of Persons with Disabilities (CRPD) was adopted in December 2006 and entered into force in May 2008<sup>1</sup>. The convention reaffirms a number of substantive rights for people with disabilities and marks a paradigm shift from an understanding of disability as a medical condition to one that sees disability as the effect of the interaction between an individual's impairment and the barriers society creates.<sup>2</sup> States parties to the convention are obliged to bring their legal frameworks in line with the CRPD's core concepts of self-determination, equality, non-discrimination, participation, inclusion and accessibility.

As of January 2015, the CRPD has been ratified by the EU – which concluded the convention in December 2010 – and by 25 EU Member States.<sup>3</sup> The remaining three Member States (Finland, Ireland and the Netherlands) have each signed the convention and are taking steps to harmonise their national legislation with CRPD standards ahead of ratification.<sup>4</sup> In addition, 21 Member States have ratified the Optional Protocol to the CRPD.<sup>5</sup> This protocol gives the Committee on the rights of persons with disabilities (CRPD Committee) competence to examine individual complaints of alleged violations of the convention by States parties to the protocol.

As both the EU and its Member States are separate contracting parties, and each has competence in the fields covered by the CRPD, the convention is a 'mixed' agreement in the context of the EU. All CRPD provisions falling within EU competence are binding on the EU institutions. In addition, EU law obliges Member States to implement the convention to the extent that its provisions fall within EU competence. Implementation of the convention in areas not under EU competence rests exclusively with the Member States. Despite their different competences, "the Union and its Member States are subject to a duty of sincere cooperation" when fulfilling the obligations set out in such 'mixed' agreements.<sup>6</sup>

FRA is part of the framework to promote, protect and monitor the EU's implementation of the CRPD, set up under Article 33 (2) of the convention. FRA's main role in the framework is to collect and analyse data, and to develop indicators and benchmarks. In this light, FRA's disability work is framed by the CRPD and its

human rights-based approach to disability. To date, FRA has published research on the situation of people with intellectual disabilities and people with mental health problems (psychosocial disabilities) focusing on: the right to vote,<sup>7</sup> non-discrimination of people with mental health problems and reasonable accommodation,<sup>8</sup> involuntary placement and treatment,<sup>9</sup> independent living,<sup>10</sup> and legal capacity.<sup>11</sup>

FRA has also developed and populated fundamental rights indicators on the right to political participation of people with disabilities,<sup>12</sup> and conducted research on children with disabilities' experiences of targeted hostility and abuse.<sup>13</sup> Currently, FRA is carrying out research into the transition from institutional to community-based care.<sup>14</sup>

In addition, FRA is promoting the convention by raising awareness of the rights of people with disabilities and by mainstreaming the rights of people with disabilities across other areas of its research.<sup>15</sup>

The evidence collected by FRA reflects on how EU Member States are taking steps to implement the obligations set out in the CRPD. Article 4 (1) of the convention requires States parties to adopt the legislative measures necessary to realise the rights enshrined in the CRPD, as well as to amend or repeal existing laws which discriminate on the grounds of disability.

### CRPD

#### Article 4 – General obligations

1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:
  - (a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;
  - (b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities; [...]

In this respect, FRA evidence shows that Member States are in the process of implementing wide-



ranging legal reforms to align their legal frameworks with CRPD requirements.<sup>16</sup> This paper aims to bring together this evidence to identify some of the areas where reforms are underway and to highlight different approaches being taken by Member States.<sup>17</sup> By doing so, it also gives an indication of how international treaties can stimulate processes of change at the national level.

The paper does not provide an exhaustive list of the many changes to national legislation linked to or prompted by CRPD ratification.<sup>18</sup> Instead, the examples provided help to illustrate the efforts of Member States to give effect to their CRPD obligations. The examples draw on data collected by FRA through its annual reports and projects on the rights of people with disabilities.

The paper is divided into two sections. The first section highlights some of the building blocks of CRPD implementation, in particular national actions plans in the area of disability and the involvement of disabled persons' organisations (DPOs) in the development of laws and policies. The second presents an overview of national legislative changes linked to specific articles of the CRPD which lie at the heart of the convention and have been a focus of attention from the UN Committee on the rights of persons with disabilities:

- Equality and non-discrimination (Article 5)
- Accessibility (Article 9)
- Legal capacity (Article 12)
- Independent living (Article 19)
- Education (Article 24)
- Employment (Article 27)
- Participation in political and public life (Article 29)
- Involuntary placement and treatment (Articles 14, 15, 17 and 25)

These articles also reflect areas of FRA work as well as some of the issues on which reforms to EU Member States' legal frameworks have centred.

## 1 Laying the foundations for CRPD implementation

### 1.1 National action plans and strategies in the area of disability

A large majority of Member States, as well as the EU itself,<sup>19</sup> have sought to give overarching direction to their efforts to implement their human rights obligations – including under the CRPD – by adopting action plans covering the rights of people with disabilities. Although not an obligation under the convention, the CRPD Committee has highlighted that such policy documents are “an excellent method of bringing laws, policies and practices in line with the United Nations Convention on the Rights of Persons with Disabilities”.<sup>20</sup>

These action plans can take many forms; they range from general strategies for the implementation of human rights to action plans containing commitments for the progressive achievement of specific rights set out in the CRPD.<sup>21</sup> By setting goals and allocating time and resources for their implementation, these strategies reflect a structural commitment by Member States to meet their obligations under Article 4 of the CRPD.

Several Member States include the rights of people with disabilities in broader action plans to promote fundamental rights. The **Greek** National Action Plan for Human Rights, adopted in March 2014, includes actions focused on social inclusion, employment support, accessibility and inclusive education for people with disabilities.<sup>22</sup> Similarly, the **Polish** National Action Plan for Equal Treatment covering the period 2013–2016 sets out a number of measures related to equal treatment for people with disabilities in the labour market, education and healthcare systems, as well as in the accessibility of goods and services.<sup>23</sup> It also aims to raise public awareness about violence against people with disabilities.

**Table 1: Overview of national strategies relevant to the CRPD**

	STRATEGY
AT	<a href="#">National Action Plan on Disability 2012-2020</a> ( <i>Nationaler Aktionsplan Behinderung</i> )
BG	<a href="#">National Strategy for Equal Opportunities for Disabled People 2008-2015</a> ( <i>Стратегия за осигуряване на равни възможности на хората с увреждания 2008-2015 г.</i> )
CY	<a href="#">National Disability Action Plan for the implementation of the UN Convention on the rights of persons with disabilities 2013-2015</a> ( <i>Εθνικό Σχέδιο Δράσης για την Αναπηρία. Για την εφαρμογή της Σύμβασης του ΟΗΕ για τα δικαιώματα των ατόμων με αναπηρίες</i> )
CZ	<a href="#">National Plan for the Creation of Equal Opportunities for People with Disabilities 2010-2014</a> ( <i>Národní plán vytváření rovných příležitostí pro osoby se zdravotním postižením na období 2010 - 2014</i> )
DE	<a href="#">National Plan of Action of the Federal Government for the implementation of the Convention of the Rights of Persons with Disabilities 2011 – 2021</a> ( <i>Nationaler Aktionsplan der Bundesregierung zur Umsetzung der UN-Behindertenrechtskonvention</i> )
DK	<a href="#">Disability policy action plan 2013 – One society for all</a> ( <i>Handicappolitiske Handlingsplan 2013 “Et samfund for alle”</i> )
EE	<a href="#">Special Care Development Plan 2014-2020</a> ( <i>Erihoolekande arengukava 2014-2020</i> ) Social Protection, Inclusion and Equal Opportunities Development Plan 2016-2023 ( <i>Sotsiaalse turvalisuse, kaasatuse ja võrdsete võimaluste arengukava 2016-2023</i> ) (draft)
EL	<a href="#">National Action Plan for Human Rights 2014-2016</a> ( <i>Εθνικό Σχέδιο Δράσης για τα Ανθρώπινα Δικαιώματα</i> )
ES	<a href="#">Spanish Disability Strategy 2012-2020</a> ( <i>Estrategia Española sobre Discapacidad 2012-2020</i> )
FI	<a href="#">Finland’s Disability Policy Programme 2010-2015</a> ( <i>Vammaispoliittinen ohjelma 2010-2015, VAMPO/ Finlands handikappolitiska program 2010-2015, VAMPO</i> )
HR	<a href="#">National Strategy of Equalisation of Opportunities for persons with disabilities 2007-2015</a> ( <i>Nacionalna strategija izjednačavanja mogućnosti za osobe s invaliditetom od 2007. do 2015. godine</i> )  <a href="#">Plan for Deinstitutionalisation and Transformation of Social Welfare and Other Legal Entities Providing Social Care Services in the Republic of Croatia 2011 – 2016 (2018)</a> and accompanying <a href="#">Operational Plan 2014-2016</a> ( <i>Plan deinstitutionalizacije i transformacije domova socijalne skrbi i drugih pravnih osoba</i> )
HU	National Disability Programme 2015-2025 (draft) ( <i>Országos Fogytékosságügyi Program</i> )  <a href="#">National Program of Disability Affairs 2007-2013</a> ( <i>Országos Fogytékosságügyi Program</i> )
IE	<a href="#">National Disability Strategy</a>
IT	<a href="#">Biennial action plan for the promotion of the rights and the integration of people with disabilities (2014-2015)</a>



	<i>(Programma di azione biennale per la promozione dei diritti e l'integrazione delle persone con disabilità)</i>
LT	<a href="#">National Programme for the Social Integration of People with Disabilities 2013-2019</a> <i>(Nacionalinė neįgalųjų socialinės integracijos 2013-2019 metų programa)</i>  <a href="#">Action Plan for 2014-2020 on transition from institutional care to care in the family and the community for people with disabilities and children without care of parents</a> <i>(Perėjimo nuo institucinės globos prie šeimoje ir bendruomenėje teikiamų paslaugų neįgaliesiems ir likusiems be tėvų globos vaikams 2014-2020 metų veiksmų plano patvirtinimo)</i>
LU	<a href="#">Action plan for the implementation of the United Nations Convention on the Rights of Persons with Disabilities</a> <i>(Plan d'action de mise en œuvre de la CRDPH du gouvernement luxembourgeois )</i>
LV	<a href="#">Guidelines for the implementation of the United Nations Convention on the Rights of Persons with Disabilities 2014-2020</a> <i>(Apvienoto Nāciju Organizācijas Konvencijas par personu ar invaliditāti tiesībām īstenošanas pamatnostādņu 2014.-2020.gadam īstenošanas plāns 2014.gadam)</i>
MT	<a href="#">National Policy on the Rights of People with Disability</a> <a href="#">National strategy for people with a disability (draft)</a>
PL	<a href="#">National Action Plan for Equal Treatment 2013-2016</a> <i>(Krajowy Program Działania na Rzecz Równego Traktowania na lata 2013-2016)</i>
PT	National Disability Strategy 2011 - 2013 <i>(Estratégia nacional para a deficiência 2011-2013)</i>
RO	<a href="#">National strategy on the social inclusion of people with disabilities 2014-2020</a> (draft) <i>(Proiect de Hotărâre privind aprobarea Strategiei naționale privind incluziunea socială a persoanelor cu dizabilități, 2014-2020)</i>
SE	<a href="#">Strategy for the implementation of disability policy 2011-2016</a> <i>(En strategi för funktionshinderspolitiken)</i>
SI	<a href="#">Action programme for People with Disabilities 2014-2021</a> <i>(Akcijski program za invalide 2014-2021)</i>
SK	<a href="#">National Programme for the Development of living conditions of persons with disabilities in 2014 - 2020</a> <i>(k Návrhu Národného programu rozvoja životných podmienok osôb so zdravotným postihnutím na roky 2014 - 2020)</i>
UK	<a href="#">Cross Government Disability Strategy - Fulfilling Potential</a>

Source: FRA (2015).

Other Member States have put in place national strategies specifically concerning people with disabilities. Many of these strategies have the explicit aim of setting an overall direction for CRPD implementation. For example, the **Cypriot** National Disability Action Plan 2013-2015 for the implementation of the CRPD sets out a commitment to “[r]econsider all laws pertaining to the rights of persons with disabilities and identify necessary improvements for the further implementation of the obligations of the state to implement the UN Convention”,<sup>24</sup> to strengthen the existing legislative framework to ensure the

rights of people with disabilities. The implementation plan for the **Latvian** Guidelines for the implementation of the CRPD 2014-2020 highlights four priority areas: education, employment, social protection and awareness raising.<sup>25</sup> In federal states, action plans have also been developed at the regional level. Flanders, in **Belgium**, developed an Action Plan concerning disability 2012-2014, which is being followed by a new plan for 2015-2019.<sup>26</sup>

Others have developed action plans in response to their reporting obligations to the CRPD

Committee: for example, the **Italian** National Action Programme for the promotion of the rights and integration of people with disabilities followed the first Italian State party report to the CRPD Committee.<sup>27</sup>

Other countries, including **Bulgaria**,<sup>28</sup> **Croatia**,<sup>29</sup> **Estonia**,<sup>30</sup> **Lithuania** and **Slovakia**,<sup>31</sup> adopted strategies for the implementation of specific rights set out in the CRPD. These action plans often complement more general policy documents (see table 1). For example, in addition to its overall strategy regarding the social integration of people with disabilities, in 2014 the government of **Lithuania** approved an action plan on the transition from institutional care to care in the family and the community for people with disabilities and children without parental care.<sup>32</sup> This plan aims to create coordinated actions towards deinstitutionalisation and complements previous national programmes.

Several Member States, including **Bulgaria**, **Cyprus**, **Denmark** and **Germany** have evaluated their programmes and strategies. In **Germany**, for example, the results of the evaluation completed in 2014 provide a basis for ongoing enhancements of the German National Action Plan, while in **Denmark**, an overview of the implementation status of the approximately 50 initiatives in its disability action plan was published in September 2014. **Croatia**, **Bulgaria**, **Hungary**, **Portugal** and **Romania** are in the process of preparing follow up action plans following the expiration of previous strategies.

## 1.2 Consultation and involvement of people with disabilities

**CRPD**  
**Article 4 – General obligations**

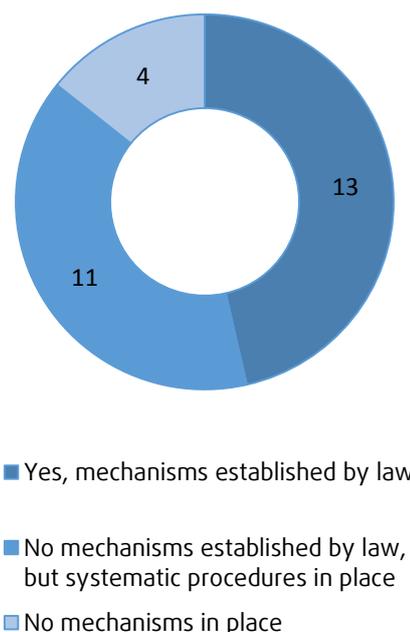
3. In the development of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities,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

A second central element of CRPD implementation is the involvement of DPOs in the design of laws and policies concerning people

with disabilities, and in decisions that directly affect them. This reflects the philosophy of the disability movement: “nothing about us without us”. Unlike developing national action plans, consulting with DPOs is an obligation cutting across the CRPD, and is frequently reiterated by the CRPD Committee in its concluding observations.<sup>33</sup>

Nearly all Member States have mechanisms in place to involve DPOs. However, FRA evidence shows that this consultation is a legal requirement in only half of Member States.<sup>34</sup> The legal provision regarding the consultation of DPOs can either be: stipulated by the constitution, as in **Sweden**; included in disability-related legislation; or, be provided through general provisions that require concerned parties and/or the public to be consulted in law and policy-making processes. The **Portuguese** Decree-Law 106/2013, an example of disability-related legislation, gives DPOs the right to participate in the definition of policies by awarding them the status of social partners in advisory and consultation bodies that deal with disability issues.<sup>35</sup>

**Figure 1: Do Member States have mechanisms in place to ensure consultation and involvement of DPOs in developing laws and policies which affect them?**



Source: FRA, 2014<sup>36</sup>. Situation as of April 2014.

Following their ratification of the CRPD, several Member States have established systematic mechanisms for people with disabilities to be consulted on legislative processes that affect them. In **Malta**, a consultative body for the rights of people with disabilities was established. Bringing together people with disabilities, service providers, activists, policy makers, academics and relevant professionals, the body was heavily involved in the preparation of the National Disability Policy in 2014. Taking a broader approach, the **Estonian** Code of Practice for Good Engagement establishes that government authorities must include interest groups who will be affected by any planned laws in the drafting process.<sup>37</sup> In particular, the 2012 Cooperation Memorandum between the Estonian government and DPOs improves the involvement of people with disabilities in public decision-making processes.

In addition to the general requirement to involve people with disabilities set out in Article 4 (3), Article 33 on national implementation and monitoring of the convention requires civil society, especially people with disabilities and their representative organisations, to “be involved in and participate fully in the monitoring process”. FRA’s annual reports show that a majority of Member States have included DPOs in the monitoring process. However, concerns have been expressed by civil society about the independence of some of these civil society representatives, and the lack of genuine and systematic participation by people with disabilities.<sup>38</sup> The independent body evaluating the **German** national action plan on the implementation of the CRPD, for example, recommended improvements to the process of ensuring the participation of people with disabilities.<sup>39</sup>

## 2 Reform of legal frameworks

In addition to putting in place the architecture and mechanisms for CRPD implementation, Member States are required to reform their legislation to meet the more specific obligations of individual CRPD articles. This section identifies the thematic areas which have been a particular focus of reforms of Member State legislation following – or in anticipation of – the ratification of the convention.

### 2.1 Equality and non-discrimination

The principle of non-discrimination set out in Article 5 of the CRPD underpins many of the convention’s subsequent standards. It prohibits all discrimination on the grounds of disability, as well as setting out the related obligation to provide reasonable accommodation when required to promote equality.

The CRPD Committee has reiterated the broad application of the principle of non-discrimination. In its concluding observations on Spain it called for an expansion of non-discrimination protection “to explicitly cover multiple disability, perceived disability and association with a person with a disability”. It also stated that denial of reasonable accommodation itself constitutes a form of discrimination.<sup>40</sup> Moreover, the Committee’s concluding observations on Belgium called for a strengthening of protection against discrimination, including “discrimination by association”.<sup>41</sup>

#### CRPD

##### Article 5 – Equality and non-discrimination

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.
2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.
3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided. [...]

Under EU legislation the prohibition of discrimination on the grounds of disability and the duty to provide reasonable accommodation are, at the time of writing, restricted to the area of employment and occupation. However, FRA evidence shows that some Member States have broadened these obligations beyond the employment context.<sup>42</sup> Such protection would extend across the EU were the proposed equal treatment directive, which sets out a prohibition on discrimination on the grounds of disability in all the areas of life covered by the Racial Equality Directive, to be adopted.

In many cases, national reforms have broadened the scope of non-discrimination protection to goods and services. The National Assembly of **Slovenia**, for example, adopted in 2010 the Act on equal opportunities for people with disabilities, which prohibits discrimination in access to goods and services available to the public. It also sets out the obligation to provide appropriate accommodations and to remove physical, information and communication barriers that prevent access by people with disabilities to goods and services.<sup>43</sup>

Other Member States have extended non-discrimination protection still further. In **Spain**, for example, the Law on the Rights of People with Disabilities and their Social Inclusion, adopted in December 2013, foresees the adoption of reasonable accommodation mechanisms in the areas of: telecommunications and information society; transport; public good and services; relations with public administration; justice; cultural inheritance; and employment.<sup>44</sup> Reforms passed in 2014 in **Cyprus** also significantly widened the duty to provide reasonable accommodation. Reasonable accommodation now covers: independent living; integrated education; healthcare; support with assistive equipment; access to housing and built infrastructure; access to information; access to services of social and economic integration; provision of goods, services and facilities; accessible telephone services; and television broadcasts.<sup>45</sup>

In addition to specific legislation on equality and non-discrimination, these principles are also increasingly shaping legal reforms related to the other articles of the convention mentioned below.<sup>46</sup> As FRA's analysis illustrates, legislating from a non-discrimination perspective poses significant challenges for EU Member States, as it requires a paradigm shift in traditional approaches to many laws addressing people with disabilities.<sup>47</sup>

## 2.2 Accessibility

Article 9 of the CRPD extends the scope of accessibility far beyond the traditional focus on the physical environment. States parties must ensure that people with disabilities have equal access not just to buildings but also to transportation, information and communications, and facilities and services open or provided to the public.

The CRPD Committee underlined the importance of accessibility for fulfilling other CRPD standards in its second General Comment, which directly linked inaccessibility to discrimination. The Committee emphasised that "denial of access should be considered to constitute a discriminatory act, regardless of whether the perpetrator is a public or private entity".<sup>48</sup>

Reflecting this approach, the lack of accessibility for people with disabilities was added as a new form of discrimination protected under the existing **Swedish** Discrimination Act.<sup>49</sup> The bill, which entered into force on 1 January 2015, covers many areas of life, including employment, goods and services, healthcare, and social services, although the prohibition on inaccessibility does not apply to people inquiring about employment or to the supply of housing. In addition, with regard to the supply of goods and services, further exemptions apply to private individuals and businesses employing fewer than 10 people.

Other reforms focus on specific aspects of accessibility identified by Article 9 of the CRPD.<sup>50</sup> Concerning the accessibility of the physical environment, FRA evidence shows that 15 Member States (**Austria, Belgium, Czech Republic, Denmark, Finland, France, Hungary, Ireland, Italy, Lithuania, Luxembourg, Poland, Portugal, Spain** and the **United Kingdom**) have mandatory accessibility standards for the construction, and alteration of national and local authority buildings,<sup>51</sup> often in line with EU-level standards.<sup>52</sup> In a number of cases, these standards were updated following CRPD ratification. In **Romania**, for example, new standards for the accessibility of buildings and urban spaces for people with disabilities entered into force in April 2013. The requirements focus on the functionality of space for people with disabilities rather than technical standards.<sup>53</sup>

With standards now commonplace, attention is turning to ensuring that they are implemented. Following a 2005 law setting a 10-year deadline for public buildings in **France** to be made accessible, buildings that will not meet the deadline are required to file a 'programmed accessibility schedule'.<sup>54</sup> These programming documents set out the nature of the work and costs required to meet accessibility standards, which must be completed within three years. In **Spain**, the 2013 Act on Urban Restoration, Regeneration and Renovation enables relevant



administrations to assess whether universal accessibility standards are met in buildings and urban public areas through a Building Evaluation Report.<sup>55</sup>

Several reforms aim to make transport more accessible for people with disabilities. The **German** Passenger Transport Act, which entered into force on 1 January 2013, obliges city councils to ensure barrier-free local public transport by January 2022,<sup>56</sup> while amendments to the **Spanish** Act on the regulation of ground transportation require all vehicles used for passenger transport to meet basic accessibility requirements, with penalties for those who do not comply.<sup>57</sup> The **Dutch** Regulation on the accessibility of public transport requires at least 46% of buses to be accessible for people with disabilities by January 2016.<sup>58</sup>

Legal reforms concerning access to information and communication focus on measures targeting audiovisual media providers and internet-based information.<sup>59</sup> The **Greek** Deputy Minister of Administration Reform and Electronic Governance issued a decision in 2012 requiring public websites to comply with the Web Content Accessibility Guidelines (WCAG),<sup>60</sup> for example. These guidelines set out technical requirements to make websites more accessible. This includes, for instance, providing text alternatives for non-text content or making all functionality available from a keyboard.

**Hungary** adopted legislation according to which audiovisual media providers shall gradually make their programmes accessible to people with hearing impairments.<sup>61</sup> The Irish Broadcasting Act 2009 requires the Broadcasting Authority of **Ireland** to draw up rules requiring broadcasters to take steps to promote the understanding and enjoyment of programmes by people with visual and hearing impairments.<sup>62</sup> Steps have also been taken to broaden access to sign language interpretation: in **Denmark**,<sup>63</sup> **Estonia**,<sup>64</sup> **Spain**<sup>65</sup> and **Sweden**,<sup>66</sup> for example, sign language has been recognised as an official language since CRPD ratification.

Looking ahead, accessibility is an area where secondary EU legislation could set minimum standards for Member States. The planned European Accessibility Act aims to improve the market for accessible goods and services by stimulating innovation and harmonising accessibility standards.<sup>67</sup>

## 2.3 Equal recognition before the law

Equal recognition before the law, as set out in Article 12 of the CRPD, has been a particular focus area for the CRPD Committee, which repeatedly highlighted the need for reform in its concluding observations. In 2014, it also issued a General Comment on Article 12, calling on states to “review the laws allowing for guardianship and trusteeship, and take action to develop laws and policies to replace regimes of substitute decision-making by supported decision-making, which respects the person’s autonomy, will and preferences”.<sup>68</sup>

Fulfilling these requirements is proving a challenge, however. **Denmark**, **France** and **Germany** have expressed concerns regarding the interpretation of Article 12 set out in the General Comment, reasserting their view that the convention allows for restrictions of legal capacity in certain circumstances.<sup>69</sup> Despite the tensions between the Committee’s interpretation of Article 12 and that of the States parties, legal capacity remains one of the areas to have seen the largest number of reforms at the national level linked to CRPD ratification.<sup>70</sup>

Member States, including the **Czech Republic**, **Hungary**, **Latvia** and **Malta**, have reformed their civil codes to comply with Article 12, although in several cases the law continues to permit some restrictions on legal capacity. For example, the revised **Czech** Civil Code, which came into force on 1 January 2014, stipulates that a person’s legal capacity may be partially limited, with courts deciding the scope of the legal capacity limitation. The decision must be revised every three years or upon request of the person.<sup>71</sup> In **Malta**, the Civil Code was amended in December 2012 to introduce a system of guardianship to replace incapacitation for people with disabilities. The legislation now states that “a major who has a mental disorder or other condition which renders him incapable of taking care of his own affairs may be subject to guardianship”. In addition, the legislation includes the establishment, which took place in 2014, of a Guardianship Board to regulate how guardianship orders are issued and implemented.<sup>72</sup>

Other Member States have passed laws specifically addressing the issue of legal capacity, but which nonetheless encompass restrictions on a person’s ability to make legally-recognised decisions. Reforms in **Belgium** replace previous

measures limiting a person's legal capacity with a unified status of protection in which a 'provisional administrator' can take decisions to protect the person and their assets.<sup>73</sup> The revised law also affords a greater role to a 'trustee' chosen by the protected person who acts as an intermediary between them and the provisional administrator. Likewise, the **Croatian** Parliament adopted a new Family Act. This act abolishes plenary guardianship but retains partial

guardianship, with the addition of further safeguards stipulating that deprivation of legal capacity should be a last resort and that primary consideration should be given to a person's needs, opinions, dignity and wellbeing.<sup>74</sup> In January 2015, however, a procedure was initiated to determine the constitutionality of the 2014 Family Act; the previous 2003 act remains in force pending the verdict of the Constitutional court.

**Table 2: Examples of reforms to legal capacity legislation linked to CRPD accession**

	Legislation	Amendment linked to CRPD accession
BE	Law amending the regulation of legal incompetence and the introduction of a new protection status that is consistent with human dignity ( <a href="#">Wet tot hervorming van de regelingen inzake onbekwaamheid en tot instelling van een nieuwe beschermingsstatus die strookt met de menselijke waardigheid/ Loi réformant les régimes d'incapacité et instaurant un nouveau statut de protection conforme à la dignité humaine</a> )	1 September 2014
CZ	Civil Code, Act no. 40/1964 ( <a href="#">Občanský zákoník, Zákon č. 40/1964 Sb.</a> ) Civil Procedure Code, Act no. 99/1963 ( <a href="#">Občanský soudní řád, Zákon č. 99/1963 Sb.</a> )	1 January 2014
DE	Civil Code ( <a href="#">Bürgerliches Gesetzbuch</a> )	1 September 2009
	Law on Procedure in Family Affairs and in Matters of Voluntary Jurisdiction Reform Act ( <a href="#">Gesetz zur Reform des Verfahrens in Familiensachen und in Angelegenheiten der freiwilligen Gerichtsbarkeit</a> )	1 September 2009
	Third Act Amending the Custodianship Act ( <a href="#">Drittes Gesetz zur Änderung des Betreuungsrechts</a> )	18 February 2013
	Law regulating the care legal consent to a medical coercive measure ( <a href="#">Gesetz zur Regelung der betreuungsrechtlichen Einwilligung in eine ärztliche Zwangsmaßnahme</a> )	1 July 2014
HR	Family Act ( <a href="#">Obiteljski zakon</a> )	6 June 2014
HU	Act V of 2013 on the Civil Code ( <a href="#">2013. évi V. törvény a Polgári Törvénykönyvről</a> )	15 March 2014
LV	Civil Code ( <a href="#">Latvijas Republikas Civillikums</a> ) Civil Procedure Code ( <a href="#">Civilprocesa likums</a> )	1 January 2013
MT	Civil Code ( <a href="#">Civili kodici</a> ) Code of Organization and Civil Procedure ( <a href="#">Kodici ta 'orqanizzazzjoni u procedura civili</a> )	<a href="#">XXIV of 2012 – Code of Organization and Civil Procedure and</a>

		<a href="#">the Civil Code (Amendment) Act</a> , 7 December 2012
SI	Code of Obligations ( <a href="#">Obliqacijskega zakonik</a> ) Non-litigious Civil Procedure Act ( <a href="#">Zakon o nepravdnem postopku</a> ) Marriage and Family Relations Act ( <a href="#">Zakon o zakonski zvezi in družinskih razmerjih</a> )	Amendments in Mental Health Act No. 77/2008 ( <a href="#">Zakona o duševnem zdravju</a> ), 23 July 2008

Source: FRA (2015).

In other Member States, reforms are ongoing. For example, in **Bulgaria**, a draft Natural Persons and Support Measures Act envisages the abolition of full and partial deprivation of legal capacity and their replacement by supported decision-making.<sup>75</sup> Proposed reforms to the **Polish** Civil Code would introduce more flexible forms of guardianship, including: assistance for people with legal capacity to perform acts in law; representative care of a person, which will grant a representative limited representation rights; co-decision regarding important aspects of the life of people placed in care; and complete representation of the person under care.<sup>76</sup>

Finally, reforms to legal capacity in **Finland**<sup>77</sup> and **Ireland** are expected to pave the way for these countries to ratify the CRPD. The Assisted Decision-Making (Capacity) Bill, which aims to provide a statutory framework that maximises individual autonomy, is progressing through the Irish parliament.<sup>78</sup> The bill also provides for the establishment of a new Office of the Public Guardian to supervise those who provide support for decision making.

## 2.4 Living independently and being included in the community

Article 19 of the CRPD sets out the right to live independently and be included in the community. It creates wide-ranging obligations including: choice in living arrangements; the provision of personalised support; and access to community services and facilities open to the general population. This section focuses on legal reforms concerning the provision of personal assistance and the transition from institutional to community-based care.<sup>79</sup> Although deinstitutionalisation is not specifically mentioned in the text of Article 19, it is at the heart of many Member States' actions to implement the article.

Several Member States introduced a statutory right to personal assistance. According to the provisions of the 2010 Disability Law in **Latvia**, from 2,013 people with disabilities have access to two new support services: personal assistance at municipality level of up to 40 hours per week and sign language interpretation for up to 120 hours per year.<sup>80</sup> However, in other Member States this support is rather narrow in scope. The Regulations for the Implementation of the Social Assistance Act in **Bulgaria**, adopted in 2010, entitle some people with psychosocial or intellectual disabilities to an assistant, but this is limited to 10 hours per year.<sup>81</sup>

Reforms in other Member States are tied to financial support. A law on strengthening care adopted by the **German** Parliament will increase payments to people in 'need of care' and their supporting relatives.<sup>82</sup> The law, which entered into force in 2015, was welcomed by the Federal Government Commissioner for Matters Relating to People with Disabilities as a step towards the implementation of the CRPD in Germany.<sup>83</sup>

A further area of reform is the transition from institutional to community-based care and support. In the **United Kingdom**, reforms which became law in May 2014 concern both the financing and the practical provision of support, and created a single harmonising law for all adult care and support.<sup>84</sup>

On the policy side, the operative plan for deinstitutionalisation and transformation of social welfare institutions in **Croatia** prioritises 18 institutions for people with intellectual and psychosocial disabilities for deinstitutionalisation, with the goal of deinstitutionalising 1,043 people by the end of 2016.<sup>85</sup> As of February 2015, 843 people with intellectual and psychosocial disabilities had moved out of institutions to live

in the community, while 6,757 continue to live in institutions.

The European Structural and Investment Funds (ESIF) are an important source of funding for such measures. They are the “main source of investment at EU level to help Member States to restore and increase growth and ensure a job rich recovery while ensuring sustainable development”.<sup>86</sup> The regulation governing the disbursement of structural funds for 2014-2020 includes a number of ex-ante conditionalities to be fulfilled before funds may be allocated; several of these refer to the CRPD.<sup>87</sup> The **Lithuanian** Action plan to increase social inclusion 2014-2020, which includes measures to increase the availability of social housing and in-house support services for people with intellectual and psychosocial disabilities, is partly funded by the ESIF, for example.<sup>88</sup>

## 2.5 Education

Education and formal qualifications open up access to employment and career advancement,<sup>89</sup> crucial factors in promoting a high quality of life and the integration of people with disabilities in society. Many Member States, including **Austria**, **Belgium**,<sup>90</sup> **Bulgaria**, **Germany**,<sup>91</sup> **France**, **Latvia**, **Luxemburg**<sup>92</sup> and the **United Kingdom**<sup>93</sup> are taking steps towards an inclusive education system, reflecting the requirements of Article 24 of the CRPD.

Following reforms, the **French** Education Code now mentions education as contributing to “tackling social and territorial inequalities in school, and to educational success” and recognises that “all children share the ability to learn and develop”. It ensures inclusive education for all children, without distinction.<sup>94</sup> The action area on inclusive education and reduction of social exclusion of the **Latvian** Guidelines on education development 2014-2020 includes steps to ensure remuneration for assistants of teachers and pedagogues, introduces measures to integrate young people with special needs, facilitates the early diagnosis of special needs, and ensures the availability of support personnel.<sup>95</sup> As of 1 September 2012, people with disabilities are entitled to an assistant in educational institutions to support mobility and self-care for up to 40 hours per week.<sup>96</sup>

The availability and training of staff is also at the heart of reforms to the training of **Austrian** educators. Curricula for Bachelor and Master courses for teaching posts must now take into consideration the objectives of Article 24 of the CRPD and incorporate inclusive pedagogy.<sup>97</sup>

Other measures focus on the accessibility of the educational system. In **Bulgaria**, for instance, a national programme for accessible schooling aims to create a supportive environment for 400 children with intellectual disabilities who have been living in institutions now scheduled for closure. A complementary inclusive education programme has seen 1,331 pupils with special educational needs receive support to study in 84 pilot secondary schools.<sup>98</sup>

## 2.6 Work and employment

Under Article 27 of the CRPD, States parties have to ensure that people with disabilities can “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”.

At the EU level, the Employment Equality Directive prohibits discrimination on the grounds of disability, among others, and incorporates the duty of reasonable accommodation for people with disabilities.<sup>99</sup> This directive has been transposed into national law in all Member States.<sup>100</sup> The European Commission acts as ‘guardian of the treaties’ and can launch infringement procedures in cases where it believes a Member State has incorrectly adopted the Directive into national law.<sup>101</sup>

One strategy for increasing the employment of people with disabilities is introducing various incentives to employ people with disabilities. **Portugal**, for example, extended available funding to public entities who hire women with disabilities or women with disabilities looking for their first job, and who have enrolled in Employment Centre and Professional Training Centres.<sup>102</sup> In **Spain**, the 2013 Act on Measures to support entrepreneurs, and foster economic growth and job creation aims to promote the employment of people with disabilities through social security reductions.<sup>103</sup>

Other Member States have introduced mandatory quotas for employees with disabilities. For example, the **Croatian** Act on



Professional Rehabilitation and Employment of People with Disabilities obliges employers with at least 20 employees to meet a quota requiring 2-6% of their workforce to be people with disabilities. Those not fulfilling this requirement by 1 January 2015 must pay a fine. This is complemented by a regulation setting a 3% quota of staff with disabilities for all employers.<sup>104</sup> **Bulgaria, Hungary and Slovenia**<sup>105</sup> introduced similar quota systems which apply to all companies which have at least 50, 25 and 20 employees respectively.

## 2.7 Participation in political and public life

The right to participate in political and public life is enshrined in Article 29 of the CRPD, which requires state parties to “ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity [...] to be elected”.

FRA evidence shows that reforms in this area have particularly focused on the link between the right to vote and legal capacity, and the accessibility of the electoral process.<sup>106</sup> Reforms to separate a decision to deprive a person of their legal capacity from their right to vote took place in **Croatia, Hungary and Latvia**. In 2012, Hungary changed its legislation from a system where all people under guardianship were prohibited from voting to one in which judges can deprive people of the right to vote “owing to their mental state”.<sup>107</sup> However, in its subsequent concluding observations on Hungary, the CRPD Committee recommended that this legislation be reviewed to ensure that all people with disabilities, regardless of their legal capacity status, have the right to vote.<sup>108</sup>

Amendments to the **Latvian** Civil Code, which end the denial of the right to vote for those deprived of legal capacity, came into force in 2013,<sup>109</sup> while **Croatia** changed its electoral legislation to allow people deprived of legal capacity to vote for the first time in the 2013 European Parliament elections.<sup>110</sup> In contrast, proposals tabled in **Germany** to revise electoral legislation by granting votes to people excluded from voting as they are under guardianship<sup>111</sup> were rejected by a majority vote in the parliament in June 2013.<sup>112</sup> Following the parliament’s decision, the government has

commissioned a study to review the compatibility of current electoral legislation with the CRPD and to advise on possible necessary amendments.

In **Belgium**,<sup>113</sup> **Poland** and **Sweden**, steps are being taken to increase the accessibility of voting procedures, facilities or materials. The **Polish** act amending the Electoral Code Act, adopted in July 2014, aims to enhance the participation of people with disabilities by making polling stations and voting procedures more accessible. Among other provisions, it requires that half of all polling stations in each municipality are accessible for people with disabilities.<sup>114</sup> To help guarantee the secrecy of the ballot for people with disabilities who require assistance to vote, **Sweden** created a multi-choice flexible assistance system for voters with disabilities. The system will enter into force in 2015, and aims to introduce fully accessible e-voting for the 2018 elections.<sup>115</sup>

Finally, **Spain** introduced specific legislation concerning the political participation of people with disabilities. Royal Decree 422/2011 on the Regulation of the basic conditions for the participation of people with disabilities in the political life and in electoral procedures includes a number of measures ranging from the accessibility of polling stations, and of public and official spaces where electoral campaign activities are held, to the provision of a free-of-charge sign language interpreting service.<sup>116</sup>

## 2.8 Involuntary placement and involuntary treatment

Involuntary placement and involuntary treatment are linked to several CRPD rights, in particular the right to liberty and security of the person (Article 14), the prohibition of torture and other forms of ill treatment (Article 15), the integrity of the person (Article 17), and the right to health (Article 25).

Legislation in this area has been a focus of significant reform, with most Member States altering their legislation over the last 15 years.<sup>117</sup> This trend continued following the entry into force of the CRPD. For example, the explanatory report to the **Austrian** bill amending the Compulsory Admission Act, passed in 2010, explicitly refers to the CRPD.<sup>118</sup>

However, implementing CRPD provisions in this area remains a challenge for EU Member States, particularly with regard to the principles of non-discrimination and equal recognition before the law.<sup>119</sup> In its General Comment on Article 12 of the CRPD, the CRPD Committee set out its view that States parties must “respect the legal capacity of persons with disabilities to make decisions at all times, including in crisis situations”.<sup>120</sup> Moreover, health and medical professionals must “obtain the free and informed consent of persons with disabilities prior to any treatment” and not permit substitute decision-makers (guardians) to provide consent on their behalf.<sup>121</sup>

The challenge this presents to Member States’ approach to involuntary placement and treatment is reflected in the **Croatian** Act on the Protection of Persons with Mental Disabilities. Although the law provides that people with psychosocial disabilities may be subjected to medical treatment only with their written consent, with the exception of cases of direct and serious danger to life or health, the capacity to give consent must be determined in each case. The Act does, however, introduce an obligatory review of all involuntary placements in psychiatric hospitals by the Ombudsman for Persons with Disabilities, who can refer cases for judicial review.<sup>122</sup>

## Looking ahead: drivers of future reforms

This paper shows that wide-ranging legislative changes are taking place across the EU following or in anticipation of accession to the CRPD. In so doing, it casts light on how the adoption of international commitments can spur wide-ranging and systematic processes of change at the national level. With the CRPD Committee now regularly issuing concluding observations, general comments and responses to individual communications to guide Member States in their further implementation of the CRPD, this process is likely to continue.

The influence of the CRPD Committee’s jurisprudence on national legislation is already being felt. Legislation concerning legal capacity and accessibility, the two areas that have been subject to interpretation though general comments, are a focus of reform at the national

level. In Hungary, in particular, the concluding observations and ruling in the individual communication concerning the right to vote of people deprived of legal capacity have already prompted amendments to existing legal provisions.<sup>123</sup>

Although outside the scope of this paper, European and national jurisprudence is also increasingly drawing on the CRPD and so acting as an additional driver of reform. A few examples serve to highlight this trend. At the European level, the Court of Justice of the European Union underlined that the Employment Equality Directive “must, as far as possible, be interpreted in a manner consistent with [the CRPD]” in its judgment in the case of *Ring and Skouboe Werge*.<sup>124</sup> In particular, the court updated the concept of disability it had set out in the *Chacón Navas* case to reflect the ‘definition’ of disability provided in Article 1 of the CRPD.<sup>125</sup> Furthermore, the judgment of the European Court of Human Rights in the case of *Stanev v. Bulgaria*<sup>126</sup> directly referred to the CRPD and prompted the setting up in Bulgaria of a working group on the implementation of Article 12 of the convention.<sup>127</sup>

Nationally, a German Federal constitutional court decision in 2011, which found that federal state (*Länder*) legislation on compulsory treatment in forensic psychiatry violated the German Basic Law, referred to the CRPD.<sup>128</sup> Following the ruling, a new federal law was enacted in 2013 and a number of federal states have since passed corresponding laws.<sup>129</sup> Moreover, a ruling by the labour section of the Court of Bologna in Italy highlights the link between national and EU law and the CRPD in the area of employment and occupation. In its judgment, the court referred to the reasonable accommodation requirements set out in both the Employment Equality Directive and the CRPD, noting the latter’s ratification by the EU and Italy.<sup>130</sup>

With the majority of EU Member States now having established frameworks to promote, protect and monitor the implementation of the CRPD, as required under Article 33 (2) of the convention,<sup>131</sup> further domestic scrutiny of the compatibility of national legislation with CRPD requirements is likely over the coming years. Examples of such monitoring by Article 33 (2) bodies can already be found in Germany, where the German Institute for Human Rights highlighted a number of challenges to CRPD



implementation in Germany in its shadow reporting to the CRPD Committee<sup>132</sup>. Similarly in Poland, the Human Rights Defender initiated a survey to assess the level of implementation of the CRPD at the local level.<sup>133</sup>

While Member States retain competence for implementing the CRPD in many policy areas, the EU can play a significant role by assisting Member States in their efforts to improve the conformity of their legislation with the convention. In particular, framing the different issues

highlighted in this paper in non-discrimination terms makes them of greater relevance to EU law and policy, creating opportunities for further EU action in the area of equality to play a role in harmonising national legislation with the CRPD. This would be given additional impetus if secondary EU legislation, notably the proposed equal treatment directive, extended the protection against discrimination on the grounds of disability to all the areas of life covered by existing protection against racial or ethnic discrimination.<sup>134</sup>

<sup>1</sup> FRA would like to thank Marie Fallon-Kund, study visitor, for her contribution to the preparation of this report.

<sup>2</sup> European Union Agency for Fundamental Rights (FRA) (2011), *The legal protection of persons with mental health problems under non-discrimination law: Understanding disability as defined by law and the duty to provide reasonable accommodation in European Union Member States*, Luxembourg, Publications Office of the European Union (Publications Office).

<sup>3</sup> FRA's website provides an [overview of EU Member States that have acceded to the CRPD](#).

<sup>4</sup> FRA (2014), *Fundamental rights: challenges and achievements in 2013*, Luxembourg, Publications Office, p. 241-242.

<sup>5</sup> In addition to the three Member States that have not ratified the CRPD, Bulgaria, the Czech Republic, Poland and Romania have not ratified the Optional Protocol to the convention.

<sup>6</sup> European Commission (2014), *Report on the implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD) by the European Union*, SWD(2014) 182 final, Brussels, 5 June 2014., para. 15. See also Council Decision 2010/48/EC.

<sup>7</sup> FRA (2010), *The right to political participation of persons with mental health problems and persons with intellectual disabilities*, Luxembourg, Publications Office.

<sup>8</sup> FRA (2011), *The legal protection of persons with mental health problems under non-discrimination law: Understanding disability as defined by law and the duty to provide reasonable accommodation in European Union Member States*, Luxembourg, Publications Office.

<sup>9</sup> FRA (2012), *Involuntary placement and involuntary treatment of persons with mental health problems*, Luxembourg, Publications Office.

<sup>10</sup> FRA (2012), *Choice and control: the right to independent living*, Luxembourg, Publications Office.

<sup>11</sup> FRA (2013), *Legal capacity of persons with intellectual disabilities and persons with mental health problems*, Luxembourg, Publications Office.

<sup>12</sup> FRA (2014), *The right to political participation for persons with disabilities: human rights indicators*, Luxembourg, Publications Office.

<sup>13</sup> For more, see: FRA project on [children with disabilities' experiences of targeted hostility and abuse](#).

<sup>14</sup> For more, FRA project on [transition from institutional to community-based care](#).

<sup>15</sup> See, for example, FRA (2015), *Victims of crime in the EU: the extent and nature of support for victims; Inequalities and multiple discrimination in access to and quality of healthcare*, and FRA (2015), *Equal protection for all victims of hate crime: the case of people with disabilities*, Luxembourg, Publications Office

<sup>16</sup> For further information on the structures set up to implement and monitor the CRPD under Article 33 of the convention, see [FRA Annual Reports](#).

<sup>17</sup> Additional information was gathered through consultation with FRA's network of National Liaison Officers. FRA is grateful for these valuable contributions.

<sup>18</sup> For further information on steps to implement the CRPD at the national level, see the reports of the Disability High Level Group, published annually since 2008.

<sup>19</sup> European Commission (2010), *European Disability Strategy 2010-2020: A renewed commitment to a barrier-free Europe*, COM(2010) 636 final, Brussels, 15 November 2010.

<sup>20</sup> United Nations (UN), CRPD Committee (2013), Concluding observations on the initial report of Austria, CRPD/C/AUT/CO/1, 30 September 2013, para. 4.

<sup>21</sup> See Flynn, E. (2011), *From rhetoric to action: Implementing the UN Convention on the Rights of Persons with Disabilities*, Cambridge, Cambridge Law and Disability Policy Series. For more information on action plans relating to the right to political participation of persons with disabilities,

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- <sup>47</sup> See: FRA (2013), [Legal capacity of persons with intellectual disabilities and persons with mental health problems](#); FRA (2012), [Involuntary placement and involuntary treatment of persons with mental health problems](#); and FRA (2012) [Choice and control: the right to independent living](#).
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