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UN & CoE

17 January – CoE Committee of Ministers adopts a decision on the examination of the implementation of its recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity

January

February

March

April

19 May – UN Committee on the Rights of Persons with Disabilities issues General Comment No. 1 on equal recognition before the law (Article 12), setting out its authoritative interpretation of this standard

22 May – UN Committee on the Rights of Persons with Disabilities issues General Comment No. 2 on accessibility (Article 9), setting out its authoritative interpretation of this standard

May

June

1 July – In *S.A.S. v. France* (No. 43835/11), the ECtHR rules that a law prohibiting the concealment of one's face in public places does not violate a practising Muslim's rights, finding no violation of the prohibition of discrimination (Article 14) combined with the right to respect for private and family life (Article 8) and the right to respect for freedom of thought, conscience and religion (Article 9) of the ECHR

16 July – In *Hämäläinen v. Finland* (No. 37359/09), the ECtHR rules that the law according to which a male-to-female transsexual could obtain full official recognition of her new gender only by having her marriage turned into a civil partnership does not constitute discrimination based on gender identity, nor does it violate her right to respect for private and family life (Article 8) or her right to marry (Article 12) of the ECHR

July

August

September

October

November

December

EU

16 January – European Parliament adopts a resolution condemning moves to criminalise lesbian, gay, bisexual, transgender and intersex people (2014/2517(RSP))

17 January – European Commission issues a joint report on the application of the Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC)

January

4 February – European Parliament calls on European Commission to adopt a roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity

13 February – Meeting of EU Framework established under Article 33 (2) of the Convention on the Rights of Persons with Disabilities (CRDP) to promote, protect and monitor the implementation of the convention

February

March

April

19 May – European Ombudsman launches an own-initiative investigation concerning respect for fundamental rights in implementation of the EU cohesion policy

May

5 June – European Commission publishes the EU's initial report on CRPD implementation, presenting steps taken to implement the convention in the two years following the EU's accession, as required under Article 35 of the convention

June

July

August

September

29 October – European Commission submits comments on the European Ombudsman's own-initiative inquiry concerning respect for fundamental rights in implementation of the EU cohesion policy

October

11 November – In *Dano v. Jobcenter Leipzig* (C-333/13), the CJEU rules that it does not amount to discrimination based on nationality when the "nationals of other Member States are excluded from entitlement to certain 'special non-contributory cash benefits' [...] although those benefits are granted to nationals of the host Member State who are in the same situation, in so far as those nationals of other Member States do not have a right of residence under the Directive 2004/38/EC [Free Movement Directive] in the host Member State"

November

2 December – In *A B and C v. Staatssecretaris van Veiligheid en Justitie* (Joined cases C-148/13 to C-150/13), the CJEU rules that certain methods of assessing the credibility of the sexual orientation of asylum applicants are not in accordance with human dignity (Article 1) and respect for private and family life (Article 7) of the Charter of Fundamental Rights of the EU

December

1

Equality and non-discrimination



Developments in equality and non-discrimination in 2014 were marked by the EU's efforts to become more inclusive. Working actively to counter discrimination in all its forms and to foster equal treatment requires sustained efforts by all interested parties, so EU institutions worked closely with Member States and FRA to raise awareness on issues of discrimination, including on grounds of sexual orientation and gender identity, or to encourage recourse to redress mechanisms. A new regulation on structural and investment funds also came into force in the EU. If applied fully, this regulation can help greater social inclusion of those most vulnerable to discrimination and unequal treatment. This includes persons with disabilities, who would stand to gain most from the full and correct implementation of the Convention on the Rights of Persons with Disabilities (CRPD), the only core international human rights convention to which the EU itself has acceded. Evidence from 2014 shows that the cross-cutting principles of equality and non-discrimination set out in Articles 3 and 5 of the convention are increasingly driving implementation of the CRPD by both the EU and its Member States.

1.1. Countering discrimination requires strong cooperation between all relevant actors

Limited rights awareness and victims' reluctance to report incidents means discrimination remains largely unaddressed in EU Member States, as evidence collected by FRA consistently shows. This is despite the racial and employment equality directives (2000/43/EC and 2000/78/EC) having been in force for a decade by 2014.¹ FRA has repeatedly highlighted the need to improve trust in public authorities and to build confidence in the state's ability to respond adequately to discrimination (for more information on ethnic discrimination, see [Chapter 2](#); more information on violence against women, see [Chapter 7](#)).

Many who face discrimination regard it as normal and lack awareness of either their rights or where and how to seek redress. This calls for urgent action by all relevant actors. FRA, EU institutions, Member States

and other national actors, including national equality bodies, human rights institutions and civil society organisations, took concrete steps in that direction in 2014, often working in cooperation, as set out below. Such efforts need to be sustained over time if the EU is to deliver on its duty to become a more inclusive society working actively to counter discrimination and foster equal treatment.

"The main challenge now is to increase awareness of the already existing protection and to ensure better practical implementation and application of the [Equality] Directives. The Commission will, together with the Member States and their equality bodies, make a concerted effort to realise the full potential of the Directives in terms of protection of the fundamental right to equal treatment in the EU."

European Commission (2014), 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'), p. 16

The European Commission's commitment made in November 2014 to establish a high-level group on non-discrimination, diversity and equality in 2015 is

an example of how cooperation in the field could lead to positive results. It would be achieved through the high-level group agreeing

“common objectives between Member States and the European Commission in the areas of equality, diversity, and non-discrimination initiatives [and working together] to achieve them. [This] would enable shared commitments agreed at European level to be effectively advanced at national level [and] establish links with the Presidency and the Council of the European Union, with the social partners, equality bodies, civil society, international partners and with the European Commission.”²

Like involving all relevant actors, effectively countering discrimination entails implementing equal treatment “irrespective of religion or belief, disability, age or sexual orientation”, as suggested in the proposed equal treatment directive.³ Although discussions on its adoption continued in 2014, the directive had not been adopted by year end, when Member States confirmed that it should be adopted by a unanimous decision.⁴

The Italian Presidency of the Council of the European Union nevertheless made 14 concrete suggestions about how the Council of the European Union, the European Commission and Member States can cooperate better with one another in the area, as set out in the Rome declaration on non-discrimination,

diversity and equality. These include adopting measures that would be effective at the national and local levels; taking particular account of the situation of disadvantaged groups; using the work of FRA and of the European Institute for Gender Equality (EIGE); enhancing cooperation with national human rights bodies; more and better involvement of civil society organisations; and effective use of structural funds (for more information, see [Section 1.2](#) on the relevance of these funds in countering discrimination, as well as [Chapter 3](#) on Roma, [Chapter 6](#) on the rights of the child and the [Focus](#)).

Awareness of rights in the area of non-discrimination can be raised through bringing relevant actors together to exchange practices on what is done at the international, national and local levels to counter discrimination. The conference hosted in October by the Italian Presidency to find ways to tackle discrimination on the grounds of sexual orientation and gender identity in the EU is an example of how bringing relevant actors together can contribute to fighting discrimination.

The conference drew on FRA evidence⁵ and brought together over 250 decision makers and fundamental rights practitioners from across the EU. It concluded that gender identity and gender expression should be explicitly recognised as protected grounds in EU non-discrimination legislation. It also concluded that Member States could consider extending national anti-discrimination legislation on sexual orientation and gender identity

Promising practice

Contributing to building a more inclusive society through raising awareness of discrimination in the classroom

The Irish Human Rights and Equality Commission launched a campaign in February 2014 to increase awareness of equality issues in schools, for example about gender equality, disability or cultural diversity. The main tool is a training manual designed to provide teachers with equality-based teaching resources for use across the curriculum, to encourage pupils to take action on equality, human rights and social justice issues in the classroom, at school or within their wider community. The inclusion of pupils was important in developing the training materials, which also involved the support of the Irish Traveller Movement’s Yellow Flag programme, the Young Social Innovators programme and the Irish Human Rights Commission’s Express Yourself! programme. As of October 2014, 78 teachers in 72 schools had attended the training programme.

For more information, see: www.ihrec.ie/download/pdf/equality_in_second_level_schools.pdf

The Dutch government is seeking to encourage schools to improve the safety of LGBT pupils. FRA evidence shows that 32 % of LGBT persons in the Netherlands experienced negative comments or conduct at school because of their sexual orientation or gender identity, compared with an EU average of 38 %. The Ministry for Education, Culture and Science ran a pilot project during the 2012/13 and 2013/14 academic years, targeting pupils from late primary and early secondary school. This included holding information sessions with external experts; organising lessons in social interaction for pupils; providing training or guidance for teachers; and increasing awareness of sexual and gender diversity in regular lessons. The Netherland Institute for Social Research found that schools achieved positive results within a short space of time, especially concerning pupils’ attitudes. These pupils had less difficulty with LGBT pupils after the pilot, for example, and LGBT pupils themselves also felt safer at school as a result.

For more information, see: *Bucx, F. and Van der Sman, F. (2014), Anders in de klas: Evaluatie van de pilot Sociale veiligheid LHBT-jongeren op school, The Hague, Sociaal en Cultureel Planbureau*

to all areas covered by the Racial Equality Directive, as the proposed equal treatment directive would. Finally, the conference considered that legislation in the field should be complemented by comprehensive policy frameworks and awareness-raising campaigns to address entrenched prejudices and social practices.⁶ FRA is collecting evidence on the role of public authorities in tackling discrimination on the grounds of sexual orientation and gender identity. It will provide a knowledge base from which to continue to fine-tune anti-discrimination strategies, thereby contributing towards building a more inclusive society. This evidence will be available towards the end of 2015.

Not knowing where to turn to seek redress in cases of discrimination is, however, often the first barrier to being able to fully exercise the fundamental right to equal treatment. No single organisation or body is responsible for enabling people to seek redress. FRA, together with a group of national human rights bodies, therefore continued working in 2014 on a pilot online tool named 'Clarity' to help victims of discrimination and other fundamental rights violations gain better access to non-judicial remedies.⁷ The bodies involved represented **Austria, Bulgaria, Cyprus, Finland, France, Greece, Hungary, Italy, Malta, Portugal, Romania, Slovakia, Spain** and the **United Kingdom** (Northern Ireland).

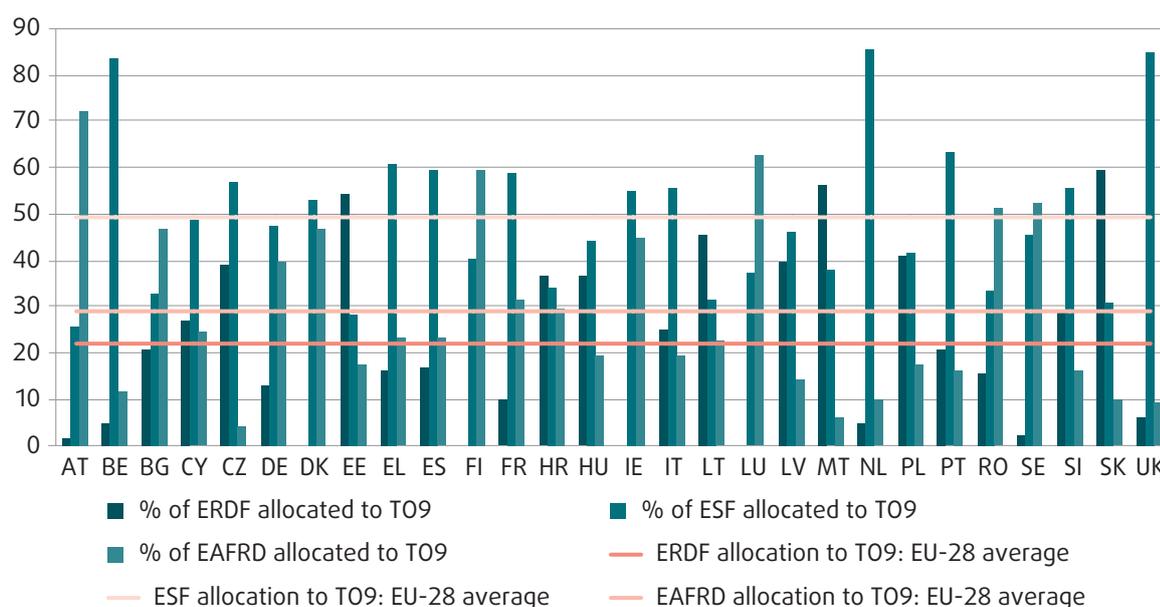
Clarity is designed to help identify the most appropriate non-judicial body with a human rights remit

competent to address a particular fundamental rights issue, including cases of discrimination. Although the tool principally targets intermediaries, such as civil society organisations guiding victims of fundamental rights violations to a relevant body, it can also be used by those who have experienced discrimination themselves. The Council of the European Union's Working Group on e-Law presented and welcomed the beta version of the Clarity tool in November 2014. The launch of the tool is planned for the first half of 2015.

1.2. Using the targeted investment of EU funds to foster social inclusion

Stronger cooperation in the field of anti-discrimination enables stakeholders better to identify initiatives and implement policies that would lead to greater social inclusion. European Structural and Investment Funds (ESIF)⁸ play an important role here, as 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".⁹ Of the 11 thematic objectives covered by ESIF, thematic objective 9 (TO9) is most relevant to this chapter: promoting social inclusion, combating poverty and discrimination. For information on the Rights, Equality and Citizenship programme, see Chapter 2.

Figure 1.1: Proportion of budget allocated by EU Member States to promote social inclusion and combat poverty and discrimination (TO9) under ESIF streams, 2014-2020 (%)



Notes: EAFRD: European Agricultural Fund for Rural Development; ERDF: European Regional Development Fund; ESF: European Social Fund; TO9: thematic objective 9 (promoting social inclusion, combating poverty and discrimination).

Source: FRA desk research, 2014

As [Figure 1.1](#) and [Figure 1.2](#) show, there is a great degree of variation in the budget allocated by EU Member States during the programming period 2014–2020 to meet this objective. This reflects diverse needs and priorities at national level. Most Member States allocated budget under three ESIF instruments: the European Regional Development Fund (ERDF), which “aims to strengthen economic and social cohesion in the European Union by correcting imbalances between its regions”;¹⁰ the European Social Fund (ESF), which is the EU’s principal tool for job creation; and the European Agricultural Fund for Rural Development (EAFRD). On average, to promote social inclusion and combat poverty and discrimination, Member States allocated most budget to ESF (49 %), followed by EAFRD (29 %) and then ERDF (22 %).

Between them, EU Member States allocated a budget of €43,705,044,741 to promote social inclusion and combat poverty and discrimination for the programming period 2014–2020. This accounted for just under 10 % of the European Structural and Investment Funds. Again, there is a great degree of variation between the budget allocations of Member States, as [Figure 1.2](#) shows. The above-average allocations by **Belgium** (16 %), **Germany** (19 %) and the **Netherlands** (25 %) stand out here.

The ESIF cycle requires EU Member States to enter into partnership agreements with the European Commission, which then assesses and agrees on specific operational programmes proposed by the Member States.

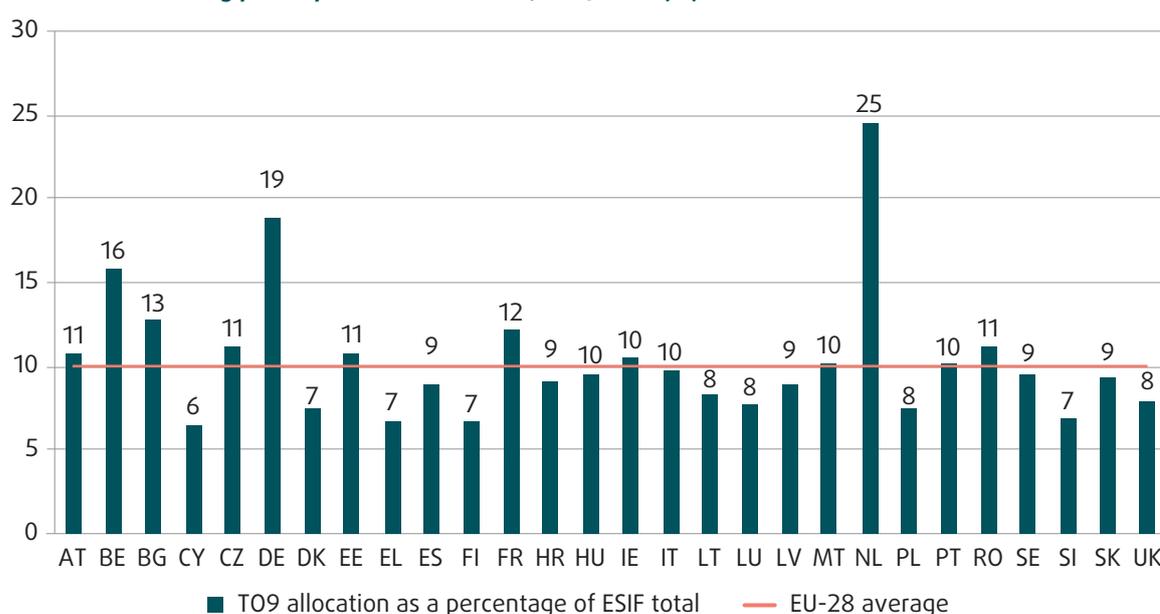
“Partnership agreements between the European Commission and individual EU countries set out the national authorities’ plans on how to use funding from the European Structural and Investment Funds between 2014 and 2020. They outline each country’s strategic goals and investment priorities, linking them to the overall aims of the Europe 2020 strategy for smart, sustainable and inclusive growth.”

European Commission (2014), European Structural and Investment Funds (online)

For Member States to benefit from structural and investment funds from the European Commission during the programming period, they must fulfil ex ante conditionalities – that is, meet a certain number of requirements. Building on last year’s FRA annual report, this section focuses on the five general ex ante conditionalities relevant to anti-discrimination and disability and included in the ESIF regulation:¹¹

- anti-discrimination: arrangements in accordance with the institutional and legal framework of Member States to involve bodies responsible for the promotion of equal treatment of all persons throughout the preparation and implementation of programmes;
- anti-discrimination: arrangements to train staff of the authorities involved in the management and control of ESIF in the fields of Union anti-discrimination law and policy;
- disability: arrangements in accordance with the institutional and legal framework of Member States to consult and involve bodies in charge of protecting

Figure 1.2: Proportion of total ESIF budget allocated by EU Member States to promote social inclusion and combating poverty and discrimination, 2014–2020 (%)



Note: TO9: thematic objective 9 (promoting social inclusion, combating poverty and any discrimination).

Source: FRA desk research

the rights of persons with disabilities or representative organisations of persons with disabilities and other relevant stakeholders throughout the preparation and implementation of programmes;

- disability: arrangements to train staff of the authorities involved in the management and control of the ESIF in the fields of applicable Union and national disability law and policy, including accessibility and the practical application of the CRPD as reflected in Union and national legislation, as appropriate;
- disability: arrangements to ensure monitoring of the implementation of Article 9 of the CRPD on accessibility in relation to ESIF funds throughout the preparation and the implementation of the programmes.

Given that the new ESIF regulation came into force on 1 January 2014, it was to be expected that Member States would begin implementing measures to fulfil these conditionalities only during 2014; the deadline to fulfil them is 31 December 2016. Member States will need to report to the European Commission in 2017, at the latest, on measures they took to fulfil the conditionalities; this can be either an annual implementation report or a progress report submitted to the Commission. Should they fail to meet them, Member States could see the payment of funds to affected priority programmes suspended.

Evidence collected by FRA shows that most Member States plan to consult with bodies in charge of anti-discrimination to provide advice on equality issues in relation to activities funded by ESIF, including national equality bodies, ombudsperson organisations and relevant governmental offices, in line with the first conditionality. Steps taken to meet each conditionality relate to fulfilling criteria defined by the European Commission.¹² Under the first conditionality, the criteria are the following: a national equality body has been set up; a plan has been set out to consult with and involve bodies in charge of anti-discrimination; the plan indicates steps taken to facilitate active involvement of the national equality body. When national equality bodies are mentioned in partnership agreements and operational programmes, they tend to be given an advisory function within monitoring committees, such as in **Cyprus**, the **Czech Republic**, **Denmark**, **Finland**, **Greece**, the **Netherlands**, **Malta**, **Poland**, **Romania** or **Slovakia**.

Member States also took steps to begin training staff involved in the management and control of ESIF on EU anti-discrimination law and policy, in line with the second conditionality. This happened in **Austria**, **Belgium**, **Bulgaria**, **Croatia**, **Cyprus**, the **Czech Republic**, **Denmark**, **Estonia**, **Finland**, **France**, **Germany**, **Hungary**, **Italy**, **Latvia**, **Lithuania**, **Luxembourg**, **Malta**, the **Netherlands**, **Poland**, **Romania**, **Slovakia**, **Slovenia**,

Spain and **Sweden**. The criteria to be met under this conditionality are having a plan in place, and the plan covering all relevant actors.

Concerning the third conditionality, some Member States have consulted or plan to consult with bodies in charge of protection of rights of persons with disabilities or disabled persons organisations (DPOs). This was the case in **Austria**, **Belgium**, **Bulgaria**, **Cyprus**, **Denmark**, **Estonia**, **France**, **Greece**, **Hungary**, **Ireland**, **Italy**, **Latvia**, **Lithuania**, **Luxembourg**, **Malta**, the **Netherlands**, **Poland**, **Portugal**, **Romania**, **Slovakia**, **Spain** and **Sweden**. The criteria to be met under this conditionality include having a plan in place to involve such organisations, identifying relevant actors and their roles and facilitating their active involvement in the process.

For the fourth conditionality, Member States took steps to ensure that relevant staff will be trained on applicable EU and national disability law and policy, including accessibility and the implementation of the CRPD. This happened in **Austria**, **Belgium**, **Bulgaria**, the **Czech Republic**, **Denmark**, **Estonia**, **Finland**, **France**, **Germany**, **Greece**, **Hungary**, **Italy**, **Latvia**, **Luxembourg**, **Malta**, the **Netherlands**, **Portugal**, **Romania**, **Slovenia**, **Slovakia** and **Spain**. The criteria to be met under this conditionality are having a plan in place, and the plan covering all relevant actors.

The other relevant conditionality Member States have to meet relates to arrangements to monitor the implementation of Article 9 of the CRPD on accessibility, in the context of disbursing structural and investment funds. Monitoring here relates to ensuring the suitability of the built environment, transport, information and communication technologies or public services. It also relates to the availability of redress mechanisms to challenge situations where structural funds would be used in a way prejudicial to accessibility. **Austria**, **Belgium**, **Bulgaria**, **Denmark**, **France**, **Hungary**, **Italy**, **Latvia**, **Lithuania**, **Luxembourg**, **Malta**, **Poland**, **Romania**, **Slovakia**, **Sweden** and the **United Kingdom** took steps towards meeting this conditionality. The criteria to be met under this conditionality are having in place monitoring, redress and enforcement mechanisms on accessibility in all its forms, and clear technical guidance being available.

All things considered, ESIF has the potential to mark a milestone for fundamental rights protection and fulfilment in the EU. This is particularly true of equality issues, as shown by the substantial budgets allocated by Member States to meet the objective of promoting social inclusion, combating poverty and any discrimination.

The European Ombudsman's investigation in respect for fundamental rights in the EU's cohesion policy

becomes relevant here. The cohesion policy is the EU's instrument to develop Member States and regions; it "aims to strengthen economic and social cohesion by reducing disparities in the level of development between regions".¹³ The investigation asked: "What means does the [European] Commission have at its disposal to ensure that fundamental rights enshrined in the Charter are complied with at all stages of the implementation of the cohesion policy in the Member States?"¹⁴

Responding to the inquiry, the Commission notes "that compliance with the Charter cannot be a precondition for approval of a Member State's Partnership Agreement, and a reference to the Charter is not necessary". What is necessary under the regulation, however, is for "Member States to set out the specific actions to promote equal opportunities and prevent discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation".¹⁵

In this respect, the implementation of ESIF during the 2014–2020 programming period has the potential to be an agent for change, leading to greater social inclusion. The European Parliament noted and emphasised this potential, and made a direct link between ESIF and the European Semester for economic policy coordination. Seeing European Semester as a tool for the coordination of economic and budgetary policies in Member States, the parliament called "on the Commission to link the European Semester more closely to the Europe 2020 social objectives" (for more information on the European Semester, see the [Focus](#) of this Annual report). The European Parliament also called on "Member States to have in place specific social inclusion and anti-discrimination measures with a view to reducing poverty, targeting those groups at greatest risk of social exclusion."¹⁶

Country-specific recommendations (CSRs) made by the European Commission to Member States on how to boost growth and jobs creation could, where followed, play an important role here. Twelve Member States received recommendations relating to poverty and social inclusion for 2014–2015: **Bulgaria, Croatia, Ireland, Italy, Hungary, Latvia, Lithuania, Poland, Portugal, Romania, Spain** and the **United Kingdom**.¹⁷

► For more information on CSRs, see [Chapter 6](#) on the rights of the child.

1.3. Fulfilling the promise of the CRPD remains a challenge

The CRPD holds a unique position in the EU's fundamental rights architecture as the only core international human rights convention confirmed by the

Union. Following the EU's ratification of the CRPD in 2010, responsibility for implementing the convention is shared between the EU and the Member States, in line with their respective competences. With most policy areas and matters falling primarily under Member State competence, it is at the national level that processes to bring standards and practices in line with the requirements of the convention were most active in 2014. These reforms are continuing apace, as the CRPD Committee reviews more Member States and sets out recommendations for further steps to implement the convention.¹⁸

Significant steps were taken regarding the implementation of the CRPD by the EU. In June, the European Commission reported, as required, on the actions the EU has taken to implement the CRPD during the two years following the entry into force of the convention in the Union.¹⁹ In parallel, the members of the EU monitoring framework established under Article 33 (2) of the CRPD continued their work to promote, protect and monitor the implementation of the convention.²⁰ The EU's dialogue with the CRPD Committee on its initial report is scheduled for August 2015.²¹ The committee's recommendations are likely to shape future actions by both the European Commission as focal point and the EU monitoring framework.

1.3.1. Bringing non-discrimination principles to bear in implementing the CRPD

The CRPD adoption codified the shift to a human rights-based approach to disability in international law. One indication of this transformation is that, although national reforms in 2014 targeted diverse policy areas, many are linked by a focus on the principles of equality and non-discrimination on the grounds of disability embedded within the convention and consistently highlighted by the CRPD Committee's jurisprudence.²² Legislating from a human rights perspective requires a shift in traditional approaches to many laws addressing persons with disabilities, to ensure that people with disabilities are treated on an equal basis with others.²³

Framing CRPD standards as rooted in the principle of non-discrimination, set out in Articles 3 and 5 of the convention, also means that further EU action in the area of equality can play a role in harmonising national legislation with the CRPD. Secondary EU legislation, notably the proposed equal treatment directive, could play a particular role in this process by extending protection against discrimination on the grounds of disability to all the areas of life covered by existing protection against racial or ethnic discrimination.²⁴

Three areas in which the non-discrimination principle had a particular impact on steps to bring national legislation in line with the CRPD in 2014 are:

- legal capacity (Article 12);
- involuntary placement and treatment, which is linked to the rights to liberty and security of the person (Article 14), the prohibition of torture or cruel, inhuman or degrading treatment or punishment (Article 15), the protection of the integrity of the person (Article 17) and health (Article 25);
- accessibility (Article 9).

“It did not come as a surprise that Article 12 [on equal recognition before the law] of the Convention [...] was one of the major conflict themes during the negotiations of the treaty. And it is foreseeable that it remains to be the greatest challenge of implementation in all States Parties. [...] In our first five years as a treaty body we have not found one country that fulfils all obligations under Article 12.”

Theresia Degener, Member of the CRPD Committee (2014), ‘The normative requirements of Article 12 of the CRPD’, Speech delivered at 2014 Work Forum on the Implementation of the UNCRPD in the EU

Article 12 of the CRPD on equal recognition before the law has consistently proved a focus of legal reforms in EU Member States, reflecting its status as one of the most challenging articles for State Parties to the convention.²⁵ In April 2014, the CRPD Committee presented its first authoritative guidance, or general comment, on the scope and meaning of Article 12.²⁶ The committee reiterated the obligations on State Parties that had emerged from previous concluding observations,²⁷ namely that they must abolish denials of legal capacity that discriminate on the grounds of disability, and that regimes where a guardian makes decisions on behalf of a person must be replaced by systems which respect the person’s “autonomy, will and preferences”.²⁸ The general comment also elaborated on key elements of the mechanisms that should replace previous guardianship regimes. To comply with the convention, these systems must, for example, be available to all, irrespective of support needs and mode of communication, and the support person should be legally recognised.²⁹

Article 12, however, remains a point of contention. Some EU Member States took issue with the interpretation of Article 12 set out by the Committee in the general comment, which requires State Parties to “refrain from denying persons with disabilities their legal capacity”.³⁰ In their comments on the draft general comment, **Denmark**, **France** and **Germany**, for example, reasserted their view that the convention allows for restrictions of legal capacity in certain circumstances.³¹ This suggests that the “divergence” between the Committee’s interpretation of Article 12

and that of the State Parties highlighted in Germany’s submission is likely to persist.³²

The tension between these two perspectives is reflected in reforms to national legal capacity legislation enacted in 2014, which continue to allow capacity to be restricted if specific criteria are met. For example, the Family Act adopted by the **Croatian** parliament in June 2014 abolishes full or plenary guardianship, but retains the possibility for courts to place persons with disabilities under partial guardianship.³³ It also establishes a five-year deadline, from 1 January 2015, for reviews of all previous decisions on deprivation of legal capacity, with the aim of restoring partial or full legal capacity.³⁴ Moves to replace the full deprivation of legal capacity with partial restrictions and to introduce requirements for periodic review of the incapacitation decision are also at the core of proposals in **Poland** to reform legislation in this area.³⁵

Similar tensions exist about implementing the non-discrimination elements of CRPD provisions concerning the involuntary placement of persons with psychosocial disabilities, particularly Article 14 on the right to liberty and security of the person.³⁶ In its 2014 concluding observations on **Belgium**, **Sweden** and **Denmark**, the CRPD Committee reiterated its position that the deprivation of liberty on the basis of actual or perceived disability is contrary to Article 14.³⁷ This reflects the view expressed by the chair of the ad hoc committee drafting the CRPD that the article is “essentially a non-discrimination provision”.³⁸

Council of Europe member states, however, have previously interpreted the CRPD as allowing involuntary placement when a “mental disorder of a serious nature” is combined with other criteria, in particular if the absence of such a placement would be likely to result in serious harm to the individual concerned or a third party.³⁹ This position is again stated in the draft of the additional protocol to the Convention on human rights and biomedicine (Oviedo Convention)⁴⁰ concerning the protection of human rights and dignity of persons with mental disorders with regard to involuntary placement and involuntary treatment, drawn up in 2014.

Discussions during the drafting process indicate that the additional protocol will set out criteria for involuntary placement, including the existence of a “mental disorder”.⁴¹ Given the CRPD Committee’s interpretation of Article 14 of the CRPD as prohibiting involuntary placement on the basis of disability, FRA highlighted in comments to the Council of Europe Steering Committee for Human Rights that adopting the additional protocol in its current form might raise issues for those EU Member States that have ratified the CRPD.

“The duty of States parties to ensure access to the physical environment, transportation, information and communication, and services open to the public for persons with disabilities should be seen from the perspective of equality and non-discrimination.”

“[D]enial of access should be clearly defined as a prohibited act of discrimination.”

Committee on the Rights of Persons with Disabilities (2014), General Comment No. 2 on Article 9: Accessibility, CRPD/C/GC/2, paragraph 44; paragraph 29

Legislative actions to implement the provisions of the CRPD linked to accessibility are also increasingly incorporating a non-discrimination perspective. This approach was reinforced in April 2014 by the CRPD Committee’s general comment on accessibility, which emphasised that not providing access for people with disabilities to the physical environment, information and services open to the public “constitutes an act of disability-based discrimination”.⁴²

Sweden offered the most explicit example of such reforms, amending legislation⁴³ to classify inaccessibility for people with disabilities as a new form of discrimination covered by the existing Discrimination Act.⁴⁴ The bill, which enters 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 persons 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.⁴⁵

Other reforms have focused on particular accessibility issues, such as the accessibility of the electoral process. Evidence published in 2014 by FRA and the Academic Network of European Disability Experts (ANED), supported by the European Commission, and presented in [Table 1.1](#), shows that, of those Member States where data were available, only half have legal standards requiring that all polling stations be accessible. This curtails the ability of persons with disabilities to exercise their political rights on an equal basis with others.⁴⁶ FRA called on Member States to develop minimum standards and guidelines for the accessibility of facilities open to the public, encompassing the accessibility needs of all persons with disabilities, not just those with physical impairments. Nevertheless, proposed reforms to the **Dutch** electoral code are limited in scope, changing the requirement to ensure that “at least 25 %” of polling stations are accessible to persons with physical disabilities to a stipulation that “as many polling stations as possible, but at least 25 %” should be accessible to persons with physical disabilities.⁴⁷

Another driver of reforms is cases concerning the accessibility of the electoral process brought before national courts ([Table 1.2](#)).⁴⁸ In **Slovenia**, three persons with disabilities challenged the constitutionality of a legal provision regarding accessible polling stations, arguing that, by requiring each district voting commission to make only one polling station accessible for persons with disabilities, it was inconsistent with both Article 9 of the CRPD and the constitutional prohibition of discrimination.⁴⁹ The constitutional court upheld the complaint, and called on the National Assembly to remedy the situation within two years of the court’s decision being published.

Table 1.1: Are legal accessibility standards for polling stations in place?

Legal accessibility standards for all polling stations	Legal accessibility standards for some polling stations	No legal standards identified
DE, EE, ES, FR, HR, IE, LT, LU, MT, PT, SE, UK	AT, BE, HU, IT, NL, PL, SI	CY, CZ, DK, LV, SK

Note: The Academic Network of European Disability Experts (ANED) provided no data for BG, EL, FI and RO.

Source: FRA, 2014

Table 1.2: Have national courts considered cases related to the right to political participation of persons with disabilities?

Cases related to the right to political participation of persons with disabilities considered	No cases related to the right to political participation of persons with disabilities identified
CZ, DE, ES, IT, MT, NL, PL, SI	AT, BE, BG, CY, DK, EE, EL, FI, FR, HR, HU, IE, LT, LU, LV, PT, RO, SE, SK, UK

Source: FRA, 2014

Promising practices

Improving accessibility for persons with disabilities

Member States have taken steps to increase the accessibility of tourist areas and facilities. For example, a **Portuguese** programme ensures that beaches comply with accessibility legislation. The programme, 'Accessible beach – beach for all!' (*Praia acessível – Praia para Todos!*), allows beaches meeting certain conditions to fly a flag highlighting their accessibility. The conditions cover accessible pathways, sanitary and first aid facilities, as well as parking spaces. The scheme has been in operation since 2004, and the number of participating beaches has increased from 50 in 2005 to 194 in 2014.

The programme brings together the National Institute for Rehabilitation (*Instituto Nacional para a Reabilitação*, INR), the Water Institute (*Instituto da Água*), the Portuguese Environment Agency (*Agência Portuguesa do Ambiente*) and Portugal Tourism (*Turismo de Portugal*).

For more information, see: www.inr.pt/content/1/17/prai-a-acessivel-prai-a-para-todos

A **Polish** National Bank (*Narodowy Bank Polski*, NBP) initiative aims to improve access to financial services for persons with disabilities. As part of the campaign, the NBP has prepared a directory of economic terms translated into sign language, and guidelines for financial institutions on what persons with disabilities need in their contact with banks.

The NBP is cooperating with the Vis Maior Foundation (*Fundacja Vis Maior*) and the Polish Deaf Association (*Polski Związek Głuchych*) in the initiative. Together with the NGO It's Good You're There (*Dobrze, że jesteś*), the NBP has also prepared a handbook to teach persons with intellectual disabilities about money and how to use it.

For more information, see: <http://nbpniewyklucza.pl/sluch>

"People with disabilities should be able to fully participate in society. Job creation and accessibility are top priority for the European Commission and I am personally committed to taking action in these areas."

Marianne Thyssen, Commissioner for Employment, Social Affairs, Skills and Labour Mobility (2014), European Day for People with Disabilities: The Swedish city of Borås wins the Access City Award 2015 for disabled-friendly cities, *Press release, Brussels, 3 December 2014*

Looking ahead, accessibility is an area where secondary EU legislation could set minimum standards for Member States. The planned European Accessibility Act, which was listed in the European Commission's 2012 and 2014 annual work programmes, was given renewed impetus by the incoming Commission. Although the act is not specifically listed in the 2015 work programme, the Commission highlights that its commitment to equality of opportunity for people with disabilities, in line with the CRPD, "includes accessibility to the physical environment, transportation, information and communications technologies and systems (ICT) and other facilities/services."⁵⁰ In addition, the draft equal treatment directive includes a non-discrimination approach to accessibility.

1.3.2. Building institutions for CRPD implementation: work in progress

Although most EU Member States ratified the CRPD before or during 2010, many are still establishing or reconfiguring the bodies responsible for leading and monitoring the implementation of the convention required by Article 33 of the CRPD (see [Table 1.3](#); bodies

established or appointed in 2014 are highlighted). The CRPD Committee expressed its frustration at delays in establishing these bodies, noting its concern that **Sweden**, which ratified the convention in 2008, is yet to introduce an Article 33 (2) mechanism to promote, protect and monitor the implementation of the convention.⁵¹

Although **Portugal** ratified the CRPD in 2009, a national framework to meet its obligations under Article 33 (2) of the convention was not created until November 2014.⁵² As well as making recommendations to competent public authorities to promote better implementation of the CRPD, the national mechanism will raise awareness and disseminate information about the rights set out under the convention. The establishment of a new body is in keeping with a trend that has seen around a quarter of EU Member States create new entities to fulfil this role: an additional third of EU Member States have appointed national human rights bodies as Article 33 (2) bodies.⁵³

Another source of contention is the lack of involvement of civil society, particularly representative organisations of persons with disabilities (DPOs), in Article 33 bodies, as required by Article 33 (3) of the CRPD. This reflects a broader concern regarding the involvement of persons with disabilities in decisions that affect them, a cross-cutting principle of the CRPD. FRA evidence published in 2014 showed that four EU Member States, **Greece**, **Lithuania**, the **Netherlands** and **Romania**, have neither legislation establishing mechanisms for consultation with DPOs nor systematic practices for ensuring such involvement in the development of laws and policies.⁵⁴

In its concluding observations on **Denmark**, the CRPD Committee criticised the inter-ministerial committee, which acts as the coordination mechanism for implementing the convention under Article 33 (1), for seeking input from DPOs “only occasionally”.⁵⁵ More encouragingly, of the six new members appointed to the **Croatian** government commission for people with disabilities, the Article 33 (2) body, three are representatives of civil society organisations.⁵⁶

A further area of recurrent concern is the sometimes insufficient resources made available to monitoring frameworks to carry out their functions.⁵⁷ Proposals to appoint the **Czech** Public Defender of Rights, the Ombudsperson, as the national body to promote, protect and monitor the implementation of the convention under Article 33 (2)⁵⁸ were abandoned in December 2014 after concerns were raised over the

additional financial resources the Ombudsperson would require to perform this task.⁵⁹ Given this, no institution has yet been designated.

As well as limiting the scope of their possible activities, a reliance on yearly government funding decisions can add to the perception that monitoring bodies lack the necessary independence from government. The CRPD Committee highlighted this issue in its concluding observations on **Austria**, which recommended that the government “allocate a transparent budget for the Independent Monitoring Committee and give it the power to administer said budget autonomously”.⁶⁰ The **Romanian** Institute for Human Rights (*Institutul Român pentru Drepturile Omului*), the Article 33 (2) body, saw its budget cut by over a third in 2014, from RON 1.6 million (about €360,000) in 2013 to RON 1 million (about €230,000) in 2014.⁶¹

Table 1.3: Structures set up for the implementation of the CRPD, by EU Member State

EU Member State	Year of accession	Acceded to optional protocol	Focal points within government for matters relating to the implementation of the CRPD – Article 33 (1)	Coordination mechanism – Article 33 (1)	Framework to promote, protect and monitor implementation of the CRPD – Article 33 (2)
AT	2008	Yes	Federal Ministry of Labour, Social Affairs and Consumer Protection (<i>Sozialministerium</i>) and regional focal points designated by the nine regional authorities (<i>Länder</i>) focused on their competences	Federal Ministry of Labour, Social Affairs and Consumer Protection (<i>Sozialministerium</i>) with the involvement of the Federal Disability Advisory Board (<i>Bundesbehindertenbeirat</i>)	CRPD monitoring committee (<i>Monitoringausschuss</i>)
BE	2009	Yes	Federal Public Service Social Security. Sub-focal points designed by the seven independent entities		Interfederal Centre for Equal Opportunities (<i>Interfederaal Gelijkekansencentrum/Centre interfédéral pour l'égalité des chances</i>)
BG	2012	No	Ministry of Labour and Social Policy, Policy for People with Disabilities, Equal Opportunities and Social Benefits Directorate, Integration of People with Disabilities Department (<i>Министерство на труда и социалната политика, дирекция “Политика за хората с увреждания, равни възможности и социални помощи”, отдел “Интеграция на хората с увреждания”</i>)	Not established/ designated	Not established/ designated

CY	2011	Yes	Department for Social Inclusion of People with Disabilities, Ministry of Labour, Welfare and Social Insurance	Pancyprian Council for Persons with Disabilities	Office of the Commissioner for Administration (Ombudsperson); Commissioner for the Protection of Human Rights
CZ	2009	No	Ministry of Labour and Social Affairs (<i>Ministerstvo práce a sociálních věcí</i>)	Ministry of Labour and Social Affairs in cooperation with Ministry of Foreign Affairs, Government Board for People with Disabilities and Czech National Disability Council	Not established/ designated
DE	2009	Yes	Federal Ministry for Labour and Social Affairs (<i>Bundesministerium für Arbeit und Soziales</i>) (16 federal states (<i>Länder</i>) designated their own sub-focal points)	Federal Government Commissioner for Matters Relating to Persons with Disabilities	German Institute for Human Rights (<i>Deutsches Institut für Menschenrechte</i>)
DK*	2009	Yes	Ministry of Children, Gender Equality, Integration and Social Affairs (<i>Ministeriet for Børn, Ligestilling, Integration og Sociale Forhold</i>)	Interministerial Committee of Civil Servants on Disability Matters	Danish Institute for Human Rights (<i>Institut for Menneskerettigheder</i>); Danish Disability Council (<i>Det Centrale Handicapråd</i>); Danish Parliamentary Ombudsperson (<i>Folketingets Ombudsmand</i>)
EE	2012	Yes	Ministry of Social Affairs (<i>Sotsiaalministeerium</i>)	Cooperation Assembly between ministries (<i>Puuetega inimeste koostöökogu</i>), Estonian Chamber of Disabled People and four DPOs	Gender Equality and Equal Treatment Commissioner (<i>Soolise võrdõiguslikkuse ja võrdse kohtlemise volinik</i>)
EL	2012	Yes	Directorate of International Relations, Ministry of Labour, Social Security and Welfare (<i>Υπουργείο Εργασίας, Κοινωνικής Ασφάλειας και Πρόνοιας</i>)	Not established/ designated	Not established/ designated
ES	2007	Yes	Ministry of Health, Social Services and Equality (<i>Ministerio de Sanidad, Servicios Sociales e Igualdad</i>); Ministry of Foreign Affairs and Cooperation (<i>Ministerio de Asuntos Exteriores y Cooperación</i>)	National Disabilities Council (<i>Consejo Nacional de la Discapacidad</i>)	Spanish Committee of Representatives of People with Disabilities (<i>Comité Español de Representantes de Personas con Discapacidad</i>)
FI**			Ministry of Foreign Affairs (<i>Ulkoasiainministeriö</i>); Ministry of Social Affairs and Health (<i>Sosiaali- ja Terveysministeriö</i>)	Ministry of Social Affairs and Health (<i>Sosiaali- ja Terveysministeriö</i>)	Human Rights Centre (<i>Ihmisoikeuskeskus</i>); Human Rights Delegation (<i>Ihmisoikeusvaltuuskunta</i>); Parliamentary Ombudsperson (<i>Eduskunnan oikeusasiamies</i>)

FR	2010	Yes	Ministry of Social Affairs and Health (<i>Ministère des Affaires sociales et de la santé</i>); Interministerial Committee for People with a Disability (<i>Comité interministériel du handicap</i>)	Interministerial Committee for People with a Disability, which consists of representatives of all ministries concerned	Public Defender of Rights (<i>Le Défenseur des Droits</i>); National Advisory Council for Human Rights (<i>Commission Nationale Consultative des Droits de l'Homme</i>); National Advisory Council for People with a Disability (<i>Conseil national consultatif des personnes handicapées</i>)
HR	2007	Yes	Ministry of Social Policy and Youth (<i>Ministarstvo socijalne politike i mladih</i>)		Ombudsperson for Persons with Disabilities (<i>Pravobranitelj za osobe s invaliditetom</i>); Commission of the Government of the Republic of Croatia for People with Disabilities (<i>Povjerenstvo Vlade Republike Hrvatske za osobe s invaliditetom</i>)
HU	2007	Yes	Department for Disability Affairs (<i>Fogyatékosügyi Főosztály</i>) within the Ministry of Human Capacities (<i>Emberi Erőforrások Minisztériuma</i>)	National Disability Council (<i>Országos Fogyatékosügyi Tanács</i>)	
IT	2009	Yes	Ministry of Labour and Social Policies (<i>Ministero del Lavoro e delle Politiche Sociali</i>)		National Observatory on the Situation of Persons with Disabilities (<i>Osservatorio Nazionale sulla condizione delle persone con disabilità</i>)
LT	2010	Yes	Ministry of Social Security and Labour (<i>Socialinės apsaugos ir darbo ministerija</i>)		Council for Disability Affairs (<i>Neįgalųjų reikalų taryba</i>) at the Ministry of Social Security and Labour (<i>Socialinės apsaugos ir darbo ministerija</i>); Office of the Equal Opportunities Ombudsperson (<i>Lygių galimybių kontrolieriaus tarnyba</i>)
LU	2011	Yes	Ministry of Family, Integration and for the Greater Region (<i>Ministère de la Famille, de l'Intégration et à la Grande Région</i>)		Luxembourg Human Rights Consultative Body (<i>Commission consultative des Droits de l'Homme du Grand-Duché de Luxembourg</i>); Centre for Equal Treatment (<i>Centre pour l'égalité de traitement</i>); Ombudsperson (<i>Méiateur au service de citoyens</i>)

LV	2010	Yes	Ministry of Welfare (<i>Labklājības ministrija</i>); National Council of Disability Affairs (<i>Invalīdu lietu nacionālā padome</i>)		Ombudsperson of the Republic of Latvia (<i>Latvijas Republikas Tiesībsargs</i>)
MT	2012	Yes	National Focal Point Office within the Ministry for the Family and Social Solidarity (<i>Ministeru għall-Familja u -Solidarjeta` Soċjali</i>); Parliamentary Secretariat for the rights of persons with a disability and active ageing (<i>Segretarju parlamentari għad-drittijiet ta' persuni b'diżabilita' u anzjanita' attiva</i>)	Council to Take Action for a Just Society (<i>Kunsill Azzjoni lejn Soċjeta' Ġusta</i>)	National Commission for Persons with Disability (<i>Kummissjoni Nazzjonali Persuni b'Diżabilità</i>)
NL**			Ministry of Health, Welfare and Sport (<i>Ministerie van Volksgezondheid, Welzijn en Sport</i>)		Netherlands Institute for Human Rights (<i>College voor de Rechten van de Mens</i>)
PL	2012	No	Ministry of Labour and Social Policy (<i>Ministerstwo Pracy i Polityki Społecznej</i>)	Ministry of Labour and Social Policy (<i>Ministerstwo Pracy i Polityki Społecznej</i>) and the Team for the implementation of the CRPD provisions (chaired by the Government Plenipotentiary for Persons with Disabilities (<i>Pełnomocnik Rządu do Spraw Osób Niepełnosprawnych</i>))	Human Rights Defender (<i>Rzecznik Praw Obywatelskich</i>)
PT	2009	Yes	Directorate General of External Policy, Ministry of Foreign Affairs (<i>Ministério dos Negócios Estrangeiros</i>); Strategy and Planning Office, Ministry of Solidarity, Employment and Social Security (<i>Ministério da Solidariedade, Emprego e Segurança Social</i>)	National Institute for Rehabilitation of the Ministry of Solidarity, Employment and Social Security (<i>Conselho Nacional para a Reabilitação e Integração das Pessoas com Deficiência</i>)	National mechanism for monitoring and implementation of the CRPD (<i>Mecanismo nacional de monitorização da implementação da Convenção</i>)
RO	2011	No	Department for the Protection of Persons with Disabilities (<i>Direcția Protecția Persoanelor cu Dizabilități</i>) within the Ministry of Labour, Family and Social Protection (<i>Ministerul Muncii, Familiei și Protecției Sociale</i>)		Romanian Institute for Human Rights (<i>Institutul Român pentru Drepturile Omului</i>)
SE	2008	Yes	Ministry of Health and Social Affairs (<i>Socialdepartementet</i>)	High-Level Interministerial Working Group led by the Division for Family and Social Services of the Ministry of Health and Social Affairs (<i>Socialdepartementet</i>)	Not established/ designated

SI	2008	Yes	Disability, Veterans and Victims of War Directorate at the Ministry of Labour, Family, Social Affairs and Equal Opportunities (<i>Ministrstvo za delo, družino, socialne zadeve in enake možnosti, Direktorat za invalide, vojne veteran in žrtve vojnega nasilja</i>)		Council for Persons with Disabilities of the Republic of Slovenia (<i>Svet za invalide Republike Slovenije</i>)
SK	2010	Yes	Department for the Integration of Persons with Disabilities at the Ministry of Labour, Social Affairs and Family (<i>Odbor integrácie osôb so zdravotným postihnutím, Ministerstvo práce, sociálnych vecí a rodiny</i>). Secondary focal points in other ministries		Not established/ designated
UK	2009	Yes	Office for Disability Issues, Department of Work and Pensions		Equality and Human Rights Commission (England and Wales); Scottish Human Rights Commission; Northern Ireland Human Rights Commission and Equality Commission for Northern Ireland
EU	2010	No	European Commission	For matters of coordination between the Council, the Member States and the European Commission, see provisions of the Code of Conduct between the Council, the Member States and the Commission setting out internal arrangements for the implementation by and representation of the EU relating to the CRPD (2010/C 340/08)	European Parliament; European Ombudsman; European Commission; FRA; European Disability Forum

Notes: Bodies established or appointed in 2014 are highlighted.

* The Danish Council and the Danish Parliamentary Ombudsman were not designated, but the explanatory text to Parliamentary Decision B15 of 17 December 2010 provides that they are to be part of the framework.

** Finland and the Netherlands have not yet ratified the CRPD; however, as the Article 33 bodies have been identified in the draft ratification legislation, they are included in this table. Ireland had not identified Article 33 bodies by year end and is therefore not included in the table.

Source: FRA, 2015

The year also saw changes in the composition of the EU monitoring framework, which monitors the implementation of the CRPD in areas of EU competence. Following a proposal by its Conference of Presidents in December 2013, the European Parliament was represented in the February 2014 meeting of the framework by the Committee for Employment and Social Affairs, which is to work in close cooperation with the Committee on Civil Liberties, Justice and Home Affairs.⁶² With the European Parliament elections of May 2014 delaying further clarification of the parliament's formal representation in the EU framework, this arrangement had not been confirmed by the end of 2014.

Figure 1.3: FRA infographics help to raise awareness of the voting rights of people with disabilities



Source: FRA 2014

Aside from the formal meeting in February 2014, the framework's work was carried out through the individual activities of its members, in keeping with the limited mandate set out in the 2012 Council decision establishing the framework.⁶³ Reflecting its role, FRA, in close cooperation with the European Commission, developed human rights indicators on Article 29 of the CRPD on the right to participation in political and public life. Published ahead of the May 2014 European Parliament elections, the indicators reveal that persons with disabilities continue to face substantial legal, administrative and accessibility-related barriers undermining their ability to participate in elections on an equal basis with others.⁶⁴

"One of the key rights that the CRPD enshrines is the right of persons with disabilities to autonomy and to live in the community: this question is now framed as a human rights issue in international law, not one of social rehabilitation or welfare policy. The most obvious and direct violation of this right is arguably the segregation of persons with disabilities in large institutions; yet, here in Europe we are unfortunately still very far from eradicating such institutions."

Council of Europe, Commissioner for Human Rights (2014), 'One of us? The right of persons with disabilities to live in the community', Speech at PACE Committee on Equality and Non-discrimination joint hearing with the Committee of Experts on the Rights of Persons with Disabilities, CommDH/ Speech(2014)9, 2 October 2014.

The transition from institutional care to community-based support is taking an increasingly central role in policymaking within the EU and its Member States, particularly in the light of the general ex ante conditionalities discussed earlier in this chapter. FRA started to implement a multi-year project focusing on the transition from institutional to community-based care and support for persons with disabilities.⁶⁵

One key element of this work is building on previous experience to develop, through close cooperation with stakeholders and DPOs, human rights indicators on Article 19 of the CRPD on the right to live independently and be included in the community. By populating these indicators, FRA will be able to develop evidence-based advice to support the EU and its Member States to implement the concluding observations of the CRPD Committee. This evidence will also feed into the review of the European Disability Strategy 2010–2020, which is to take place in 2016.

FRA conclusions

■ FRA evidence consistently shows that levels of discrimination remain high, including in areas other than employment. Nevertheless, in 2014, six years after it was first proposed, the Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief,

disability, age or sexual orientation has still not been adopted.

For the EU to fulfil its obligation to become a truly inclusive society, EU institutions and Member States should explore every means at their disposal to ensure the adoption of the proposed equal treatment directive.

■ The European Structural and Investment Funds (ESIF) are a key instrument in the EU's drive to ensure the inclusion of those most vulnerable to discrimination and unequal treatment, as well as meeting the targets of the Europe 2020 strategy. Member States allocated around 10 % of the overall budget available under ESIF to promote social inclusion, and to combat poverty and any discrimination during the programming period 2014–2020.

EU Member States should ensure that ESIF funds are invested in ways compliant with fundamental rights, leading to sustainable and tangible results with respect to social inclusion. Increased cooperation and coordination of activities between the European Commission, EU bodies and Member States will be needed to assist Member States in meeting their objectives in this field.

■ Evidence shows that EU Member States took concrete steps towards fulfilling their obligation to ensure that operational programmes funded under ESIF respect the principle of non-discrimination and the rights of persons with disabilities. This is reflected in steps taken by Member States to meet the five general ex ante conditionalities relating to anti-discrimination and disability before the deadline of 31 December 2016.

Member States are encouraged to continue efforts to meet these conditionalities fully, while engaging relevant public bodies and civil society organisations in committees set up to monitor the disbursement of funds under ESIF, thereby increasing transparency and accountability.

■ Reforms to ensure that national legislation meets the requirements of the Convention on the Rights of Persons with Disabilities (CRPD) increasingly take into account the cross-cutting provisions of the convention regarding equality and non-discrimination. These are set out in Article 3 of the CRPD, on general principles, and Article 5, on equality and non-discrimination.

Member States should ensure that they incorporate the principles of equality and non-discrimination when adapting their legal frameworks in line with the human rights-based approach to disability which underpins the convention. All reforms should take

into account the needs of persons with different types of impairments.

- The composition and role of bodies to implement and monitor the CRPD, required under Article 33 of the convention, were not finalised in five Member States at the end of 2014, although the last of these Member States had ratified the convention in 2012.

Those Member States that have not yet designated these bodies should take steps to establish them as soon as possible. All Member States should ensure that Article 33 CRPD bodies have sufficient financial and human resources to carry out their functions, and that disabled persons organisations (DPOs) participate fully in the monitoring process.

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Endnotes

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- 17 European Commission (2014), *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 2014 European Semester: Country-specific recommendations: Building growth*, COM(2014) 400 final, Brussels.
- 18 For more information on the reporting status of EU Member States to the CRPD Committee, see: FRA (2014), *The right to political participation of persons with disabilities: Human rights indicators*, Luxembourg, Publications Office, Annex 4. See also: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=4&DocTypeID=5.
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- 20 Agendas and minutes of meetings of the EU-level CRPD monitoring framework are available at: www.edf-fepoh.org/Page_Generale.aspx?DocID=22112&thebloc=33400.
- 21 See the schedule of sessions of the CRPD Committee: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty=CRPD.
- 22 All concluding observations of the CRPD Committee are available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=4&DocTypeID=5. See also: Committee on the Rights of Persons with Disabilities (2014), *General Comment No. 1 on Article 12: Equal recognition before the law*, CRPD/C/GC/1, 19 May 2014; Committee on the Rights of Persons with Disabilities (2014), *General Comment No. 2 on Article 9: Accessibility*, CRPD/C/GC/2, 22 May 2014.
- 23 See: FRA (2013), *Legal capacity of persons with intellectual disabilities and persons with mental health problems*, Luxembourg, Publications Office; FRA (2012), *Involuntary placement and involuntary treatment of persons with mental health problems*, Luxembourg, Publications Office; FRA (2012), *Choice and control: the right to independent living*, Luxembourg, Publications Office.
- 24 FRA (2013), *Legal capacity of persons with intellectual disabilities and persons with mental health problems*, Luxembourg, Publications Office, p. 13.
- 25 Committee on the Rights of Persons with Disabilities (2014), *General Comment No. 1 on Article 12: Equal recognition before the law*, CRPD/C/GC/1, 19 May 2014. See also FRA (2013), *Fundamental rights: Challenges and achievements in 2012 - Annual report 2012*, Luxembourg, Publications Office; FRA (2014), *Fundamental rights: Challenges and achievements in 2013 - Annual report 2013*, Luxembourg, Publications Office; and the forthcoming paper 'CRPD-influenced legal changes at the national level'.
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