

# The European Observatory for Inclusive Employment and Sustainable Development Goals

## Context and Relevance of the EU Regulatory Framework to Employment and Social Protection of Persons with Disabilities

June 2019

### Content

1.	Introduction .....	3
2.	EU statistics relating to employment of persons with disabilities.....	3
3.	Legal and policy approach.....	5
3.1.	Legal basis to EU legislation .....	5
3.1.1.	The EU treaty and competencies.....	5
3.1.2.	The EU Charter of Fundamental Rights.....	5
3.2.	The overarching EU policy framework.....	6
3.2.1.	The Europe 2020 Strategy.....	6
3.2.2.	The European Semester .....	6
3.2.3.	The European Pillar of Social Rights or Social Pillar .....	7
3.3.	EU approach to Social Economy .....	7
3.4.	Broader EU legislation relating to persons with disabilities .....	10
3.4.1.	The European Disability strategy 2010-2020.....	10
3.4.2.	The European Accessibility Act .....	11
3.5.	EU legislation with direct impact on employment of persons with disabilities .....	11
3.5.1.	The Employment Equality Directive.....	11
3.5.2.	The Council Recommendation on the integration of the long-term unemployed into the labour market .....	12
3.5.3.	Other legislation mainstreaming employment of persons with disabilities.....	13
3.5.4.	The State Aid and General Block Exemption Regulations.....	13
3.5.5.	EU legislation relating to education and training of persons with disabilities .....	14
3.5.6.	The EU policy on social protection for persons with disabilities .....	15
3.5.7.	The Public Procurement Directives.....	15
3.5.8.	The European Structural Funds.....	16
4.	Conclusion.....	17

## List of Abbreviations

AGS	Annual Growth Survey
ANED	Academic Network of European Disability Experts
CEB	Council of Europe Development Bank
CJEU	Court of Justice of the European Union
CRPD	Convention on Rights of Persons with Disabilities
CSR	Country-specific recommendation
DG REGIO	Directorate-General for Regional and Urban Policy
EaSI	European Union Programme for Employment and Social Innovation
EBRD	European Bank for Reconstruction and Development
EIB	European Investment Bank
EPSCO	Employment and Social Affairs Council
ERDF	European Regional and Development Fund
ESF	European Social Fund
ESIF	European Structural and Investment Funds
EU	European Union
Eurostat	European Statistical Office
GBER	General Block Exemption Regulation
GDP	Gross Domestic Product
GECES	Commission Expert Group on Social Entrepreneurship
HLGD	High Level Expert Group on Disability
ICT	Information and Communications Technology
LFS-ADM	Labour Force Survey Ad hoc module
LHPAD	Longstanding Health Problem and/or Activity Difficulty
MFF	Multiannual Financial Framework
PES	Public Employment Services
SDGs	Sustainable development goals
SE	Supported Employment
SILC	Statistics on Income and Living Conditions
SIP	Social Investment Package
Social Pillar	The European Pillar of Social Rights
SPC	Social Protection Committee
SPI	Social Progress Index
SRPP	Socially responsible public procurement
SWD	Staff Working Document, which are explanatory papers to policy documents issued by the European Commission
TFEU	Treaty on the Functioning of the European Union
UN	United Nations

## 1. Introduction

With the Strategy “Europe 2020: a strategy for smart, sustainable and inclusive growth” adopted in 2010, the European Union (EU) sets itself on a path towards a more “social Europe”. All of the headline targets of the Strategy are relevant to persons with disabilities. Their access to the open labour market is also a major issue: Eurostat statistics from 2016 show that the employment rate of men and women with disabilities remains very low at 48.1% compared to 73.9% for persons without disabilities<sup>1</sup>.

The initial EU response to unemployment of persons with disabilities lies in its legislation on equal treatment in employment and occupation from 2000. In recent years the EU has built further on this by implementing the European Disability Strategy 2010-2020. One of its main objectives is to combat discrimination based on disability and promote equal opportunities. This is also a response to the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD), which the EU signed in March 2007 and ratified in December 2010<sup>2</sup>. The Convention covers all aspects of the life of a person with a disability and specific areas such as employment, education, training, accessibility and transport. In the EU, the Convention entered into force on 22 January 2011 and all 28 EU Member states ratified it as well.

This report provides a legal overview on how the EU has approached employment and social protection of persons with disabilities. It first summarises key Eurostat data in the area. It then summarises the overarching framework guiding EU policy making (the Europe 2020 Strategy) as well as the one monitoring the progress of Member States in regards to inclusion within the European Semester process, particularly in light of the proclamation of the European Pillar of Social Rights since 2017. The European Disability Strategy and resulting initiatives are then examined. Following on from this, the last section starts with the Equal Treatment Directive and looks at how the definition of persons with disabilities in the context of employment has developed in legislation and case law.

## 2. EU statistics relating to employment of persons with disabilities

Disability data collection is a debated issue. Reflecting the shift from a medical to the human rights approach, statistical offices have progressively changed their definition of disability and corresponding methodologies. So far Eurostat has measured ‘disability’ along 3 main lines: (a) long-term health status/conditions and impairments, (b) limitations in performing daily/basic activities and (c) barriers to participation. The impairment or disability prevalence of a population varies greatly depending on the chosen definition. However European data relating to employment of persons with disabilities show similar situation and trends whatever definition is used.

Eurostat is the statistical office of the EU. Its 2013-20 EU statistical programme<sup>3</sup> has an objective of “providing statistics on key areas of social policy where the citizens is the centre of the interest” (Objective 3.2.1). Disability is identified as an area within this objective. All data must be disaggregated by gender. Subsequently Eurostat has collected data relating to employment of persons with disabilities using 2 different types of survey:

Collected yearly since 2012, the EU Statistics on income and living conditions (EU-SILC) gathers data in relation to income, social inclusion and living conditions of Europeans, including those with disabilities. The EU-SILC approaches disability as limitations in usual activities caused by health problems. The reference population includes all private households and generally exclude people living in collective households and institutions. For our target group, this is a major breach since many persons with disabilities live in institutions still.

<sup>1</sup> Eurostat, European Union Statistics on Income and Living Conditions (EU-SILC), 2016.

<sup>2</sup> Council decision 2010/48/EC concerning the Conclusion, by the European Community (now European Union), of the United Nations Convention on the Rights of Persons with Disabilities.

<sup>3</sup> The programme is governed by Regulation No. 99/2013 of the Parliament and the Council of 15 January 2013 on the European statistical programme. It has been extended to 2020 by Regulation (EU) 1951/2017 2017/1951 of the European Parliament and of the Council of 25 October 2017.

Based on the guidance from the International Labour Organisation (ILO), the Labour Force Survey ad hoc module (LFS-AHM) collects information about the working age population living in households in regards to their longstanding health conditions, basic activity difficulties and limitations in work, occupation, as well as need and use of personal assistance, special equipment and workplace adaptations. Run in 2011, the first results were presented in 2014. The LFS-AHM uses 2 definitions of disability: (1) People having a basic activity difficulty (such as sight, hearing, walking or communicating) and (2) people limited in work because of a long standing health problem and/or basic activity difficulty (LHPAD).

This sections only presents the EU-SILC and LFS-AHM results relating to employment and unemployment rates of persons with disabilities<sup>4</sup>. Based on the LFS results, the employment rate of people with basic activity difficulties living in the EU in 2011 was 47.3%, almost 20 percentage points lower than that of people without such difficulties. At Member State level, the highest gaps were seen in the Netherlands (43% for those with activity difficulties and 80% for those without) and in Hungary (24% and 61% respectively). Where persons with disabilities refers to people reporting a work limitation due to a LHPAD, the employment rate was 38.1%, nearly 30 percentage points lower than those not having a work limitation. A gap of over 40% could be seen in the United Kingdom, Ireland, Romania, the Netherlands, Hungary and Bulgaria<sup>5</sup>. Similarly the 2016 EU-SILC shows an employment rate of about 48.1% for persons with disabilities (47.4% in 2015) compared to 73.9% for persons without disabilities (73.1% in 2015). Correlation between the 2 surveys is obviously very good.

Gender is an additional bias to accessing the labour market. In the EU 45.9% of women with disabilities are employed as compared to 67.7% for women without disabilities. There are also wide differences across European countries. “The employment rate of women with disabilities is low in Ireland, Malta and Greece. On the contrary, relatively high rates can be found in Latvia, Finland and Estonia. Similar results were found in 2005 too<sup>6</sup>.”

Correspondingly, the unemployment rate of people with basic activity difficulties was 12.1% in 2011, 2.5 percentage points more than for people without. Using this definition, the largest gaps were found in Hungary and the Czech Republic (both over 9 percentage points). Where persons with disabilities refers to people reporting a work limitation due to a LHPAD, the unemployment rate was 17.4%, 8 percentage points more than for people without. The largest gaps were reported in Hungary, the Czech Republic, Germany and Estonia (more than 14 percentage points)<sup>7</sup>. In 14 Member States, more than 50% of people with basic activity difficulties were “inactive”. The highest levels of inactivity among persons with basic difficulties occur in Hungary, Bulgaria, Romania and Ireland, and the lowest in Sweden. Where persons with disabilities refers to people reporting a work limitation due to a LHPAD, this was the case in 22 Member States<sup>8</sup>. Among the inactive disabled population aged between 15 and 64, the most common, though not the only, reason stated for not seeking employment was one’s own illness or disability<sup>9</sup>. In Sweden, the second most common reason stated was “education and training” (20%), while in Spain and Cyprus it was “other family or personal responsibilities” (17% and 18% respectively)<sup>10</sup>. Comparability of data across European Member States must however be interpreted cautiously because national definitions of who is ‘active’ or ‘inactive’ varies greatly.

---

<sup>4</sup> For detailed data, the reader is encouraged to look at the report ‘European comparative data on Europe 2020 & People with disabilities’ released in April 2019 by the Academic Network of European Disability Experts (ANED). It covers many areas such as employment, unemployment and activity rates of persons with disabilities disaggregated by gender, age, type and severity of impairments. It also provides data about types and sectors of employment occupied by persons with disabilities.

<sup>5</sup> Eurostat, Disability statistics – Labour market access, 2014.

<sup>6</sup> Academic Network of European Disability Experts (ANED), European comparative data on Europe 2020 & People with disabilities, 2019.

<sup>7</sup> Eurostat, Disability statistics – Labour market access, 2014.

<sup>8</sup> Eurostat, Disability statistics – Labour market access, 2014.

<sup>9</sup> Eurostat, Disability statistics – Labour market access, 2014.

<sup>10</sup> Eurostat, Disability statistics – Labour market access, 2014.

In 2015, the CRPD Committee highlighted lack of consistent and comparability of data across Member States<sup>11</sup> and this must be kept in mind when quoting these statistics. The trend remains nonetheless crystal clear: men and women with disabilities have much lower access to the open labour market as compared to people without disabilities.

### 3. Legal and policy approach

#### 3.1. Legal basis to EU legislation

##### 3.1.1. The EU treaty and competencies

“The EU treaties are binding agreements between EU member countries. They set out EU objectives, rules for EU institutions, how decisions are made and the relationship between the EU and its member countries.<sup>12</sup>” The current treaty in place is the Treaty on the Functioning of the EU (TFEU) or Treaty of Lisbon. It was signed in 2007 and entered into place in 2009.

The EU is only allowed to act within the limits of competences conferred upon it by the Treaties. All other competences that are not conferred to the EU remain with the EU countries. The TFEU clarifies the division of competences between the EU and EU member countries in each sector. They are divided into three main groups of competences:

- **Exclusive competences:** The EU adopts legislation and Member States implements. This includes areas such as customs union, competition rules, monetary policy for the euro area and common commercial policy.
- **Shared competences:** If the EU has not adopted legally binding legislation already, the EU Member States can legislate. This covers for instance the internal market, regional policy, consumer protection and some aspects of social policy and employment.
- **Supporting competences:** the EU has no legislation power and only takes measures to support and coordinate national policies. This includes for instance areas such as protection and improvement of human health, culture, tourism, education and all matters relating to non-discrimination based on disability.

##### 3.1.2. The EU Charter of Fundamental Rights

In 2000, the EU Charter of Fundamental Rights was ratified by the European Commission, the European Parliament and the Council. In 2009 it became legally binding together with the Treaty of Lisbon. There are two main articles directly referring to persons with disabilities. Article 21 prohibits discrimination on all grounds, including disability. Article 26 sets the aims to combat it by taking measures and reads as follows: *“The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community”*.

Other relevant articles include:

- “The right to human dignity (Article 1)
- The right to education and to have access to vocational and continuing training (Article 14(1))
- The right to engage in work and to pursue a freely-chosen or accepted occupation (Article 15(1))
- Equality between men and women must be ensured in all areas, including employment, work and pay (Article 23)
- The right of access to a free placement service (Article 29)

---

<sup>11</sup> Committee of the Convention on the Rights of Persons with Disabilities, Concluding observations on the initial report of the European Union, 2015.

<sup>12</sup> European Commission, About the European Treaties: <https://eur-lex.europa.eu/summary/glossary/treaties.html> [Accessed on 6 June 2019].

- The right to protection against unjustified dismissal, in accordance with Community law and national laws and practices (Article 30)
- The right to working conditions which respect health, safety and dignity (Article 31(1))
- Entitlement to social security benefits and social services (Article 34(1))<sup>13</sup>

The European Commission publishes an annual report on the application of the EU Charter of Fundamental Rights. Last year report summarised current legislative proposals, EU policy and national agreements that bring the EU closer to fully implement those articles.

## 3.2. The overarching EU policy framework

### 3.2.1. The Europe 2020 Strategy

In 2010, the Strategy “Europe 2020: a strategy for smart, sustainable and inclusive growth” was adopted by the EU. It guides all its policy actions for the period 2010-20 and serves as the main framework to create a “social Europe”. The Strategy aims to boost growth and employment within the EU and contains 5 corresponding headline targets to be achieved by 2020. These headline targets are used as a reference point by the Member States to report on how they progress against the Strategy goals. The 2020 Strategy is organised around 8 so-called ‘flagship initiatives’ and the following ones are the most relevant to persons with disabilities:

- **The European Platform against Poverty and Social Exclusion**<sup>14</sup>: The goal is to take at least 20 million persons out of poverty by 2020. The European Commission links success of this flagship to a successful implementation of the European Disability Strategy 2010-2020.
- **Youth on the Move**<sup>15</sup>: It aims at reducing early school leavers and increase third-level education rates in Europe. Though disability is not mentioned, the measures may have an indirect yet positive impact on inclusive education and job readiness of young persons with disabilities.
- **Agenda for New Skills and Jobs**<sup>16</sup>: The objective is to increase labour participation to 75% of persons of working age and enhance labour mobility. Specific actions targeting persons with disabilities are listed under this flagship.
- **Digital Agenda**<sup>17</sup>: The European Commission mentions the CRPD and lists specific actions linked to accessibility of information and communication technologies and websites.

### 3.2.2. The European Semester

The Europe 2020 Strategy is monitored through the **European Semester**. It is an annual cycle of economic and fiscal policy coordination. The Semester is part of the EU’s economic governance framework since 2011 and is the main tool for monitoring the alignment of Member States’ budgetary and economic policies. It covers economic policy coordination regarding structural reforms, fiscal policies and macroeconomic imbalances.

The annual cycle of the European Semester is as follow: each year it starts with the publication of the Annual Growth Survey (AGS) in November/December by the European Commission. The following April, the Member States submit their National Reform Programmes (NRPs) detailing their policy programmes and responding to recommendations made in the AGS. In June the European Commission replies by issuing the Country-Specific Recommendations (CSRs): it suggests actions that should be taken at national level to achieve the commonly-agreed AGS priorities<sup>18</sup>. The CSRs are also based on

<sup>13</sup> International Labour Organisation, *Decent work for persons with disabilities: promoting rights in the global development agenda*, 2015.

<sup>14</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52010DC0758&from=EN>

<sup>15</sup> <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0477:EN:HTML>

<sup>16</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52010DC0682>

<sup>17</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52010DC0245>

<sup>18</sup>All NRPs, CSRs and Country Reports are available here: [https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester\\_en](https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester_en)

the results of Country Reports, published in January each year, which assess Member States' implementation of the previous year's CSRs<sup>19</sup>.

Given the driving force of the European Semester, links have been made with the European Disability Strategy 2010-2020: the annual assessment of the European Semester must give due consideration to the situation of persons with disabilities. The AGS does not elaborate on specific groups such as persons with disabilities. However, in the past few years the Country Reports have increasingly given attention to issues relating to persons with disabilities and the CSRs sometimes include disability-specific recommendations. For instance particular measures to protect workers with disabilities through an adapted workplace were incorporated.

### 3.2.3. The European Pillar of Social Rights or Social Pillar

Adopted in 2017, the European Pillar of Social Rights (often shortened to the Social Pillar) is an initiative of the European Commission. Its objective is to trigger reforms on the European labour markets and social systems. For this Member States committed to common minimum social standards, including fair wages, unemployment assistance and adequate pensions.

The Social Pillar aims, among other things, to align the EU to its CRPD obligations. According to the European Commission, it reflects "the holistic human rights-based approach to disability enshrined in the CRPD, based on respect for dignity, individual autonomy and independence of persons with disabilities, their full and effective participation and inclusion in society on equal basis with others, and equality of opportunity"<sup>20</sup>. The Social Pillar therefore contains a so-called 'principle' dedicated to persons with disabilities (out of 20): "They have the right to income support that ensures living in dignity, services that enable them to participate in the labour market and in society, and a work environment adapted to their needs"<sup>21</sup>. By emphasising the right of persons with disabilities to social protection, adapted work environments and full equality and inclusion, the Social Pillar goes beyond existing EU existing legislation and jurisprudence.

Besides, the Social Pillar is linked to the European Semester in the sense that it provides an existing platform to discuss and monitor the priorities set out in the Pillar at national level<sup>22</sup>. As part of the monitoring process, the European Semester's Social Scoreboard employs social indicators to track trends and performances related to the principles of the Social Pillar. It uses existing data of Eurostat and Member States' statistical offices for this purpose. Social performance is measured in relation to equal opportunities and access to the labour market, fair working conditions, public support, social protection and inclusion. In creating social indicators measuring Member States' progress in areas relating to persons with disabilities, the European Commission has mainstreamed disability issues in the European Semester process, allowing slight progress in some areas.

### 3.3. EU approach to Social Economy

The European Commission has taken steps to support social enterprises, which are defined according to 3 main criteria:

- Enterprises whose social or societal objective of the common good is the reason for the commercial activity, often in the form of a high level of social innovation
- Enterprises whose profits are mainly reinvested to achieve this social objective

---

<sup>19</sup> All NRPs, CSRs and Country Reports are available here: [https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester\\_en](https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester_en)

<sup>20</sup> Commission Staff Working Document accompanying the Communication establishing a European Pillar of Social Rights (2017) <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1494929441507&uri=CELEX:52017SC0201>

<sup>21</sup> The European Pillar of Social Rights [https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights\\_en](https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_en)

<sup>22</sup> The European Pillar of Social Rights [https://ec.europa.eu/commission/sites/beta-political/files/european\\_pillar\\_of\\_social\\_rights.pdf](https://ec.europa.eu/commission/sites/beta-political/files/european_pillar_of_social_rights.pdf)

- Enterprises where the method of organisation or the ownership system reflects the enterprise's mission, using democratic or participatory principles or focusing on social justice<sup>23</sup>.

In 2011 the European Commission launched the Social Business Initiative<sup>24</sup>, which was the initial roadmap to social economy development in Europe. It first took the form of an action plan to support the development of social enterprises, stakeholders in the social economy and social innovation. It then acted as a framework to debate the future of social enterprises. The objective of the European Commission was to establish a favourable financial, administrative and legal environment for social enterprises, in order for them to operate on an equal footing with other enterprises in the same sector. Completed in 2014, the Initiative was based on 11 measures:

Action 1	A European regulatory framework for social investment funds <sup>25</sup>
Action 2	An improved the legal and institutional framework for microcredit <sup>26</sup>
Action 3	A financial instrument to provide easier access to funding <sup>27</sup>
Action 4	Prioritisation of investment in social enterprises in the European Regional Development Fund and European Social Fund <sup>28</sup>
Action 5	A register of social enterprises in the EU to identify best practices <sup>29</sup>
Action 6	A public database of labels and certifications <sup>30</sup>
Action 7	A guide for national and regional governments on supporting, promoting and financing social enterprises <sup>31</sup>
Action 8	A multilingual information and exchange platform for social investors and entrepreneurs <sup>32</sup>
Action 9	Simplified rules regarding legal recognition of European Cooperative Societies (ECS) <sup>33</sup> and a study on mutual societies <sup>34</sup>
Action 10	Working conditions criteria for public procurement <sup>35</sup>

<sup>23</sup> Communication on the Social Business Initiative (2011) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52011DC0682>

<sup>24</sup> Communication on the Social Business Initiative (2011) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52011DC0682>

<sup>25</sup> Regulation on European Social Entrepreneurship Funds (EuSEF) 22 July 2013 [http://ec.europa.eu/info/law/european-social-entrepreneurship-funds-eusef-regulation-eu-no-346-2013\\_en](http://ec.europa.eu/info/law/european-social-entrepreneurship-funds-eusef-regulation-eu-no-346-2013_en)

<sup>26</sup> The European Code of Good Conduct for Microcredit Provision [http://ec.europa.eu/growth/content/european-code-good-conduct-microcredit-provision-0\\_en](http://ec.europa.eu/growth/content/european-code-good-conduct-microcredit-provision-0_en)

<sup>27</sup> The EU programme for Employment and Social Innovation (EaSI) <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=1093&furtherNews=yes>

<sup>28</sup> Thematic guidance on Social Economy and Social Enterprises from the Directorate-General for Regional Policy [http://ec.europa.eu/regional\\_policy/en/information/publications/guidelines/2014/thematic-guidance-fiche-social-economy-and-social-enterprises-thematic-objective-9](http://ec.europa.eu/regional_policy/en/information/publications/guidelines/2014/thematic-guidance-fiche-social-economy-and-social-enterprises-thematic-objective-9)

<sup>29</sup> A map of social enterprises and their eco-systems in Europe <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=2149&furtherNews=yes>

<sup>30</sup> Database of labels and certifications <http://ec.europa.eu/DocsRoom/documents/14684/attachments/1/translations>

<sup>31</sup> National and regional administrations - promotion of mutual learning and their capacity building: Guide to social innovation [http://s3platform.jrc.ec.europa.eu/documents/20182/84453/Guide\\_to\\_Social\\_Innovation.pdf](http://s3platform.jrc.ec.europa.eu/documents/20182/84453/Guide_to_Social_Innovation.pdf)

<sup>32</sup> Social Innovation Community (former Social Innovation Europe Platform - electronic data exchange platform) <https://www.siceurope.eu/>

<sup>33</sup> Report from the Commission 23 February 2012 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52012DC0072&locale=en>

<sup>34</sup> Study on the situation of mutual societies and their cross-border activities (2012) <http://ec.europa.eu/DocsRoom/documents/10390/attachments/1/translations>

<sup>35</sup> Procurement opportunities for social enterprises under the new EU procurement rules (2014) <http://ec.europa.eu/DocsRoom/documents/12965/attachments/6/translations>



Social economy importance was further acknowledged by the Council in 2015 with the adoption of *“The promotion of the social economy as a key driver of economic and social development in Europe”* Conclusions<sup>37</sup>. Following this, the European Commission launched the Start-Up and Scale-Up Initiative in 2016. It aims to remove barriers for all start-ups, including social enterprises, to scale up in the single market; to create opportunities for partnership, commercial opportunities and skills; and to facilitate access to finance. This sparked a debate on the social economy as a whole, as many felt that the EU should have created an Action Plan instead. The European Economic and Social Committee (EESC) called on the European Commission to *“bring together all the current and new initiatives to support social economy enterprises by issuing a communication with an Action Plan for the Social Economy”*<sup>38</sup>. Likewise, in 2016, MEPs underlined that the Parliament’s report on the Single Market Strategy, the Bratislava Declaration on Social Economy (signed by 10 Member States) and the report by the Commission Expert Group on Social Entrepreneurship (GECES) all called for an Action Plan<sup>39</sup>. The Commissioner for Justice, Consumers and Gender Equality, Věra Jourová, replied that it would be *“premature to launch an additional action plan for the social economy at this stage”*<sup>40</sup>.

Despite policy debate, the EU supports social economy with programmes adopted under the 2021-2027 MFF. They are the InvestEU Investment Fund (€38 billion) and the Rights and Values programme: The InvestEU fund contains 4 policy windows: (1) sustainable infrastructure; (2) research, innovation and digitisation; (3) SMEs; and (4) social investment and skills. Some €4 billion will be allocated to social investment and skills development, with focus on social enterprises and microenterprises of disadvantaged people. It will also build on previous plans by providing a €300m “top up” for microfinance for vulnerable groups and social enterprises. InvestEU will work in partnership with the European Investment Bank (EIB), the European Bank for Reconstruction and Development (EBRD), and the Council of Europe Development Bank (CEB). Overall, it aims to leverage private investment to reach a total of €650bn in investments during the 2021-27 period.

The European Commission’s proposal of the Rights and Values programme<sup>41</sup> in contrast focuses to bundle resources to the area of citizens’ rights and the values of respect for human dignity, freedom, democracy, equality, the rule of law and human rights. It shall be funded under the new Justice, Rights and Values Fund, which merges the existing “Rights, Equality and Citizenship programme” and the “Europe for Citizens programme”. €305 million shall be allocated to Justice, while €642 million of the fund shall be used for the Rights and Values programme. It aims to fight against discrimination on the ground of sex, racial or ethnic origin, religion or belief, disability, age, sexual orientation and other factors. The ultimate goal is to protect and promote the rights and values of the EU Treaties and EU Charter of Fundamental Rights. To achieve this, specific objectives include for example mainstreaming anti-discrimination in EU legislation and policies to protect and promote the right of persons with disabilities. The proposal is currently debated in Council and Parliament and not yet adopted.

<sup>36</sup> Simplification of the implementation of rules concerning State aid to social and local services [http://ec.europa.eu/competition/publications/cpn/2012\\_1\\_9\\_en.pdf](http://ec.europa.eu/competition/publications/cpn/2012_1_9_en.pdf); Commission staff working document: Guide to the application of EU rules on state aid, public procurement and the internal market to SGEL, and in particular to social services of general interest [http://ec.europa.eu/competition/state\\_aid/overview/new\\_guide\\_eu\\_rules\\_procurement\\_en.pdf](http://ec.europa.eu/competition/state_aid/overview/new_guide_eu_rules_procurement_en.pdf)

<sup>37</sup> The promotion of the social economy as a key driver of economic and social development in Europe - Council Conclusions (7 December 2015) <http://data.consilium.europa.eu/doc/document/ST-15071-2015-INIT/en/pdf>

<sup>38</sup> EESC Opinion on the Start-Up and Scale Up Initiative (2016) <http://webapi.eesc.europa.eu/documentsanonymous/EESC-2017-00509-00-00-ac-tra-en.docx>

<sup>39</sup> Question for oral answer O-000070/2017 [http://www.europarl.europa.eu/doceo/document/O-8-2017-000070\\_EN.html](http://www.europarl.europa.eu/doceo/document/O-8-2017-000070_EN.html)

<sup>40</sup> A European action plan for the social economy (debate) <http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20171005&secondRef=ITEM-010&language=EN>

<sup>41</sup> European Commission Proposal for a Regulation of the European Parliament and of the Council establishing the Rights and Values programme: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2018%3A383%3AREV1>

### 3.4. Broader EU legislation relating to persons with disabilities

#### 3.4.1. The European Disability strategy 2010-2020

The current EU policy approach to persons with disabilities is the European Disability Strategy 2010-20. It follows the Disability Action Plan 2003-2010. The European Disability Strategy is the EU guidance document and covers 8 areas:

1. Accessibility: making goods and services accessible to persons with disabilities and promoting a market for assistive devices;
2. Participation: ensuring that persons with disabilities enjoy all benefits of EU citizenship, removing any barriers to equal participation in public life and leisure activities, and promoting the provision of quality community-based services;
3. Equality: combatting discrimination based on disability and promoting equal opportunities;
4. Employment: significantly raising the share of persons with disabilities working in the open labour market;
5. Education and training: promoting inclusive education and lifelong learning for students and pupils with disabilities;
6. Social protection: promoting decent living conditions, and combatting poverty and social exclusion;
7. Health: promoting equal access to health services and related facilities;
8. External action: promoting the rights of persons with disabilities in the EU's enlargement and international development programmes.

Under area 4, the Disability Strategy sets the objective of significantly raising the number of persons with disabilities working in the open labour market. The European Commission Staff Working Document (SWD) on the implementation of the Strategy identifies lack of equal opportunities as the most frequent barriers faced by persons with disabilities to enter the labour market<sup>42</sup>. As a response, the Strategy aims to set a policy framework allowing the creation of quality jobs being in open, inclusive and accessible work environments to persons with disabilities.

In practice the Strategy list required EU actions. This entails a deeper analysis of the labour market situation of persons with disabilities, fighting disability benefit culture that keeps them from entering the labour market, making use of the European Social Fund (ESF) for their integration in the open labour market, developing active labour market policies, making workplaces more accessible, developing services for job placement, supporting structures and on-the-job-training and promoting the use of the General Block Exemption Regulation (GBER).

The European Disability Strategy 2010-20 will come to an end next year. The European Commission started working on a new strategy or action plan, for which the development process was made public in October 2018. A public consultation, to which all stakeholders can submit contributions, is foreseen mid-2019. An external contractor will additionally deliver a study assessing the Strategy implementation and results. This will feed into the drafting of the new disability strategy or action plan. No official document is ready at the time of writing this report. The European Commission has nonetheless shared its initial thoughts during the Annual Convention on Inclusive Growth, an official event hosted by the European Commission bringing together policy makers, Civil Society and Non-Governmental Organisations and other stakeholders of the social economy sector.

Key EU and disability related milestones will add pressure for an ambitious future Strategy. Firstly, the next EU State Report to the CPRD committee is due in 2021 and by then the EU should have implemented the recommendations of the 2015 Concluding Remarks. This might however been delayed since the CRPD Committee runs behind schedule. Secondly, the Strategy launch will coincide with the adoption of the next EU multi-annual programming period for the period 2021-28 and the 19-year anniversary of the CRPD ratification by the EU. It is hoped by many that the goal and content

---

<sup>42</sup> European Commission Staff Working Document, Progress Report on the implementation of the European Disability Strategy (2010 -2020) <http://ec.europa.eu/social/BlobServlet?docId=16995&langId=en>

of the Strategy will be levelled up accordingly. Finally, the future Strategy will likely support European and national implementation of the international Sustainable Development Goals (SDGs), several of which have disability specific indicators to be reported on.

### 3.4.2. The European Accessibility Act

One of the European Disability Strategy 8 objectives is accessibility. This is a precondition to the participation of persons with disabilities in society and economy. Accessibility can be achieved through the prevention, identification and elimination of physical and technical barriers faced by persons with disabilities in relation to the built environment, transport, goods and services, including information and communication technologies (ICT).

Initiated in 2015, the European Accessibility Act is meant to be a “*business-friendly*” Directive which harmonises accessibility requirements for a number of products and services, with a strong emphasis on e-accessibility<sup>43</sup>. The bitter negotiations between the Council and the European Parliament ended with an agreement on 8 November 2018. The European Parliament adopted the agreement on 13 March 2019 and the Council on 9 April 2019. The final agreement<sup>44</sup> is planned to be published in the Official Journal of the European Union on 7 June 2019.

In addition a specific directive on web-accessibility was adopted in 2016. It introduced mandatory EU standardised accessibility features for websites and mobile apps of public sector bodies with a limited number of exceptions. A corresponding European standard on accessibility requirements for ICT products and services has been adopted to support the Directive implementation<sup>45</sup>. Legislation relating to rail, maritime and road transport has also been revised to enhance accessibility for and assistance to persons with disabilities. The European Standardisation Bodies currently develops 2 additional European standards: one relates to accessibility requirements for public procurement in the built environment and the other one aims to include “Design for all” in standardisation initiatives.

## 3.5. EU legislation with direct impact on employment of persons with disabilities

### 3.5.1. The Employment Equality Directive

Adopted in 2000, the Employment Equality Directive requires Member States to prohibit discrimination on the grounds of disability in the fields of employment and occupation<sup>46</sup>. It covers employment and occupation, vocational training and membership of employer and employee organisations. The legislation sets out minimum requirements but Member States might decide to go for a higher level of protection against discrimination in their national legislation. By now the Directive has been transposed by all Member States into their national law.

The Directive defines discrimination in the sector: this entails direct discrimination (meaning any differential treatment based on a specific characteristic), indirect discrimination (that is any provision, criterion or practice which is apparently neutral but creates a disadvantage for the persons in question) and harassment at work. Both the public and private sectors are covered. Discrimination in all the following situations apply: conditions of access to employed or self-employed activities (including selection criteria and recruitment conditions and including promotion), vocational training, employment and working conditions (including dismissals and pay), and membership of and involvement in organisations of employers or workers. Additional key measures include creation of quotas and other positive action measures.

Provision of reasonable accommodation to workers with disabilities by their employers is used to guarantee compliance with the equal treatment principle. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have

<sup>43</sup> European Accessibility Act <http://ec.europa.eu/social/main.jsp?catId=1202&langId=en>

<sup>44</sup> <https://data.consilium.europa.eu/doc/document/PE-81-2018-INIT/en/pdf>

<sup>45</sup> [https://www.etsi.org/deliver/etsi\\_en/301500\\_301599/301549/01.00.00\\_20/en\\_301549v010000c.pdf](https://www.etsi.org/deliver/etsi_en/301500_301599/301549/01.00.00_20/en_301549v010000c.pdf)

<sup>46</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32000L0078>

access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. If providing reasonable accommodation creates a burden to the employer, it shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned (Article 5). This is further detailed in Recitals 20 and 21: a non-exhaustive list of possible “*appropriate measures*” and guidance on disproportionate burdens is listed and “*financial and other costs entailed, the scale and financial resources of the organisation or undertaking and the possibility of obtaining public funding or any other assistance*” should be taken into account. The Directive however falls short of the CRPD, which classifies a failure to comply with the duty of reasonable accommodation as discrimination, the EU Directive does not.

In addition to the Equal Treatment Directive in the employment sector, the European Commission proposed an Anti-Discrimination Directive on equal treatment outside the labour market in 2008<sup>47</sup>. The goal was to extend protection against discrimination on the grounds of gender, race, sexual orientation, age and disability horizontally in society. 10 years on, it has not been adopted. Member States in the Council have blocked negotiations seeing it as an infringement of the principle of subsidiarity and shadowing their national competences. Further issues include legal clarity and consistency with other legal acts, budgetary implications and implementation.

### 3.5.2. The Council Recommendation on the integration of the long-term unemployed into the labour market

Adopted in 2016, the Council Recommendation on the integration of the long-term unemployed into the labour market states that persons with disabilities are among those most vulnerable to long-term unemployment<sup>48</sup>. The Council encourages Member States to refer long-term unemployed people to an employment service, to provide people who have not been employed for 18 months with an individual in-depth assessment to identify their needs and potential, and offer job integration agreements within the same time frame.

The EU also issued guidelines on Supported Employment (SE), which, in this context, is understood as personal assistance and workplace adaptations in the open labour market. It started with the 2011 European Commission study on SE gathering good practices and providing recommendations<sup>49</sup>. The study emphasizes the key role of adopting (pro)-active labour market policies to create the conditions for higher participation to the open labour market for persons with disabilities. This was also highlighted by a European Commission analytical paper, which explored the “sustainable activation of persons with disabilities”<sup>50</sup>. The paper stressed the role of Public Employment Services (PES), the authorities that connect jobseekers with employers, in creating inclusive labour market: key leverages include strengthening partnerships with stakeholders and ensuring effective rehabilitation services whose programmes are defined by the evidence they collect in their areas of actions. In 2014, a Decision of the European Parliament and the Council moved this forward by establishing a European Network of Public Employment Services. Its role is to enhance co-operation between PES and employment service providers, social partners, organisations representing unemployed persons or vulnerable groups, NGOs, regional and local authorities, and all other relevant stakeholders<sup>51</sup>.

<sup>47</sup> Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52008PC0426>

<sup>48</sup> Council Recommendation on Long-Term Unemployment (15 February 2016) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016H0220%2801%29&qid=1456753373365>

<sup>49</sup> European Commission, Supported Employment for persons with disabilities in the EU and EFTA-EEA <https://publications.europa.eu/en/publication-detail/-/publication/b270b26a-bb7f-40d7-8883-53c78e436b5b>

<sup>50</sup> European Commission Mutual Learning Programme for Public Employment Services analytical paper: PES approaches for sustainable activation of persons with disabilities (August 2013) <http://ec.europa.eu/social/BlobServlet?docId=14106&langId=en>

<sup>51</sup> Decision No 573/2014/EU of the European Parliament and of the Council of 15 May 2014 on enhanced cooperation between Public Employment Services (PES) [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2014.159.01.0032.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.159.01.0032.01.ENG)

### 3.5.3. Other legislation mainstreaming employment of persons with disabilities

Adopted in 1989, the Council Directive on minimum safety and health<sup>52</sup> recognises the need for particular measures to protect workers with disabilities. This includes measures relating to adapted workplaces, especially doors, passageways, staircases, showers, washbasins, lavatories and workstations. This was backed up by the European Commission Communication on an EU Strategic Framework on Health and Safety at Work 2014-2020<sup>53</sup>.

The Directive on temporary agency work was adopted in 2008. It includes a principle of equal treatment, which prohibits discrimination based on disability with regard to temporary workers.

The Council Decision of 21 October 2010 on guidelines for employment policies was reviewed in 2018 in light of the European Pillar of Social Rights<sup>54</sup>. It guides Member States reporting in their progress against their National Reform Programmes, which is now part of the European Semester. From 2018 onwards Guidelines 6 and 8 incorporate obligations for Member States to take measures fostering social inclusion and employment of persons with disabilities.

### 3.5.4. The State Aid and General Block Exemption Regulations

In order to create more equal opportunities for disadvantaged groups, including persons with disabilities, the **State Aid Regulation**<sup>55</sup> was adopted in 2014. It declares state aid used to support the employment or training of people with disabilities compatible with the internal market principle, up to a certain amount. Such aids can include wage subsidies used to employ persons with disabilities as well as financial support to compensate additional costs in employing workers with disabilities.

In addition, the State Aid Regulation provides an exemption of aid schemes for the recruitment of disadvantaged workers. Council Regulation 994/98, amended by Council Regulation 733/2013, enables the European Commission to adopt so-called Block Exemption Regulations for State Aid. The European Commission can therefore declare specific categories of state aid compatible with the Treaty if they fulfil certain conditions, thus exempting them from the requirement of prior notification and European Commission approval.

Adopted in 2014 the General Block Exemption Regulation (GBER) provides for the exemption of “*aid for disadvantaged workers and for workers with disabilities*”<sup>56</sup>. Regarding the exemption of aid for workers with disabilities, the GBER defines workers with disabilities as any person who is “*recognised as worker with disabilities under national law*” or who “*has long-term physical, mental, intellectual or sensory impairment(s) which, in interaction with various barriers, may hinder their full and effective participation in a work environment on an equal basis with other workers*”.

The main measures of the GBER are as follows:

- It exempts aid for the employment of workers with disabilities in the form of wage subsidies (Article 33). This may cover up to 75% of the wage costs of the worker for as long as the worker is employed. This is on a condition regarding net increase of employees: the recruitment cannot represent a net increase in employees compared with the average over the past 12 months and the post cannot have become vacant as a result of redundancy.
- It exempts aid compensating additional costs of employing workers with disabilities (Article 34). This covers up to 100% of costs including costs of adapting the premises, employment

---

<sup>52</sup> Council Directive concerning the minimum safety and health requirements for the workplace: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31989L0654:EN:HTML>

<sup>53</sup> EU Strategic Framework on Health and Safety at Work 2014-2020: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0332>

<sup>54</sup> Council Decision on guidelines for the employment policies of Member States [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32018D1215&qid=1544013412694&from=EN#ntc9-L\\_2018224EN.01000401-E0009](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32018D1215&qid=1544013412694&from=EN#ntc9-L_2018224EN.01000401-E0009)

<sup>55</sup> Commission regulation declaring certain categories of aid compatible with the internal market: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014R0651&from=EN>

<sup>56</sup> Section 6 of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014R0651-20170710>

and training costs for staff assisting disabled workers, costs of adapting or acquiring equipment or software for workers with disabilities (additional to those ordinarily incurred), cost of transport for workers with disabilities, and wage costs for the hours spent by a worker with disabilities on rehabilitation.

- Sheltered employment (Article 2 (100)) is defined as “*employment in an undertaking where at least 30 % of workers are workers with disabilities*”. Sheltered employment is subsequently included in Article 34 regarding the exemption of costs relating to its provision: costs of constructing, installing or modernising production units, and costs of administration and transport, provided that they result directly from the employment of workers with disabilities. In January 2019, the European Commission launched an initiative on the targeted modification of the GBER in relation to the EU funding programmes. It aimed at modifying state aid rules to ensure that national funding and centrally-managed EU funds can be combined seamlessly while ensuring that the principles of EU State aid are applied more efficiently.

### 3.5.5. EU legislation relating to education and training of persons with disabilities

Another area tied to employment of persons with disabilities is inclusive education and training. The EU has supporting competence in this field. In other words, the EU contributes to the development of quality education by encouraging cooperation between Member States and supports implementation, while fully respecting the responsibility of Member States for the content of teaching and organisation of their education systems. In practice, Member states cooperation and implementation is fostered through the European Agency for Special Needs and Inclusive Education and the study group on disability and lifelong learning.

Although not disability-specific, the Youth on the Move flagship initiative commits to reducing school drop-out rates and increasing rates of tertiary education in Europe. These measures convey important implications for inclusive education and job placement schemes for young persons with disabilities, and acknowledge the difficulties of the latter when it comes to entering the labour market.

The 2010 Council Conclusions on the social dimension of education and training<sup>57</sup> and the 2017 Council Conclusions on the Diversity to achieve a high-quality education for all<sup>58</sup> also highlight the need of European education systems to acknowledge diversity and provide for the successful education of all learners, including those with disabilities. The 2018 Council Recommendation on promoting common values, inclusive education and the European dimension of teaching<sup>59</sup>, even explicitly referred to the CRPD and included specific recommendations on how to promote inclusive education. This should be done, for example, through the provision of tailored support according to particular needs and making use of the European Agency for Special Needs and Inclusive Education.

Launched in 2013, the Youth Guarantee focuses solely on employment of all young people, including those with a disability: it aims that no one stays out of a job, apprenticeship, traineeship or education for more than four months. Various education projects as part of the ERASMUS Programme also promote career advancement of persons with disabilities.

Finally, the “Europass” framework, supporting transparency, understanding, skills and qualifications of web-based tools for self-assessing and documenting skills, recognises the special needs of persons

<sup>57</sup> 2010 Council conclusions on the social dimension of education and training: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:135:0002:0007:EN:PDF>

<sup>58</sup> 2017 Council conclusions on Inclusion in Diversity to achieve a High Quality Education for all: [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52017XG0225\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52017XG0225(02)&from=EN)

<sup>59</sup> 2018 Council Recommendation on promoting common values, inclusive education and the European dimension of teaching: [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32018H0607\(01\)&qid=1544013412694&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32018H0607(01)&qid=1544013412694&from=EN)

with disabilities regarding this matter. It was established in 2004 and renewed in 2018<sup>60</sup>, including accessibility measures for persons with disabilities and older persons.

### 3.5.6. The EU policy on social protection for persons with disabilities

Adopted in 2013, the European Commission's Social Investment Package (SIP) is a series of additional non-binding documents adopted for 2 main contextual reasons. The economic crisis threatened the achievement of the EU2020 poverty and employment targets. Proportionally to the European population getting older, the size of the working-age population shrinks severely impacting social security systems in place.

The package encourages Member States to keep investing in social policy areas despite fiscal difficulties. This is seen as future savings on social expenditure and a way to enhance participation in the labour market and society at large. The Package encourages investment to modernise social protection systems, implementation of active inclusion strategies and investment throughout individuals' lives. It also aims to provide guidance on increasing efficiency, effectiveness, and adequacy of social protection systems; improving, activating and enabling policies; and fostering social inclusion and adequate livelihoods.

The European Platform against Poverty and Social Exclusion is a broad umbrella running alongside the SIP which is designed to help Member States reach Europe 2020 targets. It provides the basis for joint commitment between national Governments, EU institutions and key stakeholders to fight poverty and social exclusion, based on the objectives set out in the SIP. Through this Platform, the European Commission organises EU Stakeholder Dialogue meetings with NGOs, social partners, businesses, social economy actors, academics, foundations, think-tanks and international organisations.

At EU level, the Social Protection Committee (SPC) acts as an advisory policy committee for the Employment and Social Affairs Council (EPSCO). In 2010, the SPC agreed on a voluntary European Quality Framework for Social Services<sup>61</sup> which provides guidance on how to define, provide, assess and improve social services.

In 2012, the European Commission's White Paper on Pensions set out 20 actions for adequate, safe and sustainable pensions and recognised the need to promote longer careers while ensuring solidarity with people who are unable to work longer. Since 2015, the European Commission has been publishing a Pension Adequacy Report on the impact of early labour market exits due to disabilities.

### 3.5.7. The Public Procurement Directives

In addition to observing the principles enshrined in the Treaty for the European Union (TFEU) and the Procurement Directives, socially responsible public procurement (SRPP) takes into account employment opportunities, decent work, compliance with social and labour rights, social inclusion, equal opportunities, accessibility, design for all, sustainability, ethical trade issues, and corporate social responsibility. The European Commission intends to facilitate the uptake of socially-responsible criteria in public procurement and to promote their use across the EU.

In October 2001, the European Commission published an interpretative Communication setting out the possibilities offered by Community law to integrate social considerations into public procurement. The Court of Justice of the European Union (CJEU) case law further clarified these possibilities, such as in the judgement of the C-513/99 Concordia Bus case (2002) and of the C-448/01 Wienstrom (2003) case.

<sup>60</sup> Europass framework for the provision of better services for skills and qualifications: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32018D0646&qid=1544013412694&from=EN>

<sup>61</sup> Social Protection Committee, A Voluntary European Quality Framework for Social Services (2010) <http://ec.europa.eu/social/BlobServlet?docId=6140&langId=en>

This paved the ways for the adoption of the Procurement Directives in 2004<sup>62</sup>. They mentioned ways of incorporating social considerations into technical specifications, selection criteria, award criteria and contract performance clauses. In 2011, the European Commission published a guide to clarify how to take account social considerations in public procurement<sup>63</sup>. However, the biggest step taken in the reform of public procurement was in 2014, with the adoption of Directive 2014/24/EU on public procurement which repealed the 2004 Directive. This updated the obligations for public authorities to *require* accessibility in the technical specifications of tenders, and to explicitly allow the use of accessibility as an award criterion<sup>64</sup>. It also specifically mentioned sheltered workshops: Member States may reserve the right to participate in public procurement procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons or may provide for such contracts to be performed in the context of sheltered employment programmes, provided that at least 30 % of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers (Article 20, Directive 2014/24/EU)<sup>65</sup>.

Complementing it, the European Accessibility Act establishes additional common rules on accessibility that will apply to public tenders.

### 3.5.8. The European Structural Funds

In 2013, the European Commission published a Communication to guide Member States on the best use of EU funds for social investment<sup>66</sup>. In the same year, it introduced compulsory accessibility requirements for actions financed by the European Structural and Investment Funds Regulations (ESIF). It is also key noting that non-discrimination is a requirement for all funding awards under the Common Regulation.

Prior to this, the European Social Fund (ESF), one of the structural funds, has been used to improve the situation of vulnerable people at risk of poverty. In 2014, the European Commission introduced the condition that at least 20% of the ESF should be allocated to social inclusion actions, which include those relating to persons with disabilities. The ESIF and the ESF also support social innovation initiatives and national reforms in the delivery of social services within the context of transition from institutional to community-based care services.

The ESF has been used to enhance labour market participation, increase occupational mobility and facilitate adaption to changes, especially through vocational training. The fund's resources are used to support a range of schemes, including supported employment, work experience programmes, wage subsidies, temporary sheltered employment and other transitional labour market measures, and schemes promoting self-employment and cooperatives. Some 6.1 million participations were reported, of which 16% were identified as persons with disabilities between 2007 and 2013.

Data from the European Commission shows that in the programming period 2007-2013, two thirds of “operational programmes” within the ESF included persons with disabilities as a target group. Furthermore, the budget allocated to “priority axes” in which persons with disabilities participated represented 42% of the ESF budget (ESF, national and private contributions combined). In absolute

<sup>62</sup> Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32004L0018>

<sup>63</sup> Buying Social - A Guide to Taking Account of Social Considerations in Public Procurement (2011) <http://ec.europa.eu/social/BlobServlet?docId=6457&langId=en>

<sup>64</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2014.094.01.0065.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.094.01.0065.01.ENG)

<sup>65</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1542116547869&uri=CELEX:32014L0024>

<sup>66</sup> Communication from the Commission: Towards Social Investment for Growth and Cohesion – including implementing the European Social Fund 2014-2020 (2013) <http://ec.europa.eu/social/BlobServlet?docId=9761&langId=en>



figures, the largest allocations to priority axes targeting persons with disabilities in this period were in the United-Kingdom, France, Spain and Italy. In relative figures, Denmark, Ireland and Luxembourg planned to allocate close to their whole budget to priority axes targeting persons with disabilities.

While it is not possible to break down the absolute amounts exactly due to priority axes covering many target groups, if all priority axes targeted persons with disabilities amongst others planned for the 2007-2013 period (163 priority axes) are taken into consideration, the allocation totalled €76.8 billion, which is broken down into €49.5 billion from the ESF, €24.8 billion from national budgets, and €2.5 billion from private budgets<sup>67</sup>.

Another funding instrument relating to employment and social policies is the EU Programme for Employment and Social Innovation (EaSI). The EaSI promotes quality and sustainable employment by guaranteeing adequate and decent social protection, combating social exclusion and poverty and improving working conditions. It includes 3 programmes:

- PROGRESS focuses on the modernisation of employment and social policies.
- EURES is dedicated to job mobility.
- Progress Microfinance is about access to micro-finance and social entrepreneurship. It has been used to fund projects creating employment for persons with disabilities<sup>68</sup>.

Under the new 2021-2027 programming period and Multiannual Financial Framework (MFF), it can reasonably be anticipated that additional funding instruments will be put in place and continue supporting actions fighting discrimination on the basis of disabilities. At the time of writing this report, the ESF is expected to become the ESF+ and continue to operate jointly with instruments and programmes such as the ERDF (European Regional Development Fund) and EaSI. The ESF+ and EaSI should help Member States to implement the Social Pillar principles. For this purpose, the European Commission proposed that 25% of the ESF+ and the EaSI should be allocated to projects for social inclusion.

Finally, the ERDF includes a number of principles that are relevant to persons with disabilities such as accessibility and deinstitutionalisation in infrastructure projects. The ERDF measures regarding employment and education focus on access to services and improved infrastructure.

## 4. Conclusion

Eurostat statistics have shown that there are high disparities in labour market access and employment experiences between persons with disabilities and persons without disabilities in the EU. In the context of these disparities, the EU has begun to mainstream disability into its legislation and policies on equality in access to the labour market, employment and access to social protection. While the Equal Treatment Directive provided the foundations for the legal right of persons with disabilities to equal treatment in recruitment and employment, the legislation that has resulted from the European Disability Strategy has begun to form a more substantial framework for the employment of persons with disabilities in the EU. In revising the regulations on State aid and procurement, the EU has begun to mainstream reasonable accommodation and accessibility in EU Governments' spending. In addition to this, the EU has included provisions requiring Member States to allocate a minimum of the EU social funds to projects with axes including persons with disabilities in order to encourage measures that promote the employment and social protection of persons with disabilities.

While the EU does not have exclusive competence on employment of persons with disabilities, it is able to offer information and guidance to Member States and companies regarding reasonable accommodation, as well as the social economy. For example, the Social Business Initiative included guidance for national and regional governments on supporting, promoting and financing social

<sup>67</sup> European Commission, Background Report: European Social Fund and Disability (2010), pp. 40-1 [http://ec.europa.eu/employment\\_social/esf/docs/br\\_disability\\_en.pdf](http://ec.europa.eu/employment_social/esf/docs/br_disability_en.pdf)

<sup>68</sup> Successful and inspiring projects financed by EaSI and its predecessors – Sixth Commission report <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=2825&furtherNews=yes>

enterprises, although the European Commission has not yet responded to calls for a full Action Plan on the social economy, which could offer further guidance and next steps. It was also noted by the UNCRPD Committee that the EU still has some way to go in offering training to Member States on reasonable accommodation in employment more generally, rather than in sheltered workshops or other social enterprises where the Social Business Initiative has set out guidance.

Following the proclamation of the European Pillar of Social Rights, the EU has been able to include inclusion and equal opportunity further into the European Semester process through the social indicators it employs to measure progress at Member State level. In this way, the European Commission is able to offer more targeted recommendations to Member States regarding efforts to increase employment and inclusion of persons with disabilities through its CSRs. However, in practice the CSRs refer to employment of persons with disabilities directly only occasionally, usually offering wider structural recommendations regarding labour market access of disadvantaged persons. Furthermore, a study has shown that not all social indicators can be used to provide comparisons between employment and social protection of persons with disabilities and that of persons without disabilities.

It is clear that the measures and initiatives that have resulted from the European Disability Strategy 2010-20 and European Pillar of Social Rights have driven the EU closer to aligning its policy and guidance with the UN CRPD. However, there are still many areas which have been identified in which the European Commission should take action.