



# EU-CITZEN: ACADEMIC NETWORK ON EUROPEAN CITIZENSHIP RIGHTS

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## Political Participation of Persons with Disabilities

Pilot study for TYPE A REPORT

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### MAIN FINDINGS

- Overall there is a **low level of political representation** of people with disabilities in political and public affairs, both in terms of electoral participation and non-electoral forms of political participation.
- People with disabilities face **multifaceted barriers** in participating in political and public life. Those barriers can be categorised into **legal and administrative, as well as accessibility and institutional** barriers.
- People with intellectual impairments, in particular, face significant hurdles in exercising their political rights due to **deeply ingrained stereotypes and restrictive legal capacity laws**.
- Other characteristics, such as **age and gender**, and factors, such as **socio-economic status and fewer economic resources**, also affect the levels of political participation of people with disabilities.
- **Disabled persons' organisations play a major part in raising awareness** among public authorities of the rights of persons with disabilities through campaigning and advocacy, and they have been very active in implementing the CRPD.
- **Significant efforts** have been made on the part of the EU and its Member States to improve political processes and outcomes for people with disabilities, such as through repealing legal capacity laws, introducing e-voting and tactile ballot papers, and other such measures.
- However, **much work remains to be done** both at EU and Member States levels to ensure that people with disabilities can participate on an equal basis with others and enjoy their active citizenship rights.



## 1. Introduction

The concept of citizenship is widely used in disability policies, disability research and disability activism.<sup>1</sup> Citizenship has been described as a useful concept with which to theorise disability in relation to society<sup>2</sup> and as a tool that can be used by marginalised groups struggling to achieve social justice as well as inclusion and participation in society.<sup>3</sup> Ensuring rights of participation, while important in and of themselves, is also crucial to redressing the exclusion and discrimination that persons with disabilities continue to face in all areas of social, economic, cultural, civil and political life.<sup>4</sup>

The right to participate in the political life of a country and to participate in political processes at the European Union (EU) level are integral elements of active citizenship. Individuals with disabilities<sup>5</sup> are often denied their right to participate in the political sphere through discriminatory legal and administrative barriers as well as inaccessible processes and information. Barriers exist not only for wheelchair users but also for blind and deaf individuals, people with cognitive and psychosocial impairments, and others. In addition, deeply rooted stereotypes and outdated legal capacity laws prevent individuals with intellectual disabilities, in particular, from exercising their right to participate in the political sphere. Women with disabilities face particular challenges in participating in political life, including in electoral processes.<sup>6</sup>

Compounding these issues is a glaring lack of data in the majority of EU Member States on the accessibility of voting and other non-electoral forms of participation. It is vital that these, and other, barriers are eradicated in order to ensure the legitimacy of public institutions and to make democratic processes more inclusive. This would go some way towards ensuring that persons with disabilities can participate on an equal basis with others.

The right to participate in political and public life has come to the forefront as a priority area for the EU and its Member States, even more than before, following the ratification of the United Nations Convention on the Rights of Persons with Disabilities (CRPD or UN Convention) by the EU itself and by all 28 Member States. Article 29 CRPD provides for the right to participate in political and public life and seeks to ensure that all persons with disabilities, regardless of their impairment, can participate on an equal basis with others.

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<sup>1</sup> See generally M.J. Prince, 'Disability, Disability Studies and Citizenship: Moving up or off the Sociological Agenda?' (2004) *Canadian Journal of Sociology* 29, 459–467. See also M. S  pulchre 'Research about Citizenship and Disability: A Scoping Review' (2017) *Disability and Rehabilitation* 39(10), 949–956.

<sup>2</sup> See K. Caldwell, S.P. Harris and M. Renko, 'The Potential of Social Entrepreneurship: Conceptual Tools for Applying Citizenship Theory to Policy and Practice' (2012) *Intellectual and Developmental Disabilities* 50, 505–518.

<sup>3</sup> See generally, R. Lister, 'Inclusive Citizenship: Realizing the Potential' (2007) *Citizenship Studies* 11, 49–61.

<sup>4</sup> United Nations Convention on the Rights of Persons with Disabilities, resolution/adopted by the UN General Assembly, 24 January 2007, UN Doc. A/RES/61/106, Article 4(3).

<sup>5</sup> For the purposes of this report, disability is defined in accordance with the understanding of disability enshrined in the United Nations Convention on the Rights of Persons with Disabilities (CRPD). According to Article 1 of the CRPD, 'persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others'.

<sup>6</sup> Organisation for Security and Co-Operation in Europe, Office for Democratic Institutions and Human Rights (ODIHR) *Handbook on Observing and Promoting the Electoral Participation of Persons with Disabilities*, p. 30. See also United Nations Committee on the Rights of Persons with Disabilities, General Comment 3 (2016), UN CRPD C/GC/3, paras. 10 and 60.



The EU's first Citizenship Report acknowledges that 'EU citizens with disabilities face additional obstacles',<sup>7</sup> and the EU's European Disability Strategy 2010-2020 includes a specific commitment to facilitating the exercise of EU citizens' electoral rights, including those of people with disabilities.<sup>8</sup>

Against this background, this pilot report explores the right to political participation for persons with disabilities, the barriers that exist to the exercise of that right and the good practices and promising initiatives exhibited at the EU level itself and in selected EU Member States. The methodology for this report is based primarily on (legal doctrinal) desk research, drawing on primary and secondary sources of law and policy. The report includes pilot case studies on political participation of persons with disabilities at the EU level and in a selection of 6 EU Member States: Bulgaria, Denmark, Estonia, Germany, Ireland and the United Kingdom. Those case studies also draw on desk research conducted by the author alone, without assistance by national experts (except for the case study on Bulgaria, where Judit Tóth provided input). The legal doctrinal research in this report is complemented with empirical survey data, where that is appropriate and available. At the time of writing this draft report, a limited amount of survey data was made available to the author.

Following the introductory section of the present report, section two of the report distinguishes between electoral and non-electoral forms of political participation, while section three contains an overview of the international and European legal framework on non-discrimination and political participation in respect of persons with disabilities. Section four of the report sets out data on the exercise of political rights by persons with disabilities as well as the most commonly-occurring barriers to political participation in EU Member States. In section five, pilot case studies are carried out, both at the EU level and in the six above-mentioned Member States. Section six of the report contains concluding remarks and recommendations for further facilitating the right of persons with disabilities to participate in political and public life.

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<sup>7</sup> European Commission, *EU Citizenship Report 2010: Dismantling the Obstacles to EU citizens' Rights* (Brussels, 2010) COM(2010) 603 final, p. 11, available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0603:FIN:EN:PDF>, last accessed 11 September 2018.

<sup>8</sup> European Commission, *European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe* (Brussels, 2010) COM(2010) 636 final, p. 6, available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0636:FIN:en:PDF>, last accessed 11 September 2018.



## 2. Electoral and Non-Electoral Forms of Political Participation

Before examining the various factors that hinder the political participation of persons with disabilities, it is necessary to define what political participation actually means in the context of this report. An instrumental definition of political participation generally encompasses: i) voluntary participation (referring to the fact that political participation is not a part of one's job)<sup>9</sup>; and ii) the pursuit of specific objectives that consist mainly in exerting influence on political decisions at different levels of the political system.<sup>10</sup> This section of the report employs the foregoing understanding of political participation.

It is also essential to distinguish between electoral (conventional) and non-electoral (non-conventional) forms of political participation. An abundance of research exists in the field of electoral participation and electoral behaviour generally, since those are deemed to be the most important forms of political participation that legitimise democratic authority. Voting in elections and standing for election is the main and most direct form of political activity. Inclusion Europe has described the right to vote as 'the most emblematic symbol of citizenship'.<sup>11</sup> However, political participation in electoral processes involves more than just voting; rather, it derives from the ability to take part in the conduct of public affairs; and the opportunity to register as a candidate, to campaign, to be elected and to hold office at all levels of government.

While the primary focus of this report is on electoral participation of people with disabilities, it is important to draw attention to other forms of non-electoral participation, as shown in table 2 below.

**Table 2: Overview of Electoral and Non-Electoral Forms of Political Participation**

The concept of political participation has expanded over the last few decades.<sup>12</sup> In addition to electoral participation, many other activities provide citizens with opportunities to participate in the political sphere. These other activities can be considered under the heading of 'non-electoral forms of political participation'.<sup>13</sup> Van Deth differentiates between more than 70 forms of non-electoral political participation.<sup>14</sup> Four main types of non-electoral participation have been identified by Andreosso-O'Callaghan and Royall, namely:

<sup>9</sup> O.W. Gabriel & K. Völkl, 'Politische und Soziale Partizipation' in O.W. & E. Holtmann (eds.), *Handbuch Politisches System der Bundesrepublik Deutschland* (Oldenbourg, 3<sup>rd</sup> edition) 523-574, p. 528.

<sup>10</sup> See H.E. Brady, V.E. Henry, S. Schlozman & K. Lehman, 'Beyond SES: A Resource Model of Political Participation' (1995) *American Political Science Review* 89, 271-294.

<sup>11</sup> Inclusion Europe, *Participation in Political and Public Life: The Basis for People with Intellectual Disabilities to Live as Equal Citizens*, Position Paper (2011), p. 1, available at: [http://inclusion-europe.eu/wp-content/uploads/2015/03/PositionPaper2011\\_Participation\\_in\\_Political\\_and\\_Public\\_life.pdf](http://inclusion-europe.eu/wp-content/uploads/2015/03/PositionPaper2011_Participation_in_Political_and_Public_life.pdf), last accessed 11 September 2018.

<sup>12</sup> See generally L. Yaojun & D. Marsh, New Forms of Political Participation: Searching for Expert Citizens and Everyday Makers (2008) *British Journal of Political Science* 38(2), 247-272.

<sup>13</sup> See generally M. Fink, 'Types of Political Participation: A Multidimensional Analysis' (2012) *European Journal of Political Research* 20(1), 93-102.

<sup>14</sup>M. Steinbrecher, CIVICACTIVE Project Report on Non-Electoral Participation, p. 1, available at <https://www.google.com/search?q=CIVICACTIVE+Project+Report+on+Non-Electoral+Participation&ie=utf-8&oe=utf-8&client=firefox-b-ab>, last accessed 11 September (citing J.W., Van Deth, 'Vergleichende politische Partizipationsforschung', in D. Berg-Schlosser & F. Müller-Rommel, (eds.), *Vergleichende Politikwissenschaft* (Leske & Budrich, 4<sup>th</sup> edition) 167-187, p. 175.



- i) Contact activities: contacting politicians, government officials, the media, a lawyer or a judicial body;
- ii) Group activities: voluntary work in a political party or other organisation, donating money to a political organisation and trade union activities;<sup>15</sup>
- iii) Consumer activities: signing a petition or boycotting products; and
- iv) Protest activities: displaying a badge, participating in a lawful public demonstration or illegal activities.<sup>16</sup>

In light of declining election turnout, the repertoire of non-electoral political activities has expanded across the EU.<sup>17</sup> According to Dalton, non-electoral methods of political action 'expand the potential influence of the citizenry'<sup>18</sup> and give citizens 'more control over the focus and locus of political action, which should presumably increase their influence in the political process'.<sup>19</sup>

Civil society organisations (CSOs) give rise to new forms of political participation.<sup>20</sup> On the whole, disabled persons organisations (DPOs) have been very active in implementing the CRPD, and those organisations also serve to foster (in addition to electoral engagement) non-electoral engagement, such as campaigning and advocacy. Umbrella organisations, such as the European Disability Forum (EDF), which represents the collective voice of 80 million people with disabilities at the EU level, has been very active in campaigning for increased political participation in the last decade.

Participating in directly representative organisations of persons with disabilities at the national level fosters a greater capacity to engage in consultation and decision-making processes. These non-electoral forms of civic engagement constitute a vital means by which people with disabilities can participate in grassroots advocacy in order to initiate change in their local communities. According to the European Union Agency for Fundamental Rights, DPOs play a 'major part in raising awareness among public authorities of the rights of persons with disabilities and can continue to do so through the further development of consultation mechanisms at all levels of government'.<sup>21</sup> Cera reinforces this view by stating that DPOs provide a 'valuable training ground for people with disabilities in political skills, participation and leadership' and are therefore a 'key component in addressing social exclusion, [...] self-advocacy and empowerment'.<sup>22</sup>

<sup>15</sup> See further M. Martinello, 'Political Participation, Mobilisation and Representation of Immigrants and their Offspring in Europe' (2005) Willy Brandt Series of Working Papers in International Migration and Ethnic Relations, 1/05. Malmo University, pp. 2-3. Martinello includes in this category the following: trade unions, pressure groups and community groups 'organised along ethnic, racial, national, cultural or religious lines, and participation in community groups with wider goals (either local, national or global)'.

<sup>16</sup> B. Andreosso-O'Callaghan and F. Royall (eds.), *Economic and Political Change in Asia and Europe: Social Movement Analyses* (Springer 2013), p. 185.

<sup>17</sup> See generally P. Norris, *Democratic Phoenix: Reinventing Political Activism* (Cambridge University Press 2002).

<sup>18</sup> R. Dalton, 'Citizenship Norms and the Expansion of Political Participation' (2008) *Political Studies* 56, 76–98, p. 93.

<sup>19</sup> Ibid.

<sup>20</sup> M. Priestley, M. Stickings, E. Loja, S. Grammenos, A. Lawson, L. Waddington, B. Fridriksdottir, 'The Political Participation of Disabled People in Europe: Rights, Accessibility and Activism' (2004) *Electoral Studies* 42, 1-37, p. 6 (page numbers cited according to the version available at [http://eprints.whiterose.ac.uk/94068/5/The\\_political\\_participation\\_of\\_disabled\\_people\\_in\\_Europe-author\\_final.pdf](http://eprints.whiterose.ac.uk/94068/5/The_political_participation_of_disabled_people_in_Europe-author_final.pdf), last accessed 11 September 2018).

<sup>21</sup> European Union Agency for Fundamental Rights, *The Right to Political Participation for Persons with Disabilities: Human Rights Indicators* (2014), p. 10.

<sup>22</sup> R. Cera, 'Article 29 [Participation in Political and Public Life]', in V. Della Fina, R. Cera & G. Palmisano (eds.) *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (Springer 2017), p. 537.



### 3. The International and European Legal Framework

Before addressing the overall trends concerning participation of persons with disabilities in political processes and the most commonly-occurring barriers to participation, it is important to briefly set out the legal framework that exists at the international and European levels.

Article 39 of the Charter of Fundamental Rights of the European Union guarantees all EU citizens the right to vote and to stand as a candidate in elections to the European Parliament, while Article 40 guarantees the same right in respect of municipal elections. Furthermore, Article 21 of the Charter enshrines the right to non-discrimination, including on the grounds of disability, while Article 26 articulates the right of persons with disabilities to benefit from measures to ensure their independence, social and occupational integration and participation in the life of the community.

Moreover, Article 20(2)(b) of the Treaty on the Functioning of the European Union (TFEU) is of paramount importance in this context.

#### Article 20(2)(b) of the Treaty on the Functioning of the European Union (TFEU)

Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, *inter alia*:

the right to vote and stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State.

The above-mentioned rights are further elaborated on in Article 22 TFEU and in secondary legislation. Council Directive 93/109/EC<sup>23</sup> specifies arrangements for the exercise of the right to vote and to stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals. Furthermore, Council Directive 94/80/EC<sup>24</sup> lays down such arrangements with regard to voting and standing as a candidate in municipal elections.

In addition, the EU's Disability Strategy 2010-2020 includes a specific commitment to 'address accessibility to voting in order to facilitate the exercise of EU citizens' electoral rights'.<sup>25</sup>

The right to political participation is enshrined in the CRPD, to which the EU is a party in its capacity as a regional integration organisation. Since the EU and its 28 Member States are Parties to the CRPD, they are bound by its obligations, and the UN Convention provides the 'global frame of reference'.<sup>26</sup> Article

<sup>23</sup> [1993] OJ L 329/34.

<sup>24</sup> [1994] OJ L 368/38.

<sup>25</sup> European Commission, 2010 (n 8 above).

<sup>26</sup> M. Priestley *et al.* (n 20 above), p. 3.





29 CRPD seeks to ensure the civic and political engagement of people with disabilities by obliging States Parties to ensure the right of persons with disabilities to participate in public and political life. The Thematic Study on Participation in Political and Public life by Persons with Disabilities,<sup>27</sup> published by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in 2011, points to the fact that Article 29 CRPD ‘does not foresee any reasonable restriction, nor does it allow any exceptions’<sup>28</sup> to the right to political participation for people with disabilities. The report also concludes that the ‘exclusion or restriction of political rights of persons with disabilities on the basis of disability may constitute “discrimination on the basis of disability” within the meaning of Article 2 of the Convention and is contrary to the Convention’.<sup>29</sup> The OHCHR draws attention to the fact that Article 29 CRPD imposes both negative obligations on States Parties, such as the obligation not to limit the right to vote, as well as positive obligations, including the duty to provide reasonable accommodations, in order to eliminate the barriers that prevent persons with disabilities from exercising their right to be elected on an equal basis with others.<sup>30</sup>

Article 29(1) emphasises the following electoral rights of persons with disabilities: the right to vote, to stand for election and to hold office without discrimination on an equal basis with others. According to the UN Special Rapporteur on Disability, Catalina Devandas, States Parties:

must guarantee the right of persons with disabilities to vote and to be elected [...] including by ensuring that the electoral process, the voting facilities and materials are adequate, accessible and easy to understand and use, and by facilitating the use of assistive and new technologies. States should also guarantee that voting by secret ballot can be carried out without intimidation, including through the assistance, at their request, of a person of their choice.<sup>31</sup>

According to the Special Rapporteur, the criteria established for public service positions must be ‘objective and reasonable’, and they must not directly or indirectly discriminate against persons with disabilities.<sup>32</sup> Moreover, States Parties to the CRPD:

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*‘must take all necessary measures, including the provision of reasonable accommodation and support, to guarantee to persons with disabilities the right and the opportunity to hold office effectively and perform any public function at any level of government on an equal basis with others [...]. States must take the specific measures necessary to accelerate or achieve de facto equality of persons with disabilities in accessing public service positions [Article 5], and enact policies and*

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<sup>27</sup> Office of the United Nations High Commissioner for Human Rights, *Thematic study on participation in Political and Public life by Persons with Disabilities*, UN Doc. A/HRC/19/36, 21 December 2011.

<sup>28</sup> Ibid, para. 29.

<sup>29</sup> Ibid, para. 69.

<sup>30</sup> Ibid, para. 46.

<sup>31</sup> Report of the Special Rapporteur on the Rights of Persons with Disabilities on the Right to Participate in Decision-Making, UN Doc. A/HRC/31/62, 12 January 2016, para. 19.

<sup>32</sup> Ibid, para. 21, citing United Nations Human Rights Committee, General Comment No. 25 (1996) on Participation in Public Affairs and the Right to Vote, para. 23.



*measures to ensure the employment of persons with disabilities in the public sector’.*<sup>33</sup>

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The second paragraph of Article 29 ‘deals with the participation of people with disabilities in public administration and the conduct of public affairs’, detailing that right in two subparagraphs<sup>34</sup> that focus on non-governmental organisations (NGOs) and other forms of group participation as well as freedom of association. The concept of ‘public affairs’ is deemed to be wider than electoral participation and includes participation in public debates and dialogues, as well as in peaceful demonstrations and meetings.<sup>35</sup> It is a broad concept that includes all aspects of public administration and policymaking and relates to the exercise of political power, including legislative, executive and administrative powers. It also covers participation in public debates and dialogues, as well as in peaceful demonstrations and meetings.<sup>36</sup> As acknowledged by the UN Special Rapporteur on disability, persons with disabilities may participate in the conduct of public affairs either directly or indirectly. Direct participation ‘entails deciding on public issues through a referendum or other electoral process as well as taking part in popular assemblies and in other consultative spaces established by the [s]tate to engage with its citizens’; while indirect participation ‘can be exercised by voting freely to elect representatives and through membership in civil society organisations’.<sup>37</sup>

Since Article 29 CRPD covers all aspects of political and public life, this includes membership in DPOs at the local, regional, national and international levels. According to the UN Special Rapporteur on disability, States Parties to the CRPD ‘should adopt a policy framework that facilitates [the] establishment and sustained functioning’<sup>38</sup> of DPOs. This should include ‘a review of the existing legislation, the provision of financial and other support, and the establishment of a formal mechanism recogni[s]ed by law ensuring that organi[s]ations of persons with disabilities can register as legal entities, participate and be consulted’.<sup>39</sup>

Numerous other CRPD articles underpin the realisation of the right to participate in political and public life, in particular, Article 12 CRPD on equal recognition before the law (legal capacity). Moreover, the social model of disability that underpins the UN Convention requires the removal of barriers that hinder the participation of individuals with impairments in society. In that regard, Article 9 CRPD imposes generalised accessibility obligations on States Parties, including in the sphere of political life, and Articles 2 and 5 CRPD impose a duty of reasonable accommodation on States Parties. The latter duty requires States Parties to ensure that public and private entities modify existing practices or policies, to remove the disadvantage at which a particular person with disabilities is placed by the way in which an activity (such as voting) is routinely carried out. Finally, Article 4(3) CRPD requires effective participation by, and active consultation with, people with disabilities and their representative organisations in all

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<sup>33</sup> Ibid, para. 21.

<sup>34</sup> R. Cera (n 22 above), p. 528.

<sup>35</sup> United Nations Human Rights Committee, General Comment No. 25 (1996) on Participation in Public Affairs and the Right to Vote, CCPR/C/21/Rev 1/Add 7, paras. 5, 8 and 25.

<sup>36</sup> Ibid.

<sup>37</sup> Report of the Special Rapporteur on the Rights of Persons with Disabilities (n 31 above), para. 23.

<sup>38</sup> Ibid, para. 39.

<sup>39</sup> Ibid. See United Nations Committee on the Rights of Persons with Disabilities, Concluding Observations on the Initial Report of Qatar, UN Doc. CRPD/C/QAT/CO/1, 2 October 2015, para. 10.



decision-making process that affect them; and Article 33(3) accords an active role to representative organisations of persons with disabilities and broader civil society in monitoring the Convention at the national level.

It is noteworthy that the CRPD adopts a gender perspective, through its cross-cutting Article 6. That article prohibits multiple and intersectional discrimination against women with disabilities. The cross-cutting nature of Article 6 CRPD means that it prohibits discrimination in all spheres of life, including with regard to the political participation of women with disabilities.

The CRPD's framework on political participation is complemented by other instruments of international law. On 10 March 2017, the Parliamentary Assembly of the Council of Europe adopted Resolution 2155, which states that:

political rights, such as the right to vote, stand for election and be elected, are fundamental human rights. Ensuring respect for the exercise of these rights by persons with disabilities does not mean creating a set of new rights or special rights for a specific category. Guaranteeing the respect of the political rights of persons with disabilities is a democratic issue relevant to the whole population, raising questions about the inclusiveness and efficiency of democratic systems.<sup>40</sup>

Additionally, the Venice Commission's Revised Interpretative Declaration to the Code of Good Practice in Electoral Matters on the Participation of People with Disabilities in Elections makes clear that people with disabilities should be able to exercise their right to vote on an equal basis with others.<sup>41</sup> The declaration identifies the five principles underlying Europe's electoral heritage: universal, equal, free, secret and direct suffrage. It states that 'universal suffrage means in principle that all human beings have the right to vote and to stand for elections', adding that, '[p]eople with disabilities should therefore be able to exercise their right to vote and participate in political and public life as elected representatives on an equal basis with other citizens'.<sup>42</sup>

On the basis of the above, it is clear that the EU legal framework and various instruments of international law, most notably the provisions of the CRPD, serve to direct institutions at EU and national levels towards ensuring the right to political participation of persons with disabilities in municipal, local and national elections as well as in European Parliament elections. Those frameworks and provisions also target the elimination of the multifaceted barriers that exist concerning the political participation of people with disabilities in the EU, an overview of which is provided in the next section of this report.

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<sup>40</sup> Parliamentary Assembly of the Council of Europe, Resolution 2155 on the Political Rights of Persons with Disabilities: A Democratic Issue (2017), para. 2.

<sup>41</sup> European Commission for Democracy through Law (Venice Commission), Revised Interpretative Declaration to the Code of Good Practice in Electoral Matters on the Participation of People with Disabilities in Elections, 19 December 2011, CDL-AD(2011)045.

<sup>42</sup> Ibid, p. 2.



## 4. Primary Barriers to the Political Participation of Persons with Disabilities in the EU

Having forged a definition of what electoral and non-electoral participation means and having outlined the legal framework at the international and European levels, the sub-sections below provide an overview of the situation regarding the political participation of persons with disabilities and address the barriers that hinder both active political participation (voting) and passive political participation (standing as a candidate in elections) in EU Member States in general.

### 4.1 Overview of Political Participation of Persons with Disabilities

Traditionally, research has shown that there is a clear gap in the level of political participation of people with disabilities when compared with individuals without disabilities. Priestley *et al.* point out that data emerging from the European Quality of Living Survey (EQLS) indicates that severe impairment 'decreased voting probability by 8 percentage points in comparison to people without impairments but that the negative association with moderate impairment was weak and not statistically robust'.<sup>43</sup> Similarly, the authors note that the EQLS and the European Union Statistics on Income and Living Conditions (EU-SILC) data indicate that people with impairments are:

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*'less likely to report participation in voluntary work, educational, social and political organi[s]ations, political parties and trade unions. Attendance at political meetings, [trade unions] and party membership were also lower'.<sup>44</sup>*

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Grammenos asserts that 'the degree of disability increases the rate of persons reporting difficulties voting in elections'.<sup>45</sup> However, research from the CIVICACTIVE Project indicates that the effect of disability itself on political participation is not fully clear. Steinbrecher notes that while severe disability does lead to greater passivity,<sup>46</sup> and although people without disabilities use more participation forms, on average, than persons with disabilities, 'there are no clear patterns' among EU countries, which means that it is not possible to state that persons with disabilities 'are systematically underrepresented among the participatory active groups of the societies of the [EU Member States]'.<sup>47</sup>

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<sup>43</sup> Priestley *et al.* (n 20 above), p. 22, citing the 3rd European Quality of Life Survey: Technical Report the European Foundation for the Improvement of Living and Working Conditions, Dublin (2014).

<sup>44</sup> *Ibid.*

<sup>45</sup> S. Grammenos, *European Comparative Data on People with Disabilities & Citizenship*, Centre for European Social and Economic Policy (CESEP ASBL) on behalf of the Academic Network of European Disability Experts (ANED) (December 2013), p. 11.

<sup>46</sup> M. Steinbrecher (n 14 above), p. 16.

<sup>47</sup> *Ibid.*, p. 28.



Due to a lack of statistical and disaggregated data, the exact extent of the gap in the levels of participation of persons with disabilities at all levels in the political sphere is difficult to articulate with certainty. In addition, other factors, such as age and gender have an important impact on levels of political participation.<sup>48</sup> It is reported that the majority of EU citizens with disabilities are older people who are above the normal working age, and that this proportion will increase if current demographic trends continue.<sup>49</sup> Political participation levels generally increase with age and decrease with female gender. However, as the frequency of disability also increases with age, the ‘age effect’ can often ‘dominate the disability effect’.<sup>50</sup> This is further complicated by gender factors, whereby the rates of political participation of women with (severe) disabilities is lower than that of men with disabilities. Therefore, because life expectancy for women is higher than that of men, the high number of elderly women with disabilities pushes down levels of political participation for persons with disabilities as a group.<sup>51</sup>

In spite of a lack of clear patterns and systematic and disaggregated data,<sup>52</sup> what is evident is that there is a ‘disability gap’<sup>53</sup> or ‘disability effect’<sup>54</sup> in the levels of participation in the political sphere. Steinbrecher posits that the reasons for the ‘disability gap’ may not be related directly to the impairment itself; rather, he argues that other factors are more significant.<sup>55</sup> There are two demographic characteristics that are directly related to voting, namely, a higher level of education and higher income/occupational status.<sup>56</sup> Schur and Adya contend that low participation rates among persons with disabilities may be attributable to ‘the combined and interactive effects of polling-place inaccessibility, social isolation, fewer economic resources, and perceptions that the political system is unresponsive [to their needs]’.<sup>57</sup>

Priestley *et al.* highlight the various data sources at the EU level that indicate the significant impact that disability has on political participation. The authors cite the SHARE data (sampling people aged over 50) to illustrate that ‘those reporting impairments were more likely to be dissatisfied with their non-participation in social, political and other activities’.<sup>58</sup> According to the authors, this reiterates ‘the concern that social or physical barriers as well as individual health limitations may be impeding full participation’, and this assertion ‘is further supported by data from the Flash Eurobarometer survey on Accessibility in 2012’.<sup>59</sup> In the latter survey, Priestley *et al.* report that ‘one in five (21.1%) respondents who reported that they or a member of their household had an impairment also reported difficulties

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<sup>48</sup> See, M. Priestley *et al.* (n 20 above), p. 21.

<sup>49</sup> European Union Agency for Fundamental Rights (n 21 above) p. 94.

<sup>50</sup> S. Grammenos (n 45 above), p. 70.

<sup>51</sup> *Ibid.*, p. 71.

<sup>52</sup> Notably, the data generally includes only those deemed ‘eligible’ to vote, excluding those persons with disabilities who might not even be considered part of the electorate. Conference of States Parties to the Convention on the Rights of Persons with Disabilities, 29 March 2018, Political participation and equal recognition before the law Note by the Secretariat, UN Doc. CRPD/CSP/2018/4, para. 8.

<sup>53</sup> See generally L. Schur, T. Schields and K. Schriener, ‘Can I Make a Difference? Efficacy, Employment, and Disability’ (2003) *Political Psychology* 24, 119-149.

<sup>54</sup> M. Priestley *et al.* (n 20 above), p. 23.

<sup>55</sup> M. Steinbrecher (n 14 above), p. 6.

<sup>56</sup> *Ibid.*, p. 5.

<sup>57</sup> L. Schur and M. Adya, ‘Sideline or Mainstreamed? Political Participation and Attitudes of People with Disabilities in the United States’ (2013) *Social Sciences Quarterly* 94(3), 811-839, p. 837.

<sup>58</sup> M. Priestley *et al.* (n 20 above), p. 23.

<sup>59</sup> *Ibid.*



voting in an election. These difficulties increased with the severity of impairment (28.4% severe; 14.2% moderate)<sup>60</sup>.

Across the EU Member States, a number of barriers to political participation are evident. The most commonly-occurring barriers are set out in table 2 below.

**Table 2: Main Barriers by Category**

Legal and administrative	<ul style="list-style-type: none"> <li>• Guardianship or interdiction regimes resulting in legal disenfranchisement</li> <li>• Legal and administrative restrictions during naturalisation procedures</li> <li>• Lack of mechanisms for voting for individuals living in institutions</li> <li>• Inadequate remedies</li> <li>• Requirements to register to vote</li> </ul>
Accessibility	<ul style="list-style-type: none"> <li>• Physical barriers to polling stations</li> <li>• Physical barriers that impede access to buildings where political activities take place</li> <li>• Lack of reasonable accommodations</li> <li>• Inaccessible voting information</li> <li>• Lack of accessibility of websites concerning political activities</li> <li>• An absence of standards and guidelines for measuring accessibility</li> </ul>
Institutional	<ul style="list-style-type: none"> <li>• Insufficient political will</li> <li>• Inadequate data</li> <li>• Lack of gender mainstreaming</li> <li>• Insufficient financial support to account for the additional resources that individuals with disabilities might need in order to campaign effectively</li> </ul>

The sub-sections that follow elaborate on the above-mentioned barriers, through a literature review concerning the participation of persons with disabilities in the political sphere in EU Member States generally.

## 4.2 Legal Restrictions to Political Participation

### 4.2.1 Legal Disenfranchisement based on Discriminatory Legal Capacity Assessments or Other Criteria

Seven EU Member States (**Austria, Croatia, Italy, Latvia, the Netherlands, Sweden and the United Kingdom**) explicitly guarantee equal voting rights for all, including those who are deemed not to have

<sup>60</sup> Ibid.



legal capacity.<sup>61</sup> The remaining EU Member States link the right of political participation to the legal capacity of the individual.<sup>62</sup> In the latter Member States, an automatic or quasi-automatic exclusion provision exists in the respective legal systems concerning the right to vote (and sometimes also the right to be a candidate in elections) for those individuals who are under partial or plenary guardianship regimes. Those exclusionary provisions primarily affect individuals with psychosocial or intellectual impairments.<sup>63</sup> Under guardianship regimes, no account is taken of the actual and/or individual level of functional ability of the person in question nor is account taken of his/her particular impairment. The OHCHR Thematic Report notes that only a limited number of states allow people with psychosocial or intellectual disabilities to participate as candidates in elections on an equal basis with others.<sup>64</sup> The report has described the limitations that are present in certain Member States' legal systems as reflecting 'an outdated and discriminatory approach to person with disabilities and their role in society' that is inconsistent with the CRPD.<sup>65</sup> The United Nations Committee on the Rights of Persons with Disabilities (the CRPD Committee) has unequivocally rejected any exclusion of persons with disabilities from the right to vote on the basis of an intellectual (or any other) disability.<sup>66</sup>

According to the 2014 report of the European Union Agency for Fundamental Rights, several EU Member States have a system in place whereby an assessment is made (usually by the judiciary) of an individual's actual ability to vote. In its contribution to the OHCHR Thematic Study, the International Disability Alliance (IDA) classifies the application of a 'proper judgment' test in voting matters (enabling a determination of whether a person is able to make a reasoned decision) as a form of discrimination, since it is only applied to people with disabilities.<sup>67</sup>

Under Article 3(1)(b) of **Spain's** 1985 Electoral Law, those who are declared incompetent by a court cannot vote.<sup>68</sup> Article 3(1)(c) prevents individuals who have been placed in psychiatric wards (by judicial decree) from voting, subject to the condition that they have been 'explicitly declared by a judge incapable of voting'.<sup>69</sup> In its Concluding Observations on the initial report of Spain, the CRPD Committee specifically recommends the removal of the Article 3 language noted above.<sup>70</sup> The Committee also expresses deep concern regarding the lack of information on opportunities for meaningful political participation of people with disabilities.<sup>71</sup>

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<sup>61</sup> Ibid, p. 13.

<sup>62</sup> See generally the synthesis report of L. Waddington, *Access to and Accessibility of Citizenship and Political Participation of People with Disabilities in Europe: Introduction to Two Related 2013 ANED Reports, Synthesis Report for the Academic Network of European Disability Experts* (2013).

<sup>63</sup> Office of the United Nations High Commissioner for Human Rights (n 27 above), para. 70.

<sup>64</sup> Ibid, para. 44; See also the European Union Agency for Fundamental Rights, *The Right to Political Participation of Persons with Mental Health Problems and Persons with Intellectual Disabilities* (Publications Office of the European Union, 2013).

<sup>65</sup> Office of the United Nations High Commissioner for Human Rights (n 27 above), para. 43.

<sup>66</sup> UN Committee on the Rights of Persons with Disabilities, UN Doc. CRPD/C/10/D/4/2011, *Zsolt Bujdosó and five others v. Hungary*.

<sup>67</sup> International Disability Alliance, contribution to OHCHR Thematic Study on the Participation of Persons with Disabilities in Political and Public Life, 15 October 2011. See also the comments of Inclusion Europe, *Participation in Political and Public Life: The Basis for People with Intellectual Disabilities to live as Equal Citizens*, Position Paper 2011, available at: <http://www.ohchr.org/EN/Issues/Disability/Pages/StudyPoliticalAndPublicLife.aspx>, last accessed 11 September 2018.

<sup>68</sup> Spain, Representation of the People Institutional Act 5/1985, of June 19, Article 3.

<sup>69</sup> Ibid.

<sup>70</sup> United Nations Committee on the Rights of Persons with Disabilities, Concluding Observations on the Initial Report of Spain, 2011, UN Doc. CRPD/C/ESP/CO/1, 19 October 2011, paras. 47 and 48.

<sup>71</sup> Ibid, para. 15.



In **Austria**, while people with disabilities are granted the right to vote and to be elected to political and public offices (including those under guardianship regimes), individuals living in institutions under medical supervision in the federal states of Burgenland and Lower Austria can be suspended from their right to vote for significant medical reasons.<sup>72</sup>

In **Croatia**, the 2013 country report of the Academic Network of Experts on Disability (ANED) notes that reforms enacted in 2012 granted individuals who had been previously deprived of legal capacity active voting rights, but those individuals still do not have passive voting rights (i.e. the right to be voted for and to run for office).<sup>73</sup>

A similar situation arises in **Finland**, where people with disabilities have an equal right to vote in all elections, but individuals under guardianship may not stand as candidates in those elections.<sup>74</sup>

In **Greece**, people who are under plenary guardianship (and who are therefore considered to lack legal capacity) have neither the right to vote nor the right to stand for political office.<sup>75</sup>

The foregoing deviations from the entitlement to exercise the right to vote (on the grounds of lack of legal capacity and detention in institutions) are not in compliance with the CRPD. In its General Comment No. 1, the CRPD Committee notes that a 'person's decision-making ability cannot be a justification for any exclusion of persons with disabilities from exercising all of their political rights, including the right to vote, the right to stand for election and the right to serve as a member of a jury'.<sup>76</sup> The Committee goes on to underline the positive obligations for States under Article 29 of the Convention and recommends that 'States [P]arties guarantee the right of persons with disabilities to stand for election, to hold office effectively and to perform all public functions at all levels of government, with reasonable accommodation and support, where desired, in the exercise of their legal capacity'.<sup>77</sup> The Committee affirms that all persons with disabilities have full legal capacity,<sup>78</sup> which includes 'the capacity to be both a holder of rights and an actor under the law'.<sup>79</sup> The denial of the legal capacity of persons with disabilities is strongly rejected by the Committee,<sup>80</sup> which recommends that

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<sup>72</sup> Information taken from L. Waddington (n 62), p. 64, citing M. Mayrhofer, 'Landtagswahlen und Direkte Demokratie', in E. Pürgy (ed.), *Das Recht der Länder*, (Vienna, 2012), 153-212.

<sup>73</sup> See the Academic Network of Disability Experts, Country Report on Citizenship and Political Participation for Croatia, p. 7, available at: <https://www.disability-europe.net/theme/political-participation?country=croatia>, last accessed 11 September 2018, citing Article 10 of the Law on Election of Members of the Croatian Parliament (Official gazette 120/2011) and Articles 80 and 93 of the Law on Local Election (Official gazette 144/2012).

<sup>74</sup> See the Academic Network of Disability Experts, Country Report on Citizenship and Political Participation in Finland (December 2013), p. 16, available at: <https://www.disability-europe.net/theme/political-participation?country=finland>, last accessed 11 September 2018, citing the Election Act 714/1998 and Guardianship Service Act 442/1999, Section 2, available at: <http://www.finlex.fi>, last accessed 11 September 2018.

<sup>75</sup> See the Academic Network of Disability Experts, Country Report on Citizenship and Political Participation in Greece (December 2013), p.5, available at: <https://www.disability-europe.net/theme/political-participation?country=greece>, last accessed 11 September 2018, citing Article 51(5) of the Greek Constitution and Article 128 of the Greek Civil Code (Presidential Decree 456/1984, modified by L.2447/1996).

<sup>76</sup> United Nations Committee on the Rights of Persons with Disabilities, General Comment No. 1, UN Doc. CRPD/C/GC/1, 19 May 2014, para. 48.

<sup>77</sup> Ibid, para. 49. See also, Office of the United Nations High Commissioner for Human Rights, *Factors that impede Equal Political Participation and Steps to overcome those Challenges*, UN Doc. A/HRC/27/29, 30 June 2014.

<sup>78</sup> United Nations Committee on the Rights of Persons with Disabilities (n 76 above) para. 8.

<sup>79</sup> Ibid, para. 12.

<sup>80</sup> Ibid, para. 15.





current substitute decision-making schemes, such as guardianship and interdiction, be eliminated and replaced by supported decision-making schemes.

#### **4.2.2 Legal Restrictions in Naturalisation Procedures**

A handful of EU Member States either completely deny individuals who have been deprived of their legal capacity the opportunity to naturalise or have complex procedures in place, which create barriers for persons with disabilities. Country reporters for the ANED provide evidence that a lack of legal capacity is an absolute bar to naturalisation in **Croatia** and **Cyprus**.<sup>81</sup> Such legal restrictions in naturalisation procedures inhibit political participation of people with disabilities, to the extent that the right to vote is intrinsically linked with the acquisition of nationality.<sup>82</sup> Those legal restrictions are often accompanied by administrative barriers in naturalisation procedures, and the latter form of barriers are discussed in section 4.3 below.

#### **4.2.3 A Lack of Remedies**

In addition to the barriers encountered by persons with disabilities in seeking to exercise their right to participate in the political sphere, further difficulties are often encountered in accessing complaints mechanisms where a denial of rights occurs. The research conducted by the European Union Agency for Fundamental Rights indicates that people who have been deprived of their legal capacity are barred under the law from bringing complaints related to political participation in the majority of EU Member States. The Agency's 2014 report found that in 19 EU countries, only persons with legal capacity could access complaints mechanisms related to political participation rights. In those jurisdictions, persons with disabilities who have been deprived of their legal capacity do not have independent or direct access to redress mechanisms (including from non-judicial institutions, such as national human rights institutions and equality bodies).<sup>83</sup> In addition, instances of complaint mechanisms deciding cases related to the political participation of persons with disabilities have been identified in only a quarter of EU Member States.<sup>84</sup> This might indicate a lack of awareness of such mechanisms at Member State level.

### **4.3 Administrative Barriers to Political Participation**

#### **4.3.1 Barriers in Naturalisation Procedures**

Waddington draws attention to the fact that certain administrative requirements for naturalisation (such as language and integration tests or income requirements) have the potential to discriminate against certain individuals with disabilities. In that regard, she cites 'people with disabilities who are unable to take the necessary tests in the standard way or people with intellectual disabilities who are

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<sup>81</sup> L. Waddington (n 62 above), p. 38.

<sup>82</sup> See generally M.P. Fink and G.R. de Groot, 'Citizenship Attribution in Western Europe: International Framework and Domestic Trends' (2010) *Journal of Ethnic and Migration Studies* 36(5), 713-734, at 714.

<sup>83</sup> European Union Agency for Fundamental Rights (n 21 above), p. 53

<sup>84</sup> *Ibid*, p. 8



unable to acquire the necessary knowledge at all or understand the oath of allegiance'.<sup>85</sup> Where adapted tests are not offered, some individuals with disabilities will be 'unable to meet the required standards and achieve naturalisation'.<sup>86</sup>

The ANED country experts point to the fact that, in **Austria**, neither the law nor the respective decree (*Verordnung*) refer to accessibility measures in respect of the tests that a non-national has to pass in order to acquire Austrian nationality, and the tests are not accessible for certain persons with disabilities. For example, there is no easy-to-read version of the test and there is no alternative format for testing (for persons with learning disabilities, for instance).<sup>87</sup>

In **Hungary**, applicants for naturalisation are required to pass both a language test and a test in basic constitutional studies.<sup>88</sup> Waddington highlights that while persons with limited legal capacity or without legal capacity may be exempted from the criteria, 'this seems potentially to exclude from the exemption a large number of other people with disabilities who may also face difficulties taking the test'.<sup>89</sup>

#### 4.3.2 A Lack of Mechanisms for Voting for Persons with Disabilities Living in Institutions

Institutional segregation has been identified as a further factor that hinders the political participation of people with disabilities.<sup>90</sup> Individuals living in long-term institutions can be prevented from voting by a lack of mechanisms to enable them to vote.<sup>91</sup> In addition, as identified by the European Union Agency for Fundamental Rights, if there is an active voter registration procedure, it may be particularly challenging for persons in institutions in cases where special arrangements are not made.<sup>92</sup>

In **Greece**, the ANED reported (in 2014) that the only possibility to vote was through attending the polling station in person, and no alternative voting methods are offered to persons with disabilities or any other voters.<sup>93</sup>

The **Hungarian** country reporter for ANED noted that no special rules exist for individuals living in institutions. Since these individuals 'usually have another place as their registered domicile, thus, they may go to vote at their registered domicile or ask to vote in a mobile voting booth'.<sup>94</sup> This does not, however, take account of the situation of those with severe impairments or those with intellectual or cognitive impairments, whose will may be overborne. It also does not take account of the fact that, as the OHCHR has pointed out:

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<sup>85</sup> L. Waddington (n 62 above), p. 15

<sup>86</sup> Ibid.

<sup>87</sup> The Academic Network of Disability Experts, Country Report on Citizenship and Political Participation in Austria (December 2013), p. 5. available at: <http://www.disability-europe.net/theme/political-participation?country=austria>, last accessed 11 September 2018.

<sup>88</sup> The Academic Network of Disability Experts, Country Report on Citizenship and Political Participation in Hungary (December 2013), p. 3, <http://www.disability-europe.net/theme/political-participation?country=hungary>, last accessed 11 September 2018.

<sup>89</sup> L. Waddington (n 62 above), p. 27.

<sup>90</sup> Organization for Security and Co-operation in Europe (n 6 above), p. 3.

<sup>91</sup> European Union Agency for Fundamental Rights (n 21 above), p. 8.

<sup>92</sup> Ibid, p.42.

<sup>93</sup> L. Waddington (n 62 above), p. 83.

<sup>94</sup> The Academic Network of Disability Experts (n 88 above), p. 9.



alternative ways of voting should be used only in cases where it is not possible, or it is extremely difficult, for persons with disabilities to vote in polling stations like everyone else [...]. General reliance on voting assistance and alternative voting as a way to ensure the political participation of persons with disabilities would not be consistent with the general obligations undertaken by States Parties under [the CRPD].<sup>95</sup>

#### 4.3.3 The Requirement to Register to Vote

The requirement to register to vote hinders the participation of many people with disabilities in politics, particularly people with intellectual disabilities. In many EU Member States, there is a lack of information on how to sign up to the electoral register. Some EU Member States have additional registration requirements for persons with disabilities. In **Italy**, for example, voters who would like to be accompanied to the polling station by a relative or another person must register with the relevant municipal electoral as a person with a permanent disability.<sup>96</sup> In the **UK**, a new individual electoral registration system has recently been introduced, requiring an individual to register and provide further identification. This means that voters with disabilities who could previously vote by post or by proxy will need to re-register.<sup>97</sup>

### 4.4 Accessibility Barriers to Political Participation

#### 4.4.1 Inaccessibility of Electoral Processes

Inaccessibility is a problem of considerable magnitude in the large majority of EU Member States, related both to the built environment and physical structures, as well as inaccessible technologies and information. Accessibility issues arise not only in election processes but also in other types of political activities. It can be particularly difficult for deaf people who use sign language, blind people and people with learning difficulties to access information and debates, both online and offline.

Voting booths are often inaccessible to people with certain disabilities, as are the broadcasts of election communications and debates. In addition, political offices present considerable accessibility barriers for elected representatives with disabilities. Polling stations often feature architectural barriers or a lack of easy-to-read signs as well as the unavailability of voting paper in Braille. Since polling stations in EU Member States are often the same for each type of election – local, national and European elections – the inaccessibility of polling stations can seriously hamper the right to vote of persons with disabilities at all levels.

Inaccessibility in rural areas can present a particular problem. This was highlighted by the **Austrian** country reporter for ANED, who remarks that:

with regard to physical accessibility, a quite large gap still exists between cities (especially Vienna) and the countryside. Whereas the city of Vienna, for example, provides website information with

<sup>95</sup> United Nations Office of the High Commissioner for Human Rights (n 27 above), paras. 58 and 74.

<sup>96</sup> European Union Agency for Fundamental Rights (n 21 above), p. 42, citing Italian Law No. 17, 5 February 2003.

<sup>97</sup> See section 5.7. below (case study on the UK).



regard to the General Election for the National Council (September 2013)<sup>98</sup> [...] polling stations and information about the election process in rural areas is not as comprehensive as in Vienna.<sup>99</sup>

The country reporter for ANED further highlights that ‘comprehensive accessibility [obligations are] not enshrined in the different levels of electoral legislation or for other public offices’.<sup>100</sup>

Lawson draws attention to the fact that, in **Austria, Greece and the Netherlands**, among other countries, the possibility of obtaining assistance for voting is limited to people who have physical or sensory impairments.<sup>101</sup>

Lawson also notes that, in 2014, there was ‘no evidence of significant initiatives to make the activities and communications of political parties accessible’ in **Croatia, the Czech Republic, Greece, the Netherlands, Portugal and Slovakia**.<sup>102</sup> among other countries. The ANED reporters note the same types of issues occurring in some EU Member States. For example, ‘disability related accessibility is rarely observed in the election activities of political parties’ in **Luxembourg**.<sup>103</sup>

Lawson also points to the fact that ‘surprisingly little evidence’ exists in EU Member States ‘about mechanisms for training electoral officials in issues connected with the accessibility of the electoral process’.<sup>104</sup> This concern is reiterated by the European Union Agency for Fundamental Rights, whose analysis shows ‘a lack of training and awareness raising efforts for important actors, such as election officials, political parties, public authorities and media providers, on how to fulfil the right of persons with disabilities to political participation’.<sup>105</sup>

Accessibility of websites is another glaring problem. This is an issue faced, in particular (but not only), by individuals with visual impairments throughout the EU Member States. In the **Netherlands**, for instance, ‘it is encouraged, but not obligated, that municipalities provide information on the list of candidates in Braille on request, publish general information on elections and on lists of candidates on accessible websites’.<sup>106</sup> Information on candidates or the election process is also not made available in Dutch sign language.<sup>107</sup>

Priestley *et al.* report that, in many EU Member States, websites providing information on how to complain about infringement of voting rights only partially meet internationally accepted web

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<sup>98</sup> This information is archived and available via <http://www.wien.gv.at/rk/msg/2013/09/01003.html>, last accessed 11 September 2018.

<sup>99</sup> The Academic Network of Disability Experts (n 87 above), p.22.

<sup>100</sup> *Ibid.*, p. 21.

<sup>101</sup> A. Lawson, *Access to and Accessibility of Citizenship and Political Participation of People with Disabilities in Europe: Introduction to Two Related 2013 ANED Reports Synthesis Report* (2013), p. 31.

<sup>102</sup> *Ibid.*, p. 40.

<sup>103</sup> The Academic Network of Disability Experts, Country Report on Citizenship and Political Participation in Luxembourg (December 2013), p. 9, <https://www.disability-europe.net/theme/political-participation?country=luxembourg>, last accessed 11 September 2018.

<sup>104</sup> A. Lawson (n 101 above), p. 22.

<sup>105</sup> European Union Agency for Fundamental Rights (n 21 above), p.

<sup>106</sup> The Academic Network of Disability Experts, Country Report on Citizenship and Political Participation in the Netherlands (December 2013), p. 6, <https://www.disability-europe.net/theme/political-participation?country=luxembourg>, last accessed 11 September 2018.

<sup>107</sup> *Ibid.*



accessibility standards (the WCAG 2.0 AA standards).<sup>108</sup>

In addition to the accessibility barriers experienced by people with disabilities during voting processes, there is a marked inaccessibility of political life for representatives with disabilities throughout EU Member States. For instance, the ANED reporter for **Portugal** notes that ‘for individuals holding elected office there are no requirements regarding the provision of reasonable accommodation in the law’.<sup>109</sup> In **Italy**, public bodies are required to respect the laws related to the removal of architectural and communicative barriers,<sup>110</sup> but ‘these are not always are enforced, and frequently in the case of elected persons happen only after the election’.<sup>111</sup> Furthermore, there is no reference to this issue in Italian law.<sup>112</sup>

#### 4.4.2 An Absence of Standards and Guidelines for Measuring Accessibility

The European Union Agency for Fundamental Rights points to the fact that there is a ‘lack of a common understanding of disability and the absence of harmonised EU standards for assessing accessibility made cross-country comparison difficult’.<sup>113</sup> Lawson states that ‘in the absence of common standards, understandings of “accessible” will differ from country to country and perhaps also from researcher to researcher’.<sup>114</sup> The absence of common standards on accessibility is also problematic in instances where there is no definition of accessibility at the national level. For instance, the ANED country reporter for **Austria** recounts that ‘accessibility is not defined in electoral regulations across Austria’.<sup>115</sup> In addition, ‘there are no regulations about accessible ballot paper templates, voting booths, hearing loops or voting information in plain language’.<sup>116</sup>

### 4.5 Institutional Barriers to Political Participation

#### 4.5.1 A Lack of Systematic Data Collection

At present, there is a glaring lack of disaggregated data on political participation by persons with disabilities in EU Member States.<sup>117</sup> The European Agency for Fundamental Rights identifies the main

<sup>108</sup> M. Priestley *et al.* (n 20 above) p. 16. However, in at least six EU Member States (the Czech Republic, Lithuania, Malta, Poland, Spain and Sweden), the website providing information on how to complain about infringement of voting rights does meet internationally accepted web accessibility standards.

<sup>109</sup> The Academic Network of Disability Experts, Country Report on Citizenship and Political Participation in Portugal (December 2013), p. 6, <https://www.disability-europe.net/theme/political-participation?country=portugal>, last accessed 11 September 2018.

<sup>110</sup> DPR 506/96 and DM 236/89.

<sup>111</sup> Academic Network of Disability Experts, Country Report on Citizenship and Political Participation in Italy (December 2013), p. 7, <https://www.disability-europe.net/theme/political-participation?country=italy>, last accessed 11 September 2018.

<sup>112</sup> *Ibid.*

<sup>113</sup> European Agency for Fundamental Rights (n 21 above), p. 11.

<sup>114</sup> A. Lawson (n 101 above), p. 24.

<sup>115</sup> The Academic Network of Disability Experts (n 87 above), p.22.

<sup>116</sup> *Ibid.*

<sup>117</sup> The Committee has explicitly addressed this issue in its concluding observations relating to article 29 (see UN Doc [CRPD/C/CYP/CO/1](#), para. 58, and UN Doc. [CRPD/C/LTU/CO/1](#), para. 58 (c)).



barriers with regard to data collection concerning political participation as being, among others, a lack of systematic data collection and concerns about existing methodologies.<sup>118</sup>

The low levels of systematic data collection in EU Member States is concerning. This issue traverses all spheres of the election process – local, national and European elections. Lawson has identified ‘a serious lack of systematically collected statistical and other data on the accessibility of voting’ in EU Member States.<sup>119</sup> Priestley *et al.* note that in **13 out of the 28 EU Member States**, ‘no source of information on polling station accessibility could be identified’.<sup>120</sup> In **12 EU Member States**, some official data had been collected by public authorities ‘but it was often incomplete, either because it covered only certain cities or provinces or because it only considered accessibility for people with certain types of impairment (such as wheelchair users)’.<sup>121</sup>

#### **4.5.2 Concerns about Existing Methodologies for capturing the Experiences of Persons with Disabilities.**

Frequently, existing data focuses on the situation for persons with physical impairments and does not include other persons with disabilities who sometimes face barriers to political participation that are not as visible. It has been claimed that there is *de facto* exclusion of certain individuals with disabilities from certain survey data – for example, individuals living in institutions or persons who do not communicate through verbal methods.<sup>122</sup> This underlines the need to ensure that data is ‘targeted, comparable and can be broken down, for example, by age, gender and type and severity of impairment so that they accurately and reliably capture the experiences of those with disabilities’.<sup>123</sup> In addition, the OSCE notes that ‘classic data-collection methodologies, such as door-to-door, telephone and Internet interviews, can disproportionately exclude persons with certain types of disabilities, for example persons living in institutions or persons with hearing or intellectual disabilities’.<sup>124</sup> According to the OSCE, ‘it can be especially difficult to collect data about persons with psychosocial and other “invisible” disabilities, for example because of prevailing societal stigmas’.<sup>125</sup>

A study in Nordrhein-Westfalen, **Germany** reveals that there is a lack of empirical data on the participation of people with intellectual or learning difficulties. The data that does exist is usually limited to certain aspects of participation (for instance, participation in the community or in the design of assistance) and rarely targets the idea of political participation.<sup>126</sup>

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<sup>118</sup> European Union Agency for Fundamental Rights (n 21 above), p. 11.

<sup>119</sup> A. Lawson (n 101 above), p. 27. A similar point was made by the OHCHR in 2011, when it reported that ‘only a few respondent [s]tates collect statistical information on the inclusion of persons with disabilities in political and public life’ [Office of the United Nations High Commissioner for Human Rights (n 27 above), para 63].

<sup>120</sup> M. Priestley *et al.* (n 20 above), p. 24.

<sup>121</sup> *Ibid.*

<sup>122</sup> European Agency for Fundamental Rights (n 21 above), p. 11.

<sup>123</sup> *Ibid.*, p. 11.

<sup>124</sup> Organization for Security and Co-Operation in Europe, (n 6 above) pp. 36 and 37.

<sup>125</sup> *Ibid.*

<sup>126</sup> Landesarbeitsgemeinschaft Selbsthilfe Nordrhein-Westfalen, *Politische Partizipation von Menschen mit Behinderungen in den Kommunen stärken*, p. 212, available at [https://lag-selbsthilfe-nrw.de/wp-content/uploads/2015/12/LAG-Abschlussbericht\\_final\\_2016-01-12\\_barrierefrei.pdf](https://lag-selbsthilfe-nrw.de/wp-content/uploads/2015/12/LAG-Abschlussbericht_final_2016-01-12_barrierefrei.pdf), last accessed 11 September 2018.



### 4.5.3 Gender Barriers: A Lack of Political Voice and Multiple/Intersectional Discrimination

The situation of women with disabilities merits special attention, since they are discriminated against in several respects with regard to their participation in society. In all EU Member States, the proportion of women with disabilities is considerably higher than that of men with disabilities. This is largely explained by the fact that women live longer than men, on average, and by the increased occurrence of disability later in life.<sup>127</sup>

The voices of women with disabilities are often not incorporated in mainstream decision-making processes on gender and disability, and those processes often do not address their specific needs.<sup>128</sup>

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*“The specific needs of women with disabilities remain usually out of the public and political debate, and the intersectional approach remains mostly a field for researchers and academic debate. The double discrimination faced by women with disabilities is also not a priority in the agenda of associations of people with disabilities, and even when it has been incorporated in the discourse, it has not been embraced by policymakers”.*<sup>129</sup>

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In its General Comment no. 3, the CRPD Committee recognises that ‘women and girls with disabilities face barriers in most areas of life’.<sup>130</sup> The Committee draws attention to the multiple and intersectional discrimination experienced by women, regarding, among others, the ability to participate in the political sphere.<sup>131</sup> The UN Special Rapporteur on disability has also drawn attention to the specific historical barriers encountered by women and girls with disabilities in participating in public decision-making processes:

due to power imbalances and multiple forms of discrimination, they have had fewer opportunities to establish or join organisations that can represent their needs as women and persons with disabilities.<sup>132</sup>

The Council of Europe’s Report on Discrimination against Women with Disabilities states that, at the broadest level, women with disabilities are ‘considerably more disadvantaged’ with regard to political participation than women generally and that ‘the problem starts at the most basic level: very often they have no means of making their voice heard and it is other people who speak on their behalf’.<sup>133</sup> The

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<sup>127</sup> European Union Agency for Fundamental Rights (n 21 above), p. 94.

<sup>128</sup> See generally R. Traustadottir, ‘Disability and Gender: Introduction to the Special Issue’ (2006) *Scandinavian Journal of Disability Research* 8(2-3), 81-84.

<sup>129</sup> European Parliament, *Discrimination and Access to Employment for Female Workers with Disabilities* (Publications Office of the European Union 2017), p. 15. In addition, see generally European Parliament, *Discrimination engendered by the Intersection of Gender and Disability* (Publications Office of the European Union 2013).

<sup>130</sup> United Nations Committee on the Rights of Persons with Disabilities, General Comment no. 3 on Women and Girls with Disabilities, UN Doc. CRPD/C/GC/3, 25 November 2016, para. 2.

<sup>131</sup> *Ibid.*

<sup>132</sup> *Ibid.*, para. 23. See also Special Rapporteur on the Rights of Persons with Disabilities (n 31 above), para. 58.

<sup>133</sup> Council of Europe, Report on Women with Disabilities (Council of Europe Publishing, 2003), available at: <https://rm.coe.int/16805a2a17> last accessed 11 September 2018. See also [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/602067/IPOL\\_STU\(2017\)602067\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/602067/IPOL_STU(2017)602067_EN.pdf) last accessed 11 September 2018.



report suggests that there is an absence of women with disabilities in public life – they do not hold high-profile posts in key areas, such as politics, business and the public services, and are not visible on television or in the media.

States Parties to the CRPD are expressly required to prohibit multiple and intersectional discrimination,<sup>134</sup> including in the area of political and public life. Article 6 CRPD refers only to ‘multiple discrimination’; however, the CRPD Committee reads a prohibition of intersectional discrimination into the Convention’s provisions.<sup>135</sup> The Committee distinguishes between the two forms of discrimination in its General Comment No. 6 on equality.<sup>136</sup> It states that ‘multiple discrimination’ constitutes ‘a situation where a person can experience discrimination on two or several grounds, in the sense that discrimination is compounded or aggravated’.<sup>137</sup> Intersectional discrimination, on the other hand, ‘refers to a situation where several grounds operate and interact with each other at the same time in such a way that they are inseparable and thereby expose relevant individuals to unique types of disadvantage and discrimination’.<sup>138</sup> In its Recommendation CM/Rec(2011) 14, the Committee of Ministers calls on Member States to implement the Disability Action Plan provisions related to political participation and to conduct ‘positive actions likely to encourage women and men with disabilities’.<sup>139</sup> All EU Member States will also have to pay attention to the gender aspects of political participation in their laws and policies.

#### 4.5.4 Inadequate Political Will and Insufficient Resources

In addition to inadequate political will on the part of the authorities of certain Member States, there is often inadequate financial support to account for the additional resources that individuals with disabilities might need in order to campaign effectively. The Organization for Security and Co-operation in Europe (OSCE) affirms that limited support and funding for political participation has a role to play in including people with disabilities within political processes, particularly in ensuring that they have opportunities to stand as candidates for elections.<sup>140</sup> In several EU Member States, political officials with disabilities are not entitled to financial allowances or extra assistance to address their needs. This is the case, among other Member States, in **Portugal**.<sup>141</sup>

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<sup>134</sup> United Nations Committee on the Rights of Persons with Disabilities, General Comment No. 6 on equality and non-discrimination (2018), UN Doc. CRPD/C/GC/6, 26 April 2018, para. 68(d).

<sup>135</sup> *Ibid.*, para. 36.

<sup>136</sup> It is noteworthy that, in the decision of the United Nations Committee on the Elimination of all Forms of Discrimination against Women, individual communication, *R.P.B. v Philippines* (2014), UN Doc. CEDAW /C/57/D/34/2011, 12 March 2014, the Committee also referred to the CRPD in the context of gender and disability stereotyping in a rape trial.

<sup>137</sup> United Nations Committee on the Rights of Persons with Disabilities (n 134 above), para. 19.

<sup>138</sup> *Ibid.*

<sup>139</sup> Committee of Ministers of the Council of Europe, Recommendation CM/Rec(2011)(14) on the Participation of Persons with Disabilities in Political and Public life, 16 November 2011.

<sup>140</sup> Organization for Security and Co-operation in Europe (n 6 above), p. 3.

<sup>141</sup> The Academic Network of Disability Experts, (n 109 above), p. 4, <https://www.disability-europe.net/theme/political-participation?country=portugal>, last accessed 11 September 2018.





## 5. Case studies

This section of the report presents several case studies designed to outline (in greater detail) the most prevalent issues facing people with disabilities in seeking to exercise their political participation, both at the EU level and in a selection of EU Member States (Bulgaria, Denmark, Estonia, Germany, Ireland and the United Kingdom). As well as focusing on barriers to participation, the sub-sections that follow highlight the laws, policies and initiatives as well as good practices that have been adopted with regard to the political participation of persons with disabilities.

### 5.1 The EU Level

At the EU level, the issue of political participation has come to the fore in a more prominent way since the adoption of the CRPD, to which the EU is a Party. In recent years, the EU institutions have increased their efforts to bring the political participation of persons with disabilities on the policy and legislative agenda. However, certain

#### Main barriers to the political participation of persons with disabilities

The CRPD Committee notes with deep concern that, across the EU Member States, persons with disabilities, especially those deprived of their legal capacity or residing in institutions, cannot exercise their right to vote in elections.<sup>142</sup> EU legislation on elections takes the form of Council Directive 93/109/EC (concerning elections to the European Parliament) and Council Directive 94/80/EC (laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals. Waddington draws attention to the fact that Council Directive 93/109/EC is ‘particularly problematic’ in light of the CRPD:

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*“since a civil law decision, such as a withdrawal of legal capacity which brings with it an automatic deprivation of the right to stand for election, in either the Member State of nationality of the Member State of residence, will always lead to an individual being denied the right to stand for election to the European Parliament in the Member State of residence”.*<sup>143</sup>

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<sup>142</sup> See United Nations Committee on the Rights of Persons with Disabilities, Concluding Observations on the Initial Report of the EU, 2 October 2015, UN Doc. CRPD/C/EU/CO/1, 2 October 2015, para. 68.

<sup>143</sup> L. Waddington (n 62 above), p. 12. Emphasis added.



In addition, 'the withdrawal of the right to vote in the Member State of nationality *may* also lead to an individual being denied the *right to vote* in elections to the European Parliament in the Member State of residence'.<sup>144</sup>

Waddington points to a further anomaly existing under EU law, specifically under Council Directive 94/80/EC concerning municipal elections, whereby:

an EU citizen *can be* precluded from standing as a candidate in municipal elections in their state of residence if they have been deprived of their right to stand as a candidate through an individual decision under civil or criminal law in their Member State of nationality.<sup>145</sup>

She argues that this gives rise to a risk of persons with disabilities being exposed to 'a double disadvantage' in more than one EU Member State.<sup>146</sup>

In 2016, the CRPD Committee also expressed concern that participation in elections is not fully accessible in the EU<sup>147</sup> and that the 'EU [had] neither mainstreamed a disability perspective in all its gender policies, programmes and strategies, nor adopted a gender perspective in its disability strategies'.<sup>148</sup>

### **Good practice/promising initiatives**

The EU institutions have responded to some of the points mentioned above and have adopted numerous initiatives seeking to promote the participation of persons with disabilities in political and public life. On 7 July 2016, the European Parliament adopted a Resolution on the implementation of the CRPD. Notably, the Resolution followed up on the recommendations received by the EU during the EU-UN Constructive Dialogue that was concluded in August 2015.<sup>149</sup> In the Resolution, the European Parliament 'recalls that the Committee on Petitions receives a considerable number of petitions from persons with disabilities every year related, *inter alia*, to their participation in political and public life', and, in that regard, the Parliament stresses the importance of Article 29 CRPD.<sup>150</sup> The Parliament further 'acknowledges that the CRPD has proved to be a positive and key instrument for promoting law reform and requiring Member States to re-examine how persons with disabilities are perceived'.<sup>151</sup> The Parliament affirms that it considers 'full and complete access to the political system for all persons with disabilities to be a priority', and it recognises that this access must be more than mere physical access to cast a vote and should include:

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<sup>144</sup> Ibid. Emphasis added.

<sup>145</sup> Ibid.

<sup>146</sup> Ibid.

<sup>147</sup> United Nations Committee on the Rights of Persons with Disabilities (n 142 above), para. 68.

<sup>148</sup> Ibid, para. 20.

<sup>149</sup> European Parliament Resolution of 7 July 2016 on the Implementation of the UN Convention on the Rights of Persons with Disabilities, with special regard to the Concluding Observations of the UN CRPD Committee ([2015/2258\(INI\)](#)); See also the Report on the implementation of the UN Convention on the Rights of Persons with Disabilities, with special regard to the Concluding Observations of the UN CRPD Committee, (2015/2258(INI)), 9 June 2016.

<sup>150</sup> European Parliament Resolution of 7 July 2016 on the Implementation of the UN Convention on the Rights of Persons with Disabilities, with special regard to the Concluding Observations of the UN CRPD Committee ([2015/2258\(INI\)](#)), para. 160.

<sup>151</sup> Ibid, para. 61.



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*'a wide range of initiatives to open up the democratic process to all citizens [...] Braille and easy-to-read election material, complete provision of the necessary assistance to persons with disabilities during voting procedures, the promotion of postal and proxy voting when possible, and the removal of barriers to those citizens with disabilities wishing to stand for election, as well as action to address existing rules regarding legal capacity and their impact on the ability of individuals to participate fully in the democratic process'.<sup>152</sup>*

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The Resolution highlights the fact that women and girls with disabilities, in particular, are exposed to discrimination. In that connection, it is worth noting that the Gender Equality Strategy 2016-2019<sup>153</sup> also acknowledges this and allocates responsibility to the Directorate-General for Justice and Consumers (DG JUST) to consider measures to improve the gender balance in political decision-making. The Strategy also allocates responsibility to DG JUST to continue to encourage Member States and support national authorities' activities promoting gender balance in political and public decision-making positions. The Strategy affirms that 'particular attention will be paid' in the EU action to the 'specific needs of groups facing multiple disadvantages', such as women with disabilities and Roma.<sup>154</sup>

The European Disability Strategy 2010-2020 provides a framework for action at the European and national levels, 'to address the diverse situation of men, women and children with disabilities'.<sup>155</sup> The Strategy states that the Commission 'will work to overcome the obstacles to exercising their rights as [...] political actors'.<sup>156</sup> In its Resolution on the implementation of the 2010-2020 Strategy, the European Parliament notes that, in spite of the existence of numerous international conventions, EU and national legislation and strategies, persons with disabilities still do not have the opportunity to participate fully in society and enjoy their rights. The European Parliament further observes that the participation of persons with disabilities can only be achieved if they are included in political and public life, where they are often under-represented, in accordance with Article 29 UNCRPD.<sup>157</sup> In that light, the Parliament calls on the European Commission to ensure that the future Disability Strategy (2020-2030):

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*'aims at fully implementing the UNCRPD in all areas of EU policy and at mainstreaming accessibility, participation, non-discrimination and equality, encompassing all articles of the UNCRPD and that it include an adequate budget, a timeframe for implementation and a monitoring mechanism, as well as having the same legal value as the current strategy'.<sup>158</sup>*

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<sup>152</sup> Ibid.

<sup>153</sup> European Commission, *Strategic Engagement for Gender Equality 2019-2020* (Publications Office of the EU, 2016), available at: [https://ec.europa.eu/info/sites/info/files/strategic\\_engagement\\_en.pdf](https://ec.europa.eu/info/sites/info/files/strategic_engagement_en.pdf), last accessed 11 September 2018.

<sup>154</sup> Ibid, p. 9.

<sup>155</sup> European Commission (n 8 above) para. 1.

<sup>156</sup> Ibid, para. 2.2.2.

<sup>157</sup> European Parliament resolution of 30 November 2017 on the implementation of the European Disability Strategy (2017/2127(INI)), preamble para. q.

<sup>158</sup> Ibid, para. 119.



The European Economic Social Committee's Permanent Study Group on Disability Rights organised a public hearing on 'Women with Disabilities in the EU: Situation and Way Forward' on 9 February 2018. In addition, the European Union Agency for Fundamental Rights (which forms part of the independent CRPD monitoring framework at EU level) recently intervened at a conference organised by the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE). The conference took place in Vienna from 16 to 17 April 2018. The conference served as a platform to raise awareness of the limited participation of women with disabilities in political life and to identify positive measures that can facilitate more diverse and inclusive democratic institutions and parliaments, including through ensuring a closer co-operation with women's networks and organisations.

The European Parliament also debated the issue of the political participation of persons with disabilities on 5 July 2018. Interveners at the debate were, among others, the Commissioner for Justice, Consumers and Gender Equality, Věra Jourová, and 26 Members of the European Parliament (MEPs) as well as several members of the Disability Intergroup of the European Parliament. The interventions from MEPs focused on three rights that persons with disabilities are still not able to fully enjoy: the right to vote (lack of accessibility to polling stations and ballots); the right to information in accessible formats (both information about elections campaigns and the electoral process itself); and the right to stand in elections and be elected.

## 5.2 Case Study on Bulgaria

Electoral rights in the Republic of Bulgaria are governed, among other legislative acts, by the 1991 Constitution of the Republic of Bulgaria<sup>159</sup> and by the 2014 Electoral Code.<sup>160</sup> The Constitution provides for equality before the law for all individuals, and it contains a prohibition of discrimination that applies to all, including persons with disabilities.<sup>161</sup> Universal, equal and direct suffrage by secret ballot at all elections and referenda is established in the Constitution.<sup>162</sup> The Electoral Code allows certain groups of voters, including people with disabilities, those in hospitals or institutions, to cast their vote in an alternative manner, where required.<sup>163</sup> This usually takes the form of mobile voting, if at least 10 voters with permanent disabilities that prevent them from exercising their voting rights have requested it.

The Electoral Code facilitates voting by persons with disabilities through mobile polling stations, allowing voters with limited mobility and visual disabilities to vote at any polling station of their choice, and it enables assisted voting. It does not treat mobile EU citizens differently than Bulgarian nationals,

### Article 234, Section VIII, Bulgarian Election Code

<sup>159</sup> Bulgaria, Constitution of the Republic of Bulgaria, SG No. 56/13 Jul 1991 [amended by SG 85/26 Sep 2003, SG 18/25 Feb 2005, SG 27/31 Mar 2006, SG 78/26 Sep 2006 - Constitutional Court Judgment No.7/2006, SG 12/6 Feb 2007]. <http://www.parliament.bg/en/const>, last accessed 11 September 2018.

<sup>160</sup> Bulgaria, Electoral Code, SG No. 19/5.03.2014. English version available at <https://www.cik.bg/en/laws>, last accessed 11 September 2018.

<sup>161</sup> Article 6 of the Constitution of Bulgaria (n 159 above).

<sup>162</sup> Article 10 of the Constitution of Bulgaria (n 159 above).

<sup>163</sup> Article 28 and 37 of the Electoral Code (n 160 above).

(1) Not later than seven days in advance of polling day, the constituency election commission or the municipal election commission shall announce, in an appropriate manner through the mass communication media, the measures enabling visually impaired voters or voters with ambulant difficulties to vote on polling day.

(2) The announcement referred to in Paragraph (1) shall state a telephone number and an address at which assistance can be requested on polling day [...]



according to survey data received through the EU-CITIZEN project.<sup>164</sup>

## Main barriers to the political participation of persons with disabilities

A key problem that persists in Bulgaria with regard to the political participation of people with disabilities concerns the restrictive Bulgarian laws on legal capacity.<sup>165</sup> As it currently stands, all individuals under partial or plenary guardianship are not entitled to exercise the right to elect state and local authorities or vote in referenda, according to Article 42, paragraph 1 of the Bulgarian Constitution as well as Articles 3 and 4 of the Electoral Code.<sup>166</sup> Those individuals have no active or passive rights to vote and are placed on the so-called 'prohibited voter list'. The right to elect members of the European Parliament is also not permitted for those under guardianship.

In March 2017, the international election observation mission to the Republic of Bulgaria of the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE took place. During that mission, it was noted that, while the Bulgarian legal framework is conducive to the holding of democratic elections on the whole, some areas would benefit from review, such as the long-standing OSCE/ODIHR and Venice Commission recommendations on suffrage rights, including limitations of the right to vote.<sup>167</sup> As far back as 2007, a report entitled *Guardianship and Human Rights in Bulgaria; Analysis of Law, Policy and Practice* was issued by the Mental Disability Advocacy Centre (MDAC). It drew attention to the situation in Bulgaria, namely the fact that 'Bulgarian guardianship laws and practices fail to meet basic international standards'.<sup>168</sup> In response to numerous claims by NGOs and a ruling of the European Court of Human Rights (ECtHR),<sup>169</sup> the Bulgarian Government engaged in a review of the relevant national legislation in an attempt to bring it in line with Article 12 CRPD.<sup>170</sup> In 2015, the Bulgarian government informed the CRPD Committee that it had sought (and was continuing to seek) ways to implement supported decision-making for people with disabilities and to implement legislative changes, in order to amend the law on legal capacity and to implement supported decision-making.<sup>171</sup> An expert group was charged with carrying out the foregoing task. The group was composed of experts from the Ministry of Justice, the Ministry of Labour and Social Policy, the Ministry of Health, the Agency for Social Assistance,

<sup>164</sup> Respondent no. 1 from the survey data on file with the Centre for European Policy Studies, Brussels.

<sup>165</sup> See <http://www.bghelsinki.org/en/news/press/single/delayed-reform-and-implementation-rights-persons-disabilities-bulgaria/>, last accessed 11 September 2018.

<sup>166</sup> See the Bulgarian Helsinki Committee, *Alternative Report about the Rights of Persons with Disabilities in Bulgaria under the UN Convention on the Rights of Persons with Disabilities*. Available at: [https://tbinternet.ohchr.org/Treaties/CRPD/Shared%20Documents/BGR/INT\\_CRPD\\_ICO\\_BGR\\_27646\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CRPD/Shared%20Documents/BGR/INT_CRPD_ICO_BGR_27646_E.pdf), last accessed 11 September 2018.

<sup>167</sup> Organization for Security and Co-operation in Europe, *International Election Observation Mission to the Republic of Bulgaria on the Early Parliamentary Elections*, 26 March 2017. See further <https://www.osce.org/odihr/elections/bulgaria/301191>, last accessed 11 September 2018.

<sup>168</sup> Mental Disability Advocacy Centre, *Guardianship and Human Rights in Bulgaria; Analysis of Law, Policy and Practice* (2007) [http://mdac.info/sites/mdac.info/files/English\\_Guardianship\\_and\\_Human\\_Rights\\_in\\_Bulgaria.pdf](http://mdac.info/sites/mdac.info/files/English_Guardianship_and_Human_Rights_in_Bulgaria.pdf), last accessed 11 September 2018.

<sup>169</sup> European Court of Human Rights, *Stanev v. Bulgaria*, Application No. 36760/06, 12 January 2012. For a summary of the decision, see Joseph Dute, 'ECHR 2012/8 Case of *Stanev v. Bulgaria*, 17 January 2012, no. 36760/06 (Grand Chamber)' (2012) *European Journal of Health Law* 19(3) 305-311.

<sup>170</sup> Bulgaria, *National Strategy for Persons with Disabilities 2016-2020*, available at <http://www.strategy.bg/FileHandler.ashx?fileId=9439>, last accessed 11 September 2018.

<sup>171</sup> See generally Bulgaria, *Replies to the CRPD Committee's List of Issues*, UN Doc. CRPD/C/BGR/Q/1/Add.1, 29 October 2015.



representatives of the Ombudsman, of the judicial system, and representatives of organisations of and for people with disabilities as well as human rights organisations. However, due to the termination of the powers of the 43rd National Assembly, no progress was made with regard to adopting the proposed legislative reforms.<sup>172</sup> To date, no change has taken place regarding the voting and other political participation rights of persons with psychosocial or intellectual disabilities, and all individuals who are under partial or plenary guardianship are still exempt from the right to elect state and local authorities or vote on referenda according to Article 42(1) of the Bulgarian Constitution. It is notable that the ECtHR is currently examining the case of a Bulgarian man who was not allowed to vote in the May 2017 parliamentary elections due to his placement under partial guardianship.<sup>173</sup>

Accessibility also appears to be a problem of great magnitude in Bulgaria. While the law provides for specific measures in respect of persons with disabilities, including mobile ballot boxes, a 2016 report pointed to the fact that ‘most buildings used as polling stations, including schools and kindergartens, continued to be inaccessible, which made those specific measures pointless’.<sup>174</sup> In 2013, the ANED country reporters noted that there was ‘no specific disability-oriented research on the election process ‘that would reveal the real barriers that people with disabilities face in the political process.’<sup>175</sup> The ANED country reporters<sup>176</sup> also noted that most of the election observers – both domestic and international – ‘conclude that in reality accessibility was not in place’ to allow people with disabilities to exercise their voting rights despite the requirements of the law and by-laws’.<sup>177</sup> Data from surveys conducted through the EU-CITZEN project also reveals that the lack of e-voting in Bulgaria hinders the political participation of certain individuals with disabilities.<sup>178</sup>

### Good practice/promising initiatives

In terms of general participation in policy processes, national representative organisations of (and for) people with disabilities are allowed to participate in the National Council for the Integration of Persons with Disabilities, which is an advisory body to the Bulgarian Council of Ministers. This participatory process is designed to enable the co-operation of people with disabilities in the development and implementation of policies to ensure their participation and inclusion. The possibility for the council to participate in policy process represents a positive step towards ensuring the participation of persons with disabilities in all aspects of CRPD implementation.

Bulgaria has also adopted awareness-raising measures on the rights of persons with disabilities and has liaised with civil society in pursuing those measures. Survey data collected by the EU-CITZEN project

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<sup>172</sup> Ibid, para. 116.

<sup>173</sup> European Court of Human Rights, *Marinov v Bulgaria*, Application No. 26081/17. See <http://validity.ngo/bulgaria-validity-intervenues-at-european-court-of-human-rights-on-voting-rights-of-people-with-disabilities/>, last accessed 11 September 2018.

<sup>174</sup> US Department of State, ‘Bulgaria Human Rights Report’ (2016), p. 31.

Available at: <https://www.state.gov/documents/organization/277393.pdf>, last accessed 11 September 2018.

<sup>175</sup> The Academic Network of Disability Experts, Country Report on Citizenship and Political Participation in Bulgaria (December 2013), p. 6, available at: <http://www.disability-europe.net/theme/political-participation?country=bulgaria>, last accessed 11 September 2018.

<sup>176</sup> Ibid, p. 5.

<sup>177</sup> Ibid. See the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe, Final report on the Parliamentary Elections, 12 May 2013, available at <http://www.osce.org/odihr/elections/103878>, last accessed 11 September 2011.

<sup>178</sup> Respondent no. 1 from the survey data on file with the Centre for European Policy Studies, Brussels.



reveals that, in cooperation with CSOs, the Central Election Commission implements a specialised information and awareness-raising campaign for persons with disabilities through audio-visual images funded by the state budget.<sup>179</sup>

The Bulgarian authorities recently adopted the National Strategy for Persons with Disabilities 2016-2020.<sup>180</sup> It proclaims itself to be a:

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*'key political document which sets priorities and measures aimed at improving the quality of life of people with disabilities, non-discrimination on the grounds of disability, ensuring their full and active participation in all areas of public life and promoting respect for their rights in all policies'.*<sup>181</sup>

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In its replies to the list of issues drafted by the CRPD Committee, the Bulgarian Government responded that the national strategy for persons with disabilities for the period 2016–2020 'formulates the priority objectives and measures aimed at improving the quality of life of persons with disabilities, combating disability-based discrimination, and ensuring their full-fledged and active participation in all areas of public life alongside respect for their rights in all policies'.<sup>182</sup>

Furthermore, the Bulgarian authorities took a positive step towards the implementation of the CRPD's legal capacity obligations by elaborating the draft Natural Persons and Support Measures Act. On 31 July 2015, the draft Act (and the intentions behind the Act) was published on the official website of the Ministry of Justice, for the purposes of public discussion. The draft was then adopted by the Bulgarian Council of Ministers in 2016 and was introduced for voting in the Parliament in August of that year. The Act envisages the abolition of guardianship and the introduction of a new supported decision-making regime. If it were to pass into law, it would ensure the right to vote of all individuals with disabilities and would provide assistance and support to those who need it in the exercise of their right to vote. However, due to the termination of the powers of the 43rd National Assembly, the work on the draft law has been discontinued.<sup>183</sup>

### 5.3 Case Study on Denmark

Elections in Denmark are primarily regulated by the Danish Constitution<sup>184</sup> and by the Act on Parliament Elections.<sup>185</sup> Several amendments have been introduced to the latter Act in recent years to ensure improved voter access, focusing on measures for persons with disabilities. According to Article 47(a) of

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<sup>179</sup> Respondent no. 1 from the survey data on file with the Centre for European Policy Studies, Brussels.

<sup>180</sup> Bulgaria, National Strategy for Persons with Disabilities 2016-2020 (n 170 above).

<sup>181</sup> Ibid, p. 2.

<sup>182</sup> Bulgaria, Replies to the CRPD Committee's List of Issues (n 171 above), para. 13.

<sup>183</sup> Ibid, para. 51.

<sup>184</sup> Denmark, Constitution [Danmarks Riges Grundlov], available at: <https://www.retsinformation.dk/Forms/r0710.aspx?id=45902> (in Danish); available at: [http://www.stm.dk/p\\_10992.html](http://www.stm.dk/p_10992.html) (in English), last accessed 11 September 2018.

<sup>185</sup> Denmark, The Act on Parliament Elections [LBK nr 128 af 11/02/2013, *Bekendtgørelse af lov om valg til Folketinget*], available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=144959> (in Danish), last accessed 11 September 2018.



the Act, a voter may apply to cast his or her vote on election day at a different polling station in his municipality of residence from the one allocated to him or her, in circumstances where a voter's disability or poor health justifies the change in polling station. Assistance measures are also set out under Article 49(1) of the Act for voters with disabilities who request that assistance. In addition, postal voting is open to those staying in specified institutions, such as hospitals and assisted living facilities under Article 54 of the Act, and it also applies to adults with psychosocial or physical impairments who are in institutions for short-term or permanent stays.

### **Main barriers to the political participation of persons with disabilities**

Ensuring the political participation of people with disabilities has been listed as one of the ten greatest challenges facing Denmark in implementing the CRPD.<sup>186</sup> For those under guardianship, there are limitations to the right to vote in national elections to the Danish Parliament, in municipal elections and in elections to the European Parliament as well as to the right to stand for political and public office. A person who has been declared legally incompetent under Article 6 of the Guardianship Act<sup>187</sup> will be disenfranchised ('*umyndiggjort*'). According to Article 29 of the Constitution, people who have been declared incapable of conducting their own affairs do not have the right to vote for the Danish Parliament. Under Article 4 of the Act on Parliament Elections, individuals who have been deprived of their legal capacity are not eligible for election to the national parliament, and similar provisions follow from Article 30 of the Danish Constitution. The same situation applies under Article 3 of the Act on Elections to the Municipalities and Regional Councils<sup>188</sup> and Article 6 of the Act on Elections to the European Parliament.<sup>189</sup> In addition to the possibility for persons with disabilities to be deprived of their legal capacity, there is also a lack of redress mechanisms for those individuals, since a person 'would first have to challenge the decision on their legal capacity in order to then seek redress for deprivation of their right to vote'.<sup>190</sup>

In its Concluding Observations on the initial report submitted by Denmark, the CRPD Committee highlights its concerns regarding the situation pertaining to individuals under guardianship and their lack of eligibility to vote and stand for elections. The Committee recommends that the State Party amend the relevant laws, so that all persons with disabilities can enjoy the right to vote and stand for election regardless of guardianship or other such regimes.<sup>191</sup> The Danish Institute for Human Rights has also recommended that the relevant election acts be amended so that those deprived of their legal capacity are not (automatically) deprived of their right to vote. The institute has based its

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<sup>186</sup> See <https://www.humanrights.dk/activities/our-work-denmark/disability/10-greatest-challenges>.

<sup>187</sup> Denmark, The Act on Guardianship [LBK nr 1015 af 20/08/2007, *Bekendtgørelse af Værgemålsloven*], available at: <https://www.retsinformation.dk/Forms/r0710.aspx?id=2681-K2> (in Danish), last accessed 11 September 2018.

<sup>188</sup> Denmark, The Act on Elections for the Municipalities and Regional Councils [LBK nr 127 af 11/02/2013, *Bekendtgørelse om lov om kommunale og regionale valg*], available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=144947>, last accessed 11 September 2011.

<sup>189</sup> Denmark, The Act on Elections to the European Parliament [LBK nr. 126 af 11/02/2013, *Bekendtgørelse af lov om valg af danske medlemmer til Europaparlamentet*], available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=144942>, last accessed 11 September 2011.

<sup>190</sup> M. Priestley *et. al* (n 20 above), p. 13.

<sup>191</sup> United Nations Committee on the Rights of Persons with Disabilities, Concluding Observations on the initial report of Denmark, UN Doc. CRPD/C/DNK/CO/1, 30 October 2014, paras. 60 and 61.





recommendation on Articles 12 and 29 CRPD.<sup>192</sup> However, to date, the relevant Danish ministry has not taken any steps to alter the legislation that is currently in place. Notably, in a recent case, *A, B, C and D v. The Danish Ministry for Economic Affairs and the Interior*,<sup>193</sup> the Danish Supreme Court ruled that it was not in contravention of Article 29 of the Constitution or Denmark's international obligations (the European Convention on Human Rights or the CRPD) to exclude individuals from the right to vote for the Danish Parliament, where those individuals have been deprived of legal capacity under Article 6 of the Guardianship Act. Accordingly, the appellants' claims that they were entitled to compensation for denial of the right to vote in the 2015 national parliamentary election was not upheld. The outcome of the foregoing case is difficult to align with the clear requirements of the CRPD, as outlined in section 3 of this report.

According to the Danish Institute for Human Rights, accessibility is also an issue of great concern in Denmark – election materials are rarely accessible to blind persons or to persons with learning and intellectual disabilities; polling stations are often not physically accessible; and ballots may not be accessible to blind persons.<sup>194</sup> In that connection, the CRPD Committee urges the State Party to ensure, 'through legislative and other measures, the accessibility of ballots and election materials, and of polling stations' and to guarantee 'that freely chosen, adequate and necessary assistance is provided in order to facilitate voting by all persons'.<sup>195</sup>

Another barrier faced by people with disabilities in Denmark concerns the rules pertaining to social supports. According to the shadow report submitted to the CRPD Committee by a group of Danish CSOs in December 2013, the rules for municipal competencies and financial responsibilities (*handle-og betalingskommune*), provide that a municipality other than the one in which the citizen lives can make decisions regarding support measures provided to people with disabilities. The report claims that that this system deprives citizens 'of democratic influence on the local political system'.<sup>196</sup>

Notably, the Danish Government did not respond in any detail to the above-mentioned barriers in its initial report to the CRPD Committee.<sup>197</sup>

## Good practice/promising initiatives

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<sup>192</sup> L.G. Andersen, M. Ventegodt Lisberg and O. Justesen, Report from the Danish Institute for Human Rights on *Autonomy and Guardianship in Denmark* (Selvbestemmelse og Værgemål i Danmark) (Danish Institute for Human Rights, 2010), available at: <http://menneskeret.dk/udgivelser/selvbestemmelse-vaergemaal-danmark> (in Danish).

<sup>192</sup> Ibid.

<sup>193</sup> Denmark, *A, B, C and D v. The Danish Ministry for Economic Affairs and the Interior*, Supreme Court, 18 January 2018. An overview of the case in English is available on the following website: <http://www.supremecourt.dk/supremecourt/nyheder/Afgorelser/Pages/RighttovoteforDanishParliament.aspx>, last accessed 11 September 2018.

<sup>194</sup> Danish Institute for Human Rights, Selected list of Issues on the UN Convention on the Rights of Persons with Disabilities (2014), available at: [https://menneskeret.dk/files/media/dokumenter/monitorering/dihr\\_list\\_of\\_issues\\_crpd.pdf](https://menneskeret.dk/files/media/dokumenter/monitorering/dihr_list_of_issues_crpd.pdf), last accessed 11 September 2018.

<sup>195</sup> United Nations Committee on the Rights of Persons with Disabilities (n 191 above), para. 61.

<sup>196</sup> Shadow Report to the UN Committee on the Rights of Persons with Disabilities (December 2013), available at: [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&CountryID=49&ctl00\\_PlaceHolderMain\\_radResultsGridChangePage=1\\_50](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&CountryID=49&ctl00_PlaceHolderMain_radResultsGridChangePage=1_50), last accessed 11 September 2018.

<sup>197</sup> Denmark, Initial Report to the CRPD Committee, UN Doc. CRPD/C/DNK/1, 7 May 2013.



In spite of the above-mentioned issues, Danish disability policies are generally deemed to be progressive and participatory. The consultation and participation of DPOs in the conduct of public affairs has been 'formalised by means of the creation of disability councils in all local councils and at central State level.'<sup>198</sup>

The Danish Government and other organisations have sought to facilitate the political participation of individuals with disabilities in various ways. For instance, it has been reported to be common practice for the Ministry of Economic Affairs and the Interior to issue guidelines on accessibility to municipalities before each election, including the requirement that polling stations should be accessible for people in wheelchairs and for those with mobility disabilities.<sup>199</sup> The Danish Equal Opportunities Centre for Disabled Persons has also produced guidelines for municipalities on how to address the needs of different groups of people with disabilities.<sup>200</sup>

In November 2012, the Minister for the Economy and the Interior submitted a Bill (L132) on e-voting (at polling stations) for a hearing. The Bill was intended to make a digital voting trial and the digital counting of votes possible at the elections for the European Parliament in 2014.<sup>201</sup> The Bill was also intended to enable some voters with disabilities to cast their vote without assistance. DPOs in Denmark saw this as an opportunity to petition for the introduction of voting technology that would enable them to vote privately and unassisted by others. In its response to the government during the consultative process, the DPO *Danske Handicaporganisationer* expressed its positivity that the Government was taking steps towards making digital voting possible and that the legislative proposal specifically mentioned accessibility for persons with disabilities by referring to Article 29 of the UNCRPD.<sup>202</sup> However, the Bill was not adopted by the Danish Parliament (*Folketing*), due to the apparent fear that it would undermine electoral processes in Denmark.<sup>203</sup>

The Danish Government has also endeavoured to simplify naturalisation procedures for persons with disabilities. In May 2013, the Danish Government concluded a new agreement on the conditions for acquiring Danish nationality by naturalisation.<sup>204</sup> The agreement entered into force in June 2013. Under the new agreement, there is now a possibility for exemption of Danish requirements regarding language proficiency and knowledge of the Danish society. To be exempted, an applicant must now demonstrate that he suffers from a long-term physical, mental, intellectual or sensory impairment (in accordance

<sup>198</sup> Information taken from the European Union Agency for Fundamental Rights, DPO involvement: Indicators on political participation of persons with disabilities (2014), available at <http://fra.europa.eu/en/publication/2014/indicators-right-political-participation-people-disabilities/dpo-laws>, last accessed 11 September 2018.

<sup>199</sup> The Academic Network of Disability Experts, Country Report on Citizenship and Political Participation in Denmark (December 2013), p. 12, available at: <https://www.disability-europe.net/theme/political-participation?country=denmark>, last accessed 11 September 2018.

<sup>200</sup> Inclusion Europe, 'Good Practice for Accessible Elections in Europe' (2011), available at: [http://inclusion-europe.eu/wp-content/uploads/2015/04/Good\\_Practices\\_EN.pdf](http://inclusion-europe.eu/wp-content/uploads/2015/04/Good_Practices_EN.pdf), last accessed 11 September 2018.

<sup>201</sup> See: <http://valg.oim.dk/valg/e-valg.aspx> (link to press-release in Danish), last accessed 11 September 2018.

<sup>202</sup> Response to the Danish Government from a Disabled Peoples' Organisation in Denmark, *Danske Handicaporganisationer*, with regards to legislative proposal L132, 14 December, 2012, available at: <http://valg.oim.dk/media/405807/DanskeHandicaporganisationer.pdf> (in Danish), last accessed 11 September 2018. In its response, the Organisation further emphasised the importance of making e-elections accessible to all groups of persons with disabilities, which is a diverse group with different needs.

<sup>203</sup> Information taken from Eva Ersbøll, *Access to Electoral Rights Denmark June 2013* (EUDO Citizenship Observatory 2015).

<sup>204</sup> Information taken from the Academic Network of Disability Experts (n 199 above), p. 5. See <http://www.justitsministeriet.dk/nyt-og-presse/pressemeddelelser/2013/god-integration-f%C3%B8rer-til-statsborgerskab> (link to press-release, in Danish).



with Article 1 of the CRPD) and that the impairment is the cause for the non-fulfillment of the above-mentioned requirements.<sup>205</sup>

## 5.4 Case Study on Estonia

The Estonian electoral process is set out in the Constitution of the Republic of Estonia,<sup>206</sup> and it is further elaborated on in the National Election Act,<sup>207</sup> the Municipal Council Election Act<sup>208</sup> and the European Parliament Election Act.<sup>209</sup>

Specific measures have been enacted by the Estonian Government, with a view to facilitating the right to vote for people with disabilities. In the Municipal Council Election Act, it has been stipulated that people with physical impairments can deliver their vote with the help of another voter. They can also apply to vote at home on polling day, they can have an advance voting at another polling place<sup>210</sup> or they can vote by means of the Internet.<sup>211</sup>

According to Article 12 of the Constitution of the Republic of Estonia, everyone is equal before the law, including people with disabilities. There are, however, limitations to political rights for those declared by the court to have ‘restricted active legal capacity’,<sup>212</sup> as will be explained below.

### Main barriers to the political participation of persons with disabilities

Article 57 of the Estonian Constitution declares that ‘a citizen of Estonia who has been declared by a court to lack legal capacity is ineligible to vote’. It follows from the National Election Act and the Municipal Council Election Act, that a person who has been declared (by a court) as lacking in legal capacity has neither the right to stand as a candidate for elections in local or national elections nor the right to vote in those elections.<sup>213</sup> The same applies for voting in the elections for the European Parliament. Notably, Estonia has registered a declaration to Article 12 CRPD to the effect that the Republic of Estonia interprets Article 12 of the Convention as not forbidding the restriction of a person’s active legal capacity, ‘when such need arises from the person’s ability to understand and direct his or her actions’.<sup>214</sup> The declaration further states that, ‘in restricting the rights of the persons with restricted active legal capacity the Republic of Estonia acts according to its domestic laws’.<sup>215</sup>

<sup>205</sup> Ibid.

<sup>206</sup> Estonia, Constitution of the Republic of Estonia, passed 28.06.1992, RT 1992, 26, 349, available at: <https://www.riigiteataja.ee/en/eli/530102013003/consolide>, last accessed 11 September 2018.

<sup>207</sup> Estonia, Riigikogu Election Act, passed 12.06.2002, RT I 2002, 57, 355, available at:

<https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/510032014001/consolide>, last accessed 11 September 2018.

<sup>208</sup> Estonia, Municipal Council Election Act, passed 27.03.2002 RT I 2002, 36, 220, available at: <https://www.riigiteataja.ee/en/eli/514112016001/consolide>, last accessed 11 September 2018.

<sup>209</sup> Estonia, European Parliament Election Act, passed 18.12.2002, RT I 2003, 4, 22, available at: <https://www.riigiteataja.ee/en/eli/514112016002/consolide>, last accessed 11 September 2018.

<sup>210</sup> See <http://vvk.ee/voting-methods-in-estonia/voting-in-advance/>, last accessed 11 September 2018.

<sup>211</sup> See more at <http://www.vvk.ee/voting-methods-in-estonia/engindex/>, last accessed 11 September 2018.

<sup>212</sup> The Academic Network of Disability Experts, Country Report on Citizenship and Political Participation in Estonia, p. 5, available at <http://www.disability-europe.net/theme/political-participation?country=estonia>, last accessed 11 September 2018.

<sup>213</sup> See <http://www.ohchr.org/Documents/Issues/Disability/PoliticalParticipation/States/ResponseEstonia.doc>, last accessed 11 September 2018.

<sup>214</sup> See: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15&chapter=4&lang=en&clang=en-EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en&clang=en-EndDec).



The possibility to deprive an individual of his or her legal capacity is compounded by a lack of redress mechanisms. Estonian citizens are generally entitled to file a complaint about the violation of their electoral rights to the county electoral committee or the National Electoral Committee.<sup>216</sup> However, if a person has been deprived of his or her legal capacity, then he or she cannot complain about the lack of such a right. Thus, an individual would first have to challenge the decision depriving them of their legal capacity before then seeking redress for deprivation of their right to vote.<sup>217</sup>

Accessibility is also a major concern for people with disabilities in Estonia, both accessibility to buildings and to information.<sup>218</sup> In general, party manifestos are not available in accessible formats on political parties' websites.<sup>219</sup> Survey data obtained through the EU-CITIZEN network reveals that not all buildings where polling stations are situated (which are generally older buildings) are easily accessible,<sup>220</sup> even though there are regulations in existence seeking to ensure accessibility.<sup>221</sup> Furthermore, the survey data points to the fact that while assistance is provided at polling stations, there are no specific (technical) aids available to assist an individual in filling in the ballot paper nor are there any alternative methods available for casting one's vote.<sup>222</sup>

### Good practice/promising initiatives

Representatives of DPOs are included in the drafting of legislation and policies in Estonia through the Estonian Chamber of Disabled People, which is an umbrella organisation of DPOs. Collaboration between the Estonian Government and civil society appears to be strong generally, and the Estonian Chamber of Disabled People has engaged in training specialists around Estonia on the CRPD and raising public awareness about the rights of people with disabilities.

To promote political inclusion for all, the Estonian Government publishes the drafts of all legislation and related documents from public authorities *via* the Internet in the Information System for Draft Legislation (EIS).<sup>223</sup> An impact assessment, including the impact on the rights and equal opportunities of people with disabilities, is required for all laws and programmes.<sup>224</sup> The Government Communication Handbook<sup>225</sup> obliges government authorities to include interest groups in the political process. Furthermore, the Estonian Good Engagement Code of Practice<sup>226</sup> establishes that government

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last accessed 11 September 2018.

<sup>215</sup> Ibid.

<sup>216</sup> See chapters 11 of the Municipal Council Election Act, the European Parliament Election Act and the Riigikogu Election Act.

<sup>217</sup> M. Priestley *et al.* (n 20 above), p. 13.

<sup>218</sup> Respondent no. 2 from the survey data on file with the Centre for European Policy Studies, Brussels.

<sup>219</sup> See the website of the Reform Party, for instance: <http://www.reform.ee/programm>, last accessed 11 September 2018.

<sup>220</sup> Respondent no. 2 from the survey data on file with the Centre for European Policy Studies, Brussels.

<sup>221</sup> Estonia, Minister of Economic Affairs and Communications [*Majandus- ja kommunikatsiooniminister*] (2002), Requirements for ensuring Mobility Options for People with Mobility, Visual, and Hearing Disabilities in Public Buildings [*Nõuded liikumis-, nägemis- ja kuulmispuudega inimeste liikumisvõimaluste tagamiseks üldkasutatavates*].

<sup>222</sup> Respondent no. 2 from the survey data on file with the Centre for European Policy Studies, Brussels.

<sup>223</sup> Initial Report of Estonia to the CRPD Committee, UN Doc. CRPD/C/EST/1, 3 October 2017, para. 213.

<sup>224</sup> Ibid, para. 214.

<sup>225</sup> The Government Communication Handbook is available at: [https://riigikantselei.ee/sites/default/files/content-editors/Failid/valitsuskommunikatsiooni\\_kasiraamat\\_eng.pdf](https://riigikantselei.ee/sites/default/files/content-editors/Failid/valitsuskommunikatsiooni_kasiraamat_eng.pdf).

<sup>226</sup> Estonia, Good Engagement Code of Practice [*Hea Kaasamise Tava*], available at: <https://heakodanik.ee/en/good-public-engagement-code-of-practice/>, last accessed 11 september 2018.



authorities must include interest groups who will be affected by a planned law in the drafting process. On 30 March 2012, the Memorandum of Cooperation Principles between the Estonian Government and the Estonian Chamber of Disabled People was signed.<sup>227</sup> Among other things, the purpose of the Memorandum is to promote the participation of people with disabilities in decision-making processes at the national and local levels. Online forums also exist, where every Estonian resident, NGO and interest group, persons with disabilities included, can express their opinions and make suggestions about policy issues.<sup>228</sup>

With regard to accessibility measures, it is noteworthy that Estonian public television stations broadcast daily national news in sign language.<sup>229</sup> Moreover, Estonia is one of the few countries in the world where electronic voting (e-voting) is currently carried out in local as well as in national elections.<sup>230</sup> Research has shown that e-voting not only speeds up the counting of votes, but it also improves turnout among voters with disabilities.<sup>231</sup> E-voting is meant to supplement (not to replace) the traditional methods of voting, and it is intended to ensure that an individual with a disability (or any other individual) has the possibility to vote from the location of their choice, without having to actually be present at a polling station to cast one's vote. Internet voting in Estonia is based on Web Accessibility Initiative (WAI) principles,<sup>232</sup> which develops strategies, guidelines, and resources to help make the Web accessible to people with disabilities, and JAWS (Job Access With Speech).<sup>233</sup> The latter tool converts text and components of the Windows operating system into synthesised speech, thus allowing people with visual impairments to access written information in audio formats. During the last local elections held on 15 October 2017, 31,7% of Estonian voters cast their ballot electronically, which marks a new record.<sup>234</sup>

## 5.5 Case Study on Germany

German laws on political participation are contained in the German Constitution – the Basic Law<sup>235</sup> – and the Federal Electoral Law.<sup>236</sup> Those laws distinguish between active participation (the right to vote) and passive political rights (the right to stand for elections and to be elected).

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<sup>227</sup> Estonia, The Memorandum of Cooperation Principles between the Estonian Government and Representative Bodies of Disabled People [Vabariigi valitsuse ja puuetega inimeste esindusorganisatsioonide koostööpõhimõtete memorandum], available at:

[http://www.sm.ee/sites/default/files/content-editors/puudega\\_inimesele/implementation\\_of\\_the\\_convention\\_on\\_the\\_rights\\_of\\_persons\\_with.pdf](http://www.sm.ee/sites/default/files/content-editors/puudega_inimesele/implementation_of_the_convention_on_the_rights_of_persons_with.pdf), last accessed 11 September 2018.

<sup>228</sup> See [www.osale.ee](http://www.osale.ee), last accessed 11 September 2018.

<sup>229</sup> Initial Report of Estonia to the CRPD Committee (n 223 above), para. 213.

<sup>230</sup> See: [http://www.vvk.ee/public/dok/General\\_Description\\_E-Voting\\_2010.pdf](http://www.vvk.ee/public/dok/General_Description_E-Voting_2010.pdf), last accessed 11 September 2018. See also M. Solvak and K. Vassil, 'E-voting in Estonia: Technological Diffusion and Other Developments Over Ten Years (2005 - 2015) (2016), available at: [https://skytte.ut.ee/sites/default/files/skytte/e\\_voting\\_in\\_estonia\\_vassil\\_solvak\\_a5\\_web.pdf](https://skytte.ut.ee/sites/default/files/skytte/e_voting_in_estonia_vassil_solvak_a5_web.pdf), last accessed 11 September 2018.

<sup>231</sup> M.J.M. Chowdhury, 'Comparison of e-Voting Schemes: Estonian and Norwegian Solutions' (2013) *International Journal of Applied Information Systems* 6(2) 60-66, p. 60.

<sup>232</sup> See <http://www.w3.org/WAI/>, last accessed 11 September 2018.

<sup>233</sup> T. Kerikmäe, A. Chochia and T. Hoffmann, EU CITIZEN Project, template for Estonian country experts, on file with the Centre for European Policy Studies, Brussels.

<sup>234</sup> See <https://e-estonia.com/new-record-i-voting-system/>, last accessed 11 September 2018.

<sup>235</sup> Germany, Constitution of the German Republic [*Grundgesetz für die Bundesrepublik Deutschland*] 23. Mai 1949 (BGBl. S. 1), available at: <https://www.bundestag.de/grundgesetz>, last accessed 11 September 2018.

<sup>236</sup> Germany, Federal Electoral Law [*Bundeswahlgesetz, BWG*], 7 May 1956, Federal Law Gazette I, p. 383.



The Federal Electoral Regulation stipulates that polling stations should be as accessible as possible.<sup>237</sup> Voters have to be informed at an early stage which polling stations will be accessible. Polling cards have to contain the notice where people with disabilities can get information about accessible polling stations and auxiliary material.<sup>238</sup> People with disabilities who hold a public or political office are entitled to get personal assistance at the workplace and are entitled to other assistive devices as well as adaption of the workplace.<sup>239</sup>

## Main barriers to the political participation of persons with disabilities

The relevant electoral laws in Germany prevent some citizens from voting if they have a disability.<sup>240</sup> According to Section 13 of the Federal Election Law 1993, individuals are disqualified from voting for several reasons, outlined below.<sup>241</sup>

### Section 13, German Federal Election Law

A person shall be disqualified from voting if:

1. he or she is not eligible to vote owing to a judicial decision;
2. a custodian has been appointed not only through a restraining order to attend to all his or her affairs [...];
3. he or she is accommodated in a psychiatric hospital under an order pursuant to Section 63 of the Penal Code in conjunction with Section 20 of the Penal Code.

In other words, individuals may be disqualified from voting where they are under a guardianship regime and have been deprived of their right to vote by a court verdict (whereby a custodian has been appointed to take care of all of their affairs and not only under a temporary order) or where they are in a psychiatric hospital because they committed a crime but have been found to lack criminal responsibility due to psychosocial illness (under Sections 20 and 63 of the Criminal Code).

<sup>237</sup> Federal Election Regulation [*Bundeswahlordnung, BWO*], Article 46, 19 April 2002 (BGBl. I S. 1376), available at: <https://www.bundeswahlleiter.de/dam/jcr/04f736b0-66e8-4618-9063-88af47e83ce2/bundeswahlordnung.pdf>, last accessed 11 September 2018.

<sup>238</sup> *Ibid.*, Article 19.

<sup>239</sup> These rights are formulated in Article 33 Social Code Book IX Sozialgesetzbuch (SGB) - Neuntes Buch (IX) - Rehabilitation und Teilhabe behinderter Menschen (*Hilfen zur Teilhabe am Arbeitsleben*) and Article 38a Social Code Book IX (*SGB IX Unterstützte Beschäftigung*). (Bundesministerium der Justiz 2012).

<sup>240</sup> See K. Braun, "Nothing About Us Without Us": The Legal Disenfranchisement of Voters With Disabilities in Germany and its Compliance with International Human Rights Standards on Disabilities' (2015) *American University International Law Review* 30(2), 315-346. See also: [https://www.institut-fuer-menschenrechte.de/uploads/tx\\_commerce/Submission\\_of\\_the\\_National\\_CRPD\\_Monitoring\\_Body\\_of\\_Germany\\_to\\_the\\_CRPD\\_Committee\\_on\\_the\\_occasion\\_of\\_the\\_preparation\\_of\\_a\\_list\\_of\\_issues\\_by\\_the\\_Committee\\_in\\_the\\_review\\_of\\_Germanys\\_Initiaal Repo.](https://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/Submission_of_the_National_CRPD_Monitoring_Body_of_Germany_to_the_CRPD_Committee_on_the_occasion_of_the_preparation_of_a_list_of_issues_by_the_Committee_in_the_review_of_Germanys_Initiaal Repo.)

<sup>241</sup> Federal Electoral Law [*Bundewahlgesetz, BGW*], Section 1 (n 236 above). Information taken from L. Waddington (n 62 above), p. 87.



EU citizens are also disqualified from voting if they have been deprived of their right to vote by a court verdict in their home Member State, according to Section 6a (2) of the European Elections Act.<sup>242</sup> Similar provisions are contained in the municipal election acts of 16 German länder.<sup>243</sup>

The German Government has argued that it uses a ‘highly-specific definition of exclusion’ from voting rights and that the group of individuals concerned ‘is kept as small as possible’, namely ‘the provision only covers those cases in which citizens are unable to take a highly personal decision on who to vote for’.<sup>244</sup> Nonetheless, the CRPD Committee has expressed concern about this situation<sup>245</sup> and has recommended that Germany repeal all laws and regulations that deprive persons with disabilities of the right to vote. Although legislative changes have been called for in Germany for many years, the disenfranchisement of individuals with disabilities has not been revoked.<sup>246</sup>

In addition to issues pertaining to legal capacity, there is limited empirical evidence about the accessibility of polling stations in Germany. In the opinion of the Federal returning officer (*Bundeswahlleiter*), great differences exist between states and also regarding the understanding of accessibility.<sup>247</sup> A study conducted in 2013 by *Aktion Mensch*<sup>248</sup> found that accessibility considerations for people with visual and intellectual disabilities were often given lower priority than those of people with mobility impairments. This aligns with the findings of a recent report that draws on empirical data from NordRhein-Westfalen in Germany and claims that the needs of people with intellectual or learning difficulties are often ignored generally in political processes, which manifests itself in the form of numerous structural barriers to political participation.<sup>249</sup> This applies to both the general political decision-making process (for instance, with regard to the accessibility of elections) as well as to

<sup>242</sup>European Elections Act, *Europawahlgesetz* - *EuWG*, 8 March 1994 (BGBl. I S. 423, 555, 852). Available at: <https://www.bundeswahlleiter.de/dam/jcr/8681a209-6823-43d4-9165-cbd5b64b4043/europawahlgesetz.pdf>, last accessed 11 September 2018. Information taken from European Union Agency of Fundamental Rights ‘Can persons deprived of legal capacity vote? Indicators on political participation of persons with disabilities’ (2014).

<sup>243</sup> In 2014, it was reported that the exclusion of voting rights of persons who by court order are in a psychiatric hospital because they committed a crime but have been found to lack criminal responsibility due to mental illness does not exist in every state, e.g. the states of Baden-Württemberg, Bremen, Mecklenburg-West Pomerania, Hesse, North Rhine-Westphalia, Saxony-Anhalt and Schleswig-Holstein do not have these provisions. [European Union Agency of Fundamental Rights ‘Can persons deprived of legal capacity vote? Indicators on political participation of persons with disabilities’ (2014)].

<sup>244</sup> Initial Report of Germany to the CRPD Committee, 3 October 2017, UN Doc. CRPD/C/DEU/1, para. 213.

<sup>245</sup> United Nations Committee on the Rights of Persons with Disabilities, Concluding Observations on the Initial Report of Germany, CRPD/C/DEU/CO/1, paras. 53 and 54.

<sup>246</sup> Germany, Parallel Report of the National Monitoring Body for the UN Convention on the Rights of Persons with Disabilities to the UN Committee on the Rights of Persons with Disabilities in the context of the examination of the Initial Report of Germany under Article 35 of the UN Convention on the Rights of Persons with Disabilities (March 2015), p. 28. Available at: [https://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/PDF-Dateien/Sonstiges/Parallel\\_Report\\_to\\_the\\_UN\\_Committee\\_on\\_the\\_Rights\\_of\\_Persons\\_with\\_Disabilities\\_March\\_2015.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/Sonstiges/Parallel_Report_to_the_UN_Committee_on_the_Rights_of_Persons_with_Disabilities_March_2015.pdf), last accessed 11 September 2018.

<sup>247</sup> Information taken from the European Union Agency for Fundamental Rights, ‘Accessible Polling Stations: Indicators on Political Participation of Persons with Disabilities’. Available at: <http://fra.europa.eu/en/publication/2014/indicators-right-political-participation-people-disabilities/polling-stations>, last accessed 11 September 2018.

<sup>248</sup> Aktion Mensch, *Die Wahllokal-Tester* (2013), available at: <http://www.aktion-mensch.de/inklusion/barrierefreiheit/wahllokaltest.php>, last accessed 11 September 2018. Information taken from A. Lawson (n 82), p. 27.

<sup>249</sup> Landesarbeitsgemeinschaft Selbsthilfe Nordrhein-Westfalen (n 126 above), p. 212, available at [https://lag-selbsthilfe-nrw.de/wp-content/uploads/2015/12/LAG-Abschlussbericht\\_final\\_2016-01-12\\_barrierefrei.pdf](https://lag-selbsthilfe-nrw.de/wp-content/uploads/2015/12/LAG-Abschlussbericht_final_2016-01-12_barrierefrei.pdf), last accessed 11 September 2018.



advocacy for people with disabilities. Formal advocacy organisations, such as disability advisory councils, tend to favour the participation of a group of people who it is perceived can represent themselves relatively well in political contexts.<sup>250</sup> As a result, people with intellectual difficulties are rarely represented in such bodies.<sup>251</sup>

As well as structural barriers to exercising active political rights, it has been reported that German citizens with disabilities face barriers in exercising passive political rights, in the sense that efforts to encourage people with disabilities to stand for political office themselves still seem to be very low in Germany.<sup>252</sup>

### Good practice/promising initiatives

The German Government has published its National Action Plan 2.0,<sup>253</sup> with a view to implementing the CRPD and has committed itself, *inter alia*, to strengthening the empowerment and political participation of people with disabilities and their representative organisations.<sup>254</sup> The National Action Plan contains a general chapter on the social and political participation of persons with disabilities. Notably, federal ministries in Germany have an obligation to consult NGOs, including DPOs, in law-making procedures or processes to develop political strategies.<sup>255</sup>

There is evidence of promising initiatives at both the federal and regional levels. At the federal level, many advocates have campaigned for reform of the restrictive legal capacity laws in Germany.<sup>256</sup> Both the Social Democrats<sup>257</sup> and the Green Party<sup>258</sup> in the German Bundestag tabled proposals to revise the relevant laws in early 2013, in an attempt to implement Article 29 CPRD. Both proposals were discussed in depth at an expert hearing of the Committee for Home Affairs on 3 June 2013. However, both proposals were rejected by a majority vote in the plenary session during the German Bundestag on 27 June 2013.<sup>259</sup> In 2015, the German Government commissioned an interdisciplinary study regarding the

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<sup>250</sup> Ibid.

<sup>251</sup> Ibid.

<sup>252</sup> The Academic Network of Disability Experts, Country Report on Citizenship and Political Participation in Germany, p. 5, available at <https://www.disability-europe.net/theme/political-participation?country=germany>, last accessed 11 September 2018.

<sup>253</sup> Germany, The National Action Plan 2.0 of Germany's Federal Government for the UN Convention on the Rights of Persons with Disabilities, available at: [https://www.bmas.de/SharedDocs/Downloads/DE/PDF-Publikationen/a740-nationaler-aktionsplan-barrierefrei.pdf?\\_\\_blob=publicationFile](https://www.bmas.de/SharedDocs/Downloads/DE/PDF-Publikationen/a740-nationaler-aktionsplan-barrierefrei.pdf?__blob=publicationFile), last accessed 11 September 2018.

<sup>254</sup> Ibid, pp. 82 and 83.

<sup>255</sup> European Union Agency for Fundamental Rights, DPO Involvement: Indicators on Political Participation of Persons with Disabilities (2014), available at: <http://fra.europa.eu/en/publication/2014/indicators-right-political-participation-people-disabilities/dpo-laws>, last accessed 11 September 2018.

<sup>256</sup> European Union Agency for Fundamental Rights, 'Are Disabled Peoples' Organisations consulted and involved in the Development of Laws and Policies', available at: <http://fra.europa.eu/en/publication/2014/indicators-right-political-participation-people-disabilities/dpo-laws>, last accessed 11 September 2018.

<sup>257</sup> Germany, German Bundestag (*Deutscher Bundestag*) (2013), 'Antrag der Fraktion SPD. Verbesserung des Wahlrechts von Menschen mit Behinderung und Analphabeten', BT-Drs. 17/12380, 19 February 2013, available at: <http://dip21.bundestag.de/dip21/btd/17/123/1712380.pdf>, last accessed 11 September 2018.

<sup>258</sup> Germany, German Bundestag (*Deutscher Bundestag*) (2013), 'Gesetzentwurf Fraktion BÜNDNIS 90/DIE GRÜNEN. Entwurf eines Gesetzes zur Umsetzung der UN-Behindertenrechtskonvention im Wahlrecht', BT-Drs. 17/12068, 16 January 2013, available at: <http://dip21.bundestag.de/dip21/btd/17/120/1712068.pdf>, last accessed 11 September 2018.

<sup>259</sup> Information taken from European Union Agency of Fundamental Rights 'Can persons deprived of legal capacity vote? Indicators on political participation of persons with disabilities' (2014). See German Bundestag (*Deutscher Bundestag*) (2013),





necessity for legislative changes,<sup>260</sup> but, at the time of writing this report, no information is available regarding the policy outcome of that study.

To address the concerns expressed above regarding accessibility and to enhance a common understanding of the concept of ‘accessibility’, the Federal Competence Centre for Accessibility (*Bundeskompentenzentrum Barrierefreiheit e.V.*, BKB) produced a brochure for local authorities with recommendations on how to determine the accessibility of polling stations for different kind of disabilities (e.g. mobility issues, visual impairments and cognitive impairments)<sup>261</sup> prior to the Bundestag election in 2013. The project was supported by the Federal Government and was distributed to all municipalities nationwide. Furthermore, prior to each election, every voter is supposed to receive an official notification about the location and degree of accessibility of the polling station (or information on where the voter can cast his vote alternatively).<sup>262</sup>

With regard to women with disabilities, the German legislative framework is progressive. The General Act on Equal Treatment (AGG),<sup>263</sup> in force since 18 August 2006, foresees the protection of people who have been affected by multiple discrimination. Moreover, Article 2 of the Act on Equal Opportunities for People with Disabilities states that the special needs of women with disabilities need to be taken into account through special measures to remove any existing disadvantages in order to promote equality. In addition, within the national action plans to Implement the CRPD (both the first plan adopted in 2011 and the second plan, NAP 2.0, adopted in 2016), gender mainstreaming is considered as a cross-cutting issue. The objective of the NAP 2.0 is to improve and strengthen the rights of women with disabilities, with a focus on political representation and gender-based violence.<sup>264</sup> The Federal Government has also undertaken to promote the national network entitled Political Representation of the Interests of Women with Disabilities – *Weibernetz e. V.*<sup>265</sup>

At the regional level, the government of North Rhine-Westphalia adopted its own action plan, entitled ‘One society for all - NRW inclusive’ and explicitly stated that it wants to improve the conditions for the participation of people with disabilities in local communities, in line with the CRPD. A local DPO, Lag Selbsthilfe NRW, and the Ministry of Labor, Integration and Social Affairs of the State of North Rhine-

‘Entwurf für ein Gesetz zur Umsetzung der UN-Behindertenrechtskonvention im Wahlrecht’, BT-Drs. 17/12068, 16 January 2013, available at: <http://dipbt.bundestag.de/extrakt/ba/WP17/503/50338.html>, last accessed 11 September 2018.

<sup>260</sup> Parallel Report of the National Monitoring Body for the UN Convention on the Rights of Persons with Disabilities to the UN Committee on the Rights of Persons with Disabilities in the Context of the Examination of the Initial Report of Germany under Article 35 of the UN Convention on the Rights of Persons with Disabilities (March 2015), p. 28. Available at: [https://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/PDF-Dateien/Sonstiges/Parallel\\_Report\\_to\\_the\\_UN\\_Committee\\_on\\_the\\_Rights\\_of\\_Persons\\_with\\_Disabilities\\_March\\_2015.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/Sonstiges/Parallel_Report_to_the_UN_Committee_on_the_Rights_of_Persons_with_Disabilities_March_2015.pdf), last accessed 11 September 2018.

<sup>261</sup> The brochure is available at: [http://www.barrierefreiheit.de/handreichung\\_und\\_checkliste\\_für\\_barrierefreie\\_Veranstaltungen.html](http://www.barrierefreiheit.de/handreichung_und_checkliste_für_barrierefreie_Veranstaltungen.html), last accessed 11 September 2018.

<sup>262</sup> European Union Agency for Fundamental Rights, ‘Accessible Polling Stations: Indicators on Political Participation of Persons with Disabilities’. Available at: <http://fra.europa.eu/en/publication/2014/indicators-right-political-participation-people-disabilities/polling-stations>, last accessed 11 September 2018.

<sup>263</sup> General Act on Equal Treatment of 14 August 2006 (Federal Law Gazette I p. 1897), last amended by Article 8 of the SEPA Accompanying Act of 3 April 2013 (Federal Law Gazette I p. 610). Available at: [http://www.gesetze-im-internet.de/englisch\\_agg/](http://www.gesetze-im-internet.de/englisch_agg/), last accessed 11 September 2018.

<sup>264</sup> Germany, The National Action Plan 2.0 (n 243 above).

<sup>265</sup> Initial Report of Germany to the CRPD Committee (n 244 above), para. 47.



Westphalia (MAIS NRW) developed the project Strengthening Political Participation of People with Disabilities in the Communities over a three-year period between 2013-2015. The Center for Planning and Evaluation of Social Services (ZPE) of the University of Siegen acted as a project partner with regard to the scientific monitoring of the project.<sup>266</sup> The project was funded by the North Rhine-Westphalian Ministry of Economic Affairs Work, Integration and Social Issues, and it was commissioned and financed by the *Landesarbeitsgemeinschaft Selbsthilfe NRW*.

There is also evidence of good practice in Germany with regard to awareness-raising of the rights of persons with disabilities. A How to Vote pack was compiled by a number of German disability organisations, including the *Bundesvereinigung Lebenshilfe* (a member of Inclusion Europe) and *Aktion Mensch*. It contains one booklet with easy-to-read language, pictures and diagrams about how to vote in national elections and one booklet on how to vote in European elections.<sup>267</sup>

## 5.6 Case Study on Ireland

The 1992 Electoral Act regulates the registration of voters and the preparation and conduct of Dáil elections,<sup>268</sup> while the 1997 Electoral Act contains, *inter alia*, provisions on campaign spending limits and financial reporting as well as on the establishment of a Constituency Commission. Both Acts have been amended several times,<sup>269</sup> in the form of separate acts that are not integrated in the relevant legal texts.<sup>270</sup> Voting is also regulated by means of the European Parliament Elections (Voting and Candidature) Regulations 1994<sup>271</sup> and the European Parliament Elections Act 1997<sup>272</sup> as well as the Local Elections Regulations 1995 (as amended).<sup>273</sup>

Section 11 of the Electoral Act 1992 allows a person with a disability to vote at another polling station where that is more convenient for the voter, while section 17 of the Electoral Act 1992 (as amended) makes provision for alternative means of voting for persons with disabilities who are unable to vote in person at a polling place in his or her polling district by reason of physical illness or physical disability. This enables people with disabilities to vote at an alternative polling station if the local station is inaccessible; to get assistance in voting at the polling station by a companion or the presiding officer; to vote by post or to vote at a hospital, nursing home or similar institution. Section 103 of the Electoral Act

<sup>266</sup> Landesarbeitsgemeinschaft Selbsthilfe Nordrhein-Westfalen (n. 126 above).

<sup>267</sup> Inclusion Europe (n 200 above), p. 10.

<sup>268</sup> Ireland, 1992 Irish Statute Book, No. 23 of 1992. Available at [www.irishstatutebook.ie/1992/en/act/pub/0023/index.html](http://www.irishstatutebook.ie/1992/en/act/pub/0023/index.html), last accessed 11 September 2018.

<sup>269</sup> In 1996, 1998, 2001, 2002, 2005, 2006 and 2007.

<sup>270</sup> The amendments to the Irish Electoral Act 1992 are available at: [www.irishstatutebook.ie/1997/en/act/pub/0025/index.html](http://www.irishstatutebook.ie/1997/en/act/pub/0025/index.html); [www.irishstatutebook.ie/1998/en/act/pub/0004/index.html](http://www.irishstatutebook.ie/1998/en/act/pub/0004/index.html); [www.irishstatutebook.ie/2001/en/act/pub/0038/index.html](http://www.irishstatutebook.ie/2001/en/act/pub/0038/index.html); [www.irishstatutebook.ie/2002/en/act/pub/0004/index.html](http://www.irishstatutebook.ie/2002/en/act/pub/0004/index.html); [www.irishstatutebook.ie/2004/en/act/pub/0015/index.html](http://www.irishstatutebook.ie/2004/en/act/pub/0015/index.html); [www.irishstatutebook.ie/2006/en/act/pub/0033/index.html](http://www.irishstatutebook.ie/2006/en/act/pub/0033/index.html); [www.irishstatutebook.ie/2009/en/act/pub/0004/index.html](http://www.irishstatutebook.ie/2009/en/act/pub/0004/index.html); [www.irishstatutebook.ie/2009/en/act/pub/0009/index.html](http://www.irishstatutebook.ie/2009/en/act/pub/0009/index.html), last accessed 11 September 2018.

<sup>271</sup> The European Parliament Elections (Voting and Candidature) Regulations 1994, Statutory Instrument No. 14 of 1994, available at <http://www.irishstatutebook.ie/1994/en/si/0014.html>, last accessed 11 September 2018.

<sup>272</sup> The European Parliament Elections Act 1997, Statutory Instrument No. 2 of 1997, available at <http://www.irishstatutebook.ie/1997/en/act/pub/0002/index.html>, last accessed 11 September 2018.

<sup>273</sup> The Local Elections Regulations 1995, Statutory Instrument No. 297 of 1995, available at [www.irishstatutebook.ie/1995/en/si/0297.html](http://www.irishstatutebook.ie/1995/en/si/0297.html) (accessed on 11 September 2013).



1992 provides for voting assistance for blind, incapacitated and illiterate electors. The Electoral (Amendment) Act 1996 introduced the option of postal voting for people with certain disabilities. The provision in the Electoral (Amendment) Act 1996 on postal voting limits this option to cases where a person is unable to go in person to vote at the polling station by reason of physical illness or physical disability. According to the ANED country reporter, 'this wording appears to confine this postal voting facility to situations where someone's mobility is affected, and not to encompass people with other disabilities such as visual impairments'.<sup>274</sup>

## **Main barriers to the political participation of persons with disabilities**

According to Section 41(1) of the 1992 Electoral Act, a person who is deemed to be 'of unsound mind' is not eligible for election as a member of the Dáil. This restriction also applies when standing to become an Irish MEP or a candidate in local elections. The Court Service of Ireland (Rules and Fees Order 47) determines who is deemed to be of 'unsound mind'. At present, Irish legislation allows for a presiding officer (who may not have experience assessing individuals with intellectual disabilities) to refuse access to vote to a person judged not to have the capacity to vote.<sup>275</sup> The Electoral Acts 1992-2009 (as amended) do not make provision for redress and complaint mechanisms in cases where individuals with disabilities have not been able to exercise the right to vote. In 2013, the Irish Government produced a draft Bill to revise its legal capacity legislation, which now takes the form of an Act that may effect the foregoing legal provisions. This issue will be discussed further below.

In a similar vein to many other EU Member States, the accessibility of polling stations remains a major concern in Ireland.<sup>276</sup> While there are many provisions in law that seek to ensure accessibility,<sup>277</sup> there have traditionally been problems in ensuring accessibility for certain groups of voters. Until recently, many people with sight loss were unable to vote independently under the Irish electoral system. They were not entitled to partake in postal voting, but they were entitled to bring a trusted companion into the voting booth with them to mark their vote on the ballot paper or, alternatively, they could ask the Presiding Officer for assistance with marking their ballot paper. The National Council of the Blind in Ireland has long called for the implementation of alternative methods of voting for people with visual impairments that would guarantee the independence of their vote. Furthermore, complaints have been made to the Ombudsman, the Irish Human Rights Commission and the Irish High Court<sup>278</sup> about the inaccessibility of the voting procedure for individuals with visual impairments.<sup>279</sup> A promising initiative has been adopted to overcome this lack of accessibility, as detailed below.

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<sup>274</sup> The Academic Network of Disability Experts, Country Report on Citizenship and Political Participation in Irish, p. 24, available at <https://www.disability-europe.net/theme/political-participation?country=ireland>, last accessed 11 September 2018.

<sup>275</sup> Ibid, p. 50.

<sup>276</sup> See: <https://www.irishexaminer.com/election2016/election2016-news-and-analysis/some-polling-stations-have-no-wheelchair-access-384193.html>, last accessed 11 September 2018.

<sup>277</sup> The 1996 Electoral Act amends a number of provisions in the 1992 Act to provide for: Accessibility of polling places for wheelchair users; Provision of accessible polling procedures for wheelchair users; Provision for Ministerial order to make arrangements for voters with visual impairments to mark their ballot papers without assistance; and the extension of postal voting to disabled persons. Information taken from The Academic Network of Disability Experts (n 274 above), p. 20.

<sup>278</sup> See: <https://www.irishtimes.com/news/ireland/irish-news/tactile-ballot-templates-to-facilitate-visually-impaired-in-voting-1.3430104>, last accessed 11 September 2018.

<sup>279</sup> National Disability Authority, Accessible Voting, Discussion Paper, available at: [nda.ie/nda-files/Accessible-Voting.docx](http://nda.ie/nda-files/Accessible-Voting.docx), last accessed 11 September 2018.



## Good practice/promising initiatives

In 2012, legislative gender quotas were introduced in Ireland.<sup>280</sup> The relevant legislation – The Electoral (Amendment) (Political Funding) Act, 2012<sup>281</sup> – provides, at Section 6 thereof, that payments to political parties ‘shall be reduced by 50 per cent, unless at least 30 per cent of the candidates whose candidatures were authenticated by the qualified party at the preceding general election were women and at least 30 per cent were men’. The 30 per cent gender threshold came into effect at the 2016 general election. The threshold is due to rise to 40 per cent from 2023 onwards. Legislative gender quotas apply at general elections only.<sup>282</sup> The implementation of gender quotas in the 2016 General Election resulted in a welcome increase of female TDs elected to the Dáil. In 2018, the Irish Government announced plans to establish a scheme that will give political parties additional funding to hire a diversity and equality officer if they run at least 30 per cent female candidates in next year’s local elections.<sup>283</sup> However, the lack of diversity in Irish politics is notable in terms of representation from minority groups, and people with disabilities are no exception. While women continue to face barriers in terms of political participation in the Irish system, women with disabilities face multiple barriers.<sup>284</sup> The most recent National Women’s Strategy, the National Strategy for Women and Girls 2017-2020, also acknowledges the need for pro-active steps to be taken to ensure women with disabilities are included in the decision-making processes that affect their lives. Such steps might include: disability equality training, disability inclusion policies, provision of structures and spaces for women with disabilities to meet.<sup>285</sup>

In 2013, the Irish Government signaled its commitment to introducing legal capacity legislation that would bring its laws in line with Article 12 CRPD. In that regard, it drafted the Assisted Decision Making (Capacity) Act 2015, certain provisions of which have not yet come into force and are awaiting a commencement order. The Act has been deemed to encompass ‘a comprehensive reform’ of the outdated 19th century legislation on decision-making capacity that is based on the archaic Lunacy Regulations (Ireland) Act 1871.<sup>286</sup> Among other things, the 2015 Act replaces the Wards of Court (guardianship) system with a modern, supported framework for assisted decision-making. The original 2013 Bill (that preceded the 2015 Act) maintained voting restrictions for those deprived of their legal capacity in Section 106 thereof, which stated that nothing contained within the Bill shall be construed:

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*‘as altering or amending the law in force on the coming into operation of this section relating to the capacity or consent required [with regard to] a person in relation to any of the following: i) Voting at an election or at a referendum’.*

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<sup>280</sup> M. Brennan and F. Buckley, ‘The Irish legislative gender quota: The first election’ (2017) *Administration*, 65(2) pp. 15-35.

<sup>281</sup> The Electoral (Amendment) (Political Funding) Act, 2012, Statutory Instrument no. 36 of 2012, available at: <http://www.irishstatutebook.ie/eli/2012/act/36/enacted/en/html>, last accessed 11 September 2018.

<sup>282</sup> M. Brennan and F. Buckley (n 280 above).

<sup>283</sup> See: <http://www.thejournal.ie/gender-quotas-2-4210730-Aug2018/>, last accessed 11 September 2018.

<sup>284</sup> Submission to the Department of Justice and Equality on a New National Women’s Strategy 2017-2020 January 2017, p. 20.

<sup>285</sup> *Ibid.*

<sup>286</sup> See generally P.T. Rickard Clarke, ‘The Assisted Decision- Making (Capacity) Act 2015’ (2018) *Irish Journal of Family Law* 54.



Notably, Section 138 of the 2015 Act excludes any reference to capacity restrictions in the context of voting. However, that section has not yet been commenced and requires a commencement order under sections 1(2) and 3 of the Act before it enters into force. Since Section 138 excludes any reference to capacity restrictions in the context of voting, it is reasonable to assume that upon commencement of the Act, there may be amendments to the electoral laws pertaining to existing restrictions on the right to vote.

On the issue of accessibility, it is worth noting that the Irish Government has committed itself to improving the accessibility of voting and voter information in its National Disability Inclusion Strategy 2017-2021. In that regard, it has drawn on research from the National Disability Authority (NDA) – an independent statutory agency that provides expert advice on disability policy and practice to the relevant Minister – and on best practice.<sup>287</sup> The government has allocated responsibility for improving the accessibility of elections to the Department of Housing, Planning, Community and Local Government. Over the last number of years, the Department has engaged in various activities to promote the accessibility of elections. For instance, it has provided an information leaflet for Voters with Disabilities.<sup>288</sup> It has also worked with the Irish Wheelchair Association to compile a list of polling stations that do not have wheelchair access. In the past, the NDA has produced guidance on accessible voting centres and on communicating with voters with disabilities,<sup>289</sup> liaising with the Department of the Environment, Community and Local Government in that regard.<sup>290</sup> The NDA's guidance was incorporated into an administrative circular issued by Department of the Environment, Community and Local Government to returning officers who are responsible for polling stations in elections. The NDA also drafted a discussion paper in 2012 to examine some of the barriers to voting for people with sight loss and people with intellectual disabilities. It outlines the legal situation in Ireland for such voters and reviews alternative approaches in use in other jurisdictions, and how these might be relevant in an Irish context.<sup>291</sup> On foot of the foregoing measures and following the complaints of inaccessibility highlighted above, the Irish government has recently introduced new tactile ballot paper templates – a plastic device which a voter places over the ballot paper and which features raised lettering, large print and Braille – for visually impaired voters.<sup>292</sup> Audrey Tormey, from the National Council for the Blind of

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<sup>287</sup> Department of Justice and Equality, National Disability Inclusion Strategy 2017-2021, p. 17.

<sup>288</sup> Department of Environment, Community and Local Government, 'Voters with Disabilities', (2011) available at: <http://www.environ.ie/en/LocalGovernment/Voting/#Information%20for%20Voters%20with%20Disabilities>, last accessed 11 September 2018.

<sup>289</sup> See: <http://nda.ie/Publications/Others/Accessible-Voting/Accessible-Voting-Checklist.html>, last accessed 11 September 2018.

<sup>290</sup> See: [https://www.housing.gov.ie/sites/default/files/migrated-files/en/Publications/LocalGovernment/Voting/01\\_info-voters\\_with\\_disability-english.pdf](https://www.housing.gov.ie/sites/default/files/migrated-files/en/Publications/LocalGovernment/Voting/01_info-voters_with_disability-english.pdf), last accessed 11 September 2018.

<sup>291</sup> National Disability Authority, Accessible Voting, Discussion Paper, available at: <nda.ie/nda-files/Accessible-Voting.docx>, last accessed 11 September 2018. Guidance is available at: [http://www.nda.ie/website/nda/cntmgmtnew.nsf/0/1BDE21B926A1BE728025760100517AA7/\\$File/Guidance%20Accessibility-Communication%20-%20Circular%20F.28-09.htm](http://www.nda.ie/website/nda/cntmgmtnew.nsf/0/1BDE21B926A1BE728025760100517AA7/$File/Guidance%20Accessibility-Communication%20-%20Circular%20F.28-09.htm) (accessed 13 October 2013).

<sup>292</sup> The introduction of these new ballot papers follows the High Court case of Robbie Sinnott who initiated proceedings in 2016 against the Minister for the Environment, Community and Local Government and the State. Mr Sinnott complained that he was being deprived of his right to a secret ballot because he had to ask a polling station presiding officer to complete his ballot paper and ultimately won the case in April 2017.



Ireland (NCBI), described the introduction of the new ballot templates as ‘a monumental step forward for people who are blind or vision impaired’.<sup>293</sup>

Most recently, on 18 May 2018, disability activists, political leaders and international academics gathered in Trinity College Dublin to discuss the barriers to political representation and activism for people with disabilities in Ireland. The conference focused on the current challenges to political participation for people with disabilities, including standing for elections, involvement in political parties, and voting.

## 5.7 Case Study on The United Kingdom

In the UK, there is a vast array of legislation dealing with election processes. In this section, the relevant laws pertaining to elections to the European Parliament will not be addressed, since, once the UK leaves the EU, it will not take part in future European Parliament elections.<sup>294</sup>

The main UK laws relating to elections are the Local Government Act 1972,<sup>295</sup> the House of Commons Disqualification Act 1975,<sup>296</sup> the Representation of the People Act 1983<sup>297</sup> and the Political Parties and Elections Act 2009.<sup>298</sup>

The right to ‘reasonable adjustments’ is made explicit in the Equality Act 2010 and in the Electoral Administration Act 2006.<sup>299</sup> The 2010 Act states that service providers are legally obliged to make ‘reasonable’ physical adjustments to their premises to create an accessible environment for all disabled people. These are largely anticipatory duties that require, among other measures, entrance ramps and equipment to be provided to aid the voting process e.g. an enlarged version of the ballot paper, a tactile voting device, other language formats, and so forth. The Electoral Administration Act 2006 elaborates further on the duties of electoral authorities.

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<sup>293</sup> See <https://www.irishtimes.com/news/ireland/irish-news/tactile-ballot-templates-to-facilitate-visually-impaired-in-voting-1.3430104>, last accessed 11 September 2018. See also <https://www.pila.ie/news-events/2017/03/30/high-court-vindicates-right-to-a-secret-ballot-in/>, last accessed 11 September 2018.

<sup>294</sup> United Kingdom, Schedule 9 to the European Union (Withdrawal) Bill repeals the two main Acts governing the conduct of European Parliamentary elections: the European Parliamentary Elections Act 2002 and the European Parliament (Representation) Act 2003.

<sup>295</sup> United Kingdom, Local Government Act 1972. See: <http://www.legislation.gov.uk/ukpga/1972/70>, last accessed 11 September 2018.

<sup>296</sup> United Kingdom, House of Commons Disqualification Act 1975. See: <https://www.legislation.gov.uk/ukpga/1975/24/contents>, last accessed 11 September 2018.

<sup>297</sup> United Kingdom, Representation of the People Act 1983 (as amended). See: <http://www.legislation.gov.uk/ukpga/1983/2>, last accessed 11 September 2018.

<sup>298</sup> United Kingdom, Political Parties and Elections Act 2009. See: <https://www.legislation.gov.uk/ukpga/2009/12/contents>, last accessed 11 September 2018.

<sup>299</sup> United Kingdom, Electoral Administration Act <http://www.legislation.gov.uk/ukpga/2006/22/contents>, last accessed 11 September 2018.



### Article 18(B)(4), The Electoral Administration Act 2006

- (a) *The authority must seek to ensure that all electors in a constituency in its area have such reasonable facilities for voting as are practicable in the circumstances;*
- (b) *The authority must seek to ensure that so far as is reasonable and practicable every polling place for which it is responsible is accessible to electors who are disabled; and*
- (c) *The authority must have regard to the accessibility to disabled persons of potential polling stations in any place which it is considering designating as a polling place.*

## Main barriers to the political participation of persons with disabilities

While UK laws and policies provide for several measures designed to ensure accessibility (as outlined above), election processes do not always run smoothly for individuals with disabilities.<sup>300</sup> In its Shadow Report to the CRPD Committee, Disability Rights UK notes that the Leonard Cheshire Foundation Survey revealed that almost a quarter of people with disabilities found it difficult to vote in person at polling stations at the May 2015 general election.<sup>301</sup> This is in spite of the fact that guidelines had been provided to people with disabilities themselves and to the polling station staff by the Electoral Commission, which is the independent body that monitors and advises on the electoral process.

The CRPD Committee also expresses concern about the low number of individuals with disabilities running for or holding elected public office in the UK.<sup>302</sup> This concern is shared by Disability Rights UK, which draws attention to the fact that ‘the exact number of disabled members of the UK or Welsh Parliaments is not known as such data is not collected’.<sup>303</sup> This might be attributable to the fact that Section 106 of the Equality Act 2010 (containing an obligation for political parties to publish diversity data about their candidates) has not been commenced yet.

In addition, the introduction of a new system of voter registration in the UK, whereby all individuals are required to register to vote and to complete a ‘declaration of truth’, is reported to have created significant barriers to voting, particularly for persons with (severe) intellectual disabilities, since guidance from the Electoral Commission states that the individual in question must have the mental capacity to make the declaration.<sup>304</sup>

<sup>300</sup>See <https://www.theguardian.com/society/2015/mar/25/disabled-people-shut-out-lack-access-polling-stations>, last accessed 11 September 2018; See also Electoral Commission, *Elections for everyone: Experiences of People with Disabilities at the 8 June 2017 UK Parliamentary General Election* (November 2017), [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0008/237194/Accessibility-report-call-for-evidence.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0008/237194/Accessibility-report-call-for-evidence.pdf), last accessed 11 September 2018.

<sup>301</sup> United Kingdom, Shadow Report of Disability Rights UK to the CRPD Committee (January 2017), p. 53.

<sup>302</sup> United Nations Committee on the Rights of Persons with Disabilities, Concluding Observations on the Initial Report of the United Kingdom of Great Britain and Northern Ireland, UN Doc. CRPD/C/GBR/CO/1, 3 October 2017, para. 60.

<sup>303</sup> United Kingdom, Shadow Report of Disability Rights UK to the CRPD Committee (n 301 above), p. 53. See generally <https://www.electoral-reform.org.uk>.

<sup>304</sup> United Kingdom, Cabinet Office, Call for Evidence: Access to Elections, Government Response, available at <https://www.gov.uk/government/consultations/access-to-elections-call-for-evidence>, last accessed 11 September 2018.



## Good practice/promising initiatives

The UK is one of the few countries<sup>305</sup> in the EU where people with disabilities are universally recognised as being eligible to stand for election and vote, having removed legislative restrictions that were previously in place.<sup>306</sup>

The Electoral Commission has published performance standards, which require that elections take into account the need to eliminate discrimination and consider accessibility when setting up polling stations as well as the need to 'provide all materials in accessible formats that are easy for voters to use and understand'.<sup>307</sup> The Electoral Commission has also produced a number of guides on how to vote, including an animated film and guidance for local authorities about how to make voting accessible for individuals with disabilities.<sup>308</sup> However, as noted above, there remain concerns regarding the accessibility of political processes.

In light of the foregoing, the UK's Cabinet Office launched a Call for Evidence on 5 September 2017, requesting views on how disabled people experience registering to vote and voting, in order to: enhance the Government's understanding of the experiences of disabled people in registering to vote and casting their vote; to help identify if current mechanisms to support disabled people to participate in the democratic process are sufficient; and to identify examples of good practice provided by electoral service staff to disabled people at elections. Following the Call for Evidence, the Cabinet Office of the UK Government published its response to that call in a document that includes measures for further action.<sup>309</sup> The document was produced in partnership with the Government-chaired Accessibility of Elections Working Group, which includes representatives from DPOs and from bodies, which oversee the conduct of elections and referendums.

The UK Government has also made a commitment to addressing the current under-representation of people with disabilities in public and political life. The first step taken in that regard was to introduce extra support for disabled people who want to become Members of Parliament, councilors or other elected officials. In England, a public consultation, entitled Access to Elected Office for Disabled People, was conducted between February and May 2011, and a certain amount of funding was put in place to facilitate that access. In a similar vein, the Scottish Government's Fairer Scotland Action Plan,<sup>310</sup> aims,

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<sup>305</sup> Only seven out of the 28 EU Member States (Austria, Croatia, Italy, Latvia, the Netherlands, Sweden and the United Kingdom) explicitly guaranteed equal voting rights for all, including those without legal capacity. M. Priestley *et al.* (n 20 above), p. 13.

<sup>306</sup> S. Gurbai, *The Right to Vote of Adults placed under Guardianship in the Light of International Law: European Regional Law and Comparative Public Law*, Ph.D. thesis, pp. 118 and 122; See also the Initial Report of the United Kingdom of Great Britain and Northern Ireland to the CRPD Committee, UN Doc. CRPD/C/GBR/1, 3 July 2013, para 318.

<sup>307</sup> United Kingdom, Electoral Commission, *Performance Standards for Returning Officers in Great Britain*, 2011, available at: [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0003/145371/Performance-Standards-for-ROs-FINAL-web.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0003/145371/Performance-Standards-for-ROs-FINAL-web.pdf), last accessed 11 September 2018.

<sup>308</sup> See, for instance, United Kingdom, Electoral Commission, 'Polling Station Walk Through' available at [http://www.aboutmyvote.co.uk/how\\_do\\_i\\_vote/polling\\_station\\_walkthrough.aspx](http://www.aboutmyvote.co.uk/how_do_i_vote/polling_station_walkthrough.aspx), last accessed 11 September 2018.

<sup>309</sup> United Kingdom, Cabinet Office, (n 304 above).

<sup>310</sup> Scotland, 'Community: Scottish Community Empowerment Action Plan, Celebrating Success: Inspiring Change' (2009), available at: <https://www.gov.scot/Publications/2009/03/20155113/0>, last accessed 11 September 2018. See further K. Tabner, 'Scottish Community Empowerment: Reconfigured Localism or an Opportunity for Change?' (2017) *The Journal of Contemporary Community Education Practice Theory* 8(1) 1-11.





among other things, to target political participation for people with disabilities. Its action line no. 8 was specifically targeted at enabling people with disabilities to stand for election in the 2017 local government elections and to contribute to making democratic institutions more representative of the communities they serve. The government launched an Access to Elected Office Fund, which supported 30 candidates with disabilities to stand for election in the 2017 local government elections, and the government has committed to continuing the fund for the Scottish Parliamentary elections in 2021. In addition, in its delivery plan, *A Fairer Scotland for Disabled People*, published in December 2016, the Scottish Government committed to setting up a new programme of 120 disability internships (to be delivered within the current parliamentary term), including placements in the Scottish Parliament.<sup>311</sup>

The UK Government has also set up the Civic Participation Network, which helps people who need support to participate in public life. It also contributes to the Government's initiative to ensure that all communication channels across the public sector are inclusive.<sup>312</sup> In addition, several awareness-raising campaigns have also been engaged in throughout the UK in order to facilitate the participation of people with disabilities in electoral processes, both by government and disability and other community organisations. The Welsh Government runs awareness-raising campaigns to encourage disabled people to apply for public appointments, and individuals with disabilities who hold or have held public appointments are involved in those campaigns.<sup>313</sup> Additionally, the UK DPO Scope launched the 'Polls Apart' campaign. In the last general election, Scope surveyed over 2000 polling stations and found that 68% were inaccessible for people with disabilities. On the basis of that research, Scope raised awareness at government and local level about the importance of making their polling stations accessible. Moreover, the community development organization 'Outside the Box' has developed a peer training manual for people with intellectual disabilities, together with the Scottish Electoral Commission. The manual enables them to train other people with intellectual disabilities on how to participate in elections.

Finally, the survey data gathered by the EU-CITIZEN network reveals that there are plans to conduct an inquiry on the civic engagement of disabled people, under the auspices of the All Part Parliamentary Group (APPG) for Disability.<sup>314</sup>

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<sup>311</sup> Scotland, *A Fairer Scotland for Disabled People - Our Delivery Plan to 2021 for the United Nations Convention on the Rights of Persons with Disabilities* (2016).

<sup>312</sup> United Kingdom, Initial Report of the United Kingdom of Great Britain and Northern Ireland, 3 July 2013, UN Doc. CRPD/C/GBR/CO/1, paras. 322 and 323.

<sup>313</sup> Ibid, para. 326.

<sup>314</sup> Respondent no. 3 from the survey data on file with the Centre for European Policy Studies, Brussels.



## 6. Conclusions and Recommendations

FRA Director, Morten Kjaerum asserts that ‘the right to vote is a fundamental right of all EU citizens, including persons with disabilities’.<sup>315</sup> Political participation takes the form of both electoral and non-electoral participation. Political participation in electoral processes involves more than just voting; rather, as evidenced throughout this pilot report, it derives from the ability to take part in the conduct of public affairs; and the opportunity to register as a candidate, to campaign, to be elected and to hold office at all levels of government. This report explored the right to political participation for persons with disabilities (focusing on electoral participation), the barriers that exist to the exercise of that right and the good practices and promising initiatives exhibited at the EU level itself and in selected EU Member States.

No individual should be restricted, either in law or in practice, in the enjoyment of political rights on the grounds of disability. Yet, Priestly *et al.* argue that there ‘is ample aggregate evidence of unequal outcomes to position disability rights as a significant socio-economic variable in [the] political process and to suggest scope for the removal of barriers to full participation and equality’.<sup>316</sup> Based on the findings of this research, the barriers encountered by persons with disabilities in the political sphere can be categorised into legal and administrative barriers, as well as accessibility and institutional barriers.

Reform initiatives have been launched in several EU Member States since the entry into force of the CRPD. Those initiatives clearly reflect a consensus in a move away from voting restrictions for people with disabilities. This research demonstrates that, while significant efforts have been made, both within the EU institutions themselves as well as at Member State level, there are still significant shortcomings in the implementation of the CRPD. People with disabilities currently do not have an equal voice in the political sphere, and additional strategies are needed to increase the participation of people with disabilities in democratic processes. The following recommendations are put forward, with that aim in mind:

### Recommendations

- While the European Commission has limited competence on electoral matters, the EU institutions as a whole should make sustained efforts to facilitate the political participation of persons with disabilities and to support Member States’ efforts in that regard.
- The EU institutions should take appropriate measures, in co-operation with EU Member States and representative organisations of people with disabilities, to ensure that all individuals with disabilities, including those under guardianship, are allowed to vote and stand for election.<sup>317</sup>

<sup>315</sup> European Union Agency of Fundamental Rights, Press Release, available at: <http://fra.europa.eu/en/press-release/2011/if-your-vote-not-counted-do-you-not-count>, last accessed 11 September 2018.

<sup>316</sup> M. Priestley *et al.* (n 20 above), p. 7.

<sup>317</sup> See United Nations Committee on the Rights of Persons with Disabilities (n 142 above), para. 69.



- EU Member States should repeal all provisions restricting the right of persons with disabilities to vote and stand as a candidate for elections, and they should revoke any declarations that have the effect of negating the CRPD's objective to grant full legal capacity to all individuals with disabilities.
- The European Disability Strategy 2020-2030 should pay particular attention to political participation, and the EU should ensure that the Strategy is in line with the provisions of the CRPD as well as with the CRPD Committee's Concluding Observations to the EU.
- The EU should review any Directives or other laws that potentially infringe the right to political participation of persons with disabilities under the CRPD.
- The collection of statistical and qualitative research data should be fostered in all EU Member States and at the EU level, in order to populate outcome indicators on political participation and to ensure that all Parties to the CRPD are in compliance with their obligations under Article 31 of the Convention.
- The EU institutions and the Member States should strengthen the methodologies that are used for collecting data on political participation and disability. Any data collected should be disaggregated in accordance with gender, age and type of impairment.
- Data collection methodologies should be inclusive of all persons with disabilities, particularly those with intellectual disabilities.
- The EU and its Member States should ensure that polling stations are accessible to all persons with disabilities and that voting procedures are easy to understand. Accessibility measures for all types of impairments should be promoted at Member State level.
- All campaign materials and political debates as well as websites should be inclusive of persons with disabilities and in compliance with internationally accepted technical standards.
- Common guidelines on accessibility standards should be drafted in a consultative process between the EU and its Member States, in close consultation with representative organisations of persons with disabilities.
- Federal states, in particular, should ensure that they promote a common understanding of accessibility in the context of political participation in all regions of the state. This can be done by producing guidelines or a memorandum agreement.
- The EU institutions and the Member States should take positive action to advance the rights of women with disabilities in the realm of politics, and they should set up a mechanism to monitor progress in realising the rights of women with disabilities and fund data collection in that regard.<sup>318</sup>
- The EU and its Member States should mainstream a disability perspective in their gender policies, and they should adopt a gender perspective in their disability strategies.
- In addition to including disabled peoples' organisations in legal and policy dialogues on political participation, the EU Member States should promote the participation of representative organisations of women with disabilities.
- Specific measures should be adopted under Article 5(4) CRPD to achieve de facto equality, including positive action, such as the establishment of quotas in candidate lists for political parties or the reservation of seats in national parliaments for persons with disabilities.
- The Member States should conduct research on how people with disabilities most commonly engage with political processes and on the role that technology and advocacy strategies play in this process. Research and development on e-voting should be promoted at Member State level.

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<sup>318</sup> Ibid, para. 21.



- All EU Member States should introduce an obligation to consult with people with disabilities in law and policy-making processes on all relevant issues pertaining to CRPD implementation.
- The participation of people with intellectual disabilities on disability advisory councils should be promoted.
- EU Member States should put in place strong awareness-raising strategies, in order to promote the empowerment and political engagement of people with disabilities. Particular attention should be given to campaigns for deaf-blind individuals, those with psychosocial and intellectual impairments and women with disabilities.<sup>319</sup>
- The EU and its Member States should provide technical assistance to electoral management bodies on how to implement the WCAG 2.0 AA standards.
- Available funds should be set-aside at Member State level to promote the participation of people with disabilities as candidates in elections.
- Redress mechanisms for instances of deprivation of political rights should be set up and adequately monitored at Member State level.
- Impact assessments should be carried out at regular intervals and at all levels of each Member State following the introduction of laws and policies pertaining to elections.

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<sup>319</sup> Conference of States Parties to the Convention on the Rights of Persons with Disabilities, Political participation and equal recognition before the law, Note by the Secretariat, UN Doc. CRPD/CSP/2018/4, 29 March 2018, para. 16.