

Common Provisions Regulation Proposal- first reaction from the European Disability Forum

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Contents

Common Provisions Regulation Proposal- first reaction from the European Disability Forum	1
Key messages.....	1
Introduction.....	2
PROPOSALS OF ESIF REGULATIONS 2021-2027	3
COMMON PROVISIONS REGULATION PROPOSAL.....	3
The new Common Provisions Regulation Proposal includes the following direct or indirect references to persons with disabilities	3
What has been omitted from the current proposal- which was previously included	7
Consequences of these omissions from the proposals.....	7
EDF recommendations on the COMMON PROVISIONS REGULATION PROPOSAL.....	9

Key messages

1. The European Disability forum welcomes the Commissions Common Provisions Regulation Proposals acknowledging a number of strong points:
 - a. CRP recital 5 on preventing the use of funds for segregation and exclusion
 - b. Article 6, and the inclusion of organisations representing persons with disabilities in partnership and multi-level governance
 - c. Article 34 explaining that all members of the monitoring committee, including representatives of bodies responsible for promoting rights of persons with disabilities (article 6), will have voting rights
 - d. Horizontal and thematic enabling conditions related to the UN Convention on the Rights of Persons with Disabilities
2. Since the EU and all of its members have now ratified the UN CRPD, references to the CRPD need to be maintained and strengthened across all regulations and included in the legal basis of all the regulations.
3. No European Funding, including all EU funds to which the CRP applies, should be invested in inaccessible infrastructure, products or services and therefore the

accessibility provisions should be strengthened in Common Provisions Regulation proposal as follows:

- i. Article 7 of the existing regulation 1303/2013 should be reinstated as the strongest tool to ensure non-discrimination and accessibility
- ii. Article 67 of the regulation proposal should include a specific reference to accessibility for persons with disabilities as it is already done with gender equality and sustainable development

Introduction

The [European Disability Forum \(EDF\)](http://www.edf-fehp.org)¹ is an independent Non-Governmental Organisation (NGO) that represents the interests of 80 million Europeans with disabilities. EDF is a unique platform which brings together representative organisations of persons with disabilities from across Europe. EDF is run by persons with disabilities and their families. We are a strong, united voice of persons with disabilities in Europe.

In 2013, EDF welcomed the European Structural and Investment Funds (ESI Funds) regulations for the period 2014-2020 as being in line with the EU Charter of Fundamental Rights as well as the United Nation Convention on the Rights of Persons with Disabilities (CRPD)².

The ESI Funds, over the decades, have improved the situation of persons with disabilities by financing accessibility, fight against poverty and social exclusion and increasing education and employment opportunities, across the European Union (EU). They have financed key services in the community reducing disparities and promoting solidarity.

The aim of this paper is to contribute to the development of the future CPR and the related EU funds, to bring the perspective and experience of persons with disabilities.

The current Common Provisions Regulation³ (CPR), which regulates the use of all the ESI Funds as well as the regulations specific for each Fund⁴ for the period 2014-2020, introduced strong positive obligations including:

- Partnership with civil society organisations as an horizontal principle (article 5 CPR), and the code of conduct on partnership requiring involvement of civil society organisations in all phases of the use of the Funds. For the first time, organisations of persons with disabilities were put on an equal footing with regional authorities and social partners, with voting rights in the monitoring committees.
- Capacity building of civil society organisations to be financed by the European Social Fund (ESF) thanks to article 6 ESF regulation 1304/2013 which encourages the adequate participation of, and access by, non-governmental organisations in actions

¹ www.edf-fehp.org

² <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

³ **Regulation (EU) No 1303/2013** <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013R1303>

⁴ The European Structural and Investment Funds include European Social Fund, European Regional Development Fund, Cohesion Fund, European Agricultural Fund for Rural Development, European Maritime and Fisheries Fund.

supported by the ESF, in particular in the fields of social inclusion, gender equality and equal opportunities.

- Horizontal principle on equality between women and men and non-discrimination, (article 7 CPR) including accessibility for persons with disabilities as key criteria to respect in the use of the Funds.
- Ex-ante conditionalities were introduced as prerequisite countries needed to fulfil in order to receive the Funds. The general ex-ante conditionality on disability and the thematic ex-ante conditionality on fight against poverty and social exclusion have positively changed ways countries allocated ESI Funds.
- Accessibility (article 7 and Ex-ante conditionality 3. "Disability" CPR) for persons with disabilities included as an obligation in all the phases of the use of the funds: planning, implementation, communication, monitoring, reporting and evaluation. This means that all articles regulating each of these phases include obligation for the authorities managing the Funds to implement accessibility for persons with disabilities and to provide information on how they have taken it into account.

Thanks to these provisions, and in particular to the partnership principle, as referred to in article 5 Common Provision Regulation EU 1303/2013, the EU is a good example, worldwide, for meaningful involvement of organisations of persons with disabilities and other civil society organisations. In international processes such as implementation of the Sustainable Development Goals and the implementation of the CRPD, the EU is leading the way in this regard.

At the time the current European budget was adopted, not all EU member states had ratified the CRPD, but now this is the case. Therefore, the provisions related to the CRPD need to be further strengthened to ensure that no European Funds are invested in barriers and segregation for persons with disabilities and European funds need to be invested in accessibility and social inclusion for persons with disabilities in line with CRPD's scope.

PROPOSALS OF ESIF REGULATIONS 2021-2027

COMMON PROVISIONS REGULATION PROPOSAL

(Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument).

The new Common Provisions Regulation Proposal includes the following direct or indirect references to persons with disabilities

- *(5) Horizontal principles as set out in Article 3 of the Treaty on the European Union ('TEU') and in Article 10 of the TFEU, including principles of subsidiarity and proportionality as set out in Article 5 of the TEU should be respected in the implementation of the Funds, taking into account the Charter of Fundamental Rights of the European Union. **Member States should also respect the obligations of the UN Convention on the Rights of Persons with Disabilities and ensure accessibility in line with its article 9 and in accordance with the Union law harmonising accessibility requirements for products and services. Member***

States and the Commission should aim at eliminating inequalities and at promoting equality between men and women and integrating the gender perspective, as well as at combating discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The Funds should not support actions that contribute to any form of segregation.[...]

- **Article 6 Partnership and multi-level governance**

*1. Each Member State shall organise a partnership with the competent regional and local authorities. That partnership shall include at least the following partners: [...] (c) relevant bodies representing civil society, environmental partners, and bodies responsible for promoting social inclusion, fundamental rights, **rights of persons with disabilities**, gender equality and **non-discrimination**.*

2. In accordance with the multi-level governance principle, the Member State shall involve those partners in the preparation of Partnership Agreements and throughout the preparation and implementation of programmes including through participation in monitoring committees in accordance with Article 34. [...]

- **Article 67 Selection of operations by the managing authority**

1. For the selection of operations, the managing authority shall establish and apply criteria and procedures which are non-discriminatory, transparent, ensure gender equality and take account of the Charter of Fundamental Rights of the European Union and the principle of sustainable development and of the Union policy on the environment in accordance with Articles 11 and 191(1) of the TFEU. The criteria and procedures shall ensure the prioritisation of operations to be selected with a view to maximise the contribution of Union funding to the achievement of the objectives of the programme. [...]

*3. In selecting operations, the managing authority shall: [...] (b) **ensure that selected operations are consistent with the corresponding strategies and planning documents established for the fulfilment of enabling conditions**; (c) [...]*

- **ANNEX III - Horizontal enabling conditions –Article 11(1) Applicable to all specific objectives**

Name of enabling conditions	Fulfilment criteria
Effective application and implementation of the EU Charter of Fundamental Rights	Effective mechanisms are in place to ensure compliance with the EU Charter of Fundamental Rights which include: 1. Arrangements to ensure verification of compliance of operations supported by the Funds with the Charter of Fundamental Rights. 2. Reporting arrangements to the monitoring committee on the compliance with the Charter of the operations supported by the Funds
Implementation and application of the United Nations Convention on the rights of persons with disabilities	A national framework for implementing the UNCRPD is in place that includes:

(UNCRPD) in accordance with Council Decision 2010/48/EC	<p>1. Objectives with measurable goals, data collection and monitoring mechanism.</p> <p>2. Arrangements to ensure that the accessibility policy, legislation and standards are properly reflected in the preparation and implementation of the programmes</p>
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- *ANNEX IV- Thematic enabling conditions applicable to ERDF, ESF+ and the Cohesion Fund – Article 11(1)*

Enabling condition -Policy objective 4: “A more social Europe by implementing the European Pillar of Social Rights”

- Specific objective (SO) ERDF: 4.1 enhancing the effectiveness of labour markets and access to quality employment through developing infrastructure
S.O.ESF: 4.1.3 Promoting a better work/life balance including access to childcare, a healthy and well-adapted working environment addressing health risks, adaptation of workers to change and healthy and active ageing;

Fulfillment criteria for the enabling condition

A national strategic policy framework for gender equality is in place that includes:

[...]2. Measures to address gender gaps in employment, pay and pensions, and **promote work-life balance**, including through improving access to early childhood education and care, with targets
[...]

4. Arrangements for ensuring that its design, implementation, monitoring and review is conducted **in close cooperation with equality bodies, social partners and relevant civil society organizations**.

- S.O. ERDF: 4.2 improving access to inclusive and quality services in education, training and lifelong learning through developing infrastructure;
S.O. ESF: 4.2.1 Improving the quality, effectiveness and labour market relevance of education and training systems; 4.2.2 Promoting flexible upskilling and reskilling opportunities for all, including by facilitating career transitions and promoting professional mobility; 4.2.3 Promoting equal access, in particular for disadvantaged groups, to quality and inclusive education and training, from early childhood education and care through general and vocational education and training and to tertiary level;

Fulfillment criteria for the enabling condition

A national and/or regional strategic policy framework for the education and training system is in place and includes:

1. Evidence-based systems for skills anticipation and forecasting as well as graduate tracking mechanisms and services for quality and effective guidance for learners of all ages

2. Measures to ensure **equal access to, participation in and completion of quality, relevant and inclusive education** and training and acquisition of key competences at all levels, including higher education

3. Coordination mechanism across all levels of education and training, including tertiary education, and clear assignment of responsibilities between the relevant national and/or regional bodies
 4. Arrangements for monitoring, evaluation and review of the strategic policy framework
 5. Measures to target low-skilled, low-qualified adults and those with disadvantaged socio-economic backgrounds and upskilling pathways
 6. Measures to support teachers, trainers and academic staff as regards appropriate learning methods, assessment and validation of key competences
 7. Measures to promote mobility of learners and staff and transnational collaboration of education and training providers, including through recognition of learning outcomes and qualifications
- S.O.ERDF: 4.3 increasing the socio-economic integration of marginalised communities, migrants and disadvantaged groups, through integrated measures including housing and social services
S.O.EF: 4.3.1 Promoting active inclusion including with a view to promoting equal opportunities and active participation, and improving employability;

Fulfillment criteria for the enabling condition

A national strategic policy framework for social inclusion and poverty reduction is in place that includes:

1. Evidence-based diagnosis of poverty and social exclusion including child poverty, homelessness, spatial and educational segregation, limited access to essential services and infrastructure, and the **specific needs of vulnerable people**
 2. Measures to prevent and combat segregation in all fields, including through providing adequate income support, inclusive labour markets and **access to quality services for vulnerable people**, including migrants
 3. **Measures for the shift from institutional to community-based care**
 4. Arrangements for ensuring that its design, implementation, monitoring and review is conducted **in close cooperation with social partners and relevant civil society organisations**
- S.O.ERDF: 4.4 ensuring equal access to health care through developing infrastructure, including primary care
S.O.EF: 4.3.4 Enhancing the equal and timely access to quality, sustainable and affordable services; improving accessibility, effectiveness and resilience of healthcare systems; improving access to long-term care services

Fulfillment criteria for the enabling condition

A national or regional strategic policy framework for health is in place that contains:

1. Mapping of health and long-term care needs, including in terms of medical staff, to ensure sustainable and coordinated measures
2. Measures to ensure the efficiency, sustainability, accessibility and affordability to health and long-term care services, including specific focus on individuals excluded from the health and long-term care systems
3. Measures to **promote community based services, including prevention and primary care, home-care and community-based services**

What has been omitted from the current proposal- which was previously included

In the new Common Provisions Regulation Proposal, the following provisions of the Regulation 1303/2013 concerning persons with disabilities are no longer included

- *Article 7- Promotion of equality between men and women and non-discrimination*
*[...]The Member States and the Commission shall take appropriate steps to prevent any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation during the preparation and implementation of programmes. **In particular, accessibility for persons with disabilities shall be taken into account throughout the preparation and implementation of programmes.***
- ANNEX I- 5. HORIZONTAL PRINCIPLES REFERRED TO IN ARTICLES 5, 7 AND 8 AND CROSS-CUTTING POLICY OBJECTIVES

5.3 Promotion of equality between men and women and non-discrimination

*2.Member States shall ensure, in accordance with Articles 5 and 7, the participation of the relevant bodies responsible for promoting gender equality and non-discrimination in the partnership, and ensure adequate structures in accordance with national practices to advise on gender equality, **non-discrimination and accessibility** in order to provide the necessary expertise in the preparation, monitoring and evaluation of the ESI Funds.[...]*

4.Member States shall address, in an appropriate manner, the needs of disadvantaged groups in order to allow them to better integrate into the labour market, and thereby facilitate their full participation in society.

5.4 Accessibility

*1.Member States and the Commission shall, in accordance with Article 7, take appropriate steps to prevent any discrimination based on disability. **Managing authorities shall ensure by means of action throughout programme lifecycles that all products, goods, services and infrastructures that are open or provided to the public and are co-financed by the ESI Funds are accessible to all citizens including those with disabilities** in accordance with applicable law, thereby contributing to a barrier-free environment for persons with disabilities and the elderly. **In particular, accessibility to the physical environment, transport, ICT in order to promote inclusion of disadvantaged groups, including persons with disabilities, shall be ensured. Actions to be undertaken may include directing investments towards accessibility in existing buildings and established services.***

- The general ex ante conditionalities “1. Anti discrimination” and “3.Disability”(please see ANNEX XI- Ex ante conditionalities, PART II: General ex-ante conditionalities)

Consequences of these omissions from the proposals

EDF is convinced that, throughout the current programming period, in the Regulation 1303/2013 the provision of Article 7 - *Promoting equality between men and women and non-discrimination*, and particularly the point mentioning that " *accessibility for persons with disabilities shall be taken into account throughout the preparation and implementation of*

programmes ", in conjunction with the provision of Annex I, paragraph 5.4- *Accessibility* ⁵has made the major difference in favor of persons with disabilities. In some countries as in Greece, it has even led to the application of a specific ON / OFF eligibility criterion for accessibility in line with article 9 of UNCRPD, applied to all Operational Programmes even in areas for which there is no relevant national or European legislation (e.g. services). The result was that no action could be selected for funding if it did not fulfill that accessibility criterion. Considering that the CRPD is ratified in the EU and all of its member states, it is critical that this is reflected in the regulation.

General ex-ante conditionality "3 – *Disability*" played, also, a key role in : (a) establishing a continuing consultation of the Managing Authorities with the representative disabled persons' organizations, thereby enhancing partnership and multi-level governance; (b) raising -awareness of all the staff of Managing Authorities on disability and accessibility issues; and (c) speeding up the process of establishing the Monitoring Mechanism for the implementation of the UNCRPD.

Following the above mentioned, the practical importance of the provisions of Article 7 - *Promoting equality between men and women and non-discrimination* (in conjunction with the provision of Annex I, para 5.4 - *Accessibility*) and its direct connection with the use of ESIF for the benefit of disabled citizens is clear versus the conditionality 3 - *Disability*, which focuses on the existence of administrative capacity for the implementation of the UNCRPD.

In the new Common Provisions Regulation Proposal, the general conditionality 3. *Disability* is replaced by the horizontal and applicable to all thematic objectives enabling condition "*Implementation and application of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in accordance with Council Decision 2010/48 / EC* "(see Annex III). The new enabling condition is obviously a further development of the previous conditionality 3. *Disability*. It is also applying as fulfillment criteria a national framework for the implementation of the UNCRPD including measurable objectives, a data collection and monitoring mechanism and arrangements to ensure that the accessibility policy, legislation and standards are properly reflected in the preparation and implementation of the operational programmes. Of course, the wording of the new enabling condition could lead again to a specific accessibility criterion as one of the required arrangements. But this wording, **as it is linked to existing legislation and standards on accessibility (as mentioned also in point 5 of the introduction), it could create problems -both at national and European level- in relation to its scope, which could be more limited than the scope of the universal accessibility described in the UNCRPD (Article 9: Accessibility)**. Here it should be noted once again that each Member State and the EU as well are obliged to fully apply the UNCRPD after its ratification both at national and European level.

Accordingly, the new enabling condition "*Effective application and implementation of the EU Charter of Fundamental Rights*" is expected to replace the contribution of general ex-ante conditionality 1 - *Anti discrimination*, since among others Article 21 (1) - *Non-Discrimination* of the EU Charter of Fundamental Rights explicitly prohibits the discrimination based on disability.

It is also noted as a positive addition, the inclusion among the fulfillment criteria of the thematic enabling condition "4. *A more social Europe by implementing the European Pillar of*

⁵ Annex I, paragraph 5.4- *Accessibility* : "*Managing authorities shall ensure by means of action throughout programme lifecycles that all products, goods, services and infrastructures that are open or provided to the public and are co-financed by the ESI Funds are accessible to all citizens including those with disabilities* "

Social Rights” of specific references to the corresponding national strategies and measures for: work-life balance (therefore, for mothers / foster mothers of persons with disabilities), "inclusive education", de-institutionalization, access to all in community-based health services.

EDF recommendations on the COMMON PROVISIONS REGULATION PROPOSAL

1. *The addition of this text to the legal basis- (see text in bold)*

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 46(d), Article 149, Article 153(2)(a), Article 164, Article 168(5), Article 175(3) and Article 349 thereof,

Having regard to the UN Convention on the Rights of Persons with Disabilities to which the EU and all its member states are state parties.'

2. Restoring of Article 7 - *Promoting equality between men and women and non-discrimination* of the Regulation 1303/2013 in the new Common Provisions Regulation
3. Amendment of Point (5) in the introduction of the Regulation Proposal as follows (see text in bold) in order to ensure the same scope of accessibility as defined in UNCRPD:

*(5) Horizontal principles as set out in Article 3 of the Treaty on the European Union ('TEU') and in Article 10 of the TFEU, including principles of subsidiarity and proportionality as set out in Article 5 of the TEU should be respected in the implementation of the Funds, taking into account the Charter of Fundamental Rights of the European Union. Member States should also respect the obligations of the UN Convention on the Rights of Persons with Disabilities and ensure accessibility in line with its article 9 **and in accordance with the Union law harmonising accessibility requirements for products and services.** Member States and the Commission should aim at eliminating inequalities and at promoting equality between men and women and integrating the gender perspective, as well as at combating discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The Funds should not support actions that contribute to any form of segregation.*

4. Addition of article 67 of Regulation Proposal as follows (see text in bold):

Article 67 Selection of operations by the managing authority

*1. For the selection of operations, the managing authority shall establish and apply criteria and procedures which are non-discriminatory, transparent, ensure gender equality, **ensure accessibility to persons with disabilities** and take account of the Charter of Fundamental Rights of the European Union and the principle of sustainable development and of the Union policy on the environment in accordance with Articles 11 and 191(1) of the TFEU. The criteria and procedures shall ensure the prioritisation of operations to be*

selected with a view to maximise the contribution of Union funding to the achievement of the objectives of the programme. [...]

5. In ESI Funds, accessibility has to be defined in line with UNCRPD article 9. No limitation of its scope arising from national or European legislation is acceptable. The fulfillment criteria of the enabling condition concerning the UNCRPD implementation must be formatted as follows (see text in bold):

Name of enabling conditions	Fulfillment criteria
Implementation and application of the United Nations Convention on the rights of persons with disabilities (UNCRPD) in accordance with Council Decision 2010/48/EC	<p>A national framework for implementing the UNCRPD is in place that includes:</p> <ol style="list-style-type: none"> 1. Objectives with measurable goals, data collection and monitoring mechanism. 2. Arrangements to ensure that the accessibility policy, legislation and standards are properly reflected in the preparation and implementation of the programmes in line with the provisions of the UNCRPD 3. Reporting arrangements to the monitoring committee on the compliance of the operations supported by the Funds with the UNCRPD.

6. Including a clear reference to accessibility to persons with disabilities in Article 25 - *Community-led local development* of the General Regulation Proposal to meet the provision of the UNCRPD for accessible infrastructures and services in both urban and rural areas, as it is mentioned here below (see text in bold):

Article 25 -Community-led local development

[...]

2. The Member State shall ensure that community-led local development is:

[...]

(d) supportive of networking, innovative features in the local context and, where appropriate, cooperation with other territorial actors.

(e) supportive of implementing infrastructure and services accessible to persons with disabilities