

Fostering Cultural Participation of Persons with Disabilities in the European Union Through Funding: 'I Was Told There'd Be Cake'*

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I. Introduction

As highlighted by the United Nations Special Rapporteur in the field of cultural rights, culture is “a tool of affirmation of one’s identity and ultimately a tool of empowerment”.¹ This is particularly true for people with disabilities.² Cultural participation, both as audience and

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¹ Report of the Special Rapporteur in the field of cultural rights, Alexandra Xanthaki, Cultural rights: an empowering agenda, 22 March 2022, A/HRC/49/54.

² FERRI, D., LEAHY, A., “The Right of People with Disabilities to Participate in Cultural Life: Is Cinderella Going to the Ball?” In Robinson, S. & Fisher, K. R. (eds), *Research Handbook on Disability Policy*, Edward Elgar, 2023.

artists, is an assertion of their inherent dignity,³ a vital dimension of their life, and is key for them to be included in society on an equal basis with others.⁴ Further, a cultural domain that is inclusive has the potential to promote equality and mutual respect. Culture is fundamental “to fight against all forms of violence, discrimination, intolerance and prejudice”.⁵

The Strategy for the Rights of Persons with Disabilities 2021–2030 (Strategy 2021–2030),⁶ which lays down the current European Union (EU) disability policy framework, recognises that an accessible and inclusive culture is “essential for full participation in society” of persons with disabilities.⁷ By the same token, the European Commission report related to the former Work Plan for Culture 2019-2022 identifies the need for a renewed focus on access to culture for persons with disabilities.⁸ Such acknowledgements signal a growing attention to cultural rights in the burgeoning EU disability *acquis*⁹ and an emerging ‘disability’ dimension of EU cultural policy.¹⁰ In fact, participation of disabled people in cultural life sits at the intersection of EU disability and cultural policies.

Since the 70s, the EU has adopted a range of actions to protect and promote disability rights. Following an initial period of soft law initiatives focusing on employment and vocational training,¹¹ the entry into force of the Treaty of Amsterdam, in 1999, and, even more the conclusion of the UN Convention on the rights of Persons with disabilities (CRPD or “the Convention”)¹² by the EU,¹³ have led to the consolidation and expansion of the disability *acquis*. This *acquis* currently encompasses a “jigsaw” of legislative measures related to accessibility of cultural goods and services based primarily on Article 114 of the Treaty on the

³ On these aspects see LEAHY, A., FERRI, D. “Rethinking and Advancing a ‘Bottom-up’ Approach to Cultural Participation of Persons with Disabilities as Key to Realising Inclusive Equality”, *International Journal of Law in Context*, 20,2, 2024, pp.1-19.

⁴ TATIC, D. *Access for People with Disabilities to Culture, Tourism, Sports and Leisure Activities: Towards Meaningful and Enriching Participation. Council of Europe Disability Action Plan*, Council of Europe, Strasbourg, 2015.

⁵ Council Resolution on the EU Work Plan for Culture 2023–2026 [2022] OJ C 466/1.

⁶ European Commission, “Union of Equality. Strategy for the Rights of Persons with Disabilities 2021 – 2030” COM (2021) 101 final.

⁷ *Ibid.*

⁸ European Commission, “Report from the Commission to The European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Work Plan for Culture 2019-2022” COM (2022) 317 final.

⁹ FERRI, D., KROLLA E., “Introduction: Walking Through the Looking Glass”, in Ferri, D., Krolla E. (eds), *Actors and Roles in EU Disability Law*, Hart, forthcoming 2025.

¹⁰ ŠUBIC, N., FERRI, D. “Characterizing Access to Culture for People with Disabilities in EU Cultural Policy: European Identity, Market integration and Social Inclusion”, *DPCE Online*, vol. 52, 2, July 2022.

¹¹ WADDINGTON, L., *From Rome to Nice in a Wheelchair: The Development of a European Disability Policy*, Europa Law Publishing, 2005.

¹² UN Convention on the Rights of Persons with Disabilities, UN Doc. A/RES/61/106, Annex I (CRPD).

¹³ Council Decision 2010/48/EC concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities [2010] OJ L23/35.

Functioning of the European Union (TFEU).¹⁴ Other legislative measures include provisions that facilitate cultural participation of persons with disabilities.¹⁵ Such legislation tallies with growing number of references to persons with disabilities in EU cultural policy and programmes.¹⁶ This renewed attention to cultural participation of persons with disabilities is epitomised by the Regulation establishing the Creative Europe Programme 2021 to 2027 (Creative Europe Regulation),¹⁷ which highlights that the Programme “should promote and increase cultural participation across the Union, in particular with regard to people with disabilities and people from disadvantaged backgrounds”.¹⁸

Against this background, this chapter discusses the important role that EU funding to the cultural and creative sectors - and particularly the bespoke cultural funding programme Creative Europe - has played and can play in enhancing cultural participation of persons with disabilities. It argues that, in spite of a constitutionally constrained competence on culture,¹⁹ EU funding tools (and particularly Creative Europe) have a great potential to foster the right of person with disabilities to participate in cultural life, and advance the implementation of the CRPD, but have not yet displayed transformative effects. It does so on foot of a set of empirical findings from two-focus groups held with people working in the cultural sector and set of semi-structured interviews conducted with representatives of organisations of persons with disabilities or umbrella non-governmental organisations acting at the EU level. In that regard, this chapter blends legal and qualitative methods, whereby the latter serves to better gauge the role of EU funding to the cultural and creative sector, and understand its drawbacks and strengths from a disability perspective. In light of its aims, this chapter endeavours to contribute to both the longstanding literature on EU cultural policy²⁰ and the emerging literature on EU

¹⁴ FERRI, D., “The Role of the European Union in Ensuring Accessibility of Cultural Goods and Services: All about that... Internal Market?” *European Law Review*, vol. 48,3, June 2023, pp. 257-280. See also FERRI, D., DONNELLAN, K., “The Implementation of the Marrakesh Treaty in the European Union: An Important Piece in the Accessibility Jigsaw?” *Legal Issues of Economic Integration*, vol. 49, 2022, pp. 269-292.

¹⁵ Directive (EU) 2018/1808 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administration action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive - AVMSD) in view of changing market realities [2018] OJ L 303/62.

¹⁶ ŠUBIC, N., FERRI, D., *op. cit.*

¹⁷ Regulation (EU) 2021/818 establishing the Creative Europe Programme (2021 to 2027) and repealing Regulation (EU) No 1295/2013 [2021] OJ L 189/34 (Creative Europe Regulation).

¹⁸ Recital 20 of the Creative Europe Regulation.

¹⁹ Article 6 TFEU.

²⁰ CRAUFURD-SMITH, R., *Culture and European Union Law*, Oxford University Press, 2004. See also CRAUFURD-SMITH, R., “The Evolution of Cultural Policy in the European Union”, in Craig, P., de Búrca, G. (eds), *The Evolution of EU Law*, Oxford University Press, Oxford, 2011, pp. 869-894.

disability law.²¹ Further, it tallies with (albeit for a discrete and narrow perspective) the recent strand of scholarship on EU budget and EU funding instruments and their functions.²² Furthermore, this chapter locates within a new wave of academic research using empirical methods, as well as interdisciplinary analysis to better understand EU law.²³

For the purpose of this analysis, and in alignment with the CRPD, disability is conceived of as stemming from the interaction between the individual's impairment and external barriers. In line with such a social-contextual understanding, cognisant of the ongoing debate on the language of disability across disability studies and disability law literature, this chapter uses, for the most, people-first language (i.e. "people/persons with disabilities"). In doing so this chapter aligns with the wording of the CRPD and with the terminology adopted in EU disability policy. Only occasionally, and in an interchangeable fashion, the term 'disabled person/people' is used. Furthermore, embracing the definition included *inter alia* in Article 2 of the Creative Europe Regulation, "cultural and creative sectors" refer to sectors "whose activities, many of which have potential to generate innovation and jobs in particular from intellectual property: (i) are based on cultural values and artistic and other individual or collective creative expressions; and (ii) include the development, the creation, the production, the dissemination and the preservation of goods and services which embody cultural, artistic or other creative expressions, as well as related functions such as education or management".²⁴ It is immaterial whether the activities of those sectors are "market-oriented or non-market-oriented".²⁵ The cultural and creative sectors "include, *inter alia*, architecture, archives, libraries and museums, artistic crafts, audiovisual (including film, television, video games and multimedia), tangible and intangible cultural heritage, design (including fashion design), festivals, music, literature, performing arts (including theatre and dance), books and publishing, radio, and visual arts".²⁶

After these introductory remarks, the second section sets the scene by expounding the right to cultural participation, its relevance, and the obligations stemming from the CRPD. This

²¹ Among others FERRI, D., BRODERICK, A., *Research Handbook on EU Disability Law*, Edward Elgar, Cheltenham, 2020.

²² KILPATRICK, C., "Explaining and Remediating the Near Absence of the Budget in EU Law Scholarship", *Common Market Law Review*, vol. 61, 3, 2024, pp. 623-654; WEBER, R., *The Financial Constitution of European Integration: Follow the Money?*, Hart Publishing, Oxford, 2023.

²³ Among many others, DYEVRE, A., WIJTVLIET W., LAMPACH, N., "The Future of European Legal Scholarship: Empirical Jurisprudence", *Maastricht Journal of European and Comparative Law*, vol. 26, 3, 2019, pp. 348-371.

²⁴ Article 2 of the Creative Europe Regulation.

²⁵ *Ibid.*

²⁶ *Ibid.*

section is premised on the fact that increased attention to persons with disabilities in EU cultural policy, while, as noted elsewhere,²⁷ fulfilling a number of its overarching inherent functions, has been prompted by the CRPD. The third section, after having placed the chapter within the remit of socio-legal research and highlighted the added value of empirical (i.e. qualitative) research in the context of EU law scholarship, illustrates the methods used. The fourth section highlights the growing focus on cultural participation at the intersection between disability and cultural policies. The fifth section, by blending legal and empirical analysis, examines the extent to which funding tools that support the cultural and creative sector - and particularly the Creative Europe programme, which is commonly considered "the main incentive measure in the cultural policy area" -²⁸ have been used to support cultural participation of persons with disabilities and discusses their strengths and weaknesses. The sixth section provides some concluding remarks.

II. Cultural Participation of Persons with Disabilities in the CRPD: A Frame and a Benchmark

As mentioned in the introduction to this chapter and discussed elsewhere,²⁹ the need to comply with the CRPD, which now enjoys a "sub-constitutional" status in the EU legal framework,³⁰ has not only propelled the consolidation of comprehensive EU disability *acquis*, but also an increasing mainstreaming of disability issues. Furthermore, it has supported the embracing of a social-contextual conceptualisation of disability, i.e. the view of disability as stemming from the interaction between the individual's impairment and external barriers.³¹ Such understanding of disability as well as the obligations stemming from the CRPD frame the EU action on disability as a whole, and on cultural participation, specifically. Equally they contextualise the discussion of EU funding tools pursued in the chapter. For this reason, this section briefly recalls the ratio and core principles of the CRPD, and then reviews the extent to which cultural participation features in the Convention.

²⁷ ŠUBIC, N., FERRI, D., *op. cit.*

²⁸ GARBEN, S., "Article 167 TFEU", in Kellerbauer, M., Klamert, M., Tomkin, J. (eds), *The EU Treaties and the Charter of Fundamental Rights: A Commentary*, Oxford Academic, 2019.

²⁹ FERRI D. "The conclusion of the UN Convention on the Rights of Persons with Disabilities by the EC/EU: a constitutional perspective" *European Yearbook of Disability Law*, Intersentia, 2010.

³⁰ Joined Cases C-335/11 and C-337/11, *HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab (C-335/11) and HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S (C-337/11)* EU:C:2013:222.

³¹ FERRI, D., FAVALLI, S., "Defining Disability in the EU Non-Discrimination Legislation: Judicial Activism and Legislative Restraints" *European Public Law*, vol 22, 3, 2015.

1. The Key Features of the CRPD

The CRPD is commonly acknowledged to be a ground-breaking treaty. Felder contends that “the CRPD is visionary, extensive and new compared to existing law”.³² This is linked to the fact that the Convention recasts disability as a social construct.³³ Skarstad and Stein posit that “[t]he CRPD precipitated a dramatic sea change in the relative human rights empowerment of persons with disabilities by recognizing their equal dignity, autonomy, and worth, and by ensuring their equal enjoyment of all human rights and fundamental freedom”.³⁴ In fact, the CRPD revolves around the general principles of dignity, autonomy, non-discrimination and equality, accessibility and participation.³⁵ It incorporates civil and political as well as economic, social and cultural rights, which must be afforded to persons with disabilities on an equal basis with others.

While encompassing rights traditionally enshrined in international human rights law, the CRPD rewrites them from a disability perspective.³⁶ In doing so, it obliges Parties to the Convention, including the EU, to address barriers, socio-economic disadvantages, and to fight discrimination, all of which fetter the participation of people with disabilities in society. By mentioning accessibility among its general principles, the CRPD articulates it as a “precondition” for the enjoyment of all civil, political, economic, social and cultural rights.³⁷ Such approach to accessibility has somewhat trickled down in the EU disability *acquis*, given that former European Disability Strategy 2010–2020 (EDS),³⁸ which laid out a loose roadmap to implement the CRPD until 2020, qualified accessibility as a precondition “for participation in society and in the economy”.

The focus on dismantling external barriers hindering the enjoyment of rights blurs the distinction between traditionally “negative” civil and political rights and “positive” economic

³² FELDER F., “What Does the CRPD Tell Us About Being Human?”, in Felder, F., Davy, L., Kayess, R. (eds), *Disability Law and Human Rights*, Cham: Springer International Publishing, 2022, pp. 47-66.

³³ Committee on the Rights of Persons with Disabilities (CRPD Committee), “General Comment No. 6 on equality and non-discrimination” (2018) CRPD/C/GC/6.

³⁴ SKARSTAD K., STEIN M. A. “Mainstreaming disability in the United Nations treaty bodies”, *Journal of Human Rights*, vol. 17,1, 2017, pp. 1-24.

³⁵ Article 3 CRPD.

³⁶ MÉGRET F. “The Disabilities Convention: Towards a Holistic Concept of Rights”, *The International Journal of Human Rights* 12, no. 2 (2008), p. 265.

³⁷ CRPD Committee, “General Comment No. 2 on accessibility” (2014) CRPD/C/GC/2, para. 13.

³⁸ European Commission, *European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe*, COM (2010) 636 final.

social and cultural rights.³⁹ In fact, the CRPD indicates in detail how the rights it protects are to be implemented and lays out all the actions that Parties have to undertake.⁴⁰ Such focus on dismantling barriers further highlights the indivisibility of human rights.⁴¹ In that regard, in the CRPD, the right to participate in cultural life, enshrined in Article 30, is interdependent with other provisions related (for example) to accessibility of information and with independent living, and intertwines with all general principles of the CRPD. The realisation of Article 30 CRPD fits within the overall commitment to create enabling environments so that persons with disabilities can enjoy equality that stems from the CRPD.⁴²

2. The Right of Persons with Disabilities to Participate in Cultural Life in the CRPD

Cultural participation has been perceived as difficult to define “due to the variety of ways in which it can occur”,⁴³ although as Stevenson et al. suggest it can be broadly conceived of as engagement in cultural activities.⁴⁴ The right to cultural participation - which is well rooted in international human rights law⁴⁵ albeit not specifically articulated in EU primary sources -⁴⁶ is generally considered as encompassing a twofold individual dimension and a collective aspect.⁴⁷ The twofold individual dimension involves, respectively, the right to access cultural activities, goods, services and heritage, and the right to active involvement in culture, which includes engagement in the creation of cultural activities, goods and services. The collective aspect refers to cultural communities being recognized and enabled to enjoy their cultural expressions. These individual and collective facets do feature in Article 30 CRPD.⁴⁸

³⁹ DE BECO, G., “The Indivisibility of Human Rights and the Convention on the Rights of Persons With Disabilities”, *International and Comparative Law Quarterly*, vol. 68, 1, pp. 141-160.

⁴⁰ MÉGRET F. *op cit*.

⁴¹ DE BECO, G *op. cit*

⁴² PERLIN, M. L., ““The Ladder of the Law has No Top and No Bottom”: How Therapeutic Jurisprudence Can Give Life to International Human Rights”, *International Journal of Law and Psychiatry*, vol. 37, 6, November-December 2014, pp. 535-542.

⁴³ Organisation for Economic Co-operation and Development - OECD, “The Culture Fix: Creative People, Places and Industries” OECD Publishing, Paris, 2022.

⁴⁴ STEVENSON, D., BALLING, G., KANN-RASMUSSEN, N. “Cultural participation in Europe: Shared problem or shared problematisation?”, *International Journal of Cultural Policy*, vol. 23,1, 2015, pp. 89–106.

⁴⁵ BANTEKAS, I., STEPHENSON, C. P. Y., KARAPAPA, S., POLYMENOPOULOU, E., “Participation in Cultural Life, Recreation, Leisure, and Sport”, in Bantekas, I., Stein, M.A., Anastasiou, D. (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary*. Oxford: Oxford University Press, 2018, pp. 864-921.

⁴⁶ The EU Charter of Fundamental Rights (CFR) contains civil and political rights, EU citizenship rights, and social and economic rights. However, according to Psychogiopoulou many of its provisions enjoy a cultural dimension in the broad sense. Further, the CFR includes a provision on freedom of arts and science, and Article 22 on cultural diversity. PSYCHOGIOPOULOU, E., “The European Union and Cultural Rights”, in Vrdoljak, A. (ed), *The Cultural Dimension of Human Rights*, Oxford University Press, 2013, pp. 159-185.

⁴⁷ FERRI, D., LEAHY, A., 2023, *op. cit*.

⁴⁸ *Ibid*.

Article 30(1) CRPD requires States Parties to take all appropriate measures to ensure that persons with disabilities have access to cultural materials and cultural activities, as well as to places where performances are held or cultural services are provided, and to monuments and heritage sites. Such obligation links to, and must be read in light of, the general principle of accessibility.⁴⁹ It also connects to Article 21 CRPD providing for freedom of expression and opinion, as well as access to information. Article 30(2) CRPD obliges States Parties to take all appropriate measures to enable persons with disabilities to develop their creative, artistic and intellectual potential. Article 30(4) CRPD enshrines the recognition and support of the specific cultural and linguistic identity of people with disabilities, including sign languages and Deaf culture. In doing so it conceives of disability as an identitarian trait and requires States Parties to recognise it and celebrate it as part of human diversity. Notably, Article 30(3) CRPD addresses the relationship between intellectual property (IP) rights and cultural rights of persons with disabilities, demanding States Parties to take appropriate steps “to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials”.

On the whole, Article 30 CRPD requires Parties to the CRPD (including the EU) to support access to culture but also to ensure that persons with disabilities can be artists and shapers of culture in their own right. It is underpinned by a broad understanding of culture as a dynamic and evolving concept embracing cultural practices in the traditional sense as well as culture in the ‘anthropological sense’ as a ‘way of life’, encompassing values, beliefs and ways of doing things.⁵⁰ In that regard, the material scope of Article 30 CRPD encompasses the culture and creative sectors as defined in EU law.⁵¹

III. Methodology

After having expounded the CRPD standards that have come to inform the EU action on cultural participation of persons with disabilities, this section briefly presents the methodological approach of the chapter and outlines the methods used in the analysis engaged in the ensuing sections.

1. A Socio-Legal Approach

⁴⁹ Article 3 CRPD and Article 9 CRPD.

⁵⁰ BANTEKAS, I., STEPHENSON, C. P. Y., KARAPAPA, S., POLYMENOPOULOU, E., *op. cit.*

⁵¹ Article 2 of the Creative Europe Regulation. See also European Commission. “Cultural and creative sectors” available at <<https://culture.ec.europa.eu/cultural-and-creative-sectors/cultural-and-creative-sectors>>.

Scholarly work in the field of EU law has been for long characterised by the use of doctrinal legal methods.⁵² However, most recently, several authors have started engaging with interdisciplinary approaches and empirical methods.⁵³ Topical work has discussed how knowledge about EU law is produced.⁵⁴ Several academics have embraced Bailleux's suggestion that they should "not turn a blind eye to this 'social' dimension of law".⁵⁵ These works offer an alternative perspective to black-letter articulated shortcomings of EU law and to traditional legal analysis. In fact, while doctrinal research remains well rooted in EU law scholarship, the need to better understand how law is translated into practice and to generate knowledge that produces or supports change has prompted a socio-legal turn in EU law.

Without engaging with the wide scholarly debate about what socio-legal research is, this chapter conceives of socio-legal research as encompassing the "examination of how law, legal phenomena and/or phenomena affected by law and the legal system occur in the world, interact with each other and impact upon those who are touched by them",⁵⁶ but also refers to research that employs theoretical approaches borrowed from other disciplines, or uses empirical – either qualitative or quantitative – methods. In that regard, this chapter qualifies as socio-legal because of its purpose, in that it aims to evaluate the potential of the EU financial tools that support the cultural and creative sectors to enhance the right of persons with disabilities to participate in cultural life. It is also socio-legal in that it blends legal analysis with findings from qualitative research. It is premised on the idea that qualitative research can be considered particularly helpful as it allows to unveil understandings and perceptions of the law, but also to appreciate its actual impact.⁵⁷ In that connection, this chapter is also underpinned by the CRPD quest for inclusive research, i.e. for the use of methods that include

⁵² HUTCHINSON, T., DUNCAN, N., "Defining and describing what we do: doctrinal legal research", *Deakin Law Review* vol. 17,1, October 2012, pp. 83-120.

⁵³ DYEVE, A., WIJTVLIET W., LAMPACH, N., *op. cit.*

⁵⁴ DE WITTE, B., "Editorial Note: How Much Critical Distance in the Academic Study of European Law?", *Croatian Yearbook of European Law and Policy*, vol. 18, 1, December 2022, pp. 2-8.

⁵⁵ BAILLEUX, A., "From the Stage to the High Seas: Concluding Thoughts on the Present and Future of EU Legal Studies" *European Constitutional Law Review*, vol. 18,4, December 2022, pp. 737-752.

⁵⁶ WEBLEY, L., "The Why and How to of Conducting a Socio-Legal Empirical Research Project", in CREUTZFELDT, N., MASON, M., MCCONNACHIE, M. (eds), *Routledge Handbook of Socio-Legal Theory and Methods*, Routledge, Abingdon, 2019.

⁵⁷ JOLTREAU, T., SMITH, A., "Chapter 10: Qualitative Research on the European Union: What Interviews and Observatory Participation Bring to the Party", in Faure, S., Lequesne, C. (eds), *The Elgar Companion to the European Union*, Edward Elgar, Cheltenham, 2023, pp. 122-132.

persons with disabilities, in line with the disability movement motto “nothing about us, without us”.⁵⁸

2. Methods

As mentioned earlier, this chapter blends legal with qualitative research. In particular, it draws on the findings from two focus groups and a set of ten semi-structured interviews conducted as part of the wider project “DANCING”.⁵⁹

Focus groups were chosen as they allow for the collection of qualitative data through group discussions. In that regard, they use participants’ discussions to produce data that would be less accessible without that interaction.⁶⁰ The strengths of the focus group as a research method, therefore, come from the insights that arise during interaction among the participants, with this dynamic considered especially valuable because it can show the extent of consensus and diversity within the group and provide information about the sources of those similarities and differences.⁶¹ The focus groups were conducted online with participants from several countries who work on access to art and culture and explored with them what factors operate as barriers to, or facilitators of, cultural participation by people with disabilities. The choice of doing these online was underpinned by the need to facilitate participation from various European countries. However, scholarly work has evidenced that focus groups by video are comparable to face-to-face groups, with Gothberg et al.,⁶² for example, reporting equivalent breadth in terms of the range of topics discussed. In terms of how the groups were constituted, researchers typically recommend aiming for a certain amount of homogeneity within each group in order to capitalise on people’s shared experiences.⁶³ In this instance, participants were typically people working in the cultural and creative sectors (e.g. working in galleries, museums or libraries...) or working within European projects to facilitate or promote greater access for people with disabilities. Some participants identified as persons with disabilities and

⁵⁸ ARSTEIN-KERSLAKE, A., MAKER Y., FLYNN E., WARD O., BELL R., DEGENER T., “Introducing a Human Rights-based Disability Research Methodology”, *Human Rights Law Review*, Volume 20, Issue 3, September 2020, pp. 412–432.

⁵⁹ See “Protecting the Right to Culture of Persons with Disabilities and Enhancing Cultural Diversity through European Union Law: Exploring New Paths – DANCING” available at <<https://ercdancing.maynoothuniversity.ie/>>.

⁶⁰ MORGAN, D. L., *Basic and Advanced Focus Groups*, SAGE Publications, Los Angeles, 2019. ACOCELLA, I., CATALDI, S., *Using focus groups: theory, methodology, practice* SAGE Publications, London, 2021.

⁶¹ MORGAN, D. L., *op. cit.*

⁶² GOTHBERG, J., REEVES, P., THURSTON, L., APPLGATE, B., KOHLER, P. AND PETERSON, L., “Is the Medium Really the Message? A Comparison of Face-to-Face, Telephone, and Internet Focus Group Venues”, in *Journal of Ethnographic & Qualitative Research*, vol. 7, 3, 2013, pp. 108-127.

⁶³ KITZINGER, J., “Qualitative Research: Introducing focus groups”, *BMJ*, 1999.

a sign language interpreter attended one group to facilitate input by one participant. The focus groups took place on separate days, in December 2021. There were nine participants in one group, from five European countries, and eleven participants in the other drawn from eight countries.⁶⁴

Notably, as a research method, the focus group can be combined with other qualitative tools in the context of a mixed-method research design⁶⁵ such as semi-structured interviews as was the case in "DANCING". Among others, ten interviews were specifically designed, deployed and conducted at a later juncture of the DANCING project between June 2023 and January 2024, and build on the data collected in the focus group (as well as in set of other interviews at the national level). The interviews were conducted by video conference, allowing maintenance of the face-to-face element of interviewing. Participants included representatives from umbrella non-governmental organisations (NGOs) working on disability issues at the EU level and organisations of people with disabilities (OPDs), many of whom were working at a senior level, including policy officers. For the purpose of this research, OPDs were identified according to the definition proffered by the CRPD Committee in its General Comment No. 7.⁶⁶ Notably, the CRPD Committee "considers that organizations of persons with disabilities should be rooted, committed to and fully respect the principles and rights recognized in the Convention. They can only be those that are led, directed and governed by persons with disabilities". Interviewees were recruited on the basis of a mainly purposive sampling process,⁶⁷ having identified and selected organisations that could provide "information-rich cases".⁶⁸ Sampling took into account distinct expertise of interviewees. Some of the organisations are part of the Disability Platform, the expert group set up by the Commission in 2021,⁶⁹ which represents a forum for close cooperation and exchange of information between Member States, the Commission and civil society. An interview guide was used flexibly, to allow for participants to present information that was important to them.

⁶⁴ The countries from which they were drawn were: Austria, Belgium, Denmark, Finland, France, Germany, Italy, Netherlands, Poland, United Kingdom.

⁶⁵ ACOCELLA, I., CATALDI, S., *op. cit.*

⁶⁶ CRPD Committee, "General comment No. 7 Article 4.3 and 33.3: Participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention" (2018) CRPD/C/GC/7 para 11.

⁶⁷ PALINKAS, L.A., HORWITZ, S.M., GREEN, C.A., WISDOM, J.P., DUAN, N., HOAGWOOD, K., "Purposeful Sampling for Qualitative Data Collection and Analysis in Mixed Method Implementation Research" *Administration and Policy in Mental Health and Mental Health Services Research*, vol. 42,5, September 2015, pp 533-544.

⁶⁸ PATTON, M. Q., *Qualitative Research and Evaluation Methods*, Sage, London 2002.

⁶⁹ European Commission, "Commission Decision of 27.10.2021 setting up the group of experts Disability Platform" COM (2021) 7591 final.

In line with well-established best practices in qualitative research, all participants to the focus groups or to the interviews received information on the study, as well as on specific issues such as anonymisation, data protection and data storage, and gave informed, written consent to participate. Ethical approval for the study was obtained from the relevant Maynooth University Ethics Committee.

The focus group and interviews were transcribed verbatim, and transcripts were analysed using a reflexive approach to thematic analysis (TA), in line with the method outlined by Braun and Clarke.⁷⁰ TA is particularly helpful in socio-legal research, because allows to identify themes or patterns in the data that are important, and use these themes to address a research question. The analysis of the interviews followed the steps for TA outlined by Braun and Clarke and encompassed: familiarisation; coding; generating initial themes; reviewing and developing themes; and refining, defining and naming themes.⁷¹ The coding was open, unstructured and largely inductive, but the themes developed from codes took into account the core tools of EU cultural policy, key legal features of the EU disability *acquis* as well as principles of the CRPD. In following sections, when quoting extracts from the focus group, the chapter uses the acronym FG1 or FG2 associated with the number of the participant (e.g. P1). In relation to interviews, the chapter uses the acronym NGO/OPD associated with the number of the interview. As a further measure to preserve the anonymity of the interviewees, it does not identify the gender of the interviewees and uses the pronoun 'they' as further safeguard.

Qualitative research in the form of focus groups and interviews is not without limitations, which in this case are linked to the limited sample and to the timeframe of the project "DANCING", but help gain a deep understanding of the strengths, weaknesses and effects of EU funding.

IV. Cultural Participation of Persons with Disabilities at the Intersection between EU Disability and Cultural Policies

As noted above cultural participation of persons with disabilities is dealt with in different ways both with the remit of the EU disability *acquis* and in EU cultural policies. In relation to the former, legislation facilitates access to cultural goods and services to varying degrees. The latter aims to support Member States in taking full consideration of the needs of persons with

⁷⁰ *Inter alia* CLARKE, V., BRAUN, V., "Thematic Analysis" *The Journal of Positive Psychology*, vol. 12,3, December 2016, pp. 297-298.

⁷¹ CLARKE, V., BRAUN, V., "Teaching Thematic Analysis: Overcoming Challenges and Developing Strategies for Effective Learning", *The Psychologist* vol. 26, 2, February 2013, pp. 120-123.

disabilities in their own cultural policies. This section does not endeavour to provide a complete account, but rather to situate and support the analysis conducted in the following section.

1. Cultural Participation of Persons with Disabilities in the EU Disability *Acquis*

As mentioned earlier, the need to implement the broad spectrum of obligations laid out in the CRPD has prompted the EU to adopt a more decisive stand on disability rights and to mainstream disability issues. The EU disability *acquis*, as constellated at present, consists of primary sources – including key non-discrimination provisions enshrined in the TFEU and in the EU Charter of Fundamental Rights (CFR) –, the CRPD as “integral part of EU law”,⁷² the Employment Equality Directive,⁷³ as well as range of secondary sources, including disability-related provisions sparse across EU legislation and disability-specific directives, a complex net of soft law, as well as technical standards adopted by standardisation organisations, and variegated soft law tools. This *acquis* revolves around comprehensive disability policy frameworks that have traced a road map to implement the CRPD: the European Disability Strategy 2010–2020 (EDS) and the above-mentioned Strategy 2021–2030.

Prima facie, cultural participation of persons with disabilities, and the implementation of Article 30 CRPD, have featured marginally in this *acquis*. This most evidently liked to the merely supporting competence that the EU enjoys on cultural matters, and reflects lack of explicit mentioning of cultural programmes in the Appendix to the Council Decision concerning the conclusion of the CRPD.⁷⁴ Yet, cultural participation has gained growing prominence in such *acquis*.

The former EDS⁷⁵ mentioned (quite cursorily) that there are “still many obstacles preventing people with disabilities from fully exercising their fundamental rights” including their rights “to have full access to cultural, recreational, and sports activities”. It highlighted the lack of accessibility of television broadcasters, “which still provide few subtitled and audio-described programmes”,⁷⁶ without engaging further. It did not mention cultural funding, but the Commission committed itself *inter alia* to “improve the accessibility of sports, leisure,

⁷² Joined Cases C-335/11 and C-337/11 *HK Danmark v. Dansk almennyttigt Boligselskab and HK Danmark v. Dansk Arbejdsgiverforening*, EU:C:2013:222, para 30.

⁷³ Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16.

⁷⁴ Council Decision 2010/48/EC concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities [2010] OJ L23/35.

⁷⁵ European Commission, “European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe”, COM (2010) 636 final.

⁷⁶ *Ibid.*

cultural and recreational organisations, activities, events, venues, goods and services including *audio-visual* ones; promote participation in sports events and the organisation of disability-specific ones; ... foster the cross-border transfer of copyright works in accessible format; promote use of the scope for exceptions provided by the Directive on copyright".⁷⁷ In fact, the EDS did deliver on improving accessibility in the EU, with the approval of the Web Accessibility Directive (WAD)⁷⁸ and the European Accessibility Act (EAA),⁷⁹ which apply to a range of cultural goods and services.⁸⁰ The recast Audiovisual Media Services Directive (AVMSD)⁸¹ can also be considered an important achievement in that it provides that Member States "shall ensure, without undue delay, that services provided by media service providers under their jurisdiction are made continuously and progressively more accessible to persons with disabilities". Copyright legislation with the "Marrakesh Package" have also been essential to improve access to printed material for a range of persons with disabilities.⁸² The EDS did not mention cultural funding, but referred generally to structural funds as important instrument to foster independent living and participation in the community.

The Strategy 2021-2030 recalls that in some areas "such as health, education and *culture*, the main competence remains with the Member States and the EU has a supportive role".⁸³ However, it does stress that "persons with disabilities have the right to protection from any form of discrimination and violence, equal opportunities in and access to justice, education, *culture*, housing, recreation, leisure, sport and tourism..." and addresses the implementation of Article 30 CRPD, albeit to a limited extent.⁸⁴ As noted in the introduction to this chapter, it

⁷⁷ Ibid.

⁷⁸ Directive (EU) 2016/2102 on the accessibility of the websites and mobile applications of public sector bodies [2016] OJ L 327/1 (WAD).

⁷⁹ Directive (EU) 2019/882 on the accessibility requirements for products and services [2019] OJ L 151/70 (EAA).

⁸⁰ It is also worth noting that the Public Procurement Directives (see particularly Directive 2014/24/EU on public procurement and repealing Directive 2004/18/EC [2014] OJ L 94/65) require that accessibility criteria for persons with disabilities or design for all users are included in technical specifications for all procurement (including in the cultural and creative sectors) which is intended for use by natural persons. On accessibility in public procurement see BOVIS C. "Disability and EU public procurement", in Ferri D. and Broderick A. *Research Handbook on EU Disability Law*, Edward Elgar, Cheltenham, 2020, pp. 263–283.

⁸¹ Directive (EU) 2018/1808 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administration action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive - AVMSD) in view of changing market realities [2018] OJ L 303/62.

⁸² FERRI, D., "The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled in the European Union: Reflecting on Its Implementation and Gauging Its Impact from a Disability Perspective", *IIC-International Review of Intellectual Property and Competition Law*, vol. 55, February 2024, pp. 89-109. See also SGANGA, C., "Disability in EU copyright law" in Ferri D., Broderick, A., *Research Handbook on EU Disability Law*, Edward Elgar, Cheltenham, 2020, pp. 201-220.

⁸³ European Commission, Strategy 2021-2030, *cit.*

⁸⁴ Ibid. Emphasis added.

states *inter alia* that accessible and inclusive art and culture are vital to ensure full participation of people with disabilities in society, and “give everyone, including persons with disabilities, the opportunity to develop and utilise their potential”.⁸⁵ Further, while mentioning accessibility legislation, the Strategy 2021-2030 lay out a commitment to “promote and raise visibility of the art works by persons with disabilities and *strive to make cultural heritage and all art accessible and disability inclusive with support from EU funding such as the Creative Europe Programme*”.⁸⁶ In fact, the Creative Europe Programme does include references to the CRPD and disability. One of the main legislative achievements of the Strategy, that will arguably foster cultural participation, is the new directive that establishes common rules for the European Disability Card and the European Parking Card for persons with disabilities.⁸⁷ The Commission also plans a study evaluating the implementation of Article 30 CRPD, which however has not yet been launched. This study while entailing an assessment of the *status quo* at its core, not prescriptive, it is likely to have further implications in revising existing EU cultural policies.

2. Cultural Participation of Persons with Disabilities in EU Cultural Policies

Article 167(1) TFEU provides that the EU “shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore”. While being complemented by an implicit cultural dimension of internal market integration⁸⁸ - i.e. by an array of provisions adopted to boost the free movement of goods and services (including cultural goods and services) and build the internal market -⁸⁹ the EU cultural policy primarily aims at supporting and supplementing Member States’ action. It revolves around several soft law documents which set its overarching goals and planned actions. The 2007 European Agenda for Culture⁹⁰ and the following New European Agenda for Culture in 2018⁹¹ have been significant

⁸⁵ Ibid

⁸⁶ Ibid. Emphasis added.

⁸⁷ See at <<https://ec.europa.eu/social/main.jsp?catId=1139>>.

⁸⁸ NIEDOBITEK, M., *The Cultural Dimension in EC Law*, Cambridge University Press, Cambridge, 1997. PSYCHOGIOPOULOU, E., *The Integration of Cultural Considerations in EU Law and Policies*, Nijhoff, Leiden, 2008.

⁸⁹ For an overview IDEA Consult, imec-SMIT-VUB, KUL-CiTIP, AMANN S. and HEINSIUS J., *Research for CULT Committee – EU culture and creative sectors policy – overview and future perspectives*, European Parliament, Policy Department for Structural and Cohesion Policies, Brussels, 2024, at <[http://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2024\)752453](http://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2024)752453)>.

⁹⁰ European Commission, “European agenda for culture in a globalizing world”, COM(2007) 242 final.

⁹¹ European Commission, “A New European Agenda for Culture”, Brussels, 22.5.2018, COM(2018) 267 final.

milestones and traced the overall trajectory of the EU cultural action. Member States, then, define their priorities for cultural policy in multi-annual Work Plans adopted by the Council of the EU. The Open Method of Coordination (OMC) has also been a soft tool to shape and advance the EU cultural action.⁹² This soft framework has been given “flesh” through a number of funding tools that support the cultural and creative sectors. Among those, Creative Europe is the flagship and most significant programme. However, as it will be discussed below, funding comes also from the European Regional Development Fund,⁹³ the most recent Recovery and Resilience Facility (RRF),⁹⁴ as well as other sectorial funding.⁹⁵

Within this composite framework, disability rights and accessibility for persons with disabilities have become increasingly visible and somewhat mainstreamed.⁹⁶ The OMC Report from 2012 specifically mentioned the need to foster accessible cultural contents (e.g. audio described audio-visual products) by describing a range of best practices across the Member States.⁹⁷ The New European Agenda for Culture highlights the need of ensuring that culture is inclusive and accessible to everyone. The Council Conclusions on the Work Plan for Culture 2019-2022 stated that a stronger orientation towards the interests and needs of specific groups, including people with disabilities, is necessary to enhance access to culture.⁹⁸ The current Work Plan for Culture 2023-2026 does not mention disability explicitly, but highlights the importance of an “inclusive approach to vulnerable and disadvantaged groups”.⁹⁹ As mentioned at the outset, references to persons with disabilities and to the CRPD are included in the Creative Europe Regulation.¹⁰⁰ Article 3(5) of this Regulation states that the programme objectives “shall be pursued in a way that encourages inclusion, equality, diversity and participation” and through specific incentives that “ensure that *people with disabilities*, people belonging to minorities and people belonging to socially marginalised groups have access to the cultural and creative sectors and that encourage their active participation in those sectors, including in both

⁹² PSYCHOGIOPOULOU, E. “The cultural open method of coordination: A new boost for cultural policies in Europe?” *Maastricht Journal of European and Comparative Law*, 24(2), 2017, pp. 264-288.

⁹³ Regulation (EU) 2021/1058 on the European Regional Development Fund and on the Cohesion Fund [2021] OJ L 231/60.

⁹⁴ Regulation (EU) 2021/241 establishing the Recovery and Resilience Facility [2021] OJ L 57/17.

⁹⁵ IDEA Consult, imec-SMIT-VUB, KUL-CiTIP, AMANN S. and HEINSIUS J., *op cit*.

⁹⁶ ŠUBIC, N., FERRI, D., *op. cit*.

⁹⁷ OMC Working Group on EU Member States' Experts on Better Access to and Wider Participation in Culture, “A Report on Policies and Good Practices in the Public Arts and in Cultural Institutions to Promote Better Access to and Wider Participation in Culture” (2012) at <https://ec.europa.eu/assets/eac/culture/policy/strategic-framework/documents/omc-report-access-to-culture_en.pdf>.

⁹⁸ Council conclusions on the Work Plan for Culture 2019-2022 [2018] OJ C 460/10.

⁹⁹ Council Resolution on the EU Work Plan For Culture 2023–2026 [2022] OJ C 466/01.

¹⁰⁰ See e.g. Para 61 of the Preamble of the Creative Europe Regulation.

the creative process and audience development”. Further, the Annex I to the to the Regulation provides that “support to the book and publishing sector” should include *inter alia* “targeted actions that promote the translation of literature and, where possible, the adaptation of literature into accessible formats for people with disabilities”.

References to the CRPD in the Creative Europe Regulation align with the mainstreaming of disability concerns in the other regulatory instruments that provide for funding *inter alia* to the cultural and creative sectors. The Regulation on the European Regional Development Fund and on the Cohesion Fund mentions disability rights and accessibility. Similarly, the Regulation establishing the InvestEU Programme¹⁰¹ also mentions the CRPD. Although in these pieces of legislation references to disability are somewhat disjointed from references to culture and heritage, these funding instruments as will be discussed below have supported inclusive cultural projects and accessibility of cultural venues and heritage.

Finally, it is worth noting that cross-sectoral initiatives that intersect and enhance EU cultural policies further address cultural participation of persons with disabilities. For example, the New European Bauhaus (NEB) is an EU policy and funding initiative launched by the European Commission in 2021 that fosters sustainable solutions, including for the cultural sector, for transforming the built environment and lifestyles under the green transition.¹⁰² The recently published “New European Bauhaus Investment Guidelines”,¹⁰³ which support investors in understanding NEB and how this relates to different types of built environment projects. The Guidelines indicate that “inclusiveness is key for cultural buildings, such as museums, theatres, libraries, cultural centres and others, which have a strong public character and should be used and enjoyed by all”.¹⁰⁴ It also states that “cultural buildings shall prioritise physical and cognitive accessibility that allow all people to enjoy them”.¹⁰⁵

¹⁰¹ Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU Programme and amending Regulation (EU) 2015/1017 *OJ L 231, 30.6.2021, p. 60–93*

¹⁰² See at <https://new-european-bauhaus.europa.eu/index_en>. See also Council conclusions on culture, high-quality architecture and built environment as key elements of the New European Bauhaus initiative [2021] OJ C 501 I/13.

¹⁰³ The guidelines were adopted on foot of a cooperation between the European Commission and JASPERS (Joint Assistance to Support Projects in European Regions), an advisory programme funded by the European Commission and the European Investment Bank, and are available at <<https://new-european-bauhaus.europa.eu/system/files/2024-07/NEB%20Investment%20Guidelines.pdf>>

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

V. Fostering Cultural Participation through EU Funding: The Role of the Creative Europe Programme

Cultural participation of persons with disabilities sits at the intersection of disability and cultural policies, and, for this reason is addressed either directly or indirectly through a range of funding tools that support the cultural and creative sectors. These are discussed in this section, which then zooms in on the Creative Europe Programme, its strengths and weaknesses from a disability perspective and blending legal and qualitative research.

1. Supporting Cultural Participation of Persons with Disabilities through EU Funding to the Cultural and Creative Sectors

As mentioned above and discussed in detail below, Creative Europe is the bespoke programme that supports the European cultural and creative sectors, but other programmes have become additional key tools.¹⁰⁶ While this chapter cannot address all those tools, it highlights those which have been most significant from a disability perspective.

The RRF, which aimed to address the economic and social consequences of the COVID-19 pandemic, has supported the cultural and creative sectors in a significant way, somewhat in line with the call from Culture Action Europe,¹⁰⁷ and specifically cultural participation of persons with disabilities. As noted in a recent report, “16 Member States have opted to incorporate measures targeting [culture] within their plans, totalling in 10.1 billion” Euros.¹⁰⁸ The Scoreboard Thematic Analysis published in July 2024, indicates that some “Member States have planned innovative actions to *enhance access to culture and harness the power of culture for social cohesion and well-being*”, and adds that national plans include “measures to improve access to *culture for people with disabilities*”, as is the case of Lithuania or “*remove physical and cognitive barriers in museums, libraries and archives to enable wider access to and participation in culture*” as is the case of Italy.¹⁰⁹ When highlighting good practices the same Scoreboard indicates that Greece used funding inter alia “to promote interventions using arts and culture to support recovery from mental health issues and facilitate

¹⁰⁶ IDEA Consult, imec-SMIT-VUB, KUL-CiTIP, AMANN S. and HEINSIUS J., *op cit*.

¹⁰⁷ See at < <https://cultureactioneurope.org/knowledge/culture-in-the-eus-national-recovery-and-resilience-plans/>>.

¹⁰⁸ Ibid. See also the RRF Scoreboard – Thematic Analysis available at <https://ec.europa.eu/economy_finance/recovery-and-resilience-scoreboard/assets/thematic_analysis/scoreboard_thematic_analysis_culture.pdf>.

¹⁰⁹ RRF Scoreboard. Thematic Analysis (July 2024) available at <https://ec.europa.eu/economy_finance/recovery-and-resilience-scoreboard/assets/thematic_analysis/scoreboard_thematic_analysis_culture.pdf>.

access to cultural venues by visitors over 65, as well as *visitors with disabilities*".¹¹⁰ While it is arguably too early to gauge the actual impact of the RRF, it is significant to see the earmarking of funding for the cultural and creative sectors and, within such funding, the prominence of supporting access to culture for persons with disabilities. From data available, it seems that national plans have focused mostly on access rather than on support to artists with disabilities. In that, the RRF can be seen as contributing mostly (albeit not exclusively) to the implementation of Article 30(1) CRPD. The significant focus on digitalisation of cultural goods and services that emerges from national plans, in line with the overall goals of the RRF, is also likely to have a positive impact on cultural participation of persons with disabilities. For example, the Scoreboard highlights that the Belgian Recovery and Resilience Plan includes measures to support the creation of 100% digital events, which are accessible to people "facing mobility challenges".¹¹¹ The Czech Recovery and Resilience Plan includes measures to support digitalisation of cultural content, "to ensure its preservation and *accessibility*".¹¹² In that regard the RRF has been and arguably will be key in the realisation of the CRPD goals in relation to accessibility.

The EU Cohesion Policy is another funding tool that supports *inter alia* the cultural and creative sectors.¹¹³ It currently accounts for about one third of the EU budget 2021-2027 (392 billion EUR funding),¹¹⁴ which is divided into different funds. In particular, both the European Regional Development Fund (ERDF) and the European Social Fund (ESF)¹¹⁵ have supported and currently sustain cultural participation of persons with disabilities by funding projects various types of interventions to enhance accessibility for people with disabilities, including renovation of buildings and their adaptation, adaptation of the heritage infrastructures (exhibitions, information panels, etc.) to people with disabilities, and indirectly supported access through enhancement of transport connections.¹¹⁶ Other ESF projects supported creativity and entrepreneurship of people with disabilities among other disadvantage groups. For example, a Bulgarian project supported people employed in these social enterprises to use

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ IDEA Consult, imec-SMIT-VUB, KUL-CiTIP, AMANN S. and HEINSIUS J., *op cit*.

¹¹⁴ Ibid.

¹¹⁵ On the ESF from a disability perspective see generally MCEVOY E., "EU structural and investment funds and disability", in Ferri D. and Broderick A. *Research Handbook on EU Disability Law*, Edward Elgar, Cheltenham, 2020, pp. 321–342.

¹¹⁶ See data from the report ESPON, "HERIWELL – Cultural Heritage as a Source of Societal Well-being in European Regions", 2022, available at <https://archive.espon.eu/sites/default/files/attachments/HERIWELL_Final%20Report.pdf>

their creativity to make souvenirs in weekly art workshops, and those souvenirs were sold on a web platform.¹¹⁷ Albeit scant data have been collected on the number of projects that address cultural participation of persons with disabilities, the role of these funding tools is certainly important in fulfilling the obligations stemming from Article 30(1) CRPD but also in fostering the creative potential of persons with disabilities, albeit more at an amateur level or as a social engagement than at the professional level, as highlighted in Article 30(2) CRPD.¹¹⁸

2. Supporting Cultural Participation of Persons with Disabilities through Creative Europe

With a budget of 2.44 billion Euros that covers the period 2021 to 2027,¹¹⁹ the Creative Europe Programme is the most important cultural funding tool. The programme comprises three strands: (1) the Culture Strand, which aims to enhance cooperation and exchanges among cultural organisations and artists, in areas such as cultural heritage, literature and publishing, music, or performing arts, to increase access to and participation in culture as well as social inclusion through culture;¹²⁰ (2) the MEDIA Strand, which encourages competitiveness, innovation, and sustainability in the film and audiovisual industries;¹²¹ and (3) the Cross-sectoral Strand, which supports collaborative actions, and encourage innovative approaches to the creation, distribution and promotion of, and access to, content across cultural and creative sectors and other sectors.¹²² The programme is open to different organisations from EU Member States, as well as associated countries. The programme is administered by the European Commission which sets priorities, evaluates grant applications, and monitors project implementation.¹²³

The subsection below discusses the role of Creative Europe, referring to strengths and weaknesses identified by participants in the focus groups and interviews.

2.1. Good Practices, Tangible Advancements and Potential

Thus far, Creative Europe has supported a wide range of projects that focused on disability and the arts. In doing so it has addressed both access to culture, i.e. the possibility for persons with disabilities to engage with cultural goods and services as audience, but also

¹¹⁷ See at <<https://european-social-fund-plus.ec.europa.eu/en/projects/disadvantaged-innovative-web-platform>>

¹¹⁸ Participants in the focus groups also highlighted the importance of Horizon 2020 projects that have supported accessibility (FG2_P11).

¹¹⁹ IDEA Consult, imec-SMIT-VUB, KUL-CiTiP, AMANN S. and HEINSIUS J., *op cit*.

¹²⁰ Article 5 of the Creative Europe Regulation.

¹²¹ Article 6 of the Creative Europe Regulation.

¹²² Article 7 of the Creative Europe Regulation.

¹²³ See at <<https://culture.ec.europa.eu/creative-europe>>.

professional artists with disabilities. Differently from other funding tools that somewhat tend to focus on the right to access cultural activities, goods, services and heritage, Creative Europe has also supported various projects that engage professional artists with disabilities, boosting their creative potential, in line with Article 30(2) CRPD.¹²⁴ Further some projects have also engaged with identitarian traits of disability, and have backed Deaf culture.

Without any endeavour to be exhaustive (as the purpose of this chapter is not that of a quantitative appraisal of Creative Europe funded projects), few projects can be highlighted as tangible examples of good practices. Among those, *Revelland* has aimed at transforming arts into immersive and inclusive experiences for audiences with disabilities.¹²⁵ In particular it aimed to make live music performances more accessible and interesting for people with disabilities, by adding sensory effects. It includes partners in seven countries (Belgium, Bulgaria, France, Ireland, Italy, Netherlands, Spain), and will conclude in 2027. Focused on access, it is also *AAA - All Areas Access - A Mock-up for Accessible Venues* which focuses on the study, test and dissemination of good practices aimed at improving accessibility to non-institutional live venues for Deaf people.¹²⁶ Notable are the several projects related to artistic creation by artists with disabilities and transnational cooperation. For example, *Power* aimed to promote the transnational co-production of a theatre play with disabled actors and to enhance the skills and knowledge of operators that usually organize artistic activities for disabled people.¹²⁷ It included partners in four countries (Czechia, Greece, Ireland, Italy). Among the Creative Europe funded project, the one that has probably gained most visibility and success is *Europe Beyond Access*.¹²⁸ This is a 7-partner European collaboration funded under the previous budget iteration, and in 2023, funded for another 4 years, until 2027. This project has supported disabled artists to internationalise their artistic innovations and developed a network of leading mainstream cultural organisations and venues that showcase the work of these artists. It focuses on performing arts, a sector particularly impacted by the COVID-19 pandemic. Besides supporting creation of new works, *Europe Beyond Access* has also produced various resources

¹²⁴ Some of the projects funded also address the social dimension of cultural participation, see eg *Bite my Skype*, a project engaging children with learning disabilities and children in hospitals (as well as Roma children) in dance and performance techniques It involved five countries (Finland, Italy, Romania, Türkiye, United Kingdom). See at <: <https://culture.ec.europa.eu/creative-europe/projects/search/details/570570-CREA-1-2016-1-UK-CULT-COOP1>>

¹²⁵ <https://discoverrevelland.today/>

¹²⁶ <https://www.allareasaccess.eu/>

¹²⁷ <https://power-creative.eu/>

¹²⁸ See at < <https://www.disabilityartsinternational.org/europe-beyond-access/>>

to support an inclusive performing arts sector. Among those, a study (released by the British Council) classifies barriers faced by performing artists with disabilities and advocates for systemic change in the cultural and creative sector, and for redressing the longstanding marginalisation of disabled artists and arts professionals.¹²⁹ This was one of the project that was mentioned by some interviewees and persons attending the focus group and was generally heralded as success story, and as a shining example of the potential for Creative Europe funding to effect change in the cultural and creative sectors.

Several participants to the focus groups and the interviews recognised the importance of Creative Europe in fostering the right to participate in cultural life and pointed to the recent improvements in terms of disability mainstreaming following the enactment of the new Creative Europe Regulation. Among those, one participant to the focus group stated that “Creative Europe is also putting this kind of [disability accessibility] budget items in their new program” and added “this is really important that the access costs are really shown separately, and that also the people who are judging about the projects are aware about this kind of costs and how much are these costs” (FG2_P11). Participants to the focus groups also pointed to the fact that projects focusing on disability and arts are essential to combat stigma and discrimination, as it is in fact envisaged in the Work Plans on Culture outlined above.¹³⁰ For example, one participant stated “when we do some project for and with people with disabilities, we expect to educate also our public. When I organise the tactile tour, I am not only serving the blind people who is touching the sculpture, but I am educating also the public inside the museum to another point of view” (FG2_P2).

Some of participants also highlighted the untapped potential of Creative Europe and their efforts in advocating a mainstreaming of disability rights in the evaluation process. For example, among the interviewees, one suggested that “funding programmes such as Creative Europe [are those] in which we try to incorporate mainstream disability rights and ensuring that for example accessibility and reasonable accommodation will be part of it” (NGO/OPD_1). Another stated that campaigns are on going “...to push the EU to use the leverage of its funding to the film industry to promote audio description and audio sub-titling as a matter of making film productions more accessible to blind and partially sighted people” (NGO/DPO_4). The potential of EU funding in general, and Creative Europe in particular, is seen also in that it

¹²⁹ The study is available at < <https://www.disabilityartsinternational.org/wp-content/uploads/2022/01/TIMETO2.pdf>>

¹³⁰

facilitates testing inclusive practices at a cross-national level with the possibility then to scale-up using national funding streams or obtaining additional EU funding. In that regard, one interviewee stated "I think the expectation is that many of these projects should be what I would see as seed funding so to develop something, to explore what works and what doesn't. But the aim is if it has a positive impact it should be sustainable with national funding. And that's the message I've always taken away from EU funding projects or EU funding meetings" (NGO/DPO_10).

2.2. Weaknesses and Flaws

The positive account around Creative Europe and its potential is however contrasted with more bleak views on the difficulties surrounding funding applications and project implementation. One participant to the focus group bluntly stated "it's too bureaucratic. We tried many times, during many years and we decide not to use the [EU] funding because it takes too long time" (FG1_P5).

However, most interviewees and participants to the focus groups highlighted the time-limited nature of projects and their contextual realisation, with significant limitations in opportunities to scaling-up, to continue successful projects once the funding has finished. They consistently highlighted the lack of coherent approaches. While the flourishing of good practices is a good sign, it is also the biggest limitation. For example, one interviewee highlighted "...[we see] all the good practices and I think it is a huge shame that they are not continued or that there is no possibility to have other funds to continue projects that are successful" (NGO/DPO_5). One participant to the focus group stated " ...[as] Participant 3 [suggested] at the beginning of our focus group, [it is all] about pockets of good practice and pockets of research. I think this is something that's also worth thinking about, you know" (FG1_P5). Such piecemeal approach does not produce systemic change. One interviewee stated "...At least not structurally [we do not see change], maybe on bits and pieces, projects here and there" (NGO/OPD_1). In a similar vein another stated: "...Good practices, best practices is all very nice but the spirit is a bit like, oh look how well we could do or how well we have done. As if it was something exceptional and not something that should be mainstreamed. And we would like to see more of the structural solutions that have a long-lasting effect...." (NGO/OPD_4).

What emerged from interviews and focus groups is that Creative Europe (but mutatis mutandis EU funding at large) is a tool with significant inherent limitations. While its time-

limited and project based nature of Creative Europe cannot arguably be changed, the application process and the implementation might be made less cumbersome for cultural organisations, to allow smaller disability and arts groups or collectives of artists with disabilities to partake more easily. To (at least partially) address the piecemeal approach of funding, embedding more overt accessibility requirements conditions for funding would support rooting and spreading good practices.

VI. Concluding Remarks

This chapter has argued that EU funding to the cultural and creative sectors - and particularly the bespoke cultural funding programme Creative Europe - has played an important role in enhancing cultural participation of persons with disabilities. Yet, the “promises” Creative Europe makes in relation to supporting the right to participate in culture of disabled artist and audiences and the claims to align with the CRPD are not fulfilled. The difficulties for people to apply for funding still limit the plethora of organisations that can actually get the funding. But most of all, the project-based approach inherent to EU funding tools seems to give rise to an array of good practices, amazing projects and innovative artistic practices which “die” as soon as the project finishes.

The set of empirical findings from two-focus groups held with people working in the cultural sector and set of semi-structured interviews conducted with representatives of organisations of persons with disabilities or umbrella non-governmental organisations acting at the EU level reveal a mixed picture, with some lights and many shadows. The Creative Europe Regulation hints to a disability-oriented funding tool, which however seems a somewhat misguided account of what in practice happens (even in spite of the many disability and arts projects funded).

On the whole, EU funding has a great potential to advance the implementation of Article 30 CRPD, but have not yet displayed long lasting and structural transformative effects.

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