The Role of EU Law in Enabling the Participation of Professionals with Disabilities in the Cultural and Creative Sectors: Socio-legal Perspectives

Léa Urzel Francil
Student number: 21250210

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Head of School: Prof Fergus Ryan
Supervisor: Prof Delia Ferri

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Plagiarism Declaration

I hereby certify that this material, which I now submit for assessment on the programme of study leading to the award of PhD in Law, is entirely my own work and has not been taken from the work of others save and to the extent that such work has been cited and acknowledged within the text of my work.

Léa Urzel Francil

Date: 26/10/2025

Thesis Summary

Adopting a socio-legal approach, this thesis investigates the role of European Union (EU) law in enabling professionals with disabilities to take part in cultural life, and in implementing Article 30(2) of the Convention on the Rights of Persons with Disabilities. Drawing on qualitative data collected with stakeholders in the cultural and creative sectors (CCS), the thesis discusses the challenges faced by cultural and creative professionals, and provides novel insights into the key issues underlying the participation of professionals with disabilities in cultural life. On this basis, the thesis considers the extent to which the EU legal framework can facilitate this participation. It focuses on four issues identified during the data analysis: non-discrimination and equality; accessibility; the EU funding system; and knowledge-building and awareness-raising –with the latter theme being addressed in a cross-cutting manner.

Guided by the issues deemed essential by the participants for fostering the participation of professionals with disabilities in the CCS, the thesis demonstrates how the EU legal framework can support these professionals in developing and utilising their potential. It notes that various instruments promoting the application of the principle of equal treatment in the EU, such as the Employment Equality Directive, can benefit CCS professionals with disabilities. However, the research also considers the incomplete protection against disability-based discrimination in the EU and its consequences for CCS professionals with disabilities. Additionally, the thesis emphasises how EU accessibility legislation can facilitate the participation of professionals with disabilities in the CCS, while also highlighting the fragmented and limited nature of accessibility provisions. Furthermore, it argues that the EU funding system can support these professionals in many ways through programmes, such as Creative Europe, and other funds. However, it also stresses how the EU funding system can perpetuate precarity in the CCS and can practically prevent persons with disabilities from accessing opportunities in these sectors.

Abbreviations

ADICLUS	European Arts and Disability Cluster
AMWD	Adequate Minimum Wages Directive
AVMSD	Audiovisual Media Services Directive
AWP	Annual Work Programme
CCS	Cultural and Creative Sectors
CCS GF	Cultural and Creative Sectors Guarantee Facility
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CERV	Citizens, Equality, Rights and Values Programme
CESCR	Committee on Economic, Social and Cultural Rights
CF	Cohesion Fund
CFA	Committee on Freedom of Association
CFR	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
CMW	International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
COs	Concluding Observations
CPPDCE	Convention on the Protection and Promotion of the Diversity of Cultural Expressions
CRC	Convention on the Rights of the Child
CREA	Creative Europe Programme
CRPD	Convention on the Rights of Persons with Disabilities
CRPD Committee	Committee on the Rights of Persons with Disabilities
EAA	European Accessibility Act
EACEA	European Education and Culture Executive Agency
EAEA	European Arts and Entertainment Alliance
EBU	European Blind Union
EC	European Community
ECA	European Court of Auditors
ECoC	European Capital of Culture
EDF	European Disability Forum
EFF	European Film Forum
EHL	European Heritage Label
ENIL	European Network on Independent Living
EPBD	Energy Performance of Buildings Directive
EPRS	European Parliamentary Research Service
EPSR	European Pillar of Social Rights
ERDF	European Regional Development Fund
ESF+	European Social Fund Plus

ESSnet-Culture	European Statistical System Network on Culture
EU	European Union
EYE	Erasmus Young Entrepreneur Programme
FCS	Framework for Cultural Statistics
FTWD	Fixed-term Work Directive
GLAM	Galleries, Libraries, Archives and Museums
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICTs	Information and Communication Technologies
ILO	International Labour Organization
IP	Intellectual Property
KA	Key Action
LoIs	List of Issues
MFF	Multiannual Financial Framework
NEB	New European Bauhaus
OECD	Organisation for Economic Co-operation and Development
OMC	Open Method of Coordination
OMC-culture	Open Method of Coordination in the field of Culture
OP-CRPD	Optional Protocol to the Convention on the Rights of Persons with Disabilities
OPDs	Organisations of Persons with Disabilities
OSH	Occupational Safety and Health
PSBs	Public Sector Bodies
PTWD	Part-time Work Directive
RRF	Recovery and Resilience Facility
SMEs	Small and Medium-sized Enterprises
SMP	Single Market Programme
TA	Thematic Analysis
TAWD	Temporary Agency Work Directive
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UIS	UNESCO Institute for Statistics
UN	United Nations
UN HRC	United Nations Human Rights Council
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly
VET	Vocational Education and Training
WAD	Web Accessibility Directive
WPA	World Programme of Action Concerning Disabled Persons

Introduction

'The spectacle presents itself simultaneously as all of society, as part of society, and as instrument of unification'.[1]

1. Background of the Thesis

Persons with disabilities are among the various groups who experience marginalisation and exclusion from the cultural realm, and the challenges they experience in this respect are multiple.[2] Indeed, to participate in cultural life in the European Union (the 'Union' or EU), persons with disabilities face a number barriers, which affect them as audiences and as contributors to the cultural and creative sectors (CCS), whether in a professional capacity or as amateurs.[3] As its point of departure, this thesis relies on the premise that persons with disabilities have the right to fully take part in cultural life. They should enjoy access to it, and have the opportunity to contribute to it, for their own enrichment or that of society, including in a professional capacity. While acknowledging the importance of having access to cultural goods and services as 'consumers', this thesis concentrates on the realisation of the right of persons with disabilities to participate in cultural life, with a particular focus on cultural and creative professionals with disabilities. At the EU level, the situation of cultural and creative professionals has in fact been a recurrent topic of discussion, especially lately, given the different crises that the EU's CCS have experienced.[4] As such, this thesis takes the view that this increased attention on

[1] Guy Debord, *La Société du Spectacle* (Gallimard 1992) 4.

[2] See Magdalena Pasikowska-Schnass, 'Access to Cultural Life for People with Disabilities' (European Parliamentary Research Service (EPRS), European Parliament 2019); Jacqueline Snijders and others, 'The Status and Working Conditions of Artists and Cultural and Creative Professionals' (European Expert Network on Culture and Audiovisual 2020); Ann Leahy and Delia Ferri, 'Barriers and Facilitators to Cultural Participation by People with Disabilities: A Narrative Literature Review' (2022) 24 Scandinavian Journal of Disability Research 68; Ann Leahy and Delia Ferri, 'Barriers to Cultural Participation by People with Disabilities in Europe: A Study across 28 Countries' (2023) 39 Disability & Society 2465; European Arts and Disability Cluster (ADICLUS), 'European Arts and Disability Cluster Position Paper: How the European Union Can and Must Act to Reduce Discrimination against Artists, Cultural Workers and Audiences with Disabilities' (2025).

[3] Delia Ferri and Ann Leahy, *Dismantling Barriers and Advancing the Right of Persons with Disabilities to Participate in Cultural Life: A Socio-Legal Analysis* (Routledge 2025).

[4] See among others, Snijders and others (n 2); Culture Action Europe and Mafalda Dâmaso, *Research for CULT Committee – The Situation of Artists and Cultural Workers and the Post-COVID-19 Cultural Recovery in the European Union: Background Analysis* (European Parliament 2021); Isabelle De Voldere and others, *Research for CULT Committee – Cultural and Creative Sectors in Post COVID-19 Europe: Crisis Effects and Policy Recommendations* (European Parliament 2021); Voices of Culture, 'Status and Working Conditions of Artists and Cultural and Creative Professionals' (Structured Dialogue between the European Commission and the Cultural Sector, 2021); Christa Kammerhofer-Schlegel and others, *EU Framework for the Social and Professional Situation of Artists and Workers in the Cultural and Creative Sectors: European Added Value Assessment* (EPRS, European Parliament 2023); Karol Muszyński and Anna Gromada, *EU Framework for the Social and Professional Situation of Artists and Workers in the Cultural and Creative Sectors* (EPRS, Publications Office 2023); European Commission, *The Status and Working Conditions of Artists and Cultural and Creative Professionals: Report of the OMC (Open Method of Coordination) Group of EU Member States' Experts* (Publications Office 2023); European Parliament Resolution of 21 November 2023 with Recommendations to the Commission on an EU framework for the social and professional situation of artists

addressing the limitations and gaps of the EU legal framework in supporting its cultural and creative workforce, represents an opportunity to reflect on how to better enable the participation of professionals with disabilities in cultural life, in an inclusive, effective, and fulfilling manner.

The focus of the thesis, the research questions and the scope of the analysis are all linked to the broader DANCING project, of which this research is a part.[5] As such, the DANCING project (Protecting the Right to Culture of Persons with Disabilities and Enhancing Cultural Diversity in EU Law: Exploring New Paths – DANCING) has been the framework to this PhD project, which pursues distinct objectives within the broader project. Therefore, the thesis is premised on the idea that culture is a field of contrasts, one that has great potential for welfare and economic development and for unifying people in the Union, but that remains inaccessible to some, especially people with disabilities, and a challenging, if not excluding, workplace for professionals.[6]

In 2025, the European Commission released updated statistics on the attitudes of EU citizens towards culture. The findings showed that EU citizens (increasingly) consider culture as one of the factors most likely to create a feeling of community among EU citizens, ahead of other matters such as history, values, or economy.[7] Member States' experts in the field of culture also highlight the importance of culture in fostering inclusion.[8] In doing so, they acknowledge the positive spillover effects of culture on other areas such as education, healthcare, and its importance in fighting marginalisation.[9] However, those stakeholders also recall that, at the same time, the cultural field remains exclusionary and characterised by enduring barriers –'abstract ones, such as artistic

and workers in the cultural and creative sectors (2023/2051[INL]) [2023] OJ C2024/4208 (European Parliament Resolution on an EU framework for artists); Maroš Šefčovič, 'Letter to President Metsola: Article 225 Resolution EU Framework for the Social and Professional Situation of Artists and Workers in the Cultural and Creative Sectors' (European Commission 2024); Harald Hauben and others, 'Employment Characteristics and Undeclared Work in the Cultural and Creative Sectors' (European Platform Tackling Undeclared Work, European Labour Authority 2024); IDEA Consult and others, *Research for CULT Committee – EU Culture and Creative Sectors Policy: Overview and Future Perspectives* (European Parliament 2024); ADICLUS (n 2); International Confederation of Societies of Authors and Composers, 'European Creators Led by Björn Ulvaeus (ABBA) Meet Top EU Policymakers to Ensure Transparency, Consent, and Remuneration for Creators in AI Market' (*CISAC*, 21 May 2025) <https://www.cisac.org/Newsroom/news-releases/european-creators-led-bjorn-ulvaeus-abba-meet-top-eu-policymakers-ensure> accessed 4 June 2025.

[5] The project is funded by the European Research Council (ERC) under the European Union's Horizon 2020 Research and Innovation Programme (Grant Agreement No 864182).

[6] European Commission, *Europeans' Attitudes towards Culture: Eurobarometer Report* (Special Eurobarometer 562, 2025) 91.

[7] European Commission, *Europeans' Attitudes towards Culture* (n 6) 18. See also European Commission, *European Citizenship* (Standard Eurobarometer 91, Publications Office 2019) 51.

[8] European Commission, *From Social Inclusion to Social Cohesion - The Role of Culture Policy: Guidelines for Policy-Makers and Cultural Institutions, by the 2017-2019 Working Group of EU Member States' Experts on Fostering the Contribution of Culture to Social Inclusion* (Publications Office 2019) 12.

[9] European Commission, *From Social Inclusion to Social Cohesion* (n 8) 57–96.

hierarchies and exclusive habitus,[10] programming practices, traditions and symbolic barriers', and other tangible ones, 'such as economic and information barriers, as well as pure discrimination'.[11] This tallies with EU citizens' varying perceptions of cultural accessibility in the EU, and the belief expressed by a majority of people participating in the EU study that artists are not fairly remunerated for their work,[12] implying that not all of European society gets to be part of cultural life on an equal basis with others, nor to contribute to it unreservedly.

This introductory chapter presents and contextualises the research undertaken, and to this end, provides in section 2 an overview of the main research questions and the overall objectives of the thesis. Section 3 then elaborates on the terminology adopted in the thesis and its conceptual framework. It is followed by section 4 which focuses on clarifying the legal and theoretical framework of the thesis, before section 5 introduces and discusses the research methodology of the thesis. Section 6 considers its limitations while section 7 highlights the contribution of this thesis to existing research. Section 8 concludes this introductory chapter by outlining the three-parted structure of the thesis and presenting the different chapters.

2. Research Questions and Objectives of the Research

This thesis investigates the challenges and barriers to the participation of professionals with disabilities in the EU's CCS and considers the role of the EU legal framework in this respect. As noted above, this research is part of the broader DANCING project, and therefore, it sits at the intersection of Work Packages 1 and 2.[13] In line with DANCING's approach, and as further explained in section 5, it is a socio-legal piece of research. Particularly the thesis seeks to consider and provide an in-depth answer to the following three research questions:

- What are the main challenges and barriers that persons with disabilities face as professionals in the cultural and creative sectors?

[10] Habitus is a concept particularly used by Pierre Bourdieu which refers to the product of an individual's socialisation and conditions of existence, including internalised attitudes and belief common to a group, which generate specific practices and representations. See Pierre Bourdieu, *Distinction: A Social Critique of the Judgement of Taste* (Harvard University Press 1984).

[11] European Commission, *From Social Inclusion to Social Cohesion* (n 8) 12.

[12] European Commission, *Europeans' Attitudes towards Culture* (n 6) 31–32, 48–50.

[13] See DANCING, 'Project Overview and Work Packages' (*DANCING*) <https://ercdancing.maynoothuniversity.ie/project-overview-and-work-packages/> accessed 15 September 2025. Work Package 1 (Experiential) focuses on identifying features of cultural participation experienced as exclusionary by people with disabilities, while Work Package 2 (Normative) explores the intersection between cultural rights of people with disabilities and cultural diversity in EU law.

- How does the EU legal framework enable the participation of professionals with disabilities in cultural life?
- What are the limitations and gaps in the current EU legal framework that hinder the participation of professionals with disabilities in the cultural and creative sectors?

In answering these questions, this thesis centres on the EU legal framework. In this respect, the term EU legal framework, as used throughout this thesis, reflects a broader understanding than 'law'. It is used to refer to both hard and soft law and includes EU legislation as well as policy and other initiatives pursued at the Union level. The thesis also pays particular attention to the United Nations (UN) Convention on the Rights of Persons with Disabilities (the 'Convention' or CRPD).[14] Indeed, since 2008, the CRPD represents the international legal standard that sets out the human rights and fundamental freedoms that must be enjoyed by all persons with disabilities, on an equal basis with others.[15] As discussed below in this introduction, the EU has since become a party to the Convention, as all its Member States, and the UN treaty is now an integral part of the EU legal order.[16]

Overall, drawing on the knowledge and experience of cultural stakeholders in the EU, this thesis discusses the main challenges experienced by professionals with disabilities, which underpin how they take part and contribute (or not) to cultural life in the EU. As such, it investigates the challenges and barriers experienced by professionals with disabilities as they are understood by CCS stakeholders, complementing and advancing existing research that centres on the perspective and views of cultural and creative professionals with disabilities. This is one of the original contributions of this thesis. Using Article 30 CRPD on the right of persons with disabilities to participate in cultural life as a legal standard of reference, which has yet to be fully implemented in the Member States,[17] this thesis seeks to identify how, and the extent to which, the EU legal framework can be leveraged at the EU level to promote the full and effective inclusion and participation of professionals with disabilities in the functioning of the CCS. In this

[14] Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (CRPD).
[15] Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities [2009] OJ L23/35.
[16] See Joined Cases C–335/11 and C–337/11 *HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab and HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S* [2013] ECLI:EU:C:2013:222 (HK Danmark (Ring and Skouboe Werge)), para 30. See also Council Decision 2010/48/EC.
[17] Delia Ferri and Ann Leahy, 'Implementing the Right of Persons with Disabilities to Participate in Cultural Life: Trends, State Narratives, and Counter-Narratives' in Delia Ferri and Ann Leahy, *Dismantling Barriers and Advancing the Right of Persons with Disabilities to Participate in Cultural Life: A Socio-Legal Analysis* (Routledge 2025) 119.

context, it also highlights limitations and gaps in the EU legal framework and elaborates on the potential for more disability-inclusive CCS.

3. Terminology and Conceptual Framework of the Thesis

This third section discusses the choice of terminology and the associated conceptual framework. It relies on diverse scholarship to clarify concepts of, and related to, disability and culture, and to justify the use of certain terms throughout this research. In some cases, it also highlights the challenges and controversies associated with the choices made in the context of this thesis.

3.1. Conceptualising Disability and Persons with Disabilities

To understand the participation of professionals with disabilities in cultural life, it is essential to consider the concept of disability –central to which 'is the notion of systemic disadvantage'.[18] In this respect, this research first and foremost draws on the CRPD, which represents the main international legal framework for this thesis, as discussed at greater length in chapter 2.[19] The Convention articulates a broad understanding of disability and of persons with disabilities that has been negotiated and agreed upon at the international level. While the legal definition of disability is the subject of recurrent and protracted discussions, which the adoption of the CRPD did not resolve,[20] the preamble to the Convention states that:

> disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.[21]

In doing so, the CRPD avoids formulating a strict definition of disability. This reflects the challenges encountered during the CRPD negotiations in reaching an agreement on a common definition of disability.[22] Moving away from a medical lens and individual

[18] Rosemary Kayess and Phillip French, 'Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities' (2008) 8 Human Rights Law Review 1, 5.
[19] See Chapter 2.
[20] Claire Bruton and Shivaun Quinlivan, 'Disability, EU Law and the CRPD: A New Dawn?' in Charles O'Mahony and Gerard Quinn (eds), *Disability Law and Policy: An Analysis of the UN Convention* (Clarus Press 2017) 408. See also Barbara M Altman, 'Disability Definitions, Models, Classification Schemes and Applications' in Gary L Albrecht, Katherine D Seelman and Michael Bury (eds), *Handbook of Disability Studies* (SAGE 2001); Theresia Degener, 'The Definition of Disability in (German and) International Discrimination Law' (2006) 26 Disability Studies Quarterly <https://dsq-sds.org/article/id/5531/> accessed 10 October 2025.
[21] CRPD, recital (e).
[22] Rachele Cera, 'Preamble' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities* (Springer 2017) 84; Janet E Lord, 'Preamble' in Ilias Bantekas, Michael Ashley Stein and Dimitris Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities: A*

deficiency-based understanding of disability,[23] a topic discussed below in relation to the human rights model of disability, the CRPD also recognises the evolving nature of the concept of disability. As such, it provides a basis for understanding disability as a human rights issue, and for capturing the full range of experiences of people with disabilities.[24] In that vein, this thesis' understanding of disability aligns with Article 1(2) CRPD (Purpose), which provides a description of the Convention's target group[25] in the following terms:

> Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.[26]

In that respect, it is worth noting that the CRPD uses person-first language, an approach also adopted in this thesis (and in the broader DANCING project).

As with 'disability', terminology relating to individuals with disabilities is a contentious issue, certainly so in the English-speaking world.[27] Indeed, leaving aside the stereotypical and negative phrases, which scholars and society at large have for the most part distanced themselves from, there still exists some controversy around the use of people-first terminology (persons/people with disabilities) and identity-first terminology (disabled persons/people) in English.[28] In line with the social model of disability, which is discussed as part of the theoretical framework of this thesis,[29] the identity-first approach endorses the use of '"disabled people" because people with impairment are disabled by society, not by their bodies'.[30] Such terminology is also considered by its users as a way of reclaiming a 'positive social identity, whereby the language historically used to

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Commentary (Oxford University Press 2018) 12; Emily Kakoullis and Yoshikazu Ikehara, 'Article 1: Purpose' in Ilias Bantekas, Michael Ashley Stein and Dimitris Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford University Press 2018) 44–48.

[23] Declaration on the Rights of Mentally Retarded Persons, UNGA Res 2856 (XXVI) (20 December 1971) UN Doc A/RES/2856(XXVI); Declaration on the Rights of Disabled Persons, UNGA Res 3447 (XXX) (9 December 1975) UN Doc A/RES/3447(XXX). On this see, Kayess and French (n 18) 14–15.

[24] Andrea Broderick and Delia Ferri, *International and European Disability Law and Policy: Text, Cases, and Materials* (Cambridge University Press 2019) 5.

[25] For an in-depth discussion on Article 1(2) CRPD, see Kakoullis and Ikehara (n 22) 53–62.

[26] CRPD, art 1.

[27] Mac MacLachlan, 'Disability, Identity, Neurodiversity & Me: Or Should "Me" Be First?' (*Ideas in ALL*, 10 November 2021) <https://www.ideasinall.com/disability-identity-neurodiversity-me-or-should-me-be-first/> accessed 27 December 2024.

[28] See among others Helena Halmari, 'Political Correctness, Euphemism, and Language Change: The Case of "People First"' (2011) 43 Journal of Pragmatics 828; Dana S Dunn and Erin E Andrews, 'Person-First and Identity-First Language: Developing Psychologists' Cultural Competence Using Disability Language' (2015) 70 American Psychologist 255; Krista L Best and others, 'Language Matters! The Long-Standing Debate between Identity-First Language and Person First Language' (2022) 34 Assistive Technology 127; Connie MS Janiszewski and others, 'The Relationship between Disability Identity and Use of Person-First and Identity-First Language' [2025] Rehabilitation Psychology.

[29] For a discussion on the medical model of disability, see Introductory Chapter, Section 4.3.

[30] Tom Shakespeare, *Disability Rights and Wrongs Revisited* (2nd edn, Routledge 2014) 19.

dehumanize and marginalize a minority group is redeployed as a form of empowerment'.[31]

By contrast, in response to institutional oppression and violence,[32] using person/people-first language is commonly seen as a way to emphasise that 'disability is just one of an individual's many characteristics',[33] and that persons with disabilities have 'accompanying rights and responsibilities in law'.[34] In using this terminology, the aim is also to underline the shared humanity of persons with disabilities.[35] It is seen as a way of countering negative and prejudicial narratives that apprehend disability as the sole identity trait of individuals.[36] As Shakespeare notes, it is also the dominant terminology in the global disability rights field, in the CRPD, and is also 'the politically progressive choice in America, Australia and other English-speaking countries',[37] as well as for European bodies lately.[38]

While language matters, linguistic and identity discussions on this topic are also multifaceted and complex, and they are not as 'important as underlying values'.[39] They may divert from their shared 'end goals of desiring change in the way that disability is seen by society'.[40] It is also interesting to note that the Union is a vast and multilingual geographical space where a debate on this specific linguistic constructions may not necessarily find great resonance, especially when English is only one of the 24 official languages of the EU. To avoid entering into a terminology discussion which, at first sight, is of relevance to only a few EU Member States, and more importantly to prioritise the topic of this research that is the right to participate in cultural life of cultural and creative professionals with disabilities, this thesis refers primarily to 'persons with disabilities'. This also corresponds to the approach of the CRPD, and that of the EU. Nonetheless, this research acknowledges the challenges made to the person/people-first approach, and the reasons underlying the use of identity-first language. Thus, the terms 'disabled

[31] Giacomo Vivanti, 'Ask the Editor: What Is the Most Appropriate Way to Talk About Individuals with a Diagnosis of Autism?' (2020) 50 Journal of Autism and Developmental Disorders 691, 692.
[32] Monique Botha, Jacqueline Hanlon and Gemma Louise Williams, 'Does Language Matter? Identity-First Versus Person-First Language Use in Autism Research: A Response to Vivanti' (2023) 53 Journal of Autism and Developmental Disorders 870, 871.
[33] Broderick and Ferri (n 24) 6.
[34] Peter Blanck, 'On the Importance of the Americans with Disabilities Act at 30' (2023) 34 Journal of Disability Policy Studies 176, 177.
[35] Shakespeare, *Disability Rights and Wrongs Revisited* (n 30) 19; Botha, Hanlon and Williams (n 32) 871.
[36] Vivanti (n 31) 691.
[37] Shakespeare, *Disability Rights and Wrongs Revisited* (n 30) 19.
[38] European Commission, 'Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030' (Communication) COM(2021) 101 final (Disability Strategy 2021-2030).
[39] Shakespeare, *Disability Rights and Wrongs Revisited* (n 30) 19.
[40] Melissa Gomes, 'A Study of the Effectiveness of People-First Language' (4th Annual Linguistics Conference, University of Georgia, 2018) 13.

persons/people' may be used when relevant, and, for instance, to convey the chosen terminology of quoted authors and participants.

3.2. Understanding Professional Participation in Cultural Life

After providing insights into the disability dimension of this thesis, the present sub-section aims to elaborate on the notion of participation in cultural life. To do this, it considers the definition of 'culture' and 'cultural life' adopted for the purpose of this research, as well as 'participation in cultural life' as understood in international law. It also discusses the CCS and activities under study, and the variations in terminology used to refer to those working in the CCS.

3.2.1. Culture and Cultural Life

'Culture' is a polysemous word, and numerous definitions have been identified over the years, making it a particularly complex concept to define.[41] As Williams noted in 1985, it is 'one of the two or three most complicated words in the English language'.[42] For some time, the United Nations Educational, Scientific and Cultural Organization (UNESCO) embraced an understanding of culture as 'high culture', a reference to 'museums, certain kinds of theatre, painting, literature'.[43] Its approach of culture has since evolved, and, relying on an anthropological approach, it presents culture more as a 'way of life', consisting of 'all the facets of the mental and material world of a group',[44] which includes both high culture and popular culture, as well as language, religion and belief systems, and other facets.[45] In that respect, the UNESCO Universal Declaration on Cultural Diversity refers to culture as 'the set of distinctive spiritual, material, intellectual and emotional features of society or a social group [that] encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs'.[46] The conceptualisation of culture as a way of life can also be linked to collective dimensions of the right to take part in cultural life.[47] However, this anthropological dimension falls

[41] For instance, Kroeber and Kluckhohn compiled more than 150 definitions of 'culture'. See Alfred L Kroeber and Clyde Kluckhohn, *Culture: A Critical Review of Concepts and Definitions* (Peabody Museum 1952).
[42] Raymond Williams, *Keywords: A Vocabulary of Culture and Society* (rev edn, Oxford University Press 1985) 87.
[43] Elsa Stamatopoulou, *Cultural Rights in International Law: Article 27 of the Universal Declaration of Human Rights and Beyond* (Martinus Nijhoff 2007) 77, 109.
[44] Dominique Hayer, 'La culture : des questions essentielles' (2012) 296 Humanisme 85, 85.
[45] Stamatopoulou (n 43) 109–110.
[46] Universal Declaration on Cultural Diversity (adopted 2 November 2001) UNESCO Doc CLT.2002/WS/9, preamble.
[47] Ephraim Nimni, 'Collective Dimensions of the Right to Take Part in Cultural Life' (Committee on Economic, Social and Cultural Rights Day of General Discussion on The Right to take Part in Cultural Life (Article 15(1)(a) of the Covenant) Geneva 9 May 2008) E/C.12/40/17, 2.

outside the remits of the present thesis, as it appears too broad to adequately support the analysis undertaken.

In this context, 'cultural life' –a phrase commonly used in human rights law– points to a broad understanding of culture as an 'inclusive concept encompassing all manifestations of human existence'.[48] As the Committee on Economic, Social and Cultural Rights (CESCR) emphasises, 'cultural life' is therefore 'an explicit reference to culture as a living process, historical, dynamic and evolving, with a past, a present and a future',[49] which encompasses the different understandings of culture progressively accepted by the CESCR; high culture, popular culture and way of life.[50]

As this thesis focuses on professional participation in the CCS, it adopts a more restrictive and 'aesthetic' understanding of culture (and therefore of cultural life) conceptualised by Williams as 'an independent and abstract noun which describes the works and practices of intellectual and especially artistic activity'.[51] Nowadays, this understanding is commonplace, and activities related to both high and popular forms of culture, including 'the arts as traditionally defined –music, literature, poetry, dance, drama, visual art and so on'– as well as 'film-making, story-telling, festivals, journalism, publishing, television and radio',[52] are among the essential and defining components of the notion of culture, even understood more restrictively.[53]

3.2.2. Participation in Cultural Life

With culture being a multifaceted concept, the matter of 'participation in cultural life' – and the right to it– is also one that is difficult to conceptualise. In fact, while it is understood that the scope and understanding of the right to take part in cultural life has expanded as the understanding of culture evolved,[54] it has also been less explored and developed, as all cultural rights more broadly.[55] This still underpins uncertainties about its scope and content, and how it relates to other cultural rights. Indeed, the right to take

[48] Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No. 21: Right of Everyone to Take Part in Cultural Life (Art. 15, Para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights)' (2009) UN Doc E/C.12/GC/21 para 11.
[49] CESCR, 'General Comment No. 21' (n 48) para 11.
[50] Yvonne Donders, 'The Legal Framework of the Right to Take Part in Cultural Life' in Yvonne Donders and Vladimir Volodin (eds), *Human Rights in Education, Science, and Culture: Legal Developments and Challenges* (UNESCO Publishing /Ashgate 2007) 256.
[51] Williams (n 42) 90.
[52] David Throsby, *Economics and Culture* (Cambridge University Press 2000) 5.
[53] Xavier Greffe, 'Introduction : L'économie de la culture est-elle particulière ?' (2010) 120 Revue d'économie politique 1, 4.
[54] Céline Romainville, 'Defining the Right to Participate in Cultural Life as a Human Right' (2015) 33 Netherlands Quarterly of Human Rights 405, 421–428.
[55] Donders (n 50) 232.

part in cultural life can 'embody a wide array of rights' and encompasses aspects of different cultural rights, such as the right to education for instance.[56]

In exerting to provide a definition, the CESCR has identified in a dedicated General Comment three main (and interrelated) facets to the right to take part in cultural life, namely; '(a) participation in, (b) access to, and (c) contribution to cultural life'.[57] In this context, 'participation' is a reference to 'the right to seek and develop cultural knowledge, to pursue creative activities, and to identify oneself with a community', 'access' points to the right to 'know and understand culture through education and information, to follow a way of life', while contributing to cultural life encompasses the right 'to be involved in the creation of … expressions of the community' and in cultural decision-making.[58] However, as noted by Romainville, the definition provided in this General Comment No. 21 again lacks some certainty and clarity,[59] making the distinction between these three dimensions neither clearcut nor particularly helpful to provide a basis for this thesis.

While the input of the CESCR on the right of everyone to take part in cultural life provides an important background to the thesis –one that is expanded on in chapter 3– it is therefore not quite fitting to best support the analysis. Indeed, the right to participate in cultural life needs to be more precisely conceptualised so as to focus on and better investigate a more circumscribed issue; that of the situation of cultural and creative professionals in the EU. More relevant to this thesis is therefore the twofold individual dimension it evokes, where taking part in cultural life is differentiated according to passive and active modes of participation, meaning participation as 'cultural consumption, referring to passive or receptive enjoyment or attendance; and active involvement, corresponding to engagement, which entails creative participation in culture as an activity'.[60] Donders also discusses this dichotomy in the following terms:

> On the passive side, to take part means to have access to cultural life and enjoy its benefits, without any form of discrimination. It also means to have access to information concerning cultural life. Taking part in cultural life implies that cultural life should be protected and preserved, in particular its cultural and artistic heritage.

[56] Pok Yin S Chow, *Cultural Rights in International Law and Discourse: Contemporary Challenges and Interdisciplinary Perspectives* (Brill Nijhoff 2018) 105. See also Stamatopoulou (n 43) 2–3.
[57] CESCR, 'General Comment No. 21' (n 48) para 15.
[58] Ilias Bantekas and others, 'Article 30: Participation in Cultural Life, Recreation, Leisure, and Sport' in Ilias Bantekas, Michael Ashley Stein and Dimitris Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford University Press 2018) 876.
[59] Romainville (n 54) 427.
[60] Magdalena Pasikowska-Schnass, *Access to Culture in the European Union: In-Depth Analysis* (EPRS, European Parliament 2017) 10.

> On the more active side, taking part in cultural life implies the right and freedom to choose and to change a cultural affiliation and to contribute freely to cultural life and its development by means of creative or other activities. Such freedom implies a right to self-identification, which is essential to the dignity of the individual. Taking an active part in cultural life also implies the right to take part in the decision-making process in relation to it.[61]

This approach is particularly reflected in how different provisions of Article 30 CRPD operationalise the right to take part in cultural life for persons with disabilities. Bantekas and others note in this respect that '[t]he emphasis on "participation" implies that the right to take part in cultural life is not confined to the freedom to enjoy (read: "consume") culture, but also [encompasses] the freedom to pursue and contribute to every aspect of cultural life'.[62] As is discussed at greater length in chapter 2, the wording of the CRPD paves the way to a conceptualisation of participation that also incorporates a professional aspect into the active dimension of the right to take part in cultural life.[63]

The present thesis acknowledges that in fields other than law, the notion of participation has been interpreted differently. For example, the statistics field offers a more restrictive understanding of cultural participation, which does not encompass the contribution to cultural life of professionals. In that sense, the UNESCO Framework for Cultural Statistics (FCS) emphasises that 'cultural participation' as such does not cover 'activities carried out for employment purposes as they are defined by occupation … for example, cultural participation would include visitors to a museum but not the paid guide'.[64]

However, this thesis is informed by a human rights understanding of participation in cultural life enshrined in the CRPD. Thus, this research understands 'participation in cultural life' as encompassing the activities and contribution to cultural life, whether tangible or not, of cultural and creative professionals with disabilities. In this context, rather than 'cultural production' –a term commonly opposed to that of 'cultural consumption' in the fields of cultural economics for instance–[65] this thesis favours the terminology adopted in international law and in the CRPD. Therefore, when referring to the activities of professionals with disabilities in the CCS, this thesis uses for the most part 'participation in cultural life', 'taking part in cultural life', or 'professional

[61] Donders (n 50) 256.
[62] Bantekas and others (n 58) 876.
[63] See Chapter 2, Sub-section 3.2.2.
[64] United Nations Educational, Scientific and Cultural Organization (UNESCO) and UNESCO Institute for Statistics (UIS), *The 2009 UNESCO Framework for Cultural Statistics (FCS)* (2009) 45.
[65] See David Throsby, 'The Production and Consumption of the Arts: A View of Cultural Economics' (1994) 32 Journal of Economic Literature 1; C Lee Harrington and Denise D Bielby, 'Constructing the Popular: Cultural Production and Consumption' in C Lee Harrington and Denise D Bielby (eds), *Popular Culture: Production and Consumption* (Blackwell Publishers 2001); Paul Du Gay (ed), *Production of Culture/Cultures of Production* (SAGE 2001).

participation', a terminology which ensues from Article 30 CRPD. Alternatively, it may refer to work and employment in the CCS, which are terms derived from Article 27 CRPD (Work and Employment). This thesis also acknowledges that such participation can have different characteristics and assume various forms, some more precarious than others, from employment to self-employment, including full-time, part-time and intermittent work, or a combination of several jobs, and the lack of permanent contracts.[66]

3.2.3. The Cultural and Creative Sectors

In addressing the participation in cultural life of professionals with disabilities in the EU, the thesis therefore aims to cover cultural sectors and activities comprehensively. In this regard, it relies on the notion of 'cultural and creative sectors' (or CCS), which was chosen for its breadth and clarity. The concept is preferred to that of 'creative industries', and 'cultural industries', both terms being used interchangeably at times, yet distinguished by others, and referring in whole or in part to 'industrially produced commercial entertainment –broadcasting, film, publishing, recorded music'– and the creative (and subsidised) arts.[67] However, there is some confusion as to what these two terms encompass or not, and whether one subsumes the other into an economic agenda or not. While unravelling this terminology clutter can have important cultural policy implications, as already debated,[68] it is however not the focus of this research, nor conducive to the analysis.

Therefore, the expression 'cultural and creative sectors' is preferred in the context of this thesis. On the one hand, the umbrella term is rather appropriate for the scope of this research since 'cultural and creative sectors' is commonly used at the EU level and also benefits from a definition in EU law. On the other hand, it allows to cover a wide range of sectors, cultural or creative, industrial or not, and avoids the confusion that referring to the 'industries' can create.[69] In this respect, Article 2(1) of the Creative Europe Regulation 2021-2027 defines the CCS as meaning all sectors:

> a) whose activities, many of which have potential to generate innovation and jobs in particular from intellectual property:

[66] Snijders and others (n 2) 7. See also Chapter 1, Section 2.
[67] Susan Galloway and Stewart Dunlop, 'A Critique of the Definition of the Cultural and Creative Industries in Public Policies' (2007) 13 International Journal of Cultural Policy 17, 17–19.
[68] See Galloway and Dunlop (n 67); Jason Potts and Stuart Cunningham, 'Four Models of the Creative Industries' (2008) 14 International Journal of Cultural Policy 233; David Hesmondhalgh, 'Cultural and Creative Industries' in Tony Bennett and John Frow (eds), *The SAGE Handbook of Cultural Analysis* (SAGE 2008); Toby Miller, 'From Creative to Cultural Industries: Not All Industries Are Cultural, and No Industries Are Creative' (2009) 23 Cultural Studies 88; Ieva Moore, 'Cultural and Creative Industries Concept – A Historical Perspective' (2014) 110 Procedia - Social and Behavioral Sciences 738.
[69] See KEA European Affairs, 'The Economy of Culture in Europe' (European Commission 2006) 2–3.

(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;

(b) irrespective of:

(i) whether the activities of those sectors are market-oriented or non-market-oriented;

(ii) the type of structure that carries out those activities; and

(iii) how that structure is financed;

those 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.[70]

In identifying these sectors, the European legislator is supported by the work of the European Statistical System Network on Culture (ESSnet-Culture) on a European methodological framework for cultural statistics, which also draws from the 2009 UNESCO FCS mentioned above.[71] With the understanding that a cultural domain refers to 'a set of practices, activities or cultural products centred around a group of expressions recognized as artistic ones', ESSnet-Culture identifies and proposes ten cultural domains (heritage, archives, libraries, books and press, visual arts, performing arts, audiovisual and multimedia, architecture, advertising, and art crafts),[72] which correspond to the CCS listed in the Creative Europe Regulation 2021-2027. Alongside Article 2(1) of the Creative Europe Regulation 2021-2027, this classification provides a robust and practical approach to understanding what the CCS are, which was notably used in preparing the qualitative study carried out for this thesis.

The statistical work undertaken by ESSNet-Culture to update the European framework for cultural statistics also informs this thesis' understanding of the activities of CCS professionals. Building on the 'culture cycle' articulated in the UNESCO FCS,[73] ESSNet-Culture proposed six economic functions: creation, production/publishing,

[70] Regulation (EU) 2021/818 of the European Parliament and of the Council of 20 May 2021 establishing the Creative Europe Programme (2021 to 2027) and repealing Regulation (EU) No 1295/2013 [2021] OJ L189/34 (Creative Europe Regulation 2021-2027) art 2(1).

[71] Vladimír Bína and others, 'ESSnet-CULTURE: European Statistical System Network on Culture: Final Report' (2012).

[72] Bína and others (n 71) 44.

[73] UNESCO and UIS (n 64) 19–20.

dissemination/trade, preservation, education, and management/regulation.[74] Whilst it generally mirrors the culture cycle, these functions are intended to capture only cultural activities, in contrast with the UNESCO phases which encompass other types of activities like wholesale or manufacturing.[75] This detailed description of the cultural activities that professionals can engage in –from the creation of literary works, to supporting activities for managing rights and royalties in the visual arts, architectural conservation activities, to name but a few–[76] provides a remarkable frame of reference for understanding the diversity of the activities under study, and investigating the participation of professionals with disabilities in the CCS in the EU.

3.2.4. Artists, Workers, Professionals: Who are the 'Active Participants' in the CCS?

As is evident from the beginning of this thesis, 'cultural and creative professionals' or 'CCS professionals' are the main terms used to approach persons with disabilities actively participating and seeking work opportunities in the CCS. These terms are preferred to those of artists or cultural and creative workers (among other terms) which can be perceived as too restrictive.

Terminology varies not only within the EU, or among Member States' laws and policies, but also with the international level. Terms such as artists, cultural and creative workers, CCS professionals, creative professionals, creatives, creators, professional artists are often used interchangeably or together. For instance, the UNESCO Recommendation concerning the Status of the Artist, which is discussed at greater length in chapter 3,[77] provides a broad definition of an 'artist' as:

> any person who creates or gives creative expression to, or re-creates works of art, who considers his artistic creation to be an essential part of his life, who contributes in this way to the development of art and culture and who is or asks to be recognized as an artist, whether or not he is bound by any relations of employment or association.[78]

Yet, this definition has not been fully embraced at the EU level, where a variety of terms to describe all or part of the individuals contributing to the CCS exists. In that regard, Muszyński and Gromada note that '[t]he fundamental gap at the EU and Member State level is the inconsistency in the definitions of creative and cultural sectors and their

[74] Bína and others (n 71) 44.
[75] Bína and others (n 71) 50–51.
[76] Bína and others (n 71) 52–53.
[77] See Chapter 3, Sub-section 3.1.
[78] Recommendation concerning the Status of the Artist (adopted 27 Octobre 1980) UNESCO 21/C Res Annex I (1980 Recommendation) 5.

professionals (artists, art technicians, creative workers)', which often differ depending on whether they relate to the fields of taxation, social protection or other areas of policymaking.[79] For instance, although they may have common approaches,[80] Member States decide internally on the definition of who is an 'artist', resulting in a 'wide variation between Member States' criteria used to define artists'.[81] The Open Method of Coordination (OMC) working group of Member States' experts on the status and working conditions of artists and cultural and creative professionals has tried to provide a more concrete definition of an 'artist' as 'any occupationally active person who is defined or accepted as such' in the fields of taxation, labour law, social security and/or access to public funding.[82] However, this term does not always capture all professionals in the CCS.[83] Moreover, it is likely that not all professionals in the CCS would necessarily define themselves as artists or be legally recognised as such across the EU.

In this context, the term 'professionals' is also preferred to that of 'workers' in this research even though 'cultural and creative workers' is a well-used expression and is usually conflated with 'cultural and creative professionals'.[84] Indeed, the concept of 'worker' has specific meanings in EU law, particularly developed by the Court of Justice of the EU (the 'Court' or CJEU) in relation to the free movement of workers and secondary EU labour law for instance.[85] This also means that there is no single definition on which to rely. On this basis, it is considered that the term of 'worker', even as conceptualised in relation to EU labour law,[86] is not quite apt to encompass all of the CCS professionals this thesis seeks to consider –whether they are employed, genuinely self-employed or fall in the grey zones in between.

Moreover, even though the legal distinction between professionalism and amateurism is not always straightforward, and 'can differ in national legislations and national practices',[87] the term 'professional' seems to be the one that best captures the plurality of active participants in the CCS. Thus, in deliberately using a more encompassing term like

[79] Muszyński and Gromada (n 4) 1–2.
[80] For a more detailed account of those approaches, see Slovak Coalition for Cultural Diversity and Slovenská Výtvarná Únia, 'Status of the Artist: Working Document for a General International Debate' (2013).
[81] Snijders and others (n 2) 45.
[82] European Commission, *The Status and Working Conditions of Artists – OMC Report* (n 4) 18.
[83] Ben Eltham, Xin Gu and Marnie Badham, '"Artists as Workers"? Re-Imagining Cultural Policy for Insecure and Precarious Artists and Cultural Workers' [2025] Journal of Sociology 1, 2.
[84] See for example, European Commission, *The Status and Working Conditions of Artists – OMC Report* (n 4) 18.
[85] See Case C–66/85 *Deborah Lawrie-Blum v Land Baden-Württemberg* [1986] ECLI:EU:C:1986:284, paras 16-17; Case C–85/96 *María Martínez Sala v Freistaat Bayern* [1998] ECLI:EU:C:1998:217, paras 31–32; Case C–543/03 *Christine Dodl and Petra Oberhollenzer v Tiroler Gebietskrankenkasse* [2005] ECLI:EU:C:2005:364, para 27; Case C–256/01 *Debra Allonby v Accrington & Rossendale College, Education Lecturing Services, trading as Protocol Professional and Secretary of State for Education and Employment* [2004] ECLI:EU:C:2004:18 (Allonby), para 63.
[86] See Case C–256/01 *Allonby*, para 71; Case C–413/13 *FNV Kunsten Informatie en Media v Staat der Nederlanden* [2014] ECLI:EU:C:2014:2411 (FNV Kunsten), paras 35–36.
[87] European Parliament Resolution on an EU framework for artists, para C.

'professional', this thesis also endeavours to contribute to scholarly discussions on the terminology used to consider such a diverse group of individuals. Consistent with the scope of cultural employment devised by ESSnet-Culture,[88] it uses 'CCS professionals' or 'cultural and creative professionals' as umbrella terms for the following three main groups:

> 1. Common-sense definition of an artist (performing creative work in the art sector, e.g. actors, painters, dancers, musicians) …
> 2. Broader category of workers hired in the sector, including museum technicians, persons involved in publishing etc …
> 3. Other creative professions (performing creative work beyond the art sector, e.g. designers at marketing agencies, architects).[89]

Thus, the terms 'cultural and creative professionals' and 'CCS professionals' are used interchangeably to cover the different categories that make up the 'broad CCS professionals' group' in the EU.[90] However, expressions such as 'artists' or 'cultural and creative workers' are used occasionally, when reference is made to literature, legislation, policy or case law employing it. Moreover, in spite of the deliberate terminological choice discussed above, the notion of worker as understood for the purpose of EU law, and its consequences for persons with disabilities in the CCS, particularly underpins the analysis in chapter 6 and is therefore considered at greater length in that context.[91]

4. Legal and Theoretical Framework of the Thesis

Following the introduction to the terminology of the thesis and its conceptual framework, the present section considers the legal and theoretical framework underpinning the research. In this respect, it establishes the CRPD as the overarching framework of this thesis. To that end, the following sub-section first recalls how this UN treaty represents a global and binding standard on disability rights that also shapes legislation, policies and initiatives within the EU. Since the EU formally concluded the CRPD,[92] the latter has become an integral element of the EU legal order.[93] In this context, the Convention is

[88] Bína and others (n 71) 140. In this respect, the authors consider that 'cultural employment arises in 3 types of situations. 1) The working population that both exercises a cultural occupation and works in the cultural sector (e.g. a ballet dancer in a ballet company or a journalist in a daily newspaper). 2) The working population that exercises a cultural occupation outside of the cultural sector (e.g. a designer in the automobile industry). 3) The working population that exercises a non-cultural occupation in the cultural sector (e.g. an accountant in a publishing house)'.
[89] Muszyński and Gromada (n 4) 1.
[90] Muszyński and Gromada (n 4) 1.
[91] See Chapter 6, Section 3.
[92] Anna Lawson, 'The European Union and the Convention on the Rights of Persons with Disabilities: Complexities, Challenges and Opportunities' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities* (Springer 2017) 62.
[93] Joined Cases C–335/11 and C–337/11 *HK Danmark (Ring and Skouboe Werge*), para 30.

hierarchically subordinate to EU primary law, which derives from the Treaties, meaning the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), and the Charter of Fundamental Rights of the EU (the 'Charter' or CFR),[94] and superior to EU secondary legislation,[95] which must, in that configuration, be interpreted in a consistent manner with the Convention.[96]

The following sub-section therefore introduces the EU legal framework, and particularly the EU action on disability and on culture, which are then addressed substantively in part III of this thesis.[97] With the CRPD usually understood as embodying a paradigm shift in the approach to the rights of persons with disabilities –including at the EU level– this section concludes on the human rights model of disability, which serves as a theoretical framework for this thesis. Seeking to contextualise this research and the analysis developed in the following chapters, it considers the different theoretical models that have shaped the perception of persons with disabilities and their participation in society, as well as the conceptualisation of disability as a human rights issue.[98]

4.1. The CRPD as Global and EU Standard on Disability Rights

The Convention is a landmark treaty, both in the way it was drafted and adopted, and in its legal substance, as chapter 2 explores.[99] As such, it has reoriented the approach to disability towards persons with disabilities and their place in society,[100] including in culture. The CRPD also constitutes the most relevant legal standard for this thesis, one that is crucial to engage with, especially as it reframes the right to participate in cultural life for persons with disabilities. More specifically, it significantly advances the protection of a right which, although widely recognised in human rights law,[101] fell short of engaging with the distinctive experience of persons with disabilities. Additionally, the Convention is a global legal standard for disability rights that is now also enshrined in the EU legal order.[102] As such, it constitutes a guiding and binding standard for the EU.

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[94] Treaty on European Union [2016] OJ C202/3 (TEU); Treaty on the Functioning of the European Union [2016] OJ C202/47 (TFEU); Charter of Fundamental Rights of the European Union [2016] OJ C202/389 (CFR).
[95] Lawson, 'The EU and the CRPD' (n 92) 65.
[96] Joined Cases C–335/11 and C–337/11 *HK Danmark (Ring and Skouboe Werge*), para 32.
[97] See Chapter 4 and Chapter 5.
[98] Andrea Broderick, 'The Long and Winding Road to Equality and Inclusion for Persons with Disabilities: The United Nations Convention on the Rights of Persons with Disabilities' (PhD Thesis, Maastricht University 2015) 21.
[99] See Chapter 2, Section 2.
[100] Lucy Series, 'Disability and Human Rights' in Nick Watson and Simo Vehmas (eds), *Routledge Handbook of Disability Studies* (2nd edn, Routledge 2020) 80.
[101] See Stamatopoulou (n 43).
[102] Broderick and Ferri (n 24) 319–320.

In embodying a binding instrument of reference for the international community, and more importantly for the EU, it sets out essential obligations to promote, protect and fulfil the rights of persons with disabilities. Notably, the CRPD protects the right of persons with disabilities to participate in cultural life under Article 30 CRPD and outlines what can be expected of all States Parties to 'enable persons with disabilities the opportunity to develop and utilize their creative, artistic and intellectual potential'.[103] As such, the Convention paves the way for the inclusion of persons with disabilities as professionals in the EU's CCS, something that must also be understood with regards to Article 27 CRPD on work and employment. Additionally, the CRPD establishes the need to consider and take advantage of the interlinkages between the human rights and fundamental freedoms it enshrines, and particularly reaffirms their 'universality, indivisibility, interdependence, and interrelatedness'.[104]

Overall, the CRPD has bearing on the questions this thesis seeks to investigate. Indeed, enabling the participation of professionals with disabilities in the CCS is contingent upon the international human rights instruments that primarily bind the EU, but also its Member States. In this context, the CRPD provides the foundations to the analysis carried out in the following chapters of this thesis.

4.2. The EU Action on Disability and Culture

This sub-section highlights the foundations and current acts and policies that form the EU legal framework in the fields of disability and culture.[105] As such, it points to elements of the EU legal landscape that will be further discussed in part III of this thesis, especially in view of how they may –or may not– facilitate the participation of professionals with disabilities in the CCS.

4.2.1. Disability

The EU –previously European Economic Community or later European Community (the 'Community' or EC)– did not initially focus on disability, and instead pursued the construction of the internal market, and economic integration more generally.[106] However, over time, disability rights have received increasing attention, driven by various initiatives and the evolution of the founding treaties, which saw 'the emergence of

[103] CRPD, art 30(2).
[104] CRPD, recital (c).
[105] See also Chapter 4 and Chapter 5.
[106] Broderick and Ferri (n 24) 294–295.

disability rights, and its evolution from an obscure area of policy-making within the [EU] to an area that is now placed firmly on the EU policy-making agenda'.[107] More concretely, this includes a series of soft law initiatives launched by the Community institutions, particularly aimed at supporting the activities of Member States on this topic.[108] The period from the seventies to the nineties was marked by four action programmes on disability,[109] which were mostly dedicated to simplifying the exchange of experiences and dissemination of information.[110] Focusing more on the coordination and exchange of experiences than building a true Community policy on disability, it quite evidently reflected the limited competence of the former EC in the area.[111]

Moving beyond soft mechanisms, which had been the predominant approach, the adoption of the Treaty of Amsterdam in 1997[112] provided a much sought-after legal basis, within the Treaties, for addressing disability at the Community level.[113] This was a pivotal moment for EU disability law and policy. In particular, Article 13 (now Article 19 TFEU) was introduced in the Treaty establishing the European Community (EC Treaty) and enabled the EC to address and take appropriate action to combat discrimination based on a range of grounds, including disability.[114] In this context, the Treaty of Amsterdam prompted 'a qualitative and quantitative shift in the EU action' on disability, and the body of EU disability law grew considerably,[115] even before the conclusion of the CRPD. This includes the Employment Equality Directive, which was adopted in 2000 on the basis of this article and has become a long-standing pillar of EU disability law and policy.[116] To date, this is the first and main EU legislative intervention that aims –albeit it is

[107] Charles O'Mahony and Shivaun Quinlivan, 'The EU Disability Strategy and the Future of EU Disability Policy' in Delia Ferri and Andrea Broderick (eds), *Research Handbook on EU Disability Law* (Edward Elgar 2020) 12.
[108] See Anna Lawson, 'The UN Convention on the Rights of Persons with Disabilities and European Disability Law: A Catalyst for Cohesion?' in Oddný Mjöll Arnardóttir and Gerard Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives* (Brill Nijhoff 2009) 85; Delia Ferri and Andrea Broderick, 'Introduction to the Research Handbook on EU Disability Law' in Delia Ferri and Andrea Broderick (eds), *Research Handbook on EU Disability Law* (Edward Elgar 2020) 1.
[109] Council Resolution of 27 June 1974 establishing the initial Community action programme for the vocational rehabilitation of handicapped persons [1974] OJ C80/30; Council Resolution of the representatives of the Governments of the Member States of the European Communities meeting within the Council of 21 December 1981 on the social integration of handicapped people [1981] OJ C347/1; Council Decision 88/231/EEC of 18 April 1988 establishing a second Community action programme for disabled people (Helios) [1988] OJ L104/38; Council Decision 93/136/EEC of 25 February 1993 establishing a third Community action programme to assist disabled people (Helios II 1993 to 1996) [1993] OJ L56/30.
[110] O'Mahony and Quinlivan (n 107) 13.
[111] O'Mahony and Quinlivan (n 107) 13.
[112] Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts [1997] OJ C340/1 (Treaty of Amsterdam).
[113] Mark Priestley, 'In Search of European Disability Policy: Between National and Global' (2007) 1 Alter 61, 67–68.
[114] See Mark Bell, *Anti-Discrimination Law and the European Union* (Oxford University Press 2002) 121–144.
[115] Ferri and Broderick (n 108) 2.
[116] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16.

circumscribed to the workplace– to combat discrimination on the ground of disability.[117] It follows that the Employment Equality Directive also has significant potential for cultural and creative professionals with disabilities, as chapter 6 demonstrates.[118]

As noted earlier, since its conclusion by the EU, the CRPD has become a driving force behind the enactment of EU legislation on disability. However, the 'EU's complex internal division' of exclusive, shared, and supporting competences has limited EU action on disability,[119] and hampered the implementation of the CRPD in the EU.[120] Nevertheless, as this thesis seeks to highlight, the EU is an important role-player in the realisation of the rights of persons with disabilities in the Union, and this includes their right to participate in cultural life as professionals. Indeed, shortly after the conclusion of the Convention by the EU, the European Commission adopted the European Disability Strategy 2010–2020 (Disability Strategy 2010–2020),[121] which, according to the EU executive, effectively lays down its policy on disability.[122] Over the ten-year period, the European Commission's strategy has focused on the implementation of the EU's obligations under the CRPD, and detailed a range of initiatives meant to achieve the inclusion of persons with disabilities in society. This includes for instance the adoption of the European Accessibility Act (EAA),[123] now one of the cornerstones of EU disability law, along with the Web Accessibility Directive (WAD)[124] –another initiative adopted during the 2010-2020 period– or the revision of the Audiovisual Media Services Directive (AVMSD), a sectoral instrument, which notably incorporates accessibility obligations for audiovisual media services providers.[125]

Since then, the Strategy for the Rights of Persons with Disabilities 2021-2030 (Disability Strategy 2021-2030) has sought to maintain the momentum of the Disability Strategy 2010-2020 towards achieving the realisation of the CRPD in the EU. Adopted in 2021, it

[117] Andrea Broderick and Philippa Watson, 'Disability in EU Non-Discrimination Law' in Delia Ferri and Andrea Broderick (eds), *Research Handbook on EU Disability Law* (Edward Elgar 2020) 124.
[118] See Chapter 6, Sections 2 and 3.
[119] Merijn Chamon, 'Negotiation, Ratification and Implementation of the CRPD and its Status in the EU Legal Order' in Delia Ferri and Andrea Broderick (eds), *Research Handbook on EU Disability Law* (Edward Elgar 2020) 52.
[120] Delia Ferri and Léa Urzel, 'The Employment Equality Directive and Access to Justice for Persons with Disabilities: Some Reflections in Light of *Tartu Vangla* and *Komisia Za Zashtita Ot Diskriminatsia*' in Philip Czech and others (eds), *European Yearbook on Human Rights 2022* (Intersentia 2022) 87–88.
[121] European Commission, 'European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe' (Communication) COM(2010) 636 final (Disability Strategy 2010-2020).
[122] Committee on the Rights of Persons with Disabilities (CRPD Committee), 'Consideration of Reports Submitted by States Parties under Article 35 of the Convention: Initial Report of States Parties Due in 2012: European Union' (2014) UN Doc CRPD/C/EU/1 para 18.
[123] Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services [2019] OJ L151/70 (EAA).
[124] Directive (EU) 2016/2102 on the accessibility of the websites and mobile applications of public sector bodies [2016] OJ L327/1 (WAD).
[125] Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services [2010] OJ L95/1 (AVMSD).

has made advances on disability rights including with the adoption of legislation on the Disability Cards[126] or the creation of the AccessibleEU Centre,[127] to the point that civil society is calling for the strategy to be updated as almost all actions planned have been achieved.[128] Interestingly, the Disability Strategy 2021-2030 recognises both the active and passive facets of the participation in cultural life of persons with disabilities. As such, it calls on the European Commission, together with the Member States to 'promote and raise the visibility of the art works by persons with disabilities', while recognising that 'more needs to be done to ensure better labour market outcomes for persons with disabilities'.[129]

4.2.2. Culture

Given the lack of agreement between Member States on carrying cultural action at EU level, the development of an EU cultural policy has, for long, been a 'sensitive issue'. [130] Apart from a few instruments, EU action on culture was scarce until the Treaty of Maastricht, and the introduction of Article 128 in the EC Treaty (now Article 167 TFEU).[131] It initiated a new era for EU cultural action and officially established culture as an area of EU competence, providing a legal basis for future initiatives.[132]

Article 167(1) TFEU continues to delimit the EU action on culture, setting out that the Union must 'contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity'.[133] As such, the competence of the EU with regard to culture is circumscribed to 'encouraging cooperation between Member States and, if necessary, carrying out actions to support and supplement their action' in some specific areas, including that of 'artistic and literary creation'.[134] The EU cannot supplant the competences of Member States in the area of culture and therefore assumes

[126] See Directive (EU) 2024/2841 of the European Parliament and of the Council of 23 October 2024 establishing the European Disability Card and the European Parking Card for persons with disabilities [2024] OJ L2024/2841.
[127] See Disability Strategy 2021-2030, 8; AccessibleEU Centre, 'AccessibleEU Final Report: Working Together to Build a More Accessible European Union for Persons with Disabilities' (2024).
[128] European Disability Forum (EDF), 'EU Strategy on the Rights of Persons with Disabilities 2021-2030: Actions for 2025 Onwards' (Position Paper, 2024).
[129] Disability Strategy 2021-2030, 14, 21.
[130] Uta Staiger, 'New Agendas? Culture and Citizenship in EU Policy' (2009) 15 International Journal of Cultural Policy 1, 2. See also Caroline Brossat, *La Culture Européenne: Définitions et Enjeux* (Bruylant 1999); Rachael Craufurd Smith (ed), *Culture and European Union Law* (Oxford University Press 2004); Evangelia Psychogiopoulou, *The Integration of Cultural Considerations in EU Law and Policies* (Martinus Nijhoff 2008); Renaud Denuit, *Politique Culturelle Européenne* (Bruylant 2016); Evangelia Psychogiopoulou (ed), *Cultural Governance and the European Union* (Palgrave Macmillan 2015); Evangelia Psychogiopoulou and Sarah Schoenmaekers (eds), *European Union Economic Law and Culture: Towards a European Culturally Corrected Market Economy* (Edward Elgar 2024).
[131] See Treaty on European Union [1992] OJ C191/1 (Treaty of Maastricht).
[132] Alan Forrest, 'A New Start for Cultural Action in the European Community: Genesis and Implications of Article 128 of the Treaty on European Union' (1994) 1 The European Journal of Cultural Policy 11, 11.
[133] TFEU, art 167(1).
[134] TFEU, art 167(2).

a supporting role,[135] whereby it may only adopt incentive measures and recommendations.[136] Additionally, Article 167(5) TFEU also explicitly excludes any harmonisation between Member States. Nevertheless, the 'cultural mainstreaming clause',[137] set out in Article 167(4) TFEU, obliges the Union 'to take cultural aspects into account in its action under other provisions of the Treaties'. In doing so, the TFEU capitalises on EU competences and 'synergies between culture and other EU polic[y]' domains, which may facilitates initiatives.[138] In a similar vein, Craufurd Smith has highlighted that the regulation of culture is more extensive and 'long-standing' than the Treaties suggests.[139] In that context, she emphasises the 'commercial value' of culture and highlights how, in this respect, it is inextricably linked to the EU's commitment to establish the internal market and the free movement of goods, services, and people.[140]

It is interesting to note that the EU legal framework of relevance to the CCS has evolved over time, with the adoption of several instruments focusing on culture and favouring cultural creation to a certain extent. This refers, among others, to the development of a substantial body of EU copyright legislation,[141] the codification and revision of the AVMSD mentioned earlier, as well the two consecutive Regulations on the Creative Europe programme,[142] which are considered at greater length in part III.[143] Ultimately, the Treaties define a 'circumvented policy space in the field of culture',[144] which, in turn, undoubtedly influences how EU action may benefit cultural and creative professionals with disabilities in the Union.

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[135] TFEU, arts 2(5) and 6(c).
[136] TFEU, art 167(5).
[137] Evangelia Psychogiopoulou, 'The Cultural Mainstreaming Clause of Article 151(4) EC: Protection and Promotion of Cultural Diversity or Hidden Cultural Agenda?' (2006) 12 European Law Journal 575.
[138] Evangelia Psychogiopoulou, 'The Cultural Open Method of Coordination: A New but Different OMC?' (2018) 3 European Papers 257, 270.
[139] Rachael Craufurd Smith, 'Introduction' in Rachael Craufurd Smith (ed), *Culture and European Union Law* (Oxford University Press 2004) 2.
[140] Craufurd Smith, 'Introduction' (n 139) 2.
[141] See Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society [2001] OJ L167/10; Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property [2006] OJ L376/28; Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs [2009] OJ L111/16; Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works [2012] OJ L299/5; Directive (EU) 2017/1564 of the European Parliament and of the Council of 13 September 2017 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society [2017] OJ L242/6 (Marrakesh Directive).
[142] Regulation (EU) 1295/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Creative Europe Programme (2014 to 2020) and repealing Decisions No 1718/2006/EC, No 1855/2006/EC and No 1041/2009/EC [2013] OJ L347/221 (Creative Europe Regulation 2014-2020); Creative Europe Regulation 2021-2027.
[143] See Chapter 5, Sub-section 5.3. and Chapter 8, Section 2.
[144] Evangelia Psychogiopoulou and Sarah Schoenmaekers, 'The EU as a Cultural Market Economy: In Need of "Cultural Correction"?' in Evangelia Psychogiopoulou and Sarah Schoenmaekers (eds), *European Union Economic Law and Culture: Towards a European Culturally Corrected Market Economy* (Edward Elgar 2024) 2.

4.3. The Human Rights Model of Disability as Theoretical Framework

Lastly, this sub-section intends to elucidate the theoretical basis for the thesis' investigation into the participation of CCS professionals with disabilities in the EU's CCS. In discussing the human rights model of disability as the theoretical foundation of this thesis, it also references the medical and social models of disability. In doing so, this introduction succinctly captures the ways in which disability has been conceptualised over time, and how this has influenced the perception of persons with disabilities, and the protection of their human rights. The recognition of the human rights-based approach to disability as the theoretical underpinning of this thesis also provides an interesting backdrop for understanding the formulation of the research questions and its objectives. Incidentally, it supports a reflection on the situation of persons with disabilities working in the CCS, the engagement of cultural stakeholders with the concept of disability and how the EU legal framework may, or may not, enable the participation of professionals with disabilities in the CCS.

Over the last decades, the conceptualisation of disability and the protection of the rights of persons with disabilities have evolved considerably. These developments directly led to the adoption of the CRPD in 2006 –'the culmination of the evolution of disability rights protection at international level'.[145] As mentioned above, the CRPD is a legal instrument that has contributed significantly to changing the approach to disability at the international level.[146] More specifically, it embodies a paradigm shift in the field of disability law and policy, from a medical model of disability to a social model of disability.[147] It has particularly challenged the medical model of disability, a historically dominant and stigmatising approach,[148] which views disability as an individual medical issue[149] and 'focuses on attempts to "cure" the functional limitations of the disabled person [to] conform to the non-disabled "norm"'.[150] In essence, it is based on the objectification of persons with disabilities, on seeing them as 'objects' of charity 'to be managed or cared for',[151] and on the idea that disability should be considered 'as an impairment that needs to be treated, cured, fixed or at least rehabilitated' on an individual

[145] Broderick (n 98) 21.
[146] The CRPD is considered in more detail in Chapter 2.
[147] Broderick (n 98) 22.
[148] Ann Leahy and Delia Ferri, 'The Right to Participate in Cultural Life of Persons with Disabilities in Europe: Where Is the Paradigm Shift?' (2022) 16(4) Alter 5, 9.
[149] Gauthier De Beco, 'The Revival of Human Rights: A New Perspective on Human Rights Through the Lens of Disability' (2023) 45 Human Rights Quarterly 665, 672.
[150] Broderick (n 98) 22.
[151] Gerard Quinn, 'Resisting the "Temptation of Elegance": Can the Convention on the Rights of Persons with Disabilities Socialise States to Right Behaviour?' in Oddný Mjöll Arnardóttir and Gerard Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives* (Brill Nijhoff 2009) 216.

basis.[152] As such, the medical model can also be associated with the negative cultural stereotypes perpetuated about persons with disabilities, and their portrayal as objects.[153]

In contrast, the social model of disability, whereby '[d]isabled people and their allies … have challenged the over-medicalized, pathological and individualist accounts of disability',[154] has served as the foundation for the drafting of the Convention.[155] This approach, which sheds new light on the way disability is addressed in a range of fields, and more fundamentally in society, asserts that disability results from environmental and social barriers and must therefore be conceptualised from a socio-contextual perspective.[156] In that sense, Broderick contends that 'the social model focuses on the ability (or rather the inability) of societal structures to guarantee equal access to, and enjoyment of, human rights for disabled people'.[157] Over time, distinctive social-contextual approaches to disability have been posited, including the British social model of disability, the Nordic relational approach or the North American minority group understanding.[158] As such, the social model of disability shifted the focus away from the individuals' impairment towards 'environmental and social barriers, which exclude people with perceived impairments from mainstream society'.[159] In this context, Oliver has emphasised that disability is a 'long-term social state' and 'not a medical condition'.[160] Nevertheless, the medical model remains influential and still underpins the exclusion of persons with disabilities, including from cultural life.[161]

In that context, the adoption of the CRPD has marked the reaffirmation of the rights of persons with disabilities as human rights and attested to a novel approach to disability, 'from the outset of equality and non-discrimination'.[162] This is the human rights model

[152] Theresia Degener, 'Disability in a Human Rights Context' (2016) 5 Laws 35, 2.
[153] Colin Barnes, *Disabling Imagery and the Media: An Exploration of the Principles for Media Representations of Disabled People* (BCODP and Ryburn Publishing 1992) 39; Tom Shakespeare, 'Cultural Representation of Disabled People: Dustbins for Disavowal?' (1994) 9 Disability & Society 283, 287.
[154] Rannveig Traustadóttir, 'Disability Studies, the Social Model and Legal Developments' in Oddný Mjöll Arnardóttir and Gerard Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives* (Brill Nijhoff 2009) 3.
[155] Degener, 'Disability in a Human Rights Context' (n 152) 3.
[156] Traustadóttir (n 154) 3.
[157] Broderick (n 98) 23.
[158] Traustadóttir (n 154) 9–15. See also, Frank Bowe, *Handicapping America: Barriers to Disabled People* (Harper & Row 1978); Victor Finkelstein, *Changing Attitudes and Disabled People: Issues for Discussion* (World Rehabilitation Fund 1980); Michael Oliver, *The Politics of Disablement* (Macmillan 1990); Ron Amundson, 'Disability, Handicap, and the Environment' (1992) 23 Journal of Social Philosophy 105; Jane Campbell and Michael Oliver, *Disability Politics: Understanding Our Past, Changing Our Future* (Routledge 1996); Anders Gustavsson, Jan Tøssebro and Rannveig Traustadóttir, 'Introduction: Approaches and Perspectives in Nordic Disability Research' in Anders Gustavsson and others (eds), *Resistance, Reflection and Change: Nordic Disability Research* (Studentlitteratur 2005).
[159] Colin Barnes, 'The Social Model of Disability: A Sociological Phenomenon Ignored by Sociologists?' in Tom Shakespeare (ed), *The Disability Reader: Social Science Perspectives* (Cassell 1998) 79.
[160] Mike Oliver, 'The Individual and Social Models of Disability' (Joint Workshop of the Living Options Group and the Research Unit of the Royal College of Physicians, London, 23 July 1990) 3–4.
[161] Leahy and Ferri, 'The Right to Participate in Cultural Life' (n 148) 19–20.
[162] Theresia Degener and María Gómez-Carrillo de Castro, 'Toward Inclusive Equality: Ten Years of the Human Rights Model of Disability in the Work of the UN Committee on the Rights of Persons with Disabilities' in Franziska Felder,

of disability. While the social model has played a key role in its elaboration, it is argued that the CRPD transcends the social model and even 'codifies a human rights model of disability', as Degener puts it.[163] More recently, Lawson and Beckett have articulated a 'complementarity thesis' between the two models, providing nuanced accounts of the distinctive roles they play in the realisation of the human rights of persons with disabilities.[164] In essence, the human rights model of disability recognises persons with disabilities as autonomous human rights subjects and right holders.[165] It relates to a universalist approach where 'differential characteristics' are viewed 'as being a universal component of the human condition and it values diversity and human difference within its framework'.[166] Thus, it makes it possible to focus 'on the inherent dignity of the human being and subsequently, but only if necessary, on the person's medical characteristics'.[167] In this context, it follows from the human rights model that it is the responsibility of the State to address the barriers faced by persons with disabilities in society.[168]

In this respect, this thesis acknowledges the complexity and importance of this scholarly debate, as well as the extensive literature to which it has given rise.[169] Ultimately, it embraces the view that the prescriptive nature of the human rights model –which seeks to broadly answer 'the question "what should we do?" to advance social justice for disabled people'–[170] is best suited to the analysis of the EU legal framework carried out as part of this thesis.

Additionally, in the context of disability law and policy, the human rights model has become increasingly popular and the prevalence of its use, for example by the Committee

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Laura Davy and Rosemary Kayess (eds), *Disability Law and Human Rights: Theory and Policy* (Palgrave Macmillan 2022) 34.

[163] Theresia Degener, 'A New Human Rights Model of Disability' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities* (Springer 2017) 42.

[164] See Anna Lawson and Angharad E Beckett, 'The Social and Human Rights Models of Disability: Towards a Complementarity Thesis' (2021) 25 The International Journal of Human Rights 348.

[165] Degener, 'Disability in a Human Rights Context' (n 152) 1.

[166] Broderick (n 98) 27.

[167] Gerard Quinn and Theresia Degener, 'Human Rights and Disability: The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability' (United Nations 2002) HR/PUB/02/1 14.

[168] Quinn and Degener (n 167) 14.

[169] See among others Michael Oliver, *Understanding Disability: From Theory to Practice* (Macmillan 1996); Dan Goodley, 'Locating Self-Advocacy in Models of Disability: Understanding Disability in the Support of Self-Advocates with Learning Difficulties' (1997) 12 Disability & Society 367; Tom Shakespeare and Nicholas Watson, 'The Social Model of Disability: An Outdated Ideology?' (2002) 2 Research in Social Science and Disability 9; Colin Barnes and Geof Mercer, *Exploring Disability: A Sociological Introduction* (2nd edn, Polity 2010); Esther van Weele, 'The UN Convention on the Rights of Persons with Disabilities in the Context of Human Rights Law' in Joel Anderson and Jos Philips (eds), *Disability and Universal Human Rights: Legal, Ethical, and Conceptual Implications of the Convention on the Rights of Persons with Disabilities* (Utrecht University 2012); Thomas P Dirth and Nyla R Branscombe, 'Disability Models Affect Disability Policy Support through Awareness of Structural Discrimination: Models of Disability' (2017) 73 Journal of Social Issues 413; Anne Waldschmidt, 'Disability–Culture–Society: Strengths and Weaknesses of a Cultural Model of Dis/Ability' (2018) 12 Alter 65; Angharad E Beckett, 'Rethinking Disability Law: Theoretical Limitations and Transformative Possibilities' [2025] Ars Vivendi Journal 2.

[170] Lawson and Beckett (n 164) 365.

on the Rights of Persons with Disabilities (CRPD Committee) is indisputable.[171] Most remarkably, the CRPD Committee has elaborated on the human rights model of disability, explicitly stating that it 'requires the diversity of persons with disabilities to be taken into account (preamble, para.(i)) together with the interaction between individuals with impairments and attitudinal and environmental barriers (preamble, para. (e))'.[172]

In adopting the human rights model of disability as its theoretical framework, this thesis is based on the premise that the participation and inclusion of persons with disabilities in society, including in cultural life, is a matter of realisation of human rights, not charity. In doing so, it also endorses Broderick's words when she states that 'one of the main reason for exploring theoretical models of disability stems from the fact that the understanding of disability which an instrument endorses is vital in determining the human rights of disabled people'.[173] More concretely, this human rights-based approach provides a critical background to the desk-based and empirical research undertaken in this thesis. The medical and social models of disability remain of interest, especially as they complement what the human rights model can offer as a theoretical backdrop and further contextualise the investigation of the participation of professionals with disabilities in cultural life.

5. Research Methodology

After presenting the theoretical framework of this thesis, this section aims to discuss the research methods used and to substantiate the research strategy adopted in the thesis. It introduces the socio-legal approach of the thesis and considers the combination of desk-based research and empirical research, which is also developed in chapter 1.[174] It elaborates on their purpose, the research process, the issues explored, and the data-collection procedure.

5.1. A Socio-legal Approach

From the outset, this thesis takes the view that law is a social product and adopts a socio-legal approach.[175] As such, it focuses on the analysis of the EU legal framework –

[171] Lawson and Beckett (n 164) 349. See also Degener and Gómez-Carrillo de Castro (n 162) 32–35.
[172] CRPD Committee, *SC v Brazil* (Decision of the Committee on the Rights of Persons with Disabilities under Article 5 of the Optional Protocol to the Convention on the Rights of Persons with Disabilities (12th session) Concerning Communication No. 10/2013 2014) UN Doc CRPD/C/12/D/10/2013 para 6.3.
[173] Broderick (n 98) 21.
[174] See Chapter 1, Section 3.
[175] Michael McConville and Wing Hong Chui, 'Introduction and Overview' in Michael McConville and Wing Hong Chui (eds), *Research Methods for Law* (2nd edn, Edinburgh University Press 2017) 5–6.

understood broadly– of relevance to the realisation of the right of professionals with disabilities to participate in cultural life, while taking account of the social context.

In that sense, the essence of socio-legal scholarship is precisely to call into question the belief that law is an 'essentially abstract and formal entity'.[176] Law does not operate autonomously from society, and 'it cannot be understood on its own terms' or considered in isolation.[177] Since integral to the political and social fabric of society, law 'is inextricably related to it in an infinite variety of ways, and can therefore only be properly understood if studied in that wider context'.[178] In this connection, Bhat captures the multiple dimensions of socio-legal research as he refers to 'socio-legal' as an 'umbrella term comprising varied areas of research activity [which] invites interdisciplinary study and combines and transcends qualitative and quantitative study'.[179] He also adds that socio-legal research concerns 'issues of both theory and method'.[180]

In the context of this thesis, a socio-legal approach is understood to combine several advantages. It 're-situates' law in its context, particularly in relation to the realisation of Articles 30 and 27 CRPD, while enabling the researcher to exploit broader scholarship, theory and employ methods from other disciplines 'to understand the operation of law in society', and answer the research questions.[181] It can help to supply further insights and data, to broaden 'the conceptual framework within which such information can be interpreted and assessed [and] it allows research topics to be addressed in their wider contexts of emergence, development and reform'.[182]

In following this socio-legal approach, this thesis' research design outlines a multi-method research strategy, which relies on doctrinal and empirical research, as well as non-doctrinal research.[183] The participation of professionals with disabilities in the EU's CCS is not just a legal matter but an interdisciplinary and socially rooted phenomenon. As such, the research problem posed in this thesis goes beyond black letter law and its primary 'if not exclusiv[e focus] upon the law itself … with little or no reference to the world outside of the law'.[184] Beyond law, the functioning of the CCS in general, and the participation of persons with disabilities in cultural life, are matters covered to varying

[176] Nicole Graham, Margaret Davies and Lee Godden, 'Broadening Law's Context: Materiality in Socio-Legal Research' (2017) 26 Griffith Law Review 480, 484.
[177] Graham, Davies and Godden (n 176) 484.
[178] Phil Harris, 'Curriculum Development in Legal Studies' (1986) 20 Law Teacher 110, 112.
[179] P Ishwara Bhat, *Idea and Methods of Legal Research* (Oxford University Press 2020) 488.
[180] Bhat (n 179) 488.
[181] McConville and Chui (n 175) 6.
[182] Michael Salter and Julie Mason, *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research* (Pearson Education Limited 2007) 177.
[183] Bhat (n 179) 470.
[184] McConville and Chui (n 175) 1.

degrees in separate but related disciplines; from cultural policy, economics, and sociology, to disability studies, to only name a few.[185] In this context, it appeared essential to bridge the divide between law and other disciplines, to draw on existing research carried out in different fields and to lever on empirical research methods in order to contextualise the application of law with regard to the research problem posed in this thesis.

Thus, the socio-legal approach is best suited to approach and investigate the right to participate in cultural life of professionals with disabilities in the EU. In that respect, it was also felt that the problem posed in a study such as this one would benefit from the combination of different research methods '*that have non-overlapping weaknesses in addition to their complementary strengths'*.[186] This thesis is therefore based on a blended methodology associating desk-based research and empirical research. Part of the desk-based research undertaken in this thesis consists of reviewing the literature relating to the application of law and associated measures in the EU, including relevant academic works, grey literature,[187] and publications from the EU and other European and international organisations. It provides a contextual framework necessary to successfully progress through the different phases of research. In particular, the non-doctrinal research helps to identify key ideas, previous studies, and knowledge gaps of interest to this thesis, thus informing the direction of the research and its contribution to knowledge.[188] Furthermore, this thesis combines doctrinal and qualitative research methods, addressed in the following sub-sections (5.2. and 5.3.) to capture the 'circumstances of interpretation and application of legal ideas',[189] which affect the participation in cultural life of professionals with disabilities in the EU.

5.2. Doctrinal Research

After a brief discussion of its socio-legal approach, this sub-section considers the central role of doctrinal research in this thesis. As emphasised earlier, the thesis relies on a combination of methods to provide a contextualised account of the functioning of the CCS in the EU regarding the participation of CCS professionals with disabilities. To that

[185] See the cross-disciplinary review done by Leahy and Ferri in Leahy and Ferri, 'Barriers and Facilitators to Cultural Participation' (n 2).
[186] John Brewer and Albert Hunter, *Multimethod Research: A Synthesis of Styles* (SAGE 1989) 17 (emphasis added by the authors).
[187] Grey literature refers to information produced outside of traditional commercial and academic publishing channels by government, academia and other organisations, including research reports, policy documents, or conference papers.
[188] Alan Bryman, *Social Research Methods* (4th edn, Oxford University Press 2012) 98.
[189] Roger Cotterrell, 'Why Must Legal Ideas Be Interpreted Sociologically?' (1998) 25 Journal of Law and Society 171, 186–187.

effect, it relies on doctrinal research, a 'distinctly legal approach to research',[190] in order to address how the EU formally engages with the participation in cultural life of professionals with disabilities, and what the gaps and limitations, as well as opportunities, are in this respect.

Doctrinal research is otherwise described as 'research which provides a systematic exposition of the rules governing a particular legal category, analyses the relationship between rules, explains areas of difficulty and, perhaps, predicts future developments'.[191] In line with this definition, such research entails the 'close analysis of authoritative texts intrinsic to the field of law',[192] with the aim 'to systematise, rectify and clarify the law'.[193] Doctrinal research thus requires the identification and analysis of primary sources like legislation and case law, as well as research into 'secondary literature –texts, journal articles, government reports, policy documents, law reform documents and media reports'.[194] In that sense, Egan notes, while there are certain limitations, it is possible to include international bodies' 'interpretations of similar legal problems/issues', mentioning that 'the Concluding Observations and "views" of the UN human rights treaty bodies on individuals may be regarded as "authoritative" and persuasive statements of principle'.[195]

In the context of this thesis, doctrinal research is central to drawing up a comprehensive account of the rules governing the participation of professionals with disabilities in the EU's CCS. Doctrinal research is therefore utilised for 'investigating the ideational and linguistic content of law, the claims it makes and the assumptions it contains' with regard to the specific scope of the thesis.[196] It embodies, as Davies also puts it, 'the beginning of the theory on which empiricism may be based'.[197] As such, it underpins the whole of the research project, including the empirical research, discussed below,[198] as key information and insights were drawn for primary data collection and data analysis. In the second part, doctrinal research is used to provide an account of the international legal framework of

[190] Terry Hutchinson, 'Doctrinal Research: Researching the Jury' in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (Routledge 2013) 7.
[191] Terry Hutchinson, *Researching and Writing in Law* (4th edn, Thomson Reuters 2018) 7, citing Dennis C Pearce, Enid Campbell and Don E Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Australian Government Publishing Service 1987) vol 3, 17.
[192] Suzanne Egan, 'The Doctrinal Approach in International Human Rights Law Scholarship' in Lee McConnell and Rhona KM Smith (eds), *Research Methods in Human Rights* (Routledge 2018) 31.
[193] McConville and Chui (n 175) 4.
[194] Terry Hutchinson and Nigel Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17 Deakin Law Review 83, 112–113.
[195] Egan (n 192) 32.
[196] Gareth T Davies, 'Taming Law: The Risks of Making Doctrinal Analysis the Servant of Empirical Research' in Marija Bartl and Jessica C Lawrence (eds), *The Politics of European Legal Research: Behind the Method* (Edward Elgar 2021) 126.
[197] Davies (n 196) 126.
[198] See Introductory Chapter, Sub-section 5.3, and Chapter 1, Section 3.

interest to CCS professionals with disabilities. In that respect, this thesis leverages, among other sources, on the work of the CRPD Committee, especially with regard to Article 30 CRPD. Indeed, throughout the reporting process, the drafting of views, or General Comments, the CRPD Committee generates significant knowledge, which advances the understanding of the obligations of States Parties to the Convention, including the EU.

Doctrinal research is also core to the analysis developed in the third part of this thesis on the EU legal framework. Supported by the qualitative analysis, it is key to understanding how the EU legal framework contributes to enabling the participation of CCS professionals with disabilities and to highlighting shortcomings with respect to the overarching themes identified in chapter 1.[199]

5.3. Empirical Research

This thesis blends legal and qualitative research methods. With regards to the latter, it draws on both primary and secondary qualitative data collected within the DANCING research project, which this thesis is part of, through semi-structured interviews and focus groups. The qualitative research informing this thesis relies on a set of ten semi-structured interviews of CCS umbrella organisations and other cultural stakeholders active at the EU level. This the primary data set. This thesis also draws on a secondary data set, stemming from two focus groups that were carried out by Prof Delia Ferri, the principal investigator of the DANCING project, and the DANCING team. The focus groups were carried out with key informants on disability and culture, typically working in the EU's CCS or involved with European projects addressing these topics. They came from various EU Member States and the UK. The two methods, including their research design, data collection, and analysis, are discussed in greater detail in chapter 1.[200]

5.3.1. Rationale for Using Qualitative Research

Qualitative methods make it possible to inquire into 'the meaning individuals or groups ascribe to a social or human problem' and to elicit views on a chosen topic.[201] As such, they are seen as well suited for understanding the many dimensions of a phenomenon, including the ones that would underpin a research problem such as the one posed in this thesis. Indeed, the research questions motivating this thesis call for 'a *complex*, detailed

[199] See Chapter 1, Section 4.
[200] See Chapter 1, Section 3.
[201] John W Creswell, *Qualitative Inquiry and Research Design: Choosing among Five Approaches* (2nd ed, SAGE 2007) 37.

understanding'[202] of the realisation of the right to participate in cultural life of professionals with disabilities in the EU. It therefore benefits from researching the perceptions, on this specific topic, of those involved with these sectors.[203] As such, the research values the views and experiences of these CCS stakeholders on the participation of professionals with disabilities in the sector(s), on the challenges they perceive in that respect, as well as on the meaning they ascribe to it, 'from their own frames of reference'.[204] These constitute an important element of the socio-legal analysis undertaken in this thesis, one that certainly frames it and supports the desk-based research throughout.

Indeed, the combination of legal and qualitative research methods contributes to better structuring this thesis' investigation of the EU legal framework and its potential in enabling the participation of professionals with disabilities in the CCS. In particular, as further discussed in chapter 1, the empirical findings contribute to highlighting key challenges and opportunities for professionals with disabilities to participate in the CCS labour market. [205] Additionally, the themes identified through the data analysis act as a framing device for the analysis undertaken in the subsequent chapters, and particularly in part III of this thesis. The rationale for using semi-structured interviews and focus groups is briefly outlined in the following sub-sections, while chapter 1 expands on how the qualitative study was carried out.[206]

5.3.2. Semi-structured Interviews

As noted above, investigating the participation of CCS professionals with disabilities in the EU is thought to benefit greatly from broadening the scope of research methods, beyond traditional legal research methods. In this instance, semi-structured interviews allow for capturing law in action in the cultural field, by analysing the experiences and views of key EU stakeholders from the CCS. The value of semi-structured interviews stems from focused conversations with the participants –who have been identified through a purposeful sampling strategy–[207] which yield data that would not otherwise be available. They offer the possibility to gather their views, experiences, and perspectives,

[202] Creswell (n 201) 40 (emphasis added by the author).
[203] Karin Hammarberg, Maggie Kirkman and Sheryl de Lacey, 'Qualitative Research Methods: When to Use Them and How to Judge Them' (2016) 31 Human Reproduction 498, 499.
[204] Steven J Taylor, Robert Bogdan and Marjorie L DeVault, *Introduction to Qualitative Research Methods: A Guidebook and Resource* (4th edn, Wiley 2016) 7.
[205] See Chapter 1, Section 4.
[206] See Chapter 1, Section 3.
[207] For more details on the sampling, Chapter 1, sub-section 3.1.

which are not available otherwise –in this case on the functioning of the CCS and the participation of professionals with disabilities in the process.

Together with the doctrinal research, these interviews contribute to a better understanding of the structures and attitudes that shape the realisation of the right of professionals with disabilities to participate in cultural life in the EU. They were an integral part of this PhD project. More specifically, the interviews were carried out to investigate and ascertain the current level and mode of engagement of EU cultural stakeholders with the concept of disability and the support provided to persons with disabilities as CCS professionals. They sought the motives put forth to account for such involvement, or alternatively, the lack thereof, as well as their understanding of the normative framework enabling and/or preventing the participation professionals with disabilities in the CCS across the EU. The interviews also enquired participants on how disability features in cultural goods and services, and the production/consumption dynamics that underpin it.

Prior to data collection, ethical approval for this study was obtained from the Maynooth University Social Research Ethics Subcommittee.[208] The ethical approval process ensured that the interviews were carried out in compliance with Maynooth University's Research Ethics Policy and Research Integrity Policy.[209] Participants received information on the research prior to the interview, covering issues of data protection, data storage, retention or anonymisation. The participants' informed consent was then obtained in the format most convenient to them.

5.3.3. Focus Groups

As mentioned earlier, this thesis integrates findings from both individual interviews and focus groups, which is a common and accepted combination of qualitative data collection methods.[210] In doing so, the thesis draws on data collected within the broader DANCING project, to supplement the primary data and reinforce the analysis.

Focus groups generally bring together a small and predetermined group of participants in moderated sessions.[211] They are designed to foster focused discussions on a single or a

[208] See appendix for a copy of the ethical approval.
[209] The policies can be accessed on Maynooth University's website <https://www.maynoothuniversity.ie/university-policies/research-policies> accessed 17 August 2025.
[210] David L Morgan, 'Focus Groups' (1996) 22 Annual Review of Sociology 129, 134; Sylvie D Lambert and Carmen G Loiselle, 'Combining Individual Interviews and Focus Groups to Enhance Data Richness' (2008) 62 Journal of Advanced Nursing 228, 230; Ivana Acocella and Silvia Cataldi, *Using Focus Groups: Theory, Methodology, Practice* (SAGE 2021) 89–106.
[211] See David L Morgan, *Focus Groups as Qualitative Research* (SAGE 1997) 2; Monique M Hennink, *Understanding Focus Group Discussions* (Oxford University Press 2014) 2; Richard A Krueger and Mary Anne Casey, *Focus Groups: A Practical Guide for Applied Research* (5th edn, SAGE 2014) 2.

limited number of subjects.[212] Being collective in nature, they leverage on group dynamics and group discussions, not to reach a consensus, but rather to reveal and collect a range of views on a given issue.[213] In that sense, Rubin and Rubin highlight the following:

> In focus groups, the goal is to let people spark off of one another, suggesting dimensions and nuances of the original problem that any one individual might not have thought of. Sometimes a totally different understanding of a problem emerges from the group discussion.[214]

As a research method that draws on the diverse and/or complementary perspectives of participants, focus groups can offer nuanced insights on a particular topic, as well as information on the reasons for variations and/or concordances in the data.[215]

It is posited here that the present research benefits from associating two independent qualitative data collection methods. The combination of individual interviews, typically known for their 'greater depth', and focus groups, valued for their 'greater breadth',[216] was envisioned as a productive strategy for better understanding the 'structure and … essential characteristics'[217] of the issue of participation of professionals with disabilities in the EU's CCS. This enriches the data, highlighting potential convergence, divergence and complementarity.[218] Moreover, secondary qualitative data analysis is often used when primary data represents a small sample size. In the case of this thesis, this was particularly suitable since ten semi-structured interviews were carried out for the primary data collection. This is notably due to the specific focus of the interviews which sought to invite representatives of CCS umbrella organisations and other cultural stakeholders active at the EU level, meaning that the pool of potential participants for the interviews was rather limited.

As explained in more detail in chapter 1,[219] the participants were identified by purposeful sampling, similar to the interviews. Thanks to the strategy defined by the DANCING team, the thesis benefited from insights coming from various Member States, CCS, and fields of works. The two focus groups, used as secondary data source, also received ethical approval from Maynooth University Ethics Committee. Being part of the

[212] Hennink (n 211) 1–2.
[213] Taylor, Bogdan and DeVault (n 204) 131.
[214] Herbert J Rubin and Irene S Rubin, *Qualitative Interviewing: The Art of Hearing Data* (SAGE 1995) 140.
[215] David L Morgan and Richard A Krueger, 'When to Use Focus Groups and Why' in David L Morgan (ed), *Successful Focus Groups: Advancing the State of the Art* (SAGE 1993) 17–18; Morgan (n 210) 139.
[216] Morgan, 'Focus Groups' (n 210) 134.
[217] Lambert and Loiselle (n 210) 235.
[218] Lambert and Loiselle (n 210) 235.
[219] See Chapter 1, Sub-section 3.2.

DANCING project allowed for greater familiarity with how the focus groups were conducted and their purpose, thus avoiding some of the caveats often associated with the use of secondary data and raised below with regards to the limitations of the thesis.[220]

6. Limitations of the Thesis

Following the presentation of the research methodology, this section focuses on highlighting challenges met throughout the research process and the limitations of this study, with respect to its scope and the empirical research.

6.1. Scope

Admittedly, this thesis devotes limited attention to the legal implications of other instruments and frameworks besides the CRPD and the EU legal framework under study. Still, it acknowledges that the legal framework which influences the participation of professionals with disabilities in the EU's CCS is multilayered. Indeed, it is undeniable that cultural rights are addressed to varying degrees in a range of international treaties, UNESCO documents or even Conventions of the Council of Europe, and that these sources of law may influence the functioning of the EU's CCS and the participation of professionals with disabilities to some extent.[221] Additionally, given the functioning of the EU and the division of competences between the Union and the Member States, it is clear that the fields of disability and culture are not regulated solely at the EU level. The role of Member States in fostering and enabling the participation of professionals with disabilities is non-negligible.

Nonetheless, as this thesis aims to demonstrate, the Union weighs on the realisation of the right of professionals with disabilities to participate in cultural life. In that sense, and as introduced in section 4,[222] the EU has managed to create an ample body of law which relates to both areas, making use of the competences it was granted by virtue of the Treaties and of the significant supportive funding power it can yield. For this reason, this thesis –which admittedly, is already part of a broader EU research project– adopts a European perspective. Therefore, the domestic level is given little attention in this thesis, and mainly in relation to EU level concerns.

[220] As explained in Sub-section 6.2, secondary qualitative data analysis comes with some limitations, usually associated with a lack of information and knowledge on the specifics of the research design and data collection process. See also Delia Ferri, Tiarnán McDonough and Alessia Palladino, 'Qualitative Data Collection and Archiving in the DANCING Project' (Zenodo 2024).
[221] See Chapter 3.
[222] See Introductory Chapter, Section 4.2.

Although what happens in the Union is influenced by many other layers of legislation and policy, it also seemed necessary to reflect on this thesis' specific focus and to narrow the sources to consider accordingly. This was especially justified by the fact that it would have been challenging, and even beyond the capacity of this research project, to address a wide range of international sources, whether binding or not on the EU. Therefore, the socio-legal analysis conducted in this thesis focuses primarily on the EU legal framework, with the CRPD as a backdrop, and most importantly as an international legal standard to be implemented by the States Parties to the Convention, including the EU. Nevertheless, the thesis does acknowledge previous international recognitions of the right to take part in cultural life, as well as some of the work of the UNESCO and of the International Labour Organization (ILO), which are more acutely relevant to professionals with disabilities in the CCS and presented in chapter 3.[223]

Prompted by the themes identified in the data analysis (equality and non-discrimination, accessibility, the EU funding system, knowledge-building and awareness-raising), other decisions were made regarding the scope of this thesis, and in particular the scope of EU legislation analysed in the context of the research. Therefore, stemming from CCS stakeholders' concerns with regard to the research topic, this primarily means that the fields of social security law, copyright law or state aid law are excluded from the scope of this thesis, as justified in chapter 1.[224] In terms of timeline, this thesis examines developments with regards to the EU legal framework, and relevant to the participation in cultural life of persons with disabilities, up until 24 July 2025.

6.2. Empirical Research

With the research project undergoing a rigorous ethical review, significant efforts were also made to comply with general ethical principles and practices throughout the qualitative data collection, and during the data analysis. As mentioned, interviewees took part voluntarily and were made aware of how the data would be managed and stored in advance, both in writing and verbally on the day of the interview. In that respect, participants were also reminded that they, as well as their organisations, could be identifiable based on the specific context of the study, particularly as some organisations were likely to be associated with a specific cultural sector or role in the EU's CCS. Additionally, it was emphasised that should a participant raise the importance of

[223] See Chapter 3.
[224] See Chapter 1, Sub-section 3.3.

anonymity and confidentiality during their interview or part of it, their concerns would be carefully considered. Even though the risk of participating was assessed as minimal, rigorous attention was paid to mitigating this risk through the relative anonymisation of identifiable data following the interviews, by adhering to best practice guidelines in terms of confidentiality and by endeavouring to avoid any breach of confidentiality. Additionally, this thesis does not identify the gender of participants, to further preserve their anonymity. Instead, it uses the pronoun 'they'. When quoting participants, generic words such as 'them', 'organisation', 'institution', 'professional' and 'work' are also sometimes used as a precaution to replace the specific CCS professional category or a sector that were explicitly mentioned and which could risk disclosing the organisation they are attached to.

In this context, finding participants presented certain challenges. As discussed further in chapter 1, it was decided that this qualitative research should aim to cover a wide range of cultural and creative sectors to provide a comprehensive picture of the functioning of the field. It meant that the pool of potential interviewees was rather limited, which would inevitably create certain difficulties if the identified stakeholders were unable to participate or if attempts to establish contact proved unsuccessful. Ultimately, the interview participants represented most of the main sectors, including books and press, audiovisual, performing arts, or the GLAM sector (Galleries, Libraries, Archives and Museums), as well as cross-sectoral organisations, and other cultural stakeholders.

Language-related issues for the primary data collection were limited. As the participants were working at the EU level, which may involve international and European collaboration, it was expected that they would have a satisfactory command of English. In fact, most interviews were conducted in English –except one, which was conducted in French– and it was possible to accommodate English and French speakers easily. In that vein, ensuring the accessibility of the qualitative research represented one of the main concerns of the data collection. The present project sought to be inclusive of and accessible to all relevant participants, including potential participants with disabilities. Therefore, particular attention was paid to the accessibility of information sheets and consent forms, as well as to other issues related to the communication of information and the conduct of interviews.

Combining primary and secondary qualitative research also presented some issues. However, as the primary and secondary data collection were both carried out as part of the wider DANCING research project, it was easier to ensure a rigorous methodology and mitigate the challenges and shortcomings often associated with using secondary data

and secondary qualitative data analysis. These downsides relate to ethical and legal considerations, issues of data fitness, data quality, lack of knowledge of the data collection procedure or methodology for data sampling.[225] As part of the project team, the author of this thesis was therefore involved in the focus groups and with the research team that conducted them –to the extent detailed in chapter 1–[226] which alleviated many of the challenges mentioned above.

Lastly, especially with regard to the qualitative research, this thesis acknowledges that 'no research can be carried out free from "bias"'.[227] Adopting a reflexive position, the researcher sought to mitigate biases –stemming from her perspectives or assumptions– which could adversely impact the conduct of the research. In doing so, the researcher followed a rigorous approach to the research process by developing a careful and scientific methodology, as per Maynooth University's ethical policies. In line with using reflexive thematic analysis to analyse the data, as elaborated on in chapter 1,[228] this thesis further recognises that researcher subjectivity is 'a *resource* for knowledge production, which inevitably sculpts the knowledge produced',[229] and can help to reach a more nuanced understanding of the data.

7. Contribution to Existing Research

Following discussions on the limitations of this thesis, this section highlights its contribution to existing research. In this respect, the thesis sits at the intersection of various strands of scholarship and disciplines and seeks to advance the state of knowledge in four main ways, as detailed below.

7.1. A Comprehensive Perspective

The present research intends to focus not on cultural representations of disability, but rather on the representations of professionals with disabilities in the CCS workforce, which can also end up shaping cultural products and services. Therefore, a distinctive contribution of this thesis lies in its effort to offer a comprehensive perspective on the experience of professionals with disabilities in the CCS. This research covers the

[225] He-in Cheong and others, 'Secondary Qualitative Research Methodology Using Online Data within the Context of Social Sciences' (2023) 22 International Journal of Qualitative Methods 1, 5–6.
[226] See Chapter 1, Sub-sections 3.2. and 3.3.
[227] Morag McDermont, 'A View from the Coalface' [2002] Socio-legal Newsletter 5.
[228] See Chapter 1, Section 3.3.
[229] Virginia Braun and Victoria Clarke, 'One Size Fits All? What Counts as Quality Practice in (Reflexive) Thematic Analysis?' (2021) 18 Qualitative Research in Psychology 328, 334–335 (emphasis added by the authors).

participation of cultural and creative professionals with disabilities in the EU by referring to an understanding of cultural life that encompasses a wide range of cultural sectors. It also considers all people with disabilities in the EU –not a specific cohort– when current scholarship and other research tend to address the participation in cultural life of persons with the same type of disabilities distinctively.

Indeed, although other studies have addressed barriers and facilitators to the participation of persons with disabilities in culture to some extent,[230] researchers and organisations have often focused on a single country,[231] on people with a certain type of disability,[232] on specific cultural activities and a combination of these,[233] or provided perspectives from outside the EU.[234] For example, research undertaken as part of a European project on disability and the performing arts sector, has shared findings, which demonstrated that a 'lack of knowledge in the cultural sector creates barriers for disabled artists and audiences',[235] and discussed the need for a 'mindset shift' in the performing arts sector.[236] Other researchers examined whether theatre could contribute to the democratic participation of persons with learning disabilities.[237] Aujla and Redding also reviewed the available literature to understand the barriers faced by young persons with disabilities in dance training and found that it encompassed aesthetic, attitudinal, training and logistics barriers as well as shortcomings in terms of buildings' accessibility or knowledge and awareness.[238] Researching the cultural participation of certain groups of persons with disabilities is indeed valuable and facilitates the identification of specific issues.

[230] For a comprehensive review of the literature published on the subject, see Leahy and Ferri, 'Barriers and Facilitators to Cultural Participation' (n 2); Ann Leahy and Delia Ferri, 'The Scholarly Context: Cultural Participation of People with Disabilities in Academic Scholarship and Grey Literature' in Delia Ferri and Ann Leahy, *Dismantling Barriers and Advancing the Right of Persons with Disabilities to Participate in Cultural Life: A Socio-Legal Analysis* (Routledge 2025).

[231] Outi Salonlahti, 'Twists and Turns – The Careers of Finnish Disabled and Deaf Artists' (2021) 24 Nordisk Kulturpolitisk Tidsskrift 37.

[232] European Blind Union (EBU), 'EBU Access to Culture Survey 2012 Mapping Current Levels of Accessibility to Cultural Venues and Activities in Europe' (2012).

[233] Chris Creed, Russell Beale and Paula Dower, 'Digital Tools for Physically Impaired Visual Artists' (16th International ACM SIGACCESS Conference on Computers & Accessibility - ASSETS '14 ACM Press, Rochester, 2014); Elisabeth Hästbacka, Mikael Nygård and Fredrica Nyqvist, 'Barriers and Facilitators to Societal Participation of People with Disabilities: A Scoping Review of Studies Concerning European Countries' (2016) 10 Alter 201.

[234] Bree Hadley and Donna McDonald (eds), *The Routledge Handbook of Disability Arts, Culture, and Media* (Routledge 2019); Christina Maria Yarmol, 'The Right to Be an Artist: Operationalizing Studio Art Practices for People with Cognitive and Intellectual Disabilities' (PhD thesis, York University 2020); Ayse Collins and others, 'Exploring Barriers to Social Inclusion for Disabled People: Perspectives from the Performing Arts' (2022) 28 Journal of Management & Organization 308; Amanda Cachia, *Curating Access: Disability Art Activism and Creative Accommodation* (Routledge 2022).

[235] Yohann Floch and Jordi Baltà Portolés, 'Time to Act: How Lack of Knowledge in the Cultural Sector Creates Barriers for Disabled Artists and Audiences: Final Report' (On the Move, British Council 2021) 14.

[236] Jordi Baltà Portolés, 'Time to Act: Two Years On, Data-Led Insights on Performing Arts & Disability in Europe' (On the Move for the British Council 2023) 54.

[237] Ellen Saur and Oddbjørn Johansen, 'Stepping into the Unknown – Welfare, Disability, Culture and Theatre as an Opportunity for Equality?' (2013) 18 Research in Drama Education: The Journal of Applied Theatre and Performance 246.

[238] Imogen J Aujla and Emma Redding, 'Barriers to Dance Training for Young People with Disabilities' (2013) 40 British Journal of Special Education 80.

However, by focusing comprehensively on persons with disabilities in the CCS, this thesis favours a broader scope and encompasses the variety of the experiences of persons with disabilities in cultural life.

Although this project covers the whole range of CCS, it does not, however, cover analogous practices relating to leisure, recreation, or sport, as Article 30 CRPD does. The participation of persons with disabilities in these activities have been the subject of various interesting studies using doctrinal research, quantitative research, action research or literature reviews.[239] In line with its focus on cultural life and the definition of culture provided above, the scope of this research does not encompass the topics of leisure, recreation or sport, even though at the EU level, sport can be understood as having, in legal terms, a cultural quality.[240]

7.2. A Focus on Professionals with Disabilities

This thesis is also innovative in that it focuses on people with disabilities as cultural and creative professionals, rather than amateurs, consumers or audiences of cultural goods and services.[241] Current research tends to remain within the prism of 'cultural consumption' or 'passive' participation, which thus fails to highlight the role of persons with disabilities in the making of cultural products and their right to participate in cultural life as professionals. In this respect, some studies have addressed access to culture and discussed cultural outreach towards minority audiences,[242] and audience development.[243] Additional studies which touch upon the accessibility of the sector(s) also tend to focus on persons with disabilities from an audience perspective.[244] Although they mostly adopt

[239] Zbigniew Taylor and Iwona Józefowicz, 'Intra-Urban Daily Mobility of Disabled People for Recreational and Leisure Purposes' (2012) 24 Journal of Transport Geography 155; Ricardo Pagán, 'Time Allocation in Tourism for People with Disabilities' (2012) 39 Annals of Tourism Research 1514; Maria Manuel Sá and others, 'Accessibility of Sports Facilities for Persons with Reduced Mobility and Assessment of their Motivation for Practice' (2012) 41 Work 2017; Zofia Kubińska, Barbara Bergier and Józef Bergier, 'Usage of Leisure Time by Disabled Males and Females from the Lublin Region' (2013) 20 Annals of Agricultural and Environmental Medicine 341.

[240] Stephen Weatherill, 'Sport as Culture in EC Law' in Rachael Craufurd Smith (ed), *Culture and European Union Law* (Oxford University Press 2004).

[241] Elizabeth Ellcessor, *Restricted Access: Media, Disability, and the Politics of Participation* (New York University Press 2016); Heather Pressman and Danielle Schulz, *The Art of Access: A Practical Guide for Museum Accessibility* (Rowman & Littlefield 2021).

[242] Cécilia De Varine, 'L'accueil de tous au musée, au risque du changement' (2007) 2 L'Observatoire 31.

[243] Laura Zakaras and Julia Lowell, *Cultivating Demand for the Arts: Arts Learning, Arts Engagement, and State Arts Policy* (RAND Corporation 2008); European Commission, *Promoting Access to Culture via Digital Means: Policies and Strategies for Audience Development: Final Report of the Working Group of EU Member States' Experts on Promoting Access to Culture via Digital Means under the Open Method of Coordination* (Publications Office 2017).

[244] Susana Mesquita and Maria João Carneiro, 'Accessibility of European Museums to Visitors with Visual Impairments' (2016) 31 Disability & Society 373; Nicola Gratton, 'People with Learning Disabilities and Access to Mainstream Arts and Culture: A Participatory Action Research Approach' (2020) 48 British Journal of Learning Disabilities 106; Susana Mesquita, Ana Caldeira and Maria João Carneiro, 'What Facilitates or Constrains Co-Creation in Museums? The Case of People with Visual Impairments' (2022) 39 Disability & Society 1568; Maria Pirrone and others, 'Digital Humanities and Disability: A Systematic Literature Review of Cultural Accessibility for People with Disability' (2023) 38 Digital Scholarship in the Humanities 313.

an audience or consumers' perspective, the thesis draws on the knowledge from EU national experts on culture gathered and shared as part of the Open Method of Coordination (OMC), which benefits from the expertise of CCS stakeholders. This includes publications where persons with disabilities are mentioned in the context of promoting cultural diversity and intercultural dialogue,[245] of promoting better access and wider participation in culture[246] or with regards to the role of cultural policy in social inclusion and cohesion.[247]

This thesis also builds upon the research which has considered persons with disabilities in the role of creators, and which is mentioned throughout this section. Yet, it is the first socio-legal study to address the issue of participation of professionals with disabilities in the CCS comprehensively, and to highlight the point of view of the sectors at the same time. In this respect, collaborative mechanisms like Voices of Culture –once, the European Commission's structured dialogue with the CCS– have sought to foster knowledge exchange and discussions among CCS stakeholders on a range of key cultural policy issues. However, to date, this has yielded limited engagement with the subject of the participation of CCS professionals with disabilities, partly because it was never chosen as a topic for the structured dialogue. Partly, because, when it was chosen, it was also only considered to a limited extent in the context of other topics, such as gender equality, status and working conditions, social inclusion, or mental health, and often from the perspective of passive participation.[248]

Other studies involving experts on culture and the arts have discussed the status and working conditions of cultural and creative professionals, and only marginally considered those with disabilities. This is the case of the OMC report on the status and working conditions of artists and cultural and creative professionals.[249] Interestingly, the European Expert Network on Culture and Audiovisual mentions the specific challenges faced by CCS professionals with disabilities, including the difficulties in accessing funding or

[245] European Commission, 'Report on the Role of Public Arts and Cultural Institutions in the Promotion of Cultural Diversity and Intercultural Dialogue: Open Method of Coordination (OMC) Working Group of EU Member States Experts on the Role of Public Arts and Cultural Institutions in the Promotion of Cultural Diversity and Intercultural Dialogue' (2014) 22–85.
[246] European Commission, '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: Open Method of Coordination (OMC) Working Group of EU Member States' Experts on Better Access to and Wider Participation in Culture' (2012) 21–107.
[247] European Commission, *From Social Inclusion to Social Cohesion* (n 8) 30–84.
[248] Voices of Culture, 'Brainstorming Report: Social Inclusion: Partnering with Other Sectors' (Structured Dialogue between the European Commission and the Cultural Sector, 2018) 4–58; Voices of Culture, 'Gender Equality: Gender Balance in the Cultural and Creative Sectors' (Structured Dialogue between the European Commission and the Cultural Sector, 2019) 53, 62; Voices of Culture, 'Status and Working Conditions' (n 4) 43; Voices of Culture, 'Re-Engaging Digital Audiences in the Cultural Sectors: Improving Audience Data' (Structured Dialogue between the European Commission and the Cultural Sector, 2022) 22–43; Voices of Culture, 'Youth, Mental Health and Culture: Brainstorming Report' (Structured Dialogue between the European Commission and the Cultural Sector, 2022) 31–79.
[249] European Commission, *The Status and Working Conditions of Artists – OMC Report* (n 4) 44, 90.

travelling independently, and stresses that disability policies tend to not encompass arts and culture, while cultural policies fail in considering disability.[250] These publications inform the thesis as they address the intersections between culture, work and disability from the perspectives of CCS stakeholders and other experts, however, only in a rather brief and secondary manner. Additionally, they do not fil the notable gap in empirical studies on the topic.

7.3. Bringing to Light the Perspective of the CCS

The approach of this thesis departs from other research in that it involves participants representing the CCS, and therefore seeks to highlight points of views coming from the sector(s) on a topic that has primarily been studied from the perspective of professionals with disabilities or disability-focused organisations.[251] The importance of researching their participation in the CCS with professionals with disabilities themselves is undeniable, especially in light of the well-known motto 'nothing about us without us', which recalls the need for close consultation with and active involvement of persons with disabilities in matters related to the realisation of their rights.[252] However, by discussing the participation of CCS professionals with disabilities in cultural life from the perspective of the CCS in general, this thesis addresses a research gap in qualitative studies, and more so in socio-legal studies.

The views of CCS stakeholders can in fact point to specific issues that the sectors themselves recognise as barriers and can provide novel insights compared to existing research. As highlighted in chapter 1, the data analysis points to specific themes identified in the contributions of CCS stakeholders involved in the focus groups and interviews.[253] These are key to understanding the opportunities for using the EU legal framework to promote the realisation of the right of professionals with disabilities to participate in cultural life, as well as its limitations and the gaps that remain to be addressed.

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[250] Snijders and others (n 2) 30.

[251] Among others, see Saur and Johansen (n 237); Leahy and Ferri, 'Barriers to Cultural Participation by People with Disabilities in Europe' (n 2); Salonlahti (n 231); Elena Sánchez-Vizcaíno and Allison Amidei, 'Access and Inclusion for Students with Disabilities in Performing Arts Higher Education' (2021) 2 ACOTACIONES. Investigación y Creación Teatral 15; Philip Finn, 'Artists at the Intersection of Work and Welfare: Low-Income Disabled Artists' Navigation of Welfare and Working Lives' (Arts Council 2025). See also, outside of the EU, Yarmol (n 234); Bree Hadley, Eddie Paterson and Madeleine Little, 'Quick Trust and Slow Time: Relational Innovations in Disability Performing Arts Practice' (2022) 2 International Journal of Disability and Social Justice 7; Collins and others (n 234); Lisa Mahaffey, Kristin Chrissos and Kate Wettergren, 'A Qualitative Study of Disabled Performance Art in Occupational Identity Formation and Empowerment' (2025) 13 The Open Journal of Occupational Therapy 1.

[252] See CRPD, art 4(3).

[253] As explained in Chapter 1, Sections 3 and 4, the empirical findings help to frame the analysis carried out to answer the research questions. As such, they are also considered in Chapters 6, 7 and 8.

7.4. An EU Law Focus

In that connection, this thesis also stands out from earlier research in that it focuses on the participation in cultural life of persons with disabilities in a professional capacity, including from an EU law standpoint. In doing so, it complements the research mentioned above, and scholarship from various disciplines like disability studies and cultural studies, on disability and artistic practice,[254] as well as studies that relate to specific national frameworks. Thus, it provides novel insights and engages with how disability features in the CCS in the EU. As such, it contributes to EU legal scholarship, which has otherwise taken a limited interest in the situation of CCS professionals with disabilities, especially with regard to the themes identified in the qualitative research. While many scholars have considered the potential of EU non-discrimination law for professionals with disabilities, including the Employment Equality Directive,[255] there is far too little discussions on how it impacts on the professional activities of persons with disabilities in the CCS, with the exception of the discussion initiated with this research.[256] EU non-discrimination scholarship, and even labour law scholarship more generally, do not engage to a great extent with the CCS, except perhaps when prompted by case law,[257] and even less with the situation of those with disabilities in the CCS. Nonetheless, this thesis finds a strong basis in scholarship that has discussed the rights of persons with disabilities under EU labour law.[258] It remains that 'there is little overlap between culture and EU social policy',[259] except perhaps with regard to social security and social protection,[260] an area

[254] Petra Kuppers, *Disability and Contemporary Performance: Bodies on the Edge* (Routledge 2013); Petra Kuppers, *Studying Disability Arts and Culture: An Introduction* (Bloomsbury 2017).

[255] See Lisa Waddington and Anna Lawson, *Disability and Non-Discrimination Law in the European Union: An Analysis of Disability Discrimination Law within and beyond the Employment Field* (European Network of Legal Experts in the Non-Discrimination Field, Publications Office 2009); Mark Bell and Lisa Waddington, *The Employment Equality Directive and Supporting People with Psychosocial Disabilities in the Workplace: A Legal Analysis of the Situation in the EU Member States* (European Network of Legal Experts in Gender Equality and Non-discrimination, Publications Office 2016); Broderick and Watson (n 117); Patrick Daly and Darius Whelan, 'Disability in Employment Equality Law: A Reappraisal of the Reasonable Accommodation Duty and Issues Arising in its Implementation' (2021) 28 Maastricht Journal of European and Comparative Law 744; Ferri and Urzel (n 120).

[256] Léa Urzel Francil, 'Leveraging EU Non-Discrimination Law to Make the Cultural and Creative Sectors More Inclusive of Professionals with Disabilities: Socio-Legal Perspectives' [2025] International Journal of Cultural Policy 1.

[257] See for instance, Michael Doherty, 'Le « travailleur », le droit de l'UE et la négociation collective' [2021] Revue de droit comparé du travail et de la sécurité sociale 60; Antonio Aloisi, 'J.K. v TP S.A. and the "Universal" Scope of EU Anti-Discrimination Law at Work: A Paradigm Shift?' (2023) 52 Industrial Law Journal 977; Tomasz Jaroszyński and Justyna Łacny, 'Further Extension of Protection against Discrimination on Grounds of Sexual Orientation under Directive 2000/78/EC: Court of Justice (Second Chamber) 12 January 2023, Case C-356/21, *J.K.* v *TP S.A.*, ECLI:EU:C:2023:9' (2023) 19 European Constitutional Law Review 548.

[258] See Mark Bell, 'People with Intellectual Disabilities and Labour Market Inclusion: What Role for EU Labour Law?' (2020) 11 European Labour Law Journal 3; Miet Vanhegen and Frank Hendrickx, 'Disability in EU Labour Law beyond Non-Discrimination' in Delia Ferri and Andrea Broderick (eds), *Research Handbook on EU Disability Law* (Edward Elgar 2020); Michael Doherty, 'The Path Is Made by Walking ... The Social Partners and Employment Rights under EU Disability Law' in Delia Ferri and Eva S Krolla (eds), *Actors and Roles in EU Disability Law* (Hart 2025).

[259] Paul Kearns, 'Culture and EU Law: The Exploration of an Interface' in Rachael Craufurd Smith (ed), *Culture and European Union Law* (Oxford University Press 2004) 398.

[260] Juozas Tartilas, 'Social Guarantees for Artists in Lithuania and the European Union' (2009) 3 Socialinių mokslų studijos/Social Sciences Studies 183; Frederic De Wispelaere and Marco Rocca, 'The Dark Side of the Tour. Labour

of EU law that is left outside of the scope of this thesis, as mentioned earlier. Additionally, questions of accessibility in the CCS have been raised, including in the context of EU copyright law,[261] yet research has limitedly engaged with how it conditions and underpins the participation of cultural and creative professionals with disabilities in the CCS. Interestingly, the EU funding system has been considered with respect to how it benefits persons with disabilities (or contravenes their rights) and how it operates in the context of both disability and culture,[262] providing an interesting basis to investigate at greater length how it enables professionals with disabilities to take part in cultural life in the EU.

8. Structure of the Thesis

The thesis is structured into three parts. Part I focuses on setting the scene and highlights the social and professional situation of CCS professionals with disabilities. Part II then addresses the relevant international framework, while part III investigates the EU framework as it pertains to cultural and creative professionals with disabilities. A concluding chapter closes the thesis.

Chapter 1 discusses the challenges and opportunities available in the cultural and creative sectors' labour market for professionals. Reviewing the literature available, it highlights the social and professional situation of those working in the CCS, which is marked by its precarity, atypicality and fluidity. After elaborating on the methods used for the empirical research, the chapter points to the key issues identified during the data analysis which, according to CCS stakeholders, underpin the participation of professionals with disabilities. These key themes –equality and non-discrimination, accessibility, the EU funding system, and knowledge-building and awareness-raising– contribute to framing and supporting the analysis for the rest of the thesis.

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and Social Security Challenges of Highly Mobile Workers in the Live Performance Sector' (2020) 21 ERA Forum 35; Frederic De Wispelaere and others, *Cross-Border Employment in the Live Performance Sector Exploring the Social Security and Employment Status of Highly Mobile Workers* (HIVA-KU Leuven 2021).

[261] Delia Ferri and G Anthony Giannoumis, 'A Revaluation of the Cultural Dimension of Disability Policy in the European Union: The Impact of Digitization and Web Accessibility' (2014) 32 Behavioral Sciences & the Law 33; Caterina Sganga, 'Disability, Right to Culture and Copyright: Which Regulatory Option?' (2015) 29 International Review of Law, Computers & Technology 88; Caterina Sganga, 'Disability in EU Copyright Law' in Delia Ferri and Andrea Broderick (eds), *Research Handbook on EU Disability Law* (Edward Elgar 2020); Vincenzo Tudisco, 'Accessibility of Audiovisual Media Services for Persons with Disabilities in the European Union: Lights and Shadows of the Audiovisual Media Services Directive' (2022) 6 STALS Research Papers 1; Delia Ferri, 'The Role of the European Union in Ensuring Accessibility of Cultural Goods and Services: All About that … Internal Market?' (2023) 48 European Law Review 257; Giulia Dore and Pelin Turan, 'When Copyright Meets Digital Cultural Heritage: Picturing an EU Right to Culture in Freedom of Panorama and Reproduction of Public Domain Art' (2024) 55 IIC - International Review of Intellectual Property and Competition Law 37.

[262] Delia Ferri, 'Fostering Cultural Participation of Persons with Disabilities in the European Union Through Funding: "I Was Told there'd Be Cake"' in Juan Jorge Piernas López (dir), Salvador Tomás Tomás and Rafael Castillo Felipe (coords), *El Poder Transformador del Derecho de la Unión Europea: Retos y Resultados Seleccionados* (Aranzadi La Ley 2025).

In part II, chapter 2 introduces the CRPD as main international legal framework for understanding the realisation of the right of professionals with disabilities to participate in cultural life in the EU. In doing so, it considers its main features, including its structure, the conceptualisation of disability, as well as general obligations and principles. It then focuses on culture in the CRPD and on Article 30 CRPD. It also analyses the CRPD Committee's input on the right to a 'professional participation' in cultural life. After discussing Article 27 on Work and Employment and its interpretation by the CRPD Committee, it concentrates on additional influential Articles, namely, Articles 5, 8, 9, and 21 CRPD. Chapter 3 focuses on secondary, but still important, international standards for CCS professionals with disabilities. It particularly discusses previous recognitions of cultural rights, as well as standards set out by the UNESCO and the ILO.

The EU framework is then discussed in the five chapters that form part III, and which provide a focused analysis of the EU legal framework, and how the participation of CCS professionals is enabled in this regard. In doing so, part III relies on the framing provided by the empirical research discussed in chapter 1, and is therefore structured around the issues of equality and non-discrimination, accessibility, and the EU funding system as analytical pillars, while knowledge-building and awareness-raising is addressed as a cross-cutting matter. Chapter 4 concentrates on EU disability law and policy, highlighting the influence of the CRPD in the EU legal order, as well as secondary legislation and policy which influence the participation of professionals with disabilities in the CCS, according to the above-mentioned framing. Chapter 5 then examines how culture is addressed at EU level and considers the main EU legislation and policies of relevance to the area of culture, again through a thematic appraisal focusing on equality and non-discrimination, accessibility, and the EU funding system. The three remaining chapters analyse in greater detail how the EU legal framework can enable the participation of professionals with disabilities in the CCS. Combining legal and empirical research, chapter 6, chapter 7, and chapter 8 revisit the themes outlined in chapter 1, and focus especially on equality and non-discrimination, accessibility, and the EU funding system, in order to examine the potential, limitations and gaps in the current EU legal framework that influence the participation of cultural and creative professionals with disabilities.

It is followed by a concluding chapter, which recalls the core tenets of the thesis, its novelty and methodology. In this respect, it highlights the substantive findings yielded by this research according to the three themes that have been utilised to frame this thesis: equality and non-discrimination, accessibility, and the EU funding system. Finally, it recalls the research contribution that the thesis makes.

Part I

Setting the Scene: Disability in the Cultural and Creative Sectors

Chapter 1

Challenges and Opportunities for Cultural and Creative Professionals with Disabilities in the EU: Socio-legal Perspectives

1. Introduction

As already noted in the introduction, the active dimension of persons with disabilities' participation in cultural life –particularly as professionals– is generally less studied.[1] This is so because, across Member States of the EU, persons with disabilities are seldom considered as creators and 'producers of culture' in practice.[2] In that sense, recent research into EU Member States' reports to the Committee on the Rights of Persons with Disabilities (CRPD Committee) shows 'very few explicit references … to the employment of people with disabilities as arts workers or professionals within arts and cultural industries or to their participation in governance or decision-making roles'.[3] In this context, the present thesis addresses a gap in focusing on 'persons with disabilities as more active parties of cultural life' in the EU,[4] and situating the right to participate in cultural life of persons with disabilities in the professional sphere.

Combining desk-based and empirical research, this chapter aims to 'set the scene' for the rest of this thesis and particularly considers the first research question. It highlights the functioning of the cultural and creative sectors' (CCS) labour market, and how it affects the social and professional situation of CCS professionals. Therefore, this chapter emphasises the many barriers these professionals encounter, which must also be understood in light of the specific obstacles experienced by professionals with disabilities. In addition to contextualising the research undertaken in this thesis, this first chapter further justifies its scope and structure. As such, it elaborates on the main themes that were identified as part of the qualitative data analysis, and which embody what CCS stakeholders consider to be key issues for the realisation of the right of professionals with disabilities to participate in cultural life in the EU. Overall, by combining desk-based and

[1] Ann Leahy and Delia Ferri, 'Barriers to Cultural Participation by People with Disabilities in Europe: A Study across 28 Countries' (2023) 39 Disability & Society 2465, 2467.
[2] Delia Ferri and others, 'Implementing the Right of People with Disabilities to Participate in Cultural Life across Five European Countries: Narratives and Counternarratives' (2022) 14 Journal of Human Rights Practice 859, 873. See also Ann Leahy and Delia Ferri, 'The Right to Participate in Cultural Life of Persons with Disabilities in Europe: Where Is the Paradigm Shift?' (2022) 16(4) Alter 5, 21, 25.
[3] Delia Ferri and Ann Leahy, 'Implementing the Right of Persons with Disabilities to Participate in Cultural Life: Trends, State Narratives, and Counter-Narratives' in Delia Ferri and Ann Leahy, *Dismantling Barriers and Advancing the Right of Persons with Disabilities to Participate in Cultural Life: A Socio-Legal Analysis* (Routledge 2025) 113.
[4] Léa Urzel Francil, 'Leveraging EU Non-Discrimination Law to Make the Cultural and Creative Sectors More Inclusive of Professionals with Disabilities: Socio-Legal Perspectives' [2025] International Journal of Cultural Policy 1, 2.

empirical research, this chapter aims to provide the background, scope and framing for the analysis made in the subsequent chapters.

Following these introductory remarks, section 2 highlights the non-standard and sometimes precarious social and professional situation of those working in the CCS. It considers issues that pertain to their uncertain status, the use of non-standard forms of work, limited social protection coverage, a lack of protection under the EU labour law acquis as well as low and insecure incomes. Following on from the research methodology that was presented in the introductory chapter, section 3 discusses in more details how the ten semi-structured interviews and the two focus groups were conducted, considering questions of sampling, data collection and data analysis. Section 4 highlights the four themes that were identified during the data analysis as key issues to the realisation of the right of professionals with disabilities to participate in cultural life in the EU; equality and non-discrimination, accessibility, the EU funding system, and knowledge-building and awareness-raising. This section further explains how those themes are utilised to support and frame the rest of the analysis. Finally, section 5 provides some concluding remarks.

2. Social and Professional Situation: Between Atypicality and Precarity

As noted above, a key starting point for this thesis is to situate the participation of professionals with disabilities in cultural life within the broader framework of the CCS labour market. In this way, the research is contextualised by reference to the social and professional situation of the broader category of cultural and creative professionals, leading this section to discuss issues of status, non-standard forms of work, social protection and EU social acquis, and remuneration.

2.1. An Uncertain Status

The situation of CCS professionals has long been an issue for cultural stakeholders, as evidenced by the 1980 UNESCO Recommendation concerning the Status of the Artist, also discussed in chapter 3.[5] The lack of a common definition and even a common status for CCS professionals is also a concern at the EU level,[6] as 'diverging approaches

[5] Recommendation concerning the Status of the Artist (adopted 27 Octobre 1980) UNESCO 21/C Res Annex I (1980 Recommendation). See Chapter 3, Section 3.1.
[6] European Parliament Resolution of 21 November 2023 with Recommendations to the Commission on an EU framework for the social and professional situation of artists and workers in the cultural and creative sectors (2023/2051(INL)) [2024] OJ C2024/4208 (European Parliament Resolution on an EU framework for artists), para 5.

between Member States … and differing rules relating to working conditions, social protection, income and taxation' generate 'structural vulnerability' among CCS professionals, as well as 'vulnerability of specific target groups (such as women, young people)'.[7]

In the last couple of years, the EU has seen a resurgence of interest in the subject, spurred on, in particular, by different crises that have affected the EU's CCS.[8] Most notably, the Covid-19 pandemic has had a severe impact on the sectors, which were among the most affected sectors, and this has emphasised their pre-existing fragility.[9] More recently, cultural organisations across Europe have also denounced attacks on freedom of expression and artistic freedom, bans, politically motivated dismissals, budget cuts, or cultural policy developments that they believe are aimed at exerting greater control over cultural organisations and professionals.[10] This has led, among other things, to the situation of CCS professionals becoming an increasingly important agenda item for the EU, and to the European Parliament adopting a Resolution calling for an 'EU framework for the social and professional situation of artists and workers in the cultural and creative sectors' in 2023.[11] In this context, the European Parliament recommended a Directive on decent working conditions in the CCS, which has discussed below are sectors known for their structural use of atypical workers.[12]

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[7] Christa Kammerhofer-Schlegel and others, *EU Framework for the Social and Professional Situation of Artists and Workers in the Cultural and Creative Sectors: European Added Value Assessment* (European Parliamentary Research Service (EPRS), European Parliament 2023) 2.

[8] See Jacqueline Snijders and others, 'The Status and Working Conditions of Artists and Cultural and Creative Professionals' (European Expert Network on Culture and Audiovisual 2020); Culture Action Europe and Mafalda Dâmaso, *Research for CULT Committee – The Situation of Artists and Cultural Workers and the Post-COVID-19 Cultural Recovery in the European Union: Background Analysis* (European Parliament 2021); Voices of Culture, 'Status and Working Conditions of Artists and Cultural and Creative Professionals' (Structured Dialogue between the European Commission and the Cultural Sector, 2021); Kammerhofer-Schlegel and others (n 7); Karol Muszyński and Anna Gromada, *EU Framework for the Social and Professional Situation of Artists and Workers in the Cultural and Creative Sectors* (EPRS, Publications Office 2023); European Commission, *The Status and Working Conditions of Artists and Cultural and Creative Professionals: Report of the OMC (Open Method of Coordination) Group of EU Member States' Experts* (Publications Office 2023); European Parliament Resolution on an EU framework for artists; Maroš Šefčovič, 'Letter to President Metsola: Article 225 Resolution EU Framework for the Social and Professional Situation of Artists and Workers in the Cultural and Creative Sectors' (European Commission 2024); Harald Hauben and others, 'Employment Characteristics and Undeclared Work in the Cultural and Creative Sectors' (European Platform Tackling Undeclared Work, European Labour Authority 2024).

[9] See Doris Ruth Eikhof, 'COVID-19, Inclusion and Workforce Diversity in the Cultural Economy: What Now, What Next?' (2020) 29 Cultural Trends 234; Isabelle De Voldere and others, *Research for CULT Committee – Cultural and Creative Sectors in Post COVID-19 Europe: Crisis Effects and Policy Recommendations* (European Parliament 2021); EY Consulting, 'Rebuilding Europe: The Cultural and Creative Economy before and after the COVID-19 Crisis' (2021).

[10] European Theatre Convention and others, 'Resistance Now: Free Culture' (Open Letter, 2024) <https://klassiek-centraal.be/wp-content/uploads/2024/11/RESISTANCE-NOW-FREE-CULTURE-EN.pdf> accessed 21 August 2025. See also, International Network for Contemporary Performing Arts, 'Artistic Freedom under Attack: A Matter for Us All' (*IETM*) <https://www.ietm.org/en/news/artistic-freedom-under-attack-a-matter-for-us-all> accessed 21 August 2025; Network of European Museum Organisations, 'NEMO Statement: Museums under Pressure' (2024); Culture Action Europe, 'Call for Artistic Freedom and Autonomy of the Arts' (*Culture Action Europe*, 24 September 2024) <https://cultureactioneurope.org/advocacy/call-for-artistic-freedom-and-autonomy-of-the-arts/> accessed 21 August 2025.

[11] See European Parliament Resolution on an EU framework for artists.

[12] European Parliament Resolution on an EU framework for artists, annex, 1.

2.2. Non-standard Forms of Work and Precarity

As discussed in the literature, various work arrangements and nomenclature characterise the pursuing of an activity in the CCS and this makes the CCS labour market stand out from other labour markets.[13] It often involves freelance work, self-employment, short-term contracts, temporary and part-time work, and other flexible working arrangements.[14]

According to Eurostat, cultural employment is particularly characterised by a high proportion of self-employment, with 31.7% of the cultural workforce being self-employed, compared to the economy-wide average of 13.6%.[15] This shows 'the independent and specialised nature of many occupations', but also the insecure working arrangements at play in the CCS.[16] While individuals in the CCS may choose self-employment for the autonomy it offers,[17] growing literature shows that, for many, working in the CCS is associated with a lack of permanent and stable job, and income opportunities to support themselves.[18]

Indeed, since the seventies, the CCS have experienced, as other sectors, the phenomenon of 'flexploitation'[19] and how '[c]hanging labour markets and modes of employment have challenged th[e] traditional binary divide' between workers/employees (dependent employment) and independent contractors/service providers/free-lancers (genuine self-employment).[20] This has led to the advent of a grey zone in between, where dependent self-employment and bogus self-employment are common. In this context, dependent self-employment can be used to refer to 'work relationships where the worker is formally

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[13] See Valerie Antcliff, 'Broadcasting in the 1990s: Competition, Choice and Inequality?' (2005) 27 Media, Culture & Society 841; Neil O Alper and Gregory H Wassall, 'Artists' Careers and their Labor Markets' in Victor A Ginsburg and David Throsby (eds), *Handbook of the Economics of Art and Culture*, vol 1 (Elsevier 2006); Hans Abbing, *Why Are Artists Poor? The Exceptional Economy of the Arts* (Amsterdam University Press 2008); Françoise Benhamou, 'Artists' Labour Markets' in Ruth Towse (ed), *A Handbook of Cultural Economics* (2nd edn, Edward Elgar 2011); David Hesmondhalgh and Sarah Baker, *Creative Labour: Media Work in Three Cultural Industries* (Routledge 2010); Tamsyn Dent and others, 'Creative and Cultural Workforce in Europe Statistics Report' (DISCE 2020); Tamsyn Dent, Roberta Comunian and Jessica Tanghetti, 'Who Cares for Creative and Cultural Workers? The Role of Intermediaries in Europe's Creative Economy' (2023) 33 Cultural Trends 1.

[14] Greig de Peuter, 'Creative Economy and Labor Precarity: A Contested Convergence' (2011) 35 Journal of Communication Inquiry 417, 419. See also Andrea Ellmeier, 'Cultural Entrepreneurialism: On the Changing Relationship between the Arts, Culture and Employment' (2003) 9 International Journal of Cultural Policy 3, 10; Kammerhofer-Schlegel and others (n 7) 13.

[15] See Eurostat, 'Culture Statistics - Cultural Employment' (*Statistics Explained*, 11 August 2025) <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Culture_statistics_-_cultural_employment> accessed 12 August 2025.

[16] Eurostat, *Culture Statistics: 2019 Edition* (Publications Office 2019) 70.

[17] Boukje Cnossen, Ellen Loots and Arjen Van Witteloostuijn, 'Individual Motivation among Entrepreneurs in the Creative and Cultural Industries: A Self-determination Perspective' (2019) 28 Creativity and Innovation Management 389, 396–398.

[18] Lauren E Bridges, 'Flexible as Freedom? The Dynamics of Creative Industry Work and the Case Study of the Editor in Publishing' (2018) 20 New Media & Society 1303, 1312–1313; Sophie Hennekam and Dawn Bennett, 'Creative Industries Work across Multiple Contexts: Common Themes and Challenges' (2017) 46 Personnel Review 68, 73–75; Walter van Andel and Ellen Loots, 'Measures for the Betterment of the Labor Market Position of Non-Standard Working Regimes in the Cultural and Creative Sector in the Netherlands' (2022) 28 International Journal of Cultural Policy 431, 433–434.

[19] de Peuter (n 14) 419.

[20] Hauben and others (n 8) 25.

self-employed', but its working conditions are akin to those of employees.[21] Alternatively, Charhon and Murphy define bogus self-employment as a 'specific and unfair form of contracting', meaning 'subordinate employment relations which are disguised as autonomous work' for a variety of reasons, including tax reasons, but also to reduce labour costs by avoiding social security contributions, or to evade labour law obligations.[22] This mirrors for the most part the language of the preamble to the Adequate Minimum Wages Directive (AMWD), discussed in chapter 6 of this thesis.[23]

As a 'misclassification of a dependent employment relationship as self-employment', bogus self-employment is effectively understood as a form of undeclared work.[24] Hauben and others have also found that the CCS are one of 'the economic sectors with the highest shares of bogus self-employment in the EU'.[25] A recent report found that the share of bogus self-employment in the EU's CCS ranged from 1.6% to 10.8% for 2022 (depending on the estimation method).[26] In that sense, there is also a growing case law discussing false self-employment, where self-employed people are understood by the Court of Justice of the EU (the 'Court' or CJEU) as being 'in a situation comparable to that of employees'.[27]

Relatedly, the changes that have affected the world of work in the past years, have also led to an increase of non-traditional (or atypical) forms of work,[28] including in the CCS. According to the International Labour Organization (ILO), these refer 'to employment arrangements that deviate from the "standard employment relationship", understood as work that is full time, indefinite, formal, and part of a subordinate relationship between an employee and employer', like temporary employment, including through fixed-term contract, part-time work and on-call work, temporary agency work or dependent self-employment.[29]

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[21] Pascale Charhon and Dearbhal Murphy, 'The Future of Work in the Media, Arts & Entertainment Sector: Meeting the Challenge of Atypical Working' (European Group of the International Federation of Actors, European Federation of Journalists, International Federation of Musicians, UNI Europa - Uni Global Union (Media, Entertainment & Arts) 2016) 52.

[22] Charhon and Murphy (n 21) 52. It must be noted that there are different accepted understandings of bogus self-employment, including for the purpose of different European surveys like the EU statistics on income and living conditions, the EU Labour Force Survey or European Working Conditions Survey. See Kammerhofer-Schlegel and others (n 7) 4.

[23] Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union [2022] OJ L275/33 (AMWD), recital 21. See Chapter 6, Sub-section 6.1.1.

[24] Hauben and others (n 8) 34–35.

[25] Hauben and others (n 8) 35.

[26] Colin C Williams, Mireia Llobera and Adrian V Horodnic, 'Tackling Undeclared Work in the Collaborative Economy and Bogus Self-Employment: Working Paper' (European Platform Tackling Undeclared Work, 2020) 34. It should be noted that the authors of this report focus on an understanding of cultural employment that is not as refined as the one followed by Eurostat for instance. In that respect see footnote (n 88) in Introductory Chapter.

[27] Case C–413/13 *FNV Kunsten Informatie en Media v Staat der Nederlanden* [2014] ECLI:EU:C:2014:2411 (FNV Kunsten), para 31.

[28] Hauben and others (n 8) 25.

[29] International Labour Office, 'Conceptual Framework for Statistics on Work Relationships' (2020) paras 10–11.

Understood as precarious, the CCS labour market is therefore characterised by unemployment, frequent spells of unemployment and employment, as well as constrained underemployment –non-voluntary part-time work, intermittent work, or fewer hours of work– and alternations of paid and unpaid work, as well as undeclared work.[30] Bridgstock and others highlight that it is also relatively common to combine 'piecemeal creative and non-creative jobs, short-term project-based and self-employment-based work'.[31] Additionally, a lower proportion of people work on a full-time basis in the CCS (76%) than the EU average for the whole economy (80%).[32] Eurostat adds that this can be related, in part, to 'the number of cultural jobs being characterised by self-employment/freelancing and job flexibility, which may result in job insecurity and considerable variations in income over time'.[33]

In this context, it is especially difficult to appreciate the number of professionals with disabilities working in the CCS. A recent report on the employment (and self-employment) of persons with disabilities, which disaggregates by sector of employment and occupation, does not even mention the amount of persons with disabilities working in the 'Arts, Entertainment, and Recreation',[34] suggesting that this must be negligible compared to the other sectors of economic activities mentioned, such as manufacturing or human health and social work.[35]

Overall, pursuing a career in the CCS demands a high degree of flexibility and risk-taking from cultural and creative professionals to navigate fluid and intermittent work opportunities, as well as risks of unemployment.[36] As the renewed attention paid to the situation of CCS professionals shows, sustaining a cultural and creative activity and career is particularly difficult in a context that fails to take into account the atypicality and fluidity that characterises the CCS labour market.[37]

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[30] Pierre-Michel Menger, 'Les intermittents du spectacle' (2003) 82 Espaces Temps 51, 56; Ruth Bridgstock and others, 'Creative Graduate Pathways within and beyond the Creative Industries' (2015) 28 Journal of Education and Work 333, 334; Hauben and others (n 8) 51.

[31] Bridgstock and others (n 30) 334.

[32] Eurostat, *Culture Statistics* (n 16) 71.

[33] Eurostat, *Culture Statistics* (n 16) 71.

[34] The broad economic activity of 'Arts, Entertainment, and Recreation' (based on the statistical classification of economic activities in the European Community - NACE Rev. 2) does not correspond to how Eurostat defines and measures cultural employment. In that respect, see footnote (n 88) in Introductory Chapter, as well as Eurostat's explanations on defining cultural employment in Eurostat, 'Culture Statistics - Cultural Employment' (n 14). See also Eurostat, 'Glossary: Statistical classification of economic activities in the European Community (NACE)' (*Statistics Explained*, 17 April 2023) <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:Statistical_classification_of_economic_activities_in_the_European_Community_(NACE)> accessed 12 August 2025.

[35] Eszter Zólyomi, *Employment of Persons with Disabilities: Statistics - 2022 Data* (European Commission, Publications Office 2025) 27.

[36] Pierre-Michel Menger, 'Contingent High-Skilled Work and Flexible Labor Markets. Creative Workers and Independent Contractors Cycling Between Employment and Unemployment' (2017) 43 Swiss Journal of Sociology 253, 264–265.

[37] See European Parliament Resolution on an EU framework for artists.

2.3. Limited Social Protection

In this respect, the lack of status in the EU, and the likelihood that they will be in atypical and more insecure forms of work, weighs on the social protection[38] coverage cultural and creative professionals can pretend to.[39] In many cases, these careers are associated with low and partial social protection, which fails to compensate for the unpredictable, sporadic and precarious nature of their work, as experts[40] and the European Parliament have highlighted over the years.[41] This is also a concern for the ILO.[42] Stemming from their limited contributory capacity and effective access to social protection, weak to non-existent social security, or the difficult coordination of systems within the EU, social protection represents an additional challenge for the population of CCS professionals,[43] even though some generic EU coordination legislation was adopted in that respect.[44] This is of particular concern for cultural and creative professionals who tend to engage in the cross-border provision of cultural and creative services and therefore, tend to be highly mobile in the EU, such as in the performing arts sector.[45]

Concomitantly, access to social protection is also fraught with obstacles for persons with disabilities, and 'concerns remain regarding the effectiveness of social protection systems in ensuring that people with disabilities realise their rights and have the same opportunities in life as everyone else'.[46] However, as detailed below with respect to the data analysis, the intersection of those concerns is becoming increasingly researched.[47]

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[38] Social protection is usually understood to encompass social security and social protection, and to fit within the broader concept of 'welfare state'. The International Labour Organization (ILO) refers to social protection as 'the set of policies designed to reduce and prevent poverty and vulnerability throughout the life cycle, and to realize the human right to social security. Social protection includes cash and in-kind benefits for children and families, maternity, unemployment, employment injury, sickness, old-age, disability, survivors, as well as health protection'. See Mira Birbaum and Christina Behrendt, 'Social Protection Spotlight: Social Protection Systems for All to Prevent Homelessness and Facilitate Access to Adequate Housing' (ILO Brief, ILO 2020) 2.

[39] Kammerhofer-Schlegel and others (n 7) 33.

[40] See Snijders and others (n 8) 31, 44, 55–56; Muszyński and Gromada (n 8) 10–11, 16–17; Hauben and others (n 8) 15, 22.

[41] European Parliament Resolution of 7 June 2007 on the social status of artists (2006/2249(INI)) [2007] OJ C125E/223; European Parliament Resolution of 20 October 2021 on the situation of artists and the cultural recovery in the EU (2020/2261(INI)) [2022] OJ C184/88; European Parliament Resolution on an EU framework for artists.

[42] Carlos Galián, Margherita Licata and Maya Stern-Plaza, *Social Protection in the Cultural and Creative Sector: Country Practices and Innovations* (ILO Working Paper 28, ILO 2021).

[43] Culture Action Europe and Dâmaso (n 8) 15–16; European Commission, *The Status and Working Conditions of Artists – OMC Report* (n 8) 36–37. See also Xin Gu, 'Of Social Protection, Social Value and Social Rewards', in Anupama Sekhar (ed), *A Crisis of Sustainable Careers? Examining Working Conditions for Independent Arts and Cultural Workers* (International Federation of Arts Councils and Culture Agencies 2022) 18–19.

[44] See among others Regulation (EC) 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems [2004] OJ L166/1.

[45] See Frederic De Wispelaere and others, *Cross-Border Employment in the Live Performance Sector Exploring the Social Security and Employment Status of Highly Mobile Workers* (HIVA-KU Leuven 2021).

[46] Isabel Baptista and Eric Marlier, *Social Protection for People with Disabilities: An Analysis of Policies in 35 Countries* (European Social Policy Network, Publications Office 2022) 18.

[47] See, most recently, Philip Finn, 'Artists at the Intersection of Work and Welfare: Low-Income Disabled Artists' Navigation of Welfare and Working Lives' (Arts Council 2025); Karol Muszyński, 'Mutual Learning Workshop on "Access to Social Protection for Artists": Thematic Discussion Paper: Improving the Access to Social Protection for Artists' (European Commission, Publications Office 2025).

Additionally, it forms part of the initiatives pursued by the European Commission following the 2023 European Parliament Resolution mentioned above.[48] In that respect, the European Commission also facilitated a mutual learning workshop on 'Access to Social Protection for Artists' earlier in 2025.[49]

2.4. Incompatibilities between Working in the CCS and the EU Social Acquis

Uncertainties around the status of CCS professionals, and the correct classification of their work arrangements, have implications on whether the EU social acquis applies to them.[50] This is an issue that is also linked to diverging national concepts of workers and self-employed people.[51] In this respect, there is little EU labour law that focuses on genuinely self-employed people, as the latter 'are regarded as capable of negotiating their own terms and conditions of employment'.[52] In fact, the current legal framework caters mostly to those that fit within a mainstream employment relationship, with standard employment contracts, and rarely mentions cultural matters or CCS professionals. As a result, it leaves 'economically dependent, solo, self-employed and non-standard workers vulnerable to unpredictable working conditions'.[53]

That is not to say that more mainstream labour legislation does not apply in the CCS and in fact, this is a point that is elaborated on in chapter 6.[54] Rather, the point here is to highlight that few EU acts (eg the Young People at Work Directive)[55] explicitly consider issues that pertain to CCS professionals. Moreover, when they do, their application often stays conditioned to the existence of an employment relationship or is considered as inadequate by the CCS stakeholders concerned. For example, the EU rules for safety and health at work cover mostly employed workers,[56] and in some instances self-employed people.[57] Still, the Occupational Safety and Health (OSH) regulatory framework makes several references to the CCS. In defining its scope, the OSH Framework Directive indicates in quite broad terms that the directive must apply to all sectors of activity, both

[48] Šefčovič (n 8) 3.
[49] See Muszyński (n 47).
[50] European Parliament Resolution on an EU framework for artists, para 10.
[51] Hauben and others (n 8) 25.
[52] Anne CL Davies, *EU Labour Law* (Edward Elgar 2012) 113.
[53] Kammerhofer-Schlegel and others (n 7) II.
[54] See Chapter 6, Section 6.
[55] Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work [1994] OJ L216/12, arts 5 and 9(2)(b).
[56] Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work [1989] OJ L183/1 (OSH Framework Directive); European Commission, 'EU strategic framework on health and safety at work 2021 -2027: Occupational safety and health in a changing world of work' (Communication) COM(2021) 323 final.
[57] Council Recommendation 2003/134/EC of 18 February 2003 concerning the improvement of the protection of the health and safety at work of self-employed workers [2003] OJ L53/45.

public and private, including the cultural sector.[58] By contrast, Hauben and others highlight that the difficulties of establishing employment relationships in some sectors – especially in the context of bogus self-employment– may impact on compliance with OSH legislation.[59] As a result, in the 'absence of a robust accountability framework or clear employment regulation' this perpetuates exploitative practices, as well as precarious living and working conditions for CCS professionals.[60]

In that respect, the point has also been made that commendable general legislation 'can have a damaging (and inappropriate) effect on the cultural sector, which nobody has foreseen',[61] as with the Directive on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise).[62] Although Article 14 of this Directive specifically provides that Member States must draw up, in consultation with social partners, a code of conduct 'to help workers and employers in the music and entertainment sectors to meet their legal obligations as laid down in this Directive', Gordon recalls criticism from CCS stakeholders pointing out that such legislation had been drafted without considering how it might affect sectors for which making noise is an integral part of their activity.[63]

2.5. Low and Insecure Remuneration

Moreover, characterised by challenging working conditions, like long working hours, as well as intense and changing responsibilities, being a CCS professional often demands an 'ability to survive a period on low income'.[64] Despite some high-income earners,[65] the lack of income security and earning capacity of cultural and creative professionals is a well-known and enduring dimension of working in the CCS.[66] Many CCS professionals are likely to gain from decent, to little or very little earnings, and therefore tend to combine different occupations, including non-cultural ones, to sustain themselves and

[58] OSH Framework Directive, art 2(1).
[59] Hauben and others (n 8) 36.
[60] Dent and others (n 13) 18.
[61] Christopher Gordon, 'Great Expectations – the European Union and Cultural Policy: Fact or Fiction?' (2010) 16 International Journal of Cultural Policy 101, 109.
[62] Directive 2003/10/EC of the European parliament and of the Council of 6 February 2003 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise) [2003] OJ L42/38.
[63] Gordon (n 61) 110, citing Richard Pulford (*Arts Industry*, 18 April 2008) <http://www.artsindustry.co.uk>.
[64] Keith Randle and Kate Hardy, 'Macho, Mobile and Resilient? How Workers with Impairments Are Doubly Disabled in Project-Based Film and Television Work' (2017) 31 Work, Employment and Society 447, 456.
[65] Ágúst Einarsson, *Cultural Economics* (Bifröst University 2016) 75; Abbing (n 13) 106–107.
[66] See Abbing (n 13) 111–113; David Hesmondhalgh and Sarah Baker, '"A Very Complicated Version of Freedom": Conditions and Experiences of Creative Labour in Three Cultural Industries' (2010) 38 Poetics 4, 7–8.

their cultural and creative careers, meaning it is often wondered 'whether artists in general can survive economically on artistic income alone'.[67]

In that vein, CCS professionals –who are often self-employed– have found it difficult to exercise their right to collective bargaining in light of the EU competition framework,[68] leaving them at the mercy of employers in a highly competitive environment where supply often outstrips demand.[69] While unions often play a role in these circumstances, with 'collective bargaining [being] the most effective option to assert minimum terms and conditions that can at least offer a sustainable income and safe and decent working conditions', self-employed professionals have been denied this opportunity which is otherwise 'vital for the[ir] socio-economic status' in the CCS.[70] Considered as undertakings under EU competition law, it was understood that should they seek unionisation it would amount to price-fixing.[71] It was not until 2022 that the European Commission adopted guidelines on collective agreements for the solo self-employed, clarifying the application of EU competition law to collective agreements and allowing self-employed individuals to negotiate better working conditions without breaching EU rules under certain conditions.[72] This foreshadows a certain lack of adequation between the EU legal framework, the realities of the CCS labour market and the needs of cultural and creative professionals, which this thesis seeks to investigate in relation to CCS professionals with disabilities.[73]

Additionally, recent initiatives show a need to rethink remuneration, funding, and fairness in the CCS, including in terms of copyrights and related rights, and especially in view of the rapid development of digital technologies,[74] as professionals continue to be 'at risk of being under- or unpaid'.[75] With regards to remuneration and working conditions more broadly, literature also highlights a gendered dimension. Particularly, female

[67] Per Mangset and others, 'Why Are Artists Getting Poorer? About the Reproduction of Low Income among Artists' (2018) 24 International Journal of Cultural Policy 539, 541.
[68] See Charhon and Murphy (n 21) 40–45; Michael Doherty and Valentina Franca, 'Solving the "Gig-Saw"? Collective Rights and Platform Work' (2020) 49 Industrial Law Journal 352, 356–357.
[69] See Pierre-Michel Menger, 'Les artistes en quantités. Ce que sociologues et économistes s'apprennent sur le travail et les professions artistiques' (2010) 120 Revue d'économie politique 205, 229–230.
[70] Laurence Cuny, 'Protecting an Atypical Workforce: Why the Law Matters' in Anupama Sekhar (ed), *A Crisis of Sustainable Careers? Examining Working Conditions for Independent Arts and Cultural Workers* (International Federation of Arts Councils and Culture Agencies, 2022) 38.
[71] Culture Action Europe and Dâmaso (n 8) 21.
[72] European Commission, 'Guidelines on the Application of Union Competition Law to Collective Agreements regarding the Working Conditions of Solo Self-employed Persons' (Communication, 2022) OJ C374/2.
[73] See Chapter 6, Section 6.
[74] See among others, European Commission, 'A New European Agenda for Culture' (Communication) COM(2018) 267 final, 3; Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC [2019] OJ L130/92, art 14; Arts Council of Ireland, 'Paying the Artist Policy' (2020). See also Culture Action Europe and Dâmaso (n 8) 19–20; Amélie Lacourt, Justine Radel-Cormann and Sophie Valais, 'Fair Remuneration for Audiovisual Authors and Performers in Licensing Agreements' (IRIS *Plus*, European Audiovisual Observatory 2023).
[75] Cuny (n 70) 39.

professionals are often more likely to experience a gender pay gap which impact on the resources they can levy in order to thrive professionally in the CCS.[76] Despite current and systematic data lacking,[77] sexual harassment in the CCS is also evidenced and even prevalent in some contexts.[78]

Overall, the challenges presented in this section principally concern the CCS as a whole and affect, to varying degrees, all cultural and creative professionals. However, there are other barriers and difficulties that CCS professionals without disabilities do not necessarily face, which are more specific to professionals with disabilities.[79] This underpins the discussions in the following sections on methods and on the key issues to understanding the participation of CCS professionals with disabilities, as well as in the rest of the thesis.

3. Methods

As mentioned in the introductory chapter,[80] this thesis blends desk-based research with empirical research, in the form of semi-structured interviews and focus groups. This combination is intended to frame the research and contribute to a better understanding of the challenges faced by professionals with disabilities in the CCS, as well as to capture the importance of the EU's action for those with disabilities. It draws on legal and non-legal literature, including grey literature. Discussing among others EU cultural policy, disability law and policy, and labour law, it entails an analysis of a range of legislative acts, case law, policies, and other initiatives. As such, the desk-based research is supported by qualitative findings, using primary data collected through interviews and secondary data from the two focus groups, which provide a range of European CCS stakeholders' perspectives on the participation of professionals with disabilities in the CCS. The following sub-sections therefore present the preparation of the qualitative research, from the sampling of participants to the development of interview guides and questionnaire design. It also shares some considerations which pertain to using secondary data collected by another research team. It discusses what approaches have been adopted

[76] See Marilena Vecco and others, *Gender Gaps in the Cultural and Creative Sectors* (European Expert Network on Culture and Audiovisual, Publications Office 2022) 30–32.
[77] Vecco and others (n 76) 34.
[78] See Sophie Hennekam and Dawn Bennett, 'Sexual Harassment in the Creative Industries: Tolerance, Culture and the Need for Change' (2017) 24 Gender, Work & Organization 417; Muszyński and Gromada (n 8) 76. See also International Labour Organization (ILO), 'Policy Brief on Sexual Harassment in the Entertainment Industry' (ILO Brief, 2020).
[79] See Randle and Hardy (n 64) 456.
[80] See Introductory Chapter, Section 5.

to analyse the data collected and how they are relevant and adequate with regard to the research project.

3.1. Semi-structured Interviews: Sampling and Data Collection

The primary data collection consisted of ten semi-structured interviews with CCS stakeholders active at the EU level. As such, the study sought to recruit representatives from at least ten EU stakeholders drawn from distinct organisations and sectors in the CCS. It pursued a purposeful sampling strategy,[81] considered to be well suited to this type of study and the pool of potential participants.

In fact, qualitative research generally relies on smaller samples to investigate a research problem, as it does not aim to generalise to the larger population, but rather to gain a deeper understanding of a phenomenon.[82] Grounded in the quest for an in-depth understanding, purposive sampling therefore derives from a 'non-probability' strategy, which can help in 'sampl[ing] members [who] differ from each other in terms of key characteristics',[83] and implies the selection of information-rich cases to address the research problem and central issues of the thesis.[84] In the context of this thesis, this qualitative study aimed to bring the perspective of the CCS to the fore. On the basis of the knowledge and reflections of EU cultural stakeholders, it sought to identify the challenges experienced by professionals with disabilities that result in their difficult inclusion in the CCS, as well as the key points to address to enable their participation in cultural life.

Therefore, for the present research project, purposive sampling translates into an 'expert sampling' focusing on respondents with experience and expertise in the EU's CSS, 'who are especially knowledgeable about a topic and are willing to share their knowledge' to answer the research questions of the thesis.[85] Patton further insists on the power of expert sampling as '[e]xperts can provide valuable insights into the root of problems, what has been tried and failed, what has been tried and worked, and future trends to watch'.[86] Therefore, the study focused on the identification and recruitment of key informants who,

[81] Lawrence A Palinkas and others, 'Purposeful Sampling for Qualitative Data Collection and Analysis in Mixed Method Implementation Research' (2015) 42 Administration and Policy in Mental Health and Mental Health Services Research 533.
[82] Michael Quinn Patton, *Qualitative Research and Evaluation Methods* (3rd ed, SAGE 2002) 46.
[83] Alan Bryman, *Social Research Methods* (4th edn, Oxford University Press 2012) 418.
[84] Patton, *Qualitative Research and Evaluation Methods* (n 82) 46; John W Creswell, *Qualitative Inquiry and Research Design: Choosing among Five Approaches* (2nd ed, SAGE 2007) 125.
[85] Michael Quinn Patton, 'Expert Sampling', *The SAGE Encyclopedia of Educational Research, Measurement, and Evaluation* (SAGE 2018) vol 2, 648.
[86] Patton, 'Expert Sampling' (n 85) 648.

through their 'knowledge, experience, and expertise',[87] could inform this thesis' investigation into the functioning of the EU's CCS, and the participation of professionals with disabilities in those same sectors. As such, it was decided to focus on representatives of the CCS in the EU, namely representatives of umbrella organisations of the sector(s), the industries, the cultural and creative professionals, and other European cultural stakeholders active at the EU level. Identified as the experts in question, the views of the participants were expected to reflect, to some extent, those of the CCS and their professionals across the EU.

Participants were recruited in 2023. The sampling strategy involved several recruitment routes. The participants were identified based on online searches and the review of policy documents and literature. In this regard, the participants to Voices of Culture were considered,[88] and in some instances, snowball sampling was used. Taking into account the accessibility and availability of respondents, snowball sampling allows to initially reach out to 'a small group of people relevant to the research questions, and these sampled participants propose other participants'.[89] In view of the limited pool of potential respondents, this was used as a way to 'open possibilities for an expanding web of contact and inquiry',[90] in complement of the main sampling strategy.

As mentioned before, particular attention was paid to selecting organisations from different CCS to ensure a degree of nuance and diversity in experiences in the data collected. To guarantee such a variety of participants, the sampling strategy relied on the cultural domains identified in the ESSnet-Culture framework of cultural activities[91] and the definition of the CCS provided in the Creative Europe Regulation (2021-2027).[92] Although this study focuses on EU cultural and creative stakeholders, some of the participants belonged to organisations whose geographical scope extended beyond the EU, and which represented a broader European membership. This was not an exclusion criterion as these organisations are active at the EU level, engage with EU legislation and policymaking, and are still representative of the sector(s) across the Member States.

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[87] Patton, 'Expert Sampling' (n 85) 648.
[88] These participants are usually listed in the reports produced as part of Voices of Culture. See European Commission, 'Dialogue with Cultural and Creative Sectors and Industries' (*Culture and Creativity*, 18 September 2024) <https://culture.ec.europa.eu/policies/cultural-policy-cooperation-at-the-eu-level/dialogue-with-cultural-and-creative-sectors-and-industries> accessed 21 August 2025.
[89] Bryman (n 83) 424.
[90] Michael Lewis-Beck, Alan Bryman and Tim Futing Liao (eds), 'Snowball Sampling', *The SAGE Encyclopedia of Social Science Research Methods* (SAGE 2004) vol 3, 1043.
[91] Vladimír Bína and others, 'ESSnet-CULTURE: European Statistical System Network on Culture: Final Report' (2012) 48.
[92] Regulation (EU) 2021/818 of the European Parliament and of the Council of 20 May 2021 establishing the Creative Europe Programme (2021 to 2027) and repealing Regulation (EU) No 1295/2013 [2021] OJ L189/34 (Creative Europe Regulation 2021-2027) art 2(1). In that respect, see also Introductory Chapter, Sub-section 3.2.3.

Given the type of EU organisations and other stakeholders targeted, and the need to ensure that participants were drawn from a variety of domains, the pool of recruitment was limited. Moreover, some organisations' inability to participate further constrained it. Ultimately, while it was not possible to interview a representative in each domain, a sample size of ten participants was reached. The majority of the participants came from specific cultural domains, while others were representatives of cross-sectoral cultural organisations or other EU cultural stakeholders. The domains from which they were drawn were the following: heritage (1), books and press (2), performing arts (3), audiovisual and multimedia (1). In addition, some participants belonged to cross-sectoral umbrella organisations (1) or represented other cross-sectoral cultural stakeholders (2).

Although ten participants can be considered a limited sample, it is generally consistent with qualitative research methods which, instead of seeking generalisation, 'ten[d] to focus on a smaller number of … "data sources" … which are considered to be data rich and thus worthy of study'.[93] Moreover, whilst essential for reaching a deeper understanding of the role of EU law in enabling the participation of professionals with disabilities in cultural life, the interviews represent only one facet of this research. Notably, they support the legal analysis and frame how the thesis responds to the research questions, together with the focus groups. On this basis, the sample was deemed to be adequate in relation to the objectives of the qualitative study.

Qualitative interviewing, but also qualitative research more broadly, benefits from a flexible research design, dependent on the circumstances of the study at hand.[94] This proved to be crucial for the present study, as it involved participants based across the EU in the context of the aftermath of the Covid-19 pandemic, and for whom English was not necessarily their first language. In this context, in-person interviews were ruled out, and all interviews were carried out online, facilitating the engagement of participants based in various EU Member States. In this respect, research suggests that the conduct of interviews online –and the same can be said for focus groups– does not lead to 'substantial or significantly different thematic findings than conducting [these] in person'.[95] The

[93] Lisa Webley, 'Qualitative Approaches to Empirical Legal Research' in Peter Cane and Herbert M Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010) 934.
[94] Steven J Taylor, Robert Bogdan and Marjorie L DeVault, *Introduction to Qualitative Research Methods: A Guidebook and Resource* (4th edn, Wiley 2016) 8, 11.
[95] Gregory Guest and others, *Comparing Interview and Focus Group Data Collected in Person and Online* (Patient-Centered Outcomes Research Institute 2020) 44. See also, June Gothberg and others, 'Is the Medium Really the Message? A Comparison of Face-to-Face, Telephone, and Internet Focus Group Venues' (2013) 7 Journal of Ethnographic & Qualitative Research 108, 120.

interviews were conducted via a video conferencing platform,[96] which enabled the face-to-face dimension of the interview process to be maintained. In addition, all participants were invited to take part in the interviews in English. However, as an alternative to facilitate and accommodate their participation, one participant was given the option of partaking in French.

As is common with semi-structured interviews, an interview guide was developed in advance of the data collection,[97] allowing for some flexibility whilst ensuring 'that the same basic lines of inquiry [we]re pursued with each person interviewed'.[98] This interview guide, which was used flexibly, was conceived to delimit the topics and subject areas to be covered in advance. It contained some standardised questions for all participants, which enquired about the participants' organisation and role, and 'ask[ed] for relatively straightforward descriptions; … requir[ing] minimal recall and interpretation'.[99] The follow-up and more substantial questions were then tailored to the participant and their sector(s),[100] and relied on a review of the literature and extensive research in the activities of the organisation they represented. In that respect, the interview guide covered, among other things, questions on the sectors' functioning, cultural diversity, and the inclusion of professionals with disabilities, as well as on disability and the dynamics of cultural production/consumption. As the interview process was semi-structured and therefore flexible, it made it possible to be responsive and to take into account any subject raised by the participant that could be relevant to the study, to alter the order of questions, and to ask follow-up and additional questions specifically related to a cultural sector for instance.[101]

As such, ten semi-structured interviews were carried out primarily in English between April 2023 and September 2023, with representatives of EU cultural stakeholders, including umbrella organisations of the cultural and creative sector(s). Ethical approval for this study was obtained from Maynooth University Ethics Committee. All participants were given information on the research in advance and gave their informed consent to participate. Carried out by videoconference, the interviews were then recorded, translated into English when appropriate, and transcribed verbatim. The translation is thought to

[96] All interviews, except one –as per the choice of the interviewee– were conducted over Microsoft Teams, Maynooth University's approved platform for online research audio and video meetings. See Maynooth University, 'Information and Data Security Policy v1.7' (CIIO 2021).
[97] Lioness Ayres, 'Semi-Structured Interview', *The SAGE Encyclopedia of Qualitative Research Methods* (SAGE 2008) vol 2, 810.
[98] Patton, *Qualitative Research and Evaluation Methods* (n 82) 343.
[99] Patton, *Qualitative Research and Evaluation Methods* (n 82) 352.
[100] Jessica Mason, 'Qualitative Interviewing: Asking, Listening and Interpreting' in Tim May (ed), *Qualitative Research in Action* (SAGE 2002) 227.
[101] Herbert J Rubin and Irene S Rubin, *Qualitative Interviewing: The Art of Hearing Data* (3rd edn, SAGE 2012) 36.

have met translation quality criteria of fluency, accuracy, verity, content correspondence, retention of meaning, and terminology.[102] In the following sections, and in subsequent chapters, each interviewee's contribution is identified as coming from stakeholders of the EU's cultural and creative sectors (EU CCS). As they were conducted as part of the DANCING project, both the interviews and the focus groups discussed below were archived, and all related information can be found in the Irish Qualitative Data Archive, where they were deposited.[103]

3.2. Focus Groups: Sampling and Data Collection

As introduced in the previous chapter, the two focus groups, used as secondary data source in this thesis, were carried out as part of the DANCING project. Participants were recruited in 2021 using a purposeful sampling strategy as for the interviews just discussed, which relied on an expert sampling. In that respect, the researchers involved sought to recruit representatives in the EU Member States and the UK. Participants were identified as key informants on disability and culture and typically worked in the CCS or contributed to European projects which sought to address the accessibility of the sector(s) to persons with disabilities. The purposeful sampling strategy involved several recruitment routes, and the identification of participants was particularly informed by existing knowledge and research, including online searches and existing contacts of the project team. In a few cases, some snowball sampling was used to establish contact with other informants through participants.[104]

As with the interviews, the research design of the focus groups called for a flexible approach,[105] tailored to the context of the Covid-19 pandemic. The two focus groups were therefore conducted online and in English, so as to facilitate the involvement of participants from several countries throughout the EU and the UK. They were organised by the Principal Investigator of the DANCING project and the DANCING team with due regard for accessibility, and the researchers sought participants' requirements for any and all accessible formats to participate in the focus groups. In fact, several of the focus groups' participants identified as persons with disabilities and a sign language interpreter joined one of the two focus groups to facilitate the involvement of a participant.

[102] See Arle Lommel, Aljoscha Burchardt and Hans Uszkoreit, 'Multidimensional Quality Metrics: A Flexible System for Assessing Translation Quality', *Proceedings of Translating and the Computer 35* (Aslib 2013) 3–4.
[103] See Delia Ferri, Tiarnán McDonough and Alessia Palladino, 'Qualitative Data Collection and Archiving in the DANCING Project' (Zenodo 2024).
[104] Taylor, Bogdan and DeVault (n 94) 108.
[105] Taylor, Bogdan and DeVault (n 94) 11.

The focus groups aimed to understand policy developments and future priorities in relation to participation of people with disabilities in cultural life. Part of a wider mixed-method research project, they built on the early analysis of data collected through interviews with representatives from national organisations of people with disabilities (OPDs), national representative organisations of Deaf people, and national organisations that work specifically on disability and arts/culture. This enabled the researchers carrying out the focus groups to base the discussion on some of the interviews' early findings and on research that had already taken place at that time or was in progress. The focus groups' discussions therefore concentrated especially on the identification of policy barriers to participation of persons with disabilities in cultural life and on the role of EU measures in facilitating access to culture by persons with disabilities.

The focus groups were carried out by the DANCING team on two different days in December 2021. The first focus group brought together nine participants from five European countries, and the second group, eleven participants based in eight different European countries.[106] As mentioned in the introduction, ethical approval for this study was obtained from Maynooth University Ethics Committee. All participants were given information on the research in advance and gave informed consent. The focus groups were carried out by videoconference, recorded, and transcribed verbatim by the author of this thesis. In the following sections, and in subsequent chapters,[107] each contribution is identified as coming from one of the two focus groups, FG1 or FG2, alongside the participant number, for instance P1 (FG1 P1).

3.3. Data Analysis

Transcripts were analysed following a reflexive approach to thematic analysis (TA), a method comprehensively discussed by Braun and Clarke.[108] This method of qualitative analysis focuses on transforming the data collected into findings,[109] through a robust and systematic coding of the data, in order to highlight themes in the dataset.[110] Various data types can be analysed through TA –from interviews and focus groups, to qualitative

[106] Overall, the participants were based in ten European countries: Austria, Belgium, Denmark, Finland, France, Germany, Italy, Netherlands, Poland, United Kingdom. See Ferri, McDonough and Palladino (n 103) 12.
[107] See Chapters 6, 7 and 8.
[108] Virginia Braun and Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3 Qualitative Research in Psychology 77; Virginia Braun and Victoria Clarke, 'Can I Use TA? Should I Use TA? Should I *Not* Use TA? Comparing Reflexive Thematic Analysis and Other Pattern-based Qualitative Analytic Approaches' (2021) 21 Counselling and Psychotherapy Research 37; Virginia Braun and Victoria Clarke, 'One Size Fits All? What Counts as Quality Practice in (Reflexive) Thematic Analysis?' (2021) 18 Qualitative Research in Psychology 328; Virginia Braun and Victoria Clarke, *Thematic Analysis: A Practical Guide* (SAGE 2022).
[109] Patton, *Qualitative Research and Evaluation Methods* (n 82) 432.
[110] Braun and Clarke, *Thematic Analysis* (n 108) 4.

surveys– as the flexibility of this method offers the basis for identifying, analysing and developing themes across various datasets.[111]

As such, TA is well-suited to socio-legal research and it provides a range of tools, including concepts, techniques, practices and guidelines, for analysing the data collected.[112] Furthermore, it allows for 'later theme development, with themes developed *from* codes, and conceptualised as patterns of shared meaning',[113] which ultimately contribute, in this case, to addressing the research questions of the thesis. Additionally, it does so largely 'unbounded by theoretical commitments', not to suggest that TA is atheoretical but instead that it 'can be applied across a range of theoretical frameworks and research paradigms'.[114] In that respect, the approach to the analysis of the interviews and focus groups is informed by the theoretical framework of this thesis –the human rights model of disability.[115]

Following the reflexive approach devised by Braun and Clarke, the thematic analysis of the transcripts followed the phases of familiarisation; coding; generating initial themes; developing and reviewing themes; refining, defining and naming themes; and writing up.[116] With regards to the focus groups –although this is a secondary source of data– the aforementioned steps, and particularly familiarisation, were aided by the researcher's transcription of the focus groups for the DANCING project. The initial coding process was open, unstructured, and largely inductive, which made it possible to identify a number of interesting characteristics grounded in the data collected.[117] In doing so, this thesis echoes the point made by Braun and Clarke on reflexive approaches to TA, whereby:

> [t]hemes cannot exist separately from the researcher–they are *generated* by the researcher through data engagement mediated by all that they bring to this process (e.g. their research values, skills, experience and training). The coding process is unstructured and organic, with the potential for codes to evolve to capture the researcher's deepening understanding of the data.[118]

On this basis, themes were then developed from codes. In search for larger and repeated patterns of meaning,[119] codes were collated into initial themes. As suggested by a

[111] Braun and Clarke, 'Using Thematic Analysis in Psychology' (n 108) 79, 86; Virginia Braun and others, 'The Online Survey as a *Qualitative* Research Tool' [2020] International Journal of Social Research Methodology 1, 650.
[112] See Braun and Clarke, *Thematic Analysis* (n 108).
[113] Braun and Clarke, 'Can I Use TA?' (n 108) 39 (emphasis added by the authors).
[114] Victoria Clarke and Virginia Braun, 'Thematic Analysis' (2017) 12 The Journal of Positive Psychology 297, 297.
[115] See Introductory Chapter, Sub-section 4.3.
[116] See Braun and Clarke, *Thematic Analysis* (n 108) 35–36.
[117] Braun and Clarke, 'Using Thematic Analysis in Psychology' (n 108) 83.
[118] Braun and Clarke, 'Can I Use TA?' (n 108) 39 (emphasis added by the authors).
[119] Clarke and Braun (n 114) 297.

reflexive approach to thematic analysis, themes were then reviewed, developed, and refined. For the purpose of this thesis, the themes presented and highlighted in the following section are based on the identification of how the participants perceived that persons with disabilities in the EU were, or could be, challenged or enabled in participating in the CCS in a professional capacity. Thus, this thesis presents four themes identified as being of key relevance to the participation of cultural and creative professionals with disabilities in the EU; equality and non-discrimination; accessibility; the EU funding system; and knowledge-building and awareness-raising.

Overall, the themes identified in the data analysis serve as a framing device for the thesis, and they inform and support the legal analysis pursued in the following chapters. In particular, the themes presented have been refined to align with the socio-legal approach of this thesis, whereby qualitative research –meaning the interviews and focus groups– supports the legal analysis. To this end and to best address the research problem posed by this thesis, the themes discussed below are the result of a reflection on the convergence between an organic, inductive and initial generation of themes, and a more deductive refinement of those themes.

Based on trends and patterns in the accounts provided by EU cultural stakeholders, this deductive approach to data analysis considers, and is largely influenced by, the competences of the EU, the EU acquis and other EU measures on disability and culture, as well as the general principles of the CRPD. In other words, the analysis of the data took various parameters into account. This enabled, on the one hand, to focus the legal analysis on more discrete areas of EU action on the basis of the key issues raised by participants, and to ensure that the analysis remained anchored in the perspective of CCS stakeholders in the EU. On the other hand, this approach made it possible to exclude certain specific issues and areas of EU action from the scope of this thesis, as discussed below. Although some of these appear essential to the participation of professionals with disabilities in the EU's CCS, it also became apparent that investigating them in the context of this thesis would be limited in view of the EU's legal framework and competences. It would therefore also be overshadowed by the role of Member States in this respect, which is outside the scope of this thesis.

This is particularly the case for the area of social protection, which, as indicated in the previous section, is a key issue for both cultural and creative professionals and for persons with disabilities. It can therefore particularly impact the participation of persons with disabilities in cultural life as professionals. However, on top of being already researched

in different contexts and dealt with by the European Commission quite recently,[120] this topic was not raised by the participants in the interviews and focus groups. Secondly, the functioning of social protection systems is primarily the competence of the Member States, and the EU is assigned to a supportive role, which excludes any harmonisation across Member States. The Regulation on the coordination of social security systems is particularly illustrative of the EU's limited competence in that respect.[121] Indeed, the EU can only support the coordination (and not harmonisation) of those systems to favour the freedom of movement of people across the Union. This is all the more striking following the recent adoption of the Directive on the European Disability Card and the European Parking Card.[122] Regarded as a major step forward for the freedom of movement of persons with disabilities,[123] the consideration of social assistance and social security is in fact specifically excluded from the scope of these initiatives.[124] Overall, this accounts for the fact that social protection is not addressed in this thesis.

In that vein, the analysis process also contributed to rule out issues pertaining to state aid and copyrights from the scope of the thesis –although they are among those few areas of EU law where the EU framework for disability and the one for culture overlap. This is justified by the participants' limited engagement or absence of engagement with those topics as core issues, during both the interviews and the focus groups, to the point that repeated patterns of meaning could not be identified in the datasets. More specifically, the regulation of state aid was not mentioned, and it has already been examined at length in the context of culture and disability.[125] Additionally, the discussions on copyrights were contained to a very specific sectoral context –the books and press sector. As is reiterated and substantiated later in the thesis, the interaction of copyrights with the right to take part in cultural life, including from a disability standpoint, is also already discussed

[120] Frederic De Wispelaere and Marco Rocca, 'The Dark Side of the Tour. Labour and Social Security Challenges of Highly Mobile Workers in the Live Performance Sector' (2020) 21 ERA Forum 35; De Wispelaere and others (n 45); Outi Salonlahti, 'Twists and Turns – The Careers of Finnish Disabled and Deaf Artists' (2021) 24 Nordisk Kulturpolitisk Tidsskrift 37; Finn (n 47); Muszyński (n 47). At the international level, see also Galián, Licata and Stern-Plaza (n 42); Gu (n 43).

[121] See Regulation (EC) 883/2004.

[122] Directive (EU) 2024/2841 of the European Parliament and of the Council of 23 October 2024 establishing the European Disability Card and the European Parking Card for persons with disabilities [2024] OJ L2024/2841.

[123] André Felix, 'Agreement on the European Disability Card: Major Advance for Freedom of Movement' (*European Disability Forum*, 22 August 2025) <https://www.edf-feph.org/agreement-on-the-european-disability-card-major-advance-for-freedom-of-movement/> accessed 6 May 2024.

[124] Directive (EU) 2024/2841, art 2(3).

[125] See, among others, Evangelia Psychogiopoulou, 'EC State Aid Control and Cultural Justifications' (2006) 33 Legal Issues of Economic Integration 3; Delia Ferri, 'Cultural Diversity and State Aids to the Cultural Sector' in Evangelia Psychogiopoulou (ed), *Cultural Governance and the European Union* (Palgrave Macmillan 2015); Delia Ferri, 'The New General Block Exemption Regulation and the Rights of Persons with Disabilities: Smoke without Fire?' (2015) 14 European State Aid Law Quarterly 465; Delia Ferri and Juan Jorge Piernas López, 'State Aid Law and Disability' in Delia Ferri and Andrea Broderick (eds), *Research Handbook on EU Disability Law* (Edward Elgar 2020); Joris Gruyters and Lennard Michaux, 'Cultural State Aid: A Myriad of Approaches' in Evangelia Psychogiopoulou and Sarah Schoenmaekers (eds), *European Union Economic Law and Culture* (Edward Elgar 2024).

in scholarship.[126] Thus, the topic of copyrights was not perceived to make sense for the CCS as a whole, unlike the themes presented in this thesis and substantiated in the following section. Therefore, state aid and copyrights are among the issues excluded from the scope of the thesis. They only feature to a limited extent as facets of the EU legal framework for disability and for culture, or in support of the analysis developed around the main themes structuring the research.

4. Key Issues for Cultural and Creative Professionals with Disabilities in the EU

As a result of the qualitative analysis, four themes were identified as key to understanding the participation of CCS professionals with disabilities in the EU. Equality and non-discrimination, accessibility, the EU funding system, and knowledge-building and awareness-raising stand out as strategic issues for enabling the participation of cultural and creative professionals with disabilities. Yet, from the perspective of the CCS stakeholders involved in the research, shortcomings in these areas underpin, at the same time, the barriers faced by professionals with disabilities in the CCS. Although they are analysed separately, it is understood that there is some overlap between these dimensions.

As the following sub-sections demonstrate, these four issues serve as a starting point for analysing the extent to which EU law can enable the participation in cultural life of professionals with disabilities, and what gaps and limits remain. Three of them –equality and non-discrimination, accessibility, and the EU funding system– were chosen to frame the way in which the next chapters discuss the EU legal framework and answer the research questions posed in this thesis. By contrast, the cross-cutting theme of 'knowledge building and awareness-raising' is discussed at various junctures within the chapters.

Hence, the themes presented hereinafter serve first as a framing device for the thesis, meaning that the legal analysis in the following chapters is informed and delimited by these themes that were identified from the data. Secondly, the qualitative findings

[126] See Abbe Brown and Charlotte Waelde, 'IP, Disability, Culture and Exceptionalism: Does Copyright Law Deal with Difference?' in Graeme B Dinwoodie (ed), *Intellectual Property and General Legal Principles: Is IP a Lex Specialis?* (Edward Elgar 2015); Giuseppe Mazziotti, 'Cultural Diversity and the EU Copyright Policy and Regulation' in Evangelia Psychogiopoulou (ed), *Cultural Governance and the European Union* (Palgrave Macmillan 2015); Caterina Sganga, 'Disability, Right to Culture and Copyright: Which Regulatory Option?' (2015) 29 International Review of Law, Computers & Technology 88; Caterina Sganga, 'Disability in EU Copyright Law' in Delia Ferri and Andrea Broderick (eds), *Research Handbook on EU Disability Law* (Edward Elgar 2020); Delia Ferri, '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' (2024) 55 IIC - International Review of Intellectual Property and Competition Law 89; Caterina Sganga, 'Does Copyright Ease Inclusivity of Differently Able Individuals?' in Cristiana Sappa (ed), *Research Handbook on Intellectual Property Rights and Inclusivity* (Edward Elgar 2024). For an international perspective, see also Lea Shaver and Caterina Sganga, 'The Right to Take Part in Cultural Life: On Copyright and Human Rights' (2009) 27 Wisconsin International Law Journal 637.

especially support the analysis in chapters 6, 7 and 8 to better understand the resources to leverage at EU level to foster the participation of professionals with disabilities in the CCS, as well as limitation and gaps in the EU legal framework.

4.1. Equality and Non-Discrimination

Although the issues discussed earlier in this chapter are relevant to most professionals in the CCS, they can, in interaction with the specific barriers linked to disability, make it 'more challenging [for persons with disabilities] to establish and pursue a career' in the CCS.[127] Notably, equality and non-discrimination refer to two concepts and principles that fundamentally underpin the CRPD and the rights it recognises.[128] In that vein, Quinn –in his role as Special Rapporteur– points out that 'the equality concept is the key bridge that links the [CRPD] with [EU] law and policy'.[129] On top of being one of the key themes identified in the qualitative analysis, the focus on 'equality and non-discrimination' draws on the fact that discrimination and the lack of equal opportunities are some of the main barriers to be dismantled in order to make society, and culture specifically, more inclusive of persons with disabilities.[130]

As for cultural and creative professionals, the situation of persons with disabilities depends on a complex net of EU law and policy, which is likely to influence equality and non-discrimination provisions at the national level. However, it is more likely to address them just as professionals rather than as CCS professionals. This was echoed by the participants, as some noted that 'there are equality laws in the country that are promoting employment of people who have disabilities' (EU CCS 1), or that most countries should have non-discrimination legislation which covers the CCS (FG1 P3). Nevertheless, despite proposals and measures to improve outcomes in the labour market,[131] 'inequalities in the structures' remain (FG2 P16) and persons with disabilities continue to face barriers in accessing and sustaining work.

Indeed, participants overwhelmingly felt that there was a lack of equal opportunities for persons with disabilities to become and remain a professional in the CCS. As noted

[127] Eikhof (n 9) 234. See also, Snijders and others (n 8) 30, 119.
[128] Delia Ferri, 'The Legal Context: The CRPD as Human Rights Framework' in Delia Ferri and Ann Leahy, *Dismantling Barriers and Advancing the Right of Persons with Disabilities to Participate in Cultural Life: A Socio-Legal Analysis* (Routledge 2025) 56–57.
[129] United Nations Human Rights Council (UN HRC), 'Visit to the European Union: Report of the Special Rapporteur on the Rights of Persons with Disabilities, Gerard Quinn' (2022) UN Doc A/HRC/52/32/Add.1 para 9.
[130] See Urzel Francil (n 4); Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No. 5: Persons with Disabilities' (1994) E/1995/22 para 15. See also Carrie Griffin Basas, 'Indulgent Employment? Careers in the Arts for People with Disabilities' (2009) 40 Rutgers Law Journal 613, 615.
[131] European Commission, 'Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030' (Communication) COM(2021) 101 final (Disability Strategy 2021-2030), 13–15.

earlier, the part of persons with disabilities working in the 'Arts, Entertainment and Recreation' economic sector (which does not quite correspond to the concept of cultural employment underpinning this thesis)[132] is not even mentioned in a recent study on the employment of persons with disabilities in the EU, suggesting it could be negligible in comparison to the other sectors studied.[133] Additionally, persons with disabilities usually struggle to participate in the labour market on an equal basis with others, and the employment rate of persons with disabilities in the EU is of 50%, while that of persons without disabilities stands at 75%.[134] Quantitative research also finds that persons with disabilities are less generally likely to be in higher skilled occupations compared to persons without disabilities.[135]

Scholarship also highlights that 'the cultural workplace is foundationally unequal' despite legislation and initiatives put forward to level the playing field in the EU and to address the lack of equal opportunities, as well as the rise in inequality and injustice in culture.[136] Therefore, these 'inequality dynamics' have the effect of disproportionately impacting disadvantaged groups, including persons with disabilities.[137] One participant echoed this, speaking of the 'marginalised position' and socio-economic disadvantage in which persons with disabilities can find themselves in (EU CCS 4). They further acknowledged that persons with disabilities might therefore not enjoy equivalent chances to be part of the industry, pursue jobs and training opportunities, and to receive 'the equal amount of support and also, just, equal amount of acknowledgement' (EU CCS 4). As for the issue of '"inclusion" in the labour market', there is also a need to understand the participation of professionals with disabilities in the CCS, not only in terms of 'the number of people finding a job', but also in terms of 'their treatment within the workplace'.[138]

Moreover, the analysis of the interviews and focus groups suggests that much of the challenges met by persons with disabilities as professionals in the EU's CCS were, and continue to be, related to discrimination. Some participants even clearly referred to ableism (FG2 P19) or recognised that some persons with disabilities may be experiencing

[132] See footnote (n 34).
[133] Zólyomi (n 35) 27.
[134] Stefanos Grammenos, *European Comparative Data on Persons with Disabilities – Equal Opportunities, Fair Working Conditions, Social Protection and Inclusion, Health Analysis and Trends – Data 2020* (European Commission, Publications Office 2023) 74.
[135] Zólyomi (n 35) 28.
[136] Mark Banks, *Creative Justice: Cultural Industries, Work and Inequality* (Rowman & Littlefield International 2017) 109. See also Orian Brook, Dave O'Brien and Mark Taylor, *Culture Is Bad for You: Inequality and the Cultural and Creative Industries* (Manchester University Press 2020); Snijders and others (n 8) 27–30; Vecco and others (n 76).
[137] Ahu Tatli and Mustafa Özbilgin, 'Surprising Intersectionalities of Inequality and Privilege: The Case of the Arts and Cultural Sector' (2012) 31 Equality, Diversity and Inclusion: An International Journal 249, 259.
[138] Mark Bell, 'People with Intellectual Disabilities and Labour Market Inclusion: What Role for EU Labour Law?' (2020) 11 European Labour Law Journal 3, 4.

more discrimination than others depending on their disabilities (EU CCS 9). This must be understood in a context where discrimination experienced by those working in the CCS generally exceeds the average among workers in the EU.[139] In fact, the proportion of individuals in the arts, entertainment, and recreation sector who reported experiencing discrimination at work reached 6.1% in 2021, representing the third highest rate across all sectors surveyed.[140] Furthermore, 50% of people who considered themselves as having a disability reported experiencing discrimination in 2023, a rate which increased since 2019.[141] Albeit these are more generic figures, which do not focus on persons with disabilities working in general, or more specifically in the CCS, it points to a sort of consensus; discrimination is pervasive, both in relation to culture and to disability.

Additionally, persons with disabilities may be prevented from taking part in the CCS when such opportunities are seen as 'too competitive, elite, selective, or "impractical"' for them.[142] Several participants also drew attention to the elitist and highly competitive nature of more traditional sectors or practices, and how this could affect disability inclusion in the CCS. As one participant pointed out, it could 'also be a barrier, that some people think that elitism and inclusion do not really work well together' (EU CCS 8).

Participants also noted the challenges met by persons with disabilities with regard to pursuing artistic and cultural activities from a young age, and later on in higher level education. In this respect, a focus group participant stressed that 'there is a lack of access to any artistic academic education for people with disability and deaf people, and so we are turning around in a circle really quickly' (FG2 P14). In order to envision a career in the CCS, one participant particularly stressed the importance of accessing the mainstream education system:

> This is getting better, and that makes the further path easier as well, I think, than if they are in a special school only with people with disabilities where maybe … dreams are not allowed to develop the same way. (EU CCS 6)

Some other participants discussed the barriers to education and training for persons with disabilities, particularly in higher education in the arts and culture, noting that in turn, few professionals with disabilities enter the CCS labour market. This is noteworthy since

[139] Muszyński and Gromada (n 8) 76.
[140] Eurostat, 'Self-Perceived Discrimination at Work - Statistics' (*Statistics Explained*, 20 August 2025) <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Self-perceived_discrimination_at_work_-_statistics&oldid=580227#Sectors_of_activity.2C_occupation.2C_status_and_size_of_enterprise> accessed 21 August 2025.
[141] Organisation for Economic Co-operation and Development (OECD), *Combatting Discrimination in the European Union* (OECD Publishing 2025) 38–39.
[142] Basas (n 130) 664. See also Randle and Hardy (n 64) 454–455.

people in cultural employment are expected to have a 'level of educational attainment' that is significantly higher than the average.[143]

Citing financial constraints, the lack of adapted curricula, or adequate equipment or facilities, participants echoed the point of Sánchez-Vizcaíno and Amidei that 'access for students is a multi-layered issue that encompasses physical, attitudinal, and curricular aspects'.[144] In that sense, one of the participants even referred to these establishments as some of 'the main gatekeepers of the industry' (EU CCS 4). This also aligns with the view that discrimination 'pervades all aspects of education and employment' for persons with disabilities.[145]

In conclusion, the cultural workplace is a space where the number of persons with disabilities is, as one participant pointed out, 'probably not in proportion to the number of persons with disabilities in society' (EU CCS 9). As such, the CCS stand out as being an environment where 'positions are not usually held by people with disabilities', knowing that positions are 'difficult for non-disabled to obtain as well',[146] and where upward career mobility might be difficult.[147] The CCS labour market remains an arena where professionals with disabilities face persistent barriers, characterised by inequalities and discrimination 'rooted in this notion of people with disabilities as recipients of the "therapeutic benefits" of the arts, rather than as valuable producers'.[148] In that sense, in the 'current political and social climate of rising discrimination and a lack of inclusion', it appears necessary to 'address the bias that occurs (either consciously or unconsciously) in classes, productions, and in the professional world towards participants with disabilities'.[149]

Thus, this analysis points to a certain consensus and even a necessity to 'recast the participation of cultural and creative professionals with disabilities as a non-discrimination issue'.[150] For the purpose of this thesis, it therefore seems particularly apt to situate the participation of persons with disabilities in the CCS within a non-discrimination and equality framework, and to highlight, in chapter 6, the key contribution that EU non-discrimination law, and particularly the Employment Equality

[143] Eurostat, *Culture Statistics* (n 16) 69.
[144] Elena Sánchez-Vizcaíno and Allison Amidei, 'Access and Inclusion for Students with Disabilities in Performing Arts Higher Education' (2021) 2 ACOTACIONES. Investigación y Creación Teatral 15, 20.
[145] Basas (n 130) 615.
[146] Basas (n 130) 664.
[147] Randle and Hardy (n 64) 454.
[148] Basas (n 130) 615. See also, Per Koren Solvang, 'Between Art Therapy and Disability Aesthetics: A Sociological Approach for Understanding the Intersection between Art Practice and Disability Discourse' (2018) 33 Disability & Society 238, 241.
[149] Sánchez-Vizcaíno and Amidei (n 144) 18.
[150] Urzel Francil (n 4) 13.

Directive, and EU labour law, can make in the professional lives of persons with disabilities.[151]

4.2. Accessibility

The second key concept identified from the data analysis relates to a lack of accessibility in the CCS, which ultimately hinders the participation of professionals with disabilities. As discussed in the following chapter,[152] accessibility is understood under the CRPD as a 'capacious and multifaceted concept'[153] which acts as a general principle of the Convention.[154] In this regard, participants referred to the various obstacles encountered by persons with disabilities, both as professionals and as audiences. This also confirms the findings of prior research into cultural participation of people with disabilities undertaken with OPDs, arts and disability organisations and organisations involved with disability rights across Europe, which also identified the 'lack of accessibility of cultural venues, services, and products' as barriers.[155]

Evoking different dimensions of accessibility, participants especially insisted on the lack of accessibility of the built environment and physical accessibility barriers in this respect, but also on issues in terms of accessibility of information, including of websites, or on poor communication on accessibility. One participant highlighted how the 'lack of uniformity of the definition [of accessibility] but also the lack of, indeed, the notion of it being rights-based' represented one of the biggest barriers to the participation in cultural life of persons with disabilities in the EU (FG2 P18).

In this respect, participants placed a certain emphasis on accessibility of the built environment and physical accessibility and spoke of the inaccessibility of their sector(s). Sometimes, they also mentioned key sectoral events that offer few guarantees of accessibility for professionals with disabilities, especially when held in older venues. In that connection, some participants pointed out that the accessibility of older buildings is regularly neglected, and in this connection, one participant commented that 'you don't have to make them accessible until someone protests and says it has to be changed' (EU CCS 6). Many participants, who stressed the need to ensure the accessibility of the built

[151] See Chapter 6, Sections 2, 3 and 6.
[152] See Chapter 2, Section 5.3.
[153] Delia Ferri, 'The Role of the European Union in Ensuring Accessibility of Cultural Goods and Services: All About that … Internal Market?' (2023) 48 European Law Review 257, 261.
[154] CRPD, art 3(f).
[155] Ann Leahy and Delia Ferri, 'Barriers to Cultural Participation of People with Disabilities' in Delia Ferri and Ann Leahy, *Dismantling Barriers and Advancing the Right of Persons with Disabilities to Participate in Cultural Life: A Socio-Legal Analysis* (Routledge 2025) 140.

environment, also highlighted the existence of laws requiring the physical accessibility of buildings, which would often only apply to new builds, or failed to be enforced, as reported in other research.[156] Indeed, the 'lack of physical access is not only an issue with existing architecture but also to be considered when creating new spaces', whether it is for the performing arts sector, for higher arts and cultural educational institutions or the CCS more broadly.[157]

Many CCS stakeholders also perceived a certain lack of consideration for accessibility beyond the (physical) accessibility of the built environment. They alluded to the fact that accessibility is sometimes approached in a more unidimensional manner, where it only benefits certain individuals with disabilities. One participant was therefore wary to not reduce accessibility to 'wheelchair accessibility' as is the case in various contexts (FG2 P18), while another highlighted the lack of interpretation for deaf people working in the CCS, which, although expensive, is 'the basic accessibility' needed (FG2 P12).

While it appears to focus more on accessibility issues for audiences of persons with disabilities, the following remark of a focus group participant also highlights the lack of knowledge and consideration of CCS professionals for the accessibility needs of all persons with disabilities:

> They actually didn't know how they could make something accessible, beyond making it barrier-free for people with mobility impairments … there are still [cultural institutions] out there who don't know that you can go beyond and do something for blind people, people's hearing impairments and so on. (FG1 P6)

In turn, this begs the question of how such lack of knowledge may affect the capacity of the CCS to address the accessibility needs of all professionals with disabilities. This echoes the experience of one participant who recalled witnessing the inaccessibility of some sectoral events. In that respect, they stressed that failure to 'guarantee accessible industry events' for all would impact on opportunities for professionals with disabilities to meet and network –when this is an essential aspect of the functioning of their sector (EU CCS 4).

In a context where some cultural institutions and/or sector(s) are struggling to sustain themselves, several participants reported the difficulties of their sectors in engaging with accessibility, especially as this was perceived as a cost-intensive investment. Some participants also mentioned the work they were trying to do internally to remedy inaccessibility in their own organisations and recalled certain instances where they had

[156] See Leahy and Ferri, 'Barriers to Cultural Participation by People with Disabilities in Europe' (n 1) 2477.
[157] Sánchez-Vizcaíno and Amidei (n 144) 27.

failed to take accessibility into account and what they had learned from it. While some recognised that awareness and knowledge of this issue were improving, one participant also pointed out the need for 'everyone in the chain … to understand accessibility is actually an added value, not a burden' (EU CCS 1). Moreover, the sectors' commitment to accessibility was seen to lack a systematic approach, comprehensiveness and control, and therefore tended to depend on the goodwill or 'own doing' of some individuals (FG2 P10). In that vein, it is also common to see accessibility being an afterthought in the CCS, or a point that is not considered until the very end, whether it is with regard to the architectural design of spaces or the production process of audiovisual content or live performances, where accessibility features become an add-on, mandated by law or guidelines, with little creative and directorial input.[158]

From the participants' point of view, barriers to accessibility persist in the CCS, and therefore impact on the participation of professionals with disabilities in cultural life. It is also often 'perceived that less consideration [is] given to issues of access for performers and artists with disabilities who continu[e] to be excluded',[159] meaning that the improvements that are made with respect to accessibility 'typically only serve the audience, not participants or makers of the performance itself'.[160] However, as is expanded on in chapter 7,[161] accessibility for audiences and for professionals remain closely interconnected, as this first facet of accessibility may feed into the professional activities and research work of CCS professionals with disabilities, ensuring access to information and sources for inspiration.[162] On this basis, the thesis aims to consider in the following chapters the EU framework for accessibility, and to reflect on how it may be leveraged to benefit persons with disabilities, especially as professionals with disabilities.

4.3. The EU Funding System

Participants also spoke of the funding system as a particularly decisive factor for the participation of professionals with disabilities in the CCS. Notably, the lack of funding opportunities, or the lack of consideration for disability in the funding system, whether

[158] JP Udo and Deborah I Fels, 'The Rogue Poster-Children of Universal Design: Closed Captioning and Audio Description' (2010) 21 Journal of Engineering Design 207, 209, 219; Jos Boys, *Doing Disability Differently: An Alternative Handbook on Architecture, Dis/Ability and Designing for Everyday Life* (Routledge 2014) 176; Leahy and Ferri, 'Barriers to Cultural Participation by People with Disabilities in Europe' (n 1) 2479.
[159] Ann Leahy and Delia Ferri, 'Cultural Policies that Facilitate the Participation of Persons with Disabilities in the Arts: Findings from a Qualitative Multi-National Study' (2024) 4 Disabilities 539, 547.
[160] Sánchez-Vizcaíno and Amidei (n 144) 28.
[161] See Chapter 7, Section 1.
[162] See Susie Cobbledick, 'The Information-Seeking Behavior of Artists: Exploratory Interviews' (1996) 66 The Library Quarterly: Information, Community, Policy 343; Ann Medaille, 'Creativity and Craft: The Information-seeking Behavior of Theatre Artists' (2010) 66 Journal of Documentation 327.

EU based or not, were perceived as having negative consequences on such participation. This is in a context where –as pointed out at the beginning of this chapter– the livelihoods of CCS professionals are rather uncertain and precarious. In that connection, the funding landscape for the CCS is changing, and integrating new ways of producing, consuming and financing culture through the use of financing mix, the rise of crowdfunding, decreases in direct public funding and new sources of private funding, which for some still point to some instability and precariousness in the sectors.[163] And this, despite the CCS being framed as an area of growth by the EU.[164]

In this respect, Muszyński highlights how 'CCS professionals' access to social protection and regulated working conditions' can at times be compromised when they are employed by publicly funded organisations.[165] This is often due to CCS organisations' reliance on non-standard forms of work, which in turn restrict access to social protection.[166] However, despite research highlighting the importance of this issue, as shown in section 2, the question of the impact of the CCS funding system on the social protection, or the social security, of CCS professionals with disabilities was not highlighted during the qualitative study with CCS stakeholders,[167] and is therefore excluded from this thesis' scope.[168] This could be explained by the fact that the organisation of social protection and social security does not fall within the remit of the CCS, and that CCS stakeholders are unable to directly address the issues that pertain to it. This contrast with the key issues discussed in this thesis, like equality and non-discrimination, accessibility or knowledge-building and awareness-raising, which are matters that CCS stakeholders can act on more directly, and which they raised during the interviews and focus groups. Funding stands out here as it primarily depends on decisions made for the CCS. Nevertheless, CCS stakeholders have some influence over the use of funds, particularly when it comes to making the CCS more disability-inclusive. This may explain why it was highlighted in the qualitative research, unlike social protection.

In this connection, participants raised other matters in relation to funding and the CCS. One participant specified that they believed that funding –and especially public funding– was one of 'the main gatekeepers of the industry' at European level, together with the

[163] See Nicolás Barbieri and others, 'El auge del crowdfunding en la esfera cultural. ¿Nueva arquitectura de la producción compartida o simple reformulación de la fragilidad y precariedad del sector?' (2019) 195 Arbor Ciencia, Pensamiento y Cultura a490, 12; Ellen Loots and others, 'New Forms of Finance and Funding in the Cultural and Creative Industries. Introduction to the Special Issue' (2022) 46 Journal of Cultural Economics 205; Creatives Unite, 'How a Mental Health Film Project Reimagined Funding and Community Impact' (Creative FLIP 2025).
[164] See European Commission, 'A New European Agenda for Culture' (Communication) COM(2018) 267 final, 4–6.
[165] See Muszyński (n 47).
[166] Muszyński (n 47) 20–21.
[167] See Chapter 1, Sub-section 2.3. and literature cited therein.
[168] See Chapter 1, Sub-section 3.3.

higher art and cultural education institutions (EU CCS 4) as mentioned earlier. Participants further highlighted the lack of funding for the CCS, and their difficult financial situations, especially in the aftermath of the Covid-19 pandemic.[169] In this connection, one participant discussed how this would impact on the participation of persons with disabilities in cultural life in the following terms:

> I think, basically, it boils everything down to a lack of funding because all of these things cost money, and you know, now, with all these lockdowns, I mean, museums are even struggling for their existence and invests very little, I think, for disability issues. (FG1 P6)

This resonates with prior research highlighting the lack of funding and/or of adequate services as barriers to the cultural engagement of persons with disabilities,[170] as well as the hidden and unacknowledged costs associated with delivering socially engaged arts, which often leads to a prohibitive 'power imbalance' between CCS professionals and their funders.[171]

The topic of the funding system was also broached in relation to the difficulties experienced by cultural stakeholders, and especially smaller organisations, in accessing EU funding streams like Creative Europe or Interreg.[172] In this context, several participants pointed to unsupportive and complex funding structures and processes that fail to take into account the capacity and the resources –human and financial– that stakeholders in the CCS, especially independent ones, can draw on. Particularly, some participants pointed to difficulties in understanding the different funding programmes and knowing which programme to apply for, while stressing the complexity of the reporting process for professionals who have their own activities to carry out. This was despite the changes introduced with the second Creative Europe programme, which aim to simplify procedures and open up the possibility of submitting smaller projects, as discussed in chapter 8.[173] In this context, one participant representing a European CCS umbrella organisation shared that they themselves found it difficult to take part in EU funding programmes (EU CCS 10). Another participant mentioned preferring to turn to local or

[169] See EY Consulting (n 9) 29–40; De Voldere and others (n 9) 25–40.
[170] Ann Leahy and Delia Ferri, 'Barriers and Facilitators to Cultural Participation by People with Disabilities: A Narrative Literature Review' (2022) 24 Scandinavian Journal of Disability Research 68, 76.
[171] Eleonora Belfiore, 'Who Cares? At What Price? The Hidden Costs of Socially Engaged Arts Labour and the Moral Failure of Cultural Policy' (2022) 25 European Journal of Cultural Studies 61, 71.
[172] See Creative Europe Regulation 2021-2027; Regulation (EU) 2021/1059 of the European Parliament and of the Council of 24 June 2021 on specific provisions for the European territorial cooperation goal (Interreg) supported by the European Regional Development Fund and external financing instruments [2021] OJ L231/94.
[173] See Chapter 8, Section 4.

private funding instead of EU funding, highlighting lengthy administrative processes and the pressure this placed on their organisation. They explained:

> We will talk about the problem with the European Union, it's too bureaucratic. We tried many times, during many years and we decide not to use the European Union's funding because it takes too long time … we used the Interreg, but it takes too long time. I tell you something, we pay a bill for a restaurant last year, and after 17 months, we got the money. (FG2 P15)

Some participants also explicitly raised the lack of access to funding for CCS professionals with disabilities themselves. One interviewee stressed that this prevented persons with disabilities from sharing their stories and being 'part of the big creation process', including behind the scenes, concluding that 'funders … have to give access to these groups from the beginning' (EU CCS 4). They also pointed out that funding sometimes tends to benefit already established and successful professionals, leaving little room for newcomers, including persons with disabilities (EU CCS 4). In another context, cultural stakeholders have raised the need for funding to be 'accessible to all', insisting that 'there needs to be an equal opportunities approach to accessing and receiving funding for projects'.[174] The lack of access to or capacity to 'apply to funds with complex application processes' is somewhat seen to influence on the realisation of the right to participate in cultural life of professionals with disabilities.[175]

Participants also highlighted the failure of the funding structures to take disability matters into account and therefore entertain lasting change in the CCS, especially since funds are usually temporary. In that respect, several participants regretted that funders did not embed issues, such as accessibility, inclusion, or diversity in funding applications –an interesting point which is discussed at greater length in chapter 8. A focus group participant noted that funding applications, whether EU or national, could encourage recipients 'to describe how are they inclusive, how are they not discriminating against people', adding that it is for the funders to make those decisions (FG2 P16). However, in this respect, one participant also recalled their experience with funding applications that had included some access features, albeit too quickly in their opinion, as it 'led to access features being a bit of an add-on rather than built in' (FG1 P4).

Overall, the discussion in this sub-section suggests the need for funding structures to better integrate disability issues within their processes, and to ensure that professionals with disabilities in the CCS have the same opportunities as others to benefit from and

[174] Voices of Culture, 'Brainstorming Report: Social Inclusion: Partnering with Other Sectors' (Structured Dialogue between the European Commission and the Cultural Sector, 2018) 58.
[175] Voices of Culture, 'Social Inclusion' (n 174) 58. See also Snijders and others (n 8) 30.

access funding, and to participate in funded projects. Additionally, it also point to ways in which funding can facilitate the participation of cultural and creative professionals with disabilities that will be investigated in the following chapters.[176] While the participants' contributions suggested that the EU funding system has shortcomings in terms of facilitating the participation of CCS professionals with disabilities, it is also recognised that, if well prepared and implemented, it can represent an enabler to participation in cultural life.[177] This is especially key as this funding role is one of the main roles that the EU plays in relation to culture and disability.[178]

4.4. Knowledge-building and Awareness-raising

Ultimately, the analysis of the data collected via interviews and focus groups highlights the significant part played by knowledge-building and awareness-raising in enabling the participation of professionals with disabilities in the CCS. As discussed throughout the thesis, knowledge-building and awareness-raising are essential to enabling the participation of CCS professionals in cultural life. Soft law and hard law, including human rights norms, are not always 'the primary agent of change within or across societies',[179] especially when change relies on legal action.[180] In fact, as detailed in the thesis, EU level awareness-raising actions are often associated with the implementation of the CRPD in the Union, and with supporting the realisation of concrete objectives relating to equal access and non-discrimination, or accessibility. This theme also finds particular resonance in some of the general principles of the Convention on respect for inherent dignity, and respect for difference and acceptation of persons with disabilities as part of human diversity and humanity.[181]

In that connection, participants addressed this topic from various standpoints, conceding a lack of knowledge and awareness on disability in their sectors, organisations or in some instances on their own part. One participant even mentioned how they saw education as essential, 'because awareness is not enough', adding that 'people must train and be educated to care and be aware of disabled people' (FG2 P17). Another participant framed

[176] See Chapters 4, Section 6, Chapter 5, Sub-section 5.3, and Chapter 8.
[177] See Delia Ferri, 'Fostering Cultural Participation of Persons with Disabilities in the European Union Through Funding: "I Was Told there'd Be Cake"' in Juan Jorge Piernas López (dir), Salvador Tomás Tomás and Rafael Castillo Felipe (coords), *El Poder Transformador del Derecho de la Unión Europea: Retos y Resultados Seleccionados* (Aranzadi La Ley 2025).
[178] See UN HRC (n 129) para 4; Bruno De Witte, 'Legal Framework of the EU's Cultural Policy' in Evangelia Psychogiopoulou and Sarah Schoenmaekers (eds), *European Union Economic Law and Culture: Towards a European Culturally Corrected Market Economy* (Edward Elgar 2024) 25–26.
[179] Hurst Hannum, *Rescuing Human Rights: A Radically Moderate Approach* (Cambridge University Press 2019) 10.
[180] Udo and Fels (n 158) 215.
[181] CRPD, art 3(a) and (d).

it as a 'cultural' barrier stating that 'the most critical barrier is the culture, the culture of the people' (FG1 P2). In fact, participants' insights on this key issue concurs with prior research that highlights how a lack of knowledge and awareness in the CCS creates barriers for certain cultural and creative professionals with disabilities, and also for students with disabilities in higher art and cultural education institutions.[182] Even if willing to include persons with disabilities, they pointed out that people in the sectors did not know 'how they can support them, so, they didn't have the right knowledge or the right culture' (FG1 P2).

Additionally, participants highlighted a range of initiatives that sought to raise awareness and/or to build knowledge on disability, which they were undertaking within their organisation, or they were aware of at the level of their members or the sector(s). In that respect, some participants stressed that it was 'important for cultural organisations to show society that you are inclusive' (EU CCS 2), insisting that enabling the inclusion of professionals with disabilities in the CCS is 'the right thing to do' (EU CCS 7). However, while recognising the growing awareness of disability issues, one participant noted that there was still much to be done, mentioning in particular the lack of knowledge on the need to provide sign-language interpretation for professionals in the CCS (FG2 P12).

While highlighting some improvements in terms of knowledge and awareness-raising, participants also stressed that cultural stakeholders are faced with other pressing issues, including decolonisation, freedom of expression, or the climate crisis, which impede on their engagement with disability matters. In this respect, one participant shared:

> I've seen the rise of the awareness, of like how we talk about diversity … But when you make a list of the people from different minorities, sometimes the disabled people are still forgotten. (FG2 P16)

Overall, participants felt that knowledge and awareness of the need to support the participation and inclusion of cultural and creative professionals with disabilities were uneven across the CCS in the EU. One participant also perceived that such change would take time, sharing that 'it will not be so easy to fill the gap in a short time' (FG1 P2). In that connection, the lack of a comprehensive and lasting change was highlighted by participants, who mentioned the tokenistic nature of some projects, as well as the few that aimed to ensure the participation of professionals with disabilities, both 'on stage' and 'behind the scenes'. One participant also felt that such knowledge and awareness was

[182] See Sánchez-Vizcaíno and Amidei (n 144) 30–31. See also Yohann Floch and Jordi Baltà Portolés, 'Time to Act: How Lack of Knowledge in the Cultural Sector Creates Barriers for Disabled Artists and Audiences: Final Report' (On the Move, British Council 2021) 14.

confined to the relatively small circles dealing with diversity and inclusion, giving them the impression of 'preaching to the converted' (EU CCS 5).

Participants' contributions ultimately highlight that the lack of knowledge and awareness on disability matters is quite common in the CCS, and, in turn, poses challenges to the participation of persons with disabilities as CCS professionals. As such, the fourth theme identified –knowledge-building and awareness-raising– underpins progress (or lack thereof) across the three themes examined earlier and informs how this thesis answers the research questions. However, unlike those identified earlier in this section, the theme of 'knowledge-building and awareness-raising' is not singled out for the purpose of framing this thesis' investigation. It was felt that integrating considerations of knowledge-building and awareness-raising under the other three themes would help to better capture the potential, gaps, and limitations of the EU legal framework. In order to address how the EU legal framework may or may not be an enabler of the participation in cultural life of professionals with disabilities, matters of knowledge-building and awareness-raising are therefore embedded in the analysis that follows, and in particular in chapters 6, 7 and 8.

5. Concluding Remarks

Through a combination of desk-based research and empirical research, this chapter has sought to 'set the scene' for this thesis. As such, it provides an overview of the general challenges and barriers faced by professionals in the CCS, and highlights those that are more specific to professionals with disabilities. As evidenced in the literature, cultural and creative professionals encounter a range of specific challenges mostly linked to the atypicality and precarity associated with their occupations. On this basis, the generic challenges faced by CCS professionals are more acutely felt by those with disabilities.

In that regard, the chapter has identified the main issues that underpin the participation of professionals with disabilities in cultural life, as highlighted by CCS stakeholders in the EU. To do so, it relied on the analysis of primary qualitative data, collected through interviews with CCS umbrella organisations and other cultural stakeholders active at the EU level, and of a secondary data set of two focus groups which involved participants working in the CCS or contributing to European projects on the accessibility of the sector(s) to persons with disabilities.

This chapter has used the qualitative research to frame the legal analysis around what the participants have considered to be key issues when discussing the participation in cultural life of professionals with disabilities in the EU. Notably, it identifies 'equality and non-

discrimination', 'accessibility', 'the EU funding system', and 'knowledge-building and awareness-raising' as these key issues. By combining desk-based and empirical research, this chapter provides a framework grounded in the experiences of CCS representatives that orientates the legal analysis carried out in the following two parts. In this context, chapters 6, 7, and 8 discuss in greater details the opportunities for using the EU legal framework to enable professionals with disabilities to take part in cultural life, as well as its limitations and gaps, according to three of the main issues –'equality and non-discrimination', 'accessibility', and 'the EU funding system'. The chapters embed 'knowledge-building and awareness-raising' as a cross-cutting theme.

Part II

The International Framework for Cultural and Creative Professionals with Disabilities

Chapter 2

The Convention on the Rights of Persons with Disabilities as Main International Legal Framework

1. Introduction

Following the introduction and the first part, this second chapter aims to present in more detail the CRPD, which is discussed here as the most appropriate international legal framework for this thesis. Opening this second part, it recalls the importance of the CRPD as international legal standard on disability rights,[1] and the ground-breaking nature of the human rights instrument it has become –from the process leading to its adoption, the inclusion of persons with disabilities in the drafting to the speed with which it was adopted. As mentioned in the introductory chapter, it is a major milestone for the protection of the rights of persons with disabilities worldwide. Building on previous norms, scholarship, and with the advocacy work of persons with disabilities at its core,[2] it entirely re-conceptualised and advanced the approach of disability, of persons with disabilities, and of their rights on the international stage, in a manner that 'is visionary, extensive and new compared to existing law'.[3]

The CRPD enshrines a number of key themes underpinning 'contemporary disability scholarship and activism –from "nothing about us without us" to the social understanding of disability'.[4] Additionally, it embodies the paradigm shift from a medicalised approach of disability to a human rights lens and the human rights model, considered in the introductory chapter.[5] However, this change is far from concretised in general, and in the EU, including in the context of the right to participate in cultural life.[6] In a way, the paradigm shift brought about by the CRPD also relies on challenging the belief that the existing human rights framework was effective and conducive to the realisation of the rights of persons with disabilities.[7]

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[1] Andrea Broderick and Delia Ferri, *International and European Disability Law and Policy: Text, Cases, and Materials* (Cambridge University Press 2019) 2.
[2] Maya Sabatello and Marianne Schulze (eds), 'Introduction', *Human Rights and Disability Advocacy* (University of Pennsylvania Press 2014) 5; Arlene S Kanter, *The Development of Disability Rights under International Law: From Charity to Human Rights* (Routledge 2015) 8–9.
[3] Franziska Felder, 'What Does the CRPD Tell Us About Being Human?' in Franziska Felder, Laura Davy and Rosemary Kayess (eds), *Disability Law and Human Rights: Theory and Policy* (Palgrave Macmillan 2022) 48.
[4] Lucy Series, 'Disability and Human Rights' in Nick Watson and Simo Vehmas (eds), *Routledge Handbook of Disability Studies* (2nd edn, Routledge 2020) 72.
[5] See Introductory Chapter, Sub-section 4.3.
[6] Series, 'Disability and Human Rights' (n 4) 83; Ann Leahy and Delia Ferri, 'The Right to Participate in Cultural Life of Persons with Disabilities in Europe: Where Is the Paradigm Shift?' (2022) 16(4) Alter 5, 19–20.
[7] Series, 'Disability and Human Rights' (n 4) 76.

The importance of this instrument is well summarised by Lawson, as she explains shortly after the adoption of the Convention that:

> [i]f implemented fully it would impact on all aspects of the lives of millions of disabled people and, indeed, on their very existence. Further, its impact would not be confined to disabled people but would extend to all. It may, of course, directly benefit any member of the human race because those who are currently not disabled may become so at any moment. In addition, its provisions require the reshaping of societies in a way required by no other human rights treaty.[8]

In this respect, Article 30 CRPD is the article which enshrines in international human rights law the right to participate in cultural life of persons with disabilities. This is the first explicit recognition among UN treaties and other standard-setting instruments on culture.[9] As argued hereinafter, Article 30 CRPD –and more specifically Article 30(2) CRPD– obliges the Parties to the Convention to ensure that persons with disabilities can participate in cultural life, and thus contribute to it, including as professionals of the cultural and creative sectors (CCS). As main international legal standard on the topic, which binds the EU and the Member States, it provides an invaluable background to this thesis and its investigation of the participation in cultural life of professionals with disabilities.

On the one hand, it provides a legal recognition and binding response to the challenges that cultural and creative professionals with disabilities face in the CCS, including in the EU. Indeed, although recognised as part of 'the five major categories of human rights (alongside civil, political, economic and social rights …)',[10] the cultural rights of persons with disabilities are still generally considered 'a neglected category of rights of a neglected category of people'.[11] On the other hand, Article 30 CRPD informs the EU action as it engages with the situation of CCS professionals with disabilities, and provides an authoritative reference against which to analyse the potential of the EU legal framework and identify its limitations and gaps. In line with the aim and scope of this thesis, this chapter therefore does not consider the provisions of Article 30 CRPD relating to recreation, leisure and sport, and focuses on paragraphs 1 to 4.

Therefore, following these introductory remarks, section 2 provides a general overview of the CRPD and its background, considering its structure and key features, before

[8] Anna Lawson, 'The United Nations Convention on the Rights of Persons with Disabilities: New Era or False Dawn?' (2007) 34 Syracuse Journal of International Law and Commerce 563, 618.
[9] On previous recognition of the right to take part in cultural life, see Chapter 3, Section 2.
[10] Pok Yin S Chow, 'Cultural Rights', *Elgar Encyclopedia of Human Rights* (Edward Elgar 2022) vol 1, 421.
[11] Chow, 'Cultural Rights' (n 10) 426. See also, Ilias Bantekas and others, 'Article 30: Participation in Cultural Life, Recreation, Leisure, and Sport' in Ilias Bantekas, Michael Ashley Stein and Dimitris Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford University Press 2018) 873.

highlighting the general principles and obligations of the Convention that are set out in Articles 3 and 4 CRPD respectively. In doing so, it highlights their relevance for Article 30 CRPD and the participation of professionals with disabilities in cultural life. Section 3 goes on to consider specifically Article 30 CRPD and discusses how culture came to be framed as it is in the Convention. In this regard, it examines how Article 30 CRPD affirms a right to participate in cultural life for persons with disabilities and considers the content of Article 30(1)–(4) CRPD. It then critically addresses how the professional dimension of the participation of persons with disabilities in cultural life features in the activities, interactions, and publications of the Committee on the Rights of Persons with Disabilities (CRPD Committee), particularly in the reporting process and in its interpretative work on the Convention. Section 4 then focuses on Article 27 CRPD (Work and Employment), analysing its content, as well as the work of the CRPD Committee in that respect. Section 5 focuses on the relationships and interlinkages of Article 30 CRPD with other CRPD provisions that particularly affect the participation of professionals with disabilities in cultural life, including Articles 5, 8, 9, and 21 CRPD. Finally, Section 6 provides some concluding remarks.

2. The CRPD: A General Overview

As part of a more general discussion of the CRPD, this section aims to provide an overview of the Convention, highlighting its origins, and the purpose, general principles and obligations which drive it. In doing so, it also briefly outlines its structure and covers key definitions.

2.1. Background, Genesis, and Purpose

The CRPD is a treaty which brings together in a single instrument 'a number of things that are scattered in half a dozen other human rights treaties', and reaffirms if it was not 'obvious' before that disability rights are human rights, the two core issues that led to the adoption of the CRPD.[12] Early on, these points fuelled the debate on the necessity (or not) to draft an additional international human rights instrument. The prospect of this new Convention was met with some 'initial reluctance' of delegations[13] concerned with whether it 'would be redundant', or whether 'the over-theorization of rights would reduce

[12] Frédéric Mégret, 'The Disabilities Convention: Human Rights of Persons with Disabilities or Disability Rights?' (2008) 30 Human Rights Quarterly 494, 499–500.
[13] Lawson, 'The UN CRPD: New Era or False Damn?' (n 8) 573.

the value of already stipulated rights'.[14] In that context, the proclaimed universalism of precedent human rights treaties, such as the Universal Declaration of Human Rights (UDHR),[15] the International Covenant on Civil and Political Rights (ICCPR)[16] or the International Covenant on Economic, Social and Cultural Rights (ICESCR),[17] was emphasised, prompting Series to note the following:

> Several characteristics of the post-war human rights settlement were promising from a disability perspective: states must do more to protect rights than merely refrain from intervention, a concern with social, economic and cultural matters as well as civil and political rights, and the universalism and emphasis on equality inherent in human rights discourse requires reinforcement … Yet if previous human rights instruments were universal in scope, why should such a Convention be needed?[18]

Herein lies the issue denounced by disability rights activists and scholars;[19] despite the universalist scope of these instruments, persons with disabilities 'were invisible in international human rights law'.[20] Article 2 UDHR comes to mind, as it sets out an extensive –albeit non-exhaustive– list of potential grounds for discrimination 'such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status', failing to mention disability in doing so.

The drafting of the CRPD therefore prompted the international community to realise (and tackle) 'the invisibility of disabled people as subjects of human rights and equality law [which] is an inevitable consequence of their separation from the mainstream'.[21] As such, the mandate which supported the drafting of the CRPD was supposedly not about the creation of new rights,[22] but about (re)applying well-established human rights 'to the specific needs of persons with disabilities', and address the failures of UN human rights

[14] Sabatello and Schulze (n 2) 2.
[15] Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).
[16] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).
[17] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).
[18] Series, 'Disability and Human Rights' (n 4) 74.
[19] See Amita Dhanda, 'Legal Capacity in the Disability Rights Convention: Stranglehold of the Past or Lodestar for the Future?' (2007) 34 Syracuse Journal of International Law and Commerce 429; Rosemary Kayess and Phillip French, 'Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities' (2008) 8 Human Rights Law Review 1; Gerard Quinn, 'The United Nations Convention on the Rights of Persons with Disabilities: Toward a New International Politics of Disability' (2009) 15 Texas Journal on Civil Liberties & Civil Rights 33; Kanter (n 2).
[20] Lucy Series, 'The Development of Disability Rights under International Law: From Charity to Human Rights' (2015) 30 Disability & Society 1590, 1590.
[21] Lawson, 'The UN CRPD: New Era or False Damn?' (n 8) 584.
[22] United Nations General Assembly (UNGA), 'Committee Negotiating Convention on Rights of Disabled Persons Concludes Current Session' (12 August 2005) SOC/4680.

instruments in that regard. [23] In this context, the CRPD was even referred to as 'an implementation convention' by the Chairman of the Ad Hoc Committee on Convention on Persons with Disabilities,[24] one that would 'provide clarity and focus', as well as 'consolidat[e] rights already theoretically conferred on disabled people'.[25]

As such, Recital (y) of the preamble to the Convention makes it evident that the CRPD fills 'an existing gap in the international human rights framework'.[26] Its purpose in that respect is further explicated in Article 1 CRPD, which, as Kayess and French explain, states that the Convention is meant to impose obligations on States Parties 'to promote (foster recognition), protect (prevent interference with) and ensure (enable the realisation of)' the rights of persons with disabilities.[27] The three overarching obligations it sets out –to respect, protect, and fulfil– constitute the norm in human rights treaties,[28] and in the present case, 'underlie the entire foundation of the CRPD'.[29] More specifically, this wording obliges States Parties to 'refrain from interfering', to take preventive measures, and to adopt the needed 'measures towards the full realization of these rights'.[30]

In doing so, the drafters of the CRPD offered such a new perspective on human rights that it is arguable whether they strictly adhered to the limited mandate of merely reaffirming the application of well-established human rights for the benefit of persons with disabilities.[31] Indeed, in its efforts to tailor existing rights to the situation of persons with disabilities, the CRPD is seen to show great ingenuity in 'incorporat[ing] highly disability-specific interpretations of existing human rights',[32] fuelling the debate on whether new rights were created or not.[33] In that sense, Kayess and French also observe that:

> [d]espite what might be characterised as the 'official fiction' that the CRPD does not set down any new human rights, it would seem clear that it has, in fact,

[23] Maya Sabatello, 'A Short History of the International Disability Rights Movement' in Maya Sabatello and Marianne Schulze (eds), *Human Rights and Disability Advocacy* (University of Pennsylvania Press 2014) 20. See also Gerard Quinn and Theresia Degener, 'Human Rights and Disability: The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability' (United Nations 2002) HR/PUB/02/1.
[24] UNGA, 'Committee Concludes Current Session' (n 22).
[25] Lawson, 'The UN CRPD: New Era or False Damn?' (n 8) 584 and 589.
[26] Janet E Lord, 'Preamble' in Ilias Bantekas, Michael Ashley Stein and Dimitris Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford University Press 2018) 33.
[27] Kayess and French (n 19) 26.
[28] Valentina Della Fina, 'Article 1 [Purpose]' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities* (Springer 2017) 92.
[29] Emily Kakoullis and Yoshikazu Ikehara, 'Article 1: Purpose' in Ilias Bantekas, Michael Ashley Stein and Dimitris Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford University Press 2018) 50.
[30] Della Fina, 'Article 1 [Purpose]' (n 28) 93.
[31] UNGA, 'Committee Concludes Current Session' (n 22).
[32] Kayess and French (n 19) 32.
[33] See among others Mégret (n 12); Gauthier De Beco, 'The Revival of Human Rights: A New Perspective on Human Rights Through the Lens of Disability' (2023) 45 Human Rights Quarterly 665.

> modified, transformed and added to traditional human rights concepts in key respects. The CRPD does contain entirely new or amplified formulations of human rights, including a number of collective or social group rights…[34]

Indeed, if some of the rights articulated in the CRPD were inspired by provisions from the UDHR, the ICCPR or the ICESCR, some '"new" rights emerged as more detailed specifications of previously recognised rights', while others had never been articulated before, like Article 9 CRPD (Accessibility).[35] Discussed at a later point in this chapter,[36] accessibility is a key theme of this thesis, and particularly underpins the research presented in chapter 7.[37] By contrast, and as chapter 3 corroborates,[38] it is well established that the right to participate in cultural life is 'rooted in human rights law' and therefore not such a new addition.[39]

2.2. Structure

The CRPD consists of a detailed preamble and fifty headlined Articles. It is accompanied by an Optional Protocol (OP-CRPD) and its eighteen Articles.[40] With the Convention being 'modeled after other existing human rights treaties', it incorporates both civil and political rights, as well as economic, social, and cultural rights,[41] making it 'the densest exposition of human rights by the UN to date'.[42]

Its preamble consists of twenty-five recitals –from (a) to (y)– of interpretative value only,[43] making it the longest preamble among the main human rights treaties.[44] Referencing previous legal instruments, it contextualises the Convention,[45] and discusses matters not covered in substantive Articles, which may be pertinent to the implementation of the Convention by States Parties.[46] Many of the themes introduced in these recitals,

[34] Kayess and French (n 19) 32.
[35] Series, 'Disability and Human Rights' (n 4) 78.
[36] See Chapter 2, Sub-section 5.3.
[37] See Chapter 1, Sub-section 4.2.
[38] See Chapter 3, Section 2.
[39] Delia Ferri, 'The Legal Context: The CRPD as Human Rights Framework' in Delia Ferri and Ann Leahy, *Dismantling Barriers and Advancing the Right of Persons with Disabilities to Participate in Cultural Life: A Socio-Legal Analysis* (Routledge 2025) 52–53.
[40] Optional Protocol to the Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2518 UNTS 283 (OP-CRPD).
[41] Sabatello (n 23) 20.
[42] Kayess and French (n 19) 22.
[43] Rachele Cera, 'Preamble' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities* (Springer 2017) 80.
[44] Lord (n 26) 3.
[45] Lord (n 26) 3.
[46] Cera, 'Preamble' (n 43) 80.

such as discrimination[47] or accessibility,[48] are also teased out in more detail in the substantive body of the CRPD, as well as in this chapter.

Further to the Preamble, Articles 1 CRPD (Purpose) and 2 CRPD (Definitions) also have an interpretive character. The second paragraph of Article 1 CRPD, which was already mentioned in the introduction to this thesis, provides a definition or description of persons with disabilities, as understood for the purpose of the Convention.[49] Article 2 CRPD also considers a series of terms like 'discrimination on the basis of disability', 'reasonable accommodation', and 'universal design'. They are discussed at greater length in the next section, especially as they relate to the main themes identified in the qualitative research.

The Convention then introduces general provisions from Articles 3 to 9 CRPD, addressing 'overarching or crosscutting principles and measures to be applied in all aspects of [its] implementation'.[50] Articles 3 and 4 CRPD, which are also discussed in a following sub-section,[51] focus on the Convention's general principles[52] and obligations,[53] and Articles 6 CRPD (Women with Disabilities) and 7 CRPD (Children with Disabilities) place emphasis on gender and age-related aspects of the Convention. Cross-cutting themes such as equality and non-discrimination,[54] awareness-raising[55] or accessibility[56] are considered as well. Again, the later Articles are of particular importance to the analysis presented in this thesis, as they relate to the themes identified in the qualitative analysis and further frame the socio-legal analysis that follows in part III. Thus, they are discussed in greater detail at a later point in this chapter and in relation to Article 30 CRPD.

Articles 10 to 30 CRPD constitute the more substantive segment of the Convention, with provisions of varied length and detail.[57] Covering civil and political rights, as well as economic, social and cultural rights –sometimes together–[58] these Articles set out 'the specific human rights and fundamental freedoms recognised by the convention', introducing in some instances innovative, 'new or amplified applications or extensions'

[47] CRPD, recital (h).
[48] CRPD, recital (v).
[49] CRPD, art 1.
[50] Kayess and French (n 19) 27.
[51] See Chapter 2, Sub-section 2.4.
[52] CRPD, art 3.
[53] CRPD, art 4.
[54] CRPD, art 5.
[55] CRPD, art 8.
[56] CRPD, art 9.
[57] For in-depth commentaries on the Convention's articles, see among others Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities* (Springer 2017); Ilias Bantekas, Michael Ashley Stein and Dimitris Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford University Press 2018).
[58] Don MacKay, 'The United Nations Convention on the Rights of Person with Disabilities' (2007) 34 Syracuse Journal of International Law and Commerce 323, 330.

of those.[59] The implementation and monitoring of the CRPD, at the national[60] and international level, are subsequently discussed in Articles 31 to 40 CRPD.[61] Notably, these include provisions related to the establishment of the treaty body; the Committee on the Rights of Persons with Disabilities (CRPD Committee).[62] The last portion of the CRPD essentially deals with the practical formalities and aspects pertaining to the accession to the treaty and its entry into force in Articles 41 to 50 CRPD.

The OP-CRPD complements the CRPD. This Protocol has not yet been ratified by all EU Member States, nor by the EU. Through eighteen Articles, it provides for 'two additional enforcement mechanisms'.[63] It empowers the CRPD Committee to handle complaints, also known as communications in the OP-CRPD, sent by 'or on behalf of individuals and groups of individuals subject to its jurisdiction who claim to be victims of a violation' of their rights recognised in the Convention.[64] Additionally, the Optional Protocol introduces the possibility for the CRPD Committee to conduct enquiries, including on-site visits, in the event that it 'receives reliable information indicating grave or systemic violations' of the rights recognised in the CRPD.[65] The views on individual communications (also referred to as jurisprudence hereinafter) of the CRPD Committee with regards to Articles 27 and 30 CRPD, as made possible by the OP-CRPD, is discussed later in this chapter. It supports the understanding of the obligations falling on States Parties with regards to the realisation of a right of professionals with disabilities to take part in cultural life.

2.3. Definitions

As presented in the introduction to this thesis,[66] after much controversy on defining it or not, the CRPD ended up including an open-ended conceptualisation of disability in its preamble[67] and some language elements in Article 1.[68] The characterisation of disability as an evolving concept in the preamble to the Convention is essential, and points to 'both the difficulty of agreeing on a common definition of disability, together with the imperative that, howsoever defined, disability falls squarely within a socio-contextual

[59] Kayess and French (n 19) 28.
[60] CRPD, art 33.
[61] Broderick and Ferri (n 1) 64.
[62] CRPD, art 34.
[63] Lawson, 'The UN CRPD: New Era or False Damn?' (n 8) 616.
[64] OP-CRPD, art 1(1).
[65] OP-CRPD, art 6.
[66] See Introductory Chapter, Sub-section 3.1.
[67] CRPD, recital (e).
[68] Lord (n 26) 12.

frame'.[69] Moreover, it participates to the implicit acknowledgment 'that how we understand disability transforms how we respond to it'.[70] As for the understanding of 'persons with disabilities' promoted in the UN treaty, 'an agreement was reached to identify the holders of all the human rights set out in the Convention and a second paragraph was added in Article 1',[71] therefore providing an indicative 'taxonomy of impairment types'.[72] Mentioning notably those who have long-term impairments, it 'provides for the scope *ratione personae* of the Convention, identifying persons with disabilities as the beneficiaries of its protection'.[73] For both terms, a consensus was hard to reach during the negotiations, as establishing immutable definitions 'ran the risk of becoming exclusive as opposed to inclusive', even unintentionally.[74] Notably, as many delegations opposed the inclusion of definitions of 'disability' and/or 'persons with disabilities' throughout the drafting process, neither term feature in the specific Article on definitions (Article 2 CRPD) of the Convention.[75]

Nevertheless, the identification of 'the targeted group for protection'[76] in these different provisions has potential to inform reform in States Parties 'having underdeveloped disability laws or defining disability very narrowly',[77] thus providing ground to see 'societal perceptions and understanding of disability' evolving.[78] Moreover, it is echoed in the monitoring work of the CRPD Committee discussed hereinafter. Indeed, the way in which States Parties conceptualise disability and/or persons with disabilities is a recurring issue,[79] highlighting their modest grasp of the paradigm shift brought about by the Convention.

Article 2 CRPD then provides definitions of the terms 'communication', 'language', 'discrimination on the basis of disability', 'reasonable accommodation' and 'universal design'.[80] It highlights the specific meanings ascribed to those concepts for the purpose of the Convention, and ultimately, for the realisation of the rights of persons with disabilities.[81] Those definitions are more explanatory –or technical for universal design–

[69] Lord (n 26) 12.
[70] Series, 'Disability and Human Rights' (n 4) 77.
[71] Della Fina, 'Article 1 [Purpose]' (n 28) 96.
[72] Kayess and French (n 19) 23.
[73] Rachele Cera, 'Article 2 [Definitions]' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities* (Springer 2017) 109.
[74] Kakoullis and Ikehara (n 29) 44. See also Lawson, 'The UN CRPD: New Era or False Damn?' (n 8) 593.
[75] Della Fina, 'Article 1 [Purpose]' (n 28) 96.
[76] Sabatello (n 23) 21.
[77] Della Fina, 'Article 1 [Purpose]' (n 28) 99.
[78] Series, 'Disability and Human Rights' (n 4) 77.
[79] Kakoullis and Ikehara (n 29) 58. Following the examination of the CRPD Committee's concluding observations from 2011 to 2017, the authors found that such definitions or conceptualisations were still often based on the medical model.
[80] CRPD, art 2.
[81] Kayess and French (n 19) 26.

than normative.[82] In fact, they were written in such a way that it would 'dispel uncertainties about the scope and content of state obligations', while remaining pertinent throughout the years.[83] If some terms like discrimination are well known in the human rights law context, others are novel.[84] This is the case of the concept of 'universal design',[85] which refers to the 'design of products, environments, programmes, and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design'.[86] Of particular interest to this thesis, are also the definitions of 'discrimination on the basis of disability' and 'reasonable accommodation', which read as follows:

> 'Discrimination on the basis of disability' means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.
>
> 'Reasonable accommodation' means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.[87]

To that effect, the letter of Article 2 CRPD can be complemented by a reading of the *travaux préparatoires*, which are, together with the preamble, 'supplementary means of interpretation' of the CRPD.[88] Providing a frame of reference for parties to the CRPD (including the EU) to abide by the provisions set out in the Convention, these definitions 'contribute to the effective implementation of the treaty'.[89] As such, they provide an interesting legal standard to refer to when investigating the realisation of the right to participate in culture life of professionals with disabilities in the EU, especially in the context of equality and non-discrimination, or to some extent, accessibility.[90]

[82] Cera, 'Article 2 [Definitions]' (n 73) 108.
[83] Anna Nilsson, 'Article 2: Definitions' in Ilias Bantekas, Michael Ashley Stein and Dimitris Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford University Press 2018) 67.
[84] Mégret (n 12) 501.
[85] Nilsson (n 83) 64.
[86] CRPD, art 2.
[87] CRPD, art 2.
[88] Cera, 'Article 2 [Definitions]' (n 73) 108–109.
[89] Nilsson (n 83) 64.
[90] See Chapters 6 and 7.

2.4. General Principles and Obligations

To conclude this overview of the CRPD, the present sub-section discusses two general provisions –Article 3 CRPD (General Principles) and Article 4 CRPD (General Obligations). In doing so, it highlights aspects of the two Articles that support the study and interpretation of Article 30 CRPD in this chapter, as well as the broader investigation undertaken in this thesis. Moreover, this sub-section highlights the division between civil and political rights versus economic, social and cultural rights. It considers the distinction between rights of immediate application and progressive realisation, as it may impact on the realisation of the CRPD provisions, notably Article 30 CRPD, and other articles discussed in this chapter.[91]

2.4.1. Article 3 CRPD

As can be inferred from its title, 'General Principles', Article 3 CRPD enunciates 'the general (or normative) principles upon which the CRPD is based' in a standalone Article,[92] making it a rather unique feature of the CRPD.[93] Through eight paragraphs, Article 3 CRPD references respect for inherent dignity, individual autonomy and independence of persons,[94] non-discrimination,[95] equality of opportunity[96] and between men and women,[97] full and effective participation and inclusion in society,[98] respect for difference and acceptation of persons with disabilities[99] and accessibility.[100] Additionally, it calls for respecting the evolving capacities of children,[101] prompting Series to note that the concept of 'protection', as well as the 'language of "vulnerability"' more generally, were consciously avoided in this specific Article and the rest of the Convention.[102] However, while gender and youth are discussed, race or older people are not mentioned.[103]

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[91] See Chapter 2, Section 3 on Article 30 CRPD, Section 4 on Article 27 CRPD and Section 5 on Articles 5, 8, 9, and 21 CRPD.
[92] Kayess and French (n 19) 27.
[93] Valentina Della Fina, 'Article 3 [General Principles]' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities* (Springer 2017) 120; Sarah Arduin, 'Article 3: General Principles' in Ilias Bantekas, Michael Ashley Stein and Dimitris Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford University Press 2018) 85.
[94] CRPD art 3(a).
[95] CRPD, art 3(b).
[96] CRPD, art 3(e).
[97] CRPD, art 3(g).
[98] CRPD, art 3(c).
[99] CRPD, art 3(d).
[100] CRPD, art 3(f).
[101] CRPD, art 3(h).
[102] Series, 'Disability and Human Rights' (n 4) 82.
[103] Lawson, 'The UN CRPD: New Era or False Damn?' (n 8) 591.

Some of those principles are generally found in other human rights instruments, like respect for inherent dignity, or equality and discrimination –which Mégret describes as the 'twin pillars' of the Convention.[104] In that sense, the principle of non-discrimination is 'pivotal' to the Convention –as well as to this thesis– and 'bridges conceptually civil and political rights, on the one hand, and economic, social, and cultural rights, on the other hand'.[105] In contrast, the inclusion of principles such as 'accessibility' or 'individual autonomy' is another novel or unusual feature of the CRPD in the human rights law landscape, as they had not been mentioned explicitly in UN treaties before.[106] A number of Articles enunciated later –such as Article 5 CRPD (Equality and Non-discrimination), Article 6 CRPD (Women with Disabilities), or Article 9 CRPD (Accessibility) to name a few– are the substantive translation of those principles.

Similarly to Articles 1 and 2 CRPD, the underlying principles enunciated therein provide further guidance as to the interpretation of the text of the Convention.[107] These principles can be seen as a 'red thread'[108] or a 'moral compass'[109] which features throughout the whole Convention, including in the preamble, and can be used as a tool to 'assess the conformity of domestic laws with the Convention'.[110] In that sense, Schulze stresses that those principles 'are closely connected or inter-linked to each other and, overall, to every provision in the Convention', meaning that '[t]heir impact is overtly and covertly evident in every Article'.[111] In fact, as noted when discussing data analysis in chapter 1, the general principles of the CRPD –especially those of non-discrimination, equality of opportunity, respect for difference and acceptation of persons with disabilities, and accessibility– have influenced the qualitative data analysis and the identification of those key issues underpinning the participation of professionals with disabilities in the EU's CCS, which also frame this thesis.[112]

[104] Mégret (n 12) 501.
[105] Arduin (n 93) 95.
[106] Della Fina, 'Article 3 [General Principles]' (n 93) 12, 130.
[107] Lawson, 'The UN CRPD: New Era or False Damn?' (n 8) 591; Della Fina, 'Article 3 [General Principles]' (n 93) 120.
[108] Lisa Waddington, 'The European Union and the United Nations Convention on the Rights of Persons with Disabilities: A Story of Exclusive and Shared Competences' (2011) 18 Maastricht Journal of European and Comparative Law 431, 436.
[109] Quinn (n 19) 41.
[110] Broderick and Ferri (n 1) 67.
[111] Marianne Schulze, *Understanding the UN Convention on the Rights of Persons with Disabilities: A Handbook on the Human Rights of Persons with Disabilities* (3rd ed, Handicap International 2010) 43.
[112] See Chapter 1, Sub-section 3.3.

2.4.2. Article 4 CRPD

Making a reference to the terminology characterising the purpose of the CRPD,[113] Article 4 CRPD enunciates the general obligations incumbent on States Parties to 'ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability'.[114] The first paragraph enunciates 'a range of strategies which must be adopted in pursuance of the general obligation' mentioned above,[115] thus providing an interesting benchmark for analysing the EU action touching upon the participation of professionals with disabilities in the CCS. 'Both negative and positive in nature', these obligations relate to a range of issues covered in specific Articles, such as non-discrimination, universal design, new technologies or accessible information.[116] Among other things, it requires States Parties to adopt legislative, administrative and other types of measures,[117] amend or abolish all appropriate measures including laws, regulations, customs and practices which amount to discrimination against persons with disabilities,[118] or refrain from engaging in any practice inconsistent with the Convention.[119] Article 4(1)(f)–(g) CRPD also calls for taking action to 'promote the development and availability of universal design, of assistive technology and of professionals appropriately trained in the provision of relevant skills essential to the realization of human rights'.[120]

Subsequently, Article 4(2) CRPD reaffirms a common distinction in human rights instruments, which differentiates between economic, social, and cultural rights subject to progressive realisation, and civil and political rights requiring immediate implementation.[121] The inclusion of this progressive realisation clause is instrumental to 'understanding the legal nature of States Parties' obligations under the CRPD and the questions concerning the implementation of the Convention in the domestic legal orders'.[122] On this point, the Committee on Economic, Social and Cultural Rights (CESCR) has indicated that 'progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able

[113] CRPD, art 1. See Chapter 2, Sub-section 2.1.
[114] CRPD, art 4(1) chapeau.
[115] Lawson, 'The UN CRPD: New Era or False Damn?' (n 8) 591.
[116] Valentina Della Fina, 'Article 4 [General Obligations]' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities* (Springer 2017) 141–142.
[117] CRPD, art 4(1)(a).
[118] CRPD, art 4(1)(b).
[119] CRPD, art 4(1)(d).
[120] Lawson, 'The UN CRPD: New Era or False Damn?' (n 8) 592.
[121] Coomara Pyaneandee, *International Disability Law: A Practical Approach to the United Nations Convention on the Rights of Persons with Disabilities* (Routledge 2018) 178.
[122] Della Fina, 'Article 4 [General Obligations]' (n 116) 147.

to be achieved in a short period of time'.[123] Pragmatically, a distinction is drawn between economic, social and cultural rights –the implementation of which is determined by the resources available to the State Party– 'without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law'.[124]

However, it must be emphasised that such categorisation must not be understood as a hierarchisation of the rights recognised in the Convention, and rather as a practical approach to their realisation.[125] As such, the CRPD takes into consideration the 'real word challenges' that Louise Arbour highlighted at the signature ceremony of the CRPD.[126] Additionally, the reference to the obligations being immediately applicable acts as a reminder that even social, economic and cultural rights enclose core obligations whose realisation cannot be understood as progressive.[127] This distinction is particularly important with regards to the realisation of Article 30 CRPD in the EU, but also of Article 27 CRPD, as both Articles enclose provisions which require immediate realisation. They are discussed in detail and contextualised in sections 3 and 4 of this chapter.[128]

In a third paragraph, Article 4 CRPD then sets out an obligation to 'closely consult with and actively involve persons with disabilities' when implementing the Convention.[129] As such, it 'embraces the motto of the disability movement of "nothing about us without us"',[130] and makes it clear that the successful implementation of the CRPD hinges on the effective involvement of persons with disabilities.[131] Additionally, enclosed in Article 4(4) CRPD is the 'so-called saving clause or safeguard clause'.[132] Also referred to as the principle of non-retrogression,[133] it indicates that the Convention shall not impact provisions 'more conducive to the realization of the rights of persons with disabilities'.[134] In a final paragraph,[135] the Convention recalls that it applies to all States Parties, including

[123] Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)' (1990) UN Doc E/1991/23 para 9.
[124] CRPD, art 4(2).
[125] Della Fina, 'Article 4 [General Obligations]' (n 116) 149.
[126] Louise Arbour, 'Opening Address' (High Level Dialogue on the Day of the Signing of the Convention on the Rights of Persons with Disabilities and its Optional Protocol: From Vision to Action: The Road to Implementation of the Convention, New York, 30 March 2007) 5.
[127] Theresia Degener, 'Disability in a Human Rights Context' (2016) 5 Laws 35, 6.
[128] See Chapter 2, Sub-sections 3.2.5. and 4.2.1.
[129] CRPD, art 4(3).
[130] Rachele Cera, 'Article 29 [Participation in Political and Public Life]' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities* (Springer 2017) 536.
[131] Ferri, 'The Legal Context' (n 39) 60.
[132] Della Fina, 'Article 4 [General Obligations]' (n 116) 152.
[133] Andrea Broderick, 'Article 4: General Obligations' in Ilias Bantekas, Michael Ashley Stein and Dimitris Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford University Press 2018) 137.
[134] CRPD, art 4(4).
[135] CRPD, art 4(5).

federal States, and that it must therefore be implemented throughout the territory of States Parties, including 'provinces or constituent units of a federal State'.[136]

3. Article 30 CRPD: Asserting the Right of Persons with Disabilities to Participate in Cultural Life

Following more general discussions on the CRPD, this section focuses on Article 30 CRPD and particularly the provisions that concern the professional participation in cultural life of persons with disabilities. After considering the provisions set out in Article 30 CRPD, it moves on to analysing how this professional participation is interpreted and further substantiated by the CRPD Committee. In accordance with the aim and scope of this thesis, this section does not address the provisions of Article 30 CRPD on recreation, leisure and sport.

3.1. Genesis of Article 30 CRPD

In addition to various recognitions of cultural rights in international law also discussed in the next chapter,[137] a number of disability-focused soft law instruments have paved the way for Article 30 CRPD, such as the 1982 World Programme of Action Concerning Disabled Persons (WPA).[138] Consecrating 'as one of its goals the equalisation of opportunities for people with disability',[139] the WPA laid the foundations for the non-binding Standard Rules on the Equalization of Opportunities for Persons with Disabilities (Standard Rules),[140] an instrument which 'for the first time contextualised disability within the frame of human rights and included an explicit provision on culture'.[141] Rule 10 (Culture), but also Rule 11 (Recreation and Sport), of the Standard Rules became the 'forerunner for Article 30 CRPD',[142] introducing 'language and concepts' that would significantly impact the drafting of Article 30 CRPD, and particularly its first and second paragraphs.[143] Although inspired by the language of the Standard Rules, the *travaux préparatoires* of the CRPD reveal that, since 'the notion of cultural rights was (and still

[136] Della Fina, 'Article 4 [General Obligations]' (n 116) 153.
[137] See Chapter 3, Section 2.
[138] World Programme of Action Concerning Disabled Persons, UNGA Res 37/52 (3 December 1982) UN Doc A/RES/37/52.
[139] Kayess and French (n 19) 15.
[140] Standard Rules on the Equalization of Opportunities for Persons with Disabilities, UNGA Res 48/96 (4 March 1994) UN Doc A/RES/48/96 (Standard Rules).
[141] Leahy and Ferri, 'The Right to Participate in Cultural Life' (n 6) 6.
[142] Delia Ferri, 'The Right of Persons with Disabilities to Participate in Cultural Life' in Delia Ferri and Ann Leahy, *Dismantling Barriers and Advancing the Right of Persons with Disabilities to Participate in Cultural Life: A Socio-Legal Analysis* (Routledge 2025) 85.
[143] Bantekas and others (n 11) 866.

is) rather foggy as concerns non-disabled persons', delegates were seemingly not aware of the breadth and nature of the obligations involved in realising the right to participate in cultural life of persons with disabilities.[144]

Furthermore, Bantekas and others note that, in view of the first sessions of the Ad Hoc Committee, cultural rights did not appear as a prominent concern, and 'central issues, such as the definition of disability, the nature of disability rights, legal capacity, enablement and accessibility, to name a few' dominated the discussions.[145] However, many questions were raised concerning the scope of the Article and on how to deal in a single Article with distinct issues such as participation in leisure, sports and recreational activities, and participation in cultural life.[146] A number of delegations and civil society representatives also argued in favour of two separate Articles, as this would 'allow for full elaboration of the issues related to each right and would assist States with implementation and monitoring'.[147]

During the drafting, the current Article 30(2) CRPD –which informs the recognition of a right to professional participation in cultural life– was separated from the first paragraph. Schulze notes that this change was motivated by a need to change language 'as developing "creative, artistic and intellectual potential" is something that States Parties cannot recognize but wanted to "enable"'.[148] The drafting of what is now Article 30(3) CRPD, which seeks to strike a balance between the rights of persons with disabilities and intellectual property (IP) rights, was much more contentious. Indeed, there were discussions on the use of IP rights over 'copyright',[149] and the scope of obligations that would ensue from the choice of terminology.[150]

What is now Article 30(4) CRPD was also controversial as it addressed the recognition and support of persons with disabilities' 'specific cultural and linguistic identity', including contentious phrases like 'linguistic identity' and 'deaf culture', and discussed sign languages and deaf culture. Indeed, following the Sixth Session of the Ad Hoc Committee, the Chairman highlighted in a brief sentence that there had been 'no agreement on this paragraph, with some delegations proposing to delete it and others to

[144] Bantekas and others (n 11) 868.
[145] Bantekas and others (n 11) 867.
[146] UNGA, 'Report of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities on its Sixth Session' (17 August 2005) UN Doc A/60/266 annex II, paras 132–133.
[147] United Nations Department of Economic and Social Affairs (UN DESA), 'Daily Summary of Discussions Related to Article 24: Participation in Cultural Life, Recreation, Leisure and Sport' (Third Session of the Ad Hoc Committee, New York, 2 June 2004) <https://www.un.org/esa/socdev/enable/rights/ahc3sum24.htm> accessed 30 July 2025.
[148] Schulze (n 111) 161.
[149] UNGA, 'Report of the Ad Hoc Committee on its Sixth Session' (n 146) annex II, para 139.
[150] Schulze (n 111) 161.

retain it'.[151] He still noted that a compromise proposal –that would become Article 30(4) CRPD– had started to gain support.[152] This shows that, albeit well established in international law, enshrining a right to participate in cultural life of persons with disabilities was not exempt of controversies. Ultimately, the right to take part in cultural life of persons with disabilities, is the object of four paragraphs in Article 30 CRPD, which precede provisions on recreation, leisure and sport.[153]

3.2. A Content Overview of Article 30 CRPD

In offering an overview of the right to participate in cultural life of persons with disabilities –as set out in the CRPD– this chapter focuses on Article 30(1)–(4) CRPD. In doing so, it discusses the provisions that relate specifically to cultural life, and how they translate different dimensions of cultural rights for persons with disabilities, including a right to professional participation.

From the outset, it is interesting to note two things. First, as per the Article's title, the emphasis is on participation, indicating that the right to culture of persons with disabilities is 'multifaceted and capacious' and more than a right of access to culture.[154] Therefore, under the CRPD, the right to take part in cultural life encompasses different aspects that were also mentioned in the introductory chapter. As is made clear in Article 30(2) CRPD discussed below, this includes 'the freedom to enjoy' as well as 'the freedom to pursue and contribute to every aspect of cultural life'.[155]

The second remark relates to the understanding of culture adopted in the CRPD. In the past, culture was often confined to the idea of 'high culture'–mostly referring to cultural products and services of exception– as would have been the case when the UDHR or ICESCR were drafted.[156] In this instance, although no definition of cultural life or culture is provided in the CRPD, it 'seems to encompass a broad understanding of "culture"'.[157] Indeed, the Convention appears committed to a comprehensive interpretation of culture, embracing both 'high' and 'popular' culture, since it mentions theatre as well as television programmes in paragraph (1)(b), and culture as 'a way of life' with a fourth paragraph dealing with cultural identity.[158] All in all, the four 'culture-focused' paragraphs of Article

[151] UNGA, 'Report of the Ad Hoc Committee on its Sixth Session' (n 146) annex II, para 141.
[152] UNGA, 'Report of the Ad Hoc Committee on its Sixth Session' (n 146) annex II, para 142.
[153] CRPD, art 30(5).
[154] Ferri, 'The Right of Persons with Disabilities to Participate in Cultural Life' (n 142) 85.
[155] Bantekas and others (n 11) 876.
[156] Pok Yin S Chow, 'Culture as Collective Memories: An Emerging Concept in International Law and Discourse on Cultural Rights' (2014) 14 Human Rights Law Review 611, 617–618.
[157] Broderick and Ferri (n 1) 272.
[158] Ferri, 'The Right of Persons with Disabilities to Participate in Cultural Life' (n 142) 86.

30 CRPD address 'many, sometimes disparate, issues, which require several strands of expertise'.[159]

3.2.1. Paragraph 1

Under Article 30(1) CRPD, States Parties are required to recognise 'the right of persons with disabilities to take part on an equal basis with others in cultural life and shall take all appropriate measures to that end' –a chapeau that almost mirrors the phrasing of the UDHR.[160] In this respect, it specifies that States Parties have the obligation to ensure that persons with disabilities can:

> (a) Enjoy access to cultural materials in accessible formats;
> (b) Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats;
> (c) Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.[161]

The access dimension is thus at the heart of the first paragraph, as it specifies the various forms that guaranteeing accessibility of cultural goods and services can take.[162] This reflects the work of the CESCR when it states in General Comment No. 21 that accessibility is a necessary condition to the full realisation of the right to take part in cultural life, highlighting at the same time that access for persons with disabilities should be 'provided and facilitated'.[163] Article 30(1) CRPD therefore includes a non-exhaustive list of measures to realise the right of persons with disabilities to take part in cultural life,[164] calling for the accessibility to persons with disabilities of tangible or intangible cultural materials, activities, performances, services and monuments.[165] In that sense, Bantekas and others also note that Article 30(1) CRPD is a call for democratising culture[166] and ensuring that 'the means and instruments of cultural activity' are within

[159] Bantekas and others (n 11) 864.
[160] Luigino Manca, 'Article 30 [Participation in Cultural Life, Recreation, Leisure and Sport]' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities* (Springer 2017) 544.
[161] CRPD, art 30(1).
[162] Schulze (n 111) 161; Broderick and Ferri (n 1) 272.
[163] CESCR, 'General Comment No. 21: Right of Everyone to Take Part in Cultural Life (Art. 15, Para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights)' (2009) UN Doc E/C.12/GC/21 para 16 chapeau and (b).
[164] Manca (n 160) 544–545.
[165] Ferri, 'The Right of Persons with Disabilities to Participate in Cultural Life' (n 142) 87.
[166] Bantekas and others (n 11) 876.

reach for all individuals with disabilities to be able to participate and contribute freely and fully to cultural life,[167] a point which is further teased out in chapter 7.[168]

With regard to guaranteeing accessibility to cultural life for persons with disabilities on an equal basis with others, there is a series of positive and negative obligations incumbent on States Parties. In this context, States Parties should 'refrain from discriminatory practices that would contribute to the segregation and isolation of persons with disabilities in the cultural sphere', while adopting legislation and other measures to tackle discrimination and support the participation of persons with disabilities in cultural life.[169] Article 30(1)(c), which focuses on access to cultural spaces, also alludes to the progressive elimination –'as far as possible' in the case of heritage–[170] of 'any architectural barriers that may pose a serious obstacle',[171] and even to measures to ensure the accessibility of newly designed cultural spaces.[172]

3.2.2. Paragraph 2

If 'access' is a key dimension of the right to take part in cultural life, it is not the only one. In fact, Article 30(2) CRPD requires States Parties to 'take appropriate measures to enable people with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit but also for the enrichment of society'.[173] In acknowledging an inherent potential in all persons with disabilities, Article 30(2) CRPD therefore suggests that all persons with disabilities have 'the ability to enjoy culture as well as the potential for creative, artistic, and intellectual pursuits'.[174]

Thus, while the first paragraph focuses more on a 'passive enjoyment of cultural life' or on taking part as consumers of culture,[175] the second addresses the more active dimension this thesis relies on, with an underlying text that appears more emancipatory.[176] However, the reference to developing and utilising one's potential holds several meanings at once. One signification can be the participation in cultural life through the pursuit of cultural

[167] See Recommendation on Participation by the People at Large in Cultural Life and their Contribution to it (adopted 26 November 1976) UNESCO 19/C Res Annex I para 1.
[168] See Chapter 7, Section 1.
[169] Bantekas and others (n 11) 879.
[170] CRPD, art 30(1)(c). See also Committee on the Rights of Persons with Disabilities (CRPD Committee), 'General Comment No. 2 (2014): Article 9: Accessibility' (2014) UN Doc CRPD/C/GC/2 para 44.
[171] Manca (n 160) 545.
[172] Bantekas and others (n 11) 884.
[173] CRPD, art 30(2).
[174] Bantekas and others (n 11) 884–885.
[175] Elsa Stamatopoulou, *Cultural Rights in International Law: Article 27 of the Universal Declaration of Human Rights and Beyond* (Martinus Nijhoff 2007) 121.
[176] Bantekas and others (n 11) 873.

activities, such as painting or singing for one's own personal enjoyment and benefit, which entails a 'protection of the artistic and intellectual potential of people with disabilities'.[177] There is also a contributory dimension to it, where the involvement of persons with disabilities in the creation of cultural goods and services is not overlooked but rather understood as an enrichment of society,[178] whether they are amateur or professionals.[179] As such, Article 30(2) CRPD acknowledges that persons with disabilities can 'achiev[e] high levels of artistic, creative and intellectual attainment'.[180] Rather than seeing cultural and creative activities within a therapeutic framework –which would limitedly allow for developing professional careers–[181] Article 30(2) CRPD also reflects a growing belief held by persons with disabilities 'that they are capable, strong, professional' and have therefore the capacity of 'pursuing a career' in the CCS.[182]

While in other instances the Convention expressly refers to persons with disabilities as professionals, it is interesting to note that this aspect hardly appears explicit in Article 30(2) CRPD.[183] Although notable, this lack of specific language cannot be interpreted as excluding participation in cultural life as professionals, as the CRPD generally aims at the full and effective participation and inclusion of persons with disabilities in all aspects of life.[184] In this respect, Broderick and Ferri note that 'Articles 30(2) and (3) CRPD have the clear aim of increasing the low participation rate of people with disabilities in culture generally, both as artists and end users of cultural goods and services'.[185] On that basis, this thesis argues that 'the active creation of culture in its material or spiritual sense' which Article 30(2) CRPD promotes,[186] does include the participation of persons with disabilities as professionals of the CCS.

It is also worth noting that the accessibility dimension pushed by Article 30(1) CRPD, also underpins Article 30(2) CRPD, as an enabler to the information-seeking behaviours of cultural and creative professionals.[187] This second paragraph can also be interpreted as

[177] Manca (n 160) 545.
[178] CRPD, art 30(2).
[179] Delia Ferri and others, 'Implementing the Right of People with Disabilities to Participate in Cultural Life across Five European Countries: Narratives and Counternarratives' (2022) 14 Journal of Human Rights Practice 859, 873.
[180] Bantekas and others (n 11) 884.
[181] Per Koren Solvang, 'From Identity Politics to Dismodernism? Changes in the Social Meaning of Disability Art' (2012) 6 Alter 178, 183.
[182] Ayse Collins and others, 'Exploring Barriers to Social Inclusion for Disabled People: Perspectives from the Performing Arts' (2022) 28 Journal of Management & Organization 308, 320.
[183] For example, Article 24(4) CRPD calls on States Parties to take appropriate measures to 'employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille'.
[184] See CRPD, arts 1 and 3(c).
[185] Broderick and Ferri (n 1) 273.
[186] Stamatopoulou (n 175) 121.
[187] See, among others, William Hemmig, 'An Empirical Study of the Information-seeking Behavior of Practicing Visual Artists' (2009) 65 Journal of Documentation 682; Ann Medaille, 'Creativity and Craft: The Information-seeking Behavior of Theatre Artists' (2010) 66 Journal of Documentation 327.

imposing 'some form of accessibility to the "art market" (broadly understood)', and the development of 'opportunities for individuals with disabilities to showcase their artwork and participate in cultural performances'.[188] It ensues that States Parties can be required to enable access to training to follow 'creative, artistic and intellectual pursuits' – guaranteeing not only its availability but also its funding.[189] It is also argued that such provision would require that persons with disabilities be closely consulted with and actively involved in 'the decision-making processes of cultural policies affecting them'.[190] This obligation also stems from Article 4(3) CRPD discussed earlier, and relates to the principle of 'full and effective participation and inclusion' enshrined in Article 3(c) CRPD.[191] This particularly echoes the analysis of Stamatopoulou as she emphasised that cultural rights also entail a right to take part in the 'definition, preparation and implementation' of cultural policies.[192]

In the context of this thesis, it is posited that this provision particularly underpins the participation of professionals with disabilities in the EU's CCS. As such, it is the provision with the most relevance for this thesis –one that must also be understood in conversation with Article 30(1), (3) and (4) CRPD as their combined implementation contributes to enabling cultural and creative professionals to take part in cultural life. Against this background, this chapter also focuses on how the CRPD Committee discusses Article 30(2) CRPD, both in its dialogue with States Parties, and its more interpretative work in terms of General Comments and jurisprudence.[193]

3.2.3. Paragraph 3

As mentioned earlier, the Convention addresses in the third paragraph the delicate question of the 'power of intellectual property' in cultural life and the balancing of IP rights, human rights, and the rights of persons with disabilities.[194] It may in fact have been one of the most contentious provisions contained in Article 30 CRPD, one that the World Blind Union particularly supported, and in fact, the first instance that such issue was

[188] Bantekas and others (n 11) 865, 886.
[189] Bantekas and others (n 11) 886.
[190] Bantekas and others (n 11) 886.
[191] Ilze Grobelaar Du Plessis and Jehoshaphat Njau, 'Article 29: Participation in Political and Public Life' in Ilias Bantekas, Michael Ashley Stein and Dimitris Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford University Press 2018) 849.
[192] Stamatopoulou (n 175) 141.
[193] See Chapter 2, Section 3.3.
[194] Abbe Brown and Charlotte Waelde, 'IP, Disability, Culture and Exceptionalism: Does Copyright Law Deal with Difference?' in Graeme B Dinwoodie (ed), *Intellectual Property and General Legal Principles: Is IP a Lex Specialis?* (Edward Elgar 2015) 225.

addressed in an international treaty.[195] In that respect, it was subject to careful scrutiny 'since the start of the *travaux préparatoires* of the CRPD'.[196]

With this third paragraph, the CRPD therefore aims to address those 'laws protecting [IP] rights which may present an obstacle to the transcription of material into accessible formats'.[197] It creates an obligation for States Parties to ensure that the protection of IP rights does not lead to 'unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials'.[198] Although it is not clear what the 'appropriate steps' to be taken by States Parties in this respect consist of, it is understood that they 'most commonly take the form of permitted uses under [IP] laws'.[199]

Meanwhile, Article 30(3) CRPD 'has found further specification', thanks to the World Intellectual Property Organization, when the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or Otherwise Print Disabled (the Marrakesh Treaty) was adopted.[200] Clearly reinforcing the obligation set out in the CRPD, the Marrakesh Treaty calls on contracting parties to 'introduce or maintain in their copyright regimes exceptions and limitations to the benefit of the print disabled',[201] and provides a standard of reference 'to permit the reproduction, distribution and making available of published works in formats designed to be accessible'.[202] Albeit it has a more limited personal and material scope,[203] the Marrakesh Treaty is a particularly relevant international instrument with regards to Article 30(3) CRPD as 'its very purpose is to facilitate access to published works for persons who are blind, visually impaired, or otherwise print disabled'.[204] As such, it features regularly in the dialogue between the CRPD Committee and the States Parties over the implementation of Article 30 CRPD.[205]

3.2.4. Paragraph 4

The fourth paragraph is the last of Article 30 CRPD that concerns culture. It addresses the 'recognition and support of [the] specific cultural and linguistic identity' of persons

[195] Bantekas and others (n 11) 888, 893.
[196] Manca (n 160) 545.
[197] Lawson, 'The UN CRPD: New Era or False Damn?' (n 8) 602.
[198] CRPD, art 30(3).
[199] Bantekas and others (n 11) 890.
[200] Ferri, 'The Right of Persons with Disabilities to Participate in Cultural Life' (n 142) 89. See Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or Otherwise Print Disabled (adopted 27 June 2013, entered into force 30 September 2016) WIPO Publication No. 218 (E).
[201] Simonetta Vezzoso, 'The Marrakesh Spirit – A Ghost in Three Steps?' (2014) 45 IIC - International Review of Intellectual Property and Competition Law 796, 797.
[202] Bantekas and others (n 11) 865.
[203] Broderick and Ferri (n 15) 274.
[204] Manca (n 160) 545.
[205] Leahy and Ferri, 'The Right to Participate in Cultural Life' (n 6) 16–18. See also Chapter 2, Sub-section 3.2.2.

with disabilities and discusses sign languages and deaf culture.[206] Underpinned by the principle of non-discrimination,[207] Article 30(4) CRPD provides more specifically that all 'persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity'. In this respect, it expressly includes the recognition and support of sign languages and Deaf culture, another contentious matter during the *travaux préparatoires*.[208] It concurs with other Articles of the CRPD, such as Article 21 CRPD (Freedom of Expression and Opinion and Access to Information) and Article 24 CRPD (Education), which also contribute 'to recogniz[ing] and promot[ing] the use of sign languages as an essential tool of communication for the deaf communities'.[209] In substance, this paragraph mainly insists on the recognition and support of persons with disabilities' specific identities, thus introducing 'positive obligations … in relation to accessibility, inclusion and empowerment'.[210]

Broadly speaking, while it does not define 'disability culture' or 'disability identity', both concepts being a source of debate for many years,[211] Article 30(4) CRPD participates to conceptualising that persons with disabilities belong to a distinctive group (or groups when distinguishing from Deaf people) –one that shares a common language, historical and lineage ties, evidence of cohesive social community and political solidarity,[212] albeit this is sometimes discussed.[213] The reference to the notion of identity, and its protection, mirrors a development that only dates back to 'the late 1990s [where] the need to protect identities in the sense of "being different" became more visible within the international human rights discourse'.[214] Article 30(4) CRPD is therefore the provision that best

[206] CRPD, art 30(4).
[207] Stamatopoulou (n 175) 240.
[208] UNGA, 'Report of the Ad Hoc Committee on its Sixth Session' (n 146) annex II, para 141.
[209] Manca (n 160) 546.
[210] Bantekas and others (n 11) 901.
[211] See, among many others, Michael Oliver, *Understanding Disability: From Theory to Practice* (Macmillan 1996); Colin Barnes and Geoff Mercer, 'Disability Culture: Assimilation or Inclusion?' in Gary L Albrecht, Katherine D Seelman and Michael Bury (eds), *Handbook of Disability Studies* (SAGE 2001); Nick Watson, 'Well, I Know this Is Going to Sound Very Strange to You, but I Don't See Myself as a Disabled Person: Identity and Disability' (2002) 17 Disability & Society 509; Rose Galvin, 'The Paradox of Disability Culture: The Need to Combine versus the Imperative to Let Go' (2003) 18 Disability & Society 675; Tom Shakespeare, *Disability Rights and Wrongs Revisited* (2nd edn, Routledge 2014); Erin E Andrews and others, '#SaytheWord: A Disability Culture Commentary on the Erasure of "Disability"' (2019) 64 Rehabilitation Psychology 111.
[212] These are the points highlighted by Peters as she argues for the existence of a disability culture. See Susan Peters, 'Is there a Disability Culture? A Syncretisation of Three Possible World Views' (2000) 15 Disability & Society 583.
[213] See for instance, Yvonne Donders, 'Foundations of Collective Cultural Rights in International Human Rights Law' in Andrzej Jakubowski (ed), *Cultural Rights as Collective Rights: An International Law Perspective* (Brill Nijhoff 2016) 89.
[214] Bantekas and others (n 11) 898.

reflects the collective dimension of cultural rights for persons with disabilities,[215] as well as the anthropological conception of culture as a way of life.[216]

3.2.5. Minimum Core Obligations and Immediate Realisation

As far as cultural rights are concerned, the CRPD has therefore taken a major step forward by enshrining in international law what the right to take part in cultural life implies for people with disabilities. In doing so, the Convention also make 'particularly clear the requirement for positive measures for the fulfillment of cultural rights'.[217] It therefore ensues from the classification of Article 30 CRPD in the category of cultural rights that States Parties are under an obligation of progressive realisation.

However, the CESCR has highlighted that there are still minimum core obligations falling on States Parties to ensure 'the satisfaction of, at the very least, minimum essential levels of each of the rights', whether they are of a cultural, social or economic nature.[218] This is something that Article 4(2) CRPD alludes to when referring to 'those obligations contained in the present Convention that are immediately applicable according to international law'. The concept of minimum core obligations establishes that for a range of measures, like the ones required by the implementation of Article 30(2) CRPD or Article 30 CRPD more broadly, it is possible and necessary to go beyond issues of 'competing necessities and insufficient resources'.[219] In the context of the CRPD and this thesis, it appears particularly useful since cultural rights are often seen –including by non-state actors– as secondary to civil and political rights, or as a luxury, meaning that their implementation is, in turn, disregarded.[220]

Referring to the concept developed by the CESCR, Stamatopoulou has highlighted the following core obligations of immediacy regarding the right to take part in cultural life:

> (a) Non-discrimination in law and in practice …
> (b) Non-interference in the freedom of cultural expression of individuals and groups …

[215] Ann Leahy and Delia Ferri, 'Rethinking and Advancing a "Bottom-up" Approach to Cultural Participation of Persons with Disabilities as Key to Realising Inclusive Equality' (2024) 20 International Journal of Law in Context 267, 271. On cultural rights as collective rights, see Andrzej Jakubowski (ed), *Cultural Rights as Collective Rights: An International Law Perspective* (Brill Nijhoff 2016).
[216] Bantekas and others (n 11) 899.
[217] Stamatopoulou (n 175) 240.
[218] CESCR, 'General Comment No. 3' (n 123) para 10.
[219] Stamatopoulou (n 175) 153.
[220] Stamatopoulou (n 175) 153; Michael Ashley Stein, 'Disability Human Rights' (2007) 95 California Law Review 75, 111.

(c) Protection of the exercise of the freedom to participate in cultural life, when it is under threat by non-state actors, through the state's regular discharge of police and justice functions …
(d) Ensuring representative participation of society in the definition, preparation and implementation of policies on culture …
(e) Promoting policies of respect for cultural rights …
(f) Taking steps towards the full enjoyment and fulfillment of cultural rights.[221]

On this basis, Article 30 CRPD, and particularly Article 30(2) CRPD, incorporate elements that fall under immediate application, including the obligation to address discrimination, which is omnipresent in the provisions examined above, and key to the analysis carried out in this thesis. While the matter of resources was core to the development of Article 30 CRPD,[222] referring to those minimum core obligations demonstrates 'that the promotion and respect for cultural rights [is] not necessarily one of public financial resources', nor can the lack of it provide 'an excuse by human rights standards for discriminating',[223] including when it comes to the implementation of the right of persons with disabilities to participate in cultural life.

As such, the concept of minimum core obligations in cultural rights directly underpins the participation of cultural and creative professionals with disabilities in the EU's CCS as it implies core minimum obligations for the EU to enable such participation. This is most evident with non-discrimination, which is highlighted here but also in chapter 1 and chapter 6 as a core theme of this thesis.[224] Still, additional core obligations speak to the focus of this research, including when referring to ensuring representation in the development of cultural policies, promoting policies of respect for cultural rights, or taking steps towards the full enjoyment and fulfilment of cultural rights.

3.3. The CRPD Committee and Enabling Professional Participation in Cultural Life

In view of the precedent reflections, this sub-section then focuses on the work of the CRPD Committee and interpretation of Article 30 CRPD. It particularly investigates whether the treaty body addresses and conceptualises a professional participation in cultural life within Article 30 CRPD –at least more explicitly than the Convention. By examining the work of the CRPD Committee through the sole prism of professional

[221] Stamatopoulou (n 175) 154–156.
[222] Bantekas and others (n 11) 867.
[223] Stamatopoulou (n 175) 153–154.
[224] See Chapter 1, Sub-section 4.1, and Chapter 6.

participation, this sub-section offers a distinctive and innovative contribution to the understanding of the right of persons with disabilities to participate in cultural life.

In doing so, it considers the reporting guidelines, list of issues (LoIs), and concluding observations (COs) issued by the CRPD Committee, as well as States Parties' reports. It is further supported by an analysis of the interpretative work of the CRPD Committee on the Convention, meaning its jurisprudence and the General Comments published until this point. In order to provide a better overview of the CRPD's work with regards to Article 30 CRPD, it covers other States Parties to the Convention than just the EU and its Member States.

3.3.1. Monitoring the Implementation of Article 30 CRPD

As just introduced, this sub-section investigates how and whether the participation of professionals with disabilities in cultural life features in the reporting process followed by States Parties to the CRPD. Thus, it relies on the work undertaken by the CRPD Committee in its 'report-receiving role'.[225] In this respect, States Parties are instructed, under Article 35 CRPD, to submit a detailed progress report to the CRPD Committee within two years after the entry into force of the Convention, and then every four years.[226] In view of the guidelines decided by the CRPD Committee,[227] the initial report and the subsequent reports must detail 'actions taken to implement the general principles and specific articles of the Convention',[228] and difficulties encountered in that respect.[229] As part of the reporting process overseen in Article 36 CRPD (Consideration of Reports), the CRPD Committee is then tasked with examining those reports and making 'suggestions and general recommendations as it thinks fit'.[230]

3.3.1.1. Reporting Guidelines and Lists of Issues

As provided in Article 35(3) CRPD, the CRPD Committee has drawn up guidelines specifying the content of the reports in 2009 and 2016.[231] The two sets of guidelines

[225] Lawson, 'The UN CRPD: New Era or False Damn?' (n 8) 615.
[226] CRPD, art 35(1) and (2).
[227] CRPD, art 35(3).
[228] Peter Mittler, 'The UN Convention on the Rights of Persons with Disabilities: Implementing a Paradigm Shift' (2015) 12 Journal of Policy and Practice in Intellectual Disabilities 79, 80.
[229] CRPD, art 35(5).
[230] Lawson, 'The UN CRPD: New Era or False Damn?' (n 8) 615.
[231] CRPD Committee, 'Guidelines on Treaty-Specific Document to Be Submitted by States Parties under Article 35, Paragraph 1, of the Convention on the Rights of Persons with Disabilities' (2009) UN Doc CRPD/C/2/3 (Original Reporting Guidelines); CRPD Committee, 'Guidelines on Periodic Reporting to the Committee on the Rights of Persons with Disabilities, Including under the Simplified Reporting Procedure' (2016) UN Doc CRPD/C/3 (Revised Reporting Guidelines).

mention that States Parties should report on '[m]easures taken to recognize and promote the right of persons with disabilities to take part on an equal basis with others in cultural life, including opportunities to develop and utilize their creative, artistic and intellectual potential'.[232] Both sets of guidelines offer no explicit consideration of a professional dimension to cultural participation and, actually, 'do little more than to reiterate the provisions expressed in article 30(1) and (2) CPRD'.[233] In comparison, with respects to Article 24 CRPD (Education) –which, admittedly, specifically mentions professionals with disabilities– the guidelines refer to 'measures to incorporate persons with disabilities in the education team'[234] and those taken 'to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, in the regular education system'.[235]

The LoIs drafted by the CRPD Committee following receipt of the States' reports also provide little insight in that respect. They mainly reflect the reporting guidelines and sometimes do not even engage with Article 30 CRPD,[236] or only to a very limited extent.[237] The CRPD Committee is usually seen to insist on measures relating to the 'accessibility of sports facilities, museums, libraries, cultural and historical heritage sites, tourist attractions and any other places relevant to the cultural and recreational life of persons with disabilities'.[238] The ratification of the Marrakesh Treaty[239] or, for EU Member States, the state of implementation of the Marrakesh Directive,[240] is also a common feature of LoIs.[241]

Nevertheless, it is interesting to note that on occasion the CRPD Committee engages with persons with disabilities as more active actors of cultural life. In that sense, it instructed

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[232] CRPD Committee, 'Original Reporting Guidelines' (n 231) annex, 17; CRPD Committee, 'Revised Reporting Guidelines' (n 231) para 32(d).
[233] Bantekas and others (n 11) 873.
[234] CRPD Committee, 'Original Reporting Guidelines' (n 231) annex, 14.
[235] CRPD Committee, 'Revised Reporting Guidelines' (n 231) para 26(u).
[236] CRPD Committee, 'List of Issues in Relation to the Initial Report of France' (2019) UN Doc CRPD/C/FRA/Q/1.
[237] See CRPD Committee, 'List of Issues in Relation to the Initial Report of Slovenia' (2017) UN Doc CRPD/C/SVN/Q/1 para 41, which focuses on Article 30 CRPD and demands to 'update the Committee about progress made to ensure equal access and equal recognition for persons with disabilities in sports and in cultural life'. See, more recently, CRPD Committee, 'List of Issues in Relation to the Initial Report of the Netherlands' (2022) UN Doc CRPD/C/NLD/Q/1 para 28.
[238] CRPD Committee, 'List of Issues in Relation to the Initial Report of Finland' (2023) UN Doc CRPD/C/FIN/Q/1 para 27(a). Similarly, see CRPD Committee, 'List of Issues in Relation to the Combined Second and Third Periodic Reports of Lithuania' (2023) UN Doc CRPD/C/LTU/Q/2-3 para 26(a).
[239] CRPD Committee, 'List of Issues in Relation to the Initial Report of Malta' (2018) UN Doc CRPD/C/MLT/Q/1 para 37(b); CRPD Committee, 'List of Issues in Relation to the Initial Report of Norway' (2018) UN Doc CRPD/C/NOR/Q/1 para 26(b); CRPD Committee, 'List of Issues Combined Second and Third Periodic Reports of Lithuania' (n 238) para 26(b).
[240] Directive (EU) 2017/1564 of the European Parliament and of the Council of the European Union on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled and amending Directive No. 2001/29/EC on the harmonization of certain aspects of copyright and related rights in the information society [2017] OJ L242/6 (Marrakesh Directive).
[241] Leahy and Ferri, 'The Right to Participate in Cultural Life' (n 6) 17. See among others, CRPD Committee, 'List of Issues Initial Report of Finland' (n 238) para 27(b).

the Lithuanian government to provide information on initiatives pursued to 'promote culture and art among creators with disabilities',[242] and the Norwegian one to '[e]liminate sociocultural/environmental barriers hindering the participation of persons with disabilities in cultural life … television and films'.[243]

3.3.1.2. Concluding Observations

In the COs, which are adopted after every review of the States Parties' reports, the CRPD Committee has –in its own words– expressed concern on a number of issues, including the absence of signature and/or ratification of the Marrakesh Treaty,[244] as well as:

> the lack of access to, and participation in, sports and cultural facilities and activities, in particular for children and adolescents, the meagre progress in private-sector promotion of participation in cultural life, the low percentage of television programmes that are captioned or audio-described.[245]

Further to that, the CRPD Committee also highlighted the diversity of its recommendations as it advised States Parties to:

> develop policies and measures for the participation of persons with disabilities in cultural and sports facilities and activities, with sanctions applied for non-compliance; promote public-private agreements to set up accessible recreational and cultural spaces; take measures to increase captioning and audio description of television programmes; and start a national plan of accessible sport. It has also recommended that State parties sign, ratify and implement the Marrakesh treaty, or ratify and implement the Marrakesh Treaty.[246]

Additionally, the treaty body has also called on States Parties to ensure the recognition of sign languages, including as official languages,[247] and sometimes noted with appreciation such recognition.[248]

One can observe the very same tendency in the COs, as in the LoIs, meaning that the CRPD Committee engages limitedly with the right to participate in cultural life, and even less with the notion of persons with disabilities as cultural and creative professionals.[249]

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[242] CRPD Committee, 'List of Issues Combined Second and Third Periodic Reports of Lithuania' (n 238) para 26(c).
[243] CRPD Committee, 'List of Issues Initial Report of Norway' (n 239) para 26(b).
[244] See Leahy and Ferri, 'The Right to Participate in Cultural Life' (n 6) 17–18.
[245] UNGA, 'Report of the Committee on the Rights of Persons with Disabilities' in 'General Assembly Official Records Seventieth Session Supplement No. 55' (2015) UN Doc A/70/55 para 69.
[246] UNGA, 'Report of the CRPD Committee' (n 245) para 70.
[247] See CRPD Committee, 'Concluding Observations on the Initial Report of the Republic of Korea' (2014) UN Doc CRPD/C/KOR/CO/1 para 42; CRPD Committee, 'Concluding Observations on the Initial Report of Switzerland' (2022) UN Doc CRPD/C/CHE/CO/1 para 58.
[248] See CRPD Committee, 'Concluding Observations on the Initial Report of the Kingdom of the Netherlands' (2024) UN Doc CRPD/C/NLD/CO/1 para 4.
[249] Leahy and Ferri, 'The Right to Participate in Cultural Life' (n 6) 25.

In this respect, Bantekas and others point out that cultural rights have traditionally been regarded as a '"neglected category" of rights, ie the category of rights that is the least researched, developed, and understood', a point which seems verified when analysing the work of the CRPD Committee.[250] In this regard, they found that just forty-four out of the sixty-two COs available up until 2018 considered Article 30 CRPD, with twenty-three only focusing on recommending the ratification of the Marrakesh Treaty.[251] For example, the COs for Denmark, Czech Republic, Slovenia, or Sweden focus solely on the Marrakesh Treaty.[252] The Committee is not much more expansive in the case of Bulgaria.[253] In addition to being concerned by the non-ratification of the Marrakesh Treaty and encouraging its 'prompt ratification', it expresses its concerns about Bulgaria's 'insufficient efforts to support access to and participation of persons with disabilities in cultural … activities'.[254] In this respect, the CRPD Committee has also invited States Parties, in rather generic terms, to take steps to support and encourage such participation,[255] recommending for example to set up specific budgets.[256]

Although it is often unclear whether this refers to professional or amateur participation, in some instances, the treaty body discusses what is perhaps a more active aspect of taking part in cultural life. For example, it has recommended that States Parties 'take appropriate measures to ensure that persons with disabilities have access to and actively participate in cultural … activities',[257] and 'encourage the participation of persons with disabilities in cultural performances and cultural exchanges'.[258] Alternatively, it has also mentioned that Croatia should:

> take appropriate steps to ensure the accessibility of mainstream cultural facilities and enable persons with disabilities to have the opportunity to develop and

[250] Bantekas and others (n 11) 873. See also Stamatopoulou (n 175) 1; Stein (n 220) 111; Chow, 'Cultural Rights' (n 10) 426.
[251] Bantekas and others (n 11) 873.
[252] CRPD Committee, 'Concluding Observations on the Initial Report of Denmark' (2014) UN Doc CRPD/C/DNK/CO/1 paras 62–63; CRPD Committee, 'Concluding Observations on the Initial Report of Sweden' (2014) UN Doc CRPD/C/SWE/CO/1 paras 53-54; CRPD Committee, 'Concluding Observations on the Initial Report of Czech Republic' (2015) UN Doc CRPD/C/CZE/CO/1 paras 59–60; CRPD Committee, 'Concluding Observations on the Initial Report of Slovenia' (2018) UN Doc CRPD/C/SVN/CO/1 paras 51–52.
[253] CRPD Committee, 'Concluding Observations on the Initial Report of Bulgaria' (2018) UN Doc CRPD/C/BGR/CO/1.
[254] CRPD Committee, 'Concluding Observations Initial Report of Bulgaria' (n 253) paras 63–65.
[255] CRPD Committee, 'Concluding Observations Initial Report of Bulgaria' (n 253) para 66.
[256] CRPD Committee, 'Concluding Observations on the Initial Report of France' (2021) UN Doc CRPD/C/FRA/CO/1 para 61.
[257] CRPD Committee, 'Concluding Observations on the Initial Report of Armenia' (2017) UN Doc CRPD/C/ARM/CO/1 para 54.
[258] CRPD Committee, 'Concluding Observations on the Initial Report of India' (2019) UN Doc CRPD/C/IND/CO/1 para 63.

utilize their creative, artistic and intellectual potential, such as by establishing disability art festivals.[259]

In the last few years, the CRPD Committee seems to have tried to engage more regularly with issues that pertain to the professional participation of persons with disabilities in cultural life. Mirroring the wording of Article 30(2) CRPD, it has for instance recommended that Malawi '[c]ollaborate with persons with disabilities to incentivize them to utilize their creative, artistic and intellectual potential'.[260] It has also commended the performance of artists with disabilities in the Seychelles,[261] and called for the implementation of financial support programmes for artists with disabilities in Argentina.[262] More recently, it also expressed concerns over 'the lack of inclusivity and accessibility in some faculties of creative arts', recommending that Germany takes measures to promote inclusion and accessibility in all creative arts studies.[263]

Overall, it appears that when considering Article 30 CRPD –and if it does consider it– the CRPD Committee does not address Article 30(2) CRPD to any significant extent. While Cisternas Reyes writes that '[t]he repertoire of recommendations of the CRPD Committee provides extensive evolution and development in the interpretive look for practical implementation of the Treaty rules',[264] it does not appear to concern Article 30 CRPD as of yet. It could be expected that at some point the treaty body will highlight expressly, in the context of Article 30 CRPD, the right of persons with disabilities to participate in any professional capacity in cultural life. Indeed, by contrast, it has already referred expressly to the right of persons with disabilities to pursue a professional career in other contexts, like that of the justice system.[265]

This timid engagement with an active participation in the CCS is also reflected in the CRPD Committee's observations on the implementation of Article 8 CRPD (Awareness-raising). Notably, it has expressed concern with the '[t]he lack of visibility of persons

[259] CRPD Committee, 'Concluding Observations on the Initial Report of Croatia' (2015) UN Doc CRPD/C/HRV/CO/1 para 48.
[260] CRPD Committee, 'Concluding Observations on the Combined Initial and Second Periodic Reports of Malawi' (2023) UN Doc CRPD/C/MWI/CO/1-2 para 62.
[261] CRPD Committee, 'Concluding Observations on the Initial Report of Seychelles' (2018) UN Doc CRPD/C/SYC/CO/1 para 51.
[262] CRPD Committee, 'Concluding Observations on the Combined Second and Third Periodic Reports of Argentina' (2023) UN Doc CRPD/C/ARG/CO/2-3 paras 57–58.
[263] CRPD Committee, 'Concluding Observations on the Combined Second and Third Periodic Reports of Germany' (2023) UN Doc CRPD/C/DEU/CO/2-3 paras 67–68.
[264] María Soledad Cisternas Reyes, 'Foreword' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities* (Springer 2017) vi.
[265] For example, with regards to Article 13 CRPD (Access to Justice), it has explicitly recommended some States Parties to '[t]ake measures to empower persons with disabilities to work in the justice system as judges, prosecutors or in other positions, with the provision of all necessary support'. See CRPD Committee, 'Concluding Observations on the Initial Report of the United Kingdom of Great Britain and Northern Ireland' (2017) UN Doc CRPD/C/GBR/CO/1 para 33(e).

with disabilities in public spaces and the public media, including on television',[266] and recommended the adoption of 'measures to increase visibility and participation of persons with disabilities in public life'.[267] Again, it is not clear whether the Committee meant to refer to persons with disabilities in a professional capacity or not.

Overall, this professional dimension is seldom referred to in the monitoring activities of the Committee or loosely encompassed under 'the opportunity to develop and utilize their creative, artistic and intellectual potential' as per the wording of Article 30(2) CRPD. Within all the documents reviewed, there are few explicit references to persons with disabilities as cultural and creative professionals.

3.3.1.3. States Parties' Reports

It is also worth contrasting the words of the CRPD Committee with those of the States Parties under review. Indeed, some States Parties are keen to include specific measures on professional participation in their reports, going further than what is requested by the CRPD Committee. Thus, some reports refer to 'current and forthcoming initiatives with regard to active participation in cultural life'.[268] As such, some States Parties discuss persons with disabilities 'as an audience and as artists',[269] mention that 'culture is by and for everyone',[270] or alternatively that 'culture should be available to everyone', including through 'opportunities to share in professional artistic creation'.[271] Recently, the Colombian reports mentioned explicitly the funding made available to support artists, creators and cultural managers with disabilities.[272] However, as with the CRPD Committee, it can sometimes be difficult to determine whether States Parties consider persons with disabilities as professionals or amateurs[273] when they address 'the promotion of artistic achievements of disabled people',[274] or list theatre productions, cultural and

[266] CRPD Committee, 'Concluding Observations Initial Report of France' (n 256) para 17(c).
[267] CRPD Committee, 'Concluding Observations Initial Report of France' (n 256) para 18(b).
[268] Ferri and others (n 179) 867.
[269] CRPD Committee, 'Consideration of Reports Submitted by States Parties under Article 35 of the Convention: Initial Reports of States Parties Due in 2011: Portugal' (2014) UN Doc CRPD/C/PRT/1 para 273.
[270] CRPD Committee, 'Initial Report Submitted by the Netherlands under Article 35 of the Convention, Due in 2018' (2019) UN Doc CRPD/C/NLD/1 para 334.
[271] CRPD Committee, 'Implementation of the Convention on the Rights of Persons with Disabilities: Initial Reports Submitted by States Parties under Article 35 of the Convention: Sweden' (2012) UN Doc CRPD/C/SWE/1 para 282.
[272] CRPD Committee, 'Combined Second to Fourth Periodic Reports Submitted by Colombia under Article 35 of the Convention' (2023) UN Doc CRPD/C/COL/2-4 para 143.
[273] Ferri and others (n 179) 868.
[274] CRPD Committee, 'Consideration of Reports Submitted by States Parties under Article 35 of the Convention: Initial Reports of States Parties Due in 2014: Poland' (2015) UN Doc CRPD/C/POL/1 para 515.

dance projects, painting and photo workshops, festivals and 'much more' including persons with disabilities.[275]

Ultimately, the specific viewpoint of this research has the merit of highlighting how the CRPD Committee engages in the reporting process (together with the States Parties) and seldom focus on the participation of cultural and creative professionals with disabilities. In doing so, it mirrors past and present trends in research[276] and practice,[277] whereby persons with disabilities are less seen as producers of culture, including in the EU's CCS.

3.3.2. The CRPD Committee's Interpretation of Article 30 CRPD

In addition to its core task of monitoring the implementation of the Convention, the CRPD Committee also undertakes interpretative work. Therefore, this sub-section reviews the treaty body's General Comments and jurisprudence. As such, it provides novel insights in the study of Article 30(2) CRPD and the professional participation in cultural life of persons with disabilities. In so doing, it also highlights tangential considerations shared by the CRPD Committee that support the analysis undertaken in this thesis.

3.3.2.1. General Comments

Article 30 CRPD has in fact never been the subject of a dedicated General Comment and instead has mostly featured under the General Comments' sections on the relationship of the Article under study with other provisions of the Convention. Across the eight General Comments published to date, it is interesting to note that Article 30 CRPD is mentioned in only three of them; General Comment No. 2 (Article 9: Accessibility),[278] General Comment No. 4 (Right to Inclusive Education)[279] and General Comment No. 5 (Living Independently and Being Included in the Community).[280] Interestingly, General Comment No. 8 on the right of persons with disabilities to work and employment does not consider Article 30 CRPD, nor cultural and creative workers with disabilities.[281]

[275] CRPD Committee, 'Implementation of the Convention on the Rights of Persons with Disabilities: Initial Reports Submitted by States Parties under Article 35 of the Convention: Austria' (2011) UN Doc CRPD/C/AUT/1 para 98.
[276] Ann Leahy and Delia Ferri, 'Barriers to Cultural Participation by People with Disabilities in Europe: A Study across 28 Countries' (2023) 39 Disability & Society 2465, 2467.
[277] Ferri and others (n 179) 873.
[278] CRPD Committee, 'General Comment No. 2' (n 170).
[279] CRPD Committee, 'General Comment No. 4 (2016) on the Right to Inclusive Education' (2016) UN Doc CRPD/C/GC/4.
[280] CRPD Committee, 'General Comment No. 5 (2017) on Living Independently and Being Included in the Community' (2017) UN Doc CRPD/C/GC/5.
[281] CRPD Committee, 'General Comment No. 8 (2022) on the Right of Persons with Disabilities to Work and Employment' (2022) UN Doc CRPD/C/GC/8.

With Article 30 CRPD integrating a number of accessibility provisions, it is not surprising that the CRPD Committee used a General Comment focused on accessibility (General Comment No. 2) to specify the related obligations of States Parties.[282] Amidst substantial considerations on the obligations to provide access incumbent on States Parties and on how a lack of accessibility can impede on the enjoyment of concerts, paintings, films or theatrical plays, the CRPD Committee just recalls word for word Article 30(2) CRPD before moving on to considering the third and fourth paragraphs, which may admittedly have more to do with accessibility.[283] Nevertheless, it seems that the CRPD Committee missed an opportunity to insist on the cross-cutting nature of accessibility and how it is decisive to enabling persons with disabilities to 'develop and utilize their creative, artistic and intellectual potential'.[284]

General Comment No.4 does not provide much more insights as it recalls the main points of Article 30 CRPD and indicates, with regards to Article 30(2) CRPD, that:

> [a]ppropriate measures must be in place within the educational environment to ensure opportunities for persons with disabilities to access cultural life and to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit but also for the enrichment of society.[285]

Also insisting on accessibility, General Comment No. 5 discusses inclusion and mentions that cultural life (amongst other things) is an 'important dimension[n] of life in the community in which inclusion can be pursued and achieved, for example by ensuring that events, activities and facilities are accessible … and are inclusive'.[286]

Similarly to the previous sub-sections, this tailored review of its General Comments reveals little explicit and direct engagement of the CRPD Committee with the professional dimension of taking part in cultural life.

3.3.2.2. Views on Individual Communications

When it comes to its jurisprudence, the CRPD Committee has also seldom addressed Article 30 CRPD. This is dependent on a number of factors including whether States Parties have ratified the OP-CRPD, which communications are addressed to the Committee and whether the alleged victims denounce a violation of their rights under Article 30 CRPD.

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[282] Manca (n 160) 545.
[283] CRPD Committee, 'General Comment No. 2' (n 170) paras 44–45.
[284] CRPD, art 30(2).
[285] CRPD Committee, 'General Comment No. 4' (n 279) para 58.
[286] CRPD Committee, 'General Comment No. 5' (n 280) para 94.

Nonetheless, in 2017, a communication was submitted to the CRPD Committee by M. Köck, arguing violations by Austria of Article 5 CRPD, read in conjunction with Articles 7, 12(3)–(4), 13(1), 21(b) and (e), 24 and 30(4) CRPD.[287] Finding no violation of the aforementioned Articles, the CRPD Committee focused more on Articles 2, 4(2) and 24 than on Article 30(4), and consequently failed to provide explicit new means of interpretating Article 30 CRPD.[288] However, with regards to Articles 4(2) and 24 CRPD, the treaty body discussed the obligation of progressive realisation, indicating that:

> progressive realization does not prejudice those obligations that are immediately applicable: States parties have a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each aspect of the right to education, including non-discrimination in all aspects of education, and reasonable accommodation to ensure that persons with disabilities are not excluded from education.[289]

It further insisted on recalling 'that equality and non-discrimination are a cornerstone of the international protection guaranteed by the Convention and are not subject to progressive realization'.[290] As previously discussed, these considerations are relevant to the implementation of Article 30 CRPD, and particularly Article 30(2) CRPD.[291] In this context, it certainly suggests that States Parties have at least a minimum core obligation to ensure the non-discrimination of persons with disabilities (potentially cultural and creative professionals with disabilities); and to ensure that they are provided reasonable accommodation when developing and utilising their creative, artistic and intellectual potential.

As Article 30(2) CRPD protects the right of professionals with disabilities to participate in cultural life, it must also be understood in conjunction with Article 27 CRPD on work and employment, and the minimum core obligations that ensue from it. This requires States Parties to abide by fundamental work-related principles and rights that have been proclaimed in a range of key human rights conventions, including the UDHR or ICESCR, and conventions by the International Labour Organization (ILO).[292] States Parties are therefore under an obligation of immediacy to ensure, among other things, non-discrimination in the workplace, freedom of association, or the right to organise and

[287] CRPD Committee, *Köck v Austria* (Views Adopted by the Committee under Article 5 of the Optional Protocol Concerning Communication No. 50/2018 2022) UN Doc CRPD/C/26/D/50/2018 para 1.
[288] *Köck v Austria* (n 287) para 8.
[289] *Köck v Austria* (n 287) para 7.4, citing CRPD Committee, 'General Comment No. 4' (n 282) para 41.
[290] *Köck v Austria* (n 302) para 7.4, citing CRPD Committee, 'General Comment No. 6 (2018) on Equality and Non-Discrimination' (2018) UN Doc CRPD/C/GC/6.
[291] See Chapter 2, Sub-section 3.2.5.
[292] See Chapter 3, Section 4.

collective bargaining –and this should directly concern and benefit professionals with disabilities working in the EU's CCS. Additionally, the CRPD Committee indicates with regards to the situation of M. Köck that any obligation under progressive realisation entails the adoption of positive measures 'to reduce structural disadvantages and giving appropriate preferential treatment to persons with disabilities in order to achieve the objectives of full participation and equality within society for all persons with disabilities'.[293]

More recently, in *Henley v Australia*, the author of the communication alleged a violation of her rights under Articles 9(1)(b) and 30(1)(b) CRPD, read in conjunction with Article 4(1) and (2) CRPD.[294] More specifically, Lauren Henley claimed that the State Party 'had failed to enable her, as a person with a disability, to live independently and participate fully in all aspects of life by not providing audio description on free-to-air television'.[295] Concluding that Australia had not fulfilled its obligations under the aforementioned Articles, the Committee noted the following shortcomings, exposing that:

> the State party had failed to adopt specific legislation, a policy framework, sustainable budget allocations or any other foreseeable measures to demonstrate its commitment to advancing in the provision of audio description to persons with visual impairments in a sustainable manner.[296]

It also asked Australia to adopt a range of measures, deadlines, as well as human and material resources to break down accessibility barriers, including 'the provision of audio-description services to persons with visual impairments'.[297]

Similarly to *Köck v Austria*, the CRPD Committee recalled that economic, social and cultural rights were under an obligation of progressive realisation. In this respect, it emphasised that States Parties had, as such, 'a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization of rights'.[298] Additionally, the CRPD Committee also stressed the unconditional nature of the obligation of accessibility, meaning that a State Party should not justify its failure to

[293] *Köck v Austria* (n 302) para 7.4, citing CESCR, 'General Comment No. 5: Persons with Disabilities' (1994) UN Doc E/1995/22 para 9.
[294] CRPD Committee, *Henley v Australia* (Views Adopted by the Committee under Article 5 of the Optional Protocol Concerning Communication No. 56/2018 2023) UN Doc CRPD/C/27/D/56/2018 para 1.
[295] *Henley v Australia* (n 294) para 1.
[296] CRPD Committee, 'Report of the Committee on the Rights of Persons with Disabilities on its Twenty-Seventh Session (15 August–9 September 2022)' (2022) UN Doc CRPD/C/27/2 annex III, para 5.
[297] *Henley v Australia* (n 294) para 11(b)(i).
[298] *Henley v Australia* (n 294) para 10.7, citing CESCR, 'General Comment No. 3' (n 123) para 9; CRPD Committee, 'General Comment No. 4' (n 293) para 40.

comply with such obligation by invoking the burden –financial or other– of providing access to people with disabilities.[299]

Overall, as was the case for the General Comments, this analysis of the CRPD Committee's jurisprudence, while novel in its focus, does not offer very explicit means of interpreting Article 30(2) CRPD, especially when it comes to persons with disabilities taking part in cultural life as professionals. On the one hand, this is linked to circumstances beyond the treaty body's control, and particularly whether the communications submitted argued a violation of Article 30(2) CRPD by States Parties to the OP-CRPD. On the other hand, while not explicitly engaging with it, the treaty body still provides interesting means of interpreting Article 30(2) CRPD and the scope of obligations incumbent on States Parties when it discusses economic, social and cultural rights in general, or the right to education.

4. Article 27 CRPD: The Right to Work and Employment of Cultural and Creative Professionals with Disabilities

As just discussed, Article 30(2) CRPD embodies the international legal standard of reference for this thesis, as it protects the right to take part in cultural life of CCS professionals with disabilities. In that respect, it is complemented by Article 27 CRPD. The latter Article details a range of provisions related to work and employment that appear necessary to enable the realisation of Article 30(2) CRPD, and which would underpin the work and employment of professionals with disabilities in the CCS.

4.1. An Overview of Article 27 CRPD

Article 27 CRPD explicates employment and work-specific rights for the benefit of persons with disabilities. As for many provisions of the CRPD, Article 27 CRPD re-contextualises, within a disability framework, what is understood as 'a fundamental human right, chiefly because it ensures the individual's sustenance, dignity (including self-worth) and wellbeing',[300] as was already recognised in other instruments.

Indeed, the right to work has been previously protected in the UDHR, the ICESCR and regional instruments like the European Social Charter, or the ILO's international labour

[299] *Henley v Australia* (n 294) para 10.8.
[300] Ilias Bantekas, Facundo Pennilas and Stefan Trömel, 'Article 27: Work and Employment' in Ilias Bantekas, Michael Ashley Stein and Dimitris Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford University Press 2018) 766.

standards.[301] It is also often posited that accessing 'work and employment is … a prerequisite for full equality of opportunities in life'.[302] As such, Article 27 CRPD acts as a recognition, in the context of the Convention, of 'the centrality of work to the life experience of so many' in today's society,[303] positing that disability 'should not translate into disadvantage in the workplace'.[304]

However, Article 27 CRPD does not establish that the right to work is absolute,[305] and that all persons with disabilities should 'actually enter the labour market'.[306] This is something that the CESCR has already ascertained, stating that there is no 'absolute and unconditional right to obtain employment'.[307] Instead, it is argued that 'the aim of Article 27 is inclusion',[308] and the CRPD recognises in that respect the right to an opportunity to earn a living for persons with disabilities, and the necessity for States Parties to create an open, inclusive and accessible labour market.

Article 27 CRPD is divided into two main paragraphs. Under Article 27(1) CRPD, the Convention calls on States Parties to 'recognize the right of persons with disabilities to work, on an equal basis with others', indicating that such right 'includes a right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible'.[309] In a second paragraph, the CRPD proclaims the right of persons with disabilities to be safeguarded, on an equal basis with others, from forced or compulsory labour, and requires from States Parties to ensure that persons with disabilities are not held in slavery or servitude.[310]

Article 27 CRPD therefore combines a range of 'interdependent and interrelated rights within the right to work',[311] which States Parties are obliged to respect, protect and fulfil.[312] In this regard, the CRPD sets out eleven specific obligations under Article 27(1)(a)–(k) CRPD, starting with the prohibition of disability-based discrimination in Article 27(1)(a) CRPD. With this provision, the CRPD requires States Parties to take

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[301] UDHR, art 23; ICESCR, arts 6 and 7; European Social Charter (revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163 (ESC) art 1. On ILO standard, see Chapter 3, Section 4.
[302] Maria Ventegodt Liisberg, 'Article 27 [Work and Employment]' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities* (Springer 2017) 498.
[303] Michael Doherty, 'The Path Is Made by Walking ... The Social Partners and Employment Rights under EU Disability Law' in Delia Ferri and Eva S Krolla (eds), *Actors and Roles in EU Disability Law* (Hart 2025) 259.
[304] Gauthier De Beco, *Disability in International Human Rights Law* (Oxford University Press 2021) 138.
[305] Liisberg (n 302) 499.
[306] De Beco, *Disability in International Human Rights Law* (n 304) 138.
[307] CESCR, 'General Comment No. 18: The Right to Work (Art. 6 of the Covenant)' (2006) UN Doc E/C.12/GC/18 para 6.
[308] Anna Bruce, 'Which Entitlements and for Whom? The Convention on the Rights of Persons with Disabilities and its Ideological Antecedents' (PhD Thesis, Lund University 2014) 203.
[309] CRPD, art 27(1) chapeau.
[310] CRPD, art 27(2).
[311] CRPD Committee, 'General Comment No. 8' (n 281) para 6.
[312] Bantekas, Pennilas and Trömel (n 300) 765.

appropriate action, 'including through legislation' to prohibit discrimination in relation to all forms of employment –including recruitment, hiring and employment, job retention, advancement and working conditions, and to protect the rights of persons with disabilities in relation to equal opportunities, equal pay, working conditions, harassment and redress of grievance.[313] Relatedly, Article 27(1)(i) CRPD recalls that reasonable accommodation must be provided to all persons with disabilities in the workplace.[314] This resonates with Bell and Waddington's words, as they note that the CRPD is '"sprinkled" liberally with references to non-discrimination, equality and reasonable accommodation', therefore painting reasonable accommodation as a core element in the realisation of Article 27 CRPD.[315]

As a corollary to the right to the opportunity to gain a living through work, Article 27(1)(b) CRPD also refers to the protection of the right to just and favourable conditions of work, 'including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances'. Moreover, Article 27 CRPD addresses 'the collective dimension of the right to work',[316] as it calls for ensuring the exercise of labour and trade union rights on an equal basis with others.[317] The Article also sets obligations for States Parties to ensure effective access to guidance, placement and trainings,[318] employment in the public sector,[319] the promotion of employment opportunities including in the private sector,[320] career advancement in the labour market,[321] or self-employment and entrepreneurship.[322] Segregated employment –like sheltered workshops, although not named as such–[323] may not be understood 'as a measure of progressive realization of the right to work'.[324] This is made clear in Article 27(1) chapeau and (j) CRPD, which indicates that work must be freely chosen or accepted, as well as exercised in an open and inclusive labour market. As Article 27(1)(j) articulates 'a positive obligation to ensure that inclusion in the open labour market is the principal objective of law and policy',

[313] CRPD, art 27(1)(a)–(b).
[314] CRPD, art 27(1)(i).
[315] Mark Bell and Lisa Waddington, *The Employment Equality Directive and Supporting People with Psychosocial Disabilities in the Workplace: A Legal Analysis of the Situation in the EU Member States* (European Network of Legal Experts in Gender Equality and Non-discrimination, Publications Office 2016) 38.
[316] CRPD Committee, 'General Comment No. 8' (n 281) para 6.
[317] CRPD, art 27(1)(c).
[318] CRPD, art 27(1)(d).
[319] CRPD, art 27(1)(g).
[320] CRPD, art 27(1)(h).
[321] CRPD, art 27(1)(e).
[322] CRPD, art 27(1)(f).
[323] See Charlotte May-Simera, 'Reconsidering Sheltered Workshops in Light of the United Nations Convention on the Rights of Persons with Disabilities (2006)' (2018) 7 Laws 6, 14.
[324] CRPD Committee, 'General Comment No. 8' (n 281) para 15.

States Parties also have a duty 'to promote a transition away from sheltered employment'.[325] In the context of this thesis, this would require that the EU reviews whether it supports such transition process, including through EU funding,[326] as discussed in chapter 8.[327]

In view of its content and focus, it is rather evident that Article 27 CRPD is vital to understanding the professional dimension of taking part in cultural life for persons with disabilities, and the obligations incumbent on States Parties with regards to Article 30(2) CRPD.

Interestingly, Article 27 CRPD also resonates with Article 28 CRPD as it touches upon social protection,[328] while earlier instruments mostly focused on social security only.[329] As noted by the International Labour Office, social protection is essential to ensure that everyone benefits from progress, while social security 'enhances productivity, employability and supports economic development'.[330] Therefore, relevant programmes have the potential 'to directly affect the lives of persons with disabilities'[331] including of those seeking opportunities in the CCS. Although this is an interesting point –one that certainly underpins the realisation of the right to work and employment of cultural and creative professionals with disabilities, however, perhaps surprisingly, it was not identified as a key issue in the qualitative analysis.[332]

Nevertheless, the realisation of Article 27 CRPD in the EU is firmly correlated to the realisation of a right to participate in cultural life of EU cultural and creative professionals. It relies on labour and trade union rights, working conditions, remuneration, the prohibition of disability-based discrimination, or the provision of reasonable accommodation –issues that are also explored in chapter 6. In anticipation of this analysis, it is interesting to note how Article 27 CRPD requires the promotion of self-employment opportunities for professionals with disabilities. In parallel, it was noted in chapter 1 that self-employment in the CCS is often associated with a range of challenges for cultural and creative professionals, including in terms of working conditions,

[325] Mark Bell, 'People with Intellectual Disabilities and Labour Market Inclusion: What Role for EU Labour Law?' (2020) 11 European Labour Law Journal 3, 13.
[326] Bell (n 325) 13.
[327] See Chapter 8, Sub-section 5.2.
[328] CRPD, art 28(2)(b).
[329] Catalina Devandas Aguilar, 'Social Protection and Persons with Disabilities' (2017) 70 International Social Security Review 45, 47; Marco Fasciglione, 'Article 28 [Adequate Standard of Living and Social Protection]' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities* (Springer 2017) 513.
[330] International Labour Office, *The Strategy of the International Labour Organization: Social Security for All: Building Social Protection Floors and Comprehensive Social Security Systems* (ILO 2012) 14.
[331] Devandas Aguilar (n 329) 46.
[332] See Chapter 1, Sub-section 3.3.

remuneration or social protection.[333] This issue is further considered in this thesis[334] as the European Commission somewhat aligns with the CRPD on that point.[335] Therefore, the content of the different work-related rights recognised through Article 27 CRPD provide a key legal framework for understanding how to realise Article 30(2) CRPD in the EU, which this thesis builds on throughout the following chapters.

4.2. The CRPD Committee and the Realisation of Article 27 CRPD

As for Article 30 CRPD, the CRPD Committee participates to the realisation of Article 27 CRPD on the right to work and employment of CCS professionals. It does so by monitoring its implementation during the reporting process, as well as by consolidating the interpretation of the provisions it encloses, through the General Comments and its jurisprudence. In fact, in the recent General Comment on the right of persons with disabilities to work and employment (General Comment No. 8), the CRPD Committee contextualises Article 27 CRPD, and the barriers faced by persons with disabilities in the following terms:

> Persons with disabilities face high unemployment rates, lower wages, instability, lower standards in hiring conditions, and lack of accessibility of the work environment, and are also less likely than other persons to be appointed to managerial positions when they are formally employed. All such barriers are exacerbated for women with disabilities. Persons with disabilities are more likely to earn lower wages than other persons and are more likely to be in vulnerable employment, including being employed in the informal sector, being self-employed or engaging in part-time employment.[336]

However, neither in its COs, nor in General Comment No. 8, does the CRPD Committee associate the right to work and employment of persons with disabilities to the cultural workplace. On this basis, the next sub-sections follow the framework exposed in chapter 1, based on the qualitative analysis, and focus on the contribution of the CRPD Committee to the understanding Article 27 CRPD, with regards to equality and non-discrimination, accessibility and the funding system.

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[333] See Chapter 1, Section 2.
[334] See Chapter 8, Sub-sections 3.3, and 5.1.
[335] See European Commission, 'Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030' (Communication) COM(2021) 101 final (Disability Strategy 2021-2030), 15.
[336] CRPD Committee, 'General Comment No. 8' (n 281) para 4, citing UN DESA, *Disability and Development Report: Realizing the Sustainable Development Goals by, for and with Persons with Disabilities: 2018* (United Nations 2019) paras 155–158.

4.2.1. Non-discrimination and Equality

In clarifying the obligations of States Parties enshrined in Article 27 CRPD, the CRPD Committee, on the basis of the work of the CESCR,[337] particularly envisions the obligation to guarantee non-discrimination and equality as a minimum core obligation in order to satisfy 'minimum essential levels' of the right to work and employment.[338] Thus, the prohibition of the various forms of discrimination –direct discrimination, indirect discrimination, denial of reasonable accommodation, harassment, discrimination by association, as well as multiple and intersectional discrimination– benefits from a broad scope of application.[339] It concerns the employment cycle in its entirety, while also applying to non-State entities including the private sector, something the CESCR noted previously.[340]

Achieving or accelerating 'de facto equality' and tackling discrimination in work and employment spheres requires States Parties to take a range of measures.[341] In that respect, the CRPD Committee emphasises that States Parties should, among other measures, facilitate the transition from segregated work environments to the open labour market,[342] ensure that persons with disabilities can benefit from minimum wage so as to ensure equal remuneration for work of equal value,[343] and recognise the right of persons with disabilities to have access to trade and labour unions.[344] Additionally, the CRPD

[337] CESCR, 'General Comment No. 3' (n 123) para 10; CESCR, 'General Comment No. 18' (n 307) para 31.
[338] CRPD Committee, 'General Comment No. 8' (n 281) para 63.
[339] CRPD Committee, 'General Comment No. 8' (n 281) paras 16–23.
[340] CESCR, 'General Comment No. 24 (2017) on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities' (2017) UN Doc E/C.12/GC/24 para 7.
[341] CRPD Committee, 'General Comment No. 8' (n 281) para 64.
[342] CRPD Committee, 'Concluding Observations on the Initial Report of Austria, Adopted by the Committee at its Tenth Session (2–13 September 2013)' (2013) UN Doc CRPD/C/AUT/CO/1 para 44; CRPD Committee, 'Concluding Observations on the Initial Report of Germany' (2015) UN Doc CRPD/C/DEU/CO/1 paras 49–50; CRPD Committee, 'Concluding Observations on the Initial Report of Portugal' (2016) UN Doc CRPD/C/PRT/CO/1 para 52; CRPD Committee, 'Concluding Observations on the Initial Report of Slovakia' (2016) UN Doc CRPD/C/SVK/CO/1 paras 73–74; CRPD Committee, 'Concluding Observations Initial Report of Bulgaria' (n 253) paras 57–58; CRPD Committee, 'Concluding Observations on the Initial Report of Poland' (2018) UN Doc CRPD/C/POL/CO/1 paras 47–48; CRPD Committee, 'Concluding Observations on the Initial Report of Luxembourg' (2021) UN Doc CRPD/C/LUX/CO/1 paras 46–47; CRPD Committee, 'Concluding Observations Initial Report of Slovenia' (n 252) paras 45–46; CRPD Committee, 'Concluding Observations Initial Report of France' (n 256) paras 54–55; CRPD Committee, 'Concluding Observations on the Initial Report of Estonia' (2021) UN Doc CRPD/C/EST/CO/1 paras 52–53; CRPD Committee, 'Concluding Observations Combined Second and Third Periodic Reports of Germany' (n 263) paras 61–62; CRPD Committee, 'Concluding Observations on the Combined Second and Third Periodic Reports of Austria' (2023) UN Doc CRPD/C/AUT/CO/2-3 paras 63–64; CRPD Committee, 'Concluding Observations Initial Report of the Kingdom of the Netherlands' (n 248) paras 59–60; CRPD Committee, 'Concluding Observations on the Combined Second and Third Periodic Reports of Belgium' (2024) UN Doc CRPD/C/BEL/CO/2-3 paras 54–55.
[343] CRPD Committee, 'Concluding Observations Initial Report of France' (n 256) para 55; CRPD Committee, 'Concluding Observations Initial Report of Estonia' (n 342) para 53; CRPD Committee, 'Concluding Observations on the Combined Second and Third Periodic Reports of Hungary' (2022) UN Doc CRPD/C/HUN/CO/2-3 para 53; CRPD Committee, 'Concluding Observations on the Combined Second and Third Periodic Reports of the Republic of Korea' (2022) UN Doc CRPD/C/KOR/CO/2-3 paras 55–56; CRPD Committee, 'Concluding Observations on the Combined Second and Third Periodic Reports of New Zealand' (2022) UN Doc CRPD/C/NZL/CO/2-3 paras 51–52.
[344] CRPD Committee, 'General Comment No. 8' (n 281) para 64(j).

Committee consistently underlines, including in its jurisprudence,[345] that States Parties must expressly recognise the denial of reasonable accommodation as a form of discrimination, adopt legislation in this regard, and ensure the effective provision of reasonable accommodation in the workplace.[346]

However, while clarifying the obligations incumbent on States Parties to provide reasonable accommodation, a jurisprudence in the case *Marie-Louise Jungelin v Sweden* also gave rise to a contested communication from the treaty body,[347] and dissenting opinions signed by several members of the CRPD Committee.[348] In the case of this individual communication against Sweden, the CRPD Committee concluded that there was no breach of Ms Jungelin's rights under Articles 5 and 27 CRPD, as a majority of CRPD Committee members agreed that the reasonable accommodation required –to adapt computers and case handling systems of the Social Insurance Agency for a visually-impaired person– would amount to an undue burden.[349] As discussed in later chapters, the provision of reasonable accommodation and the concept of undue and disproportionate burden, and the impact on the realisation of the right of professionals with disabilities to participate in cultural life are interesting questions to raise in the context of the CCS.[350]

In one instance, the CRPD Committee also mentioned the failure of the United Kingdom, which still an EU Member State at the time, to fulfil its obligation under the Employment Equality Directive[351] to safeguard the provision of reasonable accommodation and 'ensure that persons with disabilities can access employment on the open labour market'.[352] Interestingly, this piece of legislation is one of the main instruments of EU disability law and policy discussed in chapter 6 on equality and non-discrimination.[353] As

[345] See CRPD Committee, *V.F.C. v Spain* (Views Adopted by the Committee under Article 5 of the Optional Protocol Concerning Communication No. 34/2015 2019) UN Doc CRPD/C/21/D/34/2015 para 8.5; CRPD Committee, *M.R. i V. v Spain* (Views Adopted by the Committee under Article 5 of the Optional Protocol Concerning Communication No. 48/2018 2022) UN Doc CRPD/C/26/D/48/2018 para 7.8.
[346] See CRPD Committee, 'General Comment No. 8' (n 281) para 64. See also CRPD Committee, 'Concluding Observations on the Initial Report of Lithuania' (2016) UN Doc CRPD/C/LTU/CO/1 para 52; CRPD Committee, 'Concluding Observations Initial Report of Portugal' (n 342) para 51; CRPD Committee, 'Concluding Observations Initial Report of Slovakia' (n 342) para 74; CRPD Committee, 'Concluding Observations Combined Second and Third Periodic Reports of Germany' (n 263) paras 61–62; CRPD Committee, 'Concluding Observations on the Combined Second and Third Periodic Reports of Sweden' (2024) UN Doc CRPD/C/SWE/CO/2-3 para 58; CRPD Committee, 'Concluding Observations Initial Report of the Kingdom of the Netherlands' (n 248) paras 59–60.
[347] CRPD Committee, *Marie-Louise Jungelin v Sweden* (Views of the Committee on the Rights of Persons with Disabilities under Article 5 of the Optional Protocol to the Convention on the Rights of Persons with Disabilities (Twelfth Session) Concerning Communication No. 5/2011 2014) UN Doc CRPD/C/12/D/5/2011.
[348] *Marie-Louise Jungelin v Sweden* (n 347) app.
[349] *Marie-Louise Jungelin v Sweden* (n 347) paras 10.6–11.
[350] See Chapter 4, Sub-section 4.1, and Chapter 6, Sections 2 and 3.
[351] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16 (Employment Equality Directive).
[352] CRPD Committee, 'Concluding Observations Initial Report of the United Kingdom' (n 265) para 56.
[353] See Chapter 6, Sections 2 and 3.

such, this thesis posits that it is core to the participation of professionals with disabilities in the CCS as it represents a key lever, albeit with some limits, to enabling persons with disabilities to develop and utilise their potential in the EU's CCS.[354]

With respect to the implementation of Article 27 CRPD, the CRPD Committee also often flags States Parties' discriminatory legislation and policies, which exclude or limit the participation of persons with disabilities in the open labour market and promote sheltered workplaces, especially for persons with intellectual or psychosocial disabilities.[355] On several occasions, including in its COs, the CRPD Committee has also emphasised the need to explicitly prohibit disability-based discrimination, and to mainstream disability in general labour legislation, codes, policies, measures and programmes, on top of adopting disability-specific legislation.[356] The treaty body also recalls the necessity to guarantee that 'trade union workers, employers and labour market institutions are fully aware of issues of equality and non-discrimination in the context of the work and employment of persons with disabilities'.[357] The aim is to avoid a situation where only disability-specific legislation take into account the prohibition of discrimination on the grounds of disability, whereas the above-mentioned stakeholders are likely to be more aware of general labour legislation and codes.[358] Moreover, where quota systems are in place, the CRPD Committee has recommended that States Parties should take additional measures in order to ensure their enforcement, and expressed its concerns seeing the lack of accountability of employers, and their tendency to pay fines rather than employing persons with disabilities.[359]

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[354] See Léa Urzel Francil, 'Leveraging EU Non-Discrimination Law to Make the Cultural and Creative Sectors More Inclusive of Professionals with Disabilities: Socio-Legal Perspectives' [2025] International Journal of Cultural Policy 1.

[355] CRPD Committee, 'Concluding Observations on the Initial Report of Jordan' (2017) UN Doc CRPD/C/JOR/CO/1 para 49; CRPD Committee, 'Concluding Observations on the Initial Report of Turkey' (2019) UN Doc CRPD/C/TUR/CO/1 para 52; CRPD Committee, 'Concluding Observations Combined Second and Third Periodic Reports of the Republic of Korea' (n 343) para 55; CRPD Committee, 'Concluding Observations on the Combined Second and Third Periodic Reports of Mongolia' (2023) UN Doc CRPD/C/MNG/CO/2-3 para 54; CRPD Committee, 'Concluding Observations on the Initial Report of Togo' (2023) UN Doc CRPD/C/TGO/CO/1 para 51.

[356] CRPD Committee, 'Concluding Observations Initial Report of Armenia' (n 257) para 48; CRPD Committee, 'Concluding Observations on the Initial Report of the Republic of Moldova' (2017) UN Doc CRPD/C/MDA/CO/1 para 49; CRPD Committee, 'Concluding Observations on the Initial Report of Greece' (2019) UN Doc CRPD/C/GRC/CO/1 para 39; CRPD Committee, 'Concluding Observations on the Initial Report of Georgia' (2023) UN Doc CRPD/C/GEO/CO/1 para 54.

[357] CRPD Committee, 'General Comment No. 8' (n 281) para 33.

[358] Bantekas, Pennilas and Trömel (n 300) 775.

[359] CRPD Committee, 'Concluding Observations Initial Report of Austria' (n 342) para 45; CRPD Committee, 'Concluding Observations Initial Report of Slovenia' (n 252) paras 45–46; CRPD Committee, 'Concluding Observations Initial Report of Poland' (n 342) paras 47–48; CRPD Committee, 'Concluding Observations on the Initial Report of Malta' (2018) UN Doc CRPD/C/MLT/CO/1 paras 39–40; CRPD Committee, 'Concluding Observations on the Combined Second and Third Periodic Reports of Spain' (2019) UN Doc CRPD/C/ESP/CO/2-3 paras 50–51; CRPD Committee, 'Concluding Observations on the Initial Report of Luxembourg' (n 342) paras 46–47; CRPD Committee, 'Concluding Observations Combined Second and Third Reports of Germany' (n 263) paras 61–62; CRPD Committee, 'Concluding Observations on the Combined Second and Third Periodic Reports of Sweden' (n 346) paras 57–58.

Overall, the different dimensions of Article 27 CRPD addressed by the CRPD Committee contribute to clarifying the immediate steps that States Parties must undertake to achieve equality and tackle discrimination with regards to the right to work and employment of persons with disabilities. While not expressly mentioned like this by the CRPD Committee, they must be envisioned in the context of the CCS for the purpose of this thesis.

4.2.2. Accessibility

The CRPD Committee also discusses accessibility and particularly refers to Article 27(1) chapeau CPRD, which sets out that the workplace shall be open, inclusive and accessible.[360] Therefore, it requires States Parties to take 'appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards ensuring work environments' are, among other things, accessible.[361]

While noting the lack of accessibility of the work environment, especially in relation to non-discrimination, the CRPD Committee further emphasises that the realisation of the right to work and employment of persons with disabilities is dependent on the accessibility, not only of the workplace, but also of trade union activities or of transport and other services.[362] In pointing to discrimination taking the form of inaccessible workplaces, the CRPD Committee expressly notes that the duty to ensure accessibility 'flows from the prohibition of indirect discrimination'.[363] Linking indirect discrimination to the lack of accessibility of premises, information and materials, the treaty body refers to seemingly neutral laws, policies or practices that can have adverse consequences on the realisation of the right to work and employment of persons with disabilities.[364] It takes the example of recruitment processes taking place in inaccessible public buildings, and how it can negatively impact on the possibility for some persons with disabilities to pursue employment opportunities, thus stressing that 'the prohibition of indirect discrimination [implies] an ongoing obligation to ensure accessibility through universal design in all situations'.[365]

[360] CRPD Committee, 'General Comment No. 8' (n 281) para 12.
[361] CRPD Committee, 'General Comment No. 8' (n 281) para 59.
[362] CRPD Committee, 'General Comment No. 8' (n 281) para 70. See also CRPD Committee, 'Concluding Observations Initial Report of Greece' (n 356) para 39; CRPD Committee, 'Concluding Observations on the Initial Report of Estonia' (n 342) para 53; CRPD Committee, 'Concluding Observations Combined Second and Third Periodic Reports of Hungary' (n 343) paras 52–53.
[363] CRPD Committee, 'General Comment No. 8' (n 281) paras 13, 19.
[364] CRPD Committee, 'General Comment No. 8' (n 281) para 18.
[365] CRPD Committee, 'General Comment No. 8' (n 281) para 18.

The realisation of Article 27 CRPD further relies on ensuring that accessible and effective redress mechanisms, including complaints mechanisms, are available to victims of disability-based discrimination.[366] In that vein, the CRPD Committee also emphasises – in the context of Article 27 CRPD– the difference between the duty to provide reasonable accommodation and the duty to ensure accessibility.[367] It also often calls on States Parties to strengthen measures to ensure both accessibility and reasonable accommodation in workplaces, including by raising awareness of their obligations among employers,[368] or in the case of the EU, by providing training for Member States.[369] As discussed in chapter 6 for reasonable accommodation and non-discrimination, and chapter 7 for accessibility,[370] awareness-raising and knowledge-building initiatives in the EU can be a key lever to enable the participation of professionals with disabilities in the CCS, one that was identified in the qualitative analysis too.[371]

Throughout its work, the CRPD Committee also insists on the need to ensure accessibility in order to realise a range of additional obligations laid down in Article 27 CRPD. This includes Article 27(1)(d) CRPD on access to technical and vocational guidance placement services and training, and 27(1)(e) CRPD on the promotion of employment opportunities and career advancement, as their implementation relies on the accessibility of premises, information, materials, and courses offered more broadly.[372] In particular, the CRPD Committee also emphasises the need to provide accessible information on opportunities of self-employment, entrepreneurship and cooperatives, so as to ensure persons with disabilities the right to freely choose their work,[373] which again is relevant for those working in the CCS as they are likely to be self-employed.[374]

4.2.3. The Funding System

Funding appears less dominant in the work of the CRPD Committee on Article 27 CRPD. Still, the CRPD Committee envisions funding as a way to support the realisation of the

[366] CRPD Committee, 'General Comment No. 8' (n 281) para 82(l). See also CRPD Committee, 'Concluding Observations Combined Second and Third Periodic Reports of Germany' (n 263) para 62.
[367] CRPD Committee, 'General Comment No. 8' (n 281) paras 19, 45.
[368] CRPD Committee, 'Concluding Observations Combined Second and Third Periodic Reports of Germany' (n 263) para 62; CRPD Committee, 'Concluding Observations Initial Report of the Kingdom of the Netherlands' (n 246) para 60; CRPD Committee, 'Concluding Observations Combined Second and Third Periodic Reports of Sweden' (n 346) para 58.
[369] CRPD Committee, 'Concluding Observations on the Initial Report of the European Union' (2015) UN Doc CRPD/C/EU/CO/1 para 65.
[370] See Chapter 6, Section 8, and Chapter 7, Section 7.
[371] See Chapter 1, Sub-section 4.4.
[372] See CRPD Committee, 'General Comment No. 8' (n 281) paras 35, 37; CRPD Committee, 'Concluding Observations Combined Second and Third Periodic Reports of Germany' (n 263) para 62.
[373] CRPD Committee, 'General Comment No. 8' (n 281) paras 38–39.
[374] See Chapter 1, Sub-section 2.2.

right of persons with disabilities to work and employment. It invites, in that respect, States Parties to allocate targeted funding to promote employment, in both the public and private sectors,[375] including through '[t]argeted, time-bound and financed action plans across all sectors of the economy'.[376] It also recommends taking measures to ensure the funding of reasonable accommodation in the context of vocational guidance, placement and training,[377] or providing financial support to employers.[378] This more positive outlook on the use of funding is also present in the CRPD Committee's latest General Comment No. 8.

However, when analysing the COs delivered by the treaty body, the CRPD Committee appears to have also expressed concerns regarding the use of EU funds in ways that go against the realisation of the right to work and employment of persons with disabilities as set out in the CRPD. In that respect, it particularly denounces the use of EU Funds for maintaining segregated work environments in some Member States.[379] More directly, it recommends to the EU to repeal any law 'that allows public financing of segregated forms of employment for persons with disabilities, such as institutions and other segregated facilities', and relatedly to amend EU procurement legislation and repeal enabling provisions in EU state aid law.[380]

This highlights a certain duality within funding systems, which this thesis also emphasises in a dedicated chapter 8. On one hand, funding may well support the participation of professionals with disabilities in the CCS, as was also underlined in the interviews and focus groups. On the other hand, the analysis presented here also shines a light on certain financial streams which endure and may work against the realisation of the rights of persons with disabilities, including the right of cultural and creative professionals to work and employment in the CCS.

5. Contextualising the Understanding and Realisation of Article 30 CRPD

Lastly, this section concentrates on putting Article 30 CRPD into perspective, recalling the relationship and interlinkages that exist with many other CRPD provisions, some of

[375] CRPD Committee, 'General Comment No. 8' (n 281) paras 41–42.
[376] CRPD Committee, 'Concluding Observations on the Combined Second and Third Periodic Reports of Denmark' (2024) UN Doc CRPD/C/DNK/CO/2-3 para 72.
[377] CRPD Committee, 'General Comment No. 8' (n 281) para 35.
[378] CRPD Committee, 'Concluding Observations Initial Report of Sweden' (n 271) para 50.
[379] CRPD Committee, 'Concluding Observations Initial Report of Lithuania' (n 346) para 51. See also, CRPD Committee, 'Concluding Observations on the Initial Report of Latvia' (2017) UN Doc CRPD/C/LVA/CO/1 para 46, where it is noted that despite the support from European Structural Funds being terminated, disputed measures continued being implemented.
[380] CRPD Committee, 'Concluding Observations on the Combined Second and Third Periodic Reports of the European Union' (2025) UN Doc CRPD/C/EU/CO/2-3 para 65(a).

which have already been mentioned. In this respect, it is important to recall Stamatopoulou's words, as she boldly states that:

> cultural rights are linked almost to every other aspect of human rights. Cultural rights are an integral part of human rights, which are interdependent and indivisible; cultural rights are one of the most eloquent demonstrations of the inter-complementarity of human rights.[381]

Such contextualisation is therefore particularly interesting as it makes evident the 'universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms', as recalled in the preamble to the Convention,[382] and highlights how this may affect the realisation of the right of professionals with disabilities to take part in cultural life. In that context, it is evident that cultural rights are linked to many civil, economic, political, and social rights.[383] As such, Article 30 CRPD 'cannot be read in isolation' from the general principles set out in Article 3 CRPD, and other substantive rights recognised in the Convention,[384] some of which are discussed here.

This section considers the most relevant substantive rights for the purpose of this thesis. In that respect, it takes particular account of the themes identified in chapter 1 on the basis of the qualitative analysis, and especially 'non-discrimination and equality', 'accessibility', and 'knowledge-building and awareness-raising' as they correspond to specific Articles of the UN treaty. Thus, it highlights how Article 5 CRPD (Equality and Non-discrimination), Article 8 CRPD (Awareness-Raising), Article 9 CRPD (Accessibility) complement each other and are instrumental to the realisation and understanding of the scope of Article 30 CRPD, and particularly Article 30(2) CRPD. It also discusses Article 21 CRPD (Freedom of Expression and Opinion and Access to Information) as it is core element of the professional activity of CCS professionals and essential to developing and utilising one's creative, artistic and intellectual potential in the EU.

5.1. Article 5 CRPD: Equality and Non-discrimination

As mentioned previously in this chapter, equality and non-discrimination are both principles and rights 'among the most fundamental … of international human rights law'.[385] In the present case they are also key to how this thesis answers the research

[381] Stamatopoulou (n 175) 143.
[382] CRPD, recital (c).
[383] Stamatopoulou (n 175) 143.
[384] Leahy and Ferri, 'The Right to Participate in Cultural Life' (n 6) 6.
[385] CRPD Committee, 'General Comment No. 6' (n 290) para 4.

questions posed earlier. Notably, the CRPD Committee insists on their importance in a dedicated General Comment No. 6 noting that:

> [e]quality and non-discrimination are at the heart of the Convention and evoked consistently throughout its substantive articles with the repeated use of the wording 'on an equal basis with others', which links all substantive rights of the Convention to the non-discrimination principle.[386]

While equality and non-discrimination have been considered in earlier provisions of the Convention –such as Articles 2 and 3 CRPD– Article 5 CRPD lays down in more details the States Parties' obligations with regards to guaranteeing 'the implementation of the principle of equality and non-discrimination'.[387] In this respect, Article 5 CRPD 'prohibits de jure or de facto discrimination', both in the public and private sector.[388] The first paragraph provides for 'equality before and under the law', and the entitlement of all persons 'without any discrimination to the equal protection and equal benefit of the law'.[389] The second paragraph encloses a prohibition of all discrimination on the basis of disability and an obligation to guarantee 'equal and effective legal protection'.[390] In that sense, and as provided for by Article 2 CRPD, discrimination extends to any discrimination considered to be based on disability. This incorporates 'discrimination by assumption under which persons are discriminated not only for their real characteristics but also for perceived characteristics', as well as discrimination by association 'where someone is discriminated against not so much on account of their own characteristics but on account of their relations with someone else'.[391]

Article 5(3) CRPD then requires States Parties to ensure that reasonable accommodation is provided. This is a crucial substantive equality measure and 'perhaps the most fundamental instrumental element of the convention' for some.[392] In addition to Article 2 CRPD, which defines reasonable accommodation, Article 5(3) CRPD further establishes reasonable accommodation as a core aspect of tackling disability-based discrimination. While not subject to the principle of progressive realisation, reasonable accommodation is an *ex nunc* duty and 'an intrinsic part of the immediately applicable duty of non-discrimination in the context of disability', limited only by the 'disproportionate or undue burden' defence.[393] The inclusion of a duty to provide reasonable accommodation

[386] CRPD Committee, 'General Comment No. 6' (n 290) para 7.
[387] Sabatello (n 23) 21.
[388] CRPD Committee, 'General Comment No. 6' (n 290) para 13.
[389] CRPD, art 5(1).
[390] CRPD, art 5(2).
[391] Cera, 'Article 2 [Definitions]' (n 73) 112.
[392] Kayess and French (n 19) 9, 27.
[393] CRPD Committee, 'General Comment No. 6' (n 290) paras 23, 25.

therefore enshrines the necessity to adopt 'positive measures in order to address ongoing systemic discrimination against persons with disabilities' and advance the realisation of their human rights more generally,[394] but also in the context of working in the CCS. In addition, Article 5(4) CRPD clarifies that certain specific measures are not to be regarded as discrimination, meaning that 'positive action measures, such as quota systems and other measures designed to increase the representation of disabled people in the workforce, are not prohibited'.[395]

Effectively, the relationship between non-discrimination, equality, and the right to participate in cultural life has already been considered at several junctures in this chapter. In this respect, it is well acknowledged that equality and non-discrimination is decisive to the enjoyment of the right to participate in cultural life of a number of individuals and groups, including persons with disabilities.[396] Additionally, Article 5 CRPD is one of the Convention's provisions that must be implemented with immediate effect, as '[p]romoting equality and tackling discrimination are cross-cutting obligations of immediate realization'.[397] As a source of core obligations, the right to equality and non-discrimination permeates the realisation of Article 27 CRPD and Article 30(2) CRPD. Non-discrimination entails 'obligations to remove physical, social, linguistic and attitudinal barriers [to ensure] full and equal participation in cultural life',[398] and this obviously benefits cultural and creative professionals with disabilities. Furthermore, the duty to provide reasonable accommodation is especially relevant in the context of Article 30(2) CRPD and for this thesis. Indeed, those individualised adaptations, which 'may involve changing practices or spending money on additional equipment or support or on the installation of improved physical access',[399] are decisive to the active participation and contribution of professionals with disabilities in the CCS, especially in the EU.[400]

5.2. Article 8 CRPD: Awareness-raising

As is the case with other provisions mentioned in this chapter, Article 8 CRPD is 'the first of its kind to be included in an international human rights instrument'.[401] Here, awareness-raising is seen as a decisive means of tackling on of the most challenging obstacle to

[394] Cera, 'Article 2 [Definitions]' (n 73) 113.
[395] Lawson, 'The UN CRPD: New Era or False Damn?' (n 8) 599.
[396] Stamatopoulou (n 175) 115.
[397] CRPD Committee, 'General Comment No. 6' (n 290) para 12.
[398] Chow, 'Cultural Rights' (n 10) 425.
[399] Lawson, 'The UN CRPD: New Era or False Damn?' (n 8) 598.
[400] See Urzel Francil (n 354).
[401] Series, 'Disability and Human Rights' (n 4) 77.

'achieving equality and dignity for persons with disabilities', namely, attitudinal barriers.[402] As such, during the drafting of the Convention, it was understood as a necessary pre-condition to realise the human rights of persons with disabilities, and their full and effective participation in society on an equal basis with others.[403] The CRPD Committee has notably highlighted its importance for the implementation of Articles 5 and 9 CRPD in dedicated General Comments.[404]

In a nutshell, Article 8 CRPD is an extensive Article urging States Parties 'to promote a fundamental change in societal attitudes, by fostering respect for the rights and dignity of persons with disability and by combating stereotypes and prejudice'.[405] To achieve concrete progress in the lives of persons with disabilities and bring about the paradigm shift entrenched in the CRPD, it therefore requires to raise awareness 'at all levels of society and in all areas of life'.[406] In that respect, Article 8(1) CRPD demands that States Parties 'undertake to adopt immediate, effective and appropriate measures' to promote awareness of disability throughout society,[407] to combat stereotypes, prejudices and harmful practices,[408] as well as to promote awareness of their potential and contributions.[409] In a second paragraph, Article 8 CRPD lists a non-exhaustive series of measures likely to contribute to raising awareness as intended in the first paragraph. Among general measures, it also targets specific fields like employment,[410] education[411] or the media.[412] In that respect, it mentions effective public awareness campaigns, including those that can 'promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market'.[413] Article 8(2)(b) CRPD also emphasises awareness-raising through the education system, stating that this would foster an attitude of respect towards persons with disabilities and their rights in children of all ages. Article 8 CRPD also highlights the role of the media

[402] Francisco Bariffi, 'Article 8: Awareness-Raising' in Ilias Bantekas, Michael Ashley Stein and Dimitris Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford University Press 2018) 230.
[403] Aurélie Baranger, 'Article 8 [Awareness-Raising]' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities* (Springer 2017) 214.
[404] CRPD Committee, 'General Comment No. 2' (n 170) para 19; CRPD Committee, 'General Comment No. 6' (n 290) 39.
[405] Kayess and French (n 19) 28.
[406] Baranger (n 403) 217.
[407] CRPD, art 8(1)(a).
[408] CRPD, art 8(1)(b).
[409] CRPD, art 8(1)(c).
[410] CRPD, art 8(2)(a)(iii).
[411] CRPD, art 8(2)(b).
[412] CRPD, art 8(2)(c).
[413] CRPD, art 8(2)(a)(iii).

calling for portrayals of individuals with disabilities 'in a manner consistent with the purpose of the present Convention'.[414]

In doing so, the CRPD underscores that society can also benefit from the recognition and acceptance of persons with disabilities as part of human diversity.[415] However, as for Article 9 CRPD on accessibility, scholars like Kayess and French posit that such novel provision in human rights law may present one of the 'greatest challenges to the international community'.[416] Much remains to be done to effectively influence the perception of persons with disabilities, and in the words of Devandas Aguilar, 'embracing disability as a positive aspect of humanity remains the final frontier to be conquered'.[417]

Nevertheless, it is quite easy to draw interlinkages between Article 8 CRPD and Article 30 CRPD, especially when the role of the CCS in shaping how persons with disabilities are perceived is highlighted so clearly, through the mention of the media.[418] In the context of Article 30 CRPD, Bantekas and others highlight that 'one should seriously consider states parties' making accessible disability culture to the non-disabled public' as it would also be consistent with Article 8 CRPD.[419] The reference to the need to raise awareness on the contributions of persons with disabilities also particularly resonates with Article 30(2) CRPD, as it shines a light on the creative, artistic and intellectual potential of persons with disabilities in cultural life. In this respect, it is interesting to see Article 8(1)(c) and (2)(a)(iii) CRPD addressing the need to promote awareness of and recognise the capabilities and contributions of persons with disabilities, while Article 30(2) CRPD calls for measures to enable opportunities to develop one's potential, for one's own benefit and for the enrichment of society. In a nutshell, those Articles overlap and cannot exist without the others. Ultimately, a combined reading of Articles 8, 27 and 30(2) CRPD further questions how raising awareness of, and enabling, the participation of cultural and creative professionals with disabilities in the CCS can change media narratives and portrayals, as well as the functioning of CCS as workplaces.

[414] CRPD, art 8(2)(c).
[415] Bariffi (n 402) 252.
[416] Kayess and French (n 19) 28.
[417] United Nations Human Rights Council (UN HRC), 'Rights of Persons with Disabilities: Report of the Special Rapporteur on the Rights of Persons with Disabilities' (2019) UN Doc A/HRC/43/41 para 73.
[418] In relation to representations in culture, see for instance Tom Shakespeare, 'Cultural Representation of Disabled People: Dustbins for Disavowal?' (1994) 9 Disability & Society 283.
[419] Bantekas and others (n 11) 865.

5.3. Article 9 CRPD: Accessibility

Being a novelty in international human rights law,[420] Article 9 CRPD is also a decisive provision of the CRPD. Aspects of accessibility have been discussed throughout this chapter, including as general principle of the CRPD or an intrinsic element of the right to participate in cultural life of persons with disabilities.[421] The later point is evident from the phrasing of certain provisions, such as those contained in Article 30(1) CRPD for example. As such, accessibility, and its dedicated Article, are closely connected to the realisation of Article 30 CRPD and this sub-section explores how it particularly underpins the participation of professionals with disabilities in cultural life.

Article 9 CRPD is amongst the most consequent provisions of the Convention. In a few words, it requires States Parties to take appropriate action to ensure persons with disabilities have access to the physical environment, to transportation, to information and communications, including Information and Communication Technologies (ICTs), and to any other facilities and services that are open or provided to the public.[422] In this respect, Kayess and French highlight 'that the environment is very broadly conceptualised, and not only includes built structures'.[423]

In a second paragraph, the Convention lays out a detailed series of appropriate measures that States Parties shall take to remove barriers, including the 'implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public'.[424] Additionally, it sets out that States Parties must ensure that private entities, open or providing services to the public, 'take into account all aspects of accessibility'.[425] Article 9(2)(d)–(e) CRPD also calls on States Parties to remove barriers 'by providing accessible signage (eg in braille and easy read), and by making available live assistance (eg in the form of readers or sign language interpreters), in all buildings and facilities open to the public'.[426]

In this regard, obligations of accessibility are *ex ante* obligations, which may not be triggered by an individual claim.[427] Instead, efforts towards realising a more accessible society must be continuous and systematic.[428] As such, accessibility must be

[420] Anna Lawson, 'Article 9: Accessibility' in Ilias Bantekas, Michael Ashley Stein and Dimitris Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford University Press 2018) 259.
[421] See Chapter 2, Sub-sections 2.4.1 and 3.2.
[422] CRPD, art 9(1).
[423] Kayess and French (n 19) 28.
[424] CRPD, art 9(2)(a).
[425] CRPD, art 9(2)(b).
[426] Lawson, 'The UN CRPD: New Era or False Damn?' (n 8) 601.
[427] Nilsson (n 83) 79.
[428] Nilsson (n 83) 79.

differentiated from reasonable accommodation –an *ex nunc* duty 'applicable from the moment a request for accommodation is received'.[429]

A strong emphasis is placed on accessibility and equality of opportunity by the CRPD Committee. The treaty body highlights that '[a]ccessibility is a precondition and a means to achieve de facto equality for all persons with disabilities', which requires that States Parties ensure that the built environment, transport, and information and communication services are accessible, and therefore 'available and usable for all persons with disabilities on an equal basis with others'.[430] Put simply, Article 9 CRPD, together with Article 4 CRPD, delineates 'the scope of public measures to be taken in order to improve accessibility', which may in turn contribute to the realisation of the obligations set out in Articles 27, 30, as well as 21 CRPD.[431]

Indeed, as already mentioned, accessibility plays a key role in enabling participation in cultural life. In this respect, Tatic clearly characterises it as 'a vital precondition for meaningful participation by persons with disabilities in cultural life'.[432] The identification and elimination of any barriers to accessibility, be it in terms of the physical environment, transportation, information and communication and others, are key measures to ensure that persons with disabilities have access, on an equal basis with others, to any cultural activities, facilities, and services. Lawson also insists on 'the close relationship … between articles 9 and 30 of the CRPD', particularly when it comes to Article 30(3) CRPD, and highlights the obstacles 'often created by copyright laws (preventing the transcription or sharing of books in accessible formats)'.[433]

Likewise, accessibility is also an evident pre-condition to the realisation of Article 30(2) CRPD and Article 27 CRPD, since persons with disabilities may not be able to develop and utilise their potential, should they not have access to the built environment, to transportation, to ICTs or their workplace. Ultimately, this means that professionals with disabilities may not access cultural activities, facilities and services, including those necessary to develop their cultural and creative practice, like spaces for training purposes, or for their careers if referring to exhibition spaces, theatres, studios or offices, to only name a few. Thus, before discussing this at greater length in chapter 7,[434] it is interesting

[429] CRPD Committee, 'General Comment No. 6' (n 290) para 24(b).
[430] CRPD Committee, 'General Comment No. 6' (n 290) para 40.
[431] Rachele Cera, 'Article 21 [Freedom of Expression and Opinion, and Access to Information]' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities* (Springer 2017) 391.
[432] Damjan Tatic, 'Access for People with Disabilities to Culture, Tourism, Sports and Leisure Activities: Towards Meaningful and Enriching Participation' (Council of Europe, 2015) 16.
[433] Lawson, 'Article 9: Accessibility' (n 420) 277.
[434] See Chapter 7, Section 7.

to recall here that awareness-raising efforts with employers, specifically on accessibility obligations, may also be a good avenue to ensure workplace accessibility[435] and therefore promote the realisation of the right of professionals with disabilities to take part in cultural life in the EU.

5.4. Article 21 CRPD: Freedom of Expression and Opinion, and Access to Information

Article 21 CRPD recognises the right to freedom of expression and opinion of persons with disabilities, which includes 'the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice'.[436] Also referred to as 'super-freedoms', freedom of expression and opinion are instrumental to 'the enablement of other fundamental rights',[437] and as this sub-section suggests, to fostering Article 30 CRPD. While less explicit, Article 21 CRPD also integrates obligations relating to the provision of accessible information, 'as without such provision, the right would be meaningless'.[438]

Article 21(a)–(b) CRPD particularly obliges States Parties to facilitate accessible communication, including through the use of a range of communication means, modes and formats chosen by persons with disabilities, the provision of information according to those,[439] and requires that they take the appropriate measures, including to:

> ensure that information available to the general public is provided to disabled people, in a cost-free and timely manner, in formats which are accessible to them and that, in official interactions, an individual's preferred means of communication (eg sign language or Braille) will be accepted.[440]

Article 21(e) CRPD also requires States Parties to recognise and promote the use of sign languages.[441] Thus, Article 21 CRPD must also be understood together with Article 2 CRPD, [442] which provides a definition of communication that encompasses:

> languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and

[435] Marco Fasciglione, 'Article 27 of the CRPD and the Right of Inclusive Employment of People with Autism' in Valentina Della Fina and Rachele Cera (eds), *Protecting the Rights of People with Autism in the Fields of Education and Employment* (Springer 2015) 149.
[436] CRPD, art 21 chapeau.
[437] Cera, 'Article 21 [Freedom of Expression and Opinion, and Access to Information]' (n 431) 388.
[438] Cera, 'Article 21 [Freedom of Expression and Opinion, and Access to Information]' (n 431) 390.
[439] CRPD, art 21(a)–(b).
[440] Lawson, 'The UN CRPD: New Era or False Damn?' (n 8) 601.
[441] CRPD, art 21(e).
[442] Eliza Varney, 'Article 21: Freedom of Expression and Opinion, and Access to Information' in Ilias Bantekas, Michael Ashley Stein and Dimitris Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford University Press 2018) 587.

augmentative and alternative modes, means and formats of communication, including accessible information and communication technology.[443]

It can also be read in conjunction with Article 30(4) CRPD, which provides for the recognition and support of persons with disabilities' 'specific cultural and linguistic identity, including sign languages and deaf culture'.[444]

It is well accepted that inaccessible information impacts every 'aspects of life',[445] and can have detrimental consequences 'on the exercise of other rights, including … participation in the cultural life'.[446] Thus, the combination of Articles 21 and 9 CRPD further reinforces the obligations set out in Article 30 CRPD, and supports its realisation. Articles 21 and 30 CRPD entertain 'a mutual relationship', with Article 21 CRPD being of particular relevance to Article 30 CRPD, and Article 30 CRPD contributing to the implementation of the former, as it 'provides for enabling measures to enjoy access to cultural materials in accessible formats'.[447] On that last point, it is interesting to note that Article 30(1)(b) CRPD, which calls on States Parties to take action to ensure that persons with disabilities enjoy access to television programmes, advances to some extent Article 21(d) CRPD, which 'merely requires states parties to "encourage" the mass media to make their services available to persons with disabilities'.[448] In general, the combination of these CRPD provisions –Articles 9, 21 and 30 CRPD– recognises 'the centrality of the media in people's lives',[449] and highlights ways of addressing the barriers found therein.

Article 21 CRPD is also a good example of the CRPD's ability to push boundaries when it comes to the indivisibility of human rights,[450] and demonstrates how the 'process of recognizing the rights of persons with disabilities mandated the creation of hybrid rights'.[451] Indeed, as a hybrid provision,[452] Article 21 CRPD blurs traditional distinctions between the categories of civil and political rights subject to immediate implementation, and economic, social and cultural rights to be progressively realised.[453] In that sense, the right to freedom of expression and opinion is undoubtedly a civil and political right.[454] However, Article 21 CRPD also offers detailed 'indications on how to ensure access to

[443] CRPD, art 2.
[444] CRPD, art 30(4).
[445] Lawson, 'The UN CRPD: New Era or False Damn?' (n 8) 601.
[446] Varney (n 442) 587.
[447] Cera, 'Article 21 [Freedom of Expression and Opinion, and Access to Information]' (n 431) 391.
[448] Varney (n 442) 600.
[449] Varney (n 442) 600.
[450] See Gauthier De Beco, 'The Indivisibility of Human Rights and the Convention on the Rights of Persons with Disabilities' (2019) 68 International and Comparative Law Quarterly 141.
[451] Amita Dhanda, 'Constructing a New Human Rights Lexicon: Convention on the Rights of Persons with Disabilities' (2008) 5 SUR International Journal on Human Rights 43, 49.
[452] Varney (n 442) 593.
[453] MacKay (n 58) 330.
[454] See ICCPR, art 19.

information'[455] in a *timely manner*.[456] This signals that part of this provision, relating to providing accessible information, does not fall under an obligation of immediate realisation, and instead must be addressed in a 'continuous and systematic way, gradually, yet steadily'.[457]

More topically, Article 21 CRPD underpins the right to participate in cultural life as a whole. The right to access information, as well as the right to freedom of expression and opinion, are intrinsic to the realisation of Article 30(2) CRPD. In that sense, insofar as access to information is closely linked with the possibility to develop one's creative, intellectual and artistic potential, as well as one's practice and work, Article 21 CRPD clearly contributes to the active participation of persons with disabilities in culture, including in the EU. Evidently, freedom of expression and opinion is also fundamental for all cultural and creative professionals involved in the making and dissemination of cultural goods or services, and who would be at risk of censorship for instance.

6. Concluding Remarks

To understand whether the legal framework of the EU supports disability-inclusive CCS, it is essential to grasp what the international legal standard is. This is what this chapter has sought to achieve. The participation of cultural and creative professionals with disabilities in the EU does not exist nor develop independently from the international commitments of the EU, the first and only regional integration organisation party to the CRPD, nor of its Member States, all of which are States Parties to the CRPD. As such, it is vital to understand how the CRPD recasts the right to participate in cultural life as a broad right, advancing on previous iterations of various international human rights instruments that failed to address the specific situation of persons with disabilities and the barriers they faced.

As 'a landmark achievement for inclusive lawmaking –both for disability advocates and the human rights community'–[458] it imposes a range of obligations on States Parties, with the aim to ensure the effective realisation of a right to take part in culture for persons with disabilities. Grounded, among others, in the principles of equality, non-discrimination, and accessibility, it incorporates several conceptualisations of the notion of 'participation in cultural life'. Broadly conceived of, it considers a right to enjoy culture as passive

[455] Cera, 'Article 21 [Freedom of Expression and Opinion, and Access to Information]' (n 431) 391.
[456] Emphasis added.
[457] CRPD Committee, 'General Comment No. 2' (n 170) para 27.
[458] Series, 'Disability and Human Rights' (n 4) 80.

participants/audiences/consumers, which necessitates the adoption of various non-discrimination and accessibility measures, as well as more active dimensions of participation that recognises the potential of persons with disabilities and their contributions to culture. In this respect, the Convention requires States Parties to take action in order to allow persons with disabilities the opportunity to both develop and utilise their creative, artistic and intellectual potential, may it be for their own benefit or the enrichment of society.

Although this is not explicit in Article 30 CRPD, this chapter demonstrates how the Article, and particularly Article 30(2) CRPD, can be interpreted and used to recognise the right of persons with disabilities to a professional participation in cultural life at the international level. In support of this argument, this chapter examines how Article 27 is supportive of the realisation of Article 30(2) CRPD and questions, through an innovative and distinctive focus, whether and how the CRPD Committee engages with the professional dimension of the right of persons with disabilities to take part in cultural life. Although it concludes that such reflections in the reporting guidelines, LoIs, COs and General Comments are fairly rare and limited, it highlights how various considerations of the CRPD Committee on the right to participate in cultural life, as well as connected rights, may inform this thesis.

In this respect, it also contextualises the understanding and implementation of Article 30 CRPD that ought to be pursued at the EU level, by emphasising how interdependent and interrelated it is to all other human rights recognised in the CRPD. In this respect, the chapter discusses more specifically the connections of Article 30 CRPD with Articles 5, 8, 9 and 21 CRPD. In doing so, it demonstrates how these provisions inform the realisation of the right to participate in cultural life, and particularly Article 30(2) CRPD, while highlighting the themes identified in the qualitative research.

Overall, this in-depth and innovative study considers the Convention, Articles 30 and 27 CRPD, their interpretation by the Convention's treaty body, and the interlinkages entertained with other CRPD provisions. As such, it teases out the core tenets of a conception of participation of persons with disabilities in cultural life as a professional endeavour, one that must be realised by all States Parties to the Convention. Setting the international legal standard for professional participation in cultural life, to which the EU has to adhere, this allows the thesis to investigate whether it finds an echo, either positive or negative, in the EU legal framework studied hereinafter. Although the direct effect of the Convention in the EU is challenged, it does still provide a frame of reference to understand opportunities, limitations, and gaps in the current EU legal framework in that

regard. It also allows to question whether the Convention has provided a 'pathway to cascade these human rights principles',[459] which would have materialised into EU action. Therefore, it acts as a stepping stone to the investigation of the participation of persons with disabilities in the CCS in the following chapters.

[459] Scott Avery, 'Intersections in Human Rights and Public Policy for Indigenous People with Disability' in Franziska Felder, Laura Davy and Rosemary Kayess (eds), *Disability Law and Human Rights: Theory and Policy* (Palgrave Macmillan 2022) 235.

Chapter 3
Related International Standards Relevant to Cultural and Creative Professionals with Disabilities in the EU

1. Introduction

As discussed in the previous chapter, the CRPD is considered the main legal framework for the purpose of this thesis. It provides an essential background to researching the participation in cultural life of cultural and creative professionals with disabilities in the EU and informs how the thesis approaches the research questions posed in the introduction. As noted then, the CRPD is, to this day, the only UN human rights treaty concluded by the EU. As such, it is an integral part of its legal order and ought to drive the EU action on disability (and on any related matter) and to make disability-mainstreaming the norm. However, it is not the only recognition of cultural or labour rights at the international level which would inform EU action on relevant matters. An array of instruments does so, part of which also predates the CRPD.

On this basis, this third chapter highlights the international legal framework of interest to the participation of professionals with disabilities in cultural life, which also particularly underpins the right of cultural and creative professionals with disabilities in the EU to utilise their creative, artistic and intellectual potential. In doing so, it shines a light on instruments and measures that include earlier recognitions of the right to participate in cultural life or of related rights, and stem from the work of the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Labour Organization (ILO).

The situation is such, as discussed in chapter 1, that these initiatives and measures can be seen as avenues pursued by the international community to tackle some of the challenges that affect the worlds of work and culture, and therefore the working lives of professionals in the cultural and creative sectors (CCS). This chapter therefore aims to offer further insights into the international legal context, focusing on standard-setting activities with regards to culture and labour, which either have predated the adoption of the CRPD, were adopted concomitantly or afterwards. Indeed, some instruments discussed below have preceded the adoption of the CRPD, and as such, provided a background to the recognition of the right to participate in cultural life of persons with disabilities in the CRPD, and in turn to the realisation of this right in the EU. However, while the EU has engaged to a certain extent with these international initiatives, this chapter highlights how

the latter have not meaningfully engaged with the right to participate in cultural life of professionals with disabilities prior to the adoption of the CRPD, nor advanced it significantly. In addition, other more recent developments continue to inform work on the status of CCS professionals in the EU and the protection of their rights. It is also suggested that the CRPD now seemingly influences the action of UNESCO and the ILO, albeit in a limited way.

Whilst it points to lasting failures –as well as some interesting initiatives– in understanding the challenges faced by professionals with disabilities and what the right to take part in cultural life means for them, this chapter supports the thesis in answering the research questions. In doing so, it does not downplay the role of the CRPD as a prime international legal framework to investigate the key challenges faced by cultural and creative professionals with disabilities in the world of work, and to understand whether and how the EU legal framework supports the CCS to be more inclusive in that respect. Indeed, as recalled earlier, the CRPD is particularly relevant as it encompasses and proclaims the key obligations on which this thesis seeks to draw on and study; the right to employment and work, the right to participate in cultural life, and ultimately, the right to participate in cultural life as professionals within the meaning of Article 30(2) CRPD. Therefore, the instruments and measures presented below act more as secondary standards to the CRPD and Article 30(2) CRPD. Still, their consideration here contributes to better contextualise the right to participate in cultural life of professionals with disabilities in the EU, and to understand the EU action in this respect. Thus, it prepares the ground for the analysis that will follow in the third part on the EU framework.

Following these introductory remarks, section 2 elaborates on key legal instruments addressing the right to participate in cultural life, and mentions relevant legislation adopted before the CRPD. In doing so, it discusses cultural rights as recognised in the Universal Declaration on Human Rights (UDHR),[1] the two international covenants on human rights of 1966,[2] as well as other international and regional instruments. As such, it questions how the right to participate in cultural life of professionals, including of those with disabilities, would have featured prior to the adoption of the CRPD. Section 3 highlights the work of the UNESCO, and how it has contributed, as the UN organisation with a specific cultural mandate, to setting standards which benefit CCS professionals globally. For the purpose of this analysis, it considers the UNESCO's impact on CCS

[1] Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).
[2] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR); International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

professionals in the Union, from its inception to the present day. In this respect, it particularly focuses on the 1980 UNESCO Recommendation concerning the Status of the Artist (the 1980 Recommendation)[3] and the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions (CPPDCE or 2005 Convention).[4] Section 4 moves on to highlight the work of the ILO, the UN's dedicated organisation for decent work and social inclusion, which has developed an array of international labour standards of relevance for the EU. In this context, this last substantive section makes particular reference to the ILO's work on disability, and other initiatives of relevance to the CCS and its professionals. Finally, Section 5 provides some concluding remarks.

2. Earlier Recognitions of the Right to Participate in Cultural Life in International Law

Cultural rights have been addressed directly or indirectly in several human rights instruments before the CRPD recognised a 'range of access and participation rights' in Article 30 CRPD,[5] including the right of professionals with disabilities to participate in cultural life.[6] The right to take part in cultural life has been proclaimed in various international and regional human rights instruments, some of which only concern specific groups,[7] which 'either are relevant to or apply to persons with disabilities'.[8] Admittedly, the UDHR and the other international and regional instruments discussed below, like the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), have for the most part a limited binding power on the EU, as it only concluded the CRPD as of yet. Nevertheless, some long predate the CRPD and have informed the drafting of Article 30 CRPD, as they enshrined the recognition of the right to culture as a human right to be protected under international law. This section therefore highlights the need to protect such a right,

[3] Recommendation concerning the Status of the Artist (adopted 27 Octobre 1980) UNESCO 21/C Res Annex I (1980 Recommendation).
[4] Convention on the Protection and Promotion of the Diversity of Cultural Expressions (adopted 20 October 2005, entered into force 18 March 2007) 2440 UNTS 311 (CPPDCE).
[5] Ilias Bantekas and others, 'Article 30: Participation in Cultural Life, Recreation, Leisure, and Sport' in Ilias Bantekas, Michael Ashley Stein and Dimitris Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford University Press 2018) 866.
[6] See Chapter 2, Sub-section 3.2.2.
[7] Luigino Manca, 'Article 30 [Participation in Cultural Life, Recreation, Leisure and Sport]' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities* (Springer 2017) 543–544.
[8] Delia Ferri, 'The Right of Persons with Disabilities to Participate in Cultural Life' in Delia Ferri and Ann Leahy, *Dismantling Barriers and Advancing the Right of Persons with Disabilities to Participate in Cultural Life: A Socio-Legal Analysis* (Routledge 2025) 76.

including for the benefit of cultural and creative professionals, but also the difficulties that continue to affect its application.

2.1. The Universal Declaration of Human Rights

At the 'universal' level, Article 27(1) UDHR states that '[e]veryone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits'. The second paragraph of the article also focuses on author's rights and the protection of moral and material interests over scientific, literary or artistic productions.[9] As such, Article 27 UDHR encloses several rights; 'the right to enjoy culture, freedom of scientific research, the right to enjoy scientific advancement, and … author's rights' and freedom of creative activity.[10] The latter appear to be quite relevant to CCS professionals with disabilities, since intrinsic to their occupation, and therefore of interest to this thesis.

The UDHR further anchors cultural rights as 'a category of human rights that primarily concern the development of one's personhood and self-fulfilment'[11] with Article 22 UDHR. Indeed, it recognises that everyone 'has the right to social security and is entitled to realization … of the economic, social and cultural rights indispensable for his dignity and the free development of his personality'.[12] Additionally, it protects the right to freedom of expression in Article 19 UDHR. Chow stresses how interlinked UDHR Articles are, noting that the enjoyment of the right to participate in cultural life is based on the assumption 'that a person has a minimum level of well-being (Art 25), education (Art 26), employment (Art 23) and reasonable working hours (Art 24)'.[13] Although seen as perpetuating an elite vision of culture and arts, the UDHR was the first to guarantee cultural rights globally and has remained 'the principal source of inspiration for cultural rights'.[14]

[9] UDHR, art 27(2).
[10] Ragnar Adalsteinsson and Páll Thórhallsson, 'Article 27' in Guðmundur S Alfreðsson and Asbjørn Eide (eds), *The Universal Declaration of Human Rights: A Common Standard of Achievement* (Martinus Nijhoff 1999) 575.
[11] Bantekas and others (n 5) 872.
[12] UDHR, art 22.
[13] Pok Yin S Chow, 'Cultural Rights', *Elgar Encyclopedia of Human Rights* (Edward Elgar 2022) vol 1, 421.
[14] Nolwenn Guibert, 'Legal Framework: Is there a Right to Art?' in Fiana Gantheret, Nolwenn Guibert and Sofia Stolk (eds), *Art and Human Rights* (Edward Elgar 2023) 28.

2.2. The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights

Similarly to the UDHR, the ICESCR recognises different dimensions of cultural rights, which may particularly benefit cultural and creative professionals with disabilities. As can be inferred from its title, the ICESCR is the main international human rights treaty concerned with cultural rights.[15] Although it does not define culture nor cultural life, it includes one of 'the most comprehensive provision on cultural rights' with Article 15 ICESCR.[16]. It recognises the right of everyone to take part in cultural life,[17] to enjoy the benefits of scientific progress and applications,[18] as well as author's rights.[19] While Article 15(1)(a) ICESCR does not address the right 'freely' to participate in cultural life as the UDHR does,[20] Article 15(3) ICESCR affirms that States Parties must 'respect the freedom indispensable for scientific research and creative activity'.[21] It calls for both 'abstention' and 'positive action' from States Parties,[22] as they take all the necessary steps for 'the conservation, the development and the diffusion of science and culture'.[23] Overall, as noted in the introductory chapter,[24] the right to take part in cultural life under the ICESCR comprises three elements; participation in cultural life, access to cultural life, and contribution to cultural life.[25]

Article 27 UDHR and Article 15 ICESCR both apply to all members of society, without distinction, and therefore cover persons with disabilities and CCS professionals with disabilities. In that regard, the Committee on Economic, Social and Cultural Rights (CESCR), specified early on in its General Comment No. 5 on persons with disabilities that, although not mentioned explicitly, 'persons with disabilities [were] clearly entitled to the full range of rights recognized in the Covenant'.[26] The CESCR has elaborated on the situation of persons with disabilities, noting that '[t]he effects of disability-based discrimination have been particularly severe in the fields of education, employment, housing, transport, cultural life, and access to public places and services'.[27] In several

[15] Elsa Stamatopoulou, *Cultural Rights in International Law: Article 27 of the Universal Declaration of Human Rights and Beyond* (Martinus Nijhoff 2007) 38.
[16] Chow, 'Cultural Rights' (n 13) 423.
[17] ICESCR, art 15(1)(a).
[18] ICESCR, art 15(1)(b).
[19] ICESCR, art 15(1)(c).
[20] Stamatopoulou (n 15) 130.
[21] ICESCR, art 15(3).
[22] Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No. 21: Right of Everyone to Take Part in Cultural Life (Art. 15, Para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights)' (2009) E/C.12/GC/21 para 6.
[23] ICESCR, art 15(2).
[24] See Introductory Chapter, Sub-section 3.2.2.
[25] CESCR, 'General Comment No. 21' (n 22) para 15.
[26] CESCR, 'General Comment No. 5: Persons with Disabilities' (1994) E/1995/22 para 5.
[27] CESCR, 'General Comment No. 5' (n 26) para 15.

General Comments,[28] it has further emphasised the obligations of States Parties to respect the principle of non-discrimination and equality, to eliminate communication barriers, and recalled that the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (Standard Rules) emphasise the need for States to 'promote accessibility to and availability of places for cultural performances and services'.[29] Interestingly, it shines a light on some of the key themes this thesis investigates with regard to the participation of professionals with disabilities in cultural life, namely non-discrimination and equality in chapter 6, or accessibility in chapter 7.

Although not referring to cultural rights as such, the ICCPR also recognises under Article 27 the right of minorities to enjoy their own culture, religion, and to use their own language. In this respect, if comparing with people belonging to ethnic, religious, and linguistic minorities, or indigenous peoples, who saw a right to enjoy their own culture recognised in the abovementioned Article, persons with disabilities appear to receive little recognition of their specific cultural and linguistic identity in the ICCPR. This contrasts with the recognition of the collective dimension of the right of persons with disabilities to participate in cultural life introduced in Article 30(4) CRPD.[30] This echoes the rationale behind the CRPD discussed in the previous chapter, namely, the need to reaffirm the entitlement of persons with disabilities to all human rights, including their right to culture, and to consider their needs in that respect. Similarly to the UDHR, the ICCPR also protects the right to freedom of expression,[31] a key aspect of the realisation of the right of professionals to participate in cultural life, as discussed in chapter 2.

Therefore, it seems that both covenants –although with shortcomings– make a contribution to enshrining rights and freedoms essential to the professional activities of those working in the CCS, and to the enjoyment of the benefits of one's creativity, in the broader international framework. This includes the respect for different layers of rights which make up the right to take part in cultural life or which relate to it, like authors' rights, the right to education or to freedom of expression.[32] Yet, it is also true that, while the two instruments contribute to protecting the right to participate in cultural life of persons with disabilities, including in some respects as professionals, persons with

[28] CESCR, 'General Comment No. 5' (n 26) paras 5, 36–37. See also CESCR, 'General Comment No. 21' (n 22) para 30.
[29] Standard Rules on the Equalization of Opportunities for Persons with Disabilities, UNGA Res 48/96 (4 March 1994) UN Doc A/RES/48/96 (Standard Rules) r 10.
[30] CRPD, art 30(4). See Chapter 2, Sub-section 3.2.4.
[31] ICCPR, art 19.
[32] Pok Yin S Chow, *Cultural Rights in International Law and Discourse: Contemporary Challenges and Interdisciplinary Perspectives* (Brill Nijhoff 2018) 105.

disabilities still 'receive little recognition of their capacity and their right to participate in cultural life' at the international and regional level.[33]

2.3. Other International and Regional Instruments

In addition to these generalist instruments, a number of conventions and other instruments with a more restricted personal scope also recognise cultural rights for certain specific groups, including women, children, youth, or migrant workers, albeit with a limited emphasis on the right to take part in cultural life as professionals. If, as explained earlier, the CRPD is the international legal standard of reference for this thesis, the different provisions discussed here should also be understood in conjunction with the CRPD. This is especially important as persons with disabilities may also be part of the distinct groups protected in these core UN treaties. In this respect, they can encounter intersecting and/or multiple barriers to the exercise of their right to participate in cultural life, on the basis of various grounds.

These instruments include for instance the Convention on the Elimination of All Forms of Racial Discrimination (CERD) with Article 5(e)(vi) and (f) CERD providing for the prohibition and elimination of racial discrimination, and recognising the right of everyone, without distinction as to race, colour, or national or ethnic origin, to the enjoyment of cultural rights, including the right to equal participation in cultural activities, and the 'right of access to any place or service intended for use by the general public', including theatres.[34] Article 7 CERD also requires to take 'immediate and effective measures' to tackle prejudices which lead to racial discrimination, including in the fields of culture and information.[35] This is an interesting point that is reflected in EU law, notably in different provisions of the Audiovisual Media Services Directive (AVMSD) that focus on tackling discrimination and hate speech in audiovisual media services, including on the basis of disability, as highlighted below in part III.[36] The idea of linking the fight against discrimination and the right to participate in cultural life, is also core to this thesis and discussed at greater length in chapter 6.[37]

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[33] Stamatopoulou (n 15) 230.
[34] International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 (CERD) art 5(e)(vi) and (f).
[35] CERD, art 7.
[36] Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services [2010] OJ L95/1 (AVMSD), arts 6(1)(a), 9(1)(c)(ii), 28b(1)(b) and (2). See Chapter 5, Sub-section 5.1.
[37] See Chapter 1, Sub-section 4.1, and Chapter 6.

In that vein, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[38] also contributes to the recognition of cultural rights in international law. Article 13(c) CEDAW specifically provides that States Parties shall take all measures to address discrimination against women in economic and social life, including the right to participate in all aspects of cultural life. The Convention on the Rights of the Child (CRC)[39] is also 'rich in references to cultural rights'.[40] If cultural issues are discussed in a number of Articles,[41] including Article 23 CRC on children with disabilities, Article 31 CRC is the one that provides for the respect and promotion of children's right to participate fully in cultural and artistic life. Additionally, among other Articles addressing cultural aspects relating to the protection of the rights of migrant workers and family members,[42] the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) also affirms that migrant workers and members of their families shall 'enjoy equality of treatment with nationals of that State in relation to: … [a]ccess to and participation in cultural life'.[43]

Overall, the idea of protecting professional participation in cultural life does not expressly feature in the abovementioned treaties. Still, the broad references to participation in cultural activities, the mention of the right to participate in *all* aspects of cultural life[44] or the distinction between 'access to' and 'participation in' cultural life contained in the CERD, CEDAW and CMW, are all indications that a more active contribution to cultural life is covered, albeit they do not distinguish between amateurism and work. This is also reminiscent of the wording of Article 30(2) CRPD as the CRPD provision does not explicitly approach persons with disabilities as professionals of the CCS and instead refers to their contribution to cultural life –which may therefore be in a professional or amateur capacity. Although it does not undertake to eradicate child labour,[45] the CRC is omitted here as it would seem questionable to consider whether such a human rights treaty –which explicitly protects children from economic exploitation and performing harmful work–[46] could proclaim a right to participate in cultural life as a professional.

[38] Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW).
[39] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC).
[40] Stamatopoulou (n 15) 40.
[41] See CRC, arts 8, 17, 20, 23–24 and 29–30.
[42] See Alessandro Chechi, 'Migrants' Cultural Rights at the Confluence of International Human Rights Law and International Cultural Heritage Law' (2016) 5 International Human Rights Law Review 26, 48–49.
[43] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3 (CMW) arts 43(1)(g) and 45(1)(d).
[44] Emphasis added.
[45] See Geraldine Van Bueren, *The International Law on the Rights of the Child* (Brill Nijhoff 1995) 264.
[46] CRC, art 32.

Additionally, although not always explicitly mentioned, cultural rights have been addressed in other prominent human rights instruments.[47] At the international level, the 1993 Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights specified that 'the place of disabled persons is everywhere', which could be understood as implying that they also belong in cultural spaces, including in a professional capacity.[48] Other instruments include the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,[49] as well as regional human rights instruments such as the African Charter on Human and Peoples' Rights,[50] and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.[51] As for Europe, the 1950 European Convention on Human Rights,[52] the CFR –which is discussed at greater length under part III on the EU Framework–[53] the European Social Charter[54] and a number of Conventions of the Council of Europe[55] engage with cultural rights, or other rights which underpin taking part in cultural life,[56] again not explicitly engaging with its professional dimension.

Additionally, cultural rights are addressed throughout UNESCO's rich standard-setting activity',[57] which includes for example the 2001 Universal Declaration on Cultural Diversity,[58] or the 1980 Recommendation and the CPPDCE discussed hereinafter.

[47] For an overview, see Stamatopoulou (n 15) 43–47.
[48] World Conference on Human Rights, 'Vienna Declaration and Programme of Action' (25 June 1993) UN Doc A/CONF.157/23 para 64.
[49] Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, UNGA Res 47/135 (18 December 1992) UN Doc A/RES/47/135 arts 1–2.
[50] African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 8 art 17.
[51] Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (entered into force 16 November 1999) OAS Treaty Series No 69 (1988) reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System OEA/Ser L V/II.82 Doc 6 Rev 1 at 67 (1992) art 14.
[52] Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (adopted 4 November 1950, entered into force 3 September 1953) ETS 5 (ECHR).
[53] CFR, arts 22 and 26. See Chapter 4, Sub-section 2.4, Chapter 5, Sub-section 2.3, and Chapter 6, Sub-section 3.4.
[54] European Social Charter (revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163 (ESC) arts 15(3), 23 and 30.
[55] European Cultural Convention (adopted 19 December 1954, entered into force 5 May 1955) ETS 18; Convention for the Protection of the Archaeological Heritage of Europe (adopted 3 October 1985, entered into force 1 December 1987) ETS 121; European Convention on the Protection of the Archaeological Heritage (revised) (adopted 16 January 1992, entered into force 25 May 1995) ETS 143; European Convention for the Protection of the Audiovisual Heritage (adopted 8 November 2001, entered into force 1 January 2008) ETS 183; Council of Europe Framework Convention on the Value of Cultural Heritage for Society (adopted 27 October 2005, entered into force 1 June 2011) ETS 199; Council of Europe Convention on Cinematographic Co-production (revised) (adopted 29 June 2017, entered into force 1 October 2017) ETS 220; Council of Europe Convention on Offences Relating to Cultural Property (adopted 19 May 2017, entered into force 01 April 2022) ETS 221. See also Damjan Tatic, 'Access for People with Disabilities to Culture, Tourism, Sports and Leisure Activities: Towards Meaningful and Enriching Participation' (Council of Europe, 2015) 19–21.
[56] Stamatopoulou (n 15) 44. On the ECHR, see also Ferri (n 8) 76.
[57] Stamatopoulou (n 15) 43. See also Abdulqawi A Yusuf and UNESCO (eds), *Standard-Setting in UNESCO* (Martinus Nijhoff; UNESCO 2007).
[58] Universal Declaration on Cultural Diversity (adopted 2 November 2001) UNESCO Doc CLT.2002/WS/9.

3. The Contribution of the UNESCO in Setting Standards for Cultural and Creative Professionals

The UNESCO, as the international organisation with an explicit cultural mandate, has undertaken, over the years, to establish standards for cultural and creative professionals that are rather relevant in the context of this thesis. The standard-setting activities of the UNESCO have developed concurrently to the development and formalisation of the EU's limited cultural competence in the Treaties, also discussed in chapter 5.[59] This 'cultural stagnation'[60] or lack of interest in the issue at the EU level was then largely based on the belief that 'cultural issues would be left to other international organizations with an explicit cultural remit, notably UNESCO'.[61]

For the purpose of this analysis, it is worth noting that the UNESCO adopted the Recommendation concerning the Status of the Artist in 1980 and the CPPDCE in 2005. They both remain, to this day, relevant to upholding the rights of professionals in the CCS, globally and in the EU. Indeed, all EU Member States are also UNESCO Member States, while the EU itself is as a strategic partner of the organisation. As discussed hereinafter, both instruments particularly relate to the participation of professionals with disabilities in cultural life, and articulate key issues to consider in addressing the challenges faced in the CCS, including those highlighted in chapter 1. The emphasis on the CPPDCE instrument is also linked to the scope of the DANCING project, which sought to bridge the implementation of the CRPD and the CPPDCE.

3.1. The 1980 Recommendation Concerning the Status of the Artist

One of the most notable soft law instruments developed by the UNESCO of relevance to this thesis is the 1980 Recommendation, which was adopted during the 21st session of the UNESCO General Conference. The 1980 Recommendation lays down principles and norms for the international regulation of two key concerns that UNESCO Member States sought to address at the time; a necessity to better 'understand and strengthen the role of the "creative worker"' and to enhance their status, taking into account the atypicality of their professional situation as well as 'their contribution to development'.[62]

[59] See Chapter 5, Sub-section 2.2.
[60] Paul Kearns, 'Culture and EU Law: The Exploration of an Interface' in Rachael Craufurd Smith (ed), *Culture and European Union Law* (Oxford University Press 2004) 394.
[61] Rachael Craufurd Smith, 'Introduction' in Rachael Craufurd Smith (ed), *Culture and European Union Law* (Oxford University Press 2004) 2.
[62] UNESCO, 'UNESCO's 1980 Recommendation Concerning the Status of the Artist: Promoting the Professional, Social and Economic Rights of Artists' (2022) 3.

These concerns are still relevant more than forty years later. As discussed in chapter 1, they continue to underpin the social and professional situation of those working in the CCS and the difficulties they face,[63] not least because of the lack of a common framework in the EU. In that sense, Snijders and others reiterate that the 'Status of the Artist' as spelt out in 1980 endures as 'a transversal issue that draws on several legal areas and numerous institutional competencies'.[64] Additionally, the focus of the 1980 Recommendation on '[e]quality of opportunity, inclusion of all voices, and diversity', as essential principles for aligning with such status;[65] continues to resonate with the work of EU stakeholders on the social and professional situation of artists and cultural workers to date.

In that respect, while not binding, the 1980 Recommendation serves as an essential reference point, especially in the context of this thesis,[66] as it lays the foundation for what would become 'a roadmap to improve artists' status and reshape cultural policies aimed at creating an enabling environment for artists' work'.[67] In doing so, it echoes major human rights instruments like the UDHR and the ICESCR.[68] By intertwining issues inherent to 'the creative process and the need for social change and development',[69] it also serves as guidance for a number of stakeholders, including the public and private sectors and non-governmental organisations, as they 'develop and implement policies, measures, and initiatives' to support cultural and creative professionals.[70]

With this Recommendation, 'artists' –or at least all those included in its definition– were led to 'become an exclusive object of attention' of the UNESCO community.[71] In particular, the 1980 Recommendation provides a rather comprehensive definition of the artist, which was discussed in the introduction of this thesis.[72] It has also been quoted in certain EU publications, notably in research on the status and working conditions of artists and cultural and creative professionals produced by different experts groups.[73] At times,

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[63] Christa Kammerhofer-Schlegel and others, *EU Framework for the Social and Professional Situation of Artists and Workers in the Cultural and Creative Sectors: European Added Value Assessment* (European Parliamentary Research Service (EPRS), European Parliament 2023) 8.
[64] Jacqueline Snijders and others, 'The Status and Working Conditions of Artists and Cultural and Creative Professionals' (European Expert Network on Culture and Audiovisual 2020) 9.
[65] Tom Fleming and Kathrin Schmidt, 'Empowering Creativity: Implementing the UNESCO 1980 Recommendation Concerning the Status of the Artist: 5th Global Consultation' (UNESCO 2023) 54.
[66] See Introductory Chapter, Sub-section 3.2.4.
[67] European Commission, *The Status and Working Conditions of Artists and Cultural and Creative Professionals: Report of the OMC (Open Method of Coordination) Group of EU Member States' Experts* (Publications Office 2023) 16.
[68] 1980 Recommendation, preamble.
[69] Jonathan Vickery, 'The Status of the Artist, Cultural Rights and the 2005 Convention: A Tribute to Professor Milena Dragićević Šešić' [2020] The Journal of Law, Social Justice and Global Development 131, 135.
[70] UNESCO (n 62) 4.
[71] Vickery (n 69) 135.
[72] See Introduction Chapter, Sub-section. 3.2.4.
[73] See Snijders and others (n 64) 45; European Commission, *The Status and Working Conditions of Artists – OMC Report* (n 67) 18.

the 1980 Resolution is also recalled in other EU documents, such as European Parliament and Council Resolutions.[74] Even though it informs the work of different EU institutions, the Union does not have a standardised definition of 'artist', or of cultural and creative professional, and this gives rise to various issues which were also highlighted in chapter 1.[75] Therefore, in most EU Member States, these definitions are established according to domestic criteria, leading to a lack of uniformity across the EU.[76]

The 1980 Recommendation further clarifies that the status of the artist encompasses two key aspects: first, the respect accorded to artists within society, based on the significance of their role and contribution, and second, the 'recognition of the liberties and rights, including moral, economic and social rights, with particular reference to income and social security, which artists should enjoy'.[77] The 1980 Recommendation also underscores the importance of implementing a comprehensive set of policies and measures that address various aspects of an artist's career path, including their vocation and training, social security, employment, working and living conditions, issues of taxation and income, mobility or freedom of expression.[78] It also emphasises the right of artists to form and join trade unions and professional organisations, a point which is further discussed in this thesis, as chapter 6 highlights the contribution that social partners can make in ensuring the participation of professionals with disabilities in the CCS.[79]

The 1980 Recommendation does not seek to attribute specific privileges to artists. Rather, it aims 'to grant them analogous rights as any other socio-professional group whose work has specific characteristics that need to be addressed through special measures'[80] –a purpose that is therefore particularly relevant to the focus of this thesis, as echoed in part III. Overall, it stresses the importance of recognising artists as cultural workers and ensuring they 'benefit from the legal, social or economic advantages pertaining to the status of workers'.[81]

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[74] See European Parliament Resolution of 20 October 2021 on the situation of artists and the cultural recovery in the EU (2020/2261(INI)) [2022] OJ C184/88 (European Parliament Resolution on cultural recovery), preamble; Council Resolution on the EU Work Plan for Culture 2023–2026 [2022] OJ C466/1 (EU Work Plan for Culture 2023-2026), annex I, 5; European Parliament Resolution of 21 November 2023 with Recommendations to the Commission on an EU framework for the social and professional situation of artists and workers in the cultural and creative sectors (2023/2051(INL)) [2024] OJ C2024/4208 (European Parliament Resolution on an EU framework for artists), paras 4–6.

[75] See Chapter 1, Sub-section 2.1.

[76] Karol Muszyński and Anna Gromada, *EU Framework for the Social and Professional Situation of Artists and Workers in the Cultural and Creative Sectors* (EPRS, Publications Office 2023) 1.

[77] 1980 Recommendation, 5.

[78] 1980 Recommendation, 5–6.

[79] 1980 Recommendation, 5. See Chapter 6, Sub-section 7.2.

[80] Snijders and others (n 64) 44–45.

[81] Fleming and Schmidt (n 65) 14.

As such, the 1980 Recommendation is a key reference to investigate the situation of those working in the CCS. The implementation of the 1980 Recommendation is also regularly surveyed across UNESCO Member States, as well as the EU itself. However, since its adoption, it has been seldom embedded into national cultural policy, or other regulatory frameworks, with few notable exceptions in the EU, like France, Germany or Latvia.[82] Most recently, following consultation of its Member States, the UNESCO Executive Board emphasised a range of issues which currently affect the CCS and its professionals, including:

> the ongoing and deepening vulnerability and fragility of the creative sector and artistic practices, with challenges including the lack or poor enforcement of protective normative frameworks, obstacles to artistic freedom, low pay levels and precarious working conditions, and a dearth of professional development opportunities for young and diverse talent.[83]

These concerns concur with the Declaration for Culture adopted following the UNESCO World Conference on Cultural Policies and Sustainable Development of 2022, which highlighted 'the continued vulnerability of the cultural sector, particularly in the wake of the global COVID-19 crisis'.[84] There has also been a recent renewed focus in the EU on the status of CCS professionals, with the European Parliament adopting a Resolution on the situation of artists and the cultural recovery in the EU in October 2021,[85] or with the latest Work Plan for Culture 2023-2026 highlighting this topic as a key area of action.[86] The European Parliament Resolution adopted in late 2023 particularly recommends to the European Commission to establish a comprehensive Union Framework on the social and professional situation of artists and other professionals in the CCS, and called on Member States to strive to implement the 1980 Recommendation.[87]

3.2. The 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions

As indicated earlier, the UNESCO has also adopted the Convention on the Protection and Promotion of the Diversity of Cultural Expression or CPPDCE in 2005, an international

[82] European Institute for Comparative Cultural Research and others, 'The Status of Artists in Europe' (European Parliament 2006) 17.
[83] UNESCO, 'Implementation of Standard-setting Instruments, Part III: Implementation of the 1980 Recommendation Concerning the Status of the Artist – Consolidated Report on the Implementation of the Recommendation' (31 August 2023) UNESCO Doc 217 EX/20.III para 14.
[84] UNESCO, 'Final Declaration' (UNESCO World Conference on Cultural Policies and Sustainable Development – MONDIACULT 2022, 2022) MONDIACULT-2022/CPD/6 para 4.
[85] European Parliament Resolution on cultural recovery, para 25.
[86] EU Work Plan for Culture 2023-2026, annex I, 5.
[87] European Parliament Resolution on an EU framework for artists, para 4.

agreement that furthers the commitment 'to promote and protect artistic freedom by upholding human rights and fundamental freedoms, such as the freedom of expression'.[88] Much like the CRPD, the adoption of the 2005 Convention was relatively swift, and both the EU[89] and its Member States acceded to it. Together, they also played a particularly active role in the process leading to the Convention's adoption.[90] Among many characteristics, this instrument remains, to this day, the only UNESCO Convention to which the EU is a party, which further underscores 'the importance of UNESCO's standard-setting role' in this field,[91] and a certain reach in the EU legal order.

3.2.1. Key Features

As such, the 2005 Convention marks the first legal recognition of 'the concept of cultural diversity … in a binding instrument of international law'.[92] In that respect, Article 4(1) CPPDCE introduces cultural diversity as 'the manifold ways in which the cultures of groups and societies find expression [including] expressions [that] are passed on within and among groups and societies'. As such, it refers to the cultural heritage of humanity, as well as to diverse modes of artistic creation, production, dissemination, distribution and enjoyment.[93] In aiming to protect and promote the diversity of cultural expressions – understood as those expressions that ensue, among others, from the creativity of individuals–[94] the CPPDCE also evokes the right of CCS professionals with disabilities to develop and utilise their creative, artistic and intellectual potential, as enshrined in Article 30(2) CRPD. However, in reflecting the agreement reached among States on the legal understanding of 'cultural diversity', the CPPDCE remains somewhat unclear on the subject, and even 'obscures its definition of cultural diversity through multiple and somewhat cryptical references to notions such as cultural identity [and] ways of life'.[95]

Throughout, the CPPDCE underlines the need to promote respect for the diversity of cultural expressions and to enhance the recognition of its value at the local, national and international levels,[96] therefore seemingly underscoring its importance to encourage the

[88] Kammerhofer-Schlegel and others (n 63) 8.
[89] See Council Decision 2006/515 of 18 May 2006 on the conclusion of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions [2006] OJ L201/15.
[90] European Commission, 'Quadrennial Periodic Report on behalf of the European Union on measures to protect and promote the diversity of cultural expressions in the framework of the 2005 UNESCO Convention' (Staff Working Document) SWD(2012) 129 final (Quadrennial Periodic Report CPPDCE 2012) 6.
[91] UNESCO, 'Quadrennial Periodic Report: European Union 2021' (2021) 2.
[92] Céline Romainville, 'Cultural Diversity as a Multilevel and Multifaceted Legal Notion Operating in the Law on Cultural Policies' (2016) 22 International Journal of Cultural Policy 273, 277.
[93] CPPDCE, art 4(1).
[94] CPPDCE, arts 1(a) and 4(3)
[95] Romainville (n 92) 277–278.
[96] CPPDCE, art 1(e).

contribution of professionals with disabilities in culture. It also emphasises the sovereignty of States to establish and implement the policies and measures they consider essential for safeguarding the diversity of cultural expressions on their territories.[97] However, the CPPDCE imposes few concrete obligations and seems to focus mainly on 'best-endeavour duties'.[98] For instance, Article 6 on the rights of parties at the national level, as well as Articles 7 and 8 CPPDCE, which respectively address measures to promote and measures to protect cultural expressions, remain quite open-ended in their wording. Article 6 CPPDCE refers to a non-exhaustive list of measures that 'each Party *may* adopt', while Article 7 CPPDCE indicates that Parties '*shall endeavour* to create in their territory an environment which encourages' cultural expressions, and '*shall* also *endeavour* to recognize' their contributions, particularly in terms of diversity of cultural expressions.[99] In that vein, Article 8 CPPDCE indicates that Parties '*may* take all appropriate measures to protect and preserve cultural expressions', in the instance where they '*may* determine' that a certain special situation presents certain risks.[100]

The wording used in the 2005 Convention therefore translates into less concrete obligations for the Parties, which consequently impact on the CPPDCE's concretisation. Apart from two provisions, which 'fall under the external policies of the European Union' and retain a certain binding character, the CPPDCE has had limited impact since it entered into force, which is largely due to what is seen as a 'mere declaratory' function and open-ended wording.[101] Non-compliance with the CPPDCE does not result in sanctions from its governing institutions and consequences are mostly political or reputational.[102] In that sense, Romainville is particularly critical of the CPPDCE, noting especially 'the absence of an actual control body', which weakens its institutional framework.[103]

3.2.2. Reach in the EU Legal Order

Notwithstanding its limitations, the CPPDCE requires its Parties (including the EU) to submit a quadrennial periodic report to the UNESCO.[104] In the first round of periodic reporting, the EU initially contended implementing the 2005 Convention was not 'a strict

[97] CPPDCE, art 1(h).
[98] Mira Burri, 'Business as Usual? The Implementation of the UNESCO Convention on Cultural Diversity and EU Media Law and Policies' (2013) 38 European Law Review 805, 807.
[99] Emphasis added.
[100] Emphasis added.
[101] Burri, 'Business as Usual?' (n 98) 806–807. See CPPDCE, arts 16–17.
[102] Mira Burri, 'The UNESCO Convention on Cultural Diversity: An Appraisal Five Years after its Entry into Force' (2013) 20 International Journal of Cultural Property 357, 364.
[103] Romainville (n 92) 278.
[104] CPPDCE, art 9(a).

legislative activity but rather the pursuit of policy developments both as regards internal and external policies'.[105] In doing so, the EU argued that its current cultural policy framework aligned with the CPPDCE's aim, since '[s]timulating the creation and circulation of more and diverse cultural expressions and reinforcing the capacity of the European cultural and creative sectors [were] a key axis around which the EU vision is articulated'.[106] In that sense, Article 167 TFEU –a key feature of the EU framework for culture–[107] particularly emphasises respect for cultural diversity, including national and regional diversity, as a 'fundamental value of the European integration process'.[108] Therefore, it opposes 'cultural assimilation' as a result.[109] Interestingly, Calligaro and Vlassis also mention that there is also a noticeable tendency for supranational organisations, such as the EU and the UNESCO, to emphasise that 'the cultural diversity being promoted is one capable of stimulating economic activity, and hence employment and social cohesion'.[110]

In its latest quadrennial report, the Union also emphasised its ongoing commitment to realising the CPPDCE through various policies aimed at promoting and protecting the diversity of cultural expressions.[111] In that respect, the European Commission maintains that the EU continuously and consistently promotes the CPPDCE, and in view of its vague wording, 'one can certainly maintain that the [EU] has already sufficiently fulfilled its obligations under the Convention'.[112] Although it has not put forward any radically novel cultural initiative, the efforts of the EU in that respect span over fifty EU measures, some of which have specifically been carried out in collaboration with UNESCO in countries outside the EU.[113] Although the EU was not able to define a distinct 'cultural carve-out' in the Treaties, it has therefore endeavoured to 'build alliances in recognition of state cultural sovereignty elsewhere, and [intensified] its activity within the [UNESCO], whose cultural discourse proved more appeasing'.[114]

[105] European Commission, 'Quadrennial Periodic Report CPPDCE 2012' (n 90) 7.
[106] European Commission, 'Quadrennial Periodic Report CPPDCE 2012' (n 90) 7.
[107] See Chapter 5, Sub-section 2.2.
[108] Bruno De Witte, 'Legal Framework of the EU's Cultural Policy' in Evangelia Psychogiopoulou and Sarah Schoenmaekers (eds), *European Union Economic Law and Culture: Towards a European Culturally Corrected Market Economy* (Edward Elgar 2024) 21.
[109] Evangelia Psychogiopoulou, 'The Cultural Open Method of Coordination: A New but Different OMC?' (2018) 3 European Papers 257, 268.
[110] Oriane Calligaro and Antonios Vlassis, 'La politique européenne de la culture : Entre paradigme économique et rhétorique de l'exception' (2017) 56 Politique Européenne 8, 24.
[111] See UNESCO, 'Quadriennal Periodic Report: European Union 2021' (n 91) 2.
[112] Burri, 'Business as Usual?' (n 98) 826.
[113] See UNESCO, 'Quadriennal Periodic Report: European Union 2021' (n 91).
[114] Evangelia Psychogiopoulou, 'Conclusion: Culture and the European Union' in Evangelia Psychogiopoulou (ed), *Cultural Governance and the European Union* (Palgrave Macmillan 2015) 242.

Other measures, more with an internal remit, and also mentioned in this thesis, include the increase of the budget of the Creative Europe programme, the revision of the EU copyright Directives,[115] and the AVMSD, which seeks to protect European works,[116] as well as the creation of i-Portunus, a new grant scheme to support the mobility of artists in Europe (now Culture Moves Europe),[117] the adoption of the Gender Equality Strategy, or the funding of research projects.[118] Most of those are discussed in part III in relation to the key themes this thesis identifies, namely equality and non-discrimination, accessibility, and the EU funding system.

Despite criticisms, the CPPDCE remains a significant tool that both 'celebrates the cultural as well [as] economic value' of the CCS, and stands as 'a landmark agreement for the international community'.[119] However, while the CPPDCE may be reflected in EU cultural action, it remains fairly weak and 'as a legal principle diversity appears as doubtful as an abstract legal principle of unity or integration'.[120] Although cultural diversity is one of the main objectives of the EU cultural action,[121] the numerous EU initiatives reported to the UNESCO do not necessarily attest to the effectiveness of EU cultural policy in that respect, nor to 'the achievement of a sustainable culturally diverse environment'.[122]

As this thesis has highlighted earlier in chapter 1 and further discusses in chapters 6, 7 and 8, working in the EU's CCS as a professional with disabilities remains fraught with obstacles, even though their cultural expressions promote cultural diversity and the value of their contribution should be recognised, as per the CPPDCE. In that respect, both the 1980 Recommendation and the CPPDCE represent important standards, which broadly

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[115] Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society [2001] OJ L167/10; Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property [2006] OJ L376/28; Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs [2009] OJ L111/16; Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works [2012] OJ L299/5; Directive (EU) 2017/1564 of the European Parliament and of the Council of 13 September 2017 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society [2017] OJ L242/6 (Marrakesh Directive).

[116] See Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities [2018] OJ L303/69.

[117] European Commission, '2023 Annual Work Programme for the Implementation of the Creative Europe Programme' (2022) C(2022) 6138 final (2023 Creative Europe Annual Work Programme), annex, 16.

[118] See UNESCO, 'Quadriennal Periodic Report: European Union 2021' (n 91).

[119] Snijders and others (n 64) 41.

[120] Armin Von Bogdandy, 'The European Union as Situation, Executive, and Promoter of the International Law of Cultural Diversity – Elements of a Beautiful Friendship' (2008) 19 European Journal of International Law 241, 275.

[121] Tuuli Lähdesmäki, 'Rhetoric of Unity and Cultural Diversity in the Making of European Cultural Identity' (2012) 18 International Journal of Cultural Policy 59, 64–65.

[122] Burri, 'Business as Usual?' (n 98) 809.

underscore and map how to improve the conditions for active participation in the CCS and how to enhance the contribution of professionals with disabilities in cultural life in the EU, as is studied in this thesis.

4. The ILO's Contribution on Disability Inclusion and Work in the CCS

On the other hand, as the UN's specialised agency for labour and social policy, the ILO has, developed a range of international labour standards in order to promote social justice internationally.[123] The standard-setting activity of the ILO is rather varied and extensive, and made of binding and non-binding instruments. There is currently an official corpus of 191 ILO conventions, six protocols, and 208 recommendations, most of which are up to date.

While these standards may have a more general scope or focus on other sectors or at-risk groups, the ILO also engages with disability inclusion and working in the CCS as part of its activities. Hence, the work of the ILO, to which the EU adheres to some extent, also underpins the professional participation of persons with disabilities in cultural life in the EU, and therefore informs how this thesis addresses the research questions it poses.

4.1. The ILO and the Development of International Labour Standards

The ILO, which was created in 1919,[124] has concretised the international protection of various labour standards by pursuing a unique way of working through the tripartite representation of the 'world of work', involving representatives of workers and employers' organisations, and representatives of governments.[125] In doing so, it has set out fundamental principles and rights at work in key fundamental human rights conventions. Therefore, those instruments concern all professionals with disabilities working in the CCS. These fundamental conventions cover issues of forced labour and its abolition, child labour, freedom of association, the recognition of the right to organise and collective bargaining, and occupational safety and health.[126] The ILO also provides

[123] See Constitution of the International Labour Organisation (Part XIII (Labour) of the Treaty of Versailles of 28 June 1919) (Paris Peace Conference 28 June 1919) (ILO Constitution) preamble.
[124] See ILO Constitution.
[125] Gerry Rodgers and others, *The International Labour Organization and the Quest for Social Justice, 1919-2009* (ILO 2009) 12.
[126] See Convention concerning Forced or Compulsory Labour Convention (adopted 28 June 1930, entered into force 01 May 1932) C029 (ILO Forced Labour Convention); Convention concerning Freedom of Association and Protection of the Right to Organise (adopted 09 July 1948, entered into force 04 July 1950) C087 (ILO Freedom of Association and Protection of the Right to Organise Convention); Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (adopted 01 July 1949, entered into force 18 July 1951) C098 (ILO Right to Organise and Collective Bargaining Convention); Convention concerning the Abolition of Forced Labour (adopted 25 June 1957, entered into force 17 January 1959) C105; Convention concerning Minimum Age for Admission to

for equal remuneration for men and women workers, and for tackling discrimination in employment and occupation.[127] Most of the conventions protecting core labour standards have been ratified by EU Member States.

A number of governance conventions drafted by the ILO also set up standards for areas, which impact on the functioning of the CCS and the participation of CCS professionals with disabilities, such as labour inspection and employment policy.[128] In this respect, in exerting to create the conditions for decent work and social justice, the ILO specifically enjoins its Members to design and pursue an employment policy that focuses on 'full, productive and freely chosen employment'.[129] The ILO Employment Policy Convention specifies, in that respect, that said policy must aim to guarantee 'freedom of choice of employment and the fullest possible opportunity for each worker', therefore including those with disabilities, 'to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin'.[130]

The ILO's international standards also include a large number of more technical conventions, which speak, to some extent, to the situation of cultural and creative professionals with disabilities. They are complemented by a series of ILO recommendations.[131] With varying degrees of compatibility with the EU law acquis,[132] they assume a narrower scope while covering a wide range of topics relating to all areas of work. Some conventions focus on particular categories of workers –albeit not on cultural and creative professionals– and others discuss specific issues, such as part-time work, wages, or collective bargaining.[133] These are in fact recurring themes in the context

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Employment (adopted 26 June 1973, entered into force 19 June 1976) C138; Convention concerning Occupational Safety and Health and the Working Environment (adopted 22 June 1981, entered into force 11 August 1983) C155; Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (adopted 17 June 1999, entered into force 19 November 2000) C182; Convention concerning the Promotional Framework for Occupational Safety and Health (adopted 15 June 2006, entered into force 20 February 2009) C187.

[127] See Equal Remuneration Convention (adopted 29 June 1951, entered into force 23 May 1953) C100; Convention concerning Discrimination in Respect of Employment and Occupation (adopted 25 June 1958, entered into force 15 June 1960) C111 (ILO Discrimination (Employment and Occupation) Convention).

[128] See Convention concerning Labour Inspection in Industry and Commerce (adopted 11 July 1947, entered into force 07 April 1950) C081; Convention concerning Employment Policy (adopted 09 July 1964, entered into force 15 July 1966) C122 (ILO Employment Policy Convention).

[129] ILO Employment Policy Convention, art 1(1).

[130] ILO Employment Policy Convention, art 1(2)(c).

[131] See ILO, 'List of Instruments by Subject and Status' (*ILO Normlex*) <https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:12030> accessed 28 July 2025.

[132] See European Commission and Ergon Associates, *Analysis – in the Light of the European Union Acquis –of the ILO Conventions that Have Been Classified by the International Labour Organisation as up to Date* (Publications Office 2014).

[133] See Convention concerning the Protection of Wages (adopted 01 July 1949, entered into force 24 September 1952) C095; Convention concerning Minimum Wage Fixing, with Special Reference to Developing Countries (adopted 22 June 1970, entered into force 29 April 1972) C131; Convention concerning the Promotion of Collective Bargaining (adopted 19 June 1981, entered into force 11 August 1983) C154; Convention concerning Part-Time Work (adopted 24 June 1994, entered into force 28 February 1998) C175.

of the CCS, and particularly relate to some of the challenges that were considered in chapter 1, as well as some of the EU secondary legislation discussed in the context of chapter 6.[134]

Against this background, the ILO is equipped with a supervisory system, dedicated to supporting Member States in the execution of international labour standards. It is interesting to note that, early on, the ILO's supervisory system was considered one of the most advanced forms of control exercised by an international organisation over the activities of Member States.[135] As such, the ILO continues to rely on mechanisms established in 1926 which support the ILO Governing Body like the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the (Tripartite) Conference Committee on the Application of Standards.[136] The former hears the reports prepared by Member States, and comments made by trade unions and employers' organisation on the application of international labour standards, and can issue recommendations in this respect, while the latter reviews the CEACR's annual report and discusses selected cases and complex issues.[137] The Committee on Freedom of Association (CFA) also examines complaints in relation to freedom of association.[138] Yet even if the CFA can find violation of this principle, its conclusions, together with those of the CEACR, are not legally binding.[139] This means that like 'most international law procedures, the ILO system has no real method of sanction; ultimately it relies on goodwill and persuasion'.[140] Therefore, it begs the question of its influence in the EU, including in respect of international labour standards which impact on professionals with disabilities in the CCS.

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[134] See Chapter 1, Section 2 and Chapter 6, Section 6.

[135] Marcel Merle, 'Le contrôle exercé par les organisations internationales sur les activités des Etats membres' (1959) 5 Annuaire français de droit international 411, 427; Jean Charpentier, 'Le contrôle par les organisations internationales de l'exécution des obligations des États' (1983) 182 Recueil des Cours de l'Académie de La Haye 143, 163. See also, George Politakis (ed), *Protecting Labour Rights as Human Rights: Present and Future of International Supervision: Proceedings of the International Colloquium on the 80th Anniversary of the ILO Committee of Experts on the Application of Conventions and Recommendations, Geneva, 24 - 25 November 2006* (ILO 2007); Janice R Bellace, 'The ILO Supervisory System Post-2012: Back on Track?' (2019) 57 Archiv des Völkerrechts 153.

[136] See International Labour Conference (8th Session) Resolution Concerning the Methods by which the Conference Can Make Use of the Reports Submitted under Article 408 of the Treaty of Versailles, Submitted by the Committee on Article 408 (Geneva 4 June 1926).

[137] André Nunes Chaib, 'Committee of Experts on the Application of Conventions and Recommendations: International Labour Organization (ILO)', *Max Planck Encyclopedia of International Procedural Law* (Oxford University Press 2017) paras 1–3 <https://opil.ouplaw.com/display/10.1093/law-mpeipro/e1325.013.1325/law-mpeipro-e1325?rskey=yDbXim&result=1&prd=MPIL> accessed 29 July 2025.

[138] Michael Doherty, 'Emergency Exit?: Collective Bargaining, the ILO and Irish Law' (2013) 4 European Labour Law Journal 171, 179.

[139] Bob Hepple, 'Does Law Matter? The Future of Binding Norms' in George Politakis (ed), *Protecting Labour Rights as Human Rights: Present and Future of International Supervision: Proceedings of the International Colloquium on the 80th Anniversary of the ILO Committee of Experts on the Application of Conventions and Recommendations, Geneva, 24 - 25 November 2006* (ILO 2007) 226.

[140] Doherty, 'Emergency Exit?' (n 138) 179.

4.2. The ILO-EU Collaboration

Interestingly, the EU has been cooperating with the ILO since the beginning of the European project,[141] and all EU Member States are also Members of the ILO. Acting as a critical stakeholder, the Union has built an enduring relationship with the UN specialised agency. The ILO-EU collaboration, which is seen as 'multifaceted, intensive, dynamic and result-oriented', goes beyond just the adoption and implementation of standards in the EU.[142]

In that sense, the willingness of both organisations to closely cooperate has been formalised and reiterated over the years.[143] In this respect, the ILO Constitution also indicates that ILO Members are primarily responsible for signing, ratifying and implementing ILO instruments, or bringing those before the competent authorities.[144] As international organisations cannot acquire membership of the ILO under said Constitution, only Member States of the EU may exercise those powers and the EU, through the European Commission, has instead an official non-voting observer status.[145] This means that the European Commission may attend and participate in conferences and other meetings of the ILO, including that of the ILO Governing Body.[146] However, without voting powers, it may not vote on the adoption of Conventions or Recommendations, nor can the EU ratify ILO Conventions.[147]

While the EU 'generally speaks through its Member States',[148] the European Commission represents the EU in official relations with the ILO and endeavours to support the coordination of the Member States in this context.[149] However, the Union is limited in that the European Commission has not been able to assume more leadership at the ILO, largely because its Member States have resisted the idea of 'a single EU position on the

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[141] Agreement concerning Liaison between the International Labour Organisation and the European Economic Community (ILO-European Economic Community) (139th Conference Session Geneva 7 July 1958).
[142] Evelyne Pichot and Rudi Delarue, 'International Labour Organization (ILO): A Dynamic and Result-Oriented Cooperation with the EU and its Member States' in Ramses A Wessel and Jed Odermatt (eds), *Research Handbook on the European Union and International Organizations* (Edward Elgar 2019) 102.
[143] See in that sense, Exchange of Letters between the Commission of the European Communities and the International Labour Organization [2001] OJ C165/12; European Commission and ILO, 'Memorandum of Understanding concerning the Establishment of a Strategic Partnership between the International Labour Organisation and the Commission of the European Communities in the Field of Development' (adopted 16 July 2004).
[144] See ILO Constitution, art 19(5)–(6).
[145] Tonia Novitz, 'In Search of a Coherent Social Policy: EU Import and Export of ILO Labour Standards?' in Jan Orbie and Lisa Tortell (eds), *The European Union and the Social Dimension of Globalization: How the EU Influences the World* (Routledge 2009) 39.
[146] Giuseppe Casale, 'International Labour Standards and EU Labour Law' in Nicola Countouris and Mark Freedland (eds), *Resocialising Europe in a Time of Crisis* (Cambridge University Press 2013) 92.
[147] Jan Orbie and Lisa Tortell, 'From the Social Clause to the Social Dimension of Globalization' in Jan Orbie and Lisa Tortell (eds), *The European Union and the Social Dimension of Globalization: How the EU Influences the World* (Routledge 2009) 13.
[148] Pichot and Delarue (n 142) 104.
[149] Robert Kissack, 'The Performance of the European Union in the International Labour Organization' (2011) 33 Journal of European Integration 651, 652.

development of ILO Conventions, even in areas where there is joint competence with the Union'.[150] This also alludes to complications in terms of division of powers between the EU and its Member States, especially when standards developed at the ILO level engage the exclusive competence of the Union.[151] This requires the close cooperation of the EU and the Member States with regard to the ratification and the implementation of commitments resulting from the concerned ILO conventions.[152] In effect, the EU must authorise Member States through a Council Decision to ratify the conventions which pertain to its competence,[153] while in cases of shared competence –which is rather common with international labour standards as they relate to social policy–[154] or Member State competence, they may decide autonomously to ratify ILO instruments. At times, Member States are also encouraged to ratify and implement up to date ILO Conventions.[155] Indeed, in order to advance on the decent work agenda set by the international organisation, the protection of international labour standards as set out by the ILO has remained a key focus of its collaboration with the EU.[156]

As such, although the EU cannot ratify ILO instruments in its own name and cannot be 'directly bound by international treaties in which fundamental social rights are recognised, these treaties are not without influence or even effect'.[157] Indeed, the EU social acquis –some of which is discussed in this thesis–[158] is understood to 'have been inspired by the international standards' of the ILO,[159] as was for instance the case with the European Pillar of Social Rights.[160] ILO standards are also seen to 'complement the *acquis* in areas which are not covered, or only partly covered' by the EU legal framework.[161]

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[150] Ailish Johnson, 'EU–ILO Relations: Between Regional and Global Governance' in Jan Orbie and Lisa Tortell (eds), *The European Union and the Social Dimension of Globalization: How the EU Influences the World* (Routledge 2009) 84.
[151] See Opinion 2/91 of the Court [1993] ECLI:EU:C:1993:106. On the division of competences with regards to ILO Conventions, see European Commission and Ergon Associates (n 132).
[152] See Opinion 2/91 of the Court, para 37.
[153] Pichot and Delarue (n 142) 111.
[154] TFEU, art 153.
[155] See Commission of the European Communities, 'Promoting decent work for all: The EU contribution to the implementation of the decent work agenda in the world' (Communication) COM(2006) 249 final, 5; Commission of the European Communities, 'Renewed social agenda: Opportunities, access and solidarity in 21st century Europe' (Communication) COM(2008) 412 final, 15; Council Decision (EU) 2024/1018 of 25 March 2024 inviting Member States to ratify the Violence and Harassment Convention, 2019 (No. 190) of the International Labour Organization [2024] OJ L2024/1018.
[156] ILO, 'The ILO and the EU, Partners for Decent Work and Social Justice: Impact of Ten Years of Cooperation' (2012) 8.
[157] Teun Jaspers, 'Collective Bargaining in EU Law' in Teun Jaspers, Frans Pennings and Saskia Peters (eds), *European Labour Law* (1st edn, Intersentia 2019) 279.
[158] See Chapter 4, Sub-section 4.3, Chapter 5, Sub-section 5.1.1, and Chapter 6, Section 6.
[159] Casale (n 146) 86.
[160] European Commission, 'Establishing a European Pillar of Social Rights' (Communication) COM(2017) 250 final, 6; European Commission, 'Establishing a European Pillar of Social Rights' (Staff Working Document) SWD(2017) 201 final, 2.
[161] Casale (n 146) 86. See also Pichot and Delarue (n 142) 117–118.

The EU's interest also lies in ensuring that EU law and ILO standards are compatible, a pursuit for which the European Commission carries out intense work in the development of ILO initiatives, confirming that there is a strong interplay between the EU social acquis and the ILO Conventions.[162] Yet, in some instances, the position of the Court of Justice of the EU (the 'Court' or CJEU) has been at odds with the standards set by the ILO.[163] This concerns especially restrictions to the right to collective bargaining faced by self-employed individuals in the EU –a right which is otherwise covered in the ILO Right to Organise and Collective Bargaining Convention, seen to apply 'universally to workers and employers'.[164] As mentioned in chapter 1,[165] the Union's position only evolved recently, as the European Commission released guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons,[166] bringing it closer to 'a more inclusive conception of what the right to collective bargaining should entail' and to ILO standards on the topic.[167] On another matter, it will be interesting to see the outcome of the standard-setting discussions launched by the ILO on the subject of 'Decent Work in the Platform Economy', which should lead to a Convention and a Recommendation,[168] and whether it will align with the EU social acquis. Indeed, the EU just recently adopted its own Directive on improving working conditions in platform work, as also discussed in chapter 6.[169]

4.3. The ILO and Disability Inclusion

Moreover, the ILO has tried to pave the way forward for disability inclusion and for promoting equality of opportunities and equal treatment of persons with disabilities in the world of work –an endeavour that quite evidently concerns professionals with disabilities in the CCS. As noted earlier, albeit few refer to disability, ILO Conventions are meant to apply to all, and therefore cover persons with disabilities.[170] The focus of some standards

[162] Pichot and Delarue (n 142) 109–114.
[163] See Case C–67/96 *Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie* [1999] ECLI:EU:C:1999:430 (Albany), paras 59-60.
[164] Michael Doherty, 'Le « travailleur », le droit de l'UE et la négociation collective' [2021] Revue de droit comparé du travail et de la sécurité sociale 60, 69.
[165] See Chapter 1, Sub-section 2.5.
[166] European Commission, 'Guidelines on the Application of Union Competition Law to Collective Agreements regarding the Working Conditions of Solo Self-employed Persons' (Communication, 2022) OJ C374/2.
[167] Doherty, 'Le « travailleur », le droit de l'UE et la négociation collective' (n 164) 69–70.
[168] International Labour Conference (113th Session) Resolution V: Resolution to Place on the Agenda of the Next Ordinary Session of the Conference an Item Entitled 'Decent Work in the Platform Economy' (Geneva, 13 June 2025).
[169] Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work [2024] OJ L2024/2831. See Chapter 6, Section 6.2.
[170] Ilias Bantekas, Facundo Pennilas and Stefan Trömel, 'Article 27: Work and Employment' in Ilias Bantekas, Michael Ashley Stein and Dimitris Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Oxford University Press 2018) 767.

also coincides with provisions of Article 27 CRPD, notably on topics of forced labour or freedom of association and trade unions.[171]

Most prominently, the work-related provisions of the CRPD are reinforced by the provisions of the Vocational Rehabilitation and Employment (Disabled Persons) Convention in 1983, and the related recommendation, and the Discrimination (Employment and Occupation) Convention of 1958 mentioned above, with the caveat that the latter does not explicitly mention disability as a ground of discrimination.[172] However, disability may be covered under the mention of 'other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation'.[173] In contrast, this is addressed explicitly in the EU legal framework as the Employment Equality Directive –a key instrument for the participation of CCS professionals in cultural life in the EU also discussed in chapter 6– protects expressly the ground of disability.[174]

In 2019, the ILO also put forward a Convention on the elimination of violence and harassment in the world of work,[175] which is the second convention adopted following the entry into force of the CRPD. Most interestingly, it refers to the CRPD in its preamble, albeit no other reference is made to disability within the text of the Convention.[176] It aims to protect all workers and other persons in the world of work from violence and harassment, understood as:

> a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment.[177]

In that respect, the Committee on the Rights of Persons with Disabilities (CRPD Committee) has highlighted that harassment is a form of discrimination, which 'poses further obstacles to employment in an open labour market and work environment' for

[171] Maria Ventegodt Liisberg, 'Article 27 [Work and Employment]' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities* (Springer 2017) 501, 507.
[172] Discrimination (Employment and Occupation) Convention, art 1; Convention concerning Vocational Rehabilitation and Employment (Disabled Persons) (adopted 20 June 1983, entered into force 20 June 1985) C159 (ILO Vocational Rehabilitation (Disabled) Convention); Recommendation concerning Vocational Rehabilitation of the Disabled (adopted 22 June 1955) R099 (ILO Vocational Rehabilitation (Disabled) Recommendation).
[173] ILO Discrimination (Employment and Occupation) Convention, art 1.
[174] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16 (Employment Equality Directive) art 1.
[175] Convention on the Elimination of Violence and Harassment in the World of Work (adopted 21 June 2019, entered into force 25 June 2021) C190 (ILO Violence and Harassment Convention).
[176] ILO Violence and Harassment Convention, preamble.
[177] ILO Violence and Harassment Convention, art 1(1)(a).

persons with disabilities.[178] Interestingly, this situation was explicitly discussed in an ILO expert meeting preceding the adoption of the ILO Violence and Harassment Convention. The final report emphasises the following:

> Violence and harassment can potentially affect everyone, but it affects specific groups disproportionately, where certain conditions exist. Imbalanced power relationships, including due to gender, race and ethnicity, social origin, education and poverty could lead to violence and harassment. Discrimination based on these and other grounds, including disability, HIV status, sexual orientation and gender identity, migrant status and age, are also important factors … Where grounds of discrimination intersect, such as gender and race or disability, the risk of violence and harassment is exacerbated. A key additional risk factor is a culture of impunity.[179]

As noted in chapter 1, harassment, particularly as it relates to gender, is also somewhat commonplace in the CCS.[180]

Overall, the CRPD is seen to inform the ILO's approach and work to promote disability inclusion.[181] A few initiatives were still adopted prior to the CRPD,[182] demonstrating, in the words of the International Labour Office, the ILO's 'long standing commitment to disability'.[183] Recently, the International Labour Office also published a detailed guide on reasonable accommodation in the workplace.[184] Covering more groups of workers than just those with disabilities, it makes the business case for reasonable accommodation and diversity,[185] a trend also on the rise within EU employment policy,[186] but does not address the specific situation of those working in the CCS. It does however provide detailed and practical step-by-step guidance for a range of stakeholders involved with the CCS – including workers, employers, their representative organisations and governmental actors– which may support both awareness, understanding and compliance with the duty

[178] CRPD Committee, 'General Comment No. 8 (2022) on the Right of Persons with Disabilities to Work and Employment' (2022) UN Doc CRPD/C/GC/8 para 13.
[179] International Labour Office, 'Report of the Director-General: Fifth Supplementary Report – Outcome of the Meeting of Experts on Violence against Women and Men in the World of Work' (ILO 2016) GB.328/INS/17/5 app I, para 12.
[180] See Chapter 1, Sub-section 2.5.
[181] See International Labour Office, 'Disability Inclusion' (ILO 2012) GB.316/POL/2. The ILO has since adopted successively several disability strategies and action plans to guide its efforts towards becoming more disability inclusive. See most recently, ILO, 'ILO Disability Inclusion Strategy (2024-2027)' (2024).
[182] See Recommendation concerning the Minimum Scale of Workmen's Compensation (adopted 10 June 1925) R022, IV; Vocational Rehabilitation (Disabled) Convention; Vocational Rehabilitation (Disabled) Recommendation; International Labour Office, *Managing Disability in the Workplace. ILO Code of Practice* (ILO 2002).
[183] International Labour Office, 'Disability Inclusion' (n 181) paras 4–6.
[184] International Labour Office, *Promoting Diversity and Inclusion through Workplace Adjustments: A Practical Guide* (ILO 2016).
[185] International Labour Office, *Promoting Diversity and Inclusion through Workplace Adjustments* (n 184) 28.
[186] Mark Bell, 'Adapting Work to the Worker: The Evolving EU Legal Framework on Accommodating Worker Diversity' (2018) 18 International Journal of Discrimination and the Law 124, 129.

of reasonable accommodation, an obligation also set out in the Employment Equality Directive[187] and discussed at greater length in this thesis.[188]

4.4. The ILO and Work in the CCS

The ILO does not overtly address the situation of cultural and creative professionals with disabilities. Yet, within the remit of its work, the UN specialised agency has progressively intensified its efforts to better consider the situation of those working in the CCS. Discussed hereinafter, the ILO's approach to the CCS has mostly formalised through working papers and technical meetings. It has not yet resulted in a binding (or non-binding) standard. Nevertheless, for the purpose of this thesis, this sub-section highlights how issues related to working in the CCS that have arisen at the global level have been considered.

The ILO has legislated over more discrete areas of the world of work, and on the situation of specific categories of workers, including seafarers, dock workers, nursing personnel, or domestic workers. However, it has not yet established international labour standards covering specifically and exclusively the CCS and/or their professionals, and which would, for instance, bind the EU Member States. As mentioned above, most of the ILO's more generic instruments are still intended to benefit all workers and other people in the world of work, including CCS professionals with disabilities.

Moreover, in the last decade, there also seems to be a renewed impetus at the level of the ILO to address the functioning of the CCS and the situation of cultural and creative professionals, especially following the Covid-19 pandemic. In fact, the situation of the CCS has been particularly examined in the context of the ILO's sectoral activities, with two notable studies on employment relationships in arts and culture, and in the media industry, being prepared in 2014 to support the work of the ILO in the area.[189] They particularly pointed to occupational characteristics of CCS professionals, their income, the role of States, as well as changes in the CCS landscape, in terms of media business, or information and communication technologies, and how these have affected employment relationships in the CCS.[190] Their findings resonate with some of the challenges discussed in chapter 1 when considering the social and professional situation

[187] Employment Equality Directive, art 5.
[188] See Chapter 4, Sub-section 4.1, and Chapter 6, Sub-section 2.3.
[189] Andrew Bibby, *Employment Relationships in the Media Industry* (Working Paper No 295, ILO 2014); Gijsbert van Liemt, *Employment Relationships in Arts and Culture* (Working Paper No 301, ILO 2014).
[190] See Bibby, *Employment Relationships in the Media Industry* (n 189); van Liemt, *Employment Relationships in Arts and Culture* (n 189).

of CCS professionals. In 2014, the ILO also held a Global Dialogue Forum on Employment Relationships in the Media and Culture Sector, whereby the tripartite constituents of the organisation adopted points of consensus to inform policy development on the subject. It recalled that fundamental principles and rights at work 'apply to all workers in the media and culture sector, regardless of the nature of their employment relationship'.[191]

Conscious of the particular nature of employment relationships in those sectors, further sectoral work was agreed by the ILO Governing Body in 2015, as it approved the 'collection and analysis of employment data with a view to better describing and understanding the concrete problems faced by governments, employers and workers in the application of international labour standards' in the media, culture and graphical sectors.[192] In that context, it was specified that the study could lay the foundations for decisions on potential future measures, including the adoption of a code of practice or guidelines.[193]

In mapping the political and legal landscape of selected countries, the study that was carried out then highlighted a number of issues arising in employment relationships in the CCS, including in terms of work conditions and decent work opportunities, while recalling that the 1980 Recommendation 'provides a firm, indisputable basis for recognition of the social rights of culture and media workers'.[194] As also highlighted in this thesis,[195] it recognised the widespread use of non-standard work arrangements, as well as legal gaps and policy options for the promotion of decent work in the CCS and the equal treatment of CCS professionals regardless of their employment situation.[196]

In that respect, the study questioned trade unions on specific 'employment equity policies in place for the recruitment, retention, and promotion of women, underrepresented groups, and/or persons with disabilities'.[197] While it shows that the ILO has sought to collect data in that respect, it is unfortunate that the publication does not elaborate on measures that would support CCS professionals with disabilities, and only makes

[191] ILO, 'Global Dialogue Forum on Employment Relationships in the Media and Culture Sector: Points of Consensus' (2014) GDFMCS/2014/7 para 3.
[192] International Labour Office, 'Sectoral and Technical Meetings in 2014 and Proposals for Sectoral Work in 2016–17' (2015) GB.323/POL/4 app I, 8.
[193] International Labour Office, 'Sectoral and Technical Meetings in 2014 and Proposals' (n 192) app I, 8.
[194] Mark Gruber, *Challenges and Opportunities for Decent Work in the Culture and Media Sectors* (Working Paper No 324, ILO 2019) 1, 32.
[195] See Chapter 1, Section 2.
[196] Gruber (n 194) 10–12, 32.
[197] Gruber (n 194) app I, 35.

references to trade unions that mentioned laws and non-binding measures solely focusing on increasing women's representation.[198]

Although the adoption of code of practice or of guidelines has not yet concretised –while a code of practice exists in relation to disability–[199] the research requested by the International Labour Office still highlights a range of factors to leverage on in order to strengthen decent work opportunities in the CCS. For instance, the study particularly points to effectively guaranteeing freedom of association and collective bargaining for all CCS professionals, filling the social protection gap or making use of the synergies with the 1980 Recommendation discussed above.[200]

During the Covid-19 pandemic, the ILO also further researched the situation of CCS professionals through the prism of social protection.[201] However, as stated in chapter 1, this last point is outside the scope of this thesis, primarily because social protection was not identified as key to the participation of professionals with disabilities in cultural life in the context of the qualitative study.[202] Interestingly, in a sectoral brief on Covid-19, the ILO has however highlighted the need for recovery efforts to adapt to the needs of persons with disabilities in the CCS 'who already struggle to enter and stay in the industry, and are often left out of policy planning'.[203]

With respect to addressing opportunities and challenges to decent work in the CCS, the ILO does not play the same role as it does for disability inclusion. This is evidenced in the conclusions of the technical meeting on the future of work in the arts and entertainment sector held in 2023.[204] The aforementioned conclusions particularly highlight that the role of the ILO through the International Labour Office is, among other things, to:

> promote the ratification and effective implementation of international labour standards, ILO declarations, instruments and tools relevant to the arts and entertainment sector, and strengthen the capacity of constituents to respect, promote and realize the fundamental principles and rights at work.[205]

Although the ILO published different pieces of research and held meetings on the subject in the past years, it has not yet worked on the adoption of a tangible instrument or

[198] Gruber (n 194) 26.
[199] International Labour Office, *Managing Disability in the Workplace* (n 182).
[200] Gruber (n 194) 31–32.
[201] See Carlos Galián, Margherita Licata and Maya Stern-Plaza, *Social Protection in the Cultural and Creative Sector: Country Practices and Innovations* (ILO Working Paper 28, ILO 2021).
[202] See Chapter 1, Sub-section 3.3.
[203] ILO, 'ILO Sectoral Brief: COVID-19 and the Media and Culture Sector' (ILO Brief, 2020) 6.
[204] See ILO, 'Technical Meeting on the Future of Work in the Arts and Entertainment Sector: Conclusions' (2023) TMFWAE/2023/8.
[205] ILO, 'Conclusions Technical Meeting on the Future of Work in the Arts' (n 204) para 20(a).

guidance document for the CCS. Ultimately, the ILO tends to recall that all CCS professionals are covered by the ILO's fundamental principles and rights at work, which parties have a duty to respect.[206] In that regard, it has limited its efforts to promoting compliance with already existing international labour standards meant to apply to all workers, including CCS professionals.[207] Yet, general instruments are sometimes inadequate for addressing the challenges that arise in the CCS, and especially the barriers faced by professionals with disabilities.[208]

Overall, the ILO resources highlighted here support the depiction of the CCS labour market made in chapter 1, and shows that the situation of CCS professionals, and to a very limited extent that of CCS professionals with disabilities, features in the ILO's activities. However, it has not materialised in an international labour standard that would address the intersection of disability inclusion and the CCS labour market, and that would, like the CRPD, act as an evident legal background to this thesis. Nevertheless, as for the UNESCO, the work of the ILO on these topics contextualises the situation of EU cultural and creative professionals with disabilities against the issues faced by CCS professionals worldwide. The contribution of the ILO to making working in the CCS more 'decent' therefore complements that of the UNESCO. If it limitedly engages with persons with disabilities as workers, and even less so as CCS professionals, it nonetheless forms part of the international legal framework that, in support of the CRPD, influences how the EU and its Member States provide the conditions to the realisation of the right of professionals with disabilities to participate in cultural life in the EU.

5. Concluding Remarks

This chapter has sought to highlight other international and regional instruments and measures, besides the CRPD, which complete this second part on the international framework to the participation of professionals with disabilities in the CCS. In doing so, it outlines other commitments of the EU and/or its Member States that can benefit professionals with disabilities in the CCS. This chapter also emphasises how many of the instruments discussed therein seemingly relate to the challenges faced by all CCS professionals, and more so professionals with disabilities, as examined in chapter 1.

Moreover, if they do not always address the barriers faced by professionals with disabilities, most treaties recognising cultural rights, and instruments stemming from the

[206] See ILO, 'ILO Sectoral Brief: COVID-19 and the Media' (n 203) 6.
[207] See ILO, 'Conclusions Technical Meeting on the Future of Work in the Arts' (n 204) app.
[208] See Chapter 1, Sections 2 and 4.

work of the UNESCO and of the ILO, articulate either obligations or guidance that relate to key aspects of the participation of professionals with disabilities in the CCS. In particular, the standard-setting activities of UNESCO and ILO are relevant to cultural and creative professionals with disabilities in the EU as they map key aspects of what working in the CCS might entail, including in terms of equal treatment, working conditions, remuneration or freedom of expression. It also highlights the continuous dialogue and relationship the EU entertains with both the UNESCO and ILO in trying to ensure the adequacy of the EU legal framework with culture and work-based international standards. Furthermore, it pinpoints that the key themes identified in the qualitative analysis, which frame the socio-legal analysis this thesis proposes, are also, to an extent, rooted in a wider international legal framework. As such, this chapter provides a stepping stone to the legal analysis proposed in part III on the EU legal framework.

In providing an overview of this international legal framework, this chapter also highlights the relevance of the CRPD as the primary framing device for this thesis. Indeed, by recontextualising the right of persons with disabilities to participate in cultural life in the broader international framework, this third chapter confirms that the CRPD remains the only instrument that sets out specific obligations to ensure the realisation of the right to participate in cultural life of professionals with disabilities.

Part III

The European Union Framework for Cultural and Creative Professionals with Disabilities

Chapter 4

The European Union Framework for Disability Law and Policy

1. Introduction

This thesis recognises 'disability' and 'culture' as central fields of study for the purpose of answering the research questions laid out in the introduction.[1] In these two areas, the EU has managed, from the competences defined in the Treaties, to develop specific fields for EU action and to draw on adjacent competences to address matters relating to disability and culture. By way of introduction to this third part on the EU framework, this fourth chapter, and the following one, aim to present the foundations and current legislation, policies and initiatives that make up the EU's framework and ambitions for disability and culture.

While the international standard on disability rights is the CRPD, at the European level, the Union has also consolidated a substantial legal framework on disability 'which reflects its overall constitutional development and the widening of its sphere of action' over the years.[2] With the current EU framework for disability being the result of decades of legislative and policy developments, the present chapter will only briefly retrace the historic evolution of EU disability law and policy as it has already been discussed at length in previous scholarship.[3] Notwithstanding the importance of such evolution, which includes the entry into force of the Treaty of Amsterdam and the conclusion of the CRPD by the EU[4] –two key milestones in EU disability law and policy–[5] this chapter focuses at greater length on reconstructing a picture of the current framework, including the latest and potential developments in EU disability law and policy, relevant to professionals with disabilities in the cultural and creative sector (CCS).

As evident in this chapter and the next one, the adoption of an EU act specifically addressing the situation of professionals with disabilities in the CCS is unlikely. This is

[1] See Introductory Chapter, Section 2.
[2] Andrea Broderick and Delia Ferri, *International and European Disability Law and Policy: Text, Cases, and Materials* (Cambridge University Press 2019) 295.
[3] See, among others, Anna Lawson, 'The EU Rights Based Approach to Disability: Strategies for Shaping an Inclusive Society' (2005) 6 International Journal of Discrimination and the Law 269; Lisa Waddington, *From Rome to Nice in a Wheelchair: The Development of a European Disability Policy* (Europa Law 2006); Didier Blanc, 'L'Union européenne face au handicap. Les tâtonnements d'une politique publique volontariste' in Olivier Guézou and Stéphane Manson (eds), *Droit Public et Handicap* (Dalloz 2010); Broderick and Ferri (n 2).
[4] Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities [2009] OJ L23/35.
[5] Delia Ferri and Andrea Broderick, 'Introduction to the Research Handbook on EU Disability Law' in Delia Ferri and Andrea Broderick (eds), *Research Handbook on EU Disability Law* (Edward Elgar 2020) 1.

especially true as the European Commission has already limitedly engaged[6] with the European Parliament's call for an EU framework that addresses the specific social and professional situation of cultural and creative professionals in the EU, as is also discussed in chapter 5.[7] Nevertheless, if 'an array of EU policies that are not meant to be about culture yet touch upon it', an array of EU instruments that are not meant to discuss the situation of CCS professionals with disabilities do so too.[8] All legislation, policies, and other tools mentioned here are therefore seen to contribute to some extent to the inclusion of professionals with disabilities in the CCS. As is also argued in chapters 6, 7, and 8, these instruments and their implementation –or lack thereof– are decisive to the inclusion of persons with disabilities in the CCS workforce. They impact on and underpin the development of the artistic, creative, and intellectual potential of persons with disabilities mentioned in the CRPD, as well as of their aspirations and careers.

In that respect, it is important to remember that, unlike EU Regulations, all EU Directives considered in this chapter and the following ones, mostly lay down minimum requirements. They must then be transposed in national legal systems, and Member States remain free to 'adopt or maintain more favourable provisions than those envisaged' by the Directives.[9] This type of legislation therefore leaves a certain latitude for Member States to go beyond the provisions during the transposition process, meaning that some of the gaps discussed in this chapter and the next ones might well be addressed at the national level. This can also lead to significant differences across the EU in the areas where Member States retain significant power. Nevertheless, whether it leads to harmonisation or not, the EU action on disability is a key one. It supports the engagement of the Member States and relevant stakeholders –including those in the CCS, as the contributions quoted from the qualitative study will show in chapters 6, 7 and 8– with instruments and initiatives that have potential to bolster and secure the participation of professionals with disabilities in the CCS.

Therefore, this chapter aims to provide an overview of the EU legal framework in relation to disability, which can support –or fails to support– the participation and inclusion of professionals with disabilities in the CCS, in order to lay the foundations for the analysis

[6] Maroš Šefčovič, 'Letter to President Metsola: Article 225 Resolution EU Framework for the Social and Professional Situation of Artists and Workers in the Cultural and Creative Sectors' (European Commission 2024).
[7] European Parliament Resolution of 21 November 2023 with Recommendations to the Commission on an EU framework for the social and professional situation of artists and workers in the cultural and creative sectors (2023/2051(INL)) [2024] OJ C2024/4208 (European Parliament Resolution on an EU framework for artists).
[8] Evangelia Psychogiopoulou, 'Introduction' in Evangelia Psychogiopoulou (ed), *Cultural Governance and the European Union* (Palgrave Macmillan 2015) 1.
[9] See Andrea Broderick and Philippa Watson, 'Disability in EU Non-Discrimination Law' in Delia Ferri and Andrea Broderick (eds), *Research Handbook on EU Disability Law* (Edward Elgar 2020) 125.

conducted in chapters 6, 7 and 8. In doing so, it follows the key themes identified during the qualitative analysis and spotlights relevant acts, policies or initiatives, which relate to 'equality and non-discrimination', 'accessibility' and 'the EU funding system', and to some extent to 'knowledge-building and awareness-raising'.

Following these introductory remarks, section 2 provides a general overview of EU disability law and policy and considers the place of the CRPD in the EU legal order, as well as the background to, and emergence of EU disability law and policy. It also discusses in greater detail how disability is approached in EU primary law, both in the Treaties and in the CFR. Further to that, section 3 introduces the EU strategic and policy framework for disability and, in particular, the two most recent disability strategies released by the European Commission, before highlighting how disability features in other policy frameworks. On this basis, this chapter then considers more thematic dimensions of the EU disability framework of relevance to this thesis, starting with equality and non-discrimination in section 4. In doing so, it highlights the Employment Equality Directive, as well as gaps in the current EU non-discrimination framework. Section 5 then focuses on accessibility and discusses the vast and multifaceted EU legal landscape, addressing the accessibility of the built environment, of goods and services, of information and communication technologies (ICTs), as well as access to information and other initiatives. In a final thematic section, section 6, this chapter considers how the EU funding system integrates disability considerations. Finally, section 7 provides some concluding remarks.

2. EU Disability Law and Policy: A General Overview

Over the years, the field of disability law and policy has become a standalone area of EU action, and the EU has further integrated the CRPD into its legal order. This section therefore aims to provide a general overview of the field. It examines how the TFEU, the TEU and the CFR lay the foundations for EU action of interest for the implementation of the CRPD in the EU, including Article 30(2) CRPD, by proclaiming rights and principles applicable to CCS professionals with disabilities.

2.1. The CRPD in the EU Legal Order

As already mentioned in this thesis, shortly after the entry into force of the Treaty of Lisbon, the EU ratified a UN Treaty for the first time –the CRPD.[10] The formal conclusion of the Convention concretised the active role played by the EU delegation in the negotiations, especially in the drafting of Articles 43 and 44 CRPD that govern the possibility left to regional integration organisations to sign, ratify and accede to the CRPD, and to be held accountable for its implementation.[11]

Given that both the EU and its Member States ratified the Convention as separate contracting parties, it is understood to be a mixed agreement,[12] meaning that some of the provisions of the CRPD 'falling within EU competence are binding on EU institutions', while others depend on Member States.[13] The EU and its Member States must therefore work together in a spirit of sincere cooperation to ensure the fulfilment of their obligations arising from the CRPD.[14] In this respect, Lawson notes that having the EU as a party to the CRPD 'raises interesting and sometimes perplexing questions about the nature and extent of the commitments involved and about the challenges and opportunities associated with their implementation'.[15] As this thesis posits, this seems to be the case with regard to the situation of CCS professionals with disabilities and the implementation of Article 30 CRPD in the EU. It is therefore core to the points raised in this third part.

As anticipated in Article 44 CRPD, the declaration of competence –which was drawn up by the EU upon its accession to the CRPD–[16] specifies the extent of the Union's competence with regard to matters covered by the Convention.[17] Referring to the division of powers between the EU and its Member States, the declaration discusses, alongside a list of relevant EU secondary legislation, the EU competences in general terms, rather than in reference to specific CRPD provisions.[18] Indeed, the EU can only act within the limits of the competences conferred upon it by the EU Treaties, while Member States

[10] Anna Lawson, 'The European Union and the Convention on the Rights of Persons with Disabilities: Complexities, Challenges and Opportunities' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities* (Springer 2017) 62. See Council Decision 2010/48/EC.
[11] Gráinne De Búrca, 'The European Union in the Negotiation of the UN Disability Convention' (2010) 35 European Law Review 174, 176, 180 and 195. See also Merijn Chamon, 'Negotiation, Ratification and Implementation of the CRPD and its Status in the EU Legal Order' in Delia Ferri and Andrea Broderick (eds), *Research Handbook on EU Disability Law* (Edward Elgar 2020) 61–61.
[12] Chamon (n 11) 52.
[13] European Commission, 'Report on the implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD) by the European Union' (Staff Working Document) SWD(2014) 182 final, para 15.
[14] See TEU, art 4(3).
[15] Lawson, 'The EU and the CRPD' (n 10) 62.
[16] Council Decision 2010/48/EC, annex II.
[17] SWD(2014) 182 final, para 4.
[18] See Lisa Waddington, 'The European Union and the United Nations Convention on the Rights of Persons with Disabilities: A Story of Exclusive and Shared Competences' (2011) 18 Maastricht Journal of European and Comparative Law 431, 442–445.

remain competent in all matters for which no competence has been conferred to the EU.[19] This is the principle of conferral.[20]

Further to that, the TFEU clarifies that competences must be distinguished between those that are exclusive to the EU, exclusive to the Member States, shared between the EU and its Member States, and the EU's supporting competences to the actions of the Member States.[21] In that context, the Union 'is fully bound by the Convention' and the obligation to comply with it 'falls in its entirety on the EU' with respect to competences within its exclusive domain.[22] However, in instances of shared competence, '(which covers the majority of its powers) … it must "declare" when they trigger [EU] level accountability under the Convention' through the declaration of competence.[23] Therefore, the EU action on disability remains circumscribed to a 'complex internal division' of exclusive, shared, and supporting competences.[24] This makes the implementation of the CRPD especially delicate, including for Article 30 CRPD where the EU recognises having shared and supporting competences,[25] as well as subject to evolution since 'the scope and the exercise of [Union] competence are, by their nature, subject to continuous development'.[26]

Moreover, as clarified by the Court of Justice of the EU (the 'Court' or CJEU), the CRPD is 'an integral part of the legal order of the Union',[27] hierarchically inferior to EU primary law, while superior to EU secondary legislation.[28] Therefore, the latter must, as far as possible, be interpreted in a manner that is consistent with the Convention, as per the reasoning of the CJEU.[29] However, the Court does not recognise the provisions of the Convention to be 'unconditional and sufficiently precise' to have direct effect in EU law.[30] While this decision is seen as controversial by some,[31] it also means that EU legislation cannot be 'automatically … declared invalid' for contravening the CRPD.[32]

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[19] TEU, arts 4, 5(1) and (2). See also, Sacha Garben and Inge Govaere (eds), *The Division of Competences between the EU and the Member States: Reflections on the Past, the Present and the Future* (Hart 2017).
[20] See TEU, art 5(2).
[21] See TFEU, tit I.
[22] Waddington, 'The European Union and the UN CRPD' (n 18) 449.
[23] United Nations Human Rights Council (UN HRC), 'Visit to the European Union: Report of the Special Rapporteur on the Rights of Persons with Disabilities, Gerard Quinn' (2022) UN Doc A/HRC/52/32/Add.1 para 15.
[24] Chamon (n 11) 52.
[25] Committee on the Rights of Persons with Disabilities (CRPD Committee), 'Consideration of Reports Submitted by States Parties under Article 35 of the Convention: Initial Report of States Parties Due in 2012: European Union' (2014) UN Doc CRPD/C/EU/1 para 171.
[26] Council Decision 2010/48/EC, annex II, 55.
[27] Joined Cases C–335/11 and C–337/11 *HK Danmark, Acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab and HK Danmark, Acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, Acting on behalf of Pro Display A/S* [2013] ECLI:EU:C:2013:222 (HK Danmark (Ring and Skouboe Werge)), para 30.
[28] Lawson, 'The EU and the CRPD' (n 10) 65.
[29] Joined Cases C–335/11 and C–337/11 *HK Danmark (Ring and Skouboe Werge)*, para 32.
[30] Case C–363/12 *Z v A Government Department and The Board of Management of a Community School* [2014] ECLI:EU:C:2014:159 (Z), para 90.
[31] Carmine Conte, *The UN Convention on the Rights of Persons with Disabilities and the European Union: The Impact on Law and Governance* (Hart 2022) 109.
[32] Broderick and Ferri (n 2) 320.

As a result, it seriously 'constrains the capacity of the Convention to generate any "free-standing" rights that go beyond the current state of EU law'.[33]

Nevertheless, the EU's conclusion of the CRPD clearly 'draws attention to the fact that participation in society's mainstream is a fundamental issue of human rights',[34] and as such, stands for a significant milestone in the evolution of EU disability law and policy. O'Mahony and Quinlivan posit that it represents 'the single most important development in European disability policy' to this day.[35] Reflecting a renewed interest in disability, the conclusion of the CRPD brought about an immediate and noticeable change in the EU's approach to the subject.[36] While prompting the Union to adopt a range of instruments, and to commit to a range of obligations aimed at promoting, protecting, and fulfilling the rights of persons with disabilities,[37] it also signalled an evolution in the conceptualisation of disability at the EU level[38] that came to permeate EU disability law and policy.

Over the years, it appears that 'EU action in the area of disability rights has evolved from narrow, weak, soft and technical cooperation to more robust proactive and ambitious action in the area of disability'.[39] As a result, the EU has become an increasingly pivotal stakeholder, with a range of competences at its disposal to implement the Convention, and the capacity to 'leverage significant financial and other assets to facilitate and accelerate positive change',[40] especially in respect of those obligations arising from Article 30(2) CRPD, as argued in this thesis.

2.2. Background and Genesis

As already mentioned in the introduction to this thesis, the EU has not historically focused on disability, and the advent of EU disability law and policy can be traced back to the seventies,[41] when a series of action programmes were established to support the exchange

[33] Mark Bell, 'People with Intellectual Disabilities and Labour Market Inclusion: What Role for EU Labour Law?' (2020) 11 European Labour Law Journal 3, 12.
[34] Anna Lawson, 'The UN Convention on the Rights of Persons with Disabilities and European Disability Law: A Catalyst for Cohesion?' in Oddný Mjöll Arnardóttir and Gerard Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives* (Brill Nijhoff 2009) 108.
[35] Charles O'Mahony and Shivaun Quinlivan, 'The EU Disability Strategy and the Future of EU Disability Policy' in Delia Ferri and Andrea Broderick (eds), *Research Handbook on EU Disability Law* (Edward Elgar 2020) 23.
[36] Ferri and Broderick, 'Introduction' (n 5) 2.
[37] Delia Ferri and Léa Urzel, 'The Employment Equality Directive and Access to Justice for Persons with Disabilities: Some Reflections in Light of *Tartu Vangla* and *Komisia Za Zashtita Ot Diskriminatsia*' in Philip Czech and others (eds), *European Yearbook on Human Rights 2022* (Intersentia 2022) 77.
[38] Delia Ferri, 'The Role of Soft Law in Advancing the Rights of Persons with Disabilities in the EU: A "Hybridity" Approach to EU Disability Law' (2022) 28 European Law Journal 134, 145.
[39] O'Mahony and Quinlivan (n 35) 25.
[40] UN HRC (n 23) para 4.
[41] See Broderick and Ferri (n 2) 294, 299.

of information and the coordination of Member States' action on disability.[42] This period was especially marked by four action programmes that ran from 1974 to 1996.[43] They initially appeared quite rooted in a charitable or medical model of disability and focused on individual circumstances,[44] before emphasising the societal factors underlying the exclusion of people with disabilities, and giving greater attention to tackling 'the societal forces which operate to marginalise disabled people'.[45]

In 1986, the Council of the European Communities also adopted a Recommendation on the employment of disabled people in the Community, calling for positive and coherent policies that provide, among other things, for the '[e]limination of negative discrimination' and '[p]ositive action for disabled people'.[46] In this respect, it provided a guideline framework setting out examples of positive action and mentioned, under job creation, the possibility to promote and support projects 'which identify new employment opportunities in the media'.[47] While this reference to the CCS is interesting, other sectors such as the new technology sector, tertiary services, including tourism and catering, agriculture or horticulture and forestry, but also sheltered employment, were more prominently discussed, in particular because some were said to offer 'good prospects and [to be] suitable for people with various disabilities'.[48] Despite being the first comprehensive policy initiative on disability, the 1986 Recommendation had limited success and impact,[49] certainly owing to its non-binding character and attesting more broadly to a certain reluctance of Member States 'to agree on obligations that would be binding in nature'.[50]

From 'the distorting prism of unemployment or even work',[51] and a rather medical understanding of disability, the European institutions then moved towards a more civil

[42] O'Mahony and Quinlivan (n 35) 12–13. See also Anne Waldschmidt and Eva S Krolla, 'The Surge of EU Disability Policy: Historical Developments, Current Issues and the Role of Different Actors' in Delia Ferri and Eva S Krolla (eds), *Actors and Roles in EU Disability Law* (Hart 2025).
[43] See Council Resolution of 27 June 1974 establishing the initial Community action programme for the vocational rehabilitation of handicapped persons [1974] OJ C80/30; Council Resolution of the representatives of the Governments of the Member States of the European Communities meeting within the Council of 21 December 1981 on the social integration of handicapped people [1981] OJ C347/1; Council Decision 88/231/EEC of 18 April 1988 establishing a second Community action programme for disabled people (Helios) [1988] OJ L104/38; Council Decision 93/136/EEC of 25 February 1993 establishing a third Community action programme to assist disabled people (Helios II 1993 to 1996) [1993] OJ L56/30.
[44] O'Mahony and Quinlivan (n 35) 16.
[45] Lawson, 'A Catalyst for Cohesion?' (n 34) 85.
[46] Council Recommendation 86/379/EEC of 24 July 1986 on the employment of disabled people in the Community [1986] OJ L225/43, 43–44.
[47] Council Recommendation 86/379/EEC, annex, 45.
[48] Council Recommendation 86/379/EEC, annex, 45.
[49] Waddington, *From Rome to Nice in a Wheelchair* (n 3) 7.
[50] O'Mahony and Quinlivan (n 35) 16.
[51] Didier Blanc, 'L'influence du droit de l'Union européenne dans le cadre de la reconnaissance juridique des personnes en situation de handicap' [2016] Revue des Droits et Libertés Fondamentaux 5.

rights informed approach.[52] In this context, the Commission of the European Communities acknowledged the need to give 'way to a stronger emphasis on identifying and removing the various barriers to equal opportunities and full participation in all aspects of life' in the first European Community Disability Strategy that was adopted in 1996.[53] In that vein, it also 'committed itself to mainstreaming disability issues into general areas of Community policy', a commitment that was reiterated with the entry into force of the Treaty of Amsterdam soon after.[54]

In fact, the adoption of the Treaty of Amsterdam in 1997 marked a significant legal milestone and a step forward in the development of EU disability law and policy.[55] With the introduction of what is now Article 19 TFEU, the European Community became competent to address and take appropriate action to combat discrimination based on a range of grounds, including disability.[56] In that sense, the Treaty of Amsterdam fostered major developments in EU disability law and policy, 'allowing for the adoption of EU secondary law addressing the rights of persons with disabilities',[57] like the Employment Equality Directive –which is discussed below in this chapter, and more extensively in chapter 6.[58]

Following up on the mainstreaming dimension of the 1996 strategy, the Treaty of Amsterdam also introduced 'a specific disability mainstreaming provision'.[59] This declaration –Declaration No. 22– called on the European institutions to take into account the needs of persons with disabilities when drawing up measures concerning the good functioning of the internal market, under what is now Article 114 TFEU.[60] Thus, it pointed more broadly to 'the use of internal market legislation to address, where feasible, the rights of persons with disabilities'.[61]

[52] Anne Waldschmidt, 'Disability Policy of the European Union: The Supranational Level' (2009) 3 Alter 8, 16.
[53] Commission of the European Communities, 'Equality of Opportunity for People with Disabilities: A New European Community Disability Strategy' (Communication) COM(96) 406 final, 3.
[54] Waddington, *From Rome to Nice in a Wheelchair* (n 3) 31.
[55] See, for instance, Richard Whittle, 'Disability Rights after Amsterdam: The Way Forward' [2000] European Human Rights Law Review 33, 33; Waddington, *From Rome to Nice in a Wheelchair* (n 3) 16.
[56] For an exploration of Article 13 EC (now Article 19 TFEU), see Mark Bell, *Anti-Discrimination Law and the European Union* (Oxford University Press 2002) 121–144.
[57] Ferri and Broderick, 'Introduction' (n 5) 2.
[58] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16 (Employment Equality Directive). See Chapter 4, Section 4, and Chapter 6, Sections 2 and 3.
[59] Waddington, *From Rome to Nice in a Wheelchair* (n 3) 31.
[60] Declaration No. 22 regarding persons with a disability, Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and related Acts [1997] OJ C340/1.
[61] Ferri and Broderick, 'Introduction' (n 5) 2.

2.3. The Treaties

The Treaty of Lisbon[62] clarified the division of competences between the EU and the Member States, shining a light on the protection of human rights protection in the Union,[63] including on 'combating social exclusion and discrimination'.[64] Although it did not introduce 'significant constitutional innovations in relation to disability',[65] it facilitated a certain consolidation of the field of EU disability law and policy. Interestingly, this resulted in two new cross-cutting clauses being introduced in the TFEU and enabling 'the EU to mainstream social considerations (broadly conceived) in its internal market legislation'.[66]

In this respect, Article 9 TFEU requires the Union to consider a series of factors in defining and implementing its policies and activities; namely, 'the promotion of high levels of employment, the guarantee of adequate social protection, the fight against social exclusion and the achievement of high standards of education, training and protection of human health'. In a similar spirit, the other horizontal provision –Article 10 TFEU– requires that the EU, when defining and implementing its policies and activities, aims to combat discrimination, including on the basis of disability.

This also means that the TFEU now incorporates two provisions addressing explicitly disability, Article 10 and Article 19 TFEU.[67] Indeed, Article 19 TFEU is particularly essential for persons with disabilities, as 'the list of characteristics found in [it] forms the bedrock of EU anti-discrimination law'.[68] However, while being 'the main legal basis for the adoption of equality legislation',[69] in contrast to other equal treatment provisions such as Articles 18 (discrimination on the ground of nationality) and 157 TFEU (equality in pay and employment between men and women), Article 19 TFEU cannot be relied upon directly in court as it does not have direct effect.[70]

[62] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community [2007] OJ C306/1 (Treaty of Lisbon).
[63] Sionaidh Douglas-Scott, 'The European Union and Human Rights after the Treaty of Lisbon' (2011) 11 Human Rights Law Review 645, 646.
[64] Ferri and Broderick, 'Introduction' (n 5) 3.
[65] Ferri, 'The Role of Soft Law' (n 38) 143.
[66] Ferri and Broderick, 'Introduction' (n 5) 3.
[67] Broderick and Watson (n 9) 122.
[68] Mark Bell, 'EU Anti-Discrimination Law: Navigating Sameness and Difference' in Paul Craig and Gráinne De Búrca (eds), *The Evolution of EU Law* (3rd edn, Oxford University Press 2021) 674.
[69] Ferri, 'The Role of Soft Law' (n 38) 143.
[70] Broderick and Watson (n 9) 122.

The TEU also contributes to anchoring the principles of equality and non-discrimination within the EU constitutional framework. In this context, Article 2 TEU outlines the values of the EU as follows:

> The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Article 3(3) TEU also characterises the EU as 'a highly competitive social market economy', which shall, among other objectives, combat social exclusion and discrimination, as well as promote social justice and protection. Besides, Article 9 TEU requires the Union to uphold 'the principle of the equality of its citizens' and ensure that they receive equal attention from its various institutions, bodies, offices, and agencies.

Overall, the TEU and TFEU integrate an array of significant provisions –including for CCS professionals with disabilities– relating to the internal market and freedom of movement, or more broadly governing the Union's functioning, including its 'values and objectives … the principles governing its actions, EU competences and its institutional structure'.[71]

2.4. The Charter of Fundamental Rights of the European Union

In addition, the Treaty of Lisbon gave the CFR, originally adopted in 2000, significant authority by recognising its legal value as being equal to that of the Treaties, as set out in Article 6(1) TEU. The provisions of the Charter are limitedly addressed to the Union and the Member States 'when they are implementing Union law'.[72] In this context, both the EU and its Member States must respect the provisions of the Charter that are all 'of potential relevance to persons with disabilities'.[73] Interestingly, the CFR also includes two provisions on disability, Articles 21 and 26 CFR, which, while limited in terms of application,[74] reinforce the Treaties' provisions on equality.[75]

Article 21 CFR provides for a general prohibition of discrimination on a number of grounds, including disability, that covers all EU activities. As such, its 'sphere of operation' is broad, extending beyond employment and the rights conferred by the

[71] Broderick and Ferri (n 2) 295.
[72] CFR, art 51.
[73] Broderick and Ferri (n 2) 306.
[74] O'Mahony and Quinlivan (n 35) 22.
[75] UN HRC (n 23) para 14.

Charter.[76] As such, it contributes to a 'renewed focus [on] the rights of people with disabilities'.[77]

In that vein, Article 26 CFR –which may be understood more as a principle than a right–[78] focuses on the integration of persons with disabilities and affirms a right to social and professional integration. It provides expressly that the EU 'recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community'.[79] By addressing both independence and participation in society, this provision also signals a change of paradigm in EU disability law and policy,[80] which echoes the social model of disability.[81] If these provisions provide an interesting legal background to considering the participation of CCS professionals with disabilities in the EU, their legal impact is, however, considerably restricted 'in terms of justiciable rights' as it only concerns the EU and the Member States implementing EU law.[82]

3. The EU Strategic and Policy Framework for Disability

Alongside the changes brought to the primary law of the Union, various EU initiatives and policies for persons with disabilities were adopted in the lead up to the EU's conclusion of the CRPD.[83] Shortly afterwards, the European Commission put forward the European Disability Strategy 2010–2020 (Disability Strategy 2010–2020),[84] which, together with its successor, the Strategy for the Rights of Persons with Disabilities 2021-2030 (Disability Strategy 2021-2030),[85] sought to advance the implementation of the CRPD in the Union. As this section seeks to highlight too, the two documents only represent one dimension of the EU's policy work, which impacts disability and CCS professionals with disabilities.

[76] Lawson, 'A Catalyst for Cohesion?' (n 34) 83.
[77] Ferri and Broderick, 'Introduction' (n 5) 2.
[78] Broderick and Watson (n 9) 123.
[79] CFR, art 26.
[80] Blanc, 'L'influence du droit de l'Union européenne' (n 51) 8.
[81] Broderick and Ferri (n 2) 310.
[82] Waddington, *From Rome to Nice in a Wheelchair* (n 3) 35.
[83] See Council Decision 2001/903/EC of 3 December 2001 on the European Year of People with Disabilities 2003 [2001] OJ L335/15; Commission of the European Communities, 'Equal opportunities for people with disabilities: A European Action Plan' (Communication) COM(2003) 650 final.
[84] European Commission, 'European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe' (Communication) COM(2010) 636 final (Disability Strategy 2010-2020).
[85] European Commission, 'Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030' (Communication) COM(2021) 101 final (Disability Strategy 2021-2030).

3.1. EU Disability Strategies

The main objective of the Disability Strategy 2010–2020 has been to empower persons with disabilities to enjoy their rights, and to ensure they can fully benefit from their participation in society and the European economy.[86] Detailing 'an ambitious 10-year agenda',[87] the strategy focused expressly on ensuring the effective implementation of the CRPD across the EU and evidences a certain evolution in the Union's understanding of and action on disability.[88] In a way, it also echoed the EU's ambition to build a comprehensive policy framework that 'identifies cross-cutting EU-level actions and new legislative measures that span the whole spectrum of EU competences'.[89] As such, the Disability Strategy 2010–2020 focused on eliminating barriers and pinpointed, after consulting with stakeholders,[90] eight key areas of action: accessibility, participation, equality, employment, education and training, social protection, health, and external action.[91]

It clarified, however, that actions at the EU level were only intended to complement and bolster those of the Member States.[92] Drawing on key elements of the Convention,[93] the Disability Strategy 2010–2020 expressly set out the European Commission's commitment to work towards achieving full participation of people with disabilities in society, including in supporting national activities.[94] Notably, it mentioned the need to improve the accessibility of cultural institutions, activities, gatherings, venues, products, and services, including audiovisual services.[95] While not legally binding, the Disability Strategy 2010-2020 somewhat 'acquired indirect prescriptiveness that derives from the CRPD' and instigated tangible transformations at the EU level.[96] As such, it paved the way for the adoption of a majority of the initiatives it expressly mentioned,[97] such as the European Accessibility Act (EAA).[98] The latter now constitutes one of the cornerstones of EU disability law alongside the Employment Equality Directive and the Web

[86] Disability Strategy 2010-2020, 4.
[87] Lawson, 'The EU and the CRPD' (n 10) 70.
[88] Ferri and Broderick, 'Introduction' (n 5) 2.
[89] Ferri and Broderick, 'Introduction' (n 5) 2.
[90] O'Mahony and Quinlivan (n 35) 25.
[91] Disability Strategy 2010-2020, 4.
[92] Lawson, 'The EU and the CRPD' (n 10) 70.
[93] Waldschmidt and Krolla (n 42) 72.
[94] Disability Strategy 2010-2020, 5–6.
[95] Disability Strategy 2010-2020, 5–6.
[96] Ferri, 'The Role of Soft Law' (n 38) 147.
[97] See O'Mahony and Quinlivan (n 35) 26.
[98] Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services [2019] OJ L151/70 (EAA).

Accessibility Directive (WAD)[99] –another initiative adopted during the 2010-2020 period, and discussed in this thesis.[100]

As hinted at earlier, the efforts towards the effective implementation of the CRPD were carried forward in the Disability Strategy 2021-2030. Embracing 'an even more ostensible rights-based approach to disability', the current strategy aims to achieve 'equality in all areas of life',[101] and more generally to 'improve the lives of persons with disabilities'.[102] In its 'programmatic approach to implementing the Convention',[103] it focuses on a number of areas of interest to CCS professionals with disabilities, and, among other things, on improving access to quality and sustainable work opportunities, while emphasising that employment participation leads to greater social inclusion.[104] As it acknowledges the role of the Employment Equality Directive in ensuring equal treatment in employment settings –particularly through reasonable accommodation– it also highlights that further efforts are needed to improve labour market outcomes for persons with disabilities.[105]

In this regard, the Disability Strategy 2021-2030 planned for the delivery of the Disability Employment Package, also discussed at greater length in chapter 6.[106] This flagship initiative is intended to serve as a practical tool for 'reducing the persistent employment gap between people with and without disabilities', and is meant to be of relevance to 'all involved actors'.[107] Furthermore, the current strategy urges Member States to support self-employment and entrepreneurship by offering assistance with legal and business matters, including through the use of EU funds.[108] The Disability Strategy 2021-2030 also indicates that accessible and inclusive art and culture are essential to fostering the full and equal participation of persons with disabilities in society.[109] In this context, it specifically addresses the need, for the European Commission, as well as for Member States, to promote and enhance the visibility of artworks of persons with disabilities.[110]

With this strategy, the European Commission also calls on the European Parliament and the Council of the EU (Council) 'to work together and to lead by example' in

[99] Directive (EU) 2016/2102 on the accessibility of the websites and mobile applications of public sector bodies [2016] OJ L327/1 (WAD).
[100] On the Employment Equality Directive, see Chapter 6, Sections 2 and 3, and on the WAD, Chapter 7, Section 4.
[101] Ferri, 'The Role of Soft Law' (n 38) 149.
[102] Disability Strategy 2021-2030, 5.
[103] UN HRC (n 23) para 12.
[104] Disability Strategy 2021-2030, 13–15.
[105] Disability Strategy 2021-2030, 14.
[106] See Chapter 6, Section 8.
[107] European Commission, 'Package to Improve Labour Market Outcomes of Persons with Disabilities (Disability Employment Package – "Employment Package")' (Joint Commission Services – Disability Platform Paper, 2022) 2.
[108] Disability Strategy 2021-2030, 15.
[109] Disability Strategy 2021-2030, 20.
[110] Disability Strategy 2021-2030, 21.

implementing the CRPD at both the EU and national levels.[111] In so doing, it also reveals one of its main shortcomings, namely that, as for the Disability Strategy 2010-2020, it is only the European Commission's strategy, not the Union's.[112] This means that the EU as a whole lacks a dedicated and holistic strategy to structure the implementation of the CRPD, including through 'the allocation of a budget, a time frame for implementation and a monitoring mechanism' for all EU institutions.[113] Additionally, as most flagship initiatives have been delivered over the first half of the 2021-2030 period, civil society has called on the Commission to update the Disability Strategy 2021-2030 and elaborate a new set of goals and actions to be achieved in the second half of its term.[114] Commissioner Lahbib (Commissioner for Equality, Preparedness and Crisis Management) indicated that she, together with her services, would take this concern into consideration.[115] Such update has yet to be publicised.

Nevertheless, in line with the Disability Strategy 2010-2020, the current strategic instrument demonstrates once again the broad and multi-faceted nature of EU disability law and policy. This is a field that covers 'health services and bioethics, education, employment and rehabilitation, accessibility and transport, housing and assistive technologies [and] includes care, invalidity pensions, basic income and poverty relief'.[116] It is also complemented by different measures in other policy areas.

3.2. Disability in Other Policy Areas

Indeed, it is also worth noting that the most recent strategy is only one piece of the European Commission's broader equality agenda, which pursues the construction of a 'Union of Equality'.[117] In that regard, the European Commission has adopted five strategies between 2020 and 2021. While most are coming to an end, all are geared towards promoting 'equality for all and equality in all of its senses',[118] regardless of

[111] Disability Strategy 2021-2030, 32.
[112] See European Disability Forum (EDF), 'Alternative Report to the Committee on the Rights of Persons with Disabilities' (2014) 9; CRPD Committee, 'Concluding Observations on the Initial Report of the European Union' (2015) CRPD/C/EU/CO/1 para 8.
[113] CRPD Committee, 'Concluding Observations Initial Report of the European Union' (n 112) para 9.
[114] EDF, 'EU Strategy on the Rights of Persons with Disabilities 2021-2030: Actions for 2025 Onwards' (Position Paper, 2024).
[115] Letter from Commissioner Hadja Lahbib to Catherine Naughton (6 January 2025) Ares(2025)115193.
[116] Waldschmidt (n 52) 9.
[117] European Commission and Ursula von der Leyen, *A Union that Strives for More – My Agenda for Europe – Political Guidelines for the Next European Commission 2019-2024* (Publications Office 2019) 11.
[118] European Commission and von der Leyen (n 117) 11.

differences based on gender,[119] racial or ethnic origin,[120] disability, sexual orientation,[121] or other grounds. In doing so, they highlight the need to adopt an intersectional approach to fighting discrimination, within the remits of each specific strategy, and to consider the situation of persons with disabilities.[122]

Furthermore, the situation of CCS professionals with disabilities should also be understood in light of the European Pillar of Social Rights (the 'Pillar' or EPSR).[123] Jointly proclaimed by the European Parliament, the Council and the European Commission in 2017, the Pillar is a soft law instrument setting out twenty principles meant to renew the discussion around 'the social dimension of Europe'.[124] It is considered key to 'help rebalance the EU's output by reviving the use of the Treaty's Social Title',[125] and to steer the EU and its Member States towards 'fair and well-functioning labour markets'.[126] The three main themes that guide the EPSR are 'equal opportunities and access to the labour market', 'fair working conditions', and 'social protection and inclusion'.[127]. If all principles are relevant to the situation of persons with disabilities,[128] including cultural and creative professionals, one can note in particular the third principle on equal opportunities, which states that:

> [r]egardless of gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation, everyone has the right to equal treatment and opportunities regarding employment, social protection, education, and access to goods and services available to the public. Equal opportunities of under-represented groups shall be fostered.[129]

Principle 17 on the inclusion of people with disabilities is also of interest. It states:

> People with disabilities have the right to income support that ensures living in dignity, services that enable them to participate in the labour market and in society, and a work environment adapted to their needs.[130]

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[119] European Commission, 'A Union of Equality: Gender Equality Strategy 2020-2025' (Communication) COM(2020) 152 final.
[120] European Commission, 'A Union of Equality: EU Anti-Racism Action Plan 2020-2025' (Communication) COM(2020) 565 final; European Commission, 'A Union of Equality: EU Roma Strategic Framework for Equality, Inclusion and Participation' (Communication) COM(2020) 620 final.
[121] European Commission, 'Union of Equality: LGBTIQ Equality Strategy 2020-2025' (Communication) COM(2020) 698 final.
[122] See COM(2020) 565 final, 2; COM(2020) 620 final, 2; COM(2020) 152 final, 2; COM(2020) 698 final, 3.
[123] European Commission, *European Pillar of Social Rights* (Publications Office 2017).
[124] Broderick and Ferri (n 2) 316.
[125] Sacha Garben, 'The European Pillar of Social Rights as a Revival of Social Europe' in Maurizio Ferrera (ed), *Towards a European Social Union: The European Pillar of Social Rights and the Roadmap for a Fully-fledged Social Union: A Forum Debate* (Centro Einaudi 2019) 81.
[126] European Commission, *European Pillar of Social Rights* (n 123) recital 14.
[127] European Commission, *European Pillar of Social Rights* (n 123) ch I–III.
[128] Lisa Waddington and Mark Priestley, 'Mainstreaming Disability Rights in the European Pillar of Social Rights – a Compendium' (Academic Network of European Disability Experts, 2018) 10.
[129] European Commission, *European Pillar of Social Rights* (n 123) principle 3.
[130] European Commission, *European Pillar of Social Rights* (n 123) principle 17.

The EPSR has therefore generated a certain level of anticipation for 'a strong disability mainstreaming approach throughout the developing policy framework', one that should also extend to 'all relevant policies and initiatives of the [EU]'.[131] The European Commission has notably worked on a series of actions related to these two principles, like the 'Union of Equality' strategies, including the Disability Strategy 2021-2030, and the Disability Employment Package just mentioned.[132]

4. Equality and Non-Discrimination

As already mentioned, this chapter does not aim to provide a comprehensive analysis of the development, present state and future stakes of EU disability law and policy. This would be beyond the scope of this chapter or thesis, and as noted in the introduction, it is already the subject of an expanding body of literature.[133] Following this overview on the development and state of EU disability law and policy, this section and the following ones therefore aim to delve into specific areas of EU law and policy, chosen in reference to the main themes that were identified during the qualitative analysis as key aspects of the participation of professionals with disabilities in the CCS.

Against this background, this chapter therefore first considers the work of the EU on equality and non-discrimination, and some of its shortcomings. Indeed, as developed in chapter 1, part of the barriers met by persons with disabilities, including cultural and creative professionals, relates to discrimination and a lack of equal opportunities in the CCS.[134] In anticipation of chapter 6, it particularly spotlights the Employment Equality Directive, some outstanding gaps in respect of EU non-discrimination law, as well as some of the instruments related to EU labour legislation, which can foster the application of the principle of equal treatment for the benefit of CCS professionals with disabilities.

4.1. The Employment Equality Directive

The implementation of the principle of equal treatment in the EU has been an essential corollary of the creation and the development of the internal market and free movement

[131] Waddington and Priestley (n 128) 9.
[132] European Commission, 'European Pillar of Social Rights: From Principles to Action for a Strong Social Europe' (Factsheet, 2023) 1, 3.
[133] See, among others, Delia Ferri and Andrea Broderick (eds), *Research Handbook on EU Disability Law* (Edward Elgar 2020); Rune Halvorsen and others (eds), *The Changing Disability Policy System: Active Citizenship and Disability in Europe Volume 1* (Routledge 2020); Delia Ferri and Eva S Krolla, *Actors and Roles in EU Disability Law* (Hart 2025).
[134] See Ann Leahy and Delia Ferri, 'Barriers to Cultural Participation of People with Disabilities' in Delia Ferri and Ann Leahy, *Dismantling Barriers and Advancing the Right of Persons with Disabilities to Participate in Cultural Life: A Socio-Legal Analysis* (Routledge 2025) 134–135.

within the Union.[135] In this respect, although EU law was primarily concerned with discrimination based on nationality and sex,[136] the Treaty of Amsterdam helped to operationalise non-discrimination in EU law, including on grounds of disability, with the inclusion of what is now Article 19 TFEU. In the words of Advocate General Poiares Maduro, said provision 'is an expression of the commitment of the [EU] legal order to the principle of equal treatment and non-discrimination'.[137] This also means that the EU and its Member States have a shared competence with regard to '[d]isability equality and combating disability discrimination'.[138] As noted above,[139] this article brought the combat against discrimination, including based on disability, within the area of the Union's competence[140] and '[b]y the end of 2000 two non-discrimination directives, and a non-discrimination action programme, had been adopted'.[141] One of those Directives is the Employment Equality Directive.

The Employment Equality Directive comes after years of a broader segregationist tradition, which was particularly 'evident in the employment field' in Europe, as policies were often 'developed on the assumption that disabled people will not be capable of working in mainstream environments and should therefore be catered for through separate sheltered employment schemes'.[142] The Directive has since shaped the field of EU disability law, as well as EU labour law. '[F]irmly grounded on principles of equality and non-discrimination',[143] the Employment Equality Directive remains the first and main EU legislative intervention that aims to combat discrimination on the ground of disability to this day.[144] Thus, it is one of the most important pieces of EU secondary law on non-discrimination of direct interest for persons with disabilities.[145] It also intuitively appears as an influential resource to leverage for the benefit of cultural and creative professionals with disabilities, as will be discussed more extensively in chapter 6.

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[135] Bell, 'Navigating Sameness and Difference' (n 68) 651.
[136] See, in that sense, Treaty establishing the European Economic Community [1957] (Treaty of Rome), art 7; Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women [1975] OJ L45/19; Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions [1976] OJ L39/40.
[137] Case C–303/06 *S Coleman v Attridge Law and Steve Law* [2008] ECLI:EU:C:2008:61, Opinion of AG Poiares Maduro, para 8.
[138] Broderick and Watson (n 9) 121.
[139] See Introductory Chapter, Section 4.2.
[140] Broderick and Ferri (n 2) 302.
[141] Waddington, *From Rome to Nice in a Wheelchair* (n 3) 20. See Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L180/22; Employment Equality Directive; Council Decision 2000/750/EC of 27 November 2000 establishing a Community action programme to combat discrimination (2001 to 2006) [2000] OJ L303/23.
[142] Lawson, 'The EU Rights Based Approach to Disability' (n 3) 271.
[143] Lawson, 'A Catalyst for Cohesion?' (n 34) 89.
[144] Ferri and Broderick, 'Introduction' (n 5) 2.
[145] Broderick and Watson (n 9) 124.

As well as prohibiting discrimination, Article 5 of the Employment Equality Directive places an obligation on the duty bearers identified in Article 3 –meaning any employers in the public and private sectors– to provide reasonable accommodation 'to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer'. This provision only concerns persons with disabilities.[146]

It responds to a need 'to develop a concept of equality which requires adaptation and change', but not on the part of persons with disabilities as the medical model would postulate.[147] Acknowledging in some respects the limitations of a formal understanding of equal treatment, Article 5 'represents a significant deepening and enriching of [this] principle'[148] and a unique provision in the Directive, as well as in EU law.[149] This provision was also the first recognition at the Community level of a 'binding legal force to the concept of reasonable accommodation'.[150] Since 2000, Article 5 of the Employment Equality Directive enshrines in EU law a concept that would become resolutely associated with the CRPD a decade later. Indeed, reasonable accommodation underpins almost all provisions of the Convention,[151] including Article 30 CRPD on the right to participate in cultural life, as demonstrated in chapter 6.

4.2. Gaps in the EU Non-Discrimination Framework

Yet, if the EU social policy can advance equal treatment in the Union to the benefit of CCS professionals with disabilities, as discussed later in this section, the Employment Equality Directive remains the only piece of EU legislation that focuses on discrimination on grounds of disability. Admittedly, it embodies a cornerstone of EU disability law, labour law and non-discrimination law, and encompasses an early iteration of the duty of reasonable accommodation. Yet, the Directive's 'practical impact' over the lives of persons with disabilities remains limited to 'the narrow confines of its material scope', and 'operates to benefit disabled people only in the contexts of employment and occupation'.[152] As discussed in chapter 6, improving the participation of professionals

[146] Conte (n 31) 94.
[147] Sandra Fredman, 'Disability Equality: A Challenge to the Existing Anti-Discrimination Paradigm?' in Anna Lawson and Caroline Gooding (eds), *Disability Rights in Europe: From Theory to Practice* (Hart 2005) 203.
[148] Lawson, 'A Catalyst for Cohesion?' (n 34) 93.
[149] Patrick Daly and Darius Whelan, 'Disability in Employment Equality Law: A Reappraisal of the Reasonable Accommodation Duty and Issues Arising in its Implementation' (2021) 28 Maastricht Journal of European and Comparative Law 744, 746.
[150] Lawson, 'A Catalyst for Cohesion?' (n 34) 93.
[151] Rachele Cera, 'Article 5 [Equality and Non-Discrimination]' in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities* (Springer 2017) 170.
[152] Lawson, 'A Catalyst for Cohesion?' (n 34) 93–94, 105.

with disabilities in society, including in the CCS, would require a more holistic approach. This includes overcoming challenges in terms of 'discriminatory education systems, or … inaccessible transport or housing systems', as they too directly impact on how one can access employment and occupation.[153]

The limits of the EU's protection against disability-based discrimination are therefore particularly exacerbated as the proposal for a Horizontal Non-discrimination Directive, which dates back to 2008,[154] is still unadopted and was almost withdrawn in 2025.[155] The proposal, which aims to implement the principle of equal treatment outside of the labour market in complement of the Employment Equality Directive and has featured as an initiative to be concretised in the last disability strategy,[156] could address some of the challenges just mentioned.

Indeed, the long-standing proposal pursues greater equal treatment and protection against discrimination, beyond employment and occupation, in areas such as social protection, including social security and health care, social advantages, education, and access to and supply of goods and services.[157] With this proposal, the European Commission highlights the need to extend the reach of EU disability law,[158] and to promote the principle of equal treatment more comprehensively, as Article 19 TFEU allows. However, unlike other measures mentioned in the disability strategies, including on accessibility, the proposal has so far met an unsatisfactory fate, to the detriment of CCS professionals with disabilities who could benefit from a more holistic framework addressing disability-based discrimination. This leaves a gap in the EU non-discrimination framework.[159]

4.3. Social Policy and Equal Treatment

The situation of CCS professionals with disabilities should also be addressed taking into account the broader context of EU labour law and social policy,[160] a field of shared

[153] Lawson, 'A Catalyst for Cohesion?' (n 34) 105.
[154] Commission of the European Communities, 'Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation' COM(2008) 426 final.
[155] See European Commission, 'Commission work programme 2025: Moving forward together: A Bolder, Simpler, Faster Union' (Communication) COM(2025) 45 final, annex IV, 25.
[156] Disability Strategy 2021-2030, 17.
[157] COM(2008) 426 final, art 3.
[158] Blanc, 'L'influence du droit de l'Union européenne' (n 51) 10.
[159] See also Chapter 6, Section 4.
[160] Léa Urzel Francil, 'Leveraging EU Non-Discrimination Law to Make the Cultural and Creative Sectors More Inclusive of Professionals with Disabilities: Socio-Legal Perspectives' [2025] International Journal of Cultural Policy 1, 5.

competence between the EU and its Member States –albeit subject to constraints.[161] In that respect, Article 151 TFEU indicates that the EU and the Member States must pursue:

> the promotion of employment, improved living and working conditions … proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

In some way, this leaves the EU with 'few strong social policy prerogatives',[162] and a supporting and complementary role to that of the Member States in a number of fields.[163] Still, a number of those pieces of legislation are of interest to CCS professionals with disabilities. They are notably highlighted in the context of the EU cultural action in chapter 5,[164] and analysed in greater detail in chapter 6 on equality and non-discrimination.[165]

Nevertheless, Vanhegen and Hendrickx note that '[i]n recent decades the Union has placed great emphasis on promoting the active inclusion and full participation of people with disabilities in the labour market, and in society, through soft law measures'.[166] In this respect, the European Employment Strategy, first launched in 1997,[167] and which is now integrated into the European Semester, stands out as 'a major if not the prime mover of labour law reform in the [EU]'.[168] It led to the introduction of the first employment guidelines, also known as the 1998 Employment Guidelines, which, interestingly called on Member States to take the barriers that persons with disabilities may encounter in working life into account.[169] Since the late nineties, the increasing emphasis on the situation of persons with disabilities with regards to employment can be seen in the annual Employment Guidelines. Today, they align with the principles of the Pillar,[170] attesting that disability 'occup[ies] a central position' in EU employment policy.[171]

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[161] TFEU, arts 4(2)(b) and 153.
[162] George Ross, 'The Revenge of Neglected Issues: EU Founders and Social Policy' (2011) 29 French Politics, Culture & Society 90, 90.
[163] See TFEU, art 153(1).
[164] See Chapter 5, Sub-section 5.1.
[165] See Chapter 6, Section 6.
[166] Miet Vanhegen and Frank Hendrickx, 'Disability in EU Labour Law beyond Non-Discrimination' in Delia Ferri and Andrea Broderick (eds), *Research Handbook on EU Disability Law* (Edward Elgar 2020) 146.
[167] European Council, 'Extraordinary European Council Meeting on Employment, Luxembourg, 20 and 21 November 1997: Presidency Conclusions' (1997) C/97/300.
[168] Ralf Rogowski, 'The European Employment Strategy, the European Social Pillar and Their Impact on Labour Law Reform in the European Union' (2019) 35 International Journal of Comparative Labour Law and Industrial Relations 283, 283.
[169] Council Resolution of 15 December 1997 on the 1998 Employment Guidelines [1997] OJ C30/1, 5.
[170] Council Decision (EU) 2018/1215 of 16 July 2018 on guidelines for the employment policies of the Member States [2018] OJ L224/4, recital 9; Council Decision (EU) 2023/2528 of 9 October 2023 on guidelines for the employment policies of the Member States [2023] OJ L2023/2528, recitals 8–9.
[171] Vanhegen and Hendrickx (n 166) 163.

5. Accessibility

Together with equality and non-discrimination, accessibility has been a core theme of EU disability law and policy since before the adoption of the CRPD. For instance, accessibility was one of the central objectives to be pursued, alongside non-discrimination and mainstreaming, in the Commission of the European Communities' 2003 Action Plan on equal opportunities for persons with disabilities.[172] This Action Plan highlighted accessibility's crucial role as 'a prerequisite for any disability policy', and in fostering participation in society on an equal basis with others, for without it, any 'rights proclaimed [would] remain illusory and fictitious'.[173] The Disability Strategy 2021-2030 now also recognises accessibility as 'an enabler of rights, autonomy and equality', as well as 'a prerequisite for the full participation of persons with disabilities on an equal basis with others'.[174]

As discussed in chapter 1, the conceptualisation of accessibility in the CRPD is said to be 'capacious and multifaceted'.[175] As the EU framework for accessibility lacks a holistic approach, there is a range of disparate and specific legislation which contribute to harmonising accessibility requirements in the Union. On this basis, and in anticipation of chapter 7, this sub-section aims to highlight core aspects of the EU's action on accessibility, which were identified as particularly key during the qualitative study with participants from the CCS. Their contributions in that respect are highlighted in chapter 7. The present section discusses more specifically the accessibility of the built environment, the accessibility of goods and services and the accessibility of ICTs and access to information.

5.1. Accessibility of the Built Environment

The accessibility of the built environment, meaning buildings open to the public, residential buildings, external built environment, transport infrastructures or construction related products, is not an area which the EU has addressed to a great extent.[176] Yet, it remains key to the participation of professionals with disabilities in the CCS, as it comprises spaces of cultural importance such as 'places for cultural performances or

[172] COM(2003) 650 final, 4. On this, see Lawson, 'The EU Rights Based Approach to Disability' (n 3) 274–277.
[173] Blanc, 'L'influence du droit de l'Union européenne' (n 51) 11.
[174] Disability Strategy 2021-2030, 6.
[175] Delia Ferri, 'The Role of the European Union in Ensuring Accessibility of Cultural Goods and Services: All About that … Internal Market?' (2023) 48 European Law Review 257, 261. See also Stylianos Charitakis, 'Access Denied: The Role of the European Union in Ensuring Accessibility under the United Nations Convention on the Rights of Persons with Disabilities' (PhD Thesis, Maastricht University 2018) 25–31.
[176] Charitakis 'Access Denied' (n 175) 287.

services, such as theatres, museums, cinemas, libraries and tourism services … monuments and sites of national cultural importance'.[177] It also encompasses other types of infrastructure, like roads or pathways, which can be a precondition to working in the CCS. Devoid of an adequate legal basis in the Treaties, the EU has, among others, addressed the accessibility of the built environment within the remit of other thematic legislation on transport interoperability, public procurement, health and safety, and environmental matters.

Indeed, the accessibility of the built environment is a dimension of accessibility discussed in legislation touching upon public procurement. Particularly, the Public Procurement Directive integrates a range of provisions concerning the consideration of accessibility in processes of public procurement of works, therefore relating to the built environment.[178] It is complemented by an initiative of the European Commission, the 'Buying Social Guide' of 2021, which highlights the need to take account of social considerations in public procurement, and notably of 'the impact on society of the goods, services and works purchased by the public sector'.[179]

The EU's engagement with the accessibility of the built environment has been rather scattered otherwise. Early on, accessibility considerations featured in the Directive 95/16/EC on the approximation of the laws of the Member States relating to lifts (Lifts Directive).[180] Recast in 2014, the Recast Lifts Directive now explicitly refers to the CRPD and provides for the accessibility for persons with disabilities of lifts intended for the transport of persons.[181] Additional EU legislation addressing the accessibility of the built environment include the Construction Products Regulation, whereby 'construction works must be designed and built taking into consideration accessibility and use for disabled persons'.[182] These two instruments are also complemented by the standardisation efforts initiated by the European Commission, which resulted in standards on the accessibility of lifts (EN 81-70), or on the accessibility and usability of the built environment (EN

[177] See CRPD Committee, 'General Comment No. 2 (2014): Article 9: Accessibility' (2014) UN Doc CRPD/C/GC/2 para 44.
[178] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC [2014] OJ L94/65 (Public Procurement Directive) arts 42(1) and 67(2)(a).
[179] European Commission, 'Buying Social – A Guide to Taking Account of Social Considerations in Public Procurement (2nd edition)' (Notice) C(2021) 3573 final, 7.
[180] European Parliament and Council Directive 95/16/EC of 29 June 1995 on the approximation of the laws of the Member States relating to lifts [1995] OJ L213/1 (Lifts Directive) annex I.
[181] Directive 2014/33/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to lifts and safety components for lifts (recast) [2014] OJ L96/251 (Recast Lifts Directive) art 5 and annex I
[182] Regulation (EU) 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC [2011] OJ L88/5 (Construction Products Regulation) art 1 and annex I.

17210).[183] They offer technical and practical standards of accessibility that stakeholders can rely on, and can put into practice to guarantee better accessibility in the built environment.

With the accessibility of the built environment only featuring optionally in the EAA,[184] it is also posited below in chapter 7 that one of the recent legal developments ensuing from the European Green Deal and the Renovation Wave Strategy[185] could impact positively on the accessibility of the built environment in the EU.[186] This refers notably to the Energy Performance of Buildings Directive (EPBD), as it considers the accessibility for persons with disabilities in relation to new buildings and renovations.[187]

5.2. Accessibility of Goods and Services

Moreover, as Waddington notes, 'accessibility is not only important for people with disabilities and their friends and families, but also from the point of view of achieving an internal market for goods and services in the [EU]'.[188] Such pursuit has led to the adoption of a number of instruments that seek to harmonise the accessibility requirements of goods and services across the EU as a way of achieving the internal market.[189] As such, the EAA, which is based on Article 114 TFEU, has become one of 'the primary avenue to address accessibility gaps, including with regards to some cultural goods and services'.[190] Thus, it particularly stands out as a cornerstone of EU disability law and policy.

Adopted in 2019, the EAA aims to contribute to the proper functioning of the internal market for accessible products and services by approximating laws, regulations and administrative provisions on accessibility requirements, and by eliminating barriers resulting from different requirements in the Member States.[191] Although primarily focused on the 'promotion of growth and competitiveness',[192] the EAA mentions at length

[183] See CEN-CENELEC Joint Technical Committee, 'European Standard EN 17210:2021: Accessibility and Usability of the Built Environment – Functional Requirements' (2021); CEN TC 10, 'Safety Rules for the Construction and Installation of Lifts - Particular Applications for Passenger and Goods Passenger Lift - Part 70: Accessibility to Lifts for Persons including Persons with Disability' (2022).
[184] EAA, art 4(4).
[185] European Commission, 'The European Green Deal' (Communication) COM(2019) 640 final; European Commission, 'A Renovation Wave for Europe - greening our buildings, creating jobs, improving lives' (Communication) COM(2020) 662 final.
[186] See Chapter 7, Sub-section 2.4.
[187] Directive (EU) 2024/1275 of the European Parliament and of the Council of 24 April 2024 on the energy performance of buildings (recast) [2024] OJ L2024/1275 (EPBD), arts 7(6) and 8(3).
[188] Lisa Waddington, 'Accessible Goods and Services and the Internal Market' in Maria Nyman and Agnès Chamayou (eds), *Freedom Guide: Paving the Way towards Free Movement for Persons with Disabilities* (European Disability Forum 2011) 37.
[189] CRPD Committee, 'Initial Report of States Parties Due in 2012: European Union' (n 25) para 47.
[190] Ferri, 'The Role of the EU in Ensuring Accessibility' (n 175) 258.
[191] EAA, recital 1 and art 1.
[192] Ferri, 'The Role of the EU in Ensuring Accessibility' (n 175) 269.

the CRPD in its preamble.[193] In doing so, it emphasises how the Directive participates in the implementation by the Union and its Member States of the Convention's obligations regarding accessibility, in a harmonised manner.[194] It imposes a range of obligations on economic operators dealing with products –manufacturers, authorised representatives, importers, distributors– as well as service providers,[195] and applies 'equally to economic operators from the public and private sectors'.[196] In this instance, operators and service providers must ensure that 'the products that they design produce, place and make available on the market',[197] as well as the services designed and provided, comply with the accessibility requirements of the EAA.[198] As set out in Article 2 EAA, the Directive covers specific products and services of direct or somewhat indirect relevance to the careers of CCS professionals with disabilities, including computers, smartphones, tablets, TV sets, payment terminals, ticketing machines, check-in machines, e-readers, ATMs and banking services, e-books, as well as e-commerce websites and applications.[199] It was expected that by 28 June 2025, all goods and services offered on the internal market would abide by these measures.[200]

This thesis therefore explores whether this new piece of EU disability law and policy is of significance to CCS professionals with disabilities, and in which circumstances it could make the goods and services they interact with for their professional activities more accessible. At first sight, there are some caveats, notably linked to the EAA's scope or its focus on advancing on accessibility for consumers with disabilities, that would appear to undermine its relevance for CCS professionals with disabilities. Chapter 7 elaborates on these issues.[201]

5.3. Accessibility of Information and Communication Technologies, and Access to Information

Following on from one of the pledges of the Commission's Digital Agenda for Europe,[202] the Web Accessibility Directive or WAD, represents another key piece of EU disability law. Adopted in 2016, it especially contributes to the EU's efforts in making ICTs more

[193] EAA, recitals 12–17.
[194] EAA, recital 16.
[195] EAA, arts 7–10 and 13.
[196] EAA, recital 57.
[197] Stelios Charitakis, 'Accessibility of Goods and Services' in Delia Ferri and Andrea Broderick (eds), *Research Handbook on EU Disability Law* (Edward Elgar 2020) 235.
[198] See EAA, arts 7(1), 9(1), 10(1) and 13(1).
[199] EAA, art 2.
[200] EAA, art 2(1).
[201] See Chapter 7, Section 3.
[202] European Commission, 'A Digital Agenda for Europe' (Communication) COM(2010) 245 final, 27.

accessible and in supporting access to information in the Union. Both efforts are instrumental to fostering and sustaining the participation of cultural and creative professionals in the CCS and in societies that increasingly rely on digital technologies, and associated products and services.[203]

The WAD is an instrument entirely dedicated to accessibility for persons with disabilities. The Directive therefore orchestrates the approximation of Member States' accessibility requirements for websites and applications in order to improve their accessibility to users with disabilities.[204] It concerns any State, regional or local authorities, bodies governed by public law, or specific associations,[205] meaning it also covers 'public cultural institutions and public agencies'[206] of interest to CCS professionals with disabilities. To that end, it is supported by the harmonised European Standard 'Accessibility requirements for ICT products and services' (EN 301 549).[207]

The WAD must also be understood as part of an EU legal framework that has increasingly adapted to the growing digitalisation of the society, and therefore the increasing need to address the accessibility of ICTs, as well as access to information for persons with disabilities.[208] In that vein, and to only cite a few, the EU legislator has notably adopted a Directive establishing a European Electronic Communications Code in 2018, highlighting the need to advance access for end-users with disabilities.[209] EU law also addresses the accessibility of radio terminal equipment,[210] of electronic identification, and of trust services for electronic transactions.[211] One of the latest developments is the Interoperable Europe Act of 2024, which aims to enable interoperability and to facilitate seamless cross border data flows, allowing public administrations in the Union to cooperate and make public services function across borders.[212] These acts form part of an

[203] See Chapter 7, Sub-section 4.1.
[204] WAD, art 1(1).
[205] WAD, art 3(1).
[206] Ferri, 'The Role of the EU in Ensuring Accessibility' (n 175) 267.
[207] See Commission Implementing Decision (EU) 2018/2048 of 20 December 2018 on the harmonised standard for websites and mobile applications drafted in support of Directive (EU) 2016/2102 of the European Parliament and of the Council [2018] OJ L327/84.
[208] See Delia Ferri and Silvia Favalli, 'Web Accessibility for People with Disabilities in the European Union: Paving the Road to Social Inclusion' (2018) 8 Societies 40.
[209] Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (recast) [2018] OJ L321/36, recital 9.
[210] Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC [2014] OJ L153/62, recitals 15, 18, and art 3(3)(h).
[211] Regulation (EU) 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC [2014] OJ L257/73, recital 29 and art 15.
[212] Regulation (EU) 2024/903 of the European Parliament and of the Council of 13 March 2024 laying down measures for a high level of public sector interoperability across the Union [2024] OJ L2024/903 (Interoperable Europe Act), recital 1.

accessibility framework that can support –more or less peripherally– CCS professionals with disabilities in their activities and careers.

In 2018, following the adoption of the WAD, the EU also amended what has become another key Directive in the EU accessibility landscape –the Audiovisual Media Services Directive or AVMSD.[213] The AVMSD is recognised as a significant milestone in terms of EU cultural policy,[214] and therefore discussed in the next chapter.[215] Interestingly, the updating of the AVMSD was also initiated as part of a wider European Commission initiative for a Digital Single Market Strategy for Europe.[216] To this end, the European Commission also committed itself to reviewing and making legislative proposals on a range of topics, including on copyright. Admittedly, the EU's copyright framework is quite wide-ranging,[217] yet, as argued earlier in this thesis, it was not a topic that was highlighted to a great extent in the empirical study, which justifies that it is not discussed at greater length here either.

5.4. Other Initiatives

Overall, while not holistic, EU accessibility legislation –the legal framework made of EU legislation both dedicated fully to accessibility or containing some accessibility provisions– addresses a range of topics and areas of interest to CCS professionals with disabilities. With most being entrenched in the idea of creating and ensuring the good functioning of the internal market,[218] EU disability law and policy has, as a result, put forward a range of provisions and measures that have been moulding the internal market into a gradually more accessible space.[219] As such, some EU initiatives, relevant to CCS professionals and those aspiring to be, have integrated accessibility concerns. For

[213] Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services [2010] OJ L95/1 (AVMSD).
[214] Elsa Costa E Silva and Mariana Lameiras, '"If You Can't Beat Them…": AVMSD Policy-Making for Portuguese Audiovisual Production in the Context of the Small Markets and of Multistakeholderism' (2022) 28 International Journal of Cultural Policy 715, 715.
[215] See Chapter 5, Section 5.
[216] European Commission, 'A Digital Single Market Strategy for Europe' (Communication) COM(2015) 192 final, 11.
[217] Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society [2001] OJ L167/10; Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property [2006] OJ L376/28; Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs [2009] OJ L111/16; Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works [2012] OJ L299/5; Directive (EU) 2017/1564 of the European Parliament and of the Council of 13 September 2017 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society [2017] OJ L242/6 (Marrakesh Directive).
[218] Broderick and Ferri (n 2) 368.
[219] Ferri, 'The Role of the EU in Ensuring Accessibility' (n 175) 276.

instance, these includes the European Network of Employment Services[220] and Europass, the common European framework to support the provision of better services for skills and qualifications across the EU Member States.[221]

As part of the Disability Strategy 2021-2030, the European Commission has also set up the AccessibleEU Centre.[222] This flagship initiative aims to collate resources on accessibility in the EU's working areas, to build capacity in the EU Member States on accessibility and to support the implementation of the legislation highlighted above. In particular, it is discussed in chapter 7 as an avenue for the EU to raise awareness and support knowledge-building on accessibility in the EU, which could prove particularly useful in enabling the participation of professionals in the CCS.[223]

6. The EU Funding System

In addition to equality and non-discrimination, and accessibility, which characterise part of the EU's legislative and policy action on disability, the EU holds a significant financial power, whose use can impact on the capacity of persons with disabilities to live independently and participate in the life of the community, including its cultural life. With funds being distributed across a variety of projects and programmes, many of which 'have a great potential to … advance the implementation of the CRPD', the EU appears particularly equipped to combatting exclusion and fostering the participation of CCS professionals with disabilities in cultural life.[224]

As discussed later in chapter 8, the EU funding system is rather sophisticated and covers grants, financial instruments like investments, loans or guarantees, but also subsidies, prizes or public procurement contracts.[225] The current EU budget framework is found in the Multiannual Financial Framework (MFF) 2021-2027,[226] which allocates a large part of the budget to the Common Agricultural Policy, and structural funds (also known as

[220] Regulation (EU) 2016/589 of the European Parliament and of the Council of 13 April 2016 on a European network of employment services (EURES), workers' access to mobility services and the further integration of labour markets, and amending Regulations (EU) No 492/2011 and (EU) No 1296/2013 [2016] OJ L107/1, art 4.
[221] Decision (EU) 2018/646 of the European Parliament and of the Council of 18 April 2018 on a common framework for the provision of better services for skills and qualifications (Europass) and repealing Decision No 2241/2004/EC [2018] OJ L112/42, art 4(2).
[222] Disability Strategy 2021-2030, 8.
[223] See Chapter 7, Sub-section 7.1.
[224] Delia Ferri, 'Fostering Cultural Participation of Persons with Disabilities in the European Union Through Funding: "I Was Told there'd Be Cake"' in Juan Jorge Piernas López (dir), Salvador Tomás Tomás and Rafael Castillo Felipe (coords), *El Poder Transformador del Derecho de la Unión Europea: Retos y Resultados Seleccionados* (Aranzadi La Ley 2025) 90.
[225] See Roberto Cippitani, 'Recipient of EU Programmes' in Antonio Bartolini, Roberto Cippitani and Valentina Colcelli (eds), *Dictionary of Statuses within EU Law: The Individual Statuses as Pillar of European Union Integration* (Springer 2019) 466–467.
[226] Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027 [2020] OJ L433I/11.

European Structural and Investment Funds) like the European Regional Development Fund (ERDF), the Cohesion Fund,[227] or the European Social Fund Plus (ESF+)[228] under the Cohesion Policy.[229] In July 2025, the European Commission released its first proposal for the next MFF 2028-2034,[230] proposing various mergers of programmes and funding streams of interest to disability but also to culture, and prompting mixed responses from civil society.[231] As it has to gather a unanimous agreement from the Member States, and consent of the European Parliament, a lot might change by the end of 2027 and the adoption of a new MFF.

Regarding the current MFF, similarly to the past cycle, '[t]he promotion of the rights of persons with disabilities is threaded gently through each of the [structural funds] Regulations',[232] and even reinforced in the current programming period.[233] Besides the Regulations specific to each of those funds, a Common Provision Regulation currently articulates a set of crosscutting provisions applicable to them. It introduces horizontal principles, which the Member States and the European Commission must respect when implementing the funds and throughout their lifecycle –from preparation to evaluation– that are discussed at greater length in chapter 8.[234]

As such, EU funds like the ERDF, which 'primarily focuses on infrastructure', or the ESF+, the EU's main instrument to support people in terms of employment and social support,[235] can play 'a pivotal role in attaining the economic and social participation of persons with disabilities in society'.[236] Moreover, they can support the EU's implementation of the CRPD.[237] Some funding programmes also participate in such implementation, like the Citizens, Equality, Rights and Values programme (CERV),

[227] Regulation (EU) 2021/1058 of the European Parliament and of the Council of 24 June 2021 on the European Regional Development Fund and on the Cohesion Fund [2021] OJ L231/60 (ERDF-CF Regulation).
[228] Regulation (EU) 2021/1057 of the European Parliament and of the Council of 24 June 2021 establishing the European Social Fund Plus (ESF+) and repealing Regulation (EU) No 1296/2013 [2021] OJ L231/21 (ESF+ Regulation).
[229] Claire Kilpatrick, 'Explaining and Remedying the Near Absence of the Budget in EU Law Scholarship' (2024) 61 Common Market Law Review 623, 627.
[230] European Commission, 'A dynamic EU Budget for the priorities of the future - The Multiannual Financial Framework 2028-2034' (Communication) COM(2025) 570 final.
[231] See Culture Action Europe, 'Proposed €8.6 Billion for Culture and Democracy in the next EU Budget' (*Culture Action Europe*, 16 July 2025) <https://cultureactioneurope.org/news/proposed-e8-6-billion-for-culture-and-democracy-in-the-next-eu-budget/> accessed 4 August 2025; André Felix, 'EU Budget Post-2027: Social Spending Must Be Reinforced' (*European Disability Forum*, 17 July 2025) <https://www.edf-feph.org/eu-budget-post-2027-social-spending-must-be-reinforced/> accessed 4 August 2025.
[232] Emma McEvoy, 'EU Structural and Investment Funds and Disability' in Delia Ferri and Andrea Broderick (eds), *Research Handbook on EU Disability Law* (Edward Elgar 2020) 326.
[233] Andrea Broderick and Silvia Favalli, 'The Transition from Institutional Care to Community Living in the EU: Lessons Learned in the Shadows of the COVID-19 Pandemic' in Philip Czech and others (eds), *European Yearbook on Human Rights 2021* (Intersentia-NWV 2022) 245.
[234] Chapter 8, Sub-section 3.3.
[235] UN HRC (n 23) para 36.
[236] McEvoy (n 232) 325.
[237] UN HRC (n 23) para 4.

which seeks to ensure the protection and promotion of rights and values as enshrined in the Treaties, the CFR and international human rights conventions, acknowledging in this respect that the CRPD forms an integral part of the legal order of the Union.[238] With Erasmus+, the EU also provides significant financial support to initiatives in the area of education and training. This programme seeks to support 'through lifelong learning, the educational, professional and personal development of people in the fields of education and training, youth and sport, in the EU and beyond'.[239] In that respect, the Erasmus+ Regulation indicates that the programme aims to focus on reaching more people with fewer opportunities, including persons with disabilities, and improve their participation in the programme, providing for dedicated funds in that respect.[240]

While chapter 8 further analyses the relevance of the EU funding system for CCS professionals with disabilities, it is important to highlight here how 'EU funding [represents] a vital tool in furthering the rights of persons with disabilities, and fostering their participation and inclusion into society'.[241] Funding can contribute substantially to address inequalities in the Union, to foster 'accessible employment opportunities, and to support a sustainable, innovative and inclusive European economy',[242] inclusive of the cultural economy. As substantiated in chapter 8, the EU funding system may therefore be an important tool to leverage for CCS professionals with disabilities, providing funds that enable both their 'active' and 'passive' participation in cultural life, that support the CCS in becoming more accessible for professionals with disabilities, while also developing knowledge and awareness of the contribution of professionals with disabilities to cultural life and of their rights.

7. Concluding Remarks

Overall, this first chapter on the EU framework has aimed to provide an overview of the field of EU disability law and policy, and to pinpoint how the Union as acted with regards to the main themes chapter 1 identifies. As seen above, the EU is progressively building an expanding legislative and policy body on disability, which relates, among other things,

[238] Regulation (EU) 2021/692 of the European Parliament and of the Council of 28 April 2021 establishing the Citizens, Equality, Rights and Values Programme and repealing Regulation (EU) No 1381/2013 of the European Parliament and of the Council and Council Regulation (EU) No 390/2014 [2021] OJ L156/1, recital 15 and art 2.
[239] Regulation (EU) 2021/817 of the European Parliament and of the Council of 20 May 2021 establishing Erasmus+: the Union Programme for education and training, youth and sport and repealing Regulation (EU) No 1288/2013 [2021] OJ L189/1 (Erasmus+ Regulation) art 3(1).
[240] Erasmus+ Regulation, arts 15 and 16.
[241] Neža Šubic, 'Challenging the Use of EU Funds: *Locus Standi* as a Roadblock for Disability Organisations: ECJ Order of 15 April 2021, Case C-622/20 P, *Validity and Center for Independent Living* v *Commission*' (2022) 18 European Constitutional Law Review 59, 79.
[242] McEvoy (n 232) 321.

to equality and non-discrimination, accessibility, the EU funding system, or even knowledge-building and awareness-raising. Still, the EU framework on disability somewhat resembles of a jigsaw.[243] Indeed, while some gaps are still to be addressed at the EU level, other topics are more closely regulated.

Additionally, as mentioned in the introduction, there is no specific EU instrument to rely on in order to specifically secure and foster the participation of professionals with disabilities in cultural life, and which could help in the implementation of the relevant CRPD provisions. In view of the complex division of competences that rules the field of EU disability law and policy, this chapter has sought to highlight the potential of various instruments of direct relevance –or more distantly linked– to the cultural and creative activities of professionals with disabilities, and to address some of the challenges raised in chapter 1. Some of these instruments, and their objectives, may be very technical or specific in nature, hence their consideration might feel quite removed from addressing the questions this thesis looks to answer. However, as outlined in this chapter, and as will be argued below in chapters 6, 7 and 8, they are still key to the inclusion of persons with disabilities in society and to the pursuit of a career, and particularly so for professionals in the CCS. These aspects of EU disability law and policy, and related instruments and initiatives, are seen to be decisive for the participation of CCS professionals with disabilities as they seek to benefit from equal opportunities and protection against discrimination in the CCS, to access the built environment, goods and services, digital public services, content and information, or to benefit from EU funding in order to inform and develop their own creative practice and work. As such, the EU legislation, policies and other initiatives discussed above are also seen as contributing –although not comprehensively– to the implementation of the CRPD, and in particular to the realisation of Articles 30(2) and 27 CRPD.

Overall, this chapter provides a legal picture of the EU action on disability that is necessary to understand the concrete challenges and situation of cultural and creative professionals with disabilities in the EU. This picture is completed by chapter 5, which pursues the same purpose as the present chapter in discussing the EU framework for culture. Together they form the necessary foundation for the analysis developed in chapter 6 on equality and non-discrimination, chapter 7 on accessibility and chapter 8 on the EU funding system, with regards to the potential and shortcomings of the EU legal framework in enabling the participation of professionals with disabilities in the CCS.

[243] The jigsaw metaphor is a reference to Ferri, 'The Role of the EU in Ensuring Accessibility' (n 175) 276.

Chapter 5
The European Union Legal Framework for Culture

1. Introduction

After considering the EU's efforts to consolidate a substantial legislative and policy framework on disability, this thesis moves on to discuss the foundations, and current instruments and tools that are relevant to the cultural and creative sectors (CCS). In doing so, the present chapter focuses on how the EU intervenes in the area of culture to inform the investigation of how the EU legal framework can foster the inclusion and participation of professionals with disabilities in cultural life in the EU.

In an area –culture– that Member States have historically been quite protective of, 'lay[ing] bare the bundle of anxieties that surround European integration and its impact on national identity and established traditions',[1] EU cultural action is somewhat limited, even after it acquired a formal legal basis in the Treaties.[2] Nevertheless, as highlighted in this chapter, the EU does deploy substantial efforts to support the CCS where its added value is recognised.

While referring briefly to the historical steps that have marked the development of EU cultural action, this chapter prioritises highlighting key legislation and policies to inform the analysis carried out in the following chapters. This chapter acknowledges in this regard that EU cultural policy, and its legal framework, have been and continue to be the subject of a long-standing and lively scholarship.[3] On this basis, it discusses the current state of EU cultural action to inform the investigation of how the EU legal framework enables the participation of professionals with disabilities in the CCS, and the limitations and gaps in that respect. Providing a general overview of its legal framework, as well as different processes used by the Union to intervene in the area of culture, this chapter aims –as a stepping stone to the points investigated in chapters 6, 7 and 8– to also highlight some more topical instruments. In doing so, it follows the thematic division which frames

[1] Rachael Craufurd Smith, 'Introduction' in Rachael Craufurd Smith (ed), *Culture and European Union Law* (Oxford University Press 2004) 10.
[2] See TFEU, art 167.
[3] See, among others, Caroline Brossat, *La Culture Européenne: Définitions et Enjeux* (Bruylant 1999); Rachael Craufurd Smith (ed), *Culture and European Union Law* (Oxford University Press 2004); Evangelia Psychogiopoulou, *The Integration of Cultural Considerations in EU Law and Policies* (Martinus Nijhoff 2008); Céline Romainville (ed), *European Law and Cultural Policies / Droit Européen et Politiques Culturelles* (Peter Lang 2015); Evangelia Psychogiopoulou (ed), *Cultural Governance and the European Union* (Palgrave Macmillan 2015); Renaud Denuit, *Politique Culturelle Européenne* (Bruylant 2016); Anne-Marie Autissier, *Europe et Culture: Un Couple à Réinventer ? Essai sur 50 ans de Coopération Culturelle Européenne* (Éditions de l'Attribut 2016); Pier Luigi Parcu and Elda Brogi (eds), *Research Handbook on EU Media Law and Policy* (Edward Elgar 2021); Evangelia Psychogiopoulou and Sarah Schoenmaekers (eds), *European Union Economic Law and Culture: Towards a European Culturally Corrected Market Economy* (Edward Elgar 2024).

this thesis, by discussing relevant laws, policies and other initiatives that somewhat stand at the intersection between culture, and 'equality and non-discrimination', 'accessibility' and 'the EU funding system'.

Following these introductory remarks, section 2 provides a general overview of the EU legal framework for culture. In doing so, it considers the background and genesis of the EU cultural action and introduces how culture is approached in both the Treaties and in the CFR. Then, section 3 presents the current strategic framework that informs how the Union intervenes in the field of culture, before discussing how cultural policy coordination is used as a governance tool to steer and develop its action in section 4. Following this, section 5 considers the connections between the EU cultural action and three of the main themes identified in the qualitative analysis and used to structure this thesis, starting with equality and non-discrimination. In order to inform how this thesis further answers the research questions in chapters 6, 7 and 8, section 5 also considers how accessibility features in EU cultural action before highlighting the contribution and role of the EU funding system for culture. Finally, section 6 provides some concluding remarks.

2. Culture and EU Law and Policy: A General Overview

As noted earlier, the integration of cultural considerations in EU law and policy has evolved over the years. Yet, the EU action for culture is still constrained by the limits set in the Treaties. By highlighting historical milestones in the building of an EU legal framework for culture, this section aims to offer a general overview of the field and considers how the TFEU, the TEU and the Charter lay the basis for EU action on culture.

2.1. Background and Genesis

The relationship between EU law and culture is a complex one, which has been extensively discussed over the years, as noted in the introduction. The formalisation of the EU's direct intervention in the cultural sector was a slow process, and the development of relevant EU laws and policies has been nothing but progressive and careful. Such caution still underpins the EU action on culture nowadays. In this context, a notable challenge in shaping the EU action for culture has been 'the absence of any consistent EU working definition of "culture"'.[4] Indeed, the lack of shared understandings of some key

[4] Christopher Gordon, 'Great Expectations – the European Union and Cultural Policy: Fact or Fiction?' (2010) 16 International Journal of Cultural Policy 101, 102.

concepts like culture or cultural[5] 'multiplies misunderstandings, which does few favours to the domain of "culture" as a specific sector' of EU law and policy,[6] and can contribute to rendering policymaking and legislating on the topic complex.

At the inception of European integration and EU law, culture did not represent a priority or a topic to be considered at the EU level.[7] Culture was therefore envisaged as a way 'to restrain the reach of Community law', and it was initially anticipated that 'Community intervention in the cultural field' would remain fairly limited.[8] The inclusion of cultural considerations in the founding Treaties was therefore rather scarce and incidental to other core matters, as for provisions addressing the restriction of the circulation of national treasures.[9]

Although the founding Treaties did not recognise a role for the European Community in culture, European institutions began to be involved with cultural matters and explored what had, for decades, been a 'sensitive issue'[10] and the domain of Member States. Around the seventies, under the banner of 'European cultural action', EU institutions started pushing for a European-level approach to culture.[11] However, cultural initiatives remained carefully worded. For instance, in 1977, the Commission of the European Communities would contend that '[j]ust as the "cultural sector" is not in itself "culture", Community action in the cultural sector does not constitute a cultural policy'.[12] A certain evolution can be noted a decade later[13] as the EU institution introduced its plan to provide 'A Fresh Boost for Culture in the European Community'.[14] In this context, Carlo Ripa di Meana –then European Commissioner for Culture, Tourism and Institutions– insisted on the Commission's intention to address and discuss openly and thoroughly 'the aims and form of Community action in the cultural sector'.[15] The Commissioner further pointed to the need for a shift in the EU's approach to cultural action, as he recognised cultural activity as both a 'political as well as a social and economic necessity'.[16]

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[5] See also Introductory Chapter, Sub-section 3.2.1.
[6] Gordon (n 4) 103.
[7] Paul Kearns, 'Culture and EU Law: The Exploration of an Interface' in Rachael Craufurd Smith (ed), *Culture and European Union Law* (Oxford University Press 2004) 394.
[8] Craufurd Smith, 'Introduction' (n 1) 2, 10.
[9] See Treaty of Rome, art 36. It is now Article 36 TFEU.
[10] Uta Staiger, 'New Agendas? Culture and Citizenship in EU Policy' (2009) 15 International Journal of Cultural Policy 1, 2.
[11] Bruno De Witte, 'Legal Framework of the EU's Cultural Policy' in Evangelia Psychogiopoulou and Sarah Schoenmaekers (eds), *European Union Economic Law and Culture: Towards a European Culturally Corrected Market Economy* (Edward Elgar 2024) 22.
[12] Commission of the European Communities, 'Community Action in the Cultural Sector' (Communication) COM(77) 560 final, para 3.
[13] Gordon (n 4) 102.
[14] See Commission of the European Communities, 'A Fresh Boost for Culture in the European Community' (Communication) COM(87) 603 final, 6.
[15] COM(87) 603 final, 5.
[16] COM(87) 603 final, 5.

Despite lacking formal legal competence in the area of culture, the European Community then regularly engaged with cultural issues under the guise of economic integration,[17] which was somewhat 'troubling for certain member states'.[18] Until the Treaty of Maastricht, it therefore addressed cultural matters primarily by invoking the 'facilitation of the freedom to provide services or the preservation of undistorted competition on the common market'.[19] Over the years, this approach –although seldom and 'informal'– concretised in a 'direct involvement in TV, audiovisual and publishing as legitimate spheres of economic policy and promoting competitiveness'.[20] The contribution made by the Court of Justice of the EU (the 'Court' or CJEU) in carving out a space for a common cultural action is also noteworthy. Notably, it addressed cultural matters in the context of the freedom to provide services and consumer protection.[21] However, it also meant that without coordinated or outspoken direction agreed upon, cultural issues only sporadically arose,[22] meaning that 'European cultural policy ... led a twilight existence from a competence perspective'.[23]

The Treaty of Maastricht put an end to this informal, indirect and therefore 'rather arbitrary treatment of cultural issues'.[24] At the time, the newly introduced Article 128 EC –now Article 167 TFEU– concretised 'the conferral of a formal cultural competence to the EU'.[25] It provided a dedicated legal basis for future initiatives and enshrined culture as a new area under its jurisdiction, alongside other pillars of Community action.[26] Moreover, it symbolised a new beginning for cultural action and had non-negligible implications for common cultural initiatives later on.

[17] Gordon (n 4) 101.
[18] Rachael Craufurd Smith, 'The Cultural Logic of Economic Integration' in Evangelia Psychogiopoulou (ed), *Cultural Governance and the European Union* (Palgrave Macmillan 2015) 12.
[19] De Witte (n 11) 22–23.
[20] Gordon (n 4) 101.
[21] For instance, the Court addressed cultural matters in the context of the freedom to provide services, particularly of tourist guides, and recognised that restrictions could be justified on grounds of 'general interest in the proper appreciation of places and things of historical interest and the widest possible dissemination of knowledge of the artistic and cultural heritage of a country'. See Case C–154/89 *Commission of the European Communities v French Republic* [1991] ECLI:EU:C:1991:76, para 17. In the same vein, it also affirmed that consumer protection and the conservation of the national historical and artistic heritage could constitute an overriding reason justifying a restriction on the freedom to provide services. See in that sense, Case C–180/89, *Commission of the European Communities v Italian Republic* [1991] ECLI:EU:C:1991:78, para 20; Case C–198/89, *Commission of the European Communities v Hellenic Republic* [1991] ECLI:EU:C:1991:79, para 21.
[22] Kearns (n 7) 399.
[23] De Witte (n 11) 23.
[24] Kearns (n 7) 394–395.
[25] Evangelia Psychogiopoulou, 'Cultural Heritage and the EU: Legal Competences, Instrumental Policies, and the Search for a European Dimension' in Andrzej Jakubowski, Kristin Hausler and Francesca Fiorentini (eds), *Cultural Heritage in the European Union: A Critical Inquiry into Law and Policy* (Brill Nijhoff 2019) 58.
[26] Craufurd Smith, 'Introduction' (n 1) 2.

2.2. The Treaties

The scope and limits for EU action in the area of culture are now outlined in the TFEU in a single article that has been rather untouched since the Treaty of Maastricht.[27] The wording of Article 167 TFEU is intended to prevent 'challenges from member states to the EU for straying onto unauthorised cultural territory –but in a significantly restrictive way'.[28] Therefore, the 'cultural capacity' of the EU is formally limited,[29] notably because culture is seen as 'a sensitive sector, linked to the representation of power and identities'.[30]

This approach is reflected in Article 167(1) TFEU as it states that the EU must 'contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity', as it further contributes to 'bringing the common cultural heritage to the fore'. As such, Article 167(1) TFEU outlines the 'two central aims of EU cultural policy'.[31] On the one hand, EU cultural action is intended to promote an ever closer union among Europeans and 'to make European citizens aware of the existence of a common identity'.[32] On the other hand, the EU must also 'step back from action that could be detrimental for cultural diversity' in the Member States.[33] Instead, the EU, together with the Member States 'pay homage to cultural diversity',[34] a concept that is viewed as the essential foundation for 'European unity in cultural matters', and has been integral to the construction of the European Communities and the broader integration process.[35] This approach is echoed in the preamble of the TEU, which expresses the Member States' desire 'to deepen the solidarity between their peoples while respecting their history, their culture and their traditions'.

Furthermore, Article 167(2) TFEU calls on the Union to encourage cooperation between Member States and *if necessary* to carry out actions to support and supplement their actions in some specific areas, like 'artistic and literary creation, including in the audiovisual sector'.[36] A combined reading of Articles 2(5), 6, and 167 TFEU illustrates the limited competence of the EU in the area of culture, as the Union may only play a

[27] See TFEU, art 167. See also, De Witte (n 11) 23.
[28] Gordon (n 4) 105.
[29] Gordon (n 4) 105.
[30] Oriane Calligaro and Antonios Vlassis, 'La politique européenne de la culture : Entre paradigme économique et rhétorique de l'exception' (2017) 56 Politique Européenne 8, 12.
[31] De Witte (n 11) 20.
[32] Annabelle Littoz-Monnet, 'Encapsulating EU Cultural Policy into the EU's Growth and Competiveness Agenda: Explaining the Success of a Paradigmatic Shift in Brussels' in Evangelia Psychogiopoulou (ed), *Cultural Governance and the European Union* (Palgrave Macmillan 2015) 28.
[33] Craufurd Smith, 'The Cultural Logic of Economic Integration' (n 18) 12.
[34] De Witte (n 11) 21.
[35] Céline Romainville, 'Cultural Diversity as a Multilevel and Multifaceted Legal Notion Operating in the Law on Cultural Policies' (2016) 22 International Journal of Cultural Policy 273, 283.
[36] TFEU, art 167(2) (emphasis added).

supporting role and may not supersede Member States' competence in that respect. Article 167(2) TFEU particularly emphasises and recalls the subsidiarity of the EU's action, a principle well established in Article 5(3) TEU. As such, the EU may only act if and in so far as the objectives of proposed cultural actions cannot be sufficiently achieved by the Member States and would be better achieved at Union level.[37] Article 167(3) TFEU then requires both the EU and its Member States to promote cooperation with third countries, as well as with international organisations active in the field of culture, and especially with the Council of Europe.

Understood as a 'cultural mainstreaming clause',[38] Article 167(4) TFEU then provides that the EU 'shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures'. This provision ultimately offers 'constitutional legitimacy to the informal practice preceding the adoption of the [Treaty of Maastricht]', where cultural matters were addressed as part of internal market or external trade policy matters.[39] Moreover, by framing it as a requirement to be understood as 'compulsory and systematic, in respect of both legislative texts and common policies',[40] Article 167(4) TFEU concretely promotes the integration of culture into other policy spheres and across EU policy-making.[41] As it emphasises the respect and promotion of the 'diversity of its cultures', this provision further underscores cultural diversity as 'a cross-cutting, horizontal EU policy objective'.[42] Indeed, Article 167(4) TFEU is key to enabling initiatives that exploit the Union's competences and the 'synergies between culture and other EU polic[y]' domains,[43] and therefore 'hints at the existence of a broader role of the Union' for culture.[44] In that sense, Kearns observed early on that '[i]t was always unlikely that EU law's regulation of culture would be holistic [,yet, w]hen the wheel of EU law turns, it takes with it, in each of its relevant separate segments, a particular dimension of culture'.[45] Psychogiopoulou also refers to the 'wider set of *implicit* cultural powers', which falls

[37] TEU, art 5(3).
[38] See Evangelia Psychogiopoulou, 'The Cultural Mainstreaming Clause of Article 151(4) EC: Protection and Promotion of Cultural Diversity or Hidden Cultural Agenda?' (2006) 12 European Law Journal 575.
[39] De Witte (n 11) 24.
[40] Commission of the European Communities, '1st Report on the Consideration of Cultural Aspects in European Community Action' COM(96) 160 final, 2.
[41] Mary Erickson and Patricia Dewey, 'EU Media Policy and/as Cultural Policy: Economic and Cultural Tensions in MEDIA 2007' (2011) 17 International Journal of Cultural Policy 490, 493.
[42] Evangelia Psychogiopoulou and Sarah Schoenmaekers, 'The EU as a Cultural Market Economy: In Need of "Cultural Correction"?' in Evangelia Psychogiopoulou and Sarah Schoenmaekers (eds), *European Union Economic Law and Culture: Towards a European Culturally Corrected Market Economy* (Edward Elgar 2024) 3.
[43] Evangelia Psychogiopoulou, 'The Cultural Open Method of Coordination: A New but Different OMC?' (2018) 3 European Papers 257, 270.
[44] De Witte (n 11) 23.
[45] Kearns (n 7) 388.

upon the Union, besides its 'constrained cultural remit'.[46] While the introduction of such provision indicated a 'desire to make Culture one of the major objectives of the Union',[47] it is seen as a rather underutilised provision and one of 'little practical relevance to [EU] policy-making'.[48]

Lastly, with Article 167(5), the TFEU sets out the range and type of actions available to the EU in the area of culture.[49] It provides that the European Parliament and the Council of the EU (Council), acting in accordance with the ordinary legislative procedure, can only adopt recommendations and incentive measures,[50] thus 'covering both the adoption of funding programmes and the establishment of the emblematic initiatives' discussed in the following sections.[51] Article 167(5) TFEU also excludes explicitly any legislative or regulatory harmonisation between the Member States.[52] It further emphasises the restricted scope of the Union's cultural capacity, and places beyond its reach 'any interventions, or EU-initiated reform or standardisation affecting national, regional or local cultural policy systems'.[53] Although the scope of possibilities broadened with the Treaty of Maastricht, as it provided a much-needed legal basis for EU cultural action, it simultaneously delineated a 'circumvented policy space' to manoeuvre,[54] contrasting with the more opportunistic and informal approach that took place until then.[55] The Treaties therefore firmly establish that, for the foreseeable future, Member States remain the main stakeholders and decision-makers on culture.[56]

Nevertheless, as Craufurd Smith notes, culture retains 'a commercial value, is the subject of trade, or can act as a catalyst for the sale of other goods and services'.[57] One can therefore see an 'implicit cultural logic [to] European economic integration', which fosters the realisation of 'Europe's more aspirational cultural goals' as set out in Article 167 TFEU.[58] In this context, the establishment of the internal market and the free movement of goods, services, and people suggest that the regulation of culture in EU law is broader and more enduring than the limited wording of the Treaties indicates.[59] Reflecting practices preceding the Treaty of Maastricht, other articles can serve as legal

[46] Psychogiopoulou, 'Cultural Heritage and the EU' (n 25) 59 (emphasis added by the author).
[47] COM(96) 160 final, 2.
[48] Psychogiopoulou, *The Integration of Cultural Considerations in EU Law and Policies* (n 3) 347.
[49] Psychogiopoulou and Schoenmaekers, 'The EU as a Cultural Market Economy' (n 42) 1.
[50] TFEU, art 167(5).
[51] De Witte (n 11) 23.
[52] TFEU, art 167(5).
[53] Gordon (n 4) 106.
[54] Psychogiopoulou and Schoenmaekers, 'The EU as a Cultural Market Economy' (n 42) 2.
[55] De Witte (n 11) 23.
[56] Psychogiopoulou, 'The Cultural Open Method of Coordination: New but Different?' (n 43) 268.
[57] Craufurd Smith, 'Introduction' (n 1) 2.
[58] Craufurd Smith, 'The Cultural Logic of Economic Integration' (n 18) 22.
[59] Craufurd Smith, 'Introduction' (n 1) 2.

basis for regulating cultural activities and pursuing harmonisation, particularly 'when this appears necessary for the smooth functioning of the internal market [Article 114 TFEU] or for the proper regulation of external trade [Article 207 TFEU]'.[60] Thus, rather than being driven by cultural goals, various EU instruments, adopted over the years and relating to culture, have instead been developed with the aim 'to stimulate culture as a source of growth, competitiveness and employment and to facilitate cultural consumption in a free market' in mind.[61]

2.3. The Charter of Fundamental Rights of the European Union

In addition, the Charter, which –as noted in the previous chapter– has the same legal status as the Treaties,[62] further strengthens the EU's cultural dimension. Notably, similarly to the international instruments discussed in chapter 3, it enshrines freedom of expression and of information in Article 11 CFR, as well as freedom of the arts and science in Article 13 CFR, stating that the arts and scientific research shall be free from constraint. Additionally, Article 22 CFR states that the Union must respect cultural, religious, and linguistic diversity. With this provision, the CFR also reinforces this idea that the EU is not meant 'to achieve closer union by fostering cultural homogeneity',[63] but rather by respecting its diversity 'as a key component of the Europe it endeavours to create'.[64]

While its application is limited, it firmly anchors cultural diversity as a cross-cutting policy concern and a horizontal principle guiding the action of the EU.[65] Interestingly, the CFR expressly recognises the right of older people to 'participate in social and cultural life' in Article 25 CFR. By contrast, Article 26 CFR on the integration of persons with disabilities does not expressly consider this aspect.

The CFR also encompasses a range of more generic obligations particularly relevant to cultural and creative professionals with disabilities. Article 15 CFR considers the freedom to choose an occupation and the right to engage in work, while Article 16 CFR focuses on the freedom to conduct a business. The latter is particularly key to the points raised in chapter 6 with regards to the application of the Employment Equality Directive[66] to self-

[60] De Witte (n 11) 24.
[61] Céline Romainville, 'The Right to Access Culture under EU Law' in Evangelia Psychogiopoulou (ed), *Cultural Governance and the European Union* (Palgrave Macmillan 2015) 172.
[62] See Chapter 4, Sub-section 2.4.
[63] De Witte (n 11) 21.
[64] Tawhida Ahmed, 'The EU's Relationship with Minority Rights' in Evangelia Psychogiopoulou (ed), *Cultural Governance and the European Union* (Palgrave Macmillan 2015) 180.
[65] Psychogiopoulou and Schoenmaekers, 'The EU as a Cultural Market Economy' (n 42) 3–4.
[66] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16 (Employment Equality Directive).

employed professionals in the CCS.[67] Various social rights are also recognised under its solidarity title, regarding fair and just working conditions (Article 31 CFR), or social security and social assistance (Article 34 CFR). However, as already mentioned, the impact of these provisions is restricted to the limited field of application of the Charter, which concerns only the EU institutions, bodies, offices and agencies, and Member States, as far as they are implementing EU law.[68]

3. EU Strategic Instruments for Culture

Over the years, and particularly since the Treaty of Maastricht, EU cultural action has known different strategic directions, influencing to some extent the situation of cultural and creative professionals in the EU, and therefore, those with disabilities. Nowadays, a range of strategic documents outline the conditions that govern EU action on culture, and set out distinct European objectives to be achieved, separate from those 'pursued by national or regional cultural policies'.[69] The framework to support culture and the CCS is mainly outlined in four documents; the New European Agenda for Culture (or 'New Agenda');[70] the EU Work Plan for Culture 2023–2026;[71] the European Framework for Action on Cultural Heritage (Framework for Action);[72] and the EU strategy for international cultural relations.[73]

3.1. The New European Agenda for Culture

The New European Agenda for Culture, adopted by the European Commission in 2018, is the successor of the 2007 European Agenda for Culture.[74] The latter, which ran from 2007 until 2017, marked the EU's first-ever formal cultural strategy and outlined key areas for priority actions,[75] which were particularly directed at improving 'cultural cooperation among the Member States'.[76] With the New Agenda, the European

[67] See Chapter 6, Section 3.
[68] CFR, art 51(1).
[69] De Witte (n 11) 20.
[70] European Commission, 'A New European Agenda for Culture' (Communication) COM(2018) 267 final.
[71] Council Resolution on the EU Work Plan for Culture 2023–2026 [2022] OJ C466/1 (EU Work Plan for Culture 2023-2026).
[72] European Commission, *European Framework for Action on Cultural Heritage* (Staff Working Document, Publications Office 2019).
[73] European Commission and High Representative of the Union for Foreign Affairs and Security Policy, 'Towards an EU strategy for international cultural relations' (Communication) JOIN(2016)29.
[74] Commission of the European Communities, 'A European agenda for culture in a globalizing world' (Communication) COM(2007) 242 final.
[75] Anna Kandyla, 'The Creative Europe Programme: Policy-Making Dynamics and Outcomes' in Evangelia Psychogiopoulou (ed), *Cultural Governance and the European Union* (Palgrave Macmillan 2015) 49.
[76] IDEA Consult and others, *Research for CULT Committee – EU Culture and Creative Sectors Policy: Overview and Future Perspectives* (European Parliament 2024) 26.

Commission drafted a framework for cultural policy taking into account 'new social and economic contexts',[77] which more resolutely emphasises 'the contribution of culture to growth, job creation and social cohesion in Europe'.[78] The New European Agenda for Culture particularly outlines three strategic objectives, with a focus on social, economic and global dimensions respectively.

With regards to the social dimension, the New Agenda highlights the importance of cultural diversity and the power of culture in fostering social cohesion and well-being.[79] In that respect, the New European Agenda for Culture indicates that the cultural capability of all Europeans must be fostered, and that the mobility of professionals in the CCS should be encouraged too.[80] This requires the provision of opportunities to participate actively in cultural activities and the removal of barriers to mobility.[81] The European Commission highlights then that, among other measures, it would propose a dedicated mobility scheme under Creative Europe and initiate specific actions for social inclusion through culture as part of Creative Europe and Erasmus+.[82] Both of these programmes are presented in sub-section 5.3, and more specifically discussed in chapter 8 together with the initiatives they fostered, as key tools in the EU framework to enable the participation of professionals with disabilities in the CCS.[83]

The situation of cultural and creative professionals with disabilities is also overseen under the economic dimension, where the European Commission indicates aiming to 'suppor[t] culture-based creativity in education and innovation, and for jobs and growth'.[84] There, it underlines the need to foster 'access to finance, innovation capacity, fair remuneration of authors and creators and cross-sectoral cooperation', and to '[p]romote the skills needed by cultural and creative sectors, including digital, entrepreneurial, traditional and specialised skills'.[85] In that respect, the European Commission outlines a range of relevant initiatives it aimed to pursue from 2018. It mentions the organisation of regular dialogues with the CCS in order to identify policy needs and underpin a comprehensive policy framework at EU level, as well as measures to reinforce dialogue with the European audiovisual industry, which are discussed in the following section.[86] Interestingly, the New European Agenda for Culture highlights that the European Commission aimed to

[77] IDEA Consult and others (n 76) 26.
[78] Psychogiopoulou, 'The Cultural Open Method of Coordination: New but Different?' (n 43) 270.
[79] COM(2018) 267 final, 2.
[80] COM(2018) 267 final, 2.
[81] COM(2018) 267 final, 2.
[82] COM(2018) 267 final, 3.
[83] See Chapter 5, Sub-section 5.3, and Chapter 8, Section 2 and Sub-section 3.1.
[84] COM(2018) 267 final, 4.
[85] COM(2018) 267 final, 4.
[86] COM(2018) 267 final, 6.

also support Member States in ensuring fair remuneration for artists and creators through different dialogues.[87] Moreover, it invites Member States to commit to enhancing the socio-economic conditions of cultural and creative professionals and to promoting arts education and training under the Work Plan for Culture 2019-2022.[88] Under the global dimension, the European Commission outlines its intention to strengthen international cultural relations, including by using culture as a tool for sustainable social and economic development, for peaceful inter-community relations, as well as in terms of strengthening cooperation on cultural heritage.[89]

More recently, in the EU Work Plan for Culture 2023-2026 presented below, the Council invited the European Commission to consider proposing a new 'EU strategic framework for culture'.[90] Work is presently underway to improve and strengthen the current strategic framework for culture as a new 'Culture Compass for Europe'.[91] This would allow to build on the New Agenda, which has become rather outdated since 2018, and better equip the EU to address new or enduring challenges, including the rise of AI, restrictions to artistic freedom, and the 'precarious social and working conditions of artists and cultural professionals',[92] in a way that –it can be hoped– would better integrate the challenges faced by professionals with disabilities.

3.2. The Work Plan for Culture 2023-2026

The New Agenda has been implemented through successive EU Work Plans and relies on different working methods, as discussed in the next sub-section.[93] Decided by the Council, the EU Work Plans have been strategic and dynamic instruments setting out the main topics that Member States have defined and will collaborate on for a set period.

In that respect, the latest EU Work Plan for Culture 2023-2026 outlines the overarching priorities agreed by Member States in respect of 'their contribution to enhancing European cultural cooperation, promoting cultural diversity and providing European added value and in view of the need for joint action'.[94] As such, it discusses four priorities in cultural policy-making; artists and cultural professionals (empowering the CCS); culture for the people (enhancing cultural participation and the role of culture in society);

[87] COM(2018) 267 final, 6.
[88] COM(2018) 267 final, 6.
[89] COM(2018) 267 final, 6.
[90] EU Work Plan for Culture 2023-2026, 2.
[91] European Commission, 'Call for Evidence for an Initiative (Without an Impact Assessment): A Culture Compass for Europe' (2025) Ares(2025)3070813.
[92] European Commission, 'Call for Evidence for an Initiative' (n 91) 1-2.
[93] COM(2018) 267 final, 9.
[94] EU Work Plan for Culture 2023-2026, 2.

culture for the planet (unleashing the power of culture); and culture for co-creative partnership (strengthening the cultural dimension of EU external relation).[95] Under each priority, the Work Plan defines targeted actions for the European Commission, the Member States and the presidencies of the Council to carry out.

Under the first priority area, which focuses on artists and cultural professionals, the Work Plan indicates that an online platform will be proposed in order to host information on working conditions in Member States, as a follow-up to the ongoing Open Method of Coordination (OMC) expert group on status and working conditions of artists and cultural and creative professionals. It has now been set up as 'Creatives Unite' and chapter 8 discusses its contribution in facilitating the participation of CCS professionals with disabilities.[96]

3.3. The European Framework for Action on Cultural Heritage and the EU Strategy for International Cultural Relations

As announced above, the Framework for Action and the EU Strategy for International Cultural Relations complete the strategic framework for the EU's cultural policy. The former was initiated by the European Commission in 2018 as a follow-up to the European Year of Cultural Heritage 2018. It aims to keep the momentum and ensure that cultural heritage features prominently in the EU agenda. In doing so, it provides for a continued series of short to medium-term actions. They are categorised under the five pillars on which it is based;

1. Cultural heritage for an inclusive Europe: participation and access for all;
2. Cultural heritage for a sustainable Europe: smart solutions for a cohesive and sustainable future;
3. Cultural heritage for a resilient Europe: safeguarding endangered heritage;
4. Cultural heritage for an innovative Europe: mobilising knowledge and research;
5. Cultural heritage for stronger global partnerships: reinforcing international cooperation).[97]

Under the first pillar, the Framework for Action notably discusses the need to ensure the widest possible access to cultural heritage, including for persons with reduced mobility or disabilities.[98] In that context, it also mentions actions aimed at breaking barriers to

[95] EU Work Plan for Culture 2023-2026, annex I, 3–4.
[96] See the Creatives Unite website at <https://creativesunite.eu/> accessed 04 August 2025. See also Chapter 8, sub-section 2.3.2.
[97] European Commission, *European Framework for Action on Cultural Heritage* (n 72) 10.
[98] European Commission, *European Framework for Action on Cultural Heritage* (n 72) 10.

access, like the EU Access City Awards which promote ways to make cultural heritage more enjoyable for persons with disabilities.[99] Although it does not elaborate on what is meant exactly by 'participation' and 'access',[100] it ensues from the vocabulary chosen and the actions it details that this pillar focuses rather on audiences than on creators. This is perhaps a reflection of the EU legal framework's broader tendency to focus on audiences, rather than on professionals, when it engages with the topics of culture, disability and access. Nevertheless, as chapter 7 will point out, accessibility measures aimed at audiences can also benefit CCS professionals with disabilities.[101]

Additionally, beyond the Framework for Action, the EU strategic framework for culture also encompasses an external and international relations dimension with the 2016 EU Strategy for International Cultural Relations. This Joint Communication, which was prepared by the Commission and the EU High Representative for Foreign Affairs, outlines three work streams aimed at enhancing international cultural relations with partner countries; the first focuses on 'supporting culture as an engine for sustainable social and economic development'; the second on 'promoting culture and intercultural dialogue for peaceful inter-community relations'; and the last one on 'reinforcing cooperation on cultural heritage'.[102] Overall, it represents a more strategic approach to cultural diplomacy and international cultural cooperation on the part of the EU to 'further develop channels of communication between peoples and societies'.[103]

4. EU Cultural Policy Governance

As mentioned above, in the context of its strategic framework for culture and the CCS, the EU has supported initiatives mostly aimed at fostering 'transnational cultural cooperation'.[104] Further, in view of its limited cultural competence, the Union has also facilitated cooperation as a method of soft governance, and relied on groups of national civil servants and CCS representatives to somewhat mould its cultural policy,[105] ensuring dialogue and stakeholder involvement through the Open Method of Coordination in the field of Culture (OMC-culture) and the Structured Dialogue. Both of those structured methods of cultural policy cooperation, which are discussed hereinafter, provide insights

[99] European Commission, *European Framework for Action on Cultural Heritage* (n 72) 19.
[100] European Commission, *European Framework for Action on Cultural Heritage* (n 72) 16–19.
[101] See Chapter 7, Section 1.
[102] JOIN(2016)29, 7.
[103] JOIN(2016)29, 15.
[104] Psychogiopoulou, 'The Cultural Open Method of Coordination: New but Different?' (n 43) 258.
[105] De Witte (n 11) 19. See also Minna van Gerven and Sabina Stiller, 'The Open Method of Coordination (OMC): A Hybrid Tool of Political Leverage in the Making' in Mariolina Eliantonio, Emilia Korkea-aho and Ulrika Mörth (eds), *Research Handbook on Soft Law* (Edward Elgar 2023).

from the CCS and from experts in the Member States on topics of relevance to this thesis' research questions. Therefore, they offer a valuable background against which to assess the qualitative research undertaken as part of the thesis as it also engaged with CCS stakeholders in the EU.

4.1. The Open Method of Coordination in the Field of Culture

Already in place for employment, social protection, or education and youth, the OMC-culture was introduced with the 2007 European Agenda for Culture as 'a non-binding, intergovernmental framework for policy exchange and concerted action'.[106] More specifically, the OMC has been established and promoted in the field of culture as a means to foster cultural cooperation and Member States working together.[107] Since then, it has helped to structure cultural cooperation among Member States, to 'promote the exchange of best practices, and foster national policies through recommendations for national policy-makers'.[108]

Now indivisible from EU cultural policy, the European Commission argues that the OMC-culture provides a well-suited framework for policy coordination in the field of culture.[109] Indeed, the paradigm that underlies the OMC-culture is more apt to align with the Treaties and the 'high degree of subsidiarity' that characterises the EU's cultural competence and excludes any harmonisation.[110] As such, it aims to serve the unique (and supporting) role granted to the EU in that regard.[111]

Practically, the OMC-culture brings together temporary groups of experts appointed by the Member States to discuss topics outlined in the multiannual Work Plans decided by the Council. Participants primarily engage in the exchange of policy insights on a set topic, thus enabling them to apply these learnings to improve their national cultural policies 'without these becoming standardised'.[112] Over the years, the OMC has sought to address various themes which can be regrouped as; '(i) cultural diversity, intercultural dialogue, accessible and inclusive culture and mobility of cultural works; (ii) skills and mobility of culture professionals; (iii) cultural and creative industries, the creative economy and innovation'.[113] Gradually, the OMC-culture has also adapted to the growing

[106] COM(2007) 242 final, 12.
[107] Evangelia Psychogiopoulou, 'The Cultural Open Method of Coordination' in Evangelia Psychogiopoulou (ed), *Cultural Governance and the European Union* (Palgrave Macmillan 2015) 43.
[108] Psychogiopoulou, 'Cultural Heritage and the EU' (n 25) 67.
[109] COM(2007) 242 final, 12.
[110] Psychogiopoulou, 'The Cultural Open Method of Coordination' (n 107) 44.
[111] COM(2007) 242 final, 3 and 12.
[112] Psychogiopoulou, 'The Cultural Open Method of Coordination' (n 107) 45.
[113] Psychogiopoulou, 'The Cultural Open Method of Coordination: New but Different?' (n 43) 269.

attention devoted to the socio-economic dimension of cultural policy, and entertained connections with other policy domains on 'topics that enjoy broad support by the European institutions and the member states'.[114] Therefore, the OMC-culture has considered topics like 'education and training, regional development, tourism, the EU's digitization and innovation policies, employment, social inclusion, migration and integration policies'.[115]

Most recently, the OMC has addressed the status and working conditions of artists and cultural and creative professionals.[116] Published in 2023, the report of the OMC-culture fits within a broader EU-level movement pressing for greater consideration of the social and professional situation of cultural and creative professionals across Member States, particularly in the aftermath of the Covid-19 pandemic.[117] With this report, the OMC-culture working group sought to capitalise on the momentum of what could be 'a historic opportunity to tackle the challenges of working conditions of artists together at EU level, to compare notes, learn from good practice in other countries and see how to best move forward for the benefit of all'.[118] Albeit it recommends that attention should be given to their access to 'opportunities for funding and public goods', the specific situation of cultural and creative professionals with disabilities is minimally discussed. In fact, disability is mostly mentioned as part of discussions on the social security regime of artists in the Member States.[119] This last point certainly contrasts with the qualitative findings presented at the outset of this thesis.[120]

In this regard, and despite the diversity of socio-cultural contexts and 'systemic differences in the formulation and implementation of national and subnational cultural policies' across Member States, the OMC-culture emphasises the potential of 'knowledge sharing and policy learning'.[121] It functions as a valuable tool for agenda-setting on matters seen as 'common challenges'[122] through 'agreeing common objectives, regularly following up progress towards them and exchanging best practice and relevant data in order to foster mutual learning'.[123] Instead of pursuing any convergence or

[114] Psychogiopoulou, 'The Cultural Open Method of Coordination' (n 107) 44.
[115] Psychogiopoulou, 'The Cultural Open Method of Coordination: New but Different?' (n 43) 270.
[116] European Commission, *The Status and Working Conditions of Artists and Cultural and Creative Professionals: Report of the OMC (Open Method of Coordination) Group of EU Member States' Experts* (Publications Office 2023).
[117] See European Parliament Resolution of 21 November 2023 with Recommendations to the Commission on an EU framework for the social and professional situation of artists and workers in the cultural and creative sectors (2023/2051(INL)) [2024] OJ C2024/4208 (European Parliament Resolution on an EU framework for artists).
[118] European Commission, *The Status and Working Conditions of Artists – OMC Report* (n 116) 12.
[119] See European Commission, *The Status and Working Conditions of Artists – OMC Report* (n 116) 37–38, 44, 90.
[120] See Chapter 1, Sub-section 3.3.
[121] Psychogiopoulou, 'The Cultural Open Method of Coordination' (n 107) 44–45.
[122] Evangelia Psychogiopoulou, 'Conclusion: Culture and the European Union' in Evangelia Psychogiopoulou (ed), *Cultural Governance and the European Union* (Palgrave Macmillan 2015) 239.
[123] COM(2007) 242 final, 12.

homogenisation,[124] it can be seen as a way to reinforce and expand cooperation between Member States at the EU level by stimulating their interest in key areas.[125] In that sense, the focus of the OMC-culture on learning and the circulation of knowledge speaks to some of the concerns expressed by the participants in the qualitative study, who raised the issue of a lack of knowledge and awareness as one that also underlies the lack of participation of CCS professionals with disabilities.

Ultimately, the overall impact of the OMC-culture is somewhat unclear, prompting De Witte to question whether it should be viewed as 'a coordination mechanism between national cultural policies rather than as a true European cultural policy instrument'.[126] Due to its 'voluntary nature' and several other factors –such as 'differences in national policy development and dissimilar levels of expertise and connectivity to domestic policy-makers of the [working group] participants'– the impact of the OMC-culture at both the EU and national levels is uncertain, and the adoption of follow-up measures difficult to predict.[127] In 2010, Gordon referred to the use of the OMC in other policy areas, emphasising that this experience 'suggests it is a weak mechanism'.[128] Additionally, it is unlikely that one Member State's cultural policy-making may be 'readily translated into domestic policy change' in another country, even within the EU.[129] Insights gained in the OMC-culture must therefore be adapted and integrated into new national systems 'provided that there is political will for reform'.[130]

Nevertheless, it has now come to represent 'a solid part of EU cultural policy', strengthening its connection with other initiatives, such as the Creative Europe programme,[131] but also different forms of Structured Dialogue. Additionally, in the context of this thesis, the OMC-culture outputs provide, together with the outputs of the Structured Dialogue, an interesting background for analysing and discussing the contributions of the CCS stakeholders that took part in the qualitative study.

4.2. Structured Dialogue

Indeed, the OMC-culture has not been the only method formally envisioned by the European Commission to bring together institutions, Member States, and civil society

[124] Psychogiopoulou, 'The Cultural Open Method of Coordination: New but Different?' (n 43) 268.
[125] Psychogiopoulou, 'The Cultural Open Method of Coordination' (n 107) 45.
[126] De Witte (n 11) 20.
[127] Psychogiopoulou, 'The Cultural Open Method of Coordination' (n 107) 46.
[128] Gordon (n 4) 113.
[129] Psychogiopoulou, 'The Cultural Open Method of Coordination' (n 107) 46.
[130] Psychogiopoulou, 'The Cultural Open Method of Coordination' (n 107) 47.
[131] Psychogiopoulou, 'The Cultural Open Method of Coordination: New but Different?' (n 43) 269.

following the 2007 European Agenda for Culture. Under the Structured Dialogue, it has kept a regular dialogue with civil society through different frameworks called 'Intercultural Dialogue', 'Access to Culture', or 'Potential of Cultural and Creative Industries'.[132] Then, under the New European Agenda for Culture, the European Commission has entertained this Structured Dialogue with European organisations from the CCS under 'Voices of Culture'. Similarly to the OMC-culture, the outputs of the Structured Dialogue –whether under Voices of Culture, or the European Film Forum (EFF) discussed later– also provide an understanding of the state of knowledge, awareness and engagement of the CCS stakeholders involved with issues key to this thesis.

From 2015 until 2023, Voices of Culture has served as framework for discussions and policy dialogue between the European Commission and CCS stakeholders (and occasionally stakeholders from other sectors)[133] on a limited number of themes each year.[134] The organisation of a new Structured Dialogue on cultural policy with civil society, covering the period from 2025 to 2028, has also been put for tender in 2024, therefore promising further engagement of the European Commission with the CCS.[135]

In practical terms, stakeholders would periodically apply to take part in Voices of Culture. Successful participants would then participate in a brainstorming session on the chosen theme and prepare a 'brainstorming report' for the attention of the European Commission. Some of the more recent reports discuss the green transition, mental health, the Sustainable Development Goals, but also the status and working conditions of artists, cultural and creative professionals.[136] In fact, many of the themes addressed in this dialogue align with those of the OMC-culture, and civil society stakeholders participating in Voices of Culture have also contributed to the OMC-culture working groups as external experts.[137]

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[132] See Littoz-Monnet (n 32) 33.
[133] For instance, see the list of participants in Voices of Culture, 'Brainstorming Report: Social Inclusion: Partnering with Other Sectors' (Structured Dialogue between the European Commission and the Cultural Sector, 2018) app.
[134] Annalisa Cicerchia and Else Christensen-Redzepovic, 'Nota introduttiva' [2022] Economia della Cultura 379, 379–380.
[135] See European Commission, 'Structured Dialogue with Civil Society on Cultural Policy 2025-2028' (*Culture and Creativity*, 27 June 2024) <https://culture.ec.europa.eu/calls/structured-dialogue-with-civil-society-on-cultural-policy-2025-2028> accessed 10 July 2025.
[136] Voices of Culture, 'Status and Working Conditions of Artists and Cultural and Creative Professionals' (Structured Dialogue between the European Commission and the Cultural Sector, 2021); Voices of Culture, 'Brainstorming Report: Culture and the United Nations Sustainable Development Goals: Challenges and Opportunities' (Structured Dialogue between the European Commission and the Cultural Sector, 2021); Voices of Culture, 'Youth, Mental Health and Culture: Brainstorming Report' (Structured Dialogue between the European Commission and the Cultural Sector, 2022); Voices of Culture, 'Culture & Creative Sectors & Industries Driving Green Transition and Facing the Energy Crisis: Brainstorming Report' (European Commission Structured Dialogue with the Cultural and Creative Sectors in the EU, 2023).
[137] Psychogiopoulou, 'The Cultural Open Method of Coordination: New but Different?' (n 43) 270.

In the context of the digital transformation, the EFF –organised notably during film festivals and TV markets– serves as another platform for a Structured Dialogue between policymakers and stakeholders in the audiovisual sector.[138]

The reports that are produced, especially as part of Voices of Culture, are a particularly 'valuable repository of experiences and reflections of cultural operators from many countries' on a wide range of topics.[139] In the context of this thesis, it Is interesting to note that the report on the status and working conditions of CCS considers persons with disabilities and points to the need to address 'inequalities of access to cultural mobility within the EU',[140] a point which is further raised in chapter 8. A report on social inclusion also provides for a range of case studies on the cultural participation of persons with disabilities, albeit mostly not in a professional capacity, while making the point that funding must be accessible to all.[141] Here, this emphasises the need to consider funding as a key issue of the participation of CCS professionals with disabilities in the EU, as is also done in chapter 8. More broadly, the Structured Dialogue is a valuable resource that provides further insights with which to contrast and corroborate the findings of the qualitative study.

5. The EU Legal Framework for CCS Professionals with Disabilities: Thematic Appraisal

As noted already in this chapter, the EU's involvement in cultural matters has predated the inclusion of a specific culture title in the founding Treaties. In practice, although the pursuit of cultural objectives has to be done 'only as an integral part of laws and policies whose central aim is defined otherwise',[142] the EU's economic focus and the use of related Treaty provisions has fostered the more indirect cultural intervention on the part of the EU. While the Union had to 'first establish a credible link between the measures adopted and the core, non-cultural objectives that these measures are in principle meant to attain',[143] this has prompted the adoption and revision of a series of culturally significant legislation, with 'measures which sought to bolster cultural *production* and reinforce the *distribution* of and *access* to cultural content'.[144] Noteworthy examples, which have

[138] European Commission, 'European film in the digital era: Bridging cultural diversity and competitiveness' (Communication) COM(2014) 272 final, 14.
[139] Cicerchia and Christensen-Redzepovic (n 134) 380.
[140] Voices of Culture, 'Status and Working Conditions' (n 136) 43.
[141] Voices of Culture, 'Social Inclusion' (n 133) 58.
[142] De Witte (n 11) 24.
[143] Psychogiopoulou, 'Conclusion: Culture and the European Union' (n 122) 240.
[144] Psychogiopoulou, 'Conclusion: Culture and the European Union' (n 122) 240 (emphasis added by the author).

particularly aimed to favour cultural creation, include the adoption and revision of the Audiovisual Media Services Directive (AVMSD),[145] EU state aid legislation, or the expansion of EU copyright legislation.

However, as for the EU framework for disability, this chapter does not aim to provide a comprehensive analysis of all EU laws, policies and initiatives which relate to culture. As mentioned in the introduction, this is already discussed in a range of scholarship and is beyond the scope of this chapter or thesis.[146] Following this general overview of EU cultural law and policy, its strategic framework, and EU cultural policy cooperation, this section therefore aims to highlight some specific topics, chosen in reference to the qualitative findings. On this basis, and for the reasons presented in chapter 1, this thesis discusses neither EU state aid nor EU copyright legislation.[147] As explained then, although relevant to the functioning of the CCS, both areas of EU law were so limitedly mentioned that they could not be identified in the qualitative analysis –using the perspective of the participants– as key levers for enabling the participation of CCS professionals with disabilities. With this in mind, the following sub-sections focus on equality and non-discrimination, accessibility, and the EU funding system, as the following three chapters do. They aim to tease out what in the current EU legal framework for culture contributes –or could contribute– to making the CCS more inclusive of professionals with disabilities.

5.1. Equality and Non-discrimination

As far as equality and non-discrimination are concerned, there is little to present here that explicitly considers the application of the principle of equal treatment in the context of the functioning of the CCS. Besides the AVMSD, this sub-section therefore focuses on

[145] Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services [2010] OJ L95/1 (AVMSD).

[146] See literature cited above (n 3). On state aid and culture, see also, among others, Evangelia Psychogiopoulou, 'EC State Aid Control and Cultural Justifications' (2006) 33 Legal Issues of Economic Integration 3; Delia Ferri, 'Cultural Diversity and State Aids to the Cultural Sector' in Evangelia Psychogiopoulou (ed), *Cultural Governance and the European Union* (Palgrave Macmillan 2015); Kelyn Bacon, *European Union Law of State Aid* (3rd edn, Oxford University Press 2017) 305–348; Łukasz Stępkowski, 'State Aid to Promote Culture and Heritage Conservation: Museums and Other Cultural Institutions as Recipients of EU State Aid' (2023) 9 Santander Art and Culture Law Review 191; Joris Gruyters and Lennard Michaux, 'Cultural State Aid: A Myriad of Approaches' in Evangelia Psychogiopoulou and Sarah Schoenmaekers (eds), *European Union Economic Law and Culture* (Edward Elgar 2024). On EU copyright law see also Giuseppe Mazziotti, 'Cultural Diversity and the EU Copyright Policy and Regulation' in Evangelia Psychogiopoulou (ed), *Cultural Governance and the European Union* (Palgrave Macmillan 2015); Irini A Stamatoudi and Paul Torremans (eds), *EU Copyright Law: A Commentary* (2nd edn, Edward Elgar 2021); Caterina Sganga, 'Making Room for Cultural Policies within a Market-Oriented Copyright Law: A Function-Based Approach' in Evangelia Psychogiopoulou and Sarah Schoenmaekers (eds), *European Union Economic Law and Culture* (Edward Elgar 2024).

[147] See Chapter 1, Sub-section 3.3.

highlighting the contribution that EU labour law can make for the participation of CCS professionals with disabilities in the EU, albeit with some caveats to be considered further in chapter 6.

5.1.1. EU Labour Law

It is undeniable that EU labour law is an important vehicle to foster and ensure the application of the principle of equal treatment in the CCS. Therefore, it has potential to address some of challenges faced by CCS professionals with disabilities. Interestingly, most of the legislation mentioned below was in fact highlighted in the preamble to the Resolution of the European Parliament in favour of an ambitious EU framework for the social and professional situation of artists and workers in the CCS, which also recommended the adoption of a Directive on decent working conditions for CCS professionals.[148]

In discussing EU labour law, Pennings highlights that '[f]or a long time equal pay and equal treatment of men and women were, apart from the (mainly economic) freedom of movement of workers, the only areas of EU social policy'.[149] Indeed, a number of Gender Equality Directives address the implementation of the principle of equal treatment in the EU in relation to work. Those focusing on employment and occupation,[150] or self-employment[151] were adopted on the basis of what is now Article 157 TFEU, while the Gender Equality Directives focusing on social security[152] and the supply of goods and services[153] –which, therefore address situations beyond a work context– are based on the current Article 19 TFEU, discussed also in chapter 4.[154] Moreover, the principle of equal pay for equal work[155] particularly underpins the adoption of the Pay Transparency

[148] European Parliament Resolution on an EU framework for artists, preamble and annex, 1.
[149] Frans Pennings, 'European Labour Law as the Result of Conflicting Norms and Interests' in Teun Jaspers, Frans Pennings and Saskia Peters (eds), *European Labour Law* (1st edn, Intersentia 2019) 509.
[150] Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) [2006] OJ L204/23 (Recast Gender Directive).
[151] Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC [2010] OJ L180/1 (Gender Self-Employment Directive).
[152] Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security [1978] OJ L6/24.
[153] Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services [2004] OJ L373/37 (Gender Goods and Services Directive).
[154] See Chapter 4, Sub-section 2.3.
[155] See TFEU, art 157 (1).

Directive.[156] Together with the Adequate Minimum Wages Directive (AMWD),[157] which 'has proven to be one of the most contentious pieces of EU labour legislation'[158] and whose future is uncertain,[159] it should support the reduction of wage inequalities in the EU, potentially benefiting CCS professionals with disabilities.

The adoption of these two instruments is only one of the legislative developments brought about by the European Pillar of Social Rights (the 'Pillar' or EPSR)[160] and marking the 'revival of Social Europe'.[161] Indeed, the Work-Life Balance Directive, adopted on the basis of Article 153 TFEU on social policy, is another example of those recent developments in EU labour law that contributes to the goal of equal treatment in the Union.[162] Over the years, the EU's supportive and complementary action in the area of social policy[163] has also led to the adoption of many more instruments, regarding safety and health,[164] working time,[165] working conditions,[166] and non-standard forms of work, as seen with the recent Platform Work Directive,[167] or previously with the Temporary Agency Work Directive (TAWD).[168] The application of the principle of equal treatment and the prohibition of non-discrimination also extend to part-time work and fixed-term work, thanks to two Directives implementing the relevant framework agreements concluded by cross-industry organisations.[169]

As discussed in chapter 6, if not all instruments refer to persons with disabilities and their situation in the CCS labour market, they all contribute to modernising the EU framework

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[156] See Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanism [2023] OJ L132/21 (Pay Transparency Directive).
[157] Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union [2022] OJ L275/33 (AMWD).
[158] Michael Doherty, 'Make Me Good…Just Not Yet? The (Potential) Impact of the Adequate Minimum Wage Directive' (2024) 17 Italian Labour Law e-Journal 211, 211.
[159] Case C–19/23 *Kingdom of Denmark v European Parliament and Council of the European Union* (Action brought on 18 January 2023) [2023] OJ C104/22.
[160] European Commission, *European Pillar of Social Rights* (Publications Office 2017).
[161] Marta Lasek-Markey, 'Effective Enforcement of the EU Framework on the Posting of Workers: Empirical Evidence' (2024) 15 European Labour Law Journal 740, 741.
[162] Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU [2019] OJ L188/79 (Work-Life Balance Directive), recital 16.
[163] See TFEU, art 153.
[164] See, for instance, Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work [1989] OJ L183/1 (OSH Framework Directive).
[165] Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time [2003] OJ L299/9 (Working Time Directive).
[166] Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union [2019] OJ L186/105 (Working Conditions Directive).
[167] Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work [2024] OJ L2024/2831 (Platform Work Directive).
[168] Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work [2008] OJ L327/9 (TAWD).
[169] Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC [1997] OJ L14/9 (PTWD); Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP [1999] OJ L175/43 (FTWD).

for labour law and social policy, in a way that can, nevertheless, benefit them as CCS professionals with disabilities.[170]

5.1.2. The Audiovisual Media Services Directive

Furthermore, the AVMSD, also mentioned briefly in the previous chapter,[171] explicitly combines considerations of equality and non-discrimination, with that of the good functioning of one of the CCS. Being a sector-specific act, the AVMSD governs the EU-wide coordination of Member States' regulatory frameworks on the provision of audiovisual media services. Taking into account the changing market realities, such as the spread of information and communication technologies (ICTs), the AVMSD seeks to foster the good functioning of the internal market for audiovisual media services, to ensure the protection of consumers and minors and to contribute to the promotion of cultural diversity. The AVMSD legislates on a broad range of topics, and includes provisions on non-discrimination and hate speech, as well as accessibility obligations for media service providers, as noted in the next sub-section. As such, it forms part of the field of EU disability law and policy and represents a significant milestone in terms of EU cultural policy.[172]

In this context, disability is addressed in the context of the prohibition of hate speech,[173] the prohibition of audiovisual advertisements including, or promoting discrimination based on disability,[174] and the rules applying to video-sharing platforms.[175] These provisions particularly touch upon how disability is represented in audiovisual content and seek to offer a certain level of protection in preventing and countering hate speech and discrimination towards persons with disabilities. Some even argue that the AVMSD therefore contributes to lifting some of 'the stigma that people with disabilities experience', and to fostering greater 'social accessibility' through audiovisual media services,[176] a point of interest to CCS professionals with disabilities.

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[170] See Chapter 6, Section 6.
[171] See Chapter 4, Section 5.
[172] Elsa Costa E Silva and Mariana Lameiras, '"If You Can't Beat Them…": AVMSD Policy-Making for Portuguese Audiovisual Production in the Context of the Small Markets and of Multistakeholderism' (2022) 28 International Journal of Cultural Policy 715, 715.
[173] AVMSD, art 6(1)(a).
[174] AVMSD, art 9(1)(c)(ii).
[175] AVMSD, art 28b(1)(b) and (2).
[176] Stelios Charitakis, 'Accessibility of Goods and Services' in Delia Ferri and Andrea Broderick (eds), *Research Handbook on EU Disability Law* (Edward Elgar 2020) 223.

5.2. Accessibility

The AVMSD also addresses directly the accessibility of audiovisual media services with Article 7 AVMSD. The Article enjoins Member States to ensure that media service providers make their services continuously and progressively more accessible to persons with disabilities and report on a regular basis to the national regulatory authorities or bodies.[177] As explained in the introduction to chapter 7, such article supports the guarantee to persons with disabilities, including CCS professionals with disabilities, the broadest possible access to audiovisual creations. This access is indeed essential, not just purely from an audience point of view, but also as a source of inspiration and knowledge that informs the creative process of cultural and creative professionals with disabilities or else, their career decisions for instance.[178]

Moreover, as expanded on in chapter 7, the EU has also complemented its action in the area of culture with emblematic initiatives integrating accessibility concerns,[179] some of which predate the Treaty of Maastricht. For instance, since 1985, the EU organises the European City of Culture[180] –now the European Capital of Culture (ECoC)– which integrates the consideration of accessibility to cultural activities as part of the outreach criterion in the selection procedure.[181] The European Heritage Label (EHL) is another interesting initiative in that respect.[182] It particularly features in the European Framework for Action on Cultural Heritage, mentioned earlier,[183] as it considers the need to engage the wider public with cultural heritage. As seen in chapter 7, both initiatives have a certain potential for making the CCS more inclusive of professionals with disabilities; whether by fostering their access to cultural activities and spaces, which can feed into their work, or by more directly pushing sites to become more accessible for professionals with disabilities.

5.3. The EU Funding System

Lastly, as noted in this chapter already, '[t]he development of an EU cultural policy has been profoundly affected by the *complementary* nature of the EU cultural

[177] AVMSD, art 7(1) and (2).
[178] See Chapter 7, Section 1.
[179] Psychogiopoulou, 'Cultural Heritage and the EU' (n 25) 64–65.
[180] Resolution of the Ministers responsible for Cultural Affairs, meeting within the Council, of 13 June 1985 concerning the annual event 'European City of Culture' [1985] OJ C153/2.
[181] European Commission, 'European Capitals of Culture 2020 to 2033: A Guide for Cities Preparing to Bid' (2021) 20.
[182] Decision No 1194/2011/EU of the European Parliament and of the Council of 16 November 2011 establishing a European Union action for the European Heritage Label [2011] OJ L303/1.
[183] See Chapter 5, Sub-section 3.3.

competences'.[184] In that respect, the EU cultural action has primarily revolved around '*supporting* action in the realm of culture through various funding tools',[185] and its role in that respect, has evolved significantly over time.[186]

The funding role of the EU is exemplified not only by the Creative Europe programme, but also by other EU funds, programmes and initiatives which provide financial support to the CCS, or which indirectly benefit CCS professionals with disabilities, including the European Regional Development Fund (ERDF),[187] Erasmus+[188] or Horizon Europe.[189]

5.3.1. Evolution of Cultural Funding

Cultural funding was initially '"smuggled" into the annual EC budget in pre-Maastricht times'.[190] Nowadays, the EU has formalised its funding role in the Treaties, as '[t]he cultural powers attributed to the EU allowed for the adoption of incentive measures in the form of funding programmes'.[191] As such, it has established a number of large-scale multiannual cultural action programmes that aim to support diverse projects and initiatives benefitting the CCS and relevant stakeholders. This includes notably the Culture 2000 programme, which was established as the single financing and programming instrument for cultural cooperation, and ran until 2006 to promote intercultural dialogue and the 'recognition of culture as an economic factor and as a factor in social integration and citizenship'.[192]

It was followed by the MEDIA programme and the Culture programme which ran from 2007 until 2013. The MEDIA programme primarily supported projects and activities related to film development and distribution, while the Culture programme focused mostly on cultural diversity and heritage. In 2014, the EU strengthened its support for the cultural and audiovisual sectors and deployed a single funding programme –the Commission's flagship programme for culture– called Creative Europe, which ran first

[184] Psychogiopoulou, 'Conclusion: Culture and the European Union' (n 122) 238 (emphasis added by the author).
[185] Psychogiopoulou, 'The Cultural Open Method of Coordination' (n 107) 37 (emphasis added by the author).
[186] See Birgit Mitter, 'A Retrospective View on the Union's Cultural Policy: The Commission's Objectives in Distributing Project Funds across Europe's Creative Industries' (2024) 47 Journal of European Integration 361.
[187] Regulation (EU) 2021/1058 of the European Parliament and of the Council of 24 June 2021 on the European Regional Development Fund and on the Cohesion Fund [2021] OJ L231/60 (ERDF-CF Regulation).
[188] Regulation (EU) 2021/817 of the European Parliament and of the Council of 20 May 2021 establishing Erasmus+: the Union Programme for education and training, youth and sport and repealing Regulation (EU) No 1288/2013 [2021] OJ L189/1 (Erasmus+ Regulation).
[189] Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination, and repealing Regulations (EU) No 1290/2013 and (EU) No 1291/2013 [2021] OJ L170/1 (Horizon Europe Regulation).
[190] De Witte (n 11) 23.
[191] Kandyla (n 75) 50.
[192] Decision 508/2000/EC of the European Parliament and of the Council of 14 February 2000 establishing the Culture 2000 programme [2000] OJ L63/1, art 1(f) and (g).

from 2014 until 2020.[193] In 2021, the second edition of Creative Europe (2021-2027)[194] was launched in line with the duration of the multiannual financial framework (MFF) 2021-2027.[195] The new draft budget indicates the European Commission's intention to merge Creative Europe under a new programme called AgoraEU, but this is not yet decided.[196]

5.3.2. The Creative Europe Programme

According to the Creative Europe Regulation 2021-2027, the EU legislator intends for Creative Europe to generally bolster the 'competitiveness and economic potential' of the CCS, with a particular emphasis on the audiovisual sector.[197] Additionally, Creative Europe is tasked with safeguarding and supporting European cultural and linguistic diversity and heritage.[198] Based on Articles 167(5) and 173(3) TFEU, the Creative Europe programme must therefore support the CCS, particularly in addressing common challenges, while optimising their potential to contribute to jobs, growth and social inclusion, including for the most disadvantaged and hard-to-reach groups. Among its objectives, it also expressly mentions the need to ensure that people with disabilities and under-represented groups have access to the CCS and take part actively in those sectors.[199]

Overall, the Creative Europe programme seeks to acknowledge the dual nature of the CCS, recognising both 'the intrinsic and artistic value of culture', as well as the economic significance of those sectors and their 'contribution to growth, competitiveness, creativity and innovation'.[200] In that respect, Creative Europe may only support actions with 'European added value', such as the funded projects with a transnational or cross-border dimension.[201] In a sense, as for other funding opportunities, Creative Europe provides a platform for the EU to '*supplemen[t]* national cultural policies by pursuing objectives that

[193] Regulation (EU) 1295/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Creative Europe Programme (2014 to 2020) and repealing Decisions No 1718/2006/EC, No 1855/2006/EC and No 1041/2009/EC [2013] OJ L347/221 (Creative Europe Regulation 2014-2020).
[194] Regulation (EU) 2021/818 of the European Parliament and of the Council of 20 May 2021 establishing the Creative Europe Programme (2021 to 2027) and repealing Regulation (EU) No 1295/2013 [2021] OJ L189/34 (Creative Europe Regulation 2021-2027).
[195] Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027 [2020] OJ L433I/11.
[196] European Commission, 'Proposal for a Regulation of the European Parliament and of the Council establishing the "AgoraEU" programme for the period 2028-2034, and repealing Regulations (EU) 2021/692 and (EU) 2021/818' COM(2025) 550 final. An initial appraisal of this proposal is done in Chapter 8, Sub-section 2.1.
[197] Creative Europe Regulation 2021-2027, art 3(1)(b).
[198] Creative Europe Regulation 2021-2027, art 3(1)(a).
[199] Creative Europe Regulation 2021-2027, art 3(5)(a).
[200] Creative Europe Regulation 2021-2027, recital 9.
[201] Creative Europe Regulation 2021-2027, art 3(4).

are not (sufficiently) attended to by the member states'.[202] As emphasised in chapter 8, Creative Europe is an important funding tool, which takes disability matters into consideration to a certain extent, and has potential to foster the participation and inclusion of professionals with disabilities.[203]

The Creative Europe programme also supports EU initiatives of interest to CCS professionals with disabilities, like the Culture Moves Europe or the Creatives Unite platform.[204] The former provides mobility grants for cultural and creative professionals throughout Europe –as was foreseen in the New European Agenda for Culture discussed above.[205] The latter gathers information on intellectual property, on opportunities in terms of funding and mobility, and maps CCS working conditions in the EU, as foreseen in the latest Work Plan for Culture.

Concomitantly to its funding role, the EU looks to promote the idea of Europe and 'foster a sense of European belonging',[206] with the European Union Youth Orchestra, the EHL, the European Heritage Days, and European prizes in the areas of contemporary, rock and pop music, literature, heritage, and architecture. All are covered under the Creative Europe programme as special actions.[207] As acknowledged in the preamble of the Creative Europe Regulation 2021-2027, these initiatives 'have directly reached millions of European citizens, have demonstrated the social and economic benefits of European cultural policies, and should therefore be continued and whenever possible expanded'.[208] Some of these initiatives engage with the situation of persons with disabilities,[209] like the EHL, mentioned in the context of accessibility. They also tend to have a more permanent character than other projects funded under Creative Europe, allowing them to 'provide continuing visibility to the [EU] in some key domains of cultural policy'[210] and perhaps to foster long term accessibility in the CCS, as discussed in chapter 7.[211]

[202] Psychogiopoulou, 'Conclusion: Culture and the European Union' (n 122) 239 (emphasis added by the author).
[203] See Chapter 8, Section 2.
[204] See Chapter 8, Sub-section 2.3.
[205] See COM(2018) 267 final, 3.
[206] De Witte (n 11) 15, 17–18.
[207] See Creative Europe Regulation 2021-2027, annex I.
[208] Creative Europe Regulation 2021-2027, recital 18.
[209] See Doris Pack and Piotr Borys, 'European Heritage Label' (2010) 1 Uncommon Culture 31, 34; Anthony R Zitto, Susannah Eckersley and Sam Turner, 'The Instruments of European Heritage' in Christopher Whitehead and others (eds), *Dimensions of Heritage and Memory: Multiple Europes and the Politics of Crisis* (Routledge 2019) 66; Neža Šubic and Delia Ferri, 'Characterizing Access to Culture for People with Disabilities in EU Cultural Policy: European Identity, Market Integration and Social Inclusion' (2022) 52 DPCE Online 801.
[210] De Witte (n 11) 18.
[211] See Chapter 7, Sub-section 7.2.

5.3.3. Other Programmes and Funds

Further to the Creative Europe programme, other funds and programmes advance the action of the EU in relation to culture. In this respect, Lähdesmaki notes how the division between 'explicit and implicit EU cultural policy' is therefore found to underpin the EU's funding capacity.[212] In this regard, explicit EU cultural policy funding, including for EU heritage initiatives, appears rather modest, when implicit cultural policy funding has been much more substantive, as it relied on regional, structural, and rural development funds.[213]

In this context, Horizon Europe –the EU flagship programme for research and innovation– integrates cultural dimensions within various clusters, and most evidently in the Cluster 'Culture, Creativity and Inclusive Society'.[214] This cluster particularly seeks to fund projects that 'contribute substantially to the research on cultural and creative sectors, including on the Union's cultural heritage'.[215] Other funding streams include the Recovery and Resilience Facility (RRF), through which Member States have developed national recovery and resilience plans, allocating in total EUR 11.7 billion to support the CCS, with some Member States making some potentially interesting plans for the sectors and its professionals.[216]

Over the years, substantial funding has also been sourced from the ERDF and Erasmus+. Contributing to the funding role of the EU in the area of culture,[217] these EU funds and programmes can also enable the participation of CCS professionals with disabilities, as explained in chapter 8.[218]

6. Concluding Remarks

Similarly to the previous chapter on the EU framework for disability law and policy, this chapter has outlined how the EU has, since its inception, developed an expanding body of laws, policies, and initiatives of interest to the area of culture. As such, this chapter helps to understand the EU action in the field of culture, and its limits. It contributes to

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[212] Tuuli Lähdesmäki, 'The Economic Logic of Europeanization: Branding, Competition and Social Capital' in Evangelia Psychogiopoulou and Sarah Schoenmaekers (eds), *European Union Economic Law and Culture: Towards a European Culturally Corrected Market Economy* (Edward Elgar 2024) 32.
[213] See Tuuli Lähdesmäki and others, *Creating and Governing Cultural Heritage in the European Union: The European Heritage Label* (Routledge 2020) 58. See also, Lähdesmäki, 'The Economic Logic of Europeanization' (n 212) 32.
[214] Horizon Europe Regulation, art 4(1)(b)(ii).
[215] Horizon Europe Regulation, recital 25 and annex I.
[216] See European Commission, 'Recovery and Resilience Scoreboards: Thematic analysis: Culture and Creative Industries' (NextGenEU, 2024). The countries are BE, CZ, EL, ES, FR, HR, IT, PO, PT, RO, SK. See also Chapter 8, Sub-section 6.2.
[217] European Commission, *The Status and Working Conditions of Artists – OMC Report* (n 116) 14–15; IDEA Consult and others (n 76) 41–42.
[218] See Chapter 8, Section 3.

framing how the thesis explores the ways the EU legal framework supports the participation of professionals with disabilities in the CCS in the following chapters, and to highlighting caveats in this respect.

Since the inclusion of a culture title in the Treaties, the EU struggles, in some respect, to act and drive forward its cultural action. In particular, professionals of the sectors are greatly impacted 'by the fragmentation resulting from the differing national structures of CCS and diverging legislation on working conditions, social security benefits, income and taxation'.[219] The EU framework appears to currently fail in adequately capturing the nature of working in the CCS, and legislating to directly address challenges faced by professionals, which were highlighted in chapter 1. This issue is at the heart of the increased attention paid, at the EU level, to the social and professional situation of artists and workers in the CCS.[220] It particularly feeds into the European Parliament's call for a more ambitious framework on the subject, which would recognise and address, among other things, the working conditions of CCS professionals through a dedicated directive.[221] However, the European Commission has provided a less ambitious response for now and does not yet seem willing to propose such legislation.[222]

Against this background, it appears fitting to expose with this chapter, the different laws, policies, and tools of interest to the situation of CCS professionals with disabilities, even if none offer a comprehensive answer to the challenges they face in the EU, as recently highlighted by the European Parliament. Indeed, and despite the EU's limited formal competence over cultural matters, there are, in fact, numerous domains of 'EU policies where significant cultural policy choices are *made* by the EU institutions'.[223] This alignment between cultural action and economic aims has allowed the EU to pursue more initiatives than what the limited wording of Article 167 TFEU hinted at, and therefore highlighted the need to look outside of the TFEU's culture title in order 'to open up domestic (cultural) markets and ensure the proper functioning of a common (cultural) market'.[224]

As the previous sections demonstrate, the EU has progressively made use of the limited cultural competence it was granted, and has leveraged on the relationship between the

[219] Christa Kammerhofer-Schlegel and others, *EU Framework for the Social and Professional Situation of Artists and Workers in the Cultural and Creative Sectors: European Added Value Assessment* (EPRS, European Parliament 2023) II.
[220] See Chapter 1, Sub-section 2.1.
[221] See European Parliament Resolution on an EU framework for artists, annex, 1.
[222] Maroš Šefčovič, 'Letter to President Metsola: Article 225 Resolution EU Framework for the Social and Professional Situation of Artists and Workers in the Cultural and Creative Sectors' (European Commission 2024).
[223] Psychogiopoulou and Schoenmaekers, 'The EU as a Cultural Market Economy' (n 42) 2 (emphasis added by the authors).
[224] Psychogiopoulou, 'Conclusion: Culture and the European Union' (n 122) 240.

functioning of the CCS and the Union's longstanding main objectives to make cultural choices in areas of interest to this thesis, including with regards to equality and non-discrimination, accessibility and the EU funding system.

As such, this chapter provides an interesting background to understanding the current status quo with regard to culture and EU law and policy, and how this can affect CCS professionals with disabilities, and the implementation of Articles 30(2) and 27 CRPD. Further, it contextualises the investigation of the potential and shortcomings of the current EU framework in accommodating and enabling the participation of CCS professionals with disabilities, as expanded on in the following chapters.

Chapter 6
Equality and Non-discrimination

1. Introduction

Chapters 4 and 5 have demonstrated that the EU, although limited to a supportive role in the area of culture, can be an important actor in the implementation of Articles 30 and 27 CRPD. Indeed, the EU has a range of exclusive, shared and supporting competences at its disposal, which it makes use of to advance the rights of persons with disabilities in the Union. Additionally, Member States are required, when exercising their competences, including in the field of culture or social policy, to abide by their obligations under EU law. This brings into play the EU's shared competence on non-discrimination, which points to both the EU and its Member States having to adopt implementation measures 'in combination' so as to advance on the realisation 'in full of all [CRPD] provisions relating to discrimination'.[1] As such, non-discrimination and Article 19 TFEU have been, since the Treaty of Amsterdam, an important avenue for adopting a range of instruments which endeavour to advance equality within the EU. This has fostered change throughout the Member States, and since then contribute to, in ensuring more equal opportunities throughout the EU, including for those with disabilities.

Against this background, this chapter therefore frames the participation of professionals with disabilities in the cultural and creative sectors (CCS) from the particular vantage point of non-discrimination and equal treatment. Integrating the contributions of interviewees and focus-group participants, who saw equality and non-discrimination as an important dimension of working in the CCS, it seeks to highlight the role of dedicated and adjacent EU legislation in enabling the professional participation in cultural life of persons with disabilities. As discussed hereinafter, this chapter reflects on the participants' acknowledgment of the importance of equality and non-discrimination legislation and on their awareness of national provisions and discrimination cases. It shines a light on the issues in terms of application they referred to, which somewhat underpin the fact that 'artists with disabilities or deaf artists are still very few and far between … they have no access to work' (FG2 P12). This thematic approach links the

[1] Lisa Waddington and Andrea Broderick, *Disability Law and Reasonable Accommodation beyond Employment: A Legal Analysis of the Situation in EU Member States* (European Network of Legal Experts in Gender Equality and Non-discrimination, Publications Office 2016) 44.

qualitative findings to the understanding that '[t]he issue of disability is most prominently regulated under EU law by way of anti-discrimination provisions'.[2]

Echoing the 2003 Council Resolution on accessibility of cultural infrastructure and cultural activities for people with disabilities, this chapter therefore considers different mechanisms combating disability-based discrimination and supporting 'equality of opportunity in the production and promotion of th[e] work' of CCS professionals with disabilities.[3] Overall, it examines the possibilities for harnessing the EU's competences in relation to equality, non-discrimination and social policy for the benefit of cultural and creative professionals with disabilities in the Union, and to advance the realisation of Article 30(2) CRPD. In doing so, it considers how to leverage on the EU legal framework, while discussing its gaps and limitations.

Following these introductory remarks, the chapter first focuses on the application of the Employment Equality Directive[4] to the situation of CCS professionals with disabilities in section 2. In doing so, it particularly elaborates on how this Directive is the only instrument at the EU level that can be used to combat disability-based discrimination, before discussing at greater length the disability ground and the duty to provide reasonable accommodation in the context of the CCS. In section 3, the chapter considers how the professionals that are self-employed can be protected against disability-based discrimination under the Employment Equality Directive, highlighting the relevance and limitations of the EU Directive in the context of self-employment relationships. Section 4 then discusses the potential and fate of the 2008 proposal for a Horizontal Equal Treatment Directive,[5] while paying attention to other Equality Directives. Section 5 highlights some of the barriers to the application of the principle of equal treatment in the CCS, including challenges to the implementation of non-discrimination provisions in the Member States, and issues of enforcement and remedy. Section 6 broadens the discussion on the application of the principle of equal treatment to the situation of CCS professionals with disabilities. As such, it considers EU legislation on pay, on non-standard forms of work, and other EU acts which pertain to working conditions. Section 7 then elaborates on avenues to facilitate the application of non-discrimination law and the principle of

[2] Luísa Lourenço and Pekka Pohjankoski, 'Breaking Down Barriers? The Judicial Interpretation of "Disability" and "Reasonable Accommodation" in EU Anti-Discrimination Law' in Uladzislau Belavusau and Kristin Henrard (eds), *EU Anti-discrimination Law beyond Gender* (Hart 2019) 322.

[3] See Council Resolution of 6 May 2003 on accessibility of cultural infrastructure and cultural activities for people with disabilities [2003] OJ C134/7, recital (i).

[4] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16 (Employment Equality Directive).

[5] Commission of the European Communities, 'Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation' COM(2008) 426 final.

equal treatment in the CCS, highlighting the role of equality bodies and social partners. As a last substantive point, section 8 emphasises the potential of the Disability Employment Package in enabling the professional participation of persons with disabilities in cultural life. Finally, section 9 provides some concluding remarks.

2. Leveraging the Employment Equality Directive: The Main EU Instrument to Tackle Discrimination on the Basis of Disability

Mainstream labour legislation and non-discrimination legislation were broached many times during the interviews, including national norms or the 'condition of non-discrimination' (EU CCS 2) applying in the general employment framework. With the Employment Equality Directive being the one piece of EU legislation that explicitly aims to create a 'level playing-field as regards equality in employment and occupation' for persons with disabilities,[6] it is therefore necessary to investigate whether and how it can also create a level playing-field for CCS professionals with disabilities, and advance the implementation of Articles 30(2) and 27 CRPD at the EU level.

This section argues that the Employment Equality Directive is manifestly relevant to tackle discrimination in the CCS, foster equal treatment, and enable the participation of cultural and creative professionals with disabilities. In doing so, it discusses combatting discrimination in the CCS on the basis of the Directive, and questions how the understanding of disability it is based on can impact CCS professionals with disabilities, before considering the provision of reasonable accommodation to employed CCS professionals with disabilities.

2.1. Prohibiting Discrimination in the CCS

As noted above, the Employment Equality Directive is a 'major legislative achievement' in the history of EU disability law and policy.[7] Among the 'comprehensive body of EU anti-discrimination legislation' put in place over the years,[8] it is the only one that centres on their experience of discrimination as professionals with disabilities. To date, the Employment Equality Directive remains the only piece of secondary legislation that

[6] Employment Equality Directive, recital 37.
[7] Charles O'Mahony and Shivaun Quinlivan, 'The EU Disability Strategy and the Future of EU Disability Policy' in Delia Ferri and Andrea Broderick (eds), *Research Handbook on EU Disability Law* (Edward Elgar 2020) 27.
[8] European Commission, 'Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030' (Communication) COM(2021) 101 final (Disability Strategy 2021-2030), 17.

addresses discrimination on the basis of disability,[9] meaning that a gap endures in EU law to guarantee the equal treatment of persons with disabilities beyond employment settings.[10]

On the one hand, the Directive responds to the concerns of the participants in the study regarding the discrimination and lack of equal opportunities that professionals with disabilities may face in the CCS.[11] On the other hand, it also answers the call from some interviewees to make inclusion an obligation in the CCS, and not something 'on top' or expendable (EU CCS 8). Indeed, some felt that laws where needed to facilitate access to jobs in the CCS, noting that persons with disabilities lacked equal opportunities in that respect (FG1 P7). Overall, most participants appeared to know of a non-discrimination legal framework, and occasionally, a few also recalled provisions applicable in their own countries. In a context where 'the nature of work in the CCS, such as imbalances in power structures combined with highly competitive and unstructured working environments, has been shown to leave CCS workers in a particular vulnerable position',[12] the Employment Equality Directive can be influential in enabling the participation of professionals with disabilities in the CCS.[13]

As introduced in chapter 4, the Employment Equality Directive seeks to combat discrimination on the basis of disability, and a number of other grounds.[14] It applies to all persons, both in the private and public sectors, including public bodies,[15] 'in a broad sway of employment and training related areas, including university education' to the extent that it covers vocational training.[16] It requires the Member States to implement measures, within their legal systems, to combat discrimination in employment, occupation, and vocational training settings, specifically in relation to conditions for access to employment, self-employment, or occupation,[17] access to vocational guidance and training, including practical work experience,[18] employment and working conditions,[19]

[9] Andrea Broderick and Philippa Watson, 'Disability in EU Non-Discrimination Law' in Delia Ferri and Andrea Broderick (eds), *Research Handbook on EU Disability Law* (Edward Elgar 2020) 124.
[10] See Chapter 6, Section 4.
[11] See Chapter 1, Sub-section 4.1.
[12] European Commission, *The Status and Working Conditions of Artists and Cultural and Creative Professionals: Report of the OMC (Open Method of Coordination) Group of EU Member States' Experts* (Publications Office 2023) 58.
[13] See Léa Urzel Francil, 'Leveraging EU Non-Discrimination Law to Make the Cultural and Creative Sectors More Inclusive of Professionals with Disabilities: Socio-Legal Perspectives' [2025] International Journal of Cultural Policy 1.
[14] Employment Equality Directive, art 1.
[15] Employment Equality Directive, art 3(1).
[16] Lisa Waddington, *From Rome to Nice in a Wheelchair: The Development of a European Disability Policy* (Europa Law 2006) 21.
[17] Employment Equality Directive, art 3(1)(a).
[18] Employment Equality Directive, art 3(1)(b).
[19] Employment Equality Directive, art 3(1)(c).

as well as in relation to membership in employers and workers organisations.[20] In this respect, the Directive has become relevant 'to all persons who exercise an economic activity either in an employed or self-employed capacity'.[21] The role of the Directive in protecting all cultural and creative professionals with disabilities from discrimination, and specifically those that are self-employed, is examined in greater detail in section 3.

On the concept of discrimination, Article 2(1) of the Directive specifies that 'the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination' on any of the grounds covered by the Employment Equality Directive.[22] As such, it prohibits direct discrimination, meaning 'the less favourable treatment of a person on grounds of disability',[23] including between persons with different disabilities.[24] It also seeks to combat indirect discrimination when it occurs that an apparent 'neutral provision, criterion or practice would put persons having … a particular disability … at a particular disadvantage compared with other persons',[25] even when the employer does not have prior knowledge of the protected characteristic.[26] It further characterises discrimination on the basis of disability as including harassment, as well as instructions to discriminate.[27]

As Waddington and Lawson observe, Article 1 of the Directive prohibits discrimination 'on' the different grounds cited therein, meaning that '[p]rotection is not explicitly confined to individuals who possess these grounds or characteristics themselves'.[28] Indeed, the Court of Justice of the EU (the 'Court' or CJEU) has clarified in *Coleman* that the Directive extend to discrimination by association.[29] In this instance, Advocate General Poiares Maduro argued that the Directive should 'protec[t] people who, although not themselves disabled, suffer direct discrimination and/or harassment in the field of employment and occupation because they are associated with a disabled person'.[30] The Court took a similar view, interpreting the concept of equality and the Directive's scope

[20] Employment Equality Directive, art 3(1)(d).
[21] Broderick and Watson (n 9) 125.
[22] Employment Equality Directive, art 2(1).
[23] Anna Lawson, 'The EU Rights Based Approach to Disability: Strategies for Shaping an Inclusive Society' (2005) 6 International Journal of Discrimination and the Law 269, 274.
[24] See Case C–16/19 *VL v Szpital Kliniczny im dra J Babińskiego Samodzielny Publiczny Zakład Opieki Zdrowotnej w Krakowie* [2021] ECLI:EU:C:2021:64 (VL), para 35.
[25] Employment Equality Directive, art 2(2)(b).
[26] See Mark Bell and Lisa Waddington, *The Employment Equality Directive and Supporting People with Psychosocial Disabilities in the Workplace: A Legal Analysis of the Situation in the EU Member States* (European Network of Legal Experts in Gender Equality and Non-discrimination, Publications Office 2016) 82.
[27] Employment Equality Directive, art 2(3) and (4).
[28] Lisa Waddington and Anna Lawson, *Disability and Non-Discrimination Law in the European Union: An Analysis of Disability Discrimination Law within and beyond the Employment Field* (European Network of Legal Experts in the Non-discrimination Field, Publications Office 2009) 17.
[29] Case C–303/06 *S Coleman v Attridge Law and Steve Law* [2008] ECLI:EU:C:2008:415 (Coleman), para 63.
[30] Case C–303/06 *S Coleman v Attridge Law and Steve Law* [2008] ECLI:EU:C:2008:61, Opinion of AG Poiares Maduro, para 25.

extensively enough to cover under EU law those 'subtler forms of discrimination'[31] –as does the CRPD. It confirmed that the Directive concerns not only 'people who are themselves disabled', but also those that are associated with individuals who have a particular characteristic protected under it.[32] Although this is a welcome development, it is tangential to this thesis' focus on cultural and creative professionals with disabilities themselves. Nonetheless, it could be of interest to those professionals with disabilities who are associated with other persons with disabilities, for example as carers.

Interestingly, apart from some recitals mentioning multiple discrimination, the corpus of EU non-discrimination law does not include any binding provisions addressing multiple and/or intersectional discrimination,[33] bar the recently adopted Pay Transparency Directive.[34] While it can be argued, following a functional interpretation, that the full body of EU non-discrimination law does encompass multiple and intersectional discrimination, including in the Employment Equality Directive, the CJEU has not made this explicit yet.[35] In contrast, multiple and/or intersectional discrimination may in general constitute the norm rather than the exception.[36] Therefore, it is also likely to provide a more reliable picture of the experience of cultural and creative professionals, including those with disabilities.

For instance, as noted already, women face considerable discrimination in the CCS.[37] This has been recognised in different fora spotlighting the situation of women with disabilities in the sector(s), and recommending to address this structural issue.[38] Recital 3 of the Employment Equality Directive does echo the obstacles faced by women with disabilities as it states that 'women are often the victims of multiple discrimination'. Although not binding, such recognition holds 'political value as a guideline in making

[31] Case C–303/06 *Coleman*, Opinion of AG Poiares Maduro, para 12.
[32] Case C–303/06 *Coleman*, para 56.
[33] See Raphaële Xenidis, 'Multiple Discrimination in EU Anti-Discrimination Law: Towards Redressing Complex Inequality?' in Uladzislau Belavusau and Kristin Henrard (eds), *EU Anti-discrimination Law beyond Gender* (Hart 2019) 51; Erica Howard, 'Intersectional Discrimination and EU Law: Time to Revisit Parris' (2024) 24 International Journal of Discrimination and the Law 292, 293–294.
[34] Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanism [2023] OJ L132/21 (Pay Transparency Directive), art 3(2)(e).
[35] See Shreya Atrey, 'Illuminating the CJEU's Blind Spot of Intersectional Discrimination in *Parris v Trinity College Dublin*' (2018) 47 Industrial Law Journal 278, 285; Dagmar Schiek, 'On Uses, Mis-Uses and Non-Uses of Intersectionality before the Court of Justice (EU)' (2018) 18 International Journal of Discrimination and the Law 82, 90; Howard, 'Intersectional Discrimination and EU Law' (n 33) 304. See also Case C–443-15 *David L Parris v Trinity College Dublin and Others* [2016] ECLI:EU:C:2016:897 (Parris), para 80. By contrast see, Case C–443-15 *David L Parris v Trinity College Dublin and Others* [2016] ECLI:EU:C:2016:493, Opinion of AG Kokott, para 159.
[36] See Sarah Elsuni and Anna Lena Goettsche, 'Multidimensional Discrimination and the Law: Views and Experiences from a German Perspective' [2016] Sociologia del Diritto 87, 87.
[37] See Chapter 1, Sub-section 2.5.
[38] See Amelie Menzel, *Towards Gender Equality in the Cultural and Creative Sectors: Recommendations of the OMC (Open Method of Coordination) Working Group of Member States' Experts* (European Experts' Network on Culture, Publications Office 2021) 37; EU Audiovisual Sectoral Social Dialogue Committee, 'Framework of Actions on Gender Equality' (2023) 27.

and interpreting EU anti-discrimination law'.[39] Yet, it once again highlights 'the priority given to gender equality on the EU anti-discrimination agenda'[40] and disregards the fact that multiple and/or intersectional discrimination experienced by cultural and creative professionals with disabilities can be found on other grounds than gender.

The Employment Equality Directive also establishes that a difference in treatment, which can be based on disability, does not constitute discrimination where that characteristic is a 'genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate'.[41] On this particular exception, the CJEU has consistently held that it must be interpreted strictly, having regard to the specific nature of the job in question.[42] The Employment Equality Directive also addresses positive action in Article 7, and specifies that the 'principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to any of the grounds' covered, including disability.[43] Similarly, Member States may not be prevented from putting forward any other measures which concern specifically persons with disabilities and focus on 'creating or maintaining provisions or facilities for safeguarding or promoting their integration into the working environment'.[44]

As such, the Employment Equality Directive appears as an adequate mean to foster 'safe and dignified working environments free from bullying, harassment and discrimination'[45] for cultural and creative professionals with disabilities.

2.2. The Disability Ground: An Opportunity for All Cultural and Creative Professionals with Disabilities?

While the Directive provides a capacious protection against discrimination, based on a broad understanding of what such discrimination entails, it does not provide definitions for the different grounds it covers, including disability. In this context, the CJEU has elaborated its own interpretation over the years, and in the transposition process, the definition of disability was left to the discretion of Member States, and therefore influenced by their respective domestic legislation, understandings and views on

[39] Xenidis, 'Multiple Discrimination in EU Anti-Discrimination Law' (n 33) 51.
[40] Xenidis, 'Multiple Discrimination in EU Anti-Discrimination Law' (n 33) 73.
[41] Employment Equality Directive, art 4(1).
[42] See for instance, Case C–416/13 *Mario Vital Pérez v Ayuntamiento de Oviedo* [2014] ECLI:EU:C:2014:2371, para 47.
[43] Employment Equality Directive, art 7(1).
[44] Employment Equality Directive, art 7(2).
[45] European Commission, *The Status and Working Conditions of Artists – OMC Report* (n 12) 58.

disability.[46] Knowing that 'the qualification of the individual as "disabled" is a preliminary requirement' to ascertain discrimination on grounds of disability, '[a] rigid analysis of the different components of the definition could hence become a barrier in itself'[47] and affect how CCS professionals could benefit from the Directive's protection.

Against this background, it seems especially relevant to discuss what is the common understanding of disability when, as pointed out in the qualitative study, 'very often … disability is not seen in the context of discrimination' (FG2 P19). Hence, this section discusses whether the lack of definition could impact on the protection afforded to cultural and creative professionals with disabilities, while considering the interpretative role of the CJEU in disclosing the boundaries of such protected characteristic.

2.2.1. Defining Disability in Alignment with the CRPD

The understanding of the disability ground has been particularly disputed in national courts, triggering preliminary ruling requests and decisions of the CJEU.[48] The Court has assumed this interpretative role, refining over the years the conceptualisation of disability as understood in the context of the Employment Equality Directive. Notably, the first case relating to disability to come before the CJEU concerned the concept of disability and who could be considered as having a disability under the Directive.[49] The seminal decision of 2006 –*Chacón Navas*–[50] was widely criticised for being clearly based on a medical or individual model of disability.[51] Since then, the Court has discussed at regular intervals the core tenets and reach of the Employment Equality Directive in an increasing corpus of case law, including after the EU became party to the CRPD.[52]

The conclusion of the CRPD by the EU,[53] a Treaty which denounces the medical model of disability, prompted the CJEU to incorporate this normative and substantive paradigm

[46] Mark Bell and Ann Numhauser-Henning, 'European Labour Law as the Result of Conflicting Norms and Interests' in Teun Jaspers, Frans Pennings and Saskia Peters (eds), *European Labour Law* (1st edn, Intersentia 2019) 149; Broderick and Watson (n 9) 131.
[47] Lourenço and Pohjankoski (n 2) 332.
[48] Broderick and Watson (n 9) 131–136.
[49] Waddington and Lawson (n 28) 15.
[50] See Case C–13/05 *Sonia Chacón Navas v Eurest Colectividades SA* [2006] ECLI:EU:C:2006:456 (Chacón Navas), para 43.
[51] Waddington and Lawson (n 28) 16.
[52] See, among others, Lisa Waddington, 'Equal to the Task? Re-Examining EU Equality Law in Light of the United Nations Convention on the Rights of Persons with Disabilities' in Lisa Waddington, Eilionóir Flynn and Gerard Quinn (eds), *European Yearbook of Disability Law*, vol 4 (Intersentia 2013) 185–188; Silvia Favalli and Delia Ferri, 'Defining Disability in the European Union Non-Discrimination Legislation: Judicial Activism and Legislative Restraints' (2016) 22 European Public Law 541, 553–562; Lisa Waddington and Andrea Broderick, *Court Practices Regarding Disability Discrimination, Including Reasonable Accommodation, at EU and Member State Level, and in Light of the UN CRPD* (European Network of Legal Experts in Gender Equality and Non-discrimination, Publications Office 2024) 22–28.
[53] Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities [2009] OJ L23/35.

shift within its own case law. In this context, the Court frequently recalls that the Directive must, as far as possible, be interpreted in a manner consistent with the CRPD. Referencing the Convention, the Court has therefore adopted an evolved stance on disability, as is evident in *HK Danmark (Ring and Skouboe Werge)* or later judgments in *Z*, *Kaltoft*, *Daouidi*, *HR Rail* or *Ca Na Negreta*,[54] signalling a clearer inclination towards the social model of disability.[55]

In the influential decision *HK Danmark (Ring and Skouboe Werge)*, the Court specifically refers to Recital (e) and Article 1 CRPD,[56] stating that:

> the concept of 'disability' must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers.[57]

Since then, it has also insisted on the long-term character of disability, as understood for the purpose of the Directive.[58]

However, the CJEU's approach to defining disability continues to attract criticism,[59] especially since its 'case law on the meaning of disability has continued to place emphasis upon medical evidence of the degree of impairment (and its prognosis) as a significant element in establishing disability',[60] which sits at odds with the human rights model of disability.[61] This reveals a certain shortcoming on the CJEU's part, particularly when it comes to fully appreciating the paradigm shift brought about by the CRPD in terms of the understanding of disability. In a context where definitions of disability across the EU are already disparate, this could have real consequences for potential litigants with disabilities, including when Member States' non-discrimination legislation does not

[54] See Joined Cases C–335/11 and C–337/11 *HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab and HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S* [2013] ECLI:EU:C:2013:222 (HK Danmark (Ring and Skouboe Werge)), para 38; Case C–363/12 *Z v A Government department and The Board of management of a community school* [2014] ECLI:EU:C:2014:159 (Z); Case C–354/13 *FOA, acting on behalf of Karsten Kaltoft v Kommunernes Landsforening (KL), acting on behalf of the Municipality of Billund* [2014] ECLI:EU:C:2014:2106 (Kaltoft); Case C–395/15 *Mohamed Daouidi v Bootes Plus SL and Others* [2016] ECLI:EU:C:2016:917 (Daouidi); Case C–485/20 *XXXX v HR Rail SA* [2022] ECLI:EU:C:2022:85 (HR Rail); Case C–631/22 *JMAR v Ca Na Negreta SA* [2024] ECLI:EU:C:2024:53 (Ca Na Negreta).

[55] Lisa Waddington, 'The Influence of the UN Convention on the Rights of Persons with Disabilities on EU Anti-Discrimination Law' in Uladzislau Belavusau and Kristin Henrard (eds), *EU Anti-discrimination Law beyond Gender* (Hart 2019) 349.

[56] See Introductory Chapter, Sub-section 3.1.

[57] Joined Cases C–335/11 and C–337/11 *HK Danmark (Ring and Skouboe Werge)*, para 38.

[58] See Case C–485/20 *HR Rail*, para 34; Case C–631/22 *Ca Na Negreta*, para 34.

[59] See Lisa Waddington, 'Saying All the Right Things and Still Getting it Wrong: The Court of Justice's Definition of Disability and Non-Discrimination Law' (2015) 22 Maastricht Journal of European and Comparative Law 576.

[60] Mark Bell, 'People with Intellectual Disabilities and Labour Market Inclusion: What Role for EU Labour Law?' (2020) 11 European Labour Law Journal 3, 19. See Case C–354/13 *Kaltoft*, para 60; Case C–395/15 *Daouidi*, para 57.

[61] Broderick and Watson (n 9) 133.

include such definition.[62] Additionally, it still seems questionable whether the CRPD 'taken up by the CJEU in the anti-discrimination context, may serve as a broader frame of reference' for defining disability in the context of the Employment Equality Directive.[63] Indeed, as the CJEU focuses on hindered participation in professional life, it contrasts drastically with the way disability discrimination features in the CRPD, where it is addressed 'extensively', as 'the Convention is more precise, and certainly has a far broader scope'.[64]

Overall, cultural and creative professionals with disabilities may therefore avail of the protection offered by the Employment Equality Directive if they can be considered as having a disability. As such, different elements must be ascertained; they must have a limitation which results from an impairment, including psychosocial, physical, or mental; their 'impairment is long-term [and t]he impairment, in interaction with various barriers, hinders the participation of the person concerned in professional life on an equal basis with other workers'.[65]

2.2.2. Limiting the Understanding of Disability to Professional Life

The narrowness of the CJEU's interpretation in conceiving disability purely in relation to an employment and occupation context,[66] as in the case of *Z*,[67] is also rather topical and worth highlighting.

In the case at hand, Ms. Z, who could not support a pregnancy because of a physical condition, had a child through a surrogate mother. After she was refused paid leave of absence –equivalent to maternity leave or adoption leave– Ms. Z claimed she had been discriminated on grounds of sex, family status and disability. In that respect, the Court ruled that the individual's inability to have a child by conventional means did not in principle 'ma[k]e it impossible for her to carry out her work or constituted a hindrance to the exercise of her professional activity'.[68] Ultimately, the CJEU held that the refusal to grant paid leave did not amount to discrimination on the ground of disability, and that, to constitute discrimination on the ground of disability, an individual's full and effective participation in professional life must be hindered.[69] In this respect, Waddington observes

[62] Bell and Numhauser-Henning (n 46) 149.
[63] Lourenço and Pohjankoski (n 2) 329.
[64] Waddington, 'The Influence of the UNCRPD on EU Anti-Discrimination Law' (n 55) 339.
[65] See Bell and Waddington, *The Employment Equality Directive and People with Psychosocial Disabilities* (n 26) 37.
[66] Lourenço and Pohjankoski (n 2) 330.
[67] Case C–363/12 *Z.*
[68] Case C–363/12 *Z*, para 81.
[69] Case C–363/12 *Z*, paras 81–81, 91.

that the CJEU seemingly acknowledged that Ms Z 'may have been disabled' and recognised as such under the CRPD,[70] 'but not "in the right way"'.[71] However, the CJEU still considered that Ms. Z should not be considered as having a disability for the purpose of the Employment Equality Directive, nor was it recognised that she was discriminated against.[72]

In addition to conceiving disability only in a professional context, while by contrast the CRPD refers to 'participation in all spheres of society',[73] the CJEU also interprets restrictively this idea of 'full and effective participation' in professional life.[74] As such, it fails to consider 'the impact Ms Z's impairment had on her access to employment-related benefits [which] is part of the material scope' of the Directive.[75] This begs the question of whether the impact that barriers to equality and discrimination can have on the lives of cultural and creative professionals with disabilities can realistically be segmented in this way, and whether this is even desirable. In fact, confining the recognition of one's disability to one dimension of their lives –the professional one– as the definition provided by the CJEU calls for,[76] simply fails to grasp the experience of disability, which extends beyond such remits.

Such interpretation of the already restricted understanding of disability –in relation to professional life– epitomises the 'limits of the legal effects of the CRPD'[77] and presents risks for professionals with disabilities in the CCS. Indeed, it compromises the recognition of one's disability and therefore their protection under the Employment Equality Directive, insofar as their impairment, in interaction with various barriers, would be seen to affect more prominently another activity than a professional one, meaning that it would not make their 'professional life more burdensome'.[78] As such, a cultural and creative professional who would conventionally be recognised as having a disability could, in these circumstances, not be recognised as having a disability under the Employment Equality Directive, nor benefit from its provisions. Interpreted in that way,

[70] Waddington, 'The Influence of the UNCRPD on EU Anti-Discrimination Law' (n 55) 347. See Case C–363/12 *Z*, para 79.
[71] Lisa Waddington, '"Not Disabled Enough": How European Courts Filter Non-discrimination Claims through a Narrow View of Disability, "Pas suffisamment handicapé": comment les cours européennes filtrent les actions en discrimination par une apprehension étroite de la notion de handicap' (2015) 15 Journal européen des droits de l'homme / European Journal of Human Rights 11, 21.
[72] Case C–363/12 *Z*, para 91.
[73] Broderick and Watson (n 9) 134.
[74] Lourenço and Pohjankoski (n 2) 331.
[75] Waddington, 'The Influence of the UNCRPD on EU Anti-Discrimination Law' (n 55) 347.
[76] Joined Cases C–335/11 and C–337/11 *HK Danmark (Ring and Skouboe Werge)*, para 38.
[77] Mark Bell, 'EU Anti-Discrimination Law: Navigating Sameness and Difference' in Paul Craig and Gráinne De Búrca (eds), *The Evolution of EU Law* (3rd edn, Oxford University Press 2021) 673.
[78] Favalli and Ferri (n 52) 559.

the Directive may therefore fail to capture the breadth and forms that disability-based discrimination of CCS professionals can take.

2.3. Reasonable Accommodation as a Driver of Change for Employed Professionals with Disabilities in the CCS

As discussed in this section, the prohibition of discrimination in all the forms delineated in the Employment Equality Directive is an important means of promoting equal treatment and combating the obstacles faced by cultural and creative professionals with disabilities. This final sub-section highlights a third key dimension of the Employment Equality Directive, the duty of reasonable accommodation. It prompts a reflection on the possibility of leveraging Article 5 of the Directive for the benefit of cultural and creative professionals with disabilities and discusses how the disproportionate burden defence may impact the accommodation of professionals with disabilities in the CCS.

2.3.1. Article 5 and the Reasonable Accommodation of Cultural and Creative Professionals with Disabilities

As introduced in chapter 4, Article 5 of the Employment Equality Directive is a provision dedicated exclusively to persons with disabilities. As such, the Directive places on duty bearers –meaning employers in both the public and private sectors, including public bodies– an obligation to reasonably accommodate persons with disabilities in order 'to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer'.[79]

As this thesis posits, and as has been argued elsewhere, the implementation of such duty in the CCS is key to enabling the participation of professionals with disabilities.[80] This was particularly picked up by a participant in the focus groups who pointed to 'laws and policies at national and European level', emphasising the role of non-discrimination legislation or measures akin to reasonable accommodation, in the following terms:

> Probably, a large number of EU countries have anti-discrimination legislation that somehow applies to the field of culture; different legal concepts are used … in the general phrasing of legislation like in the UK 'making reasonable adjustments', and in France something a little bit similar. (FG1 P3)

[79] Employment Equality Directive, art 5.
[80] Urzel Francil (n 13) 11–13.

However, for the most part, participants in the qualitative study appeared unacquainted with the concept and terminology of reasonable accommodation. When the issue was explicitly raised during the interviews, some interviewees seemed to not understand the phrase or concept and started talking of different matters. Others readily conceded to not knowing what reasonable accommodation was, to not having worked on the topic or to not having enough knowledge to be able to discuss the subject at greater length. However, whilst most of the participants did not know of reasonable accommodation in the strict sense (also owing to the fact that maybe not all were native English speakers), analysis of the data demonstrates a strong familiarity with what it is in practice.

In line with the focus group participant quoted earlier,[81] several interviewees discussed reasonable accommodation, including concrete instances where accommodation was provided, albeit without referring to 'reasonable accommodation' as such. For instance, the duty to provide reasonable accommodation seems to particularly underpin the following contribution of one of the interviewees:

> It is still the question of persons with disabilities, their integration in the workforce, the specificities they have, and how it is taken into account or not. And I suspect the 'or not' is probably the current situation. (EU CCS 7)

In this respect, the same interviewee continued sharing 'seeing quite a few places where you had sort of arrangements for … people with, say, wheelchairs, and then you would have of course access ramps and all these kinds of things. But then you would also have adapted desks … or adapted facilities' (EU CCS 7).

In several interviews, participants even considered how their organisations or their sectors would accommodate employees with disabilities, or whether they could. Interestingly, some examples of reasonable accommodation related more to the organisation of events and appeared to extend beyond the employer-employee relationship that characterises the duty of reasonable accommodation set out in Article 5 of the Employment Equality Directive. A few also recalled being enquired about providing accommodation, including by allowing the submission of an application for a project in video-format instead of in writing (EU CCS 10). Essentially, the principle of accommodating persons with disabilities in the CCS appeared to be rather well accepted amongst the participants.

The EU legislator does not elaborate more in Article 5 on what 'the individualized duty of reasonable accommodation may be taken to mean'.[82] Waddington noted in 2006 that '[t]he brevity of the Directive in establishing the reasonable accommodation requirement

[81] FG1 P3.
[82] Broderick and Watson (n 9) 128.

provided relatively little guidance to the Member States on how they were to transpose this obligation into national law'.[83] Only recitals, which are non-binding and therefore merely indicative, offer additional details on this matter. Referring to 'effective and practical measures to adapt the workplace to the disability', Recital 20 mentions the physical adaptation of the workplace, as well as the adjustment of working time patterns, 'the distribution of tasks, or the provision of training or integration resources'.[84] Such a list is considered as non-exhaustive by the CJEU,[85] meaning that reasonable accommodation encompasses a vast and varied range of adaptations, beyond those mentioned in the recitals, that are seen as 'necessary to configure the job to match the aptitudes of the individual'.[86] Thus, the duty of reasonable accommodation calls for a tailored assessment that considers the abilities of the professional concerned, while provided with such accommodation, together with 'the work-related skills and activities that are required'.[87]

Depending on their disabilities, activities and the sector(s) concerned, the provision of reasonable accommodation to CCS professionals with disabilities can therefore take many forms. Although the CJEU regularly stresses the importance of providing reasonable accommodation to enable the participation of persons with disabilities in professional life,[88] it has yet to consider the situation of a cultural and creative professional with disabilities. In this context, it might include those of a more organisational nature if it could 'make it possible for the worker to continue employment'.[89] Although individualised in nature, some accommodations are also applicable to a range of occupations. Adjusting patterns of working time,[90] reducing working time altogether,[91] making physical adjustments to the working environment[92] in terms of lighting, rearranging space or seating are all accommodations which could be sought in the CCS. Changes to training, supervision, or job duties,[93] or changes in terms

[83] Waddington, *From Rome to Nice in a Wheelchair* (n 16) 25.
[84] Employment Equality Directive, recital 20.
[85] See Joined Cases C–335/11 and C–337/11 *HK Danmark (Ring and Skouboe Werge)*, para 56.
[86] Bell, 'People with Intellectual Disabilities and Labour Market Inclusion' (n 60) 21.
[87] Lisa Waddington, 'EU Disability Law and Policy and Access to Art Works through 3D Printing' in Jani McCutcheon and Ana Ramalho (eds), *International Perspectives on Disability Exceptions in Copyright Law and the Visual Arts: Feeling Art* (Routledge 2020) 111.
[88] See Joined Cases C–335/11 and C–337/11 *HK Danmark (Ring and Skouboe Werge)*; Case C–795/19 *XX v Tartu Vangla* [2021] ECLI:EU:C:2021:606 (Tartu Vangla); Case C–824/19 *TC and UB v Komisia za zashtita ot diskriminatsia and VA* [2021] ECLI:EU:C:2021:862 (Komisia); Case C–631/22 *Ca Na Negreta*.
[89] Joined Cases C–335/11 and C–337/11 *HK Danmark (Ring and Skouboe Werge)*, para 56.
[90] Joined Cases C–335/11 and C–337/11 *HK Danmark (Ring and Skouboe Werge)*, para 55.
[91] Joined Cases C–335/11 and C–337/11 *HK Danmark (Ring and Skouboe Werge)*, para 64. See also Case C–312/11 *European Commission v Italian Republic* [2013] ECLI:EU:C:2013:446 (Commission v Italy), para 60.
[92] Lourenço and Pohjankoski (n 2) 335.
[93] Caitlin McDowell and Ellie Fossey, 'Workplace Accommodations for People with Mental Illness: A Scoping Review' (2015) 25 Journal of Occupational Rehabilitation 197, 199.

of communication, including by facilitating the use of Braille, easy-to-understand language or by allowing the use of assistive devices like hearing aids,[94] may also constitute reasonable accommodation.

In that connection, Recital 17 indicates that the Employment Equality Directive does not require an employer to recruit, promote or maintain an individual 'who is not competent, capable and available to perform the essential functions of the post concerned or to undergo the relevant training'.[95] However, it explicitly states that this is 'without prejudice to the obligation to provide reasonable accommodation for people with disabilities'.[96] The interpretation of this 'competence defence' is subject to caution as the Directive remains silent on the distinction between essential and non-essential functions, or on the procedural requirements to be met by employers.[97] Given the CRPD's influence on national and supranational case law, Daly and Whelan observe with optimism that 'there may be a general shift towards an interpretation of the competence defence which requires the employer to consider far-reaching measures to accommodate the individual'.[98]

Recently, the European Commission has also published a guidance document on reasonable accommodation that delves into this legal obligation, and provides examples of good practices or types of reasonable accommodation to support employers in meeting their duty.[99] This could be an interesting addition to address the 'lack of knowledge and understanding of the concept of "reasonable accommodation"', which endures as a challenge to tackle disability-based discrimination in the workplace.[100] However, these guidelines seek only 'to help employers to meet this requirement', and while they rely on suggestions and good practices shared by social partners,[101] the European Commission continues to neglect the need to raise awareness of the implementation of the duty of reasonable accommodation more broadly, including with those social partners whom somewhat still lack awareness of this concept.[102]

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[94] Waddington and Lawson (n 28) 53; Waddington and Broderick, *Court Practices Regarding Disability Discrimination* (n 52) 33. See Case C–795/19 *Tartu Vangla*, paras 51–53; Case C–824/19 *TC and UB v Komisia za zashtita ot diskriminatsia and VA* [2021] ECLI:EU:C:2021:862, Opinion of AG Saugmandsgaard Øe, para 84.
[95] Employment Equality Directive, recital 17.
[96] Employment Equality Directive, recital 17.
[97] Patrick Daly and Darius Whelan, 'Disability in Employment Equality Law: A Reappraisal of the Reasonable Accommodation Duty and Issues Arising in its Implementation' (2021) 28 Maastricht Journal of European and Comparative Law 744, 747–748.
[98] Daly and Whelan (n 97) 749.
[99] European Commission, *Reasonable Accommodation at Work: Guidelines and Good Practices* (Publications Office 2024).
[100] Tina Weber and Catherine Cerf, *Role of Social Partners in Tackling Discrimination at Work* (Eurofound, Publications Office 2020) 30.
[101] European Commission, *Reasonable Accommodation at Work* (n 99) 5.
[102] See Michael Doherty, 'The Path Is Made by Walking ... The Social Partners and Employment Rights under EU Disability Law' in Delia Ferri and Eva S Krolla (eds), *Actors and Roles in EU Disability Law* (Hart 2025) 270.

European organisations of persons with disabilities (OPDs) have also sought to clarify the duty of reasonable accommodation. For instance, the European Blind Union (EBU) has indicated that reasonable accommodation can be effective even if the employer chooses not to 'provide the employee's first choice of reasonable accommodation'.[103] In this respect, it emphasises that although the employee's preference should be prioritised, '[i]f a requested accommodation is too difficult or expensive, an employer may choose to provide an easier or less costly accommodation as long as it is effective in meeting the employee's needs'.[104] This appears relevant for the CCS and its stakeholders at a time of financial turmoil.[105] However, the costs incurred by employers in providing reasonable accommodation should not be the main focus, as discussed in the following sub-section.

In that vein, the CJEU has reiterated on numerous occasions that the duty of reasonable accommodation must be interpreted in light of the CRPD and must aim at the 'elimination of the various barriers that hinder the full and effective participation of persons with disabilities in professional life on an equal basis with other workers'.[106] From this standpoint, it is fairly straightforward to understand the importance of an obligation to provide reasonable accommodation for CCS professionals with disabilities. As observed by Belavusau and Henrard, reasonable accommodation '"fit[s]" with the broader development towards a quest for equality, in particular as regards substantive equality',[107] as implied in the CRPD.[108]

The provision of reasonable accommodation can contribute to 'securing equal opportunities, by evening out barriers to full participation due to the interaction amongst personal characteristics and the way the society is structured'.[109] It is a key factor in ensuring 'that persons with disabilities are treated on an equal basis with others',[110] including as they exercise their activities as creative and cultural professionals. While culture is an area in which the Member States retain significant competence –which seems to affect the possibility to legislate more broadly on the social and professional situation

[103] European Blind Union (EBU), 'EBU Guidelines on Reasonable Accommodation for Visually Impaired Employees and Applicants' (2023) 7.
[104] EBU (n 103) 7–8.
[105] See EY Consulting, 'Rebuilding Europe: The Cultural and Creative Economy before and after the COVID-19 Crisis' (2021).
[106] Joined Cases C–335/11 and C–337/11 *HK Danmark (Ring and Skouboe Werge)*, paras 53–54. See also Case C–312/11 *Commission v Italy*, para 59; Case C–795/19 *Tartu Vangla*, para 49; Case C–824/19 *Komisia*, para 59; Case C–631/22 *Ca Na Negreta*, para 41.
[107] Uladzislau Belavusau and Kristin Henrard, 'The Impact of the 2000 Equality Directives on EU Anti-Discrimination Law: Achievements and Pitfalls' in Uladzislau Belavusau and Kristin Henrard (eds), *EU Anti-discrimination Law beyond Gender* (Hart 2019) 28.
[108] Lucy-Ann Buckley and Shivaun Quinlivan, 'Reasonable Accommodation in Irish Equality Law: An Incomplete Transformation' (2021) 41 Legal Studies 19, 20.
[109] Belavusau and Henrard (n 107) 28.
[110] Lourenço and Pohjankoski (n 2) 332.

of cultural and creative professionals–[111] the Employment Equality Directive is an important piece of EU legislation for advancing the participation in cultural life of professionals with disabilities, especially through reasonable accommodation. Yet, this provision also comes with some limits laid down in Article 5 of the Directive, and its preamble.

2.3.2. Assessing the Disproportionate Burden for Employers in the CCS

Indeed, in outlining the duty of reasonable accommodation, the Employment Equality Directive also indicates how this obligation is not absolute, and specifies in Article 5 that it may not impose a disproportionate burden on the duty-bearer.[112] Therefore, although not all reasonable accommodations entail direct costs for the employer,[113] there is a need to understand what distinguishes 'reasonable from unreasonable accommodations'.[114]

As suggested in Recital 21, the disproportionate nature of an accommodation may be contingent on an employer's size and financial circumstances.[115] The Recital further indicates that 'account should be taken in particular of the financial and other costs entailed, the scale and financial resources of the organisation or undertaking and the possibility of obtaining public funding or any other assistance',[116] although it 'does not require states to provide any such funding' in return.[117] Interestingly, the Employment Equality Directive also explicitly states that 'the burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned'.[118] In this regard, while acknowledging that an analysis of the burden on the employer would be necessary, Lourenço and Pohjankoski outline that:

> it can be assumed that when the disability policy of a Member State provides, for example, for financial aid to employers hiring persons with disabilities, such an employer may only justify a refusal to put in place accommodation measures when that financial aid is plainly insufficient to remedy the costs of their implementation.[119]

[111] See Chapter 5. See also Maroš Šefčovič, 'Letter to President Metsola: Article 225 Resolution EU Framework for the Social and Professional Situation of Artists and Workers in the Cultural and Creative Sectors' (European Commission 2024).
[112] Employment Equality Directive, art 5.
[113] See for instance McDowell and Fossey (n 93) 200.
[114] Belavusau and Henrard (n 107) 28.
[115] Lawson, 'The EU Rights Based Approach to Disability' (n 23) 275.
[116] Employment Equality Directive, recital 21.
[117] Daly and Whelan (n 97) 747.
[118] Employment Equality Directive, art 5.
[119] Lourenço and Pohjankoski (n 2) 335.

As a result, the Employment Equality Directive and the CJEU point to an appraisal of reasonable accommodation mostly in terms of costs, with the Court interpreting the duty to reasonably accommodate in a manner that, as Waddington and Broderick argue, is precisely the approach 'which the CRPD Committee seeks to avoid'.[120]

Indeed, the treaty body offers a contrasting position as it explains that 'the reasonableness of an accommodation is a reference to its relevance, appropriateness and effectiveness for the person with a disability'.[121] It particularly points out that for determining whether a reasonable accommodation gives rise to a disproportionate or undue burden, there must be 'an assessment of the proportional relationship between the means employed and its aim, which is the enjoyment of the right concerned'.[122] The Committee on the Rights of Persons with Disabilities (CRPD Committee) therefore emphasises that what must be central to the provision of reasonable accommodation is the person accommodated, and not the employer who fulfils their duty.

Nonetheless, the financial costs associated with reasonable accommodation may be a concern for the CCS, including employers and employees, especially if it is considered that, without State support, 'the measures required may be beyond a firm's resources'.[123] For instance, one interviewee questioned whether their organisation 'would have the budget for it' (EU CCS 5). Participants also referred to the difficult economic circumstances faced by the professionals of the sectors, with some sectors being more affected by funding cuts than others, and more broadly, to the fragile financial situation of the CCS particularly since the Covid-19 pandemic.[124] Knowing the financial state of the CCS, questions can thus arise as to how this might affect the ability of cultural organisations to abide by their obligations under Article 5 of the Employment Equality Directive. In that sense, a participant emphasised that:

> because probably many cultural operators are restricted by the lack of funding as well, so if there is any sort of special adjustment, adjustments to make, it can be tricky for them to do it because they are already struggling. (EU CCS 7)

As already noted, however, accommodating persons with disabilities in the CCS does not have to revolve around the costs sustained or predicted, nor does it have to impose

[120] Lisa Waddington and Andrea Broderick, *Combatting Disability Discrimination and Realising Equality: A Comparison of the UN CRPD and EU Equality and Non-Discrimination Law* (European Network of Legal Experts in Gender Equality and Non-discrimination, Publications Office 2018) 72.
[121] Committee on the Rights of Persons with Disabilities (CRPD Committee), 'General Comment No. 6 (2018) on Equality and Non-Discrimination' (2018) UN Doc CRPD/C/GC/6 para 25(a).
[122] CRPD Committee (n 121) para 26(d).
[123] Daly and Whelan (n 97) 755.
[124] See Isabelle De Voldere and others, *Research for CULT Committee – Cultural and Creative Sectors in Post COVID-19 Europe: Crisis Effects and Policy Recommendations* (European Parliament 2021).

unbearable costs for CCS stakeholders. Additionally, Lawson notes how the particular circumstances that dictate the provision of reasonable accommodation, whether they concern the individuals with disabilities or the duty bearers 'are likely to change over time with the result that an accommodation that may at one time be considered to impose an undue burden will, at a later point, not be so regarded'.[125]

It is rather encouraging that several interviewees emphasised the willingness and resourcefulness of CCS stakeholders in this respect:

> [W]hen people want to adapt they just do it. (EU CSS 10)
> [I]n the cultural sector, there is a lot of solidarity … we manage to find solutions even without any sort funding or any sort of things … We don't know how, we don't know with which funding, but we will find a way to make it happen. (EU CCS 7)

Ultimately, the provision of reasonable accommodation is a key issue, and indeed an enabler for the participation of persons with disabilities in the CCS.[126] Given that the CJEU upholds the need to provide reasonable accommodation to persons with disabilities, and potentially those employed in the CCS, it presents the Employment Equality Directive as essential to advancing the EU's implementation of the CRPD,[127] and notably of Articles 30(2) and 27 CRPD.

3. The Protection of Self-employed Cultural and Creative Professionals from Disability-based Discrimination

After discussing the significance of the Employment Equality Directive for employees with disabilities in the CCS, this section examines at greater length another dimension of the Directive's relevance, namely, how it may benefit those cultural and creative professionals with disabilities who are self-employed. With the Employment Equality Directive being the only non-discrimination instrument of direct relevance to persons with disabilities in the Union, in that it addresses disability-based discrimination, this section questions whether it represents the sought-after legal framework where *all* cultural and creative professionals with disabilities may 'feel more welcome and don't

[125] Anna Lawson, 'The UN Convention on the Rights of Persons with Disabilities and European Disability Law: A Catalyst for Cohesion?' in Oddný Mjöll Arnardóttir and Gerard Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives* (Brill Nijhoff 2009) 104.
[126] Urzel Francil (n 13) 11–13.
[127] Urzel Francil (n 13) 13. Alternatively, see how the CJEU's case law advances the implementation of Article 13 CRPD through its interpretation of the Employment Equality Directive, in a context –the organisation of the justice system– where Member States retain significant competence, in Delia Ferri and Léa Urzel, 'The Employment Equality Directive and Access to Justice for Persons with Disabilities: Some Reflections in Light of *Tartu Vangla* and *Komisia Za Zashtita Ot Diskriminatsia*' in Philip Czech and others (eds), *European Yearbook on Human Rights 2022* (Intersentia 2022).

draw back, and also have an opportunity to connect to discrimination' (FG2 P19).[128] In considering how the Directive could apply to the professional relationship of those self-employed in the CCS, this thesis also discusses the provision of reasonable accommodation in this context, the employee/self-employed divide and balancing the prohibition of discrimination with the freedom to conduct a business.

3.1. The Relevance of the Employment Equality Directive to the Entire Professional Relationship

As discussed earlier in this chapter, the Employment Equality Directive focuses on employment and occupation –as its full title reflects. With employment not being defined in its text, it can be questioned whether the Directive is prone to benefit those in more classic employment relationships whose status as 'workers' is rather undeniable.

In this context, one could refer to the stricter understanding set out in *Lawrie-Blum*, which established that the two main features of an employment relationship were, first, that the 'person performs services for and under the direction of another person' for a period of time, and second, that the person receives remuneration in return for such services.[129] The Court has since then expanded on *Lawrie-Blum*'s criteria,[130] and applied a 'wide definition of "worker"' especially with regards to the scope of application of non-discrimination legislation in the 'grey zone between employment and self-employment'.[131]

In this respect, the scope of the Employment Equality Directive appears to be rather broad in that it 'cover[s] the entire work life cycle from job application and recruitment through to dismissal',[132] and includes expressly the question of conditions for accessing self-employment too.[133] However, while some saw that the Directive 'appl[ied] to all persons, expressly including the self-employed and those engaged in independent occupations',[134] the recent case law of the Court proves that uncertainties remained as to the extent to

[128] Emphasis added.
[129] Case C–66/85 *Deborah Lawrie-Blum v Land Baden-Württemberg* [1986] ECLI:EU:C:1986:284 (Lawrie-Blum), para 17.
[130] Emanuele Menegatti, 'Taking EU Labour Law beyond the Employment Contract: The Role Played by the European Court of Justice' (2020) 11 European Labour Law Journal 26, 29. See also Nicola Countouris, *The Changing Law of the Employment Relationship: Comparative Analyses in the European Context* (Ashgate 2007) 171–203.
[131] Bell and Numhauser-Henning (n 46) 188–189.
[132] Francisco Javier Cabrera Blázquez and others, *Diversity and Inclusion in the European Audiovisual Sector* (European Audiovisual Observatory 2021) 29.
[133] Employment Equality Directive, art 3(1)(a).
[134] Menegatti, 'Taking EU Labour Law beyond the Employment Contract' (n 130) 31.

which the Employment Equality Directive could be relevant for self-employment professional relationships, like those that characterise working in the CCS.[135]

Indeed, it is only recently that the CJEU discussed the personal scope of the Employment Equality Directive in relation to self-employment with *JK v TP SA*.[136] The interrogations raised in the Polish District Court's referral to the CJEU are critical, especially in the context of this thesis, and Aloisi highlights in that sense that:

> the case touches upon issues such as the assessment of proportionality between freedom of contract and anti-discrimination legislation, the socially oriented function of contractual autonomy, the blurred boundaries between self-employment and the provision of goods and services, and the notion of the termination of short-term contracts for services.[137]

Here, the CJEU considered the situation of J.K., a self-employed individual working with the Polish public broadcasting company TP. After the publication of a video of himself and his partner promoting tolerance for same-sex couples, his shifts with the audiovisual company were cancelled and their collaboration terminated. In this instance, J.K. claimed he had been directly discriminated against on the ground of his sexual orientation, to which TP argued, among other things, that Polish law 'did not guarantee the renewal of the contract for specific work'.[138] In this judgment, the CJEU had the opportunity to examine whether the Employment Equality Directive, which explicitly prohibits discrimination in relation to the conditions for access to self-employment in Article 3(1)(a), could also be understood to guarantee 'the principle of equal treatment during and after the exercise of that activity'.[139]

Further to that, it considered whether the Polish law on equal treatment was compatible with the Employment Equality Directive as it guaranteed the freedom to choose a contracting party, and therefore to not choose a party, as long as such choice was not based on sex, race, ethnic origin or nationality only. The national legislation at issue did not foresee exceptions to the freedom to choose a contracting party on the grounds overseen by the Employment Equality Directive, including sexual orientation (but also disability). Therefore, it allowed a situation such as the one heard in *JK v TP SA* 'where

[135] See Chapter 1, Sub-section 2.2.
[136] Case C–356/21 *JK v TP SA* [2023] ECLI:EU:C:2023:9.
[137] Antonio Aloisi, 'J.K. v TP S.A. and the "Universal" Scope of EU Anti-Discrimination Law at Work: A Paradigm Shift?' (2023) 52 Industrial Law Journal 977, 993.
[138] Case C–356/21 *JK v TP SA*, para 24.
[139] Tomasz Jaroszyński and Justyna Łacny, 'Further Extension of Protection against Discrimination on Grounds of Sexual Orientation under Directive 2000/78/EC: Court of Justice (Second Chamber) 12 January 2023, Case C-356/21, *J.K.* v *TP S.A.*, ECLI:EU:C:2023:9' (2023) 19 European Constitutional Law Review 548, 555.

an allegedly discriminatory choice result[ed] in the refusal to enter into a contract for services due to the sexual orientation of the other contracting party'.[140]

In this context, the Court highlights how it clearly ensues 'from the terms "employment" and "occupation", understood in their usual sense, that the EU legislature did not intend to limit the scope of Directive 2000/78' as such.[141] Referring to *HK/Danmark and HK/Privat*,[142] the CJEU therefore affirms that it cannot be inferred from the wording of Article 3 that the Directive's application should only benefit those understood as '"workers", within the meaning of Article 45 TFEU'.[143] Additionally, the CJEU aptly recalls that the Employment Equality Directive was adopted on the basis of what is now Article 19(1) TFEU, 'which confers on the Union the power to take appropriate action to combat discrimination'.[144] Unlike other secondary legislation, it was not based on Article 153(2) TFEU, which 'seek[s] to protect only workers as the weaker party in an employment relationship'.[145] In that respect, Belavusau and Henrard recall that the CJEU 'is known for its teleological interpretation',[146] aimed at granting 'rights conferred the fullest possible effect'.[147]

At the same time, the CJEU formulates 'the outer limit of such an ample scope', which is something for the referring court to consider.[148] Indeed, it establishes that in order for occupational activities to fall within the scope of the Employment Equality Directive –in this case, activities pursued by self-employed people– they must be 'genuine and … pursued in the context of a legal relationship characterised by a degree of stability'.[149] Here it makes a distinction with the mere provision of goods and services. In the case of *JK v TP SA*, the Court considered that the provision of services by the claimant, a CCS professional working in the audiovisual sector for a single client, on the basis of a series of consecutive short-term contracts was 'pursued on a personal and regular basis for the same recipient, enabling the applicant to earn his livelihood, in whole or in part'.[150]

In this context, the CJEU recalls that the principle of equal treatment does apply to self-employment, and that this 'protection extends to the professional relationship concerned

[140] Aloisi (n 137) 982.
[141] Case C–356/21 *JK v TP SA*, para 37.
[142] Case C–587/20 *Ligebehandlingsnævnet acting on behalf of A v HK/Danmark and HK/Privat* [2022] EU:C:2022:419 (HK/Danmark and HK/Privat), paras 28–29.
[143] Case C–356/21 *JK v TP SA*, paras 37–38.
[144] Case C–356/21 *JK v TP SA*, para 40.
[145] Case C–356/21 *JK v TP SA*, para 43.
[146] Belavusau and Henrard (n 107) 16.
[147] Evelyn Ellis and Philippa Watson, *EU Anti-Discrimination Law* (2nd edn, Oxford University Press 2014) 498.
[148] Aloisi (n 137) 983–984. See also Adrijana Martinović, 'Anti-Discrimination Cases Decided by the Court of Justice of the EU in 2023' (2025) 16 European Labour Law Journal 161, 163–164.
[149] Case C–356/21 *JK v TP SA*, para 45.
[150] Case C–356/21 *JK v TP SA*, paras 46–47.

in its entirety'.[151] On this basis, the CJEU interprets the concept of 'conditions for access' to self-employment set out in Article 3(1)(a) of the Directive, to cover 'circumstances or facts [which are] essential in order for a person to be able to pursue a particular self-employed activity', thus including the conclusion of a contract but also the refusal to conclude such contract,[152] 'provided there is a stable pattern of such contracts'.[153] Additionally, the Court also interprets broadly Article 3(1)(c) of the Directive –which does not expressly refer to self-employment– and follows a teleological interpretation, leading it to conceive 'employment and working conditions' as covering the conditions of employment, as well as of self-employment activities, 'whatever the legal form in which it is pursued'.[154]

As already established,[155] the CJEU particularly stresses that if the Directive was to be interpreted restrictively, and dependent 'on the formal categorisation of an employment relationship under national law', it would come to undermine the protection it confers against all forms of discrimination on the grounds covered, thus including disability.[156] In the case of *JK v TP SA*, it further insists, stating that the Directive is clearly intended 'to eliminate, on grounds relating to social and public interest, all discriminatory obstacles to access to livelihoods and to the capacity to contribute to society through work, irrespective of the legal form in which it is provided'.[157]

Ultimately, the CJEU delivers here a broad interpretation of the scope of the Employment Equality Directive. It confirms that the Directive extends the prohibition of discrimination against self-employed people to the entire professional relationship, including conditions of conclusion, renewal, or termination of contracts related to a self-employed activity.[158] In doing so, scholarship recognises *JK v TP SA* 'as a transformative step forward in defining the personal scope of application of European anti-discrimination law and, potentially, determining the wider construction of labour rights'.[159]

The importance and relevance of such case law in the context of this thesis appears easy to grasp, especially with J.K. being a cultural and creative professional in the audiovisual sector. With both the grounds of sexual orientation and disability being covered in the

[151] Case C–356/21 *JK v TP SA*, para 56.
[152] Case C–356/21 *JK v TP SA*, paras 49-51.
[153] Uladzislau Belavusau, 'Op-Ed: "Filling a Gap in EU Anti-Discrimination Law for Short Contracts: Case C-356/21, TP (Monteur Audiovisuel Pour La Télévision Publique)"' (*EU Law Live*, 16 March 2023) <https://eulawlive.com/op-ed-filling-a-gap-in-eu-anti-discrimination-law-for-short-contracts-case-c-356-21-tp-monteur-audiovisuel-pour-la-television-publique-by-uladzislau-belavusau/> accessed 26 September 2024.
[154] Case C–356/21 *JK v TP SA*, para 58.
[155] See Case C–232/09 *Dita Danosa v LKB Līzings SIA* [2010] ECLI:EU:C:2010:674 (Danosa), para 69.
[156] Case C–356/21 *JK v TP SA*, paras 55-56.
[157] Case C–356/21 *JK v TP SA*, para 54.
[158] Case C–356/21 *JK v TP SA*, paras 56, 58.
[159] Aloisi (n 137) 977. See also Belavusau (n 153); Jaroszyński and Łacny (n 139).

Employment Equality Directive, it is evident that the conclusions of the CJEU concern a range of CCS professionals with disabilities who are self-employed in the EU, especially knowing that self-employment in the CCS is twice as high as for the rest of the economy according to recent statistics.[160] Overall, it confirms the relevance of the Directive in addressing discrimination in the EU for all professionals with disabilities in the CCS, whether employed or self-employed, and in 'guaranteeing that virtually every individual is able to reap the material and symbolic benefits arising from economic participation',[161] irrespective of the way they perform their activity.

3.2. Bridging the Employed/Self-employed Divide in EU Law: A Chance for CCS Professionals with Disabilities?

While it is important to see the CJEU confirming the application of the Employment Equality Directive to self-employment relationships in their entirety (as long as they are genuine and characterised by a degree of stability), it is also interesting to point out that the nature of that self-employment relationship was not in question as such.

Indeed, being employed was not the deciding factor for being covered by the scope of the Directive. The Court did not discuss the classification of J.K.'s professional relationship as a genuine self-employment one or as employment, saying that the scope of the Employment Equality Directive should be 'construed broadly'.[162] However, it did differentiate between the 'pure' provision of goods and services, excluded from the scope of the Employment Equality Directive, and those genuine relationships, characterised by a degree of stability,[163] which it found in the case of the audiovisual professional, and which may be relevant to many other CCS professionals. It would be common to have a portfolio of different clients for whom you would perform work as a self-employed CCS professional.[164] However, in the case at hand, it was not several clients but one, and J.K.'s livelihood was wholly dependent on the renewal of its one-week shifts with TP, a contractual arrangement that had lasted for seven years.[165] In this context, the situation of J.K. would appear to fall in the grey area between employment and self-employment, and

[160] Eurostat estimates that 31.7% of cultural workers across the EU were self-employed in 2024, the average for the whole economy being of 13.6%. See Eurostat, 'Culture Statistics - Cultural Employment' (*Statistics Explained*, 11 August 2025) <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Culture_statistics_-_cultural_employment> accessed 12 August 2025.
[161] Raphaële Xenidis, 'The Polysemy of Anti-Discrimination Law: The Interpretation Architecture of the Framework Employment Directive at the Court of Justice' (2021) 58 Common Market Law Review 1649, 1656.
[162] Case C–356/21 *JK v TP SA*, para 47.
[163] Case C–356/21 *JK v TP SA*, paras 44–46.
[164] Andrew Ross, 'The Mental Labor Problem' (2000) 18 Social Text 1, 11.
[165] Case C–356/21 *JK v TP SA*, para 12.

crystallises certain concerns 'at the intersection of discrimination … and contractual formats that exacerbate both precariousness and vulnerability'[166] also particularly present in the CCS.[167]

In that connection, Aloisi notes how the current framework is 'facing intense scrutiny and pressure due to its limited ability to recognise and address situations that are not fully compatible with standard contractual templates'.[168] Cases like *JK v TP SA,* and before that *HK/Danmark and HK/Privat,* therefore enable the Court and EU law to address the situation of the many professionals who are being 'disadvantaged by the restriction of the possibility to conclude employment contracts and the need to conclude civil law contracts instead'.[169] Křičková and Palkovská also recall in that sense that:

> [b]road protections against discrimination in self-employment make it significantly easier for all gig workers, who perform their jobs under various types of precarious contracts, to defend themselves against discrimination, irrespective of the precise legal nature of their work relationships.[170]

It can further lay the foundations for softening 'the strict binary distinction between employment and self-employment status',[171] when:

> most employment-related secondary legislation has largely granted [labour] rights solely to "workers" who are hired via an employment contract or relationship [and] self-employed persons generally fall outside the scope of protection and, therefore, can rely only on private or commercial law remedies.[172]

For that matter, it is interesting to recall the words of Davies who observes that 'equality law can be seen as a slightly different "legal order" to traditional labour law' with a capacity to transcend the traditional divide between employed and self-employed, and the protection afforded as a result.[173] As such, it enables EU law, using non-discrimination as an entry point, to 'react to the digital transformation of the economy, and related

[166] Aloisi (n 137) 992.
[167] See Karol Muszyński and Anna Gromada, *EU Framework for the Social and Professional Situation of Artists and Workers in the Cultural and Creative Sectors* (European Parliamentary Research Service (EPRS), Publications Office 2023) 1–4.
[168] Aloisi (n 137) 978.
[169] Jaroszyński and Łacny (n 139) 564.
[170] Lenka Křičková and Iva Fellerová Palkovská, 'Battling the Hydra in EU Anti-Discrimination Law: ECJ Judgment Raises More Questions about Discrimination against Self-Employed Workers' (*Verfassungsblog*, 31 January 2023) <https://verfassungsblog.de/battling-the-hydra/> accessed 21 April 2024.
[171] Muszyński and Gromada (n 167) 9.
[172] Aloisi (n 137) 978.
[173] Anne CL Davies, *EU Labour Law* (Edward Elgar 2012) 113.

changes in society and work relations',[174] including 'the new challenges posed by both flexibilisation and the green and digital transitions'.[175]

In this context, the EU has recently legislated on the issue of determining employment (or self-employment) status in the context of platform work, a form of work which epitomises how working relationships have become more complex, further blurring the strict binary divide discussed here.[176] Albeit heterogenous, platformisation has significantly changed parts of the CCS landscape,[177] on the basis of a 'business model which heavily relies on the fragmentation of work largely to prevent or avoid labour-related costs'.[178] In this regard, the relationship that existed between J.K. and TP also prompted Aloisi to note that such 'peculiar work-related arrangements were common in the creative, audio-visual and artistic industries long before the advent of digital labour platforms'.[179] Interestingly, the newly adopted Platform Work Directive introduces 'measures to facilitate the determination of the correct employment status of persons performing platform work', including through the legal presumption of an employment relationship for those otherwise considered as self-employed professionals.[180]

Ultimately, with new types of working relationships questioning the relevance of such dichotomy,[181] it does probe whether this new addition to EU labour law could then be 'paving the way for a much-needed retargeting of the personal and material scope of other EU secondary legislation', and therefore enable EU secondary law to 'provide protection for the constellation of casual templates that diverge from the regulatory "prototype"'.[182] Just on the basis of the number of self-employed people in the CCS, this could bear significant consequences and guarantee better protection for CCS professionals with disabilities, beyond non-discrimination legislation.

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[174] Křičková and Palkovská (n 170).
[175] Aloisi (n 137) 995.
[176] Michael Doherty, 'Le « travailleur », le droit de l'UE et la négociation collective' [2021] Revue de droit comparé du travail et de la sécurité sociale 60, 62.
[177] See Willem Peter de Groen and others, *Employment and Working Conditions of Selected Types of Platform Work* (Eurofound, Publications Office 2018); Ana Alacovska, Eliane Bucher and Christian Fieseler, 'A Relational Work Perspective on the Gig Economy: Doing Creative Work on Digital Labour Platforms' (2024) 38 Work, Employment and Society 161; Drew Gardiner, *Balancing Act: The Role of Digital Platforms in Shaping the Conditions of Creative Work* (ILO Working Paper 123, ILO 2024); Júlia Vilasís-Pamos and others, 'Social Media and Platform Work: Stories, Practices, and Workers' Organisation' (2024) 30 Convergence: The International Journal of Research into New Media Technologies 410; Ben Eltham, Xin Gu and Marnie Badham, '"Artists as Workers"? Re-Imagining Cultural Policy for Insecure and Precarious Artists and Cultural Workers' [2025] Journal of Sociology 1, 3.
[178] Miriam Kullmann, '"Platformisation" of Work: An EU Perspective on Introducing a Legal Presumption' (2022) 13 European Labour Law Journal 66, 66.
[179] Aloisi (n 137) 993.
[180] Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work [2024] OJ L2024/2831 (Platform Work Directive), arts 1(1)(a) and 5. The Platform Work Directive is also discussed at greater length in Chapter 6, Sub-section 6.2.
[181] See Menegatti, 'Taking EU Labour Law beyond the Employment Contract' (n 130) 27–28.
[182] Aloisi (n 137) 994.

3.3. A Duty of Reasonable Accommodation for Self-employed Cultural and Creative Professionals with Disabilities?

However, while the question of the classification of the relationship in *JK v TP SA* did not condition J.K.'s protection under the Employment Equality Directive, it can be argued that should a CCS professional with disabilities be refused reasonable accommodation, due to being considered as 'self-employed' under national legislation, then determining the nature of that relationship would matter. While it has not yet been addressed by the Court, Article 5 of the Employment Equality Directive is perhaps the provision that cannot benefit, as such, from the broadly construed scope of the Directive that the Court established.

Indeed, the notion of 'employer' is a key concept on which the duty of reasonable accommodation relies. More specifically, it ensues from the wording of Article 5 that the duty entails that *employers* must 'take appropriate measures', and that the provision of reasonable accommodation shall enable the individual 'to have access to, participate in, or advance in *employment*, or to undergo training'.[183] It follows that –in the context of EU labour law and EU non-discrimination law– reasonable accommodation is a duty confined solely to an employer/employee and/or employer/trainee relationship. However, as has been recalled in this thesis, around 31.7% of cultural and creative stakeholders are self-employed across the Union.[184] This begs one question, namely, in what circumstances could Article 5 benefit self-employed CCS professionals with disabilities?

At first sight, it seems clear that such obligation does not extend to 'pure' or genuine self-employment since 'employers' would logically be the individuals with disabilities themselves. Therefore, they would be able to decide on accommodating their work needs. However, as the labour market has changed, tending towards a 'blurring of the boundaries between subordinate employment and self-employment in many economic sectors including the Live Performance and Audiovisual environments',[185] it appears important to consider the scope of the duty to provide reasonable accommodation in this context. Indeed, the question of the provision of reasonable accommodation to self-employed CCS professionals is unresolved with regards to those 'grey zones' between employment and

[183] Employment Equality Directive, art 5 (emphasis added).
[184] See Eurostat, 'Culture Statistics - Cultural Employment' (n 160).
[185] Pascale Charhon and Dearbhal Murphy, 'The Future of Work in the Media, Arts & Entertainment Sector: Meeting the Challenge of Atypical Working' (European Group of the International Federation of Actors, European Federation of Journalists, International Federation of Musicians, UNI Europa - Uni Global Union (Media, Entertainment & Arts) 2016) 52.

self-employment, which the European Commission identifies as '"dependent" and "bogus" self-employment',[186] both terms being defined in chapter 1.[187]

In this context, the CJEU has particularly coined the term 'false self-employed' in *FNV Kunsten*, a case concerning a 'collective agreement securing minimum fees for self-employed musicians'.[188] Then, it established that false self-employed individuals are 'service providers in a situation comparable to that of employees'.[189] In that context, the Court adds that a service provider should not be considered an individual contractor or undertaking where:

> he does not determine independently his own conduct on the market, but is entirely dependent on his principal, because he does not bear any of the financial or commercial risks arising out of the latter's activity and operates as an auxiliary within the principal's undertaking.[190]

This case also epitomised another key issue for self-employed people in the Union which was discussed in chapter 1, namely that of collective bargaining.[191] Indeed, the importance of determining whether the CCS professionals in question were falsely self-employed or undertakings was related to EU competition rules, which in principle treated self-employed people as undertakings, and therefore barred them from collectively negotiating for better working conditions.[192] Highly relevant to CCS professionals, the position of the CJEU has prevented for many years those that are not employees to negotiate better working conditions, as this would be seen to distort competition.[193] Interestingly, the European Commission has since adopted guidelines which clarify the application of EU competition law to collective agreements regarding the working conditions of solo self-employed people,[194] which are therefore especially relevant to the CCS.

In the context of the CCS, it is thus worth questioning the relevance of limiting the application of the duty of reasonable accommodation to a strict employer/employee relationship, when 'categories of workers have increasingly found themselves effectively

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[186] European Commission, 'Launching a Consultation on a European Pillar of Social Rights' (Communication) COM(2016) 127 final, annex I, 5.
[187] See Chapter 1, Sub-section 2.2.
[188] Menegatti, 'Taking EU Labour Law beyond the Employment Contract' (n 130) 37.
[189] Case C–413/13 *FNV Kunsten Informatie en Media v Staat der Nederlanden* [2014] ECLI:EU:C:2014:2411 (FNV Kunsten), para 31.
[190] Case C–413/13 *FNV Kunsten*, para 33.
[191] See Chapter 1, Sub-section 2.5.
[192] See Michael Doherty and Valentina Franca, 'Solving the "Gig-Saw"? Collective Rights and Platform Work' (2020) 49 Industrial Law Journal 352, 357.
[193] See Case C–67/96 *Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie* [1999] ECLI:EU:C:1999:28.
[194] European Commission, 'Guidelines on the Application of Union Competition Law to Collective Agreements regarding the Working Conditions of Solo Self-employed Persons' (Communication, 2022) OJ C374/2.

without labour protection owing to their employment relationship being disguised, ambiguous or not clearly defined'.[195] Additionally, it potentially means that individuals with disabilities in the CCS may not benefit from reasonable accommodation on the basis of being classified as self-employed under national law. This may become an issue if in some instances, CCS professionals with disabilities were closer to an employment relationship than to genuine self-employment, whereby professionals enjoy '"direct" access to the markets they work in, where they normally perform services for multiple clients, without any functional and operational subordination to any other business entity'.[196]

However, the Court has not yet ruled on a situation like the one just described. It would be interesting to see if the CJEU does, as this specific issue fits within the wider debate on the differentiation between employment and self-employment, and protections afforded on this basis at the EU level. As discussed above, the traditional binary divide between the 'dependent' employee and the 'independent' self-employed is increasingly called into question. In cases like *Allonby*, the CJEU has for instance pushed towards an understanding of 'worker' that would cover those self-employed, when their independence is considered to be 'merely notional, thereby disguising an employment relationship'.[197] The CJEU has since confirmed this line of thought and reaffirmed 'that the classification of a "self-employed person" under national law does not prevent that person being classified as an employee within the meaning of EU law' in a number of cases.[198] The reasoning of the Court seems to hint to the classification of a self-employment relationship into an employment one under certain conditions, which would therefore benefit those CCS professionals with disabilities requesting to be accommodated, when they are in a 'grey zone'. If J.K. had been discriminated on the basis of disability, this could have been a question for the Court, in view of the nature of the work relationship with TP.

Therefore, if the situation of CCS professionals with disabilities was to be akin to that of an employed person, and if it is clear that the provision of reasonable accommodation would enable them to undertake their activities, it can be posited that those false self-employed professionals with disabilities should be able to require reasonable

[195] Charhon and Murphy (n 185) 52.
[196] Menegatti, 'Taking EU Labour Law beyond the Employment Contract' (n 130) 39.
[197] Case C–256/01 *Debra Allonby v Accrington & Rossendale College, Education Lecturing Services, trading as Protocol Professional and Secretary of State for Education and Employment* [2004] ECLI:EU:C:2004:18 (Allonby), para 71.
[198] Case C–413/13 *FNV Kunsten*, para 35. See also Case C–232/09 *Danosa*, para 41; Case C–692-/19 *B v Yodel Delivery Network Ltd* [2020] ECLI:EU:C:2020:288, para 30.

accommodations from their so-called 'clients', when their relationship could be understood as an employment one. This would seem rather aligned to the Court's interpretation of the Directive, as it regularly recalls that the underpinning of the Employment Equality Directive is to establish a comprehensive framework for 'providing everyone with effective protection against discrimination' on the grounds set out in Article 1.[199] Clarification on this would be welcomed and would certainly benefit individuals with disabilities in general, and perhaps, even more so, cultural and creative professionals with disabilities, as the CCS are prone to self-employment and its abuse.[200]

3.4. A Balancing Exercise between the Freedom to Conduct a Business and the Prohibition of Discrimination against Self-employed Individuals

Finally, coming back to *JK v TP SA*, a case which concerns a CCS professional, it is also interesting to see opposed the parties' freedom of contract and the general prohibition of discrimination. Indeed, the Polish company's refusal to contract with J.K. on the ground of his sexual orientation, as it was claimed, also cast doubt on the compatibility with the Employment Equality Directive of a provision of the Polish legislation on equal treatment, which guaranteed the freedom of choice of the contracting parties, as long as the choice was not based on sex, race, ethnic origin or nationality.[201] Again, a parallel with the ground of disability can easily be drawn, as both grounds were not addressed in the Polish legislation in question. Thus, this sub-section seeks to reaffirm the potential there is in leveraging the Employment Equality Directive in the CCS, even when other protected freedoms and rights are opposed to the principle of equal treatment and the prohibition of discrimination.

In that respect, the Employment Equality Directive does indicate that '[t]he right to equal treatment is not absolute',[202] stating in Article 2(5) that the Directive shall be without prejudice to the measures:

> laid down by national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others.

[199] Case C–356/21 *JK v TP SA*, paras 40–41. See also Case C–507/18 *Associazione Avvocatura per i diritti LGBTI* [2020] EU:C:2020:289, para 36.
[200] See Harald Hauben and others, 'Employment Characteristics and Undeclared Work in the Cultural and Creative Sectors' (European Platform Tackling Undeclared Work, European Labour Authority 2024).
[201] Case C–356/21 *JK v TP SA*, paras 25.
[202] Suzanne Kali, 'Ruling in J. K. vs. TP S.A. Regarding Discrimination of a Self-Employed Worker Based on Sexual Orientation' (2023) 9 International Labor Rights Case Law 188, 190.

However, because it establishes an exception to the principle prohibiting discrimination, Article 2(5) must also be interpreted strictly.[203]

In that respect, the CJEU considered the Polish law on equal treatment, which guarantees the freedom of choice of the parties.[204] It highlights that the freedom to conduct a business –which incorporates the freedom with whom to do business– albeit protected under Article 16 CFR, is not absolute and that it must be viewed in relation to its social function.[205] In earlier case law, the CJEU has elaborated on this point, insisting that the freedom to conduct a business must 'first … be viewed in relation to its function in society, … and, second, be weighed in the balance with other interests protected by the EU legal order … and the rights and freedoms of others'.[206]

In this balancing exercise, the CJEU emphasises that accepting that the parties' freedom of choice could justify the refusal to contract with an individual, on grounds protected by the Employment Equality Directive (in this case, sexual orientation) would ultimately deprive Article 3(1) of 'its practical effect in so far as that provision specifically prohibits any discrimination based on that ground as regards access to self-employment'.[207] The Court ultimately ruled that the Polish company's refusal to 'conclude or renew a contract for services with a freelancer on the grounds of their sexual orientation falls within the prohibition of discrimination' introduced in the Directive,[208] and that in accordance with Article 2(5), it could not be justified on the basis of contractual freedom.[209] It therefore considered that the Polish legislation, by introducing such exclusion in favour of the freedom to choose a contracting party, failed to ensure the protection against discrimination conferred by the Employment Equality Directive.[210]

As such, it is clear that the Employment Equality Directive is relevant to CCS professionals with disabilities in many ways. The interpretation provided by the CJEU in *JK v TP SA,* while related to discrimination on the ground of sexual orientation, should benefit all those discriminated under the grounds protected by the Employment Equality Directive. This means that, by analogy, CCS professionals with disabilities, who may face discrimination from a contracting party, perhaps under the guise of the freedom with

[203] Case C–356/21 *JK v TP SA*, para 71. See also Case C–396/18 *Gennaro Cafaro v DQ* [2019] ECLI:EU:C:2019:929, para 42.
[204] Case C–356/21 *JK v TP SA*, paras 73–79.
[205] Case C–356/21 *JK v TP SA*, para 75.
[206] Case C–124/20 *Bank Melli Iran v Telekom Deutschland GmbH* [2021] ECLI:EU:C:2021:1035, para 80. See also, Case C–101/12 *Herbert Schaible v Land Baden-Württemberg* [2013] ECLI:EU:C:2013:661, para 60; Case C–283/11 *Sky Österreich GmbH v Österreichischer Rundfunk* [2013] ECLI:EU:C:2013:28, para 48; Case C–277/16 *Polkomtel sp z oo v Prezes Urzędu Komunikacji Elektronicznej* [2017] ECLI:EU:C:2017:989, para 50.
[207] Case C–356/21 *JK v TP SA*, para 77.
[208] Aloisi (n 137) 977.
[209] Case C–356/21 *JK v TP SA*, para 78.
[210] Case C–356/21 *JK v TP SA*, para 80.

whom to do business, should not be prevented from seeking protection as self-employed people under the Employment Equality Directive[211] –as long as the activities pursued are genuine and characterised by a degree of stability.[212] Ultimately, it shines light on the Directive as an instrument that can offer a more tailored protection to self-employed people in the CCS against discrimination. It also underlines that the Employment Equality Directive, as interpreted by the CJEU, is an instrument that can be considered far-reaching, and therefore, capable of tackling part of the barriers faced by many professionals with disabilities in the CCS.

4. The Horizontal Equal Treatment Directive: A Missed Opportunity for CCS Professionals with Disabilities

As introduced earlier, this chapter concentrates on how, in fostering equality and non-discrimination, the EU legal framework may aid in making the CCS more inclusive of professionals with disabilities. Although recent developments have asserted that the Employment Equality Directive offers, in a sense, a broad protection regardless of employment status, its scope stays partial as it can only cover a limited number of situations.[213]

Interestingly, Aloisi highlights in that respect that the 'objective of the principle of non-discrimination is to provide every individual with an equal and fair chance to access the opportunities available in society'.[214] However, as is clear from this chapter,[215] there is to date no equivalent instrument to the Employment Equality Directive, at the EU level, that would help tackle more comprehensively discrimination on the ground of disability beyond 'the sphere of pure work relations'.[216] Therefore, there is no equivalent instrument to ensure that CCS professionals with disabilities truly have access to equal opportunities in all aspects of life. In this context, this sub-section discusses the (still-standing) proposal for a Horizontal Equal Treatment Directive[217] and how the unfortunate fate it has known until now affects CCS professionals with disabilities.

[211] See Belavusau (n 153).
[212] See Chapter 6, Sub-section 3.1.
[213] Bruno De Witte, 'Epilogue: The Limits of a Transformative Change in European Equality Law' in Uladzislau Belavusau and Kristin Henrard (eds), *EU Anti-discrimination Law beyond Gender* (Hart 2019) 364.
[214] Aloisi (n 137) 992.
[215] See Chapter 6, Sections 2 and 3.
[216] Belavusau (n 153).
[217] COM(2008) 426 final.

4.1. Why Non-Discrimination beyond Work Matters for Cultural and Creative Professionals with Disabilities

This discrepancy in protection against discrimination is worth noting as discrimination against persons with disabilities is, in fact, not confined to the workplace, including for cultural and creative professionals, and this may prevent them from availing, on an equal basis with others, of opportunities in the CCS. In that sense, scholars like Waddington and Lawson have highlighted the discrimination and marginalisation faced by persons with disabilities in areas of life that go beyond employment and occupation, or training.[218]

This includes more broadly the field of education, and this at all levels, where discrimination may manifest itself in 'straightforward refusals of places in particular establishments, or of participation in certain activities, as a result simply of prejudice or misinformed assumptions about the abilities or characteristics of disabled people'.[219] Findings of the qualitative study mirror those concerns, as there were several instances where participants particularly referred to barriers in education that could affect the career pathways of professionals with disabilities, may it be in relation to the mainstream education system and/or in higher arts and cultural education institutions.

For instance, several participants pointed to how crucial education was, emphasising that 'there is a lack of access to any artistic academic education for people with disability and deaf people' (FG2 P14), that 'there is work to be done' to address the conservatism of educational institutions (EU CCS 2) or that arts and cultural education institutions are 'a big obstacle' or 'gatekeepers' for persons with disabilities and other groups (EU CCS 4). Notably, a participant shared the story of a deaf student in a graphic design school who had been denied education as the institution got to know of their disability (FG2 P16). They highlighted how, in this regard, the national Non-discrimination Act 'gave a clear path … of what to do when you face this type of incident' (FG2 P16). If the school was sanctioned on this basis, which the participant appears to point to (FG2 P16), it seems probable that this was on the basis of more favourable national provisions and not on the basis of EU non-discrimination law. Indeed, the Employment Equality Directive can only be understood to cover university education insofar as it can be understood as vocational training.[220]

Furthermore, discriminatory barriers are also likely to affect CCS professionals with disabilities in areas tightly connected to pursuing a professional activity, such as transport,

[218] See Waddington and Lawson (n 28) 40–46.
[219] Waddington and Lawson (n 28) 42.
[220] Waddington, *From Rome to Nice in a Wheelchair* (n 16) 21.

housing, social protection, or access to goods and services more broadly. These obstacles have all more or less direct consequences on the possibility for persons with disabilities to live independently,[221] seek work and pursue careers of their choosing, including in the CCS. Therefore, if the Horizontal Equal Treatment Directive is to become reality, it would enable EU law to better grasp and address the discrimination faced by CCS professionals with disabilities, which affects their career pathways. It could also uphold the provision of reasonable accommodation in many areas of life, which are essential to aspire to, develop and sustain a career as cultural and creative professionals –if not already addressed at Member State level.

4.2. The Potential and Uncertain Fate of the Horizontal Equal Treatment Directive

For seventeen years, it was hoped to see the proposal for a Horizontal Equal Treatment Directive concretised. This hope was dashed earlier this year by the European Commission when it indicated its intention to withdraw the proposal for June 2025,[222] although it then indicated it would wait for August 2025 before making a final decision.[223] Most recently, various outlets reported that the European Commission has reversed its decision to withdraw the Horizontal Equal Treatment Directive.[224] The potential, as well as the fate, of the proposal have been discussed at length in scholarship,[225] and it could become a breakthrough instrument for protecting CCS professionals with disabilities if it was adopted.

Indeed, the draft Directive seeks to extend the prohibition of discrimination to transport, housing, social protection and education,[226] and includes some recognition of multiple

[221] Waddington and Lawson (n 28) 45.
[222] European Commission, 'Commission work programme 2025: Moving forward together: A Bolder, Simpler, Faster Union' (Communication) COM(2025) 45 final, annex IV, 25.
[223] See Committee on Civil Liberties, Justice and Home Affairs, 'Ordinary Meeting' (*European Parliament*, 12 May 2025) <https://multimedia.europarl.europa.eu/en/webstreaming/committee-on-civil-liberties-justice-and-home-affairs-ordinary-meeting_20250512-1500-COMMITTEE-LIBE> accessed 12 September 2025; European Parliament, 'MEPs Debate Proposed Withdrawal of Horizontal Anti-Discrimination Directive' (*News European Parliament*, 12 May 2025) <https://www.europarl.europa.eu/news/en/press-room/20250512IPR28363/meps-debate-proposed-withdrawal-of-horizontal-anti-discrimination-directive> accessed 12 September 2025.
[224] André Felix, 'Good News on Equal Treatment Directive: Commission Reverses Decision to Withdraw' (*European Disability Forum*, 24 July 2025) <https://www.edf-feph.org/good-news-on-equal-treatment-directive-commission-reverses-decision-to-withdraw/> accessed 13 August 2025; Magnus Lund Nielsen, 'Commission Revives Anti-Discrimination Directive after 17-Year Standstill' (*Euractiv*, 24 July 2025) <https://www.euractiv.com/section/politics/news/commission-revives-anti-discrimination-directive-after-17-year-standstill/> accessed 8 August 2025.
[225] See, among others, Mark Bell, 'Advancing EU Anti-Discrimination Law: The European Commission's 2008 Proposal for a New Directive' (2009) 3 The Equal Rights Review 7; Mark Bell, 'The Principle of Equal Treatment: Widening and Deepening' in Paul Craig and Gráinne De Búrca (eds), *The Evolution of EU Law* (2nd ed, Oxford University Press 2011) 620; Lisa Waddington, 'Future Prospects for EU Equality Law: Lessons to Be Learnt from the Proposed Equal Treatment Directive' (2011) 36 European Law Review 163; Belavusau and Henrard (n 107) 13–14; Waddington, 'The Influence of the UNCRPD on EU Anti-Discrimination Law' (n 55) 350–356.
[226] Belavusau and Henrard (n 107) 13.

discrimination.[227] At some point, the proposal also particularly considered the interconnection of accessibility and non-discrimination in an Article 4, and called on Member States to take all necessary and appropriate measures to identify and eliminate obstacles to accessibility and the prevention of new barriers in the areas covered.[228] It therefore provided for a recognition in EU law that the '[c]onsideration of the equality principle entails recognition of lack of accessibility as a form of differential treatment'.[229]

Some saw the authority wielded by the CRPD in this proposal, especially as the draft was revised in the aftermath of the Convention's entry into force.[230] Compared to the original proposal, increased reference to the CRPD were added in the text of the draft Directive, and in one of its latest iteration, it also recognised the denial of reasonable accommodation as discrimination,[231] as does the CRPD, bringing about 'genuine novelty' in the EU legal framework.[232] As such, the proposal also alludes to the more fundamental question of whether pursuing equal treatment in the workplace is worthwhile when all measures have not been taken to combat discrimination outside of the sphere of employment and occupation.[233]

However, to be adopted, the Horizontal Equal Treatment Directive requires unanimity of the Member States' representatives in the Council, as the proposal is based on Article 19 TFEU. Early on, it 'raised doubts as to whether the Member States would be able to find consensus'.[234] The proposed Directive has since encountered strong objections in the Council,[235] notably on points relating to competences and subsidiarity, while other Member States were opposed to the inclusion of social protection or education within its scope.[236] In contrast with the Equality Directives from the early 2000s, the proposed Horizontal Equal Treatment Directive 'has been burdened by several unsuccessful

[227] Xenidis, 'Multiple Discrimination in EU Anti-Discrimination Law' (n 33) 74.
[228] Council of the European Union, 'Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation' (Note) 14500/16, annex, art 4.
[229] Maria Ventegodt Liisberg, 'Accessibility of Services and Discrimination: Concentricity, Consequence, and the Concept of Anticipatory Reasonable Adjustment' (2015) 15 International Journal of Discrimination and the Law 123, 127.
[230] Waddington, 'The Influence of the UNCRPD on EU Anti-Discrimination Law' (n 55) 350.
[231] Council of the European Union, 'Directive on implementing the principle of equal treatment (Article 19) - Progress report' (Report) 10817/24, annex, art 2(2)(e).
[232] Bell, 'Advancing EU Anti-Discrimination Law' (n 225) 10.
[233] Christa Prets and Henri Weber, 'Intégration et handicaps : la situation européenne' (2005) 2 Reliance 54, 57.
[234] Bell, 'The Principle of Equal Treatment: Widening and Deepening' (n 225) 618.
[235] Bell, 'Navigating Sameness and Difference' (n 77) 664.
[236] See Council of the European Union, 'Proposal for a Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Religion or Belief, Disability, Age or Sexual Orientation' (Addendum) 16594/08 ADD 1, 15–16; Council of the European Union, 'Proposal for a Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of Religion or Belief, Disability, Age or Sexual Orientation - Progress Report' (Report) 14867/17, 2–4.

negotiation rounds, reflecting a changed political climate',[237] and the political momentum (almost) vanished.[238]

The consideration and prohibition of discrimination, on the basis of disability therefore remains 'by and large, confined to the employment sphere and, to that extent, can still be seen as essentially a branch of labour law'.[239] For these reasons, EU non-discrimination law 'is substantially narrower' than what is set out in the CRPD, which, as noted in chapter 2, makes no distinction and prohibits discrimination in all aspects of life.[240] In addition, there is no doubt that the legal basis for extending EU non-discrimination law to other areas of life exists in the Treaties. Indeed, Article 19 TFEU has provided the legal basis for implementing the principle of equal treatment between men and women, and on grounds of race and ethnicity, beyond the professional sphere. The explanatory memorandum of the 2008 proposal even makes clear that the protection granted to people on the basis of race, ethnic origin or sex is much greater than that based on disability and other grounds, as discrimination is prohibited in a range of areas which cover employment and occupation but also social protection, healthcare or access to goods and services.[241]

For instance, the Race Equality Directive[242] protects individuals against discrimination in and outside of professional life in a single instrument, while several Gender Equality Directives address the implementation of the principle of equal treatment in relation to employment and occupation,[243] self-employment,[244] social security[245] and supply of goods and services.[246] Interestingly, the discrepancy in protection afforded to people on grounds of race or gender, and on the basis of disability[247] did not go unnoticed in the CCS, as noted elsewhere.[248] In particular, an interviewee stated:

> The issue of inclusion, of diversity, it is on everyone's mind. But probably today we are in any case … in Europe, maybe more focused on the question of non-

[237] Belavusau and Henrard (n 107) 13.
[238] De Witte (n 213) 364.
[239] De Witte (n 213) 364.
[240] Broderick and Watson (n 9) 126.
[241] COM(2008) 426 final, 2–3.
[242] Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L180/22 (Race Equality Directive).
[243] Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) [2006] OJ L204/23 (Recast Gender Directive).
[244] Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC [2010] OJ L180/1 (Gender Self-Employment Directive).
[245] Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security [1978] OJ L6/24.
[246] Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services [2004] OJ L373/37 (Gender Goods and Services Directive).
[247] See, for instance, Lawson 'A Catalyst for Cohesion?' (n 125) 105–106.
[248] Urzel Francil (n 13) 11.

> discrimination between people of different ethnic backgrounds, between men and women. (EU CCS 9)

A participant in the focus groups also compared the situation of persons with disabilities to that of 'other marginalised groups, for example, people who are confronted with racism', noting that there is at the moment 'a discourse going on' on the subject, with interested parties 'very often asked to sit in panels, in discussions, and give presentations' (FG2 P19). Some scholars have discussed whether this discrepancy could signal of sort of hierarchy of 'equalities', of 'discrimination grounds', or 'of what the EU considers as significant enough to be actionable'.[249]

Although the point here is not to demonstrate the causality between the state of EU legislation and the views of the CCS on non-discrimination protection, it is a telling example of the failures in broadening the scope of EU non-discrimination legislation. The collective failure at the EU level to 'remed[y] the disparities in scope of application of the prohibition of discrimination on grounds of race (and gender)' therefore endures.[250] As such, the EU for now fails to address the fact that being a professional is not a siloed situation. In order to achieve equal treatment in the cultural and creative workplace, it would be useful to address disability-based discrimination and promote equal treatment outside of it through legal means, so as to ensure minimum protection throughout the Member States. Nevertheless, if CCS professionals with disabilities were to consider they are discriminated on the basis of their gender, race or ethnicity, the abovementioned instruments provide several bases for bringing actions and seek redress.

5. Limits to the Application of the Principle of Equal Treatment in the CCS

As this chapter shows, the EU has been conducting different initiatives with the aim of ensuring the application of the principle of equal treatment in the Union, which can benefit CCS professionals with disabilities in the EU. However, as was also discussed above, such application remains limited by the scope of current legislation, especially that of the Employment Equality Directive. As is made clear with the qualitative research, persons with disabilities are likely to face discrimination in their professional activities and the struggle for equal opportunities in the CCS remains. This section therefore sets

[249] See Erica Howard, 'The Case for a Considered Hierarchy of Discrimination Grounds in EU Law' (2007) 13 Maastricht Journal of European and Comparative Law 445; Bell, 'The Principle of Equal Treatment: Widening and Deepening' (n 225) 620; Belavusau (n 153). See also Dagmar Schiek, 'A New Framework on Equal Treatment of Persons in EC Law? Directives 2000/43/EC, 2000/78/EC and 2002/???/EC Changing Directive 76/207/EEC in Context' (2002) 8 European Law Journal 290, 300; Mark Bell and Lisa Waddington, 'Reflecting on Inequalities in European Equality Law' (2003) 28 European Law Review 349.

[250] Belavusau and Henrard (n 107) 13.

out to explore some of the obstacles to the effective protection against disability-based discrimination under EU law, in particular under the Employment Equality Directive. In doing so, it points to issues in terms of implementation and highlights serious difficulties that concern the enforcement of such provisions and the remedies available to CCS professionals with disabilities.

5.1. Shortcomings in the Implementation of Non-discrimination Provisions

With equality and non-discrimination being seen as a pathway to realising inclusion in the CCS for professionals with disabilities,[251] there could be hope that the setting of norms to tackle disability-based discrimination in professional environments would have ensured meaningful and lasting change in the sectors since 2000. More than twenty years following its adoption, the Employment Equality Directive endures as a 'major legislative achievement in respect of EU disability policy [which] had a significant impact upon the domestic legislation of the Member States of the EU'.[252] The European Commission notes how its transposition in national legal orders has required Member States to make 'significant changes to national law [even for] those that already had comprehensive anti-discrimination legislation'.[253] Overall, it steered 'an expansion of the domestic laws of the vast majority of Member States', whilst embodying 'an important expansion of EU equality law' at the same time.[254]

However, a 2023 survey on discrimination in the EU indicates that '[t]he proportion of respondents who think discrimination on the basis of disability is widespread has increased', compared to 2019.[255] Moreover, while not confined to the workplace, self-reported rates of discrimination for persons with disabilities in the EU also stand above 50% for 2023.[256] In some Member States like France, the Defender of Rights (the equality body) reports that disability is the most common ground of discrimination for complaints referred to its office.[257] While non-discrimination is regulated, questions remain as to the

[251] See Urzel Francil (n 13); European Arts and Disability Cluster (ADICLUS), 'European Arts and Disability Cluster Position Paper: How the European Union Can and Must Act to Reduce Discrimination against Artists, Cultural Workers and Audiences with Disabilities' (2025) 2.
[252] O'Mahony and Quinlivan (n 7) 27.
[253] Commission of the European Communities, 'Equality and non-discrimination in an enlarged European Union' (Green Paper) COM(2004) 379 final, 6.
[254] Lawson, 'A Catalyst for Cohesion?' (n 125) 93.
[255] European Commission, *Special Eurobarometer 535 – Discrimination in the European Union* (Publications Office 2023) 57.
[256] Organisation for Economic Co-operation and Development (OECD), *Combatting Discrimination in the European Union* (OECD Publishing 2025) 38–39.
[257] See Défenseur des Droits, 'Rapport annuel d'activité 2024' (2024) 24.

application of dedicated legislation throughout the EU, even within the set confines of labour law.[258]

The Employment Equality Directive is a key dimension of EU disability law and should therefore logically be key to the participation of professionals with disabilities in the CCS. However, the existence of a gap between the law and its application seems corroborated by the study participants. In that sense, one of them emphasised that persons with disabilities 'are so discriminated and so marginalised' (FG2 P14). Another focus group participant highlighted the following:

> The … thing is that we have very few people with disabilities and deaf people who actually work in cultural institutions and actually speak up about the problem. And unfortunately, a lot of institutions don't want to employ people with disabilities and deaf people. (FG2 P12)

As outlined in chapter 1, discriminatory practices and a lack of equal opportunities in the CCS are also associated with a form of elitism, which underpins the operation of some sectors and is seen as somewhat antinomic to the presence of professionals with disabilities in culture. In that connection, an interviewee pointed to how including persons with disabilities in the CCS 'is a challenge for some, especially for the conservative arts' (EU CCS2). In that sense, they added '[i]t is much more difficult for orchestras, as you can imagine, than for contemporary theatre where you can play with the casting' (EU CCS2). Another interviewee also shared that including persons with disabilities in the workforce was an advantage for the stakeholders they represent, however they also stressed that:

> at the same time things are moving slowly, this implies investments which are investments in times where [cultural institutions] are not rich, let's say, and that implies significant investments. (EU CCS 9)

In this respect, De Witte emphasises that non-discrimination law has the potential to 'change the lives of some persons, in some situations, and in some parts of Europe'.[259] This indicates that non-discrimination law sometimes struggles to be reflected in practice. This is particularly true when it comes to persons with disabilities in the CCS, and throughout the Union, and it points to 'an irreducible *gap between legal proclamation and effective social change*'.[260] EU case law, or the lack thereof, has been seen as a sign of the uneven 'level of protection'[261] and application of the law. It points to discrepancies

[258] See Bell, 'People with Intellectual Disabilities and Labour Market Inclusion' (n 60) 22–23.
[259] De Witte (n 213) 365.
[260] De Witte (n 213) 365 (emphasis added by the author).
[261] Jan Tymowski, *Implementation of the Employment Equality Directive: European Implementation Assessment* (EPRS, Publications Office 2016) 52.

in terms of preliminary questions referred to the CJEU on the different grounds, as well as in terms of which Member States –via their judicial institutions– become involved with the CJEU.[262]

Although it has decided a number of cases on disability and reasonable accommodation,[263] little has been said by the CJEU with regard to self-employment, and even less with regard to self-employed individuals with disabilities, or professionals with disabilities in the CCS. As mentioned already in section 3, *JK v TP SA* was the first case –after more than 20 years– in which the Court clarified the application of the Employment Equality Directive to self-employment relationships. As this was not on the ground of disability, there has not yet been a case where considerations of discrimination, provision of reasonable accommodation and self-employment have overlapped. In the context of the CCS, this can also prompt some discussion on whether:

> EU equality law is implemented and applied in such an excellent manner that no questions of interpretation arise that should be submitted to the CJEU, or does this rather indicate a lack of legal mobilisation or lack of interest from the side of the courts of those countries?[264]

In turn, this questions the effectivity of the means available to CCS professionals with disabilities for enforcing non-discrimination provisions and seeking remedy.

5.2. Barriers to Enforcement and Seeking Remedy

This sub-section particularly seeks to question how equipped and how supported CCS professionals victim of discrimination may be in order to understand their situation, the law applicable, the remedies available to them, and hence, how to act upon it. This is especially key for persons with disabilities, in view of the 'individual rights-based model' of EU non-discrimination legislation,[265] and therefore 'the weight that it places upon enforcement by individual complaints and litigation'.[266]

Some provisions of the Employment Equality Directive, but also of other Directives on pay transparency or equality discussed below, have been introduced to address enforcement challenges and promote better justice in that respect.[267] This includes, for instance, Article 9(2) of the Employment Equality Directive on the defence of rights,

[262] De Witte (n 213) 364.
[263] Belavusau and Henrard (n 107) 18.
[264] De Witte (n 213) 364.
[265] Timo Makkonen, 'Equal in Law, Unequal in Fact: Racial and Ethnic Discrimination and the Legal Response Thereto in Europe' (PhD Thesis, University of Helsinki 2010) 193.
[266] Bell, 'People with Intellectual Disabilities and Labour Market Inclusion' (n 60) 22.
[267] See Race Equality Directive, ch II; Employment Equality Directive, ch II; Gender Goods and Services Directive, ch II; Pay Transparency Directive, ch III.

which grants '*locus standi* for organisations to represent disadvantaged groups either in the absence or on behalf of the individual plaintiffs, and also enable[s] these organisations to collect information and provide advice'.[268] It is an avenue to support all persons 'who consider themselves wronged by failure to apply the principle of equal treatment to them', and to take action either through administrative and/or judicial procedures.[269] Article 10 of the Employment Equality Directive also introduces a partial shift of the burden of proof from the plaintiff to the respondent in a case of discrimination, which can profit victims of discrimination, as do other acts cited hereinafter.[270] In addition, a number of the Directives cited in this chapter include provisions against the victimisation of individuals who have exercised their rights in relation to the different dimensions of the application of the principle of equal treatment to which they relate.[271]

However, discriminatory situations can 'have many faces and it is often not easy for those affected to act against these abuses by individuals or institutions'.[272] In this respect, it is important to recall 'that litigants in the most precarious forms of employment, such as casual work, encounter greater obstacles to relying on equality law'.[273] There are therefore intersecting considerations to take into account when discussing the possibility for CCS professionals with disabilities to avail of enforcement mechanisms and exercise their rights under non-discrimination legislation.

In the case of cultural and creative professionals –who may already face a range of challenges because of the nature of working in the CCS– it is worth noting that individuals often need a certain willingness or ability to transcend the potential 'negative consequences for their own professional activity' that taking action against such abuses might entail.[274] In that respect, they may lack the necessary resources to engage in legal endeavours and to 'act constructively' in such context.[275] Moreover, with regards to non-standard work, it might also be that '[t]he challenge facing the courts is to ensure that equality law is interpreted in a manner that does not reinforce the marginalisation of such workers'.[276] These represent barriers which could impact on CCS professionals' ability

[268] Belavusau and Henrard (n 107) 20–21.
[269] Employment Equality Directive, art 9(1)–(2).
[270] De Witte (n 213) 363.
[271] See Employment Equality Directive, art 11. See also Race Equality Directive, art 9; Gender Goods and Services Directive, art 10; Recast Gender Directive, art 24; Pay Transparency Directive, art 25.
[272] European Commission, *The Status and Working Conditions of Artists – OMC Report* (n 12) 58.
[273] Mark Bell, 'EU Equality Law and Precarious Work' in Uladzislau Belavusau and Kristin Henrard (eds), *EU Anti-discrimination Law beyond Gender* (Hart 2019) 94.
[274] European Commission, *The Status and Working Conditions of Artists – OMC Report* (n 12) 58.
[275] European Commission, *The Status and Working Conditions of Artists – OMC Report* (n 12) 58.
[276] Bell, 'EU Equality Law and Precarious Work' (n 273) 94.

to use non-discrimination law and seek protection under the Employment Equality Directive, among other acts.

Ultimately, although EU non-discrimination law has sought to ensure better enforcement and the availability of remedies to cultural and creative professionals with disabilities, it would seem that the application of the principle of equal treatment in the CCS is rather arduous, especially because of the specificities of working in the CCS. As discussed in section 7, this points to the role that equality bodies and social partners could play in supporting better enforcement of the Employment Equality Directive and of the other provisions of EU labour law discussed in the following section.

6. Furthering Equal Treatment with EU Labour Law

As introduced in chapter 1 and discussed in this chapter, participants in the qualitative study believed in the importance of addressing discrimination and the lack of equal opportunities in the CCS, and in the necessity of guaranteeing that inclusion would develop as 'a normal concept' of how the CCS operate (EU CCS 1). Although the Employment Equality Directive is still to this day the only secondary instrument protecting individuals against disability-based discrimination, and therefore one of obvious importance for CCS professionals with disabilities, it is not the only relevant one.

This section discusses a number of secondary instruments, which contribute to the application of the principle of equal treatment in the Union, including on pay, non-standard forms of work and other working conditions. As such, it shines a light on ways in which they may benefit cultural and creative professionals with disabilities, and considers the gaps and limits that can be identified in that respect.

6.1. Legislation on Minimum Wages and Pay Transparency

The topic of pay[277] is particularly interesting since, despite EU initiatives, persons with disabilities remain more at risk of poverty, including in-work poverty, and subject to more income inequalities compared to people without disabilities.[278] Interestingly, the Employment Equality Directive provides that there is to be no discrimination, direct or

[277] Recital 21 of the Pay Transparency Directive specifies that the concept of pay encompasses various elements, which must be understood, in view of the case law of the CJEU, to include not only wages and salaries, but also 'any other consideration, whether in cash or kind, which workers receive directly or indirectly' including, without being exhaustive, bonuses, overtime compensation, housing and food allowances or statutory sick pay.

[278] Eurostat, 'Disability Statistics - Poverty and Income Inequalities' (*Statistics Explained*, 18 August 2025) <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Disability_statistics_-_poverty_and_income_inequalities > accessed 12 September 2025.

indirect, on ground of disability, including in relation to pay.[279] In fact, the issue of pay and remuneration was also broached upon during the qualitative study, in the following terms:

> And then obviously any person acting or performing … should be paid according to the standards as all the other artists, it goes beyond even questioning that sector. But I know that, perhaps, that is not always the case but they should have their proper wages… (EU CCS 2)

In recent years, the EU has sought to legislate more actively on working conditions, including on pay, to foster the principle of equal pay for equal work and reduce wage inequality within the Union. This includes the Adequate Minimum Wages Directive (AMWD)[280] and the Pay Transparency Directive. Against this background, the following sub-sections discuss how the adoption of these two Directives could be beneficial for CCS professionals with disabilities.

6.1.1. The Adequate Minimum Wages Directive

The AMWD particularly provides a framework for Member States –meaning procedural obligations as minimum obligations– to improve the adequacy and coverage of minimum wages set by statute and collective agreements.[281] In doing so, it pursues the objective of improving living and working conditions, fostering upward social convergence[282] and reducing wage inequality, particularly between men and women.[283] It makes reference in that sense to different international standards like the International Labour Organization's Conventions on Minimum Wage Fixing and Collective Bargaining.[284]

Although its adoption remains contentious, as discussed below, the Directive 'is not the first piece of EU legislation to affect pay', nor does it 'introduce a uniform minimum wage' for the Union.[285] Indeed, Article 1 AMWD provides that the Directive shall be 'without prejudice to the full respect for the autonomy of the social partners, as well as

[279] Employment Equality Directive, arts 2 and 3(1)(c).
[280] Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union [2022] OJ L275/33 (AMWD).
[281] AMWD, recitals 18, 38 and art 1.
[282] For a discussion on upward social convergence, see Massimiliano Mascherini and others, *Upward Convergence in the EU: Concepts, Measurements and Indicators: Monitoring Convergence in the European Union* (Eurofound, Publications Office 2018). See also Erika Kovács, 'Subject Matter (Article 1)' in Luca Ratti, Elisabeth Brameshuber and Vincenzo Pietrogiovanni (eds), *The EU Directive on Adequate Minimum Wages: Context, Commentary and Trajectories* (Hart 2024) 143.
[283] AMWD, recital 18, arts 1 and 5.
[284] AMWD, recitals 8 and 24. See Convention concerning Minimum Wage Fixing, with Special Reference to Developing Countries (adopted 22 June 1970, entered into force 29 April 1972) C131; Convention concerning the Promotion of Collective Bargaining (adopted 19 June 1981, entered into force 11 August 1983) C154. See Chapter 3, Sub-section 4.1.
[285] Kovács (n 282) 148–149.

their right to negotiate and conclude collective agreements'.[286] Moreover, the AMWD does not seek to undermine 'the competence of Member States in setting the level of minimum wages, as well as … the choice of the Member States to set statutory minimum wages, to promote access to minimum wage protection provided for in collective agreements, or both'.[287] In this context, Recital 10 AMWD recognises that persons with disabilities and those individuals experiencing multiple discriminations 'still have a higher probability of being minimum wage or low wage earners than other groups'.[288] In addition, the preamble refers to the CRPD, noting that the Convention requires that all 'workers with disabilities receive equal remuneration for work of equal value', a principle which is highlighted as 'also relevant with regard to minimum wage protection'.[289]

Article 6(1) AMWD on variations and deductions therefore reminds of the application of non-discrimination in setting minimum wages. As such, it provides that a different rate of statutory minimum wage for specific groups of workers, such as those with disabilities, would be contrary to the principle, and therefore it would 'constitut[e] prima facie direct discrimination' according to Grzebyk.[290] Article 11 AMWD also explicitly refers to persons with disabilities indicating that Member States must ensure that information on statutory minimum wages and protection provided through collective agreements, including on redress mechanisms, must be made publicly available 'in a comprehensive and easily accessible way, including to persons with disabilities'. The aim here is to ensure that all the workers concerned 'can effectively benefit from their rights to statutory or collectively-agreed minimum wages',[291] making it a particularly useful provision for those CCS professionals with disabilities that can benefit from the framework provided under the AMWD.

As for the professionals concerned, Recital 21 and Article 2 AMWD are rather useful to determine the personal scope of the Directive and relevance to those working in the CCS. Article 2 AMWD indicates that it covers 'workers in the Union who have an employment contract or employment relationship as defined by law, collective agreements or practice in force in each Member State', while consideration should be given to the case law of the CJEU for determining the status of worker. Therefore, as set out in the preamble, the

[286] AMWD, art 1(2).
[287] AMWD, art 1(3).
[288] AMWD, recital 10.
[289] AMWD, recital 15.
[290] Piotr Grzebyk, 'Variations and Deductions (Article 6)' in Luca Ratti, Elisabeth Brameshuber and Vincenzo Pietrogiovanni (eds), *The EU Directive on Adequate Minimum Wages: Context, Commentary and Trajectories* (Hart 2024) 224. See also AMWD, art 6(1).
[291] Jérôme Porta, 'Final Provisions (Articles 14–19)' in Luca Ratti, Elisabeth Brameshuber and Vincenzo Pietrogiovanni (eds), *The EU Directive on Adequate Minimum Wages: Context, Commentary and Trajectories* (Hart 2024) 322.

AMWD can concern a variety of professionals, and apply to 'workers in both the private and the public sectors', but also on-demand workers, intermittent workers, voucher-based workers, platform workers, trainees, or apprentices.[292]

The AMWD goes further, as it indicates that it can also cover other non-standard workers, as well as bogus self-employed and undeclared workers.[293] With regards to the AMWD, Menegatti argues that '[t]he capacious "container" that is the CJEU concept of a worker' may also be understood to include 'economically and functionally dependent self-employed individuals [but not] self-employed workers and entrepreneurs with "direct" access to the markets they work in'.[294] Not discarding the potentiality that there are also many genuinely self-employed professionals in the CCS, the AMWD has therefore the potential to interest a 'broad working population',[295] including in the sectors under study. The AMWD could also mean higher wages for those professionals with disabilities, who are more likely to be minimum or low wage earners. Indeed, the Directive appears to have had a major impact on certain Member States since its adoption, as it fostered 'the dynamic development of minimum wages' and promoted a 'trend towards significant nominal minimum wage increases'.[296]

However, the future of the AMWD is also suspended to an incoming ruling from the CJEU[297] following the annulment action brought forward by Denmark for a lack of legal basis, and the unfavourable opinion of Advocate General Emiliou.[298] Additionally, van Andel and Loots have warned that 'cultural sectors' and their labor markets' composition can become strongly affected by measures that have good intentions but do not discriminate between groups'.[299] By driving wage costs for employers in the CCS upwards without consideration for the existing patterns of inequalities in the sectors, it could also be that the AMWD negatively impacts on the 'opportunities of those

[292] AMWD, recital 21.
[293] AMWD, recital 21.
[294] Emanuele Menegatti, 'Scope (Article 2)' in Luca Ratti, Elisabeth Brameshuber and Vincenzo Pietrogiovanni (eds), *The EU Directive on Adequate Minimum Wages: Context, Commentary and Trajectories* (Hart 2024) 167.
[295] Menegatti, 'Scope (Article 2)' (n 294) 167.
[296] Malte Luebker and Thorsten Schulten, 'WSI Minimum Wage Report 2025: Reorientation of Minimum Wage Policy Leads to Real Increases' (Report No 100, WSI Institute of Economic and Social Research 2025) 1, 17.
[297] Case C–19/23 *Kingdom of Denmark v European Parliament and Council of the European Union* (Action brought on 18 January 2023) [2023] OJ C104/22.
[298] See Case C–19/23 *Kingdom of Denmark v European Parliament and Council of the European Union* [2025] ECLI:EU:C:2025:11, Opinion of AG Emiliou. See also Sacha Garben, 'Choosing a Tightrope Instead of a Rope Bridge – The Choice of Legal Basis for the AMW Directive' in Luca Ratti, Elisabeth Brameshuber and Vincenzo Pietrogiovanni (eds), *The EU Directive on Adequate Minimum Wages: Context, Commentary and Trajectories* (Hart 2024); Claire Kilpatrick and Marc Steiert, 'A Little Learning Is a Dangerous Thing: AG Emiliou on the Adequate Minimum Wages Directive (C-19/23, Opinion of 14 January 2025)' [2025] EUI LAW Working Paper 1.
[299] Walter van Andel and Ellen Loots, 'Measures for the Betterment of the Labor Market Position of Non-Standard Working Regimes in the Cultural and Creative Sector in the Netherlands' (2022) 28 International Journal of Cultural Policy 431, 441.

individuals and groups willing to work in the [CCS] … leaving the strive for a "just" sector most likely unanswered'.[300]

6.1.2. The Pay Transparency Directive

The Pay Transparency Directive was adopted a few months after the AMWD. It focuses primarily on strengthening 'the application of the principle of equal pay for equal work or work of equal value between men and women … enshrined in Article 157 TFEU and the prohibition of discrimination' contained in the Recast Gender Directive.[301] To do so, it lays down minimum requirements for pay transparency and seeks to reinforce enforcement mechanisms. It particularly calls on Member States to make the necessary arrangements to guarantee that 'employers have pay structures ensuring equal pay for equal work or work of equal value'.[302]

The preamble to the Pay Transparency Directive recognises that gender-based pay discrimination 'may involve an intersection of various axes of discrimination or inequality' including for women with disabilities, a group 'which may face intersectional discrimination'.[303] As such, it encourages the competent authorities to take due account of any situation of disadvantage that could be linked to such combination of discrimination grounds.[304] In this context, Article 8 sets out that employers must provide to workers and applicants the information related to pay transparency prior to employment, pay setting and pay progression policy, and their right to information –in a format accessible to persons with disabilities.

The Directive applies to all workers 'who have an employment contract or employment relationship as defined by law, collective agreements and/or practice in force in each Member State' with consideration to the CJEU case law.[305] Recital 18 specifies that this can include part-time workers, workers on a fixed-term contract, temporary agency workers and under certain circumstances on-demand workers, intermittent workers, voucher-based workers, workers in sheltered employment, platform workers, trainees, or apprentices. The Directive also concerns applicants for employment, in some circumstances.[306] However, it does not mention self-employed individuals, nor those in bogus self-employment. In this respect, it may be perceived as having a narrower scope

[300] van Andel and Loots (n 299) 441.
[301] Pay Transparency Directive, art 1.
[302] Pay Transparency Directive, art 4.
[303] Pay Transparency Directive, recital 25.
[304] Pay Transparency Directive, recital 25.
[305] Pay Transparency Directive, art 2(2).
[306] Pay Transparency Directive, art 2(3).

with regards to the type of CCS professionals being able to benefit from strengthened pay transparency and enforcement mechanisms.

Similarly to the AMWD, the Pay Transparency Directive concerns employers in public and private sectors.[307] However, reporting obligations on the pay gap between female and male workers do not apply to those employers with fewer than a hundred workers[308] –a sign for some that 'the protection of economic interests seems to take precedence over the social fight against the [gender pay gap]'.[309] This means that many of the micro-enterprises which form the majority of the enterprises in the CCS will not have to provide such information.[310]

Nevertheless, in certain circumstances, the Pay Transparency Directive, which Member States must transpose by June 2026, should hopefully bolster access to pay information in a transparent manner for cultural and creative professionals with disabilities. It will essentially benefit the CCS professionals with disabilities who have an employment relationship or contract, with employers above the hundred workers threshold, and in particular, women with disabilities, allowing them to 'better understand their relative position within the broader wage structure'[311] in the CCS.

6.2. Legislation on Non-standard Forms of Work

As mentioned throughout this thesis and more particularly in chapter 1, the CCS are also characterised by non-standard forms of employment.[312] Since the late nineties, the EU has sought to legislate on these more flexible forms of work and extended the application of the principle of equal treatment to those workers.[313] EU labour law has therefore ascertained the application of equal treatment, and the prohibition of discrimination to non-standard forms of work and 'to specific vulnerable groups on the labour market'.[314] In this context, this sub-section discusses how such development of EU labour law can be relevant for the participation of professionals with disabilities in the CCS. To do so, it

[307] Pay Transparency Directive, art 2(1).
[308] Pay Transparency Directive, art 9(5).
[309] Vincenzo Mignano, 'Gender Pay Gap: The Protection of the Right to Equal Pay under the Pay Transparency Directive' (2024) 27 Zeitschrift für Europarechtliche Studien 371, 392.
[310] Eurostat, 'Culture Statistics - Cultural Enterprises' (*Statistics Explained*, 11 August 2025) <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Culture_statistics_-_cultural_enterprises> accessed 12 September 2025.
[311] Sara Benedí Lahuerta, Katharina Miller and Laura Carlson, 'Introduction: Pay Inequity - Old Problems, New Solutions?' in Sara Benedí Lahuerta, Katharina Miller and Laura Carlson (eds), *Bridging the Gender Pay Gap through Transparency* (Edward Elgar 2024) 2.
[312] European Commission, *The Status and Working Conditions of Artists – OMC Report* (n 12) 21. See also Chapter 1, Sub-section 2.2.
[313] Bell, 'The Principle of Equal Treatment: Widening and Deepening' (n 225) 623.
[314] Petra Herzfled Olsson, 'Collective Bargaining and Equal Treatment' in Beryl Ter Haar and Attila Kun (eds), *EU Collective Labour Law* (Edward Elgar 2021) 398–399.

particularly discusses, in the context of the CCS, the so-called 'Atypical Work Directives', meaning the Part-time Work Directive (PTWD)[315] and the Fixed-term Work Directive (FTWD)[316] –which are both the result of framework agreements concluded by cross-industry social partners– and the Temporary Agency Work Directive (TAWD).[317] It also considers the Platform Work Directive, which is one of the latest additions to the EU legal framework.[318]

In summary, the PTWD establishes the general framework for eliminating discrimination against part-time workers, improving the quality of part-time work and contributing to the development of the potential of part-time work.[319] Similarly, the FTWD sets out general principles and minimum requirements for fixed-term work, providing for the improvement of the quality of fixed-term work through the application of the principle of non-discrimination and the establishment of a framework to prevent abuses.[320] It does not apply to temporary agency work,[321] as this is the purpose of the TAWD, which focuses on establishing a suitable and protective framework for temporary agency workers by ensuring the application of the principle of equal treatment to temporary agency workers, as well as transparency and proportionality.[322] In view of 'the emerging phenomenon of work via digital platforms',[323] the Platform Work Directive focuses more on addressing how '[d]igitalisation is changing the world of work', and introduces measures to improve working conditions and the protection of personal data in platform work.[324]

As is evident from the aims pursued by the different Directives, none focus solely on non-discrimination and equality. Nevertheless, it appears that 'the principle of equal treatment … lies at their heart'.[325] Both the PTWD and FTWD elaborate on the principle of equal treatment and non-discrimination through key clauses of the framework agreements they implement[326] and provide that part-time workers and fixed-term workers shall not be

[315]Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC [1997] OJ L14/9 (PTWD).
[316] Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP [1999] OJ L175/43 (FTWD).
[317] Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work [2008] OJ L327/9 (TAWD).
[318] These acts have also been discussed, among others, in the following literature. See Massimiliano Delfino, 'Work in the Age of Collaborative Platforms between Innovation and Tradition' (2018) 9 European Labour Law Journal 346; Bell, 'EU Equality Law and Precarious Work' (n 273) 94; Doherty and Franca (n 192); Anne Pieter van der Mei, 'Fixed-Term Work: Recent Developments in the Case Law of the Court of Justice of the European Union' (2020) 11 European Labour Law Journal 66, 67. See also Chapter 6, Sub-section 3.2 on the Platform Work Directive.
[319] PTWD, annex, cl 1.
[320] FTWD, annex, cl 1.
[321] FTWD, annex, preamble.
[322] TAWD, recital 12 and art 2.
[323] Bell, 'EU Equality Law and Precarious Work' (n 273) 94.
[324] Platform Work Directive, recital 4 and art 1(1).
[325] Bell, 'The Principle of Equal Treatment: Widening and Deepening' (n 225) 623.
[326] Herzfled Olsson (n 314) 404.

treated less favourably than full-time workers 'unless different treatment is justified on objective grounds'.[327] Article 5(1) TAWD expands on the application of the principle of equal treatment (and derogations) to the situation of temporary agency workers who should benefit, at least, of the basic working and employment conditions than if they had been recruited directly for the same position. This means that they must benefit from the application of non-discrimination measures, including based on disability.[328] The Platform Work Directive broaches more explicitly on the topic of equal treatment in relation to the human oversight of automated monitoring systems and automated decision-making systems of digital labour platforms, as the latter are obliged to carry out an evaluation of the impact of the decisions taken, notably with regard to equal treatment at work.[329] It also precludes digital labour platforms to process any personal data to infer the disability of the person performing platform work.[330]

The personal scope of those Directives is one which highlights their relevance to the situation of CCS professionals with disabilities, as they apply to categories of workers which are likely present in the CCS.[331] This includes, respectively, part-time workers[332] and fixed-term workers with an employment contract or employment relationship,[333] temporary agency workers 'with a contract of employment or employment relationship with a temporary-work agency who are assigned to user undertaking',[334] and 'every person performing platform work in the Union who has or who, on the basis of an assessment of the facts, is deemed to have an employment contract or employment relationship as defined by the law, collective agreements or practice'.[335]

With the role of digital labour platforms becoming rather prominent in the CCS,[336] there is no doubt that the Platform Work Directive could become relevant, once transposed,[337] to cultural and creative professionals with disabilities. The Platform Work Directive is a significant achievement in that respect, especially because it weaves the consideration of equal treatment and risks of discrimination in the oversight and evaluation of algorithmic management in platform work, but also because it introduces 'measures to facilitate the determination of the correct employment status of persons performing platform work',[338]

[327] PTWD, annex, cl 4; FTWD, annex, cl 4(1).
[328] TAWD, art 5(1)(b).
[329] Platform Work Directive, art 10(1).
[330] Platform Work Directive, art 7(1)(e).
[331] See Chapter 1, Sub-section 2.2.
[332] PTWD, annex, cls 2 and 3(1).
[333] FTWD, annex, cls 2 and 3(1).
[334] TAWD, arts 1(1) and 3(1)(c).
[335] Platform Work Directive, art 1(2).
[336] See, among others, Alacovska, Bucher and Fieseler (n 177); Gardiner (n 177).
[337] As per Article 29(1) of the Platform Work Directive, the transposition deadline is set to 2 December 2026.
[338] Platform Work Directive, art 1(1)(a).

which could benefit those falsely self-employed professionals, as discussed earlier in this chapter.[339] This opens up the EU legal framework to the legal presumption of status, whereas the Court had been somewhat reluctant to it in the past.[340]

Interestingly, the issue of the employment relationship of CCS professionals is one that has also been discussed by the CJEU, and continues to be referred to it, with regards to the abuse of fixed-term contracts in the CCS.[341] In *Martina Sciotto* for instance, the case concerned a ballet dancer's request to see successive fixed-term employment contracts reclassified as an employment relationship of an indefinite duration.[342] In this context, the national legislation at issue did not provide any limit to the successive use of fixed-term employment relationships or contracts –addressed in clause 5(1) of the framework agreement enshrined in the FTWD– for the operatic and orchestral foundations, when common law rules governing employment relationships did.[343] While it recognised that artistic or technical requirements linked to the performance of a spectacle may lead to temporary recruitment needs, the CJEU found that national legislation allowing the fixed and permanent renewal of fixed-term employment contracts could not be justified on this basis, and that, in the case at hand, it actually covered usual programming needs.[344] Pointing out that this would likely lead to discrimination with fixed-term workers in other sectors, the CJEU also suggested that the common rule –the automatic transformation into a contract of indefinite duration– would prevent such abuse.[345] A similar dispute on the renewal of fixed-term contracts has since come before the Court, involving another ballet dancer in the Italian operatic and orchestral sector who worked under various self-employment contracts between 2014 and 2019, and is therefore seeking the recognition of her employment status.[346] This case remains to be decided.

Thus, although recent case law has confirmed that the prohibition of discrimination on the basis of disability shall benefit those employed and self-employed,[347] not all issues linked to self-employment, and even non-standard work, have been resolved, especially

[339] See Chapter 6, Sub-section 3.2.
[340] Case C–255/04 *Commission of the European Communities v French Republic* [2006] ECLI:EU:C:2006:401, para 55. See also, Nicola Kountouris, 'The Concept of "Worker" in European Labour Law: Fragmentation, Autonomy and Scope' (2018) 47 Industrial Law Journal 192, 212.
[341] Case C–331/17 *Martina Sciotto v Fondazione Teatro dell'Opera di Roma* [2017] ECLI:EU:C:2018:859 (Martina Sciotto); Case C–668/24 *UX v Fondazione Teatro alla Scala di Milano* (Request for a preliminary ruling from the Tribunale di Milano (Italy) lodged on 11 October 2024) [2025] OJ C2025/528.
[342] Case C–331/17 *Martina Sciotto*, para 2.
[343] Case C–331/17 *Martina Sciotto*, para 36.
[344] Case C–331/17 *Martina Sciotto*, paras 46–54.
[345] Case C–331/17 *Martina Sciotto*, para 70–71.
[346] See Case C–668/24 *UX v Fondazione Teatro alla Scala di Milano.*
[347] See Chapter 6, Sections 2 and 3.

as the EU lacks competence with regards to 'the classification of CCS professionals'.[348] These limitations, intrinsic to the nature of EU law at present, must stimulate reflection on how to leverage on current legislation in an attempt to promote the participation of CCS professionals with disabilities, especially when they find themselves in non-standard work situations.

As discussed here, through the prism of equal treatment and discrimination, the four Directives can play a key role as they relate to non-standard forms of work that are somewhat mainstream in the CCS. This includes temporary agency work, which, for instance, can be used in the context of the organisation of temporary events like festivals. Indeed, in relying on the principle of equal treatment, albeit with some possible derogations for the PTWD, FTWD and TAWD, the Directives can contribute to enhancing working conditions for all CCS professionals in the EU, especially in the context of 'changing European labour markets'.[349] Moreover, they have the potential to advance the participation of cultural and creative professionals with disabilities in the EU by addressing more directly disability-based discrimination, like for the TAWD, and to some extent the Platform Work Directive, but also by considering some forms of work which –rather than instinctively being the result of discrimination–[350] are also accommodating of work-life balance needs[351] and of persons with disabilities' personal and health concerns, like part-time work.[352]

It also appears that the 'original' Atypical Work Directives 'and the Equality Directives often intersect in their application',[353] and the same will likely be true with the Platform Work Directive. Still, the protection offered under equality law –including under the Employment Equality Directive– is stronger than that offered by non-standard work legislation.[354] In view of the nature of the CCS labour market, as highlighted in chapter 1, such intersection is likely to concern a range of CCS professionals with disabilities,

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[348] Christa Kammerhofer-Schlegel and others, *EU Framework for the Social and Professional Situation of Artists and Workers in the Cultural and Creative Sectors: European Added Value Assessment* (EPRS, European Parliament 2023) 41.

[349] See Caroline de la Porte and Patrick Emmenegger, 'The Court of Justice of the European Union and Fixed-Term Work: Putting a Brake on Labour Market Dualization?' (2017) 27 Journal of European Social Policy 295, 307.

[350] Still, with regards to the ground of gender, De Vos notes; 'When a differential treatment between part-time and full-time work is suspicious because it disproportionately affects women, to name a famous example, indirect sex discrimination recognizes the differences in career opportunities that partly explain why women tend to work more part-time than men'. See, Marc De Vos, 'The European Court of Justice and the March towards Substantive Equality in European Union Anti-Discrimination Law' (2020) 20 International Journal of Discrimination and the Law 62, 69.

[351] See Sophie Robin-Olivier and Antonio Lo Faro, 'Collective Bargaining in EU Law' in Teun Jaspers, Frans Pennings and Saskia Peters (eds), *European Labour Law* (1st edn, Intersentia 2019) 208.

[352] Ricardo Pagán, 'Transitions to Part-Time Work at Older Ages: The Case of People with Disabilities in Europe' (2012) 27 Disability & Society 95, 101. See also Tom Shakespeare, *Disability Rights and Wrongs Revisited* (2nd edn, Routledge 2014) 31–32.

[353] Bell, 'EU Equality Law and Precarious Work' (n 273) 93.

[354] Bell, 'EU Equality Law and Precarious Work' (n 273) 93.

who find themselves in more precarious and non-standard situations, because they work in these sectors and/or in relation to their disability. In these instances, Bell argues that 'there is a need to ensure that the potential application of both sources of law are considered in litigation', especially as precariousness and the grounds protected in EU non-discrimination legislation are often closely interconnected,[355] including for disability.

6.3. Additional Instruments Addressing Working Conditions and Expanding the Application of the Principle of Equal Treatment

If the competence in the area of social policy is shared, Member States keep the upper hand, prompting Jacobs to note that the EU seldom makes use 'of its social competence'.[356] Yet, more of the EU social acquis advances the application of the principle of equal treatment in the CCS, particularly under the prism of working conditions. As such, the EU social acquis is considered to be both 'wide and modest'.[357] Thanks to the protection afforded in EU secondary legislation, which was put forward to modernise the existing legal framework, this acquis advances many social rights,[358] and favours rights of direct interest to persons with disabilities and some less so.

In the context of this chapter, this sub-section questions whether the EU social acquis, in setting requirements for better working conditions in the EU, further advances the application of the principle of equal treatment in the CCS to the benefit of professionals with disabilities. In doing so, it particularly refers to the point made by an interviewee, who highlighted the possibility to shine a light on the 'structural issue' of diversity in the sectors, including for persons with disabilities, while using 'the issue of working conditions within the cultural and creative sectors [as a] broad framework for discussion' (EU CCS 7). Echoing the contributions of several participants, the European Labour Authority also highlights the 'structural precarious working conditions' at play in the CCS, and which concern millions of employees, self-employed people, and cultural enterprises in the EU.[359]

[355] Bell, 'EU Equality Law and Precarious Work' (n 273) 93–94. In his chapter, the author particularly discusses the interaction of precarity with gender and age.
[356] Antoine Jacobs, 'Labour Law, Social Security Law and Social Policy after the Entering into Force of the Treaty of Lisbon' (2011) 2 European Labour Law Journal 119, 136.
[357] Miet Vanhegen and Frank Hendrickx, 'Disability in EU Labour Law beyond Non-Discrimination' in Delia Ferri and Andrea Broderick (eds), *Research Handbook on EU Disability Law* (Edward Elgar 2020) 149–150.
[358] See European Commission, 'The EU social acquis' (Staff Working Document) SWD(2016) 50 final, 6
[359] See Hauben and others (n 200) 10, 18.

Against this background, it is interesting to outline the intersection between the consideration of equal treatment and working conditions, which is perhaps more obvious in the Work-Life Balance Directive[360] and the Posted Workers Directive.[361] This section also considers health and safety legislation, as well as the Working Time Directive and the Working Conditions Directive.[362] As mentioned already in this thesis, social protection and social security were not discussed in the qualitative study and are therefore not raised here either.

6.3.1. The Work-Life Balance Directive

The Work-Life Balance Directive, which is directly linked to the European Pillar of Social Rights (the 'Pillar' or EPSR),[363] mentions specifically the Convention in its preamble.[364] It seeks to contribute to the Treaty-based goal of equal treatment at work by reconciling work and family life,[365] and requires Member States to make arrangements with regard to parental leave which take account of the situation of parents with disabilities, as well as of parents of children with disabilities.[366] Recital 37 further encourages Member States to assess 'whether conditions for access to, and the detailed arrangements for, exercising the right to paternity leave, carers' leave and flexible working arrangements should be adapted to particular needs', including for parents with disabilities. Still, the latter arrangements do not equate the duty to provide reasonable accommodation.[367] In this respect, Article 11 of the Work-Life Balance Directive provides for the prohibition of discrimination between those workers that have applied for, or have taken leave or time off, or exercised their rights to flexible arrangements, and makes its own complimentary contribution to EU non-discrimination law.[368]

The Work-Life Balance Directive is therefore more of interest to a subset of CCS professionals with disabilities, namely those workers who are parents or carers, and who can benefit of the minimum requirements it sets out with regards to paternity leave,

[360] Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU [2019] OJ L188/79 (Work-Life Balance Directive).
[361] Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services [1996] OJ L18/1 (Posted Workers Directive).
[362] See Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time [2003] OJ L299/9 (Working Time Directive); Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union [2019] OJ L186/105 (Working Conditions Directive).
[363] European Commission, *European Pillar of Social Rights* (Publications Office 2017).
[364] Work-Life Balance Directive, recital 4.
[365] Work-Life Balance Directive, recital 16 and art 1.
[366] Work-Life Balance Directive, art 5(8).
[367] Mark Bell and Lisa Waddington, 'Similar, yet Different: The Work-Life Balance Directive and the Expanding Frontiers of EU Non-Discrimination Law' (2021) 58 Common Market Law Review 1401, 1429.
[368] See Bell and Waddington, 'Similar, yet Different' (n 367).

parental leave, and carers' leave, and to flexible working arrangements. In fact, with the Directive also aiming to contribute specifically to the goal of equality between men and women, the Directive can be thought as one '*for* equality'[369] in the CCS, which would be of particular relevance to female CCS professionals with disabilities in the EU.[370]

6.3.2. The Posted Workers Directive

On a different topic, the Posted Workers Directive focuses on the situation of workers in a cross-border context and sets out 'mandatory provisions regarding working conditions and the protection of workers' health and safety', which must be respected during their posting.[371] In that respect, it calls on Member States to ensure that undertakings guarantee to posted workers the terms and conditions of employment, including provisions on non-discrimination, which are set out in the Member State where the work is carried out.[372]

The relevance of the latter Directive to CCS professionals is especially salient for those in the live performance sector, who tend to cross borders for very short stays.[373] It would seem to have less application perhaps for the rest of the CCS. Admittedly, however, there is less data available that would help identify the cross-border mobility habits of other professionals, including those moving for residencies abroad like visual artists, or those involved in cross-border audiovisual productions in the EU.[374]

6.3.3. Health and Safety Legislation

Other dimensions of EU legislation relating to working conditions can prove of interest to CCS professionals with disabilities. In that respect, persons with disabilities are considered in several instruments and particularly within the remit of the EU workplace health and safety legislation,[375] which addresses issues such as health and safety

[369] Álvaro Oliveira, Miguel De la Corte-Rodríguez and Fabian Lütz, 'The New Directive on Work-Life Balance: Towards a New Paradigm of Family Care and Equality?' (2020) 45 European Law Review 295, 319 (emphasis added by the author).
[370] See European Parliament Resolution of 21 November 2023 with Recommendations to the Commission on an EU framework for the social and professional situation of artists and workers in the cultural and creative sectors (2023/2051(INL)) [2024] OJ C2024/4208 (European Parliament Resolution on an EU framework for artists), para 55.
[371] Posted Workers Directive, art 1(-1).
[372] Posted Workers Directive, art 3(1)(g).
[373] Frederic De Wispelaere and others, *Cross-Border Employment in the Live Performance Sector Exploring the Social Security and Employment Status of Highly Mobile Workers* (HIVA-KU Leuven 2021) 104, 170–171. See also, Frederic De Wispelaere and Marco Rocca, 'The Dark Side of the Tour. Labour and Social Security Challenges of Highly Mobile Workers in the Live Performance Sector' (2020) 21 ERA Forum 35.
[374] See Hauben and others (n 200) 14.
[375] See Vanhegen and Hendrickx (n 357) 149–151.

requirements, and workplace accommodation.[376] In this respect, the most recent EU strategic framework on Health and Safety at Work mentions persons with disabilities.[377] As mentioned in chapter 1, the Occupational Safety and Health (OSH) regulatory framework makes references to those working in the CCS, albeit it limitedly covers self-employed professionals who are expected to be responsible for their own health and safety.[378]

Yet, research shows that cultural and creative professionals 'struggle with some occupational safety and health risks [including] loud noise … carrying and moving heavy loads … tiring and painful positions … and repetitive hand or arm movements' compared to the EU average.[379] This gap in protection is also found in those instruments seeking to regulate the organisation of working time, through minimum health and safety requirements, or to improve working conditions by promoting more transparent and predictable employment.[380]

6.3.4. The Working Time Directive and the Working Conditions Directive

Both the Working Time Directive and the Working Conditions Directive lay down standards that should contribute to improve the participation of CCS professionals with disabilities. Interestingly, the Working Time Directive makes explicit reference to its application to the cultural sector –by reference to the OSH Framework Directive.[381] Yet, both Directives are not intended to apply to self-employed professionals, beyond those who meet the criteria, developed in the case law of the CJEU, to be considered as workers.[382]

In addition, the Working Time Directive allows for many derogations to the rights it establishes for certain categories of workers or sectors, including through collective

[376] See among others, Council Directive 89/654/EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace (first individual directive within the meaning of Article 16 (1) of Directive 89/391/EEC) [1989] OJ L393/1, annex I.
[377] See European Commission, 'EU strategic framework on health and safety at work 2021-2027: Occupational safety and health in a changing world of work' (Communication) COM(2021) 323 final, 6, 13–14, 18.
[378] Council Recommendation 2003/134/EC of 18 February 2003 concerning the improvement of the protection of the health and safety at work of self-employed workers [2003] OJ L53/45. See also Chapter 1, Sub-section 2.4.
[379] Muszyński and Gromada (n 167) 13–14.
[380] Working Time Directive, art 1(1); Working Conditions Directive, art 1(1).
[381] Working Time Directive, art 1(3). See also Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work [1989] OJ L183/1 (OSH Framework Directive), art 2.
[382] For the Working Conditions Directive, see recital 8 and art 1(2). For the Working Time Directive, see Case C–428/09 *Union syndicale Solidaires Isère v Premier ministre and Others* [2010] ECLI:EU:C:2010:612, para 27–32; Martin Risak and Thomas Dullinger, *The Concept of 'Worker' in EU Law: Status Quo and Potential for Change* (European Trade Union Institute (ETUI) 2018) 24. On the concept of worker in the CJEU's case law, see also Case C–66/85 *Lawrie-Blum*; Case C–413/13 *FNV Kunsten*.

agreements, as well as individual opt-out derogations.[383] Notably, it provides that derogations may be adopted 'in the case of activities involving the need for continuity of service or production' including the press, radio, television, or cinematographic production.[384] In that respect, the latest report on the implementation of the Directive indicates that in certain Member States some of the CCS professionals are excluded from the scope of the legislation, including those in the libraries or museums sectors.[385] In this context, and as discussed later in this chapter,[386] social partners can play an important role especially when reaching collective agreements which advance the rights of professionals in the CCS with regards to working time and working conditions. This recently happened in the German audiovisual sector.[387] Indeed, in 2024, German social partners concluded a new collective agreement covering film professionals, and providing improvements in terms of reduced working hours, salary increases or pension scheme.[388]

Overall, one can question the relevance and adequacy of such EU legislation for the CCS, especially knowing that non-standard working time –including night-time work, working more than five days a week, working in free time to meet work demands, long working hours or working at short notice– remains characteristic of working in the CCS, and stands out compared to what all EU workers declare on average.[389] Such claim of inadequacy finds maybe the best resonance with the recent call from the European Parliament for a Directive on decent working conditions in the CCS, known for their structural use of atypical workers.[390]

The relevance of those Directives with the ways of working of the CCS would perhaps better be studied on a national and/or sectoral level. Nevertheless, it can also be noted that neither of them mentions workers with disabilities, even the Working Conditions Directive which was adopted after the conclusion of the CRPD. This is unfortunate knowing that the consequences of unpredictable working conditions and non-standard working time may be more acutely felt by professionals with disabilities, if they struggle

[383] Working Time Directive, arts 18 and 22. On derogations and exceptions, see Working Time Directive, chap 5.
[384] Working Time Directive, art 17(3)(c)(iii).
[385] European Commission, 'Detailed report on the implementation by Member States of Directive 2003/88/EC concerning certain aspects of the organisation of working time' (Staff Working Document) SWD(2023) 40 final, 4.
[386] See Chapter 6, Sub-section 7.2.
[387] UNI Europa, 'ver.di Landmark Agreement "Greatest Progress for Film Workers in Decade"' (*UNI Europa*, 16 October 2024) <https://www.uni-europa.org/news/ver-di-landmark-agreement-film-workers/> accessed 28 May 2025.
[388] See ver.di-Bundesvorstand, 'Tarifabschluss für Filmproduktionen: Neuer Tarifvertrag für Filmschaffende mit Arbeitszeitkürzungen, branchenweiter Altersvorsorge und Gagenerhöhungen – erste Regelungen zum Einsatz von KI' (2024).
[389] See Muszyński and Gromada (n 167) 75.
[390] See European Parliament Resolution on an EU framework for artists, annex, 1.

to adapt to 'the intensity, variability of responsibilities and extremely long days' that characterises some sectors.[391]

Overall, the pieces of EU labour law discussed here, together with the Employment Equality Directive, have undoubtedly a role to play in fostering the full and effective participation of professionals with disabilities in the CCS. Additionally, several of the acts mentioned in this chapter also point to the importance of disseminating information to the persons concerned on the adopted provisions, as well as ensuring social dialogue and dialogue with non-governmental organisations. Some of those aspects are therefore discussed at greater length in the following sections, with the aim to shine a light on the role of equality bodies, of social partners, and of the European Commission –through the Disability Employment Package– to facilitate the application of the principle of equal treatment in the CCS.

7. Facilitating the Application of EU Law in the CCS: The Role of Equality Bodies and Social Partners

As already mentioned earlier in this chapter, a number of participants readily recognised the existence of laws and regulations on non-discrimination that would apply in the CCS. However, they also pointed to the need for more support to find solutions for the CCS. In that respect, this section seeks to highlight some of the regulatory framework, and mechanisms at play at the EU level, which can foster the application of the principle of equal treatment in the CCS, particularly through equality bodies, and social partners.

7.1. Leveraging on the Equality Bodies Directives

Equality bodies are not mentioned in the Employment Equality Directive. By contrast, they are considered in earlier and later legislation, including the different Equality Directives, and other Directives on Pay Transparency or Work-Life Balance, as bodies which serve the purpose of promoting equal treatment in their respective Member States.[392] This demonstrates how they are perceived as useful and key to action the rights protected in most of the EU legislation mentioned in this chapter. As such, this sub-section seeks to highlight how the adoption of the Equality Bodies Directives,[393] and in

[391] See Keith Randle and Kate Hardy, 'Macho, Mobile and Resilient? How Workers with Impairments Are Doubly Disabled in Project-Based Film and Television Work' (2017) 31 Work, Employment and Society 447, 456.
[392] Race Equality Directive, art 13; Gender Goods and Services Directive, art 12; Recast Gender Directive, art 20; Gender Self-employment Directive, art 11; Work-Life Balance Directive, art 15; Pay Transparency Directive, art 28.
[393] Council Directive (EU) 2024/1499 of 7 May 2024 on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in matters of employment and occupation

particular Council Directive (EU) 2024/1499 (as it relates to the Employment Equality Directive), can contribute to addressing the discriminatory barriers which hinder the participation of professionals with disabilities in the CCS.

All Member States have equality bodies pursuant to the Race Equality Directive and the Gender Equality Directives and their establishment has led to good practices. However, Recital 10 of the Council Directive (EU) 2024/1499 highlights how 'many equality bodies face challenges, in particular concerning the resources, independence and powers necessary to perform their tasks'.[394] Such issues particularly spurred the drafting of the aforementioned Directive and the development of minimum requirements for the functioning of equality bodies 'to improve their effectiveness and guarantee their independence in order to strengthen the application of the principle of equal treatment' derived from the Employment Equality Directive, among other legislation.[395] In this respect, Member States are required to transpose Council Directive (EU) 2024/1499 by 19 June 2026.[396]

In brief, this Directive establishes standards for equality bodies to promote equal treatment, prevent discrimination, collect data on discrimination and assist victims, in accordance with the Employment Equality Directive, while onus is also placed on taking into account intersectional discriminations.[397] The roles of the equality bodies can be broadly divided between two types of action; promotion and prevention on one side,[398] and access to justice and remedy[399] on the other.[400] Therefore, Council Directive (EU) 2024/1499 may be particularly interesting to address what an interviewee saw as something that, in part, 'has to do with awareness raising [and] having experts who accompany the employers' in being more inclusive and accessible (EU CCS 2). Indeed, Article 5 of the Directive especially focuses on awareness-raising, prevention, and promotion activities of equality bodies. It calls on Member States to ensure that bodies can, among others things, mainstream equality 'among public and private bodies, providing them with relevant training, advice and support, engaging in public debate,

between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and amending Directives 2000/43/EC and 2004/113/EC [2024] OJ L2024/1499; Directive (EU) 2024/1500 of the European Parliament and of the Council of 14 May 2024 on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and amending Directives 2006/54/EC and 2010/41/EU [2024] OJ L2024/1500.

[394] Council Directive (EU) 2024/1499, recitals 9–10.

[395] Council Directive (EU) 2024/1499, art 1(1).

[396] Council Directive (EU) 2024/1499, art 24.

[397] Council Directive (EU) 2024/1499, recital 16 and arts 5–6, 16.

[398] See Council Directive (EU) 2024/1499, arts 5 and 15–18.

[399] See Council Directive (EU) 2024/1499, arts 6–11.

[400] See Jim Fitzgerald and others, *Understanding the New EU Directives on Standards for Equality Bodies: Legal Digest on Standards for Equality Bodies* (EQUINET - European Network of Equality Bodies 2024) 51–98.

communicating with relevant stakeholders, including the social partners, and promoting the exchange of good practices'.[401] Article 5(1) also requires that Member States adopt measures to raise awareness among the population, and more so, among the people and groups at risk of discrimination, of their rights under the Employment Equality Directive (among other legislation), and of the equality bodies' existence and the services they provide. Interestingly, this responds to one of the concerns of a focus group participant mentioned earlier, and expressed in the following words:

> However, we have to do a lot of explanation and educating the society, for the greater society, so people with disabilities feel more welcome and don't draw back, and also have an opportunity to connect to discrimination as other groups. (FG2 P19)

Moreover, it seems particularly valuable that the equality bodies are granted the right, under Article 10 of the Directive, to act in court proceedings, which must include at least the right to initiate or participate in court proceedings on behalf or in support of one or several victims,[402] or 'the right to initiate court proceedings in its own name, in order to defend the public interest'.[403] Indeed, this may be an interesting avenue to ensure the application of the Employment Equality Directive, especially when there are no complainants 'in certain cases of discrimination', and where 'the abundance or seriousness of cases or the need for legal clarification … could imply that the discrimination is structural or systematic in nature'.[404] This relates to some of the concerns of several participants who highlighted different instances where 'people with disability, then of course, feel unwell in certain situations and they tend to drawback from the cultural industries, kind of their own decision' (FG2 P19), or they 'try to hide the disability' (FG2 P14), suggesting that persons with disabilities might not come forward when experiencing discrimination in the CCS.

As this chapter has highlighted, and done elsewhere, professionals with disabilities are discriminated in the CCS.[405] However, they are, at the same time, likely to be in precarious forms of employment, which could also influence on their willingness and ability to ascertain their rights under the Employment Equality Directive for instance. In such situation, the role of the equality bodies to support or act on behalf of victims of

[401] Council Directive (EU) 2024/1499, art 5(2).
[402] Council Directive (EU) 2024/1499, art 10(3)(a)–(b).
[403] Council Directive (EU) 2024/1499, art 10(3)(c).
[404] Council Directive (EU) 2024/1499, recital 35.
[405] See Urzel Francil (n 13); ADICLUS (n 251).

discrimination in the CCS, or to defend the public interest, would be instrumental to combat disability-based discrimination in the sectors.

In setting out the minimum standards for equality bodies in the field of equal treatment, Council Directive (EU) 2024/1499 also provides for guaranteeing the equal access to the bodies' services and publications, and calls on equality bodies to ensure that complaints can be submitted without obstacles.[406] In that vein, it also provides that persons with disabilities shall be guaranteed equal access to all services and activities of the bodies, and that Member States shall ensure in this regard accessibility and the provision of reasonable accommodation.[407] As the transposition deadline has not been reached, it is unclear how this Equality Bodies Directive will practically improve equality bodies' effectiveness and independence in strengthening the application of the principle of equal treatment in the Union, in a context where social partners have in comparison been given 'a rather peripheral role'.[408]

7.2. A Role for Social Dialogue and Social Partners?

In contrast to equality bodies, the role of social partners and social dialogue is foreseen in Article 13 of the Employment Equality Directive, and in a number of the Directives mentioned throughout this chapter. It is discussed hereinafter in order to appreciate how social partners and social dialogue can participate in the application of the principle of equal treatment in the CCS and in tackling discrimination for the benefit of cultural and creative professionals with disabilities.

Although the adoption of the Employment Equality Directive dates back to the 2000s, evidence confirms that 'disability-based discrimination in recruitment and employment' remains important.[409] In a similar way, and as discussed in chapter 1, it is likely that discrimination in the CCS entails discriminatory hiring practices, and is grounded in the negative perceptions of disability from employers and clients, as well as a certain 'reluctance to make workplaces and workstations accessible, or to offer reasonable accommodations'.[410]

Whilst social partners were not mentioned in the qualitative study, some participants made it clear that, including on the topic of discrimination, they were looking for

[406] Council Directive (EU) 2024/1499, art 12.
[407] Council Directive (EU) 2024/1499, art 13.
[408] Doherty, 'The Path Is Made by Walking' (n 102) 274.
[409] Weber and Cerf (n 100) 15.
[410] See Célia Bouchet, 'Où sont les freins à l'emploi ? Inactivité et chômage parmi les personnes avec une déficience de survenue précoce' (2021) 15 Alter 282, 301.

government action 'which … also involves user organisations to progressively evolve [towards] clearer, sharper regulations', including 'to define and redefine what is meant by the legislation' (FG1 P3). Albeit this remark was directed more at governments rather than social partners, this sub-section argues that the latter could assume such a (re)defining role, and foster the better application of non-discrimination legislation in the CCS, including in making the law more tangible for employers and professionals of the sectors.

Articles 152 to 155 TFEU clarify the 'role afforded *explicitly* in the Treaties to social dialogue'.[411] In this context, the impact of social dialogue on EU law has been particularly acute with a number of framework agreements being adopted, some of which acquired EU law status, like the Framework Agreements on Part-time Work and Fixed-term Work,[412] also discussed with regard to non-standard forms of work. The Employment Equality Directive also makes clear that Member States must take the necessary measures:

> to promote dialogue between the social partners with a view to fostering equal treatment, including through the monitoring of workplace practices, collective agreements, codes of conduct and through research or exchange of experiences and good practices.[413]

Article 13(2) of the Employment Equality Directive also calls on Member States, if the national circumstances allow, to encourage social partners to conclude agreements integrating 'anti-discrimination rules in the fields referred to in Article 3 which fall within the scope of collective bargaining'. As such, social partners are positioned as legitimate and key actors to reaching the objectives set out in the aforementioned legislation, and to advance the application of the principle of equal treatment. More broadly, although social dialogue may not be thriving as it used to,[414] social partners continue to feature in a number of hard and soft law instruments of interest to disability rights in the EU, including the disability strategies[415] or the EPSR.[416]

[411] Doherty and Franca (n 192) 368 (emphasis added by the authors).
[412] See Doherty, 'The Path Is Made by Walking' (n 102) 261.
[413] Employment Equality Directive, art 13(1).
[414] See Doherty and Franca (n 192) 368–369; Matteo Borzaga, 'EU Social Policy, Social Partners, and the Rule of Law' in Luisa Antoniolli and Carlo Ruzza (eds), *The Rule of Law in the EU: Challenges, Actors and Strategies* (Springer 2024) 263–265.
[415] European Commission, 'European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe' (Communication) COM(2010) 636 final (Disability Strategy 2010-2020) 7; Disability Strategy 2021-2030, 14–15.
[416] For a more comprehensive discussion of the role of social partners as actors of EU disability law, see Doherty, 'The Path Is Made by Walking' (n 102).

With disability-based discrimination being on the 'radar' of a majority of the social partners in the EU, their activities have mostly focused on influencing legislation and policy, and on the 'drafting of joint texts/projects/activities'.[417] In this context, cross-industry social partners usually focus on influencing policy and legislation, 'while sectoral organisations are more involved in drafting practical advice and guidelines tailored to the circumstances in their sector or organisation'.[418]

Yet, disability-based discrimination stays prevalent, leading to questioning the action of social partners in the CCS, and social dialogue in the EU. Weber and Cerf highlight a range of challenges, which continue to impede on tackling disability-based discrimination in general.[419] Yet, they also point out that cross-industry social partners in a number of Member States do not, or seldomly, take action in relation to disability-based workplace discrimination, mostly because of a 'lack of capacity/other priorities tak[ing] precedence', and disability not being 'considered to be a significant problem/having already been addressed'.[420] As Doherty points out, the latter reason is rather criticisable,[421] especially in view of the discrimination faced by persons with disabilities in the EU.[422]

A closer look at the work of the EU-level sectoral social partners would seem to confirm some of those tendencies. Indeed, the European Commission promotes social dialogue at the sectoral level particularly for the audiovisual sector and the live performance sector. The Audiovisual Social Dialogue Committee has focused on equal opportunities and diversity as one of the main priorities of its work programme for a number of years.[423] It has done so mostly focusing on implementing a framework of actions on gender equality for the sector, while disability is covered under its activities 'towards the development of a "framework of action" on diversity for the sector', which has just been published.[424] In a similar fashion, when it focuses on equality matters, the European sectoral social

[417] See Weber and Cerf (n 100) 35–36.
[418] Weber and Cerf (n 100) 50.
[419] Weber and Cerf (n 100) 30.
[420] Weber and Cerf (n 100) 50.
[421] Doherty, 'The Path Is Made by Walking' (n 102) 267.
[422] See European Commission, *Discrimination in the European Union* (n 255) 57; OECD (n 256) 38–39.
[423] See EU Audiovisual Sectoral Social Dialogue Committee, 'Working Programme 2013-2014' (2014) <https://circabc.europa.eu/sd/a/32f8daca-803c-4cb5-b8c0-4b6753b9f419/av_wp_2013-2014_rev2014.pdf> accessed 14 August 2025; EU Audiovisual Sectoral Social Dialogue Committee, 'Working Programme 2017-2018' (2016) <https://circabc.europa.eu/sd/a/b6af9c44-1864-44f2-af08-924b85c13ed7/AV-2017-2018-WP.pdf> accessed 14 August 2025; EU Audiovisual Sectoral Social Dialogue Committee, 'Working Programme 2019-2020' (2019) <https://circabc.europa.eu/sd/a/497435cf-5dd7-4a71-913b-8ec55457f060/AV-2019-2020-WP.pdf> accessed 14 August 2025; EU Audiovisual Sectoral Social Dialogue Committee, 'Work Programme 2021-2022' (2020) <https://circabc.europa.eu/sd/a/5ff65eaa-0dd8-47ad-a78f-6a89eaad9d41/AV-2021-2022-WP.pdf> accessed 14 August 2025; EU Audiovisual Sectoral Social Dialogue Committee, 'Work Programme 2023-2025' (2023) <https://circabc.europa.eu/sd/a/8eeb21e6-b365-4f20-8aa5-82052ae36b11/Work%20programme_Programme%20de%20travail_Arbeitsprogramm%202023-2025> accessed 14 August 2025.
[424] See EU Audiovisual Sectoral Social Dialogue Committee, 'Framework of Actions on Diversity and Inclusion in the Audiovisual Sector' (2025) 5.

dialogue committee for Live Performance mainly highlights gender equality as a key point in its work programmes, with a range of activities comprising exchange of good practices, a 2019-2021 gender equality project, including capacity building, health and safety, skills, and the development of a database on good practices.[425] The pursuit of diversity is also mentioned, although not defined.[426] It could therefore be understood to cover broadly disability and a range of other characteristics. The number of activities in that respect appears much more modest than those planned for gender equality. The 2022-2024 work programme only mentions that the social partners would 'exchange on national level developments on diversity in the live performance sector and on good practices'.[427] For both committees, it appears that social partners are more advanced on gender equality than on any other ground of discrimination. The list of actions in that regard, seems more ambitious, therefore taking precedence over disability and 'diversity'. That is not to say that sectoral social partners at the national level may not be working more on disability. These considerations only pertain to those two committees on the audiovisual and live performance sectors, which are formally organised as part of the European Commission's activities on EU social dialogue and reported as such. Still, it interestingly reflects findings from Eurofound, but also from the qualitative study, which pointed to how the CCS struggle with the competing issues they look to tackle.[428]

Participants also admitted during the qualitative study that much remains to be done to ensure the application of EU non-discrimination and labour law for the benefit of all professionals with disabilities in the CCS. Notably, this involves raising awareness of the obligations and rights under non-discrimination law, especially with regards to the provision of reasonable accommodation in the CCS. Moreover, a change in attitudes is needed, and all sectors and artforms should be approached as legitimate career paths for persons with disabilities, even those considered as more elitist and high culture, like opera or ballet for instance. In this context, CCS social partners should assume a greater role in the application of the principle of equal treatment in the sectors. As social partners, they

[425] See European Arts and Entertainment Alliance (EAEA) and Pearle*, 'European Sectoral Social Dialogue Committee "Live Performance": Two Year Work Programme 2020 – 2021' (2021) <https://circabc.europa.eu/sd/a/d2bdaca5-a632-446d-9c64-d8ab3bb292b3/LP-2020-2021-WP.pdf> accessed 14 August 2025; EAEA and Pearle*, 'European Sectoral Social Dialogue Committee "Live Performance": Three Year Work Programme 2022 – 2024' (2022) <https://circabc.europa.eu/sd/a/6ecc1a27-5e25-4e9e-850f-fbafc7611b6a/Work%20programme_Programme%20de%20travail_Arbeitsprogramm%202022-2024> accessed 14 August 2025.

[426] EAEA and Pearle*, 'Programme 2020 – 2021' (n 425) 1, 4; EAEA and Pearle*, 'Work Programme 2022 – 2024' (n 425) 5–6.

[427] See EAEA and Pearle*, 'Work Programme 2022 – 2024' (n 425) 5.

[428] See Weber and Cerf (n 100) 29–31; Urzel Francil (n 13) 9.

'have a common interest in, and probably the best practical means of, promoting a workplace that is free from discrimination'.[429]

In that connection, the conclusion of the 'first phase' of the Disability Employment Package,[430] an initiative of the European Commission to which social partners were again a part of (albeit at the periphery)[431] may also bring answers and boost possibilities to advance on the application of non-discrimination law in the CCS.

8. The Way Forward? The Case of the Disability Employment Package

Although tangible limits to the implementation and enforcement of the Equality Directives exist, especially for the Employment Equality Directive in the CCS, it transpired from the qualitative analysis that the sectors are rather inclined to make more efforts to be inclusive of professionals with disabilities. Participants shared, at times, the knowledge-building, and awareness-raising activities they were undertaking in their organisation, with their membership or their sectors more largely. Agreeing that diversity was important, some emphasised the goodwill and resourcefulness of their sector(s) to accommodate professionals with disabilities.[432] A participant notably pointed out that their members 'talk about that and they try to find the solutions and, like I say, work with experts and specific knowledge centres as well' (EU CCS 2). One focus-group participant also referred to a national survey of the CCS, which underlined an inclination to be more proactive to realise inclusion in the CCS (FG1 P9). In that vein, an interviewee shared their belief in their sector's awareness and ability to enable the participation of professionals with disabilities:

> Then, it's always difficult to discuss disability as if there was only one form of disability, we have to distinguish, probably, between all different forms of disabilities, some are undoubtedly more discriminatory than others when it comes to working … but I think that our establishments are now extremely aware of this and are likely to make room for salaried professionals or professionals working for them … who have disabilities. (EU CCS 9)

However, the sentiment that prevailed was that employers, organisations and companies in the CCS lacked the expertise and needed help to ensure equal opportunities for persons with disabilities in the CCS.

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[429] Doherty, 'The Path Is Made by Walking' (n 102) 276.
[430] Katarina Ivanković Knežević, 'Introduction to the Disability Employment Package and Context of the Study' (EASPD Launch of the Study on Alternative Employment Models for Persons with Disabilities, 21 May 2025) <https://www.youtube.com/watch?v=_Ki7QFTuXBk> accessed 22 May 2025.
[431] Doherty, 'The Path Is Made by Walking' (n 102) 270.
[432] See Chapter 6, Sub-section 2.3.

Moreover, some also highlighted that knowledge on disability, on inclusion, and on accommodating professionals with disabilities can get lost, together with the impetus to foster diversity, inclusion and equal opportunities for professionals with disabilities. This can be linked to the fragile contractual situations that may be at play in the CCS and particularly their temporary nature, leading people to regularly leave cultural institutions. In that vein, one participant pointed to the 'constant contracts' and changes in their teams, and the risks this entailed:

> Because in my field, I'm working only with freelancers, there's not only the team of my [institution], my director, etc. I work with the freelancers, and so freelancers come and go, and this always means a lack of knowledge, which we built. (FG2 P10)

This may present issues when '[e]mployers, and their representative organisations, [who] have a key role in ensuring the law is properly implemented and observed at the workplace',[433] do not play such role. In that sense, some participants have also doubted how their specific sector could accommodate professionals with certain disabilities, admitting 'it is true that disability is a question that we don't even think about' (EU CCS 10).

In this context, the potential of hard law appears unfulfilled, including for the Employment Equality Directive, and the other secondary legislation mentioned above, but there appears to be a need for knowledge-building and awareness-raising. This section therefore posits that the Disability Employment Package could address these issues to a certain extent, and become a concrete and softer way to address the barriers faced by cultural and creative professionals with disabilities, including in terms of employment gap, wage gap or working conditions in the CCS.

The Disability Employment Package is one of the flagship initiatives of the Disability Strategy 2021-2030, which the European Commission launched in 2022.[434] The package combines toolkits, guidelines and other documents to support Member States in implementing pre-existing legislation on employment, and improving labour market outcomes for persons with disabilities. Its deliverables are divided into the following six areas of action:

1) Strengthening capacities of employment and integration services …
2) Promoting hiring perspectives through affirmative action and combating stereotypes …

[433] Doherty, 'The Path Is Made by Walking' (n 102) 271.
[434] European Commission, 'Package to improve Labour Market Outcomes of Persons with Disabilities (Disability Employment Package – "Employment Package")' (Joint Commission Services – Disability Platform Paper, 2022).

3) Ensuring reasonable accommodation at work …
4) Retaining persons with disabilities in employment: Preventing disabilities associated with chronic diseases …
5) Securing vocational rehabilitation schemes in case of sickness or accidents …
6) Exploring quality jobs in sheltered employment and pathways to the open labour market[435]

Aimed at supporting Member States in improving labour market outcomes for persons with disabilities, the Disability Employment Package includes a range of deliverables that explore the different facets of the employment of persons with disabilities, and barriers to it. This has led to the publication of a number of deliverables, from practitioner toolkit, briefing note, webinar, catalogue of positive actions, guidelines, or study.[436] The last deliverable was released earlier in 2025.[437] Produced with the help of the European Disability Expertise project and members of the Disability Platform, the European Commission aims for those materials to reach different target groups, including employers, employers' organisations, public authorities, social partners and other stakeholders that support employment of persons with disabilities, like civil society or employment and support services.[438]

Albeit the Disability Employment Package does not look specifically at culture, the initiative of the European Commission can still contribute to raising awareness and building knowledge among CCS stakeholders of their obligations when employing and/or recruiting persons with disabilities, including those arising from the Employment Equality Directive. The package has therefore potential to 'help companies to integrate' (EU CCS3), which was a concern shared by several participants in the qualitative study.

Ultimately, the potential of the Disability Employment Package finds an echo with Daly and Whelan's view on the usefulness of awareness-raising actions, which in contrast to a more 'hard law prohibition' may have strong potential to address disability-related stigma and create change.[439] It could provide a basis to address the negative perceptions and prejudiced views that exist and cast doubt on the artistic, creative and intellectual potential

[435] See European Commission, 'Disability Employment Package Paper' (n 434) 5–7.
[436] See European Commission, 'Disability Employment Package' (*Employment, Social Affairs and Inclusion*) <https://employment-social-affairs.ec.europa.eu/policies-and-activities/eu-employment-policies/disability-employment-package_en> accessed 14 August 2025.
[437] Karsten Gareis and others, *Study on Alternative Employment Models for Persons with Disabilities: Set up, Working Conditions and Pathways to the Open Labour Market in Inclusive Enterprises and Sheltered Workshops: Final Report* (European Commission, Publications Office 2025).
[438] See, for instance, European Commission, 'Catalogue of Positive Actions to Encourage the Hiring of Persons with Disabilities and Combating Stereotypes' (Publications Office, 2023) 6; Laura Jones and Mathias Maucher, *A Manual for Managing Chronic Diseases and Preventing the Risk of Acquiring Disabilities* (European Commission, Publications Office 2024) 10.
[439] Daly and Whelan (n 97) 750.

of persons with disabilities, and the contributions they can make in the CCS as professionals.

This is something that is also addressed in the Audiovisual Media Services Directive (AVMSD) as it contains provisions prohibiting hate speech and incitement to violence through audiovisual media services, and video sharing platforms, or commercial communications including or promoting discrimination on the basis of disability.[440] As such, the AVMSD contributes to ensuring that the audiovisual content does not reinforce hate and discriminatory narratives which can underpin the exclusion of persons with disabilities from society,[441] and thus also from careers in the CCS.

Perhaps one of the shortcomings to be highlighted here is that the Disability Employment Package remains focused broadly on employment, when expertise and solutions specific to the CCS were somewhat sought after by a few participants. Hence, it does not encompass considerations pertaining to self-employment or employment in the CCS, which could have allowed actors in the CCS to better grasp the information provided in the different deliverables, and use it. However, the qualitative study took place before most of the deliverables were even published. On this basis, it is not possible to ascertain whether the European Commission has managed to reach stakeholders in the CCS with the Disability Employment Package.

9. Concluding Remarks

As is discussed throughout this thesis, CCS professionals with disabilities continue to face a number of challenges to participate in cultural life, and their full and effective inclusion in the CCS in the EU 'is still to be realised, in spite of the clear obligations stemming from Article 30(2) CRPD'.[442] Following a socio-legal approach, which entailed the analysis of legislation, scholarship, grey literature and qualitative data, the chapter particularly considers the issue of participation in cultural life of professionals with disabilities as one of equality and non-discrimination. Therefore, it has sought to provide valuable insights into how the EU legal framework contributes to combatting discrimination and enabling equal opportunities to professionals with disabilities in the CCS. In doing so, it also acknowledges the gaps and limitations that exist and hinder the

[440] Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services [2010] OJ L95/1 (AVMSD), arts 6(1)(a), 9(1)(c)(ii), 28b(1)(b) and (2).
[441] Stylianos Charitakis, 'Access Denied: The Role of the European Union in Ensuring Accessibility under the United Nations Convention on the Rights of Persons with Disabilities' (PhD Thesis, Maastricht University 2018) 286.
[442] Urzel Francil (n 13) 13.

ability of cultural and creative professionals with disabilities to work in the CCS, on an equal basis with others.

This chapter confirms that the Employment Equality Directive is, to this day, the only piece of legislation which can be used to tackle disability-based discrimination in the CCS, for the benefit of employees and self-employed professionals with disabilities – under certain circumstances. Gaps and limitations remain, especially as the EU legal framework currently, and most probably for the foreseeable future (until the adoption of the Horizontal Equal Treatment Directive), fails to address disability-based discrimination outside of work settings. Therefore, being largely restricted to the professional sphere, to the difference of other grounds like race or gender, it can only benefit CCS professionals with disabilities in limited circumstances, and may not address discriminatory practices that could influence on one's career in the CCS, like in education settings for instance.

In that connection, this chapter raises the issue of barriers to the application of non-discrimination law, be it in terms of implementation, enforcement, means available to CCS professionals with disabilities to seek remedy under the transposed legislation in the Member States, or the likelihood that they would do so. In this context, it lays out the potential (intersecting) challenges that CCS professionals with disabilities may face in order to assert their rights under the Employment Equality Directive, acknowledging that the right to non-discrimination under EU law is mostly envisioned as an individual right, which therefore 'places individual complaints at the heart of [its] enforcement model', as for the other Equality Directives.[443]

In that respect, the provisions of the Employment Equality Directive, must be understood in interaction with various instruments that expand the right to non-discrimination and the application of the principle of equal treatment in the EU, and which are relevant to the participation in cultural life of cultural and creative professionals with disabilities. This chapter therefore discusses to what extent persons with disabilities are, or not, considered in EU labour law, and which acts could be relevant to the CCS. In doing so, it highlights a number of Directives, including those relative to pay transparency and adequate minimum wages, those addressing non-standard forms of work, or other issues of working conditions, relating in part to the challenges evoked in chapter 1. In that connection, it questions their relevance to the situation of persons with disabilities, as cultural and creative professionals, and as CCS professionals with disabilities.

[443] Bell, 'Navigating Sameness and Difference' (n 77) 661.

Interestingly, it points out how the binary divide between self-employed people and 'workers', understood with regards to the case law of the Court, is one of key importance in the context of this thesis. Indeed, with self-employment being so high among cultural and creative professionals, it is essential to understand the extent and the circumstances in which protection is afforded under EU labour law, noting that its scope is narrower than EU equality law in that respect. Additionally, this chapter highlights recent legislative developments, such as the Platform Work Directive, which show that the EU legislator seeking to address the grey zones between the traditional employee and the genuinely self-employed, in order to counter the abuse of self-employment, and the lack of protection afforded to workers as a result. Interestingly, this chapter also highlights that the situation of CCS professionals regularly appears before the CJEU, therefore suggesting specificities of working in the sectors leaving cultural and creative professionals longing for remedies, equal treatment and the respect of their social rights.

Moreover, this chapter highlights the facilitating role that equality bodies, but also social partners, can assume in realising the rights of persons with disabilities in the context of non-discrimination and equality provisions. It particularly pinpoints how both entities have a key part to play in translating the protections afforded in EU non-discrimination law and labour law into tangible progress on the ground for CCS professionals with disabilities. Furthermore, it considers one of the latest work-related initiatives of the European Commission, the Disability Employment Package, and discusses its adequacy in supporting CCS employers and other stakeholders of the sectors in understanding their obligations under EU law. Indeed, this could enable professionals with disabilities to pursue opportunities in the CCS, on an equal basis with others.

As such, this is the first chapter analysing more critically the adequacy and limitations of the EU legal framework with regard to enabling the participation of professionals with disabilities in cultural life in the EU. Overall, it depicts an EU legal framework that is perhaps not fully in a position to cater to the situation of CCS professionals with disabilities and the discrimination and inequalities they face. On this basis, it appears evident that, although key, equality and non-discrimination are just one facet of the EU action that has 'potential to make the cultural and creative sectors more inclusive of professionals with disabilities'.[444] As this thesis posits, it must be understood in conjunction with measures to improve accessibility in the EU, as well as with EU funding

[444] Urzel Francil (n 13) 14.

opportunities –two streams of action also integrating elements of equality and non-discrimination.

Chapter 7
Accessibility

1. Introduction

After considering the EU's efforts to consolidate a legislative and policy framework for disability and culture, this chapter pursues the analysis of the contribution of such framework to the inclusion of professionals with disabilities in the cultural and creative sectors (CCS). To that end, after discussing equality and non-discrimination, it focuses on accessibility. As already mentioned when discussing the qualitative study carried out as part of this thesis, accessibility, among other themes, was identified by interviewees and participants in the focus groups as one of the key topics to underpin the participation in cultural life of CCS professionals with disabilities, and one in which the legal framework of the EU might make a difference.[1] In that sense, one interviewee emphasised how important it was to have 'adapted infrastructure', adding that within the institutions they represented there was generally 'also a very high [and increasing] degree of sensitivity to accessibility' for persons with various disabilities, including sensory and intellectual ones (EU CCS 9).

Accessibility falls within the competence of the EU, and was, at the time of the EU's conclusion of the CRPD already addressed by several EU acts.[2] However, as this chapter elaborates on, EU accessibility legislation –understood as the legal framework made of EU legislation dedicated fully to accessibility or containing some accessibility provisions–[3] is a rather fragmented field, and the lack of accessibility of several goods and services in the EU is still a concern. In that respect, the views of CCS stakeholders

[1] See Chapter 1, Sub-section 4.2.
[2] Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities [2009] OJ L23/35, annex II, app.
[3] These include, but are not limited to: Regulation (EC) 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 [2004] OJ L46/1*;* Regulation (EC) 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air [2006] OJ L204/1; Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services [2010] OJ L95/1 (AVMSD); Commission Regulation (EU) 1300/2014 of 18 November 2014 on the technical specifications for interoperability relating to accessibility of the Union's rail system for persons with disabilities and persons with reduced mobility [2014] OJ L356/110; Directive (EU) 2016/2102 on the accessibility of the websites and mobile applications of public sector bodies [2016] OJ L327/1 (WAD); Regulation (EU) 2017/1563 of the European Parliament and of the Council of 13 September 2017 on the cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled [2017] OJ L242/1 (Marrakesh Regulation); Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services [2019] OJ L151/70 (EAA); Regulation (EU) 2021/782 of the European Parliament and of the Council of 29 April 2021 on rail passengers' rights and obligations (recast) [2021] OJ L172/1.

on the challenges experienced by professionals in the CCS tally with the views of EU citizens on accessibility barriers faced by people with disabilities, which are seen to 'make it more difficult for people with a disability to attend schools, to have a job … and/or to freely move around'.[4]

In critically examining the relevance of EU accessibility law for professionals with disabilities, the chapter fills an ostensible gap in literature. In fact, when it comes to cultural participation, it appears that research and practice tend to focus on audiences rather than on professionals with disabilities.[5] Further, the chapter interrogates how the focus of EU law on 'consumers' with disabilities impacts on the rights and protection afforded to persons with disabilities in the context of their professional activities. From the outset, this chapter contends that EU accessibility legislation may have significant potential to support the participation of CCS professionals with disabilities, even if it is designed for consumers, or to benefit audience members more generally. Indeed, it can be argued that engaging with cultural and creative goods and services as more 'passive' users or consumers forms part of the creative process,[6] and is therefore likely to inform the activities of CCS professionals with disabilities and the development of their creative, artistic, and intellectual potential, and thus their contribution to the CCS.

Pursuing an activity in the CCS seems inevitably linked to having access to cultural products and services, and these two aspects should be recognised as closely related, hence not easily distinguishable. In this respect, the chapter argues that EU accessibility legislation responds to the combined implementation of Article 30(1) and (2) CRPD. Admittedly, access to cultural life is also covered under Article 30(3) CRPD, but as explained in chapter 1, issues of intellectual property and EU copyright law are not covered in this thesis as copyright did not emerge as a key enabler or a key issue from the point of view of the CCS.[7] In the case of the Audiovisual Media Services Directive (AVMSD), ensuring the accessibility of audiovisual media services as provided for in Article 7(1) AVMSD corresponds in part to implementing Article 30(1) CRPD, as it seeks to foster access to audiovisual materials and information, including television

[4] TNS Political & Social, 'Accessibility' (Flash Eurobarometer 345, European Commission 2012) 43.
[5] See Ann Leahy and Delia Ferri, 'The Scholarly Context: Cultural Participation of People with Disabilities in Academic Scholarship and Grey Literature' in Delia Ferri and Ann Leahy, *Dismantling Barriers and Advancing the Right of Persons with Disabilities to Participate in Cultural Life: A Socio-Legal Analysis* (Routledge 2025) 29, 35–39.
[6] Sandra Cowan, 'Informing Visual Poetry: Information Needs and Sources of Artists' (2004) 23 Art Documentation: Journal of the Art Libraries Society of North America 14, 18. See also William S Hemmig, 'The Information-seeking Behavior of Visual Artists: A Literature Review' (2008) 64 Journal of Documentation 343; William Hemmig, 'An Empirical Study of the Information-seeking Behavior of Practicing Visual Artists' (2009) 65 Journal of Documentation 682; Ann Medaille, 'Creativity and Craft: The Information-seeking Behavior of Theatre Artists' (2010) 66 Journal of Documentation 327; Allison Hosier, 'The Role of Research in Creative Writing: A Follow-up Study' (2024) 24 portal: Libraries and the Academy 789.
[7] See Chapter 1, Sub-section 3.3.

programmes, films, plays and other cultural materials that can be broadcasted. In addition, as it facilitates the accessibility of audiovisual content, it is key in allowing cultural and creative professionals with disabilities –not strictly in the audiovisual sectors– to inform their practice and careers, and therefore to develop their creative, artistic, and intellectual potential as per Article 30(2) CRPD. Furthermore, through provisions on tackling incitement to violence, hatred and any discrimination based on disability in audiovisual media services, including commercial communications, which were mentioned in chapter 6, the AVMSD also advances social accessibility in audiovisual media services.[8] It may in turn be a determining factor in the decision of CCS professionals with disabilities to seek opportunities, be accepted and included in such sectors.

This chapter therefore uses the premise that fostering more disability-inclusive CCS in the EU depends on the removal of accessibility barriers that prevent persons with disabilities from participating in cultural life, both as audiences and as professionals. In this context, this chapter addresses how EU accessibility legislation has evolved as a patchwork of provisions dispersed throughout the EU legal framework, which now forms part of EU disability law and policy.[9] Being grounded in the qualitative research, the following sections therefore focus more prominently on those dimensions of accessibility or pieces of EU accessibility legislation raised by the participants during the empirical study. In an attempt to show how EU accessibility legislation can be utilised to ensure the participation of CCS professionals with disabilities, the following sections discuss legislation related to the accessibility of the built environment, the European Accessibility Act (EAA) and the Web Accessibility Directive (WAD). As discussed hereinafter, this reflects both CCS stakeholders' knowledge of EU accessibility legislation and/or what they perceived as key to enabling the participation in cultural life for persons with disabilities.

It is noteworthy that the accessibility of transports, a precondition to participate in the CCS, was not identified as a key concern in the qualitative analysis. This contrasts with the accessibility of the built environment which was much more discussed and is in fact a more direct condition to access professional opportunities in the CCS, as noted in section 2. Additionally, the accessibility of audiovisual media services, through the AVMSD, albeit a key dimension of EU accessibility legislation and a long-standing feature of EU law, was not brought up either, when more recent acts –the EAA and WAD–

[8] See Stylianos Charitakis, 'Access Denied: The Role of the European Union in Ensuring Accessibility under the United Nations Convention on the Rights of Persons with Disabilities' (PhD Thesis, Maastricht University 2018) 259–260.
[9] See Chapter 4, Section 5.

were. As discussed in chapter 1, issues pertaining to EU copyright law and how it may contribute to the accessibility of cultural content –including through the implementation of the Marrakesh Treaty– are outside of the scope of this thesis and are discussed elsewhere in scholarship.[10] In particular, even when the topic of copyright was raised, it was in a cursory fashion and remained confined to a very specific sectoral context; the books and press sector. As such, it appeared that repeated patterns of meaning could not be identified through the datasets, and that copyright could not be understood as a salient and important issue for all the CCS that would help address the research questions.

Following these introductory remarks, section 2 highlights how EU accessibility legislation, albeit fragmented, can contribute to the accessibility of the built environment and benefit CCS professionals with disabilities. In that respect, it discusses a range of provisions and standards that contribute, to some extent, to improving the accessibility of spaces of cultural relevance and beyond. Section 3 focuses on the EAA, one of the EU's standout pieces of accessibility legislation. The section elaborates on the scope of the EAA, and especially its focus on consumers, as it questions the relevance and limitations of the EU's recent directive for cultural and creative professionals with disabilities, before discussing the obligations and exceptions it sets out for CCS stakeholders. Section 4 then discusses another milestone in EU disability law –the WAD– highlighting key provisions, their relevance to CCS professionals with disabilities. Additionally, it considers the shortcomings of the Directive in terms of material scope, implementation and impact. Section 5 focuses more specifically on the inclusion of the disproportionate burden exception in EU accessibility legislation, using Article 9 CRPD as a reference point. Section 6 discusses caveats which affect the implementation of the instruments mentioned prior, before assessing whether awareness-raising initiatives related to accessibility can represent a realistic lever for improved participation in cultural life for CCS professionals with disabilities in section 7. Finally, section 8 provides some concluding remarks.

[10] See Chapter 1, Sub-section 3.3. See also, among others, Caterina Sganga, 'Disability, Right to Culture and Copyright: Which Regulatory Option?' (2015) 29 International Review of Law, Computers & Technology 88; Giulia Dore and Pelin Turan, 'When Copyright Meets Digital Cultural Heritage: Picturing an EU Right to Culture in Freedom of Panorama and Reproduction of Public Domain Art' (2024) 55 IIC - International Review of Intellectual Property and Competition Law 37; Delia Ferri, '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' (2024) 55 IIC - International Review of Intellectual Property and Competition Law 89; Caterina Sganga, 'Making Room for Cultural Policies within a Market-Oriented Copyright Law: A Function-Based Approach' in Evangelia Psychogiopoulou and Sarah Schoenmaekers (eds), *European Union Economic Law and Culture* (Edward Elgar 2024).

2. Ensuring Accessibility of the Built Environment in the EU: A Piecemeal Approach

This section seeks first to discuss some instruments that can foster the accessibility of the built environment in the EU. Referring to the contribution of participants from the study, the following sub-sections aim to highlight the EU's competence or lack thereof in terms of the built environment, as well as the few EU provisions which can contribute to addressing physical barriers and to making the built environment more accessible to CCS professionals with disabilities. It considers procurement legislation, before discussing other opportunities in terms of construction products and lifts regulations, standards, and energy performance of buildings.

2.1. The Competence Issue

From a legal standpoint, EU legislation does not address the accessibility of the built environment to a great extent. In that regard, the TFEU does not include a specific legal basis for accessibility of the built environment. The EU has adopted relatively little legislation on the topic, which Charitakis speculates is 'a result of the fact that the field does not entail a cross-border element that justifies EU action'.[11] Nevertheless, the internal market and energy are areas of shared competence,[12] and a number of TFEU provisions, including Article 114 TFEU, have provided a legal basis for a range of initiatives seeking to harmonise accessibility requirements. The built environment has therefore come within the remits of EU law through other thematic legislation, including on public procurement, health and safety,[13] or environmental issues.

The European Commission has also underlined that the accessibility of the built environment is addressed to varying degrees in the Member States, either in terms of 'scope and detailed level of coverage'.[14] As it is a required field of Member State action, particularly under Article 9 CRPD, the European Commission aims to support them in improving the accessibility of the built environment and in developing technical accessibility requirements, including through EU-level standardisation.[15]

[11] Charitakis, 'Access Denied' (n 8) 287.
[12] TFEU, art 4(2)(a) and (i).
[13] Charitakis, 'Access Denied' (n 8) 303–309.
[14] European Commission, 'Impact Assessment Accompanying the document Proposal for a Directive of the European Parliament and of the Council on the Approximation of the Laws, Regulations and Administrative Provisions of the Member States as regards the Accessibility Requirements for Products and Services' (Staff Working Document) SWD(2015) 264 final, 19.
[15] SWD(2015) 264 final, 19–20.

In the context of the EAA, the European Commission has also recognised the difficulties faced by architect services, including large architectural design companies, estimating that the share of architect services taking place in a cross-border context is of 40%.[16] The challenges they encounter are especially linked to how different the legislation or technical accessibility requirements for the built environment can be between Member States, but also regionally or locally, 'impl[ying] both fragmentation in the internal market as well as barriers to the professionals willing to work in the different member states'.[17] Despite taking the perspective of cross-border architect services, the impact assessment report supporting the preparation of the EEA stressed that there was less evidence to attest of 'internal market barriers in the area of the built environment, particularly when it comes to immovable goods'.[18] Thus, it was considered that there was not enough clear evidence of a significant internal market problem which could justify the necessity to act in the area of the built environment at the EU level, justifying that it be left outside of the scope of the EAA. As discussed in section 3,[19] the EAA therefore only provides that Member States may decide on their own accord to impose accessibility requirements on the built environment used in the provision of services covered in the Directive.

By contrast with the limited engagement of EU law with the topic, citizens taking part in a public consultation on accessibility (as input for the impact assessment) identified the built environment, together with transport and information and communication, as one of the most 'problematic' areas in terms of accessibility and one of the 'most relevant areas presenting many accessibility barriers'.[20] The other stakeholders taking part in this public consultation (non-governmental organisations, industry and public bodies) also ranked the built environment as a priority together with transport and information and communication.[21] Such emphasis on the inaccessibility of the built environment often finds reflection in Member States' narratives before the Committee on the Rights of Persons with Disabilities (CRPD Committee), including in the context of the CCS, as many cultural institutions are based in historical buildings.[22]. Indeed, this can create

[16] See SWD(2015) 264 final, 33 and annex 7, 59.
[17] CEN, CENELEC and AENOR, 'Final Joint Report: CEN/BTWG 207 "Accessibility in the built environment" and CENELEC/BTWG 101-5 "Usability and safety of electrical products with reference to people with special needs" (PT A and PT B)' (2011) 26. See also See SWD(2015) 264 final, 33.
[18] SWD(2015) 264 final, 47.
[19] See Chapter 7, Sub-section 3.2.2.
[20] SWD(2015) 264 final, annex 2, 12–13.
[21] SWD(2015) 264 final, annex 2, 16.
[22] See Delia Ferri and Ann Leahy, 'Implementing the Right of Persons with Disabilities to Participate in Cultural Life: Trends, State Narratives, and Counter-Narratives' in Delia Ferri and Ann Leahy, *Dismantling Barriers and Advancing the Right of Persons with Disabilities to Participate in Cultural Life: A Socio-Legal Analysis* (Routledge 2025) 107–108.

difficulties in terms of post-modification for accessibility, including when 'the protection of cultural heritage prevails over the rights of people with disabilities to enjoy autonomous access' to historical places and buildings.[23] Physical barriers have also been acknowledged by the CRPD Committee who notes the existence of challenges in making 'monuments and sites of national cultural importance' accessible.[24]

The accessibility of the built environment also featured prominently in the qualitative study and appeared key to foster the participation of persons with disabilities in cultural life, albeit some participants were wary of not focusing only on this dimension of accessibility. One participant shared in this respect that:

> one thing that comes immediately to my mind is access of course. I mean many venues are just not made for … persons with disabilities in terms of mobility. (EU CCS 8)

Albeit some mentioned more positive experiences, many of the participants recalled examples of physical barriers to accessibility –from concert venues, performing arts schools or conservatoires, to festivals or even industry events in the book or audiovisual sectors.

It raises questions on how to bridge the gap between what is seen as a key barrier to be addressed by the CCS and the current state of EU legislation, particularly if Member States who should make progress on the subject fail to do so. In that respect, since the adoption of the Convention, the CRPD Committee has reaffirmed that States Parties must 'strive to provide access to sites' like cultural and historical monuments that are part of national heritage, and that, in fact many 'have been made accessible in a way that preserves their cultural and historical identity and uniqueness'.[25]

Yet, the example of the EAA is perhaps one of the latest demonstrations of the EU's reluctance in engaging directly with the accessibility of the built environment and the difficulties it has to justify its competence to do so. Overall, the accessibility of the built environment for persons with disabilities is only addressed in a fragmented manner and mainstreamed in a small number of thematic legislations. It is where the interest of such section resides, namely; in highlighting that what is seen as a key challenge by the CCS, is only very partially addressed at EU level.

[23] See Albertina Pretto, 'A Study on Accessibility in an Old Italian City: When the Past Is Worth More than the Present' (2022) 37 Disability & Society 496, 499–500.
[24] Committee on the Rights of Persons with Disabilities (CRPD Committee), 'General Comment No. 2 (2014): Article 9: Accessibility' (2014) UN Doc CRPD/C/GC/2 para 44.
[25] CRPD Committee, 'General Comment No. 2' (n 24) para 44.

2.2. Public Procurement

In considering how EU provisions, which tackle the accessibility of the built environment, can have a positive impact on the participation of CCS professionals with disabilities, this sub-section discusses procurement legislation and more specifically the provisions of the Public Procurement Directive[26] that concern public work contracts in the EU. Indeed, as per Article 2(1)(7) of the Directive, a 'work' is defined as 'the outcome of building or civil engineering works … which is sufficient in itself to fulfil an economic or technical function'. The Directive therefore interesses the construction of new buildings and works, as well as their restoration, the construction of roads or pedestrian ways,[27] and can be understood to relate (broadly) to the built environment.

The Public Procurement Directive notably contributes to making the CCS more inclusive of professionals with disabilities in that it bolsters accessibility obligations and considerations in processes of public procurement of works across the EU, and therefore has the potential of making the infrastructures procured more accessible to persons with disabilities. According to Article 42(1) of the Directive, this means that for the procurement for public works, which meet or exceed the set financial thresholds,[28] the technical specifications laying down the characteristics of works must be drawn up taking into account accessibility criteria for persons with disabilities or design for all users.[29] Only in duly justified cases, is it now possible to bypass these accessibility provisions relative to technical specifications.[30] It is therefore a stronger obligation than the previous provision in Directive 2004/18/EC, which stated that technical specifications should take into account accessibility criteria 'whenever possible',[31] and left 'the issue to the discretion of the contracting parties'.[32] Nevertheless, Steinicke notes that the current provision does not 'imply any obligation that can be sanctioned'.[33]

However, this provision is reinforced by a stronger requirement, added with the adoption of the new Public Procurement Directive in 2014. Indeed, a final paragraph makes reference to mandatory accessibility requirements adopted in legal acts of the Union (eg

[26] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC [2014] OJ L94/65 (Public Procurement Directive).
[27] See, for instance, the list of activities referred to in Annex II of the Public Procurement Directive.
[28] Public Procurement Directive, art 4(a). The financial thresholds are revised every two years. At the time of writing the financial threshold for public works contracts is set at EUR 5 538 000.
[29] Public Procurement Directive, art 42(1).
[30] Public Procurement Directive, art 42(1).
[31] Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts [2004] OJ L134/114, art 23(1).
[32] Charitakis, 'Access Denied' (n 8) 307.
[33] Michael Steinicke, 'Article 42 Technical Specifications' in Michael Steinicke and Peter L Vesterdorf (eds), *Brussels Commentary on EU Public Procurement Law* (Bloomsbury 2018) 536.

the EAA) and stipulates that technical specifications must be defined in reference to those when drawing up accessibility criteria for persons with disabilities and design for all users[34] –a requirement which appears stronger than the previous paragraph.[35] Article 42(1) therefore reflects the 'political wish to take into account accessibility for persons with disabilities'.[36] As it obliges contracting authorities to take into account accessibility for persons with disabilities and design for all users as criteria of technical specifications for public work contracts, the Public Procurement Directive can particularly impact on the accessibility, among others, of the cultural spaces that CCS professionals are bound to visit and access as part of their activities.

In addition, accessibility and design for all are explicitly mentioned as potential criteria for awarding contracts.[37] Contracting authorities are under an obligation to award public contracts to the most economically advantageous tender, which must be identified on the basis of price or cost, including on the basis of the criterion of the best price-quality ratio.[38] To that end, the ratio must be assessed on the basis of criteria, including criteria which attest of the quality linked to the subject matter of the public contract. Therefore, it *may* take into account the accessibility and design for all characteristics of the tender, as provided in Article 67(2)(a) of the Public Procurement Directive.[39]

As such, accessibility and design for all are only potential criteria for the contracting authorities to take into account when awarding contracts. By contrast, it is compulsory for public buyers to seek to procure infrastructures that are designed for all and accessible to persons with disabilities as per Article 42(1) of the Directive. Although there is a slight discrepancy between the provisions on accessibility ensuing from Article 42(1) on technical specifications and Article 67(2)(a) on contract award criteria, it remains that the Public Procurement Directive sketches out 'a strong and clear obligation that accessibility must be included from the initial stages of the project'.[40] Yet, it does not mean that the works procured have to be accessible. Additionally, as raised in an alternative report submitted to the CRPD Committee for the review of the EU, there is also no remedy available 'to challenge the purchasing decisions of public authorities when they result in

[34] Public Procurement Directive, art 42(1).
[35] Steinicke (n 33) 536. However, it is not without limits, see Emma McEvoy, 'Small and Medium-Sized Enterprise (SME) Participation in Public Procurement' (PhD Thesis, Maynooth University 2020) 70.
[36] Carina Risvig Hamer, 'Article 42 Technical Specifications' in Roberto Caranta and Albert Sanchez-Graells (eds), *European Public Procurement* (Edward Elgar 2021) 466.
[37] Public Procurement Directive, art 67(2)(a).
[38] Public Procurement Directive, art 67(2).
[39] Emphasis added.
[40] Charitakis, 'Access Denied' (n 8) 307.

products, services or infrastructure that are not accessible',[41] something Steinicke also hinted at.[42]

Nevertheless, CCS professionals with disabilities may be able to benefit from procured infrastructures that are more accessible as a result of the Directive. This may ensue, for instance, from the procurement of works in relation to the construction of new cultural buildings by a contracting authority, such as theatres, museums, concert halls or music schools. This would especially benefit the CCS professionals with disabilities the authority employs or contracts with, and thus, who work there, as well as those that frequent such places if they are open to the public. It could also benefit CCS professionals with disabilities visiting a museum, library, or archives as part of their creative process; to seek inspiration, references, or documentation. This concurs with the CRPD Committee's interpretation of Articles 9 and 30 CRPD, as it notably requires States Parties to take all appropriate measures to ensure that persons with disabilities '[e]njoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance'.[43] Insofar as the Public Procurement Directive makes accessibility a key characteristic to consider in procurement procedures above the financial threshold, it may also benefit CCS professionals with disabilities with regard to those infrastructures, including roads or pathways, that are not cultural as such, but more a precondition to working in the CCS as they may be frequented or used by CCS professionals to go to work, to gain access to a building or more broadly as part of their activities.

The Public Procurement Directive also provides that contracting authorities can 'exclude economic operators which have proven unreliable, for instance because of violations of environmental or social obligations, including rules on accessibility for disabled persons or other forms of grave professional misconduct'.[44] As such, the violation of accessibility rules may make an economic operator unreliable, and thus represent a ground of exclusion from the procurement procedures.[45] Member States enjoy some discretion with respect to those optional exclusion grounds and their implementation,[46] and how they may want to

[41] European Disability Forum (EDF), 'Alternative Report for the Second Review of the European Union by the CRPD Committee: Submission for the Adoption of Concluding Observations on the EU' (updated, 2025) 37.
[42] Steinicke (n 33) 536.
[43] CRPD Committee, 'General Comment No. 2' (n 24) para 44.
[44] Public Procurement Directive, recital 101.
[45] Public Procurement Directive, arts 18(2), 57(4)(a) and (c). See Carina Risvig Hamer, 'Article 57 Exclusion Criteria' in Michael Steinicke and Peter L Vesterdorf (eds), *Brussels Commentary on EU Public Procurement Law* (Bloomsbury 2018) 633; Roberto Caranta, 'Towards Socially Responsible Public Procurement' (2022) 23 ERA Forum 149, 157.
[46] Public Procurement Directive, art 57(7). See among others, the interpretation of the CJEU provided in Case C–171/15 *Connexxion Taxi Services BV v Staat der Nederlanden (Ministerie van Volksgezondheid, Welzijn en Sport) and Others*

'satisfy public interest objectives' in this context.[47] Nevertheless, in laying out such possibility and articulating in the preamble that the breach of accessibility obligations may well amount to violations of social obligations which can justify the exclusion of economic operators from procurement procedures, the Public Procurement Directive further entrenches accessibility for persons with disabilities as a key consideration in EU procurement legislation.

As Bovis notes, while Member States and contracting authorities enjoy a certain margin of discretion, '[p]ublic procurement regulation currently plays, and will continue to play, an important role in realizing the rights of persons with disabilities'.[48] In the context of this thesis, the consideration of accessibility in relation to public purchases therefore advances the realisation of Article 30 CPRD insofar as the Public Procurement Directive can participate to making cultural spaces and other infrastructures used by CCS professionals with disabilities more accessible. As such, it can benefit cultural and creative professionals with disabilities who usually see their professional activities affected by the inaccessibility of the built environment and can contribute to making the CCS labour market and work environment more open and accessible. Nevertheless, the Public Procurement Directive does not provide for public works procured in the EU to be accessible, systematically and without exception.

2.3. Mainstreaming Accessibility in EU Rules on the Built Environment

If the field of EU legislation on accessibility is seen as fragmented, it is even more so when focussing on the built environment, as accessibility has only been mainstreamed in a few instruments of relevance to this thesis, such as legislation on lifts, construction products or standards. Besides procurement legislation, these other scattered provisions may therefore be used to improve the accessibility of the built environment in the EU.

2.3.1. Lifts and Construction Products

Of particular interest is the Recast Lifts Directive, which sets out essential health and safety requirements to be satisfied for lifts, notably those permanently serving buildings

[2016] ECLI:EU:C:2016:948, para 29; Case C–178/16 *Impresa di Costruzioni Ing E Mantovani SpA and Guerrato SpA v Provincia autonoma di Bolzano ea* [2017] ECLI:EU:C:2017:1000, paras 31–32; Case C–395/18 *Tim SpA - Direzione e coordinamento Vivendi SA v Consip SpA and Ministero dell'Economia e delle Finanze* [2020] ECLI:EU:C:2020:58, para 34.

[47] Case C–395/18 *Tim SpA - Direzione e coordinamento Vivendi SA v Consip SpA and Ministero dell'Economia e delle Finanze* [2020] ECLI:EU:C:2020:595, Opinion of AG Campos Sánchez-Bordona, para 43.

[48] Christopher Bovis, 'Disability and EU Public Procurement' in Delia Ferri and Andrea Broderick (eds), *Research Handbook on EU Disability Law* (Edward Elgar 2020) 282.

and intended for the transport of persons.[49] In that respect, under certain conditions – meaning if the lift is being used for the transport of persons and 'where its dimensions permit'– the lift's car must be designed and constructed in a way that does not impede access and use by persons with disabilities.[50] In the context of this thesis, the accessibility of lifts that the EU Directive seeks to harmonise, while explicitly excluding from its scope 'lifting appliances intended for lifting performers during artistic performances',[51] could be particularly crucial to the mobility of a range of cultural and creative professionals with disabilities in buildings, and therefore to them accessing cultural facilities and other spaces when they require the use of 'elevators … to roam freely' (EU CCS 9).

Additional provisions may support the accessibility of the built environment, and other construction products, including for CCS professionals with disabilities. For instance, the Construction Products Regulation 'establishes the basic health and safety requirements for construction works'[52] and mainstreams accessibility in basic requirements for the elaboration of standardisation mandates and harmonised technical specifications applicable to construction works.[53] The basic requirements set out in Annex I of the Regulation notably state that 'construction works must be designed and built taking into consideration accessibility and use for disabled persons'.[54] As such, the Regulation provides for the consideration of accessibility in construction works, which can, as for procured works, include those infrastructures that have a cultural purpose and must be accessed by CCS professionals with disabilities to pursue their activities, training, research or information-seeking activities.

2.3.2. Standards

Furthermore, both the accessibility of lifts and the built environment more broadly are supported by the standard setting activities initiated by the European Commission, including standards on accessibility of lifts (EN 81-70) or accessibility and usability of the built environment (EN 17210).[55] Standards have generally been 'a mean to codify

[49] Directive 2014/33/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to lifts and safety components for lifts (recast) [2014] OJ L96/251 (Recast Lifts Directive), arts 1(1)(a) and 5.
[50] Recast Lifts Directive, art 5 and annex I, 271.
[51] Recast Lifts Directive, art 1(2)(g).
[52] Charitakis, 'Access Denied' (n 8) 307.
[53] See Regulation (EU) 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC [2011] OJ L88/5 (Construction Products Regulation), arts 2(1), 3, and annex I.
[54] Construction Products Regulation, annex I, para 4.
[55] See CEN-CENELEC Joint Technical Committee, 'European Standard EN 17210:2021: Accessibility and Usability of the Built Environment – Functional Requirements' (2021); CEN TC 10, 'Safety Rules for the Construction and

professional knowledge' to be used, in turn, by interested professionals (but not only).[56] They are in fact 'ubiquitous in … daily life',[57] and in many public policy fields.[58] The preamble to the European Standardisation Regulation specifically states that standards can participate in addressing 'major societal challenges such as climate change, sustainable resource use [or] integration of people with disabilities',[59] and can be particularly impactful on society, especially with regards to 'the safety and well-being of citizens … workers' safety and working conditions [and] accessibility', amongst other public policy fields.[60] In that respect, Recital 24 also specifies that the 'European standardisation system should also fully take into account' the CRPD, and seek to enable the participation of persons with disabilities in the standardisation process.[61]

In indicating 'a series of functional accessibility and usability requirements and recommendations for many construction elements … that make up the built environment',[62] Standard EN 17210 also specifies those requirements and recommendations applicable to buildings intended for cultural use.[63] These standards therefore provide a presumption of conformity to accessibility standards applicable to lifts and the built environment. In conjunction with the above-mentioned provisions on accessibility, the use of standards may benefit CCS professionals as they lay out accessibility requirements for relevant stakeholders. This can therefore pave the way for a more accessible built environment for CCS professionals with disabilities. However, that is if the above-mentioned standards are being used and developed in adequation with the CRPD and meet legal requirements, which organisations of persons with disabilities (OPDs) like the European Blind Union (EBU) have questioned in the past.[64] Discussing the accessibility of lifts, the OPD notably emphasised how the 2018 revision of Standard

Installation of Lifts - Particular Applications for Passenger and Goods Passenger Lift - Part 70: Accessibility to Lifts for Persons including Persons with Disability' (2022).

[56] Andrée Brunet, 'Une activité d'intérêt général mise en oeuvre par les parties intéressées' in Fabienne Péraldi Leneuf (dir), Andrée Brunet and Hélène Aubry, *La fabrique du bien commun: Des normes techniques aux normes de services* (Actes du Colloque, Université Paris Dauphine, 18 Mars 2010) 16.

[57] Megi Medzmariashvili, 'Regulating European Standardisation through Law: The Interplay between Harmonised European Standards and EU Law' (PhD Thesis, Lund University 2019) 53.

[58] Case C–160/20 *Stichting Rookpreventie Jeugd and Others v Staatssecretaris van Volksgezondheid, Welzijn en Sport* [2021] ECLI:EU:C:2021:618, Opinion of AG Saugmandsgaard Øe, para 79.

[59] Regulation (EU) 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council [2012] OJ L316/12 (European Standardisation Regulation), recital 19.

[60] European Standardisation Regulation, recital 22.

[61] European Standardisation Regulation, recital 24.

[62] AccessibleEU Centre, 'AccessibleEU Final Report: Getting to Know the European Legislation on Accessibility' (2024) (Getting to Know the European Legislation on Accessibility) 22.

[63] AccessibleEU Centre, 'Getting to Know the European Legislation on Accessibility' (n 62) 23.

[64] European Blind Union (EBU), 'Accessibility of Lifts: Why the European Standard EN 81-70:2018 Fails to Meet the Legal Requirements' (2019).

EN 81-70 failed to cater to the widest possible range of users with disabilities, and to meet CRPD requirements, as it found that essential requirements were 'downgraded to loose requirements' like the provision of information in braille, or that there were insufficient contrast requirements.[65] However, it appears that a number of concerns, including the issue of contrast, were addressed before the European Commission published an amended 2021 version of Standard EN 81-70.[66]

2.4. The Renovation Wave: An Opportunity to Improve Accessibility in the EU?

In view of the recent events and uncertainties surrounding the fate of the Horizontal Equal Treatment Directive,[67] which at some point proposed an article on accessibility,[68] or the fact that the EAA only mentions the accessibility of the built environment as a potentiality left to Member States' discretion, it is rather difficult to imagine what interlinkages could be drawn on to further address the accessibility of the built environment in the EU.

Yet, as discussed in this thesis,[69] and elsewhere, some participants in the study have drawn connections between the issues of disability-inclusion and climate change, emphasising that 'climate action could serve as a model to spur change in the sector(s)'.[70] The Disability Strategy 2021-2030 does too, as it calls on Member States to mainstream accessibility, including in policies and actions related to the European Green Deal and the Renovation Wave.[71] In this context, one of the most recent legal developments arising from the European Green Deal and the Renovation Wave Strategy –the Energy Performance of Buildings Directive (EPBD)– could indeed become a valuable asset in tackling accessibility barriers since it targets both new buildings and existing buildings.[72]

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[65] EBU (n 64) 1, 3–4.

[66] See Commission Implementing Decision of 17 August 2023 amending Implementing Decision (EU) 2021/76 as regards harmonised standards on safety rules for the construction and installation of lifts [2023] OJ L206/670. See also European Lift Association, 'Information Note: EN 81-70:2021 +A1:2022' (2024) 2.

[67] See European Commission, 'Commission Work Programme 2025: Moving Forward Together: A Bolder, Simpler, Faster Union' (Communication) COM(2025) 45 final, annex IV, 25; Magnus Lund Nielsen, 'Commission Revives Anti-Discrimination Directive after 17-Year Standstill' (*Euractiv*, 24 July 2025) <https://www.euractiv.com/section/politics/news/commission-revives-anti-discrimination-directive-after-17-year-standstill/> accessed 8 August 2025.

[68] Council of the European Union, 'Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation' (Note) 14500/16, annex, art 4.

[69] See Chapter 8, Sub-section 4.1.1.

[70] Léa Urzel Francil, 'Leveraging EU Non-Discrimination Law to Make the Cultural and Creative Sectors More Inclusive of Professionals with Disabilities: Socio-Legal Perspectives' [2025] International Journal of Cultural Policy 1, 9.

[71] European Commission, 'Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030' (Communication) COM(2021) 101 final (Disability Strategy 2021-2030), 7. See also European Commission, 'The European Green Deal' (Communication) COM(2019) 640 final; European Commission, 'A Renovation Wave for Europe - greening our buildings, creating jobs, improving lives' (Communication) COM(2020) 662 final.

[72] Directive (EU) 2024/1275 of the European Parliament and of the Council of 24 April 2024 on the energy performance of buildings (recast) [2024] OJ L2024/1275 (EPBD).

Notably, the preamble to the EPBD emphasises that the deep renovation of buildings to increase their energy performance can be 'a prime opportunity to address other aspects' including accessibility for persons with disabilities.[73] This is especially relevant for those older buildings that were not built with accessibility in mind. The Directive also specifies that measures taken to improve the energy performance of buildings must, as such, 'not affect other requirements concerning buildings such as accessibility'.[74]

Substantively, the EPBD obliges Member States to address accessibility for persons with disabilities in relation to new buildings, and not only those owned by public bodies.[75] It may therefore concern a wide range of 'roofed construction having walls', in the words of the Directive,[76] of use to cultural and creatives professionals with disabilities. Likewise, with regard to existing buildings undergoing major renovation,[77] Member States are also required to address accessibility for persons with disabilities.[78] However, in both cases, Member States remain free to define what addressing accessibility for persons with disabilities shall mean, and whether it could be that buildings must meet both accessibility and energy performance requirements.

Although the transposition period has not yet ended,[79] the EPBD may provide, at least for the future, opportunities to improve the accessibility of both residential and non-residential buildings used by CCS professionals with disabilities. Whether they are newly built or existing ones, private or public, with a cultural purpose or not, including those protected buildings of architectural or historical merit, buildings in the EU could progressively become more accessible insofar as accessibility is taken into account as part of meeting energy performance minimum requirements.

Overall, the EU has mainstreamed accessibility for persons with disabilities in a number of norms related to the built environment, notably embedding its consideration in procedures relating to the construction and renovation of buildings that CCS professionals may access like those with a cultural purpose, including public buildings or buildings used by public bodies, but also private buildings. However, this section also highlights that the 'pure physical access problem' (EU CCS 6) is not met by adequate EU legislation which could foster more comprehensively the accessibility of buildings to professionals

[73] EPBD, recital 45.
[74] EPBD, recital 11.
[75] EPBD, art 7(1) and (6).
[76] EPBD, art 2(1).
[77] Article 2(22) EPBD indicates that '"major renovation" means the renovation of a building where: (a) the total cost of the renovation relating to the building envelope or the technical building systems is higher than 25 % of the value of the building, excluding the value of the land upon which the building is situated; or (b) more than 25 % of the surface of the building envelope undergoes renovation. Member States may choose to apply point (a) or (b)'.
[78] EPBD, art 8(3).
[79] EPBD, art 35(1).

with disabilities, and this despite a Council Resolution dating back to 2003[80] that one participant recalled (FG1 P3).

Indeed, there is no main piece of legislation that entrenches making the built environment more physically accessible to persons with disabilities, and it might be complex, just on the basis of the EU provisions mentioned above, to ensure this. The different instruments discussed here paint the picture of an exceptionally fragmented normative landscape, which can (more or less directly) contribute to making the CCS more accessible and inclusive of professionals with disabilities. Admittedly, the lack of EU accessibility legislation on the topic remains a significant gap in the EU legal framework, especially in view of the obligations it would have agreed to when concluding the CRPD. The accessibility of the built environment is therefore not a field that has been core to EU disability law and policy, including on the basis that there is little cross-border element that would underpin the EU legitimacy to address such issue. As discussed in the following chapter, the EU funding system can, to some extent, also serve as an alternative since the Union makes available significant funds, which can be used to making buildings, including those with a cultural purpose, more accessible to persons with disabilities.[81]

3. Leveraging the European Accessibility Act to Support the Participation of Professionals with Disabilities in the CCS

The EAA is a key component of EU disability law and policy, which promises to make a range of goods and services in the EU more accessible to persons with disabilities. As discussed herein after, its relevance for cultural and creative professionals with disabilities is perhaps more negligible than what its abbreviated (and generous) title –the European Accessibility Act– would suggest. This is in part due to its personal scope, since the EAA focuses on defining accessibility requirements for consumers with disabilities, but also due to the fact that its material scope only covers cultural goods and services to a limited extent.

In that vein, only a handful of stakeholders taking part in the study referred to this Directive, and when they did, they discussed in particular whether and how it would change the ways their sector(s) and professionals operate, and less how it could benefit professional participation in cultural life. The discrepancy between the status of the EAA as a milestone achievement of EU disability law and policy –including in terms of

[80] Council Resolution of 6 May 2003 on accessibility of cultural infrastructure and cultural activities for people with disabilities [2003] OJ C134/7.
[81] See the projects mentioned in Chapter 8, Sub-section 3.3.

implementing the CRPD in the EU– and its limited relevance for making the CCS more accessible to cultural and creative professionals with disabilities is a key finding, and it underpins how it is considered in the context of this thesis.

As such, this section seeks to highlight the potential and limitations more specific to the personal and material scope of the EAA, while recalling some synergies between the Directive and a range of EU acts fostering accessibility in the EU.

3.1. A Directive Only for Consumers with Disabilities?

In summary, the EAA requires Member States to ensure that goods and services covered under its scope meet the broad accessibility requirements laid down in Annex I 'in such a way as to maximise their foreseeable use by persons with disabilities'.[82] Article 2 EAA specifies that the Directive applies to products intended for consumers, including computer hardware systems and operating systems (meaning personal computers, including desktops, notebooks, smartphones and tablets), consumer terminal equipment used for electronic communications services and for accessing audiovisual media services,[83] as well as all services covered by the EAA, meaning those provided to consumers.[84] These include, amongst others, electronic communications services, services providing access to audiovisual media services, elements of transport services such as websites, mobile applications or self-service terminals, consumer banking services, or e-books.[85] In this respect, the EAA aims to take particular account of the needs of persons with disabilities, including individuals with intellectual disabilities, blind and visually impaired people, as well as deaf and hard of hearing persons. Indeed, it mentions among other examples of solutions, the use of subtitles, visual contrast, Braille or the consistent use of the same words, and their clear and logical structure.[86]

As it is overwhelmingly dedicated to making products and services more accessible to consumers with disabilities, it is clear that the EAA is a consumer-driven Directive. In this respect, Article 3(22) EAA specifies that 'consumer' must be understood to mean 'any natural person who purchases the relevant product or is a recipient of the relevant service for purposes which are outside his trade, business, craft or profession'. This is also the case of the Payment Services Directive, which provides for the accessibility of information to persons with disabilities, and circumscribes its relevance to consumers

[82] EAA, art 4 and annex I, 151.
[83] EAA, art 2(1)(a), (c)–(d)
[84] EAA, art 2(2).
[85] See EAA, art 2(2)(a)–(e).
[86] EAA, annex II.

with disabilities 'acting for purposes other than his or her trade, business or profession'.[87] Moreover, the Consumer Rights Directive, and EU consumer protection law more broadly, understand a consumer as a natural person acting for purposes which are outside their trade, business, craft or profession.[88] The Court of Justice of the EU (the 'Court' or CJEU) has established that 'this criterion corresponds to the idea on which the system of protection implemented … is based, namely that the consumer is in a weaker position vis-à-vis the seller or supplier, as regards both his bargaining power and his level of knowledge'.[89]

The situation of CCS professionals with disabilities as 'professionals' thus appears to be an issue. This begs the question of whether and under which circumstances CCS professionals with disabilities can benefit from the EAA's consumer-based accessibility provisions. At first sight, the letter of the Directive suggests that CCS professionals cannot claim the status of consumer, and therefore benefit from the products and services made accessible following the entry into force of the EAA, as they are only intended for the use of consumers. Adopting a strictly professional perspective limits drastically the possibilities for CCS professionals to benefit from the effects brought about by such a key piece of the 'jigsaw' of accessibility legislation.[90]

However, the case law of the CJEU nuances this point. In the event of dual-purpose transactions, which can be attributed to purposes falling partly within and partly outside the person's professional activities, and where the professional purpose is 'so limited as not to be predominant in the overall context of the contract', the CJEU has considered that the individual should be considered a consumer.[91] It is also expressly addressed in the preamble to the Consumer Rights Directive.[92] These situations have been particularly

[87] Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC [2015] OJ L337/35 (Payment Services Directive), art 4(20) and 106(5).
[88] See Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council [2011] OJ L304/64 (Consumers Rights Directive), art 2(1); Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC [2013] OJ L165/63, art 4(1)(a); Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 [2017] OJ L345/1, art 3(12); Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC [2019] OJ L136/28, art 2(2).
[89] See Case C–488/11 *Dirk Frederik Asbeek Brusse and Katarina de Man Garabito v Jahani BV* [2013] ECLI:EU:C:2013:341, para 31; Case C–110/14 *Horațiu Ovidiu Costea v SC Volksbank România SA* [2015] ECLI:EU:C:2015:538, para 18; Case C–537/13 *Birutė Šiba v Arūnas Devėnas* [2015] ECLI:EU:C:2015:14, para 22; Case C–570/21 *IS and KS v YYY SA* [2023] ECLI:EU:C:2023:456 (YYY), para 35.
[90] Delia Ferri, 'The Role of the European Union in Ensuring Accessibility of Cultural Goods and Services: All About that … Internal Market?' (2023) 48 European Law Review 257, 259.
[91] See Case C–570/21 *YYY*, para 53.
[92] Consumer Rights Directive, recital 17.

controversial and have given rise to numerous cases on the concept of consumer as understood in EU law, although not yet in the context of EU accessibility legislation.

The idea that CCS professionals may use products and services on the market for dual purposes therefore blurs the lines with regards to the potential of the EAA in enabling their participation in cultural life. Indeed, the EAA is relevant to CCS professionals with disabilities, and especially to those that are self-employed and who may for instance buy a computer, a mobile phone or use different websites for dual purposes. Although there has not yet been any ruling with respect to this specific Directive, the jurisprudence of the CJEU seems to indicate that CCS professionals with disabilities would be considered consumers if the professional purpose in the purchase of products or the receipt of services was so limited as not to be predominant in the overall context.

According to the CJEU's case law in relation to consumers, the assessment of dual-purpose transactions requires the court concerned to determine, on the basis 'of the objective evidence available to it, to what extent the trade, business or professional purpose of that contract or its non-professional purpose is predominant'.[93] Noting that the criteria for such assessment 'are neither exhaustive nor exclusive', it entails taking into consideration all the relevant circumstances –both qualitative and quantitative– surrounding the purchase of products or receipt of services at issue.[94] Under certain conditions, the EAA could therefore benefit some CCS professionals with disabilities seeking products and services for dual-purposes.

Moreover, if the products put on the market and the services provided to consumers are made more accessible so as to abide by the accessibility requirements set by the EAA, the Directive is likely to benefit CCS professionals with disabilities indirectly, insofar as they 'consume' those same products and services as part of their professional activities. For example, if a private person buys a personal computer for personal use, which meets the accessibility requirements put forward in the EAA, it is likely that a CCS professional can buy the same computer for professional purposes and therefore benefit from increased accessibility features. Moreover, if the websites and mobile applications of transport services comply with accessibility requirements, as well as the built environment used in the provision of such services as enabled by Article 4(4) EAA, this would most likely also benefit persons with disabilities as CCS professionals who would use such transport services.

[93] Case C–570/21 *YYY*, para 58.
[94] See Case C–570/21 *YYY*, paras 57–59.

This line of argument finds perhaps its limits with Article 29 EAA on enforcement, which enjoins Member States to make sure that adequate and effective means exist to ensure compliance with the Directive.[95] Indeed, if CCS professionals with disabilities should be able to benefit indirectly, as part of their professional activities, from the positive repercussions of the implementation of the EAA, and from those accessible products and services originally intended for consumers, their ability to make claims before courts will be severely limited. Most probably, unless they can prove a dual purpose whereby the professional purpose is not predominant, CCS professionals with disabilities should not be able to take action under national law to ensure that the national provisions transposing the Directive are complied with. This possibility should be particularly reserved to those persons that are considered to be consumers, as per Article 29(2)(a) EAA.

Although there should still be opportunities for professionals to benefit from such a significant shift in the EU market, the notion of 'consumer', as defined in the EAA and in EU law more broadly, does compromise the relevance of the Directive for CCS professionals with disabilities.

3.2. Material Scope of the EAA: Questioning the Relevance for CCS Professionals with Disabilities

While the previous sub-section laid out the circumstances and conditions for CCS professionals with disabilities to be covered under the personal scope of the EAA, the present sub-section explores at greater length the material scope of the EAA. As such, it questions how making products and services more accessible, as per the EAA, can impact positively on the functioning of the CCS and enable the participation of professionals with disabilities. Secondly, it discusses the shortcomings of the EAA in that respect.

3.2.1. Opportunities

Being designed 'to ensure that the same level of accessibility is maintained throughout Europe for a selection of products and services'[96] placed on the market or provided after 28 June 2025,[97] the EAA should now be producing effects in the internal market with regard to the accessibility of goods and services. However, the material scope of the Directive covers few products or services that can be understood more straightforwardly

[95] EAA, art 29(1).
[96] Charitakis, 'Access Denied' (n 8) 282.
[97] EAA, art 2(1)–(2).

as ‘cultural’. Indeed, the CCS are not among the sectors ‘fully in the scope of the EAA’, as according to Drabarz, only the Information and Communication Technologies (ICTs) industry is.[98] In this context, this means that the EAA is only apt to directly foster the accessibility of the CCS to professionals with disabilities as it enjoins to make accessible those few cultural products and services like e-books, e-readers, or ‘services providing access to audio-visual media’.[99] As such, the EAA can contribute to enabling the cultural participation of CCS professionals who directly interact with those products and services as part of their occupation. Perhaps most obviously –but non exhaustively– this would interest the book and publishing sectors, as well as the audiovisual sector.

There is however further potential for leveraging on the EAA to foster the inclusion of professionals with disabilities in the CCS, in that the Directive can bolster the accessibility of the creative process for some professionals. As noted in the introduction, cultural and creative professionals often seek information, including for inspiration purposes, visual image needs, knowledge of trends, and research cultural and creative elements, materials, technics, which then feed into their creative process and work.[100] In this context, the EAA can benefit CCS professionals who might do so using e-books or e-readers, and/or using services providing access to audiovisual media.

In addition, the EAA also encompasses within its scope a range of products and services, which, albeit not cultural *per se*, are necessary to the conduct of the activities of cultural and creative professionals with disabilities. Indeed, the list of digital goods and services covered by the EAA is fairly broad,[101] and includes many goods such as computers, tablets, smartphones, and smart TVs[102] whose accessibility is ‘also a precondition to access the cultural digital space’,[103] and therefore of interest to CCS professionals with disabilities. The EAA also covers digital services, including websites and mobile applications used for transport, banking or e-commerce services, in addition to those providing access to the audiovisual media services, as mentioned earlier.[104]

While the digital transformation poses certain challenges in the CCS, those digital products and services are ubiquitous to entertaining a professional occupation in the

[98] Anna Drabarz, ‘Harmonising Accessibility in the EU Single Market: Challenges for Making the European Accessibility Act Work’ (2020) 43 Review of European and Comparative Law 83, 91.
[99] Ferri, ‘The Role of the EU in Ensuring Accessibility’ (n 90) 270.
[100] See Hemmig, ‘The Information-seeking Behavior of Visual Artists’ (n 6) 355.
[101] Lisa Waddington, ‘Regulating e-Accessibility and Digital Equality in Europe from a Multilevel Perspective’ in Carola Ricci (ed), *Building an Inclusive Digital Society for Persons with Disabilities: New Challenges and Future Potentials* (Pavia University Press 2019) 5–6.
[102] See EAA, art 2(1)–(2).
[103] Ferri, ‘The Role of the EU in Ensuring Accessibility’ (n 90) 270.
[104] EAA, art 2(2)(b)–(d) and (f).

CCS.[105] On the one hand, digital products and services may be 'functional to guarantee access to cultural goods and services'.[106] Therefore, their accessibility should boost the information-seeking activities of CCS professionals with disabilities. On the other hand, it is hardly imaginable that professionals with disabilities can entertain a career in the CCS without interacting with most of the digital goods and services that must be made accessible as per the provisions set out in the EAA.

Indeed, nowadays, and as discussed in the following section on the WAD, society at large but more importantly cultural institutions, funders, other employers and/or potential clients rely on digital technologies and have entered the digital space.[107] As such, CCS professionals with disabilities are likely to be using computers, smartphones, or tablets for the purpose of connecting with other stakeholders in the CCS, applying for positions, residencies, responding to open calls, tenders, or sharing their work through online portfolios for instance. Most probably, it requires the use of emails and the use of the aforementioned digital tools as a medium. Their work is also likely to involve interaction with terminal equipment, ATMs, ticketing machines –to travel for a residency for instance– or e-commerce services. It is thus considered that the accessibility of many of these products and services, although not cultural as such, plays a decisive role for CCS professionals with disabilities. As such, even if intended for consumers the entry into effect of the EAA will likely benefit CCS professionals using digital products and services, in the conditions discussed in sub-section 3.1.

Interestingly, the EAA also contributes to the accessibility of passenger transport services whether by air, bus, rail and waterways, except for urban, suburban and regional ones.[108] In this regard, Article 2(2)(c) EAA provides for the accessibility of their websites, mobile applications and other mobile services, electronic tickets and e-ticketing services. It also covers the accessibility of the delivery of transport service information, including live travel information, and interactive self-service terminals in the EU, the latter also applying to urban, suburban and regional transport services.[109] Eventually, the EAA only partially covers the ambitions of the European Commission,[110] which saw in the Directive an 'opportunity to develop a general set of standards on the accessibility of transport

[105] Marta Massi, Marilena Vecco and Yi Lin, 'Digital Transformation in the Cultural and Creative Sectors' in Marta Massi, Marilena Vecco and Yi Lin (eds), *Digital Transformation in the Cultural and Creative Industries: Production, Consumption and Entrepreneurship in the Digital and Sharing Economy* (Routledge 2021) 1–3.
[106] Ferri, 'The Role of the EU in Ensuring Accessibility' (n 90) 270.
[107] For further discussions, see Chapter 7, Sub-section 4.1.
[108] EAA, art 2(2)(c).
[109] EAA, art 2(2)(c).
[110] European Commission, 'Proposal for a Directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services' COM(2015) 615 final, art 1(2)(c).

infrastructure and services'.[111] Yet, for CCS professionals with disabilities, as for many other professionals, participating in the labour market can depend on transport.[112] Accessibility of transport systems is therefore a precondition to the realisation of Article 27 CRPD, and to implementing Article 30(2) CRPD. In rendering transport services more accessible across the Union, the EAA may again be able to improve the accessibility of the CCS to those professionals with disabilities, as they require to travel across the Union or use national transport services.

The EAA therefore touches upon a range of products and services which are crucial for professionals with disabilities to be included in today's society and in the CCS, including some cultural goods and services, transport and banking services, payment terminals, ATMs, or computers and smartphones. All are connected and, if not equally, highly relevant to the pursuit of a career in the CCS. Overall, the relevance of the EAA for CCS professionals appears more or less straightforward depending on the products or services involved –with some being more obviously cultural and others much less so. However, this also depends on whether CCS professionals with disabilities can benefit from the application of EAA provisions as non-consumers.

3.2.2. Limits

The EAA is a step in the right direction in implementing Article 9 CRPD in the Union. However, on top of the points raised above, its scope is limited.[113] Indeed, contrary to what its title may suggest, the EAA is not quite an all-encompassing piece of accessibility legislation, and as this thesis argues, this can particularly impact CCS professionals with disabilities. In addition to considerations relative to the exclusive notions of consumers and professionals discussed earlier, the EAA's relevance for CCS professionals with disabilities is further called into question in view of the limitations of its material scope.

Indeed, as it 'does not refer to making art or culture accessible to people with disabilities',[114] the EAA concerns only a few types of cultural products and services. In that sense, with the Directive being limited to 'the existence of actual or potential market

[111] European Commission, 'A European vision for Passengers: Communication on Passenger Rights in all transport modes' (Communication) COM(2011) 898 final, 6.
[112] Anna Lawson, 'The UN Convention on the Rights of Persons with Disabilities and European Disability Law: A Catalyst for Cohesion?' in Oddný Mjöll Arnardóttir and Gerard Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives* (Brill Nijhoff 2009) 105.
[113] See United Nations Human Rights Council (UN HRC), 'Visit to the European Union: Report of the Special Rapporteur on the Rights of Persons with Disabilities, Gerard Quinn' (2022) UN Doc A/HRC/52/32/Add.1 para 11.
[114] Lisa Waddington, 'EU Disability Law and Policy and Access to Art Works through 3D Printing' in Jani McCutcheon and Ana Ramalho (eds), *International Perspectives on Disability Exceptions in Copyright Law and the Visual Arts: Feeling Art* (Routledge 2020) 115.

barriers',[115] 'cultural media content (e.g. performances, theatres, cinema, concerts)' is not covered, as it was not identified as part of the priority goods and services which can face 'barriers in cross-border trade' in the EU.[116]

In that connection, while the EAA opens the possibility to require that some of the built environment is made accessible, there is little consideration given to the accessibility of the built environment with a cultural purpose like 'buildings open to the public, including libraries, theatres, monuments, and cultural heritage'.[117] While improving the accessibility of the built environment is discussed in the EAA, as in '[s]ome situations, common accessibility requirements of the built environment would facilitate the free movement of the related services and of persons with disabilities', it is merely a suggestion for Member States –one which limitedly concerns the services covered by the EAA[118] and which has been criticised in this connection.[119] Should Member States decide to apply accessibility requirements in that respect, the EAA only refers to the built environment used for 'passenger transport services, consumer banking services and customer service centres of shops of electronic communications service providers'.[120] As such, the EAA excludes from its scope 'the real environment where people spend most of their time',[121] which also means that 'access to culture in the "real world" remains outside the scope of accessibility legislation',[122] or at least of the EAA's.[123] This contributes to a broader lack of engagement of EU accessibility legislation with the built environment, one which certainly impacts CCS professionals with disabilities, especially when no relevant domestic legislation on the subject is in place.

This thesis identifies additional shortcomings in the EAA concerning accessible transport services. Particularly, it ensues from the provisions discussed above that the EAA mostly focuses on transport services other than urban, suburban and regional ones. Only Article 2(2)(c)(v) EAA provides for the accessibility of interactive self-service terminals of urban, suburban and regional transport services. With regard to how urban, suburban and regional transport services are defined in this context,[124] this restricts considerably the

[115] Ferri, 'The Role of the EU in Ensuring Accessibility' (n 90) 270.
[116] See SWD(2015) 264 final, annex 5, 38–42.
[117] Ferri, 'The Role of the EU in Ensuring Accessibility' (n 90) 278.
[118] See EAA, recital 49 and art 4(4).
[119] See Stelios Charitakis, 'Accessibility of Goods and Services' in Delia Ferri and Andrea Broderick (eds), *Research Handbook on EU Disability Law* (Edward Elgar 2020) 239.
[120] See EAA, arts 4(4) and 33(2).
[121] European Disability Forum (EDF), 'Disappointing Compromise on EU Accessibility Act' (2018) 2 <https://www.internationaldisabilityalliance.org/sites/default/files/annexure_5.docx> accessed 12 September 2025.
[122] Ferri, 'The Role of the EU in Ensuring Accessibility' (n 90) 278.
[123] On how EU accessibility legislation can foster accessible built environment in the CCS, see Chapter 7, Section 2.
[124] As per Articles 3(35) and (36) EAA, read in conjunction with Articles 3(6) and (7) of Directive 2012/34/EU, 'urban and suburban services' refer to transport services (by rail, bus and coach, metro, tram and trolley bus) whose principal purpose is to meet the transport needs of an urban centre or conurbation, including a cross-border conurbation; while

accessibility requirements ensuing from the EAA that may apply to transport modes usually taken by CCS professionals with disabilities. As such, the daily commute of professionals with disabilities may, on the basis of the EAA, only very limitedly be made more accessible.

Such limits may further impede on the professional participation of persons with disabilities in cultural life, knowing that they are already not the intended recipients of the EAA, and may only profit indirectly from the Directive coming into effect.

3.3. Obligations and Exemptions for Cultural and Creative Professionals

Instead, the EAA is perhaps more likely to create obligations for CCS professionals with disabilities than to set out obligations that would benefit them, as they may put products and services on the market that must be made accessible. In that sense, one of the participants recalled working with their members on the Directive, and especially those traders that would have to make their websites accessible (EU CCS 10).

As a matter of fact, the adoption of the EAA was controversial and reinforced the 'politically sensitive issues that accessibility brings', particularly with regards to businesses.[125] In that respect, 'the "freedom to conduct a business", protected by art.16 [CFR] seems to underpin the concerns expressed within the [European Parliament]' on the ability of micro-enterprises to conduct their business under too stringent accessibility requirements.[126] Such concerns eventually led to exempting micro-enterprises from complying with several provisions introduced by the EAA,[127] 'mean[ing] that a large number of service providers can lawfully continue to exclude potential customers as a result of inaccessibility'.[128] This exemption has a particular meaning for the CCS, which are sectors prone to the development of micro-enterprises.[129] Indeed, an interviewee noted that many of their members are covered by the EAA's 'exception for [Small and Medium-sized Entreprises]' (EU CCS 10). This exemption can end up further restricting the scope

'regional transport services' means transport services (rail, bus and coach, metro, tram and trolley bus) whose principal purpose is to meet the transport needs of a region, including a cross-border region. See Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (recast) [2012] OJ L343/32.

[125] Delia Ferri, 'The European Accessibility Act and the Shadow of the "Social Market Economy"' (2020) 45 European Law Review 660, 670–671.

[126] Ferri, 'The EAA and the Shadow of the "Social Market Economy"' (n 125) 671–672.

[127] See EAA, arts 4(5) and 14(4).

[128] Andrea Broderick, 'The European Accessibility Act: A Paradigm of Inclusive Digital Equality for Persons with Disabilities?' in Carola Ricci (ed), *Building an Inclusive Digital Society for Persons with Disabilities: New Challenges and Future Potentials* (Pavia University Press 2019) 31.

[129] See Eurostat, 'Culture Statistics - Cultural Enterprises' (Statistics Explained, 11 August 2025) <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Culture_statistics_-_cultural_enterprises> accessed 12 September 2025

of goods and services accessible to CCS professionals with disabilities, therefore affecting the opportunities they have to take part in cultural life.[130]

In contrast, now that the EAA has come into effect, some of the most well-known audiovisual stakeholders, including online video platforms like Amazon Prime Video, Disney Plus, Netflix, and YouTube, have to make their services accessible. A few months prior the cut-off date of 28 June 2025, significant accessibility issues remained unaddressed.[131]

Nevertheless, the EAA represents a new piece in the EU's accessibility legislation jigsaw that has some potential for making the CCS more accessible to professionals with disabilities, even more so if understood in conjunction with other legislation, including the WAD, as discussed hereinafter.

4. The Web Accessibility Directive as a Tool to Enhance Participation of Cultural and Creative Professionals with Disabilities

As introduced in chapter 4, EU accessibility legislation incorporates a range of provisions attached particularly to ICTs and access to information.[132] The articulation of such provisions in EU law, together with those affecting digital goods and services, is key to enabling the participation of cultural and creative professionals in the CCS, and to foster opportunities for them to work, and develop and utilise their creative, artistic, and intellectual potential.

Adopted during the Disability Strategy 2010-2020, the WAD is, with the EAA, one of the most influential pieces of accessibility legislation adopted by the EU, and one of the few dedicated solely to accessibility for persons with disabilities. Focused on providing better access to websites and mobile applications of public sector bodies (PSBs), the WAD endeavours to improve web accessibility, and to advance new ways of accessing information and services, particularly for persons with disabilities.[133] Interestingly, a number of interviewees and focus group participants showed that they were familiar with the Directive, or at least with the obligations it put forward. Several participants also conveyed that, beyond web accessibility, they felt it was paramount for CCS stakeholders

[130] Ferri, 'The Role of the EU in Ensuring Accessibility' (n 90) 271.
[131] See Philipp Michtner and Robert FJ Pinzolits, 'Web Accessibility Gaps in Online Video Platforms: Video Services Ahead of the European Accessibility Act (EAA)' (2025) 24 Universal Access in the Information Society 2611, 2622–2623.
[132] See Chapter 4, Sub-section 5.3.
[133] WAD, art 1.

to provide information on accessibility –particularly on the accessibility of the built environment in the CCS– including through their websites.

In this context, the WAD is a key instrument that can foster access to information, including information on accessibility. While discussing the importance of accessing the digital world for CCS professionals with disabilities, this section therefore explores the material scope and provisions put forward by the WAD, before assessing the implementation and impact of the Directive on the activities of cultural and creative professionals with disabilities.

4.1. Why Accessibility in the Digital Age Matters for CCS Professionals

Over the years, 'shaping Europe's digital future' has become a key focus of the EU, and particularly of the European Commission.[134] In this respect, the EU institution has put the onus on supporting the digital transformation of the Union, 'promoting a human-centred, fundamental-rights-based, inclusive, transparent and open digital environment' with the Digital Decade, through the achievement of four specific digital targets; a digitally-skilled population and highly-skilled digital professionals, secure and sustainable digital infrastructures, the digital transformation of businesses and the digitalisation of public services.[135]

Concomitantly, the rise of and increased reliance on digital technologies, and related products and services, has particularly impacted on the functioning of the CCS and the activities of cultural and creative professionals.[136] Cultural economists have indeed pointed to how 'this [creative] economy is now dominated by the digital revolution in the use of knowledge and information, and its distribution via the Internet'.[137] As mentioned

[134] European Commission, *Shaping Europe's Digital Future* (Publications Office 2020).
[135] Decision (EU) 2022/2481 of the European Parliament and of the Council of 14 December 2022 establishing the Digital Decade Policy Programme 2030 [2022] OJ L323/4, arts 3(1)(a) and 4(1).
[136] See, for instance, Xavier Greffe, 'Artistic Jobs in the Digital Age' (2004) 34 The Journal of Arts Management, Law, and Society 79; Hasan Bakhshi and David Throsby, 'New Technologies in Cultural Institutions: Theory, Evidence and Policy Implications' (2012) 18 International Journal of Cultural Policy 205; Enrico Bertacchini and Federico Morando, 'The Future of Museums in the Digital Age: New Models for Access to and Use of Digital Collections' (2013) 15 International Journal of Arts Management 60; Marius Carboni, 'The Digitization of Music and the Accessibility of the Artist' (2014) 3 Journal of Professional Communication 149; Joost Poort and others, 'Perspectives of Creators and Performers on the Digital Era' (2015) 17 New Media & Society 666; Yves Evrard and Anne Krebs, 'The Authenticity of the Museum Experience in the Digital Age: The Case of the Louvre' (2018) 42 Journal of Cultural Economics 353; Joel Waldfogel, 'Digitization in the Creative Industries' in Ruth Towse and Trilce Navarrete Hernández (eds), *Handbook of Cultural Economics* (3rd edn, Edward Elgar 2020); Marta Massi, Marilena Vecco and Yi Lin (eds), *Digital Transformation in the Cultural and Creative Industries: Production, Consumption and Entrepreneurship in the Digital and Sharing Economy* (Routledge 2021); Peter Booth and Sigrid Røyseng, 'Artists and Online Dissemination: An Analysis of Positions and Position-Takings' (2022) 52 The Journal of Arts Management, Law, and Society 266; Anne-Britt Gran and Terje Gaustad, 'Digitizing Cinemas – Comprehensive Intended and Unintended Consequences for Diversity' (2022) 52 The Journal of Arts Management, Law, and Society 101.
[137] Ruth Towse and Trilce Navarrete Hernández, 'Introduction' in Ruth Towse and Trilce Navarrete Hernández (eds), *Handbook of Cultural Economics* (3rd edn, Edward Elgar 2020) 1.

in the context of the EAA, cultural and creative professionals are using digital products and services to work, access information and communicate with stakeholders of interest, including through the internet, social media, apps, and other digital technologies. Digital products and services are indeed critical to pursue learning opportunities, to seek work, residencies, other mobilities or funding, and engage with cultural stakeholders and other potential clients, employers, and funders, but also to produce and to publicise and enhance the visibility of one's work.[138]

Nowadays, the context in which CCS professionals with disabilities must evolve and seek work opportunities is that of the digital world, and their online presence is mostly a given and key to sustaining a career. As a result, they experience the rapid evolution of digital technologies, and the opportunities and challenges this presents. Ferri and Favalli emphasise that '[t]he acknowledgement that ICT can foster participation and inclusion of people with disabilities in society goes hand in hand with the recognition that digital technologies may also create a system of exclusion'.[139] Indeed, the CRPD Committee has stressed how persons with disabilities 'are often denied their right to freedom of expression owing to the inaccessibility of information and communication'.[140] This tallies with a range of issues raised by CCS stakeholders during the interviews and focus groups, as they were concerned with barriers in terms of communication and access to information, especially information on accessibility which 'is often hidden away' (FG1 P4). Admittedly, one participant also noted:

> When we talk about digital technology, I believe that one may think more easily of the ways in which today's audiences can do online visits, or the ways in which audiences can benefit onsite from assistive tools during visits, their iPhones, iPad, access to augmented reality. (EU CCS 9)

Against this background, this section therefore aims to highlight how the WAD is relevant to persons with disabilities in the CCS, in particular as professionals, and how it can respond to some of the concerns raised during the qualitative study.

[138] See, for instance, Sam Miles, '"Do We Have LIFT-Off?" Social Media Marketing and Digital Performance at a British Arts Festival' (2018) 48 The Journal of Arts Management, Law, and Society 305; Tula Giannini and Jonathan P Bowen, 'Transforming Education for Museum Professionals in the Digital Age' in Tula Giannini and Jonathan P Bowen (eds), *Museums and Digital Culture: New Perspectives and Research* (Springer 2019); Aleksandra Webb and James Layton, '*Digital Skills for Performance*: A Framework for Assessing Current and Future Digital Skills Needs in the Performing Arts Sector' (2023) 13 Arts and the Market 33.
[139] Delia Ferri and Silvia Favalli, 'Web Accessibility for People with Disabilities in the European Union: Paving the Road to Social Inclusion' (2018) 8 Societies 40, 2.
[140] CRPD Committee, 'General Comment No. 2' (n 24) para 7.

4.2. Material Scope of the WAD: Making the Digital Space Inclusive of CCS Professionals with Disabilities?

Indeed, the inaccessibility of the digital world –which the EU addresses to some extent with the WAD– can represent a barrier to working in the CCS for persons with disabilities, especially when governments increasingly rely on the internet to deliver public services and information.[141] Therefore, the present sub-section considers the material scope of the WAD, highlighting the potential of the Directive in making the CCS more inclusive and accessible for professionals with disabilities, before addressing some limitations.

4.2.1. Opportunities

The aim of the WAD is primarily to approximate Member States' framework in terms of accessibility requirements for public sector websites and applications, in order to improve their accessibility to users and particularly persons with disabilities.[142] As laid out in the preamble, accessibility for the purpose of the WAD refers to principles –including perceivability, operability, understandability and robustness– 'and techniques to be observed when designing, constructing, maintaining, and updating websites and mobile applications in order to make them more accessible to users', and especially to users with disabilities.[143]

In this respect, the WAD indicates that such principles have been converted into testable success criteria via harmonised standards.[144] The Directive is therefore complemented by an updated harmonised European Standard called 'Accessibility requirements for ICT products and services' (EN 301 549), which supports its implementation.[145]

As such, the WAD addresses specifically the accessibility of websites and mobile applications of PSBs, and covers any State, regional or local authorities, as well as bodies governed by public law, or specific associations.[146] The WAD is quite pertinent then as it

[141] European Commission, 'Supporting Public Administrations in EU Member States to Deliver Reforms and Prepare for the Future' (Staff Working Document) SWD(2021) 101 final, 6–7.
[142] WAD, art 1(1).
[143] WAD, recitals 2 and 37.
[144] WAD, recital 37.
[145] See Commission Implementing Decision (EU) 2018/2048 of 20 December 2018 on the harmonised standard for websites and mobile applications drafted in support of Directive (EU) 2016/2102 of the European Parliament and of the Council [2018] OJ L327/84.
[146] WAD, art 3(1).

can be understood to apply to a range of PSBs of greater interest to cultural and creative professionals with disabilities, including:

> ministries for culture and/or heritage, and other government departments; state agencies in the areas of tourism, heritage, and culture and arts; galleries; libraries; museums; orchestra; theatres; operas; cultural and arts centres; higher education establishments in the area of arts and culture; cultural institutes; and cultural funds/foundations.[147]

These are stakeholders of relevance to CCS professionals with disabilities as they are potential clients, employers, partners, and funders, and instrumental to the exercise of their occupation and their participation in the CCS. They are also institutions that CCS professionals may want to interact with as audience members. In this respect, albeit some focused more on audiences with disabilities, participants insisted that websites, and especially those of cultural institutions should be accessible, easy to navigate and display useful information for persons with disabilities to engage with (FG1 P5), to plan visits and 'to know in advance what is expecting you' with regard to 'any cultural activity, institution, any building' (FG1 P1).

The websites and mobile applications within the scope of the WAD can host information that underpin the participation of professionals with disabilities in the CCS, such as essential information regarding their status, obligations under national law, taxation, social protection, employment/self-employment rules, or education and training possibilities, and the forms associated. Moreover, they can host, without being exhaustive, information on opportunities in terms of employment or self-employment, funding, projects, mobilities or residencies, or on the physical accessibility of the built environment, including of cultural institutions, where their activities may take place. In addition, how accessible PSBs' website are also determines the possibilities that persons with disabilities have to communicate with them, especially with regard to dematerialised procedures. Again, websites and applications can also include content of use to the creative process of CCS professionals with disabilities, for inspiration, research into specific cultural and creative elements, materials, technics, or background information.[148]

The WAD therefore bolsters the possibilities for PSBs, with a cultural remit or not, 'to provide services to more people thanks to improved accessibility',[149] and this may

[147] Ferri, 'The Role of the EU in Ensuring Accessibility' (n 90) 268.
[148] See, for instance, Susie Cobbledick, 'The Information-Seeking Behavior of Artists: Exploratory Interviews' (1996) 66 The Library Quarterly: Information, Community, Policy 343; Medaille (n 6); Hosier (n 6).
[149] European Commission, 'Review of the application of Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies (Web Accessibility Directive)' (Staff Working Document) SWD(2022) 410 final, 45.

positively affect the activities of CCS professionals with disabilities. As such, it has the potential to positively impact on the ability of CCS professionals with disabilities to access a number of services and information of relevance to their professional activities, therefore advancing to a certain extent on the realisation of Articles 30(2) and 27 CRPD.

4.2.2. Limits

While the WAD appears as a key piece of legislation to leverage for CCS professionals with disabilities in the EU, it is not without flaws, especially in the context of this thesis. To begin with, it is worth pointing out a few self-contained limitations of the WAD's scope, which come to nuance its potential with regard to cultural matters and for CCS professionals. These concern some of the websites, mobile applications and content that are not covered by the WAD.

In this respect, Article 1(3)(a) WAD excludes the websites and mobile applications of public service broadcasters from the Directive's scope on the basis that the provision of accessible audiovisual media services would be better developed in the context of legislation that would equally apply to private broadcasters.[150] Fortunately, the services providing access to audiovisual media services are now covered under the EAA,[151] albeit a recent study found that much remains to be done to ensure their accessibility.[152]

Certain content of websites and mobile applications are also not covered, like the reproductions of items in heritage collections, which cannot be made accessible on the basis of incompatibility with the preservation of the item concerned or authenticity of reproduction, or the unviability of automated and cost efficient solutions.[153] Still, the preamble to the WAD indicates that 'accessibility requirements … should still be complied with as regards the metadata linked to the reproduction of items in heritage collections'.[154]

Adopting a professional perspective reveals other shortcomings of the WAD. Indeed, the WAD excludes from its scope the content published on intranets and extranets before 23 September 2019, until those undergo substantial revisions.[155] In that respect, Recital 34 makes clear that Member States also have the possibility to go beyond the minimum accessibility requirements the Directive sets out and to extend its application to the

[150] WAD, recital 23 and art 1(3)(a).
[151] See EAA, recital 31 and art 2(2)(b). See Chapter 7, Section 3.
[152] Michtner and Pinzolits (n 131) 2622.
[153] WAD, art 1(4)(f).
[154] WAD, recital 31.
[155] WAD, art 1(4)(g).

intranet or extranet websites and mobile applications it does not cover, and which could be 'designed for and used by a limited number of persons in the workplace or in education'.[156] With the democratisation of the internet in the 1990s and the web becoming an 'ubiquitous feature in offices', intranets and extranets have become common tools for communication and knowledge exchange in organisations.[157] Their full accessibility, including that of all the content they host, therefore seems essential to the participation of cultural and creative professionals with disabilities in the cultural public sector, as part of the bodies concerned, or as external users. Although this gap is likely to be corrected as intranets and extranets undergo substantial revisions, in the meantime, the accessibility of online work environments and professional relationships, which rely on the use of intranets and extranets, might be limited. Therefore, this provision could impact on the participation of professionals with disabilities in the CCS to the extent they would need to access the content excluded from the scope of the Directive in accessible format.

In addition, the WAD only encourages EU institutions to comply with the accessibility requirements it sets out, it does not oblige them to do so.[158] If the EU appears committed to follow guidelines for accessible web content, not all of its websites and content have yet been optimised in terms of accessibility.[159] As highlighted in the following chapter, the websites of EU funded cultural initiatives also seem to fail certain accessibility requirements,[160] and this is to the detriment of CCS professionals with disabilities that require such accessibility barriers to be lifted in order to carry out their work on an equal basis with others.

Lastly, the joint assessment of the WAD and EAA reveals that a number of websites, including those of private economic operators, are still not bound to conform to accessibility obligations under EU legislation.[161] While it was once thought that the EAA would fully address this gap, it did not.[162] In this context, the adoption of codes of conduct for accessibility under the Digital Services Act [163] is unlikely to have much impact, and

[156] WAD, recital 34.
[157] Ian Watson, 'Internet, Intranet, Extranet: Managing the Information Bazaar' (1999) 51 Aslib Proceedings 109, 110–111.
[158] WAD, recital 35.
[159] See European Commission Directorate-General for Communication, 'Accessibility Statement' (*European Union*, 22 July 2025) <https://european-union.europa.eu/accessibility-statement_en> accessed 08 August 2025. See also, European Ombudsman, 'Decision of the European Ombudsman closing her strategic inquiry OI/6/2017/EA on how the European Commission ensures that persons with disabilities can access its websites' (2018) OI/6/2017/EA.
[160] See Chapter 8, Sub-section 2.3.2.
[161] Charitakis, 'Accessibility of Goods and Services' (n 119) 237–238.
[162] See European Commission, 'Impact Assessment Accompanying the Document Proposal for a Directive of the European Parliament and of the Council on the Accessibility of Public Sector Bodies' Websites' (Staff Working Document) SWD(2012) 401 final, 21.
[163] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC [2022] OJ L277/1, art 47.

certainly not a binding effect. Some websites of interest therefore remain outside of the scope of EU accessibility legislation, such as those of private cultural institutions like foundations, or of some micro-enterprises that could provide services or goods of interest.[164] As noted by Charitakis, such gaps in terms of web accessibility obligations should continue to 'create problems for the functioning of the internal market, as it is possible that the Member States will end up with different rules on the accessibility of the remaining private and public websites'.[165] Insofar as cultural and creative professionals will need access to them, this will continue to represent a challenge to their activities, unless the 'spillover' effect hoped for by the European Commission sets in.[166]

4.3. Implementation and Impact of Web Accessibility Legislation in the CCS

Whilst the EAA and the WAD only provide for minimum accessibility requirements, some participants certainly agreed that regulations were necessary, even though it might not please the stakeholders they stood for. Indeed, the European Commission highlights that, according to Member States' reports, scrutiny in terms of monitoring has weighed more heavily on three categories of services, and in particular recreation and culture.[167] The review of the application of the WAD has also shown how instrumental monitoring has been to making the WAD come to life, prompting the European Commission to label it 'an important success factor' in allowing PSBs to identify issues with accessibility requirements, while learning from counterparts' reports.[168]

Considering the qualitative study, it appears that the WAD has indeed made an impact in the CCS. One participant believed that EU legislation had, in fact, 'finally' fostered change at the national level in 'mak[ing] accessible digital services', adding that 'it's not like they didn't know that they should do it before, but now that it's forced by law, now, they're finally doing it' (FG2 P16). Someone else mentioned a national law on digital accessibility, which could be expected to be related to the WAD, recalling 'it doesn't matter what form, if it's digital, it has to be accessible, if it's not, if you're not accessible as a cultural institution there are fines to pay' (FG2 P12). In this context, lawmaking also appeared to an interviewee as a way for Europe 'to differentiate [itself] towards the other markets' and to ensure 'a better product at the end' (EU CCS 3).

[164] See Ferri, 'The Role of the EU in Ensuring Accessibility' (n 90) 277.
[165] Charitakis, 'Access Denied' (n 8) 272.
[166] SWD(2012) 401 final, 21.
[167] SWD(2022) 410 final, annex VI, 91.
[168] SWD(2022) 410 final, 44.

Moreover, it seems that the implementation of the WAD has fostered 'a significant overall increase in the awareness of web accessibility among PSBs'.[169] It transpired in the interviews and focus groups that these minimum accessibility requirements could be improved on and represent the stepping stone for broader and more stringent accessibility obligations to be decided at the national level, or for stakeholders to pursue on their own accord. Some participants underlined how there was a 'lot of information on how to make [a] website accessible' already available to stakeholders willing to improve on their accessibility for persons with disabilities (FG1 P9). In that vein, one interviewee also stressed that there was room for manoeuvre, noting that:

> national governments and international organisations [had] to take existing policy and legal commitment seriously, and to improve them, and to expand them … because there is a lot already but it's also liable to improvement. (FG1 P3)

Interestingly, the implementation of web accessibility requirements was also seen as affecting more directly the work opportunities of certain CCS professionals, potentially with disabilities. In that respect, one participant highlighted the changes brought about by 'European regulations … in the recent years', according to which 'you have to design web interfaces also for people with reading disabilities', leading to increased demand and work opportunities for those designers with this 'special knowledge' (EU CCS 3). Overall, this confirms the WAD's relevance to CCS professionals with disabilities, who, following the entry into effect of the EAA, should be benefitting from increased accessibility to the digital world, and therefore improved access to information and communication channels of interest to their work.

5. The Inclusion of the Disproportionate Burden Exception in EU Accessibility Legislation

Besides the limitations discussed earlier, one drawback of both the EAA and the WAD is the inclusion of the 'disproportionate burden' limitation. The provisions which allow this are certainly criticisable on several fronts, especially when using the CRPD as a reference point. As discussed below, this can impact further on the relevance of both Directives for CCS professionals with disabilities.

[169] SWD(2022) 410 final, 46.

5.1. Proportionality and EU Accessibility Legislation

The EU legislator regularly introduces the notion of proportionality –in the context of the disproportionate burden exception– as a way to limit accessibility obligations ensuing from EU law. The WAD, the EAA, and even the accessibility article of the draft Horizontal Equal Treatment Directive, contain a provision that limits accessibility requirements where they would impose a disproportionate burden on the 'duty bearer'.[170] Interestingly, Article 7(1) AVMSD also states that audiovisual media services must be made more accessible to persons with disabilities through proportionate measures.[171]

More specifically, Article 5 WAD discusses modalities of removing the 'duty to provide accessibility',[172] indicating that PSBs must apply the accessibility requirements 'to the extent that those requirements do not impose a disproportionate burden' on them.[173] As just mentioned, the WAD also excludes those reproductions of items in heritage collections from the scope of the Directive, which, among other reasons, cannot be made accessible for the unavailability of cost-efficient solutions. The assessment of whether complying with measures under the WAD represents a disproportionate burden must take a range of factors into account, including the size, resources and nature of the PSB concerned, as well as a costs-benefit approach, considering in particular the estimated benefits for persons with disabilities.[174] The preamble to the WAD also underlines that '[l]ack of priority, time or knowledge should not be considered as legitimate reasons' for PSBs to avoid meeting their obligations under the WAD.[175]

In the context of the EAA, Article 14 states that accessibility requirements shall apply unless they would 'result in the imposition of a disproportionate burden on the economic operators concerned',[176] for which it details assessment criteria in Annex VI.[177] The EAA also introduces another exception to the accessibility requirements it sets out, in case compliance would require 'a significant change in a product or service that results in the fundamental alteration of its basic nature'.[178] Interestingly, the EAA does not refer to any specific criteria for assessing what the fundamental alteration of the basic nature of a service or product can entail.[179] Article 14 EAA further details the modalities and review

[170] See Council of the European Union, 'Proposal for a Council Directive' (n 68) annex, arts 4 and 4b; WAD, art 5; EAA, art 14.
[171] AVMSD, art 7(1).
[172] Waddington, 'Regulating e-Accessibility and Digital Equality' (n 101) 11.
[173] WAD, art 5(1).
[174] WAD, art 5(2).
[175] WAD, recital 39.
[176] EAA, art 14(1)(b).
[177] EAA, art 14(2) and annex VI.
[178] EAA, art 14(1)(a).
[179] See EAA, art 14(2).

of the economic operators' self-assessment of fundamental alteration and disproportionate burden. It exempts, in that respect, micro-enterprises dealing with products from documenting such assessment.[180] Article 14(6) EAA also explicitly mentions that the receipt of public or private funding dedicated to improving accessibility prevents any economic operator to rely on the disproportionate burden exception. However, it does not prevent them from relying on the fundamental alteration exception.

As can be seen here, the provisions introducing a disproportionate burden exception in the context of accessibility legislation are not isolated. In limiting the accessibility obligations these acts aim to set out, the disproportionate burden exception may in turn impede on the removal of accessibility barriers for the benefit of CCS professionals with disabilities. This denotes a limited engagement with CRPD obligations, while fostering the confusion between reasonable accommodation and accessibility,[181] to the detriment of CCS professionals with disabilities.

5.2. Cost-based Motivations and the Failed Implementation of Article 9 CRPD

Indeed, from the CRPD's standpoint, articulating an exception to accessibility obligations on the basis of the disproportionate burden it may impose on PSBs or economic operators is 'troubling'.[182] As mentioned earlier,[183] the CRPD Committee explicitly established it to be a gradual and unconditional obligation, meaning that 'the entity obliged to provide accessibility may not excuse the omission to do so by referring to the burden of providing access for persons with disabilities'.[184]

In this context, it might be 'understandable that the EU institutions introduced the aforementioned exceptions',[185] especially in the case of the EAA after the European Parliament referred to the necessity of 'striking the right balance between the needs of people with disabilities, creating possibilities for innovating new products and services and at the same time reducing disproportionate costs for companies'.[186] In that connection, the recurrent use of the concept of proportionality in accessibility legislation demonstrates also the EU legislator's concern for the costs associated with implementing

[180] EAA, art 14(2)–(8) EAA.
[181] Broderick, 'The European Accessibility Act' (n 128) 30–31.
[182] Charitakis, 'Accessibility of Goods and Services' (n 119) 240.
[183] See Chapter 2, Sub-section 3.3.2.2.
[184] CRPD Committee, 'General Comment No. 2' (n 24) para 25.
[185] Broderick, 'The European Accessibility Act' (n 128) 30.
[186] European Parliament, 'Report on the Proposal for a Directive of the European Parliament and of the Council on the Approximation of the Laws, Regulations and Administrative Provisions of the Member States as Regards the Accessibility Requirements for Products and Services (COM(2015)0615 – C8-0387/2015 – 2015/0278(COD))' (2017) A8-0188/2017, 114.

accessibility obligations in the EU –something the criteria referred to in the EAA or the WAD suggest.[187]

This focus on the costs associated with accessibility also mirrors some of the concerns of CCS stakeholders who participated in the study. Several participants equated improving accessibility in the CCS with the costs that organisations would have to bear –albeit some of their considerations extended beyond the current obligations set out at EU level. Referring to the provision of sign language interpretation, as well as the modification of cultural buildings, a participant pointed out that '[t]here are many, many theatres and people from the cultural field who … explai[n] the difficulties it is for them to adhere to all these measures from a financial point of view' (EU CCS 5).

However, this has to be nuanced as it can depend on the circumstances. By contrast, it is noteworthy that despite additional economic costs for PSBs, '[a]ccessibility-related costs do not constitute a main barrier to implementing the WAD' according to a review of the European Commission.[188] Interestingly, this also concurs with a participant's contribution as they pointed out that addressing obstacles in terms of communication and access to information was 'maybe something … not so expensive to put in practice' (FG1 P1). Eventually, some participants also concluded that it should be incentivised (EU CCS 3) or that extra funding was needed to cover such expenses (EU CCS 2).

Although the costs associated with making the CCS more accessible should not be overlooked, the recourse to the disproportionate burden exception in this context signals a way out of the obligation to implement accessibility, as understood in the CRPD. The wording of Article 7(1) AVMSD has for instance led some Member States to exempt certain media services from accessibility obligations on the basis of the specific programmes broadcasted, their size, market share, regional or local focus.[189]

Threading repeatedly the idea of disproportionality into EU accessibility legislation, and paying little attention 'to the fact that both the EU and the Member States are obliged to implement Article 9 [CRPD]',[190] also undermines the possibilities to make EU society and the CCS gradually more accessible to cultural and creative professionals with disabilities, to the extent that the EAA and the WAD provide for in this case. Additionally, it imports a concept applicable to the duty of reasonable accommodation, set out for

[187] See WAD, art 5(2)(b); EAA, annex VI.
[188] SWD(2022) 410 final, 47.
[189] European Commission, 'Reporting on the Application of Directive 2010/13/EU "Audiovisual Media Services Directive" as Amended by Directive (EU) 2018/1808, for the Period 2019-2022' (Staff Working Document) SWD(2024) 4 final, 8.
[190] Charitakis, 'Access Denied' (n 8) 284.

instance in the Employment Equality Directive,[191] and reinforces the confusion between reasonable accommodation and accessibility, which has otherwise been clarified by the CRPD Committee and by scholarship.[192]

5.3. On the Tension between Accessibility and Reasonable Accommodation

Strongly related, both reasonable accommodation and accessibility contribute to the enjoyment of their human rights by persons with disabilities and 'perform that task by eliminating the barriers that people with disabilities face as a result of the disabling society'.[193] In this regard, it is also understood that a lack of accessibility can underpin 'that more persons with disabilities will need to ask for an individualized reasonable accommodation in order to enjoy access to a service on an equal footing with others'.[194]

However, a key difference is that, unlike the duty of reasonable accommodation, accessibility is intended to be an anticipatory duty, that does not suffer exceptions, nor is it aimed at 'ensuring access for one individual'.[195] As discussed in this thesis, the provision of reasonable accommodation is an *ex nunc* duty, usually limited to whether it imposes an undue or disproportionate burden on the duty bearer.[196] Consequently, the introduction of an exception to accessibility obligations in EU law –by borrowing characteristics of reasonable accommodation– perpetuates the confusion between the two concepts and, more importantly, prevents the progressive and continuous implementation of the WAD and the EAA in the Union. The draft Horizontal Equal Treatment Directive also entertained this tension. Indeed, when accessibility was the subject of a dedicated article, the draft proposal also contained an Article 4b (Provisions Common to Accessibility and Reasonable Accommodation), which focused on the criteria to take into account for assessing a disproportionate burden.[197] The obligations relative to accessibility have since been removed from the draft Directive.[198]

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[191] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16 (Employment Equality Directive).
[192] See, among many others, CRPD Committee, 'General Comment No. 6 (2018) on Equality and Non-Discrimination' (2018) UN Doc CRPD/C/GC/6 paras 40–42; Andrea Broderick, 'Of Rights and Obligations: The Birth of Accessibility' (2020) 24 The International Journal of Human Rights 393, 402–405.
[193] Charitakis, 'Access Denied' (n 8) 93.
[194] Maria Ventegodt Liisberg, 'Accessibility of Services and Discrimination: Concentricity, Consequence, and the Concept of Anticipatory Reasonable Adjustment' (2015) 15 International Journal of Discrimination and the Law 123, 125.
[195] Liisberg (n 194) 124.
[196] See also Chapter 6, Sub-section 2.3.
[197] See Council of the European Union, 'Proposal for a Council Directive' (n 68) annex, arts 4 and 4b.
[198] Council of the European Union, 'Directive on implementing the principle of equal treatment (Article 19) - Progress report' (Report) 10817/24, 3.

This confusion reinforces some of the shortcomings of EU accessibility legislation, when 'the way in which those pieces of legislation interact and overlay when it comes to the cultural sector is unclear'.[199] It also reveals a further disconnect in EU accessibility legislation. This ensues in part from the introduction of exceptions to implementing accessibility, in disregard of the CRPD's international standard on accessibility. It is also partly due to the current lack of a general EU duty to provide reasonable accommodation, which stems from the delay in adopting the Horizontal Equal Treatment Directive.

Indeed, the existence of a disproportionate burden exception in EU accessibility legislation and the absence of a general duty of reasonable accommodation also means that in cases where CCS professionals with disabilities cannot benefit from accessible services or products, they may not be able to demand accommodation if it is considered to fall outside the remits of the Employment Equality Directive. Overall, it supports the idea that there is an important discrepancy between the potential accessibility needs of CCS professionals with disabilities and what can be achieved on the basis of existing EU legislation.

6. The Implementation of EU Accessibility Legislation: A Challenge to the Participation of CCS Professionals with Disabilities

As this chapter has shown, the EU has carried out several legislative initiatives in the field of accessibility which can benefit CCS professionals with disabilities. However, it is by no means close to tackling all accessibility barriers in the CCS or in EU society at large.[200] As most of the legislative texts examined here are Directives, also laying down minimum accessibility requirements, the situation of cultural and creative professionals with disabilities is highly dependent on transposition and effective implementation at Member State level, as well as on the larger corpus of national accessibility provisions. In the context of this thesis, a number of factors have thus been identified, based on qualitative and desk-based research, as affecting the implementation and potential impact of EU accessibility legislation, in particular for those working in the CCS.

6.1. Fragmentation and Remaining Differences across Member States

While the core limits for each EU act or area of accessibility have been discussed above in their respective sections, the aim of this sub-section is to examine how the

[199] Ferri, 'The Role of the EU in Ensuring Accessibility' (n 90) 259.
[200] Charitakis, 'Accessibility of Goods and Services' (n 119) 241.

fragmentation of EU legislation on accessibility, and the fact that these are for the most part minimum harmonisation Directives, affect the accessibility of the CCS for professionals with disabilities, and therefore the opportunities they have to contribute to cultural life.

Although the EU's activity on accessibility has intensified since the ratification of the CRPD, a lack of common understanding of the concept of accessibility and of related obligations remains, due in part to a competence issue, which seemingly also underpins the dearth of EU accessibility legislation on the built environment. In this respect, one of the main issues is that the EU's approach to accessibility is scattered across various pieces of legislation, and far from being all-encompassing or able to address accessibility barriers as a whole in the EU or in the CCS. In turn, this results in a lack of harmonisation of accessibility requirements throughout Member States. The situation is especially striking for CCS professionals with disabilities, as their 'professional' capacity also deprives them from fully benefitting from accessibility provisions meant for consumers.

CCS stakeholders taking part in the study perceived such weakness in EU accessibility legislation. Several referred to a lack of a common definition and understanding of accessibility, highlighting how it could be an obstacle to participation of persons with disabilities. In this respect, certain participants deplored that 'cultural accessibility [wa]s rarely defined' (FG1 P5), while others shared that it was 'a big challenge, a big barrier, this lack of uniformity of the definition' (FG2 P18). The latter participant also appeared to highlight how a lack of uniformity in definition could lead to shortcomings in the implementation of accessibility, saying that:

> since we go from country to country, we kind of realise that whenever institutions say that they are working on accessibility, or they are accessible and inclusive, they often are talking about one version of accessibility, or certain aspects. (FG2 P18)

In that vein, participants further pointed to a lack of rules for cultural institutions to understand and implement with regards to accessibility. One participant talked about a self-satisfactory exercise, saying 'they feel that that's ticked that box and they feel that they are the experts', yet 'those pockets of experience aren't shared' either (FG 2 P11). Another participant also warned that accessibility in the CCS should not be reduced to a 'list of good practices', such as '"the National Museum of Archaeology did this" and the "British Museum did that"' (FG1 P3).

These contributions therefore suggest that efforts to promote accessibility are seen not so much as compliance with legal obligations, but as a discretionary decision on the part of

the cultural institutions willing to embed accessibility in their functioning, even if partially. In a way, the fragmented approach to accessibility in EU legislation appears to be mirrored by a piecemeal approach on the ground which fails to embed accessibility in the functioning of the CCS, to the detriment of cultural and creative professionals with disabilities in the EU.

6.2. Failures and Delays in Implementation

Apart from the fact that professionals with disabilities may not be able to benefit from EU accessibility provisions –as those may not correspond to their routine, activities or needs– there is also a risk that failures and delays in implementation of such legislation will further hinder their participation in the CCS.

Indeed, long and delayed timelines of the acts cited in this chapter are an issue in that respect. This is in part due to failures in communicating transposition or delays in transposition of Directives such as the WAD, the AVMSD, or the EAA, prompting the European Commission to initiate infringement procedures.[201] In the case of the AVMSD, these delays in transposition had further repercussions and impacted on the development of accessibility action plans.[202] However, in the case of some Directives, and particularly the EAA, the implementation timeline has been rather lengthy, leaving three years from the end of the transposition deadline for market operators to comply with the new accessibility rules. The same can be said of the WAD –entered into force on 22 December 2016– for which the last enforcement deadline for mobile applications of PSBs was set almost five years later in June 2021. Additionally, this does not take into account that not all market operators, nor PSBs, might abide with the transposed provisions by those deadlines.

In addition, implementation and compliance with accessibility requirements has also been hindered by lack of skills on accessibility.[203] In the case of the WAD, Member States

[201] See European Commission, 'July Infringements Package: Key Decisions' (*Press Corner*, 25 July 2019) <https://ec.europa.eu/commission/presscorner/detail/en/inf_19_4251> accessed 01 October 2025; European Commission, 'Audiovisual Media: Commission Opens Infringement Procedures against 23 Member States for Failing to Transpose the Directive on Audiovisual Content' (*Shaping Europe's Digital Future*, 23 November 2020) <https://digital-strategy.ec.europa.eu/en/news/audiovisual-media-commission-opens-infringement-procedures-against-23-member-states-failing> accessed 30 April 2025; European Commission, 'Infringements Decisions: Non-Transposition of EU Legislation: Commission Takes Action to Ensure Complete and Timely Transposition of EU Directives' (*Press Corner*, 20 July 2022) <https://ec.europa.eu/commission/presscorner/detail/en/inf_22_4559> accessed 04 August 2025; European Commission, 'July Infringements Package: Key Decisions' (*Press Corner*, 14 July 2023) <https://ec.europa.eu/commission/presscorner/detail/en/inf_23_3445> accessed 04 August 2025.

[202] SWD(2024) 4 final, 9.

[203] See European Parliament Resolution of 4 October 2022 on AccessibleEU Centre in support of accessibility policies in the EU internal market (2022/2013(INI)) [2023] OJ C132/23 (European Parliament Resolution on AccessibleEU Centre), para 4.

reported an overall 'lack of basic skills in web accessibility, within the PSBs as well as in the market',[204] which a participant also mentioned (EU CCS 3). The evaluation of the Directive highlighted the need to train technical experts on web accessibility, as well as the need to raise awareness within the communities of interested professionals –here, the website design and graphic design sectors– on this lack of expertise and 'knowledgeable market players'.[205] As the following section notes, the European Commission is seeking to address such knowledge gaps, including through the AccessibleEU Centre (or the 'Centre').

6.3. Lack of Adequate Monitoring and Compliance Mechanisms

Admittedly, as noted above, the European Commission has initiated a number infringement procedures against non-compliant Member States in the context of EU accessibility legislation.[206] Making use of this 'important monitoring power' provided for in Articles 258 and 260 TFEU and which can lead to financial sanctions, the European Commission has notably taken action against those Member States that either failed to transpose in a timely manner, to communicate on transposition of EU Directives on accessibility, or to effectively implement EU accessibility provisions.[207]

In addition, the European Commission uses 'softer' tools, as with the AccessibleEU Centre, a recent flagship initiative under the Disability Strategy 2021-2030[208] discussed in greater detail in section 7. Indeed, with a view of advancing the implementation of the CRPD in the Union, this Centre now also monitors rather comprehensively the action and progress made by Member States in implementing accessibility legislation, against the background of Article 9 CRPD.[209]

Yet, concerns have been raised over the years on whether the monitoring and enforcement mechanisms in place were effective enough to help guarantee compliance with EU accessibility legislation.[210] In this respect, the European Parliament alerted in 2017 that 'the monitoring of some pieces of legislation, such as the Web Accessibility Directive or the Regulation on Rail Accessibility [was] through self-assessment by industry and the

[204] SWD(2022) 410 final, 46.
[205] SWD(2022) 410 final, 46–47.
[206] See footnote (n 201). See also Eva S Krolla, 'The Role of the European Commission in Shaping EU Disability Law: A Driver with the Brakes Put On?' in Delia Ferri and Eva S Krolla (eds), *Actors and Roles in EU Disability Law* (Hart 2025) 102–104.
[207] Krolla (n 206) 102–103.
[208] See Disability Strategy 2021-2030, 8.
[209] See the reports available at European Commission, 'Accessibility Monitoring' (*AccessibleEU*) <https://accessible-eu-centre.ec.europa.eu/accessibility-monitoring_en> accessed 08 August 2025.
[210] Broderick, 'The European Accessibility Act' (n 128) 31; Charitakis, 'Accessibility of Goods and Services' (n 119) 241.

Member States and [was] not conducted by an independent entity'.[211] As a result, it called on the European Commission to 'improve its assessment of compliance and consider developing monitoring legislation'.[212] The matter of self-assessment might also become an issue in relation to the EAA, as it provides that economic operators 'are responsible for determining themselves whether compliance with the accessibility requirements contained in the Directive constitutes a disproportionate burden'.[213] This reinforces the point made by the participants that the implementation of accessibility in the CCS is not so much a matter of complying with EU law, national law or, ultimately, the CRPD, but more of a choice to be made by some decision-makers in the CCS.

In this respect, there was an interesting and telling exchange between two focus group participants. Whilst one noted the following:

> My [workplace], I'm lucky enough that the director decided that, from the main budget, she will pay for accessibility. So, that was her decision, she understood that accessibility is something that we need, but it is not the rule of law. This is not the rule of law, this was just her own doing. (FG2 P12)

… another stressed:

> You used the expression 'her own doing' and so, I want to underline that it's still so individual what we do and the implementation … Nobody controls me, what I do, there's nobody, not in my own town, not in my own country, not in my own [cultural institution] at all. (FG2 P10)

As such, it is interesting to see how, despite what is commonly acknowledged as an ever growing body of EU accessibility legislation, some of the CCS stakeholders taking part in the study perceived that there was no control over their activities, and arguably no obligation to make their organisations more inclusive and accessible.

Nevertheless, some non-legal developments also embed accessibility, and although these may not resolve all limitations and gaps of the current EU legal framework, they may still enable the better implementation of accessibility legislation in the EU and in the CCS, in a way that would enable the participation of professionals with disabilities in cultural life.

7. The Role of the EU in Fostering Awareness on Accessibility

Although the EU strives to regularly strengthen its body of accessibility legislation, in particular by revising and reviewing existing Directives and Regulations, the current

[211] European Parliament Resolution of 30 November 2017 on implementation of the European Disability Strategy (2017/2127(INI)) [2018] OJ C356/110 (European Parliament Resolution on Disability Strategy), para 6.
[212] European Parliament Resolution on Disability Strategy, para 6.
[213] Broderick, 'The European Accessibility Act' (n 128) 31.

Disability Strategy for 2021-2030 suggests that no major legislation on accessibility will likely be adopted in the coming years to remedy the shortcomings of the current framework.[214] Therefore, the improvement of accessibility in the CCS could come from other types of initiatives, in particular those soft law measures set out in the Disability Strategy 2021-2030 (and the incoming series of actions to be announced by the European Commission), or more long-standing ones like the accessible awards and other cultural initiatives.

7.1. The AccessibleEU Centre

The EU has indeed mobilised other resources to diversify its action on accessibility. One of them, the AccessibleEU Centre is in fact a central objective of the Disability Strategy 2021-2030, and the European Commission's flagship initiative for achieving accessibility in the Union.[215] It is becoming instrumental in raising awareness and supporting knowledge-building on accessibility, on top of helping the European Commission monitor accessibility efforts in the Member States.

In that respect, it is interesting to recall that while most of participants admitted to a lack of knowledge and awareness of disability in the CCS, some made more nuanced remarks, also noting that there was a lot of information available already (FG2 P16), in particular with regards to web accessibility, as well as on 'how to give information about the built environment, and about the content of the festivals' (FG1 P9). Yet, because it was rather spread, the latter participant also deplored that 'no one knows how to start, so, that is kind of a lack of knowledge' (FG1 P9).

The creation of the Centre could address such needs. Meant as a resource on accessibility for the national and EU level, the AccessibleEU Centre has reported having reached 5.600 people across the EU as part of its awareness-raising activities in its first year of existence.[216] It has also arranged workshops and trainings in each Member State, involving 4.400 people in 2023, and 8.291 in 2024, and established a community of practice, which it continues to facilitate through the organisation of events.[217] In order to provide a European knowledge-base on accessibility, the Centre has also led the creation of an online library on accessibility with input coming from all Member States, including

[214] See Disability Strategy 2021-2030, 6–8.
[215] Disability Strategy 2021-2030, 8.
[216] AccessibleEU Centre, 'AccessibleEU Final Report: Working Together to Build a More Accessible European Union for Persons with Disabilities' (2024) (Final Report 2024) 6.
[217] See AccessibleEU Centre, 'Final Report 2024' (n 216) 7–8; AccessibleEU Centre, 'AccessibleEU Final Report: Working Together to Build a More Accessible European Union' (European Commission, 2025) (Final Report 2025) 9, 11.

'library content and good practice cases of accessibility solutions'.[218] To promote 'the implementation of accessibility in places, products, and services' in the EU, the Centre also regularly develops guidelines and support materials which provide knowledge on accessibility legislation and standards.[219]

As hinted at earlier, the AccessibleEU Centre has supported the implementation of accessibility obligations in the EU through monitoring, compliance and surveillance, and developed in this respect a set of indicators to monitor the action and progress of Member States.[220] It has also been involved in the development of new harmonised European standards and the revision of some existing standards in support of the EAA and the WAD, while supporting the involvement of OPDs in European standardisation.[221] Overall, the activities of the AccessibleEU Centre address one of the key concerns expressed by the participants in the interviews and focus groups, in that they support awareness-raising and knowledge-building,[222] here on accessibility.

Indeed, the AccessibleEU Centre enables the EU to foster engagement with the norms it has adopted over the years, as well as with accessibility as a whole, spreading information and collecting knowledge throughout the Member States. More broadly, the AccessibleEU Centre raises awareness on accessibility across the EU –'one of the preconditions for the effective implementation of the [CRPD]' in the words of the treaty body.[223] The Centre therefore contributes to a layered approach to implementing accessibility at the EU level, which relies on the adoption of accessibility legislation, standardisation, the mainstreaming of accessibility in supporting initiatives, and awareness-raising.

According to some participants in the study, awareness-raising and knowledge-building activities, combined with regulations, are powerful tools to improve accessibility in the Union and to trigger progress and positive developments beyond the scope of the current EU accessibility framework. The work carried out by the Centre has the potential to foster a culture of 'equal opportunities and full participation in society for persons with disabilities, including at professional level',[224] which could reach the CCS when legislation fails to do so. As such, it can help reach relevant stakeholders, including

[218] AccessibleEU Centre, 'Final Report 2024' (n 216) 6.
[219] AccessibleEU Centre, 'Final Report 2024' (n 216) 7; AccessibleEU Centre, 'Final Report 2025' (n 217) 10. See, for instance, AccessibleEU Centre, 'Getting to Know the European Legislation on Accessibility' (n 62).
[220] AccessibleEU Centre, 'Final Report 2025' (n 217) 12. See European Commission, 'Accessibility Monitoring' (*AccessibleEU*) <https://accessible-eu-centre.ec.europa.eu/accessibility-monitoring_en> accessed 08 August 2025.
[221] AccessibleEU Centre, 'Final Report 2025' (n 217) 14.
[222] See Chapter 1, Sub-section 4.2.
[223] CRPD Committee, 'General Comment No. 2' (n 24) para 35.
[224] European Parliament Resolution on AccessibleEU Centre, para 2.

decision-makers in the CCS, and counter the narrow view, which is generally held, of accessibility as accessibility to the built environment.[225] The activities undertaken by the AccessibleEU Centre can also be a way to foster 'rising awareness about people with disabilities', and of the various aspects of accessibility that need to be addressed with CCS stakeholders (FG2 P12). Additionally, by regrouping and making available key information, which could be used to make the CCS more accessible, the AccessibleEU Centre has the potential to counteract the 'permanent loss of knowledge' associated with staff turnover in cultural institutions, which a participant regretted (FG2 P10).

Moreover, it can also trigger changes in the practices of categories of CCS professionals who are more directly involved in implementing accessibility. Indeed, one participant shared that a piece of legislation (most probably the WAD) had created 'huge demand' for skilled professionals at the time it entered into force, and that since then it was easier as accessibility features had become directly embedded in software and programmes (EU CCS 3). Another participant also underlined changes on the ground in terms of graphic design and documents' accessibility (EU CCS 7). Questioning whether it was 'the direct effect of various regulations or if it is some sort of awareness thing', they shared how they had noticed the focus on the topic of public administrations they worked with, including the European Commission –triggering within their organisation 'accessibility discussions whenever [writing] a report for example' (EU CCS 7). The practice and approach of accessibility of some key players can have a tangible influence over the stakeholders they collaborate with, including in the CCS. In this respect, it is interesting to recall a participant's contribution, discussed elsewhere, as they emphasised that CCS stakeholders were '"not the sole solution" to inclusion, and rather a piece of a more global system which relies on different factors –transport policies, cities, associations and the education system (EU CCS 9)'.[226]

Although, the Council has invited the European Commission to work towards this, the AccessibleEU Centre has not yet addressed the importance of accessibility of culture and cultural aspects in monitoring the implementation of EU accessibility legislation.[227] Nonetheless, the Centre may well represent a key avenue to address the caveats mentioned in this chapter, especially in terms of implementation, monitoring or skills necessary to making EU accessibility provisions effective. As such, it can contribute to embed the consideration of accessibility in the functioning of the CCS, which, as

[225] See CRPD Committee, 'General Comment No. 2' (n 24) para 35.
[226] Urzel Francil (n 70) 11.
[227] See Council Conclusions on improving and fostering access to culture [2024] OJ C2024/7446, para 49.

highlighted by a participant, is maybe not the case at present (FG2 P16). Furthermore, the Centre can progressively and tangibly support the implementation of accessibility legislation and standards in the Union, enhancing coherence between Member States and advancing on the minimum standards set out in EU accessibility legislation.

However, based on its reported engagement, the impact of the AccessibleEU Centre seems limited in scale for the moment.[228] By way of reference, Eurostat estimates that there were 7.8 million people in cultural employment in the EU in 2023.[229] This means that millions of people whose improved knowledge and awareness of accessibility could foster meaningful change for CCS professionals with disabilities have not yet been reached by this initiative. Obviously, the AccessibleEU Centre should be able, over the years, to increase its reach with decision-makers in the Member States and in the CCS. This is particularly key as a broader awareness of accessibility challenges in the EU, and information on solutions and obligations in that respect, are likely to increase the positive impact of EU accessibility legislation for CCS professionals with disabilities.

7.2. Other Initiatives

Additional efforts are made at the EU level to mainstream disability and accessibility in the EU framework and activities. As discussed in the following chapter, accessibility for persons with disabilities is particularly mainstreamed in the EU funding system.[230] It is considered as part of the programme actions under Creative Europe,[231] and is recognised as a horizontal principle to be taken into account in the preparation and implementation of programmes under the Common Provisions Regulation, which governs the delivery of eight EU Funds.[232]

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[228] From its latest report, it is possible to estimate that the AccessibleEU Centre has involved around 20.000 people in its activities (not taking into account potential overlaps). See AccessibleEU Centre, 'Final Report 2025' (n 217).

[229] Eurostat, 'Culture Statistics - Cultural Employment' (*Statistics Explained*, 11 August 2025) <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Culture_statistics_-_cultural_employment> accessed 12 August 2025. In that respect, Eurostat specifies that it understands cultural employment as follows; '[c]ultural employment includes everyone working in economic activities that are deemed cultural, whether or not the person is employed in a specifically cultural occupation. It also covers people with a cultural occupation, whether or not they are employed in a cultural economic activity. Cultural employment is defined in terms of the statistical classification of economic activities in the European Community (NACE Rev. 2) and by the international standard classification of occupations (ISCO)'.

[230] See Chapter 8, Sections 2 and 3.

[231] Regulation (EU) 2021/818 of the European Parliament and of the Council of 20 May 2021 establishing the Creative Europe Programme (2021 to 2027) and repealing Regulation (EU) No 1295/2013 [2021] OJ L189/34 (Creative Europe Regulation 2021-2027), annex I, 55. See also Chapter 8, Section 2.

[232] Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy [2021] OJ L231/159 (Common Provisions Regulation), art 9(3).

In addition, the European Commission reports many examples of mainstreaming of accessibility in cultural policy, and promoting access to cultural materials and events of people with disabilities.[233] This includes efforts to promote the accessibility of Europeana (the European public digital library), or the consideration of accessibility criteria in the special actions funded under the Creative Europe programme like the European Capitals of Culture (ECoC) award.[234] In this respect, the European Commission makes clear that candidate cities must pay attention to 'the creation of new and sustainable opportunities for a wide range of citizens to attend or participate in cultural activities … with special attention being given to persons with disabilities and the elderly as regards the accessibility of those activities'.[235] This concurs with the experience of some national OPDs 'in projects specifically in arts/culture funded and/or promoted by the EU' who have, in earlier research, discussed their collaboration with the ECoC initiative 'to ensure that events/exhibitions would be accessible', and shared their hopes in this regard to see 'a lasting impact due to greater knowledge on the part of cultural bodies'.[236]

The European Heritage Label (EHL)[237] is another initiative which receives financial support through Creative Europe and engages with the situation of persons with disabilities. The EHL may represent an interesting initiative as it integrates the need to engage the wider public with cultural heritage. In this respect, the attribution criteria for the EHL include the obligation for candidate sites to address in a work plan how they intend to 'ensur[e] access for the widest possible public, inter alia, through site adaptations or staff training'.[238] Admittedly, the wording is less specific than for the ECoC and does not refer to access for persons with disabilities specifically. Nevertheless, these initiatives tend to have a more permanent character than other projects funded under Creative Europe for instance, allowing them to 'provide continuing visibility to the [EU]

[233] European Commission, 'Evaluation of the European Disability Strategy 2010-2020' (Staff Working Document) SWD(2020) 289 final, annex 5, 84.
[234] SWD(2020) 289 final, 84.
[235] European Commission, 'European Capitals of Culture: 2020 to 2033: A Guide for Cities Preparing to Bid' (2017) 20.
[236] Ann Leahy and Delia Ferri, 'Cultural Policies that Facilitate the Participation of Persons with Disabilities in the Arts: Findings from a Qualitative Multi-National Study' (2024) 4 Disabilities 539, 545.
[237] See Doris Pack and Piotr Borys, 'European Heritage Label' (2010) 1 Uncommon Culture 31, 34; Anthony R Zitto, Susannah Eckersley and Sam Turner, 'The Instruments of European Heritage' in Christopher Whitehead and others (eds), *Dimensions of Heritage and Memory: Multiple Europes and the Politics of Crisis* (Routledge 2019) 66. See also Neža Šubic and Delia Ferri, 'Characterizing Access to Culture for People with Disabilities in EU Cultural Policy: European Identity, Market Integration and Social Inclusion' (2022) 52 DPCE Online 801.
[238] Decision No 1194/2011/EU of the European Parliament and of the Council of 16 November 2011 establishing a European Union action for the European Heritage Label [2011] OJ L303/1, art 7(1)(c)(iv).

in some key domains of cultural policy'[239] and perhaps to foster long term accessibility in the CCS.

Accessibility for persons with disabilities is also mentioned in resolutions of the European Parliament on Artificial Intelligence[240] or on cultural heritage,[241] which underline the worth of both issues in 'furthering the accessibility of cultural and creative content for persons with disabilities'.[242] The Council has also highlighted the need to '[f]acilitate appropriate synergies' between the New European Bauhaus (NEB) initiative and other strategies, including those that promote accessibility such as the Disability Strategy 2021-2030.[243]

In that context, it is also interesting to refer to the EU Access City Awards as it recognises the efforts made by European cities to be more accessible. It is portrayed in the Disability Strategy 2021-2030 as having 'stimulated a coherent, cross-sectoral approach going beyond the minimum standards set by law'.[244] This initiative is also recognised under the Framework for Action on Cultural Heritage[245] as it promotes ways to make cultural heritage more easily enjoyable for persons with disabilities, and aims at breaking accessibility barriers in the Union.[246] In this context, a number of European cities have seen their efforts to make cultural events and infrastructure, including heritage sites, more accessible, recognised.[247]

As such, the EU multiplies accessibility measures in a vast array of EU initiatives, including cultural ones, beyond those acts solely focused on the rights of persons with disabilities. This approach in fostering and mainstreaming the consideration of accessibility in the Union could therefore be valuable to CCS professionals with disabilities.

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[239] Bruno De Witte, 'Legal Framework of the EU's Cultural Policy' in Evangelia Psychogiopoulou and Sarah Schoenmaekers (eds), *European Union Economic Law and Culture: Towards a European Culturally Corrected Market Economy* (Edward Elgar 2024) 17–18.
[240] European Parliament Resolution of 19 May 2021 on artificial intelligence in education, culture and the audiovisual sector (2020/2017(INI)) [2022] OJ C15/28, paras AK, 52 and 54.
[241] European Parliament Resolution of 20 January 2021 on achieving an effective policy legacy for the European Year of Cultural Heritage (2019/2194(INI)) [2021] OJ C456/24, paras 13 and 28.
[242] Šubic and Ferri (n 237) 817.
[243] Council Conclusions on culture, high-quality architecture and built environment as key elements of the New European Bauhaus Initiative [2021] OJ C501I/13, para 13. On the New European Bauhaus, see Chapter 8, Sub-section 3.2.
[244] Disability Strategy 2021-2030, 7.
[245] See Chapter 5, Sub-section 3.3.
[246] European Commission, *European Framework for Action on Cultural Heritage* (Staff Working Document, Publications Office 2019) 11.
[247] See European Commission, 'Access City Award 2023: Examples of Best Practice in Making EU Cities More Accessible' (Publications Office 2023).

8. Concluding Remarks

As noted here, the EU action on accessibility has been particularly prolific since the conclusion of the CRPD, and this chapter demonstrates how it impacts on enabling the participation of professionals with disabilities in cultural life, and on implementing Articles 30(2) and 27 CRPD in the Union. In particular, this chapter evidences how the EU has sought to flesh out the body of EU accessibility legislation and followed a twin-track approach in doing so. This approach, which 'has been long recognised and advocated for within the disability community'[248] and that the CRPD Committee recalls occasionally in its concluding observations, relies on mainstreaming the rights of persons with disabilities –or a category of persons with disabilities like women with disabilities– across all initiatives, while adopting targeted and monitored measures aimed specifically at supporting and empowering persons with disabilities.[249] EU accessibility legislation fits this approach as it derives in part from disability specific acts, like the EAA or the WAD, and in part from numerous provisions mainstreamed into other legislative texts addressing public procurement, construction products, the energy performance of buildings, audiovisual media services, EU funding and various other EU initiatives.

The analysis has focused primarily on the accessibility of the built environment, the EAA, and the WAD. Grounded in the qualitative study, this chapter has considered more specifically these three dimensions of EU accessibility legislation that relate to both aspects of this twin-track approach, and investigated their potential in making the CCS more accessible for cultural and creative professionals with disabilities.

All in all, while this chapter demonstrates the relevance of EU accessibility provisions in enabling the participation of cultural and creative professionals, and the potential for awareness-raising in this respect, it also highlights important shortcomings. As evidenced throughout this chapter, EU accessibility legislation is for now so fragmented that it is seemingly not apt to tackle accessibility barriers in the EU holistically, and especially not the ones that professionals with disabilities may encounter in the CCS and that were raised quite prominently by CCS stakeholders in the qualitative study. Even in interaction with each other, the EU instruments addressing inaccessibility in the Union, including those discussed here, remain limited in many respects –be it in terms of the scope of EU

[248] Hannah Kuper, Tracey Smythe and Antony Duttine, 'Reflections on Health Promotion and Disability in Low and Middle-Income Countries: Case Study of Parent-Support Programmes for Children with Congenital Zika Syndrome' (2018) 15 International Journal of Environmental Research and Public Health 514, 4.

[249] See CRPD Committee, 'Concluding Observations on the Initial Report of Austria, Adopted by the Committee at its Tenth Session (2–13 September 2013)' (2013) UN Doc CRPD/C/AUT/CO/1 para 26; CRPD Committee, 'Concluding Observations on the Initial Report of Slovenia' (2018) UN Doc CRPD/C/SVN/CO/1 para 9(a); CRPD Committee, 'Concluding Observations on the Initial Report of the Lao People's Democratic Republic' (2022) UN Doc CRPD/C/LAO/CO/1 paras 6(c) and 7(c).

accessibility provisions, the use of the disproportionate burden exception or shortcomings in terms of implementation.

Moreover, the mainstreaming of accessibility into EU legislation, meaning non-accessibility-focused legislation, has led to what can be seen as looser accessibility provisions –in a context where most of the dedicated EU accessibility acts are themselves minimum harmonisation Directives. 'Taking into account', 'taking into consideration' or 'addressing' accessibility are some of the expressions used in EU sectoral legislation.[250] Albeit much is left to Member States in the transposition process, this phrases do not equate that of 'ensuring' accessibility for persons with disabilities. If analysed against the CRPD, EU accessibility legislation therefore compares poorly to the intentions set by Article 9 CRPD. Moreover, this confirms the field of EU accessibility legislation as a particularly disjointed one, where 'economic interests [have] emerged prominently' and restrained the EU initiatives.[251]

Evidently, for participants to be raising issues pertaining to the accessibility of the built environment, of products and services or web accessibility, this means that neither the EU nor its Member States have yet fulfilled their respective obligations under Article 9 CRPD or Article 30(1) CRPD on access to cultural life. As argued here, the fragmentation of EU accessibility legislation might be felt rather acutely by cultural and creative professionals with disabilities.

On the one hand, the built environment, or the products and services, they more directly or routinely interact with, may be limitedly, or not even, covered in the scope of EU accessibility legislation. This is to the detriment of their effective participation and contribution to society as cultural and creative professionals. Indeed, the recurrent concerns of CCS stakeholders with regards to accessibility appear to contrast starkly with the EU's limited involvement in some areas, as for the built environment. OPDs have also raised difficulties faced in accessing cultural content in accessible formats with the European Commission, citing the limited availability of accessible cultural content, the lack of easy-to-read formats, or shortcomings in making works accessible for persons with multiple disabilities.[252]

On the other hand, it would seem that CCS professionals with disabilities are finding themselves in a peculiar situation. They are often *too* professional to benefit fully from

[250] Public Procurement Directive, art 42(1); EPBD, arts 7(6) and 8(3); Construction Products Regulation, annex I.
[251] Ferri, 'The EAA and the Shadow of the "Social Market Economy"' (n 125) 671.
[252] European Commission, 'Report on the availability of certain copyright protected works for persons with disabilities within the internal market' (Staff Working Document) SWD(2022) 109 final, 10.

some of the major advancements in EU accessibility legislation, like the EAA, while at the same time not being considered as the *right type* of professionals to benefit from the protection afforded to standard employees, as discussed in part in chapter 6.[253]

The need to capitalise on synergies between accessibility, equality and non-discrimination and the EU funding system, and to use awareness-raising initiatives, to advance the participation of CCS professionals with disabilities is clear. In anticipation of the following chapter, it is also interesting to note that the synergies between accessibility and EU funding system appear rather established as the EU both mainstreams accessibility in the EU funding –albeit accessibility is not quite 'a mandatory condition for [EU] funding of culture'–[254] while mobilising EU funds to tangibly advance accessibility in the Member States.

[253] Emphasis added. See among others Chapter 8, Section 6.
[254] CRPD Committee, 'Concluding Observations on the Combined Second and Third Periodic Reports of the European Union' (2025) UN Doc CRPD/C/EU/CO/2-3 para 71(b).

Chapter 8
The EU Funding System

1. Introduction

As discussed earlier in this thesis, public funding in the form of 'direct finance or subsidy, or tax measures to encourage private donation' is a common thread in the functioning of the cultural and creative sectors (CCS)[1] and a key avenue to ensure the remuneration of the sectors' professionals, including those with disabilities. Still, not all sectors and their professionals depend, to the same extent, on public finance to operate.[2] Moreover, working in the CCS is often associated with 'a desire to create, share and contribute to culture and society', which also sees professionals 'more likely to accept unfair terms as a compromise if it helps them achieve their artistic and creative goal'.[3] Yet, in part prompted by the Covid-19 pandemic and its detrimental impact on the CCS, the issue of the working conditions and remuneration of CCS professionals has been revived at the EU level in the past years.[4] However, matters of remuneration of CCS professionals, and connected issues like social protection and security, have not yet found a resolution, despite the European Parliament's recent efforts.[5]

In this context, funding, and in particular the EU funding system, was identified as part of the qualitative study as a key theme and potential enabler to the participation of CCS professionals with disabilities in the EU. As previously mentioned in chapter 1, one interviewee insisted that funding, in the way it was distributed, was one of the main barriers to achieving diversity and inclusion in their sector, stressing that it 'also all goes back to the funders' who are in control of who and what gets financed (EU CCS 4).

Referring to the discussion on the EU legal framework for culture and policy of chapter 5, the importance of investigating the potential of the EU funding system in the context of this thesis is not surprising. Indeed, funding is currently one of the main ways in which the Union formalises its supporting role in the area of culture, whereas otherwise much depends on the approach and the type of state intervention decided at the Member State

[1] Ruth Towse and Trilce Navarrete Hernández, 'Introduction' in Ruth Towse and Trilce Navarrete Hernández (eds), *Handbook of Cultural Economics* (3rd edn, Edward Elgar 2020) 5.
[2] Towse and Navarrete Hernández (n 1) 6.
[3] European Commission, *The Status and Working Conditions of Artists and Cultural and Creative Professionals: Report of the OMC (Open Method of Coordination) Group of EU Member States' Experts* (Publications Office 2023) 52.
[4] See literature and EU initiatives cited earlier in the thesis, as in Chapter 1, Sub-section 2.1.
[5] See European Parliament Resolution of 21 November 2023 with Recommendations to the Commission on an EU framework for the social and professional situation of artists and workers in the cultural and creative sectors (2023/2051(INL)) [2024] OJ C2024/4208 (European Parliament Resolution on an EU framework for artists).

level.[6] In that sense, Dawson and de Witte have also highlighted how '[u]sing and manipulating money is therefore rapidly shifting from a minor to a major instrument in the EU's regulatory box'.[7]

In this regard, the EU funding system is rather broad and therefore encompasses different types of funding, namely grants, financial instruments like investments, loans or guarantees, but also subsidies, prizes or public procurement contracts.[8] EU funding can be managed in three different ways: direct management, meaning that the European Commission is responsible throughout the programme's implementation; shared management whereby responsibility is shared between the European Commission and national authorities in the Member States; or indirect management where funding is implemented by a third party like a national authority or international organisation.[9] As noted by Kilpatrick, 'the bulk of the budget (three-quarters) is spent through shared management by the Commission and Member States' on the Common Agricultural Policy and on 'structural funds' under the Cohesion Policy like the European Regional Development Fund (ERDF) or the European Social Fund Plus (ESF+),[10] and direct management amounts to one fifth of it, while indirect management represents approximately a tenth of the EU budget.[11] In addition to these funding streams, the EU also initiated 'an increasing number of so-called "action programmes", especially in areas of supplementary competence such as … culture'.[12] As such, a wide array of EU funds and funding programmes of interest to CCS professional exists, each of which can, within their own remit, represent funding opportunities for CCS professionals with disabilities.[13]

On this basis, this chapter questions whether and how the EU may be using 'its "spending power" to try and steer the policy choices made at the national or local level',[14] especially with regard to the realisation of Articles 30(2) and 27 CRPD. In doing so, it aims to

[6] Towse and Navarrete Hernández (n 1) 5–6.
[7] Mark Dawson and Floris de Witte, *EU Law and Governance* (Cambridge University Press 2022) 90.
[8] Roberto Cippitani, 'Recipient of EU Programmes' in Antonio Bartolini, Roberto Cippitani and Valentina Colcelli (eds), *Dictionary of Statuses within EU Law: The Individual Statuses as Pillar of European Union Integration* (Springer 2019) 466–467.
[9] See Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast) [2024] OJ L2024/2509 (Recast Financial Regulation), arts 62–63.
[10] Regulation (EU) 2021/1057 of the European Parliament and of the Council of 24 June 2021 establishing the European Social Fund Plus (ESF+) and repealing Regulation (EU) No 1296/2013 [2021] OJ L231/21 (ESF+ Regulation); Regulation (EU) 2021/1058 of the European Parliament and of the Council of 24 June 2021 on the European Regional Development Fund and on the Cohesion Fund [2021] OJ L231/60 (ERDF-CF Regulation).
[11] Claire Kilpatrick, 'Explaining and Remedying the Near Absence of the Budget in EU Law Scholarship' (2024) 61 Common Market Law Review 623, 627.
[12] Bruno De Witte, 'Integration through Funding: The Union's Finances as Policy Instrument' in Ruth Weber (ed), *The Financial Constitution of European Integration: Follow the Money?* (Hart 2023) 227.
[13] See European Commission, *The CulturEU Funding Guide: EU Funding Opportunities for the Cultural and Creative Sectors: 2021-2027* (Publications Office 2021).
[14] De Witte, 'Integration through Funding' (n 12) 221.

address how the EU contributes to making the CCS more inclusive of professionals with disabilities through its funding system, and to highlight limitations and gaps in the current EU funding system, that are detrimental to the right to take part in cultural life of cultural and creative professionals with disabilities. This chapter especially contributes to a law-in-context approach, blurring the lines between 'the spending law-on-the-books and spending in practice'[15] by highlighting both the regulatory framework of funds and funding programmes, as well as the calls and funded projects of interest to this thesis. As such, this chapter also looks to question the adequacy of the implementation of the EU budget in terms of the support provided to the CCS for enabling the participation of professionals with disabilities in cultural life.

In this context, informed by how EU funding shapes the EU legal framework for disability and for culture,[16] this chapter further grounds itself in the qualitative research and focuses more prominently on those funds and funding programmes discussed by the cultural stakeholders that took part in the interviews and focus groups. In an attempt to show how the EU funding system can be leveraged to enhance the participation of CCS professionals with disabilities, the following sections therefore focus more prominently on Creative Europe, Erasmus+, Horizon Europe and the ERDF,[17] addressing both their potential and shortcomings in realising Article 30(2) CRPD, together with Article 27 CRPD. The analysis of the above-mentioned funding streams is key to understanding if and how the right of professionals with disabilities to participate in cultural life can , as for other rights, be 'effectively enforced through the EU budget'.[18] In doing so, it discusses some issues which pertain to the drafting of the next Multiannual Financial Framework (MFF) for 2028-2034.[19]

Following these introductory remarks, section 2 elaborates on how Creative Europe, the only funding programme dedicated solely to the CCS and its professionals, creates opportunities that can support the participation of professionals with disabilities in the CCS. In doing so, it discusses how disability considerations are mainstreamed in the legal

[15] Kilpatrick (n 11) 630.
[16] See Chapters 4 and 5.
[17] See Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination, and repealing Regulations (EU) No 1290/2013 and (EU) No 1291/2013 [2021] OJ L170/1 (Horizon Europe Regulation); Regulation (EU) 2021/817 of the European Parliament and of the Council of 20 May 2021 establishing Erasmus+: the Union Programme for education and training, youth and sport and repealing Regulation (EU) No 1288/2013 [2021] OJ L189/1 (Erasmus+ Regulation); Regulation (EU) 2021/818 of the European Parliament and of the Council of 20 May 2021 establishing the Creative Europe Programme (2021 to 2027) and repealing Regulation (EU) No 1295/2013 [2021] OJ L189/34 (Creative Europe Regulation 2021-2027).
[18] Cristina Fasone and Marta Simoncini, 'Fighting with Hands Tied? The European Social Fund and the Promotion of Social Inclusion' (2021) 13 Italian Journal of Public Law 478, 481.
[19] See European Commission, 'A dynamic EU Budget for the priorities of the future - The Multiannual Financial Framework 2028-2034' (Communication) COM(2025) 570 final.

basis of the programme, as well as, in dedicated calls for proposals. It further highlights a range of initiatives and projects funded under Creative Europe, which act as practical examples of the programme's impact and potential for professionals with disabilities, before discussing some of the shortcomings of the flagship programme. Section 3 focuses on how funds and funding programmes that are not specific to the CCS contribute to supporting the participation of cultural and creative professionals with disabilities. In this respect, it focuses specifically on Erasmus+, Horizon Europe and the ERDF. Section 4 moves on to consider shortcomings and tensions within the EU funding system, particularly in terms of procedural challenges and their consequences on the participation of cultural and creative professionals with disabilities in cultural life. Section 5 then contrasts the use of EU funding with obligations enshrined in the CRPD, while section 6 questions the potential of the EU funding system in setting the conditions for transformative change and successful inclusion of professionals with disabilities in the CCS. Finally, section 7 provides some concluding remarks.

2. Creative Europe: Fostering Opportunities for Professionals with Disabilities through the Main Sectoral Funding Programme

As presented in chapter 5, the Creative Europe programme is the EU's flagship programme for culture. It is therefore at the forefront of EU cultural action, as delimited in Article 167 TFEU. It was also mentioned several times during the interviews and focus groups.

The programme is particularly noteworthy in the current funding round –from 2021 to 2027– for its explicit support to the participation of persons with disabilities, and seemingly embodies the renewed attention paid by the Union to the participation of persons with disabilities in cultural life as both audiences and professionals. As this section argues, the Creative Europe programme is therefore an interesting illustration of the financial resources that the EU can mobilise for the benefit of cultural and creative stakeholders from EU Member States and beyond, including for professionals with disabilities. Albeit there are some caveats, this is particularly evidenced in the way Creative Europe has been regulated in EU law, and by the different calls, or projects and standout actions it has funded over the years.

2.1. Creative Europe and CCS Professionals with Disabilities: A Regulatory Evolution

As the Member States are largely responsible for culture, Creative Europe is one of the few EU programmes directly dedicated to culture and to supporting its stakeholders and 'the development of a range of cultural services and activities'.[20] More specifically, it is composed of three strands, which all have specific priorities.

The Culture strand covers the CCS –except for the audiovisual sector– and seeks to strengthen transnational cooperation, improve cultural access and audience development, promote social inclusion and intercultural dialogue, enhance the CCS' capacity to innovate and generate jobs and growth, as well as reinforce European identity, values and the capacity of the CCS to engage at international level.[21] The Media strand, which focuses on the audiovisual sector, prioritises nurturing talent and skills in the audiovisual sector, fostering cross-border collaboration, promoting the distribution of European audiovisual works, and engaging and developing diverse audiences, while supporting the development, production, promotion and dissemination of European works.[22] Lastly, the Cross-sectoral strand focuses on fostering cross-sectoral transnational policy cooperation, encouraging innovative content creation and distribution approaches across sectors, supporting the adaptation to structural and technological changes faced by the media, and promoting media pluralism and literacy.[23] It also supports the programme desks to enhance cross-border collaboration and best practices within the CCS.[24]

In its second iteration, the legal basis of the Creative Europe programme has also included an increasing number of references to persons with disabilities in the CCS, as well as to the CRPD. This is an interesting point to note, especially as several CCS stakeholders mentioned the programme during the qualitative study. From a legal standpoint, the current Regulation (Creative Europe Regulation 2021-2027) contrasts with the Regulation which established the first Creative Europe programme (Creative Europe Regulation 2014-2020) and limitedly referred to disability issues.[25] In particular, the former piece of legislation recognised 'the need to seek a new balance between the increasing accessibility of cultural and creative works, fair remuneration of artists and

[20] Delia Ferri, 'The Role of the European Union in Ensuring Accessibility of Cultural Goods and Services: All About that … Internal Market?' (2023) 48 European Law Review 257, 279.
[21] Creative Europe Regulation 2021-2027, art 5(1).
[22] Creative Europe Regulation 2021-2027, art 6(1)–(2).
[23] Creative Europe Regulation 2021-2027, art 7(1)(a)–(c).
[24] Creative Europe Regulation 2021-2027, art 7(1)(d).
[25] Regulation (EU) 1295/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Creative Europe Programme (2014 to 2020) and repealing Decisions No 1718/2006/EC, No 1855/2006/EC and No 1041/2009/EC [2013] OJ L347/221 (Creative Europe Regulation 2014-2020).

creators and the emergence of new business models'.[26] Article 4(b) also laid out as one of the programme's specific objectives that of reaching new audiences and improving 'access to cultural and creative works in the Union and beyond, with a particular focus on children, young people, people with disabilities and under-represented groups'. Overall, references to disability issues were scant, and persons with disabilities' participation in cultural life was not addressed from a professional or active point of view. It can be inferred that the EU legislator mostly envisioned the contribution of the Creative Europe programme to enabling participation in cultural life from an audience perspective.

By contrast, 'the link between access to culture for people with disabilities and the social goals of the EU cultural agenda emerges very clearly' in the Creative Europe Regulation 2021-2027.[27] Indeed, additional references are made to promoting and increasing cultural participation of persons with disabilities.[28] As such, the programme exemplifies the 'mainstreaming of disability concerns in [EU] regulatory instruments'.[29] In particular, Recital 61 states that the Regulation aligns with the CRPD and seeks to ensure full respect for the right to non-discrimination on the grounds of disability. The Recast Financial Regulation also makes clear that grants shall be subject to the principle of equal treatment.[30] However, to date, the Court of Justice of the EU (the 'Court' or CJEU) has not yet found any breach of the principle of equal treatment and non-discrimination in relation to decisions linked to the Creative Europe programme.

Additionally, Article 3(5)(a) of the Creative Europe Regulation 2021-2027 indicates that Creative Europe's objectives must 'be pursued in a way that encourages inclusion, equality, diversity and participation', including through incentives that support persons with disabilities' access to the CCS. In that respect, the Regulation specifically calls for encouraging the active participation of persons with disabilities in the CCS, including in the process of creation and audience development.[31] Although it does not explicitly refer to persons with disabilities as 'professionals', it can be inferred from the mention of their 'active participation', including in the creative process, that reference is made to the participation of persons with disabilities as producers of culture, ie as amateurs, but also as professionals.

[26] Creative Europe Regulation 2014-2020, recital 13.
[27] Neža Šubic and Delia Ferri, 'Characterizing Access to Culture for People with Disabilities in EU Cultural Policy: European Identity, Market Integration and Social Inclusion' (2022) 52 DPCE Online 801, 820.
[28] See Creative Europe Regulation 2021-2027, recital 20.
[29] Delia Ferri, 'Fostering Cultural Participation of Persons with Disabilities in the European Union Through Funding: "I Was Told there'd Be Cake"' in Juan Jorge Piernas López (dir), Salvador Tomás Tomás and Rafael Castillo Felipe (coords), *El Poder Transformador del Derecho de la Unión Europea: Retos y Resultados Seleccionados* (Aranzadi La Ley 2025) 105.
[30] Recast Financial Regulation, art 191(a).
[31] Creative Europe Regulation 2021-2027, art 3(5)(a).

Leaving aside the considerations on what might come after 2027, as briefly discussed below, the Creative Europe Regulation 2021-2027 certainly emphasises the address of 'persons with disabilities with regard to broader social inclusion goals and the idea of redressing the disadvantage faced by them'.[32] From a legal standpoint, it also portrays the Creative Europe programme as a funding tool apt and designed to provide opportunities for CCS professionals with disabilities, and showcases the interest of the EU legislator to enable the participation of professionals with disabilities in cultural life. This was particularly raised in the latest report of the EU to the Committee on the Rights of Persons with Disabilities (CRPD Committee) as it highlighted that Creative Europe 'encourages the active participation of persons with disabilities, both as creators and as audience'.[33]

In this context, it is interesting to briefly discuss the next EU budget with the European Commission's proposal for the MFF 2028-2034, especially as it will impact the Creative Europe programme.[34] In July 2025, the European Commission proposed to support the CCS and civil society under a common programme called AgoraEU, which would essentially entail the combination of the Citizens, Equality, Rights and Values programme (CERV) and Creative Europe in one funding programme.[35] A brief assessment of the proposed Regulation shows that the consideration of and support to CCS professionals and audiences with disabilities under the AgoraEU strands of direct relevance to the CCS (with the exception of the CERV+ strand) is regressing.

Albeit it makes clear that the programme will contribute to the EU's implementation of the CRPD,[36] it does not explicitly address persons with disabilities within the specific objectives of the Creative Europe-Culture strand and the MEDIA+ strand.[37] Indeed, while the Creative Europe-Culture strand does refer to 'improving access to and participation in culture and cultural heritage for all', for now it only singles out youth as a group of interest.[38] Although persons with disabilities can be encompassed in this group, the same can be said for the following paragraph regarding the support directed at cultural and creative professionals, which highlights emerging artists and young artists but does not explicitly refer to those with disabilities.[39] This focus on youth translates in the MEDIA+

[32] Šubic and Ferri (n 27) 820.
[33] Committee on the Rights of Persons with Disabilities (CRPD Committee), 'Combined Second and Third Periodic Reports Submitted by the European Union Under Article 35 of the Convention, Due in 2021' (2023) UN Doc CRPD/C/EU/2-3 para 9.
[34] See COM(2025) 570 final.
[35] European Commission, 'Proposal for a Regulation of the European Parliament and of the Council establishing the "AgoraEU" programme for the period 2028-2034, and repealing Regulations (EU) 2021/692 and (EU) 2021/818' COM(2025) 550 final, 2.
[36] COM(2025) 550 final, recitals 15, 18 and art 7(c).
[37] See COM(2025) 550 final, arts 4–6.
[38] COM(2025) 550 final, art 4(b).
[39] COM(2025) 550 final, art 4(c).

strand as it for now aimed at 'building audiences for European audiovisual work … and addressing in particular young Europeans and underserved communities'.[40] Those considerations are not definitive as these proposals for the MFF 2028-2034 have yet to be negotiated.

2.2. Practical Examples of the Potential of Creative Europe for CCS Professionals with Disabilities: Calls and Funded Projects

For now, the Creative Europe programme is implemented both through direct and indirect management, and it provides funding through prizes, procurement, and grants.[41] With respect to grants, the increased attention paid to the cultural participation of persons with disabilities therefore finds reflection in the calls for projects that have been published over the years, as well as in the projects that Creative Europe has funded.

For instance, calls for proposals underline that the general objectives of the Creative Europe programme should be implemented taking into account persons with disabilities, in the following terms:

> The objectives are pursued in a way that encourages inclusion, equality, diversity and participation, including, where appropriate, specific incentives that encourage the active participation in the cultural and creative sectors of people with disabilities … including both the creative process and audience development.[42]

Moreover, in line with the Annual Work Programme (AWP), calls for proposals place a certain emphasis on Creative Europe's contribution to overarching priorities, which, for 2025, include the digital transition, the EU greening efforts, international relations and inclusion and gender equality.[43] This focus on inclusion –or inclusivity as some participants put it– was certainly reflected in the qualitative study, as some CCS stakeholders recalled the general emphasis on inclusivity in applying for and reporting on projects. At the same time, some also stressed that there were different dimensions of inclusion, beyond just disability inclusion.

A number of calls also underline the need to address the active participation of persons with disabilities in the CCS, which, as discussed above, can be assumed to cover

[40] COM(2025) 550 final, art 5(c).
[41] Creative Europe Regulation 2021-2027, art 13(1)–(2).
[42] European Education and Culture Executive Agency (EACEA), 'Call for Proposals: News – Media Literacy' (Creative Europe Programme (CREA) 2022) CREA-CROSS-2022-MEDIALITERACY, 6; EACEA, 'Call for Proposals: Pan-European Cultural Entities' (CREA 2023) CREA-CULT-2024-PECE, 6; EACEA, 'Call for Proposals: Circulation of European Literary Works' (CREA 2024) CREA-CULT-2025-LIT, 5.
[43] European Commission, '2025 Annual Work Programme for the Implementation of the Creative Europe Programme' (2024) C(2024)6503 final (2025 Creative Europe Annual Work Programme), annex, 12–14.

professionals. In particular, call documents have and continue to invite interested parties to submit cooperation projects in order to 'enhance social inclusion in/through culture in particular of/for people with disabilities',[44] and explicitly encourage projects 'to include artists with disabilities in the creative process'.[45] Moreover, the inclusion of persons with disabilities is articulated as an area of innovation that the Culture strand of Creative Europe seeks to promote as a cross-cutting issue. In that sense, some calls for project have indicated that the programme will support projects that facilitate access to cultural content especially for professionals and participants with 'fewer opportunities' or underrepresented in the CCS landscape, such as persons with disabilities.[46]

The possibility for grants to cover specific accessibility costs –meaning 'expenses incurred to make the project more accessible for people with disabilities, whether as artists, arts workers or audiences'– is also made clear in calls for Perform Europe, a funding scheme for performing arts collaboration financed by the Creative Europe programme.[47] While it is unclear whether this refers to accessibility costs or in fact, reasonable accommodation costs, it still represents a way to level the playing field and ensure that professionals with disabilities have the opportunity to participate in certain Creative Europe calls, on a more equal basis with others. Overall, the increased attention to the situation of persons with disabilities within the CCS, and more specifically of professionals with disabilities, found in Creative Europe Regulation 2021-2027 is reflected in the calls that have been published over the years, attesting to the intention of the EU to move forward on this matter.

As a result, a number of projects funded under the Creative Europe programme, both in the 2014-2020 and 2021-2027 cycles, integrate this disability dimension and focus on making cultural products and services more accessible and inclusive of persons with disabilities, as professionals and as audiences. In that respect, the funding derived from the programme has, among others, benefited participants in the qualitative study. One focus group participant shared:

> [W]e are challenging ourselves and our audiences working mainly through Creative Europe projects, challenging the norms of who we can see on our stage, and who is missed in our audiences. (FG1 P8)

[44] EACEA, 'Call for Proposals: European Cooperation Projects' (CREA 2021) CREA-CULTURE-2021-COOP, 10; EACEA, 'Call for Proposals: European Cooperation Projects' (CREA 2022) CREA-CULT-2022-COOP, 10.
[45] EACEA, 'CREA- CULT-2022-COOP' (n 44) 12.
[46] EACEA, 'CREA-CULTURE-2021-COOP' (n 44) 8; EACEA, 'Call for Proposals: European Platforms for the Promotion of Emerging Artists' (CREA 2021) CREA-CULT-2021-PLAT, 8; EACEA, 'CREA- CULT-2022-COOP' (n 44) 8; EACEA, 'CREA-CULT-2024-PECE' (n 42) 7; Perform Europe, 'The Open Call of Perform Europe 2023 – 2026: Reimagine International Touring with Us!' (2023) 6–7.
[47] Perform Europe (n 46) 12.

As such, Creative Europe contributes rather directly to supporting the participation of CCS professionals with disabilities in funded projects. In addition, in facilitating the access to culture of persons with disabilities, it also supports cultural and creative professionals with disabilities in their information-seeking activities, therefore more as audiences and consumers of culture.

Indeed, there are a number of projects that are dedicated more overtly to the accessibility of the CCS, and therefore not always targeting professionals with disabilities. These include, for instance, projects funded under the Culture strand such as 'PAGE: a Project for Advancing coGnitivE accessibility in publishing', and 'AAA - All Areas Access - A Mock-up for Accessible Venues' dedicated to improving accessibility to live venues for d/Deaf people and involving notably d/Deaf CCS professionals.[48] There is also P.A.I.R. on 'Paving Accessible and Inclusive Realities' or PASS on 'Promoting Accessible Shows combining music and performing arts for people with Sensory and cognitive disabilities'.[49]

Under the Media strand, a number of grants have been awarded to support costs of subtitling and audio-description of cultural content for distribution, including on video-on-demand platforms, or closed captioning and sign language interpretation at festivals, like the European Film Market.[50] Interestingly, some projects make explicit reference to the implementation of the European Accessibility Act (EAA)[51] as they promote innovation in the production and distribution of born accessible publications and e-books,

[48] European Commission, 'AAA - All Areas Access - A Mock-up for Accessible Venues' (*EU Funding & Tenders Portal*) <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/opportunities/projects-details/43251814/101099448/CREA2027?order=DESC&pageNumber=1&pageSize=50&sortBy=title&keywords=disab*&isExactMatch=false&frameworkProgramme=43251814> accessed 04 August 2025; European Commission, 'PAGE: A Project for Advancing CoGnitivE Accessibility in Publishing' (*EU Funding & Tenders Portal*) <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/opportunities/projects-details/43251814/101173233/CREA2027?order=DESC&pageNumber=1&pageSize=50&sortBy=title&keywords=Disabilities&isExactMatch=true&frameworkProgramme=43251814> accessed 04 August 2025.

[49] European Commission, 'Paving Accessible and Inclusive Realities' (*EU Funding & Tenders Portal*) <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/opportunities/projects-details/43251814/101173834/CREA2027?order=DESC&pageNumber=1&pageSize=50&sortBy=title&keywords=disab*&isExactMatch=false&frameworkProgramme=43251814> accessed 04 August 2025; European Commission, 'Promoting Accessible Shows Combining Music and Performing Arts for People with Sensory and Cognitive Disabilities' (*EU Funding & Tenders Portal*) <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/opportunities/projects-details/43251814/101131091/CREA2027?order=DESC&pageNumber=1&pageSize=50&sortBy=title&keywords=Disabilities&isExactMatch=true&frameworkProgramme=43251814> accessed 04 August 2025.

[50] European Commission, 'Filmo Expanded: Fostering Access, Diversity, Sustainability, and Cross-Border Cooperation for the European VoD Industry' (*EU Funding & Tenders Portal*) <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/opportunities/projects-details/43251814/101101600/CREA2027?order=DESC&pageNumber=1&pageSize=50&sortBy=title&keywords=accessibility&isExactMatch=false&frameworkProgramme=43251814> accessed 04 August 2025; European Commission, 'Inclusion and Accessibility at the EFM 2022' (*EU Funding & Tenders Portal*) <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/opportunities/projects-details/43251814/101053345/CREA2027?order=DESC&pageNumber=1&pageSize=50&sortBy=title&keywords=accessibility&isExactMatch=false&frameworkProgramme=43251814> accessed 04 August 2025.

[51] Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services [2019] OJ L151/70 (EAA).

and raise awareness on best practices, like the project APACE 'Accelerating Publishing Accessibility through Collaboration in Europe' or ABE 'Accessible Backlist Ebooks Laboratory'.[52]

Some large-scale cooperation projects, such as Europe Beyond Access,[53] have also earned the recognition of the sector(s) and policymakers, including of some participants in the interviews and focus groups. This is one of the programme's largest funded initiative that focuses on supporting the active participation of cultural and creative professionals with disabilities, particularly in the mainstream performing arts, and which continues to produce research on making said sector(s) more inclusive.[54] The work of Europe Beyond Access and the reports published as part of the project have also been monitored by the European Commission in particular as part of the Disability Strategy 2021-2030, with regard to the implementation of Article 30 CRPD.[55]

Hence, the funding made available through the Creative Europe programme enables the participation in cultural life of cultural and creative professionals with disabilities in several ways. First, as mentioned already in the introduction of this chapter, this programme can directly fund professionals with disabilities as recipients of Creative Europe grants, and can also fund projects that aim to directly foster the active participation of persons with disabilities in cultural life, thus boosting the opportunities available to them to gain a living and to work. In providing grants to projects across the EU, which involve cultural and creative professionals with disabilities, the Creative Europe programme can therefore practically support them in their professional endeavours. As such, it can also advance their participation in cultural life and foster the development and utilisation of their creative, artistic, and intellectual potential, as well as their contribution to society, as foreseen in Article 30(2) CRPD, together with Article 27 CRPD.

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[52] European Commission, 'Accelerating Publishing Accessibility through Collaboration in Europe' (*EU Funding & Tenders Portal*) <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/opportunities/projects-details/43251814/101129578/CREA2027?order=DESC&pageNumber=1&pageSize=50&sortBy=title&keywords=accessibility&isExactMatch=false&frameworkProgramme=43251814> accessed 04 August 2025; European Commission, 'Accessible Backlist Ebooks Laboratory' (*EU Funding & Tenders Portal*) <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/opportunities/projects-details/43251814/101100053/CREA2027?order=DESC&pageNumber=1&pageSize=50&sortBy=title&keywords=accessibility&isExactMatch=false&frameworkProgramme=43251814> accessed 04 August 2025.

[53] European Commission, 'Europe Beyond Access' (*EU Funding & Tenders Portal*) <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/opportunities/projects-details/43251814/101128575/CREA2027?order=DESC&pageNumber=1&pageSize=50&sortBy=title&keywords=disab*&isExactMatch=false&frameworkProgramme=43251814> accessed 04 August 2025.

[54] See Yohann Floch and Jordi Baltà Portolés, 'Time to Act: How Lack of Knowledge in the Cultural Sector Creates Barriers for Disabled Artists and Audiences: Final Report' (On the Move, British Council 2021).

[55] See European Commission, 'Monitoring Framework: Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030' (*European Commission*) <https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/disability/union-equality-strategy-rights-persons-disabilities-2021-2030/monitoring-framework_en> accessed 04 August 2025.

Additionally, Creative Europe channels EU funding towards making cultural products and services more accessible to persons with disabilities, thus remedying –to a certain extent– the lack of funding that stakeholders and Member States consulted by the European Commission identified as an 'important obstacle to the production of accessible formats'.[56] In this respect, it contributes to the combined implementation of Article 30(1), (2) and even (3) CRPD, and is therefore key to address the challenges faced by professionals with disabilities with regard to the accessibility of cultural life discussed in chapter 7.

As more CCS professionals with disabilities are included in funded projects and are able to participate in cultural life, thanks to EU funding provided through Creative Europe, the programme may also contribute to tackling the lack of awareness and knowledge about the participation of persons with disabilities as professionals in the CCS. In fact, on foot of a socio-legal analysis with stakeholders interested in culture and disability, Ferri notes how 'projects focusing on disability and arts are essential to combat stigma and discrimination'.[57] Further to supporting the production of disability-inclusive works, insofar as cultural and creative professionals with disabilities are included in projects and cultural products and services are made accessible, Creative Europe funding also helps to raise awareness of the capabilities and contribution to cultural life of CCS professionals with disabilities across the EU. As such, it has the potential to touch and educate many of the CCS professionals involved in those projects, colleagues in partner organisations, administrations, audiences, and any other stakeholders that CCS professionals with disabilities may interact with as part of the funded projects.

2.3. Standout Actions Supported under Creative Europe

While learning and mobility opportunities are particularly linked to the Erasmus+ programme, discussed in the following section, CCS professionals with disabilities may also benefit from initiatives funded through Creative Europe that facilitate that they freely move in the EU, and support their economic performance.

[56] European Commission, 'Report on the availability of certain copyright protected works for persons with disabilities within the internal market' (Staff Working Document) SWD(2022) 109 final, 13–14.
[57] Ferri, 'Fostering Cultural Participation of Persons with Disabilities' (n 29) 111.

2.3.1. Culture Moves Europe

This is the case of the 'Culture Moves Europe' action, an horizontal initiative funded as part of the Creative Europe programme and launched in 2021, succeeding i-Portunus.[58] Dedicated to supporting mobility opportunities for CCS professionals under individual mobility directly targeting CCS professionals, and under residency actions for cultural organisations wishing to host CCS professionals from Creative Europe countries,[59] it integrates additional financial support for people with disabilities.

It promises to particularly consider those applicants with disabilities and encourages professionals with disabilities to apply, offering the possibility for virtual and hybrid mobility projects.[60] Grants delivered under Culture Moves Europe aim to cover travel allowances, daily allowances and individual top ups and support. This includes accessibility support for people with disabilities including for virtual mobility projects, which aim:

> to help cover specific additional costs connected to the project implementation and/or the travel from the place of residence to the destination (and back) [like] increased costs of accessible accommodation and/or travel, support workers, a Sign Language interpreter, etc.[61]

However, it is unclear whether this extra financial support can cover the additional costs supported by cultural and creative professionals with disabilities in full. Rather, it appears that this is assessed on a case-by-case basis with the Culture Moves Europe team, and in some instances, it has been limited to a certain threshold.[62] For residency action, the additional financial support to organisations can be up to EUR 75 per day, per participant with disabilities.[63] Overall, Culture Moves Europe does not commit to cover 100% of the additional costs supported by cultural and creative professionals with disabilities that may participate in the programme, or organisations hosting them. In that, it differs from the approach of other mobility actions, like Erasmus+, as discussed below in section 3. This can represent an obstacle to the participation of CCS professionals with disabilities who

[58] European Commission, '2023 Annual Work Programme for the Implementation of the Creative Europe Programme' (2022) C(2022) 6138 final (2023 Creative Europe Annual Work Programme), annex, 16.
[59] European Commission, '2025 Creative Europe Annual Work Programme' (n 43) annex, 34.
[60] European Commission, 'Culture Moves Europe: Individual Mobility Action: Call for Individual Mobility: Third Call from 1st August 2024 to 30th November 2024 23:59:59 CET' (2024) 9.
[61] European Commission, 'Culture Moves Europe Third Call for Individual Mobility Action' (n 60) 17.
[62] European Commission, 'Second Call for Individual Mobility of Artists and Cultural Professionals' (*Culture and Creativity*, 2 October 2023) <https://culture.ec.europa.eu/calls/second-call-for-individual-mobility-of-artists-and-cultural-professionals> accessed 04 August 2025. In this instance, the disability support was limited to 100% of the combined travel (EUR 350 to EUR 700 for round trip) and daily (EUR 75 per day) allowances.
[63] European Commission, 'Frequently Asked Questions - Call for Residency Hosts' (*Culture and Creativity*, 7 December 2023) <https://culture.ec.europa.eu/creative-europe/creative-europe-culture-strand/culture-moves-europe/faqs-residency-call> accessed 04 August 2025.

would like to participate in these mobility schemes but may be discouraged to do so if, among the other challenges they face,[64] the costs to be supported are prohibitive.

Nevertheless, the latest Creative Europe AWP indicates that the action 'will continue its efforts to increase the inclusion of people with disability in the scheme'.[65] In this context, the European Commission highlights how the possibility to apply for virtual mobility, introduced in the call for individual mobility of September 2024, ensues from this commitment. It shares that communication and outreach activities were planned for 2025 in order to promote the participation of CCS professionals with disabilities in the scheme. Interestingly, it also emphasises that 'more than 50% of organisations applying as host organisations declared in the first two calls having capacity to host artists with disabilities, [and that] they will be further encouraged to do so in the next calls'.[66]

With this specific mobility action, and the increased attention given to CCS professionals with disabilities within its remits, the Creative Europe programme therefore provides financial means to support a range of opportunities 'for international collaborations, for professional development, to find new audiences, to co-produce or co-create with others'.[67] The attention paid to CCS professionals with disabilities, as well as the organisational and financial adjustments foreseen are an indication of the potential of this initiative. They present Culture Moves Europe, and by extension Creative Europe, as an EU initiative with the potential to promote greater equality of opportunity in the EU for CCS professionals with disabilities, including to earn a living and develop their professional practice. Indeed, these funded mobility opportunities enable CCS professionals with disabilities to collaborate internationally, on a more equal basis with other CCS professionals, and to reach new markets, for instance by touring, exhibiting, or producing in multiple countries. Thus, to some extent, and more or less directly, it can contribute to the sustainability of their livelihoods as professionals in the CCS. However, for now, it remains limited in that it does not provide to cover the full additional costs supported by the CCS professionals with disabilities during such mobilities.

2.3.2. The Creatives Unite Platform and the CCS Guarantee Facility

Further to Culture Moves Europe, Creative Europe supports another initiative, which can be seen as a key avenue for improving the participation of professionals with disabilities

[64] See Chapter 1, Section 2.
[65] European Commission, '2025 Annual Work Programme' (n 43) annex, 14.
[66] European Commission, '2025 Annual Work Programme' (n 43) annex, 16.
[67] European Commission, '2025 Annual Work Programme' (n 43) annex, 34.

in the CCS, the Creatives Unite platform.[68] Over the years, EU funding made available through the Creative Europe programme has supported innovative actions in terms of 'Finance, Learning, Working conditions, Innovation, and Intellectual Property Rights for the Cultural and Creative Sectors and Industries' under the policy project 'Creative FLIP'.[69] The consortium leading the project works towards improving the long term resilience of the CCS and supporting preparedness 'to tackle future disruption and transformation processes'.[70] This project oversees the establishment of the flagship Creatives Unite platform that gathers resources for CCS professionals and hosts interactive tools for better access to information on finance, working conditions and intellectual property rights.

More specifically, the platform hosts initiatives, funding opportunities, information, tips, as well as a series of tools, which are meant to facilitate access to information on working conditions across EU Member States, to support CCS professionals' understanding of Intellectual Property (IP) law, and of financial opportunities to sustain themselves in the EU. In that connection, it discusses under the 'So You Need Money' tool, the possibility to get loans. To that end, it also mentions another initiative launched as part of Creative Europe, the Cultural and Creative Sectors Guarantee Facility (CCS GF).[71] Designed to support CCS stakeholders' loan requests and to improve access to accessible debt financing for micro-businesses and small and medium-sized enterprises (SMEs) in the CCS, the CCS GF supports and provides guarantees to financial intermediaries offering loans to these businesses.[72] Acknowledging issues faced by CCS stakeholders in terms of investing in their businesses, the European Investment Fund manages this guarantee scheme on behalf of the European Commission since 2016. It represents another opportunity ensuing from the Creative Europe programme to support CCS professionals in their cultural and creative endeavours.

More broadly, the Creatives Unite platform contributes to the availability of resources on the CCS for CCS professionals, and to their knowledge of the sectors and the rules at play. In providing information on working conditions in the CCS in the EU, it also maps, in a self-proclaimed 'user-friendly' way, information on key issues for the sector(s), including on legal status, social security, labour relations, learning and skills, and artistic

[68] See the Creatives Unite website at <https://creativesunite.eu/> accessed 04 August 2025.
[69] Creative FLIP, 'Current Phase 2024-2026' (*Creative FLIP*) <https://creativeflip.creativehubs.net/page/phase-3> accessed 04 August 2025.
[70] Creative FLIP (n 69).
[71] See Creatives Unite, 'So You Need Money! Loans' (*Creatives Unite*) <https://creativesunite.eu/synm/> accessed 04 August 2025.
[72] See European Investment Fund, 'Be Creative - Call the Bank' (2019).

freedom in all Member States. The Creatives Unite platform can therefore contribute, through knowledge-building and awareness-raising, to ensure a sustainable, financially sound and rewarding career in the CCS, including through the use of the CCS GF, as well as facilitate the free and informed movement of cultural and creative professionals with disabilities in the EU.

It further demonstrates the potential of the Creative Europe programme in enabling the participation of cultural and creative professionals with disabilities in the CCS –yet the web accessibility of the platform leaves to be desired.[73] Despite its otherwise great potential, this shortcoming may prevent CCS professionals with disabilities from benefitting from an important EU initiative dedicated to CCS professionals. It also echoes one of the criticisms made in the previous chapter, which highlighted gaps in EU legislation with regard to the accessibility of websites. More broadly, it also demonstrates the interplay of the identified themes, which must be addressed as mutually reinforcing in order to enable the participation in cultural life of professionals with disabilities.

2.4. Shortcomings of the Creative Europe Programme

While deeper cross-cutting issues of the EU funding system and how it risks failing CCS professionals with disabilities are discussed in section 4, the present sub-section seeks to highlight those flaws more specific to the Creative Europe programme.

One of the main shortcomings of the Creative Europe programme is the relatively low level of EU spending that it represents. For the period 2021-2027, the Creative Europe programme has a total budget of EUR 2.44 billion,[74] up from the EUR 1.46 billion for the period 2014-2020. As per the programme Regulation, at least 33% of the budget is allocated to the Culture strand, 58% to the Media strand and up to 9% to the Cross-sectoral strand.[75] As a sidenote, the indicative budget for AgoraEU, which has yet to be negotiated, is set at approximately EUR 8.6 billion, of which EUR 1.8 billion would go to the Creative Europe-Culture strand, and 3.2 billion would be dedicated to the MEDIA+ strand,[76] therefore doubling the funding directly dedicated to supporting the CCS.

[73] Using a web accessibility evaluation tool (https://wave.webaim.org/), many errors can be found including in terms of contrast or missing alternative text. A simple test was done in that respect on 10/03/2025.
[74] Creative Europe Regulation 2021-2027, art 8(1)–(2).
[75] Creative Europe Regulation 2021-2027, art 8(3)–(4).
[76] COM(2025) 550 final, art 11(1); European Commission, 'Legislative Financial and Digital Statement' in European Commission, 'Proposal for a Regulation of the European Parliament and of the Council establishing the "AgoraEU" programme for the period 2028-2034, and repealing Regulations (EU) 2021/692 and (EU) 2021/818' COM(2025) 550 final, 13.

Despite a notable increase in funding for Creative Europe (or for AgoraEU), the EU's dedicated budget for culture remains relatively modest compared to other areas,[77] in addition to being on occasions the object of proposed budget cuts.[78] For now, the European Commission's flagship programme represents just 'a tiny part of the overall EU budget, namely 0.22 percent in the current seven-year period'.[79] In comparison, education or research programmes, which may also provide funding avenues for CCS professionals with disabilities –as discussed in section 3– have drastically larger budgets. Notably, Erasmus+ has a budget ten times higher, with EUR 26.2 billion planned for the period 2021-2027 (EUR 40.8 billion foreseen for 2028-2034)[80] and Horizon Europe has a total programme budget of EUR 95.5 billion (EUR 175 billion foreseen for 2028-2034).[81]

At a time when the European Commission is celebrating 10 years of investment in European creativity,[82] the criticisms raised in the context of Creative Europe 2014-2020 remain valid for the second cycle of the flagship programme. Indeed, the financial investment in the CCS, which Creative Europe is supposed to embody, falls short of its 'wide-ranging ambition'[83] to foster and 'safeguard cultural diversity and increase the competitiveness of the [CCS]'.[84]

Overall, the impact of Creative Europe on the CCS is called into question due to the limited amount of funding it represents. This also casts doubt on its potential to support creation in the EU and beyond on the long term, while fostering the participation of professionals with disabilities. In that sense, De Witte observes that while the funded projects 'may make an important difference for the participants in the single projects funded by it, their overall contribution to the policy objectives stated in the Treaties is bound to be rather modest'.[85]

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[77] See Oriane Calligaro and Antonios Vlassis, 'La politique européenne de la culture : Entre paradigme économique et rhétorique de l'exception' (2017) 56 Politique Européenne 8, 9; Bruno De Witte, 'Legal Framework of the EU's Cultural Policy' in Evangelia Psychogiopoulou and Sarah Schoenmaekers (eds), *European Union Economic Law and Culture: Towards a European Culturally Corrected Market Economy* (Edward Elgar 2024) 16–17.

[78] See Council of the European Union, 'Draft general budget of the European Union for the financial year 2024: Council position' (Note) 11427/23, 7.

[79] De Witte, 'Legal Framework of the EU's Cultural Policy' (n 77) 16.

[80] Erasmus+ Regulation, art 17; European Commission, 'Proposal for a Regulation of the European Parliament and of the Council establishing the Erasmus+ programme for the period 2028-2034, and repealing Regulations (EU) 2021/817 and (EU) 2021/888' COM(2025) 549 final, art 9(1).

[81] Horizon Europe Regulation, art 12; European Commission, 'Proposal for a Regulation of the European Parliament and of the Council establishing Horizon Europe, the Framework Programme for Research and Innovation, for the period 2028-2034 laying down its rules for participation and dissemination, and repealing Regulation (EU) 2021/695' COM(2025) 543 final, art 6.

[82] This is a reference to the wording of Creative Europe's home page. See European Commission, 'Creative Europe' (*Culture and Creativity*) <https://culture.ec.europa.eu/creative-europe> accessed 28 April 2025.

[83] Philip Schlesinger, 'Whither the Creative Economy? Some Reflections on the European Case' in Abbe EL Brown and Charlotte Waelde (eds), *Research Handbook on Intellectual Property and Creative Industries* (Edward Elgar 2018) 15.

[84] European Commission, '2025 Creative Europe Annual Work Programme' (n 43) annex, 11.

[85] De Witte, 'Legal Framework of the EU's Cultural Policy' (n 77) 17.

This issue is exacerbated by the increasing number of applicants for certain action branches, notably the cooperation projects funded under the Culture strand. The increase in applications is seen to reduce the success rate for applicants and, as the European Commission puts it, it means that a number of 'high-quality projects cannot be financed'.[86] Critics have also highlighted the way in which the funding programme tends, in some respects, to 'reinforc[e] existing success', and to 'strengthe[n] already strong relationships rather than creating new ones'.[87] In the context of the current Creative Europe programme, the European Commission explained in the AWP 2025 that it was considering to level the playing field by encouraging better turnover in funded organisations, especially for cooperation projects, and by introducing the possibility of limiting the number of applications per organisation.[88] It is now limiting to three the number of applications an organisation can participate in for the call for European Cooperation projects.[89] The impact assessment for AgoraEU also raised this issue, however, how this will be addressed post-2027 remains a question.[90]

Such measures can affect CCS professionals with disabilities in two ways. On the one hand, it can be a positive development as it enables new organisations and collaborations to be funded, meaning that more, and new cultural and creative professionals with disabilities could potentially be supported by the programme. On the other hand, it can have a negative impact by depriving of funding those organisations with/of CCS professionals with disabilities or those more largely committed to including persons with disabilities in the CCS, such as those who have carried out Creative Europe projects with/for CCS professionals with disabilities and audiences, and who may wish to continue this work in subsequent projects.[91]

In the context of this thesis, it raises questions about the value of the programme in promoting change and improving overall participation in the conditions described in this section, including in terms of the practical impact of the programme on the situation of CCS professionals with disabilities wishing to apply for or benefit from Creative Europe funding.

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[86] European Commission, '2025 Creative Europe Annual Work Programme' (n 43) annex, 15.
[87] Cathrin Bengesser and Kim Toft Hansen, 'Scandinavian Success as European Policy Dilemma: Creative Europe's Funding for TV Drama Co-Productions, 2014-20' (2022) 28 International Journal of Cultural Policy 697, 697, 711.
[88] European Commission, '2025 Creative Europe Annual Work Programme' (n 43) annex, 15.
[89] European Commission, '2026 Annual Work Programme for the implementation of the Creative Europe Programme' C(2025) 6405 final (2026 Creative Europe Annual Work Programme), annex, 8.
[90] See European Commission, 'Impact Assessment Report Accompanying the documents Proposal for a Regulation of the European Parliament and of the Council establishing the "AgoraEU" programme for the Period 2028-2034, and repealing Regulations (EU) 2021/692 and (EU) 2021/818 and Proposal for a Regulation of the European Parliament and of the Council establishing the Erasmus+ programme for the Period 2028-2034, and repealing Regulations (EU) 2021/817 and (EU) 2021/888' (Staff Working Document) SWD(2025) 550 final, 144.
[91] See Chapter 8, Sub-section 2.2.

3. Non-sectoral Funding: A Land of Opportunities for Cultural and Creative Professionals with Disabilities?

As introduced earlier in this chapter, the study of the EU funding system carried out in the context of this thesis is supported and framed by empirical findings, drawn from both interviews and focus groups with cultural stakeholders active in the EU. As a result, it focuses on how different streams of EU funding, discussed during the empirical study, can be leveraged to foster the realisation of Article 30(2) CRPD in the EU. Namely, it uses the Creative Europe Programme, which was just considered, and other non-sectoral funding programmes and funds –Erasmus+, Horizon Europe, and the ERDF– as a starting point for analysing the extent to which the EU funding system can enable the participation of professionals with disabilities in cultural life, and what gaps and limits can be identified in that respect.

3.1. Erasmus+

In addition to the Creative Europe programme and the Culture Moves Europe initiative, which are meant solely for the CCS, the EU also makes available significant funds that can contribute to supporting learning and mobility opportunities for CCS professionals with Erasmus+. Erasmus+ responds to a certain interest, on the part of the CCS, in mobilities in the Union, and to some of the challenges attached to freely moving in the EU that participants mentioned. Notably, Erasmus+, which is one of the EU's most recognisable initiative, was particularly praised by a participant for its ability to take into account disability issues (FG2 P14). Other participants had taken part in Erasmus+ funded projects, albeit they limitedly mentioned it in the qualitative study.

This section therefore considers how the Erasmus+ programme supports the participation of CCS professionals with disabilities in the EU, first by highlighting the potential opportunities and financial support available for professionals with disabilities, and secondly, by discussing its impact and the relevant funded projects.

3.1.1. Erasmus+ Opportunities and Inclusion Support

The Erasmus+ programme is in fact another of the EU's '"incentive measures" –a generic term which has been interpreted consistently as allowing for the adoption of funding programmes in fields such as education and culture'– based on Article 165(4) TFEU.[92]

[92] De Witte, 'Integration through Funding' (n 12) 223.

The Erasmus+ Regulation claims that the Programme invests in 'learning mobility for all, regardless of background and means'[93] and seeks to support the participation of people with fewer opportunities, including by allocating specific funds to ensure that they have effective access to the opportunities offered under it. In this respect, Article 2(25) of the Erasmus+ Regulation specifies that the concept of people with fewer opportunities encompasses persons with disabilities.

One of the key actions (KA) of the programme is to support learning mobility (KA1).[94] To that end, KA1 targets a wide range of learners. Besides students, which can include those aspiring CCS professionals in arts and cultural education institutions, KA1 provides mobility opportunities to vocational education and training learners, adult education learners and staff, and can therefore benefit the CCS professionals with disabilities who may fall into these categories.[95] In this respect, as with Culture Moves Europe, virtual opportunities are also available for individuals who cannot participate in an in-person learning mobility.[96]

Moreover, under the second key action 'Cooperation among organisations and institutions' (KA2), the Erasmus+ programme can also support partnerships for cooperation and exchange of practices,[97] and therefore fund CCS professionals with disabilities. In this context, inclusion and diversity feature as one of the key horizontal aspects to be considered when submitting projects under Erasmus+. To that end, the programme guide indicates that 'independently from the thematic of their projects, organisations should design accessible and inclusive project activities, taking into account the views of participants with fewer opportunities and involving them in decision making throughout the whole process'.[98]

The Erasmus+ Regulation also indicates that financial support measures shall be put in place to facilitate the participation of people with fewer opportunities, and that grants must be adjusted to support learning mobility to improve access and ensure the smooth implementation of the programme.[99] This was particularly noted by a focus group participant who contrasted Erasmus+ against Creative Europe, noting that:

> what is quite interesting, because I can only compare Erasmus+ with Creative Europe, … in Erasmus+ you already have the special needs costs, which is a

[93] Erasmus+ Regulation, recital 1.
[94] Erasmus+ Regulation, art 3(3)(a).
[95] Erasmus+ Regulation, art 5(1).
[96] Erasmus+ Regulation, art 5(2).
[97] Erasmus+ Regulation, art 6(a).
[98] European Commission, 'Erasmus+: Programme Guide' (2024) 243.
[99] Erasmus+ Regulation, art 16(1)–(2).

> 100% financing, and you can be funded 100% for your access needs. We are working at the moment on … Creative Europe … also putting this kind of budget items in their new programme. (FG2 P14)

Indeed, the Erasmus+ inclusion strategy clearly indicates that the programme shall offer both additional dedicated 'funding aimed at covering costs of any specific needs of participants experiencing fewer opportunities to allow participation on equal footing as their peers', as well as 'additional financial support for organisations who run projects actively fostering inclusion and diversity' and are working with people with fewer opportunities.[100]

For example, as part of what the programme labels 'inclusion support', participants with disabilities in KA1 can see eligible costs being covered in full, namely the 'costs [which] aim at covering the extra financial support required for participants with physical, mental or health related conditions to allow their participation in the mobility as well as in preparatory visits and for accompanying persons'.[101] However, the inclusion support for organisations –meaning the costs related to 'the organisation of mobility activities for participants with fewer opportunities'– is limited to EUR 125 per participant.[102] In that connection, under KA2 partnerships, 'special needs support' meaning the additional financial support related to participants with disabilities taking part in strategic partnerships projects, may also be covered under Erasmus+ –the European Commission guide indicating that the grant requested 'can be equal to the total costs incurred'.[103]

Concurring with the participant cited earlier, it appears that, in certain circumstances, Erasmus+ can fully cover the additional costs supported by CCS professionals with disabilities. It may also more practically cover reasonable accommodation costs, that would not fall under Article 5 of the Employment Equality Directive.[104] This is an interesting feature of the Erasmus+ programme, which can weigh in the decision of cultural and creative professionals with disabilities to apply for such funding. As such, the programme seems particularly relevant as a means of funding for CCS professionals with disabilities. However, such conclusion must also be nuanced given that costs supported by organisations under KA2 are limited per participant, which would concur

[100] European Commission, 'Implementation Guidelines: Erasmus+ and European Solidarity Corps Inclusion and Diversity Strategy' (2021) 13.
[101] See European Commission, 'Erasmus+: Programme Guide' (n 98) 68–69, 104, 140.
[102] European Commission, 'Erasmus+: Programme Guide' (n 98) 68, 104, 140.
[103] European Commission, 'Mobility Tool+ Beneficiary Guide: For the Erasmus+ and European Solidarity Corps Programme' (2021) 613–614.
[104] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16 (Employment Equality Directive), art 5.

with the assessment of the CRPD Committee who noted that 'the Erasmus+ did not fully cover disability-related expenses'.[105]

In that connection, the EU also funds another cross-border exchange programme, the Erasmus Young Entrepreneur programme (EYE). It is related to Erasmus+ in name only, as it is actually financed under the Single Market Programme (SMP). However, it also has the potential to fund the mobility of CCS professionals with disabilities, if they qualify as new or aspiring entrepreneurs, and to enable them to gain experience by being matched with more experienced entrepreneurs in another country.[106] While data is not available regarding all participants, nor disaggregated according to disability, it is possible to see from the testimonies shared that a number of participants in the EYE programme are professionals of the CCS.[107]

Moreover, although it does not cover the real and additional costs supported by those entrepreneurs with disabilities, it provides for the maximum monthly financial allowance of EUR 1200 to be paid to those entrepreneurs with disabilities, regardless of the country of stay, in order to 'compensate for the extra costs linked to their specific situation'.[108] For comparison, the amount provided to an entrepreneur without disabilities carrying out an exchange in Member States such as Bulgaria, Lithuania, Poland, or Romania is EUR 650. However, on the other hand, it compares poorly to Austria, France, Italy, Sweden (EUR 1000), Ireland (EUR 1100) or Denmark (EUR 1200).[109] This programme seemingly stands out as it provides explicitly for a more important allowance for entrepreneurs with disabilities compared to those without disabilities (to the exception of Denmark). However, the financial support provided and how it may cover the additional costs supported by entrepreneurs with disabilities, in comparison to their non-disabled counterparts, is highly dependent on the country of stay. EYE therefore does not compare with the Erasmus+ programme on this point.

[105] CRPD Committee, 'Concluding Observations on the Combined Second and Third Periodic Reports of the European Union' (2025) UN Doc CRPD/C/EU/CO/2-3 para 58(c).
[106] Regulation (EU) 2021/690 of the European Parliament and of the Council of 28 April 2021 establishing a programme for the internal market, competitiveness of enterprises, including small and medium-sized enterprises, the area of plants, animals, food and feed, and European statistics (Single Market Programme) and repealing Regulations (EU) No 99/2013, (EU) No 1287/2013, (EU) No 254/2014 and (EU) No 652/2014 [2021] OJ L153/1, recital 32.
[107] See Erasmus for Young Entrepreneurs (EYE), 'Success Stories Archives: Sector of Activities: Music, Theater, Events and Related Cultural and Entertainment Services' (*Erasmus for Young Entrepreneurs*) <https://www.erasmus-entrepreneurs.eu/stories_archive.php?period=&sector=7&cid=09&country=&keyword=> accessed 05 August 2025.
[108] See EYE, 'Erasmus for Young Entrepreneurs Implementation Manual for Intermediary Organisations (Quality Manual)' (Version 9.14, 2024) 46.
[109] EYE, 'Monthly Financial Assistance Valid for Exchanges Starting from 01/06/2024' (2024) 1–2.

It is also the reflection of a broader issue with mobility schemes that a participant in the interviews raised, saying:

> that is probably something that is very often overlooked … it is almost like, 'oh wow, we managed to get funding to put together a mobility scheme'. But at the end of the day, you look at it and there was no particular attention [given] to any sort of diversity issue, challenge or whatever we name that. (EU CCS 7)

Nevertheless, in the case of Erasmus+, it can be expected that the programme may well be able to support the mobility of persons with disabilities and should continue to do so.[110]

3.1.2. Erasmus+ Funded Projects and Impact

In this context, it is however difficult to assess the impact that the Erasmus+ programme has had for CCS professionals with disabilities. In fact, the lack of disaggregated data on the issue makes it complicated to draw conclusions. Information on individuals with disabilities pursuing a learning mobility or virtual exchanges as part of the CCS, or as students of higher arts and cultural education institutions, is not available as such.

It is unclear from the latest Erasmus+ annual report how many persons with disabilities have participated in KA1, under which type of mobility, and whether they would also qualify as CCS professionals. The European Commission does share that in 2023, 16% of participants in learning mobilities were persons with 'fewer opportunities',[111] which among others, can encompass persons with disabilities. It also highlights how 48% of cooperation projects funded under KA2 are dedicated to supporting inclusion and diversity.[112] Whilst these are rather broad findings that do little to answer this thesis' research questions, it is nevertheless interesting to note that 94% of participants in Erasmus+ projects have declared 'that they have increased their tolerance awareness', and 53% 'have reached a better understanding of inclusion and diversity',[113] supposedly including in some instances a better understanding of disability.

It is also possible to find information on a range of cooperation projects funded under Erasmus+, which are more closely related to the focus of this thesis and should have contributed to making the CCS more inclusive of professionals with disabilities to a certain extent. This includes projects funded under KA2 as part of the strategic partnerships for adult education, such as 'Access and Aesthetic' which aimed to research, explore and develop ways of embedding access into performance, to promote best

[110] See COM(2025) 549 final, art 8.
[111] European Commission, *Erasmus+ Annual Report 2023* (Publications Office 2024) 39.
[112] European Commission, *Erasmus+ Annual Report 2023* (n 111) 95.
[113] European Commission, *Erasmus+ Annual Report 2023* (n 111) 95.

practices, and 'to increase the participation of disabled people in the arts, both as artist and audience'.[114] Projects like 'YES WE ARE IN!' have also supported theatre actors and actresses with intellectual disabilities –although it is unclear whether they are professionals or amateurs– to experiment with digital performance, participate in creating a live-streamed piece, and facilitated trainings and workshops in the partner countries.[115] The Deaf Museums Project is another interesting project that used Erasmus+ funding in order to preserve, protect, display and share Deaf heritage, Deaf history, and therefore promote Deaf awareness, while aiming to improve the employability of Deaf sign language users.[116] More recently, the 'IDEA Innovation Diversité Explorations Alternatives', was funded as a small-scale partnership in adult education, to document inclusive artistic creation and practices, and to organises discussions on the place of people with disabilities in third places.[117]

Other projects, pursuing strategic partnerships for Vocational Education and Training (VET), have also contributed to making the CCS more disability inclusive. In that respect, the SHIFT project 'Shared Initiatives for Training' has created guidelines, tools and recommendations to enable individuals in the involved organisations, and more globally in the CCS, to become more competent to tackle and achieve a range of global challenges such as inclusion.[118] It has produced guidelines and research that support CCS stakeholders in engaging with the topic of disability and in including professionals with disabilities.[119] In the same vein, 'Artsmetric', a digital platform co-funded by Erasmus+ for CCS organisations supporting peer-learning, provides a knowledge base for CCS stakeholders and touches upon inclusion and disability.[120]

While the Erasmus+ programme is more traditionally associated with education, and is in fact the flagship programme of the European Commission for the area, this sub-section has sought to highlight its potential for CCS professionals with disabilities. As argued here, Erasmus+ notably supports the mobility of CCS professionals with disabilities in

[114] European Commission, 'Access and Aesthetic' (*Erasmus+*) <https://erasmus-plus.ec.europa.eu/projects/search/details/2019-1-UK01-KA204-062044> accessed 04 August 2025.
[115] European Commission, 'Erasmus+: Yes We Are In' (*Erasmus+*) <https://erasmus-plus.ec.europa.eu/projects/search/details/2018-1-BE02-KA204-046862> accessed 04 August 2025.
[116] Deaf Museums Project, 'Project Summary' (*Deaf Museums*) <https://www.deafmuseums.eu/index.php/en/home/project-summary> accessed 04 August 2025.
[117] European Commission, 'Erasmus+: IDEA Innovation Diversité Explorations Alternatives' (Erasmus+) <https://erasmus-plus.ec.europa.eu/projects/search/details/2023-2-FR01-KA210-ADU-000177354> accessed 04 August 2025. For a discussion on third places, see Matina Magkou, Maud Pélissier and Emilie Pamart, 'The *"Tiers-Lieux Culturels"* as Cultural and Social Infrastructures, and their Support in French Public Policies' (2025) 42 City, Culture and Society 100640.
[118] European Commission, 'SHIFT' (*Erasmus+*) <https://erasmus-plus.ec.europa.eu/projects/search/details/2019-1-DE02-KA202-006440> accessed 04 August 2025.
[119] See for instance Isadora Andjus and others, 'Inclusion Handbook' (SHIFT Culture 2021) 95–96.
[120] Artsmetric, 'About: What's Artsmetric?' (*Artsmetric*) <https://artsmetric.com/about/> accessed 04 August 2025.

the EU, through individual learning mobility grants, which can be adjusted on the basis of disability, or as part of wider projects funded under the programme, as is the case with the development of partnership for adult education and VET. In doing so, Erasmus+ can support the development of inclusive practices in the CCS and foster the accessibility of cultural products and services, as well as training opportunities for (aspiring) CCS professionals with disabilities.

In addition, it addresses in its own way the lack of knowledge and awareness –one of the challenges identified in chapter 1– by supporting projects more specifically dedicated to the development of tools, guidelines, and knowledge bases, including on disability, for the CCS to build on and integrate. It should enable CCS stakeholders (and others) to become more acquainted with cultural and creative professionals with disabilities, their potential for contributing to the CCS, and how to include them in their organisations.

3.2. Horizon Europe

The EU funding programme for research and innovation –Horizon Europe– offers a different standpoint and additional financial opportunities, including through the New European Bauhaus (NEB).[121] It is highlighted below for its potential to facilitate the participation of professionals with disabilities in cultural life, and to make the CCS more accessible to cultural and creative professionals with disabilities, as noted by some participants.

3.2.1. Opportunities and Horizon-funded Projects

According to the Horizon Europe Regulation, activities developed under the programme must aim to eliminate inequalities and promote equality and diversity, including with regard to disability, in all aspects of research and innovation.[122] In this context, this sub-section aims to demonstrate how research projects funded under Horizon 2020, and now Horizon Europe have, over the years, established the value of the EU programme in enabling CCS professionals with disabilities to take part in cultural life, and in supporting the CCS to become more inclusive.

A number of Horizon-funded projects have indeed contributed to advancing accessibility and inclusion in the CCS, such as the ARCHES project on 'Accessible Resources for

[121] See European Commission, 'State of the Union Address by President von Der Leyen at the European Parliament Plenary' (2020) SPEECH/20/1655, 7; European Commission, 'New European Bauhaus: Beautiful, Sustainable, Together' (Communication) COM(2021) 573 final.
[122] Horizon Europe Regulation, recital 53.

Cultural Heritage EcoSystems', with 3D art replicas, mobile phone apps, games or sign language video avatars.[123] The MuseIT project on 'Multisensory, User-centred, Shared cultural Experiences through Interactive Technologies' also contributed to advancing accessibility of cultural heritage for persons with disabilities, through interactive technologies.[124] Admittedly, the projects mentioned here are specific to the museum sector and the accessibility of cultural heritage. Nonetheless, the research and innovation activities they undertake are particularly suited to respond to the needs of CCS professionals with disabilities, including in terms of access to cultural products and services as part of their information-seeking activities.

A few participants in the qualitative study also mentioned Horizon 2020/Europe projects at the intersection of culture and disability, including through participatory research, and the difficulties associated with undertaking such projects. In that respect, one participant shared their experience, highlighting the following:

> A key problem we had … was some people could be paid, and some couldn't be paid … So, another one of those things that the people who are making the funding decisions need to be thinking about is the costs of paying people to be participants within research projects, so that disabled people aren't doing it for free. (FG2 P11)

This is an interesting point which speaks to the burden that engaging with the EU funding system can represent for persons with disabilities in research projects. It also hints to the administrative issues that abiding to EU funding rules creates for funded organisations, especially in the CCS, something discussed at greater length in section 4.[125]

All in all, Horizon Europe does contribute to solving accessibility challenges in the CCS, so that these sectors are better able to facilitate access to cultural products and services for CCS professionals with disabilities, and to include them. Moreover, Horizon Europe funding helps building knowledge and raising awareness of the need to achieve inclusion and involve persons with disabilities in the CCS, and ways to do so, among the professionals involved in funded projects.

[123] See Accessible Resources for Cultural Heritage Ecosystems, 'ARCHES Helps European Museums to Become Barrier-free with 3D Art Replicas, Mobile Phone Apps, Games and Sign Language Video Avatars' (*ARCHES*) <https://www.arches-project.eu/> accessed 05 August 2025.
[124] See MuseIT, 'Multisensory, User-centred, Shared Cultural Experiences through Interactive Technologies 2022 - 2025' (*MuseIT*) <https://www.muse-it.eu/> accessed 05 August 2025.
[125] See Chapter 8, Sub-section 4.2.

3.2.2. Focus on the New European Bauhaus

Horizon Europe has also channelled large amounts of funding into the NEB.[126] Contributing to the 'new cultural project for Europe' wanted by President von der Leyen,[127] the NEB is a rather new policy and funding initiative of the European Commission kickstarted as part of NextGenerationEU during the Covid-19 pandemic, with a particular focus on the built environment and enabling sustainable, inclusive, and aesthetic solutions for the green transition. Aiming to bring together architects, artists, students, engineers, and designers, the NEB is a co-creation space 'to translate the European Green Deal into tangible change on the ground'.[128] It seeks to take advantage of and foster innovation, ambition and creativity to imagine a new sustainable and inclusive future through co-designed 'solutions with style'.[129] As such, this sub-section discusses how the NEB is one of these 'cross-sectoral initiatives that intersect and enhance EU cultural policies',[130] and which can foster the accessibility of the CCS for professionals with disabilities.

Accessibility for all members of society is identified under the 'Together' core value of the NEB, of relevance to buildings, open spaces or neighbourhoods.[131] The NEB initiative particularly identifies cultural buildings has being highly and naturally more suited to take 'advantage from a NEB approach, reach higher ambitions' and benefit from them.[132] The European Commission articulates that, under the NEB, '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'.[133] In that respect, it highlights that the added-value of the NEB would be to facilitate that 'cultural buildings … prioritise physical and cognitive accessibility that allow all people to enjoy them'.[134] Such a direction could obviously mean that the NEB will benefit CCS professionals with disabilities who, along with audiences with disabilities, would be the primary beneficiaries of initiatives in that sense.

To this end, the NEB mobilises its own funding through the New European Bauhaus Facility, which is derived from Horizon Europe, and additional funds from different

[126] See COM(2021) 573 final, annex 2; European Commission, *Horizon Europe-New European Bauhaus NEXUS Report: Conclusions of the High-Level Workshop on 'Research and Innovation for the New European Bauhaus', Jointly Organised by DG Research and Innovation and the Joint Research Centre* (Publications Office 2022).
[127] European Commission, 'State of the Union 2020' (n 121) 7.
[128] European Commission, 'New European Bauhaus Progress Report' (Report) COM(2023) 24 final, 2.
[129] European Commission, 'New European Bauhaus: Commission Launches Design Phase' (Press Release, 2021).
[130] Ferri, 'Fostering Cultural Participation of Persons with Disabilities' (n 29) 106.
[131] European Commission, 'New European Bauhaus Investment Guidelines' (Staff Working Document) Ares(2024)4318756 19, 41–52.
[132] European Commission, 'New European Bauhaus Investment Guidelines' (n 131) 40.
[133] European Commission, 'New European Bauhaus Investment Guidelines' (n 131) 45.
[134] European Commission, 'New European Bauhaus Investment Guidelines' (n 131) 45.

sources to support the achievement of its objectives. Funding from the ERDF, Erasmus+, Horizon Europe, Creative Europe, the Programme for the Environment and Climate Action, Digital Europe, Europe Solidarity Corps or the SMP are therefore used for three strands of NEB initiatives.[135] The calls for projects have focused on projects facilitating the concrete transformation of the built environment and associated lifestyles at local level, projects that support innovation aimed at integrating sustainability, inclusion, and aesthetics in new solutions and products, and projects questioning perspectives and mindsets around the core values of aesthetics, sustainability and inclusion.[136] In that respect, following a call on 'Supporting the creation of an accessible and inclusive built environment (Built4People Partnership)', Horizon Europe funding has benefited projects of interest, like AccesS or 'Enhancing Accessibility and Sustainability in Smart Cities and Smart Buildings: The Universal Accessibility Suite Initiative'[137] and 'inclusiveSpaces: Designs, Tools & Frameworks for creating an Accessible & Inclusive Built Environment for All, for now & for the Future'.[138]

In mobilising funding from Horizon Europe to foster the transformation of society with sustainability, aesthetics and inclusion in mind, the NEB holds potential for enabling the CCS to become more inclusive of cultural and creative professionals with disabilities. This is mainly because it seeks to channel EU funding towards making the built environment, including cultural buildings, more accessible. As such, it provides some resolution for a topic that remains broadly underregulated at the EU level, as highlighted in chapters 4 and 7,[139] but also addresses one of the challenges identified on the basis of the qualitative research.

In addition to finding potential in the NEB actions which focus on transforming places on the ground, the NEB projects that support innovation towards new solutions and products, or aimed at 'diffusing new meanings' and 'questioning our perspectives and mindset' with regard to the value of inclusion, can also be of interest.[140] They could

[135] See COM(2023) 24 final, annex I.
[136] New European Bauhaus, 'Overview of EU Funding Opportunities to Support the Achievement of the New European Bauhaus Objectives (2023-2024)' (*European Union,* July 2024) <https://new-european-bauhaus.europa.eu/document/download/2ac74518-d22b-43f1-91ca-8577ea6e3aae_en?filename=Overview_funding_opportunities_New_European_Bauhaus_29112023.pdf> accessed 05 August 2025.
[137] European Commission, 'Enhancing Accessibility and Sustainability in Smart Cities and Smart Buildings: The Universal Accessibility Suite Initiative (AccesS)' (*EU Funding & Tenders Portal*) <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/how-to-participate/org-details/999999999/project/101147722/program/43108390/details> accessed 28 April 2025.
[138] European Commission, 'InclusiveSpaces: Designs, Tools & Frameworks for creating an Accessible & Inclusive Built Environment for All, for now & for the Future' (*CORDIS*) <https://cordis.europa.eu/project/id/101147881> accessed 28 April 2025.
[139] See Chapter 4, Sub-section 5.1, and Chapter 7, Section 2.
[140] See COM(2023) 24 final, 8; New European Bauhaus (n 136) 6–7.

indeed benefit CCS professionals with disabilities in addressing and adapting to social and environmental challenges, and/or trigger awareness among those participating in related calls for projects.

However, with respect to funding derived from Horizon Europe, the deployment of NEB innovative solutions may be limited insofar as the programme only covers innovation up to a certain point, also referred to as TRL8.[141] This means that the actual roll-out –for instance, making the built environment accessible and inclusive– in an operational environment will have to be undertaken through other sources of funding.[142] Therefore, the impact of the NEB and Horizon Europe in transforming the environment that CCS professionals with disabilities frequent, which is naturally not confined to cultural buildings, is unlikely to be immediate.[143] It remains to be seen how the NEB will contribute to making European society, and the CCS in particular, more accessible for and inclusive of cultural and creative professionals with disabilities.

3.3. ERDF

In addition to Horizon Europe or Erasmus+, the EU funding system also contributes to tackling some of the challenges faced by CCS professionals with disabilities through the ERDF, including by fostering better access to the CCS. Some of the participants in the qualitative study alluded to this, particularly with regard to the Interreg programme.

Therefore, this sub-section highlights how the ERDF and some of the key EU initiatives it funds can help transform the CCS environment for cultural and creative professionals with disabilities to be able to flourish and carry out their professional activities. In this respect, it also considers the use of conditionality in funding and its potential role in enabling the participation in cultural life of professionals with disabilities.

3.3.1. ERDF and CCS Professionals with Disabilities: Legal Considerations

Discussed in chapter 4 and chapter 5, the ERDF sits at the intersection of both cultural and disability policy[144] and pursues various objectives of interest to CCS professionals with disabilities.

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[141] See Agenzia per la Promozione della Ricerca Europea and Centro para el Desarrollo Tecnológico y la Innovación, 'Guiding Notes to Use the TRL Self-assessment Tool' (BRIDGE2HE Project, 2022) 5.
[142] European Commission, 'NEB Facility: Scoping Document' (2024) 4.
[143] See Delia Ferri and Alessia Palladino, 'The Disability Dimension of the New European Bauhaus: The 'Soft' Route to Embedding Accessibility for Persons with Disabilities in the European Green Deal' (2025) 5 STALS Research Paper 1, 21–22.
[144] See Chapter 4, Section 6, and Chapter 5, Sub-section 5.3.3.

Implemented under shared management, the ERDF is tasked with 'strengthening the economic, social and territorial cohesion of the Union' and reducing disparities between EU regions through a range of investments touching upon infrastructures, services, research and innovation, or SMEs among other areas.[145] More specifically, the ERDF seeks to make Europe and its regions more connected by enhancing mobility,[146] to implement the European Pillar of Social Rights (the 'Pillar' or EPSR),[147] and to achieve a 'more social and inclusive Europe' by supporting employment, skills, social inclusion and culture.[148] These are all policy objectives of relevance to CCS professionals with disabilities.[149] In doing so, the ERDF, and the Interreg programme, the interregional cooperation programme it funds,[150] are principally guided by the horizontal principles set out in the Common Provisions Regulation.[151] Indeed, Article 9(3) of the Regulation calls on the Member States and the European Commission to take the necessary steps to prevent disability-based discrimination, among other grounds, and to take into account accessibility for persons with disabilities throughout the different stages of the programmes.

The implementation of the CRPD and persons with disabilities are also explicitly mentioned in the preamble to the Regulation establishing both the Cohesion Fund (CF) and the ERDF (hereinafter ERDF-CF Regulation), but not in substantive provisions.[152] In Recital 5, which highlights the need for Member States to respect the obligations enclosed in the CRPD and to ensure accessibility, the EU legislator also refers to both the ERDF and ESF+, stating that their implementation should be pursued 'with a view to contributing to the creation of quality jobs', among other things.

Additionally, the preamble to the ERDF-CF Regulation emphasises the relevance of the fund for the CCS by highlighting how it could finance 'the creative and cultural industries,

[145] ERDF-CF Regulation, arts 2(1)–(2) and 5.
[146] ERDF-CF Regulation, art 3(1)(c).
[147] European Commission, *European Pillar of Social Rights* (Publications Office 2017).
[148] ERDF-CF Regulation, art 3(1)(d).
[149] In the context of the Cohesion Policy's mid-term review, the Council has adopted amendment to the ERDF-CF Regulation to introduce, among others, new priorities to respond to emerging geopolitical and economic challenges. However, the proposal put forward should not affect the objectives discussed here. See although at the time of writing, the text has yet to be negotiated and adopted. See Regulation (EU) 2025/1914 of the European Parliament and of the Council of 18 September 2025 amending Regulations (EU) 2021/1058 and (EU) 2021/1056 as regards specific measures to address strategic challenges in the context of the mid-term review [2025] OJ L2025/1914.
[150] See Regulation (EU) 2021/1059 of the European Parliament and of the Council of 24 June 2021 on specific provisions for the European territorial cooperation goal (Interreg) supported by the European Regional Development Fund and external financing instruments [2021] OJ L231/94 (Interreg Regulation).
[151] Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy [2021] OJ L231/159 (Common Provisions Regulation), art 9(3).
[152] ERDF-CF Regulation, recitals 5 and 20.

cultural services and cultural heritage sites … under any policy objectives' which are spelled out in Article 3(1), as long as projects relate and contribute to that objective, and fall within the ERDF's scope.[153] Additionally, Recital 20 notes that promoting social inclusion and combatting poverty among marginalised communities requires notably 'to improve access' to cultural services, 'taking into account the specific needs of persons with disabilities'.[154]

In that connection, Article 3(1) of the ERDF-CF Regulation, sets out the specific objectives pursued by the ERDF, which also apply to the Interreg programme. It clarifies that the realisation of a more social and inclusive Europe, which is referred to as PO 4 and concerns the implementation of the EPSR, requires 'enhancing the effectiveness and inclusiveness of labour markets and access to quality employment',[155] as well as 'enhancing the role of culture … in economic development, social inclusion and social innovation'.[156] Under PO 5, the ERDF is also meant to contribute to making the Union closer to its citizens by supporting culture in urban and non-urban areas,[157] therefore making clear the relevance of the fund for the CCS, and hinting at its a potential to improve cultural participation for professionals with disabilities.

The first ERDF policy objective of 'a smarter Europe' is an interesting one too as it focuses on skills for entrepreneurship, sustainable growth and competitiveness of SMEs and job creation in SMEs.[158] In that sense, facilitating self-employment and entrepreneurship is also explicitly encouraged by the European Commission in the latest Disability Strategy 2021-2030 as it calls on Member States to provide support on legal and business matters, including through the use of EU funds.[159] In addition, the promotion of entrepreneurship among specific target groups at risk of discrimination, like persons with disabilities, was once highlighted as a topic for Interreg projects, which responds to the horizontal principle of equal opportunities and non-discrimination.[160] This is also said to have the potential to 'increase the possibilities of reaching new markets, improving market positions, broadening the recruitment base and increasing creativity'.[161]

As already noted in this thesis, this brings to light an interesting discrepancy on how entrepreneurship and self-employment are perceived in a cultural context, and in

[153] ERDF-CF Regulation, recital 26.
[154] ERDF-CF Regulation, recital 20.
[155] ERDF-CF Regulation, art 3(1)(d)(i).
[156] ERDF-CF Regulation, art 3(1)(d).
[157] ERDF-CF Regulation, art 3(1)(e).
[158] ERDF-CF Regulation, art 3(1)(a)(iii) and (iv).
[159] European Commission, 'Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030' (Communication) COM(2021) 101 final (Disability Strategy 2021-2030), 15.
[160] See Common Provision Regulation, art 9(3).
[161] Interreg Europe, 'Interreg Europe Programme Manual' (Version 9, 2021) 25.

reference to the disability field. On one hand, as discussed in chapter 1, self-employment is rather common in the CCS and associated with a number of shortcomings.[162] On the other hand, the European Commission also sees it as a way to foster 'quality and sustainable jobs' for persons with disabilities,[163] while the CRPD considers it as a means of realising the right to work and employment of persons with disabilities.[164] These objectives might be reconcilable if the support provided through the ERDF and Interreg could enable professionals with disabilities to take part in cultural life, and to better handle the challenges of being self-employed in the CCS.

3.3.2. Projects and Initiatives of Interest

The ERDF has for many years overwhelmingly contributed to funding cultural projects throughout the EU, to the point that 'the amount of money allocated by the EU to the funding of cultural activities through its regional development policy exceeded, for many years, the budget of its dedicated cultural policy action programme'.[165] Lähdesmaki emphasises that, although they do not require to promote 'a European dimension of culture, heritage, values, narratives, or meanings', the EU's regional fund contributes to EU cultural policy, as local cultural stakeholders such 'as cities and arts institutes have managed to secure non-cultural earmarked funds'.[166] On this basis, the role of the ERDF in setting the conditions for the inclusion of CCS professionals with disabilities is an important one, especially in view of the amount of funding it makes available.[167]

As noted above, the ERDF has also been mobilised for the NEB, in particular for the 'European Urban Initiative'.[168] The ERDF has also funded projects that broadly consider accessibility in the context of transforming neighbourhoods and meeting housing needs.[169] Yet, the way in which accessibility and inclusion are addressed is rather unclear. Alternatively, financial support has been provided to improve infrastructures, including transport systems, and their accessibility to persons with disabilities, through the ERDF

[162] See Chapter 1, Sub-section 2.2.
[163] Disability Strategy 2021-2030, 13.
[164] CRPD, art 27(1)(f).
[165] De Witte, 'Legal Framework of the EU's Cultural Policy' (n 77) 25.
[166] Tuuli Lähdesmäki, 'The Economic Logic of Europeanization: Branding, Competition and Social Capital' in Evangelia Psychogiopoulou and Sarah Schoenmaekers (eds), *European Union Economic Law and Culture: Towards a European Culturally Corrected Market Economy* (Edward Elgar 2024) 32.
[167] The initial allocation for the ERDF over the period 2021-2027 was EUR 226 billion. See European Commission, *The EU's 2021-2027 Long-Term Budget and Next Generation EU: Facts and Figures* (Publications Office 2021) 16.
[168] See European Urban Initiative, 'Terms of Reference: European Urban Initiative – Innovative Actions: Third Call for Proposals 06/05/2024 – 14/10/2024' (2024).
[169] See European Urban Initiative, 'Egaleo: Rock the Block - Integrated Participatory Roadmaps for Affordable Co-Living' (*European Urban Initiative*) <https://www.urban-initiative.eu/ia-cities/egaleo/home> accessed 04 August 2025.

and the CF.[170] As already noted, access to housing, but also to transport, is closely linked to the pursuit of an occupation.[171] Improving their accessibility can therefore have positive externalities for persons with disabilities who could benefit from such improvements. It also attests to the relevance –albeit indirect– of the ERDF for CCS professionals with disabilities. In this way, the ERDF has a clear potential to enable professionals with disabilities to take part in cultural life by concretely improving the accessibility of the environment they frequent.

Moreover, it is worth noting that Interreg Europe was mentioned several times during the qualitative study. Indeed, Interreg funding has been directly involved in making cultural spaces accessible to professionals with disabilities. For instance, Interreg Europe has financed the renovation of cultural facilities and sites, and contributed to making them accessible to persons with disabilities in several projects throughout the EU,[172] including one concerning the Bulgarian National Academy of Music.[173] In that connection, another noteworthy project is 'Come IN! – Cooperating for open access to museums towards a wider inclusion'.[174] Supported through Interreg Central Europe, the project set out to make cultural heritage accessible to all in six European countries, taking into account physical, informational, communicational, social and economic accessibility criteria.[175] Grounding itself in the motto 'nothing about us, without us', the project also claims to have explicitly engaged with persons with disabilities as part of its activities.[176]

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[170] See, for instance, European Commission, 'New Lifts at Madrid Metro's Príncipe Pío Station Improve Accessibility' (*Regional Policy*, 29 May 2019) <https://ec.europa.eu/regional_policy/projects/projects-database/new-lifts-at-madrid-metros-principe-pio-station-improve-accessibility_en> accessed 04 August 2025; European Commission, 'Modernising Railway Line No.93 in Silesia and Lesser Poland Will Increase Service Efficiency' (*Regional Policy*, 20 February 2020) <https://ec.europa.eu/regional_policy/projects/projects-database/modernising-railway-line-no-93-in-silesia-and-lesser-poland-will-increase-service-efficiency_en> accessed 06 August 2025; European Urban Initiative, 'Hamburg: CUSTOM - Customizable, User-Centric, and Innovation-Driven Mobility Assistance System Empowering Diverse Impaired Users Groups to Access Public Transportation Seamlessly Cross-Modal and -Regional in Hamburg's Metropolitan Area and Beyond' (*European Urban Initiative*) <https://www.urban-initiative.eu/ia-cities/hamburg/home> accessed 10 October 2025.

[171] Anna Lawson, 'The UN Convention on the Rights of Persons with Disabilities and European Disability Law: A Catalyst for Cohesion?' in Oddný Mjöll Arnardóttir and Gerard Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives* (Brill Nijhoff 2009) 105.

[172] See European Commission, 'JACOB@CCESS: Breaking Social Barriers on the Way of Saint James' (*Regional Policy*, 08 October 2019) <https://ec.europa.eu/regional_policy/projects/projects-database/jacob-ccess-breaking-social-barriers-on-the-way-of-saint-james_en> accessed 04 August 2025; European Commission, 'Renovation Allows Cultural Centre in Suwalki, Poland to Expand its Activities' (*Regional Policy,* 26 August 2020) <https://ec.europa.eu/regional_policy/projects/projects-database/renovation-allows-cultural-centre-in-suwalki-poland-to-expand-its-activities_en> accessed 06 August 2025.

[173] European Commission, 'Bulgaria's National Academy of Music Hits the Right Notes with Renovated Facilities' (*Regional Policy,* 11 April 2020) <https://ec.europa.eu/regional_policy/projects/projects-database/bulgaria-s-national-academy-of-music-hits-the-right-notes-with-renovated-facilities_en> accessed 04 August 2025.

[174] European Commission, 'Come In! – Making Cultural Heritage Accessible to all in Six European Countries' (*Regional Policy*, 18 September 2019) <https://ec.europa.eu/regional_policy/projects/projects-database/come-in-making-cultural-heritage-accessible-to-all-in-six-european-countries_en> accessed 06 August 2025.

[175] See European Commission, 'Come In!' (n 174).

[176] See European Commission, 'Come In!' (n 174).

Interestingly, one of the study participants also noted the successful advocacy with local policy makers that they had conducted as part of an Interreg project on a related subject. They said it led to the inclusion of requirements to train local staff on accessibility and to present projects improving accessibility for cultural institutions to be able to receive funding (FG1 P1), therefore embedding inclusive practices in the CCS for the long term thanks to funding derived from the Interreg programme. By contrast, one participant also criticised the ERDF for a certain lack of control, which meant that disability commitments made by projects could somewhat be sacrificed (FG2 P19). In this context, this participant insisted on the need to strengthen controls saying that 'it must be clear that the disability part is binding, and they [cannot] use the money to actually pay for anything else' (FG2 P19).

In this respect, the latest Interreg programme manual has since established quite clearly that Interreg endeavours to address the issues of equal opportunities and non-discrimination, including on the basis of disability, 'at every stage of its implementation and especially in relation to accessing funding'.[177] It also highlights that the Interreg programme shall consider the 'requirement of ensuring accessibility to persons with disabilities',[178] something that is also foreseen in the Interreg Regulation as part of the criteria and procedures for the selection of Interreg operations.[179] Interestingly, the programme manual also indicates that applicants must explain how the project they are seeking funding for respects and supports equal opportunities and non-discrimination, especially in instances where these matters are not core to the project.[180] However, it remains rather quiet in relation to disability-related costs that projects might have to support, and appears to not require the inclusion of accessibility costs for projects to be funded, as for the ERDF more broadly.

3.3.3. The Use of Conditionality

The Common Provisions Regulation, which is applicable to the ERDF, amongst other funds, has introduced an interesting system of horizontal and thematic enabling conditions for Member States to comply with.[181] In this context, in the event that a Member State is deemed to not meet the conditions set out in Annexes III and IV to the

[177] Interreg Europe, '2021-2027: Programme Manual' (Version 5, 2025) 20.
[178] Interreg Europe, '2021-2027: Programme Manual' (n 177) 20.
[179] See Interreg Regulation, art 22(2).
[180] Interreg Europe, '2021-2027: Programme Manual' (n 177) 20.
[181] Common Provision Regulation, art 15. See Ilaria Gambardella, 'EU Governance through Funding: What Consequences for the Scope of Application of EU Fundamental Rights?' (2024) 31 Maastricht Journal of European and Comparative Law 215, 223.

Regulation, the European Commission shall not reimburse the corresponding expenditure submitted by the Member State.[182] The Common Provisions Regulation therefore requires Member States to self-assess whether they fulfil the enabling conditions and justify themselves in that respect, before the European Commission undertakes its own assessment.[183] Additionally, as per Article 15(6) of the Common Provision Regulation, the enabling conditions must 'remain fulfilled and respected throughout the programming period'.

Two horizontal enabling conditions respectively call for the effective application and implementation of the CFR and of the CRPD.[184] Furthermore, one of the thematic enabling conditions for the Cohesion Policy funds, like the ERDF, refers to the promotion of social inclusion and poverty reduction, including through a 'shift from institutional to family- and community-based care',[185] a point also raised in the ERDF-CF Regulation.[186] Introduced in the latest spending cycle, these enabling conditions, especially in that they refer to the CFR and the CRPD in their entirety, should guide Member States' preparation of a programme, or amendments made to it. They can bolster the consideration of fundamental rights and the rights of persons with disabilities during the ERDF implementation,[187] and benefit CCS professionals with disabilities as a result.

In contrast with the rule of law conditionality, Kilpatrick notes that the application of these enabling conditions, while key to 'the contemporary conditionality funding landscape', has barely been analysed, making it hard to know 'whether and how [disability NGOs] have been using' the CRPD horizontal enabling condition for instance.[188] This issue becomes especially salient when EU funding is reported to finance projects that are in violation of the CRPD, including Article 19 CRPD (Living independently and being included in the community), as discussed in section 5 of this chapter. The European Court of Auditors (ECA) has also been rather critical of the impact of these conditions, noting the limitations of the European Commission's compliance assessment, as it does not entail checking that Member States achieve the targets they set out but merely that they are setting such targets in strategies and action plans.[189]

[182] Common Provision Regulation, art 15(5).
[183] Common Provision Regulation, art 15(2) and (4).
[184] Common Provision Regulation, annex III.
[185] Common Provision Regulation, annex IV.
[186] ERDF-CF Regulation, recital 5.
[187] Gambardella (n 181) 222–223.
[188] Kilpatrick (n 11) 652.
[189] European Court of Auditors (ECA), 'Special Report 20/2023: Supporting Persons with Disabilities: Practical Impact of EU Action Is Limited' (Publications Office 2023) para 81.

Nevertheless, it appears that the ERDF, similarly to Creative Europe, Erasmus+ or Horizon Europe, is an interesting funding source to address the challenges faced by CCS professionals with disabilities, and especially those related to accessibility. As mentioned above, it can be used to improve the accessibility of cultural facilities. More broadly, it financially supports the accessible transformation of a range of buildings and transport systems throughout the EU. The ERDF, including through Interreg, supports the accessibility of society for CCS professionals with disabilities, including in their day-to-day and cross-border activities, therefore making the labour market and work environment more inclusive and accessible. In turn, this can facilitate the professional endeavours of cultural and creative professionals with disabilities, and help the EU and its Member States meet –to a certain extent– obligations arising from Articles 9, 27 and 30 CRPD.

4. Shortcomings and Tensions in the EU Funding System: The Impact of Mainstreaming and Procedural Challenges

While it is interesting to highlight the opportunities that may arise for CCS professionals with disabilities from the EU funding sources mentioned above, it is also key to note a number of challenges inherent to the current funding system, which were also often raised by participants. These include shortcomings in terms of prioritising disability issues and planning for disability-related costs, as well as the administrative burden and financial constraints attached to applying for and obtaining EU funding.

4.1. Lack of Systematic Mainstreaming of Disability-related Priorities and Costs in EU Funding

In that regard, shortcomings in facilitating participation of CCS professionals with disabilities may find a cause in the lack of mainstreaming of disability-related obligations, conditionalities or separate budget lines in the EU funding processes, in a context where competing issues also require the attention of CCS stakeholders.

4.1.1. Competing Priorities

Admittedly, many funding sources emphasise, among other issues, social inclusion or inclusion as a priority and can therefore be regarded as a preferred avenue for funding projects that include persons with disabilities. However, as is evident from the terminology, prioritising inclusion or social inclusion differs from prioritising disability-

inclusion and the inclusion of persons with disabilities both in society and in the CCS. It can therefore be expected that funded projects prioritising social inclusion may do so for groups other than persons with disabilities.

It raises the question of whether disability concerns could be overshadowed not only by broader priorities such as inclusion, but also by different pressing priorities like environmental ones. In that respect, several participants highlighted the interlinkages that can be drawn between 'the efforts needed to achieve disability-inclusion [and] the ongoing efforts to tackle climate change'.[190] They also appeared to emphasise that considerations relating to climate change, the greening of the sector(s), but also decolonisation, gender or freedom of expression, were somewhat competing issues to that of fostering the participation of professionals with disabilities in the CCS. In that connection, participants stressed the limited resources and the regional disparities they must adapt to in order to address, amongst many other topics, the participation of persons with disabilities in the CCS.

Interestingly, some also felt that their efforts and activities in relation to sustainability or decolonisation could be seen as a roadmap for catalysing change in their sector(s) on the topic of disability-inclusion, or as evidence that they could indeed 'tackle such important issues' (EU CCS 9). In this respect, one participant suggested that 'the conversation should also be more diverse… so that we make sure that these topics are transversal in all our conversations, so that it stays in our minds all the time' (EU CCS 5), meaning that these issues should also be treated as interconnected.

4.1.2. Lack of Obligations and Conditionality

In addition to the competing issues mentioned above, which risk stretching the resources of CCS stakeholders, the CCS also seem to be wary that the introduction of social or environmental conditionalities could 'dilute funding for artistic creation itself or impose barriers to accessing the programme' if not accompanied by additional funding.[191] In this context, participants in the qualitative study still regretted the lack of obligations that would make the consideration of disability systematic and mandatory in the funding process.

[190] See Léa Urzel Francil, 'Leveraging EU Non-Discrimination Law to Make the Cultural and Creative Sectors More Inclusive of Professionals with Disabilities: Socio-Legal Perspectives' [2025] International Journal of Cultural Policy 1, 9.
[191] Culture Action Europe, 'EU Funding for Culture in the Multiannual Financial Framework 2028-2034' (2025) 7.

Analysis of the focus groups and interviews shows that the consideration of disability in funding calls for CCS organisations might be far from consistent across funding sources. Indeed, participants made mixed remarks as to whether there was any disability or inclusion clauses to abide by when applying for and/or receiving funding. Inclusion may be one of the main priorities of a number of the funding sources just discussed, but it is relatively difficult to find references to clear obligations for applicants and recipients to demonstrate and expand on their commitment to inclusion, and particularly to disability-inclusion. While this was made rather explicit for the Interreg programme, how this is complied with and assessed practically is another question. In that connection, as mentioned above, the EU funding framework has become more dependent on the concept of conditionality over the years, whereby '[f]unding is made conditional on compliance by the member states with a large number of so-called enabling conditions'.[192] The issue is that it targets Member States, not project participants.

One interviewee pointed to the general responsibility of funders in this regard, stating that funders, as those who decide who to allocate funding to, 'should have actually also the lens on diversity and inclusion more widened and opened' (EU CCS 4). A focus group participant also highlighted the following:

> When I think about the EU funding, as well as national level, if those who make the applications were always asked, and if this was obligatory, to describe how are they inclusive, how are they not discriminating against people, then, because everybody needs money to do something, and if the funders are giving these rules, like 'do not forget diversity, you need to pay attention, so how are you gonna do this', then it could be helpful. (FG2 P16)

It also tallies with Belfiore's reflections as she emphasises 'that since the arts are made possible by the commitment made by society through public spending, it is to be expected that they should have clear responsibilities towards the society that maintains them'.[193] In this respect, whether it concerned EU funding or funding in general, participants questioned what kind of obligations in the funding system could translate and foster such a commitment to inclusion, and disability-inclusion in particular, and effectively lead to change in their sector(s).

Interestingly, one participant suggested that perhaps one aspect to consider when developing such obligations is connected to equality and non-discrimination and the domestic legal context, as they referred to their country's Equality Act saying, 'that's

[192] De Witte, 'Integration through Funding' (n 12) 227.
[193] Eleonora Belfiore, 'Art as a Means of Alleviating Social Exclusion: Does it Really Work? A Critique of Instrumental Cultural Policies and Social Impact Studies in the UK' (2002) 8 International Journal of Cultural Policy 91, 104.

something else to return to and challenge people on' (FG1 P4). This is an interesting point which, once again, shows the need to understand and to address the themes discussed in this thesis in synergy with one another.

Overall, the analysis of the qualitative data suggests that legislation on non-discrimination, on equality, or on accessibility, may not be sufficient to address the barriers faced by professionals with disabilities in the CCS. Although it risks representing a burden,[194] a form of conditionality or obligations in funding programmes –informed by such legislation– could be a more practical and pragmatic lever to achieve compliance by the implementing projects, and to ensure better inclusion of groups at risk of marginalisation in the CCS. This concurs with previous qualitative research into cultural policies facilitating the participation of persons with disabilities, which highlights that:

> funding mechanisms incorporating accessibility and other disability criteria supported by detailed guidelines should be regularly embedded in cultural policies and deserve to be more widely recognized by cultural agencies, governments, and funding bodies.[195]

Recommendations in that sense were made recently as it was argued that applicants to Creative Europe should develop an action plan on accessibility.[196]

4.1.3. Lack of Separate Budget Lines

As noted in the qualitative study, there seems to be a discrepancy between the official narrative that 'social inclusion is always the sort of core focus of any cultural funding at EU level', while 'the connection between cultural policy and diversity and inclusion is quite weak in practical effects' (EU CCS 7). In that sense, the perceived lack of obligations and conditionalities across the EU funding system also ties in with another point raised during the qualitative study, namely, the lack of dedicated and separate budget lines for accessibility costs, or disability-related costs more broadly. In that sense, the ECA has found that the current EU funding framework for 2021-2027 (as the previous one) does not 'provid[e] for a dedicated category of expenditure concerning support for persons with disabilities'.[197]

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[194] See Chapter 8, Sub-section 4.2.
[195] Ann Leahy and Delia Ferri, 'Cultural Policies that Facilitate the Participation of Persons with Disabilities in the Arts: Findings from a Qualitative Multi-National Study' (2024) 4 Disabilities 539, 545.
[196] European Arts and Disability Cluster (ADICLUS), 'European Arts and Disability Cluster Position Paper: How the European Union Can and Must Act to Reduce Discrimination against Artists, Cultural Workers and Audiences with Disabilities' (2025) 10.
[197] ECA (n 189) para 93.

As such, there appears to be a growing consensus on the need to address such issue. For example, a recent position paper from the European Arts and Disability Cluster recommends that accessibility costs have a dedicated budget line in all funded projects under Creative Europe.[198] These CCS stakeholders have also argued that accessibility costs should be also considered in a separate budget, so as to not decrease the budget allocated to more cultural and core activities.[199] Introducing measures in that sense was seen in the qualitative study as key to raising awareness among applicants, partners, and reviewers of certain types of costs. Participants also argued that having accessibility and/or disability concerns mainstreamed in projects' budgets and in the EU funding system could ensure that these costs are an integral part of planning and design, rather than an afterthought or an expendable feature. In the words of a participant, and in relation to the previous point on obligations and conditionality, it would mean that it is 'not a discussion … not a choice, it's a mandatory thing' (FG2 P13). These measures can therefore also support the provision of reasonable accommodation to CCS professionals with disabilities in the context of funded projects when it gives rise to situations that are not covered by the Employment Equality Directive or by national provisions.[200] Moreover, it can be a helpful way to retrieve data and 'provide information on the extent to which EU funding contributes to improving the situation of persons with disabilities'.[201]

In that connection, a focus group participant also suggested to use a human rights approach 'to guide the project design', adding that 'it could [be] a way for recognising accessibility as a right, rather than a favour [or] an afterthought' (FG2 P13). Such approach can certainly contribute to embedding disability considerations, including on accessibility, as obligations throughout the funding process, and thus advance on the implementation of Articles 30(2) and 27 CRPD.

Overall, it appears essential to address shortcomings in terms of disability-related costs or priorities to ensure that the EU funding system better meets the needs of CCS professionals with disabilities. However, the procedural issues that impede on the participation in cultural life are manifold, and as discussed in the following sub-section, can also stem from the administrative and financial burden that applying for and managing EU funding can represent for CCS professionals.

[198] ADICLUS (n 196) 7.
[199] See ADICLUS (n 196) 7.
[200] See Chapter 6, Section 2.
[201] See ECA (n 189) paras 70–77, 93.

4.2. Bureaucratic and Financial Constraints in the EU Funding System: Another Hurdle for CCS Professionals with Disabilities

As this section shows, the EU supportive action in the field of culture, and beyond, is subject to time-consuming and complex application and reporting procedures. As a result, EU funding opportunities for the CCS and professionals with disabilities cannot be dissociated from the bureaucratic and financial constraints imposed on CCS organisations and individuals seeking funding from the above-mentioned programmes and funds.

4.2.1. The Administrative Burden

As discussed in this chapter, there is potential for the EU funding system to provide opportunities and support, either directly or indirectly, the participation of professionals with disabilities in the CCS. However, this potential is particularly undermined by the bureaucracy and administrative burden that getting involved in the EU funding process imposes on CCS stakeholders. Indeed, a variety of structural barriers can prevent individuals with relevant expertise and interest from engaging with EU funding.[202] While the procedural rules supposedly apply equally to all CCS stakeholders, they can impose an additional burden on persons with disabilities, who already face other barriers in their personal and professional lives. In the context of this thesis, these barriers can discourage CCS professionals with disabilities from engaging with EU funding but also lowers their chances from writing successful bids.

Notably, it was evident from the interviews and focus groups that some CCS stakeholders find it difficult to engage with the EU funding system. The funding framework for the CCS is rather 'incoherent' and difficult to understand, as 'CCS funding is spread across a variety of programmes'.[203] In that sense, a participant representing a European umbrella organisation shared the difficulties they faced themselves to understand how EU funding worked, and how it could benefit them:

> Even for us … when you look at Creative Europe, first we need to identify which one [is] the right funding for you, and already that is not easy … So, for years, we had to think what we can do, what can we bring to [them] and which is the right format for us. (EU CCS 10)

[202] Rebecca Rumbul, 'Structurally Excluded? Structural Embeddedness and Civil Society Competition for Funding' (2013) 9 Journal of Civil Society 341, 357.
[203] Christa Kammerhofer-Schlegel and others, *EU Framework for the Social and Professional Situation of Artists and Workers in the Cultural and Creative Sectors: European Added Value Assessment* (European Parliamentary Research Service (EPRS), European Parliament 2023) 31.

This is an initial hurdle to overcome for CCS stakeholders, and some end up to turning to private funding sources as one focus group participant, who mentioned:

> We don't know any clear programme to help … Maybe they have but we have been asking and nobody knows. So, we decided not to use [the EU]. (FG2 P15)

In this respect, Richieri Hanania's words resonate when she emphasises that 'the contribution by the private sector to artists and cultural industries has proven to be essential', especially over the last years.[204]

Further down the line, the administrative capacity of CCS stakeholders is often severely tested when they apply or take part in EU funding programmes. Participating in those programmes is reputed to 'require a substantial amount of time and effort in relation to completing paperwork and adhering to policies and systems that may be unfamiliar to SMEs'.[205] EU funding programmes have therefore been particularly criticised for being complex, burdensome and time consuming to engage with,[206] especially for smaller CCS organisations,[207] which, as noted in chapter 1, represent a large part of the CCS.

Indeed, the number of self-employed people in the CCS is growing and the CCS continue to be composed a large number of SMEs, and sometimes more specifically of microenterprises,[208] therefore employing fewer than 10 people.[209] As an example, in 2022, most of workers in the 'creative, arts, entertainment activities' were employed by microenterprises (78%) and those made up an estimated 99% of all enterprises in those selected activities.[210] According to Eurostat, the same trend (where there is a majority of microenterprises in a sector of activity and those employ a majority of the workers in the sector) applies to most of the selected cultural activities investigated.[211]

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[204] Lilian Richieri Hanania, 'The Review of the EU's Sustainability Reporting System: An Opportunity for Cultural Diversity?' in Evangelia Psychogiopoulou and Sarah Schoenmaekers (eds), *European Union Economic Law and Culture* (Edward Elgar 2024) 72.

[205] Audrey Gilmore, Brendan Galbraith and Maurice Mulvenna, 'Perceived Barriers to Participation in R&D Programmes for SMEs within the European Union' (2013) 25 Technology Analysis & Strategic Management 329, 331.

[206] European Parliament Resolution of 16 January 2024 on the implementation of the Creative Europe Programme 2021-2027 (2023/2003(INI)) [2024] OJ C2024/5702, recital G. See also Dominika Wojtowicz, *Research for REGI Committee – Streamlining EU Cohesion Funds: Addressing Administrative Burdens and Redundancy* (European Parliament 2024).

[207] Kammerhofer-Schlegel and others (n 203) 31.

[208] See Eurostat, 'Culture Statistics - Cultural Enterprises' (*Statistics Explained*, 11 August 2025) <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Culture_statistics_-_cultural_enterprises> accessed 12 September 2025.

[209] Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises [2003] OJ L124/36, annex, art 2(3).

[210] See Eurostat, 'Culture Statistics - Cultural Enterprises' (n 208).

[211] See Eurostat, 'Culture Statistics - Cultural Enterprises' (n 208).

This issue was emphasised by one participant who stressed the serious difficulty that the CCS professionals they stand for would have in engaging with the EU funding system:

> They can, they can but it is extremely difficult because you have to write a whole project, and having done it, this is not something that a small [enterprise] has the time or the manpower to do … So, for small independent [professionals] who have a staff of five and have to be at [work] six days a week, there is no time. And the reporting that they are asking now, no, impossible. (EU CCS 10)

EU funding requirements and procedures seem to be exceeding and ill-suited to the actual resources, including the administrative and reporting capacity, of a majority of (potential) applicants from the CCS, who, as just mentioned, are characterised by high numbers of self-employed people and SMEs.

In other cases, the shared management of certain funds, which relies on the administrative capacity of Member States, has also been identified as a source of administrative burden.[212] Indeed, the administrative capacity of the managing authorities, including national and regional authorities, can itself be challenged during programme management cycles under the Cohesion Policy,[213] or when assessing whether EU-funded operations promote and respect fundamental rights.[214]

Additionally, issues of access, application, or audits were some of the criticisms raised against the Creative Europe programme for 2014-2020, as umbrella organisations called for its simplification.[215] The current programme meant to address it through 'a substantial simplification of bureaucratic procedures' and the diversification of the types of projects that could be submitted (small, medium and large-scale), while allowing small-scale projects a higher co-financing rate.[216] Still, this simplification was criticised by a study participant who argued that difficulties for smaller organisations in terms of application and implementation endured (EU CCS 10). In this respect, Ciancio also questioned 'whether this [was] enough to effectively support a variety of expressions in the EU cross-border cooperation in times of changes and profound crisis'.[217]

This shines a light on a key (and enduring) limitation of the EU funding system, a system that relies on a number of administrative procedures and requirements necessary to ensure

[212] See Fasone and Simoncini (n 18) 509.
[213] See John Bachtler and others, 'Administrative Capacity and EU Cohesion Policy: Implementation Performance and Effectiveness' (2024) 58 Regional Studies 685, 685–686.
[214] European Union Agency for Fundamental Rights, *EU Funds: Ensuring Compliance with Fundamental Rights* (Publications Office 2023) 43.
[215] Culture Action Europe, 'Creative Europe: Programme Analysis and Recommendations' (2017) 18–24.
[216] Creative Europe Regulation 2021-2027, recital 25; European Commission, '2021 Annual Work Programme for the Implementation of the Creative Europe Programme' (2021) C(2021) 3563 final, 13–14.
[217] Giuliana Ciancio, 'For a Porous Cultural Policy Process, the Creative Europe Programme between Emotional Clusters and Political Efforts' (2022) 1 Nectart 110, VIII.

the good management of the funds, which may pose, as a result, significant access and implementation challenges for the intended recipients, including for professionals with disabilities. The question therefore remains as to how the EU funding system, even taking into account the European Commission's efforts to simplify administrative procedures, can actually benefit CCS professionals with disabilities, who, as persons with disabilities, already face a range of accessibility barriers and challenges in other respects that monopolise their time and administrative capacity.[218]

4.2.2. The Financial Burden

In addition to these administrative requirements, the EU funding system relies to a large extent on the principle of co-financing, and this can be a barrier for CCS professionals with disabilities seeking to receive EU funding, as well as for other CCS stakeholders, mostly those in smaller organisations. This principle requires implementing organisations to complement the budget with their own resources or other financial or in-kind contributions, public or private, to ensure that the funding provided by the EU is matched.[219]

While Erasmus+ and Horizon Europe cover 100% of the project costs, other funding sources like Creative Europe or the ERDF rely on the principle of co-financing whereby applicants are obliged to contribute to a project's costs to avail of EU funding. For instance, the co-financing rate for cooperation projects under the Culture strand of Creative Europe varies between 60%, 70% and 80%, depending on the scale of the projects (large, medium or small).[220] The higher rate applies to smaller cooperation projects, meaning the EU covers up to 80% of the costs. For ERDF projects, the co-financing rates vary between 85% for less developed regions, 60% to 70% for transition regions and 40% to 50% for more developed regions, according to the criteria set in the Common Provisions Regulation.[221]

As not all EU funds and funding programmes provide for the full project costs to be covered, there is a risk that applying the principle of co-financing exerts significant financial pressure to cover the remaining costs on those delivering projects. In that respect, the 'economic dimension' of EU funding, and the impact it has on the possibility

[218] See Elizabeth Emens, 'Disability Admin: The Invisible Costs of Being Disabled' (2021) 105 Minnesota Law Review 2329.
[219] See Recast Financial Regulation, art 193.
[220] EACEA, 'Call for Proposals: European Cooperation Projects'' (Creative Europe Programme 2024) CREA-CULT-2025-COOP, 23.
[221] Common Provisions Regulation, art 112(3).

to be financed endures, and, despite simplification efforts, it underpins, in the case of Creative Europe:

> a high competition for accessing the programme by applying the same rules to the cultural and creative sector, which is by nature very heterogenous. Organizations, that are different in scale and economic capacity (such as municipalities, foundations, small, medium and grassroots organizations) still compete one against the other for the same calls.[222]

Co-financing may further discourage structures, including municipalities,[223] with limited financial and human resources to draw up such budget, especially at a time when many in the CCS are struggling financially.[224]

In making this point, it is also possible to draw a parallel with the earlier commentary about the impact of administrative requirements on professionals with disabilities. Indeed, it seems evident to point out that if co-financing exerts a certain pressure on the CCS in general, it can in turn pose additional challenges for CCS professionals with disabilities. This is particularly relevant for those working in smaller organisations and with limited financial means and capacity to apply for funding, especially EU funding, if the procedures are accessible to them in the first place.

However, the EU funding procedures and the associated administrative and financial rules, although they may be burdensome for CCS professionals seeking funding for their activities, are also prompted by the need to ensure the good management of EU Funds, meaning that funding is well spent, irregularities are avoided and fairness is ensured in the process.[225] Although necessary, it seems that there is again a mismatch between the procedures associated with implementing EU funds and funding programmes, and the actual capacity of recipients in the CCS to comply with them. Therefore, 'seemingly fair and transparent programmes' can exclude organisations with expertise on the ground.[226]

Additionally, as mentioned in this section, the challenges posed by the administrative and financial commitments associated with seeking EU funding must be considered alongside the challenges faced by CCS professionals with disabilities, including in terms of accessibility. The bureaucratic and financial burdens associated with EU funding can hinder their capacity to apply for and implement projects as part of their professional

[222] Ciancio (n 217) VIII.
[223] See Kerli Lorvi, 'Unpacking Administrative Capacity for the Management of EU Structural Funds in Small and Large Municipalities: The Estonian Case' (2013) 14 Halduskultuur 98, 120.
[224] See EY Consulting, 'Rebuilding Europe: The Cultural and Creative Economy before and after the COVID-19 Crisis' (2021).
[225] See Recast Financial Regulation, tit II, ch 7.
[226] Rumbul (n 202) 357.

activities. These challenges may also impact organisations seeking to undertake projects involving CCS professionals with disabilities, or working on improving accessibility in the CCS, as they may find these requirements too burdensome and beyond their capacity.

5. Assessing the EU Funding System against the Backdrop of the CRPD

As discussed in this chapter, the use of EU funding can support actions of relevance to persons with disabilities and promote their participation in cultural life. However, if persons with disabilities in the CCS are considered in EU funds and funding programmes, including under the umbrella of inclusion or social inclusion, questions remain as to how much of EU funding directly benefits CCS professionals with disabilities, and fosters the realisation of Article 30(2) in the EU's CCS. In this context, this section discusses how EU funding is limitedly used to support CCS professionals with disabilities, while some of it is channelled towards non-CRPD compliant activities, thus, fostering the segregation of persons with disabilities away from the CCS.

5.1. The Limited Mobilisation of EU Funding to Directly Support CCS Professionals with Disabilities

As mentioned above, all CCS professionals with disabilities are theoretically able to apply for the funds and programmes mentioned in this chapter, or at least, are not directly prohibited from doing so. However, the lack of accessibility of procedures, of additional or dedicated funding, or demanding requirements in terms of financial and administrative capacity may well be prohibitive. However, at this stage, it is not possible to measure exactly how many CCS professionals with disabilities are involved in actions supported under Creative Europe,[227] ERDF, Horizon Europe or Erasmus+. More broadly, the monitoring framework set by the European Commission is 'not designed to provide information on the extent to which EU funding contributes to improving the situation of persons with disabilities'.[228]

In this respect, some participants said they felt that funding and funded projects were geared more towards persons with disabilities as audiences rather than as professionals of the sector(s). In that vein, a participant regretted that:

> very often … people with disabilities are limited to audiences. They are not given or granted an active role within culture and art. So, seeing them as producers, as

[227] See ADICLUS (n 196) 8.
[228] ECA (n 189) para 93.

> programmers, as curators is not actually, it hasn't yet arrived in the heads of people. (FG2 P19)

Going further, another focus group participant believed there was even a need to 'mainstrea[m] disabled culture' and to ensure its visibility in funding (FG2 P18).

Referring to sections 2 and 3, it is apparent that the number of projects supporting the active participation of persons with disabilities in the CCS is rather limited (taking into account that data is not always available or easily accessible). Moreover, it is sometimes difficult to distinguish whether persons with disabilities are involved as cultural and creative professionals or as amateurs. There are also projects in which cultural experts and professional artists collaborate with persons with disabilities in order to actively involve them in cultural activities designed for or about them. This highlights enduring barriers in the CCS in terms of breaking down the silos between the amateur and professional worlds for persons with disabilities, or in terms moving beyond entrenched perceptions of persons with disabilities as beneficiaries of cultural activities organised by professionals without disabilities.

In this context, it is interesting to note that the ESF+, which is the EU's main instrument for investing in people, and which one might therefore expect to be more suited to supporting cultural and creative professionals with disabilities, was not mentioned in the empirical study. The ESF+ Regulation is quite overtly concerned with disability and persons with disabilities, emphasising that it aims to promote equal access to quality and inclusive education and training, and services, including by improving accessibility for persons with disabilities.[229] The preamble to the Regulation also indicates that the ESF+ should promote social inclusion, meaning that it should foster equal opportunities for all, reduce barriers, as well as combat discrimination, and ensure the socio-economic integration of those most alienated from the labour market.[230] The ESF+ aims, in particular, to help Member States 'achieve high employment levels, fair social protection and a skilled and resilient workforce ready for the future world of work, as well as inclusive and cohesive societies aiming to eradicating poverty'.[231] It also aims to 'support, complement and add value to' Member States' policies in a range of social policy fields, and foster the realisation of the EPSR.[232]

However, little can be found on ESF+ projects that support or have supported persons with disabilities as professionals, and even less so as cultural and creative professionals.

[229] ESF+ Regulation, arts 4(f), (k), and 6.
[230] ESF+ Regulation, recital 18.
[231] ESF+ Regulation, art 3(1).
[232] ESF+ Regulation, art 3(1)–(3).

This affirmation must be tempered insofar as research into ESF+-funded projects is limited by the fact that part of the fund is implemented by national authorities and comprehensive data on funded projects are not centrally displayed. Indeed, other research has found that the ESF+ contributes, to a certain extent, to the development of the potential of persons with disabilities, be it artistic, creative or intellectual, although, perhaps 'more at an amateur level or as a social engagement than at the professional level'.[233] Some ESF+-funded projects have also contributed to the promotion of the 'creativity and entrepreneurship of people with disabilities',[234] therefore aligning with the Disability Strategy 2021-2030 as it calls on Member States to facilitate self-employment and entrepreneurship, including by using EU Funds.[235] While the ESF+ also supports the accessibility of the CCS for persons with disabilities,[236] its potential seems to be somewhat limited in the context of this thesis, which may explain why it was not discussed by the stakeholders involved in the qualitative study.

Ultimately, as seen in this chapter, a diverse range of projects tackle the accessibility of the sector(s). Even if geared more towards the implementation of Article 30(1) CRPD, this has the potential to benefit CCS professionals with disabilities. However, even then, one focus group participant pointed out the shortcomings of the EU funding system, sharing that:

> if we … undertook to look at the way cultural funding is distributed in all of the EU countries at local, national, regional level, we would see that the lever of cultural funding for promoting cultural accessibility is barely used. (FG1 P3)

Moreover, while data is missing on this issue, it seems reasonable to point out that EU funds and funding programmes are limitedly used to support persons with disabilities as cultural and creative professionals.

Such support is not yet at the forefront of the EU incentivising action, and this does not take into account that the EU funding system can also be used to prevent persons with disabilities from becoming CCS professionals in more radically ways, including by funding their segregation, as discussed below.

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[233] Ferri, 'Fostering Cultural Participation of Persons with Disabilities' (n 29) 109.
[234] See Ferri, 'Fostering Cultural Participation of Persons with Disabilities' (n 29) 108.
[235] Disability Strategy 2021-2030, 15.
[236] European Commission, 'A Culture without Barriers' (*Kohesio*) <https://kohesio.ec.europa.eu/en/projects/Q4416516> accessed 06 August 2025; European Commission, 'Accessibility of Art for People with Disabilities in the Region' (*Kohesio*) <https://kohesio.ec.europa.eu/en/projects/Q3812296> accessed 04 August 2025.

5.2. The Use of EU Funding for Non-CRPD Compliant Purposes: Keeping Persons with Disabilities Away from Opportunities in the CCS

As has been made clear before, EU funding can support actions of relevance to CCS professionals with disabilities and proactively promote a range of objectives instrumental to their inclusion and autonomous participation in society.[237] However, a number of stakeholders at international, European, local and non-governmental level, including the UN Special Rapporteur on the rights of persons with disabilities and the European Ombudsman, have expressed their concern over the use of EU Funds in the segregation and institutionalisation of persons with disabilities in the EU,[238] which would therefore prevent *de jure* and *de facto* participation in the CCS. In this respect, it is widely understood 'that the institutionalisation of people with disabilities is an outmoded and unacceptable model of care in the 21st Century and leads to serious human rights violations'.[239] Thus, rather than opening up the CCS to persons with disabilities, the use of EU Funds –arguably in breach of the CRPD– instead would contribute to the segregation from cultural life, and reinforces what one participant deplored, namely that 'separation is still seen as natural' (FG2 P13).

The misuse of EU funding, redirecting funding away from deinstitutionalisation and transition to independent living, has been denounced for many years, despite the safeguards put in place at the EU level.[240] Civil society has found evidence suggesting that EU Funds have been used in projects that 'further perpetuated segregation of persons with disabilities' in violation of the CRPD and the CFR,[241] including through the 'building and renovation of institutions using ERDF' and as part of 'the wave of energy

[237] Emma McEvoy, 'EU Structural and Investment Funds and Disability' in Delia Ferri and Andrea Broderick (eds), *Research Handbook on EU Disability Law* (Edward Elgar 2020) 342.
[238] See, for instance, CRPD Committee, 'Inquiry Concerning Hungary under Article 6 of the Optional Protocol to the Convention Report of the Committee' (2020) UN Doc CRPD/C/HUN/IR/1 para 101(g); United Nations Human Rights Council (UN HRC), 'Visit to the European Union: Report of the Special Rapporteur on the Rights of Persons with Disabilities, Gerard Quinn' (2022) UN Doc A/HRC/52/32/Add.1; European Ombudsman, 'Decision on the Own Initiative Inquiry into How the European Commission Monitors EU Structural and Investment Funds to Ensure They Are Used to Promote the Right of Persons with Disabilities to Independent Living and Inclusion in the Community' (2022) OI/2/2021/MHZ; European Network on Independent Living (ENIL), 'Advancing Slowly, Regressing Quickly: First Glance at the Right to Independent Living in the European Union Funding of 2021-2027' (Briefing 2023); Bridge EU, '1.1 Billion Euros, 63 Projects, Six Countries, One Pattern: How EU Funds Violate Fundamental Rights' (FURI - EU Funds for Fundamental Rights Project, 2025); CRPD Committee, 'Concluding Observations Combined Second and Third Periodic Reports of the European Union' (n 105) paras 48(b) and 49. See also Gerard Quinn and others, 'Legal Memo. The Impermissibility of Using the ESIF to Invest Monies in Long Term Care Residential Institutions for Persons with Disabilities' (2018) <https://enil.eu/segregation-and-segregated-facilities-as-a-prima-facie-form-of-discrimination/> accessed 26 August 2021.
[239] Camilla Parker and Luke Clements, 'The European Union Structural Funds and the Right to Community Living' (2012) 9 The Equal Rights Review 95, 95.
[240] See Parker and Clements (n 239) 111; ENIL (n 238) 2.
[241] Neža Šubic, 'Challenging the Use of EU Funds: *Locus Standi* as a Roadblock for Disability Organisations: ECJ Order of 15 April 2021, Case C-622/20 P, *Validity and Center for Independent Living* v *Commission*' (2022) 18 European Constitutional Law Review 59, 60.

efficiency efforts'.[242] Non-governmental organisations have notably lodged an action for annulment before the CJEU in that respect, but it was found inadmissible for lack of legal standing.[243] This outcome therefore 'prevent[ed] an urgent examination in substance of the compliance of EU funding measures' with the CRPD.[244] Similar concerns have been expressed in relation to NextGeneration EU, the more recent and temporary recovery instrument, and in particular about the Recovery and Resilience Facility (RRF) funded to promote the economic, social and territorial cohesion of the Union, as set out in Member States' Recovery and Resilience Plans.[245] Indeed, recent research has revealed that the RRF might also be misused to support the construction and renovation of institutions.[246] It also appears that funding derived from Horizon Europe, under the banner of the NEB, has been used in the development of group homes.[247]

Meanwhile, the promotion of deinstitutionalisation and the transition from residential or institutional care to family and community-based care are approached as priorities in the Common Provisions Regulation, and as thematic conditionalities for funds like the ESF+ or ERDF.[248] The Common Provisions Regulation also makes clear in Article 9(1), which discusses horizontal principles, that both the Member States and European Commission must ensure respect for fundamental rights and compliance with the CFR in the implementation of the funds covered. The specific funds' Regulations for the ESF+, and the ERDF and Cohesion Fund also clearly indicate a commitment to transitioning to community-living[249] and position EU Funds as a way to promote deinstitutionalisation[250]

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[242] ENIL (n 238) 3. See also action taken by ENIL in the context of the use of EU funding in Austria, Bulgaria, Hungary, Portugal, Romania, Poland, discussed in ENIL, 'Funding' (*ENIL*, 26 February 2022) <https://enil.eu/funding/> accessed 06 August 2025.

[243] See Case C–622/20 *P Validity Foundation – Mental Disability Advocacy Centre and Center for Independent Living Association v European Commission* [2021] ECLI:EU:C:2021:310. See also Case T–613/19 *European Network on Independent Living Brussels Office (ENIL Brussels Office) and Others v European Commission* [2020] ECLI:EU:T:2020:382.

[244] Šubic (n 241) 60.

[245] See Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility [2021] OJ L57/17, art 4.

[246] See Inge Volleberg, 'Deinstitutionalisation Should Remain a Priority for EU Funding' (*The European Expert Group on the Transition from Institutional to Community-based Care*, 15 March 2022) <https://deinstitutionalisation.com/2022/03/15/deinstitutionalisation-should-remain-a-priority-for-eu-funding/> accessed 1 August 2025.

[247] Rūdis Rubenis, Emīls Zinkēvičs and Liene Siņicka, 'The Green Transition: Transforming Soviet Housing Neighborhoods in Zjepju, Riga' in Alessandro Deserti and Emma Puerari (eds), *Experimenting with the New European Bauhaus Values and Principles in Urban Transformation* (Springer 2025) 29. As per the CRPD Committee, or Catalina Devandas Aguilar as UN Special Rapporteur on the Rights of Persons with Disabilities, group homes are a form of institutionalisation. See CRPD Committee, 'General Comment No. 5 (2017) on Living Independently and Being Included in the Community' (2017) UN Doc CRPD/C/GC/5 para 16(c); UN HRC, 'Rights of Persons with Disabilities: Report of the Special Rapporteur on the Rights of Persons with Disabilities' (2019) UN Doc A/HRC/40/54 paras 67–69. See also Eric Rosenthal, 'Residential Care Controversy: The Promise of the UN Convention on the Rights of Persons with Disabilities to Protect All Children' (2021) 1 International Journal of Disability and Social Justice 95.

[248] Common Provisions Regulation, recital 6 and annex IV.

[249] See ERDF-CF Regulation, recital 5 and art 3(d)(v); ESF+ Regulation, art 6.

[250] ENIL (n 238) 3.

and not 'any action that contributes to segregation or to social exclusion'.[251] Most recently, the European Commission has published a 'Guidance on independent living and inclusion in the community of persons with disabilities in the context of EU funding'.[252] This is a flagship policy initiative ensuing from the Disability Strategy 2021-2030 to support the realisation of Article 19 CRPD.[253]

However, while insisting and providing for the use of EU funding towards the transition from institutional to family and community-based care, the European Commission also admits that 'national authorities can in some cases use EU funding for residential care facilities, since investments in institutions are not prohibited by the applicable legal framework'.[254] This use of the EU funding system therefore risks jeopardising current efforts to implement the CRPD in the EU, and especially Article 19 CRPD.[255] This raises doubts about the effectivity of the safeguards put in place by the EU in the implementation of its funds and funded programmes,[256] like the enabling conditions discussed earlier. It is rather concerning, especially when a recent study finds that there is limited understanding and awareness of 'how to operationalise these conditionalities or what practical arrangements are needed to enforce them' among interested stakeholders.[257] Furthermore, it 'frustrates th[e] enormous potential [of Structural Funds] to be a positive force in the transition from institutional to community-based care for disabled people'.[258]

More importantly, for the purposes of this research, it can be argued that by prolonging and perpetuating –with the support of EU Funds– the segregation of persons with disabilities from society, the EU funding system could also be found to be working against the realisation of Articles 30(2) and 27 CRPD. In this respect, it is interesting to recall the words of one of the participants, already mentioned in chapter 1, as they regretted that, in special schools, 'dreams are not allowed to develop the same way' (EU CCS 6). Indeed, segregated settings like institutions, special schools or sheltered workshops can hamper on the opportunities for persons with disabilities to become CCS professionals. In that sense, the CRPD Committee has also noted that EU Funds were directed to segregated work environments.[259] This abuse of the EU funding system diverts persons with

[251] ESF+ Regulation, recital 30.
[252] European Commission, 'Guidance on independent living and inclusion in the community of persons with disabilities in the context of EU funding' (Notice) C(2024) 7897 final.
[253] Disability Strategy 2021-2030, 12.
[254] CRPD Committee, 'Combined Second and Third Periodic Reports Submitted by the European Union' (n 33) para 154.
[255] Šubic (n 241) 64.
[256] Šubic (n 241) 80.
[257] Bridge EU (n 238) 29.
[258] Parker and Clements (n 239) 111.
[259] CRPD Committee, 'Concluding Observations on the Initial Report of Lithuania' (2016) UN Doc CRPD/C/LTU/CO/1 para 51.

disabilities from opportunities in the CCS in that it actively undermines inclusion, full participation in the community and possibilities to seek work opportunities in the mainstream. Indirectly, it can impact on participation in cultural life[260] and the conception of the CCS as a possible career path for persons with disabilities. However, as Bell notes, 'the process of transitioning away from sheltered employment lies predominantly in the hands of the Member States, who are the primary operators and funders of these bodies'.[261]

While it does not derive directly from the use of EU funding, EU legislation on state aid and on public procurement also contributes to framing the way in which public funds are used in the EU.[262] In this context, the ambiguity of the EU on the subject of sheltered employment is noteworthy. Civil society has for instance been wary of the role and use of state aid, and EU state aid law, in financing and maintaining institutions,[263] or sheltered workshops.[264]. In that sense, the recent Disability Employment Package also explores 'quality jobs in sheltered employment' as a key area of action.[265] By contrast, the CRPD Committee is clear; sheltered workshops are a form of segregated employment and should 'not be considered a measure of progressive realization of the right to work' set out in Article 27 CRPD.[266]

In addition, although the need to revise the Directives on Public Procurement is being evaluated,[267] for the time being, EU procurement law also contains provisions that allow 'Member States [to] reserve the right to participate in public procurement procedures to sheltered workshops'.[268] In that vein, the preamble to the Public Procurement Directive explicitly states that '[e]mployment and occupation contribute to integration in society

[260] CRPD Committee, 'Concluding Observations Combined Second and Third Periodic Reports of the European Union' (n 105) paras 70(c) and 71(c).
[261] Mark Bell, 'People with Intellectual Disabilities and Labour Market Inclusion: What Role for EU Labour Law?' (2020) 11 European Labour Law Journal 3, 14.
[262] See, among others, Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC [2014] OJ L94/65 (Public Procurement Directive); Commission Regulation (EU) 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty [2014] OJ L187/1.
[263] See Florian Sanden, 'The Role of State Aid in the Maintenance of Institutions for Disabled People: A Case Study on Germany and Portugal by the European Network on Independent Living – ENIL' (ENIL 2023).
[264] ENIL, 'Stop Subsidising Sheltered Employment: Implementing the UN CRPD into EU State Aid Legislation' (Briefing, 2024).
[265] European Commission, 'Package to Improve Labour Market Outcomes of Persons with Disabilities (Disability Employment Package – "Employment Package")' (Joint Commission Services – Disability Platform Paper, 2022) 7. See also Karsten Gareis and others, *Study on Alternative Employment Models for Persons with Disabilities: Set up, Working Conditions and Pathways to the Open Labour Market in Inclusive Enterprises and Sheltered Workshops: Final Report* (European Commission, Publications Office 2025).
[266] CRPD Committee, 'General Comment No. 8 (2022) on the Right of Persons with Disabilities to Work and Employment' (2022) UN Doc CRPD/C/GC/8 para 15.
[267] See Council Conclusions on the European Court of Auditors' Special Report No. 28/2023: Improve a fair and effective competition for EU public procurement contracts awarded for works, goods, and services [2024] OJ C2024/3521, para 7; European Commission, 'Call for Evidence for an Evaluation/Fitness Check: Public Procurement Directives – Evaluation' Ares(2024)8928678.
[268] Public Procurement Directive, art 20(1).

and are key elements in guaranteeing equal opportunities for all. In this context, sheltered workshops can play a significant role'.[269] The CRPD Committee recently recommended that the EU address these issues, by repealing or amending the abovementioned legislation.[270]

As such, the EU endorses the existence and viability of segregated settings. Overall, the ways in which state aid and public procurement law accommodate recursing to sheltered employment are another example of how the EU legal framework can be understood to keep persons with disabilities away from opportunities to become CCS professionals. As for institutions, the EU legal framework perpetuates the segregation of persons with disabilities from the open labour market, away from opportunities to work freely, including in seeking opportunities in the CCS. As such, it takes part, to an extent, in a funding system that enables the use of public funds in the EU (not necessarily EU Funds) in a way that contravenes the CRPD. These considerations on the use of funds reinforce the concerns one can have about the realistic impact of the EU funding system over the situation of professionals with disabilities in the CCS.

6. Questioning the Impact of the EU Funding System on the Participation of Professionals with Disabilities in Cultural Life

As mentioned at several junctures of this thesis, the importance of funding for the inclusion of persons with disabilities and especially professionals in the CCS were identified as key during the qualitative analysis. Therefore, it is subject to a dedicated section in chapter 1, and the reason behind the analysis of the EU funding system undertaken in the present chapter. However, as the previous sections have highlighted, the adequacy of the EU funding system to support the participation of cultural and creative professionals with disabilities is uncertain. Furthermore, key characteristics of the EU funding system –time-bound, project-based and contingent on political decisions– can also be seen as jeopardising the sustainability and transformative impact of the activities funded. This section therefore argues that, in turn, this undermines the effective use of EU Funds in the realisation of Articles 27 and 30(2) CRPD in the EU, while perpetuating precarious work patterns and conditions.

[269] Public Procurement Directive, recital 36.
[270] See CRPD Committee, 'Concluding Observations Combined Second and Third Periodic Reports of the European Union' (n 105) paras 64–65.

6.1. Challenges to Achieving Transformative and Sustainable Change in the CCS

Indeed, as evident from sections 2 and 3, the EU funding system, albeit key to the realisation of the Union's cultural policy objectives, is also grounded in 'projectification' or a 'project-based logic',[271] and therefore time-bound. This was a key point raised in one participant's contribution, as they felt that 'any kind of funding is a hugely temporary thing … you have funding to test something, it is usually to pilot an idea, so funding is normally not ongoing' (EU CCS 5). Other research also highlights how funding is time set, meaning that projects are limited in terms of timeline, while being constrained in terms of scope, 'with significant limitations in opportunities to scaling up, to continue successful projects once the funding has finished'.[272] A recent report also emphasises the following:

> Funding and project planning often prioritize short-term results over long-term sustainability [and the] project-based approach leads to fragmented efforts, resulting in missed opportunities for significant cultural contributions and long-term societal impact.[273]

It begs the question of how transformative the EU funds and funding programmes mentioned in this chapter can be with regard to supporting the participation of CCS professionals with disabilities in the long term. Here, one can suppose that some will more obviously have long-term effects, including the funds that are mobilised to make the environment more accessible. The sustainability of inclusive practices and knowledge developed or shared as part of projects including professionals with disabilities is perhaps less certain. In that vein, the participant quoted earlier wondered the following:

> So, it would have to be funding that would spark some new thinking, some new ways of doing it, exchanging best practices? And that is good in itself. But then each and every participant in such a discussion would have to then go home and say: 'How can we then turn this around in our organisation, so that what we have learned from the project could become a norm afterwards, or at least attempting or going in that direction?' (EU CCS 5)

One might expect the transformative impact of the EU funding system to be the result of a trickle-down effect. However, this is again rather speculative, and EU funds and funding

[271] See Sebastian M Büttner, 'The European Dimension of Projectification: Implications of the Project Approach in EU Funding Policy' in Damian Hodgson and others (eds), *The Projectification of the Public Sector* (Routledge 2019); Ciancio (n 217) IX.
[272] Ferri, 'Fostering Cultural Participation of Persons with Disabilities' (n 29) 112.
[273] IDEA Consult and others, *Research for CULT Committee – EU Culture and Creative Sectors Policy: Overview and Future Perspectives* (European Parliament 2024) 77–78.

programmes of interest to persons with disabilities 'have not yet displayed long lasting and structural transformative effects' one could have expected from them.[274]

In addition, as mentioned in this chapter, the European Commission has limited the number of time organisations can apply for some of the Creative Europe funding streams to address oversubscription issues.[275] As already noted, there are concerns that this may hinder already successful organisations of/working with CCS professionals with disabilities in elaborating new projects, securing funding and continuing their efforts towards the realisation of Articles 30(2) and 27 CRPD in the EU. Furthermore, if the sustainability of the work carried out as part of EU funded projects is uncertain, the importance of EU funding for CCS professionals with disabilities might be further undermined as the question of the general future of funding for the CCS arises.

Indeed, this chapter has already highlighted the limited EU funding available solely for the CCS and its professionals –which compares poorly to other areas of EU action– all the while this 'project-based public action' seems to be the preferred way of EU action in the field of culture.[276] Additionally, focusing again on Creative Europe, it is worth remembering that it was recently the subject of proposed budget cuts. Moreover, being a renewable programme like the other funding programmes mentioned in this chapter, concerns and uncertainties reappear around the end of a MFF, especially with regard to their continuation and budget.

For now, it would seem that the proposed budget for the Cultural and Media strands in the AgoraEU Programme will be higher than the current Creative Europe, however as already noted, references to supporting professionals with disabilities have for now decreased.[277] Ultimately, funding is dependent on political decisions, and so is the use of funds towards ensuring the participation of CCS professionals with disabilities. This sentiment was particularly encapsulated by one participant who stated that:

> funding … is a political instrument to make people do what politicians want them to do … So, if the politicians want more attention being given to disability, then they put a bag of money to say that. (EU CCS 5)

Therefore, in the absence of political momentum at the EU level to enhance the participation of professionals with disabilities in the CCS, it is less likely that the EU's

[274] Ferri, 'Fostering Cultural Participation of Persons with Disabilities' (n 29) 113.
[275] European Commission, '2026 Creative Europe Annual Work Programme' (n 89) annex, 8. See also European Commission, '2025 Creative Europe Annual Work Programme' (n 43) annex, 15.
[276] See, for instance, Mehdi Arfaoui, '« Creative Europe » ou l'action publique par projet. Enquête sur une modernisation des politiques publiques en Europe' (PhD Thesis, École des Hautes Études en Sciences Sociales (EHESS-Paris) 2019) 32–41.
[277] See European Commission, 'Legislative Financial and Digital Statement' (n 79) 13.

supportive action will develop in this direction and enable such outcome. It is also legitimate to ponder if the EU funding system does not act, at the same time, as a reinforcing mechanism of the precarity and atypicality of working in the CCS.

6.2. The Role of EU Funding in Reinforcing Precarious Work Patterns and Working Conditions

As demonstrated in this chapter, the EU funding system can foster opportunities for professionals with disabilities in the CCS. However, whether this means that the CCS have become a better and more inclusive and accessible working environment for professionals with disabilities, where they 'can, amongst others, work under fair conditions, access sustainable funding, and receive proper recognition and compensation for their contributions',[278] is less evident.

On the contrary, the relation between the project-based organisation of the CCS, which the EU funding system entertains, and the perpetuation of temporary and flexible forms of employment, where the CCS are reliant on 'the constant availability of the CCS professionals',[279] is rather clear.[280] Indeed, while the EU funding system fosters the functioning of the CCS, it also relies on the widespread use of project-based funding which risks supporting precarious work patterns and livelihoods in that:

> the design and temporary nature of the programmes and related financing contribute to highly flexible employment relationships (temporary work, project-based intermittent work, (bogus) self-employment); this increases the current unstable project-based employment situation and favours precariousness.[281]

In that regard, Arfaoui outlines in the context of Creative Europe that implementing projects positions applicant organisations in situations that are 'durably precarious'.[282] Hence, these dynamics reinforce the view that, while it has the potential to provide opportunities to participate in cultural life, the EU funding system does so by entertaining precarious project-based work for CCS professionals and the normalisation and abuse of

[278] IDEA Consult and others (n 273) 77.
[279] Harald Hauben and others, 'Employment Characteristics and Undeclared Work in the Cultural and Creative Sectors' (European Platform Tackling Undeclared Work, European Labour Authority 2024) 35.
[280] Kammerhofer-Schlegel and others (n 203) 31–32; Karol Muszyński and Anna Gromada, *EU Framework for the Social and Professional Situation of Artists and Workers in the Cultural and Creative Sectors* (EPRS, Publications Office 2023) 4.
[281] Kammerhofer-Schlegel and others (n 203) 31.
[282] Arfaoui (n 276) 391.

non-standard forms of work, which can undermine the protection of working conditions.[283]

It may therefore leave CCS professionals in atypical situations, outside of the core of EU labour law or social protection legislation.[284] Indeed, the current regulatory framework mainly provides for 'workers with standard employment contracts, leaving economically dependent, solo, self-employed and non-standard workers vulnerable to unpredictable working conditions'.[285] It is especially concerning that the EU funding system works as a reinforcing mechanism to the practices allowing employers to evade obligations tied to the employment relationship, including under EU law, when the CCS are one of the sectors in the EU in which bogus self-employment is most prevalent.[286] In that respect, recent legislation on platform work and adequate minimum wages have sought to provide for non-genuinely self-employed individuals and other non-standard workers,[287] and to advance on tackling the abuse of false self-employment by facilitating the determination of the employment status of those working for platforms,[288] therefore seemingly contributing to better protection of the individuals concerned. While contingent on ascertaining the existence of an employment relationship, this might be especially important for CCS professionals with disabilities as discussed in chapter 6. Yet, it is a rather tenuous avenue to address the more comprehensive issue that the project-based organisation of the EU funding system might represent.

By contrast, a recent OMC report points out that the funding of the CCS, particularly by public bodies, provides both an 'obligation and opportunity to influence improved standards of remuneration and working conditions, which have the potential to influence the ecosystem across sectors' for all.[289] In that vein, the EU funding system could also have the potential –in view of the increasing references made to the CRPD– to introduce conditions that specifically address fair practices and working conditions in the CCS for professionals with disabilities, or the accessibility of the sectors to professionals with disabilities. In this context, it is interesting to emphasise the use of the RRF in supporting

[283] Karol Muszyński, 'Mutual Learning Workshop on "Access to Social Protection for Artists": Thematic Discussion Paper: Improving the Access to Social Protection for Artists' (European Commission, Publications Office 2025) 20–21.
[284] Kammerhofer-Schlegel and others (n 203) 15.
[285] Kammerhofer-Schlegel and others (n 203) II.
[286] Colin C Williams, Mireia Llobera and Adrian V Horodnic, 'Tackling Undeclared Work in the Collaborative Economy and Bogus Self-Employment: Working Paper' (European Platform Tackling Undeclared Work, 2020) 34–35. The authors understand bogus self-employment as referring to all employment relationships between pure dependent employment and genuine self-employment.
[287] Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union [2022] OJ L275/33 (AMWD), recital 21.
[288] Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work [2024] OJ L2024/2831 (Platform Work Directive), ch II.
[289] European Commission, *The Status and Working Conditions of Artists – OMC Report* (n 3) 54.

the post-pandemic recovery of the CCS and their professionals[290] by enabling, through national plans, 'important legislative reforms to improve the working conditions of artists and cultural workers (CZ, EL, ES, RO) or … reform[s] the funding system of the cultural sector or institutions (BG, CZ, RO)'.[291] However, this observation may have to be tempered. While the country examples provided by the European Commission are not meant to be exhaustive, those mentioned seem to have mainly supported access to cultural life or at least intends to do so for the next few years, thus focusing more on audiences/visitors with disabilities than on professionals.[292] Moreover, as mentioned in sub-section 5.2, the RRF is also suspected to have been used for institutions. Nevertheless, it is interesting to see the convergence of some Member States' intentions and plans regarding the status and working conditions of CCS professionals, thanks to EU funding, at a time when this issue is also receiving attention at EU level. However, it falls short of the European Parliament's ambitions, which called for the establishment of an EU framework for the social and professional situation of artists and workers in the CCS, including a Directive on decent working conditions.[293]

At a time when EU funding programmes for the CCS, and in particular the Creative Europe programme, 'seem to have limited impact on the social and professional situation of CCS professionals',[294] it is necessary to acknowledge that 'using financing rather than rule-making'[295] has reached some of its limits in the area of culture. In a way, it shows that if working through financial incentives has not been enough to get Member States to address key current issues for the sectors, or the situation of CCS professionals in general, it is unlikely that the EU funding system will drive systemic progress in the implementation of Article 30(2) CRPD, together with Article 27 CRPD.

As this sub-section demonstrates, there seems to be a clear tension between the EU's role in supporting creation under Article 167 TFEU, which it has pursued in part through funding or 'incentive measures', and its role in supporting the improvement of working conditions in the EU, as provided under Article 153 TFEU, which is compromised by the

[290] See Delia Ferri and Lazar Stefanovic, 'Fostering Cultural Participation of Persons with Disabilities in the European Union What Is the Potential of the Recovery and Resilience Facility' (*Diritti Comparati*, 27 February 2025) <https://www.dirittocomparati.it/fostering-cultural-participation-of-persons-with-disabilities-in-the-european-union-what-is-the-potential-of-the-recovery-and-resilience-facility/?print-posts=pdf> accessed 28 February 2025.
[291] European Commission, 'Recovery and Resilience Scoreboards: Thematic analysis: Culture and Creative Industries' (NextGenEU, 2024) 5.
[292] See European Commission, 'Recovery and Resilience Scoreboards' (n 292) 8, 10–11.
[293] See European Parliament Resolution on an EU framework for artists.
[294] Kammerhofer-Schlegel and others (n 203) 31.
[295] Dawson and de Witte (n 7) 89.

instability fostered by the project-based organisation of the EU funding available to the CCS.[296]

7. Concluding Remarks

Whilst the EU competence on culture is limited, this does not mean that the EU cannot provide substantial financial support to the cultural field. This chapter has sought to highlight how the EU funding system is somewhat a practical and tangible way to support CCS professionals with disabilities in their activities, and enhance the accessibility of their environment, as well as of the products and services they might interact with for professional purposes. In that connection, the chapter has demonstrated the various ways the EU funding system can benefit CCS professionals with disabilities. In this context, this chapter sought to ground itself in the qualitative findings in order to consider more specifically Creative Europe, the only funding programme solely dedicated to the CCS, and three non-sectoral funds and funding programmes –Erasmus+, Horizon Europe and ERDF. While other funds or programmes could seem relevant, a partly deductive and inductive approach in the data analysis shaped how this chapter sought to answer the research questions.

In investigating the use of EU funding in enabling the cultural participation of persons with disabilities as professionals, this chapter sheds a light on a topic that seldom is investigated. It argues that the EU funding system is able to support professionals with disabilities in several ways. First and foremost, this system directly benefits them and represents a potential source of financing for their cultural and creative endeavours as direct recipients, if they are able to successfully respond to calls for proposals. Additionally, the EU can also fund projects which aim to address participation of CCS professionals with disabilities or provide funds focusing on access to cultural life of persons with disabilities, therefore indirectly reaching those professionals with disabilities. In that vein, EU funds and funding programmes may also be leveraged to make the CCS and the environment frequented by professionals with disabilities more accessible. Furthermore, the use of EU funding acts as a mean to raise awareness and build knowledge on the rights of persons with disabilities and the creative, cultural, and intellectual potential of professionals with disabilities, with project participants, with audiences, and more broadly, with those involved or benefiting from the implementation of funding programmes. This can be a way to address prejudicial views that can be held

[296] Kammerhofer-Schlegel and others (n 203) 14.

on this topic,[297] and that can underpin discriminatory practices and inequalities in the sectors.[298]

However, if the EU funding system is an important avenue for supporting the participation of professionals with disabilities in the CCS, and change more broadly, it is also somewhat of an impasse. As currently structured, the EU funding system is flawed, in that it cannot realistically support the participation of professionals with disabilities in the CCS, or even the realisation of Article 30(2) CRPD in the EU, beyond just a piecemeal approach, project by project, participant by participant. The analysis provided in this chapter highlights a range of caveats in the EU funding system, notably linked to the lack of systematic engagement with disability, or related costs, in procedures, as well as to the administrative and financial requirements that may become barriers for CCS professionals with disabilities to access and benefit from such funding. This chapter has also sought to highlight the legitimate concerns one can have with regard to the use of funding for non-CRPD compliant purposes, meaning that persons with disabilities risk being kept away from opportunities in the CCS, including in institutions or sheltered workshops. Additionally, this chapter questions whether using the EU funding system may realistically foster systemic change, and enable the effective and full participation of professionals with disabilities in cultural life on the long term.

Overall, the idea of funding remains closely linked to the functioning of the CCS, including to promoting and supporting good practices, their proliferation, and the creation of opportunities for professionals with disabilities in the CCS. However, the present state of play highlights how the EU funding system, albeit being an important and instrumental feature of the EU cultural action, including for CCS professionals with disabilities, addresses issues in silos when the problem runs much deeper. As it is structured now, the EU funding system is more about discrete or singular answers that fail in resolving a more systemic problem, and in addressing the priorities set out in the Treaties.[299] This is all the more problematic as it is identified as key to the functioning of most of the CCS, and to the inclusion of professionals with disabilities. While it may well be beneficial and important to the participants of funded projects, it highlights broader shortcomings in the EU's action for supporting artistic and literary creation involving CCS professionals with disabilities, as foreseen in Article 167(2) TFEU. It also exemplifies the lack of ongoing

[297] Silvia Bonaccio and others, 'The Participation of People with Disabilities in the Workplace Across the Employment Cycle: Employer Concerns and Research Evidence' (2020) 35 Journal of Business and Psychology 135, 135–136.
[298] Urzel Francil (n 190) 9.
[299] See De Witte, 'Legal Framework of the EU's Cultural Policy' (n 77) 17.

systemic change, as well as the broader limitations of the EU action in support of persons with disabilities.[300]

Although competences come into play, with 'the EU project being one of integration through law rather than integration through funding',[301] enabling the participation of professionals with disabilities in the CCS and promoting their right to work, should not be more a question of funding than one of law. Albeit one can find reflected in funding provisions to promote equality of opportunities for CCS professionals with disabilities and accessibility to the CCS, derived from the EU legal framework studied here, the EU funding system as such is not enough to address the challenges faced by cultural and creative professionals with disabilities.

[300] See ECA (n 189).
[301] Kilpatrick (n 11) 629.

Conclusion

1. The Core Tenets of the Thesis

Culture is an important dimension of the EU project. It is an area of growth, as well as a catalyst for cohesion, inclusion, and community among citizens. However, as this thesis shows, the cultural and creative sectors (CCS) are also an exclusionary, if not exclusive, space that not everyone has access to or can contribute to, including persons with disabilities. This is despite the recognition of the right of everyone to take part in cultural life in various instruments, particularly international human rights treaties such as the CRPD, with Article 30 CRPD on the right of persons with disabilities to participation in cultural life. As such, the right of persons with disabilities to participate in cultural life encompasses a professional dimension (Article 30(2) CRPD), which is less researched, and relies notably on the opportunities persons with disabilities have to take part and contribute to cultural life, by developing and utilising their creative, artistic, and intellectual potential.

In the context of the DANCING research project, the thesis focuses on cultural and creative professionals with disabilities and considers the role of the EU legal framework in enabling their full and effective participation in cultural life in the Union. It does so against the background of the CRPD as the international legal standard of reference, while shining a light on other previous recognitions of the right to take part in cultural life, and on the standard-setting activities of both the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Labour Organization (ILO).

In this context, the analysis considers the following three research questions:

- What are the main challenges and barriers that persons with disabilities face as professionals in the cultural and creative sectors?
- How does the EU legal framework enable the participation of professionals with disabilities in cultural life?
- What are the limitations and gaps in the current framework that hinder the participation of professionals with disabilities in the cultural and creative sectors?

The characteristics of working in the CCS are well known for the broader category of CCS professionals. The absence of common definitions for certain key concepts like culture, cultural and creative professionals/workers, or artists as well as the absence of an agreed status at the EU level parasite the improvement of their social and professional situation. It poses difficulties for CCS professionals in the EU, especially for

understanding their obligations and rights in the Member States. In this regard, the CCS labour market is also known for issues relating to remuneration, high rates of self-employment, the significant use of non-standard forms of work, and associated challenges in terms of social rights protection, particularly as the EU social acquis has mostly catered for more traditional workers. Moreover, persons with disabilities face challenges in accessing education, employment, or are also more at risk of poverty. In this context, CCS professionals with disabilities have to tackle additional barriers that impede on their capacity to seek opportunities in the CCS, and to develop and utilise their potential in that respect.

On the basis of a socio-legal analysis, this thesis considers four main challenges to a professional participation of persons with disabilities in cultural life in the EU; namely, a lack of equal opportunities and discrimination; lack of accessibility; lack of funding; and lack of knowledge and awareness of disability in the CCS. Identified as part of a qualitative study with CCS stakeholders –a novel contribution of this research to the field– the thesis recognises that these issues are familiar obstacles in many areas of life for persons with disabilities, including outside of the CCS. Interestingly, it finds that most also relate to some of the general principles underpinning the whole of the CRPD, including respect for inherent dignity, non-discrimination, respect for difference and acceptance of persons with disabilities as part of human diversity and humanity, and accessibility.[1]

Using these core themes as a framing device for the rest of the thesis, the analysis particularly focuses on how to leverage on the EU legal framework to facilitate the participation in cultural life of CCS professionals with disabilities with respect to equality and non-discrimination, accessibility and the EU funding system. It integrates considerations of knowledge-building and awareness-raising under the abovementioned core themes, the findings of which are detailed below in section 4. In doing so, the thesis points to limitations and gaps in the EU legal framework which can hamper the participation in cultural life of persons with disabilities as professionals.

2. Novelty of the Thesis

The focus on professionals with disabilities in the CCS is a distinctive facet of the thesis. By concentrating on cultural and creative professionals with disabilities, this thesis is able to contribute novel insights to the limited research that addresses their situation in the

[1] CRPD, art 3(a)–(b), (d) and (f).

Union, especially in terms of EU law scholarship. Such focus helps shedding light on features of the EU legal framework, including landmark achievements of EU disability law such as the EAA, and reveals significant limitations and gaps that affect the specific category of persons with disabilities who are professionals in the CCS. In doing so, this thesis also advances the understanding of the normative content of Article 30(2) CRPD and its protection of a professional participation in cultural life.

Moreover, this socio-legal research associates the perspectives of CCS stakeholders to the discussion on the situation of cultural and creative professionals with disabilities in the Union. In doing so, this thesis makes a singular contribution on the topic, and to the field, as research has for now mostly involved contributions from CCS professionals with disabilities, organisations of persons with disabilities, or other arts and disability organisations. The characteristics of the methodological approach of the thesis are discussed below in section 3, while the broader contribution of the thesis to the state of research is considered in section 5.

3. The Methodological Approach

Indeed, a distinctive feature of this thesis lies in its research methodology. Following a socio-legal approach, the thesis has combined desk-based research and empirical research. Leveraging on doctrinal legal research, a core method of legal research, it also drew on qualitative research methods to support the analysis. Such approach was also used as a springboard for gaining insights from other disciplines into how the EU can enable the participation of professionals with disabilities in the CCS. This required engaging with not only EU law but also international human rights law, disability studies, cultural studies, cultural policy, and leveraging on grey literature related to the topic.

In this context, the qualitative research included a primary data set of ten semi-structured interviews and a secondary data set of two focus groups, which were conducted with CCS stakeholders throughout the EU. As such, the study has supported the analysis in answering the problem posed in the thesis and rooted the legal analysis in the experiences of stakeholders in the CCS. This socio-legal approach has been a way to refine the scope of this thesis and to highlight those issues that appeared most salient to participants when discussing the participation of professionals with disabilities in cultural life.

In that respect, the qualitative study carried out as part of this thesis also contributes to addressing a lack of data and research into how CCS stakeholders conceive of the inclusion and participation of professionals with disabilities in cultural life, and the

challenges to it. Noting that most participants were representatives and/or in decision-making roles in their organisations, including those representing umbrella organisation of the sector(s), the qualitative study allowed to have discussions, which leveraged on the personal experience, knowledge and opinions of those who formally represent the CCS. As such, the semi-structured interviews, and even the focus groups, prompted more personal contributions from the participants involved, leaving official narratives aside.

Moreover, one of the notable contributions of the qualitative research is how it helped to frame the thesis and therefore justified that some topics be excluded from its scope, including copyrights, state aid, and social protection. The latter is noteworthy since the intersection of social protection and working in the CCS (including for professionals with disabilities) is quite researched or even highlighted in policymaking circles, and in the activities of the European Union. What can be speculated is that social protection and social security are not topics that stakeholders in the CCS have a lot of leverage on. By contrast, addressing the lack of equal opportunities and discrimination, or the lack of accessibility, as well as building knowledge and raising awareness, are matters that can be more directly tackled at the level of the CCS. Funding is perhaps more singular in that respect, as it is also something mostly decided for the sectors, and suspended to political and executive decisions, and legislation adopted at the EU level. However, the use of funding, including the integration of accessibility matters and coverage of the additional costs supported by CCS professionals with disabilities, or the use of funds to make the sectors more accessible and to facilitate opportunities for CCS professionals with disabilities, is something CCS stakeholders handle more directly.

4. Substantive Findings

As pointed out in this thesis, the role of the Union in enabling the participation of professionals with disabilities in cultural life is notably limited by the supporting competence in the area of culture conferred on it in the Treaties. Yet, this thesis demonstrates that the EU legal framework can contribute to promoting and supporting opportunities for persons with disabilities to develop and utilise their creative, artistic, and intellectual potential in the EU's CCS. The research findings also suggests that there are substantial gaps and limitations that remain in this respect. The following sub-sections recall and discuss the core research findings.

4.1. Equality and Non-discrimination

As noted in this thesis, equality and non-discrimination are key principles in EU law, which also act as a 'bridge' between the CRPD and EU law and policy.[2] It also correspond to those minimum core obligations of the right to take part in cultural life, which entail an obligation of immediacy, while the realisation of cultural rights is generally understood as progressive.

On this basis, and in view of the EU shared competence on non-discrimination, this thesis considers the overlap of EU non-discrimination law and the characteristics of cultural employment. In doing so, it particularly highlights that the Employment Equality Directive,[3] being the only legislation which addresses disability-based discrimination and encloses a duty of reasonable accommodation, is a key instrument to leverage for CCS professionals with disabilities. The adequacy of the Directive has become even more salient as recent case law confirmed it could cover a broad range of CCS professionals in the EU, including those that are self-employed. While EU non-discrimination law has always tended to pursue a broader scope than EU labour law for instance,[4] this is a particularly valuable clarification, especially as the rate of self-employment in the CCS is rather high, more than twice as high as the EU average.[5]

However, different shortcomings also cast a shadow on this picture. Most notably, the Employment Equality Directive remains limited to the workplace, and does not apply to various settings which have an impact on the development and utilisation of one's potential as a CCS professional, including access to goods and services, education or transport. This gap is even more acute as the one piece of legislation that could address it –the Horizontal Equal Treatment Directive–[6] remains unadopted to date. This thesis further shines a light on those shortcomings which affect the application of EU non-discrimination law, when the right to non-discrimination is mostly envisioned as an individual one, and impact on the EU legal framework being used to tackle the lack of equal opportunities and discriminatory practices in the CCS. In this respect, the Disability Employment Package, equality bodies, and social dialogue may be interesting avenues to

[2] United Nations Human Rights Council (UN HRC), 'Visit to the European Union: Report of the Special Rapporteur on the Rights of Persons with Disabilities, Gerard Quinn' (2022) UN Doc A/HRC/52/32/Add.1 para 9.
[3] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16 (Employment Equality Directive).
[4] Anne CL Davies, *EU Labour Law* (Edward Elgar 2012) 113.
[5] See Eurostat, 'Culture Statistics - Cultural Employment' (*Statistics Explained*, 11 August 2025) <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Culture_statistics_-_cultural_employment> accessed 12 August 2025.
[6] Commission of the European Communities, 'Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation' COM(2008) 426 final.

pursue to advance on tackling discrimination and providing equal opportunities to take part in cultural life for CCS professionals with disabilities.

In that regard, the application of the principle of equal treatment is also a red thread which ties the body of EU labour legislation to enabling the participation of professionals with disabilities in the CCS. While most of the EU social acquis mentioned here remains attached to the notion of worker, and would limitedly apply to self-employed people in the CCS, bar those that can be understood as falsely self-employed, it has potential to address and improve the working conditions of CCS professionals. Recent legislation like the Platform Work Directive also attests of a shift at the EU level in terms of capturing and legislating on new forms of work, including through the application of a legal presumption of employment relationship.[7]

4.2. Accessibility

With regard to accessibility, this thesis acknowledges that the body of EU accessibility legislation has grown over the years. The thesis evidences that the selected legislation, in reference to the concerns of the participants to the qualitative study, must be understood in synergy with each other. As such, this thesis highlights the relevance of a number of acts, including some related to the accessibility of the built environment –the Public Procurement Directive,[8] the Recast Lifts Directive,[9] the Construction Products Regulation[10] or the Energy Performance of Buildings Directive–[11] as well as the European Accessibility Act (EAA),[12] and the Web Accessibility Directive (WAD).[13] Overall, these acts and provisions work in tandem, and contain a range of obligations which should make working in the CCS more accessible to persons with disabilities. In this respect, the thesis also discusses the role that the AccessibleEU Centre can have in translating

[7] See Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work [2024] OJ L2024/2831 (Platform Work Directive), art 5.
[8] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC [2014] OJ L94/65 (Public Procurement Directive).
[9] Directive 2014/33/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to lifts and safety components for lifts (recast) [2014] OJ L96/251 (Recast Lifts Directive).
[10] Regulation (EU) 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC [2011] OJ L88/5 (Construction Products Regulation).
[11] Directive (EU) 2024/1275 of the European Parliament and of the Council of 24 April 2024 on the energy performance of buildings (recast) [2024] OJ L2024/1275 (EPBD).
[12] Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services [2019] OJ L151/70 (EAA).
[13] Directive (EU) 2016/2102 on the accessibility of the websites and mobile applications of public sector bodies [2016] OJ L327/1 (WAD).

accessibility legislation into tangible action levers for the stakeholders it interacts with, building knowledge and awareness throughout the EU.

This thesis also contrasts the recurrent concerns of CCS stakeholders with regard to the accessibility of the built environment with the EU's limited involvement in the field. It also formulates important considerations on the adequacy of some standout achievement in EU disability law and policy regarding the situation of CCS professionals with disabilities, as for the EAA. As such, the thesis highlights some of the shortcomings of the EAA, which include the exclusion of cultural content from its remits, the little consideration given to the built environment, the types of transports covered, and the exemption of microenterprises. In this context, the thesis emphasises how its focus on protecting consumers might be one of its biggest limitations. Indeed, the EAA applies to products and services meant for consumers, meaning individuals who are not acting for purposes relating to their trade, business, craft or profession. As a consequence, cultural and creative professionals may not be able to benefit fully from the impact of the EAA's consumer-based accessibility provisions, albeit the thesis speculates on different situations where they could.

What the analysis reveals is that the scope of protection offered by EU accessibility legislation to CCS professionals with disabilities is limited in many ways. In this respect, the thesis highlights the fragmented approach adopted by the EU legislator when tackling inaccessibility in the Union. Moreover, it underlines that the somewhat looser accessibility provisions that have been mainstreamed in EU legislation, fail in obliging to make the environment, or the goods and services of interest, accessible, often only demanding that accessibility be considered. Likewise, this thesis criticises the recurrent use of the disproportionate burden exception in EU accessibility legislation, contrasting these provisions with the obligations stemming from the CRPD.

4.3. The EU Funding System

The EU funding system is a vital component of the EU action on culture, and it is key to enabling the development and utilisation of their potential by professionals with disabilities in the CCS. In that sense, this thesis highlights how the core funding programme for culture, Creative Europe, as well as other funds and programmes like Erasmus+, Horizon Europe or the European Regional Development Fund (ERDF), participate in opening the CCS to professionals with disabilities, more or less directly.

In this context, the EU's mainstreaming of the CRPD, and of disability matters in the different programmes and funds' Regulations,[14] or in the Common Provisions Regulation through enabling conditions,[15] shows that there is potential in using EU funds and implementing programmes and projects that have the advantage of being able to practically advance on the realisation of Article 30(2) and 27 CRPD.

On the one hand, the thesis argues that the ways the EU funding system can enable the participation in cultural life of professionals with disabilities are multiple; in involving and funding CCS professionals with disabilities directly, in funding projects that involve CCS professionals with disabilities, in funding projects that address the accessibility of the CCS, including those projects that focus on developing accessibility of cultural life and realising a more passive dimension of the right to cultural life. The EU funding system has also the potential of building knowledge and raising awareness with all stakeholders involved of the potential CCS professionals with disabilities, and of their contribution to cultural life.

On the other hand, it raises a few critical questions on the capacity of the EU funding system to realistically create enduring change in the CCS for cultural and creative professionals with disabilities. The thesis notably stresses a lack of commitment in ensuring that the preparation and implementation of funded projects and programmes are disability-inclusive, including failures in recognising and covering for the added costs that taking part in these might entail for persons with disabilities. In that sense, the bureaucratic and financial burden that engaging with the EU funding system might involve for all in the CCS, and especially for CCS professionals with disabilities, is particularly underlined.

In that connection, the thesis argues that, while the limitations mentioned above are only limitations of the EU funding system in advancing on enabling the participation in cultural life of professionals with disabilities, EU funds have also been used in a way that not only

[14] Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination, and repealing Regulations (EU) No 1290/2013 and (EU) No 1291/2013 [2021] OJ L170/1 (Horizon Europe Regulation); Regulation (EU) 2021/817 of the European Parliament and of the Council of 20 May 2021 establishing Erasmus+: the Union Programme for education and training, youth and sport and repealing Regulation (EU) No 1288/2013 [2021] OJ L189/1 (Erasmus+ Regulation); Regulation (EU) 2021/818 of the European Parliament and of the Council of 20 May 2021 establishing the Creative Europe Programme (2021 to 2027) and repealing Regulation (EU) No 1295/2013 [2021] OJ L189/34 (Creative Europe Regulation 2021-2027); Regulation (EU) 2021/1058 of the European Parliament and of the Council of 24 June 2021 on the European Regional Development Fund and on the Cohesion Fund [2021] OJ L231/60 (ERDF-CF Regulation).

[15] Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy [2021] OJ L231/159 (Common Provisions Regulation), art 15.

slows down the progressive realisation of their right to take part in cultural life, but in fact runs counter to it. As such, the thesis particularly criticises the use of EU funds for institutionalisation and sheltered employment, a phenomenon which the Union still fails to contain, and which directs people away from the CCS and from freely chosen work opportunities in the CCS, if that is their wish. Moreover, the way that the EU funding system is designed, mostly cyclical and time-set, risks entertaining dynamics of instability in sectors that are already prone to non-standard ways of working and structural vulnerabilities.

Overall, the EU has considerable financial power, which it uses to support the CCS, more or less directly. While funding is key to culture and EU cultural action, it is unable to address all the challenges that affect the participation in cultural life of professionals with disabilities at present. Using the EU funding system as the main approach to enable opportunities for professionals with disabilities to develop and utilise one's potential in the CCS is bound to be flawed and incomplete. This system is too definite and self-contained to entertain systemic change in the Union on this matter. The use of EU funds must therefore be understood as part of a multi-pronged approach to fostering the inclusion of professionals with disabilities in the CCS. Such approach must build on synergies between the use of the EU funding system, efforts towards tackling discrimination and the lack of equal opportunities in the CCS and beyond, but also efforts towards ensuring accessibility in the EU, or better awareness and knowledge on disability and on the contribution of professionals with disabilities to cultural life.

5. Research Contribution

Limited research is available on the participation of cultural and creative professionals with disabilities in the EU's CCS, and on the role that the EU legal framework plays in this respect. In addressing this gap, this thesis has examined how the EU legal framework may enable opportunities for CCS professionals with disabilities at a timely moment. Indeed, a certain momentum has been building at the EU level and increasing research and discussions have been carried out, in the EU, on the status and working conditions of CCS professionals. This is in the context of the different crises that the CCS are experiencing; the aftermath of the Covid-19 pandemic, attacks on freedom of expression and artistic freedom, or the rise of Artificial Intelligence and its impact on the remuneration of CCS professionals. This thesis therefore opportunely situates itself in the debate on an EU framework regarding the social and professional situation of CCS

professionals. Notably, it emphasises the need to consider, in this context, the right of cultural and creative professionals with disabilities to take part in cultural life.

Adopting a socio-legal approach, it proposes new insights into the mechanisms that can underpin representations (and perceptions) of disability in culture by investigating the participation of professionals with disabilities in the CCS workforce. As such, it adds to the scholarship that has focused on the intersection of culture and disability, and provides an interesting viewpoint into the challenges that professionals with disabilities face in the CCS, neither focusing on a specific group of persons with disabilities, on a specific sector, nor on a specific locality or Member State. In that connection, the thesis contributes to the body of empirical studies which have investigated the participation of persons with disabilities in cultural life in the EU and beyond, and from various standpoints. Recognising that the participation and opinion of persons with disabilities, and of their representative organisations, on the topic are paramount, as stipulated in the CRPD, it also sought the views of stakeholders in the CCS, a perspective which is less highlighted. In doing so, it offered insights into how they understood the challenges faced by CCS professionals with disabilities and what underpins their inclusion and participation in the CCS.

In a context where cultural rights are less studied, this thesis also makes an important contribution to the understanding of the right of persons with disabilities to take part in cultural life, and of its professional dimension, which is best captured and protected in the CRPD. Moreover, it adds to the understanding of how EU law can enable the participation of CCS professionals with disabilities in cultural life. In doing so, the thesis emphasises how complex it is to make the EU legal framework relevant to CCS professionals, and in particular to CCS professionals with disabilities. In view of the division of competence between the Union and its Member States, there are few triggers to the application of EU law to the situation of CCS professionals with disabilities, and to address the characteristics and challenges that working in the CCS can pose for persons with disabilities.

Cognisant of Member States' responsibilities over the social and professional situation of cultural and creative professionals with disabilities, which provides ground for further research, but also of their obligations together with those of the EU regarding the implementation of the CRPD, the thesis shines a light on the role that the EU legal framework can play in advancing the implementation of Article 30(2) CRPD and relatedly Article 27 CRPD (Work and Employment). In that respect, this socio-legal contribution therefore pinpoints significant legal avenues, and other EU initiatives, which

have the potential to enable opportunities for persons with disabilities to develop and utilise their creative, artistic, and intellectual potential in the Union. Furthermore, this thesis exposes significant limitations and gaps that remain unaddressed, highlighting that the CCS still tend to represent a 'part of society', rather than 'all of society'.[16]

[16] See Guy Debord, *La Société du Spectacle* (Gallimard 1992) 4.

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Appendix

MAYNOOTH UNIVERSITY RESEARCH ETHICS COMMITTEE
MAYNOOTH UNIVERSITY,
MAYNOOTH, CO. KILDARE, IRELAND

Maynooth University
National University of Ireland Maynooth

Dr Carol Barrett
Secretary to Maynooth University Research Ethics Committee

07 December 2021

Léa Urzel
Department of Law
Maynooth University

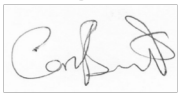
Re: Application for ethical approval for Project entitled: Investigating the Disability Dimension of Cultural Production in the European Union

Dear Léa,

The above project has been evaluated under Tier 2 process, expedited review and we would like to inform you that ethical approval has been granted.

Any deviations from the project details submitted to the ethics committee will require further evaluation. This ethical approval will expire on 30/09/2023.

Kind Regards,



Dr Carol Barrett
Secretary,
Maynooth University Research Ethics Committee

C.c. Professor Delia Ferri, Department of Law

Reference Number
SRESC-2021-2453299