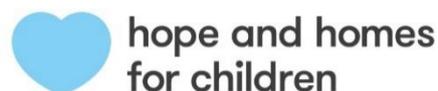


# Joint Briefing for United Nations Committee on the Rights of Persons with Disabilities regarding the review of the implementation of the CRPD by the EU

Equality and intersectional discrimination faced by  
persons with disabilities in the European Union

February 2022



This document informs the UN Committee on the Rights of Persons with Disabilities about issues of inequality and intersectional discrimination faced by persons with disabilities with intersectional identities in the European Union (EU). Its objective is to inform the adoption of the List of issues prior to reporting on the EU.

## Contributors and endorsement

- ▶ [AGE Platform Europe](#) is a European network of non-profit organisations of and for people aged 50+, which aims to voice and promote the interests of the 200 million citizens aged 50+ in the European Union (Eurostat, 2018) and to raise awareness on the issues that concern them most.
- ▶ [Equinox Initiative for Racial Justice](#) is a people of colour-led initiative working to advance rights and justice for all people in Europe. We work in solidarity with a coalition of racial and social justice leaders and organisations to influence European Union law and policy.
- ▶ [Eurochild](#) is a network of organisations and individuals working with and for children in Europe. Our network brings together almost 200 members in 35 European countries, representing over 2000 children's rights organisations.
- ▶ The [European Disability Forum \(EDF\)](#) is an independent umbrella organisation of persons with disabilities that defends the interests of over 100 million persons with disabilities in Europe.
- ▶ The [European Network Against Racism \(ENAR\)](#) is a pan-European anti-racism network that combines advocacy for racial equality and facilitating cooperation among civil society anti-racism actors in Europe.
- ▶ The [European Network of Equality Bodies \(Equinet\)](#) is membership organisation which promotes equality in Europe by supporting and enabling the work of national equality bodies. It supports equality bodies to be independent and effective catalysts for more equal societies.
- ▶ The [European Roma Grassroots Organisations \(ERGO\) Network](#) mobilises and connects grassroots, national and international organisations and individuals who share a set of core values to create the courage, capacity, and opportunities to combat antigypsyism and Roma poverty.
- ▶ The [European Youth Forum](#) is the platform of youth organisations in Europe. We represent over 100 youth organisations, which bring together tens of millions of young people from all over Europe.

- ▶ [Hope and Homes for Children](#) is an international NGO aiming to end the institutionalisation of children globally. We strive to catalyse the reform of child protection and care systems to ensure all children can grow up in a safe and loving family environment. We achieve this by strengthening child protection mechanisms, building the capacity of local professionals, developing services to support all families, and influencing policy and legislation to promote children's rights.
- ▶ [ILGA-Europe](#) are an independent, international non-governmental umbrella organisation working towards equality and human rights for lesbian, gay, bisexual, trans and intersex people, bringing together over 600 organisations from 54 countries in Europe and Central Asia.
- ▶ [Lumos](#) is fighting for every child's right to a family by transforming care systems around the world. We are an international charity striving for a future where every child is raised in a safe, loving home, supported by family to help them thrive.
- ▶ [Transgender Europe \(TGEU\)](#) is a member-based organisation working to strengthen the rights and wellbeing of trans people in Europe and Central Asia.

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## Summary

The endorsing organisations are alarmed by the rate of discrimination faced by persons with disabilities in all their diversity in Europe. The EU has not taken enough measures to address equality and non-discrimination in its legislation and policies, and in particular to address intersectional and multiple forms of discrimination.

In particular, the EU is yet to:

- ▶ Adopt legislation and policies to prevent and combat discrimination on all grounds and in all areas of life
- ▶ Adopt legislation and policies to prevent and combat hate speech and hate crime, including based on disability and other grounds
- ▶ Ensure that Equality Bodies are protected by standards that among others, harmonise the mandate of equality bodies so that they can adequately and efficiently combat disability-based discrimination and support victims of unequal treatment
- ▶ Adopt intersectional policies and targeted measures against intersectional discrimination

**The sub-mentioned organisations recommend that the CRPD Committee request information on those issues and pay particular attention to the diversity of persons with disabilities in its List of issues prior to report and Concluding observations.**

## Equality and non-discrimination (art. 5 CRPD)

Persons with disabilities living in the European Union continue to face discrimination, including denial of reasonable accommodation, harassment<sup>1</sup> and multiple and intersectional forms of discrimination in all areas of their lives.

### EU legislation

#### Anti-discrimination

Under EU law, persons with disabilities are **only protected against discrimination in the field of employment and vocational training**.<sup>2</sup> Existing EU-wide legislation includes an obligation for employers to provide reasonable accommodation for employees with disabilities but does not explicitly recognise the denial of reasonable accommodation as a form of discrimination.<sup>3</sup> In addition it does not explicitly recognise discrimination by association<sup>4</sup> and does not recognise and address multiple and intersectional forms of discrimination. Consequently, Member States have applied these concepts in an asymmetric way, which implies that some groups of persons with disabilities are facing higher degree of discrimination with no or limited access to legal remedy across Europe. This affects, for instance, especially disadvantaged groups such as women, young and older persons, migrants and refugees, persons from ethnic minorities, including Roma, and LGBTIQ+ persons with disabilities.

Contrary to disability-based discrimination, discrimination on the grounds of sex and race, is prohibited in employment and in other areas of life, such as social protection including social security and healthcare, social advantage, and access to and supply of good and services (plus education, media, and advertising as regards to race and ethnic origin only). Therefore, **EU anti-discrimination legislation remains inconsistent in its scope and creates a hierarchy between the different grounds for discrimination**. For more than 10 years, the EU has been discussing a proposed horizontal equal treatment directive covering

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<sup>1</sup> According to data published by the Fundamental Rights Agency of the European Union (FRA), 50% of persons with disabilities have reported being harassed over a 5-year period, comparing to 37% of persons without disabilities. See FRA, Fundamental Rights Survey: CRIME, SAFETY AND VICTIMS' RIGHTS (2021), page 22.

<sup>2</sup> [Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation](#). Also CJEU, [David L. Parris v Trinity College Dublin and Others](#), Case C-443/15, Judgment of the Court (First Chamber) of 24 November 2016.

<sup>3</sup> See article 2 "Concept of discrimination" of the directive.

<sup>4</sup> However, the European Court of Justice hold in Case-303/06 *Coleman v. Attridge Law* that the directive applies to direct discrimination or harassment by association. The jurisprudence did not explicitly recognise indirect discrimination by association. In addition, the judgment in *Coleman v. Attridge* did not recognise a right to reasonable accommodation because of an association with a person with disabilities. Further, the 2008 Horizontal Directive proposal included discrimination by association in its provisions. After the last changes to the file within the Council of the European Union, all reference to discrimination by association have been erased.

discrimination on the grounds of disability, age, religion or belief, and sexual orientation in the areas of social protection, health care, (re)habilitation, education and the provision of goods and services.<sup>5</sup> Resistance still remains from the member states in the Council of the EU to adopt this piece of legislation. Further, the latest negotiations around the file have strongly watered down the initiative, especially as regards to the provisions regarding multiple and intersectional discrimination and those related to disability.<sup>6</sup>

It must be noted that according to existing EU law, **positive action is a permitted action, but it is not specifically a recommended action.**<sup>7</sup> This has prompted, the absence of clear EU guidance asymmetry and diversity as regards the use of positive action measures, exacerbated by the fact that case law of the Court of Justice of the EU in this area refers solely to the ground of gender. As a consequence, positive action has not been used as a tool to reach substantive equality for especially disadvantaged groups, such as persons with disabilities, including women with disabilities.<sup>8</sup>

The EU has not taken alternative measures to effectively protect persons with disabilities from discrimination in all areas of life.

## Hate speech and hate crime

### **Disability related hate speech and hate crime are not recognised and sanctioned as such by all EU Member States and are not prohibited by the EU.<sup>9</sup>**

On 9th of December 2021, the European Commission presented an [initiative](#) to extend the list of 'EU crimes' to hate speech and hate crime. The existing list of EU crimes in the Treaty

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<sup>5</sup> Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age, or sexual orientation; see [Interinstitutional File: 2008/0140\(COD\)](#).

<sup>6</sup> Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation; see [Interinstitutional File: 2008/0140\(COD\)](#).

<sup>7</sup> See for example article 7 of the [Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation](#).

<sup>8</sup> In the meantime, CRPD General comment No. 3 (2016) on women and girls with disabilities establishes that "In line with the Convention, States parties must take "all appropriate measures" to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities. Measures can be of a legislative, educational, administrative, cultural, political, linguistic, or other nature. Measures are appropriate if they respect the principles of the Convention, including the goal of guaranteeing to women with disabilities the exercise and enjoyment of the human rights and fundamental freedoms set out in the Convention. Measures may be temporary or long-lasting and should overcome de jure and de facto inequality. While temporary special measures such as quotas might be necessary to overcome structural, or systemic, multiple discrimination, long-lasting measures such as reforming laws and policies to ensure the equal participation of women with disabilities in all areas of life are essential prerequisites for achieving substantive equality for women with disabilities". Equinet, Exploring positive action as a means to fight structural discrimination in Europe, chapter 2 (forthcoming).

<sup>9</sup> In 2014, only 13 EU Member States explicitly addressed bias based on disability in their criminal code. Of these, only a few separate the hate motivation from the basic offence by using enhanced penalties to stress the severity of bias related offences. See [EDF position paper on hate speech and hate crime](#) (2021)

on the Functioning of the European Union (TFEU) needs to be extended to ensure minimum common rules on how to define criminal offences and sanctions applicable in all EU Member States. In its [communication](#), the European Commission makes 16 references to disability. The [proposed Council decision](#) on the topic also includes a paragraph on persons with disabilities victims of hate speech and hate crime and the obligations under the CRPD.

The Council of the EU needs to unanimously adopt, after obtaining the consent of the European Parliament, a decision identifying hate speech and hate crime as another area of crime that meets the criteria set out in Article 83(1) of the TFEU. This initiative and additional measures to prevent and prohibit hate speech and hate crime, including based on disability is essential to achieve equality and non-discrimination.

## Equality bodies

The EU legislation requests to designate **Equality Bodies** to protect victims of discrimination on the grounds of gender and sex and race and ethnic origin. However, the same has not been done as regards to the grounds of disability, sexual orientation, age, religion, or belief. While most Member States have vested powers to Equality Bodies to work on disability, some members have applied EU legislation ad minimum, implying in practice that persons with disabilities, as right holders, have different levels of support and even none depending on their location across Europe.

The European Commission proposed to extend the mandate of Equality Bodies through the Horizontal Directive back in 2008 to ensure the protection and promotion of equality to persons with disabilities (14 years later the proposal remains non-adopted) and has announced the publication of a proposal regarding Standards for Equality Bodies in 2022. Yet, **the daily reality for persons with disabilities remains that they do not have the same rights and cannot expect the same protection across Member States given the lack of legal obligation to Member States to designate an Equality Body to work on the area of disability and its intersections with other grounds.**

## EU Strategies

In 2020 and 2021, the European Commission adopted a series of policy initiatives and strategies that could contribute to a better inclusion of disadvantaged groups, namely the [Strategy on the rights of persons with disabilities 2021-2030](#), the [Gender Equality Strategy 2020-2025](#), the [LGBTIQ Equality Strategy 2020-2025](#), the [EU anti-racism action plan 2020-2025](#), the [Strategy on the Rights of the Child and the European Child Guarantee](#), the [Roma strategic framework for equality, inclusion and participation 2020-2030](#), the [Action plan on the integration and inclusion 2021-2027](#), and the [European Pillar of Social Rights Action Plan](#). An [EU Youth Strategy for 2019-2027](#) with 11 European Youth Goals was adopted in

2018. Disability-based discrimination and persons with disabilities are mentioned in most of these initiatives.<sup>10</sup>

**However, without concrete actions and a disability focal point<sup>11</sup> in charge of monitoring and contributing to the implementation of these initiatives, it is not certain to which extent persons with disabilities facing multiple and intersectional forms of discrimination will benefit from them.** In addition, the EU still lacks a specific action plan/strategy on ageing/older persons, which makes addressing the intersection of ageing and disability challenging at best.<sup>12</sup>

## Intersectional discrimination

### Concept of intersectionality under EU law

As explained above, none of the EU legislative documents contain provisions, further than marginal mentions, regarding multiple and intersectional discrimination. While the Horizontal Directive, proposed in 2008 contained some provisions in this respect, subsequent negotiations to get the file approved have seen the disappearance of such provisions. Currently, only the [proposed Pay transparency directive](#) contains a provision regarding intersectional discrimination.

Regardless of continuous calls from the European Parliament or even the European Commission, **victims of multiple and intersectional discrimination remain unprotected at the EU level**, in clear breach of article 6 of the CRPD.

Despite some suggestions by academics<sup>13</sup> and the opinion of AG Kokott that the current EU legislative framework could be interpreted in an encompassing way, the Court of Justice of the European Union (CJEU) established, back in 2016 in the above-mentioned *Parris* case<sup>14</sup> that it “is not capable of creating discrimination as a result of the combined effect of sexual orientation and age, where that rule does not constitute discrimination either on the ground of sexual orientation or on the ground of age taken in isolation”. This case proved the

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<sup>10</sup> The EU Youth Strategy failed to include young persons with disabilities.

<sup>11</sup> In 2015, the UN Committee on the Rights of Persons with Disabilities (CRPD) in its Concluding Observations recommended that disability focal points be appointed in all Commission Directorates-General (DGs) and agencies, and in all EU institutions, together with the establishment of an interinstitutional coordination mechanism. The recommendation also forms part of several European Parliament resolutions, and it has also been made by the European Economic and Social Committee.

In spite of this, in June 2020 disability focal points had not yet been established with the exception of the Disability Unit of DG Employment, Social Affairs and Inclusion.

<sup>12</sup> The EU only adopted a [Green paper on Ageing](#) that launched a discussion on ageing in the EU and does not foresee any follow-up action.

<sup>13</sup> In this regard, Fredman, S., [Intersectional discrimination in EU gender equality and non-discrimination law](#), (2016)

<sup>14</sup> CJEU, [David L. Parris v Trinity College Dublin and Others](#), Case C-443/15, Judgment of the Court (First Chamber) of 24 November 2016.

inherent and urgent need to include multiple and intersectional discrimination in EU legal provisions.

A multitude of actors have made a call for the European legislator to include such provisions, including the Fundamental Rights Agency of the European Union (FRA):<sup>15</sup> “The EU legislator should consider broadening the concept of discrimination to include intersectional discrimination in existing and new legislation in the area of equality and non-discrimination.”

It is notable that in spite of the lack of legal provisions at the European level, some Member States have enacted legislation to protect citizens from multiple and intersectional discrimination<sup>16</sup>, and a number of Equality Bodies report engaging in this matter.<sup>17</sup>

## Issues faced by persons with disabilities with intersectional identities<sup>18</sup>

### Children and young persons with disabilities

There is no data on the number of children and young persons with disabilities living in the European Union, or in Europe. Despite this lack of information on their number and situation, research indicates that children and young persons with disabilities face multitude accounts of discrimination, leading to, for instance, limited access to quality, inclusive education, violation of their right to grow up in a family, institutionalisation, and violence. In most European countries, children with disabilities are overrepresented in residential care. In a 2021 report by UNICEF, 8 out of 27 Member States placed children in alternative care on the basis of disability.<sup>19</sup> The Opening Doors campaign documented that children with disabilities continue to be disproportionately represented in institutional care and face high levels of discrimination and neglect.<sup>20</sup> According to UNICEF, across Eastern Europe and Central Asia, children with disabilities are almost 17 times more likely than other children to

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<sup>15</sup> European Union Agency for Fundamental Rights, [Equality in the EU 20 Years on from the Initial Implementation of the Equality Directives](#) (2021).

<sup>16</sup> European network of legal experts in gender equality and non-discrimination, [A comparative analysis of gender equality law in Europe](#) (2020) page 18. Multiple discrimination and/or intersectional discrimination is explicitly covered in the national legislation of Austria, Bulgaria, Croatia, Germany, Greece, Iceland, Italy, Malta, Norway, Poland, Romania, and Slovenia.

<sup>17</sup> N. Crowley, [Equality bodies making a difference](#), European network of legal experts in gender equality and non-discrimination, 2018, page 79: ‘18 equality bodies in 17 countries identified that they had worked on issues of intersectionality.’ Several other Equality Bodies have requested their governments to enact law that would include this kind of discrimination in their national legislation, such as the IHREC, [Submission on the Review of the Equality Acts](#), December 2021.

<sup>18</sup> It is important to keep in mind that that people who are members of multiple of these groups, (e.g., LGBTI youth with disabilities, older Roma women with disabilities) face further unique experiences of discrimination.

<sup>19</sup> UNICEF, [Better data for better child protection systems in Europe: Mapping how data on children in alternative care are collected, analysed and published across 28 European countries](#), (2021) page 15.

<sup>20</sup> Opening Doors Campaign, [Final report](#) (2019) page 16,

be institutionalised. Placement in such institutions increases the risk of violence.<sup>21</sup> Children with disabilities are most likely to be left behind by de-institutionalisation efforts.

In addition, young people with disabilities are more likely to face limited access to employment and social protection, and be denied access to proper healthcare, including mental health and sexual and reproductive health.

In a report by the European Youth Forum on multiple discrimination and young people in Europe, disability was reported as one of the reasons leading to young people being isolated, due to a lack of adequate support measures, notably in the education system.<sup>22</sup> In an online survey conducted by the European Youth Forum, respondents with disabilities also reported that being left without any help to face personal difficulties and challenges led to deeper depression and even to alcohol or drug abuse, failures at exams and school dropout.<sup>23</sup> At an age when young people feel they might not be taken seriously or be seen as “exaggerating,” young people with disabilities, especially with psychosocial disabilities, face even more stigma.

These barriers also extend to the field of employment, in which the possibility to work from home would be used by employers as a reason to refrain from adapting workplaces to be accessible for young people with disabilities and chronic illness. Furthermore, young people with disabilities have experienced challenges to their financial security, particularly during the COVID-19 pandemic, which have been exacerbated due to age-based discrimination and eligibility requirements in social protection mechanisms that often exclude youth.<sup>24</sup>

Several Equality Bodies, when their mandate allows, made campaigns on the rights of children and young persons with disabilities in Europe.<sup>25</sup> For example, the Irish Human Rights and Equality Commission prepared and presented observations on the Education (Admissions to School) Bill 2015 at draft stage. Issues identified included the need to ensure that the regulatory framework guiding school admissions criteria and policies take account of difficulties experienced by particular groups of people in accessing education including traveller children and children with disabilities or special educational needs.<sup>26</sup> In Lithuania,

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<sup>21</sup> FRA, [Violence against children with disabilities: legislation, policies and programmes in the EU](#) (2015).

<sup>22</sup> European Youth Forum, [Multiple discrimination and young people in Europe](#) (2015)

<sup>23</sup> Ibid.

<sup>24</sup> European Youth Forum, [Beyond Lockdown: The pandemic scar on young people](#) (2021). The adoption of a legally binding International Convention on the Rights of Young People with an accompanying monitoring mechanism would set a standard for youth to be active rights-holders and prevent such forms of age-based discrimination.

<sup>25</sup> For instance, in 2019 the Commission for the Rights of Persons with Disability (CRPD) in Malta created a video clip for secondary schools to challenge perceptions and stereotypes of disability. The clip was scripted and acted by persons with a disability, giving a direct voice to their thoughts and feelings. It is used regularly in disability equality training provided to young people. The training is provided to many organisations and entities, including schools, educational institutions, and youth organisations, to create more awareness on disability. See: Equinet, [Stepping Up our Engagement with Youth: Handbook for Equality Bodies](#) (2021), page 60.

<sup>26</sup> Equinet, [Equality Bodies contributing to the protection, respect and fulfilment of Economic and Social Rights](#) (2015), page 24, para 3

the Office of the Equal Opportunities Ombudsperson's (both an Equality body and CRPD article 33.2 independent mechanism) interventions led to the adoption of a policy for children to get higher quality hearing aid.<sup>27</sup>

The issue of insurance provisions for children with disabilities has also been a point of attention for Equality Bodies. While non-discrimination law generally prohibits unequal treatment of individuals based on statistical findings with respect to their group belonging, insurance companies operate precisely on group-based statistical assessments.<sup>28</sup> Young persons with disabilities also faced issues travelling or moving to other EU Member States when insurances do not cover them because of their disability.

Another topic that has devoted attention from Equality bodies as regards to young people with disabilities, has been the lack of reasonable accommodation in schools. Access to education and quality of educational outcomes were given significant mention by the equality bodies as an issue for young people. The Office of the Ombudswoman in Croatia, for example, noted inequalities in access to education where access for young people depends on their parents' property status. The Latvian Ombudsman identified the specific issues of inclusive education for children with disabilities and retaining Muslim children in school.<sup>29</sup>

A [EU Youth Strategy for 2019-2027](#) with 11 European Youth Goals was adopted in 2018. It completely failed to include young persons with disabilities

Newly adopted policies on children are more inclusive of children with disabilities. In 2021, the EU adopted its new [Strategy on the Rights of the Child](#) that acknowledges the rights of children with disabilities.<sup>30</sup> It is explicitly mentioned that the Strategy is anchored to the CRPD. However, the [Child Guarantee for Vulnerable Children \(or Child Guarantee\)](#)<sup>31</sup> lacks a strong commitment to end the institutionalisation of children across the EU. Worryingly, the

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<sup>27</sup> Equinet, [Equality, diversity, and non-discrimination in healthcare: Learning from the work of equality bodies \(2021\)](#) page 16, para 1.

<sup>28</sup> In Sweden, insurance providers considered that correct decisions based on a statistical risk assessment, allowed under the Swedish Insurance Act, could not be challenged as discriminatory. A major insurance company thus had a rule that, without first having performed an individual risk assessment, children with serious illnesses and disabilities were automatically excluded from receiving coverage. The Swedish Equality Ombudsman brought a claim for a child with a hearing impairment who had been denied coverage with reference to this rule. The Ombudsman lost the case in the first instance, but the Court of Appeal later found that the insurance company had directly discriminated the child by denying her the right to the individual risk assessment afforded to children without disabilities. The ruling established that business-motivated risk assessments in insurance provisions were not exempt from non-discrimination law. This was later confirmed by a governmental inquiry citing the case as an authority. See: Equinet, [Strategic Litigation Handbook \(2017\)](#) page 13, para 1.

<sup>29</sup> Equinet, [Equality bodies combating discrimination against young people \(2021\)](#) page 15 para 2

<sup>30</sup> The 2011-2014 EU Agenda for the Rights of the Child failed to acknowledge the rights of children with disabilities. Except for a reference acknowledging that they are more exposed to violence and more at risk of seeing their rights violated, no actions directly concerning them were included.

<sup>31</sup> The [Renewed Child Guarantee for Vulnerable Children \(or Child Guarantee\)](#) aims to prevent and combat social exclusion by guaranteeing the access of children in need to a set of key services including early childhood education and care, education (including school-based activities), healthcare, nutrition and housing.

[Council Recommendation on the European Child Guarantee](#) includes the option to place children in institutions, despite the fact that this is never in a child's best interests. It is a missed opportunity and a particularly pressing issue for children with disabilities who are more likely to be institutionalised, and to remain in institutions on a long-term or permanent basis.

## Girls and women with disabilities

There are over 60 million women and girls with disabilities living in the EU (60% of the population of persons with disabilities).

Women and girls with disabilities face multiple and intersectional discrimination in all areas of life, including, socio-economic disadvantages, social isolation, violence against women, forced sterilisation and abortion, lack of access to community services, low-quality housing, institutionalisation, inadequate healthcare, and denial of the opportunity to contribute and engage actively in society.

Women with disabilities are 2 to 5 times more likely to face violence. The status of women and girls with disabilities is not only worse than that of women without disabilities but also worse than that of their male peers. This is especially so in rural areas with fewer services and opportunities for this group than in urban environments.

Available data illustrate the discrimination faced by women with disabilities in the EU:<sup>32</sup>

- **22% of women with disabilities are at risk of poverty**, comparing to 20.8% of men with disabilities and 15.9% of women without disabilities
- **6% of women with disabilities are in full-time employment**, comparing to 28.5% of men with disabilities and 48.5% of women without disabilities
- **2% of women with disabilities graduate tertiary education**, comparing to 17.5% of men with disabilities and 29.6% of women without disabilities
- **6,7% of women with disabilities have unmet needs for medical examination**, comparing to 5.9% men with disabilities and 2.3% women without disabilities

This is also reflected in data available at national level. For example, the Commission for the Rights of Persons with disability (CRPD) in Malta, (both Equality Body and CRPD article 33.2 independent mechanism) reports that the number of complaints coming by women and girls with disabilities in Malta are almost 10% higher than those coming from men.<sup>33</sup>

Equinet highlighted the risk of poverty and the impact of intersectional discrimination in the [Report on Women in Poverty: Breaking the Cycle](#). For example, it explains that women with disabilities face more difficulties in accessing the labour market than men with disabilities,

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<sup>32</sup> See Gender Equality Index 2020.

<sup>33</sup> Complaints which CRPD investigates 269 (44.67%) were sent by men, 330 (55%) were sent by women while 2 were sent by X gender (0.33%).

and when women with disabilities work, they often experience unequal hiring and promotion standards, unequal access to training and retraining, to credit and other productive resources, unequal pay for equal work and occupational segregation, harassment, and sexual harassment, and they hardly participate in economic decision-making.<sup>34</sup>

The report notes that challenges posed by poverty increase for women from extra disadvantaged groups, such as women with disabilities, older women, migrant women, Roma women, asylum seekers, homeless women, etc. Women with disabilities for example, can face elevated health care costs. They can also experience additional barriers when physically accessing adapted health care services. In many countries, there is a lack of affordable specialised care services that can meet their needs,<sup>35</sup> and their right to sexual and reproductive health is often not ensured.

The gender digital divide is also undermining women's possibilities to meet digital literacy requirements, including new forms of work. The gender digital gap is a major issue for women in rural areas, women with disabilities, older women, migrant women, or women with a minority ethnic background.<sup>36</sup> Women and girls with disabilities are even more excluded when digital tools are not available and/or accessible to them.

## Lesbian, Gay, Bisexual, Trans, Intersex and Queer persons with disabilities

Many lesbians, gays, bisexual, trans intersex and queer (LGBTIQ+) people with disabilities are at risk of multiple and intersectional forms of discrimination in all areas of life in the EU. This is particularly true in the areas of education, employment, and healthcare.<sup>37</sup> This is even more the case as EU law does not prohibit discrimination based on sexual orientation or gender identity,<sup>38</sup> nor discrimination based on disability outside the field of employment and vocational training.

Data from the Fundamental Rights Agency's 2019 survey on LGBTI people show lower rates of employment and self-employment among disabled trans respondents. For example, 10% of disabled trans people reported being unemployed, while 23% reported being unable to work due to long-standing health problems.<sup>39</sup>

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<sup>34</sup> Equinet, [Women in Poverty: Breaking the Cycle](#) (2020) page 14 para 2

<sup>35</sup> Equinet, [Women in Poverty: Breaking the Cycle](#) (2020) page 19 para 5

<sup>36</sup> Equinet, [Women in Poverty: Breaking the Cycle](#) (2020) page 12 para 2

<sup>37</sup> In relation to trans persons with disabilities, see: Transgender Europe, [Oppression Squared: D/deaf and disabled trans experiences in Europe](#)

<sup>38</sup> Although trans people are referred to in the preamble of the [Gender Recast Directive](#) insofar as "discrimination arising from the gender reassignment of a person".

<sup>39</sup> TGEU, Paulie Amanita Calderon-Cifuentes (forthcoming), Trans Discrimination in Europe. A TGEU analysis of the FRA LGBTIQ Survey 2019, page 29.

The COVID-19 pandemic has exacerbated the discrimination faced by LGBTIQ+ persons with disabilities. In times of health crisis and care rationing, LGBTIQ+ people, and particularly trans people with disabilities, have been targeted by triage policies. They are being denied life-saving care and face difficulties in receiving disability support, in addition to the already major struggles trans communities face with general and trans-related healthcare access. Cuts in care provision combined with the discrimination most trans people face while trying to access healthcare is seriously impacting their health and wellbeing. For instance, trans persons with disabilities may have faced difficulties in receiving disability support and trans-related care such as gender affirming hormones and up-to-date prescriptions often due to this health care being deemed 'non-essential'.<sup>40</sup>

In addition, Lesbian, Gay, Bisexual, and Trans persons have seen an increase in domestic violence. Lockdown and the spread of COVID-19 has condemned LGBTIQ+ people to live in proximity with sometimes homophobic or transphobic relatives, including relatives who may be carer and/or legal guardian (for example youth with disabilities but also adults with high support needs). LGBTIQ+ persons with disabilities were at higher risk to face both homophobic/transphobic and disability specific violence. LGBTIQ+ people who have not told their families yet about their sexual orientation or gender identity may have been experiencing mental health difficulties during lockdown.

The [LGBTIQ Equality Strategy 2020-2025](#) of the European Commission recognises that LGBTIQ+ people “who have disabilities, are elderly, migrants, or come from ethnic or religious minority background are particularly vulnerable to discrimination” and that the pandemic increased this vulnerability. It also recognises that “research on the intersectional experiences of LGBTIQ+ people, as those who are elderly or with disabilities, is often lacking”.

## Older persons with disabilities

Europe has the oldest population of all world regions. In 2019, more than one fifth (20.3%) of the EU-27 population was aged 65 and over. Disability is correlated to age and persons with disabilities are over-represented in the population category that is 60 years old and over.

Older persons with disabilities frequently face discrimination on the grounds of age and disability, in law and in practice. The United Nations Expert Group Meeting on Supporting Autonomy and Independency of Older Persons with Disabilities noted that “older persons with disabilities face exclusion, multiple and intersectional discrimination that lead to human rights violations, such as the deprivation of legal capacity and institutionalisation”.<sup>41</sup> In many countries, age also impacts negatively on disability assessment and allocation of

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<sup>40</sup> TGEU, [COVID-19 impact assessment \(2021\)](#), pages 12 and 13.

<sup>41</sup> UN Expert Group Meeting on Supporting Autonomy and Independency of Older Persons with Disabilities (25-26 October 2017), Summary Note, page 6.

disability benefits, resulting in older people with disabilities not being offered the same level of quality or ranges of support as younger people with disabilities.<sup>42</sup>

Measures taken in response to the Covid-19 pandemic had negative impacts on older persons, including those with disabilities. EDF reported on the many cases of deaths in residential care, gaps in continuity of healthcare, medical treatment, and support services, as well as violence, neglect, abuse, and ageist speech that took place in EU countries.<sup>43</sup>

AGE Platform Europe identified several key issues faced by older persons with disabilities:

- Combined effect of ageism and ableism: older people with disabilities more likely to be seen as a burden, not supported, institutionalised, deprived of legal capacity.<sup>44</sup>
- Fragmentation of policies for persons with disabilities of working age and older persons and different administrations: at the EU level there are different Directorate-Generals dealing with age and disability. This is also reflected in EU policies. Under the European Pillar of Social Rights there are different principles focusing on long-term care vs rights of persons with disabilities, the planned EU care strategy mainly focusing on older people, and the lack of EU strategy on ageing/age equality makes it difficult to address intersectional challenges.
- Lack of consultation of older people with disabilities: older people who acquire disabilities don't necessarily self-identify as people with disabilities, nor associated with DPOs and older people with disabilities who are ageing not adequately represented in DPOs.
- Age limits in access to disability allowances and services in several EU Member States, which is not addressed by the EU.
- Predominant medical model in services for older people with disabilities and increased risk of institutionalisation
- Lack of data: age limits, lack of disaggregation and lack of info about institutionalised older people<sup>45</sup>
- Under-reporting of elder abuse - and disability as risk factor for such cases
- Issue of access to justice for 'vulnerable adults' in cross border situations and implementation of Hague convention
- Digital divide and the risk of exclusion of older persons with disabilities

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<sup>42</sup> AGE Platform Europe, [Draft Outline of General Comment on Article 5 Equality & Non-Discrimination](#) (2017)

<sup>43</sup> See EDF, [Human Rights Report on the impact of COVID-19 on persons with disabilities](#) (2021), Chapter on multiple and intersectional forms of discrimination and disadvantage

<sup>44</sup> See UN Special Rapporteur report:

<https://www.ohchr.org/EN/Issues/Disability/SRDisabilities/Pages/SupportingTheAutonomyOlderPersons.aspx>

<sup>45</sup> See Report of UN Independent Expert: Human rights of older persons: The Data Gap Conundrum:

<https://www.ohchr.org/EN/Issues/OlderPersons/IE/Pages/Reports.aspx>

- Increase risk of poverty due to inadequate old age income (pension), lack of financial support for care/support needs (due to age limits) and increase in prices (ex. medicine, privatisation of services, high insurance premiums, rents, etc.)
- Issue with housing, for older people who need to make accommodations to their housing to make it more accessible they may have trouble finding subsidies, financial means for such adaptations due to age limits

Equinet has also pointed out the need for the EU, in the future to put in place and finance targeted measures, including positive action measures, to improve the situation and experience of marginalised groups adopting an intersectional approach. In that, particular attention and resources must be allocated to the most vulnerable (for example Roma women, Muslim women, older persons with disabilities).<sup>46</sup>

The EU has failed to address the issues faced by older persons, including older persons with disabilities from a human rights-based approach. In January 2021, the European Commission launched a [Green Paper on Ageing](#) which focuses on demographic transformation in Europe. The Green Paper does not address age (and disability) discrimination, nor does it foresee the adoption of sufficient policies paving the way for participation and well-being of all generations. AGE Platform called for the adoption of an EU Age Equality Strategy.<sup>47</sup> Such strategy could also have a positive impact on persons with disabilities of all ages, including older people.

## Racialised persons with disabilities

While there is a general lack of data on intersectional discrimination cases, Equality Bodies report that the most observed forms of intersectional discrimination take place at the intersections of race/ethnicity and gender, as well as race/ethnicity and socio-economic status, disability, or age.<sup>48</sup>

Black people with disabilities and people from ethnic minorities with disabilities are often victims of multiple and intersectional discrimination in all areas of life. A report published by the charity BRAP,<sup>49</sup> formerly known as ‘Birmingham Race Action Partnership’, highlights that detention rates in the United Kingdom under the Mental Health Act 1983 are 6% lower than average for white British mental health patients, while they are 32% higher than average for black Caribbean patients and 24% higher for multiple heritage white and black Caribbean patients.<sup>50</sup> Black and minority ethnic women are three to six times more likely to be admitted to mental health units than average and more likely to be forcibly admitted. On

<sup>46</sup> Equinet, [11 Recommendations for a fair and equal Europe: Rebuilding our Societies after Covid-19](#) (2020) page 3 para 3

<sup>47</sup> AGE Platform, [Green Paper on Ageing: There is no solidarity without equality!](#) (2021)

<sup>48</sup> Equinet, [Fighting Discrimination on the Ground of Race and Ethnic Origin](#) (2016), page 6, para 6

<sup>49</sup> Find more information about their work at: <https://www.brap.org.uk/>.

<sup>50</sup> BRAP, [Improving mental health for BME communities: an event report](#), page 3.

the other hand, they are less likely to be admitted to women's crisis houses and less likely to be referred to talking therapies.<sup>51</sup>

In addition, many cases of hate speech and hate crimes [collected by the Organisation for Security and Co-operation in Europe \(OSCE\)](#) show an intersection between ethnic origin, religion, and disability. For example:<sup>52</sup>

- In Austria, an Afghan man with disabilities was subjected to racist insults and physically assaulted by police at a police station in 2018.
- In Germany, in 2019, a male Libyan asylum seeker who uses a wheelchair was subjected to anti-Arab insults, repeatedly punched in the face and, after falling out of his wheelchair, was repeatedly kicked while lying on the ground by a group. The victim sustained injuries. The main perpetrator, who has a far-right background and had been implicated in previous racist attacks, was prosecuted for a racist and ableist hate crime.
- In Italy, a family of foreign nationals was subjected to racist and ableist insults, threatened and harassed by their neighbours, who tried to make them move home. Police opened an investigation into a potential hate crime in 2019.
- In Italy, a man of Moroccan descent who uses a wheelchair was subjected to racist, xenophobic and ableist insults and spit at by other passengers on a tram in 2019. The perpetrators accused the victim of delaying the tram's departure while he fixed his wheelchair in place, as required by law.
- In Ireland, a man of Chinese descent, who had a disability, was subjected to racist insults, and had his medication stolen by colleagues at work in 2019.

Although access to justice is difficult given the lack of an EU mandate for Member States to designate an Equality Body to work on the ground of disability across Europe, there have been notably reported cases of strategic litigation as regards to the combination of the grounds of race and disability before national courts (even if not intersectional, of multiple discrimination). For instance, in the case of *Al Jumard v Clywd Leisure*<sup>53</sup> which concerned Mr Al Jumard, a duty manager at a leisure centre. He was a British national who was Iraqi by birth and disabled as a result of a hip operation. The tribunal found that he had been discriminated against based on his ethnic origin, and in relation to separate incidents, discriminated against based on his disability. In that case, the Tribunal said that losses flowing from the two forms of discrimination, where they did not arise out of the same

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<sup>51</sup> Mental Health Foundation, [Recovery and resilience: African, African-Caribbean and South Asian women's narratives of recovering from mental distress](#)

<sup>52</sup> See [EDF position paper on hate speech and hate crime](#) (2021).

<sup>53</sup> *Al Jumard v Clywd Leisure Ltd* 2008 IRLR 345

facts, should have been separately considered, and “injury to feelings” awarded for the separate claim.<sup>54</sup>

A project that took place in Ireland involving several stakeholders<sup>55</sup> aimed at improving the work on intersectionality and looking at the particular situation, experience, and identity of five multiple identity groups<sup>56</sup> including racialised persons with disabilities found that:

- Strategies to accommodate diversity need to look beyond homogenous groups and acknowledge diversity within these groups
- Policy needs to acknowledge how the complexity of people’s identities have shaped how they experience discrimination and inequality, and that the combination of oppressions experienced by multiple identity groups “produced something quite unique”<sup>57</sup>

The European Commission is yet to establish legislative protection to protect the intersection of persons with disabilities and racialised people.

#### Roma with disabilities

Among racialised people, Roma with disabilities are particularly at risk of intersectional and multiple discrimination.

While there is no accurate data on the number of Roma with disabilities in Europe, a 2016 study estimates that **15% of the Roma population are persons with disabilities**, meaning that there would be more than 1.6 million Roma with disabilities in the EU and EU enlargement countries (Albania, Montenegro, North Macedonia, Serbia, and Turkey). Roma with disabilities experience even greater isolation, less access to inclusive education and more severe poverty. During COVID-19, their situation has been even more critical.

Intersectionality and multiple discrimination are a feature in the work of Equality Bodies on Roma and Traveller issues. The two most significant intersections reported relate to gender and socio-economic status. There is some focus on Roma and Traveller older people and children, intersection with the age grounds, and on Roma and Traveller people with disabilities, intersection with the disability grounds, but these intersections might merit further attention along with the intersection with the sexual orientation ground.<sup>58</sup> In

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<sup>54</sup> Equinet, [Fighting Discrimination on the Ground of Race and Ethnic Origin](#) (2016), page 25, para 1

<sup>55</sup> The Equality Authority and the Irish Human Rights Commission (now merged as the Irish Human Rights and Equality Commission and CRPD article 33.2 monitoring mechanism), the Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission, the Disability Rights Commission, Commission for Racial Equality and Equal Opportunities Commission in Britain (now merged as the Equality and Human Rights Commission).

<sup>56</sup> Black and minority ethnic women, Black and minority ethnic people with disabilities, disabled women, young gay, lesbian and bisexual people, young minority ethnic men, and lesbian, gay and bisexual disabled people

<sup>57</sup> Equinet, [Innovating at the Intersections. Equality Bodies tackling Intersectional Discrimination](#) (2016), page 23 para 1

<sup>58</sup> Equinet, [Roma and Traveller Inclusion: Towards a new EU Framework learning from the work of Equality Bodies](#) (2020), page 20 para 7

addition, both women with disabilities and Roma women are at risk of forced sterilisation in the EU.

The European Commission adopted a [2020-2030 EU Roma Strategic Framework](#). It recommends that national strategic framework set out “targets and measures for specific groups (Roma children, women, young people, older Roma or those with disabilities, EU mobile citizens, non-EU nationals, stateless Roma) to reflect diversity among Roma, including gender-responsive and child/age-sensitive measures”. However, there are no specific measures that efficiently look at specific issues faced by Roma with disabilities, and issues faced by both the Roma and the disability community (e.g., segregated education, forced sterilisation, etc.). The Strategy on the rights of persons with disabilities also fails to address the issues of Roma with disabilities.

## Resources

- EDF, [Human Rights Report on Equality and Non-Discrimination](#) (2019)
- EDF, [Human Rights Report on Poverty and Social Exclusion](#) (2020)
- EDF, [Human Rights Report on the impact of COVID-19 on persons with disabilities](#) (2021), Chapter on multiple and intersectional forms of discrimination and disadvantage
- Equinet, [11 Recommendations for a fair and equal Europe: Rebuilding our Societies after Covid-19](#) (2020)
- Equinet, [Equality Bodies contributing to the protection, respect and fulfilment of Economic and Social Rights](#) (2015)
- Equinet, [Equality in the Time of Covid-19: Learning from Equality Body Initiatives](#), (2021)
- Equinet, [Equality, diversity and non-discrimination in healthcare: Learning from the work of equality bodies](#) (2021)
- Equinet, [Fighting Discrimination on the Ground of Race and Ethnic Origin](#) (2016)
- Equinet, [Policy Brief: Future Gender Equality Strategy](#) (2019)
- Equinet, [Roma and Traveller Inclusion: Towards a new EU Framework learning from the work of Equality Bodies](#) (2020)
- Equinet, [Stepping Up our Engagement with Youth: Handbook for Equality Bodies](#) (2021)
- Equinet, [Strategic Litigation Handbook](#) (2017)
- Equinet, [Tackling Violence against Women and Gender-Based Violence: Equality Bodies' Contribution](#) (2019)
- Equinet, [Women in Poverty: Breaking the Cycle](#) (2020)
- European network of legal experts in gender equality and non-discrimination, [A comparative analysis of gender equality law in Europe](#) (2020)
- European Union Agency for Fundamental Rights, [Equality in the EU 20 Years on from the Initial Implementation of the Equality Directives](#) (2021)
- European Youth Forum, [Beyond Lockdown: The pandemic scar on young people](#), (2021)
- Fredman, S., [Intersectional discrimination in EU gender equality and non-discrimination law](#) (2016)
- N. Crowley, [Equality bodies making a difference](#), European network of legal experts in gender equality and non-discrimination (2018)
- Opening Doors for Europe's Children, [Lessons learned and recommendations to strengthen families and end institutionalisation for children in Europe](#) (2020)
- TGEU, [Impact Assessment: COVID-19 and trans people in Europe and Central Asia](#), (2021)

- UNICEF, [Better data for better child protection systems in Europe: Mapping how data on children in alternative care are collected, analysed and published across 28 European countries](#) (2021)