

A new era in human rights protection in the European community

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L. Waddington

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A New Era in Human Rights Protection in the European Community: The Implications the United Nations' Convention on the Rights of Persons with Disabilities for the European Community

Lisa Waddington¹

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) is ground breaking in many respects: it is the first human rights Convention of the new century; it is not merely a non-discrimination convention, but also provides for a wide range of classical and substantive rights;² and, from a European perspective, it is the first human rights convention which the European Community (EC) negotiated and signed, and it will be the first such convention which the Community is expected to ratify. In the past only the Member States have been party to human rights conventions.³

Consequently, the CRPD will take on a completely new legal status within EC law, and will have to be respected in its totality, and not as a mere add on to be referred to in passing in Community instruments. The Community competence to negotiate, sign and ultimately ratify the Convention, alongside the Member States, resulted primarily from changes introduced by the Amsterdam Treaty. Under Article 13 EC the Community acquired powers to take action to combat disability discrimination. In addition EC

¹ European Disability Forum Chair in European Disability Law, Maastricht University (NLs). A first version of this paper was presented at the conference The Human Rights of Persons with Disabilities – from Social Policy to Equal Rights, held in Reykjavik on 27-28 September 2007, and organized by Reykjavik University and the Icelandic Human Rights Centre. I am grateful to the organisers of the conference, and particularly Prof. Oddný Mjöll Arnardóttir, my fellow speakers and the participants. A collection of the papers presented at the conference, edited by Oddný Mjöll Arnardóttir and Gerard Quinn, will also be published.

² Gerard Quinn, The UN Convention on the Human Rights of Persons with Disabilities, at 9, (available at: <http://www.nhri.net/2007/Berlin-Quinn2.pdf>) and Tara J. Melish, Perspectives on the UN Convention on the Rights of Persons with Disabilities: The UN Disability Convention: Historic Process, Strong Prospects, and Why the U.S. Should Ratify, 14 *Human Rights Brief* 37, March 2007, at footnote 11, who describes the Convention as adopting a “hybrid approach”.

³ However, this is not to say that human rights Conventions have been completely ignored by the Community institutions, and references to such Conventions can be found, for example, in preambles to the equality directives. The Employment Equality Directive (Directive 2000/78) refers to the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Covenant on Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights, and ILO Convention 111 in recital 4 of its preamble. Infrequent references can also be found in European Court of Justice case law. In this context Rikki Holtmaat and Christa Tobler refer to Case 158/91 *Levy* [1993] ECR I-3287 as being the only case in which the ECJ has referred to the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), CEDAW and the European Union's Policy in the Field of Combating Gender Discrimination, 12 *Maastricht Journal of European and Comparative Law* 4, 2005, 399. The authors also discuss the limited impact which CEDAW has had on EC gender equality law at 418-421. The Court has also occasionally made reference to other human rights instruments. In Case C-249/96 *Grant v. South West Trains Ltd.* [1998] ECR I-621 the Court referred to the International Covenant on Civil and Political Rights. However, the Covenant did not impact on its decision as the Court declined to follow the opinion of the Human Rights Committee established under the Covenant. One can conclude that the impact of such international conventions has certainly been very restricted thusfar.

competences exist in a number of other areas where a disability dimension exists, although no other specific mention of disability can be found in the main body of the EU or EC Treaties.

As a consequence of this direct involvement with the Convention, the EC will, like other State Parties, be bound by its obligations. The goal of this paper is to give some first impressions as to what this implies for the EC and, specifically, what legal obligations ratification of the Convention will impose on the Community.

In essence, this analysis involves asking, and answering, three sets of questions:

1. What fields does the Convention cover and what kinds of obligations does it impose on State Parties in those fields?
2. In which of those fields does the EC have competence?
3. In those fields in which there is an overlap between the Convention and EC competence,
 - in how far do existing EC instruments meet the required standard?
 - what further initiatives is the EC required to take?

This paper is structured accordingly. However, given the brevity of this paper, these three topics can only be touched upon. Further research will be needed to fully explore the implications of the Convention for EC law.

The UN Convention and the Obligations it Imposes⁴

The Convention, as is appropriate for a human rights instrument, strongly reflects the social model of disability. Explicit recognition is made of the fact 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.”⁵ The Convention therefore reflects the reality that disability stems primarily from the failure of the social environment to meet the needs and aspirations of people with impairments, and is the highest legal manifestation and confirmation of the social model of disability on the international stage.

Moreover, the scope of the Convention is extremely broad. The Convention does not simply prohibit disability discrimination, nor does it only cover civil or political rights or economic, cultural or social rights. Instead the Convention is underpinned by the principles of non-discrimination and equality, which embrace the right to a reasonable

⁴ For a more detailed discussion of the content of the Convention, including the provisions relating to equality and non-discrimination, see Anna Lawson, *The United Nations Convention on the Rights of Persons with Disabilities: New Era or False Dawn?*, 34 *Syracuse Journal of International Law and Commerce* 2007, 563, at section IV (590-616).

⁵ Preamble, recital (e) and Article 1.

accommodation, and these are linked to a broad group of rights. These rights are both civil and political, such as the right to liberty,⁶ as well as more substantive, such as the right to education.⁷ It is, in fact, truly a human rights convention for the 21st century.

The principles of equality and non-discrimination run through the Convention like a red thread. They find their anchor in Article 3, which Gerard Quinn has described as providing the “moral compass for change”⁸ which the Convention embraces. This Article refers not only to non-discrimination and equality of opportunity, but a series of other principles which “animate” the Convention, including dignity; individual autonomy; full and active participation and inclusion; respect for difference; and accessibility. The principles of non-discrimination and equality find repeated reference elsewhere in the Convention. In light of this, Article 2, which elaborates on key terms used in the Convention contains a broad definition of “discrimination on the basis of disability”, and specifies that such discrimination includes the denial of a reasonable accommodation.

The principles of equality and non-discrimination also receive specific attention in Article 5. This Article embraces both a formal approach to equality (“equal before and under the law”)⁹; and a more substantive approach (“prohibit discrimination on the basis of disability”;¹⁰ provision of “reasonable accommodation”;¹¹ and positive action measures¹² “shall not be considered discrimination”). State Parties are under an obligation to recognise and ensure protection of these rights. Elsewhere the Convention is “sprinkled” liberally with references to non-discrimination, equality and reasonable accommodation. Article 6, another transversal article addressing the particular needs of women with disabilities, specifies that State Parties recognise that women and girls with disabilities are subject to multiple discrimination. Eliminating discrimination, in the sense of removing obstacles and barriers to accessibility, lies at the heart of Article 9. Article 12, on equal recognition before the law, and Article 13, on access to justice, refer to the need to recognise that people with disabilities “enjoy legal capacity on an equal basis with others in all aspects of life”, and that they have “effective access to justice ... on an equal basis with others” respectively. Explicit or implied references to reasonable accommodation can be found, amongst others, in Articles 20, on personal mobility and 21 on freedom of expression and opinion and access to information (both implicit references); and Articles 24 on education and 27 on employment (both explicit references).

Turning to the specific fields covered by the Convention, one finds a broad range of rights protected. The Convention covers classical rights, which include, in addition to those already mentioned, the right to life (Article 10); freedom from torture or cruel, inhuman or degrading treatment or punishment (Article 15); freedom from exploitation,

⁶ Article 14, which covers liberty and security of the person.

⁷ Article 24.

⁸ Quinn, *op.cit.*, p.3.

⁹ Article 5(1).

¹⁰ Article 5(2).

¹¹ Article 5(3).

¹² The Convention does not refer to positive action, but instead speaks of “Specific measures which are necessary to accelerate or achieve de facto equality”, Article 5(4).

violence and abuse (Article 16); protecting the integrity of the person (Article 17); and respect for privacy (Article 22). The Convention recognises that, in order to protect and respect some “classical” rights, quite substantial action by State Parties is required. Whilst these “classical” rights are certainly not irrelevant from the perspective of the European Community, they have traditionally fallen more within the scope of the Council of Europe, and under the European Convention of Human Rights, than been matters for regulation by EC law. For this reason, it is likely that the more substantive rights found in the text will be of particular importance for determining the implications of the Convention for the EC.

Amongst the Articles addressing substantive rights which are likely to engage Community responsibility are Article 9 on accessibility and Article 27 on employment. These are both underpinned by the principles of non-discrimination and equality, and are discussed in more detail below.

Other articles address living independently and being included in the community (Article 19); personal mobility (Article 20); education (Article 24); health (Article 25); adequate standard of living and social protection (Article 28); and participation in cultural life, recreation, leisure and sport (Article 30).

Article 32 covers international cooperation, and recognizes that such cooperation can be used to support national efforts to realize the purpose and objectives of the Convention. This includes ensuring that international development programmes are inclusive of and accessible to persons with disabilities.

Finally,¹³ Article 4 of the Convention sets out the general obligations of the States Parties, which include the requirement “to adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention”. Gerard Quinn has concisely stated that this article “converts the convention into a trigger for worldwide disability law reform”.¹⁴

The Competences of the EC – Overlaps with the Convention

Having provided a brief outline of the fields covered by the Convention, attention will now be turned to the question of which of those fields fall within the scope of EC law. It is appropriate to approach this analysis of the overlap of the EC competencies with the obligations contained in the Convention from three directions.

Firstly, a review of the “opinion” of the Community institutions on this matter is helpful. As stated previously, the CRPD was the first human rights treaty to which the Community was party to negotiations and which it is expected to ratify. This results from

¹³ Given that the purpose of this paper is to not to explore the implications of the Convention in full, the description of its contents has necessarily been brief and selective. Many important provisions, including those relating to the Committee on the Rights of Persons with Disabilities (Article 34) have not been touched on in this overview.

¹⁴ Quinn, op.cit., at 5.

the fact that the EC Treaty transfers competences to the Community which fall within the scope of the new Convention. Both the Commission and, more authoritatively, the Council, have adopted (legally binding) instruments in which (some of) the relevant Community competences are referred to and discussed, and where power is explicitly conferred on the Commission to negotiate and sign the Convention on the basis of specific EC Treaty Articles. As a consequence, insight into the “Community” perspective can be gained through an examination of a variety of documents, ranging from the original communication of the Commission of 2003¹⁵ which sets out why “an active participation of the European Community in the development” of the Convention was “indispensable”¹⁶ to the Council Decision of 2007 on the signing, on behalf of the EC, of the Convention.

Secondly, in the past decade, the Community has adopted a number of legislative acts which specifically address the situation of disabled people. The most well known of these instruments is the Employment Equality Directive of 2000¹⁷ which prohibits disability discrimination in the area of employment. However, a number of, primarily mainstream,¹⁸ instruments, also contain specific requirements with regard to people with disabilities. An examination of these instruments, and specifically a consideration of the fields they cover and the legal bases utilized, can also help to reveal where the Community has competence to act with regard to disability.

Lastly, it is appropriate to return to the Convention to establish whether any areas not already revealed as falling within the scope of Community law through the preceding two analyses, present themselves. This may be because the Community has some competence in a specific area covered by the Convention, but has not yet exercised that competence in the context of disability.

A. The EC Competence to Negotiate and Sign the Convention

It is clear from the 2003 Commission Communication “Towards a United Nations legally binding instrument to promote and protect the rights and dignity of persons with disabilities” that the Commission saw non-discrimination and equality as being the core principles to be embraced by any new Convention. The Communication recognised that, in principle, the then existing human rights treaties protected people with disabilities, but that, in practice, their rights were, far too often overlooked and ignored. The Commission, in common with the international community, saw a specific disability convention as being necessary to “tailor the existing human rights implementation standards to the specific circumstances of people with disabilities, thereby improving

¹⁵ Communication from the Commission Towards a United Nations legally binding instrument to promote and protect the rights and dignity of persons with disabilities of 24 January 2003, COM (2003) 16 final.

¹⁶ *Ibid.*, p.2.

¹⁷ Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation. [2000] O.J. L. 303/16. This directive is examined in more detail below.

¹⁸ The documents are mainstream in that they do not address exclusively the situation of persons with disabilities, but do include one or more provisions paying specific attention to the needs of this group.

access for people with disabilities to their rights.”¹⁹ This was to be achieved through the non-discrimination and equality principles:

“A key tool in achieving equality is the **non-discrimination principle**. Equal access to the human rights can be guaranteed by ensuring that people with disabilities are not discriminated against on the grounds of their disability.”²⁰ [emphasis in original]

Turning to the question of Community competences to negotiate and, ultimately sign and ratify any disability convention, the only specific Treaty article referred to in the 2003 Communication is Article 13 EC, which addresses combating discrimination on a number of grounds, including disability. This may well explain the strong emphasis on non-discrimination and equality in the Communication. The Commission clearly saw Article 13 EC as giving it “access” to the negotiating table, and that its primary area of concern should be to ensure appropriate references to non-discrimination and equality in the Convention. Moreover, its goal was to “seek to ensure consistency between European internal and international action regarding disabled people”.²¹ However, this does not mean that the Commission thought any convention should be confined to the areas of non-discrimination and equality – instead it stated that the instrument “should refer to and identify the full spread of human rights including political and civil / fundamental rights as well as economic, social and cultural rights.”²² As has been seen above, this is indeed what happened in practice.

The Economic and Social Committee, in its Opinion on the Communication,²³ took a similar stance to the Commission, although it referred, in addition to Article 13 EC, to Articles 21 and 26 of the EU Charter of Fundamental Rights,²⁴ addressing respectively non-discrimination and integration of persons with disabilities. The Committee likewise requested that the Commission ensured adequate consistency between the new Convention and these provisions.

Whilst the Commission Communication set out the background to why Community involvement in the Convention was appropriate, it did not amount to a legally binding decision conferring competence on the Commission to enter negotiations on the behalf of the Community. This was done by a Council Decision,²⁵ which was itself based on an earlier Commission recommendation.²⁶ The Commission recommendation stated that “The Community competence [to conduct negotiations on behalf of the European

¹⁹ Communication from the Commission Towards a United Nations legally binding instrument to promote and protect the rights and dignity of persons with disabilities. op.cit., p.3.

²⁰ Ibid., p.10.

²¹ Ibid., p.12

²² Ibid., p. 11.

²³ Opinion of the European Economic and Social Committee on the Communication from the Commission Towards a United Nations legally binding instrument to promote and protect the rights and dignity of persons with disabilities of 24 January 2003, COM (2003) 16 final, Brussels, 26 March 2003.

²⁴ Ibid., para. 2.14.

²⁵ Based on document 9066/1/04/ REV 1.

²⁶ Recommendation from the Commission to the Council in order to authorise the Commission to participate in the negotiations of an international legally binding instrument to promote and protect the rights and dignity of persons with disabilities, SEC (2003) 0116 final.

Community LW] is based on Article 13 of the EC Treaty ...”²⁷, however, no specific reference to any Treaty Article seems to exist in the subsequent Council Decision.²⁸

The latest set of documents in this series is the Commission proposal,²⁹ and the related Council Decision,³⁰ on the signing of the Convention by the Community. Interestingly the legal basis for this Decision is not only Article 13 EC, but also Article 95 EC which relates to the establishment and functioning of the internal market.³¹ As will be seen in the next section of this paper, this is completely appropriate given the prior use of this Article by the Community with regard to disability, not to mention the wide scope of the Convention itself. Nevertheless, this is the first explicit reference to this Article in Community documents on the Convention, and it seems that it was only recognised, at this relatively late stage, that the Convention could engage Community obligations in areas beyond non-discrimination.

This story is not yet complete. Attached to the 2007 Council Decision was a declaration that the Council would reconsider the signing of the Optional Protocol to the Convention by the Community as soon as possible.³² In addition, a further Council Decision will need to be taken in order to enable the Community to ratify the Convention.

B. EC Competences to Adopt Legislation Specifically referring to Persons with Disabilities – Existing Instruments

The key instruments and fields in which the EC has already exercised powers with regard to disability will now be briefly reviewed.

1. Discrimination

²⁷ Explanatory Memorandum.

²⁸ The relevant Council Decision is not a publicly available document. However, in response to a request to the Council from the author, the Decision was partially declassified. The whole document was not declassified on the grounds that “Disclosure of this information could weaken the future position of the European Union in the framework of similar international negotiations.” (Letter from Karel Jezek to author of 7 September 2007). The information which was made available to the author was a note from the Council Working Party on Human Rights to Coreper / the Council of Ministers containing a Draft Council Decision to authorise the Commission to open and conduct negotiations on behalf of the EC on the UN Convention (but which did not include the negotiating directives). This did not make reference to any specific EC Treaty article. A further request for information to the Council elicited the response: “The requested information [relating to references to EC Treaty articles in the Council Decision] is not mentioned in the parts of document 9066/1/04 Rev 1 to which you were not granted access.” (Email from DG F – Transparency – Information to the Public Service to author of 27 September 2007).

²⁹ Proposal for a Council Decision on the signing, on behalf of the European Community, of the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol, COM(2007) 77 final.

³⁰ Council Decision on the signing, on behalf of the European Community, of the United Nations’ Convention on the Rights of Persons with Disabilities, 20 March 2007, 7407/07.

³¹ A third legal basis was Article 300(2). This addresses the procedure to be followed when the Community makes agreements with international organisations.

³² The original Commission proposal for a Council Decision specified that the Community should sign not only the Convention, but also the Optional Protocol. However, the latter proposal was not accepted by the Council, and the ultimate Decision reflected this.

As a result of the 1997 Amsterdam Treaty, the Community acquired the power to take action to combat discrimination on a number of grounds, including disability. The new Article 13 EC³³ contained the first ever mention of disability to be found in the Treaty, and quickly revealed its potential by providing the legal basis for a 2000 directive addressing discrimination in the areas of employment and vocational training on the grounds, amongst others, of disability (henceforth Employment Equality Directive).³⁴ This Directive built on earlier Community initiatives in the area of disability which preceded the Amsterdam Treaty. In 1996 both the Commission and the Council had taken the first steps towards developing a broader disability policy and formally recognised and embraced the social model of disability. In July 1996 the Commission adopted a Communication on Equality of Opportunity for People with Disabilities, the subtitle of which was “A New European Community Disability Strategy”.³⁵ This was the first comprehensive European Community strategy produced by the Commission and was inspired by the (non-binding) United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities.³⁶ The Communication noted that the way in which society is organised serves to exclude disabled citizens,³⁷ and spoke of the evolution towards “an equal opportunities model in the field of disability policy” within the Member States of the EU.³⁸ The Communication stated:

“The core value of equality – rendered here as equal opportunities – is now seen as the central benchmark against which economic and social structures must be assessed. It forms the essence of the rights-based approach to disability. The equal opportunities ideal is of course broader than that, but nevertheless subsumes the principle of non-discrimination.”³⁹

In December of the same year, the Council also approved a Resolution on Equality of Opportunity for People with Disabilities.⁴⁰ In this document, the Council too reaffirmed its commitment to the principles and values of the United Nations Standard Rules and the principles of equality of opportunity and eliminating negative discrimination on the sole grounds of disability.

³³ The amendments brought about by the “Amsterdam” Treaty came into force in 1999, following ratification by all Member States.

³⁴ Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, op.cit.

³⁵ Communication of the Commission on Equality of Opportunity for People with Disabilities of 30 July 1996, COM (96) 406 final.

³⁶ United Nations General Assembly Resolution 48/46 of 20 December 1993.

³⁷ Communication of the Commission on Equality of Opportunity for People with Disabilities of 30 July 1996, op.cit., par.2.

³⁸ Communication of the Commission on Equality of Opportunity for People with Disabilities of 30 July 1996, op.cit., par.20.

³⁹ Communication of the Commission on Equality of Opportunity for People with Disabilities of 30 July 1996, op.cit., par.18.

⁴⁰ Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council of 20 December 1996 on equality of opportunity for people with disabilities, [1997] O.J. C.12/1.

The Community institutions have continued to regularly refer to the philosophical underpinning of disability policy and stress the commitment to the social model of disability. In 2003, for example, the European Commission reiterated its commitment to the model by stating:

“The EU’s long-standing commitment towards its disabled citizens goes hand in hand with a new approach to disability: from seeing people with disabilities as the passive recipients of compensation, society has come to recognise their legitimate demands for equal rights and to realise that participation relates directly to insertion.”⁴¹

This philosophy is reflected in the 2003 Communication on the UN Convention that stressed that the development of such a Convention was fully in line with EC disability policy.

2. The Internal Market

Article 95 provides the Community with the competence to adopt harmonizing measures which have as their object the establishment and functioning of the internal market. Given that the internal market is an extremely broad notion which encompasses the removal of all kinds of barriers to trade, it is not surprising to find that Article 95 has provided the legal basis for instruments addressing many different areas. In some cases these instruments have recognised a specific disability dimension. For example, Directive 2001/85⁴² on vehicles carrying more than eight passengers requires the mandatory fitting of certain accessibility features for persons with reduced mobility and visually impaired persons; Directive 95/16/EC⁴³ on lifts refers to the need to ensure accessibility for disabled persons; Directives 2004/17⁴⁴ and 2004/18⁴⁵ on public procurement allow accessibility for disabled people and design for all requirements to be taken into account during the different stages of public procurement; Directive 1999/5⁴⁶ on radio and telecommunication terminal equipment provides that the Commission may decide that apparatus shall support features to facilitate their use by disabled persons; Directive 2002/21⁴⁷ on electronic communications networks and services requires national regulatory authorities to address the needs of disabled users in a variety of ways; and

⁴¹EU Disability Action Plan (Equal opportunities for people with disabilities: a European Action Plan, COM (2003) 650 final), 4.

⁴² Directive 2001/85/EC relating to special provisions for vehicles used for the carriage of passengers comprising more than eight seats in addition to the driver’s seat, and amending Directives 70/156/EEC and 97/27/EC, [2002] O.J. L.43/1.

⁴³ Directive 95/16/EC on the approximation of the laws of the Member States relating to lifts, [1995] O.J. L.213/1 as amended.

⁴⁴ Directive 2004/17/EC coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, [2004] O.J. L.134/1.

⁴⁵ Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, [2004] O.J. L.134/114.

⁴⁶ Directive 1999/5/EC on radio and telecommunications terminal equipment and the mutual recognition of their conformity, [1999] O.J. L.91/10.

⁴⁷ Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (Framework Directive), [2002] O.J. L.108/35.

Directive 2002/22⁴⁸ on universal services and users' rights relating to electronic communication networks and services requires Member States to ensure that covered services are affordable for disabled users and that they have the same conditions of access as others. All of these instruments have, as their legal basis, Article 95,⁴⁹ and therefore recognise the disability dimension to securing the internal market. They also amount to EC legislation containing a disability dimension in the fields of transport; building infrastructure; public procurement; digital television; and telecommunications – with the exception of public procurement, all of these fields are clearly covered by the Convention.

In order to understand how such references to disability can be included within legal instruments based on Article 95, it is worth studying the (non-binding) preambles to some of the measures. For example, the preamble to Directive 2001/85, on vehicles used for the carriage of more than eight passengers, specifies that technical requirements relating to vehicles can differ from one Member State to another, and that such differences prevent vehicles being sold in the Community market. For that reason the Directive sets out harmonized requirements to facilitate the proper functioning of the internal market. Whilst the principal aim of the Directive is to guarantee the safety of passengers, the Directive recognises that it is also necessary to provide technical prescriptions to allow accessibility for persons of reduced mobility in accordance with Community transport and social policies. The aim of this Directive was therefore to create harmonized design standards to ensure a single market for such vehicles, and, at the same time, to ensure that these standards contributed to the safe transport of passengers. With regard to the latter, the legislators recognised that certain travellers with a disability required specific safety measures, and included appropriate and additional standards within the Directive.

Similar arguments have been used, and can be used, to justify harmonization standards in other areas. These standards can specifically take account of the needs of disabled consumers when this is appropriate.

3. Transport

The Community has been relatively successful in mainstreaming disability into its general legislation in the area of transport. Reference has already been made to Directive 2001/85 concerning vehicles used for the carriage of more than eight passengers which was based on Article 95. However, Title V of the Treaty, which is devoted to Transport, is also relevant. Article 70 EC in Title V refers to a common transport policy and Article 71 confers legislative powers on the Community with the purpose of implementing Article 70. This power is broad, and as well as allowing the Community to adopt common rules applicable to international and intra-Community transport and measures to improve transport safety, includes the adoption of “other appropriate provisions”.⁵⁰

⁴⁸ Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), [2002] O.J. L. 108/51.

⁴⁹ In the case of Directive 2004/17 and 2004/18 on public procurement, Articles 47(2) and 55 are also legal bases in addition to Article 95.

⁵⁰ Article 71(1) (a),(c), and (d) respectively.

Article 80 specifies that the Title applies to rail, road and inland waterway transport,⁵¹ and allows the Council to extend the measures to sea and air transport.⁵²

A number of instruments addressing the needs of disabled travellers have found their legal basis in this Title. Significantly, Article 80(2) covering sea and air transport has been relied on, on three occasions. Undoubtedly the most important instrument in this context is Regulation 1107/2006.⁵³ This is a disability specific measure designed to protect the rights of disabled persons and persons with reduced mobility when traveling by air. The Regulation specifies that disabled individuals cannot be denied boarding, or booking; they are entitled to receive assistance at the airport and when boarding and cannot be charged an additional fee for this; and establishes standards for providing assistance.

Two other mainstream instruments based on Article 80(2) pay specific attention to the needs of disabled travelers. Regulation 261/2004⁵⁴ which establishes rights to compensation and assistance for air passengers when they are denied board, face long delays, or their flights are cancelled, requires that air carriers pay particular attention to the needs of people with reduced mobility and those people accompanying them. Carriers are to give priority to carrying such persons and must provide “care” to these passengers in the event of delay or cancellation as soon as possible. Meanwhile Directive 2003/24⁵⁵ requires Member States to take appropriate measures to enable persons with reduced mobility to have safe access to passenger ships and highspeed passenger crafts.

Finally Article 156, which relates to trans-European networks in the areas of transport, telecommunications and energy infrastructure, has provided the legal basis for two Directives on the inter-operability of rail systems and these both require that the infrastructure of covered railway stations and train carriages must be accessible for disabled passengers.⁵⁶

As a result of this combination of disability specific and mainstream instruments which recognise the specific needs of disabled consumers, there can be little doubt that the Community has the competence to address transport related matters with regard to disability. It is also interesting to note the variety of legal bases which the Community has utilized in this respect.

⁵¹ Article 80(1).

⁵² Article 80(2).

⁵³ Regulation 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, [2006] O.J. L. 204/1.

⁵⁴ Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, [2004] O.J. L.46/1.

⁵⁵ Directive 2003/24/EC amending Council Directive 98/18/EC on safety rules and standards for passenger ships, [2003] O.J. L.123/18.

⁵⁶ Directive 96/48/EC on the interoperability of the trans- European high-speed rail system, [1996] O.J. L.235/6 and Directive 2001/16/EC on the interoperability of the trans-European conventional rail system, [2001] O.J. L.110/1 as modified by Directive 2004/49/EC (Railway Specific Directive), [2004] O.J. L.164/44.

4. *Employment*

As of the Amsterdam Treaty the Community and its Member States have sought to develop a “coordinated” strategy for employment through the European Employment Strategy (EES). The Open Method of Coordination is now used in this context. This involves the adoption of employment guidelines by the Council, which then form the basis for National Reform Programmes⁵⁷ (NRPs) produced by each Member State. The NRPs set out how each Member State intends to implement the guidelines and are commented on and the subject of a joint annual report by the Council and Commission. New guidelines and NRPs are adopted each year, although, since 2005, the practice has been to only fully review the guidelines once every three years and, in the meantime, to renew the previous year’s guidelines.⁵⁸ This process now contributes to achieving the goals of the Lisbon Strategy, which in essence aims at promoting the competitiveness of the EU on the global stage, and stimulating employment, modernizing social protection and promoting social inclusion. The guidelines do make reference to the situation of disabled people. For example the 2005 Council Decision on the guidelines states: “Particular attention must also be paid to significantly reducing employment gaps for people at a disadvantage, including disabled people...”.⁵⁹ In addition, the Commission has issued a report on Disability Mainstreaming in the European Employment Strategy,⁶⁰ although this concluded that “mainstreaming is still rarely applied” by Member States.⁶¹

5. *EC Funding*

The EC provides a vast amount of funding for a variety of projects within the Member States. This ranges from funding for infrastructure projects, employment and training, and cultural activities to farming and agricultural subsidies. Much of this funding is provided through the Structural Funds, which consume 35% of the EU budget, amounting to some 43 billion euros annually. The latest Regulation⁶² on the use of the Funds⁶³ requires the Member States and Commission to take appropriate steps to prevent discrimination on the grounds of disability with regard to access to the Funds and specifies that accessibility for disabled persons shall be one of the criteria to be considered as relevant in deciding on the allocation of funds.

In addition, the EU and its Member States are the largest providers of international development aid in the world. As of the Amsterdam Treaty, a specific title is devoted to

⁵⁷ Previously known as National Action Plans.

⁵⁸ See Council Decision on guidelines for the employment policies of the Member States, SOC 239, ECOFIN 243, 10237/07, 19 June 2007, which maintained the existing guidelines.

⁵⁹ Council Decision of 12 July 2005 on Guidelines for the employment policies of the Member States, 2005/600/EC, [2005] O.J. L.205/21.

⁶⁰ Disability mainstreaming in the European Employment Strategy, Brussels, 1.7.2005, EMCO/11/290605.

⁶¹ *Ibid.*, at 15.

⁶² Regulation 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Funds and repealing Regulation (EC) No. 1260/1999, [2006] O.J. L.210/25 as amended.

⁶³ Based on Article 161 EC.

development cooperation in the EC Treaty.⁶⁴ A variety of legal instruments provide the basis for development aid programmes, including multilateral or bilateral international agreements or conventions and unilateral arrangements based on specific Treaty articles.⁶⁵ With regard to disability, the Commission has issued a Guidance Note on Disability and Development which provides advice to EU delegations and services on how to address disability issues effectively within development cooperation.⁶⁶

C. Further Possible EC Competences Falling within the scope of the Convention

This analysis has already revealed that the EC has a variety of relevant competences in the disability field, going beyond combating discrimination, that might be potentially engaged as the result of the ratification of the Convention.

In addition the Community arguably has competences in a number of other areas which fall within the scope of the Convention, although it has thus far not exercised these in the field of disability. It is beyond the scope of this article to consider all the areas of potential Community competence which are also covered by the Convention, although a number of fields deserve specific mention.

The Community has not only taken legislative action to combat disability discrimination in the past, but has also addressed discrimination on the grounds of gender, and race and ethnic origin, amongst others. It is notable that the material scope of directives addressing these three forms of discrimination, is much wider than that covered by the Employment Equality Directive. Directive 2004/113⁶⁷ prohibits gender discrimination with regard to access to goods and services,⁶⁸ whilst Directive 2000/43,⁶⁹ which addresses equal treatment between persons irrespective of racial or ethnic origin, goes further and covers not only employment and access to goods and services, but also social protection, including social security and healthcare; social advantages; and education. Whilst the limits of the Community's competences in areas such as healthcare and education have certainly not been established yet, the Directive does demonstrate that some Community competences exist in these areas, and that these clearly extend to taking action to prohibiting discrimination. One can conclude that the Community competence to combat disability discrimination certainly extends beyond the limited employment related field covered by the current Employment Equality Directive, and the Community may also

⁶⁴ Title XX including Articles 170-181.

⁶⁵ Article 133 EC, which governs the common commercial policy, provides the basis for the Generalised System of Preferences which allows access to the Community market of products from developing countries, and Article 308 has been used to allow the Community to develop financial and technical aid for Asian and Latin American countries.

⁶⁶ Guidance Note on Disability and Development, European Commission, July 2004, available at: http://ec.europa.eu/development/body/publications/descript/pub7_17_en.cfm.

⁶⁷ Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services, [2004] O.J. L.373/37.

⁶⁸ Other Community Directives prohibit gender discrimination in the areas of employment and social security.

⁶⁹ Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, [2000] O.J. L.180/22.

have competencies related to access to goods and services, healthcare and education which go beyond combating discrimination.

In addition the UN Convention may well engage the responsibilities of the Community in a number of activities that it undertakes. Access to information, which falls under Article 21 of the Convention, is potentially relevant given the huge amount of documentation that is generated by the Community institutions and the already existing commitment to openness and transparency. The Community compiles statistics on a regular basis, meaning that Article 31, addressing statistics and data collection, must also be considered. The Community will also be obliged to monitor its own activities in implementing the Convention under Article 33.

Implications of the Convention for EC Law

In considering the implication of the Convention for the EC it is important to distinguish between obligations relating primarily to non-discrimination and equality, and other obligations. As has been seen, the Commission entered into and pursued negotiations at the UN on the basis of a Council Decision which found its legal basis in Article 13 EC. The assumption throughout the negotiations seems to have been that the relevant competence resulted from the Community's powers in the area of discrimination. Furthermore, combating discrimination is the only area where the Treaty confers explicit powers on the Community in the context of disability, and it is therefore in this area where it has the most solid claim to act. Nevertheless, many areas of the Convention extend beyond non-discrimination and this has, to some degree, been reflected in the dual legal basis of Articles 13 and 95 of the Council Decision on the signing of the Convention by the Community. It is therefore also important to consider what implications the CRPD has for the Community in areas extending beyond combating disability discrimination.

In addition, in non-discrimination and other fields, it is important to consider both whether existing EC instruments meet the standards set by the Convention, and whether the Convention requires the adoption of additional legal instruments.

A. Non-Discrimination and Equality

i. The Convention

It has already been noted that discrimination and equality are prominent themes in the Convention. Since this is also an area where the Community clearly has competence to act, and indeed, has already done so with regard to employment, it is worth reflecting in more detail on the obligations imposed on State Parties by the Convention in this respect.

Article 2 of the Convention, which elaborates on key terms used in the text, defines "discrimination on the basis of disability" very broadly to mean:

“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 political, economic, social, cultural, civil or any other field.”

Importantly, such discrimination includes the denial of a reasonable accommodation, which is itself defined as meaning:

“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”.

Under Article 4, which establishes general obligations, State Parties are to, inter alia, “take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise”⁷⁰ and under Article 5 they are to promote equality and eliminate discrimination and “take all appropriate steps to ensure that reasonable accommodation is provided.”⁷¹

Article 9, which addresses accessibility, does not specifically refer to discrimination, but does require State Parties “take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public” These measures include the “identification and elimination of obstacles and barriers to accessibility” in a wide range of areas, and could certainly be interpreted as requiring, inter alia, measures to combat discrimination.⁷²

Employment is addressed in Article 27 which requires State Parties meet the set obligations by “taking appropriate steps, including through legislation,” to, amongst others, prohibit disability discrimination in all employment related areas; protect the employment rights of persons with disabilities, such as the right to equal pay and protection from harassment, on an equal basis with others; ensure effective access to vocational training and related activities; and ensure reasonable accommodation is provided. State Parties are also to “safeguard and promote the realization of the right to work” and this is to occur “on an equal basis with others”.

⁷⁰ Article 4(1)(e).

⁷¹ Article 5(3).

⁷² For criticism of the Convention and, in particular Article 9 thereof, see Tracy R. Justesen and Troy R. Justesen, Perspectives on the UN Convention on the Rights of Persons with Disabilities: An Analysis of the Development and Adoption of the United Nations Convention Recognizing the Rights of Individuals with Disabilities: Why the United States Refuses to Sign this UN Convention, 14 *Human Rights Brief* 36, March 2007. Justesen and Justesen state: “. . . Article 9 suggests that member-states [sic] must independently create architectural design and construction standards for facilities to meet the accessibility requirements of the Convention. The article provides no additional support or technical assistance specifying which building elements and features must be accessible, or how and by when member-states should meet such standards. Likewise, there is no reasonable means for measuring a member-state’s progress or lack thereof in this regard.”[footnotes omitted].

Justesen and Justesen also argue that US law provides stronger protection for disabled individuals, including technical accessibility standards.

Finally, whilst the Convention does not contain a definition of disability,⁷³ it is clearly founded upon the social model of disability as already noted, and underpins this by giving an indication of group of individuals who are protected:

“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.”⁷⁴

ii. Existing Instruments

It is important to bear in mind that the Commission, in negotiating the Convention, had the specific task of ensuring that any UN text was compatible with existing EC disability law and policy. Since the Employment Equality Directive of 2000, which prohibits disability discrimination in the area of employment and vocational training, is the “flag ship” of European disability policy, it is natural that the Community’s primary concern was to ensure that the CRPD was in line with this instrument. The Directive prohibits both direct and indirect discrimination, and harassment, and requires that reasonable accommodations be made for disabled individuals. Measuring the Directive against the standards set out in Article 27 of the Convention, one can conclude that EC law certainly appears to meet the set requirements. The Directive prohibits discrimination “with regard to all matters concerning all forms of employment”, it covers areas such as vocational training, career advancement, self-employment, the public and private sectors, and it includes an obligation to make reasonable accommodations.⁷⁵

However, whilst the Directive is clearly based on the social model of disability, no definition of disability or disabled person, or even guidance on what is meant by these terms, is included within it. This has, however, been the subject of a 2006 decision of the European Court of Justice (*Chacón Navas*),⁷⁶ in which the Court was called upon to decide if an employee, who had been absent from work for some time as a result of illness, was to be regarded as a person with a disability for the purposes of the Directive. The Court responded by developing a “uniform and autonomous” approach to disability in the context of the Directive and defined disability in that light as “a limitation which results in particular from physical, mental or psychological impairments and which

⁷³ The question of whether to include a definition of disability in the Convention or not was controversial, and the penultimate (Seventh) Ad Hoc Committee meeting on the Convention was devoted almost exclusively to this issue. Ultimately it was decided not to include a definition, since any definition would necessarily exclude some people. The inclusion of a definition of disability was seen also as potentially undermining the Convention’s commitment to the social model of disability. As a compromise, however guidance was included on who was to be regarded as a person with a disability under the Convention. For further discussion and elaboration of the background to this decision see Arlene S. Kanter, *The Promise and Challenge of the United Nations Convention on the Rights of Persons with Disabilities*, 34 *Syracuse Journal of International Law and Commerce* 2007, 287 at 292 and Anna Lawson, *The United Nations Convention on the Rights of Persons with Disabilities: New Era or False Dawn?*, op.cit. at 593-595.

⁷⁴ Article 1 on Purpose.

⁷⁵ These requirements are set out in Article 27(1)(a), (d), (e), (f), (g), (h) and (i) of the Convention.

⁷⁶ Case C-13/05, *Chacón Navas v. Eures Colectividades SA*, [2006] ECR I-6467.

hinders the participation of the person concerned in professional life”.⁷⁷ According to this approach the cause of the disadvantage (or the “limitation”) is the “impairment” which an individual has, and it is the “impairment” which hinders participation in professional life. Therefore, the problem lies in the individual, and not in the reaction of society to the impairment or the organisation of society.⁷⁸

Unlike the Commission, Council and European Parliament, which have been showing increasing sensitivity to the social model of disability, the Court embraced a medical or individual model of disability⁷⁹ in its judgment by locating the cause of the “limitation” clearly within the individual and the impairment. Furthermore, it is interesting to note that this judgment seems to have affected the Commission’s negotiating stance on the Convention. Prior to the Court’s judgment, the European Commission had argued that no definition of the term disability was required within the Convention, and referred to the Employment Equality Directive, to demonstrate that a human rights based instrument could cover disability and disabled people, without including any such guidance or elaboration. However, following the *Chacón Navas* judgment, the Commission, at the last negotiating session in New York in August 2006, withdrew its opposition to the inclusion of guidance on the meaning of the concept of disability and disabled persons in the Convention.⁸⁰

Therefore, whilst the Employment Equality Directive seems to comply with the requirements of the new Convention, the “definition” of disability developed by the European Court of Justice in the context of the Directive seems out-dated and to require a revisit in light of the Convention. Further preliminary references to the Court from national courts seeking guidance on the concept of “disability” will give it this opportunity. However, the Commission seems not to does share the opinion that the Court was out of line with the Convention. In its Explanatory Memorandum accompanying its 2007 proposal for a Council Decision on the signing of the Convention, it stated:

“The Commission ensured that the provisions of the Convention are in line with relevant EU legislation and jurisprudence, for example the definitions of discrimination as well as the non discrimination in employment. ... Disability is defined against a set of criteria which both reflect the social model of disability and the recent ECJ jurisprudence on the definition of disability (case C-13/05).”

⁷⁷ Para. 43.

⁷⁸ For criticism of the *Chacón Navas* judgment, including the argument that it is not in line with the new UN Convention see, Lisa Waddington, Case C-13/05, *Chacón Navas v. Eures Colectividades SA*, judgment of the Grand Chamber of 11 July 2006, nyr, *Common Market Law Review*, 2007, Vol. 44, Issue 2, 487-499.

⁷⁹ There is a wealth of literature addressing theoretical models of disability. See, e.g. M. Oliver, *Understanding Disability: from theory to practise*, (Macmillan Press Ltd., 1996), and M. Priestley, “Constructions and creations: idealism , materialism and disability theory”, (1998) 13 *Disability and Society* 1, 75-94

⁸⁰ Information received from participants to the Ad Hoc Committee which negotiated the Convention.

Given that the *Chacón Navas* judgment seems to be incompatible with the social model of disability, it is difficult to agree with the last statement.

ii. New Instruments

Having argued that the Employment Equality Directive, with the exception of the definition of disability developed by the European Court of Justice, is in line with the Convention, it is necessary to consider whether ratification of the Convention will require the Community to take further action, in areas beyond employment, to combat disability discrimination. This paper has already revealed that the Community certainly has the competence to address discrimination in many non-employment related areas, such as access to goods and services, healthcare, education and social security.

Furthermore, it has been established that Article 9 of the Convention, requires that people with disabilities enjoy, on an equal basis with others, access to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public. Article 24, meanwhile, refers to the right, without discrimination, of persons with disabilities to education, Article 25 refers to a right to enjoy the highest standard of health without discrimination, whilst Article 28 establishes the right to enjoy social protection without discrimination.

Given the already demonstrated wide potential for the adoption of Community measures to combat discrimination provided by Article 13 EC, it seems clear that ratification of the Convention will impose an obligation on the Community to adopt broad disability non-discrimination legislation covering, at a minimum, the fields already addressed in Race and Gender legislation, including access to goods and services, social security, education and healthcare. The Commission has thus far resisted calls for the adoption of such legislation arguing time was needed for the bedding in of the complicated requirements of the Employment Equality Directive, and further research was required in order to establish whether there was a need for additional Article 13 EC instruments.⁸¹ In 2007 the Commission organised a public consultation on the future of Community non-discrimination legislation and is now reflecting on whether to propose further initiatives.⁸² It is submitted that the consequences of EC ratification of the disability Convention should also play a part in that reflection.

B. Other Fields – The Internal Market, Transport and Beyond

i. The Convention

⁸¹ That research resulted in the publication of the Mapping study on existing national legislative measures and their impact in tackling discrimination - outside the field of employment and occupation - on the grounds of sex, religion or belief, disability, age and sexual orientation available at: http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm#stud.

⁸² More information on the consultation, and the consultation document itself, is available at: <http://ec.europa.eu/yourvoice/ipm/forms/dispatch?form=Discrimination&lang=EN>.

The Convention contains a wealth of Articles reflecting substantive rights, and it is not possible to consider all of them here. However, given the established Community competences with regard to the internal market and transportation, Article 9, dealing with accessibility to the physical environment, transportation, information and communications and other facilities and services open to the public, is significant.

Article 9(1) requires State Parties to identify and eliminate obstacles and barriers to accessibility with regard to, inter alia, buildings, roads, transportation and other indoor and outdoor facilities, and information, communication and other services. Moreover, Article 9(2)(a) requires State Parties to develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public.

ii. Existing Instruments

It seems to have become established Community policy to consider the needs of disabled consumers whenever adopting legislative measures in the area of transportation. Whilst this is an extremely positive trend, it is questionable if even this will be sufficient in light of the Convention which establishes clear accessibility requirements relating to transport in Article 9. Given the Community competence to legislate on the common transport policy, which covers international and intra-Community transport, it is submitted that ratification of the Convention will require a review of the existing instruments to identify still existing barriers and obstacles to travel experienced by disabled people, and, where these exist, further (disability specific) Community instruments to address these impediments. These instruments could, in time, result in a set of EU wide accessibility standards covering all areas of transport which fall within the scope of Community law. Moreover, the potential for such standards to become a model at the global level should not be underestimated.

Secondly, whilst the Employment Equality Directive might meet the Convention's standards in terms of addressing employment discrimination, Article 27 of CERD's might also require further attention be paid the stimulating the employment and training of people with disabilities in the European employment guidelines and related NRPs. People with disabilities in Europe, as elsewhere in the world, are proportionately more likely to be unemployed than their non-disabled compatriots, and the EES creates the infrastructure and monitoring system for further attention to be paid to addressing this problem.

Thirdly, it has already been noted that the Regulations on the Structural Funds now allow some room for the consideration of measures to prevent disability discrimination and ensure disability accessibility. In light of the many kind of activities supported by European funding, and the requirements imposed on State Parties by the Convention in areas such as cultural life, recreation, leisure and sport,⁸³ as well as those already considered with regard to accessibility and employment, it seems likely that a detailed review of Community funding will be required in order to ensure that EC funding is

⁸³ Article 30.

being used to support the achievement of the standards set out in the Convention to the full within the Member States. The obligations which the Convention brings with it should prevent the huge amount of Community funding being used to create new barriers for persons with disabilities, and may also ensure that funding is used to remove existing barriers. It is likely that the Convention will imply a need for a similar reflection on, and a review of, the Community's vast development aid programme, with the possible incorporation of suitable provisions within the many international agreements and legal instruments behind unilateral initiatives in the future.

ii. New Instruments

It has already been noted that Article 95 EC empowers the Community to adopt instruments contributing to the creation of the internal market, and that a number of these instruments have made specific mention of the need to ensure access of disabled consumers. There seems a clear link, in terms of the standardization requirement, between the establishment of harmonised standards to serve the internal market, and the requirements of Article 9(2)(a) of the Convention, which relates to minimum standards to ensure accessibility of facilities and services provided to the public for persons with disabilities. It is doubtful whether Article 95, with its internal market aim, can provide the legal basis for instruments which have the sole aim of ensuring disability accessibility, and which have only a tenuous link to the internal market. However, where the requirements of the internal market necessitate the development of harmonized standards, as was the case with Directive 2001/85 on the construction of vehicles carrying more than eight passengers, it seems that the Convention will require that disability accessibility standards are incorporated within any Community rules. Therefore, whilst the Convention may not require the Community to adopt accessibility standards with regard to all aspects of the physical environment, information and communication, and access to facilities and services open to the public, it does oblige the Community to establish such accessibility standards where the demands of the internal market require that the Community intervenes in one of these areas.

Conclusion

The negotiating, signing and likely ratification of the UN Convention on the Rights of Persons with Disabilities takes the European Community into new territory. It is clear that the Convention will impose new obligations on the Community, as it will do for all State Parties, however the exact scope and limit of those new obligations is still uncertain. Most immediately, it seems that the Community will be under an obligation to significantly extend its action to combat disability discrimination, and to make much wider use of the potential offered by Article 13 EC than it has done thus far. A revision of the personal scope of the Employment Equality Directive, in terms of making explicit use of the social model of disability in defining who is entitled to claim protection from discrimination would also seem to be a priority.

One is engaging in greater speculation in discussing further consequences of the Convention for the Community. It has been argued here that the Convention, and particularly Article 9 on accessibility, will require the Community to incorporate disability accessibility standards into harmonising instruments based on Article 95. For this reason it seems that both Articles 13 and 95 EC should provide the legal basis for the Council Decision to ratify the Convention.⁸⁴

However, even if that Decision only refers to Articles 13 and 95 EC, it is likely that the Community will be obliged to act in other fields as well. Transport has been highlighted as one such area where further initiatives will probably be required, given the already demonstrated Community competences with regard to accessible and safe transport for persons with disabilities. Furthermore EC funding, with its large resources and therefore potential for change, must probably also be fine-tuned to meet the requirements of the Convention and can provide a huge catalyst for change. It is likely that further reflection will reveal that other Community competences and obligations are likely to be engaged by the Convention. We are watching a legal experiment that will hopefully lead to many positive results.

⁸⁴ However, this should certainly not exclude references to other Treaty Articles being included in the Decision.