



EU Implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD)

European Implementation Assessment

IN-DEPTH ANALYSIS

EPRS | European Parliamentary Research Service

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Ex-Post Impact Assessment Unit

PE 536.347 - February 2016

EU Implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD)

In-depth Analysis

On 29 July 2015, the Committee on Employment and Social Affairs (EMPL) requested an implementation report on the Implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD) with special regard to the Concluding Observations of the UN CRPD Committee. The ensuing resolution will, once adopted in Plenary, constitute Parliament's position on the UN Committee's recent recommendations to the EU ('Concluding Observations'), made in the wake of the review process of the Convention's implementation.

Parliamentary implementation reports are routinely accompanied by European Implementation Assessments, drawn up by the Ex-Post Impact Assessment Unit of the Directorate for Impact Assessment and European Added Value, within the European Parliament's Directorate-General for Parliamentary Research Services.

Abstract

This in-depth analysis, produced by the Ex-Post Impact Assessment Unit of the European Parliamentary Research Service (EPRS), looks into the state of play of the implementation by the European Union of the UN Convention on the Rights of Persons with Disabilities (UN CRPD), after the first round of the review process. The Convention's overarching principles entail mainstreaming of disability rights across all policies and within all institutions. This paper analyses the institutional arrangements required to monitor the implementation process, and subsequently puts the recommendations of the CRPD Committee ('Concluding Observations') into a broader context, outlining the progress made so far and the challenges ahead.

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LANGUAGE VERSIONS

Original: EN

This document is available on the internet at: <http://www.europarl.europa.eu/thinktank>

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Manuscript completed in February 2016. Brussels © European Union, 2016.

PE 536.347

ISBN 978-92-823-8686-6

doi:10.2861/831248

QA-04-16-072-EN-N

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1. Introduction

The UN Convention on the Rights of Persons with Disabilities (CRPD) is a legally binding instrument that aims to protect and promote the rights and dignity of persons with disabilities. The comprehensive catalogue of rights for people with disabilities that is enshrined in the Convention seeks to pull down the barriers disabled persons are facing in their daily lives – barriers that often prevent them from enjoying their fundamental rights on an equal basis with others. The Convention marks a shift of paradigm, since it puts the focus on disabled people's autonomy and their right to full inclusion in society, hence overriding the formerly typical welfare approach. Creating conditions which allow people with disabilities to live independently is a major objective in this respect, meaning a move from institutional to community-based living. EU-wide, an estimated 80 million people are affected by some kind of disability, with an upward prevalence trend due to Europe's ageing population.

The EU concluded the CRPD in 2010 in its capacity as a regional integration organisation. It entered into force for the EU in January 2011. Since then, the Convention's provisions have become an integral part of the EU's legal order. Accordingly, all EU legislation, policies and programmes must comply with the CRPD's established obligations. It also requires the EU to protect the rights of persons with disabilities within its jurisdiction, and particularly, within EU public administrations. Implementing the CRPD is not a straightforward process, however, as the Convention's overarching principles entail mainstreaming of disability rights across all policies and within all institutions. To this end, its implementation requirements (Article 33) provide for the set-up of a monitoring mechanism, including detailed reporting to the UN's dedicated oversight committee - the Committee on the Rights of Persons with Disabilities (hereinafter called 'the CRPD Committee').

In September 2015, the CRPD Committee finalised its review of the EU's first implementation report by issuing its 'Concluding Observations'. These include a long list of recommendations for further action. The EU's follow-up report is due by early 2021. The European Parliament seeks to contribute to this follow-up with an own-initiative implementation report (*Implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD) with special regard to the Concluding Observations of the UN CRPD Committee*) which is currently under preparation. To support Parliament's report, this European Implementation Assessment depicts in detail the institutional arrangements the EU has set in place to implement Article 33 of the Convention, and the key role Parliament plays in it. Furthermore, it discusses a selection of the 42 issues of concern to the CRPD Committee, and outlines the progress made so far.

2. A brief outline of the UN CRPD

The UN Convention on the Rights of Persons with Disabilities (CRPD) is a legally binding instrument that lays down minimum standards for protecting and safeguarding the civil, social, political, economic, legal and cultural rights of people with disabilities. In force since 3 May 2008, it sets out the legal obligations of State Parties to ensure these rights.

The Convention refrains from defining the term *disability*, because it considers disability to be an 'evolving concept'¹. However, it provides some indications of its understanding by subsuming under persons with disabilities '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'. Meanwhile, in the EU context, the European Court of Justice (ECJ) has started defining disability in its jurisprudence.

Estimates by the World Health Organization (WHO) suggest that 15% of the world's population live with some form of disability.² This makes people with disabilities the world's largest minority. EU-wide, a similar prevalence is reported: according to commonly cited Commission data, some 80 million EU citizens live with some kind of disability. Due to Europe's demographic ageing, a steep upward trend can be expected.³

The Convention does not in principle create any new rights, but rather reaffirms and codifies existing ones. It can be argued, however, that it gives State Parties new obligations on *how* certain rights can be achieved (e.g. by providing 'reasonable accommodation'⁴). The Convention enshrines non-discrimination, self-determination and unconditional equal treatment of persons with and without disabilities as key principles. By putting the focus on disabled people's full inclusion in society and their right to an autonomous living, the Convention marks a shift of paradigm towards an autonomy- and rights-based, inclusive approach to persons with disabilities. Hence it overrides the formerly typical medical or welfare approach. In this vein, the Convention regards disability as the effect of the barriers a person with impairment is facing in his interactions with his or her environment rather than the person's physical or mental condition ('disability').

¹ CRPD Preamble subparagraph (e).

² [WHO disability and health fact sheet no 352](#).

³ The Commission expects that by 2020 approximately 120 million persons in the EU will have multiple and/or minor disabilities. See COM(2015) 615, p. 2.

⁴ For a definition of 'reasonable accommodation', see chapter 7.2.2.

The Convention is guided by eight general principles, which are enumerated in article 3:

- respect for the inherent dignity and individual autonomy
- non-discrimination (which does not, however, exclude affirmative action in favour of persons with disabilities, if deemed necessary)
- full inclusion and participation in society
- respect for difference and acceptance of persons with impairments as part of human diversity
- equal opportunities
- accessibility
- equality between men and women
- respect for children with disabilities.

Structure of the CRPD Convention

Art. 1 – 4	lay down the Convention's objectives, guiding principles and general obligations
Art. 5 – 30	set out the rights contained in the Convention in the areas of education, employment, transport, infrastructures and public buildings, political participation and the right to vote as well as legal capacity of disabled persons
Art 31 – 40	address implementation and monitoring aspects, including reporting obligations
Art. 41 - 50	contain legal and administrative provisions

3. The EU as a State Party to the UN CRPD

Of all the UN human rights instruments, which consist of nine core international treaties,⁵ the CRPD is not only the newest, but also the first that is open to 'regional integration organisations' in addition to nation states. In this respect, the European Union sets a precedent, since it is the only regional organisation to date that has acceded to the CRPD. The EU (then European Community) signed the

⁵ These are 1. International Convention on the Elimination of all Forms of Racial Discrimination. 2. International Covenant on Civil and Political Rights. 3. International Covenant on Economic, Social and Cultural Rights. 4. Convention on the Elimination of all Forms of Discrimination against Women. 5. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. 6. Convention on the Rights of the Child. 7. International Convention on the Protection of Rights of all Migrant Workers and Members of their Families. 8. International Convention for the Protection of all Persons from Enforced Disappearance. 9. Convention on the Rights of Persons with Disabilities.

Convention on 30 March 2007, the opening day for signature. Following the adoption of Council Decision 2010/48/EC⁶ and the subsequent deposit of the formal ratification instruments with the UN Secretary General in December 2010, the CRPD entered into force for the EU on 22 January 2011. Hence, in line with the instrument's legally binding nature, all EU legislation, policies and programmes must comply with the Convention's established obligations. Moreover, the EU is obliged to protect the rights of persons with disabilities within its jurisdiction, and also within its public administration.

Pursuant to Article 216 TFEU the agreement is legally binding upon the EU institutions and the Member States. Each of the parties involved has to ratify the Convention, due to its nature as a 'mixed agreement', meaning that the EU and its Member States have mixed competences in the areas covered by the CRPD. Subsequently, responsibility to implement the Convention is shared between the EU and the Member States, covering the extent of their respective competences. These are specified in a declaration⁷ submitted under Convention Article 44(1), which is to be updated as the EU *acquis* evolves. As with other mixed agreements, the EU and its Member States 'are subject to a duty of sincere cooperation'.⁸ Details of the internal coordination arrangements between the Council, the Commission and the Member States are set out in a dedicated Code of Conduct.⁹

However, not all EU Member States are yet parties to the Convention: by 31 January 2016, 25 Member States had ratified it, whilst the ratification process of the remaining three – Finland, Ireland and the Netherlands – is still pending. Since these three countries signed the Convention in 2007, legal reforms have been underway to pave the way for ratification. By now, all three countries are reportedly well advanced in this process.

⁶ Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the UN CRPD. OJ L 23, 27.1.2010, pp. 35-61.

⁷ Declaration concerning the competence of the European Community with regard to matters governed by the United Nations Convention on the Rights of Persons with Disabilities. Annex II to Council Decision 2010/48/EC. OJ L 23, 27.1.2010, pp. 55-60.

⁸ Report on the implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD) by the European Union. SWD(2014) 182, 5.6.2014, p. 7.

⁹ Code of Conduct between the Council, the Member States and the Commission setting out internal arrangements for the implementation by and representation of the European Union relating to the UN Convention on the Rights of Persons with Disabilities, OJ C 340, 15.12.2010, pp. 11-15.

4. The Optional Protocol to the Convention

The CRPD is accompanied by an Optional Protocol. It provides for complaints by individual citizens or groups of individuals to the CRPD Committee in case of a State Party's infringement of Convention rights, once their national systems of legal remedies have been exhausted. Furthermore, it entitles the UN Committee to conduct inquiries into alleged grave or systematic violations of Convention rights by a State party.

The Optional Protocol is subject to a separate ratification process. So far, 23 EU Member States have signed and 21 have ratified it.¹⁰ The European Union has not yet concluded the Optional Protocol, despite a favourable Commission proposal¹¹ dating back to 2008, which was overwhelmingly backed by the European Parliament.¹² However, in addition to Parliament's consent, the EU's accession also requires unanimity in the Council. The UN expressed its concerns about the EU's non-ratification of the Optional Protocol and called on the EU to take action.¹³ Progress in this respect is likely to be forthcoming, since the new Action Plan on Human Rights and Democracy 2015-2019, which was adopted by the Council in July 2015, foresees the EU accession to the Optional Protocol as one of the measures to be taken to achieve its objective 12 'Cultivating an environment of non-discrimination'.¹⁴

5. Implementation of the UN CRPD on EU level

5.1. Governance and monitoring mechanism

Like any international treaty, the primary responsibility to implement the CRPD lies with the State Parties. Signing and ratifying the Convention obliges the State Parties to ensure that all existing and future legislation, policies and programmes are aligned with its provisions. Article 4(1)(b) of the Convention stipulates that State Parties take 'all appropriate measures, including legislation, to modify or

¹⁰ For an overview of the state of ratification by the EU Member States, see Annex.

¹¹ Proposal for a Council Decision concerning the conclusion of the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities. COM(2008) 530-2 (corr). 2.9.2008.

¹² On 24 April 2009, the European Parliament adopted a legislative resolution approving the Commission's proposal, whereby it called on the Commission and Member States to periodically report on the status of implementation of the Protocol. T6-0313/2009.

¹³ Concluding observations to the initial report of the European Union / UN Committee on the Rights of Persons with Disabilities. CRPD/C/EU/CO/1. 2.10.2015, points 6 and 7.

¹⁴ Action Plan on Human Rights and Democracy (2015-2019) 'Keeping human rights at the heart of the EU agenda'. Joint communication by the European Commission and the EU High Representative for Foreign Affairs and Security Policy to the European Parliament and the Council. JOIN(2015) 16 final of 28.4.2015, p. 11.

abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities'. Similarly, all future legislation must comply with the Convention.

To this aim, *ex-ante* impact assessments accompanying new legislative proposals should systematically address social and fundamental rights issues in order to ensure compliance, where relevant, with the CRPD Convention. In this respect, the UN expressed concerns that the Commission's impact assessment guidelines did not sufficiently consider the Convention and called on the EU to review the guidelines 'to include a more comprehensive list of issues to better assess compliance with the Convention'.¹⁵ This criticism appears no longer valid with regard to the new guidelines that were issued as part of the Better Regulation Package in May 2015. Notably the practice-oriented 'toolbox' considers impact on people with disabilities (in the framework of fundamental rights) in several places and recommends a compliance check with the CRPD. In fact, the Commission had already stressed the 'strengthened and more operational impact assessment guidance' of the new guidelines in its response to the UN 'List of issues'.¹⁶ Only the application of the new guidelines in practice will show whether there is a need for more specific guidance.

The Convention itself contains a detailed set of rules (Articles 31-40) governing its implementation. Unlike previous UN human rights treaties, the CRPD's monitoring mechanism addresses both levels - the UN and the State Parties. On the side of the UN, a dedicated body - the **Committee on the Rights of Persons with Disabilities** - was established to oversee the effective implementation of the Convention and in particular the national monitoring processes.

On the national level, Article 33 provides for a three-tier mechanism. This requires that the State Parties:

- designate one (or more) national **focal point(s)** at government level;
- consider putting in place a **coordination mechanism** within the government to ensure multi-level and cross-service implementation; and
- establish an **independent framework** to promote, protect and monitor the Convention's implementation in the country concerned.

Moreover, **civil society** representatives - notably disability organisations - need to be actively involved in the monitoring mechanism. Involving people with

¹⁵ Concluding observations, point 12 and 13.

¹⁶ Reply of the European Union to the list of issues in relation to the initial report of the European Union on the implementation of the UN Convention on the Rights of Persons with Disabilities. SWD(2015) 127. 19.6.2015, p. 2.

disabilities – as had already been the case in the negotiations of the Convention – underpins the Convention's principle of participation. The implementation of Article 33 is a key issue and can be considered a pre-condition for giving effect to the Convention. Scholar Gauthier de Beco judges Article 33 to be 'one of the most innovative provisions of the Convention', as it is 'arguably the most complete provision on national implementation and monitoring ever found in an international human rights treaty'.¹⁷

5.1.1. Focal point

The national **focal point** at government level bears the central responsibility for a State Party's implementation of the CRPD. Due to its multifaceted role (see table below) it requires adequate staffing. For the EU, the European Commission was mandated to act as focal point (Article 3 of Council Decision 2010/48/EC). In this capacity, the Commission ensures cross-sectorial coordination on three levels: within its own institution, between all EU bodies, and with the Member States. It also ensures that persons with disabilities and their representative organisations are involved in the implementation of the Convention. As focal point, the Commission is also in charge of reporting to the UN on behalf of the EU.

Role of the focal point

- Advise the Government on the development of policies, legislation, programmes and projects with respect to their impact on disabled persons
- Coordinate all governmental activities in the area of disabilities, within the ministries and at various levels of governance (federal/national/regional)
- Draft, revise and amend relevant legislation
- Raise awareness about the Convention and the Optional Protocol
- Ensure the translation of the CRPD and publication in accessible formats
- Establish and monitor action plans for the ratification and implementation
- Coordinate the State Party's periodic reports
- Ensure and coordinate the collection of data and statistics for policy programming and future evaluation of implementation
- Ensure that persons with disabilities participate in the development of policies and laws
- Encourage persons with disabilities to participate in civil society, and encourage the creation of disability organisations
- Source: CRPD Handbook for Parliamentarians¹⁸

¹⁷ Gauthier de Beco: Article 33 of the UN Convention on the Rights of Persons with Disabilities: practice and evaluation. In: European yearbook of disability law, Vol. 5 (2014), pp. 9-42.

¹⁸ From exclusion to equality. Realizing the rights of persons with disabilities. Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol / UN Department of Economic and Social Affairs, Office of the UN High Commissioner for Human Rights (OHCHR) and Inter-Parliamentary Union. 2007, p. 95.

5.1.2. Coordination mechanism

Unlike the focal point, the establishment of a horizontal coordination mechanism is recommended, but not compulsory.¹⁹ It is meant to 'facilitate related action in different sectors and at different levels', in order to avoid isolated, inconsistent decisions. For the EU, the above-mentioned Code of Conduct (see chapter 3) specifies the coordination arrangements amongst the Council, the Commission and the Member States. It notably sets out the 'Who does what' in terms of representation (speaking and voting) as well as monitoring and reporting. However, to date the EU has not designated any formal coordination mechanism, a choice that was viewed critically by the CRPD Committee, which recommended that the EU establish 'an inter-institutional coordination mechanism' and designate focal points 'in each EU institution, agency and body'.²⁰

Despite the lack of a formal coordination mechanism, in practice, two actors are to some extent filling the gap, though neither of them involving Parliament: The Council Working Party on Human Rights (COHOM), which is promoting and overseeing the implementation of EU human rights policies, ensures the formal coordination between Member States, while the Disability High Level Group (DHLG) - a Commission expert group made up of representatives of the Member States, the Council of Europe and Norway - assumes an advisory role towards the Commission. Disability organisations are usually invited to the meetings of these two groups. The DHLG was set up back in the 1990s to mainstream disability issues across all policy sectors. Its annual report on the implementation of the CRPD²¹ constitutes a major source of information on the efforts of the EU and the Member States to comply with the CRPD.

5.1.3. Monitoring framework

The implementation mechanism also requires the creation of a monitoring framework that is independent from the executive or government. The scope of the framework is to promote, protect and monitor the implementation of the Convention. It can consist of one or more actors, e.g. national human rights institutions (NHRIs) or ombudsmen, and is required to involve representatives of civil society. The monitoring framework must be in line with the so-called 'Paris

¹⁹ See Article 33(1) CRPD: 'State Parties ... shall give due consideration to the establishment or designation of a coordination mechanism within government...'

²⁰ Concluding observations, point 77.

²¹ The most recent was the seventh report, issued in July 2015.

Principles',²² which set out minimum standards for the composition, mandate and working arrangements of NHRIs (e.g. independence, pluralism).

Since the EU does not have its own, dedicated, EU-wide human rights institution, actors with a specific interest in disability issues were designated to form the EU Framework. Today it is composed of:

- - the European Commission;
- - the European Parliament;
- - the European Ombudsman;
- - the EU Agency for Fundamental Rights (FRA);
- - and the European Disability Forum (EDF) as the representative of civil society.

All Framework members share the overall mission to promote, protect and monitor the implementation of the Convention. However, each of them assumes a specific role, as outlined below.

The **European Commission** has been part of the EU Framework since its creation, due to the institution's competence to monitor the application of EU law and to open infringement procedures against Member States violating Community law, and because it assumes a protection role vis-à-vis citizens (they can, when directly affected, bring national authorities' infringements of EU law to the attention of the Commission). However, as a result of the UN CRPD Committee's questioning of the compatibility of the Commission's dual role – as EU focal point and member of the Framework – with the 'Paris Principles',²³ the Commission is currently in the process of withdrawing from the Monitoring Framework. It confirmed its intention to pull out in a public hearing at the European Parliament in October 2015²⁴ and has *de facto* stopped attending meetings of the Framework.

The European Parliament promotes the implementation of the CRPD through political debate and public hearings. Its protection role lies primarily with the Committee on Petitions (PETI), which hears petitions from directly affected EU citizens (individuals or groups) on any policy issue, including disability issues.

²² [Principles relating to the Status of National Institutions \(The Paris Principles\)](#), adopted by General Assembly resolution 48/134 of 20 December 1993.

²³ See Concluding Observations, points 76-77. The 'Paris Principles' stipulate that representatives of ministries may only participate in an advisory capacity.

²⁴ In a public hearing at the European Parliament on the CRPD implementation, held by the Petitions Committee (PETI) on 15.10.2015, the Commission representative stated that 'the Commission prepares for the withdrawal of the Framework as a member'. As a matter of interest, this EP hearing was the first ever to fully meet accessibility standards.

Parliament can also monitor the application of the CRPD through dedicated 'implementation reports' (i.e. a specific type of own-initiative report), through human rights reports, its right to address oral and written questions to the Commission, or through studies. Implementation reports are currently undergoing a reform and it is thought that they are likely to play a more prominent role in future in the context of Parliament's monitoring and scrutiny function.

The European Parliament's participation in the EU Monitoring Framework has significantly evolved since its establishment. Initially, Parliament was represented by PETI, because of the latter's specific protection role with regard to the Convention.²⁵ Since December 2013, Parliament's role in the Framework has expanded in that it now involves three committees with key competence for disability issues: the Committee on Employment and Social Affairs (EMPL) takes the lead in Parliament's representation in the Framework, while the Committee on Civil Liberties, Justice and Home Affairs (LIBE) and PETI are closely associated.

LIBE is responsible for issues concerning the protection of fundamental rights and combating discrimination (also based on disability), whereas EMPL is responsible for social policy in general, and in particular for the areas of discrimination at the workplace and in the labour market (including disability-based discrimination), social inclusion and the European Social Fund.²⁶ The operational work of the Framework is conducted at administrative level, hence involving committee secretariat staff; it can also act at political level, involving appointed Members from each of the three committees.

Parliament is strongly committed to the mainstreaming of the CRPD Convention within its own institution. Following a decision by the Conference of Presidents on 8 January 2015, Parliament has – independently of its role in the Framework –, set-up an inter-committee CRPD Network at political level, composed of leading Members of committees which regularly touch upon disability issues (EMPL, LIBE, PETI, BUDG, CULT, DROI, ENVI, FEMM, IMCO, JURI, TRAN; others, such as REGI and DEVE, were also invited to participate). The CRPD Network is, by analogy to Parliament's membership of the Framework, chaired by EMPL. Its task is twofold:

²⁵ For more details on PETI's protection role, see the recent study: Mark Priestley, Meredith Raley and Gauthier de Beco: 'The protection role of the Committee on Petitions in the context of the implementation of the UN Convention on the Rights of Persons with Disabilities'. EP Policy Department C, September 2015.

²⁶ The exact remits of parliamentary committees are defined in Parliament's rules of procedure, [Annex VI](#).

- to promote the public debate on disability issues in general, and
- to promote the political role the EP plays in the implementation of the Convention. It does so by scrutinizing documents (legislative and other) for their CRPD compliance and by awareness-raising activities.

Regarding the implementation of the Convention in Parliament's own administration (e.g. working conditions/reasonable accommodation, recruitment, buildings, sign language interpretation, Braille printing etc.), a dedicated Bureau Working Group on Equality and Diversity was set up to supervise all necessary administrative measures. An inter-departmental Working Group issued a booklet on the logistical aspects of accessibility of Parliament's premises and services.²⁷ Moreover, Parliament's 'Code of good practice for the employment of people with disabilities', adopted by its highest political body, the Bureau, in June 2005, marks Parliament's commitment to take positive action.

In addition to the parliamentary actors described above, it is also worth mentioning Parliament's Disability Intergroup, which is an informal gathering of representatives from all political groups. In existence since 1980, it illustrates that Members of the European Parliament have long been active defenders of disability rights.

The European Ombudsman is an independent and impartial body that holds the EU administration to account. In that capacity the Ombudsman examines complaints about maladministration by EU institutions or bodies, including violations of the application of the CRPD. Furthermore, the Ombudsman is entitled to launch own-initiative investigations, and issue findings in the form of reports and recommendations.

The **Fundamental Rights Agency (FRA)**, the independence of which is ensured by the composition of its Management Board, plays a specific monitoring role by developing indicators and benchmarks, and by collecting EU-wide data related to fundamental rights (cf. Article 31 of the Convention). Through its independent research and publications it raises awareness of the rights of people with disabilities and promotes the Convention.

The **European Disability Forum (EDF)** is an umbrella organisation representing European citizens with disabilities, the interests and rights of whom it actively promotes and defends. It monitors the implementation of the CRPD by scrutinizing EU initiatives and legislative proposals as regards their impact on people with disabilities, and notably their compliance with the Convention, by

²⁷ European Parliament Interservice Working Group on the Accessibility of Parliament's Buildings: Information on the accessibility of the European Parliament's buildings. [undated].

means of position papers. It is active in promoting its cause through a network of national disability organisations. Furthermore, the EDF protects individuals by providing assistance in court cases. It submitted an alternative report to the UN Committee, as the voice of civil society.²⁸

The **Framework's *modus operandi*** is laid down in a note endorsed by the Council in October 2012.²⁹ Its internal organisation is ensured by a chair and a secretariat, both rotating every two years. At present, FRA assumes both functions in an interim capacity until June 2016. By then the Framework's operational provisions are to be reviewed.³⁰ The Framework agrees on an annual work programme and meets at least twice a year.

Beyond the Framework and its capacity as EU focal point, since 2010 the European Commission has organised an annual *Work Forum* on the CRPD implementation. This is a platform that brings together actors from the various implementation and monitoring mechanisms at the level of the EU and Member States, plus representatives of civil society and scholars, to discuss and exchange best practices.

5.2. The European Disability Strategy 2010-2020

In the wake of their CRPD ratification, many State Parties have adopted national disability strategies or action plans as operational instruments for the implementation of the Convention,³¹ as did the EU. The European Disability Strategy 2010-2020³² was adopted in November 2010, ahead of the EU's accession to the CRPD, as an overall framework to promote the rights of people with disabilities, and to anticipate the Convention's effective implementation. Its objectives are pursued through measures in eight key areas for action (see table below) and underpinned by four general instruments for implementation, mirroring provisions of the Convention: 1. awareness-raising; 2. financial support; 3. statistics and data collection and monitoring; 4. mechanisms required by the UN Convention.

²⁸ European Disability Forum: Alternative report to the UN Committee on the Rights of Persons with Disabilities, adopted on 8-9 November 2014.

²⁹ Note on the set up of the EU-level framework required by art. 33.2 of the UN Convention on the Rights of Persons with Disabilities; adopted by the Council on 29 October 2012.

³⁰ Cf. the [Framework's operating provisions](#) currently in place.

³¹ Cf. the comparative monograph on national disability strategies: Eilionóir Flynn : From rhetoric to action: implementing the UN Convention on the Rights of Persons with Disabilities. Cambridge University Press, 2011.

³² European Disability Strategy 2010-2020: a renewed commitment to a barrier-free Europe. COM(2010) 636. 15.11.2010.

Priority areas of the European Disability Strategy 2010-20

Accessibility	Make goods and services accessible to people with disabilities and promote the market of assistive devices
Participation	Ensure that disabled people enjoy all benefits of EU citizenship; remove barriers in public life and leisure activities; promote the provision of quality community-based services
Equality	Combat discrimination based on disability and promote equal opportunities
Employment	Raise significantly the share of persons with disabilities working in the open labour market
Education & training	Promote inclusive education and lifelong learning for pupils and students with disabilities
Social protection	Promote decent living conditions for disabled people, combat poverty and social exclusion
Health	Promote equal access to health services and related facilities for people with disabilities
External action	Promote the rights of people with disabilities within the EU external action

The Disability Strategy is accompanied by an 'Initial Plan of activities for 2010-2015',³³ which is a sort of roadmap with respect to each of the priority areas, and a timetable. Progress on the implementation of the action plan is monitored by the Commission's Inter-service group on Disability and the Disability High Level Group (DHLG). The Disability Strategy was due for review by the end of 2013 and in the course of 2016, to take account of the progress made. However, the intended mid-term review of the roadmap has been delayed, as was critically noted by the CRPD Committee in its Concluding Observations. The latter also recommended establishing clear benchmarks and indicators (points 10-11).

Meanwhile, on 23 December 2015, the Commission launched a public consultation on its mid-term review of the European Disability Strategy 2010-2020, open for contributions until 18 March 2016.

³³ Initial plan to implement the European Disability Strategy 2010-2020 : List of actions 2010-2015. SEC(2010) 1324. 15.11.2010.

6. The constructive dialogue between the EU and the UN CRPD Committee

6.1. General CRPD reporting duties

One of the core responsibilities of the Geneva-based CRPD Committee is to review the progress made by the State Parties in the effective implementation of the Convention. In practical terms, this review process is carried out in the form of reports and bilateral meetings. State parties' reporting obligations are enshrined in the Convention (articles 35 and 36); their design provides for a constructive dialogue between the UN and all State parties.

Each party is required to periodically report to the UN Committee on the Rights of Persons with Disabilities about the measures taken to give effect to the Convention. An initial report is due within the two years following the CRPD's entry into force in any given country. This initial report is usually based on a comprehensive law review which should precede a State Party's roadmap for implementation. 'Alternative' or 'shadow reports' by disability NGOs may complement a State Party's official report.

Subsequent progress reports are to be submitted every four years. The CRPD Committee scrutinizes all submitted reports and, in response, addresses any shortcomings in the form of suggestions and recommendations to the State parties.

According to the CRPD's nature as an agreement of shared competence, to which the EU and its Member States are parties, both the EU and the individual Member States are subject to the reporting duties. They deliver complementary reports on the implementation of the Convention with respect to the matters under their competence.³⁴

³⁴ Reports of State Parties are accessible at: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>. It is worthwhile mentioning in this context that the EU Fundamental Rights Agency has published a comparative analysis of Member States' efforts in complying with the CPRD: 'Implementing the United Nations Convention on the Rights of Persons with Disabilities (CRPD): an overview of legal reforms in EU Member States.' FRA Focus 05/2015.

6.2. EU-UN reporting history

On 5 June 2014, in its capacity as focal point, the European Commission submitted the first EU CRPD implementation report to the UN,³⁵ covering the period from January 2011 to December 2013. It details the implementation measures taken through legislation, policy actions and funding instruments. In April 2015, the consideration of the report took place in Geneva, with the participation of the Commission as focal point,³⁶ to explain the report and to answer specific questions from the CRPD Committee. This meeting led to the adoption of the '**List of Issues**'³⁷ by the CRPD Committee. Parliament, whose role in the reporting exercise is formally limited, expressed its view on the 'List of Issues' in its resolution adopted on 20 May 2015.³⁸ The Commission formally replied to the CRPD Committee in June 2015,³⁹ taking into account input from the administrations of the EU institutions as well as a number of points from Parliament's resolution. This written exchange was followed by a constructive stock-taking dialogue between the EU Framework and the UN Committee in August 2015 in Geneva, upon which the UN Committee issued its '**Concluding Observations**'.⁴⁰

These contain a significant number of recommendations and incitements, which are discussed in detail in chapter 7.

As a follow-up to the Concluding Observations, the EU is required to implement the recommendations and to respond to the CRPD Committee **by 23 January 2021**. However, the EU has been advised to submit its report already one year ahead of the deadline, under the Committee's simplified reporting procedure.

Only the three areas listed below require immediate action. Reporting on their implementation is due within 12 months, i.e. **by September 2016** (point 90):

- the EU is required to regularly update the '**Declaration of competence**' and its list of instruments to include recently adopted instruments (point 17);

³⁵ Report on the implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD) by the European Union. [SWD\(2014\) 182 final](#). 5.6. 2014.

³⁶ In addition, a private briefing meeting with the EU Monitoring Framework took place as side event.

³⁷ UN Committee on the Rights of Persons with Disabilities: List of issues in relation to the initial report of the European Union. [CRPD/C/EU/Q/1](#), 15.5.2015.

³⁸ EP Resolution P8-TA-(2015)0208 of 20 May 2015.

³⁹ Reply of the European Union to the list of issues in relation to the initial report of the European Union on the implementation of the UN Convention on the Rights of Persons with Disabilities. [SWD\(2015\) 127 final](#). 19.6.2015.

⁴⁰ UN Committee on the Rights of Persons with Disabilities: Concluding observations on the initial report of the European Union. [CRPD/C/EU/CO/1](#), 2.10. 2015.

- the EU is required to swiftly adopt an amended **European Accessibility Act**,⁴¹ compliant with the Convention; it should include effective and accessible enforcement and complaint mechanisms (point 29);
- as regards the institutional arrangements in place to ensure the **implementing and monitoring mechanism**, the EU is required 'to decouple the roles of the European Commission [...] by removing it from the independent monitoring framework, so as to ensure full compliance with the Paris Principles, and ensure that the framework has adequate resources to perform its functions'; moreover, it encourages the creation of an 'interinstitutional coordination mechanism and the designation of focal points in each European Union institution, agency and body'.

The European Parliament's ongoing own-initiative implementation report on the CRPD forms the basis for Parliament's position to the Concluding Observations. This EMPL report on the CRPD implementation, with the LIBE and PETI committees associated under Rule 54 of Parliament's Rules of Procedure, is the first in a series; it will in future be drawn up 'on a regular basis'.⁴²

7. The CRPD Committee's Concluding Observations: main issues of concern

7.1. Actors involved in the EU review process

Giving effect to the CRPD Convention is not a straightforward process. Its overarching principles require mainstreaming of disability rights across all EU policies and within all institutions. This leads to wide-ranging legislative changes at EU level and in the Member States, since the Convention obliges both to align their legal frameworks with the CRPD's key principles of equality, non-discrimination, autonomy and self-determination, inclusion and accessibility. Beyond the legislative reforms, the European Court of Justice is also contributing to the Convention's implementation and will probably trigger reform in future, by drawing up its jurisprudence on the CRPD.

Numerous actors and stakeholders have commented on the review process and provided their contributions; some of them even addressed alternative or shadow reports to the CRPD Committee. This is fully in line with the spirit of the

⁴¹ The Commission has in the meantime issued its proposal, see chapter 7.2.6.

⁴² European Parliament Resolution on the List of Issues adopted by the United Nations Committee on the Rights of Persons with Disabilities in relation to the initial report of the European Union. P8_TA-(2015)0208 of 20 May 2015, point 15.

Convention, which expressly encourages the involvement of, and input from, civil society and especially disability organisations. The CPRD Committee explicitly requested the EU and its institutions to set up a structured dialogue with persons with disabilities, through their representative organisations (Concluding Observations, point 15).

In this vein, the European Parliament is actively seeking the input from civil society organisations to its CPRD implementation report, e.g. in the form of public hearings.⁴³ Likewise, the European Economic and Social Committee (EESC) is committed to engaging in a dialogue with stakeholders, and to providing a forum for civil society. It has set up a Permanent Study Group on Disability to facilitate the participation of civil society in the monitoring of the CRPD implementation. Building on the outcome of the conference⁴⁴ it organized immediately after the Concluding Observations had been issued, the EESC is currently preparing its opinion.⁴⁵ The conference understood the Concluding Observations as guidance for the way ahead: they 'challenge the EU to go further and to ensure that efforts are not limited to discussions being held in Brussels, but will actually affect the lives of persons with disabilities' (point 4 of the conference conclusions). It also recalled the social dimension of the economic crisis, by addressing, amongst others, the negative impact the austerity measures had in many EU countries on persons with disabilities, e.g. through cuts in inclusive education programmes or funds for supported employment.⁴⁶

7.2. Discussion of specific recommendations

The UN's Concluding Observations contain a total of 42 recommendations for further EU action to ensure compliance with the Convention, ranging from general issues to specific rights enshrined in the CRPD. On a cross-cutting level, the UN Committee requires that the EU conduct a comprehensive review of its

⁴³ e.g. the public hearing on the INI Report on the Concluding Observations of the UNCRPD Committee organised by MEP Helga Stevens (the rapporteur for the ongoing implementation report) and MEP Martina Anderson (the draftsman of the LIBE opinion) on 27.1.2016 in Brussels, or the informal hearing organised by the Disability Intergroup ('The UN CRPD Committee's Concluding Observations to the EU - views from Disabled People Organisations (DPOs)'), held on 17.12.2015 in Strasbourg.

⁴⁴ EESC Group on Disability, conference '*The implementation of the UN CRPD by the EU: Assessing the impact of the UN Committee on the Rights of Persons with Disabilities' concluding observations - The way forward*' held on 10.9. 2015 in Thessaloniki.

⁴⁵ EESC own-initiative report '*Concluding observations of the UN CRPD Committee to the European Union - A new strategy for persons with disabilities in the European Union.*' Rapporteur: Ioannis Vardakastanis.

⁴⁶ Also the CRPD Committee expresses concerns about the EU's austerity measures, see points 66-67 of the Concluding Observations, concerning art. 28 CRPD (adequate standard of living and social protection).

legislation in order to ensure full compliance with the Convention, and that it adopt a strategy on the implementation of the Convention, with an allocated budget, a timeframe and a monitoring mechanism (point 9).

Discussing all recommendations in detail would go beyond the scope of this implementation assessment. Therefore, a number of core issues have been singled out for further discussion.

7.2.1. EU Monitoring Framework (art. 33)

As outlined in chapter 5.1., the UN Committee called the composition of the EU Monitoring Framework into question. Aligning the latter with the Convention and the 'Paris Principles' is a matter of urgency, on which the Committee requires a solution within a year (see chapter 6.2.) The 'List of Issues' already contained doubts about the independence of the Framework and addressed the 'allocation of sufficient financial and human resources' (point 39 LI). The Committee's concerns become even more explicit in the Concluding Observations, where it argues that the EU Framework is not fully in line with the 'Paris Principles'. This criticism concerns two aspects: the Commission's role and the adequacy of the Framework's resources.

With regard to the Commission, the CRPD Committee asks to decouple its double role - as focal point and part of the Framework - by removing it from the Framework. As mentioned in chapter 5.1., the Commission is currently preparing its withdrawal. This may give an impetus to reflect about the Framework's design. Hence, it remains to be seen whether the Framework continues its work in its current setting, but without the Commission, or whether it will be re-thought from scratch.

Moreover, the CRPD Committee critically addressed the lack of specific resources of the Framework. Even if Article 33 of the Convention remains silent about funding, the 'Paris Principles' stipulate that the institution 'shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.'

7.2.2. Equality and non-discrimination (art. 5)

Equality and non-discrimination form part of the fundamental values enshrined in EU primary law, particularly the Treaties⁴⁷ and the Charter of Fundamental Rights. The EU is bound to combat all forms of discrimination, including discrimination based on disability, in all its policies and their implementation. These values are reflected in the European Disability Strategy 2010-2020, which provides the operational instrument for the EU implementation of the CRPD.

The legal framework based on the **Employment Equality Directive**⁴⁸ (EED) sets out minimum rules for protection against (direct and indirect) discrimination on the grounds of disability⁴⁹ in employment, occupation and vocational training. Even though the Directive was overall successfully transposed in the Member States, its effective implementation remains difficult to assess, due to a lack of data (the EED does not require Member States to collect equality-related data).⁵⁰

To extend non-discrimination to areas beyond the scope of employment, the Commission proposed, already in 2008, the horizontal **Equal Treatment Directive**,⁵¹ which was meant to complement the EED. However, its adoption, requiring unanimity in the Council, has been pending ever since, due to reservations on the part of some Member States, especially concerning the principle of subsidiarity. Over the past years, the European Parliament has repeatedly addressed the lack of progress within the Council by means of resolutions.⁵² Similarly, the CRPD Committee urges the EU to adopt the Equal Treatment Directive in its Concluding Observations (point 19).

To establish equality between people with disabilities and their peers, affirmative action (also called 'positive action') is explicitly allowed (article 5(4) CRPD and article 7 EED).

⁴⁷ Cf. e.g. Article 9 TEU: 'In all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions...'

⁴⁸ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. OJ L 303, 2.12.2000, pp. 16-22.

⁴⁹ Together with others grounds of discrimination, such as religion or belief, age or sexual orientation.

⁵⁰ The European Parliament is currently looking into the effective application of the EED, by means of an implementation report (EMPL, rapporteur: Renate Weber). Research background to this report is provided by the EP Research Services: Jan Tymowski: The Employment Equality Directive: European Implementation Assessment. European Parliament, February 2016.

⁵¹ Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation. COM(2008) 426 of 2.7.2008.

⁵² e.g. EP Resolution on the List of Issues. P8_TA-(2015)0208, point 5. ; EP resolution of 25 October 2011 on mobility and inclusion of people with disabilities and the European Disability Strategy 2010-2020. P7_TA(2011)0453, point 53.

A key element of the EED is the provision of '**reasonable accommodation**'. This is a core concept defined in Article 2 UN CRPD as the 'necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden [...] to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms'. By analogy to employment, the concept of reasonable accommodation applies also to inclusive education.

7.2.3. Women with disabilities (art. 6)

Even though equality between men and women is part of the EU's fundamental values,⁵³ the UN Committee deplors in its Concluding Observations the lack of disability mainstreaming in the EU's gender policies. It recommends a mainstreamed 'women and girls with disabilities perspective in its forthcoming gender equality strategy' (points 20-21).

In the meantime, in December 2015, the Commission has published a follow-up and prolongation of its Gender Equality Strategy ('Strategic engagement for gender equality 2016-2019') in form of a 'staff working document'.⁵⁴ It commits itself to putting a particular focus on 'the specific needs of groups facing multiple disadvantages, e.g. single parents and older, migrant, Roma and disabled women.' However, in its resolution adopted on 3 February 2016, the European Parliament expressed dissatisfaction and called on the Commission 'to reconsider its decision and to adopt a communication on a new Strategy for Gender Equality and Women's Rights 2016-2020'.⁵⁵

Parliament, which has been an active defender of the rights of women with disabilities in the past, underlined the importance of mainstreaming gender disability in gender policies, programmes and measures in a comprehensive resolution adopted in 2013.⁵⁶

7.2.4. Children with disabilities (art. 6) and education (art. 24)

The Convention advocates community-based living in general, and consequently also promotes the right of children with disabilities to live in family settings rather than institutions (point 57).

⁵³ Cf. e.g. Article 19 TFEU.

⁵⁴ SWD(2015) 278. 3.12.2015.

⁵⁵ European Parliament Resolution of 3 February 2016 on the new Strategy for Women's Rights and Gender Equality in Europe post-2015. P8_TA(2016)0042, point 3.

⁵⁶ European Parliament Resolution of 11 December 2013 on women with disabilities. P7_TA(2013)0579.

With regard to disabled children, the Concluding Observations mention three issues of concern: inclusive quality education, community-based living and children's right to be involved in decisions that affect their lives.

As regards education, the European Disability Strategy 2010-2020 lists education and training as one of its eight priority areas, with the aim of promoting inclusive education and lifelong learning for pupils and students with disabilities. However, as education falls under the competence of the Member States, the EU cannot enact legislation on inclusive education. Despite Member States' commitment in principle to inclusive education, children with disabilities are still often segregated in institutions or do not receive adequate support when placed in 'normal' schools.

The UN Committee requests the EU to take measures to facilitate access to inclusive quality education, and to include disability-specific indicators relating to education in its Europe 2020 Strategy. To promote mobility of students with impairments, the EU has included specific provisions for persons with disabilities in its new Erasmus+ programme.⁵⁷ Moreover, to improve the situation regarding pupils/students with disabilities, Member States can make use of the European Structural and Investment Funds (ESIF) for projects improving inclusive education, and for projects promoting a shift from institutional care to community-based living.

Children with disabilities are particularly vulnerable to **violence (art. 16)**, be it physical violence, over-medication or sexual abuse. The EU Fundamental Rights Agency argues in its recent report⁵⁸ that in order to be effective, measures to address and prevent violence against children with impairments need to be cross-cutting and holistic. The report includes a number of recommendations to prevent and combat violence against disabled children. It advocates the banning of placing children in institutions, regardless of the kind and degree of disability, and mentions, on a positive note, the EU co-funding possibilities offered through the ESIF for de-institutionalization, both issues being fully in line with the CRPD.

⁵⁷ Cf. Recital 7 of the Erasmus+ Regulation (Regulation (EU) No 1288/2013 of the European Parliament and of the Council of 11 December 2013 establishing 'Erasmus+'): 'There is a need to widen access for members of disadvantaged and vulnerable groups and to actively address the special learning needs of people with disabilities in the implementation of the Programme.'

⁵⁸ Fundamental Rights Agency: Violence against children with disabilities: legislation, policies and programmes in the EU. December 2015, p. 8.

7.2.5. Awareness-raising (art. 8) and access to information (art. 21)

Despite the detailed record of disability-related awareness-raising initiatives the EU provided in its answer to the 'List of Issues' to the UN Committee, the latter comes back on this topic in its Concluding Observations. The Committee criticizes the lack of a coherent strategy in the EU's disability-related awareness-raising actions, and recommends the development of a comprehensive awareness-raising campaign about the Convention in order to promote the enshrined rights and to combat prejudice against disabled persons. All related information material should be provided also in accessible formats (point 27).

As regards accessible formats in general, the Committee recommends to enforce the implementation of EU legislation on accessible information, so as to facilitate content in accessible formats, languages and technologies (incl. sign language, Braille, spoken audio or easy-to-read formats).⁵⁹ It also recommends promoting the official recognition of Braille and sign language.

The status of the 30 sign languages used in the EU falls under the exclusive competence of the Member States and appears to diverge from one country to the other.⁶⁰ Nonetheless, the EU recognises sign languages as part of Europe's multilingual diversity and promotes their recognition in the Member States, to foster inclusion of deaf people in education and employment. Notably the European Parliament has for decades been calling for official recognition of sign languages by Member States, and for EU funding of employment and training programmes.⁶¹

The EU is also committed to facilitating the use of sign language and Braille for citizens' interaction with the EU institutions, as set out in the European Disability Strategy 2010-2020. There are no exact data on the EU-wide use of sign languages, but according to estimates of the *European Union of the Deaf*, ca. 800 000 EU citizens use sign language.⁶² The Commission believes that one in 1 000 people uses sign language as their first language.

⁵⁹ For an overview of accessible formats see *European Blind Union* guidelines '[Making information accessible to all](#)'.

⁶⁰ See the comparative study by the European Union of the Deaf : Mark Wheatley and Annika Pabsch : Sign language in legislation in the European Union. 2nd ed. Brussels, 2012.

⁶¹ European Parliament Resolution of 17 June 1988 on sign languages for the deaf. A2-302/87. OJ C 187, 18.7.1988, p. 236.

European Parliament Resolution of 8 November 1998 on sign languages. B4-0985/98. OJ C 379. 7.12.1998, p. 66.

⁶² Cf. Wheatley/Pabsch, p. 19.

With regard to access to information, the EU has recently put forward a proposal for a new Directive on the **accessibility of public websites**.⁶³ It aims to help Member States to render the content of public sector bodies' websites accessible to all users, including to those with disabilities.

7.2.6. Accessibility (art. 9)

In its Concluding Observations (points 28-29), the UN CRPD Committee urges the EU to swiftly adopt a **European Accessibility Act**, including effective and accessible enforcement and complaint mechanisms, in line with Article 9 of the Convention. This provision commits the State Parties to set up a legislative framework that ensures that people with disabilities have full and barrier-free access to products, infrastructure facilities and services in a range of areas, such as buildings, roads, transport, schools, housing, medical care facilities, workplace, ICT (including the internet), electronic services or emergency services.

The EU recognizes non-discrimination and accessibility of disabled persons as a fundamental right (cf. Articles 21 and 26 of the EU Charter of Fundamental Rights). In this vein, the EU Disability Strategy 2010-2020 identifies accessibility as one of its eight key priorities. Nonetheless, despite a number of initiatives to promote and harmonize accessibility requirements in a range of areas (e.g. transport, built infrastructure, ICT or assistive technologies), the EU's regulatory environment has remained fragmented.

The European Parliament has been calling on the Commission to put forward an 'ambitious' Accessibility Act⁶⁴, as did the European Economic and Social Committee (EESC) in its opinion on the human rights dimension of accessibility for people with disabilities.⁶⁵

Eventually, in December 2015, the Commission issued its long-awaited (amended) proposal for a European Accessibility Act.⁶⁶ The proposed directive aims to improve the accessibility of products and services by harmonizing accessibility requirements and hence removing barriers created by divergent

⁶³ Proposal for a new Directive aiming at the approximation of the laws, regulations and administrative provisions of the Member States on the accessibility of websites of public sector bodies. COM(2012) 721 of 3.12.2012.

⁶⁴ EP Resolution on the List of Issues. P8_TA-(2015)0208.

⁶⁵ Opinion of the European Economic and Social Committee on Accessibility as a human right for persons with disabilities. TEN/515. 21.1.2014.

⁶⁶ Proposal for a directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services. COM(2015) 0615 of 2.12.2015.

legislation. Once adopted, the Accessibility Act could therefore significantly contribute to a better functioning internal market. In compliance with the CRPD Convention and following broad stakeholder consultation, the proposal covers the goods and services listed below:

- computers and operating systems
- ATMs, ticketing and check-in machines
- telephones and smartphones
- TV equipment related to digital television services
- telephony services and related equipment
- audiovisual media services, such as television broadcast
- services related to air, bus, rail and waterborne passenger transport
- banking services
- e-books
- e-commerce

However, the proposal does not specify technical solutions to allow for innovation.

The Commission proposal is accompanied by an *ex-ante* impact assessment and will be subject to the ordinary legislative procedure. The EESC is preparing an opinion on the draft directive to take into account civil society concerns. Disability interest groups received the legislative proposal favorably. The European Disability Forum, which announced an in-depth examination of the proposal during the consultation period, welcomed it in an initial statement, stating that it 'has great potential to bring a positive change'.⁶⁷ *Autism Europe* expressed its hope that the Directive may have a 'major influence on ensuring that innovative, affordable and accessible goods and services will be available for persons with disabilities in the EU internal market'.⁶⁸

7.2.7. Full legal capacity/equal recognition before the law (art. 12) and participation in political and public life (art. 29)

Under points 36-37, the UN Committee expresses concerns about the fact that EU-wide the full legal capacity of many people with disabilities is restricted. It recommends the EU to take action, so as to ensure 'that all people with disabilities can exercise all the rights enshrined in EU treaties and legislation,

⁶⁷ European Disability Forum [press release](#), 2.12.2015.

⁶⁸ Autism Europe [press release](#), 2.12.2015.

such as access to justice, goods and services, including banking, employment and health care, as well as voting and consumer rights'.

As regards the question of legal capacity and equal recognition before the law, the competence lies with the Member States. A comparative FRA report⁶⁹ concluded that the paradigm shift of the CRPD towards a rights-based approach to disability triggered a considerable amount of legislative reforms in the Member States, as it was common practice to abridge, under certain conditions, the legal capacity of persons with intellectual disabilities and mental health problems.

The Convention does allow for safeguards: 'Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.'

Of similar concern is the right to participation in political and public life. Often, persons deprived of their legal capacity and persons with disabilities residing in care institutions, are disenfranchised from their right to vote. In this regard, the UN Committee recommends that the EU take measures to enable persons with disabilities, including those under guardianship, to exercise their right to vote and to stand for elections (point 69).

Also in this area, most competences lie with the Member States. FRA developed human rights-based indicators on the right to participate in political and public life. Its published report⁷⁰ concluded that 'legal and administrative barriers, inaccessible processes and information, and a lack of awareness about political rights can deny persons with disabilities the opportunity to participate in the political lives of their communities.' In its May 2015 Resolution, Parliament addressed these challenges, calling on the Commission 'to translate into national law the obligations derived from Art 12 of the CRPD, most specifically to ease any restrictions on their rights to cast their vote and to be elected'.⁷¹

⁶⁹ FRA : Legal capacity of persons with intellectual disabilities and persons with mental health problems.2013.

⁷⁰ FRA: The right to political participation of persons with disabilities: human rights indicators. 2014.

⁷¹ EP Resolution on the List of Issues. P8_TA-(2015)0208, point 10.

7.2.8. Independent living and inclusion in society (art. 19)

Under the underlying objective of full inclusion and participation in society, Article 19 CRPD recognises the right of disabled people to live independently and to be included in the community. This provision stresses three key aspects: 1. the right to freely choose the kind of living arrangement, i.e. where and with whom to live; 2. the right of access to individual support services, including personal assistance, to promote inclusion and prevent segregation from the community; and 3. the right to access community services for the general public on an equal basis with the non-disabled.

Many people with disabilities are placed, without having a choice, in long-stay residential care. With a view to fostering independent living, the CRPD requires State Parties to promote a shift from institutional care to community-based alternatives. In the EU, developing such community-based services falls under the competence of the Member States, while the European Structural Funds allow for funding de-institutionalization initiatives. The Commission acknowledges that 'only those actions that help to establish the conditions for independent living should be supported by the EU. Any measure contributing to further institutionalisation of disabled people or the elderly should not be supported by ESI Funds'.⁷²

Various NGOs have expressed their concerns about the use of EU funds to support projects that counter the concept of independent living, e.g. the NGO *European Network on Independent Living – European Coalition for Community Living (ENIL-ECCL)* that submitted a shadow report on the EU's CRPD implementation of Article 19 to the UN Committee.⁷³ Most recently, the *Open Society Foundations* called on the Commission to ensure that EU funded projects comply with the scope of the CRPD.⁷⁴ In 2014-2015, the European Ombudsman conducted an own-initiative inquiry into this issue (case OI/8/2014/AN) and concluded that 'the Commission should not allow itself to finance, with EU money, actions which are not in line with the highest values of the Union'.

In its Concluding Observations, the UN Committee recommends the EU to guide and promote de-institutionalization and to strengthen the monitoring of the use of the Structural Funds. It even goes further by encouraging the Commission to

⁷² Commission reply to the 'List of Issues'. SWD(2015) 127, p 21.

⁷³ Realising the right to independent living: is the European Union competent to meet the challenges? ENIL-ECCL shadow report on the implementation of Article 19 of the UN Convention on the Rights of Persons with Disabilities in the European Union. October 2014.

⁷⁴ Open Society Foundations: Community, not confinement: the role of the European Union in promoting and protecting the right of people with disabilities to live in the community. October 2015.

'suspend, withdraw and recover payments if the obligation to respect fundamental rights is breached' (point 51).

For the current programming period 2014-2020, the ESIF Regulations make explicit reference to the CRPD. Furthermore, as is positively noticed by the UN Committee (point 5), they better promote the principles of equality, non-discrimination, inclusion and accessibility for disabled persons through actions under the Funds. The new legal framework obliges the Member States to report on how non-discrimination and accessibility for people with disabilities are implemented through the funds.

7.2.9. Employment (art. 27)

As explained above, the Employment Equality Directive sets the ground for minimum standards to protect persons with disabilities - among other grounds of discrimination - against direct and indirect discrimination in employment. Nonetheless, available statistical data give evidence for highly divergent employment rates between persons with and those without disabilities. The *Academic Network of European Disability Experts (ANED)*, that provides independent scientific advice to the Commission, analyzed Eurostat data relating to the employment rate of persons with disabilities and came to the following conclusions (data reported for 2012):⁷⁵

- Only about 48% of persons with disabilities are employed, compared to 72% of persons without disabilities,⁷⁶ with the situation across Member States differing significantly.
- The degree of disability is paramount for the employment rate. At the EU level, the employment rate of severely disabled people is 28%, whereas for persons with a moderate disability it is 56% (compared to 72% for non-disabled).
- The EU-wide employment rate of women with disabilities (44%) is significantly lower compared to women without disabilities (65%). Concerning people with disabilities, the female employment rate is 44% and the male employment rate is 52%. This results in a gender gap of eight percentage points. Women with disabilities face a double disadvantage.

⁷⁵ [European comparative data on Europe 2020 & People with disabilities](#). Task 6: Comparative data and indicators. Final report prepared by Stefanos Grammenos from Centre for European Social and Economic Policy (CESEP) on behalf of the Academic Network of European Disability Experts (ANED). December 2014.

Also Eurostat provides relevant data in its publication 'Employment of disabled people : Statistical analysis of the 2011 Labour Force Survey ad hoc module.' 2015 edition.

⁷⁶ In this context it is worthwhile recalling the objective of the Europe 2020 Strategy, which requires that 75% of the population aged 20-64 should be employed (disabled and non-disabled).

Unemployment is closely linked to poverty and social exclusion. According to ANED, from amongst the workforce (i.e. age range 16-64), EU-wide 50% of persons with a severe disability are at risk of poverty or social exclusion, compared to 33% for persons with a moderate disability and 23% for persons without disabilities.⁷⁷

The UN's Concluding Observations express concern about the high unemployment rate for persons with disabilities, especially women, and recommend to the EU to 'take effective action to measure the employment of persons with disabilities and to increase their employment rate in the open labour market by providing training for Member States on reasonable accommodation and accessibility in the context of employment'.

This recommendation corresponds with the objective set in the European Disability Strategy 2010-2020, namely to raise significantly the share of persons with disabilities in the open labour market.

7.2.10. The right to participate in cultural life (art. 30) and the Marrakesh Treaty

In its Concluding Observations (point 71), under the heading 'Participation in cultural life, recreation, leisure and sport', the CRPD Committee encourages the EU to swiftly ratify and implement the so-called **Marrakesh Treaty**. This would mean a milestone for access to information for blind and visually impaired EU citizens. This international treaty, signed in Marrakesh, Morocco, in June 2013, forms part of the international copyright treaties administered by the World Intellectual Property Organisation (WIPO). It provides for mandatory copyright exceptions (and limitations) in international law to facilitate access to books and other copyrighted work to blind or visually impaired people (VIPs). In practical terms, it entitles authorized entities to convert published books that are inaccessible to VIPs into formats accessible to them. Aside from Article 30 CRPD, the Treaty touches also upon other CRPD provisions, such as accessibility (Article 9), access to information (Article 21), and the right to education (Article 24).

The EU signed the Marrakesh Treaty on 30 April 2014. Soon afterwards, on 21 October 2014, the Commission put forward a proposal for a Council Decision to conclude the Marrakech Treaty under the consent procedure.⁷⁸ Since then the

⁷⁷ ANED report, p. 12.

⁷⁸ Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Marrakech Treaty to facilitate access to published works for persons who are blind, visually impaired, or otherwise print disabled. COM(2014) 638. 21.10.2014.

ratification process has been blocked in the Council due to a competence dispute, as seven Member States contest the EU's exclusive competence over the scope of the Marrakesh Treaty. To resolve the competence issue, in July 2015 the Commission formally asked the European Court of Justice (ECJ) for its legal opinion.⁷⁹ Under these circumstances it does not seem likely that visually impaired EU citizens could benefit soon from the alleviations provided by the Marrakech Treaty, since, even once the EU proceeds with ratification, it would still require specific legislative measures to implement the treaty.

The delay in the EU's ratification of the Marrakesh Treaty was harshly criticized by the *European Blind Union*.⁸⁰ The European Parliament has committed itself to 'working actively with the relevant actors to find a pragmatic solution to acceding to the Marrakesh Treaty'⁸¹. In this vein, it adopted a resolution on 3 February 2016, based on petitions received, to urge the Council and the Member States to speed up the ratification.⁸²

7.3.11. Statistics and data collection (art. 31)

The CRPD obliges State Parties to collect relevant statistical and research data as a basis for informed policy making with regard to the CRPD implementation. The collected information should be disaggregated, to allow for identifying issues that constitute barriers to people with disabilities, and to pave the way for future monitoring and evaluation of how effectively the Convention has been implemented.

Already back in 2008, the Council recognised the lack of EU-wide data regarding the overall situation of people with disabilities as a gap. It stressed the need for disability-related statistics, arguing that 'such statistical and research data allow informed disability policies to be formulated and implemented at the different levels of governance'. Subsequently, it called on the Commission and the Member States to take action.⁸³ However, so far there are no EU data available that would allow for a comprehensive, systematic and regular monitoring of the situation of people with disabilities in all areas of life.

⁷⁹ Request for an opinion submitted by the European Commission pursuant to article 218(11) TFEU (Opinion 3/15).

⁸⁰ See press release by the *European Blind Union*: ['Right to read' for blind and low vision Europeans still denied - access to literary works locked](#). 10.12.2015

⁸¹ EP Resolution P8-TA-(2015)0208 of 20 May 2015, point 13.d.

⁸² European Parliament Resolution of 3 February 2016 on the ratification of the Marrakech Treaty, based on petitions received, notably Petition 924/2011. P8_TA(2016)0036, point 2.

⁸³ Resolution of the Council of the European Union and the representatives of the Governments of the Member States, meeting within the Council of 17 March 2008 on the situation of persons with disabilities in the European Union. OJ C 75, 26.3.2008, pp. 1-4.

Available Eurostat data relating to disability stem from the following four EU-wide surveys:

- European Health and Social Integration Survey (conducted once, in 2012-13)
- European Health Interview Survey (to be run every five years)
- Statistics on Income and Living Conditions (annual data collection since 2003)
- Labour Force Survey (collected twice, in 2002 and 2011)

They provide a picture of the situation of people with disabilities aged 15+ who live in private households, hence leaving significant gaps, e.g. they do not consider people living in care institutions or children under 15 with disabilities. Moreover, exact data collection is hampered by the fact that the definition of disability varies from Member State to Member State.

To ease the lack of comprehensive data, Eurostat and the Member States' National Statistical Institutes agreed to develop a modernisation programme for social statistics, including health and notably disability issues. This is a step forward, since the CRPD Committee requires, in its Concluding Observations, that the EU develop 'a human rights-based indicators system as well as a comparable comprehensive data collection system, with data disaggregated by gender, age, rural or urban population and impairment type' (point 73).

7.3.12. EU public administration

The CRPD Concluding Observations also contain a chapter on the European Union institutions' compliance with the Convention (points 78-89).

In this context, the UN Committee issued the following six recommendations, targeted at the EU as public administrations:

- All EU employees with disabilities or who have family members with disabilities should receive reasonable accommodation (art. 5).
- The EU should guarantee full access to justice and eliminate all barriers, including physical and procedural barriers, and those relating to legal capacity, in EU courts (art. 13).
- The EU should ensure full application of web accessibility standards to the websites of all EU institutions and offer information in sign language, Braille, augmentative and alternative communication, easy-to-read formats and the like (art. 21).

- The EU should ensure the right to inclusive education and reasonable accommodation in European schools (art. 24).
- The EU's Joint Sickness and Insurance Scheme should be revised in order to cover disability-related health needs in compliance with the Convention (art. 25).
- The EU should act as role model and increase employment of persons with disabilities across all EU institutions (art. 27)

8. Conclusion

The entry into force of the UN Convention of the Rights of Persons with Disabilities (CRPD) on 22 January 2011 meant a major change in the EU legal system, as the – legally binding – Convention requires mainstreaming of disability rights throughout all EU policies and legislation. Much has been achieved since the EU's accession to this international human rights treaty, as is proven by the EU-UN dialogue on the implementation of the CRPD, and notably the related reports.

However, the UN Committee's 'Concluding Observations' from October 2015, which marked the closure of the first round of the review process, leave no doubt that there is still a long way to go until the EU's full compliance with the Convention. The UN's over 40 specific recommendations constitute a roadmap for the way ahead. They touch upon specific rights, but also upon the general principles and obligations. One major question mark is over the future composition of the 'EU Monitoring Framework' implementing Article 33 CRPD, after the UN Committee had assessed the European Commission's role as incompatible with the 'Paris Principles', which set out minimum standards for the composition and mandate of national human rights institutions (e.g. independence, pluralism). The Commission's announced withdrawal from this body may prompt a wider-ranging reform of the EU Framework, of which Parliament is also a member.

The EU is very committed to the CRPD review process, the ultimate objective of which is full compliance of the EU *acquis* with the CRPD Convention. To this end, it has recently stepped up its efforts to meet the requirements of the Concluding Observations. The Commission has put forward initiatives in several policy areas, by proposing the European Accessibility Act, and a directive on the accessibility of public websites as well as the renewed Gender Equality Strategy. It has also initiated the public consultation on the (overdue) mid-term review of the European Disability Strategy 2010-2020. Furthermore, the EU institutions, as

public administrations, are obliged to provide reasonable accommodation to persons with disabilities.

Progress in some other areas is harder to achieve, partly due to resistance by some Member States, as is the case with the Equal Treatment Directive or the EU's ratification of the Marrakech Treaty, which aims to facilitate access to copyrighted work to blind or visually impaired people. Both files are blocked in the Council.

In the spirit of the Convention, the EU institutions seek dialogue with and input from civil society organisations representing persons with disabilities. The EU is very open to their voices. After all, EU implementation of the CRPD should not become a paper tiger, but should lead to effective and tangible improvements for all 80 million EU citizens with disabilities. Parliament's ongoing implementation report will contribute to making this happen.

Annex: CRPD and Optional Protocol signatures and ratifications by the EU and its Member States

State of play as of 31 January 2016

	Convention		Optional Protocol	
	signature	ratification	signature	ratification
EU	✓	✓		
Austria	✓	✓	✓	✓
Belgium	✓	✓	✓	✓
Bulgaria	✓	✓	✓	
Croatia	✓	✓	✓	✓
Cyprus	✓	✓	✓	✓
Czech Republic	✓	✓	✓	
Denmark	✓	✓		✓
Estonia	✓	✓		✓
Finland	✓		✓	
France	✓	✓	✓	✓
Germany	✓	✓	✓	✓
Greece	✓	✓	✓	✓
Hungary	✓	✓	✓	✓
Ireland	✓			
Italy	✓	✓	✓	✓
Latvia	✓	✓	✓	✓
Lithuania	✓	✓	✓	✓
Luxembourg	✓	✓	✓	✓
Malta	✓	✓	✓	✓
Netherlands	✓			
Poland	✓	✓		
Portugal	✓	✓	✓	✓
Romania	✓	✓	✓	
Slovakia	✓	✓	✓	✓
Slovenia	✓	✓	✓	✓
Spain	✓	✓	✓	✓
Sweden	✓	✓	✓	✓
UK	✓	✓	✓	✓

Countries may become parties of the Convention either by signing and subsequent ratification, or by directly ratifying without prior signing ('accession'). This is the case for Denmark and Estonia.

Source: UN

This in-depth analysis, produced by the Ex-Post Impact Assessment Unit of the European Parliamentary Research Service (EPRS), looks into the state of play of the implementation by the European Union of the UN Convention on the Rights of Persons with Disabilities (UN CRPD), after the first round of the review process. The Convention's overarching principles entail mainstreaming of disability rights across all policies and within all institutions. This paper analyses the institutional arrangements required to monitor the implementation process, and subsequently puts the recommendations of the CRPD Committee ('Concluding Observations') into a broader context, outlining the progress made so far and the challenges ahead.

This is a publication of the Ex-Post Impact Assessment Unit
EPRS | European Parliamentary Research Service
European Parliament



PE 536.347

ISBN 978-92-823-8686-6

doi:10.2861/831248

QA-04-16-072-EN-N

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