



DIRECTORATE-GENERAL FOR EXTERNAL POLICIES
POLICY DEPARTMENT



**IMPLEMENTATION OF
THE UN CONVENTION
ON THE RIGHTS OF
PERSONS WITH
DISABILITIES IN THE EU
EXTERNAL RELATIONS**

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DIRECTORATE-GENERAL FOR EXTERNAL POLICIES OF THE UNION

DIRECTORATE B

POLICY DEPARTMENT

BRIEFING PAPER

**IMPLEMENTATION OF THE UN CONVENTION ON THE
RIGHTS OF PERSONS WITH DISABILITIES IN THE EU'S
EXTERNAL RELATIONS**

Abstract

Whilst significant efforts have already been made to integrate the UN Convention on the Rights of Persons with Disabilities in EU legal and institutional processes, more needs to be done to mainstream it across all policy areas and reflect the paradigm shift of disability as a human rights issue that was brought about by the Convention. Institutional changes are necessary to adequately include the Convention in all European Parliament processes and increase its visibility, while the continuous involvement of the concerned beneficiaries – persons with disabilities – in these processes is paramount.

This briefing paper was requested by the European Parliament's Subcommittee on Human Rights.

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LIST OF ABBREVIATIONS

ANED	Academic Network of European Disability Experts
COHOM	Council Working Group on Human Rights
DCI	Instrument for Development Cooperation
DG DEVCO	Directorate General Development and Cooperation - EuropeAid
DG ELARG	Directorate General for Enlargement
DG JUST	Directorate General for Justice
DHLG	Disability High-Level Group
DPO	Disabled People's Organisation
DROI	European Parliament Sub-committee on Human Rights
EDF	European Disability Forum
EIDHR	European Instrument for Democracy and Human Rights
IPA	Instrument for Pre-Accession Assistance
MDGS	Millennium Development Goals
OHCHR	UN Office of the High Commissioner for Human Rights
PETI	European Parliament Committee on Petitions
UNCRPD	UN Convention on the Rights of Persons with Disabilities
UNICEF	United Nations Children's Fund
WHO	World Health Organisation

EXECUTIVE SUMMARY

This paper attempts to present the overview of the state of play of the implementation of the UN Convention on the Rights of Persons with Disabilities (UNCRPD) by the European Union, focusing on its impact on the development policies and external human rights policy of the EU, and to present recommendations for action, including in the area of mainstreaming of disability in all EU policies. The role of the European Parliament in the implementation and monitoring of the Convention is given specific attention, and possible courses of action for the Parliament are formulated in the recommendations.

Chapter 2 provides an overview of the new international legal order brought about by the UNCRPD, the first human rights treaty of the UN of the 21st century, and the first one negotiated with the direct involvement of its beneficiaries. The Convention symbolised the paradigm shift and reaffirmed the inalienable right of all persons with disabilities to all human rights without discrimination and on an equal basis with their non-disabled peers. Reasonable accommodation that may be necessary for the enjoyment of the Convention rights by persons with disabilities has been codified by this treaty¹ that also establishes a unique framework for domestic mechanism for monitoring of implementation. The special focus of the Chapter is on Article 32 "International cooperation" that imposes an important legal obligation on the EU to mainstream disability in its relations with third partners.

Chapter 3 unwraps the legal and policy framework of the EU that supports, or should be amended to support, the implementation of the Convention by the Union. European Disability Strategy 2010-2020 is a comprehensive operational framework that includes a number of actions in the external dimension. In addition, the generalist human rights policy, development cooperation and enlargement and neighbourhood policies, as well as the financial instruments, provide for an ensemble of measures that can advance the implementation of the UNCRPD if formulated, used and monitored adequately.

The EU institutional framework for implementing and monitoring the Convention is analysed in Chapter 4. The need for vertical coordination of actions between the Member States and the EU is acute, the latter being responsible for implementing the Convention strictly to the extent of its competences defined by the Treaties. The UNCRPD touching most EU policies, horizontal coordination between various EU services is equally called for. In view of the institutional consensus to opt for a light and informal European independent monitoring framework, a creative interpretation of the mandate of the framework, particularly to the EP Committee on Petitions, is necessary. Possible consequences of the delay in the ratification by the Union of the Optional Protocol to the Convention include legal uncertainty for many Europeans with disabilities who may lose their access to an effective international remedy.

Recommendations for action are presented in Chapter 5. It is submitted that the European Parliament must increase its presence in the UNCRPD processes at the EU level through including disability more prominently in its resolutions, actions and institutional culture. The Parliament should also contribute to further improving the EU human rights policy (for example, by calling for mainstreaming of disability in the Human Rights Guidelines) and insist on the disability-inclusive development policy. The EP own processes for monitoring the UNCRPD must be strengthened by providing active support to the Committee on Petitions, better coordination among the Parliament services and further improving the accessibility of the EP information and communication.

1. INTRODUCTION

The UN Convention on the Rights of Persons with Disabilities and its Optional Protocol was adopted on 13 December 2006 by the United Nations General Assembly and entered into force on 3 May 2008, after it received its 20th ratification.

In the language of the European Disability Forum (EDF), the representative European umbrella organisation bringing together disability activists from across Europe, the UN Convention on the Rights of Persons with Disabilities is 'the Convention of many firsts': it is the first UN human rights treaty adopted in the 21st century; it is the first treaty negotiated with direct and continuous participation of its beneficiaries – persons with disabilities; and the first treaty that provides for an ensemble of mechanisms for multilevel monitoring of the implementation². Crucially for the EU, the Convention is also the first human rights treaty enabling ratification by a regional integration organisation, such as the Union³.

UNCRPD Article 1 "Purpose"

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

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.

This definition is the symbol of the overarching approach of the UNCRPD that has been described as a '**paradigm shift**' in attitudes to persons with disabilities. It firmly and unequivocally rejects the medical, or welfare, model of disability, whereby persons with disabilities were seen as weak recipients of charity and/or medical treatment, often responsible for their own condition. Instead, it reaffirms the social, or human rights, model that defines disability as the result of 'the interaction between persons with impairments and attitudinal and environmental barriers'⁴. In other words, a person in a wheelchair may have difficulties taking public transport not because of her condition, but because there are environmental barriers, such as inaccessible buses that impede seamless access, and inflexible or ignorant societal attitudes that prevent remediation of the situation. By the same token, a person with a psychosocial disability is put under guardianship and stripped of his right to political participation not because of his inability to make informed decisions, but because of the

¹ Article 2 UNCRPD defines 'reasonable accommodation' as 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 of or exercise on an equal basis with others of all human rights and fundamental freedoms.

² The Convention, which took 4 years (2002 – 2006) to adopt, is also the fastest negotiated human rights treaty in the history of the UN and, having received 82 signatures on its opening day of 30 May 2007 alone, the UN treaty with the highest number of signatories on the opening day.

³ 'Regional integration organisation' is defined in UNCRPD Article 44 as 'an organisation constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by the present Convention.' References to 'States Parties' throughout the Convention equally apply to regional integration organisation within the limits of their competences. The absence of a similar provision in earlier human rights treaties of the UN is one of the obstacles preventing the EU from formally acceding to instruments, such as the UN Convention on the Rights of the Child or the International Convention on Elimination of all Forms of Racial Discrimination.

⁴ UNCRPD, paragraph (e) of the Preamble.

stigma associated with mental health illness and the society's resistance to accommodating the person's needs⁵.

2. OVERVIEW OF THE INTERNATIONAL LEGAL FRAMEWORK

KEY FINDINGS

- The UN Convention reaffirms and codifies the existing human rights of persons with disabilities, without creating any new rights or putting them in a privileged position in comparison with their non-disabled peers.
- The UN Convention is the first UN human rights treaty that provides for a comprehensive national-level implementation monitoring framework. In all processes, due regard must be paid to the adequate involvement of organisations of persons with disabilities.
- The Convention recognises that human rights being universal and inalienable, their protection must extend beyond jurisdiction of States Parties and include disabled people in third countries. Legal basis for including a disability perspective in all international cooperation initiatives is thus provided.
- International cooperation must comprise civil, political, economic, social and cultural rights, include cooperation between sovereign States and with regional and international organisations and respect the twin-track approach.

2.1 The Convention that reclaims rights

The UNCRPD is underpinned by **eight fundamental principles** spelled out in UNCRPD Article 3 and interwoven throughout the letter and the spirit of the Convention:

1. Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons
2. Non-discrimination
3. Full and effective participation and inclusion in society
4. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity
5. Equality of opportunity
6. Accessibility
7. Equality between men and women
8. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

Yet, the international community concurs that the Convention does not create any new rights for persons with disabilities nor grant them any rights that are not available to their non-disabled peers. Rather, it serves to codify the universal, inalienable and indivisible human rights and facilitate their realisation for persons with disabilities through provision of equal treatment, accessibility, participation and awareness-raising.

⁵ Adapted from Byrnes, A. et al., *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 United Nations High Commissioner for Human Rights and the Inter-Parliamentary Union, Geneva, 2007, p. 8.

2.2 The Convention that brings rights home

Unlike the previous UN human rights treaties that only provide for an international monitoring of implementation⁶, the UNCRPD also establishes a system of monitoring at the national level. **Article 33 “National Implementation and Monitoring”** of the Convention provides for a three-tier system: a government-level focal point; an independent monitoring framework; and the involvement of the civil society, in particular, organisations of persons with disabilities⁷.

Article 33(1) places responsibility with governments who should designate one or more **focal points** within the responsible ministry and consider the establishment of a **coordination mechanism** in other relevant governmental structures to ensure multilevel and multiagency implementation.

Article 33(2) provides for putting in place of a **framework, including one or more independent mechanisms** to promote, protect and monitor implementation of the Convention. Such a framework must be established taking into account the ‘principles relating to the status and functioning of national institutions for the protection and promotion of human rights’ as agreed by the UN General Assembly in 1993 in Paris (*Paris Principles*)⁸.

Article 33(3) requires that the **civil society**, especially the organisations of persons with disabilities, be actively involved in the monitoring process, reaffirming the principle of participation interwoven in the Convention. It must be stressed that in order to respect the very broad scope of the Convention, the civil society must be understood broadly, and necessarily include the organisations that work on the implementation of the Convention’s both internal and external dimension.

2.3 The Convention that defends the rights of people everywhere

As Butler notes, the personal scope of the Convention is not limited to persons with disabilities in the territory of States Parties (here: the EU), but extends to all those who are affected by the actions of the State Party. In other words, full compliance with the UNCRPD is only possible when the EU takes into account the rights of persons with disabilities within and outside its borders. This is implied in **Article 4 “General Obligations”** that puts States Parties under the obligation ‘to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability.’

In addition to general provisions implying the obligation to take into account the impact of policies on persons with disabilities outside the State Party’s direct jurisdiction, the Convention also includes a stand-alone **Article 32** on international cooperation, recognising the importance of disability mainstreaming in the work done by the State Party vis-à-vis its international partners⁹.

⁶ Reporting obligation (UNCRPD, Article 35), individual communications and inquiries, whereby the two latter ones are subject to ratification of the Optional Protocol by individual States. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is the closest pre-UNCRPD international human rights instrument, which imposes an obligation to set up a national preventive mechanism.

⁷ For the sake of conciseness, the obligations under Article 33 are not detailed in the present study. For more information, the reader is encouraged to consult the OHCHR, *Thematic study on the role of national mechanisms for the implementation and monitoring of the Convention on the Rights of Persons with Disabilities*, A.HRC.13.29, of 22 December 2009.

⁸ General Assembly resolution 48/134 of 20 December 1993.

⁹ Although UNCRPD Article 32 is the one that spells out the obligations of States Parties in the framework of international cooperation most explicitly and is thus unwrapped here, it is not the only UNCRPD provision that could and should be relied on when designing cooperation supports with third parties. Under Article 4(1)(c), the States Parties undertake “to take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes”.

UNCRPD Article 32 “International Cooperation”

1. States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, inter alia:
 - a. Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;
 - b. Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;
 - c. Facilitating cooperation in research and access to scientific and technical knowledge;
 - d. Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.
2. The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the present Convention.

In its 2010 study¹⁰, the **UN Office of the High Commissioner for Human Rights (OHCHR)** unwraps the Article and highlights a number of distinct elements that make its approach truly innovative and in line with the paradigm shift enshrined in the Convention. Summarising the OHCHR findings, the following trends can be noted:

- The international cooperation efforts should go beyond the traditional realm of **economic, social and cultural rights**, and include cooperation in achieving **civil and political rights**, as well as comprise a broader range of activities. Indeed, the OHCHR study finds that the majority of examples of disability mainstreaming submitted to it focused overwhelmingly on ‘traditional’ activities of international cooperation, such as economic and technical assistance, or training, at the expenses of newer, less explored areas of cooperation, such as research and development, transfer of technologies or humanitarian assistance¹¹. Learning from this challenge, the EU would be welcome to look outside the box and support the initiatives aiming, for example, at inclusion of persons with disabilities in political processes, improving statistics and data collection, or addressing the accessibility of places of detention for disabled inmates.
- Article 32 insists on the broad range of actors who could be involved in fulfilling the rights of persons with disabilities: it includes States (whether or not parties to the Convention), international and regional organisations (such as the Unicef, WHO, Council of Europe, the Organisation of American States, the African Union, etc), civil society and, in particular, organisations of disabled people. Clearly, the EU – a powerful player at the global scene – would need to take a more active role in mainstreaming disability in its relations with world States and international players, while encouraging bilateral cooperation between States, whether or not Parties to the Convention.

¹⁰ OHCHR, *Thematic study on the role of international cooperation in support of national efforts for the realisation of the rights of persons with disabilities*, A/HRC/16/38 of 20 December 2010.

¹¹ *Ibid.*, paragraph 52.

- The OHCHR warns the States Parties from focusing exclusively on disability-specific projects in the framework of their international cooperation at the expense of mainstreaming disability rights into broader international cooperation, such as the fight against global poverty or democratisation processes (so-called ‘**twin-track approach**’)¹². To this end, Article 32(1)(a) emphasizes the need to make all, including non-disability specific international cooperation programmes inclusive of and accessible to persons with disabilities. Possible ways of mainstreaming disability rights would be including a disability perspective in EU election monitoring missions¹³, making sure that the EU programmes only support initiatives that do not, even if indirectly, exclude persons with disabilities from participation, or raising disability rights in human rights dialogues with third countries.
- Finally, it must be stressed that the Convention, in regulating the modalities of international cooperation, does not exempt individual States Parties to the Convention from their obligations thereunder. **States remain primary duty bearers in relation to the rights protected under the UNCRPD within their jurisdiction**, whereas international cooperation measures should be available to support and complement national efforts. In this vein, the EU is encouraged to monitor the actions made by sovereign States in their progress towards implementation of the Convention. For example, in assessing countries’ progress towards EU accession, the EU could consult concluding observations produced by the UN Committee on the Rights of Persons with Disabilities, where they have been issued, as well as the alternative reports submitted to the Committee by the national NGOs¹⁴.

3. OVERVIEW OF THE EUROPEAN LEGAL AND POLICY FRAMEWORK

KEY FINDINGS

- A strong and comprehensive policy framework, the European Disability Strategy 2010 – 2020, is the operational instrument for implementation of the UNCRPD. It includes a section on External Action and enumerates a list of specific mid-term (2015) deliverables. The European Parliament response to the Strategy did not include any recommendations for implementation of the External Action section.
- EU Strategic Framework and Action Plan on Human Rights and Democracy include disability-specific actions to be delivered by end 2014 and provide for a number of opportunities to mainstream disability in the EU human rights discourse. However, relatively low awareness about disability as a human rights issue results in its insufficient visibility in human rights dialogues, election observation missions and other bilateral exchanges with third countries.
- Disability is increasingly reflected in the EU development policy documents. Its initial absence from the Millennium Development Goals is now being rectified by global partners, and this trend is supported by the EU position.

¹² The European Commission has acknowledged its commitment to the twin-track approach in its submission to the OHCHR for the 2010 thematic study; cf

<http://www2.ohchr.org/english/issues/disability/docs/study/EuropeanCommission.doc>.

¹³ Possibly, by nominating a disability focal point, by analogy to gender focal points that are traditionally appointed within the EU election observation missions.

¹⁴ Under UNCRPD Article 35, the States Parties to the UNCRPD are expected to submit an initial implementation report to the UNCRPD Committee within two years of its ratification of the Convention, followed by periodic reports every four years thereafter.

- Inclusion of disability in EU enlargement policy is not yet systematic. The existing political fora and funding streams must be used more strategically to foster implementation of the UNCRPD in the accession and pre-accession countries.
- There is growing potential to use the EU funding instruments for better implementation of its obligations under the UNCRPD. In addition to many disability-specific projects, better attention must be paid to mainstreaming disability in projects that aim at strengthening infrastructures, civil and political rights or research and development. The new Multiannual Financial Framework being under negotiation at the time of writing, the exact opportunities to use the EU funds to implement the UNCRPD are yet unclear.

Accession of the European Union to an international human rights treaty giving rise to individual rights is unprecedented in the history of the Union or, indeed, the UN. It is a symbol of rising awareness about disability as a human rights issue on the part of the EU, and of the increasing capacity of the Disabled People's Organisations (DPOs) to campaign for their rights not only at the national, but also supra-national level. In addition to the philosophical importance of the ratification, it was also a practical necessity to reflect the transfer of competences to the EU by its Member States to the extent that the implementation of certain Convention rights has become impossible without the leadership and the involvement of the EU¹⁵.

The Council of the European Union approved of the conclusion by the EU of the UNCRPD by adopting, on 26 November 2009, **Decision 2010/48/EC**¹⁶. The declaration of competences attached to the Decision, outlines the division between the competences of the EU and its Member States in relation to the Convention; the declaration of competences will be regularly updated to take into account the EU legal and policy developments. Following the adoption of the Decision in 2010, the Council adopted the **Code of Conduct**¹⁷, specifying the internal arrangements for the implementation of the UNCRPD, including the establishment of joint positions vis-à-vis the United Nations. The adoption of the Code of Conduct completed the internal preparations for the formal conclusion of the Convention and enabled the EU to deposit its instruments of formal confirmation with the UN on 23 December 2010. The Convention entered into force for the EU on 23 January 2011.

As of September 2013, all EU Member States but Finland, Ireland and the Netherlands have ratified the Convention; out of these, the Optional Protocol has not been ratified by Bulgaria, the Czech Republic, Denmark, Poland and Romania. Although simple signature does not impose legal obligations on a country, it implies their intention to take steps to be bound by the Convention and creates an obligation to refrain from acts that would go against the letter or the spirit of the treaty¹⁸. Furthermore, having given consent to the accession to the UNCRPD by the EU, the non-ratifying Member States demonstrate their commitment to the Convention values.

¹⁵ For example, the rights relating to the free movement, transport, or competition.

¹⁶ Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities (2010/48/EC).

¹⁷ 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 United Nations Convention on the Rights of Persons with Disabilities (2010/C 340/08).

¹⁸ <http://www.un.org/disabilities/default.asp?id=231>.

3.1 European Disability Strategy 2010 – 2020

To prepare the EU for implementation of the Convention, the Commission had adopted on 15 November 2010 the **European Disability Strategy 2010-2020**¹⁹. The Strategy provides a comprehensive policy and institutional framework for implementation of the UNCRPD at the EU level and for support for national-level actions. Empowerment of persons with disabilities is interwoven in all actions of the Strategy.

The scope of the Strategy is both internal and external dimension of the EU. Indeed, one of eight main areas for action is **External Action**²⁰. The Strategy is accompanied by an **Initial Plan of activities for 2010-2015**²¹ that has 12 points in the field of External Action, ranging from highlighting disability as a human rights issue in the EU human rights dialogues to supporting the national efforts of partner countries for accession to the UNCRPD to ensuring the progress on promoting the rights of persons with disabilities by candidate and potential candidate countries.

In addition to thematic actions, the Disability Strategy is underpinned by general instruments in the areas of awareness-raising, financial support, and statistics and data collection and monitoring. It also outlines the Commission's plans to comply with the EU's obligations under the UNCRPD to establish a governance framework for the implementation of the Convention.

The European Parliament responded to the Disability Strategy by adopting in October 2010 a **resolution on mobility and inclusion of people with disabilities and the European Disability Strategy 2010-2010**²². Comprehensive as it is in many other areas, the resolution does not contain any political recommendations for the implementation of the UNCRPD in the external action. The report, drafted by the Committee on Employment and Social Affairs, was supported by opinions from three Committees²³, all focusing on the internal dimension of the EU obligations to fulfil the rights of persons with disabilities.

3.2 Specific policies

The EU disability policy in external relations is informed by a number of legislative and policy instruments, some of which are pre-Convention. Following the adoption of the Convention, more and more instruments have explicitly referred to the UNCRPD, and it has also been reflected in some funding instruments of the Union as well²⁴. The Convention is also prominently present on the Union's political agenda: following its entry into force, the EU participates in the annual Conference of States Parties to the UNCRPD where it presents the Union's position on the basis of the above-mentioned interinstitutional arrangements²⁵.

¹⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "European Disability Strategy 2010 – 2020: A Renewed Commitment to a Barrier-Free Europe", COM(2010)636.

²⁰ Others are Accessibility, Participation, Equality, Employment, Education and training, Social protection and Health.

²¹ Initial plan to implement the European Disability Strategy 2010 – 2020: List of Actions 2010 – 2015, SEC(2010)1324.

²² P7_TA(2011)0453.

²³ ENVI, FEMM, PETI.

²⁴ The Academic Network of European Disability Experts (ANED) produces annual Annotated review of European Union law and policy with reference to disability against 20 thematic classification headings of EUR-Lex; cf <http://www.disability-europe.net/theme/eu-law-and-policy/reports-law-and-policy>.

²⁵ For example, EU Statement for the General Debate of the Sixth Conference of the States Parties to the UNCRPD, available at http://www.eu-un.europa.eu/articles/en/article_13779_en.htm; also, the EU Side Event: the Experience of a Regional Organisation in the UNCRPD at the Fifth Conference of the States Parties to the UNCRPD, available at http://www.eu-un.europa.eu/articles/en/article_12553_en.htm.

3.2.1 Human rights policy

The European Parliament has emphasised the political significance of the UN Convention on the Rights of the Persons with Disabilities for a number of years. It usually features in its **Annual Report on Human Rights in the World** but this reference rarely goes beyond stressing the importance of formal accession to the Convention and into the details of violations of the rights of persons with disabilities in the world²⁶.

The conclusion of the Convention and the parallel adoption of the European Disability Strategy in 2010 have triggered a more systematic attention to disability in the general human rights framework of the Union. In June 2012, the Council adopted the **EU Strategic Framework and Action Plan on Human Rights and Democracy**. The Framework aims to reaffirm the EU's commitment to universal and indivisible human rights and pledged the EU's support to their promotion across all policy areas. Whereas fight against discrimination on the ground of disability is included as one of EU priorities on human rights, the UN Convention on the Rights of Persons with Disabilities is not mentioned alongside other primary law treaties and conventions that the EU is or will be bound by (such as the EU Charter of Fundamental Rights and the European Convention on Human Rights).

Potentially significantly, the Framework enumerates some areas where human rights (which should include the rights of persons with disabilities) must be mainstreamed, including trade, investment, technology and telecommunications, Internet, energy, environmental, corporate social responsibility, development policy, Common Security and Defence Policy, employment and social policy, and the area of freedom, security and justice (including fight against terrorism). Although this is not spelled out explicitly, the Framework provides a useful guidance for a **mainstreaming approach** that could be an opportunity to answer the calls for a reinforced 'twin-track approach' to disability in external relations. It remains to be seen how disability will be mainstreamed in practice in these, and other, policy areas.

The Framework attaches a specific significance to the role of the European Parliament in the promotion of human rights in the world. Closer coordination between the three EU institutions is called for; indeed, it is indispensable if the EU is to live up to its ambitious commitment to promoting, protecting and fulfilling human rights across all areas of its influence.

Attached to the Framework is the **EU Action Plan on Human Rights and Democracy**, which is a set of concrete commitments to implement the Framework using the existing EU policy instruments on human rights and external action. The ambitious Action Plan comprising 97 actions under 36 headings, to be delivered before 31 December 2014, contains a vast range of commitments. Action 30, entitled 'Enjoyment of human rights by persons with disabilities' pledges to promote the rights of persons with disabilities, as set out in the UNCRPD and the European Disability Strategy, in development programmes, and to update the **Guidance Note on Disability and Development**²⁷.

The Guidance Note was first produced in 2004 but the general consensus among the stakeholders was that it did not provide a practical enough guidance for delegations to effectively mainstream disability in their work. The 2012 updated Guidance Note²⁸ builds on the recommendations of the

²⁶ The 2011 report (T7-0503/2012) strongly welcomed the ratification of the UNCRPD by the EU and called for the Council and the Commission to follow the suit by ratifying other human rights treaties; it also stressed the significance of the European Disability Strategy 2010 – 2012 and, in particular, its Action 8 "External Action", and stressed the need to monitor the implementation of the Convention within and outside the Union's territory.

²⁷ This action was delivered in summer 2012 with the adoption of the updated Guidance Note.

²⁸ European Commission, DEVCO, D3 "Social and Human Development & Migration", *Disability-inclusive development cooperation, Guidance note for EU staff*, 2012.

earlier external 'Study of Disability in EC Development Cooperation'²⁹. It seeks to raise awareness among EU staff in headquarters and delegations about disability mainstreaming and align the actions with the philosophy of the UNCRPD and the European Disability Strategy. Trainings for delegations around the Guidance Note have been organised for Brussels-based staff and delegations³⁰.

Whilst the disability-specific Action 30 of the EU Action Plan is undoubtedly of significance, being the token of the recognition of disability as part and parcel of the mainstream human rights discourse, the eyes are now on the EU to monitor how it will integrate the disability perspective in other relevant actions, such as Action 11(c)³¹, Action 24(b)³², or Action 32(a)³³, just to name a selected few.

The coordination of implementation of the Strategic Framework and the Action Plan lies with the **European Union Special Representative for Human Rights** appointed in 2012³⁴. Within its mandate, the Special Representative can (a) formulate recommendations for implementation of the Framework, (b) engage in the human rights dialogue with third countries and international organisations, (c) contribute to the implementation of the Union guidelines on human rights and (d) work to achieve better coherence of the EU human rights policies and actions.

The two latter objectives deserve a special attention in view of their potential to reinforce the implementation of the UNCRPD in the external action of the EU.

Human rights guidelines that serve as the basis of the Special Rapporteur's mandate³⁵, are pragmatic instruments adopted at ministerial level that aim to support the EU human rights agenda and equip the EU representations to better advance it in the field. There are currently 8 guidelines³⁶ - all focusing on civil and political rights. Two of them - the guidelines on torture (revised in 2012) and on rights of the child (initially adopted in 2007, currently considered for revision) - mention the UNCRPD in passing. The guidelines, being a key reference for the EU agents as well as the civil society actors in their human rights work in third countries, could be an important source of a policy to support the rights of persons with disabilities. However, in the absence of clear instructions to raise disability with third countries, it is not surprising that there is yet no systematic inclusion of a disability perspective in human rights dialogues³⁷. The guidelines, being revised on average every 4

²⁹ Coleridge, P. et al., *Study of Disability in EC Development Cooperation*, European Commission, 2010. The study found that despite targeted funding of NGO-led disability-specific projects in third countries, aimed at promotion of human rights, community-based rehabilitation or social inclusion, the EU has not systematically mainstreamed disability in bilateral cooperation with governments of third countries. As a result, the needs of persons with disabilities have often been ignored in areas such as sanitation, infrastructures, rural development, or health.

³⁰ Such as this course organised on 29-30 November 2012: <http://goo.gl/yNSRb>.

³¹ 'Ensure that the EU investment policy takes into account the principles and objectives of the Union's external action, including on human rights'.

³² '[...]; empower stakeholders to use ICTs to promote human rights, taking into account privacy and personal data protection.'

³³ 'Establish priorities, objectives, indicators of progress for EU human rights dialogues and consultations, to facilitate their review.'

³⁴ Council Decision 2012/440/CFSP of 25 July 2012 appointing the European Union Special Representative for Human Rights.

³⁵ The European Parliament (T7-0250/2012) specifically insisted in its recommendation to the Council that the mandate of the Special Rapporteur be based on the EU human rights guidelines. Cf para 1(f) of the recommendation.

³⁶ Available at http://eeas.europa.eu/human_rights/guidelines/index_en.htm.

³⁷ According to European External Action Service, *Human Rights and Democracy in the World: report on EU action 2012*, disability was raised in human rights dialogues with the African Union, Chile, Mexico, New Zealand, the Palestinian Authority, Russia and the US in 2012. According to an EEAS representative (interview on 20 March 2013), the EU raises the question of disability with more and more countries in the world, whenever the (usually packed) agenda of the dialogue so permits.

years, should gradually include more references enabling effective mainstreaming of the UNCRPD rights.

The potential of the Special Rapporteur as a watchdog of the way disability is raised in the external action of the EU should also not be underestimated. The need for a **more uniform, more coherent messaging of disability as a human rights issue** on a par with other issues the EU raises in its human rights dialogues has been repeatedly raised by many NGOs in the field. The Special Rapporteur for Human Rights is appropriately placed to raise the EU's obligations under the UNCRPD with his colleagues in the Commission, Council, the European Parliament, but also with global partners. It must be reminded that DPOs must become permanent participants of Special Rapporteur's civil society dialogues in third countries.

Since 2000, the European Union has deployed 78 election observation missions³⁸. The methodology for election monitoring is presented in the **Handbook for EU Election Observation**³⁹, the 2nd edition of which, revised in 2008, does include the references to the right to political participation of persons with disabilities as protected in **UNCRPD Article 29**. However, despite this positive step, it is worrying that the Handbook only refers to the prohibition of restrictions on the right to universal suffrage on the ground of **physical** disability. Leaving out persons with intellectual and psychosocial disabilities from the equation makes them exposed to exclusion from political participation on the basis of their disability, contrary to the Convention. The dangerous trend of denying persons with intellectual and psychosocial disabilities their right to vote has been raised repeatedly by European and international disability activists⁴⁰.

OHCHR thematic study on participation in political and public life by persons with disabilities⁴¹ unequivocally confirms the right of **all** persons with disabilities to political participation as protected under UNCRPD Article 29. Realisation of this right is closely linked to the enjoyment of the right to legal capacity protected under UNCRPD Article 12, the right to live independently in the community (UNCRPD Article 19) and the provision of reasonable accommodation, as defined in UNCRPD Article 2.

The EU election observation missions usually being led by a Member of the European Parliament⁴² as Chief Observer, the role of the Subcommittee in ensuring truly inclusive elections is crucial.

3.2.2 Development policy

According to the WHO, over 1 billion people, or 15% of world population, are living with a disability⁴³, 80% of them – in developing countries⁴⁴. Despite the clear link between disability and poverty, persons with disabilities were invisible in the original **Millennium Development Goals**

³⁸ Cf http://eeas.europa.eu/eueom/about-us/observers/index_en.htm.

³⁹ Available at http://eeas.europa.eu/eueom/pdf/handbook-eueom-en-2nd-edition_en.pdf.

⁴⁰ Cf 'Save the Vote' campaign of the Mental Disability Advocacy Center, available at <http://www.savethevote.info/>; EDF roundtable on the right to vote at the European Parliament, available at http://www.edf-feph.org/Page_Generale.asp?DocID=13855&thebloc=28243; interactive debate at the UN Human Rights Council in 2012, available at <http://www.ohchr.org/EN/Issues/Disability/Pages/politicalpubliclife.aspx>.

⁴¹ OHCHR, Thematic study by the Office of the United Nations High Commissioner for Human Rights on participation in political and public life by persons with disabilities, A/HRC/19/36 of 21 December 2011.

⁴² European Parliament Rules of Procedure Annex VII.I states: 'The [Committee on Foreign Affairs] coordinates the work of joint parliamentary committees and parliamentary cooperation committees as well as that of the interparliamentary delegations and ad hoc delegations and election observation missions falling within its remit.'

⁴³ WHO and World Bank, *World Report on Disability 2011*, Malta, 2011, p. 19.

⁴⁴ UN General Assembly, *Realizing the Millennium Development Goals for persons with disabilities towards 2015 and beyond*, General Assembly Resolution of 4 February 2011.

(MDGs) adopted by the UN in 2000⁴⁵, making the achievement of the MDGs virtually impossible. This important gap was addressed by the UN in 2010 and the revised goals include a number of references to persons with disabilities in the development processes⁴⁶.

At the EU level, the 2005 **European Consensus on Development**⁴⁷ is an important reference document that underpins all EU development cooperation and guides the work of the Council, the Member States, the European Parliament and the Commission towards the eradication of poverty, including in the context of meeting the MDGs. Disability is only mentioned in passing in the Consensus, and not enumerated as one of the priority issues to be mainstreamed in EU's development activities⁴⁸. The European Commission recently suggested that the absence of a clear reference to disability in the Consensus, as well as in the original MDGs, makes it difficult to mainstream it systematically in bilateral cooperation with third countries⁴⁹. In light of the revision of MDGs in 2010 and the accession of the EU to the UNCRPD, the inclusion of disability in the Consensus now seems to be the most logical and necessary development⁵⁰.

The need to concentrate on **inclusive** growth, paying particular attention to areas of social protection, health and education, in order to eradicate poverty, was emphasised by the Commission in a 2011 **Communication on the EU Development policy**⁵¹. Although disability is not mentioned explicitly, the emphasis is made on *inclusive* and sustainable growth, implying that all groups of population, incl persons with disabilities, must be included in order to make progress towards the MDGs and beyond. The European Parliament's response to the Communication⁵² further strengthens this position, making the commitment to respect the rights of persons with disabilities in the development cooperation agenda more prominent.

Post-2015 development agenda is currently being discussed by the global partners at the UN level. In February 2013, the Commission adopted a proposal for a joint EU position in the international negotiations on a new development agenda after 2015. The Commission **Communication "A decent life for all: ending poverty and giving the world a sustainable future"**⁵³ includes a number of references to the rights of persons with disabilities and states that the implementation of the UNCRPD is an important component of sustainable development. The European Parliament

⁴⁵ Millennium Development Goals (MDGs) include 8 goals to be achieved by 2015 that form a blueprint for international actions to eradicate poverty and improve the quality of life; cf <http://www.un.org/millenniumgoals/>.

⁴⁶ UN General Assembly, *Keeping the promise: united to achieve the Millennium Development Goals*, General Assembly Resolution of 19 October 2010.

⁴⁷ Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: 'The European Consensus' (2006.C 46/01).

⁴⁸ The issues that are mainstreamed are democracy, good governance, human rights, the rights of children and indigenous people; gender equality; environmental sustainability; HIV/AIDS.

⁴⁹ H el ene Bourgade, Head of Unit DEVCO B.3 at the international conference "The European – Arab International Cooperation: a common agenda for the UNCRPD", 14 December Brussels; cf <http://goo.gl/uIQNg>. Also, cf European Commission, DEVCO, D3, op. cit., page 13.

⁵⁰ Earlier calls for revision of the Consensus have been received with enthusiasm since the reopening of the areas to mainstream was described as a "Pandora's Box", whereby an almost unlimited list of thematic priorities could be added to the existing list, following stakeholders' pressure. However, post-UNCRPD and in light of EU's legal obligations thereunder, the issue of disability does have a legitimate claim for inclusion in the list of areas to be mainstreamed.

⁵¹ Commission Communication "Increasing the impact of EU Development Policy: an Agenda for change", COM(2011)637, 13.10.2011

⁵² European Parliament resolution of 23 October 2012 on an Agenda for Change: the future of EU development policy (T7-0386/2012).

⁵³ COM(2013)92.

resolution⁵⁴ strongly supports the inclusion of the most marginalised persons, including persons with disabilities, in the post-2015 framework, and the importance of collecting data disaggregated by disability. However, the position of the Council⁵⁵ did not make any specific commitments towards persons with disabilities or other discriminated groups. This stand was regretted by CBM, the international disability and development NGO, who nevertheless welcomed the strong focus on human rights approach to poverty alleviation, which leaves the door open for concrete post-2015 actions⁵⁶.

A key event to define the place of disability in the global post-2015 development framework took place on 23 September 2013 in New York where the UN General Assembly hosted the High-Level meeting on Disability and Development. The meeting was the culmination of a series of regional consultations in all world's regions. The Council of the European Union had indicated the EU's participation in this meeting to be an important human rights priority for 2013⁵⁷, and indeed, in the months running up to the meeting, the European Union took the responsibility for the coordination of the European regional consultation. The European consultation, involving 47 countries in the wider Europe region, as well as organisations of persons with disabilities, was wound up by a meeting hosted by the European Commission in Brussels on 23 April 2013 where the regional consultation document was presented⁵⁸.

The draft Outcome document of the High-Level meeting⁵⁹ itself was discussed and adopted at the UN General Assembly on 23 September 2013. It can be considered as a symbol of the global consensus to include persons with disabilities in the development agenda through implementation of the UNCRPD and mobilisation of all available resources, including North-South and public-private sector cooperation. Importantly, the General Assembly calls for the monitoring of progress towards the implementation of the High-Level meeting commitments, thus raising legitimate expectations for long-term continuity of the process.

The European Union was represented by Commissioner for Development Andris Piebalgs who expressed the Union's commitment to continuing "to ensure that the disability dimension is included in all our development related policies and projects just as we committed to do under the UN Convention"⁶⁰

EU's representation at UN-level meetings on disability is regulated by the Code of Conduct between the Commission, Council and the Member States. As such, the European Parliament did not directly participate in the formulation of the Union's position for the High-Level meeting in New York even though the Union's intervention reflects the Parliament's positions on disability and development. In light of the EP's prominent role as human rights watchdog and a long-standing ally of the disability movement, it is recommended it be given a more formal and visible place in the process of following up the Outcome document.

⁵⁴ European Parliament resolution of 13 June 2013 on the Millennium Development Goals – defining the post-2015 framework (TA(2013)0283). The European Parliament has previously taken a stand on disability and development cooperation, most notably in 2006, with the resolution on disability and development (T6-0033/2006) and in 2010, with the resolution on progress towards the achievement of the Millennium Development Goals (T7-0210/2010).

⁵⁵ The Overarching Post 2015 Agenda – Council Conclusions, General Affairs Council meeting, Luxembourg, 25 June 2013

⁵⁶ <http://www.cbm.org/How-inclusive-is-the-EU-position-on-the-future-development-agenda--397935.php>.

⁵⁷ Council conclusions on EU priorities at the UN Human Rights Fora, 3222nd Foreign Affairs Council meeting, Brussels 18 February 2013, para 19.

⁵⁸ http://www.un.org/disabilities/documents/hlmdd/hlmdd_regional_report_europe.pdf.

⁵⁹ Draft General Assembly resolution A/68/L.1, 17 September 2013.

⁶⁰ http://europa.eu/rapid/press-release_SPEECH-13-736_en.htm?locale=en.

3.2.3 Enlargement and neighbourhood policy

All but two countries participating in the EU enlargement process ratified the UNCRPD and are responsible for its conscientious implementation⁶¹. Their efforts are complemented by the EU to the extent of its obligations under the Convention that calls on it to take 'appropriate and effective measures' to support 'national efforts for the realisation of the purpose and the objectives of the [...] Convention', the objectives being 'to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity'⁶². The EU can support the implementation of the Convention in the accession and pre-accession countries using a number of instruments at its disposal.

The **Enlargement package** adopted annually by the Commission comprises the EU Enlargement Strategy Paper⁶³ and the individual country Progress Reports. The package assesses the progress towards EU accession of the countries in the Western Balkans, Iceland and Turkey, sets goals for the future and defines overall funding priorities. The situation of persons with disabilities is often taken into account in the country progress reports – but only from the perspective of their social and economic situation. The processes established and facilitated by DG Enlargement (DG ELARG) enable fair and independent input in the progress reports. Two are of particular interest⁶⁴:

- The well-established procedure of **peer review missions** to the accession countries conducted by independent experts of high standing nominated by the Member States enables an impartial look into specific policy or practice areas in the countries and makes recommendations for future action. The areas of peer review are proposed jointly by DG ELARG and the DG in whose competence the issue lies ('the line DG'), whereas the process of the peer review itself is completely independent from the Commission's influence. In the course of the peer review, the independent experts may undertake study visits, hold interviews with country authorities and civil society organisations and conduct research. The findings of the peer review missions serve to illustrate the annual Progress Report and help choose the course of action, including priorities for funding.
- Another potentially useful tool for mainstreaming disability in the enlargement activities is the use of **sectoral sub-committee meetings**. The country-specific meetings are organised once a year with the purpose to have an in-depth exchange on a thematic area involving the country authority and the line DG of the Commission, facilitated by DG ELARG. It is the responsibility of the line DG to propose specific nuances for the discussion. In this sense, the potential of disability awareness across EU internal policies cannot be underestimated: if raised by the line DG, the key issues for disability mainstreaming in areas such as transport, internal market, consumer policy, justice, etc., have an opportunity to be reflected in the policies of the enlargement countries and possibly rectify the current trend to report on disability from the social welfare perspective.

At the European Parliament, the enlargement and neighbourhood policies fall within the mandate of the Committee on Foreign Affairs⁶⁵, whose responsibilities include strengthening the political relations with third countries by means of cooperation programmes and international agreements,

⁶¹ Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and Turkey; the Convention has not been ratified by Iceland and Kosovo.

⁶² UNCRPD, Arts 32(1), 1.

⁶³ Cf, for example, Communication from the Commission to the European Parliament and the Council "Enlargement Strategy and Main Challenges 2012-2013), COM(2012)600.

⁶⁴ Interview with DG ELARG on 7 March 2013.

⁶⁵ European Parliament Rules of Procedure, Annex VII.I.

and conducting accession negotiations. In particular, the Committee drafts responses to the annual country progress reports stating its position with the view to the country's progress towards the EU accession. The **EP plenary debate on enlargement** is an excellent opportunity to raise the concerns and challenges on the right of persons with disabilities in the enlargement countries. By doing so, the European Parliament would contribute to living up to the obligations of the EU under Article 32 UNCRPD. Further, the meetings of **Joint Parliamentary Committees** should be used to assess the progress of the accession and pre-accession countries in meeting their obligations under the UNCRPD and for exchanges with national DPOs.

In the same vein, the **European Neighbourhood Policy** must embrace the paradigm shift brought about by the ratification of the UN Convention by the EU and mainstream the rights of persons with disabilities in its relations with the participating countries⁶⁶. This should be reflected more explicitly in both policy⁶⁷ and funding instruments⁶⁸. In 2011, the European Parliament made a call for an enhanced accessibility and channelling of EU funds into projects aimed at protection of the rights of migrants⁶⁹. By the same token should the EP now call for a disability-proof European Neighbourhood Policy.

3.2.4 Funding

Since 2006, **the European Instrument for Democracy and Human Rights (EIDHR)**⁷⁰ has provided support for the promotion and respect of human rights in third countries, where they are most at risk, aiming to strengthen the role of civil society and to enhance international and regional framework for the protection of human rights. For the period 2007-2013, the EIDHR has a budget of EUR 1.104 million⁷¹. Protection of the rights of persons with disabilities is explicitly mentioned in the Regulation on the EIDHR as one of the criteria to be considered when granting financial assistance. It is reinforced and mainstreamed in the EIDHR Strategy Paper 2011-2013⁷².

Disappointingly, the language of the proposal for a Regulation establishing the EIDHR 2014-2020 does not reflect the fundamentally different legal order that applies to the EU following the ratification of the UNCRPD: the rights of persons with disabilities are mentioned, but no reference to the implementation of the Convention is to be found in the text. Amendments to the draft European Parliament report on the Regulation propose to significantly strengthen the text, adding a number of references to the Convention and insisting that all actions under the EIDHR should be consistent with the UNCRPD and the European Disability Strategy⁷³.

⁶⁶ The ENP participating countries are Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Occupied Palestinian Territory, Syria, Tunisia, Ukraine. Out of these, the Convention has not been ratified by Belarus, Georgia, Lebanon, Libya and Moldova. Occupied Palestinian Territory ('State of Palestine' in the official UN documents) received the observer state status with the UN in late 2012 and has not to-date adhered to any international human rights treaties.

⁶⁷ Joint Communication of the European Commission and the High Representative of the European Union for Foreign Affairs and Security Policy "Delivering on a new European Neighbourhood Policy", JOIN(2013)4.

⁶⁸ Proposal for a Regulation of the European Parliament and of the Council establishing a European Neighbourhood Instrument, COM(2011)839.

⁶⁹ European Parliament resolution of 14 December 2011 on the review of the European Neighbourhood Policy (T7-0576/2011), para 68.

⁷⁰ Regulation (EC) No 1889/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide.

⁷¹ The proposal for a new Regulation establishing the EIDHR for the period 2014 – 2020 increases the financial envelope to EUR 1.578 million (cf COM(2011)844). As of September 2013, the final amounts of the Multiannual Financial Framework 2014-2020 were not yet confirmed.

⁷² C(2010)2432.

⁷³ PE491.263.

The European **Instrument for Development Cooperation (DCI)** is the main source of funding for initiatives aimed at eradication of poverty in third countries (except the countries covered by the below-mentioned instrument for pre-accession). The budget allocated for the current programming period is EUR 16.9 billion. The Commission proposal for a new package 2014-2020 includes, for the first time, disability as a cross-cutting issue to be mainstreamed in all programmes covered by the instrument⁷⁴.

According to the EEAS, in 2012, the EU funded over 80 projects in over 50 partner countries through the above-mentioned instruments (with a budget estimated at over EUR 30 million)⁷⁵

The **Instrument for Pre-Accession Assistance (IPA)** funds programmatic support to countries undergoing transition with the view to potential EU membership⁷⁶. The priorities for funding are based on the annual progress reports, and the overall budget for 2007 – 2013 is EUR 11.5 billion. Among IPA objectives are the promotion and protection of human rights and the promotion of anti-discrimination; it can be, and has in fact been, used to undertake disability-specific projects⁷⁷. Despite the recent incorporation of the UNCRPD in the legal framework of the EU, disability does not feature specifically in the new **proposal for a Regulation on the Instrument for Pre-accession Assistance (IPA II)**⁷⁸. Instead, the Commission opted for a non-specific formulation of objectives and policy areas to be addressed by the future instrument. However, some members of the European Parliament Committee on Foreign Affairs took a far more progressive approach and proposed to explicitly rely on the Convention in a number of amendments submitted to the EP report on IPA II, such as:

‘(21a) The actions should be consistent with United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) that entered into force for the Union on 22nd January 2011, Council Decision No 2010/48 and the European Disability Strategy. The IPA should reflect the Union's commitment and ambitions of the external relations chapter of the Union's Disability Strategy, where it promotes the rights of people with disabilities in the Union's enlargement programmes⁷⁹.

It is submitted that in light of the EU's obligations under the UNCRPD, mainstreaming of disability rights should be made more explicit in the enlargement package, including IPA, the annual enlargement strategy paper and the country progress reports.

The European Parliament contribution to the draft regulation establishing a **European Neighbourhood Instrument** is comparable to the above. Although neither the Commission proposal⁸⁰ nor the EP rapporteur's report⁸¹ included any disability-specific provisions, the AFET

⁷⁴ COM(2011)840, 7.12.2011, Art 3(3).

⁷⁵ Supra, nr 37, p.122.

⁷⁶ IPA benefits Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Iceland, Kosovo, Montenegro, Serbia and Turkey.

⁷⁷ Although the language of Council Regulation No 1085/2006 establishing an Instrument for Pre-Accession Assistance (IPA) is not disability-specific, Article 3 of Commission Regulation No 718/2007 implementing the IPA Regulation does specify that prevention of “any discrimination based on sex, racial or ethnic origin, religion or belief, *disability*, age or sexual orientation” is one of the main principles to be respected during the implementation of assistance.

⁷⁸ COM(2011)838.

⁷⁹ Amendment 112, submitted by MEPs Marian Harkin, Catherine Bearder, Richard Howitt. Also cf amendment 111 at <http://goo.gl/aqFRm> and IPA II draft report tabled at AFET Committee at <http://goo.gl/e4Bjd>. As of September 2013, the results of the vote at AFET were not publicly available.

⁸⁰ COM (2011) 839.

⁸¹ PR\899937EN.doc.

Committee amendments⁸² strongly supported the use of the Instrument for implementation of the UNCRPD.

4. GOVERNANCE AND MONITORING

KEY FINDINGS

- Absence of the European Parliament in the interinstitutional coordination of the implementation efforts is notable. Currently, the European Parliament is not expected to formally participate in the key initiatives of 2013: submission of the initial EU report to the UN Committee on the Rights of the Persons with Disabilities or the preparation of the UN High-Level meeting on Disability and Development.
- European Parliament Committee on Petitions formally participates in the EU independent monitoring framework under UNCRPD Article 33(2) but its current mandate is insufficient to address the external dimension of the UN Convention.
- There are no formal structures at the European Parliament that enable systematic monitoring of the implementation of the UN Convention. The structures that do exist are either informal and non-resourced (Disability Intergroup) or only allow for monitoring of the UNCRPD at the Parliament as public administration (i.e. employer and public place).
- The delays in the ratification by the EU of the Optional Protocol to the UN Convention risk stripping EU citizens of an international remedy in relation to some UNCRPD rights.

As emphasised above, the Convention provides for an unprecedented mechanism of domestic (regional, in case of the European Union) monitoring of its implementation. It is coupled with the more traditional mechanism for international monitoring provided by the UN Committee on the Rights of Persons with Disabilities that comprises periodic reporting and individual communications, the latter being subject to ratification by the States Parties of the Optional Protocol to the Convention.

4.1 EU-level monitoring

As mentioned above, the three-tier monitoring structure as required by UNCRPD Article 33 comprises a national focal point (possibly, also a coordination mechanism), and independent monitoring framework and the close involvement of the civil society throughout the monitoring process.

4.1.1 Focal point and coordination mechanism

As per the requirement of UNCRPD Article 33(1), Council Decision 2010/48/EC⁸³ designated the European Commission as a **focal point** for matters relating to the implementation of the Convention to the extent of the EU's competences. Neither the Council Decision nor the Code of Conduct specify which service of the Commission is primarily responsible for carrying out the functions of the focal point for the EU. It is commonly accepted that the Unit JUST D.3 "Rights of Persons with Disabilities" coordinates this work and leads on the implementation of the European Disability Strategy 2010-2020.

⁸² AM\904279EN.doc; cf amendments 133, 168, 226, 257.

⁸³ Supra, nr 16, p 11.

Given the mandate of DG Justice (DG JUST) that is focused on the internal EU action, there is an obvious need for **horizontal coordination** of its work with the services that focus on the external EU action (particularly, the EEAS, DG Development Cooperation – EuropeAid (DG DEVCO) and DG ELARG). Although no formal **coordination mechanism** has been designated, the **Commission Interservice group on Disability** is the de facto structure that facilitates the exchange on disability agenda among the relevant Commission services and advances the implementation of the European Disability Strategy 2010 – 2020. The group is also continuously feeding into the initial report that the EU will submit to the UNCRPD Committee in late 2013, under the provisions of UNCRPD Article 35⁸⁴.

Disability being a cross-cutting issue that touches the competencies of many EU services, the model of an interservice dialogue is very welcome and should be considered by other EU institutions and agencies as well.

UNCRPD being a mixed agreement (i.e it cuts across the competences of the EU and its Member States), **vertical coordination** of implementation efforts is required. As of September 2013, no coordination mechanism has formally been adopted (as a reminder, the Convention does not impose the nomination of a coordination mechanism, but recommends it). However, de facto coordination is already happening through two distinct channels (none of which, at this point, involves the European Parliament).

Council Working Group on Human Rights (COHOM)⁸⁵ has so far taken the lead on political aspects of EU's accession to the UNCRPD and the division of competences between the EU and the Member States vis-à-vis the United Nations. It is composed of the representatives of Foreign Ministries of the Member States who are generalist experts on human rights but do not necessarily have specific expertise on the UNCRPD. The EEAS and the Commission are also members of the Working Group. In particular, the relevant services of the Commission participate in meetings of COHOM when the Convention is discussed. On individual occasions, the EDF has been asked to present its views on the UNCRPD to COHOM.

Some of the recent deliverables of the COHOM in respect of the UNCRPD are the Code of Conduct and the approval of the European independent monitoring mechanism. For the 2013, the COHOM agenda includes preparation of the Union's position ahead of the UN High-Level meeting on Disability and Development to be held in September in New York, and the discussion of the initial report of the EU to the UN Committee on the Rights of Persons with Disabilities⁸⁶.

The **Disability High-Level Group (DHLG)**⁸⁷ is a standing expert group made up of Member States representatives, usually with disability-specific expertise, that convenes twice a year in Brussels at the invitation of the European Commission. European DPOs and NGOs⁸⁸ participate in parts of meetings where they have an opportunity to exchange views with the institutional representatives. The DHLG, being a Commission expert group, European Parliament does not participate in its meetings⁸⁹. The

⁸⁴ Interview with European Commission DG JUST D.3, 7 March 2013.

⁸⁵ COHOM was established in 1987; its work is based on the mandate issued by the Council; cf http://www.consilium.europa.eu/uedocs/cmsUpload/COHOM_mandates.pdf.

⁸⁶ Interview with COHOM secretariat, 4 March 2013.

⁸⁷ No updated information about the Disability High Level Group or its mandate is available on the website of the European Commission.

⁸⁸ The organisations funded through PROGRESS programme of the EU, which largely excludes the organisations that are primarily active in disability in external relations.

⁸⁹ In 2011, the European Disability Forum proposed to give the European Parliament the "European Disability Committee", which would essentially be the strengthened and renamed DHLG (cf Fifth Disability High Level Group Report on the implementation of the UN Convention on the Rights of Persons with Disabilities, May 2012, page 112). This proposal was later abandoned (interview with the European Disability Forum on 13 March 2013).

DHLG serves as a platform for sharing the national and European efforts for implementation of the UNCRPD and for discussing thematic issues of particular importance. The annual DHLG report on the implementation of the Convention provides a very valuable compilation of the national and European implementation activities⁹⁰.

Similar to COHOM, the DHLG will in 2013 discuss disability and development cooperation in preparation for the UN High-Level meeting on Disability and Development. This will be the first time that the DHLG touches upon the implementation of the UNCRPD in international cooperation in depth. In addition, the initial report to the UNCRPD Committee may also be discussed at the DHLG, although it will have no formal role in its approval⁹¹.

Given that the focus of the DHLG has traditionally been internal EU affairs, some degree of flexibility in its membership and participation in meetings may be necessary when certain thematic areas touching upon the external dimension of the UN Convention are discussed. This may include inviting the external EU services (such as EEAS or DG DEVCO) and NGOs active in disability and development cooperation (such as CBM⁹² or International Disability and Development Consortium⁹³) to meetings when the external action is on the agenda.

4.1.2 Independent monitoring framework

The Code of Conduct mandated the Commission to propose in due course **an appropriate framework, taking into account all relevant EU institutions, bodies and agencies**⁹⁴. Having consulted a wide range of stakeholders, the Commission has proposed a framework that would include the **European Parliament Petitions Committee (PETI)**, the European Ombudsman, the European Commission (that also provides an informal secretariat to the framework); the EU Agency for Fundamental Rights (FRA); and the European Disability Forum. The Commission proposal, first presented to COHOM on 25 January 2012, was formally adopted by the Council on 29 October 2012⁹⁵.

The European framework 'covers areas of EU competence, and it is a complement to the national frameworks and independent mechanisms which bear the main responsibility for the promotion, protection and monitoring of the UNCRPD in the Member States'⁹⁶. The framework carries out its tasks in two distinct areas:

- The EU legislation and policy to the extent of the competences of the Union as per the Code of Conduct;
- Administrative arrangements (i.e recruitment and employment of the EU agents, accessibility of premises and communication tools, etc).

The examination of the extent to which the EU can accomplish the first task in relation to its external action, deserves special attention. Paragraph 5(b) of the Code of Conduct indicates that development cooperation and cooperation with industrialised countries fall under the sphere of shared competence between the EU and its Member States. Consequently, this area should fall under the mandate of the European independent monitoring framework, vis-à-vis which it should be

⁹⁰ Ibid.

⁹¹ Interview with European Commission DG JUST D.3, 7 March 2013.

⁹² <http://www.cbm.org/EU-Liaison-Office-250878.php>.

⁹³ <http://www.iddconsortium.net/joomla/>.

⁹⁴ Supra, nr 17, para 13.

⁹⁵ Council Press release 15491/12, Luxembourg 29 October 2012; available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/trans/133256.pdf.

⁹⁶ Fifth Disability High Level Group Report; supra nr 90, p 105.

capable to exercise its duty to promote, protect and monitor the implementation of the UN Convention.

On the face of it, the framework's difficulties of raising the issue of disability in external action are obvious: both Committee on Petitions and European Ombudsman can only accept communications from EU citizens or residents of Member States, whereas the mandate of FRA, being closely linked to the EU Charter of Fundamental Rights, does not extend beyond the internal EU dimension either⁹⁷.

Following the institutional preference for a light and informal structure of the European independent monitoring framework, no legal amendments to the mandates of its parts are to be proposed. However, it has been suggested by the European Commission⁹⁸ that all framework elements be encouraged to interpret their own mandate generously and to creatively shape their participation in the framework – naturally, without prejudice to their competences given to them by the EU primary or secondary legislation.

In this vein, it is recommended that the Committee on Petitions reflect how its new role as part of the framework could best be accommodated, respecting its above-mentioned limitations.

The first – and the most essential – recommendation to the Committee focuses on its educational role. The prerequisite for a due respect of the Convention provisions by the Parliament is its good understanding of the implications of the EU's accession and of the Parliament's responsibilities and opportunities in this regard. It is therefore suggested that the Committee take the lead on raising the awareness about the Convention first among its own members and then at other EP Committees. It is encouraged to hold seminars, hearings and other public events with disability experts, conduct studies, organise training sessions on the UNCRPD for the EP services and promote the Convention on its website. An appropriate symbolic gesture would be the explicit inclusion of the Committee's monitoring role in the EP Rules of Procedure.

The Committee on Petitions, whose mandate does not extend to the external dimension of the EU policies, should make a proposal on how to involve the external affairs Committees (Committee on Foreign Affairs - AFET, Sub-Committee on Human Rights - DROI, Committee on Development - DEVE, Committee on International Trade - INTA) in the monitoring process. Other EP Committees who have specific expertise in the Convention fields must also be involved⁹⁹.

4.1.3 Monitoring of the UN Convention in the European Parliament

The European Parliament does not currently have dedicated structures to systematically contribute to the implementation of the UN Convention at the EU level, apart from the involvement of the Committee on Petitions in the European independent monitoring framework with the limitations outlined above.

The Parliament's informal **High Level Group on Gender Equality and Diversity**¹⁰⁰, chaired by an EP Vice-President meets regularly during EP plenary session. Among its activities is the promotion of

⁹⁷ For an in-depth analysis of the proposed framework, cf Waddington, L., *Reflections on the Establishment of a Framework to Promote, Protect and Monitor Implementation of the UN Convention on the Rights of Persons with Disabilities (Article 33(2) CRPD) by the European Union*, Maastricht Faculty of Law Working Paper No. 2011-3, January 24, 2011.

⁹⁸ DG JUST D.3, interview on 7 March 2013.

⁹⁹ For example, EMPL (employment and social protection), TRAN (accessibility of transport networks to persons with disabilities), ITRE (accessibility of infrastructures, research), IMCO (accessibility of goods and services), FEMM (women and girls with disabilities), etc. The involvement of LIBE is also paramount to reflect the new paradigm that defines disability as a human rights issue.

¹⁰⁰ Cf <http://goo.gl/U000t> for the draft mandate of the Group. The final version of the mandate is not available. More information on the Group is available at <http://www.europarl.lv/ressource/static/files/sievietes-ep-en.pdf>, p 9.

equal opportunities of persons with disabilities within EP structures. Theoretically, the High Level Group could be the EP body to implement the Convention in relation to the EP internal procedures, such as employment of agents with disabilities or accessibility of the EP communication tools¹⁰¹; however, it is unclear whether and to what extent the Group does perform these tasks, since its activities are not reported publicly.

The European Parliament **Disability Intergroup** is an informal cross-party grouping of MEPs who regularly meet to discuss disability issues. Intergroups are recognised in the EP Rules of Procedure as groupings designed to hold informal exchanges among Members and to promote contact between MEPs and civil society. They may not engage in any activities which may provoke confusion with the official EP activities or represent the EP views¹⁰². The Disability Intergroup does not receive any financial or human resource support from the European Parliament and it is thus difficult to monitor its activities¹⁰³. Although a welcome MEP-driven initiative, the Disability Intergroup cannot be seen as a body that does or could fulfil the function of monitoring the Convention for the European Parliament.

During the 3rd “European Parliament of Persons with Disabilities” – a public event organised by the European Disability Forum at the European Parliament and endorsed by the latter - EDF suggested a number of **ways to reinforce the role of the European Parliament in implementation of the UNCRPD**¹⁰⁴:

- To hold a 2nd “State of the Union on Disability” in 2013 with the participation of the three Presidents of the European Parliament, the European Commission and the European Council, together with EDF¹⁰⁵;
- To hold a plenary debate on the EU periodic report to the UN Committee on the Rights of Persons with Disabilities with participation of DPOs;
- To debate the implementation of the UNCRPD with national parliaments;
- To establish a taskforce of MEPs coordinated by the Committee on Petitions and inclusive of members of LIBE and DROI Committees;
- To continue the tradition of the “European Parliament of Persons with Disabilities” and hold it once per parliamentary term.

4.2 International monitoring – Optional Protocol to the UNCRPD

The Commission proposal for a Council Decision on the conclusion by the European Union of the **Optional Protocol** to the Convention¹⁰⁶ has not, as of September 2013, been adopted, although in

¹⁰¹ In accordance with paragraph 1 of Annex II to Council Decision 2010/48/EC concerning the conclusion of the UNCRPD by the EU that stipulates: ‘To the extent that provisions of Community law are affected by the provision of the Convention, the European Community has an exclusive competence to accept such obligations with respect to its own public administration. In this regard, the Community declares that it has power to deal with regulating the recruitment, conditions of service, remuneration, training etc. of non-elected officials under the Staff Regulations and the implementing rules to those Regulations’.

¹⁰² European Parliament Rules of Procedure, Rule 32. The rules governing the establishment of Intergroups further restrict their activities and the support that they may receive from the European Parliament, cf http://www.europarl.europa.eu/pdf/intergroupes/2012_Rules_EN.pdf.

¹⁰³ Its Secretariat of the Disability Intergroup is informally provided by the European Disability Forum, according to whom in 2012, the Intergroup held around 10 public meetings, one of which had been planned to be dedicated to disability in external action, but did not materialise. The Disability Intergroup does not have a website.

¹⁰⁴ Motion for resolution “A vision for the next decade: Implementing the UN CRPD in times of crisis” voted by over 450 delegates of the 3rd European Parliament of Persons with Disabilities meeting on 5 December 2012 at the European Parliament in Brussels, cf <http://bit.ly/XqBLvA>.

¹⁰⁵ First State of the Union, initiated by EDF was held in 2011; cf <http://goo.gl/NyRjl>.

2012 the Commission stated that it would welcome the continuation of the ratification process that has been in the hands of the Council since 2010¹⁰⁷.

The ratification of the Optional Protocol would enable individuals or groups of individuals within the EU jurisdiction claiming to be victims of a violation by the EU of the provisions of the Convention to bring complaints to the attention of the UN Committee on the Rights of Persons with Disabilities. Such claims would only be admissible if they respected the division of competences between the EU and its Member States as outlined in the Code of Conduct. Although the views of the UNCRPD Committee are not binding on the Member States, they do have an important political and jurisprudential value and are often relied on by human rights advocates. States often take steps to follow the recommendations of the Committee and provide remedy to the individual complainant as well as introduce a legislative or policy change.

The European Parliament has repeatedly called for a speedy ratification of the Optional Protocol by the EU, seeing it as an indivisible part of the Convention¹⁰⁸. Ratification of the Optional Protocol is regularly put on the agenda of COHOM that must approve of the Commission proposal for a Council Decision, but the negotiations have not progressed due to resistance of some Member States, including those that have not themselves ratified the Optional Protocol yet. Although the deliberations in the Council are not open, it is understood that the main concerns are around the possible repercussions of the EU ratification on the national legal order. In particular, some Member States are concerned that if the UNCRPD Committee were to issue an unfavourable opinion against the European Union, all its Member States, include those that explicitly chose not to ratify the Optional Protocol domestically, would be forced to abide by Committee's interpretation.

Indeed, the **possible impact of the EU's ratification of the Optional Protocol** is hard to assess, since it would be an unprecedented move. The Code of Conduct, the logical place to elaborate on the intricacies of this relationship, is silent on the matter. The most obvious concern presented by the delayed ratification is the legal uncertainty for citizens in those Member States that did ratify the Optional Protocol: some rights (the ones within the Member States competence) would be justiciable before the UNCRPD Committee, whereas the others (the ones within the shared or exclusive EU competence) would not. Most likely, the citizens would not have an international remedy against those national measures that are based on the EU regulations and directives.

A legal study further exploring the implications of the ratification by the EU of the Optional Protocol on the division of competencies between the EU and its Member States would be welcome.

Arguably, the resistance to the EU ratification of the Optional Protocol will weaken when or if all the remaining EU Member States ratify both the Convention and its Optional Protocol domestically and thus align their own obligations under the Convention to these of the EU. Intensive national-level lobbying is required at this stage to harmonise the legal situation across the European Union.

¹⁰⁶ COM(2008)530.

¹⁰⁷ Ratification and Implementation of the UN Convention on the Rights of People with Disabilities – Information from the Commission, 11171/12, 22 June 2012, available at <http://register.consilium.europa.eu/pdf/en/12/st11/st11171.en12.pdf>.

¹⁰⁸ European Parliament resolution of 16 December 2010 on the Annual Report on Human Rights in the World 2009 and the European Union's policy on the matter (T7-0489/2010), para 27.

European Parliament resolution of 7 May 2009 on the Annual Report on Human Rights in the World 2008 and the European Union's policy on the matter (T6-0385/2009), para 19.

5. RECOMMENDATIONS

5.1 On the legal and policy framework

Recommendation 1

Sub-committee on Human Rights is encouraged to consider giving the implementation by the EU of its obligations under the UN Convention a more prominent place in its **Annual Report on Human Rights in the World** (and, subsequently, in the annual plenary debate on human rights) given its unprecedented status in the EU legal framework. The Report containing a dedicated section on the implementation of the UNCRPD should be sent to the Commission and the Council with a specific request to take its findings into account when preparing the EU periodic report to the UNCRPD Committee.

Recommendation 2

An even more ambitious proposal would be to hold a **dedicated debate on the UNCRPD** that would review the EU's progress in the implementation of the Convention and feature an independent assessment of the efforts by the European monitoring framework. In line with the requirements of UNCRPD Article 33(3), the representatives of the European and international disability community should be invited to address the European Parliament.

Recommendation 3

The European Parliament should call on the Member States sitting as the Council of the European Union to gradually revise the **EU Human Rights Guidelines** to include references to the rights of persons with disabilities in accordance with the respective provisions of the UNCRPD.

Recommendation 4

Sub-committee on Human Rights is encouraged to consistently raise the implementation of the UNCRPD with the **Union Special Representative for Human Rights** during the exchanges of views. The Special Representative should be asked to mainstream disability in all activities of his office and to consult, as appropriate, the organisations of persons with disabilities during his missions.

COHOM should continue discussing the external dimension of the UNCRPD at regular intervals. The European Parliament is invited to call on the Council of the EU to continuously mainstream the UNCRPD in the EU human rights priorities vis-à-vis the United Nations.

Recommendation 5

Rights of persons with disabilities should become a permanent point on the agenda of **human rights dialogues** with third countries, including ENPI countries. EU election observation missions, led by an MEP as Chief Observer, should consider nominating an analyst on disability in the mission, on a par with the analyst on gender already present in most missions.

The Handbook for EU Election Observation must be amended to protect the right of persons with intellectual and psychosocial disabilities to political participation under UNCRPD Article 29.

Recommendation 6

The EU commitments under the Millennium Development Goals should be based on a firm understanding that persons with disabilities must be included and visible in all development cooperation programmes. The **post-2015 development agenda** must also prominently include disabled people, and the EU is called to take the leadership in ensuring this. To this end, the European Parliament is invited to work with the other EU institutions to defend a strong EU position on the inclusion of persons with disabilities in the post MDG agenda. The implementation of the

Outcome document of the 2013 UN High-Level meeting on Disability and Development must be used as the benchmark for the EU policy.

Recommendation 7

The European Parliament must use all available tools to support and encourage the **accession and pre-accession countries** to meet their obligations under the UNCRPD. It should do so in annual resolutions on accession country progress reports, at plenary debates on enlargement, at meetings of Joint Parliamentary Committees and during missions and exchanges with representatives of the enlargement countries. Special attention should be paid to the support of DPOs in the countries.

5.2 On governance and monitoring

Recommendation 8

The European Parliament could request the Commission and the Member States to revisit the membership and working methods of the **Disability High Level Group**. The DHLG should comprise representatives of national focal points established under UNCRPD Article 33(1), all elements of the European independent monitoring framework set up under UNCRPD Article 33(2) and the European Commission (including the thematic services if their participation is warranted by the discussion issues). The DHLG should draw on the broad pool of experts (NGOs, human rights institutions, MEPs) to assist its thematic discussions.

More clarity on roles of **COHOM** and DHLG concerning the UNCRPD processes, including the interplay between the two, would be welcome.

Recommendation 9

More generally, the European Parliament is invited to request the Member States and the Commission to include it in the **interinstitutional arrangements for coordination** of implementation of the Convention. Possibly, a European Parliament role could be raised during the eventual revision of the Code of Conduct¹⁰⁹.

Recommendation 10

The European Parliament Rules of Procedure could be amended to explicitly include the unique role of the **Committee on Petitions** in monitoring the UNCRPD under its Article 33(2). Further, the Committee is encouraged to reflect how to address the broad material scope of the UNCRPD, including its external aspect. It could hold hearings and training sessions on the UNCRPD (involving other EP services as appropriate), draft annual reports on disability-specific petitions, analysing them in light of the Convention, and reinforce links with national monitoring frameworks established under UNCRPD Article 33(2) to exchange information and guide petitioners when their petition does not fall within the Committee's competence.

Recommendation 11

The European Parliament should reflect the transversal nature of disability in its structures, respecting both internal and external dimensions of the UNCRPD. Better **coordination between all relevant Committees** would be welcome. Possibly, the internal EP coordination could be stirred by the Committee on Petitions that has a formal role in monitoring the Convention under the

¹⁰⁹ Paragraph 14 of the Code of Conduct says: "At the request of the Council, a Member State or the Commission. The arrangement will be reviewed, taking account of experience gained during its operation"; supra nr 17. Formally, the European Parliament cannot ask for a revision of the Code of Conduct. According to EEAS (interview on 20 March 2013), there are no immediate plans to revise the Code of Conduct.

provisions of its Article 33(2). It should include representatives from the all EP Committees (both MEP and secretariat-level) whose work is informed by the UNCRPD. This should include Committees working on external dimension of the EU (AFET, DROI, DEVE, INTA...).

Based on the recommendations of this coordinating structure, the relevant EP Committees should within the limits of their mandates set by the EP Rules of Procedure try to include various aspects of UNCRPD implementation in their work. This could take form of own-initiative reports, debates, exchanges of views, studies, etc.

Recommendation 12

The European Parliament should draw on the positive examples of **interservice coordination** and establish a working structure to facilitate the discussion on the implementation of the UNCRPD by the Parliament when performing its public administration functions. A welcome development would be the appointment of a **disability coordinator** at the office of the Secretary General, who would be in charge of overseeing the internal disability policies of the European Parliament (recruitment and employment of staff with disabilities, accessibility of EP infrastructures and communication tools, etc). This would help raise the profile of disability at the European Parliament and centralise the work.

Recommendation 13

The European Parliament should consider requesting the European Commission to present to it the **draft EU periodic report to the UN Committee on the Rights of Persons with Disabilities**. Eventually, this process would need to be reflected in the Code of Conduct during its next revision.

Alternatively, the Parliament should draft its own parallel annual report on the implementation of the UNCRPD by the EU (similar to the Annual Report on Human Rights in the World authored by DROI Committee, or to the Annual Report on Fundamental Rights in the EU authored by LIBE Committee) and hold an annual plenary debate on it with the Commission and the Council.

The Concluding Observations that are issued by the UNCRPD Committee to the EU should be debated in plenary with a resolution to wind up the debate.

Recommendation 14

The European Parliament should propose regular debates on the UNCRPD in the framework of its cooperation with national parliaments, bearing in mind the impact of the EU legislation and policies at the national level.

Recommendation 15

In compliance with UNCRPD Article 33(3), involvement of civil society, in particular organisations of persons with disabilities, is required throughout all steps of monitoring. In this vein, the European Parliament is recommended to initiate and maintain **contact with disability NGOs, particularly DPOs**, during election observation missions, human rights dialogues and in the framework of activities of the ACP-EU Joint Parliamentary Assembly.

Recommendation 16

The European Parliament is invited to take measures to **improve the awareness about the UNCRPD** among the general public using its extensive outreach channels. This could be done through public hearings, exhibitions, a dedicated page on its website, video clips on Europarl TV, use of Parliamentarium, activities in the national information offices, etc. Particular attention should be paid to demonstrating how the EU uses its external action tools to implement the UNCRPD. In designing these activities, the Parliament is encouraged to actively involve persons with disabilities, including children – both in the EU Member States and, whenever appropriate, in third countries.

Recommendation 17

Members of the European Parliament are encouraged to explore the ways to influence their national governments on their stance vis-à-vis the **Optional Protocol**. If appropriate, they should raise the issue with the national parliament and in other national-level debates. The European Parliament is invited to take a strong position on the issue in its next Annual Report on Human Rights in the World and the Annual Report on Fundamental Rights in the EU. It could also raise this issue with the Council and invite it to commission a legal study exploring the potential impact of the ratification of the Optional Protocol by the European Union on the division of competences between the EU and its Member States.

5.3 On funding¹¹⁰

Recommendation 18

Implementation of the UN Convention on the Rights of Persons with Disabilities must be explicitly spelled out as an **objective of the relevant EU funds** (including DCI, EIDHR, IPA, ENPI). Inspiration could be taken from the processes established under the EU Structural Funds that provide for inclusion of disability (particularly areas, such as independent living and accessibility) in national projects.

Recommendation 19

Technical guidance on how to include persons with disabilities in **mainstream programmes** (such as water and sanitation, microcredit, infrastructures, vocational training) should be developed to assist the programmatic support. Accessibility criteria for public procurement must be developed and enforced.

Recommendation 20

In light of its obligations under Article 32, the EU should promote the creation of **resource-sharing partnerships** between donors (World Bank, governments, private sector, foundations, etc) and beneficiaries (persons with disabilities and their representative organisations)¹¹¹.

¹¹⁰ In light of the ongoing negotiations on the Multiannual Financial Framework 2014-2020, only general recommendations based on UNCRPD principles are given. As of September 2013, the final provisions and amounts of the MFF and its various elements had not yet been adopted.

¹¹¹ Such as the Global Partnership for Disability and Development, <http://www.gpdd-online.org/index.php>.

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ANNEX: EU LEGAL AND POLICY FRAMEWORK ¹¹²**Legislative instruments**

Nr	Title of instrument	Remarks
1.	Charter of Fundamental Rights of the European Union	Art 26 stipulates that the Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community. Art 21(1) prohibits any discrimination based on disability.
2.	Council Decision 2012/440/CFSP of 25 July 2012 appointing the European Union Special Representative for Human Rights	Although the Decision does not mention disability, the USR's actions should cover disability rights in line with the EU Strategic Framework and Action Plan.
3.	Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities	The Decision to approve, on behalf of the Community, the conclusion of the CRPD, enable to deposition of the instrument of formal confirmation of the Convention by the EU with the UN.
4.	Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights	The Regulation establishes the FRA whose task is to provide assistance and expertise relating to fundamental rights and to implement the EU Charter of Fundamental Rights. The mandate enabled FRA to take active role in monitoring the rights of persons with disabilities and participate in the EU independent monitoring framework.
5.	Commission Regulation (EC) No 718/2007 of 12 June 2007 implementing Council Regulation (EC) No 1085/2006 establishing	The Regulation includes a general non-discrimination provision and states that the beneficiary states should report which actions are undertaken with regard to the inclusion in employment and society

¹¹² In reverse chronological order; adapted from Arsenjeva, J. Annotated review of European Union law and policy with reference to disability, ANED, available at <http://goo.gl/PBSZk>.

	an instrument for pre-accession assistance (IPA)	of people with disabilities.
6.	Regulation (EC) No 1889/2006 of the EP and of the Council of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide	EIDHR established a financing instrument for the promotion of democracy and human rights worldwide. It has been used for promotion of the rights of people with disabilities.
7.	Regulation (EC) No 1905/2006 of the EP and of the Council of 18 December 2006 establishing a financing instrument for development cooperation	The scope of the DCI includes the protection of rights of people with disabilities in developing countries and combatting discrimination.
Policy instruments		
Nr	Title of instrument	Remarks
8.	Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "European Neighbourhood Policy: Working towards a Stronger Partnership" JOIN(2013)4	The revised ENP does not currently explicitly mainstream disability, although there is a significant potential for it, alongside the gender equality and rights of the minorities that are indeed mentioned.
9.	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "A decent life for all: ending poverty and giving the world a sustainable future" COM(2013)92	The Communication spells out the respect of the UNCRPD as an essential component of sustainable development. Implementation of the European Disability Strategy is part and parcel of achieving the EU objectives in the field of poverty eradication.
10.	Council conclusions of Social Protection in European Union Development Cooperation, 3191st Foreign Affairs – Development – Council meeting Luxembourg, 15 October 2012	The Council calls on the Commission to explore how to best include the social protection in the post-2015 development agenda, focusing on vulnerable persons, including disabled people.
11.	EU Strategic Framework and Action Plan on Human Rights and Democracy, Luxembourg, 25 June 2012, 11855/12	The document provides for a political framework and an Action Plan for the advancement of human rights outside the EU borders. Disabled people are explicitly mentioned in Action 30.
12.	European External Action Service, Human Rights and Democracy in the World: report on EU action 2011 , June 2012	A specific chapter of the report is dedicated to the rights of persons with disabilities, firmly placing it within the mainstream human

		rights discourse.
13.	Communication from the Commission to the European Parliament and the Council "Enlargement Strategy and Main Challenges 2012 – 2013" COM(2012)600	The Strategy mentions disability as a human rights issue in relation to most enlargement countries.
14.	Guidance Note for EU Staff: Disability-inclusive development cooperation, drafted by DEVCO, D3 "Social and Human Development & Migration" (2012)	The note aims to raise awareness amongst the Commission's external staff about CRPD and give practical guidance about disability mainstreaming, and especially CRPD Article 32.
15.	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Social Protection in European Union Development Cooperation, COM(2012)0446	The Communication proposes measures to support national policies to support employment and address the needs of vulnerable groups, including persons with disabilities, in accessing social protection in developing countries.
16.	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Increasing the impact of EU Development Policy: an Agenda for Change, COM(2011)637	The Communication does not mention explicitly persons with disabilities in developing countries; instead, the Agenda insists on the need to promote inclusive growth.
17.	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe COM(2010)0636	The ten-year strategy was adopted with the view to operationalizing the UNCPRD implementation process at the EU level. Eight main areas of action, incl one on 'external action' were identified.
18.	Initial plan to implement the European Disability Strategy 2010-2020. List of Actions 2010-2015 SEC(2010)1323	Attached to the Disability Strategy, the document sets concrete objectives to be delivered by 2015.
19.	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions - A twelve-point EU action plan in support of the Millennium Development Goals COM(2010)0159	The Communication sets out an action plan with a number of area-specific medium-term actions in the Member States in support of the MDG. Targeted interventions should focus on the most vulnerable, including people with disabilities, through support for wide-coverage social protection systems.
20.	Code of Conduct between the Council, the Member States and the	The Code of Conduct sets out interinstitutional arrangements for

	Commission setting out internal arrangements for the implementation by and representation of the European Union relating to the United Nations Convention on the Rights of Persons with Disabilities 2010/C 340/08	the division of tasks, taking positions and voting on issues concerning the UNCRPD. The adoption of the Code of Conduct enabled the formal deposition by the EU of the instrument of accession with the UN in December 2010.
21.	European Instrument for Democracy and Human Rights (EIDHR) Strategy Paper 2011 – 2013, C(2010)2432	The Strategy Paper reinforces the commitment to invest in the protection of the rights of persons with disabilities in third countries.
22.	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'Supporting developing countries in coping with the crisis' COM(2009)0160	In the recognition that people with disabilities are among the most vulnerable groups, the Communication reaffirms the EU's commitment to the MDG Agenda for Action and recognises the need for support in the fields of health, decent work and education.
23.	Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: 'The European Consensus', (2006/C 46/01)	The Consensus identifies the main commitments of the EU in its development policies. The EU will aim to prevent social exclusion and discrimination in its work on poverty eradication. It specifically aims to address 'the condition of disabled people'.
EP instruments		
Nr	Title of instrument	Remarks
24.	European Parliament resolution of 23 October 2012 on an Agenda for Change: the future of EU development policy (2012/2002/INI)	The resolution makes a strong link between disability and poverty and calls for implementation of Art 32 CRPD, which would make international cooperation inclusive of disabled people.
25.	European Parliament recommendation to the Council of 13 June 2012 on the EU Special Representative for Human Rights (2012/2088(INI))	Among other recommendations, the EP suggested that the USR's mandate be based on the EU Human Rights Guidelines and made known its views on the implementation of the Action Plan.
26.	European Parliament Resolution of 18 April 2012 on the Annual Report on Human Rights in the World and the European Union's policy on the matter, including implications for the EU's strategic	The Annual Report stresses the need for universal ratification of the CRPD and its adequate monitoring; mentions the need to focus on accessibility of electoral processes to persons with disabilities.

	human rights policy	
27.	European Parliament resolution of 25 October 2011 Mobility and inclusion of people with disabilities and the European Disability Strategy 2010-2020	EP reaction to the European Disability Strategy stressed inadequate access to services as the main barrier that needs to be tackled; asked for a more formalised involvement of the EP in the implementation of the CRPD through adoption of an interinstitutional agreement and called for linking the Disability Strategy and Europe 2020. External dimension was not mentioned.
28.	European Parliament resolution of 15 June 2010 Progress towards the achievement of the Millennium Development Goals: mid-term review in preparation of the UN high-level meeting in September 2010	The EP calls on the EU to target the neediest groups in the least developed countries, incl people with disabilities, and to insert non-negotiable human rights and non-discrimination clauses into its international agreements.
29.	European Parliament legislative resolution of 24 April 2009 on the proposal for a Council decision concerning the conclusion, by the European Community, of the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities	The resolution approves the accession of the European Community to the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities.
30.	European Parliament resolution of 24 April 2009 on the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto	The resolution approves the accession of the European Community to the UN Convention on the Rights of Persons with Disabilities.
31.	European Parliament resolution of 19 January 2006 on disability and development	The resolution supports the inclusion of an article on international cooperation in the then draft UNCRPD.
32.	European Parliament Bureau Decision of 22 June 2005 'Code of Good Practice for the Employment of People with Disabilities'	The Decision is the most complete to-date EP commitment to equal treatment of persons with disabilities as EP employees. It covers recruitment, reasonable accommodation, positive action, disability awareness training, etc.
33.	European Parliament resolution on the Communication from the Commission to the Council and the European Parliament 'Towards	The EP position on the future Convention emphasised that it should be based on the recognition of the rights-based approach,

[a United Nations legally binding instrument to promote and protect the rights and dignity of persons with disabilities'](#)
[COM\(2003\)16](#)

reasonable accommodation, involvement of disabled people, awareness-raising and attention to multiple discrimination.

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