

Submission to the UN Committee on the Rights of Persons with Disabilities (the Committee) on its Review of the European Union (EU)

Executive Summary of Main Recommendations

The European Network of National Human Rights Institutions' (ENNHRI) Working Group on the Convention on the Rights of Persons with Disabilities (ENNHRI's CRPD Working Group) urges the Committee to recommend that:

1. The EU adopt the Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (article 5 UNCRPD)
2. The EU publish and adopt a European Accessibility Act, which accords fully with the scope of UNCRPD, including effective enforcement mechanisms (article 9 UNCRPD)
3. The EU take measures to mainstream and prioritise de-institutionalisation in all European legislation and policies including via the European Semester and country-specific recommendations (article 19 UNCRPD)
4. The EU fully integrate UNCRPD into the decision making processes and criteria for the allocation of investment of the European Structural and Investment Funds (ESIF); and closely monitor ESIF investment to ensure it is facilitating the enjoyment of the right to live independently (article 19 UNCRPD)
5. The EU implement the recommendations of the European Ombudsman relating to ESIF including:
 - i. The creation of a transparent framework in which civil society, and in particular disabled people's organisations, can contribute at all stages in the implementation of ESIF and in the European Commission's supervisory role
 - ii. More thorough and frequent checks on Member States which implement cohesion programmes, including checks to ensure national redress systems work well
 - iii. That the European Commission focuses its guidance and support to Member States on preventative measures to ensure cohesion programmes are implemented according to UNCRPD and human rights standards from the outset

- iv. That the European Commission strictly applies sanctions when Member States fail to fulfil the 'ex ante conditionalities', including that Member States take 'measures for the shift from institutional to community-based care', and human rights obligations (article 19 UNCRPD)
 - v. That the EU publishes information on the measures it will put in place to achieve the improvements outlined above, including timescales, responsible institution, indicators to evaluate, and updates on progress (article 19 UNCRPD)
6. The EU take measures to engage relevant actors at regional and international level with the aim to review and amend the Montreal Convention in line with equality and human rights legislation and in order to provide effective remedy for disabled air passengers (article 20 UNCRPD)
 7. The EU publish a timed action plan for the implementation of the European Mobility Card (article 20 UNCRPD)
 8. The EU and its Member States ratify and implement the Marrakesh Treaty as soon as possible in order to facilitate access to published material for blind persons, persons with visual impairments and persons with other difficulties in accessing published works (article 30 UNCRPD)
 9. The EU, in relation to the EU-level monitoring framework (EUMF) under article 33(2) UNCRPD:
 - i. Bring an end to the European Commission's simultaneous designation as the focal point for the implementation of the Convention at the EU level and as part of the EU level monitoring framework, given the conflict with the aims and intentions of article 33 UNCRPD
 - ii. Take measures to enhance the EUMF, including to strengthen or establish one or more independent mechanisms, taking account of the UN Paris Principles
 - iii. Allocate sufficient financial, structural and staff resources to the EUMF for it to deliver an integrated programme of work to protect, promote and monitor implementation of the CRPD at EU-level (article 33 UNCRPD)
 10. The EU provide an action plan setting out how it will guide Member States on the designation, strengthening or establishment of independent monitoring mechanisms. The guidance should take account of the Paris Principles and the need to allocate sufficient resources to enable designated independent mechanisms to carry out article 33.2 monitoring, in particular to engage with persons with disabilities and their representative organisations (article 33 UNCRPD)

1. Introduction

The CRPD Working Group of the European Network of National Human Rights Institutions (ENNHRI) is made up of National Human Rights Institutions which are, or will be, designated under article 33.2 UNCRPD as independent mechanisms to promote, protect and monitor implementation of UNCRPD.¹ This submission to the Committee is in response to the List of Issues² adopted in relation to the initial report of the EU at the Committee's 13th session.

2. Equality and non-discrimination (art. 5) Paragraph 9, List of Issues

The CRPD Working Group highlights the continuing shortfall in protection for persons with disabilities under EU anti-discrimination legislation, including the failure to provide reasonable accommodation, outside employment and vocational training. This is in contrast to the wider scope of protection afforded under EU law on grounds of race, ethnic origin and gender³. A proposal for a horizontal Directive⁴, which would extend protection for persons with disabilities to other areas of life, including the provision of goods, facilities and services, has been under consideration by the Council of the EU since 2008, but is currently blocked in the European Council.

ENNHRI's CRPD Working Group urges the Committee to recommend that the EU adopt anti-discrimination legislation in relation to persons with disabilities' equal access to goods, facilities and services, and ensure that the eventual Directive is fully consistent with the UNCRPD.

3. Accessibility (art. 9) Paragraph 14, List of Issues

ENNHRI's CRPD Working Group notes concerns regarding the delay in the publication of the European Accessibility Act (EAA), which has been an aim of the European Disability Strategy since 2010. The lack of EU-level accessibility standards, which are guaranteed by an effective enforcement mechanism, undermines the right of persons with disabilities to participate fully in all areas of life.

ENNHRI's CRPD Working Group urges the Committee to recommend the EU publish and adopt a European Accessibility Act, which accords fully with the scope of the UNCRPD, including effective enforcement mechanisms.

¹ More information about the ENNHRI CRPD Working Group is provided below.

² List of Issues on the initial report of the European Union, CRPD/C/EU/Q/1 (15 May 2015) available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeID=18

³ EU Directives 2000/43/EC and 2004/113/EC.

⁴ Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:52008PC0426>

4. Living independently and being included in the community (art. 19) Paragraph 22, List of Issues

ENNHRI's CRPD Working Group is concerned by the use of the European Structural and Investment Funds (ESIF) to re-develop or expand institutions which exclude persons with disabilities from the community. These have been raised, inter alia, by the European Network of Independent Living and the European Coalition for Community Living⁵ and have been acknowledged by the OHCHR, Regional Office for Europe.⁶

The continued institutionalisation of persons with disabilities⁷ has the capacity to violate article 19, the right to independent living. Furthermore, the ENNHRI CRPD Working Group notes that, in circumstances of enforced institutionalisation, the Committee has raised concerns regarding the use of degrading treatment in contravention of the right to freedom from torture or cruel, inhuman or degrading treatment or punishment (article 15).⁸

ENNHRI's CRPD Working Group notes that the current regulations for the EU Cohesion Policy investment, adopted in December 2013 by the European Council and the European Parliament, include specific references to support the "transition from institutional to community-based care". The European Expert Group on the Transition from Institutional to Community-based Care has stated that "[t]his represents a commitment that EU Funds will not be used to perpetuate institutionalisation, but to develop the much needed community-based alternatives".⁹

The European Expert Group on the Transition from Institutional to Community-based Care (the European Expert Group) has recently published a Revised Edition of the Toolkit on the Use of EU Funds for the Transition from Institutional to Community-based Care. The European Expert Group has also re-iterated that de-institutionalisation should be mainstreamed in all European legislation and policies and has called on the European Commission to make better use of the 2015 country-specific recommendations and the European Semester as systemic tools to promote human rights standards, including the UNCRPD.¹⁰

The European Ombudsman recently conducted an own-initiative inquiry into compliance with fundamental rights in the implementation of the EU cohesion policy. In her decision, the European Ombudsman concluded that "the [European]

⁵ <http://www.ombudsman.europa.eu/en/cases/summary.faces/en/59871/html.bookmark>

⁶ Office of the United Nations High Commissioner for Human Rights Regional Office for Europe, *Getting a Life – Living Independently and Being Included in the Community* (2012) Available at: http://www.europe.ohchr.org/Documents/Publications/Getting_a_Life.pdf

⁷ Including older persons with disabilities who enter residential care against their will.

⁸ CRPD/C/HRV/CO/1 15 May 2015 para 23 -24, CRPD/C/CZE/CO/1 (15 May 2015) para 31 – 33 and see generally Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez A/HRC/22/53 (1 February 2013)

⁹ A historic opportunity for people in institutional care: EU Funds must be used to develop community-based alternatives in 2014-2020 - January 30, 2014 <http://www.enil.eu/news/a-historic-opportunity-for-people-in-institutional-care-eu-funds-must-be-used-to-develop-community-based-alternatives-in-2014-2020/>

¹⁰ Press release of the European Expert Group on Transition from Institutional to Community-Based Care , 15 June 2015

Commission cannot abdicate its human rights obligations just because it does not directly manage the funds.”¹¹

The European Ombudsman has set out eight ‘guidelines for improvement’¹² to help the European Commission ensure that the ESIF do not support Member State cohesion programmes which breach fundamental rights. These include a proposal to: “Create a clear and transparent framework in which civil society can contribute to the Commission’s supervisory role, in addition to the existing working and expert groups and committees.”¹³ ENNHRI’s CRPD Working Group particularly welcomes this proposal from the European Ombudsman, and considers CRPD Monitoring Frameworks should also play a role in monitoring compliance.

ENNHRI’s CRPD Working Group urges the Committee to recommend the EU:

- Use the European Structural and Investment Funds (ESIF) to facilitate the enjoyment of the right to live independently in the community by all persons with disabilities, including persons with psychosocial disabilities
- Takes measures to mainstream and prioritise de-institutionalisation in all European legislation and policies including via the European Semester and country-specific recommendations
- Fully integrate the UNCRPD into the decision making processes and criteria for the allocation of investment of ESIF, and closely monitor its investment to ensure it facilitates the enjoyment of the right to live independently
- implement the recommendations of the European Ombudsman relating to the cohesion programme, including:
 - The creation of a transparent framework in which civil society, and in particular disabled people’s organisations, can contribute at all stages in the implementation of the ESIF and in the European Commission’s supervisory role
 - More thorough and frequent checks on Member States which implement cohesion programmes including checks to ensure national redress systems work well
 - That the European Commission focuses its guidance and support to Member States on preventative measures to ensure cohesion programmes are implemented according to UNCRPD and human rights standards from the outset

¹¹ European Ombudsman, Press release 8/2015, 18 May 2015

¹² <http://www.ombudsman.europa.eu/en/press/release.faces/en/59897/html.bookmark>

¹³ Decision of the European Ombudsman closing her own name initiative inquiry 01/8?2014 concerning the European Commission

- That the European Commission strictly applies sanctions when Member States fail to fulfil the 'ex ante conditionalities', including that Member States take 'measures for the shift from institutional to community-based care' and human rights obligations
- That the EU publish information on the measures it will put in place, including national redress systems, timed actions, , indicators to evaluate progress, and periodic updates on progress.

5. Personal mobility (art. 20) Paragraphs 24 and 25, List of Issues

Rights of air travellers with disabilities

ENNHRI's CRPD Working Group refers to a recent United Kingdom (UK) Supreme Court judgement¹⁴ which held that there is no effective remedy when a discriminatory act takes place whilst travelling by air. This applies in relation to all types of discrimination, whether because of disability, race, gender, or any other protected characteristic.

By way of background, Mr Christopher Stott, a wheelchair user, was not provided with seating to meet his needs on board a flight from Greece to the UK. Mr Stott brought a claim for compensation under UK law for breach of the EC Disability Regulation 1107/2006¹⁵ as implemented by the UK Disability Regulations which made provision for the rights of disabled passengers and those with reduced mobility when travelling by air.

Mr Stott was successful in his claim but the UK Supreme Court, with overt reluctance, found that article 29 of the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention)¹⁶ prevents compensation being awarded for discrimination claims where the relevant unlawful act takes place between embarkation and disembarkation.¹⁷

The Montreal Convention has exclusive jurisdiction at national and European level in relation to the liability of airlines to passengers, including with regard to strict limits on heads of damages. The Montreal Convention only allows liability for death, bodily

¹⁴ Stott v Thomas Cook Tour Operators Ltd (2014) UKSC15 available at https://www.supremecourt.uk/decided-cases/docs/UKSC_2012_0109_Judgment.pdf

¹⁵ Regulation (EC) 1107/2006 concerning the rights of disabled persons with reduced mobility when travelling by air

¹⁶ [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:22001A0718\(01\):en:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:22001A0718(01):en:HTML)

¹⁷ The Equality and Human Rights Commission, the British NHRI, supported Mr Stott in his proceedings against Thomas Cook Tour Operators Limited.

injury and loss or damage to baggage. The European Union is a party to the Montreal Convention.

ENNHRI's CRPD Working Group highlights the important role the EU, and its Member States, could take to initiate discussions at international level to review and amend the Montreal Convention in line with developments in equality and human rights legislation.

European Mobility Card

The ENNHRI CRPD Working Group welcomes the recent announcement by Commissioner Thyssen that the tendering process for Member States to set up a system for the European Mobility Card will be launched in the summer.¹⁸ The card will enable persons with disabilities to travel to other Member States and receive the same benefits in relation to transport, leisure, culture and sport offered to persons with disabilities in that country. The timely implementation of the Mobility Card, in conjunction with the adoption of a European Accessibility Act, will assist persons with disabilities to enjoy freedom of movement within the EU on an equal basis as other citizens.

ENNHRI's CRPD Working Group urges the Committee to recommend that the EU:

- take measures to engage relevant actors at regional and international level (such as civil aviation authorities, government ministers, disabled people's organisations, NHRIs and national equality bodies) with the aim to review and amend the Montreal Convention in line with equality and human rights legislation and in order to provide effective remedy for disabled air passengers.
- publish a timed action plan for the implementation of the European Mobility Card.

6. Participation in cultural life, recreation, leisure and sport (art. 30) Paragraph 36, List of Issues

The EU has signed but not yet ratified the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired, or Otherwise Print Disabled (VIPs). The Marrakesh Treaty 'requires contracting parties to introduce a standard set of exemptions and limitations to copyright rules in order to permit the reproduction, distribution and making available of published works in formats designed to be accessible to VIPs.'¹⁹

Some Member States have raised issues in relation to the EU's competence to ratify the treaty and have postponed national ratification on that basis. This has been a

¹⁸ Towards a barrier-free Europe: European Disability Card event at the European Parliament, 30 June 2015

¹⁹ Summary of the Marrakesh Treaty (2013) World Intellectual Property Organisation, available at http://www.wipo.int/treaties/en/ip/marrakesh/summary_marrakesh.html

matter of concern to the Committee in past reviews and it has recommended that national State Parties ratify the Marrakesh Treaty.²⁰

ENNHRI's CRPD Working Group urges the Committee to recommend that the EU and its Member States ratify and implement the Marrakesh Treaty as soon as possible in order to facilitate access to published material for blind persons, persons with visual impairments and persons with other difficulties in accessing published works.

7. Implementation and Monitoring (art. 33) Paragraphs 39 and 40, List of Issues

The EU Monitoring Framework

The EU is the first regional integration organisation to accede to a UN human rights convention. ENNHRI's CRPD Working Group welcomes this development and recognises the challenges in the practical implementation of article 33 for a regional organisation, taking account its areas of competence. However, ENNHRI's CRPD Working Group also notes that the current composition and remit of the EU monitoring framework (EUMF) does not entirely accord with article 33.2, taking account of the UN Paris Principles.²¹

The current EUMF²² does not include 'one or more independent mechanisms'. Further, the member institutions of the EUMF do not have sufficiently broad or independent remits to fulfil the Paris Principles. ENNHRI's CRPD Working Group notes, in particular, that the European Commission's Unit on the Rights of Persons with Disabilities is simultaneously designated as the article 33.1 focal point for the implementation of Convention at the EU level²³ and as part of the EU level monitoring framework. This arrangement appears to run contrary to the aims and intention of article 33 of UNCRPD.

²⁰ For example, see Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Germany, paragraphs 55/56, UN-Documents CRPD/C/DNK/CO/1 (17 April 2015) and Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Croatia, paragraphs 47/48 UN-Documents CRPD/HRV/CO/1 (17 April 2015).

²¹ Principles relating to the Status of National Institutions (The Paris Principles), Adopted by General Assembly resolution 48/134 of 20 December 1993, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>

²² The EU-level monitoring framework was set up by the Council of the EU on 29 October 2012 and includes the European Ombudsman, the European Parliament, the EU Agency for Fundamental Rights, the European Disability Forum and the European Commission. See page 20, Council of Europe decision <http://register.consilium.europa.eu/pdf/en/12/st15491.en12.pdf>

²³ The Council decision on the conclusion by the EU of the CRPD designated the Commission as the focal point for the implementation of the Convention at the EU level.

ENNHRI's CRPD Working Group notes that the EUMF work programme for 2015-16²⁴ consists mainly of activities carried out by each of the framework members separately, according to their individual remits. In this regard, ENNHRI's CRPD Working Group regrets the lack of a single report by the EUMF to inform the Committee's review of the EU. ENNHRI's CRPD Working Group highlights that the EUMF requires sufficient financial and staff resources in order to fulfil its role under article 33.2 and carry out more joint working

ENNHRI's CRPD Working Group published proposals²⁵ on the arrangements for an EUMF prior to the establishment of the current framework. It remains the view of ENNHRI's CRPD Working Group that further action is needed to reform and strengthen the current EU framework, particularly in regard to independence and resourcing.

Role of the EU to promote the designation, strengthening or establishment of Independent Mechanisms across Member States

ENNHRI's CRPD Working Group submits that the EU should play an active role in promoting the designation, strengthening or establishment of independent mechanisms across Member States and suggests that the Committee recommends that the EU take proactive measures in this regard. It is important that in determining the arrangements for the EUMF, the EU role models good practice regarding article 33 to Member States.

NHRIs and CRPD monitoring

ENNHRI's CRPD Working Group highlights the important role played by National Human Rights Institutions (NHRIs) throughout the EU. Many NHRIs have been designated by their states as independent mechanisms under article 33 UNCRPD. NHRIs work to bridge the gap between periodic international monitoring processes and day-to-day domestic implementation, and they support the involvement of civil society and disabled people's organisations in CRPD monitoring.

Given the support provided by the EU to representative organisations of persons with disabilities to facilitate their involvement in the monitoring and evaluation of the Convention in the EU, the Committee should also consider support provided to NHRIs. In particular, ENNHRI's CRPD Working Group urges the Committee to enquire how the EU and its Member States have promoted and supported independent mechanisms throughout the EU to carry out this role and, in particular, to engage with persons with disabilities and their representative organisations to ensure that their voices are heard.

²⁴ The EU Monitoring Framework work plan for 2015-16 is published on the member institutions websites including that of the current framework chair EDF at http://www.edf-feph.org/Page_Generale.asp?DocID=22112&thebloc=33400

²⁵ Proposal of the CRPD Working Group of the European Network of National Human Rights Institutions regarding implementation of article 33 of the UNCRPD by the European Union (August 2011), available at <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/un-convention-rights-persons-disabilities/european-network-national-human-rights-institutions>.

ENNHRI's CRPD Working Group urges the Committee to recommend that the EU:

- Bring an end to the European Commission's simultaneous designation as the focal point for the implementation of the Convention at the EU level and as part of the EU level monitoring framework, given the conflict with the aims and intentions of article 33 UNCRPD
- Take measures to enhance the EUMF, including to strengthen or establish one or more independent mechanisms, taking account of the UN Paris Principles
- Allocate sufficient financial, structural and staff resources to the EUMF for it to deliver an integrated programme of work to protect, promote and monitor implementation of the CRPD at EU-level
- Provide an action plan setting out how it will guide Member States on the designation, strengthening or establishment of independent monitoring mechanisms. The guidance should take account of the Paris Principles and the need to allocate sufficient resources to enable designated independent mechanisms to carry out article 33.2 monitoring, in particular to engage with persons with disabilities and their representative organisations

8. About ENNHRI's CRPD Working Group

ENNHRI brings together around 40 National Human Rights Institutions (NHRIs) from across wider Europe. NHRIs are state funded institutions, independent of government, with a broad mandate to promote and protect human rights. They are accredited by reference to the United Nations Principles on the Status of National Institutions for the Promotion and Protection of Human Rights (the UN Paris Principles) to ensure their independence, plurality, impartiality and accountability.

Article 33.2 UNCRPD envisages a central role for NHRIs acting as 'independent mechanisms', working within a wider framework to promote, protect and monitor implementation of the Convention by States Parties. To this end, ENNHRI has convened a Working Group on the UNCRPD (ENNHRI's CRPD Working Group), chaired by the Great British NHRI, the Equality and Human Rights Commission.

Given that not all article 33 CRPD national monitoring mechanisms (NMM) are NHRIs, ENNHRI's CRPD Working Group has granted observer status to and works collaboratively with a number of partners including NMM representatives from the EU Agency for Fundamental Rights (FRA), Equinet, the European Network of Equality Bodies, the European Ombudsman and the European Disability Forum; and also the European Regional Officer of the UN Office for the High Commissioner on Human Rights.