

NOTE ON THE SET UP OF THE EU-LEVEL FRAMEWORK REQUIRED BY ART. 33.2 OF THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

1. INTRODUCTION

The UN Convention entered into force for the EU on 22 January 2011. Article 33.2 of the Convention requires State Parties to "maintain, strengthen, designate or establish" a framework, including at least one independent mechanism. The role of the framework is to promote, protect and monitor the implementation of the Convention. The framework must be put in place in accordance with *the legal and administrative systems* of each State Party. Article 33.2 of the Convention envisages that the relevant activities can be carried out in a framework, which may consist of several bodies. Article 33.3 of the Convention provides that civil society (in particular persons with disabilities and their organisations) must be involved and fully participate in the monitoring.

Paragraph 13 of the 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 Rights of Persons with Disabilities¹ (hereinafter 'the Convention'²) provides that the "Commission will propose in due course an appropriate framework for one or several independent mechanisms in accordance with Article 33.2 of the Convention and on the involvement of civil society, in accordance with Article 33.3 of the Convention, taking into account all relevant Union institutions, bodies, offices or agencies."³

2. SCOPE

According to Article 44.2 of the Convention, the obligations of the EU as a regional integration organisation are equivalent to those of a State Party, to the extent of EU competences. These competences are defined in Annex ii of Council Decision 2010/48⁴.

The EU framework's mandate 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 UNCPRD in the Member States.

The EU framework covers two different mandates:

- **first**, the tasks must be carried out in those areas where the Member States have transferred competences to the EU (mainly EU legislation and policy⁵). This will be the main area of the framework's actions.
- **second**, the tasks must be carried out with respect to the "internal" implementation of the Convention by EU institutions, that is to say vis-à-vis the Union's Public Administration, for example in relation to their employees as well as in their interaction with citizens and the public.

¹ 2010/C 340/08, OJ C 340, 15.12.2010, p. 11.

² All references to legal provisions are meant to refer to the Convention, unless intended otherwise.

³ Hereafter, the term "institution" will be used for simplicity, except where reference is made to the specific Treaty provisions.

⁴ Council Decision 2010/48/EC concerning the conclusion by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities, OJ L 23, 27.1.2010, p. 35.

⁵ As illustrated in the EU declaration of competences annexed to Council Decision 2010/48.

3. MEMBERS OF THE FRAMEWORK

A range of EU institutions and bodies currently exercise the tasks of promotion, protection and monitoring of the rights defined by the Convention.

The following entities have been identified to form together the EU framework:

- the European Parliament's Petitions Committee,
- the European Ombudsman,
- the European Commission,
- the EU Agency for Fundamental Rights (FRA),
- the European Disability Forum (EDF).

4. TASKS TO BE PERFORMED

4.1 Promotion

The Commission promotes the Convention by encouraging mutual learning and exchange of good practices through events and stakeholders engagement, issuing reports⁶, organising training and disseminating information⁷. The Commission also provides financial support to civil society organisations, in particular disabled persons' organisations (DPOs) that promote and raise awareness of the Convention.

The European Ombudsman can receive complaints, as well as undertake *ex officio* investigations and produce reports (Article 228 TFEU) on maladministration in the activities of the EU institutions, bodies, offices and agencies, including the Commission and the FRA. These responsibilities include carrying out promotional activities under the Convention, like issuing an annual activity report with a dedicated section on disability and disseminating information via the Network of European Ombudsmen.

The EU Agency for Fundamental Rights (FRA) can raise awareness of the Convention in accordance with Regulation 168/2007⁸ and the Multi-annual Framework (MAF)⁹. In particular it can address disability as part of the thematic area of anti-discrimination, but also through other thematic areas following a cross-cutting approach.¹⁰

⁶ The Commission, in cooperation with its Disability High Level Group, prepares an annual report on the implementation of the Convention in the Member States and the EU. In studies and reports on disability matters the Commission systematically refers to and uses the Convention as a benchmark.

⁷ The Commission organises trainings on the UNCRPD for legal practitioners and policy makers, arranges information sessions on the UNCRPD for staff, organises an annual Work Forum to promote mutual learning on the implementation of the Convention among all concerned actors at EU level, in the Member States and from civil society and DPOs. Stakeholders' engagement and mutual learning are also promoted through the annual conference that celebrates European Day of Persons with Disabilities on the 3rd December.

⁸ Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, see especially Article 3, and Article 4.1 and 4.2.

⁹ Council Decision (2008/203/EC) implementing Regulation (EC) No 168/2007 as regards the adoption of a Multi-annual Framework for the European Union Agency for Fundamental Rights for 2007-2012, Article 4.1 (a) to (h), Regulation 168/2007

¹⁰ Relevant activities are the presentation of the FRA annual report on fundamental rights issues covered by the areas of the Agency's activity, the publication of thematic reports, the organisation of training and educational activities, stakeholders' engagement as well as communication and events. The Agency can also raise the awareness of the general public about their fundamental rights, and about possibilities and different mechanisms for enforcing them in general, without, however, dealing itself with individual complaints.

The **European Disability Forum** (EDF) independently promotes the Convention through awareness-raising campaigns and media activities, reports, the organisation of hearings and events, trainings, networking activities and the dissemination of relevant information to its European and national member organisations in order to reinforce their technical knowledge and advocacy capacity, as well as stakeholders' engagement. Other strategic promotional activities are the scrutiny of compliance of EU legislation and policies and giving technical advice to public authorities on the application of the Convention.

4.2 Protection

4.2.1 Compliance of the Member States with the Convention when implementing EU law

The **protection of individuals** against breaches of the Convention by the Member States when implementing EU law is **primarily a matter for the national frameworks and courts**. The EU framework's role in the protection of individuals' rights is complementary to the national frameworks.

The **European Parliament's Petitions Committee** (PETI) also contributes to the protection against Member States breaches of the Convention when implementing EU law as it can hear all petitions from any EU citizen on matters that come within the Union's field of activity and directly affect them (Art. 227 TFEU). The Committee is independent from the Member States and the Commission when carrying out this task.

The **Commission** can deal with citizens' complaints (as provided for in Art. 20 para 2.d TFEU), monitor Member States' compliance with the Convention when implementing EU law and start infringement proceedings in case of non-compliance within areas of EU competence (Art. 258 TFEU). In performing this task the Commission is independent from the Member States as defined in the Treaties.

4.2.2 Compliance of the EU institutions with the Convention

The monitoring of alleged breaches of the Convention in the form of maladministration in the activities of the EU institutions is primarily the task of the **European Ombudsman**. He can hear and investigate complaints raising issues of law and good administration as well as undertake *ex officio* investigations and produce reports (Article 228 TFEU). The **European Ombudsman** can investigate and report on possible maladministration by the Commission in the administrative phases of its complaints-handling and monitoring activity. The Ombudsman is independent from all the other EU institutions as well as from any Government, institution, body or office.

The **European Parliament's Petitions Committee** plays a broad protection role as regards compliance with the Convention by the EU institutions in their policy-making and legislative actions, including when the EU institutions act in their public administration functions (e.g. in staff cases). It hears petitions concerning EU legislation and policies and can table oral questions to the Council and the Commission for debate in the plenary, or issue reports and/or resolutions.

EDF receives information and complaints from persons with disabilities about their individual experiences, and brings these to the attention of the responsible administrations as well as the general public. EDF can write third party interventions to a number of national and European Courts.

4.3 Monitoring

4.3.1 Monitoring the implementation of the Convention by the EU institutions through EU law and policies

EDF independently performs systematic **monitoring of the implementation of the Convention by the EU through law and policies**, including by examining new legislative proposals, and receives complaints relating to their implementation. It can therefore assess progress, stagnation or retrogression in the enjoyment of rights over a certain period of time.

The **European Ombudsman** complements the monitoring of the institutions' implementation of the Convention, as he can open own initiative inquiries and issue reports on instances of maladministration in the EU institutions and bodies, offices and agencies¹¹.

The implementation of the Convention by the EU through its law and policies is to some extent monitored in ex ante impact assessments prepared by Commission departments and examined by the Impact Assessment Board (IAB), a **central quality control** and support body operating independently of the Commission's policy making departments¹². In particular, the Operational Guidance on taking account of fundamental rights in Commission Impact Assessments¹³ requires the verification of compliance with the UN Convention. Progress in this area could also be reported on in the Annual Report on the application of the Charter of Fundamental Rights.

4.3.2 Monitoring Member States' compliance with the Convention when implementing EU law

As a complement to the national frameworks and in accordance with the EU founding treaties, **the Commission** independently monitors how Member States implement and apply EU legislation falling within the scope of the Convention. This is done for instance in Commission reports on the application of directives and regulations. The Commission also addresses related matters in communications and staff working papers. Ultimately, the Commission can start infringement proceedings to ensure that EU legislation which puts the Convention into effect is correctly implemented.

4.3.3 Provision of data and development of indicators

The **FRA** independently collects and analyses data within the limits of its mandate. Providing such data in an independent manner will be its main task in the framework. In this context and in cooperation with the Commission, **the FRA** shall also develop indicators and benchmarks to support the monitoring process.

The Commission also collects data, statistics, develops benchmarks and indicators, and presents reports and studies. In particular the Commission and the High-Level Group on Disability jointly publish an annual report on progress in implementing the Convention at member state and EU level, addressing both governance issues and specific thematic areas.

¹¹ The European Ombudsman can also act as a channel of communication with national and regional ombudsmen in the Member States, through the European Network of Ombudsmen.

¹² The Impact Assessment Board was created at the end of 2006. It works under the authority of the Commission President and is chaired by the Deputy Secretary General responsible for Better Regulation. Its members are high-level officials from the Commission departments most directly linked with the three pillars of the impact assessment - economic, social and environmental impacts. The members are appointed in a personal capacity and on the basis of their expert knowledge.

For more information see http://ec.europa.eu/governance/impact/iab/iab_en.htm

¹³ SEC(2011) 517 final

5. MODUS OPERANDI

The EU framework is to operate as a simple, efficient and practical mechanism where individual participants acting within a coordinated work plan will contribute to the tasks of promotion, protection and monitoring of the Convention within the remit of their existing competences.

During the year the participants of the framework will carry out their respective tasks in the context of their activities, and contacts between participants will take place on the basis of need.

The framework will meet at least once a year for a progress meeting. The possibility of holding additional meetings will be duly considered in function of needs and upon request by any of the framework participants.

All participants have the right to be present during the whole of the meeting, to have access to the meeting documents, and to express their views on the matters discussed. Decisions will be taken by consensus. Participants will agree on working methods and priorities.

Clear communication towards the public is essential to make sure that the functioning of the framework as well as the tasks and activities of the different components are well understood. The members of the framework shall make sure that in their regular reporting activities the work related to the implementation of the Convention is clearly identifiable and adequately made visible.

Moreover, a fully accessible webpage will be included in the Commission's DG Justice website and it will contain links to the other participants' websites.

Also, the annual Work Forum on the implementation of the Convention, organised by the Commission since 2010, brings together the relevant actors and mechanisms involved in the implementation of the Convention at EU and member state level as well as civil society organisations and DPOs. The Work Forum will provide the possibility for the EU framework to exchange information, to network and coordinate its action with the national frameworks.

A review of the framework and/or its working methods may be initiated whenever judged necessary.