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## UN & CoE

## EU

January

January

February

February

March

March

27 April – In *Q v. Denmark* (2001/2010), the United Nations (UN) Human Rights Committee concludes that Denmark violated the right to equality before the law and to equal protection of the law (Article 26 of the International Covenant on Civil and Political Rights) of an applicant with severe mental health problems who requested exemption from the language requirement for naturalisation because of his medical condition, finding that Denmark failed to demonstrate that refusing to grant the exemption was based on objective and reasonable grounds

April

11 May – European Ombudsman closes the own-initiative inquiry OI/8/2014/AN into the respect of fundamental rights in the implementation of European Union (EU) cohesion policy, including eight guidelines for improvement

20 May – European Parliament adopts a resolution on the list of issues adopted by the CRPD Committee in relation to the initial report of the EU, following a public hearing in the European Parliament on 12 May

April

13 May – UN Committee on the Rights of Persons with Disabilities (CRPD Committee) publishes concluding observations on the initial report of Germany

May

15 May – CRPD Committee publishes concluding observations on the initial reports of the Czech Republic and Croatia, and the list of issues on the initial report of the EU

June

May

July

June

August

July

September

August

15 October – At a public hearing, the European Parliament launches a study on the protection role of the Committee on Petitions in the context of the implementation of the CRPD

4 September – CRPD Committee publishes concluding observations on the initial report of the EU

October

CRPD Committee adopts guidelines on Article 14 of the Convention on the Rights of Persons with Disabilities (CRPD) (on the liberty and security of persons with disabilities)

13 November – FRA becomes interim chair and secretariat of the EU Framework to promote, protect and monitor the implementation of the CRPD (EU Framework)

September

November

1 October – CRPD Committee publishes lists of issues on the initial reports of Lithuania, Portugal, and Slovakia

2 December – European Commission adopts its proposal on the European Accessibility Act

October

December

November

December

# 8

## Developments in the implementation of the Convention on the Rights of Persons with Disabilities



*Five years on from the EU's accession to the Convention on the Rights of Persons with Disabilities (CRPD), for the first time in 2015 a United Nations (UN) treaty body, the Committee on the Rights of Persons with Disabilities (CRPD Committee), reviewed the EU's fulfilment of its human rights obligations. In its concluding observations, the CRPD Committee created a blueprint for the additional steps required for the EU to meet its obligations under the convention. At national level, the CRPD is driving wide-ranging change processes as Member States seek to harmonise their legal frameworks with the convention's standards. These processes are likely to continue as monitoring frameworks set up under Article 33 (2) of the convention further scrutinise legislation for CRPD compatibility.*

### 8.1. The CRPD and the EU: a year of firsts

Developments in the implementation of the CRPD by the EU in 2015 were dominated by the Union's first review by the CRPD Committee, the body responsible for monitoring States parties' implementation of the convention (see [Figure 8.1](#)).<sup>1</sup> To mark this milestone, FRA is, for the first time, reporting on developments in the implementation of the CRPD by both the EU and its Member States in a separate chapter that will become a regular feature of FRA's Fundamental Rights reports. Other important issues concerning the rights of persons with disabilities are covered in [Chapter 2](#) (discrimination on the ground of disability) and [Chapter 6](#) (children with disabilities).

*"The Committee notes with appreciation that the EU is the first regional organization to ratify a human rights treaty concluded under the auspices of the United Nations, thus setting a positive precedent in public international law."*

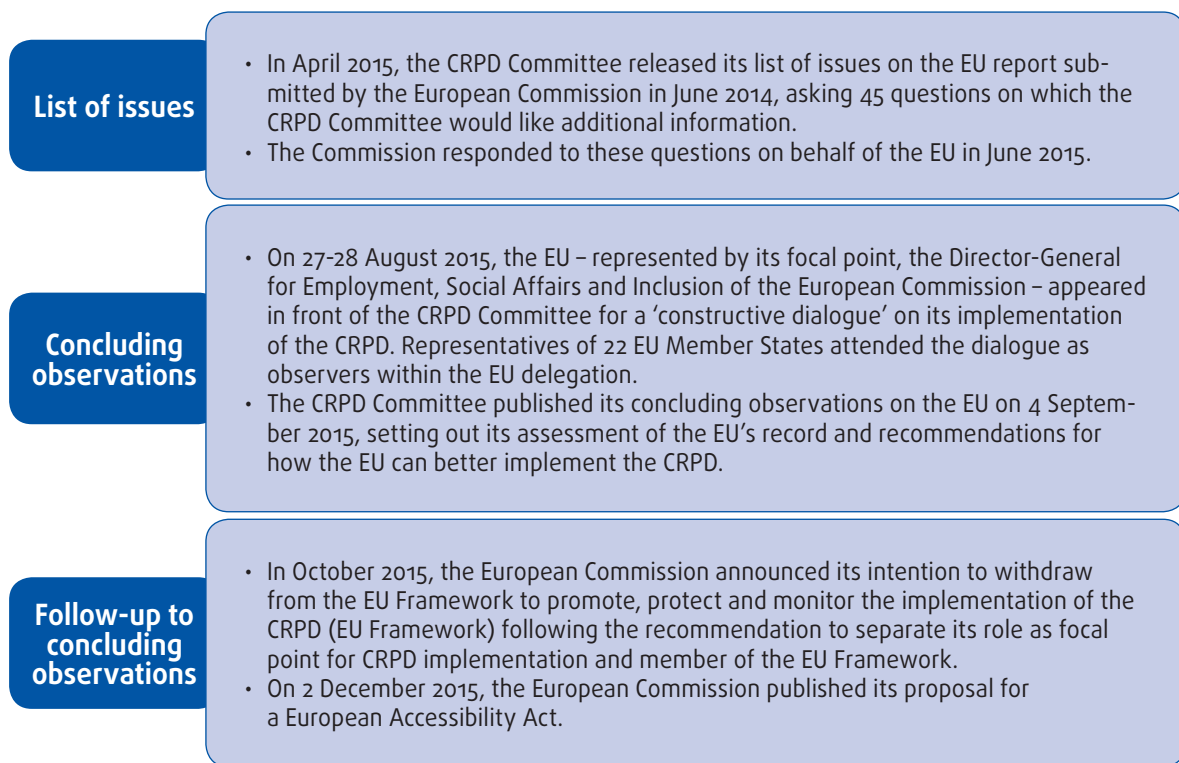
CRPD Committee (2015), Concluding observations on the initial report of the European Union, CRPD/C/EU/CO/1, 4 September 2015, para. 4

Marking the first time that an international body examined how the EU is fulfilling its international human rights obligations, the review process served

as a symbol of the EU's evolution from an economic organisation to "a union with various degrees of integration and cooperation, covering diverse areas such as non-discrimination, employment, justice and development cooperation".<sup>2</sup> More importantly, in making recommendations (called 'concluding observations') regarding most of the 26 specific rights set out in the convention, the CRPD Committee presented its view of what the EU needs to do to fulfil the promise of the convention.<sup>3</sup> These recommendations call for wide-ranging legal and policy initiatives by the EU across its spheres of competence, from making sure that the emergency number 112 is fully accessible (Article 11 of the CRPD) to ensuring the portability of social security benefits in a coordinated manner (Article 18 of the CRPD).<sup>4</sup>

The CRPD Committee's recommendations on the CRPD's general principles and obligations, set out in Articles 1–4 of the convention, set a frame for further EU action to implement the convention. In particular, the committee requests that the EU "conduct a cross-cutting, comprehensive review of its legislation in order to ensure full harmonization with the provisions of the Convention", and that it adopt "a strategy on the implementation of the Convention, with the allocation of a budget, a time frame for implementation and a monitoring

**Figure 8.1: Key steps in the review of the EU by the CRPD Committee in 2015**



Source: FRA, 2016

mechanism”.<sup>5</sup> Reflecting the principle of ‘nothing about us without us’, which demands that persons with disabilities be involved in decision-making concerning their lives, the committee also called on the EU to set up a structured dialogue for “meaningful consultation with and the participation of persons with disabilities, including women, and girls and boys with disabilities, through their representative organizations”.<sup>6</sup>

The review process itself also reflected this call for consultation, with civil society organisations – including disabled persons’ organisations (DPOs) – engaged closely at each stage. Many of the specific suggestions for questions and recommendations made by the numerous pan-European organisations and networks that submitted reports were taken up by the CRPD Committee in its list of issues and concluding observations, as the examples in [Table 8.1](#) illustrate.

**Table 8.1: Selected examples of civil society submissions reflected in the CRPD Committee’s list of issues and concluding observations on the EU**

Civil society submissions for list of issues	CRPD Committee
Has the EU undertaken a review of EU legislation and policies for compliance with the CRPD [...]? <i>European Network on Independent Living – European Coalition for Community Living</i>	List of issues: 7. Please indicate what practical initiatives the [EU] is taking or planning to take to ensure that all new and existing legislation, regulations and policies are systematically harmonised with the Convention.
Has a comprehensive screening exercise of all existing EU policy instruments been undertaken regarding their compatibility with the UN CRPD [...]? <i>European Disability Forum</i>	Concluding observations: 9. The Committee recommends the [EU] to conduct a cross-cutting, comprehensive review of its legislation in order to ensure full harmonisation with the provisions of the Convention.
Describe what measures were taken by the [EU] to assess the compliance of EU legislative and regulatory schemes, customs and practices with the CRPD. <i>Mental Disability Advocacy Centre</i>	

Note: Submissions relate to ‘General principles and obligations’ under the CRPD (Articles 1–4).

Source: FRA, 2015, selected from documents available on the [website](#) of the UN High Commissioner for Human Rights

### 8.1.1. First concluding observations underscore need for coordinated action

As the focal point for the EU, the European Commission, working with the Council of the EU, has primary responsibility for following up on the recommendations set out in the concluding observations. The CRPD is, however, a ‘mixed agreement’ in the context of the EU, meaning that the “the Union and its Member States are subject to a duty of sincere cooperation” when fulfilling its obligations across their respective areas of competence.<sup>7</sup> As with overall implementation of the CRPD, successfully addressing the concluding observations’ numerous recommendations will require the European Commission to collaborate closely with Member States as they put EU law into practice. This also holds true for cooperation with the EU’s other institutions and bodies for those recommendations concerning the EU’s public administration.<sup>8</sup>

In line with this obligation, the publication of the concluding observations in September prompted a swift response from the European Commission. This related in particular to the second and third of the three recommendations on whose implementation the CRPD Committee requested that the EU report back within 12 months: the declaration of competence; the European Accessibility Act, which was first announced in the European Disability Strategy 2010-2020;<sup>9</sup> and the EU Framework to promote, protect and monitor the implementation of the CRPD (EU Framework) established under Article 33(2) of the convention (see Figure 8.2).

In keeping with many of the developments related to CRPD implementation, the proposal for a European Accessibility Act, adopted by the European Commission

in December, is characterised by several novel features.<sup>10</sup> Although its stated aim is to improve the functioning of the EU’s internal market, the act represents a new approach to promoting fundamental rights by setting common requirements and creating market opportunities for businesses developing accessible products and services. In addition, the proposed directive will apply to existing EU law by further defining the general accessibility obligations contained in other instruments – for example, relating to public procurement and the European structural and investment funds (ESIF). Looking ahead, its requirements could also “help to define the concept of accessibility in other instances, such as in the context of the Commission proposal for a horizontal equal treatment Directive”.<sup>11</sup>

While specifying which features and functions of key products and services need to be accessible, the act does not give technical details of how this accessibility should be achieved. For example, it requires that websites be designed in a way that allows users to perceive the information it presents, use its functions and navigate its pages, but does not provide implementing details.<sup>12</sup> Making explicit reference to Article 9 of the CRPD on accessibility, the act – if adopted – will cover products and services including cash machines and banking services, computers and operating systems, smartphones and telephony services, TV equipment, transport, audiovisual services, and e-books and e-commerce. The proposal opened for public consultation in December 2015.

*“Disability should not be a barrier to full participation in society, nor should the lack of EU common rules be a barrier to cross-border trade in accessible products and services. With this Act, we want to deepen the internal market and use its potential for the benefit of both companies and citizens with disabilities. In fact, we all may benefit from it.”*

*Marianne Thyssen, Commissioner for Employment, Social Affairs, Skills and Labour Mobility, press release, IP/15/6147, Brussels, 2 December 2015*

### Selected concluding observations on the initial report of the EU

The CRPD Committee requested that the EU provide within 12 months written information on measures taken to implement three of its recommendations:

17. The Committee recommends that the European Union regularly update the declaration of competence and its list of instruments to include recently adopted instruments and instruments that may not specifically refer to persons with disabilities, but that are relevant to persons with disabilities.
29. The Committee recommends that the [EU] take efficient measures towards the prompt adoption of an amended European Accessibility Act that is aligned to the Convention, [...] including effective and accessible enforcement and complaint mechanisms. The Committee also recommends that the [EU] ensure the participation of persons with disabilities, through their representative organizations, in the adoption process.
77. The Committee recommends that the [EU] take measures to decouple the roles of the European Commission in the implementation and monitoring of the Convention, by removing it from the independent monitoring framework, so as to ensure full compliance with the Paris Principles, and ensure that the framework has adequate resources to perform its functions. The Committee also recommends that the [EU] consider the establishment of an interinstitutional coordination mechanism and the designation of focal points in each [EU] institution, agency and body.

*Source: CRPD Committee, 2015, Concluding observations on the initial report of the European Union, CRPD/C/EU/CO/1, 4 September 2015*

The second main element of the European Commission’s immediate response to the concluding observations was its decision to withdraw from the EU Framework responsible for monitoring the EU’s implementation of the CRPD (see [Figure 8.2](#)). Within the framework, the Commission undertook activities related to the key tasks of promotion, protection and monitoring, including monitoring Member States’ compliance with EU law.<sup>13</sup> Its withdrawal followed consistent criticism from national human rights institutions and civil society, as well as the CRPD Committee, that the Commission’s dual status as both focal point for CRPD implementation and member of the EU Framework meant it was effectively monitoring itself.<sup>14</sup> Although the decision has not yet been officially communicated, the Commission announced its intention to withdraw at several public events in late 2015.<sup>15</sup>

Implementing many of the other concluding observations will be a longer-term process. An early test of the EU’s wider commitment to taking on board the CRPD’s Committee’s recommendations will be the mid-term review of the European Disability Strategy 2010–2020.<sup>16</sup> Scheduled for 2016, the review could reflect the committee’s call to “establish clear guidelines for including the recommendations in the [...] concluding observations, with clear benchmarks and indicators, in close consultation with persons with disabilities and their representative organizations”.<sup>17</sup> Another signal

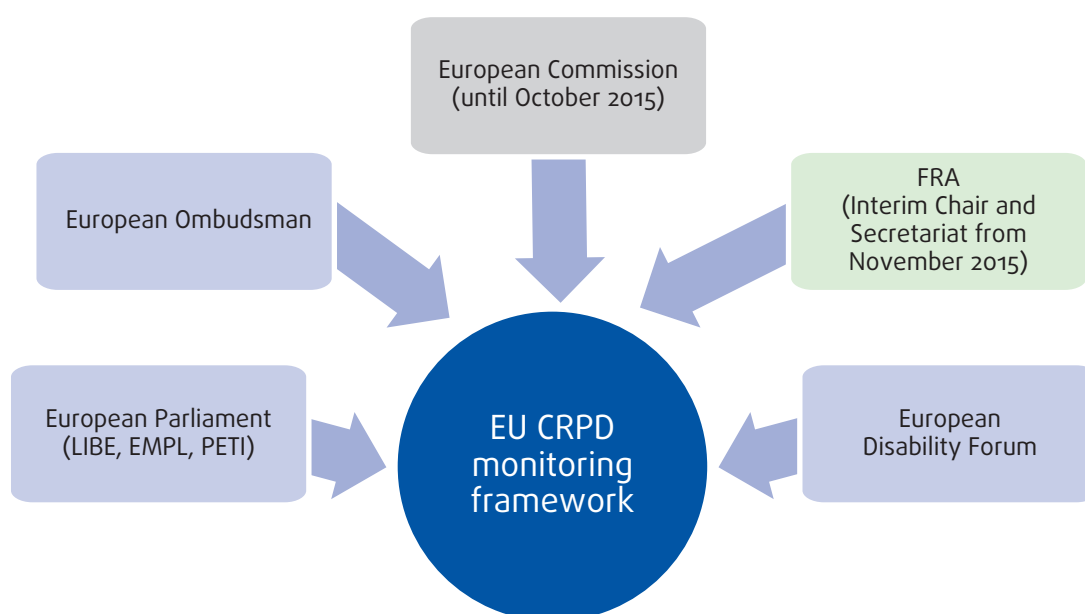
would be ensuring that the CRPD is fully incorporated into the European Semester process, for example by including “disability-specific indicators in the Europe 2020 strategy”, as called for by the CRPD Committee.<sup>18</sup>

### 8.1.2. Members of ‘EU Framework’ collaborate to support EU review

Contributing to the EU’s review by the CRPD Committee helped to drive closer coordination and cooperation in 2015 between the members of the EU Framework, namely: the European Parliament, the European Ombudsman, the European Commission (until November), FRA, and the European Disability Forum.<sup>19</sup> Frequent meetings culminated in opening and closing statements during the constructive dialogue, in addition to two private briefings with the CRPD Committee to present the framework’s activities (see [Figure 8.3](#)).

The publication of the concluding observations raises important questions for the framework concerning both its activities and its financing and functioning. With regard to its activities, the withdrawal of the European Commission (see [Section 8.1.1](#)), combined with the confirmation in January of the decision by the Conference of Presidents of the European Parliament to alter the parliament’s representation to include the Committee on Employment and Social Affairs and the Committee on Civil Liberties, Justice and Home

**Figure 8.2: Members of the EU Framework to promote, protect and monitor the implementation of the CRPD**



*Note:* EMPL is the Committee on Employment and Social Affairs; LIBE is the Committee on Civil Liberties, Justice and Home Affairs; and PETI is the Committee on Petition. The European Commission withdrew from the framework following publication of the concluding observations on the EU by the CRPD Committee in September 2015. FRA was appointed, by consensus, as chair and secretariat of the framework on an interim basis in November 2015.

*Source:* FRA, 2016

Affairs, means that the distribution of tasks initially envisaged will need to be revisited.<sup>20</sup> Such a review could consider issues such as how members might work together on joint initiatives within their various mandates, and their independence in terms of the Paris Principles establishing standards for national human rights institutions.<sup>21</sup>

With regard to financing and functioning, the concluding observations highlight the importance of the framework having “adequate resources to perform its functions”.<sup>22</sup> This potentially challenges the initial proposal for the framework,<sup>23</sup> which foresees members each allocating existing resources to carry out their framework tasks. In addition, the conclusion of the review process marks an opportunity to reflect on the framework’s operational provisions, which set out the roles of the chair and secretariat, as well as working methods.<sup>24</sup> Following on from the European Disability Forum and the European Commission, which acted as chair and secretariat of the framework, respectively, between 2013 and 2015, FRA took on both roles in an interim capacity in November.

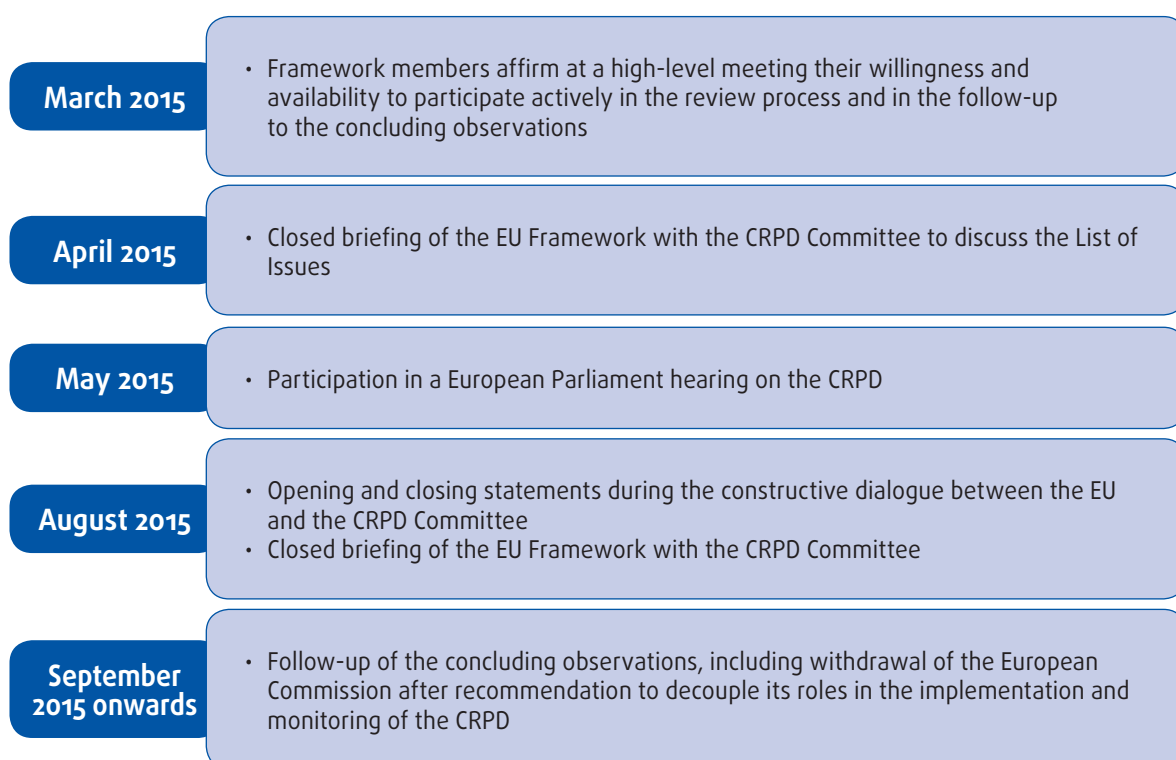
The questions concerning the EU Framework’s activities, financing and functioning highlight the lack of a formal legal basis for the framework, such as the legislative act setting up the **Austrian** Independent Monitoring Committee<sup>25</sup> or the parliamentary decision

designating the **Danish** monitoring mechanism.<sup>26</sup> While any legal designation would need to reflect the specificities of the EU context, clearly setting out the framework’s role and scope would strengthen the foundations on which it can support the EU in following up on the concluding observations. Working through these questions to ensure an effective framework would require regular communication between the European Commission, as focal point for CRPD implementation, and the remaining members of the framework.

In addition to their work on the review process, framework members took steps to fulfil their individual and collective tasks as set out in the work programme they agreed on in March.<sup>27</sup> The launch of a [joint webpage](#) in July gave the promotion aspect of the framework’s activities a major boost (see [Figure 8.4](#)). Incorporating accessibility features such as easy-read text and sign language video, the webpage presents information about the membership, activities and partners of the framework, and enhances transparency by providing access to meeting minutes and other documents.

On the protection side, proactive steps taken by the framework’s two complaints-receiving members – the European Ombudsman and the Petitions Committee of the European Parliament – illustrate how the convention is increasingly influencing the work of EU institutions and bodies. In May, following a targeted

**Figure 8.3: Role of the EU Framework in the 2015 review process**



Source: FRA, 2016

Figure 8.4: Webpage of the EU Framework to promote, protect and monitor the implementation of the CRPD

The screenshot shows the webpage for the EU Framework for the UN Convention on the Rights of Persons with Disabilities. The header includes the European Commission logo and the title 'EMPLOYMENT, SOCIAL AFFAIRS & INCLUSION'. The main content area features a video player titled 'Rights of Persons with Disabilities' and text explaining the framework's role in promoting, protecting, and monitoring the implementation of the UN Convention. The page also includes a navigation menu, a search bar, and a sidebar with links to various policies and activities.

**EU Framework for the UN Convention on the Rights of Persons with Disabilities**

As a party to the UN Convention on the rights of persons with disabilities, the EU has a Framework that promotes, protects and monitors the implementation of the Convention in matters of EU competence:

- EU legislation and policy: non-discrimination, passengers' rights, EU funding...
- EU public administration: personnel selection, access to documents...

It complements national monitoring mechanisms, which are the main bodies responsible for promoting, protecting and monitoring the UN Convention in EU countries.

The Framework became operational in 2013, based on a proposal by the Commission that was endorsed by the Council in 2012.

**Who are the members?**

The Framework is composed of:

- The European Parliament
- The European Ombudsman
- The European Commission
- The EU Agency for Fundamental Rights (FRA)

Source: European Commission, DG Employment, Social Affairs and Inclusion, Webpage on EU Framework for the UN Convention on the Rights of Persons with Disabilities

consultation, the European Ombudsman published its decision on the own-initiative inquiry concerning respect for fundamental rights in the implementation of the EU cohesion policy, including eight guidelines for improvement.<sup>28</sup>

Although much broader in scope than the place of the CRPD in cohesion policy, the guidelines for improvement reflect many of the concerns raised by civil society regarding the use of the funds to further CRPD implementation.<sup>29</sup> In particular, the guidelines call for strict enforcement of the control mechanisms to ensure proper use of the funds, as well as a framework through which civil society can contribute to the European Commission's supervision of ESIF spending. The former would include strict application of the *ex ante* conditionalities – preconditions that must be met before funds are released – related to disability included in the main ESIF regulation.<sup>30</sup>

The European Parliament's Petitions Committee, for its part, examined its protection role by commissioning an analysis of the disability-related petitions it receives.<sup>31</sup> The ensuing report illustrates that a large proportion

of these petitions concern social protection and standard of living, employment opportunities, community living, and accessibility issues, all areas where Member States retain most responsibility for law and policy. Nevertheless, the report argues that the EU's accession to the CRPD could expand the scope of the European Parliament's concern with disability issues in areas of shared EU and Member State competence.

Reflecting its monitoring role in the framework, FRA published its human rights indicators on Article 19 of the CRPD, on the right to live independently and be included in community life.<sup>32</sup> To be applied by FRA in 2016 using data collected from across the 28 EU Member States, the indicators will enable Member States to assess their implementation of Article 19 standards and to identify gaps in existing law and policy. In addition, FRA's report on violence against children with disabilities (see ► Chapter 6) gives clear recommendations on how EU institutions and Member States can meet their obligations under both the CRPD and the Convention on the Rights of the Child.<sup>33</sup> Evidence from both these activities will also feed into the mid-term review of the European Disability Strategy 2010–2020, which will be completed in 2016.<sup>34</sup>



## 8.2. The CRPD and the EU Member States: a driver of change

*“Much progress has been achieved in the past 10 years [...]. From changes in legislation to better service delivery, from improvements in physical environments to changes in attitudes, Europe has become a better place to be for persons with disabilities. However, many challenges still remain. [...] Europe has a lot to do to bridge the gap between legal standards and the daily reality of persons with disabilities.”*

*Thorbjørn Jagland, Secretary General, Council of Europe, ‘Disability: human rights should come first’, Statement on the occasion of the International Day of Persons with Disabilities, 3 December 2015*

FRA’s evidence consistently shows that the CRPD has been recasting approaches to the rights of persons with disabilities across the EU since the first Member States ratified it in 2007.<sup>35</sup> This process continued in 2015, paying powerful testimony to how international human rights treaties and commitments can stimulate change at national level. Nevertheless, significant challenges remain in terms of both the shift to the human rights-based approach to disability demanded by the CRPD and the implementation of its individual articles on the ground. Furthermore, many Member States have yet to build up effective structures for the implementation and monitoring of the convention, as required under Article 33 of the CRPD. A table presenting the bodies designated under Article 33 in all EU Member States, as well as the EU itself, is available on FRA’s website.<sup>36</sup>

The three EU Member States yet to ratify the convention each took steps towards completing the ratification process in 2015. In October, the **Irish** government published a roadmap to ratification of the CRPD, setting out the legislative measures needed to meet the convention’s requirements.<sup>37</sup> The **Finnish** parliament accepted both the CRPD and its Optional Protocol in March, pending final legislative reforms.<sup>38</sup> A discussion in the **Dutch** parliament of the draft bill for the implementation of the CRPD was scheduled for October, but postponed twice to January 2016 (see [Section 8.2.1](#) for more information).<sup>39</sup> Meanwhile, **Bulgaria**, the **Czech Republic**, **Poland**, **Romania**, and the EU have still not ratified the Optional Protocol to the CRPD, which allows for individuals to bring complaints to the CRPD Committee.

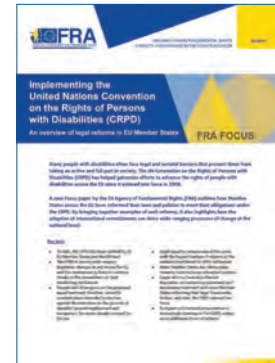
### 8.2.1. CRPD-led reforms focus on equality and participation

Many legislative and policy developments in 2015 centred on issues highlighted in FRA’s previous annual reports, reflecting Member States’ ongoing focus on specific elements of the CRPD, including:

- strategies and action plans for implementing the CRPD;

- consultation and involvement of people with disabilities (Article 4);
- involuntary placement and treatment (Articles 14, 15, 17 and 25);
- accessibility (Article 9).

As highlighted in FRA’s 2015 overview of national legal reforms linked to CRPD ratification,<sup>40</sup> as well as in the 2014 FRA Annual report, these are also areas in which the principle of non-discrimination is increasingly shaping action to harmonise national legislation with the CRPD (see [Chapter 2](#) for more information on equality and non-discrimination).



Although not an obligation under the convention, the CRPD Committee has repeatedly recommended that States parties develop action plans and strategies to give overarching direction to their actions to implement the CRPD.<sup>41</sup> Reflecting these calls, in 2015 half of EU Member States introduced action plans related to the CRPD, were in the process of drafting new strategies, or reviewed the outcomes of previous such documents.

Among those introducing new strategies (see [Table 8.2](#)), the **Dutch** Secretary of State for Health, Welfare and Sport published an action plan for the implementation of the CRPD in June.<sup>42</sup> Part of its final preparations for ratifying the convention, the action plan explains how an administrative consultation committee, including DPOs, the local government association, and employers organisations will guide CRPD implementation. The **Czech** National Plan to Support Equal Opportunities for Persons with Disabilities 2015–2020 is more specific; it sets out measures to implement the convention across a wide range of policy areas, including equality and non-discrimination, awareness-raising, accessibility, access to justice, and independent living.<sup>43</sup>

With the CRPD having been in force for five years or more in most Member States, attention is increasingly turning to evaluating existing action plans that are coming to the end of their implementation period. Reflecting a wider trend for developing action plans targeting specific CRPD articles, the **Slovak** Ministry of Labour, Social Affairs and Family assessed the implementation of two strategies – the first on deinstitutionalisation of social care<sup>44</sup> and the second on development of living conditions for persons with disabilities.<sup>45</sup> Such assessments in turn often result in follow-up

**Table 8.2: Strategies and action plans relevant to the CRPD adopted in 2015, by EU Member State**

EU Member State	Strategy or action plan
BE	Flanders: Overall Objective Framework for the Flemish Policy of Equal Opportunity 2015–2019 ( <i>Algemene doelstellingenkader Vlaams Horizontaal Gelijkekansenbeleid 2015–2019</i> )
BG	Action Plan for the Application of the Convention for the Rights of Persons with Disabilities 2015–2020 (План за действие на Република България за прилагане на Конвенцията за правата на хората с увреждания 2015–2020)
CZ	National Plan to Support Equal Opportunities for Persons with Disabilities 2015–2020 ( <i>Národní plán podpory rovných příležitostí pro osoby se zdravotním postižením na období 2015–2020</i> )
HU	National Disability Programme 2015–2025 ( <i>Országos Fogyatékoságügyi Program 2015–2025</i> ) and Action Plan for the National Disability Programme 2015–2018 ( <i>Országos Fogyatékoságügyi Program végrehajtásának 2015–2018. évre szóló intézkedései</i> )
LT	Action plan 2015 ( <i>Nacionalinės neįgalųjų socialinės integracijos 2013–2019 metų programos įgyvendinimo 2015 metų veiksmų planas</i> ) and Action plan 2016–2018 ( <i>Nacionalinės neįgalųjų socialinės integracijos 2013–2019 metų programos įgyvendinimo 2016–2018 metų veiksmų planas</i> ) on the implementation of the National Programme on the Social Integration of People with Disabilities 2013–2019  Action plan on the implementation of the complex (integrated) services model of social integration for persons with epilepsy for 2015–2020 ( <i>Socialinės integracijos kompleksinių (integruotų) paslaugų modelio neįgaliesiems, sergantiems epilepsija, įgyvendinimo 2015–2020 metų veiksmų planas</i> )
LV	2015–2017 Implementation Plan of the Guidelines for the Implementation of the United Nations Convention on the Rights of Persons with Disabilities 2014–2020 ( <i>Pamatnostādņu „Apvienoto Nāciju Organizācijas Konvencijas par personu ar invaliditāti tiesībām īstenošanas pamatnostādnes 2014.-2020.gadam” īstenošanas plāns 2015.-2017.gadam</i> )
NL	Action Plan for the Implementation of the CRPD ( <i>Plan van aanpak implementatie VN-verdrag Handicap</i> )
SK	National Strategy for the Protection and Promotion of Human Rights ( <i>Celoštátna stratégia ochrany a podpory ľudských práv v Slovenskej republike</i> )
UK	Northern Ireland: Strategy to improve the lives of people with disabilities 2012–2015 (extended until March 2017)

A more comprehensive table presenting an overview of national strategies relevant to the CRPD can be found in FRA (2015), *Implementing the United Nations Convention on the Rights of Persons with Disabilities: An overview of legal reforms in EU Member States*, FRA Focus 06/2015, Vienna.

Source: FRA, 2015

strategies, such as that developed in **Bulgaria** for the period 2015–2020. The new plan addresses objectives that were not reached during the period of the 2013–2014 plan, including designating Article 33 bodies (see [Section 8.2.2](#)) and drafting a longer-term national strategy for CRPD implementation.<sup>46</sup>

Again reflecting the principle of ‘nothing about us, without us’, action plans are often developed with input from DPOs, among other stakeholders. As part of the preparation of its 2016–2020 delivery plan for the CRPD, the **Scottish** government, for example, launched an open consultation on the draft plan, including an easy-read version of the consultation questions.<sup>47</sup>

Unlike developing national action plans, structured consultation with DPOs is a cross-cutting obligation of the CRPD. The active involvement required by the CRPD can be achieved in myriad ways, but must include

active and “meaningful” involvement, including of women and children with disabilities.<sup>48</sup> FRA evidence shows that EU Member States have implemented a wide range of measures to bring persons with disabilities into the policy-making process. For example, nearly all Member States have mechanisms in place to involve DPOs in policy-making, although this consultation is a legal requirement in only half of the states.<sup>49</sup>

Two examples from 2015 highlight the variety of possible approaches. **Malta** moved to formalise the participation of persons with disabilities in decision-making by amending a number of legal acts to provide for persons with disabilities’ membership of the governing authorities of different public entities. For instance, the Housing Authority Act was amended to require that one of the up to 11 members of the Board of Directors of the Housing Authority will be a person with a disability; similarly, one of the seven to 10 members of the

National Commission for Further and Higher Education must now be a person with a disability.<sup>50</sup>

### Promising practice

#### Highlighting accessible services for persons with disabilities

The **Estonian** Gender Equality and Equal Treatment Commissioner has launched a scheme for providers of services to highlight the steps they are taking to improve accessibility for persons with disabilities. The ‘BE Here. Access for all’ (*SIIA SAAB. Ligipääs kõigile*) project encourages participating organisations to display signs indicating that their premises, operations and information are accessible to persons with different impairments. The scheme also facilitates mutual learning, as services just starting to improve accessibility can share experiences with others with more long-standing accessibility initiatives.

For more information, see the project’s website

Taking a different approach, the **German** Federal Ministry of Labour and Social Affairs followed up the 2014 evaluation of the Federal Act on Disability Equality<sup>51</sup> by inviting experts from political parties, federal ministries, commissioners for matters concerning persons with disabilities, and civil society to a forum to discuss possible revisions of the act.<sup>52</sup> Drawing on this input, the revised draft bill to amend the act includes a proposal to promote participation by organisations representing the interests of people with disabilities.<sup>53</sup>

*“Article 14 of the Convention is, in essence, a non-discrimination provision. [...] The Committee has repeatedly stated that States parties should repeal provisions which allow for involuntary commitment of persons with disabilities in mental health institutions based on actual or perceived impairments.”*

*CRPD Committee, Guidelines on Article 14 of the CRPD: the right to liberty and security of persons with disabilities, September 2015, paras. 4 and 10*

Turning to legislative actions tied to particular CRPD articles, the issue of involuntary placement and involuntary treatment again served to highlight tensions between CRPD standards and long-established national legal frameworks. CRPD ratification in **Finland** is stalled, for example, pending the finalisation of ongoing legislative amendments to meet the requirements of Article 14 on the right to liberty and security of the person.<sup>54</sup>

Amid concern about misinterpretations of CRPD obligations in this area, the CRPD Committee further clarified its authoritative interpretation of Article 14 in September. The committee’s guidelines strongly criticise laws allowing persons to be detained on the basis

of an actual or perceived impairment, viewing them as “incompatible with article 14; [...] discriminatory in nature and amount[ing] to arbitrary deprivation of liberty”.<sup>55</sup>

The guidelines were in part developed in response to the proposed additional protocol to the Council of Europe Convention on human rights and biomedicine (Oviedo Convention), a draft of which was published for consultation in June.<sup>56</sup> The binding additional protocol is intended to clarify the “standards of protection applicable to the use of involuntary placement and of involuntary treatment” for persons with “mental disorder”, which is “defined in accordance with internationally accepted medical standards”.<sup>57</sup>

Responding to the consultation, the Council of Europe Commissioner for Human Rights underlined his misgivings about many of the draft additional protocol’s basic assumptions, concluding that it represents a “risk of an explicit conflict between international norms at the global and European levels, owing to the divergence of interpretation between the [Committee on Bioethics of the Council of Europe] and the Committee on the Rights of Persons with Disabilities.”<sup>58</sup> Reiterating its previous comments on an earlier proposal for the additional protocol, FRA’s response emphasised that this divergence could make adopting the protocol difficult for those EU Member States that have ratified the CRPD.

*“Having carefully examined the [draft additional protocol] and its draft explanatory report, [...] the Commissioner came to the conclusion that he cannot subscribe to many of the basic assumptions underpinning the draft Additional Protocol and has serious misgivings about the compatibility of the draft’s approach with the [CRPD].”*

*Comments of the Council of Europe Commissioner for Human Rights on the ‘Working document concerning the protection of human rights and dignity of persons with mental disorder with regard to involuntary placement and involuntary treatment’, CommDH(2015)28, Strasbourg, 9 November 2015, para. 3*

The discrepancy between the CRPD Committee’s interpretation of Article 14 and that of States parties is highlighted in amendments to laws governing coercion in psychiatry adopted in **Denmark** in 2015.<sup>59</sup> Intended to reduce the use of coercion in psychiatry, one focus of the reforms is to increase safeguards for the use of physical restraint. For example, an external medical assessment must be conducted in all instances of forced physical restraint after 24 hours, rather than 48 hours as required before.<sup>60</sup> Nevertheless, these reforms do not sit easily with the committee’s call for States parties to “eliminate[e] the use of forced treatment, seclusion and various methods of restraint in medical facilities, including physical [...] restraints”.<sup>61</sup>

Implementing the accessibility requirements of the CRPD does not pose the same conceptual challenges, but nonetheless highlights the wide range of the convention’s obligations. In the area of information and

communication technology, for example, the **Italian** Digital Agency adopted guidelines for public administration on the improvements necessary to guarantee full access to technology for employees with disabilities.<sup>62</sup> Regarding physical accessibility, the **Latvian** Cabinet of Ministers approved new requirements for the accessibility of public buildings.<sup>63</sup> This suggests ongoing reforms after evidence analysed by FRA in 2014 indicated that just 15 EU Member States had mandatory accessibility standards in place for the construction and alteration of national and local authority buildings.<sup>64</sup> Importantly, the Latvian regulations include a requirement for the availability of information for persons with hearing and visual impairments, as well as common elements such as wheelchair ramps and accessible toilets.

### Promising practice

#### Promoting positive attitudes towards persons with disabilities

The **Irish** Department of Justice and Equality's Disability Awareness Funding Programme 2015 provides grants to initiatives that promote positive attitudes towards persons with disabilities. While raising awareness of disability among the public generally, funded projects should particularly target people involved in delivering mainstream services and information, in employment, community and sporting activities, and in the media and education. In addition, proposals for funding should highlight the transferability of the project and how its approach and deliverables can be used by other organisations as a model of good practice.

*For more information, see: Department of Justice and Equality (2015), Disability awareness grant scheme 2015: promoting positive attitudes to people with disabilities – guidance manual for grant applications*

The proposed draft bill on accessibility prepared by the **Luxembourg** Ministry of Family Affairs, Integration and the Greater Region is broader in scope.<sup>65</sup> Incorporating 'design for all' principles, the draft bill, which is scheduled to be introduced in 2016, aims to ensure equal opportunities for persons with disabilities in all areas of life. In light of its wide application, preparation of the draft bill involves cooperation with diverse stakeholders, including civil society organisations, the National Competence Centre for Accessibility to Buildings, and professional groups.

### 8.2.2. Monitoring CRPD implementation: challenges and opportunities

As at EU level, reviews of Member States' implementation of the CRPD by the CRPD Committee increasingly serve both as an opportunity for critical reflection on progress made and as a catalyst for further reforms. By the end of 2015, all but two of the 25 EU Member States

that have ratified the CRPD had submitted their initial reports to the CRPD Committee, as required under Article 35 of the convention. **France** and **Romania** both have yet to publish their reports, despite deadlines of March 2012 and March 2013, respectively.

The **Czech Republic** and **Germany**, two of the nine EU Member States so far reviewed by the CRPD Committee, used the release of their concluding observations as an opportunity to discuss follow-up actions. The German Federal Government Commissioner for Matters of Persons with Disabilities, along with the German Institute for Human Rights, organised a major conference a month after the publication of the concluding observations.<sup>66</sup> Participants from government, public administration, and civil society discussed implications for policy-making at federal, regional, and local levels, highlighting the situation of persons with psychosocial disabilities, supported decision-making, and healthcare for refugees with disabilities as particularly urgent issues. On a smaller scale, the Czech Government Board for People with Disabilities met to debate the CRPD Committee's recommendations.<sup>67</sup>

The review process also provides an opportunity for civil society actors to offer their own assessment of CRPD implementation, often in the form of so-called shadow reports to the State party's initial report. In September, for example, a coalition of national non-governmental organisations (NGOs) published a report – available in easy-read and sign language versions – summarising their views on how the CRPD is being applied in **Poland**.<sup>68</sup> The report drew on consultations with over 250 representatives of NGOs and DPOs – the first shadow report submitted to a UN Committee to be prepared on such a scale.

Nevertheless, following up on the CRPD Committee's wide-ranging concluding observations, which often demand profound shifts in approaches to disability issues, poses an ongoing challenge. One particular difficulty is coordinating reforms that may cut across different ministries, as well as the responsibilities of federal, regional, and local government. Looking back at the concluding observations published in September 2013, for example, the **Austrian** Monitoring Committee for the CRPD argued that it is not sufficiently clear who is responsible for implementing the CRPD Committee's recommendations. It also highlighted that, as of May 2015, the National Action Plan on Disability had yet to be updated to incorporate the concluding observations.<sup>69</sup>

Such analysis underlines the key role of strong monitoring structures, in line with the standards set out in Article 32(2) of the convention, in supporting effective domestic scrutiny of the compatibility of national legislation with CRPD requirements. A positive step in this regard is the adoption of legislation establishing

## Promising practice

### Increasing awareness of universal accessibility

The **French** government launched a public awareness campaign on universal accessibility in partnership with *France Télévisions*, a public broadcaster, and the popular television series *Plus belle la vie*. Broadcast with subtitles and audio description, the 20 one-minute sketches illustrate various aspects of universal accessibility. By focusing on everyday scenes such as using a smartphone and waiting for the doctor, the series highlights how improving accessibility for persons with disabilities can result in much broader benefits for all members of society.

For more information, see the France Télévisions website

a commissioner for persons with disabilities in the **Slovak Republic**. Although the law does not specifically mention Article 33(2), the commissioner is tasked with “monitoring the rights of persons with disabilities, in particular, conducting independent surveys of obligations under international agreements”, including the CRPD.<sup>70</sup> The commissioner will also be able to receive complaints, including from children and persons lacking full legal capacity without the knowledge of their parent or guardian.

Although this means that all but four (**Bulgaria**, the **Czech Republic**, **Greece** and **Sweden**) of the Member States that have ratified the CRPD have now appointed Article 33(2) bodies, concerns persist about the effectiveness of some of these monitoring mechanisms. For example, in **Estonia**, the Committee on the Rights of Persons with Disabilities created under the Centre

for Policy Studies PRAXIS as a temporary mechanism in 2013 to monitor the implementation of the convention has not been active due to problems with state funding.<sup>71</sup> While the draft law to extend the role of the Gender Equality and Equal Treatment Commissioner to incorporate monitoring under Article 33(2) would bridge this gap, it had not been adopted by the end of 2015.<sup>72</sup>

Monitoring mechanisms should also have sufficient financial and human resources to carry out their functions, as highlighted in the conclusions of FRA’s 2014 Annual report. In practice, however, these resources are often lacking. For example, the job of the Secretary of the Council for Persons with Disabilities, the **Slovenian** Article 33(2) body, is performed as an additional task by an official working full time at the Ministry of Labour, Family, Social Affairs and Equal Opportunities. An initiative to set aside further resources to carry out this task has received widespread support – including from the President, the President of the National Assembly, and most ministries<sup>73</sup> – but the allocation of further resources will be determined only during the next budget period.<sup>74</sup>

With the CRPD Committee scheduled to review the implementation of the CRPD by another five Member States (**Cyprus**, **Italy**, **Lithuania**, **Portugal**, and **Slovakia**) in 2016 (see Table 8.3), national efforts to meet the convention’s standards will face further international and domestic scrutiny. Having consistently emphasised the lack of independence and resources available to Article 33(2) bodies in its concluding observations, equipping monitoring mechanisms with the tools they need to effectively monitor CRPD implementation is likely to be a central focus of the CRPD Committee’s recommendations.

**Table 8.3: CRPD Committee reviews in 2015 and 2016, by EU Member State**

EU Member State	Date of submission of initial report	Date of publication of list of issues	Date of publication of concluding observations
CY	2.8.2013	9.2016	
CZ	1.11.2011	28.10.2014	15.5.2015
DE	19.9.2011	11.5.2014	13.5.2015
HR	27.10.2011	30.10.2014	15.5.2015
IT	21.1.2013	3.2016	9.2016
LT	18.9.2012	1.10.2015	4.2016
PT	8.8.2012	1.10.2015	4.2016
SK	26.6.2012	1.10.2015	4.2016
EU	5.6.2014	15.5.2015	4.9.2015

Note: Shaded cells indicate review processes scheduled for 2016.

Source: FRA, 2016 (using data from the Office of the High Commissioner for Human Rights)

## FRA opinions

As for the first time a UN treaty body, the CRPD Committee, reviewed the EU's fulfilment of its international human rights obligations, the committee's concluding observations on the EU's implementation of the CRPD, published in 2015, are an important milestone for the EU's commitment to equality and respect for human rights. The wide-ranging recommendations offer guidance for legislative and policy actions across the EU's sphere of competence.

### FRA opinion

*To allow for a full implementation of the CRPD, it is FRA's opinion that the EU institutions should use the CRPD Committee's concluding observations as an opportunity to set a positive example by ensuring rapid implementation of the committee's recommendations. Representing the EU under the convention, the European Commission needs to work closely with other EU institutions, bodies and agencies, as well as Member States, to coordinate effective and systematic follow-up of the concluding observations. Modalities for this cooperation could be set out in an implementation strategy of the CRPD, as recommended by the CRPD Committee, as well as in the updated European Disability Strategy 2010–2020.*

As the 10-year anniversary of the entry into force of the CRPD approaches in 2016, evidence shows that it has served as a powerful driver of legal and policy reforms at European and national levels. Nevertheless, the human rights-based approach to disability demanded by the convention is yet to be fully reflected in either EU or national law- or policymaking.

### FRA opinion

*To address the fact that a human rights-based approach to disability is not yet fully endorsed, it is FRA's opinion that the EU and its Member States should consider intensifying efforts to align their legal frameworks with CRPD requirements. As the CRPD Committee recommends, this could include a comprehensive review of their legislation to ensure full harmonisation with the convention's provisions. Such EU and national level reviews could set clear targets and timeframes for reforms, identifying the actors responsible.*

The CRPD Committee's reviews of the EU, Croatia, the Czech Republic and Germany in 2015 show that review processes by monitoring bodies offer a valuable opportunity for input from civil society organisations, including organisations for persons with disabilities. Retaining this level of involvement and consultation throughout the follow up of the concluding observations presents a greater challenge, given the wide-ranging scope of the committee's recommendations.

### FRA opinion

*To retain the level of involvement the CRPD review process has so far witnessed, it is FRA's opinion that, when taking steps to implement the CRPD Committee's concluding observations, both the EU and the Member States should consider structured and systematic consultation and involvement of persons with disabilities. This consultation should be fully accessible, allowing all persons with disabilities to participate, irrespective of type of impairment.*

By the end of 2015, only Finland, Ireland and the Netherlands had not ratified the CRPD, although each took significant steps towards completing the reforms required to pave the way to ratification. A further four Member States, and the EU, are still to ratify the Optional Protocol to the CRPD, allowing individuals to bring complaints to the CRPD Committee, despite each having ratified the main convention by 2012.

### FRA opinion

*To achieve full ratification of the CRPD, it is FRA's opinion that the EU Member States that have not yet done so should consider taking rapid steps to finalise the last reforms standing in the way of CRPD ratification. The EU and the Member States yet to complement their ratification of the CRPD with adoption of the Optional Protocol should consider completing quickly the necessary legal actions to ratify the Optional Protocol.*

At the end of 2015, four of the 25 EU Member States that have ratified the CRPD were yet to establish or designate a body to implement and monitor the convention, as required under Article 33, according to a FRA comparative analysis. Evidence shows that a lack of financial and human resources, as well as the absence of a solid legal basis for the bodies'



designation, impedes the work of those bodies already established, in particular the monitoring frameworks set up under Article 33 (2).

#### FRA opinion

*To improve monitoring of CRPD obligations, it is FRA's opinion that the EU and all Member States should consider allocating the monitoring frameworks established under Article 33 (2) sufficient and stable financial and human resources to enable them to carry out their functions. They should also consider guaranteeing the independence of monitoring frameworks by ensuring that their composition and operation takes into account the Paris Principles on the functioning of national human rights institutions, as required under Article 33 (2). Establishing a formal legal basis for monitoring frameworks at EU and national levels, clearly setting out frameworks' role and scope, would support their independence. Those Member States still to designate Article 33 bodies should do so as soon as possible and equip them with the resources and mandates to effectively implement and monitor their obligations under the CRPD.*

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