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## UN & CoE

12 January – Special Rapporteur on the rights of persons with disabilities publishes report on right of persons with disabilities to participate in decision-making

January

February

March

29 April – CRPD Committee publishes concluding observations on the initial report of Portugal and publishes list of issues on the initial report of Italy

April

11 May – CRPD Committee publishes concluding observations on the initial report of Lithuania

17 May – CRPD Committee publishes concluding observations on the initial report of Slovakia

May

June

July

19 August – Special Rapporteur on the rights of persons with disabilities publishes report on disability-inclusive policies

26 August – CRPD Committee adopts General Comment No. 3 on Article 6 (Women with disabilities) of the CRPD and General Comment No. 4 on Article 24 (Education) of the CRPD, and publishes Guidelines on independent monitoring frameworks and their participation in the work of the committee

August

September

6 October – CRPD Committee finds that significant cuts to social benefits in the United Kingdom meet the threshold of grave or systematic violations of the rights of persons with disabilities

October

30 November – Council of Europe adopts Strategy on the Rights of Persons with Disabilities 2017-2023

November

December

## EU

January

5 February – European Parliament (EP) publishes the European Implementation Assessment on the implementation of the United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD) with regard to the concluding observations of the UN Committee on the Rights of Persons with Disabilities (CRPD Committee)

February

March

April

10 May – European Ombudsman opens an own-initiative inquiry (OI/4/2016/EA) on the treatment of persons with disabilities under the Joint Sickness Insurance Scheme (JSIS)

11 May – Finland ratifies the CRPD as 26<sup>th</sup> of the 28 EU Member States

May

14 June – the Netherlands ratifies the CRPD as 27<sup>th</sup> of the 28 EU Member States

June

7 July – EP adopts a resolution on the implementation of the CRPD with a special focus on the concluding observations of the CRPD Committee

July

August

8 September – Advocate General Wahl of the Court of Justice of the European Union (CJEU) delivers an opinion (Opinion Procedure 3/15) concluding that the EU has exclusive competence to conclude the Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired or otherwise print disabled

14 September – European Commission adopts its proposals for a regulation on the cross-border exchange of accessible format copies and directive on permitted uses of works for persons who are blind, visually impaired or print disabled

September

26 October – EP adopts Directive on the Accessibility of Websites and Mobile Applications of Public Sector Bodies

October

November

December

# 9

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



*Ten years after the United Nations (UN) General Assembly adopted the Convention on the Rights of Persons with Disabilities (CRPD), the convention continues to spur significant legal and policy changes in the EU and its Member States. As attention gradually shifts from the first wave of CRPD-related reforms to consolidating progress made, the recommendations of review and complaints mechanisms at the international, European and national levels are increasingly important in identifying persisting implementation gaps. Monitoring frameworks established under Article 33 (2) of the convention can be essential tools to drive follow-up of these recommendations, particularly those stemming from reviews by the CRPD Committee – but they require independence, resources and solid legal foundations to carry out their tasks effectively.*

### 9.1. The CRPD and the EU: following up on the concluding observations

In September 2015, the CRPD Committee published its assessment of the EU's progress in implementing the CRPD.<sup>1</sup> Developments at EU level in 2016 focused on efforts to follow up on the committee's wide-ranging recommendations (called 'concluding observations'). These developments highlight that, despite not being legally binding, concluding observations are important interpretative tools and provide clear guidance on fulfilling convention obligations to States parties, on which they can act. Further information on developments relating to discrimination based on disability is provided in [Chapter 2](#) on Equality and non-discrimination.

Of particular importance in 2016 were steps to address the three recommendations on whose implementation the CRPD Committee requested that the EU report back by September 2016. These are the concluding observations on the declaration of competence; on the European Accessibility Act; and on the EU Framework to promote, protect and monitor the implementation of the CRPD (EU Framework) established under Article 33 (2) of the convention. In its response to the committee, sent in

January 2017, the European Commission announced that an updated overview of EU legal acts referring to aspects of the CRPD would be published as an annex to the progress report on the European Disability Strategy 2010–2020. It also highlighted the publication of the proposal for the European Accessibility Act in December 2015. However, with discussions continuing in both the Council and the European Parliament, there is as yet no timeframe for its adoption. [Section 9.3.1](#) covers issues relating to the European Commission's withdrawal from the EU Framework.

The CRPD Committee's recommendations, however, reach far beyond the three areas identified for urgent reform. Stretching across the full scope of EU competence, the concluding observations call for wide-ranging legal and policy initiatives that touch on the responsibilities and activities of all the EU's institutions and bodies. Moreover, it is a 'mixed agreement' covering some areas over which the EU has authority and some for which Member States are responsible, so responsibility for implementation rests with both the EU and the Member States, and requires close cooperation between them.<sup>2</sup>

Against this backdrop, a few examples of legislative, policy and complaints-related developments serve to highlight some of the steps EU institutions took in 2016

to respond to the CRPD Committee's recommendations within their respective mandates and activities. These examples underline two key ways in which the CRPD is driving processes of change at both the EU and national levels (see also [Section 9.2](#)):<sup>3</sup>

- Many initiatives specifically refer to individual recommendations from the CRPD Committee. This emphasises that the concluding observations can act as a blueprint for what the EU must do to fulfil its obligations under the CRPD.
- The activities and judgments of complaints mechanisms, both judicial and non-judicial, refer to the standards set out in the convention. This helps to clarify the scope of CRPD obligations and how they are to be met.

On the legislative side, the main developments concern accessibility of information and communications. Four years after the proposal was first presented, the EU adopted the Directive on the accessibility of websites and mobile applications of public sector bodies (Web Accessibility Directive) in October 2016.<sup>4</sup> Part of a package including the proposed European Accessibility Act and revision of the Audiovisual Media Services Directive,<sup>5</sup> the Web Accessibility Directive will require websites and apps of public sector bodies – ranging from public administrations and police departments to public hospitals and universities – to meet common accessibility standards.<sup>6</sup>

*“Today, we have ensured that e-government is accessible to everyone. Just as physical government buildings should be accessible, so should the digital gateways. [...] But the internet is far more than government websites and apps. We need reform also for the private world of services, from banks to television stations to private hospitals. I hope that we can soon adopt the European Accessibility Act, so that both public and private services are accessible to all our citizens.”*

*Dita Charanzová, MEP, Rapporteur for the Directive of the European Parliament and of the Council on the accessibility of the websites and mobile applications of public sector bodies, 26 October 2016*

Reflecting concerns about possible implementation gaps, the directive includes a series of measures to ensure that its provisions become reality. Public sector bodies will have to regularly update an ‘accessibility statement’ on the compliance of their websites and apps with the directive, and establish a feedback mechanism to allow users to report compliance issues and request content that remains inaccessible. Moreover, they must provide a link to an ‘enforcement procedure’ for complaints about unsatisfactory responses to feedback or requests for information.<sup>7</sup> From its side, the European Commission will adopt implementing acts establishing a methodology for monitoring conformity with the directive. Member

States have until 23 September 2018 to incorporate the directive into their national legislation.

In addition, in September the European Commission adopted two legislative proposals focused on helping people with visual impairments access published works, including special format books, audio books and other print material.<sup>8</sup> Part of the Commission's Digital Single Market Strategy,<sup>9</sup> the proposals would create exceptions to copyrights to increase the availability of publications in accessible formats. The explanatory memoranda for both proposals make specific reference to the CRPD and the EU Charter of Fundamental Rights, arguing that these commitments justify restrictions on the property rights of rights holders.

These proposals link directly to moves for the EU to become a party to the Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired or otherwise print disabled (Marrakesh Treaty).<sup>10</sup> In September 2015, the CRPD Committee specifically recommended ratifying it.<sup>11</sup> Although the EU signed the treaty in April 2014, seven EU Member States (the **Czech Republic, Finland, France, Hungary, Lithuania, Romania** and the **United Kingdom**) have opposed ratification, arguing that the EU does not have ‘exclusive competence’ to accept it.<sup>12</sup> Following a European Commission request to the Court of Justice of the European Union (CJEU) for an opinion, in September 2016 the Advocate General proposed that the court answer the Commission by finding that the EU “has exclusive competence to conclude the Marrakesh Treaty”.<sup>13</sup> Should the CJEU follow this proposal in its final opinion, this would give significant impetus to finalising the EU's accession to the treaty, the second disability-related international agreement which the EU itself accepts.

The European Parliament adopted a relevant resolution in July 2016.<sup>14</sup> Although not legally binding, it gave a strong signal of the parliament's commitment to following up on the CRPD Committee's concluding observations. Addressing the full range of the committee's recommendations, the resolution covers both the importance of an overarching approach to CRPD implementation – such as taking measures “to mainstream disability in all legislation, policies and strategies” – and specific actions – for example, to support migrant women and girls with disabilities “to develop skills that would give them opportunities to obtain suitable employment”.<sup>15</sup> [Section 9.3](#) covers recommendations concerning the EU Framework. Importantly, organisations that represent persons with disabilities were actively involved throughout the process of preparing the report for adoption, reflecting the ‘nothing about us, without us’ philosophy enshrined in the CRPD.<sup>16</sup>

## Promising practice

## Promoting equal access for travellers with disabilities

The European Commission launched a pilot project implementing an EU Disability Card in eight EU Member States: **Belgium, Cyprus, Estonia, Finland, Italy, Malta, Romania and Slovenia**.



The project aims to ensure mutual recognition of disability status between EU Member States, helping to increase access to certain benefits in the areas of culture, leisure, sport and transport for people with disabilities travelling to other EU countries.

For example, in Slovenia, the EU Disability Card project will run for 18 months from February 2016. After this point, all administrative units in Slovenia will begin to issue the card. The Ministry of Labour, Family, Social Affairs and Equal Opportunities is contributing 20 % of the funds, with the remaining costs met by EU Structural and Investment Funds.

*For more information, see European Commission, 'EU Disability Card'*

In terms of policy, the key focus was on the mid-term review, now termed progress report, of the European Disability Strategy 2010–2020.<sup>17</sup> The progress report was postponed until 2016 to allow it to take the CRPD Committee's concluding observations into account, and had not been published by year end. FRA contributed to the consultation on the review in March, highlighting several issues that could be taken into account in the review, including strengthening mechanisms for involving disabled persons' organisations (DPOs); specific measures addressing violence against women and children with disabilities; and actions targeting disability hate crime.

More broadly, the CRPD Committee's focus on the broad relevance of the convention across EU policymaking was reflected in the Commission's preliminary outline of the proposed European Pillar of Social Rights.<sup>18</sup> Acknowledging the barriers that persons with disabilities face in employment – particularly linked to inaccessible workplaces, tax-benefit disincentives and a lack of support services – the outline highlights the importance of ensuring enabling services and basic income security. While welcoming the outline in principle, several civil society organisations criticised the focus on disability benefits, and called for the rights of persons with disabilities to be mainstreamed throughout the proposed pillar, in line with the CRPD.<sup>19</sup>

EU institutions with a mandate to receive and investigate complaints also used these powers to respond to the

concluding observations. These investigations help draw attention to the EU's obligations to implement the provisions of the CRPD within its own workings as a public administration, as well as through its law- and policymaking. For its part, the Committee of Petitions of the European Parliament (PETI Committee) updated its 2015 study on its protection role in the context of implementing the CRPD.<sup>20</sup> Complemented by a public workshop<sup>21</sup> and a PETI Committee debate on petitions about disability issues,<sup>22</sup> both now established as an annual practice, the study underlines the committee's increasing focus on disability issues.

The European Ombudsman's mandate is limited to investigating maladministration in the EU's institutions and other bodies. She initiated an own-initiative inquiry and two strategic initiatives explicitly linked to following up on the concluding observations. Such actions can serve as examples for ombudspersons at the national level.

In January and February, the Ombudsman twice wrote to the European Commission asking for information on how it will give effect to two concluding observations: one concerning accessibility for persons with disabilities of websites and online tools managed by the European Commission;<sup>23</sup> and the other concerning inclusive education at European Schools for children of EU staff.<sup>24</sup> In its response on website accessibility, the Commission stated that most of its websites are compliant with the Web Content Accessibility Guidelines, and it highlighted some of the steps it is taking to enhance accessibility.<sup>25</sup> On inclusive education, the Commission reiterated that the European Schools are not part of the EU public administration, but noted some of the additional support available for children with disabilities.<sup>26</sup>

In addition, in May the Ombudsman opened an own-initiative inquiry on whether or not the treatment of persons with disabilities under the EU's Joint Sickness Insurance Scheme (JSIS) complies with the CRPD.<sup>27</sup> The inquiry followed two complaints submitted by EU staff members whose children have disabilities. In writing to the President of the European Commission requesting information on how the Commission will follow up the CRPD Committee's recommendation in this area, the Ombudsman hinted that there is potential for a "more ambitious approach" on this issue than the "marginal scope for improvement" identified with regard to website accessibility and the European Schools.<sup>28</sup> The Commission's response highlighted that the JSIS is only one component of the EU's efforts to implement the CRPD with respect to its workforce, alongside other financial benefits to cover additional costs associated with an impairment.<sup>29</sup> Furthermore, the Commission announced its readiness to examine the application of the JSIS in relation to disability-related health needs, with the involvement of persons with disabilities and/or DPOs.

## FRA ACTIVITY

## FRA evidence supports UN work on rights of persons with disabilities

In addition to its reports, FRA draws on its body of evidence to provide country-specific and thematic input to the monitoring work and consultations of international bodies. In 2016, FRA submitted three contributions to the UN Special Rapporteur on the rights of persons with disabilities in relation to social protection, the right to participate in decision-making and provision of support to persons with disabilities. FRA also provided written input to the CRPD Committee on the right to live independently and be included in the community, and on national implementation and monitoring; and to the UN Office of the High Commissioner for Human Rights (OHCHR) on equality and non-discrimination for persons with disabilities.

All FRA input to the UN Special Rapporteur is available under the respective 'Issue in focus'; FRA input to the CRPD Committee is available on the committee's website; FRA input to OHCHR is available on the disability section of the OHCHR website.

## 9.2. The CRPD in EU Member States: a decade on, reflection drives reform

*"Ten years ago the global community witnessed the adoption of the first international treaty on the rights of persons of disabilities from a human rights-based approach. [...] The Convention has given visibility to the rights of persons with disabilities at a local, national, and international level. However, [...] many persons with disabilities continue to face significant barriers in the enjoyment of their rights, in particular women with disabilities and those belonging to historically discriminated groups."*

Catalina Devandas Aguilar, UN Special Rapporteur on the rights of persons with disabilities, *Speech at 2016 Social Forum*, 3 October 2016

The UN General Assembly adopted the CRPD in December 2006.<sup>30</sup> In the 10 years since then, the convention has consistently spurred significant legal and policy changes across the EU Member States. Evidence from 2016 illustrates that reforms are increasingly drawing on experience gained both nationally and internationally from developing and implementing measures to implement the CRPD. Thus, it reiterates the role of twin drivers of change: guidance from the CRPD Committee, whether as concluding observations, general comments or inquiries; and the growing body of national and European case law that makes reference to the convention.

This is reflected in the most prominent development in 2016: ratification of the CRPD by **Finland** – which also ratified the Optional Protocol to the Convention – and

the **Netherlands**, leaving **Ireland** as the only Member State still to do so. Both ratifications mark the end of significant reform processes to bring national legal frameworks in line with the provisions of the CRPD. The Dutch Act implementing the CRPD included a package of legislative amendments in areas as varied as non-discrimination, elections, social support, participation and youth.<sup>31</sup> Similarly, before ratifying the convention, Finland finalised legislative amendments to the Act on special care for persons with intellectual disabilities, to meet the CRPD requirements on the right to liberty and security of the person.<sup>32</sup> This issue was discussed in FRA's *Fundamental Rights Report 2016*.<sup>33</sup>

## FRA ACTIVITY

## Highlighting barriers faced by migrants with disabilities

Article 11 of the CRPD, on situations of risk and humanitarian emergencies, requires States parties to the convention to "take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict [and] humanitarian emergencies".

Every month, FRA collects data on the fundamental rights situation of people arriving in Member States that are particularly affected by large migration movements. In August, FRA focused specifically on the situation of migrants with disabilities. The findings highlight that there is a lack of formal procedures to identify migrants and refugees with disabilities, with significant knock-on effects for the provision of targeted support and assistance. They also indicate that identification of, and support for, persons with disabilities relies heavily on the expertise and knowledge of individual staff. However, a lack of relevant training can impede the identification of impairments, particularly those that are less immediately visible.

For more information, see FRA's August 2016 *Thematic focus on migrants with disabilities* and Chapter 5 of the present report

### 9.2.1. Taking recommendations on board in law and policymaking

More broadly, the trend for reflection is exemplified by looking at reforms in five key areas:

- strategies and action plans for implementing the CRPD;
- education (Article 24);
- participation in political and public life (Article 29);

- accessibility (Article 9);
- living independently and being included in the community (Article 19).

These issues are the subject of existing or forthcoming general comments by the CRPD Committee, and they are increasingly addressed from the perspective of the general principle of non-discrimination.<sup>34</sup> Notably, they have also featured consistently in FRA's annual Fundamental Rights Reports, signifying their place at the heart of national efforts to implement the CRPD. One mainstay of national actions to implement the CRPD is strategies or action plans related to the rights of persons with disabilities. Rather than new national action plans, such as those adopted in **Bulgaria** and **Romania** (see Table 9.1), much activity now focuses on evaluating existing action plans and developing their successors. As part of the **Swedish** Strategy for the implementation of disability policy,<sup>35</sup> the country's Agency for Participation analysed developments in national disability policy across all state authorities during its 2011–2016 implementation period. The evaluation highlighted that, while there has been positive change in the areas of art and culture, media, information technology and transport, progress in improving physical accessibility and access to the labour market has been slow.<sup>36</sup>

One obvious way to take such evaluations further is to feed the results into the development of follow-up

strategies. The **German** government built on the findings of the 2014 evaluation of its previous strategy, as well as the CRPD Committee's concluding observations,<sup>37</sup> in developing its second National action plan to implement the CRPD.<sup>38</sup> The plan is built around 175 measures in 13 areas, including work, education, mobility, rehabilitation and health, social and political participation, and – as a new area – awareness raising. The German Institute for Human Rights welcomed it as marking a “quantum leap” forward in conceptual terms. The institute, which is the monitoring body under Article 33 (2) of the convention, did however express concern that the plan lacks sufficient proposals to address issues such as coercion in the psychiatric system, reforms of electoral law – which excludes certain groups of persons with disabilities from the right to vote – and the scaling down of sheltered workshops.<sup>39</sup>

The Council of Europe's 2017–2023 Strategy on the Rights of Persons with Disabilities, adopted in November, can support efforts at the national level.<sup>40</sup> Drawing on the evaluation of the 2006–2015 strategy,<sup>41</sup> its priority areas (equality and non-discrimination; awareness raising; accessibility; equal recognition before the law; and freedom from exploitation, violence and abuse) and cross-cutting issues (participation, cooperation and coordination; universal design and reasonable accommodation; gender equality; multiple discrimination; and education and training) reflect FRA input during the development of the strategy.

**Table 9.1: Strategies and action plans relevant to the CRPD adopted in 2016, by EU Member State**

Member State	Strategy or action plan
BE	Walloon region, French-speaking community and Brussels-Capital region: Cross-sectional autism plan ( <i>Plan Transversal Autisme</i> )
BG	National strategy for the persons with disabilities 2016–2020 ( <i>Национална стратегия за хората с увреждания 2016–2020 г.</i> )
DE	Second National action plan to implement the UN Convention on the Rights of Persons with Disabilities ( <i>Nationaler Aktionsplan 2.0 der Bundesregierung zur Umsetzung der UN-Behindertenrechtskonvention</i> )
ES	Comprehensive plan for supporting families 2015–2017 ( <i>Plan Integral de Apoyo a la Familia 2015–2017</i> )
RO	National strategy: a society without barriers for persons with disabilities 2016–2020 ( <i>Strategia națională 'O societate fără bariere pentru persoanele cu dizabilități' 2016–2020</i> )
SK	Updates to National programme for the development of living conditions for citizens with disabilities 2014–2020 ( <i>Národný program rozvoja životných podmienok občanov so zdravotným postihnutím na roky 2014 – 2020</i> )
UK	Scottish Government, A fairer Scotland for disabled people – our delivery plan to 2021 for the United Nations Convention on the Rights of Persons with Disabilities
	Northern Ireland physical and sensory disability strategy and action plan extended to 2017
	Northern Ireland, Active living: no limits – 2016–2021
	Welsh Government, Together for mental health: delivery plan 2016–2019
	Action against hate: the UK government's plan for tackling hate crime

Source: FRA, 2016

Turning to specific articles of the convention, the CRPD Committee strengthened its guidance on obligations under the convention through the publication of two further general comments, on women and girls with disabilities (Article 6)<sup>42</sup> and on inclusive education (Article 24).<sup>43</sup> That on inclusive education reflects an area of persistent concern for the committee, which has repeatedly highlighted ongoing segregation of children with disabilities in the education systems of EU Member States.<sup>44</sup> Of particular note are the concrete measures to implement inclusive education at the national level spelled out by the committee. They include ensuring that responsibility for the education of persons with disabilities rests with the education ministry, rather than social welfare or health; introducing a substantive right to inclusive education within the legislative framework; and the development of an educational sector plan in conjunction with DPOs.<sup>45</sup>

*“Inclusion involves access to and progress in high-quality formal and informal education without discrimination. [...] States parties should respect, protect and fulfil each of the essential features of the right to inclusive education: availability, accessibility, acceptability, adaptability.”*

*CRPD Committee, General comment No. 4 – Article 24: Right to inclusive education, CRPD/C/GC/4, 2 September 2016, paras. 9 and 38*

Ongoing developments within EU Member States reflect several of these measures. Corresponding to the general comment’s focus on reasonable accommodation, a proposal by the French Community in **Belgium** aims to clarify how accommodations for pupils with ‘special needs’ are applied for and reviewed.<sup>46</sup> The country’s equality body, however, highlighted that provision of reasonable accommodation is an obligation under the CRPD rather than a possibility, as the current proposal implies.<sup>47</sup> The equality body also expressed concern that the proposal fails to reflect the human rights-based approach to disability and that it was not subject to accessible public consultation in line with Article 4 (3) of the convention. These reflect recurring criticisms of legislative and policy developments linked to CRPD implementation.<sup>48</sup>

Achieving inclusive education requires more than a robust legislative framework, however. One key task is devising and providing targeted training, a repeated recommendation in the general comment. In this vein, the **United Kingdom** Equality and Human Rights Commission developed an online training kit to help schools fulfil their duty to provide reasonable accommodations for learners with disabilities. Structured in several modules, it includes practical activities to increase knowledge of reasonable accommodation and inclusive teaching strategies.<sup>49</sup> A project in **Croatia** supported by the European Social Fund addresses another crucial element: adequate assistance from qualified staff. For the school year

2016/2017, the project will fund 2,030 teaching assistants supporting 2,268 students with disabilities in primary and secondary schools.<sup>50</sup>

### Promising practice

#### Developing self-advocacy skills of persons with disabilities

The Foundation Institute of Regional Development in **Poland** has launched a project to develop the self-advocacy skills of persons with disabilities in cooperation with US DPOs. Drawing on the US organisations’ expertise in strengthening awareness and use of self-advocacy, the project will map current Polish experience and develop two online training modules targeting persons with disabilities and their families.

*For more information, see Baza Dobrych Praktyk, ‘Rozbudowa ruchu self-advokatów w Polsce. Doświadczenia polskich i amerykańskich organizacji osób z niepełnosprawnościami’*

The potential for general comments to shape national legislation over the longer term is underlined by the ongoing influence of the CRPD Committee’s first two comments on legal capacity (Article 12) and accessibility (Article 9), published in 2014. A case in point is reforms related to realising the right to political participation. On legal capacity, the committee forcefully reiterated the importance of ensuring that people deprived of legal capacity do not as a consequence lose the right to vote.<sup>51</sup> Concerning accessibility, it highlighted that people with disabilities cannot exercise the right to political participation without accessible voting procedures, facilities and materials.<sup>52</sup> FRA first looked at the legal capacity side in a 2010 report<sup>53</sup> and has tracked developments in both areas since, in particular through the development of human rights indicators on the right to political participation of persons with disabilities.<sup>54</sup>

Reforms in **Denmark** address both capacity and accessibility concerns. Legal amendments mean that persons under full legal guardianship are now entitled to vote and run for election in municipal, regional and European Parliament elections.<sup>55</sup> The amendment, however, highlights the challenge of severing often long-standing and deeply rooted links between legal capacity and the right to vote: it does not grant the right to vote in elections to the Danish Parliament or referendums, as this would, according to the Ministry of Justice, violate the country’s constitution.

Although less likely to come up against such legal barriers, making elections more accessible has also proved a challenge. Further proposed reforms to Danish electoral law provide persons with “immediately ascertainable or documentable physical or mental disabilities” with the right to be assisted in

voting by a person chosen by them, without this being overseen by polling station officials, if they express this wish explicitly and unambiguously. Officials would nevertheless retain the power to judge whether or not persons with disabilities explicitly and unambiguously express this wish.<sup>56</sup> Moreover, one of the reforms tied to **Dutch** ratification of the CRPD obliges local authorities to make polling stations accessible to persons with disabilities.<sup>57</sup> This is an improvement on the previous requirement, highlighted in FRA's 2014 report, for at least one in four polling stations to be "as accessible as possible".<sup>58</sup> However, no detail is given on what makes a polling station accessible or what criteria will be used to assess accessibility.

Away from elections, the range of Member State action to improve accessibility reflects the role of accessibility in realising CRPD provisions across different areas of life. In line with calls from the CRPD Committee to view accessibility in the context of non-discrimination, the end of transitional provisions meant that it has been possible since January to claim compensation in **Austria** if buildings or transport facilities are not barrier-free, with exemptions where the removal of barriers would require disproportionate efforts.<sup>59</sup> In the area of housing, **Hungary** increased the value of the allowance for ensuring accessibility from HUF 150,000 (€ 490), claimable only once, to HUF 300,000 (€ 980), which can be requested every 10 years.<sup>60</sup>

Accessibility is also an area where national jurisprudence is giving further impetus to CRPD implementation. A **Bulgarian** applicant with physical impairments claimed financial compensation for damages suffered as a consequence of inaccessible court premises, which meant he – a wheelchair user – needed the help of two people to enter the building.<sup>61</sup> Again drawing on the principle of equal treatment, the court found that, as there was no way for persons using wheelchairs to enter or move around the building without help, the applicant's right to equal treatment had been violated. However, the court did not make reference to the CRPD, although the applicant explicitly mentioned its provisions concerning discrimination on the grounds of disability and accessibility.

The subject of the CRPD Committee's next general comment will be the right to live independently and be included in the community (Article 19). In preparation, the committee held a day of general discussion in April 2016, at which FRA joined a wide range of other stakeholders and presented its work on the transition from institutional to community-based support for persons with disabilities, or de-institutionalisation, and developing human rights indicators on Article 19.<sup>62</sup>

One issue likely to feature prominently in the general comment is appropriate and adequate funding to ensure individualised support in the community. This is particularly salient for the EU, given concerns expressed in a report prepared for the European Parliament that European Structural and Investment Funds (ESIF) have previously "been used to perpetuate the institutionalisation of people with disabilities".<sup>63</sup> The 2014–2020 ESIF funding period introduced ex ante conditions<sup>64</sup> – requirements that must be fulfilled before funds can be disbursed. They provide an important new set of safeguards. The next challenge is to heed the CRPD Committee's call for the Union "to strengthen the monitoring of the use of the ESIF [...] to ensure that they are used strictly for the development of support services for persons with disabilities [...] and not for the redevelopment or expansion of institutions".<sup>65</sup>

An essential aspect of effective monitoring will be thorough and systematic data on how ESIF are used. Several initiatives in 2016 show the range of possible evidence and relevant actors. In its complaints-receiving capacity, the PETI Committee investigated the use of ESIF in **Slovakia** and highlighted key considerations for achieving de-institutionalisation, ranging from close coordination of ESIF-funded projects to improving the accessibility of mainstream services.<sup>66</sup> From the civil society side, the independent initiative Community Living for Europe: Structural Funds Watch monitors the use of ESIF in the transition from institutional care to community-based living, including by collecting information on innovative uses of the funds in this area.<sup>67</sup> For its part, FRA's indicators and fieldwork on Article 19 both look extensively at the use of ESIF in de-institutionalisation.<sup>68</sup>

At the national level, too, funding for independent living remains a concern. Following complaints that cuts to social benefits in the **United Kingdom** disproportionately affected persons with disabilities, the CRPD Committee set up a confidential inquiry under Article 6 of the Optional Protocol to the CRPD, the first such process since the convention entered into force. Following wide-ranging consultations, the committee found that the consequences of welfare reforms enacted since 2010 meet "the threshold of grave or systematic violations of the rights of persons with disabilities".<sup>69</sup> Concerning independent living in particular, the committee found that the benefit cuts and stricter eligibility criteria had "limited the right of persons with disabilities to choose their residence on an equal basis with others" and hindered the de-institutionalisation process.<sup>70</sup> More positively, draft reforms to the law on long-term care insurance in **Luxembourg** aim to simplify current procedures for evaluating individuals' support needs and to better match services offered to the needs of each person, as part of a wider effort to reinforce individualisation at all levels of care.<sup>71</sup>

## Promising practice

## Preventing violence against persons with intellectual disabilities

The **Portuguese** National Federation of Social Solidarity Cooperatives and the Public Security Police (PSP), in partnership with the National Institute for Rehabilitation and the National Confederation of Social Solidarity Institutions, have developed a programme focused on preventing and responding to violence against people with intellectual disabilities. Under its auspices, security forces and organisations working with people with intellectual disabilities developed tailor-made training modules, which over 600 members of the PSP, professionals working with people with disabilities and disability organisations, have already taken. In addition, 130 police stations and 200 disability organisations have signed local cooperation agreements to improve coordination and develop needs-based responses.

*For more information, see National Institute for Rehabilitation (Instituto Nacional para a Reabilitação), 'Ações de Formação no âmbito do Protocolo Significativo Azul'*

Looking finally at national case law, two judgments concerning the definition of disability illustrate how interlinkages between national and European jurisprudence and the CRPD help to clarify the scope of the convention's obligations. Both cases concern discrimination based on disability in employment, and they draw directly on the CJEU's interpretation of the Employment Equality Directive in light of the CRPD. In the first, the Employment Appeal Tribunal in the **United Kingdom** relied on the definition of disability set out in Article 1 of the CRPD to interpret the much narrower concept of disability established in the 2010 Equality Act.<sup>72</sup> In his reasoning, the judge referenced the *HK Danmark v. Dansk Almennyttigt Boligselskab* judgment, in which the CJEU asserted that, with regard to the Employment Equality Directive, the "concept of 'disability' must be understood as referring to" Article 1 of the CRPD.<sup>73</sup>

The second case was brought by a man who had been rejected for a position as a driving instructor on account of his weight.<sup>74</sup> A **Belgian** labour tribunal employed the same judgment when ruling. Upholding his complaint, the judge stated that, while obesity is not itself a protected characteristic, the wording of Article 1 of the CRPD means that an employee's obesity can constitute a disability if it results in a limitation, resulting in long-term physical, mental or psychological impairment. That would make it a protected characteristic. Notably, the judge did not make reference to the 2014 *Kaltoft* case, which specifically addressed the question of when obesity can constitute disability for purposes of the Employment Equality Directive.<sup>75</sup> European Commission-funded training for members of the judiciary and legal

practitioners on EU disability law and the CRPD builds capacity concerning the interlinkages between UN, EU and national standards.<sup>76</sup>

### 9.3. Further clarity needed on promoting, protecting and monitoring CRPD implementation

When the CRPD was adopted in 2006, the requirement for national monitoring set out in Article 33 (2) was identified as one of the new convention's most novel features. Understanding and implementing what is required of the bodies tasked under this article with promoting, protecting and monitoring CRPD implementation has long posed a challenge, both to States parties tasked with establishing these frameworks and to the frameworks themselves. Concluding observations consistently highlight issues regarding independence and resources.<sup>77</sup> Other difficulties include the need for a legal basis for frameworks and common understanding of their main tasks, as regularly illustrated in FRA's Fundamental Rights Reports as well as in the agency's legal opinion published in May 2016.<sup>78</sup>

Guidance from the CRPD Committee published in September 2016 sets out responses to many of these questions.<sup>79</sup> On resources and a legal basis, the committee's position is clear: the duty to maintain frameworks set out in Article 33 (2) requires States parties to ensure both that the "monitoring framework has a stable institutional basis which allows it to properly operate over time" and that it is "appropriately funded and resourced (technical and human expertise) through allocations from the national budget".<sup>80</sup>

On other issues, however, the guidelines reflect persistent difficulties in living up to the spirit of Article 33 (2). For example, frameworks should include tasks to promote, protect and monitor the implementation of the CRPD. The guidelines bring together previous suggestions for tasks put forth during the drafting of the convention and others that the Office of the High Commissioner for Human Rights made later (see [Table 9.2](#)).<sup>81</sup> These tasks include a wide range of research, scrutiny, complaints-based, advocacy and awareness-raising activities. Carrying them out is likely to prove challenging for frameworks, given the wide scope of the CRPD's provisions.

Similarly, questions remain regarding the requirement for independence. While the convention itself speaks of "a framework" including "one or more independent mechanisms, as appropriate", the guidelines refer

**Table 9.2: Tasks of frameworks to promote, protect and monitor implementation of the CRPD**

CRPD Committee Guidelines on independent monitoring frameworks and their participation in the work of the committee	
Promote	Raising awareness of the convention, capacity building and training initiatives
	Regular scrutiny of existing national legislation, regulation and practices as well as draft bills and other proposals, to ensure that they are consistent with convention requirements
	Encouraging the ratification of international human rights instruments
	Undertaking or facilitating research on the impact of the convention or of national legislation
	Providing technical advice to public authorities and other entities on implementing the convention
	Issuing reports at their own initiative, or when requested by a third party or a public authority
	Contributing to the reports that States parties are required to submit to United Nations bodies and committees
Protect	Cooperating with international, regional and other national human rights institutions
	Considering individual or group complaints alleging breaches of the convention
	Referring cases to the courts
	Participating in judicial proceedings
Monitor	Conducting inquiries
	Issuing reports related to complaints received and complaints processes
	Maintaining databases of activities undertaken to implement the convention
	Developing indicators and benchmarks
	Developing a system to assess the impact of implementing legislation and policies

Source: FRA, 2016 (based on CRPD Committee's 2016 Guidelines on Independent Monitoring Frameworks and their participation in the work of the Committee)

throughout to “independent monitoring frameworks” when discussing Article 33 (2) bodies.<sup>82</sup> This shift in terminology seems to move the independence requirement from “one or more mechanisms” to the monitoring framework as a whole. This raises doubts about the composition of existing frameworks in which some but not all members are independent. This departure from the wording of the convention could risk undermining conceptual and operational clarity concerning Article 33 (2), as both FRA and the Global Alliance of National Human Rights Institutions highlighted in their contributions to the consultation on the draft guidelines.<sup>83</sup>

### 9.3.1. FRA highlights unresolved challenges

In the wake of the concluding observations on the EU, the Article 33 (2) framework at the EU level also faces questions concerning its scope of activities, financing and functioning, and lack of a solid legal basis, as FRA noted in its *Fundamental Rights Report 2016*. These are further exacerbated by the very different mandates and roles of its members: the European Parliament, the European Ombudsman, FRA and the European Disability Forum (EDF). To clarify the “requirements for full compliance with the CRPD as it relates to the status and effective functioning of the EU Framework, taking into account the specificities of the EU”, in March the

European Parliament requested a FRA opinion on “requirements under Article 33 (2) of the CRPD within the EU context”.<sup>84</sup>

Drawing on existing institutional practice in EU Member States, FRA’s opinion is clustered around four key areas of concern to Article 33 (2) frameworks: composition, legal basis and involvement of persons with disabilities; status and efficiency of the independent mechanism; framework tasks; and working arrangements (see [Figure 9.1](#) and [Table 9.2](#)). Several of its findings are reflected in the European Parliament’s resolution on implementation of the CRPD (see [Section 9.1](#)), which “calls on the budget authorities to allocate adequate resources to enable the EU Framework to perform its functions independently”.<sup>85</sup> While the EU Framework itself could follow up some of the opinions, notably concerning working arrangements, many are reliant on actions by the EU legislature to clarify the framework’s scope of activity and resources.

Against this backdrop, the EU Framework met representatives of the EU Member States during a meeting of the Council of the EU’s Working party on human rights in July 2016.<sup>86</sup> In addition to highlighting the framework’s important role in improving the lives of people with disabilities in the EU, framework members drew attention to two ‘enablers’ of a strong and impactful EU Framework: resources to perform the promotion,

protection and monitoring tasks; and a legal basis to ensure transparency, legal clarity and foreseeability.

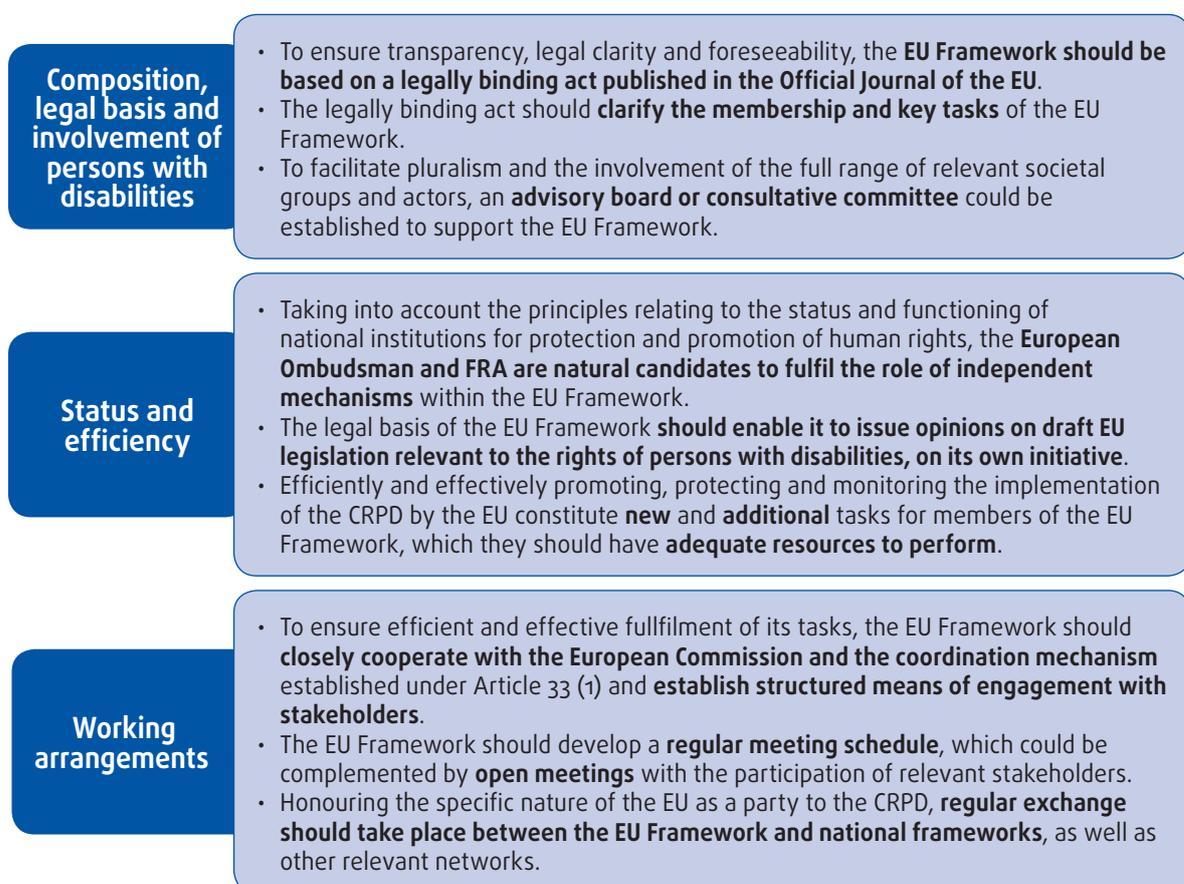
The European Commission's reply to the CRPD Committee provides an indication of the Union's response to the concluding observation on the EU Framework. The Council is expected to endorse a revised proposal for the EU Framework in early 2017. That will formalise the Commission's withdrawal but not change the tasks and the requirement that activities be carried out within existing resources. Finding sustainable solutions to the questions raised by the concluding observations and the CRPD Committee's guidelines will require further strengthening the communication between the EU Framework and the EU institutions, in particular the European Commission as the focal point for implementing the CRPD.

Away from these underlying issues, the European Parliament, European Ombudsman, FRA and EDF continued to implement the EU Framework's work programme, in line with their commitment to participate actively in the follow-up of the EU review process within

the means provided by their mandates.<sup>87</sup> Examples of four joint activities stemming from the work programme give a flavour of how members collaborate.<sup>88</sup> (Section 9.1 discusses activities of individual members.) These joint activities are:

- Updated [EU Framework webpage](#) (see [Figure 9.2](#)): the framework's webpage was transferred from the European Commission to FRA and relaunched in June. It includes a section on the EU review process, as well as updated information on the European Commission's withdrawal from the framework and FRA's taking over the chair and secretariat roles on an interim basis. Crucially, it helps to ensure transparency by acting as a depository for important documents, such as the work programme and minutes of framework meetings.<sup>89</sup>
- Events on follow-up of concluding observations on the EU: all EU Framework members took part in an exchange of views with the European Parliament's Committee on employment and social affairs. They gave their input to the preparation of the European

**Figure 9.1: Revisiting the EU Framework under Article 33 (2) of the CRPD – key FRA opinions**



Note: Issues related to tasks of the EU Framework reflect those identified by the CRPD Committee and presented in [Table 9.2](#).

Source: FRA, 2016 (adapted from its 2016 Opinion concerning requirements under Article 33 (2) of the CRPD within the EU context)

**Figure 9.2: Webpage of the EU Framework to promote, protect and monitor the implementation of the CRPD**



Source: FRA, *Webpage on EU Framework for the UN Convention on the Rights of Persons with Disabilities*

Parliament's resolution on CRPD implementation (see Section 9.1).

- Annual meeting between EU Framework and national monitoring mechanisms in EU Member States, organised alongside the European Commission Work Forum: the latest meeting allowed both the EU and national frameworks to give updates on their respective activities and areas of focus, as well as to discuss in more detail challenges they face in their work and how to step up their cooperation.
- Development of work programme 2017–2018:<sup>90</sup> all members agreed the second EU Framework work programme at the end of 2016. It provides for the continuation of ongoing tasks such as awareness raising, complaints procedures and data collection. It also plans greater collaboration in the organisation of events, and development and dissemination of information and training material to increase awareness of the CRPD among the EU public administration.

### 9.3.2 National frameworks consolidate monitoring role

Four more EU Member States received concluding observations in 2016. Half of the Member States that have ratified the CRPD have now been subject to review by the CRPD Committee (see Table 9.3).

This growing body of country-specific guidance on monitoring coalesces around three recurrent themes: independence, adequate resources, and systematic participation and involvement of persons with disabilities. An overview of developments in 2016 suggests a mixed bag of progress and areas of concern.

On the positive side, the CRPD Committee's recommendations are reflected in the monitoring bodies designated by **Finland** (Human Rights Centre, Human Rights Delegation and Parliamentary Ombudsman) and the **Netherlands** (Netherlands Institute for Human Rights), which formally took up their monitoring responsibilities after the countries ratified the CRPD. Both frameworks comprise the independent national human rights institutions and received additional financial and/or human resources to fulfil their Article 33 (2) responsibilities.<sup>91</sup>

Other changes reflect the particular challenges faced by monitoring frameworks in federal states, where different levels of government are responsible for various areas of disability policy. Responding to recommendations from the CRPD Committee, states in **Austria** and **Germany** established their own monitoring bodies in 2016 to complement those already in place at the national level. The province of Salzburg established a monitoring committee, so all nine Austrian provinces now have their own Article 33 (2) bodies.<sup>92</sup> Some German federal states concluded contracts with the German Institute of Human Rights – the national Article 33 (2) body – to establish monitoring mechanisms at the state level. The creation of a body in North Rhine-Westphalia<sup>93</sup> was highlighted as a model for other German federal states.<sup>94</sup> Looking ahead, experience gained in ensuring effective coordination between these different national bodies can inform enhanced cooperation between the EU Framework and national monitoring frameworks, given their similarly complementary roles in monitoring the EU's implementation of the convention.

Nevertheless, familiar concerns remain. At the most basic level, 2016 saw no developments in the four EU Member States (**Bulgaria**, the **Czech Republic**, **Greece** and **Sweden**) still to appoint Article 33 (2) bodies.<sup>95</sup> In other Member States, ongoing parliamentary processes to designate monitoring frameworks continue. Legislation to extend the role of the **Estonian** Gender Equality and Equal Treatment Commissioner to cover the requirements of Article 33 (2) of the CRPD is being drafted and should be submitted to parliament in 2017. This leaves the country without a functioning monitoring framework.<sup>96</sup> Moreover, although the **Romanian** parliament passed legislation on Article 33 bodies in January,<sup>97</sup> doubts persist about their ability to operate effectively in practice. The inaugural president of the Monitoring Council for the implementation of the CRPD resigned her post in July, citing administrative

**Table 9.3: CRPD Committee reviews in 2016 and 2017, by EU Member State**

Member State	Date of submission of initial report	Date of publication of list of issues	Date of publication of concluding observations
CY	2 August 2013	6 October 2016	April 2017
IT	21 January 2013	29 April 2016	6 October 2016
LT	18 September 2012	1 October 2015	11 May 2016
LU	4 March 2014	March 2017	
LV	29 October 2015	March 2017	
PT	8 August 2012	1 October 2015	18 April 2016
SK	26 June 2012	1 October 2015	17 May 2016
UK	24 November 2011	April 2017	

Note: Shaded cells indicate review processes scheduled for 2017.

Source: FRA, 2017 (using data from OHCHR)

shortcomings that prevented her from finalising the process of establishing the council.<sup>98</sup> A new president was appointed in October.<sup>99</sup>

Involving DPOs is essential for successful monitoring. Evidence from 2016 also highlights how that is often intertwined with issues of their resources. For example, DPOs frequently struggle to find the resources required to put together their own assessments of CRPD implementation. Those are known as shadow reports and sent to the CRPD Committee alongside State party submissions. **Luxembourg** boosted such efforts by financial support from the country's National Disability Council to a leading DPO, enabling it to conduct interviews and legal analysis in preparation for its shadow report.<sup>100</sup> Less encouragingly, the **Slovenian** monitoring framework – the Council for Persons with Disabilities of the Republic of Slovenia (*Svet za invalide Republike Slovenije*) – a third of whose members are representatives of DPOs, continues to operate without resources to employ any full-time staff.<sup>101</sup> Meanwhile,

the **Cyprus** Confederation of Organisations of the Disabled withdrew from the technical committees coordinating implementation of the CRPD in protest at a lack of political will and funding.<sup>102</sup>

The CRPD Committee has scheduled four further reviews (**Cyprus, Latvia, Luxembourg** and the **United Kingdom**) for 2017, meaning that additional country-specific guidance is forthcoming. This is likely to return to familiar themes of independence and resources, but the wider scope of the CRPD Committee's 2016 guidelines raises new questions for Article 33 (2) bodies. Chief among these could be whether or not they have a mandate to conduct the full range of activities required to promote, protect and monitor the implementation of the CRPD (see [Table 9.2](#)). Monitoring frameworks in a number of Member States – such as **Germany, Hungary** and **Italy** – are not able to receive complaints themselves, and others lack a mandate to participate in judicial proceedings. Further critical reflection and consolidation is on the cards for 2017.



## FRA opinions

Following the 2015 review of the EU's progress in implementing the United Nations Convention on the Rights of Persons with Disabilities (CRPD), EU institutions took a range of legislative and policy measures to follow up on some of the CRPD Committee's recommendations, underlining the Union's commitment to meeting its obligations under the convention. The committee's wide-ranging recommendations set out a blueprint for legal and policy action across the EU's sphere of competence and are relevant for all EU institutions, agencies and bodies.

### FRA opinion 9.1

*The EU should set a positive example by ensuring the rapid implementation of the CRPD Committee's recommendations to further full implementation of the convention. This will require close cooperation between EU institutions, bodies and agencies – coordinated by the European Commission as focal point for CRPD implementation – as well as with Member States and disabled persons' organisations. Modalities for this cooperation should be set out in a transversal strategy for CRPD implementation, as recommended by the CRPD Committee.*

Actions to implement the CRPD helped to drive wide-ranging legal and policy reforms across the EU in 2016, from accessibility to inclusive education, political participation and independent living. Nevertheless, some initiatives at EU- and Member State- level do not fully incorporate the human rights-based approach to disability required by the CRPD, or lack the clear implementing guidance required to make them effective.

### FRA opinion 9.2

*The EU and its Member States should intensify efforts to embed CRPD standards in their legal and policy frameworks to ensure that the rights-based approach to disability, as established in the CRPD, is fully reflected in law and policymaking. This could include a comprehensive review of legislation for compliance with the CRPD. Guidance on implementation should incorporate clear targets and timeframes, and identify actors responsible for reforms.*

EU Structural and Investment Funds (ESIF) projects agreed in 2016 show that in many areas initiatives to implement the CRPD in EU Member States are likely to benefit from ESIF financial support. The ex-ante conditionalities – conditions that must be met before funds can be spent – can help to ensure that the funds

contribute to furthering CRPD implementation. As ESIF-funded projects start to be rolled out, monitoring committees at the national level will have an increasingly important role to play in ensuring that the funds meet CRPD requirements.

### FRA opinion 9.3

*The EU and its Member States should take rapid steps to ensure thorough application of the ex-ante conditionalities linked to the rights of persons with disabilities to maximise the potential for EU Structural and Investment Funds (ESIF) to support CRPD implementation. To enable effective monitoring of the funds and their outcomes, the EU and its Member States should also take steps to ensure adequate and appropriate data collection on how ESIF are used.*

Evidence collected by FRA in 2016 shows the important role that judicial and non-judicial complaints mechanisms can play in identifying gaps in CRPD implementation and clarifying the scope of the convention's requirements. Several cases concerning non-discrimination in employment serve to underline the complementarity and mutual relevance of standards at the UN, EU and national levels.

### FRA opinion 9.4

*The EU and its Member States should take steps to increase awareness of the CRPD among relevant judicial and non-judicial complaint mechanisms to enhance further the important role of the latter in securing CRPD implementation. This could include developing training modules and establishing modalities to exchange national experiences and practices.*

By the end of 2016, only Ireland had not ratified the CRPD, although the main reforms paving the way for ratification are now in place. In addition, five Member States and the EU have not ratified the Optional Protocol to the CRPD, which allows individuals to bring complaints to the CRPD Committee and for the Committee to initiate confidential inquiries upon receipt of "reliable information indicating grave or systematic violations" of the convention (Article 6).

### FRA opinion 9.5

*EU Member States that have not yet become party to the CRPD and/or its Optional Protocol should consider completing the necessary steps to secure their ratification as soon as possible to achieve full and EU-wide ratification of these instruments. The EU should also consider taking rapid steps to accept the Optional Protocol.*

Four of the 27 EU Member States that have ratified the CRPD had not, by the end of 2016, established or designated frameworks to promote, protect and monitor the implementation of the convention, as required under Article 33 (2) of the convention. Furthermore, FRA evidence shows that the effective functioning of some existing frameworks is undermined by insufficient resources, the absence of a solid legal basis, and a failure to ensure systematic participation of persons with disabilities, as well as a lack of independence in accordance with the Paris Principles on the functioning of national human rights institutions.

#### FRA opinion 9.6

*The EU and its Member States should consider allocating the monitoring frameworks established under Article 33 (2) of the CRPD sufficient and stable financial and human resources. This would enable them to carry out their functions effectively and ensure effective monitoring of CRPD implementation. As set out in FRA's 2016 legal Opinion concerning the requirements under Article 33 (2) of the CRPD within an EU context, they should also consider guaranteeing the sustainability and independence of monitoring frameworks by ensuring that they benefit from a solid legal basis for their work and that their composition and operation takes into account the Paris Principles on the functioning of national human rights institutions.*



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