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# UN & CoE

January

February

March

23 March – In *A.-M.V. v. Finland* (No. 53251/13), the European Court of Human Rights (ECtHR) finds no violation of Article 8 (right to respect for private and family life) or Article 2 of Protocol No. 4 (freedom of movement) of the European Convention on Human Rights (ECHR) as the Finnish courts' decision not to replace the mentor of a man with intellectual disabilities was justified, taking into account his inability to understand what was at stake if he moved

April

May

8 May – CRPD Committee publishes concluding observations on the initial report of Cyprus

June

July

14 July – UN Special rapporteur on the rights of persons with disabilities publishes a report on the sexual and reproductive health and rights of girls and young women with disabilities

August

31 August – CRPD Committee adopts General Comment No. 5 on Article 19 (right to independent living) of the CRPD

September

October

3 October – CRPD Committee publishes concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland

10 October – CRPD Committee publishes concluding observations on the initial reports of Luxembourg and Latvia

November

28 November – In *N. v. Romania* (No. 59152/08), the ECtHR finds that Romania violated Articles 5 § 1 (right to liberty and security) and 5 § 4 (speedy review of the lawfulness of detention by a court) of the ECHR on account of prolonged psychiatric confinement without sufficient assessment of the applicant's dangerousness and lack of regular review of his confinement

December

12 December – UN Special rapporteur on the rights of persons with disabilities publishes a thematic study on the right of persons with disabilities to equal recognition before the law

# EU

## January

16 January – Council of the EU confirms the European Commission's withdrawal from the EU Framework to promote, protect and monitor the implementation of the CRPD

## February

2 February – European Commission publishes progress report on the implementation of the European Disability Strategy 2010-2020

14 February – Grand Chamber of the Court of Justice of the EU (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

## March

## April

## May

## June

## July

12 July – European Ombudsman opens a strategic inquiry (OI/6/2017/EA) on the accessibility for persons with disabilities of websites and online tools managed by the European Commission

## August

## September

14 September – European Parliament (EP) adopts its position on the European Accessibility Act

## October

## November

30 November – EP adopts a resolution on the implementation of the European disability strategy 2010-2020

## December

7 December – Employment, Social Policy, Health and Consumer Affairs Council agrees its position on the European Accessibility Act and adopts conclusions on enhancing community-based support and care for independent living



# 10

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



*The European Commission's progress report on implementation of the European Disability Strategy 2010-2020 provided an opportunity to take stock of the EU's efforts to realise the rights set out in the United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD). Movement towards the adoption of the European Accessibility Act indicated that a major legislative milestone is moving closer. Despite significant achievements at the EU and national levels, however, implementation gaps persist in key areas such as accessibility and independent living. Tools such as indicators, as well as rulings by national courts on the justiciability of the CRPD, can help to ensure that practice follows the promise of legal obligations. Monitoring frameworks established under Article 33 (2) of the convention also have a crucial role to play, but a lack of resources, limited mandates and a lack of independence undermine their effectiveness.*

### 10.1. The CRPD and the EU: taking stock for the future

Important milestones at the start and close of 2017 provided an opportunity to take stock of the EU's progress in implementing the CRPD. These marked the latest step in efforts to follow up on the CRPD Committee's recommendations to the EU, published in September 2015.<sup>1</sup> In January, the European Commission replied to the CRPD Committee about steps to address the three most urgent recommendations:

- declaration of EU competence concerning the CRPD;
- adoption of the European Accessibility Act; and
- EU Framework to promote, protect and monitor the implementation of the CRPD (EU Framework).

The following month, the European Commission published its progress report on implementation of the European Disability Strategy 2010-2020. While showing significant progress, the report reaffirms that persons with disabilities "remain consistently disadvantaged in terms of employment, education and social inclusion".<sup>2</sup> Discrimination on the grounds of

- ▶ disability is covered in Chapter 3, and the intersection
- ▶ between age and disability is addressed in Chapter 1.

The brief response to the CRPD Committee focused on the three urgent recommendations. On the first and third recommendations – the declaration of EU competence and the EU Framework – the European Commission highlighted concrete progress. An annex to the progress report on the European Disability Strategy presented an updated overview of EU legal acts referring to the CRPD, which showed an increasing number of legislative acts relating to matters governed by the convention. On the third recommendation, the Council of the EU formally adopted the European Commission's withdrawal from the EU Framework (see [Section 10.3](#)). Adoption of the European Accessibility Act remains on the agenda for 2018 (see [Section 10.1.1](#)).

The progress report on the European Disability Strategy covers the full range of EU action to implement the CRPD as set out in the strategy's eight 'areas for action': accessibility, participation, equality, employment, education and training, social protection, health and external action.<sup>3</sup> This reflects the strategy's position as "the main instrument to support



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the EU's implementation of the [CRPD]".<sup>4</sup> A look at a few of the 'areas for action' illustrates some of the steps EU institutions and Member States took in 2017 to implement the CRPD. Each shows achievement tempered by ongoing challenges.

### 10.1.1. Improving accessibility of information and communications

Accessibility is one area in which concrete steps forward have been taken since the adoption of the CRPD and the European Disability Strategy, particularly in the area of information and communication. Member States began taking steps to implement the requirements for the accessibility of websites and mobile applications set out in the Web Accessibility Directive, which was adopted in 2016 and has a transposition deadline of 23 September 2018.<sup>5</sup> For example, as a first step, the responsible ministries in **Bulgaria**<sup>6</sup> and **Finland** established working groups to support transposition.<sup>7</sup> In July, the Finnish working group published its draft mid-term report, which emphasises that the national implementation should be based on the realisation of fundamental rights, including the CRPD. **Denmark** launched a public consultation on a draft bill to implement the directive.<sup>8</sup> Although broadly welcoming the proposal, the Danish Institute for Human Rights, the country's national human rights institution, expressed concern about weaknesses in the enforcement procedure for the bill.<sup>9</sup> The EU institutions' own websites are not covered by the Web Accessibility Directive, but they are "encouraged to comply" with its accessibility requirements.<sup>10</sup>

In February 2017, the Court of Justice of the EU (CJEU) ruled 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.<sup>11</sup> This paved the way for the adoption in September of a directive<sup>12</sup> and a regulation<sup>13</sup> introducing into EU law a new mandatory exception to copyright rules, in line with the treaty. This will "allow beneficiary persons and organisations to make copies of works in accessible formats, and to disseminate them across the EU and in third countries which are party to the treaty".<sup>14</sup>

The flagship piece of EU legislation in this area, the European Accessibility Act (EAA), is yet to be adopted, however. Following publication of the European Commission's proposed directive in late 2015, 2017 was marked by ongoing negotiations concerning the scope of the legislation and the technical

accessibility requirements it contains. In April, the European Parliament's internal market and consumer protection committee (IMCO), the main committee responsible for the directive, adopted its report on the proposal.<sup>15</sup> Civil society organisations criticised its position as weakening the Commission proposal, in particular by excluding microenterprises from the scope of the legislation, limiting the requirements for audiovisual services to websites and mobile applications, and weakening the obligation to replace self-service terminals.<sup>16</sup>

When the plenary of the European Parliament voted on its final position on the draft EAA in September, however, it strengthened the Commission's proposal in several important ways.<sup>17</sup> For example, it included mandatory provisions on accessibility of the built environment around goods and services, expanded the modes of transport and tourism services covered by the legislation, and underlined the applicability of the act to other EU law, as the Commission had proposed.<sup>18</sup> Limits on the applicability of the draft directive to microenterprises and small and medium-sized enterprises remain, however.

On the Council side, technical negotiations throughout 2017 culminated in the adoption of a general approach on the draft legislation in December.<sup>19</sup> The Council's approach reflects in several important ways the positions that IMCO adopted in April. For example, it limits provisions concerning audiovisual media services, reduces its applicability to transport services and weakens the requirements for self-service terminals. Moreover, it removes provisions addressing the built environment and linking the EAA to "other Union acts", including European Structural and Investment Funds (ESIF) and the Public Procurement Directive.<sup>20</sup> Now that each of the three main EU institutions have adopted their position, negotiations on the final text can start in 2018. For developments at the national level, see [Section 10.2.1](#).

### 10.1.2. Investing in independent living

Although not an explicit area for action, the right to independent living, set out in Article 19 of the CRPD, cuts across many of the main elements of the European Disability Strategy. As in previous years, deinstitutionalisation was a particular focus of attention. In October, FRA published three reports on the deinstitutionalisation process (see FRA activity box). The reports' publication coincided with a conference on the same topic hosted by the Estonian Presidency of the Council of the EU.<sup>21</sup>



## FRA ACTIVITY

## Promoting the right to independent living

In October, FRA published a series of three reports looking at different aspects of deinstitutionalisation for people with disabilities across the EU. The first report, exploring deinstitutionalisation plans and commitments, highlights the obligations the EU and its Member States have committed to fulfil, while the second one looks at how funding and budgeting structures can turn these commitments into reality. The final report assesses to what extent Member States have implemented the right to independent living, focusing on the impact that commitments and funds are having on persons with disabilities' daily lives.

FRA also conducted qualitative fieldwork research in five EU Member States (**Bulgaria, Finland, Ireland, Italy and Slovakia**) to explore the drivers of and barriers to deinstitutionalisation at the local level. The results of this fieldwork will be published in December 2018.

*See FRA (2017), From institutions to community living – Part I: commitments and structures, Publications Office; FRA (2017), From institutions to community living – Part II: funding and budgeting, Publications Office; and FRA (2017), From institutions to community living – Part III: outcomes for persons with disabilities, Publications Office. For more information on the qualitative fieldwork, see the project's webpage.*

In follow up to the conference, the Employment, Social Policy, Health and Consumer Affairs council adopted conclusions on enhancing community-based support and care for independent living in December.<sup>22</sup> The conclusions reiterate many of the main findings and

recommendations emerging from the FRA reports.<sup>23</sup> For instance, they highlight the importance of “a clear strategy and strong investment [...] to develop modern high-quality community-based services”<sup>24</sup> and invite Eurostat to look into the possibility of including collective households, such as institutions, in surveys. They also

underscore the importance of a holistic approach to deinstitutionalisation, encompassing a “change in mind-set [...] to secure wider recognition of the principle that everyone has the right to live independently within their community” and the “development of community-based services in accordance with the needs of the persons concerned”.<sup>25</sup>

Although civil society organisations broadly welcomed the conclusions, they highlighted concerns about the compatibility of some of the wording with Article 19 of the CRPD. In particular, the European Network on Independent Living suggested that some passages

implied that “rather than closing institutions, Member States should improve them” and that independent living is not possible for some people.<sup>26</sup>

Reflecting the importance of this issue across EU institutions and bodies, in November the Committee of the Regions also adopted an opinion on deinstitutionalisation in care systems at local and regional level. It notes that deinstitutionalisation “is more than closing down large institutions and creating alternative forms of care”, but also means “combating prejudice” and “changing mindsets”. Arguing that “developing a more community-based system of care should be a high priority for all EU Member States”, it calls for actions including training, reducing guardianship and guaranteeing assistance.<sup>27</sup>

*“There is no such thing as a ‘good institution’ as they all impose a certain type of living arrangement, which limits the individual’s capability to live a good life on an equal basis with others. Persons with disabilities, including those with high support needs, must have the opportunity to live in their communities, to choose their place of residence and with whom they live.”*

*Catalina Devandas-Aguilar, UN Special Rapporteur on the rights of persons with disabilities, End of mission statement on her visit to France, 13 October 2017*

Deinstitutionalisation also featured heavily in discussions concerning the fundamental rights compliance of the ESIF in 2017. As FRA’s 2017 report *From institutions to community living – Part II: funding and budgeting* shows, for many Member States ESIF are a key source of funding, in addition to national resources, to achieve the transition from institutional to community-based support for persons with disabilities.<sup>28</sup> However, evidence of ESIF funding the construction of new institutions or renovation of existing institutions has focused much civil society attention on how to prevent misuse of the funds.<sup>29</sup>

In November, for example, the Community Living for Europe: Structural Funds Watch initiative published a report on how to harness ESIF to promote deinstitutionalisation.<sup>30</sup> Drawing on practical case studies from EU Member States, the report highlights how the EU institutions, Member States and civil society can work to ensure the funds support independent living. Crucial to this is ensuring the full and effective use of the so-called ex-ante conditionality – or pre-condition – on deinstitutionalisation, to ensure that any projects that might perpetuate institutionalisation are rejected before funding decisions are made.

Looking ahead, the European Pillar of Social Rights, proclaimed in November, provides an additional policy tool to support CRPD implementation. The Pillar includes several principles linked specifically to persons with disabilities, including concerning the right to “income support that ensures living in dignity,



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services that enable [persons with disabilities] to participate in the labour market and in society, and a work environment adapted to their needs”.<sup>31</sup> It also underlines that “everyone has the right to affordable long-term care services of good quality, in particular home-care and community-based services”.<sup>32</sup> More information on the European Pillar of Social Rights is available in Chapter 1 and Chapter 3.

## 10.2. The CRPD in EU Member States: reforms, rulings and measuring results

Last year’s Fundamental Rights Report highlighted the role of two drivers of legal and policy changes in EU Member States to implement the CRPD: guidance from the CRPD Committee, and the growing body of national and European case law referring to the convention. These factors continued to spur reform processes in 2017, alongside the increasing use of indicators as a tool to measure CRPD implementation and the ongoing role of national strategies and action plans. At the end of 2017, **Ireland** remained the only EU Member State that has not ratified the convention; a further five Member States and the EU have not ratified the Optional Protocol to the CRPD, which allows the CRPD Committee to handle complaints and set up inquiries relating to CRPD implementation.

National monitoring mechanisms established under Article 33 (2) of the convention also play a key role; several can receive complaints, while others developed indicators to support their monitoring efforts (see also Section 10.3).<sup>33</sup>

### 10.2.1. Independent living far from realised

With much focus in 2017 centred on the CRPD Committee’s adoption of a general comment on Article 19 in August,<sup>34</sup> the topic of independent living provides a useful framework to look at the impact of guidance from the CRPD Committee in practice. The general comment provides the authoritative interpretation of the normative content of Article 19 and what States parties to the convention must do to implement it. Two key aspects of implementing the right to independent living were a particular focus of national reforms in 2017:

- personal assistance;
- accessibility.

Disabled persons’ organisations (DPOs) have long highlighted personal assistance as essential to realising the right to independent living in practice.

It is the only type of community support service specifically mentioned in Article 19 of the CRPD. The general comment strongly reinforces this position, identifying the “inadequacy of legal frameworks and budget allocations aimed at providing personal assistance” as one of the remaining barriers to implementing Article 19.<sup>35</sup> To support states in developing personal assistance services, the CRPD Committee provides an extensive ‘definition’ of personal assistance, highlighting four key elements: funding for personal assistance must be controlled by and allocated to the person with disability; personal assistance must be controlled by the person with disability; personal assistance is a one-to-one relationship; and persons with disabilities have “self-management of service delivery”.<sup>36</sup> In practice, however, two long-term trends impede the realisation of these requirements. First, family members and other informal carers provide a large part of the assistance people with disabilities receive.<sup>37</sup> Second, eligibility criteria for disability benefits have tightened because of ongoing fiscal consolidation, as the Social Protection Committee highlighted in its 2017 report.<sup>38</sup>



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Reforms in 2017 demonstrate these challenges. Following a trend that has seen personal assistance more widely available in the EU,<sup>39</sup> **Slovenia** adopted a law regulating personal assistance.<sup>40</sup> The law targets persons aged between 18 and 65 years who require at least 30 hours of personal assistance per week, and will enter into force in January 2019. However, the law does not enable beneficiaries to receive the funding for personal assistance directly, which could raise questions about its compatibility with the requirements set out by the CRPD Committee. **Sweden**, by contrast, has one of the most long-standing and comprehensive personal assistance systems. However, concerns about rising costs prompted the government to look for ways to reduce the overall funds attributed to assistance allowances in 2017. In response, the National Association for Mobility-Impaired Children and Youths (*Riksförbundet för rörelsehindrade barn och ungdomar*) started a campaign called ‘Stop the assistance lottery’ (*Stoppa assistanslotteriet*). It focuses on stories of persons with disabilities who have had their assistance allowance hours reduced or removed altogether, resulting in family members having to stop working.<sup>41</sup> A government-appointed special investigator looking at state-funded assistance will report back in 2018.

In light of these challenges, several Member States have adopted pilot projects to test ways of providing personal assistance. For example, **Portugal** established the Independent Living Support Model (*Modelo de Apoio à Vida Independente*) programme to provide

personal assistance for persons with disabilities, developed through a series of pilot projects between 2017 and 2020.<sup>42</sup> The provision of assistance is based on a personalised plan identifying: the assistance needs; how support activities are carried out; and how the assistance is monitored and evaluated. The assistance may include: support in hygiene and personal care, health, nutrition, travel, higher education, vocational training, culture, sports, job search, participation in society, and citizenship. While such projects can be a useful way to develop modalities of personal assistance, they can raise questions of sustainability and risk unequal provision of services across different parts of the country.

### Promising practice

#### Strengthening the role of municipalities in CRPD implementation

The involvement of and cooperation among all stakeholders at the local level is central to implementing the CRPD. In February 2017, the municipality of Ardea in Lazio, **Italy**, created a municipal council consisting of both delegates of municipal authorities and people with disabilities and their representative organisations. The council aims to promote policies and actions to overcome the barriers that persons with disabilities can face and to promote their rights.

The **Slovenian** Association of Disabled Workers runs a project to encourage municipalities to respond to the needs of their citizens with disabilities. It awards the title of “a municipality tailored to the needs of people with disabilities” to municipalities that analyse the situation of their residents with disabilities together with local disability organisations and adopt appropriate action programmes. The association, together with the disability organisations, then monitors the implementation of these activities. By the end of 2017, 30 municipalities had received this distinction.

*For more information, see Municipal Council for overcoming disability (Consulta comunale per il superamento delle disabilità) and Slovenian Association of Disabled Workers (Občina po meri invalidov).*

Independent living is closely tied to accessibility. Without it, persons with disabilities cannot access the services and facilities in the community mentioned in Article 19. The CRPD Committee emphasises this link in its general comment on Article 19, stating that “the general accessibility of the whole built environment, transport, information and communication and related facilities and services open to the public [...] is a precondition for living independently in the community”.<sup>43</sup> A few examples illustrate the range of reforms that Member States implemented in 2017 to

address the broad scope of the CRPD’s accessibility obligations. In several instances, these show Member States anticipating the adoption of the EAA by moving to implement some of its key provisions on accessibility of goods and services.

Taking a horizontal approach, a decree on the accessibility of services took effect in the **Netherlands** in June.<sup>44</sup> It stipulates that the national government encourages the drafting and implementation of accessibility plans covering different sectors, and that the government will monitor the implementation of the norm of accessibility in society. It also requires suppliers of goods and services to ensure they are accessible for persons with disabilities, unless such steps would constitute a disproportionate burden. The ‘disproportionate burden’ test is a central element of the proposed EAA.

Other Member States focused on specific services and sectors. FRA’s analysis of data from the European Statistics on Income and Living Conditions (EU-SILC) survey shows that, on average, persons with disabilities in the EU are more likely than other persons to have difficulty accessing services such as grocery shopping, banking, postal, primary healthcare and public transport.<sup>45</sup> Amongst these services, persons with disabilities most often face difficulties accessing public transport services (26 % compared to 19 % of persons without disabilities).

Reflecting this challenge, the **United Kingdom** Department for Transport published a draft transport accessibility action plan in August.<sup>46</sup> It sets out the department’s strategy to address barriers for people with disabilities in transport services. For example, it includes measures to ensure that accessibility features required by regulations are consistently monitored and that compliance is enforced; to improve information on passenger facilities at stations and on trains; and to enhance awareness training for transport staff about the requirements of people with visible and hidden disabilities or impairments.

**France** and **Germany** both adopted measures related to the accessibility of telephone services. In France, a decree adopted in May specifies which services electronic communications operators must make accessible, and sets a threshold for sales turnover above which companies must ensure their customer service number is accessible to persons with visual or hearing impairments.<sup>47</sup> It also sets out how the government intends to evaluate the implementation of these obligations. The German reforms relate to contacting emergency services, with an amendment requiring that people with hearing impairments can make emergency calls via text messages or in sign language at any time. Previously, this was only possible between 8 am and 11 pm.<sup>48</sup>

## Promising practice

## Raising awareness of persons with disabilities' sexual and romantic relationships

FRA's research has indicated a lack of attention to persons with disabilities' romantic and sexual relationships. Two efforts have attempted to address this issue. In July 2017, the **Maltese** Commission for the Rights of Persons with Disabilities conducted a quantitative survey on the rights of persons with disabilities regarding intimate relationships, marriage, family, parenthood, and whether there is enough education on these matters. The survey looks at whether Malta is living up to its obligations under Article 23 of the CRPD (respect for home and the family) and was followed by the conference "Breaking the Silence: Sexuality, Intimate relationships and Disability".

In the **Czech Republic**, for example, two non-governmental organisations, 'Pleasure without Risk' and 'Freyja', offer people with disabilities courses and coaching relating to sex and sexuality, and provide counselling on issues of sex and intimacy. They have helped support five specially trained sex counsellors to support persons with disabilities.

*For more information, see Commission for the Rights of Persons with Disabilities (Il-Kummissjoni għad-Drittijiet ta' Persuni b'Diżabilità) and Pleasure without Risk/Freyja (Rozkož bez rizika/Freyja).*

## 10.2.2. What gets measured gets done

As already noted in last year's Fundamental Rights Report,<sup>49</sup> one thread linking many of the developments in Member States is the role of evaluation and consolidation in driving reform processes. In 2017, this took two particular forms: steps to improve the

assessment of CRPD implementation and using the CRPD in national courts.

A consistent theme of FRA's research is the role of strategies and action plans in guiding implementation of the CRPD. The year 2017 was no exception, with several Member States adopting either overall or sector-specific action plans linked to the CRPD. Those adopted in **Croatia**, **Italy** and the **Netherlands** are the most comprehensive. All three put significant focus on how best to assess and measure implementation of the plans.

One way to help make strategies and other legal and policy commitments effective is to ensure that they are accompanied by clear targets, timeframes and budgets.<sup>50</sup> In this respect, the National Strategy for Equalisation of Opportunities for Persons with Disabilities 2017-2020 adopted by the **Croatian** government in April marks an upgrade on the previous strategy.<sup>51</sup> It introduces more measurable indicators to give a realistic overview of the implementation of the 78 measures and 199 activities set out in the strategy. A budget of around HRK 1 billion (approximately € 135 million) will support the strategy's implementation, with funding coming from the government budget, national lotteries and EU funds. Implementation assessments must, however, be underpinned by data. The second **Italian** Action Plan for the Promotion of the Rights and for the Integration of People with Disabilities, which was adopted by presidential decree in December, further develops the seven areas of action set out in the first plan.<sup>52</sup> However, it supplements these with a new area on the development of a reporting and statistical system on the implementation of disability policies.

Another implementation tool is the development of indicators, particularly those tied specifically to the fundamental rights standards set out in the CRPD.

**Table 10.1: Strategies and action plans relevant to the CRPD adopted in 2017, by EU Member State**

Member State	Strategy or action plan
BE - Wallonia	Walloon accessibility plan for persons with reduced mobility 2017-2019 ( <i>Plan Wallon accessibilité pour les personnes à mobilité réduite</i> )
CY	First National Strategy for Disability 2018-2028 and National Action Plan for Disability 2018-2020
HR	National Strategy for Equalisation of Opportunities for Persons with Disabilities 2017-2020 ( <i>Nacionalna strategija izjednačavanja mogućnosti za osobe s invaliditetom od 2017. do 2020. godine</i> )
IT	Second Action Plan for the Promotion of the Rights and for the Integration of People with Disabilities ( <i>Programma di Azione Biennale per la Promozione dei Diritti e l'Integrazione delle Persone con Disabilità</i> )
NL	Implementation plan for the UN Convention on the Rights of Persons with Disabilities ( <i>Implementatieplan VN Verdrag Handicap verdrag inzake de rechten van personen met een handicap</i> )
UK	Improving lives: the future of work, health and disability

Source: FRA, 2018

FRA has already adopted this approach for two CRPD articles: in 2014, on participation in political and public life (Article 29); and in 2015, on living independently and being included in the community (Article 19).<sup>53</sup> In the same vein, the **Netherlands** Institute for Human Rights, the country's national monitoring mechanism for the CRPD, commissioned research on indicators to monitor CRPD implementation. The preliminary report published in July details 17 quantitative indicators focused around independent living and employment (Articles 19 and 27 of the CRPD).<sup>54</sup> Using data from 2016 and 2017, the indicators will be applied and published in 2018.

In practice, a lack of data often hampers the use of indicators, including those developed by FRA.<sup>55</sup> As a consequence, FRA and other organisations sometimes have to use 'proxy indicators'. These make use of the best existing data to measure the situation approximately. This challenge is reflected in the research commissioned by the **Latvian** Ministry of Welfare on the development of indicators to monitor the CRPD. One of its first objectives was to evaluate the availability, adequacy and quality of existing administrative and survey data that monitor the policy areas the convention covers.<sup>56</sup> The proposed indicators were published in August, but have not yet been applied.

### National jurisprudence clarifies applicability of CRPD to domestic law

Several national-level judgments outlined in last year's Fundamental Rights Report helped to clarify the scope of convention obligations and how they should be met. In 2017, a number of cases looked at the justiciability of the CRPD. These judgments shed light on how the courts view the applicability of the CRPD to domestic law.

The **Austrian** Supreme Court considered this issue in the case of an applicant who had been denied care allowance because he did not have a main residence in Austria. The applicant's submission to the court referred to Articles 18 (liberty of movement and nationality) and 4 (cross-cutting non-discrimination provision) of the CRPD. In its ruling, the court upheld the decision of the lower court, arguing that the CRPD has to be implemented by way of domestic law. Without specific legislation to bring the CRPD into national law, the CRPD is not directly applicable, does not afford any subjective rights and is not a benchmark for assessing the lawfulness of another legal act.

The High Court in the **United Kingdom** used similar reasoning to find that "great care must be taken in deploying provisions of the UNCRPD [...], which set out broad and basic principles as being determinative tools for the interpretation of

a concrete measure, such as a particular provision of a UK statute. Provisions which are aspirational cannot qualify the clear language of primary legislation".

Sources: *Austria, Supreme Court (Oberster Gerichtshof, OGH), 10 ObS 162/16w, Vienna, 24 January 2017; United Kingdom, High Court, Queen's Bench Division (Administrative Court), R. (on the application of Davey) v Oxfordshire CC, [2017] EWHC 354 (Admin), 27 February 2017, para. 47.*

Given the EU's own ratification of the CRPD, another issue concerns the role of the CRPD in areas covered by EU law. A case heard by the High Court in **Ireland** – which has not itself ratified the convention – explored this question. The case concerned a man with a visual impairment who was required to use the assistance of a polling clerk to cast his ballot in local and European elections and referenda, undermining the secrecy of the ballot. EU law gives EU citizens the right to vote in European and municipal elections in any Member State of which they are resident under the same conditions as nationals of that state. However, Member States remain free to design and apply their own procedural rules to the extent that EU legislation does not harmonise respective procedures. In the ruling, the judge clarified that as "none of the [EU] Directives or regulations governed by the [CRPD] relate to electoral procedures [and] there is no common electoral procedure within the [EU]", any consideration of the UN convention in Irish law would require that the parliament had legislated to give the CRPD the status of domestic law.

Source: *Ireland, Sinnott v The Minister for The Environment [2017] IEHC 214, 30 March 2017, paras. 83-85.*

For more information, see also FRA (2014), *The right to political participation for persons with disabilities: human rights indicators*, Luxembourg, Publications Office.

Key jurisprudence related to discrimination on the grounds of disability is highlighted in the 2018 edition of the *Handbook on European non-discrimination law*, published by FRA and the European Court of Human Rights.

## 10.3. Familiar challenges impede effective CRPD monitoring

FRA's previous Fundamental Rights Reports have highlighted a number of recurring challenges that can impede the effectiveness of EU monitoring, both in Member States and at the EU level. These include the absence of a clear legal basis, insufficient financial and human resources, and a lack of independence. While these continued to pose a challenge, another feature of 2017 was a number of changes to the structures appointed under Article 33 of the CRPD. Such changes can both give renewed impetus to monitoring and risk a lack of continuity.

The EU Framework was among the monitoring bodies to see structural change. Although the European Commission stopped participating in EU Framework meetings after the publication of the CRPD Committee's concluding observations on the EU in autumn 2015, it remained an official member. The Council of the EU confirmed the European Commission's formal withdrawal on 16 January 2017, "in accordance with the recommendation of the [CRPD Committee] so as to ensure the independence of the monitoring framework".<sup>57</sup> The revised EU Framework adopted on the same day replicates that originally adopted in 2013, with references to the European Commission removed.<sup>58</sup>

In October, the new composition of the EU Framework met for the first time, with the European Commission in its role as the EU's focal point for CRPD implementation.<sup>59</sup> The meeting identified several concrete ways to strengthen regular and systemic dialogue between the EU's focal point and monitoring body, including through regular biennial meetings and contributions to mutually relevant activities, such as the annual Work Forum, events for the European Day of Persons with Disabilities, and the meeting between the EU and national monitoring frameworks for the CRPD.

On a day-to-day basis, EU Framework members continued to implement the Framework's 2017-2018 work programme.<sup>60</sup> A few examples serve to highlight some of the joint activities that EU Framework members undertook in 2017:

- Webinar on practical tools for implementing the CRPD: in March, the European Parliament, European Ombudsman and FRA each contributed to a webinar highlighting practical steps EU institutions and other parts of the public administration can take to implement the CRPD. Hosted by CEPOL, the EU's police training college, the webinar covered topics such as accessibility of offices, websites, events, human resources, and receiving and handling complaints.<sup>61</sup>
- Annual meeting with national monitoring mechanisms: in addition to allowing for an exchange of information about activities to promote, protect and monitor the implementation of the CRPD, the May meeting had a thematic focus on independent living. The Chair of the CRPD Committee presented the draft General Comment on Article 19, while a representative of the European Expert Group on the transition from institutional to community-based care discussed the role of ESIF in supporting deinstitutionalisation.
- Participation in key events on the EU's implementation of the CRPD: EU Framework members

contributed a number of events related to the mid-term review of the European Disability Strategy (see [Section 10.1](#)). In July, the European Ombudsman represented the Framework in an exchange with the European Parliament's Employment and Social Affairs Committee.<sup>62</sup> In October, all Framework members took part in a public hearing on the future of the EU disability strategy after 2020 organised by the European Economic and Social Committee.<sup>63</sup> In addition, FRA represented the EU Framework in a discussion with the Council working party on human rights in April concerning mainstreaming disability in all EU law, policies and programmes in external action, and the possibility of the EU ratifying the Optional Protocol to the CRPD, which allows for individual complaints to be brought to the CRPD Committee.<sup>64</sup>

## FRA ACTIVITY

### FRA evidence supports preparation of general comments

As in previous years, FRA supported the CRPD Committee's work in 2017 with evidence and expertise. In particular, FRA jointly organised two events to support the committee's work on general comments on Article 5 (equality and non-discrimination) and Article 19 (living independently and being included in the community) of the convention.

In March, FRA organised a side event on measuring the implementation of the right to independent living, alongside the UN Office of the High Commissioner for Human Rights and the European Disability Forum. This was followed up in August with a briefing co-organised with the International Disability Alliance and the Global Alliance of National Human Rights Institutions on how to ensure implementation of the Sustainable Development Goals and how the CRPD supports equality for persons with disabilities. The agency also submitted written input on the draft general comments.

*For more information, see FRA's webpage on [Measuring the right to independent living and the International Disability Alliance's webpage on \[SDG-CRPD implementation for equality for persons with disabilities: the role of organisations of persons with disabilities and National Human Rights Institutions\]\(#\)](#).*

At the national level, the most important structural development was the appointment in the **Czech Republic** and **Greece** of monitoring frameworks under Article 33 (2) of the CRPD. In the Czech Republic, the Public Defender of Rights – the ombuds organisation – was designated as the monitoring body and given new powers to fulfil this role.<sup>65</sup> From 1 January 2018, it will be able to propose legislative changes for the protection of the rights of persons with disabilities, and establish an advisory body composed of persons

with disabilities and their representative organisations to support its monitoring activities. The ombuds organisation will also fulfil this role in Greece. In addition, the Ministry of Justice, Transparency and Human Rights will act as focal point for implementing the CRPD and the Minister or State for coordinating government operations will act as the coordination mechanism under Article 33 (1) of the convention.

This leaves **Bulgaria, Estonia and Sweden** as the only three Member States yet to appoint monitoring bodies.<sup>66</sup> Preparations in Bulgaria took a step forward with the establishment of an interagency working group to design the coordination and monitoring mechanisms. The group includes representatives of the ombuds organisation, the Commission for Protection against Discrimination (*Комисия за защита от дискриминацията*), NGOs and DPOs.<sup>67</sup>

Less encouragingly, familiar concerns regarding funding, mandate and independence highlighted in FRA's 2016 Opinion on requirements under

Article 33 (2) of the CRPD in the EU context persisted.<sup>68</sup> In their shadow report to the CRPD Committee, civil society organisations in **Luxembourg** criticised the failure to provide additional funding to the monitoring framework and highlighted possible gaps in the protection mechanisms with respect to actions by the private sector.<sup>69</sup> The CRPD Committee reflected these concerns in its recommendations.<sup>70</sup> Similarly, a number of **Swedish** NGOs expressed concerns that the planned human rights institution will not have adequate resources to be able to monitor the implementation of the CRPD in accordance with the requirements of Article 33 (2).<sup>71</sup>

These concerns were also reflected in the CRPD Committee's recommendations to the four EU Member States it reviewed in 2017 (see Table 10.2). The committee expressed concern about insufficient resources for monitoring in **Cyprus**<sup>72</sup> and the **United Kingdom**,<sup>73</sup> and the limited capacity and involvement of persons with disabilities and their representative organisations in **Latvia**<sup>74</sup> and **Luxembourg**.<sup>75</sup>

**Table 10.2 CRPD Committee reviews in 2017 and 2018, 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	5 October 2016	8 May 2017
LU	4 March 2014	10 April 2017	10 October 2017
LV	3 April 2014	26 April 2017	10 October 2017
MT	10 November 2014	March 2018	
PL	24 September 2014	March 2018	
SI	18 July 2014	10 October 2017	March 2018
UK	24 November 2011	20 April 2017	3 October 2017

Note: Shaded cells indicate review processes scheduled for 2018.

Source: FRA, 2018 (using data from OHCHR)

## FRA opinions

The European Commission's progress report on implementation of the European Disability Strategy demonstrates how actions to implement the United Nations Convention on the Rights of Persons with Disabilities (CRPD) are helping to drive wide-ranging legal and policy reforms, from accessibility to 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 objectives, adequate budgets and operational guidance for effective implementation and assessment of progress.

### FRA opinion 10.1

*The EU and its Member States should intensify efforts to embed CRPD standards in their legal and policy frameworks to ensure that the human rights-based approach to disability is fully reflected in law and policymaking. This should 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. Member States should also consider developing indicators to track progress and highlight implementation gaps.*

Intense negotiations saw the Council of the EU and the European Parliament adopt their positions on the proposed European Accessibility Act in 2017, demonstrating the EU's commitment to this flagship legislation to implement the CRPD. Nevertheless, significant differences remain over important issues, such as the scope of the act's applicability to audio-visual media and transport services, as well as its interrelationship with other relevant EU law, including European Structural and Investment Funds (ESIF) and the Public Procurement Directive. This raises the prospect of the proposal being weakened in key areas during legislative negotiations, which risks undermining the act's capacity to improve the accessibility of goods and services for persons with disabilities in the EU.

### FRA opinion 10.2

*The EU should ensure the rapid adoption of a comprehensive European Accessibility Act, which includes robust enforcement measures. This should enshrine standards for the accessibility of the built environment and transport services. To ensure coherence with the wider body of EU legislation, the Act should include provisions linking it to other relevant acts, such as the regulations covering the European Structural and Investment Funds and the Public Procurement Directive.*

EU Structural and Investment Funds (ESIF) play an important role in supporting national efforts to achieve independent living. Civil society, including disabled persons' organisations, can play an important role in providing the information necessary for effective monitoring of the use of the funds.

### FRA opinion 10.3

*The EU and its Member States should ensure that the rights of persons with disabilities enshrined in the CRPD and the EU Charter of Fundamental Rights are fully respected to maximise the potential for EU Structural and Investment Funds (ESIF) to support independent living. To enable effective monitoring of the funds and their outcomes, the EU and its Member States should also take steps to include disabled persons' organisations in ESIF monitoring committees and to ensure adequate and appropriate data collection on how ESIF are used.*

By the end of 2017, Ireland was the only EU Member State not to have 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 10.4

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

Two of the 27 EU Member States that have ratified the CRPD had not, by the end of 2017, established frameworks to promote, protect and monitor its implementation, as required under Article 33 (2). Furthermore, the effective functioning of some existing frameworks is undermined by insufficient resources, limited mandates 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 10.5

*The EU and its Member States should consider allocating sufficient and stable financial and human resources to the monitoring frameworks established under Article 33 (2) of the CRPD. 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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