

**FRA Opinion – 3/2016**  
**[CRPD]**

Vienna, 13 May 2016

Opinion of the  
European Union Agency for Fundamental Rights  
concerning requirements under Article 33 (2)  
of the UN Convention on the Rights of Persons  
with Disabilities within the EU context

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THE EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS (FRA),

Bearing in mind the Treaty on European Union (TEU), in particular Article 6 thereof,

Recalling the obligations set out in the Charter of Fundamental Rights of the European Union (the Charter),

In accordance with Council Regulation 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights (FRA), in particular Article 2 with the objective of FRA *“to provide the relevant institutions, bodies, offices and agencies of the Community and its EU Member States when implementing Community law with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights”*,

Having regard to Article 4 (1) (d) of Council Regulation 168/2007, with the task of FRA to *“formulate and publish conclusions and opinions on specific thematic topics, for the Union institutions and the EU Member States when implementing Community law, either on its own initiative or at the request of the European Parliament, the Council or the Commission”*,

Having regard to Recital 13 of Council Regulation 168/2007, according to which *“the institutions should be able to request opinions on their legislative proposals or positions taken in the course of legislative procedures as far as their compatibility with fundamental rights are concerned”*,

Having regard to previous FRA opinions on related issues, in particular on the equality directives,

Having regard to the request of the European Parliament of 18 March 2016 to FRA for an opinion on *“requirements under Article 33 (2) of the UN Convention on the Rights of Persons with Disabilities (CRPD) within the EU context”*, *“[i]n particular [...] 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 European Union”*,

Having regard to the fact that, with the CRPD, the European Union as a regional integration organisation has for the first time acceded to an international human rights treaty, thereby visibly committing the Union itself to human rights at a global level,

Having regard to the Concluding observations on the initial report of the European Union by the UN Committee on the Rights of Persons with Disabilities, of 2 October 2015, pointing out concerns with the framework for implementation and monitoring, as designated under Article 33 of the CRPD,

Having regard to consultations conducted in preparation of this opinion with the Office of the United Nations High Commissioner for Human Rights,

SUBMITS THE FOLLOWING OPINION:

## Opinions

### Composition of Article 33 (2) frameworks, their legal basis and involvement of persons with disabilities

**Transparency, legal clarity and foreseeability are basic rule of law principles. Based on concluding observations of the Committee on the Rights of Persons with Disabilities (CRPD Committee) and of the Sub-Committee on the accreditation of national human rights institutions (SCA), as well as in light of practices at national level, it is FRA’s opinion that a legally binding act published in the EU Official Journal should provide the basis for the EU Framework implementing Article 33 (2) of the CRPD. Through the adoption of such an act the EU would officially clarify, without further delay, both membership and tasks of the EU Framework. The act could take the form of a new EU decision (for instance based on Articles 19 and 114 of the Treaty on the Functioning of the EU), a revised version of the existing Code of Conduct or an interinstitutional agreement.**

**National practices across the EU show that national human rights institutions play a central role in Article 33 (2) frameworks. It is FRA’s opinion that such institutions are especially qualified to function as “independent mechanism” in the sense of Article 33 (2) of the CRPD. At the same time, based on concluding observations of the CRPD Committee and of the Sub-Committee on the accreditation of national human rights institutions (SCA), as well as in light of some Member State practices, it is FRA’s opinion that the EU Framework should reflect the diversity of relevant societal groups and actors. This can be achieved through procedures allowing for effective cooperation with these groups and actors, as well as by establishing consultative committees.**

**For the final composition of the EU Framework, the European Commission could request the CRPD Committee for capacity building (Article 37 (2) of the Convention on the Rights of Persons with Disabilities (CRPD)), technical advice and assistance (Article 36 (5) of the CRPD). When deciding on the final composition of the EU Framework, it is FRA’s opinion that relevant stakeholders, including disabled persons’ organisations (DPOs) are given the opportunity to provide their views.**

### Status and efficiency of the independent mechanism

**The members of the current EU Framework have distinct and largely complementary mandates. The European Ombudsman and FRA are well placed to perform the role of an Article 33 (2) ‘independent mechanism’ in the EU Framework. It is FRA’s opinion that the EU Framework should have the possibility to issue opinions on draft EU legislation with relevance to the rights of persons with disabilities. This option should be laid down in the legal document establishing the framework. Such independent external expert advice should be available independently from any EU institutions’ request.**

**In recognition of the independence and efficiency of Article 33 (2) frameworks, various Member States have provided them with additional resources. The assignment as framework includes new tasks, even if the mandates of the respective bodies remain unchanged. It is FRA’s opinion that, once the composition, tasks and respective roles in the EU Framework are properly provided for, the EU follows up on the CRPD Committee’s recommendation to provide “adequate resources to perform its functions”.**

## Promotion, protection and monitoring – tasks of the Article 33 (2) framework

***The legally binding EU act establishing the EU Framework should identify the framework's key tasks. This could include activities undertaken as a framework or by one or more members. When identifying these key tasks, it is FRA's opinion that attention needs to be paid as to whether these would constitute new and additional tasks for members of the EU Framework and thus require adequate resources.***

***The tasks of the EU Framework should reflect the three dimensions of Article 33 (2): promotion, protection and monitoring. Drawing on guidance from the Conference of States parties on the CRPD, as well as established practice in EU Member States, it is FRA's opinion that the EU Framework should carry out the following tasks:***

- ***Promotion: awareness raising activities; training and capacity building; mainstreaming and scrutiny of existing legislation and draft legislation for compliance with the CRPD; and the provision of support and assistance to the Union in construing and applying the CRPD.***
- ***Protection: investigation and examination of complaints; conducting research and inquiries, on its own initiative; and issuing reports.***
- ***Monitoring: data collection and analysis; development of indicators and benchmarks for assessing progress, stagnation or retrogression in the enjoyment of CRPD rights over time; active involvement in the review by the CRPD Committee of the EU's implementation of the CRPD, including the submission of periodic alternative reports (shadow reports).***

## Working arrangements of Article 33 (2) frameworks: internal coordination and external interaction

***To ensure the efficient and effective fulfilment of the EU Framework's tasks, it is FRA's opinion that the framework should closely cooperate with the European Commission and the coordination mechanism established under Article 33 (1) and establish structured means of engagement with stakeholders.***

***In addition to the 'framework-external' cooperation and coordination efficient coordination among the entities in the EU Framework is required. It is FRA's opinion that the EU Framework should develop a regular meeting schedule, such as once a quarter, with additional meetings organised as required. Meetings of EU Framework members could be complemented by open meetings in which relevant stakeholders are invited to participate.***

***In light of its experience of the first years of operation, the EU Framework intends to review the working methods as agreed by the current framework members ('operational provisions'). To increase transparency of its working methods, it is FRA's opinion that the EU Framework should agree in a written document on the detailed tasks for each member and its mode of coordination and cooperation. All stakeholders should have access to this document and EU Framework members should regularly review it on the basis of feedback from disabled persons' organisations (DPOs).***

***Regular communication regarding its activities can enhance the transparency of the EU Framework's work, as well as providing an avenue for feedback from other actors. It is FRA's opinion that one of the EU Framework's tasks should be the establishment of a joint Framework website, updated regularly with relevant information and events. A regular newsletter and the establishment of a central contact point for framework-related enquiries could complement the website information.***

***Honouring the specific nature of the EU as a party to the CRPD, regular exchange should take place between the EU Framework and national frameworks. The EU Framework should also cooperate with other relevant networks, such as the CRPD Working Group of the European Network of national human rights institutions. It is FRA's opinion that an annual meeting between the EU Framework and national frameworks should become standard practice, complemented by a mechanism for regular exchange of information and good practices.***

## Introduction

On 18 March 2016, the European Parliament requested FRA to deliver an opinion “concerning requirements under Article 33 (2) of the UN Convention on the Rights of Persons with Disabilities (CRPD)<sup>1</sup> within the EU context. In particular, this opinion should advise on 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 European Union.” The request indicates that FRA’s opinion will feed into the ongoing preparation of a report by the European Parliament Committee on Employment and Social Affairs (EMPL) on the ‘Implementation of the UN Convention on the Rights of Persons with Disabilities with special regard to the Concluding Observations of the UN CRPD Committee’.

This opinion therefore aims to support the EU’s follow up to the ‘Concluding observations on the initial report of the European Union’ by the United Nations (UN) treaty monitoring body for the CRPD, the Committee on the Rights of Persons with Disabilities (CRPD Committee), which were published on 2 October 2015.<sup>2</sup>

### Scope and structure of this opinion

This opinion addresses the designation and operation of a framework established at EU level under Article 33 (2) of the CRPD (EU Framework). It aims to clarify the requirements for the EU Framework in light of the CRPD Committee’s monitoring practice and jurisprudence<sup>3</sup> and – with regard to the concept of independence – the Committee interpreting the Paris Principles on the establishment of National Human Rights Institutions (NHRIs).<sup>4</sup> Although concluding observations issued by treaty bodies are not legally binding on parties, they constitute the primary record of findings and recommendations concerning national implementation. They are therefore important interpretative tools for the respective treaties.<sup>5</sup>

To ground FRA’s advice on the EU Framework on evidence concerning existing institutional practice, each section explores the situation regarding national Article 33 (2) frameworks in EU Member States. While practices at the national level determine neither the normative understanding of Article 33 of the CRPD nor the approach to be taken by the EU, they do offer a valuable evidence base that can inform how to best build the EU Framework.

The first section of this opinion looks at the composition of an Article 33 (2) framework, its legal basis, and whether and how it involves disabled persons’ organisations (DPOs). The second section reviews the “independent mechanism” – the specific element of the framework required by Article 33 (2) of the CRPD – against the requirements of the Paris Principles, which provide standards on the mandate, funding, independence, tasks and

<sup>1</sup> United Nations High Commissioner for Human Rights (OHCHR), [Convention on the Rights of Persons with Disabilities \(full text\)](#).

<sup>2</sup> For further discussion of the CRPD Committee’s ‘Concluding observations on the initial report of the European Union’, see FRA (2016), *Fundamental Rights Report 2016*, Chap. 8 (forthcoming in June 2016).

<sup>3</sup> The CRPD Concluding observations are available on the [OHCHR website](#). By 1 May 2016, the CRPD Committee had issued 40 Concluding observations, including regarding 12 EU Member States and the EU. See also OHCHR, Europe Regional Office (2011), [Study on the Implementation of Article 33 of the UN Convention on the Rights of Persons with Disabilities in Europe](#). The CRPD Committee has so far not dealt with Article 33 in its [General Comments](#). On 9 May 2016, the CRPD Committee published [Draft Guidelines](#) on the establishment of Independent Monitoring Frameworks and their participation in the work of the committee.

<sup>4</sup> United Nations (UN) General Assembly, Resolution 48/134, [National institutions for the promotion and protection of human rights](#), 20 December 1993.

<sup>5</sup> O’Flaherty, M. (2006), ‘The Concluding Observations of United Nations Human Rights Treaty Bodies’, *Human Rights Law Review*, Vol. 6, No. 1, pp. 27–52.

powers of human rights institutions. The Paris Principles are read together with the General Observations as adopted by the International Coordinating Committee of National Institutions for the promotion and protection of human rights (ICC).<sup>6</sup> The third section of the opinion analyses the role of the Article 33 (2) framework, including its tasks and coordination and cooperation.

To support the preparation of this opinion, FRA consulted a range of relevant experts and stakeholders.<sup>7</sup> To gather information on national frameworks, FRA sent short questionnaires to its network of National Liaison Officers (NLOs) in all 28 EU Member States and to members of all 21 Article 33 (2) frameworks currently in place. Stakeholders in 24 Member States responded, and included responses from NLOs in 23 Member States and members of Article 33 (2) frameworks in 10 Member States. This opinion does not necessarily represent the views of the organisations or the individual experts who kindly provided information.

## Background information

The UN Convention on the Rights of Persons with Disabilities (CRPD) was adopted in 2006 and entered into force in 2008.<sup>8</sup> The EU became party to the CRPD through “formal confirmation” on 23 December 2010<sup>9</sup> – the first time the EU acceded to a core international human rights convention. The convention entered into force with respect to the Union on 21 January 2011.<sup>10</sup> By 12 May 2016, 26 EU Member States had ratified the convention; the two remaining EU Member States (Ireland and the Netherlands) have signed the CRPD and are progressing towards ratification.

The optional protocol to the convention, which was adopted and entered into force at the same time as the CRPD, allows individual or groups of individuals to submit complaints. By 12 May 2016, 22 EU Member States had ratified the optional protocol. The EU has not (yet) signed it.<sup>11</sup>

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<sup>6</sup> The [General Observations](#) are developed by the ICC Sub-Committee on Accreditation (SCA) and approved by the ICC Bureau.

<sup>7</sup> FRA received valuable input from key partners, including the secretariat of the CRPD Committee, the Regional Office for Europe of the Office of the OHCHR, the OHCHR Disability and Human Rights Advisor, and informal input from the European member of the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions (GANHRI, formerly known as the International Coordinating Committee, ICC).

<sup>8</sup> UN, [Convention on the rights of persons with disabilities \(CRPD\)](#).

<sup>9</sup> [Depositary notification](#) with the UN on 23 December 2010; the instrument was submitted based on [Council Decision 2010/48](#), 26 November 2009, OJ L23/35, 27 January 2010.

<sup>10</sup> At the time of formal confirmation, the EU made a declaration (regarding EU competence, relevant EU legislation) as required under Article 44 (1) of the CRPD and a reservation (relating to the possibility for EU Member States to enter reservations in relation to disability and employment in armed forces). Neither the declaration nor the reservation affects the applicability of Article 33. Details on the status of ratification are available on the UN [website](#).

<sup>11</sup> The EU is planning to become a party to the protocol, by “tak[ing] necessary steps for the EU accession”, point 12 (d), which also stresses EU support to the functioning of CRPD Article 33 (2) mechanisms in partner countries. See European Commission, *Action Plan on Human Rights and Democracy (2015-2019)*, 28 April 2015. There were also earlier moves by the EU to become party to the protocol, including a [European Commission proposed Council Decision from 2008](#) (COM(2008 530-2, 28 August 2008), and a [European Parliament resolution from 2009](#) (OJ 53/111, 8 July 2010). The CRPD Committee has also recommended that the EU also become a party to the protocol. See UN (2015), *Concluding observations on the initial report of the European Union, CRPD/C/EU/CO/1*, 2 October 2015, para. 7.



**CRPD****Article 33 – National implementation and monitoring**

1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.
2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.
3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.

Inserting specific requirements regarding national implementation and monitoring in Article 33 (2) of the CRPD underlines the importance of the CRPD for driving a positive dynamic of reform as States parties strive to meet their obligations under the convention.<sup>12</sup> The obligation to establish “frameworks” to “promote, protect and monitor” the implementation of the convention (Article 33 (2) frameworks), is at the heart of this process.

Without prescribing what form Article 33 (2) frameworks should take, the CRPD requires States parties – when establishing independent mechanisms – to take into account the Principles relating to the Status of National Institutions (Paris Principles), which are the universally accepted standards for independence and efficiency of bodies with a human rights remit (see section 2).<sup>13</sup>

The Conference of States parties to the CRPD has elaborated on what is required of Article 33 (2) frameworks, setting out some key characteristics, namely: a broad mandate set out in a constitutional or legislative text; composition, independence and pluralism, including pluralist representation, sufficient funding and infrastructure; methods of operation in terms of freely considering issues within competence and to interact with other human rights bodies and NGOs; and details on how to deal with complaints, if applicable.<sup>14</sup>

At the EU level, “after careful analysis of the legal requirements and possible options”,<sup>15</sup> the European Commission<sup>16</sup> proposed that five members jointly form the ‘EU Framework to promote, protect and monitor the implementation of the CRPD’. The proposal to establish a framework composed of the European Parliament (Petitions Committee (PETI)), the European Ombudsman, the EU Agency for Fundamental Rights (FRA), the European Disability Forum (EDF), and the European Commission was endorsed by the Council of the EU on 29

<sup>12</sup> See FRA (2015), [Implementing the UN CRPD: An overview of legal reforms in EU Member States](#).

<sup>13</sup> The Paris Principles were adopted by the UN General Assembly on 20 December 1993.

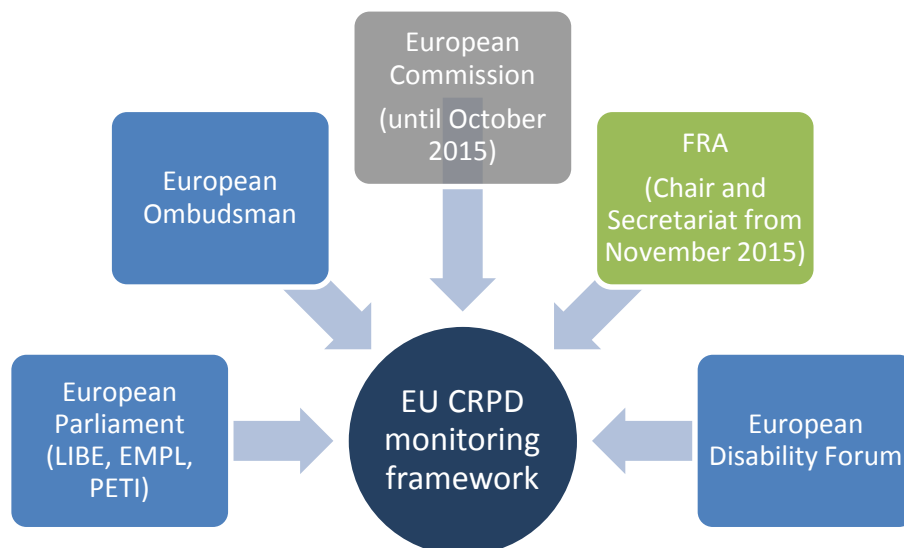
<sup>14</sup> CRPD/CSP/2014/3, 1 April 2014.

<sup>15</sup> Initial party report of the EU, para. 225.

<sup>16</sup> European Commission (2012), [Commission non paper on the setting-up at EU level of the framework required by Art. 33.2 of the UN Convention on the Rights of Persons with Disabilities](#).

October 2012.<sup>17</sup> In December 2013, the European Parliament Conference of Presidents decided that the Committee on Employment and Social Affairs (EMPL), in close association with the Committee on Civil Liberties, Justice and Home Affairs (LIBE) and PETI, will represent the European Parliament in the EU Framework.<sup>18</sup>

**Figure 1: Members of the EU Framework to promote, protect and monitor the implementation of the CRPD**



*Note: The European Commission decided to withdraw from the EU Framework following publication of the CRPD Committee’s Concluding observations on the EU in September 2015. FRA was appointed, by consensus, chair and secretariat of the EU Framework on an interim basis in November 2015.*

*Source: FRA, 2016*

The EU’s arrangements under Article 33 were reviewed by the CRPD Committee as part of its 2015 examination of the EU’s implementation of the convention. Its recommendations on Article 33 are among those identified as particularly urgent, with the CRPD Committee asking the EU to report on steps taken to implement them within 12 months of publication of the concluding observations, hence by October 2016.<sup>19</sup> As an immediate response, the European Commission announced its intention to withdraw from the EU Framework at several public events in late 2015.<sup>20</sup>

### CRPD Committee

#### Concluding observations on the initial report of the European Union

76. The Committee notes with concern that the [EU] Framework for implementation and monitoring of the Convention is not fully in line with the Paris Principles nor adequately resourced. Moreover, the European Commission is designated as both a focal point (art.

<sup>17</sup> [Note on the set up of the EU-level framework required by art. 33.2 of the UN Convention on the Rights of Persons with Disabilities](#); approved by the Council on 29 October 2012.

<sup>18</sup> For further information on the EU Framework, see FRA (2016), *Fundamental Rights Report 2016*, Ch. 8 (forthcoming), as well as chapters on equality and non-discrimination in earlier FRA Annual reports.

<sup>19</sup> Concluding Observations on the European Union, para. 90.

<sup>20</sup> For example, the European Commission mentioned its withdrawal during the public hearing on the protection of the rights of people with disabilities from the perspective of petitions received, organised by the European Parliament’s PETI Committee on 15 October 2015. Further details and a recording of the event are available via the European Parliament’s [website](#).

33.1) for implementation and a mechanism for monitoring the implementation (art. 33.2) of the Convention.

77. The Committee recommends that the [EU] take measures to decouple the roles of the European Commission in the implementation and monitoring of the Convention, by removing it from the independent monitoring framework, so as to ensure full compliance with the Paris Principles, and ensure that the framework has adequate resources to perform its functions. [...]

## 1. Composition of Article 33 (2) frameworks, their legal basis and involvement of persons with disabilities

According to Article 33 (2) of the CRPD, the overall purpose of the Article 33 (2) framework is to “promote, protect and monitor implementation of the present Convention.” In addition to these three main functions, the CRPD also specifies that “one or more” of the components of the framework has to be an “independent mechanism”.

However, the convention does not specify what other actors an Article 33 (2) framework should ideally include and how their respective responsibilities relate to each other. This is reflected in the CRPD Committee’s concluding observations, which typically focus on two issues: the independence of the Article 33 (2) framework – sometimes as a framework, not just the independent mechanism<sup>21</sup> – and the involvement of civil society, particularly DPOs. A comparative look at institutional practice as it unfolded at national level can offer inspiration for the EU Framework to be established under Article 33 (2) of the CRPD.

### Composition of the Article 33 (2) framework

With regard to membership in the mechanism, the CRPD establishes only two criteria, one explicit and one implicit. First, the framework must include a mechanism that is independent in accordance with the Paris Principles; second, it must be composed in a way that allows delivering on its three main tasks, namely to promote, protect and monitor the convention’s implementation. In that sense, NHRIs are natural candidates for becoming members of Article 33 (2) frameworks. The CRPD Committee encourages States parties “to appoint NHRIs as part of the monitoring framework or as a mechanism that forms part of the monitoring framework and to further equip them with additional and adequate budgetary and skilled human resources to appropriately discharge their additional mandate”.<sup>22</sup>

Concerning the types of bodies acting as Article 33 (2) frameworks, of the 21 Member States that have set up Article 33 (2) frameworks:

- 13 have appointed national human rights bodies, including national human rights institutions, equality bodies and/or ombudsperson organisations.<sup>23</sup>
- Five have given the task to other existing bodies.<sup>24</sup>
- Six have created new entities to fulfil this role, although these can include pre-existing organisations among their members (see below).

Turning to the number of bodies forming a framework, three-quarters (16) of the national Article 33 (2) frameworks set up so far are composed of a single body. Half of the single-body frameworks are national human rights bodies; six are new bodies specifically created to fulfil functions under Article 33 (2); and two are other previously existing bodies given Article 33 (2) responsibilities.

Article 33 (2) frameworks are composed of multiple organisations or bodies in only five Member States. These ‘multi-component’ frameworks include different types of bodies: all members of the UK and Luxembourg frameworks are national human rights bodies, for

<sup>21</sup> See, for example, Concluding observations on Cook Islands, para. 61 and 62: “The Committee is concerned at the absence of an independent monitoring framework and [...] recommends that the State party designate an independent monitoring framework aligned to the Paris Principles, with an allocated budget”.

<sup>22</sup> Draft Guidelines on the establishment of Independent Monitoring Frameworks and their participation in the work of the Committee, para. 15.

<sup>23</sup> Finland, Ireland and the Netherlands have also indicated that national human rights bodies will form their frameworks, once formally designated.

<sup>24</sup> Note that the total is greater than 21, as some frameworks consist of more than one body.

instance, while the Danish, French and Lithuanian frameworks include both national human rights bodies and other existing bodies.

## Legal basis of the frameworks

According to the CRPD Committee and following the Paris Principles, to be considered independent, any component of an Article 33 (2) framework must have a “mandate [...] clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.”<sup>25</sup> The text describing the mandate must provide for

*“sufficient detail to ensure [...] a clear mandate and independence. In particular, it should specify the [...] role, functions, powers, funding and lines of accountability, as well as the appointment mechanism for, and terms of office of, its members. The establishment [...] by other means, such as an instrument of the Executive, does not provide sufficient protection to ensure permanency and independence.”<sup>26</sup>*

General Observation 1.1, adopted by the Sub-Committee on the accreditation of NHRIs (SCA), mirrors this statement. The observation states that NHRIs

*“must be established in a constitutional or legislative text with sufficient detail to ensure the National Institution has a clear mandate and independence. In particular, it should specify the Institution’s role, functions, powers, funding and lines of accountability, as well as the appointment mechanism for, and terms of office of, its members. The establishment of a National Institution by other means, such as an instrument of the Executive, does not provide sufficient protection to ensure permanency and independence.”<sup>27</sup>*

The CRPD Committee has raised concerns about the absence of a legal basis, such as in relation to “the independent monitoring body, the Office of the Ombudsman for Persons with Disabilities” in Croatia, which “is not designated as such by law”.<sup>28</sup> The committee also urged a (non-EU Member State) party “to adopt the necessary legal measures to clearly establish the independent mechanism under the Convention in line with the Paris Principles”.<sup>29</sup> These observations signal that a proper legal basis for at least the independent mechanism established under Article 33 (2) is considered a crucial element. The SCA also stresses the “requirements for a stable mandate, without which there can be no independence.”<sup>30</sup>

Even if the criterion of independence were not to apply to the Article 33 (2) framework but only to the independent mechanism, the principles of legal certainty, transparency and good administration strongly speak in favour of having the overall framework established by a legal act that allows for appropriate levels of transparency as to who is in charge of the tasks to be delivered under Article 33 (2) of the CRPD.

Moreover, at least for the EU context the CRPD Committee seems to suggest that the “framework” itself is supposed to be “fully in line with the Paris Principles” and “adequately resourced”.<sup>31</sup> By referring to “the independent monitoring framework”, the committee’s

<sup>25</sup> Paris Principles, Competence and responsibilities-section, point 2.

<sup>26</sup> CRPD, General Observations, 1.1.

<sup>27</sup> SCA, General Observation 1.1.

<sup>28</sup> CRPD/C/HRV/CO/1, 15 May 2015, para. 52.

<sup>29</sup> CRPD/C/ECU/CO/1, 27 October 2014, para. 55.

<sup>30</sup> SCA, General Observation 2.1.

<sup>31</sup> CRPD, Concluding Observations on the European Union, para. 76.

language also implies that the independence requirement reaches beyond the independent mechanism.<sup>32</sup>

Looking at the national level within the EU reveals that not only most of the members of the Article 33 (2) frameworks are established by law, but that the frameworks also have a legal basis. Specifically, either a legal act created the framework itself or a legal document designated an institution as the Article 33 (2) framework. Among the first group, in Austria an amendment of the Federal Disability Act in 2008 established the Austrian Independent Monitoring Committee at the federal level; similarly, in Italy the legislation ratifying the CRPD established the Italian National Observatory on the Status of Persons with Disabilities. Within the second group, in Latvia the 2010 Law on the CRPD designated the Latvian Article 33 (2) framework, the Ombudsman of the Republic of Latvia. Other Article 33 (2) frameworks were created through soft law instruments, including explanatory memorandums and governmental decrees or rulings.<sup>33</sup>

### Involvement of disabled persons organisations

In its concluding observations, the CRPD Committee frequently reiterated the importance of involving DPOs in Article 33 (2) activities, recommending that Denmark “enable civil society and, in particular, representative organizations of persons with disabilities, to fully and regularly participate in monitoring of the implementation of the Convention”.<sup>34</sup> The committee has given further guidance on the form this involvement could take, recommending that States parties “involve organizations of persons with disabilities [...] in the mechanism established under [Article 33 (2) of] the Convention” and “adopt legal provisions to ensure the full participation of persons with disabilities and their representative organizations in the monitoring of the implementation of the Convention”.<sup>35</sup> Another means is for the Article 33 (2) framework to “be in permanent consultation with disabled persons’ organizations at the national level”.<sup>36</sup>

Notably, the only Article 33 (2) framework judged by the CRPD Committee to be in full compliance with the CRPD is in Spain, where a DPO acts as the framework.<sup>37</sup> To support its work as monitoring body, it created a 26-member committee including human rights bodies; political and parliamentary representatives; representatives of relevant national ministries; representatives of regional and local bodies; and representatives of academia, among others. Such advisory committees are an appropriate means to guarantee pluralism. The SCA underlined that pluralism can be ensured “through procedures enabling effective cooperation with diverse societal groups, for example advisory committees, networks, consultations or public forums”.<sup>38</sup>

In EU Member States, the involvement of persons with disabilities via their representative organisations is often secured through the participation of DPOs in the bodies constituting the framework.<sup>39</sup>

<sup>32</sup> CRPD, Concluding Observations on the European Union, para. 77.

<sup>33</sup> See, for example, Cyprus, Denmark, Poland, Portugal and the United Kingdom.

<sup>34</sup> CRPD/C/DEN/CO/1, 15 May 2015, para. 67. See also Article 4 (3) CRPD.

<sup>35</sup> Concluding Observations on Dominican Republic, para. 63(b); COs on Republic of Korea, para. 62.

<sup>36</sup> Concluding Observations on Paraguay, para. 76.

<sup>37</sup> Concluding Observations on Spain, CRPD/C/ESP/CO/1, para. 6.

<sup>38</sup> SCA, General Observations 1.7.

<sup>39</sup> In Italy and Slovenia, a third of the members of the framework are representatives of DPOs. In Portugal, half of the members of the framework represent DPOs. All three countries have single-body frameworks. In the Lithuanian Council for Disability Affairs, one part of a two-body framework, half of the Council

Where there is no provision for participation in the structures of the monitoring frameworks themselves, alternatives exist. Often there is an explicit obligation for the member institutions of the framework and/or the independent mechanism to systematically consult with DPOs. In Cyprus and Poland, for example, consultative commissions have been established, including representatives of DPOs. Similarly, in the UK, the governance arrangements for the Equality and Human Rights Commission include a statutory disability committee, which the EHRC must consult on matters concerning persons with disabilities.

The CRPD Committee has called on States parties “to provide organizations of persons with disabilities and other civil society organizations with adequate resources to enable them to participate fully and effectively in the national implementation and monitoring process.”<sup>40</sup>

### Article 33 (2) mechanism at EU level

Certain aspects of the mechanism currently in place at EU level differ from most mechanisms established at EU Member State level. Some of these differences appear to be due to the special nature of the EU as ‘Non State-State party’ to the CRPD (see discussion below on the PETI Committee’s membership in the EU Framework), others less so (as is the case for the legal basis of the framework – see section below).

#### Legal foundation

The EU Framework is not based on an easily accessible and legally binding act, nor were the different members of the framework assigned as such in a legally binding instrument accessible to all. The European Commission chose an informal approach, presenting to the institutions a “non paper” setting up the EU Framework,<sup>41</sup> which was discussed in the Council Working Group on Human Rights (COHOM).<sup>42</sup> The note was finally approved at the Council of the European Union in its formation of transport, telecommunications and energy ministers on 29 October 2002.<sup>43</sup>

This note has not been reviewed after the Commission’s announcement of its withdrawal from the EU Framework. Legal clarity and foreseeability, transparency and good administration, but also guaranteeing independence, are all requirements that should be met when taking any decisions with regard to the implementation of Article 33 of the CRPD. In this context, and following the CRPD Concluding observations, it appears that establishing a sound legal foundation for the EU Framework through an easily accessible and legally binding document is clearly preferable. Increased coherence and transparency could be reached by at least applying the same standard to the designation of the Article 33 (2) framework as were applied in the case of the designation of the EU’s Article 33 (1) “focal point”. The latter was done in the “Code of Conduct” – a formal document agreed by the Council, the Member States and the Commission and accessible in the Official Journal.<sup>44</sup>

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members are DPOs. In Denmark, DPOs are represented on the board of the Danish Institute for Human Rights, as well as in the Council for Human Rights, which discusses the work of the institute.

<sup>40</sup> CRPD/C/HRV/CO/1, 15 May 2015, para. 53. See also, e.g., Concluding Observations on Germany, para. 62(c) (“The Committee recommends that the State party [...] ensure the availability of resources for more comprehensive and effective monitoring at the Land and municipal levels.”)

<sup>41</sup> European Commission (2012), [Commission non paper on the setting-up at EU level of the framework required by Art. 33.2 of the UN Convention on the Rights of Persons with Disabilities](#).

<sup>42</sup> Council document 15089/12 as of 22 October 2012 (LIMITE).

<sup>43</sup> Council of the European Union (2012), 3196th Council meeting Transport, Telecommunications and Energy, Press release, PRES/12/447, Luxembourg.

<sup>44</sup> Council, Code of Conduct between the Council, the Member States and the Commission setting out internal arrangements for the implementation by and representation of the European Union relating to the United Nations Convention on the Rights of Persons with Disabilities, in OJ C340 as of 15 December 2010,

Enhanced levels of transparency and formality would also be more in line with Article 15 of the Treaty on the Functioning of the European Union (TFEU), which requires the EU “institutions, bodies, offices and agencies [to] conduct their work as openly as possible”.

In conclusion, the EU Framework could, for instance, be based on a legally binding EU act adopted on the basis of Articles 19 and 114 TFEU (the legal basis used for accession to the EU). Alternatively, one could expand the scope of the “Code of Conduct” to cover not only the representation of the Union vis-à-vis the UN and the Commission’s role as focal point, but also the composition and the distribution of tasks within the EU Framework. The EU Framework could also be laid down in an inter-institutional agreement concluded between the three EU institutions.<sup>45</sup>

## Composition

As underlined above, the CRPD leaves States parties a large margin of appreciation regarding how to design their Article 33 (2) frameworks. It allows for the participation not only of NHRIs and Ombudsman offices, but also any other human rights organisations, equality bodies, inspectorates, DPOs, trade unions, universities, research centres, etc.

Despite this wide potential for frameworks to form ‘networks’, most EU Member States have opted for rather centralised solutions in which NHRIs mostly take the leading role. Although NHRIs are not explicitly mentioned in Article 33, they generally play an important role in promoting fundamental rights at the national level.<sup>46</sup> The General Assembly has invited all UN human rights mechanisms to work with national institutions, and the CRPD Committee is drawing up guidelines on its own relationship with NHRIs, which might also be of relevance for the committee’s relationship with the EU Framework.

Although no unified model is used across Member States, it is remarkable that in three quarters of the Member States that assigned a mechanism, the latter is composed of a single body.

The EU’s approach is quite different as five actors – or even eight, if one considers the different committees of the European Parliament – were assigned to jointly form ‘the EU Framework’: the European Parliament (three different committees), the European Ombudsman, FRA, the European Disability Forum and the European Commission. The CRPD Committee can comment on the degree to which this composition is in line with the CRPD. In its 2015 Concluding observations on the initial report of the European Union, the committee only commented on the European Commission’s membership, suggesting that the current multi-component structure (without the European Commission) does not raise major issues under the CRPD.

The alternative to this current mix of actors would have been the establishment of a single EU body tasked with implementing Article 33 (2) of the CRPD.<sup>47</sup> Given the spectrum of tasks

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pp. 11-15. Note that para. 13 reads as follows: “The Commission will propose in due course an appropriate framework for one or several independent mechanisms in accordance with Article 33.2 of the Convention and on the involvement of civil society, in accordance with Article 33.3 of the Convention, taking into account all relevant Union institutions, bodies, offices or agencies.”

<sup>45</sup> See Art. 295 TFEU.

<sup>46</sup> UN General Assembly, Resolution A/RES/70/163, “National institutions for the promotion and protection of human rights”, 17 December 2015.

<sup>47</sup> The establishment of such a “EU disability rights monitoring body” was described as the “ideal solution”, but this conclusion is based on the debatable assumption that “even if available EU entities are adapted, and are designated as the EU’s ‘framework’ [...] the EU will not manage to meet the requirement of having at least one independent mechanism as part of its ‘framework’”. See European Foundation Centre,



to be performed under Article 33(2) and the rights and policy areas covered by the CRPD as a whole, such an EU body would have to be established on the basis of Article 352 of the TFEU,<sup>48</sup> which requires unanimity in the Council. This is the competence base on which FRA was established. The creation of FRA clearly showed that, politically speaking, it is far from easy to establish a human rights body at EU level. Moreover, establishing a new body tasked with implementing the CRPD would necessitate close cooperation and coordination with all existing EU institutions and bodies. This would dilute the relative advantage of a single-body scenario compared to the existing multi-component framework. A multi-component framework composed of existing EU actors can therefore be considered a realistic and appropriate solution.

However, for the sake of transparency and legal certainty, the members of the EU Framework should be clearly assigned and not be subject to unilateral changes (as was the case with the representation of the European Parliament in the EU Framework). The European Parliament's participation in the EU Article 33 (2) mechanism has significantly evolved since the initial establishment of the framework in 2012. In the European Commission proposal endorsed by the Council in 2012, the European Parliament was represented in the framework by the Committee on Petitions (PETI) only – because of its protection role with regard to the CRPD, enabling European citizens to lodge complaints against infringements of their rights on the part of European, national and local authorities. Since December 2013, the Committee on Employment and Social Affairs (EMPL) and the Committee on Civil Liberties, Justice and Home Affairs (LIBE) are also represented in the framework, with EMPL entrusted with the task of representing the European Parliament in the framework.<sup>49</sup>

The number of bodies in the EU Framework should be limited as the coordination needs of such a framework are from the start more demanding than at national level. As the EU Framework will also need to cooperate and coordinate with 28 national frameworks, it appears advisable not to unnecessarily increase coordination tasks within the EU Framework. In fact, the obvious advantage of the dominant approach identified at the EU Member State level – to have single-body frameworks – is that a framework with a single member or very few members will have to invest less resources in coordination and cooperation between these entities.

Aside from FRA and the European Ombudsman – which can be considered 'independent mechanisms' in the sense of Article 33 (2) CRPD due to their specific mandates and independence from political actors – three additional actors form part of the framework.

Whereas the European Commission fulfils important monitoring tasks vis-à-vis the EU Member States, it simultaneously functions as a state party tasked with implementing the CRPD. This prompted the CRPD Committee to recommend that the European Commission withdraw from the framework. As mentioned above, in terms of transparency and legal certainty, it would be advisable to clarify the framework's composition in a binding document.

That the European Parliament is part of the framework is atypical compared to the situation at national level – where no parliaments or parliamentary committees form part of the Member States' Article 33 (2) mechanisms. The advantage of having a parliament as a

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Study on challenges and good practices in the implementation of the UN Convention on the Rights of Persons with Disabilities, October 2010, pp. 165-172.

<sup>48</sup> Art. 352 of the TFEU allows the EU to adopt an act necessary to attain objectives laid down by the treaties when the latter have not provided the powers of action necessary to attain them.

<sup>49</sup> Meeting of the [EU Framework to promote, protect and monitor the UNCRPD](#), point 4, 13 February 2014.

member of the framework is that parliaments – and this is also true at EU level – have efficient means available to promote and mainstream disability rights. The European Parliament adopts resolutions on its own motion, and each EP committee is entitled to draw up legislative or non-legislative own-initiative reports. Examples include the ongoing own-initiative procedure on the implementation of the CRPD (Employment Committee)<sup>50</sup> and the European Parliament’s resolution on the list of issues from last year.<sup>51</sup>

On the other hand, every parliament is a prominent branch of the public power of any State party and in that sense tasked with the implementation of the CRPD. Where a parliament is part of an Article 33 (2) framework, the roles of implementation and monitoring do not appear to be fully decoupled.

However, the PETI Committee’s participation in the EU Framework can be seen as responding to a special situation at EU level. The European Disability Forum (EDF) provides information to persons with disabilities if they are discriminated, and may bring these to the attention of the responsible administrations and relevant mechanisms and even provide assistance in the process of seeking redress through third party interventions to the European Court of Human Rights and the European Committee on Social Rights. However, formal avenues are underdeveloped. The protection element appears reduced at EU level in the sense that access to justice for individuals is limited both in judicial and non-judicial procedures. Despite the slight improvements introduced in the Lisbon treaty, access for individuals to the Court of Justice of the European Union remains subject to limitations.<sup>52</sup>

FRA has a wide mandate to provide the EU and its Members States with “assistance and expertise” in the areas falling within the scope of EU law. However, the Agency is excluded from dealing with individual complaints.<sup>53</sup> Finally, the European Ombudsman is indeed entitled to receive complaints, but its mandate is limited to maladministration by the EU-institutions themselves. This leaves uncovered all issues that arise at EU level and are not related to maladministration. There is also no possibility of complaining to the Ombudsman about maladministration occurring in national, regional or local bodies and institutions. Even if not equipped with the powers of an Ombudsman institution, the PETI Committee can hear complaints. It receives around 2,000 petitions a year, with a small portion of currently 2% dealing with disability-related cases.<sup>54</sup> As already mentioned, the participation of an EP committee in the EU Framework also allows for a variety of measures to promote the implementation of the CRPD – for instance, through own-initiative resolutions, hearings, fact-finding missions and the like.

### **Involvement of disabled persons organisations and other actors**

With regard to civil society participation in the Article 33 (2) framework, the CRPD puts such involvement at the forefront of CRPD implementation without, however, requiring that civil society organisations or representatives necessarily form part of the framework. The

<sup>50</sup> [Implementation of the UN Convention on the Rights of Persons with Disabilities with special regard to the concluding observations of the UN CPRD Committee](#), 2015/2258(INI).

<sup>51</sup> [European Parliament resolution of 20 May 2015 on the List of Issues adopted by the United Nations Committee on the Rights of Persons with Disabilities in relation to the initial report of the European Union](#).

<sup>52</sup> There is a possibility to address the Court where an EU act, for instance, violates disability rights. Individuals may, however, only institute proceedings against an EU act if the latter is addressed to that person or is of direct concern to them (see Art. 264 TFEU, para. 4).

<sup>53</sup> See FRA founding regulation 168/2007, Consideration No. 15.

<sup>54</sup> Of the 952 petitions publicly ‘available to supporters’ in August 2015, about 2 % (26) made reference to disability. See European Parliament, [The protection role of the Committee on Petitions in the context of the implementation of the UN Convention on the Rights of Persons with Disabilities](#), Study for the PETI Committee, 2015.

mechanisms established at EU Member State level provide for the involvement of civil society through representatives of DPOs participating in the bodies forming the national frameworks. That a DPO itself forms (part of) a framework is the exception. This, however, is the case for the EU Framework, which includes the European Disability Forum, a Europe-wide umbrella organisation of DPOs, as one of its members. In terms of fundamental rights standards, nothing speaks in favour or against *specific forms* of involving civil society and DPOs. The main criterion is efficiency, so that Article 33 (3) of the CRPD does not remain black letter law but leads to a situation where persons with disabilities and their organisations are indeed “involved and participate fully in the monitoring process”.

In addition to the formal members of the EU Framework, more pluralistic involvement in Article 33 (2) activities could be ensured through the establishment of an advisory board or consultative committee supporting the framework. Other relevant EU institutions and bodies could include Eurostat, the Economic and Social Committee, the Committee of the Regions, and the European Court of Auditors, for example. From the civil society side, a consultative committee could include representatives of a range of DPOs and relevant NGOs.<sup>55</sup> Actors with strong links to the national level, such as European networks of national human rights bodies, namely the European Network of NHRIs, Equinet and the European Network of Ombudsmen, could also play an important role in guiding and supporting the work of the EU Framework.

The EU Framework’s composition, in addition to its status and efficiency (Section 2) and its tasks and coordination (Section 3), could be reviewed as part of an independent external evaluation after five years. A broader evaluation process could also make use of the possibility for the CRPD Committee, as part of its relationship with States parties to the convention, to enhance national capacities for CRPD implementation, as set out in Article 37 (2).

## FRA opinions

- ***Transparency, legal clarity and foreseeability are basic rule of law principles. Based on concluding observations of the Committee on the Rights of Persons with Disabilities (CRPD Committee) and of the Sub-Committee on the accreditation of national human rights institutions (SCA), as well as in light of practices at national level, it is FRA’s opinion that a legally binding act published in the EU Official Journal should provide the basis for the EU Framework implementing Article 33 (2) of the CRPD. Through the adoption of such an act, the EU would officially clarify, without further delay, both membership and tasks of the EU Framework. The act could take the form of a new EU decision (for instance based on Articles 19 and 114 of the Treaty on the Functioning of the EU), a revised version of the existing Code of Conduct or an interinstitutional agreement.***
- ***National practices across the EU show that national human rights institutions play a central role in Article 33 (2) frameworks. It is FRA’s opinion that such institutions are especially qualified to function as “independent mechanism” in the sense of Article 33 (2) of the CRPD. At the same time, based on concluding observations of the CRPD Committee and of the Sub-Committee on the accreditation of national human rights institutions (SCA), as well as in light of some Member State practices, it is FRA’s opinion that the EU Framework should reflect the diversity of relevant societal groups and actors. This can be achieved through procedures allowing for***

<sup>55</sup> For the FRA see Art. 10 of the FRA founding regulation 168/2007. See Kjaerum, M. and Toggenburg, G. N. (2012), [The Fundamental Rights Agency and Civil Society: Reminding the Gardeners of their Plants’ Roots](#).

***effective cooperation with these groups and actors, as well as by establishing consultative committees.***

- ***For the final composition of the EU Framework, the European Commission could request the CRPD Committee for capacity building (Article 37 (2) of the Convention on the Rights of Persons with Disabilities (CRPD)), technical advice and assistance (Article 36 (5) of the CRPD). When deciding on the final composition of the EU Framework, it is FRA’s opinion that relevant stakeholders, including disabled persons’ organisations (DPOs) are given the opportunity to provide their views.***

## 2. Status and efficiency of the independent mechanism

The CRPD provides in Article 33 (2) that parties to the CRPD “shall take [the Paris Principles] into account [...] when designating or establishing [independent] mechanism[s]”. Although this does not make the Paris Principles legally binding benchmarks, they do constitute a prominent source that guides parties when setting up their frameworks. This is reflected in the CRPD Committee’s concluding observations, which have stated that “the body designated further to article 33 (2) must comply with the Paris Principles”.<sup>56</sup>

The CRPD clearly links the principles to the ‘independent mechanism’ and not to the wider Article 33 (2) framework. It is reasonable, however, to take a wider view, as the principles offer standards not only on independence, but on efficiency relevant for the Article 33 (2) framework as a whole. In addition, the CRPD Committee does not always make a clear distinction between the two in its concluding observations, often referring only to “independent mechanisms” and not broader frameworks when making recommendations on Article 33 (2).<sup>57</sup> For example, the concluding observations on the EU speak of the “*independent monitoring framework*”, which gives the impression that Article 33 (2) would require the overall framework (and hence, presumably, all of its components) to be independent.<sup>58</sup>

The Paris Principles, read together with the General Observations by the International Coordinating Committee of National Institutions for the promotion and protection of human rights, generates an appropriate framework for the structure and content of this chapter. They provide guidance on the following four points considered relevant for the EU Framework:

- independence;
- adequate funding to ensure independence;
- requested or own-motion opinions;
- promoting legislative and practice compliance.

### Independence

As suggested under Article 33 (2), ‘one or more’ of the members of the Article 33 (2) framework should be an independent mechanism. For example, the CRPD Committee has called on a (non-EU) State party to “officially designate mechanisms to monitor the implementation of the Convention [...], involving both civil society and an institution fulfilling the Paris Principles”.<sup>59</sup> As the CRPD Committee underlined, in Member States where a single body acts as the framework, “this single body is required to be independent and comply with the Paris Principles”.<sup>60</sup> This is the case for most single-body frameworks, most obviously in those Member States where a national human rights body is the sole framework member – for example, Belgium, Croatia, Cyprus, Estonia, Germany, Latvia, Poland and Romania.

However, in Hungary, Italy, Portugal and Slovenia (all single-body frameworks), government representatives are among the members of the single-body frameworks, calling into

<sup>56</sup> Concluding observations on Gabon, para. 71.

<sup>57</sup> There is no reference to a framework in the concluding observations on Argentina, Austria, Brazil, Croatia, Czech Republic, El Salvador and Sweden, for example.

<sup>58</sup> See Concluding observations on the EU, paras. 76 and 77, as well as those on the Cook Islands, paras. 61 and 62.

<sup>59</sup> Concluding observations on El Salvador, para. 70.

<sup>60</sup> Draft Guidelines on the establishment of independent monitoring frameworks and their participation in the work of the Committee, para. 12.

question their ability to act independently. In its concluding observations on Portugal, the CRPD Committee recommended that “the State party adopts measures to ensure that the independent monitoring mechanism is in full compliance with the Paris Principles, in that no government representative should form part of it”.<sup>61</sup> Moreover, the concluding observations on Austria, where the focal point for CRPD implementation provides the framework’s secretariat and can participate in meetings in an advisory capacity, noted the Committee’s concern that “the monitoring committee [...] appears to lack the independence required by the principles relating to the status and functioning of national institutions for protection and promotion of human rights (the Paris Principles)”.<sup>62</sup>

In multi-component Article 33 (2) frameworks, not all members necessarily have the status of ‘independent mechanism’. In Lithuania, for example, an Ombudsman is the independent mechanism in a framework that also includes the Council for Disability Affairs. In its concluding observations, however, the CRPD Committee raised concern that the “Council falls under the mandate of the Ministry of Social Security and Labour” and recommended that “the State party: [...] [r]emove the Council for the Affairs of the Disabled from the independent monitoring framework and [...] expedite the establishment of an independent monitoring mechanism complying with the Paris Principles with the required expertise and with access to sufficient resources in accordance with article 33 (2)”.<sup>63</sup> In Finland (designate), Luxembourg, and the UK, however, all members are independent mechanisms.

### Adequate funding to ensure independence

The Paris Principles, as interpreted by the General Observations, specify that for compliance, the entity shall “have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding” – to ensure its independence.<sup>64</sup> “To function effectively, a National Human Rights Institution must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities. It must also have the power to allocate funding according to its priorities.” At a minimum, this represents “the allocation of a sufficient amount of resources for mandated activities”. Importantly, an NHRI “should have complete autonomy over the allocation of its budget”, although “it is obliged to comply with the financial accountability requirements applicable to other independent agencies of the State.”<sup>65</sup>

The CRPD Committee has underlined the central importance of adequate funding and human resources in its concluding observations. For instance, it expressed concern “that the monitoring committee [in Austria] does not have its own budget and appears to lack the independence required by the principles relating to the status and functioning of national institutions for protection and promotion of human rights (the Paris Principles).”<sup>66</sup> The Committee recommended “that [Austria] allocate a transparent budget for the Independent Monitoring Committee and give it the power to administer said budget autonomously.”<sup>67</sup>

The human and financial resources allocated to independent mechanisms – as well as Article 33 (2) frameworks or their constituent parts – to perform their functions under

<sup>61</sup> Concluding observations on Portugal, para. 63.

<sup>62</sup> Concluding observations on Austria, para. 52.

<sup>63</sup> Concluding observations on Lithuania, paras. 67-68.

<sup>64</sup> Paris Principles, Composition and guarantees of independence and pluralism-section, point 2.

<sup>65</sup> General Observations, 1.10.

<sup>66</sup> CRPD/C/AUT/CO/1, 30 September 2013, para. 52. A somewhat similar critique has been made about the situation in Germany, focusing on the availability of resources to monitor effectively. See CRPD/C/DEU/CO/1, 13 May 2015, para. 62.

<sup>67</sup> CRPD/C/AUT/CO/1, 30 September 2013, para. 52.

Article 33 (2) vary considerably across Member States. FRA received responses from 23 Member States in preparation for this opinion, not all of which provided information on resources. Among these, six national Article 33 (2) frameworks receive additional resources, while a further four either receive further resources in anticipation of being designated as the Article 33 (2) framework or will receive further resources once designated.<sup>68</sup> In some cases, additional resources have been provided, but under the auspices of the focal point designated under Article 33 (1) of the CRPD.<sup>69</sup>

### Requested or own-motion opinions

The Paris Principles, as interpreted by the General Observations, specify that for compliance, the entity shall have the power to submit “opinions, recommendations, proposals and reports on any matters” on “an advisory basis either at the request of the authorities concerned or through the exercise of its own power [...] without higher referral” to government or parliament.<sup>70</sup> Recommendations should be discussed by these bodies “in a timely manner” to ensure proper follow up.<sup>71</sup>

The responses received as part of the consultation for this opinion indicate that several Article 33 (2) frameworks can submit opinions, either of their own initiative or when requested by the government or parliament. This assistance takes many different forms and can address all three branches of government.

Several Article 33 (2) frameworks can deliver formal, but non-binding, legal opinions. In Latvia, for example, the ombudsman institution can submit proposals for legal amendments. In Hungary, the Article 33 (2) framework can give its opinion on draft legal acts and make proposals regarding the adoption or amendment of legal acts concerning the rights of persons with disabilities. Other contributions come during public hearings or inquiries – such as in Slovenia, where the Article 33 (2) framework gives opinions on laws and regulations regarding the rights of persons with disabilities; and in the United Kingdom, where the Article 33 (2) framework gave joint written and oral evidence to the UK parliament’s Joint Committee on Human Rights’ inquiry into the implementation of the right to independent living for persons with disabilities.

In addition, some Article 33 (2) frameworks can deliver opinions in judicial proceedings. The Latvian Article 33 (2) framework can submit legal opinions to the Constitutional Court regarding the rights of persons with disabilities, while the German framework also makes *amicus curiae* submissions.

### Promoting compliance

The Paris Principles, as interpreted by the General Observations, specify that the mechanism shall have the power to “promote and ensure the harmonisation of national legislation, regulations and practices with the international human rights instruments [...] and their effective implementation”.<sup>72</sup>

One such means is through handling complaints. Among the 13 responses to the consultation that referred to complaints, in 10 Member States Article 33 (2) frameworks – or one or more of their members – can receive complaints concerning violations of the rights of persons with disabilities. In most cases – for example, Croatia, Cyprus, Denmark, Finland (designate), Latvia, Lithuania and

<sup>68</sup> The Belgian, Danish and German frameworks received additional staff posts; the Danish and German frameworks also received significant additional funding.

<sup>69</sup> For example, in Italy and Austria.

<sup>70</sup> Paris Principles, Competence and responsibilities-section, point 3 (a).

<sup>71</sup> General Observations, 1.6.

<sup>72</sup> Paris Principles, Competence and responsibilities-section, point 3 (b). The Additional principles concerning the status of commissions with a quasi-jurisdictional competence of the Paris Principles would be relevant for situations where complaints would be processed.

Luxembourg – it is the ombuds organisation within the framework that receives complaints. In other Member States – for example, Belgium and the United Kingdom – some or all of the national human rights bodies comprising the Article 33 (2) framework can receive complaints. The Cypriot framework, for example, examines, on its own initiative or following complaints by persons with disabilities or disabled persons organisations, cases of non-implementation of the CRPD. Within the ambit of the legislation in force, the framework carries out consultation proceedings with the parties and may impose sanctions for violations of the principle of equal treatment or violations of the rights of persons with disabilities.

Many Article 33 (2) frameworks conduct research and analysis to support their work of promoting legislative and practical compliance with the CRPD. The German Article 33 (2) framework undertakes legal and social research, including data collection, which supports its advice to policymakers, public officials and courts on issues related to the CRPD. In Cyprus, Italy, Slovenia, Spain and the United Kingdom, among others, Article 33 (2) frameworks prepare reports, including recommendations, on the implementation of policies related to the CRPD.

Article 33 (2) frameworks also raise awareness of the CRPD, often through training. For example, the Belgian Article 33 (2) framework organised information sessions, a colloquium on social participation and quality of life of persons with disabilities, discussion panels, and training on the use of sign language. Similarly, the Northern Irish members of the United Kingdom Article 33 (2) framework facilitated the delivery of training on the CRPD for members of the Northern Ireland Assembly and officials working on the Northern Ireland Disability Strategy.

## Article 33 (2) mechanism at EU level

### Independence

The EU Framework appears equipped with independent mechanisms that can contribute to the role assigned under Article 33 (2) of the CRPD in different ways. With the European Ombudsman established by EU primary law, it is the TFEU itself that underlines that the Ombudsman “shall be completely independent in the performance of his duties. In the performance of those duties he shall neither seek nor take instructions from any Government, institution, body, office or entity.”<sup>73</sup> The Ombudsman is mandated to “conduct all the enquiries which he considers justified to clarify any suspected maladministration” in the activities of the European Union institutions and bodies either “on his own initiative or following a complaint”.<sup>74</sup>

While FRA is not mentioned in the treaties, its founding regulation stresses independence in four different contexts: the independence of the Agency as such,<sup>75</sup> the independence of the Director,<sup>76</sup> the independence of the Management Board members,<sup>77</sup> and the independence of the members of the Scientific Committee.<sup>78</sup> Article 16 of the regulation states: “The

<sup>73</sup> Art. 228(3) TFEU.

<sup>74</sup> Article 3 of the decision of the European Parliament on the regulations and general conditions governing the performance of the Ombudsman's duties, adopted on 9 March 1994 (OJ L 113, 4.5.1994, p. 15) and amended by its decisions of 14 March 2002 (OJ L 92, 9.4.2002, p. 13) and 18 June 2008 (OJ L 189, 17.7.2008, p. 25).

<sup>75</sup> See recital 20 and Art. 16 of Regulation 168/2007.

<sup>76</sup> See Art. 15 (5) of the founding regulation.

<sup>77</sup> See Art. 9, Art. 12 (1) lit a, and considerations 18 and 20 of the founding regulation.

<sup>78</sup> See Art. 14 (1) (3) of the founding regulation.



Agency shall fulfil its tasks in complete independence”. The term “complete” indicates that enhanced levels of independence are envisaged.<sup>79</sup>

Both the European Ombudsman and FRA are independent and dispose over a mandate that allows delivering on the tasks of promoting, protecting and monitoring; however, the Ombudsman is not a human rights body but a specialised institution that deals with complaints alleging maladministration, which may or may not include allegations involving fundamental rights, including disability rights. The scope of FRA’s mandate covers the whole spectrum of fundamental rights and thus goes far beyond the right to good administration. This also creates expectations vis-a-vis FRA in the context of the CRPD, and thus justifies having a second look at FRA’s independence – which, unlike for the European Ombudsman, is not guaranteed by EU primary law.

Contrary to other EU agencies, FRA’s Management Board is composed of independent experts instead of government representatives.<sup>80</sup> However, aside from these 28 members (plus an independent expert appointed by the Council of Europe), the Board also consists of “two representatives of the Commission”, who are not independent but represent the Commission. Contrary to the Paris Principles, they participate in the deliberations not “only in an advisory capacity”<sup>81</sup> – but their participation in the decision-making cannot veto any decisions by the Board<sup>82</sup> and does not affect the Agency’s overall independence.

FRA’s thematic priorities (the ‘Multiannual framework’, MAF) are decided – even if based on a consultation with the FRA Management Board<sup>83</sup> – by the Council of the European Union. This, however, is no form of ‘external programming’, as the MAF areas are formulated in a generic way and cover most areas relevant to the protection of fundamental rights, also explicitly including discrimination based on disability.<sup>84</sup> Moreover, the annual programming is left to the FRA Management Board and FRA’s Director, who are entirely independent in deciding what FRA does within the thematic areas listed in the MAF.<sup>85</sup>

<sup>79</sup> In a different context – that of national data protection authorities established under Directive 95/46/EC – but confronted with exactly the same wording, the CJEU held: “In relation to a public body, the term ‘independence’ normally means a status which ensures that the body concerned can act completely freely, without taking any instructions or being put under any pressure [...]. [T]he concept of ‘independence’ is complemented by the adjective ‘complete’, which implies a decision-making power independent of any direct or indirect external influence on the supervisory authority.” See Case C-518/07, *Commission v. Germany* (2010), ECR I-1885 [18, 19].

<sup>80</sup> Article 12 (1) of the Regulation specifies that “[t]he Management Board shall be composed of persons with appropriate experience in the management of public or private sector organisations and, in addition, knowledge in the field of fundamental rights”.

<sup>81</sup> See also [General Observation 1.9](#).

<sup>82</sup> Decisions in the Board are taken by majority (mostly simple majority) and there is no matter that requires unanimity (the sole exception is the decision on FRA’s language regime).

<sup>83</sup> On the upcoming Multiannual framework (2018–2022), see FRA’s [Management Board Opinion on a new Multi-annual Framework \(2018–2022\) for the agency](#), 12 February 2016.

<sup>84</sup> For various references in literature and analysis, see Toggenburg, G.N. (2013): ‘[Fundamental Rights and the European Union: how does and how should the EU Agency for Fundamental Rights relate to the EU Charter of Fundamental Rights?](#)’, *EUI Working Papers*, LAW 2013/13.

<sup>85</sup> This did not, however, prevent the Management Board from calling on the Commission to propose a revision of the [founding regulation](#) so that the MAF is adopted by the Management Board itself. In a letter dated 13 June 2013 and sent to Commissioner Viviane Reding, the Management Board argues as follows: “According to the current founding regulation the Agency’s activities are – as long as they are not carried out at the request of an EU institution but on the Agency’s own motion – confined to the Multiannual Framework as adopted by the Council of the European Union. However, according to CJEU jurisprudence the MAF can no longer be directly based on the founding regulation (as envisaged by its Art. 5). Therefore the new MAF was adopted on the basis of Art. 352 TFEU. In this sense the MAF becomes a ‘founding regulation on the side’. The Management Board therefore recommends that a revision of the regulation

## Requested or own-motion opinions

What appears problematic is that FRA is not entitled to issue opinions on its own motion on draft EU legislation. In light of the Paris Principles, it would be important for an independent mechanism in the EU Framework to be entitled to deliver expert assessments of draft EU legislation on its own motion. FRA can do so only if requested by the European Parliament, the European Commission or the Council of the European Union.<sup>86</sup>

Admittedly, the European Parliament – being part of the current framework – could as a matter of principle request FRA to issue opinions where upcoming EU legislation appears to raise issues from a disability rights perspective. However, in contrast to what was said above with regard to petitions to the PETI Committee, such an approach would not fully compensate for the lack of own-initiative opinions: in light of the Paris Principles, the monitoring component of the framework requires that such opinions can be delivered on own motion, even where the European Parliament – which is after all the co-legislator – does not wish to request such an opinion.<sup>87</sup>

In that sense, the situation in the area of disability law contrasts with the situation in the area of data protection. There the European Data Protection Supervisor (EDPS) examines whether EU acts raise issues with regard to the processing of personal data.<sup>88</sup> The legal document establishing the EDPS requires the Commission to consult the EDPS “when it adopts a legislative proposal relating to the protection of individuals’ rights and freedoms with regard to the processing of personal data”.<sup>89</sup> The EDPS has interpreted this mandate widely and looks at all

*“proposals which build on, supplement or amend the existing legal framework for data protection, and [...italics added ...] proposals which have a significant impact on the protection of individuals’ rights and freedoms with regard to the processing of personal data.’ What counts is the impact on the effectiveness of the protection itself, rather than the formal impact on the existing Community framework on data protection.”<sup>90</sup>*

In light of the CRPD’s strong emphasis on monitoring, it would appear appropriate for the area of disability law to profit equally from such independent expert input, which the area of data protection has done for many years. This would complement the existing possibility for civil society actors to comment on EU legislation (EDF monitors EU legislation and policies and gives technical advice to public authorities on the application of the UN Convention).

## Promoting compliance and adequate funding

With regard to the different activities national Article 33 (2) frameworks carry out, the EU Framework appears well equipped to deliver in a comparable way. As mentioned above, receiving and acting on complaints is possible through the European Ombudsman and the

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should establish that the MAF is to be adopted by the Management Board in close consultation with all the three EU institutions in order to ensure that it takes the respective priorities appropriately into account”.

<sup>86</sup> See Art. 4(2) of regulation 168/2007.

<sup>87</sup> Note that, formally speaking, the President of the European Parliament can request opinions from EU agencies and not single parliamentary committees. See Rule 139 of the European Parliament rules of procedure.

<sup>88</sup> See Art. 41(2) of regulation 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

<sup>89</sup> Art. 28 of regulation 45/2001.

<sup>90</sup> European Data Protection Supervisor: ‘[The EDPS as an advisor to the Community Institutions on proposals for legislation and related documents](#)’, policy paper, Brussels, 18 March 2005.

PETI Committee. FRA as well as EDF are conducting research and analysis and awareness-raising, including training.

The extent to which all members of the EU Framework can make their services under their specific mandates available under the EU Framework will depend on whether the necessary resources are available.

As mentioned above, the Paris Principles require human rights institutions to be “provided with an appropriate level of funding in order to guarantee [their] independence and [their] ability to freely determine [their] priorities and activities”. The Paris Principles thereby point to the need of meeting additional tasks (or an additional amount of already existing tasks) with sufficient resources, so that these do not only remain on paper but are executed in reality. In addition, the principle of efficiency requires that any institution tasked with specific duties should be equipped with the necessary resources – the same conclusion can be applied to the resources dedicated to, e.g., the European Parliament’s PETI Committee and the EDF. The respective needs can only be assessed if the concrete tasks are defined and agreed upon in an EU legally binding act. The latter could be inspired by the wording of the General Data Protection Directive, which requires Member States to provide the independent supervisory authorities

*“with the human, technical and financial resources, premises and infrastructure necessary for the effective performance of its tasks and exercise of its powers, including those to be carried out in the context of mutual assistance, cooperation and participation in the Board”.*<sup>91</sup>

## FRA opinions

- ***The members of the current EU Framework have distinct and largely complementary mandates. The European Ombudsman and FRA are well placed to perform the role of an Article 33 (2) ‘independent mechanism’ in the EU Framework. It is FRA’s opinion that the EU Framework should have the possibility to issue opinions on draft EU legislation with relevance to the rights of persons with disabilities. This option should be laid down in the legal document establishing the framework. Such independent external expert advice should be available independently from any EU institutions’ request.***
- ***In recognition of the independence and efficiency of Article 33 (2) frameworks, various Member States have provided them with additional resources. The assignment as framework includes new tasks, even if the mandates of the respective bodies remain unchanged. It is FRA’s opinion that, once the composition, tasks and respective roles in the EU Framework are properly provided for, the EU follows up on the CRPD Committee’s recommendation to provide “adequate resources to perform its functions”.***

<sup>91</sup> Art. 52 (5) of the [General Data Protection Regulation](#), text as agreed by the Council in December 2015. Article 52 addresses the independence of the data protection authorities.

### 3. Promotion, protection and monitoring – tasks of the Article 33 (2) framework

Article 33 (2) of the CRPD defines the overall purpose of the Article 33 (2) frameworks of the States parties to be “to promote, protect and monitor implementation of the present Convention”.

There is as yet no commonly accepted or authoritative guidance on the activities Article 33 (2) frameworks should carry out to fulfil the promotion, protection and monitoring requirements of Article 33 (2) of the CRPD. Nevertheless, some indication of the types of potential tasks falling under each heading can be found in the various records of the drafting of Article 33, as well as in subsequent documents stemming from the Office of the United Nations High Commissioner for Human Rights (OHCHR) (see Table 1). A general comment on Article 33 by the CRPD Committee could give authoritative guidance on tasks to be undertaken by Article 33 (2) frameworks to ensure full and effective promotion, protection and monitoring of the implementation of the convention.

**Table 1: Possible tasks for Article 33 (2) frameworks envisaged during the drafting of the CRPD, by different actors**

CRPD	Working groups drafting CRPD	Chair of Ad Hoc Committee drafting CRPD	Thematic study by the OHCHR on the structure and role of national mechanisms for the implementation and monitoring of the CRPD
Promote	Promoting awareness of the provisions of the convention		Scrutiny of existing national legislation, regulations and practices, as well as draft bills and other proposals, to ensure they are consistent with convention requirements
	Undertaking or facilitating research on the impact of the convention or of national legislation	Regularly examining the situation of persons with disability with a view to promoting and protecting their human rights	Provisions of technical advice to public authorities or other agencies in construing and applying the convention, including on the basis of observations and recommendations and general comments issued by the CRPD Committee
Protect	Hearing complaints about failures to observe the convention	Regularly examining the situation of persons with disability with a view to promoting and protecting their human rights	Investigation and examination of individual and group complaints
			Taking cases to court
			Conducting inquiries and issuing reports

<b>Monitor</b>	Monitoring national legislation, policies and programmes to ensure consistency with the convention	Making recommendations to relevant authorities with the aim of enhancing persons with disabilities' enjoyment of their Convention rights	Assessing progress, stagnation or retrogression in the enjoyment of rights over a certain period of time
	Developing a system for assessing the impact on persons with disabilities	Submitting proposals and observations concerning existing or draft legislation	Development of indicators and benchmarks
		Submitting proposals and observations concerning existing or draft policies and programmes	Monitoring human rights violations, for example through collecting or keeping records of complaints filed by alleged victims before relevant judicial or quasi-judicial complaints mechanisms, and other sources such as civil society organisations and DPOs

Source: FRA (2016), based on: Report of the working group, [footnote 114](#), cited in MDAC (2011), p. 15; [Discussion Text proposed by the Chair on Monitoring](#), 7th session, 16 January – 3 February 2006, cited in MDAC (2011), p. 15; and General Assembly, Human Rights Council (2009), *Thematic study by the Office of the United Nations High Commissioner for Human Rights on the structure and role of national mechanisms for the implementation and monitoring of the Convention on the Rights of Persons with Disabilities*, 22 December 2009, A/HRC/13/29. This guidance is reproduced in *Conference of States Parties to the Convention on the Rights of Persons with Disabilities (2014), National implementation and monitoring: note by the secretariat*, 1 April 2014, CRPD/SCP/2014/3.

The SCA understands 'promotion' to include "those functions which seek to create a society where human rights are more broadly understood and respected. Such functions may include education, training, advising, public outreach and advocacy. 'Protection' functions may be understood as those that address and seek to prevent actual human rights violations. Such functions include monitoring, inquiring, investigating and reporting on human rights violations, and may include individual complaint handling."<sup>92</sup> Submitting alternative (shadow) reports to the monitoring bodies at UN level is an important feature of NHRI interaction with the international human rights system.<sup>93</sup> The Paris Principles also establish annual reporting as an important element of efficiency and independence. In this context, the SCA considers it "important that the enabling laws of a National Institution establish a process whereby the Institution's reports are required to be widely circulated, discussed and considered by the legislature. It would be preferable if the National Institution has an explicit power to table reports directly in the legislature, rather than through the Executive, and in so doing to promote action on them."

The legal documents designating national Article 33 (2) frameworks in the EU tend not to specify their tasks. Instead, in most cases, it is the responsibility of the framework to

<sup>92</sup> SCA, General Observation 1.2.

<sup>93</sup> SCA, General Observation 1.4.

elaborate how it will promote, protect and monitor the implementation of the CRPD. Nevertheless, responses from the consultation for this opinion indicate that some tasks are commonly undertaken by national Article 33 (2) frameworks (see Table 2). Cyprus and Lithuania are notable exceptions; in these countries, the decisions designating the frameworks set out their general tasks.

**Table 2: Common tasks of national Article 33 (2) frameworks in the EU**

Promote	Protect	Monitor
Awareness raising, including organising and participating in events, publishing reports and other materials, communication activities (such as press releases and media activities), information campaigns.	Handling complaints and, in some cases, imposing sanctions where violations of the CRPD are found. As discussed in Section 2, not all frameworks have a mandate to handle complaints.	Thematic data collection on specific issues concerning the rights of persons with disabilities including, in a small number of cases, collection of statistical data.
Training and capacity building, including production of guides on the CRPD, seminars and trainings, and supporting DPOs to build up their monitoring capacities.	Some frameworks can initiate inquiries into potential non-compliance with the CRPD on their own initiative.	Reviewing national legislation, policies and programmes, including making recommendations, and submitting reports and legal opinions to government and other public authorities concerning CRPD implementation. Some frameworks also have a role in monitoring the implementation of national disability strategies and action plans.
Policy development, including supporting the preparation of action plans and other policy initiatives concerning the rights of persons with disabilities and the implementation of the CRPD.	Some frameworks have a mandate to bring complaints themselves, or to submit <i>amicus curiae</i> briefs.	Regular reporting, both to national authorities, including the government and parliament, as well as to the CRPD Committee as part of the review process as laid down in Article 35 of the CRPD.
	Some frameworks provide written or oral evidence during inquiries concerning the rights of persons with disabilities.	Members of a number of frameworks have a mandate to conduct monitoring visits to closed institutions, sometimes – but not exclusively (for example, Croatia) – under their role as National Preventative Mechanism under the Optional Protocol to the UN Convention against Torture.
CROSS-CUTTING TASKS		
Engagement with DPOs		
Cooperation with focal points and coordination mechanisms established under Article 33 (1)		

Source: FRA (2016)

The internal allocation of ‘who does what’ is often left to institutional practice. In multi-component frameworks, the allocation of tasks is often based on the mandates and specific roles of the individual members, without an additional formal cooperation agreement. It appears that in these cases it is assumed that the different mandates of the members of the framework suffice as a sort of ‘natural’ distribution of tasks.

The members of the UK framework, in contrast, have put in place several formal agreements regarding their respective work in the UK’s four constituent countries. In relation to work in Scotland, there is a formal agreement between the Equality and Human Rights Commission and the Scottish Human Rights Commission, while in Northern Ireland, there is a memorandum of understanding between the Northern Ireland Human Rights Commission (NIHRC) and the Equality Commission for Northern Ireland (ECNI).

## FRA opinions

- ***The legally binding EU act establishing the EU Framework should identify the framework’s key tasks. This could include activities undertaken as a framework or by one or more members. When identifying these key tasks, it is FRA’s opinion that attention needs to be paid as to whether these would constitute new and additional tasks for members of the EU Framework and thus require adequate resources.***
- ***The tasks of the EU Framework should reflect the three dimensions of Article 33 (2): promotion, protection and monitoring. Drawing on guidance from the Conference of States parties on the CRPD, as well as established practice in EU Member States, it is FRA’s opinion that the EU Framework should carry out the following tasks:***
  - ***Promotion: awareness raising activities; training and capacity building; mainstreaming and scrutiny of existing legislation and draft legislation for compliance with the CRPD; and the provision of support and assistance to the Union in construing and applying the CRPD.***
  - ***Protection: investigation and examination of complaints; conducting research and inquiries, on its own initiative; and issuing reports.***
  - ***Monitoring: data collection and analysis; development of indicators and benchmarks for assessing progress, stagnation or retrogression in the enjoyment of CRPD rights over time; active involvement in the review by the CRPD Committee of the EU’s implementation of the CRPD, including the submission of periodic alternative reports (shadow reports).***

## 4. Working arrangements of Article 33 (2) frameworks: internal coordination and external interaction

### Coordination and cooperation, including on communication

According to the information gathered during the consultation for this opinion, few multi-component national frameworks have established formal modes of cooperation for their various activities to promote, protect and monitor the implementation of the CRPD. One example of more formalised cooperation is between the two Northern Irish members of the UK framework. The Northern Ireland Human Rights Commission (NIHRC) and the Equality Commission for Northern Ireland (ECNI) established a CRPD Joint Committee – the purpose, membership and working methods of which are defined by Terms of Reference. The NIHRC and ECNI agreed on a common programme of work relating to: logo, publications, websites, legal opinions, policy opinions, platform events, engagement with persons with disabilities, and cooperation with focal points. They also issued framework papers outlining their responsibilities in promoting, protecting and monitoring the implementation of CRPD in Northern Ireland.

Particular modes of cooperation have also been set up by frameworks in Member States with a federal structure. For example, the Belgian Article 33 (2) framework has local contact points across the country, which can receive individual complaints and organise local activities to promote the CRPD. In addition to the federal monitoring committee in Austria, each of the country's nine provinces has set up its own regional monitoring mechanism.

In addition to national-level cooperation, many of the frameworks that include a national human rights institution cooperate at the European level through the European Network of NHRIs' CRPD working group. The working group provides a point of contact for national Article 33 (2) frameworks to develop and promote good practice and to coordinate their collaboration with international and European bodies. It also enables members to work jointly to influence the implementation of the CRPD and jurisprudence linked to the CRPD at the European and international levels.

One of the main ways multi-component frameworks coordinate their work is through regular meetings. Information from the consultation for this opinion indicates that the members of national frameworks meet at least once a year; the Hungarian framework meets at least every three months. In several Member States, the frequency of meetings reflects the current work of the framework, with more frequent meetings organised during the preparation of the shadow report to the CRPD Committee, for instance.

These meetings also offer an opportunity for frameworks to make decisions, often through voting. Where Member States provided information during FRA's consultation, it showed that, in Lithuania and the UK, all members have equal votes. In Slovenia, decisions are taken by a majority vote in which only representatives of disability organisations and professional institutions participate; the government representatives within the framework do not vote. Likewise, decisions of the Hungarian framework are taken by majority vote and take the form of a resolution published on the government website.



## Contribute to reports submitted to CRPD Committee

The Paris Principles, as interpreted by the General Observations, specify that for compliance, the entity shall be empowered “[t]o contribute to the reports [... and] to express an opinion on the subject, with due respect for their independence”.<sup>94</sup>

As of April 2016, the CRPD Committee has published concluding observations on nine EU Member States. In six of these, the monitoring mechanism contributed to the review process. In most cases, this took the form of submitting reports to the CRPD Committee concerning national implementation of the convention. By contrast, in Hungary, the Article 33 (2) framework commented on the implementation report by the government; similarly, the Italian framework prepared a report in conjunction with the Inter-ministerial Committee on Human Rights.

## Article 33 (2) framework at EU level

### Internal coordination and cooperation

Multi-component frameworks require enhanced levels of coordination and cooperation. This is of relevance to the EU Framework, which currently consists of four different actors. As shown above, multi-component frameworks at EU Member State level do not tend to establish more formal rules distributing tasks and roles. Much is left to institutional practice and regular meetings.

The practice of the current EU Framework is organised according to operating provisions adopted by consensus upon the framework’s formation in 2013, and is available on the current framework website.<sup>95</sup> These provisions address three issues:

- Working methods, including: guiding principles; decision-making; a coordinated annual work programme for the framework; annual meetings; and publicity and transparency.
- Framework chair, including: role of the chair; and appointment and rotation system.
- Framework secretariat, including: role of the secretariat, allocation of resources to fulfil the secretariat function, and appointment of the secretariat.

Based on the agreed working methods (‘operational provisions’), framework members have contributed to the promotion, protection and monitoring tasks individually within the remit of their respective competences and mandates. In addition, the framework developed a work programme for 2015–2016, setting out different activities under promotion, protection and monitoring, as well as the members involved in their implementation.

Meetings have not been organised regularly, but have taken place more frequently than once a year, particularly in the context of the EU’s review by the CRPD Committee during 2015.<sup>96</sup> These meetings take two forms: high level meetings between framework representatives with decision-making powers, and – more frequently – technical meetings between representatives of the services of framework members.

Between 2013 and late 2015, the roles of chair and secretariat of the Framework were performed by EDF and the European Commission, respectively. In November 2015, framework members – not including the European Commission, which had previously announced its intention to withdraw from the framework – decided unanimously that FRA

<sup>94</sup> Paris Principles, Competence and responsibilities-section, point 3 (d).

<sup>95</sup> See the [website](#) of the current EU Framework for the UN CRPD.

<sup>96</sup> For more information on the role of the EU CRPD Framework in the 2015 review process, see FRA (2016), *Fundamental Rights Report 2016*, Ch. 8 (forthcoming).

would take on both the chair and secretariat roles on an interim basis. Framework members also signalled their intention to revisit the existing operation provisions, in view of a possible merger of the chair and secretariat roles.

### **External communication**

Moreover, the information received during consultation suggests that multi-component frameworks at national level tend to communicate to their audience through their components rather than centrally as a framework. Arguably, at EU level, enhanced communication efforts are needed to reach out to the respective audiences, and special challenges of the transnational environment, including the diversity of languages, need to be addressed.

One important component of the EU Framework work programme was the development of a joint framework website, hosted by the European Commission as framework secretariat. Based on contributions from all EU Framework members, the website includes information on the membership, tasks and activities of the framework, as well as details on the scope of its work and relationship with national monitoring mechanisms. Meeting agendas and minutes, and the EU Framework work programme, are also available for download. The website is currently available in English, French and German, with easy-read and sign language summaries.

EU Framework members also regularly present their work, including work related to the framework, at external events organised both by other framework members and other actors. Participation in such events is publicised by individual framework members through their various communication channels.

### **Interact with the national Article 33 (2) frameworks**

Some national frameworks have systems in place at national level that also allow for coordination at vertical level. In fact, the CRPD Committee underlined that States parties with federal or decentralised administrations “should ensure that the national monitoring framework can properly discharge its functions at the federal, state/provincial, regional and local levels”. When monitoring frameworks exist at those levels, States parties “shall ensure that the federal or national monitoring framework can properly interact and coordinate its activities with state/provincial, regional, local or municipal monitoring frameworks”.<sup>97</sup>

It appears useful to establish channels of cooperation to allow the EU Framework to learn from national experiences (see also Section 1). Annual meetings between the EU Framework and representatives of national frameworks have taken place since 2013, allowing for sharing of information. In addition, the European Ombudsman, FRA and EDF are each observers of the CRPD Working Group of the European Network of NHRIs, and regularly attend its biannual meetings. Given the multilevel nature of the European Union, cooperation with other human rights bodies, as required by the Paris Principles, includes regular and constructive engagement with the Article 33 (2) frameworks established at national level. In fact, the concluding observations stress for the national level that this cooperation implies “develop[ing], formaliz[ing] and maintain[ing] working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights, including sub-national statutory human rights institutions, thematic institutions, as well as civil society and non-governmental organizations”.<sup>98</sup>

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<sup>97</sup> Draft Guidelines on the establishment of Independent Monitoring Frameworks and their participation in the work of the Committee, 20 April 2016, para. 16.

<sup>98</sup> SCA, General Observation 1.4.

## Interact with the CRPD Committee

In terms of tasks, the national frameworks perform a large variety of activities and tasks. At EU level, the framework's current composition allows for a wide set of activities, which at the same time underlines the need to prioritise. In line with the Paris Principles, the EU Framework should aim for active participation in the CRPD Committee's periodic review of the EU's implementation of the CRPD. The CRPD "encourages independent monitoring frameworks to actively engage and contribute at all stages of the reporting procedure", including by submitting alternative reports to the Committee and "independent written contributions commenting on the State party replies to the list of issues".<sup>99</sup> The SCA also underlines effective interaction with the international human rights system and stresses that this should include "submitting parallel or shadow reports to the Universal Periodic Review, Special Procedure mechanisms and Treaty Bodies Committees".<sup>100</sup> In addition to submitting periodic shadow reports to the CRPD Committee, as done by various national frameworks, this could include responses to the Committee's List of issues and proactive engagement with the Committee during the review process.

## FRA opinions

- ***To ensure the efficient and effective fulfilment of the EU Framework's tasks, it is FRA's opinion that the framework should closely cooperate with the European Commission and the coordination mechanism established under Article 33 (1) and establish structured means of engagement with stakeholders.***
- ***In addition to the 'framework-external' cooperation and coordination efficient coordination among the entities in the EU Framework is required. It is FRA's opinion that the EU Framework should develop a regular meeting schedule, such as once a quarter, with additional meetings organised as required. Meetings of EU Framework members could be complemented by open meetings in which relevant stakeholders are invited to participate.***
- ***In light of its experience of the first years of operation, the EU Framework intends to review the working methods as agreed by the current framework members ('operational provisions'). To increase transparency of its working methods, it is FRA's opinion that the EU Framework should agree in a written document on the detailed tasks for each member and its mode of coordination and cooperation. All stakeholders should have access to this document and EU Framework members should regularly review it on the basis of feedback from disabled persons' organisations (DPOs).***
- ***Regular communication regarding its activities can enhance the transparency of the EU Framework's work, as well as providing an avenue for feedback from other actors. It is FRA's opinion that one of the EU Framework's tasks should be the establishment of a joint Framework website, updated regularly with relevant information and events. A regular newsletter and the establishment of a central contact point for framework-related enquiries could complement the website information.***

<sup>99</sup> Draft Guidelines on the establishment of Independent Monitoring Frameworks and their participation in the work of the Committee, 20 April 2016, para. 21.

<sup>100</sup> SCA, General Observation 1.4.

- ***Honouring the specific nature of the EU as a party to the CRPD, regular exchange should take place between the EU Framework and national frameworks. The EU Framework should also cooperate with other relevant networks, such as the CRPD Working Group of the European Network of national human rights institutions. It is FRA's opinion that an annual meeting between the EU Framework and national frameworks should become standard practice, complemented by a mechanism for regular exchange of information and good practices.***