

Proposal of the CRPD Working Group of the European Group of National Human Rights Institutions regarding implementation of Article 33 of the United Nations Convention on the Rights of Persons with Disabilities by the European Union

1. Introduction

- 1.1 The European Group of National Human Rights Institutions (NHRI's) is one of four regional networks of NHRI's within the International Coordinating Committee (ICC) of NHRI's. It represents 35 NHRI's across Europe, including 22 NHRI's across the European Union. This proposal is made by the CRPD Working Group of the European Group of NHRIs. The role and objectives of the CRPD Working Group are set out at paragraph 1.3 below.
- 1.2 Article 33.2 of the United Nations Convention on the Rights of Persons with Disabilities envisages a central role for NHRI's acting as 'independent mechanisms', working within a wider framework to promote, protect and monitor implementation of the Convention by States Parties.
- 1.3 To this end, the European Group has convened a Working Group on the UN Convention on the Rights of Persons with Disabilities, chaired by the British Equality and Human Rights Commission. Its objectives are:
 - To provide a point of contact on disability rights among NHRIs, equality agencies, and other CRPD independent mechanisms, and between them and EU and CoE institutions, and other regional and international institutions working on CRPD issues
 - To identify develop and promote good practice guidance on the role and actions of NHRIs in promoting, protecting and monitoring implementation of the CRPD in the European Group and internationally
 - To co-ordinate participation of European NHRIs concerning CRPD at the Human Rights Council, the UNCRPD Committee, Conferences of State Parties and other CRPD-related events
 - To work together to influence the interpretation and implementation of the Convention and the development of jurisprudence in our own Countries, by the CRPD Committee and at the ECtHR and ECJ
 - To promote and support the most effective use of the CRPD Optional protocol
 - To assist the European Union Agency for Fundamental Rights (FRA) in any role assigned to it in relation to the EU as a party to CRPD
 - To promote ratification and implementation of CRPD throughout Europe and by the EU
- 1.4 In addition to a core membership of 'A' status NHRI's the Group has also granted observer status and will work collaboratively with a number of partners including the EU Agency for Fundamental Rights (FRA), the Office for the High Commissioner on Human Rights, Equinet and the European Disability Forum. Details of the members of the group and partners with observer status are set out in Annex 1.
- 1.5 The UNCRPD is the first international human rights convention which the European Community negotiated and signed and which the European Union has concluded,

acting as a 'Regional Integration Organisation' in accordance with Article 44 of the UNCRPD. All EU member states have signed the Convention.

- 1.6 Upon conclusion, the European Union agreed a Code of Conduct which set out arrangements for a 'focal point' and 'coordinating mechanism' at the EU level. Paragraph 13 of the Code says that 'the Commission will propose in due course an appropriate framework for one or several independent mechanisms in accordance with Article 33.2 of the Convention and on the involvement of civil society in accordance with Article 33.3.'
- 1.7 The CRPD Working Group welcomes the commitment of the European Commission to secure agreement on any such proposals by the end of 2011.
- 1.8 This paper details comments and proposals by the CRPD Working Group regarding arrangements under Article 33 for the European Union acting in its capacity as a 'regional integration organisation'. In developing these proposals, the Group has consulted the European Disability Forum, Equinet and the EU Agency for Fundamental Rights.
- 1.9 In elaborating its position, the CRPD Working Group has placed the greatest priority on the need to proceed urgently with the tasks of promoting and protecting disabled people's fundamental rights in the EU. The undertaking of this important work cannot and should not be delayed indefinitely pending a 'perfect solution' to the challenge of implementing Article 33 at the EU level.
- 1.10 Nevertheless, the Group believes that the intentions of the drafters of UNCRPD can and must continue to be fully respected in any model proposed for the EU. Our proposal therefore seeks to provide an accommodation between these two principles.

2. Summary of proposals

- 2.1 With respect to Article 33.1, the CRPD Working Group questions whether the designation of the roles of focal point and coordinating mechanism to existing mechanisms and structures without any reform is sufficient in terms of signalling the shift in paradigm envisaged by UNCRPD, the fact that the Convention is the first and to date only international human rights Convention to which the EU is party and the new responsibilities this brings. The Eurogroup is interested in the proposals of the European Disability Forum¹ to this end and would welcome involvement in further discussion with the European Commission regarding their proposals.
- 2.2 Further, the CRPD Working Group would welcome clarity regarding the development and implementation of transparent and robust processes by which UNCRPD will inform the strategies, policy and decision making of the EU and its institutions.

¹ EDF VIEWS ON THE INSTITUTIONAL FRAMEWORK UNDER ARTICLE 33 OF THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES, European Disability Forum

- 2.3 With respect to Article 33.2, it is the view of the CRPD Working Group that it is not possible to fulfil the requirements of Article 33.2 at the EU level based on any existing institutional arrangements. This is because the EU does not at present enjoy a supra-national, Paris Principles-compliant human rights institution. Hence to meet the requirements of 33.2, the EU will need to 'strengthen or establish' one or more independent mechanisms.
- 2.4 The CRPD Working Group considers that the EU Agency on Fundamental Rights (FRA) could be reformed in such a way as to enable the EU to comply with Article 33.2.
- 2.5 In the meantime, the CRPD Working Group proposes the following:
- a) That the FRA is assigned key tasks relevant to the responsibilities set out under 33.2 and within its competence via the multi-annual framework ² and provided with the resources commensurate with the tasks.
 - b) That the Commission extends a formal request to the FRA that in discharging these tasks it must do so with the active involvement of and partnership with those bodies central to independently promoting, protecting and monitoring Article 33 across the European Union, including members of the European Group of NHRI's, Equinet and the European Disability Forum (EDF)
 - c) That the Commission recognises the role of the European Group of NHRI's (including the CRPD Working Group), Equinet members and EDF members in relation to undertaking some of the tasks associated with Article 33.2 and routinely engages and involves the organisations in the processes by which it plans to implement the Convention
 - d) That the European Commission makes clear its expectation to the European Ombudsman that it should receive and investigate complaints related to UNCRPD compliance by EU institutions
 - e) That a timetable is set for full compliance with Article 33.2 and clear processes put in place to work towards this goal
- 2.6 Details regarding FRA, the European Group of NHRI's, Equinet and EDF are included in Annex 2.
- 2.7 The European Commission should not use the term 'independent mechanism' to describe bodies or arrangements which do not accord with the Paris Principles.
- 2.8 The Commission should promote the designation, strengthening or establishment of independent mechanisms (NHRI's) across Member States.
- 2.9 In meeting Article 33.3, the European Commission should put in place a mechanism to stimulate and support the development of disabled people's organisations across the European Union. Any such mechanism should involve the active participation of disabled people. Further, the Commission should establish clear structures and processes to facilitate the active participation of disabled people in relation to implementing the Convention.

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:063:0014:0015:EN:PDF>

3. Article 33.1 - focal point and coordinating mechanism

- 3.1 The CRPD Working Group welcomed the publication of a Code of Conduct alongside the EU's conclusion of UNCRPD in December 2010.
- 3.2 However, the Group does not feel confident that designation of the roles of focal point and coordinating mechanism to existing structures is of itself sufficient to ensure effective implementation of UNCRPD. To this end we are interested in and would welcome involvement in discussions regarding the proposals of the European Disability Forum in its paper 'EDF views on the institutional framework under Article 33 of the United Nations Convention on the Rights of Persons with Disabilities'³.
- 3.3 The CRPD Working Group welcomes the integration of UNCRPD into the 2010-20 European Disability Strategy, the annual work forums and the proposals outlined in the associated Commission Staff Working Document concerning both effective governance to implement UNCRPD and action to comply with the substantive obligations of UNCRPD and looks forward to further details. In particular, we would welcome further clarity regarding:
- a. How existing legislation and policy has or will be systematically appraised against the relevant UNCRPD articles
 - b. What processes will be put in place to assess the impact of proposed policy and legislation on implementation of UNCRPD, such as a UNCRPD impact assessment (either as a separate instrument or development of the existing fundamental rights impact assessment)
 - c. How disabled people and their organisations be involved in the implementation mechanisms and processes
 - d. How member state level independent mechanisms will be engaged in the monitoring and reporting process

4. Article 33.2 - a framework including one or more independent mechanisms

- 4.1 Article 33.2 of the UNCRPD requires States to 'designate, strengthen or establish a framework including one or more independent mechanisms to promote, protect and monitor implementation of UNCRPD'.
- 4.2 The Convention goes on to say that '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.' The principles referred to are the UN Paris Principles - the normative standards regarding the constitution and mandate of NHRI's.
- 4.3 The European Union does not presently have a supra-national NHRI and the Paris Principles were not drafted with regional mechanisms in mind. As a consequence the

³ <http://www.edf-feph.org/Page.asp?docid=25005&langue=EN>

EU does not enjoy institutional arrangements which are sufficient to be designated as a single 'independent mechanism'.

- 4.4 In order to meet Article 33.2, the EU will therefore be required to either strengthen or establish one or more independent mechanisms.
- 4.5 The preference of the CRPD Working Group is to strengthen the EU Agency for Fundamental Rights (FRA) in order that it can be designated this role.
- 4.6 However, the group recognises that such reform may not be immediately forthcoming and does not wish this to act to prevent the essential tasks associated with Article 33.2 - to promote, protect and monitor implementation - from being carried out.
- 4.7 Therefore the CRPD Working Group proposes the following:
- a) That the FRA is assigned key tasks relevant to the responsibilities set out under 33.2 and within its competence via the multi-annual framework and provided with the resources commensurate with carrying out these tasks. In particular, the FRA should lead on promoting and monitoring implementation of UNCRPD. The FRA is the only single fundamental rights agency with a pan EU remit, with a relevant mandate and with existing relationships with NHRI's, equality bodies and civil society organisations
 - b) That the Commission extend a formal request to the FRA that in discharging these tasks it must do so with the active involvement and partnership with those EU bodies who will play a central role in promoting, protecting and monitoring implementation of the Convention including the EU members of the European Group of NHRI's, Equinet members and European Disability Forum (EDF). This will inject an added degree of independence into the process by which the FRA carries out the assigned tasks, bring the collective expertise of the other bodies to the table, provide an independent range of linkages between the FRA and EU member states, help ensure disabled people are involved in the monitoring process and allow for gaps in FRA's mandate to be plugged, especially in relation to protection.
 - c) That the Commission recognises the role of the EU members of the European Group of NHRI's, Equinet members and EDF in relation to undertaking some of the tasks associated with Article 33.2 and routinely engages and involves the organisations in the processes by which it plans to implement the Convention
 - d) That the European Commission makes clear its expectation to the EU Ombudsman that it should receive and investigate complaints related to UNCRPD compliance by EU institutions
 - e) That a timetable is set for full compliance with Article 33.2 and clear processes put in place to work towards this goal
- 4.8 Whilst welcoming and supporting the development by States of broad-based frameworks for implementation under Article 33.2 – in which NHRIs will play a variety of roles and in which a range of other actors will have significant roles to play - the CRPD Working Group strongly discourages the use of the term 'independent mechanism' to describe organisations which do not meet the Paris Principles. Doing so undermines the intention of the drafters of UNCRPD and the evolution of NHRIs across member states.

4.9 The Group therefore also encourages the European Commission to address Article 33.2 by promoting the designation, strengthening or establishment of independent mechanisms (NHRI's) in all Member States.

5. **Article 33.3 - the active participation of disabled people's organisations**

5.1 Article 33.3 builds upon an underlying principle of the UNCRPD by placing responsibilities upon States Parties to promote the active participation of disabled people's organisations (DPO's) in monitoring implementation.

5.2 The existence, maturity and capacity of DPO's vary considerably across member states. Even many well established DPO's are struggling to survive in the face of the hostile economic environment.

5.3 Hence the CRPD Working Group proposes a specific EU sponsored initiative to strengthen and build the capacity of DPO's across member states, linked explicitly to the implementation of Article 33.3. Any such initiative will only enjoy credibility if it includes the active participation of disabled people, hence we would anticipate a leading role for the European Disability Forum (potentially in partnership with others such as the European Network on Independent Living). NHRI's and equality bodies have a clear role to play as partners in any such process, sharing expertise, information and intelligence.

5.4 Reflecting the cross-cutting nature of disability, the Commission should in addition to DPO's strive to engage and build the capacity of a broad base of civil society actors in relation to disability including those focused on such areas as children's rights, women's rights, the rights of ethnic minorities including Roma, lesbian, gay, bisexual and transgender rights and mainstream human rights organisations.

Annex 1

Members of the CRPD Working Group of the EuroGroup of NHRIs

Equality and Human Rights Commission, Great Britain (chair of the working group)
Consultative Commission of Human Rights of Luxemburg
Danish Institute for Human Rights
French Nationale Consultative Commission on Human Rights
German CRPD Monitoring Body / German Institute for Human Rights
Northern Ireland Human Rights Commission
Office of Public Defender of Georgia
Scottish Human Rights Commission
Swedish Equality Ombudsman

Observers

Equality Commission for Northern Ireland
Belgian Centre for Equal Opportunities and Opposition to Racism
Romanian Institute for Human Rights
Ombudsperson Institution Republic of Kosovo
Equal Treatment Commission of the Netherlands
Austrian Monitoringcommittee/Büro des Unabhängigen Monitoring-Ausschusses
EU Agency for Fundamental Rights (FRA)
European Disability Forum (EDF)
EQUINET Secretariat - European Network of Equality Bodies
Council of Europe Commissioner for Human Rights
Office of the UN OHCHR / Regional Office for Europe

Annex 2

The European Union Agency for Fundamental Rights (FRA)

The European Union Agency for Fundamental Rights (FRA) is an advisory body of the European Union. It was established in 2007 by a legal act of the European Union and is based in Vienna, Austria.

The FRA helps to ensure that fundamental rights of people living in the EU are protected. It does this by collecting evidence about the situation of fundamental rights across the European Union and providing advice, based on evidence, about how to improve the situation. The FRA also informs people about their fundamental rights.

http://www.fra.europa.eu/fraWebsite/home/home_en.htm

The European Group of National Human Rights Institutions

The European Group of NHRIs is one of four regional networks of national human rights institutions within the International Co-ordinating Committee of NHRIs (the ICC). Full membership of the Group is restricted to those human rights commissions and ombudsman agencies deemed by the ICC to be fully compliant with the United Nations-endorsed Paris Principles, hence accredited with "A status" by the peer review process carried out by an ICC subcommittee in close liaison with the Office of the United Nations High Commissioner for Human Rights. "A status" institutions gain special access to the Human Rights Council, UN treaty committees and other elements of the UN human rights system. National institutions without "A status" may attend Group meetings by invitation, but may not vote or take office.

The European Group co-ordinates joint action by NHRIs across the Council of Europe region, including by way of conferences and thematic working groups. It is chaired by the Scottish Commission for Human Rights.

Equinet

Established in 2007, EQUINET - the European Network of Equality Bodies brings together 33 member organisations from 28 European countries. Equality Bodies were established across the Member States of the European Union to promote equality and to combat discrimination in the areas covered by the EU Equal Treatment Directives.

<http://www.equineteurope.org/>

The European Disability Forum

The European Disability Forum is an independent NGO that represents the interests of 80 million Europeans with disabilities. It is run by people with disabilities and was created in 1996 by its member organisations to make sure decisions concerning disabled people are taken with an by disabled people.

<http://www.edf-feph.org/>

The European Ombudsman

The European Ombudsman investigates complaints against the institutions and bodies of the European Union (EU). You can complain to the Ombudsman about maladministration in the activities of these institutions and bodies.

The European Ombudsman cannot investigate complaints against national, regional or local administrations in the Member States, even when the complaints are about EU matters. Many of these complaints could be addressed to national or regional ombudsmen or committees on petitions in national or regional parliaments. Contact details for all national and regional ombudsmen and committees on petitions in the EU are available on the European Ombudsman's website: <http://www.ombudsman.europa.eu>