



**Annex to DOC-B-17-02-07**

## **Update on the CRPD**

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### **EDF response to the urgent recommendations of the UN CRPD Committee to the EU**

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#### **SUMMARY**

The European Union received recommendations from the UN CRPD Committee in September 2015. These recommendations are known as the ‘concluding observations’ (CO) , and they give clear guidance to the EU on how to better promote, protect and ensure the rights of persons with disabilities in the EU. EDF and its members have been actively involved in the review process of the EU before the UN CRPD Committee and submitted an alternative report in 2015.

The next report of the EU to the UN CRPD Committee is expected in January 2021. However, the Committee requested the EU to submit within 12 months of the adoption of the CO information in writing on three urgent matters. The EU has to explain what measures it has taken to implement the Committee’s recommendations set out in paragraphs 17, 29 and 77, regarding the declaration of competence, the European Accessibility Act and the monitoring mechanism.

EDF welcomes the responses provided by the EU on 13 January 2017 and the significant progress made by the EU on the three urgent recommendations such as the publication of the progress report on the implementation of the European Disability Strategy 2010-2020, the publication of the proposal for an European Accessibility Act and the withdrawal of the European Commission from the EU Monitoring Framework.

With this document, EDF provides its alternative response to the three urgent recommendations and calls on the UN CRPD Committee to recommend the EU

- to complete and update the Declaration of Competences, its list of policy areas to which the Convention applies and include all instruments which are recently adopted and which affect persons in general. This review of the Declaration of Competences should be based on the legislative review that the Committee asks for in paragraph 9 of the Concluding Observations. All instruments mentioned in the EU initial report should be included in the Declaration of Competences. The Committee also noted that the review of the EU's competences should take place on a regular basis. EDF requests to have a review of the Declaration of Competences with each review process of the EU report before the CRPD Committee;
- to promptly adopt an amended European Accessibility Act that is aligned to the CRPD, as developed in the Committee's General Comment No. 2 (2014) on accessibility, including a wide scope of application, effective and accessible enforcement and complaint mechanisms. The process of adoption should ensure the participation of persons with disabilities, through their representative organizations, in the adoption process;
- to allocate the necessary financial and human resources to the EU Monitoring Framework so that it has the capacity in itself to fully deliver the tasks of protecting, promoting and monitoring the CRPD in line with the Paris Principles. The EU Monitoring Framework members (the European Parliament, the European Ombudsman, the European Agency for Fundamental Rights and the European Disability Forum) require further resources to perform the new and additional tasks they have with regards to monitoring the CRPD as a Framework member.

## INTRODUCTION

This document presents a response from the European Disability Forum (EDF) to the three urgent recommendations of the CRPD Committee to the EU and an alternative item under Article 33 CRPD. EDF is an independent NGO that represents the rights of 80 million Europeans with disabilities. EDF is a unique platform organisation including a wide range of members- National Councils of Persons with Disabilities and European wide DPOs, and a range of European, International and national

ordinary and associate members. EDF developed this response as a membership network - developing joint analysis and recommendations. Consultation also took place with other civil society organisations, equality bodies and the other members of the EU Monitoring Framework during a Civil Society Hearing at the European and Economic Social Committee on 14 September 2016. EDF members and partners were also consulted and had the opportunity to comment on EDF's response prior to submission to the CRPD Committee.

The three urgent recommendations of the CRPD Committee are the following:

- paragraph 17 of the CO: "The Committee recommends that the European Union regularly update the Declaration of Competence and its list of instruments to include recently adopted instruments and instruments that may not specifically refer to persons with disabilities, but that are relevant to persons with disabilities". (Article 4 CRPD)
- paragraph 29 of the CO: "The Committee recommends that the European Union take efficient measures towards the prompt adoption of an amended European Accessibility Act that is aligned to the Convention, as developed in the Committee's General Comment No. 2 (2014) on accessibility, including effective and accessible enforcement and complaint mechanisms. The Committee also recommends that the European Union ensure the participation of persons with disabilities, through their representative organizations, in the adoption process".(Article 9 CRPD)
- paragraph 77 of the CO: "The Committee recommends that the European Union take measures to decouple the roles of the European Commission in the implementation and monitoring of the Convention, by removing it from the independent monitoring framework, so as to ensure full compliance with the Paris Principles, and ensure that the framework has adequate resources to perform its functions. The Committee also recommends that the European Union consider the establishment of an inter-institutional coordination mechanism and the designation of focal points in each European Union institution, agency and body".(Article 33 CRPD)

## **EDF ALTERNATIVE RESPONSE ON THE IMPLEMENTATION OF THE THREE URGENT MATTERS**

### **ARTICLE 4 CRPD –REVIEWING THE EU DECLARATION OF COMPETENCES**

The EU is the first inter-governmental organisation to ratify any UN human rights treaty. It is equally the first state party which had to develop a Declaration of Competences clarifying the extent of their competence with respect to matters governed by the CRPD (Article 44 CRPD).

The Declaration of Competences produced by the EU upon concluding of the CRPD is critical. It should set the example for other regional integration organisations wishing to conclude the CRPD. EDF stresses that it is important that it is done correctly by the EU. The EU highlighted in the Declaration itself and in its response to the Committee that ‘the scope and the exercise of Community competence are, by their nature, subject to continuous development and the community will complete or amend this Declaration, if necessary’.

The Committee has analysed for the first time in 2015 the obligations of a regional integration organisation under article 44 CRPD. The recommendations to the EU in its Concluding Observations were a first important opportunity to create jurisprudence on this article. However, more guidance is needed on how a regional integration organisation should undertake this task.

EDF welcomes the publication of a comprehensive and up-to-date overview of EU legal acts referring to matters governed by the CRPD as an annex to the progress report on the European Disability Strategy 2010-2020.

The overview should however be completed and include a list of policy areas to which the Convention applies and all instruments which affect persons in general, not only the ones which have a specific reference to persons with disabilities.

A future review of the Declaration of Competences should also be based on the legislative review that the Committee asked for in paragraph 9 of the Concluding Observations. All instruments mentioned in the EU initial report and future periodic reports should be included in the Declaration of Competences.

The Committee also noted that the review of the EU’s competences should take place on a regular basis. EDF requests to have a review of the Declaration of Competences with each review process of the EU report before the CRPD Committee.

#### **ARTICLE 9 CRPD –EUROPEAN ACCESSIBILITY ACT**

The European Commission fulfilled its commitment to publish the [Proposal for an European Accessibility Act](#) on December 2<sup>nd</sup> 2015. The Proposal is now under discussion at the Council of the EU and the European Parliament, and it is not sure when it will be adopted. . Once it is adopted and, after a transition phase which may take several years, enters into force, the Act will ensure that some products and services in Europe become accessible for persons with disabilities.

EDF welcomed the proposal for the European Accessibility Act and has analysed the published draft against the CRPD. EDF recommends the following issues to be amended to ensure its compliance with the CRPD:

1. Scope: The number of different kinds of products and services to be made accessible in the proposed Accessibility Act is very limited compared to the requirements set out by the CRPD. It only covers smartphones, tablets and computers, ticketing machines and check-in machines, televisions and TV

programmes, banking and ATMs, e-books, and online shopping. Therefore, the scope of application of the Act should be extended to include also the built environment and transport. The buildings where a product is sold or a service is provided should be made accessible. If not, this would lead to a situation where parts of a service can be accessible, and other parts not, rendering the service itself inaccessible. An example could be an accessible ATM that is situated inside an inaccessible bank.

2. Disproportionate burden: the Proposal includes the possibility for manufacturers to call upon the disproportionate burden clause and to not make a good or services accessible. This important concept needs to be clarified so it does not provide an easy way out to avoid making mainstream products and services accessible.
3. Enforcement: EDF calls on the national enforcement bodies to receive a strong mandate and the capacity for monitoring and enforcing the application of the Act. The Act should foresee an easy to use complaint mechanism, and an appropriate penalty system.

EDF will continue to work with the European Commission, the European Parliament and the Council of the EU for a swift adoption of an Act that is in line with the CRPD.

EDF would also like to recall here the necessity for the EU to make progress towards the adoption of the proposed Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation.

## **MORE INFORMATION**

- [EDF's web page dedicated to the Accessibility Act](#)
- [EDF's initial response to the proposal of the Act \(PDF version\)](#)
- [EDF's initial response to the proposal of the Act \(Word version\)](#)
- [EDF members' positions on the Act](#)
- [the European Commission's proposal of the Act](#)
- [Frequently Asked Questions \(FAQ\)](#)

## **ARTICLE 33 CRPD- FOCAL POINT AND EU MONITORING FRAMEWORK**

The recommendation that the CRPD Committee made with regards to the EU Monitoring Framework is very important. It is the first time that the Committee has

examined a regional integration organisation and made an accurate recommendation calling for its independence and resources.

EDF welcomes the progress that the EU has made in relation to its independent monitoring mechanism. The recommendation on article 33 CRPD was quickly followed up by the European Commission who informally withdrew itself from the Framework since they stopped going to the meetings of the Framework. The withdrawal was formalised with the [approval](#) of the European Commission's proposal by the Council of the EU on January 10<sup>th</sup>.

However, the second part of the UN CRPD Committee's recommendation calling for the provision of adequate resources for the performance of its functions has not been implemented yet.

EDF calls on the EU to allocate the necessary financial and human resources to the EU Monitoring Framework so that it has the capacity in itself to fully deliver the tasks of protecting, promoting and monitoring the CRPD in line with the Paris Principles. The EU Monitoring Framework members (the European Parliament, the European Ombudsman, the European Agency for Fundamental Rights and the European Disability Forum) require further resources to perform the new and additional tasks they have with regards to monitoring the CRPD as a Framework member.

Another aspect is the importance of a strong focal point within the European Commission. The Committee rightly recommended a robust set of focal points and a coordination mechanism to be set up by the EU. This recommendation is particularly important within the EU institutions' context since the decision making process is complex. The Commission is the focal point for the CRPD, and the informal arrangement is that this focal point is in Directorate General (DG) Employment and Social Affairs. However, the Commission handles human rights and discrimination issues in DG Justice. If the EU is a human rights leader worldwide, it's EDF's view that the focal point for the CRPD should be in DG Justice.