

ALTERNATIVE REPORT

For the second review of the European Union by the
Committee on the Rights of Persons with Disabilities
(UN CRPD)



By Mental Health Europe (25 February 2022)

Mental Health Europe's alternative report for the second review of the European Union by the Committee on the Rights of Persons with Disabilities

About Mental Health Europe (MHE)

[Mental Health Europe](#) (MHE) is the largest independent European non-governmental network working in the field of mental health. We are committed to the promotion of mental well-being, the prevention of mental distress and improvement of care. We advocate for social inclusion and the protection of the rights of (ex)users of mental health services, persons with psychosocial disabilities, their families and carers. We also raise awareness of mental health to end mental health stigma and discrimination.

MHE represents associations and individuals in the field of mental health including users of mental health services, their supporters, professionals, service providers, human rights experts and volunteers. We work closely with the European Institutions and international bodies to mainstream mental health in all policies and end mental health stigma. For a better understanding of the essence of our work, check our [Mental Health Europe explained](#) page and [our introductory video](#).

Context

The European Union (EU) ratified the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD) in 2010. In 2015, it was reviewed for the first time by the Committee on the Rights of Persons with Disabilities (UN CRPD Committee).

As a unique economic and political union between 27 Member States, the EU listed the areas in which it has an exclusive or shared competence with its Member States vis-à-vis the implementation of the UN CRPD. The EU has exclusive competence about the compatibility of state aid with the common market and the common custom tariff. It shares competence with Member States on actions to **combat discrimination towards persons with disabilities**, improve **free movement of goods, persons, services and capital** agriculture, transport by rail, road, sea and air transport, taxation, internal market, **equal pay regardless of gender, disability or other grounds of discrimination**, Trans-European network policy and statistics. It also shares competence with Member States towards developing a **coordinated strategy for employment**.

The declaration of competence also contains a list of EU laws and regulations that are relevant for the implementation of the UN CRPD on topics related to accessibility, equality, independent living standards, social inclusion, work and employment, personal mobility, statistics and data collection, and international cooperation.

Methodology

MHE created an ad-hoc working group to support the preparation of our alternative report. The working group was composed of MHE's members knowledgeable on human rights and psychosocial disability, including experts by experience, and/or expert in one or more of the topics covered by the UN CRPD. The alternative report was drafted by MHE's Brussels office and reviewed by the ad-hoc working group and MHE Board.

Information was collected through desk research starting from [MHE's 2019 Implementation report of the UN CRPD recommendations](#).

Abbreviations and acronyms

EEG	European Expert Group in the transition from institutional to community-based care
EU	European Union
MHE	Mental Health Europe
UN CRPD	United Nations Convention on the Rights of Persons with Disabilities
UN CRPD Committee	Committee on the Rights of Persons with Disabilities

Glossary

Mental health is [defined by the World Health Organisation \(WHO\)](#) as “a state of well-being in which every individual realizes his or her own potential, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to her or his community.” Mental health is an integral part of everyone’s general health, and is as valuable and important as physical health.

Mental health problems are the opposite of good mental health. It is a state where a combination of factors, such as a person’s life, social, economic and cultural environment, negatively influence their well-being. Mental health problems can prevent a person to reach the highest possible level of wellbeing if paired with societal barriers.

Psychosocial disability is an internationally recognised term, in particular by the United Nations, to describe the experience of people who have mental impairments which, in interaction with various societal barriers, may hinder the full realisation of their rights.

The **psychosocial model of disability** frames psychosocial disability as a human experience. Distress is caused by a variety of factors including wider socio-economic issues, challenging or traumatic life events and personality. With this model, a psychosocial disability is a mental health problem which, when combined with barriers in society, becomes disabling. The psychosocial model differs from the biomedical model of disability, which frames psychosocial disability as an illness mainly caused by biomedical factors and genetic predisposition.

This term **experts by / through experience** is often seen as an equivalent of ‘person with lived experience’. It refers to a person who has or had experience of mental health problems and has gained expertise in their own experience.

Co-creation is an approach through which persons with psychosocial disabilities, their supporters, service providers and other actors work together on an equal basis and value the essential knowledge each contribute.

For more information and explanations on terms and words related to psychosocial disabilities, please consult [MHE glossary and guidance](#).

Review of General Provisions of the UN CRPD

Articles 1 to 4: General principles and obligations

- **Ratification of the Optional Protocol**

The EU has not ratified the Optional Protocol of the UN CRPD.

Suggested question:

What are the measures and timeframe of the European Union to fully implement the ratification of the Optional Protocol to the Convention?

- **Review of EU legislation to harmonise it with the UN CRPD**

To date the EU has not conducted a review of its legislation to ensure the full harmonisation with the provisions in the UN CRPD, as recommended in the 2015 Concluding Observations.

Additionally, in a number of documents including pieces of legislations, publications or web pages, inappropriate terminology continues to be used, despite the UN CRPD. These are widely prevalent, one example is the use of expressions like “mentally disabled persons” in documents referring to the [mutual recognition of final decisions in criminal matters](#).

Suggested questions:

What is the intended timeline to conduct a review of EU legislation and used terminology?

What practical steps is the EU taking to ensure legal harmonisation with the UN CRPD of all its existing and new laws, policies and programmes?

- **Strategy on the implementation of the UN CRPD**

The EU adopted its strategy for the implementation of the UN CRPD in March 2021, the [Strategy for the Rights of Persons with Disabilities 2021-2030](#). This strategy clearly mentions some of the barriers faced by persons with psychosocial disabilities and mental health problems – a clear improvement from the past strategy covering the 2010-2020 period, which did not fully address the challenges faced by persons with ‘invisible’ disabilities. However, while some improvements are evident, many of the commitments in the strategy are vague and have no timeline with concrete actions for implementation.

Suggested question:

What practical steps and timeline will the European Commission take to implement its Strategy for the Rights of Persons with Disabilities 2021-2030? Please provide a timeline with clear intermediate actions and deadlines on the implementation of each proposed initiative.

- **Set up a structured dialogue for the meaningful involvement of persons with disabilities**

The Strategy for the Rights of Persons with Disabilities 2021-2030 established the Disability Platform. This group includes experts in the field of disability, including persons with disabilities, and aims to support the European Commission in the implementation of the 2021-2030 strategy, as well as national disability strategies, plans or policies. Additionally, the Directorate-General for Employment, Social Affairs and Inclusion has a structured dialogue with civil society which sometimes deals with issues of relevance for persons with disabilities.

That said, there is no standardised mechanism to ensure the regular and meaningful involvement of persons with disabilities and their representative organisations in other Directorate Generals of the European Commission or other EU bodies (e.g. Council of the EU). Consultation continues to be ad hoc across all EU institutions.

Suggested question:

What steps will the EU take to set up a structured dialogue with an independent budget line and sufficient funding for coordination among EU institutions, agencies and bodies and for meaningful consultation with and participation of persons with disabilities in all their diversity and their representative organisations?

- **Update the declaration of competence and its list of instruments**

The EU has not updated the declaration of competence and its list of instruments, as recommended in the 2015 Concluding Observations.

Suggested question:

When will the EU declaration of competences and its list of instruments be updated and what measures will be taken if this timescale is unmet?

Article 5: Equality and non-discrimination

The 2015 Concluding Observations recommended the EU to adopt the horizontal Directive on equal treatment as well as ensure that discrimination in all aspects on the grounds of disability is prohibited, including multiple and intersectional discrimination.

Until today, the proposed horizontal Directive on equal treatment is not adopted as this piece of legislation remains blocked for adoption in the Council of the EU. This implies that presently the EU does not have a comprehensive piece of legislation addressing discrimination on the grounds of disability, age, religion or belief, and sexual orientation in the areas of social protection, health care, (re)habilitation, education and the provision of goods and service. Under EU law, persons with disabilities are only protected against discrimination in the field of employment and vocational training through the [EU Directive on equal treatment in the field of employment](#).

Over the past few years, the European Commission has introduced a variety of initiatives to address the better inclusion of persons in disadvantaged situations or marginalised groups. Examples of such initiatives are: the [Gender Equality Strategy 2020-2025](#), the [LGBTIQ Equality Strategy 2020-2025](#) and the [EU Youth](#)

[Strategy for 2019-2027](#). While some of these initiatives aim to tackle those barriers and challenges that can cause multiple and intersectional discrimination and other socio-economic factors that can precipitate mental distress, there continues to be a lack of concrete actions to ensure the adequate implementation of these initiatives and the meaningful involvement of persons with lived experiences.

A barrier that is specifically faced by persons with psychosocial disabilities is the way in which their disability is recognised and assessed through legislation. Definitions of psychosocial disabilities remain narrow, over-medicalised or non-existent. The continuous prevalence of the bio-medical model frames and interprets mental impairments as a series of symptoms to cure and psychosocial disability as an illness to treat. This approach hinders the understanding of mental health and psychosocial disability as a wide spectrum of experiences and feelings, and does not take into account the external barriers that might cause distress and mental impairments.

The bio-medical approach implies that the variety of experiences of a person can be reduced to a disease or illness that should be solely cured medically. This leads to misconceptions and stigma that can fuel discrimination towards an individual as well as systematic discrimination against a group of persons with disabilities (e.g. in being equally recognised before the law, being granted equal access to justice, being able to enjoy one's freedom and independent living).

The bio-medical approach (and definitions based on it) are incompatible with the UN CRPD as they predominantly focus on the functional evaluation of the capabilities of a person rather than the needs and barriers faced by individuals. In addition, unclear or medical definitions of disability have assessments that require proof of impairment or duration of impairment, which can be harder to prove for people with psychosocial disabilities since their impairment is not visible and the assessment can be subjective and narrow for the reasons explained above.

Suggested question:

What measures is the EU taking to ensure the adoption of the horizontal Directive on equal treatment and to ensure that discrimination in all aspects on the grounds of disability is prohibited, including multiple and intersectional discrimination?

Which actions will the EU take to step up the efforts to promote a psychosocial model to disability – as opposed to a biomedical model – in laws, policies and programmes?

Article 8: Awareness-raising

The EU has not introduced a comprehensive campaign to raise awareness about the UN CRPD and combat prejudice against people with psychosocial disabilities.

In 2019, the European Commission launched an online campaign on combating discrimination in the workplace for people with disabilities. This campaign focused on employers and on the provision of reasonable accommodations.

Suggested question:

How will the EU develop comprehensive and accessible campaigns through co-creation to raise awareness about the UN CRPD and combat prejudice against people with psychosocial disabilities? Please provide a timeline to indicate proposed steps and dates for their implementation.

Article 12: Equal recognition before the law

The full legal capacity of persons with psychosocial disabilities remains a restricted right for many persons across the EU. [MHE research](#) shows that while some promising initiatives and legislation on supported decision-making exist at the local and national level, there is still no EU-wide measure or initiative to ensure that all persons with psychosocial disabilities can fully exercise their rights as enshrined in EU treaties and legislation.

In the Strategy for the Rights of Persons with Disabilities 2021-2030, the EU acknowledges that the deprivation of legal capacity remains a dominant barrier for many persons with psychosocial disabilities to participate as equal members of society and be treated in an equitable way. The Strategy states that this barrier is particularly prevalent when it comes to the full participation in the democratic processes, the possibility to access and retain quality and sustainable jobs as well as access to justice, legal protection, freedom and security.

Through the Strategy, the European Commission commits to “work with Member States to implement the 2000 Hague Convention on the international protection of vulnerable adults in line with the UN CRPD” and to collect good practices on supported decision-making. Neither action specifies concrete measures for their implementation.

The [2000 Hague Convention](#) regulates issues of jurisprudence, applicable law and others "in international situations of adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests". In the [2017 Explanatory Report](#), it is further outlined that situations of placing adults in “a particular care institution” or confining adults “who are a danger to third parties by reason of the mental disorders from which they suffer” for reasons of both public safety are included in the scope of the Convention.

These provisions and the language that they use are in clear contrast with the principles of the UN CRPD, its Article 12 as well as the 2015 Concluding Observations. The Strategy for the Rights of Persons with Disabilities 2021-2030 foresees a study on the Hague Convention on the protection of vulnerable adults in cross-border situations with the aim to pave the way for its ratification by all EU Member States. This intent has been [deemed as concerning by MHE](#) as well as the [broader disability movement](#).

Suggested questions:

Which urgent actions will the EU take to eliminate the restriction of legal capacity that hinder the rights of EU citizens with disabilities granted by the EU treaties, and ensure that the ratification and implementation of the 2000 Hague Convention on international protection of vulnerable adults promoted by the European Commission is done in compliance with the CRPD?

What steps will the EU take to provide robust data and comprehensive research about the impact of restrictions of legal capacity on the lives of persons with disabilities, including persons with psychosocial disabilities?

What initiatives will the EU take to support the abolishment of substituted decision-making and replacement with supported decision-making across the EU, including through the promotion of data collection, research and exchange of good practices which include co-creation?

What concrete measures and timeline will the European Commission take to carry out the collection of good practices on supported decision-making as defined in the Strategy for the Rights of Persons with Disabilities 2021-2030?

Article 13: Access to justice

People with psychosocial disabilities are often facing additional barriers when dealing with criminal justice systems. This can stem from inaccessible justice procedures, inadequate community care as well as stigma over being more 'dangerous' than people without psychosocial disabilities and being a 'danger' to public safety.

Within the framework of the European Union's Rights, Equality and Citizenship Programme 2014-2020, the European Law Academy organised a [series of seminars for legal practitioners and civil servants](#) on EU Disability Law and the UN CRPD. While these seminars have partly fulfilled the recommendation from the 2015 Concluding Observations to fund training for justice personnel on the UN CRPD, these seminars only reached a limited amount of justice personnel.

The [Strategy on victims' rights 2020-2025](#) includes victims with disabilities within its scope and specifically mentions the UN CRPD. This Strategy foresees the allocation of EU funding to provide support to victims with special needs, including persons with disabilities.

Finally, the Strategy for the Rights of Persons with Disabilities 2021-2030 commits the European Commission to launch a study on procedural safeguards for vulnerable adults in criminal proceedings and assess the need for legislative proposals strengthening the support and protection of vulnerable adults who fall victims of crime, in line with the EU Victims' Rights Strategy (2020-2025). The Strategy also states that the European Commission will provide guidance to Member States on access to justice for persons with disabilities in the EU.

Suggested questions:

What measures will the European Commission take to address the lack of awareness of psychosocial disabilities amongst criminal justice services?

What concrete measures and timeline will the EU take to ensure the funding of training to justice personnel and to provide support to victims with disabilities, in line with the UN CRPD?

What concrete measures and timeline will the European Commission take to assess the need for legislative proposals strengthening the support and protection of vulnerable adults and to provide guidance to Member States on access to justice for persons with disabilities in the EU?

Article 14: Liberty and security of the person

Persons with psychosocial disabilities continue to be deprived of their liberty through involuntary treatment. While [some initiatives, policies and laws exist at the local and national level to put an end to forced treatment and coercion](#), all the EU Member States are involved in the drafting of the additional protocol to the Oviedo Convention of the Council of Europe. If adopted, this additional protocol would pass legislation regulating involuntary treatment and placement in psychiatry.

Although the EU is not a member of the Council of Europe, the two bodies have signed a [Memorandum of Understanding](#) in 2007 where they agreed to base their co-operation on the principles of indivisibility and universality of human rights, respect for the standards set out in this field by the fundamental texts of the United Nations and the Council of Europe, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms, and the preservation of the cohesion of the human rights protection system in

Europe. As both EU and Council of Europe referred explicitly to the fundamental text of the United Nations, including the UN CRPD.

Despite the content of the Memorandum of Understanding and the clear contrast with the UN CRPD, the EU has not taken a position to oppose the adoption of the additional protocol to the Oviedo Convention.

Suggested question:

What steps is the EU taking to oppose the draft additional protocol to the Oviedo Convention and promote voluntary treatment in EU Member States?

Article 19: Living independently and being included in the community

The [European Expert Group in the transition from institutional to community-based care \(EEG\)](#) estimates that [over one million people still live in institutions in Europe](#). [MHE research](#) shows that institutions for persons with psychosocial disabilities still exist in many EU Member States. Moreover, historically, a large proportion of individuals previously in institutionalised settings did not receive adequate support in the community and have consequently experienced homelessness or have been re-institutionalised.

The EU promotes the transition from institutional to community-based care through the allocation of its funding, in particular through the [European Social Fund Plus](#), the [Regional Development Fund](#) and the [Common Provisions Regulation](#). In addition, as a response to COVID-19 pandemic, the EU created the [Recovery and Resilience Facility](#) to boost recovery. Despite this funding allocation, examples of misuse of funding to invest in institutions are still present, as it is [repeatedly flagged by the EEG](#).

The Strategy for the Rights of Persons with Disabilities 2021-2030 commits the European Commission to publish a guide to recommend Member States improvements on independent living and inclusion in the community, as well as calls on EU Member States to implement good practices of deinstitutionalisation in the area of mental health and in respect of all persons with disabilities.

Suggested questions:

When will the EU publish official guidance documentation to ensure that no EU funds is being used to promote the institutionalisation of people with disabilities?

How does the EU plan to improve its monitoring on the use of EU funds, with withdrawal and recovery of payments if the obligation to respect fundamental rights is breached?

What concrete measures and timeline will the European Commission take to publish the guide to Member States on independent living and inclusion in the community?

What concrete measures and timeline will the European Commission to monitor its call to Member States to implement good practices of deinstitutionalisation in the area of mental health and in respect to all persons with disabilities?

Article 25: Health

At EU level several initiatives concern mental health. The European Commission is building a strong European Health Union, in which all EU countries prepare and respond together to health crises, medical supplies are available, affordable and innovative, and countries work together to improve prevention, treatment and aftercare for diseases such as cancer. An evaluation was also carried out in 2021, by the European Commission, to assess the [Directive on patients' rights in cross-border healthcare](#) and whether it makes it easier to access safe and high-quality healthcare abroad. Here, service users and persons with psychosocial disabilities often face barriers in accessing cross-border healthcare.

In addition, the creation of a [European Health Data Space](#) is one of the priorities of the Commission 2019-2025, to promote better exchange and access to different types of health data, to support healthcare delivery, health research and health policy-making purposes.

Lastly, the EU's future work on digitalisation including the [2030 Digital Compass](#), the Commission vision and targets for the digital transformation, guided by digital rights and principles, which will certainly impact access to support to mental health services.

Access to health services and support remains a right that cannot be fully enjoyed by persons with disabilities in Europe. As mentioned above in the section on Article 5, the EU does not currently recognise discrimination on the ground of disability in relation to healthcare. This means that persons with disabilities are not protected to receive the same range, quality and standard of free or affordable healthcare and programmes as provided to other persons.

For persons with psychosocial disabilities the challenge does not only come from possible discrimination and stigma, but also from the risk of not receiving adequate information and give informed consent if they are under guardianship.

Supported decision-making is a practice that can have a substantial impact on the right to health of persons with psychosocial disabilities, yet virtually [all EU Member States still include some type of substitute decision-making schemes as a last resort](#). This means that, in many cases, where there is a choice between the two, substitute decision-making prevails over supported decision-making.

Suggested questions:

What is the EU doing to support in ensuring persons with disabilities, including psychosocial disabilities, are provided with the same range, quality and standard of free or affordable health care and programmes as provided to other persons?

What are the EU's plans to support its Member States in the abolition of substitute decision-making schemes in healthcare with practices and programmes implementing supported decision-making?

What steps is the EU taking to ensure all initiatives connected to the right to health are sensitive the needs of people with disabilities, including persons with psychosocial disabilities, with co-creation at the heart of any consultative initiatives?

How will the EU ensure that everyone is able to equally benefit from digital health and care services? What steps will be taken to ensure the fundamental rights of persons with disabilities are protected and prevent discrimination from being further fuelled, though digital tools?

Article 27: Work and employment

In 2019, the European Commission launched an online campaign on combating discrimination in the workplace for people with disabilities. This campaign focused on employers and on the provision of reasonable accommodations. Yet, levels of employment of persons with disabilities remain lower than the rest of the population across the EU. [In 2019, only 50.8% of persons with disabilities were in employment, compared to 74.8% for persons without disabilities.](#) This data concerns the employment situation before the coronavirus pandemic and does not include persons with disabilities living in institutions, suggesting that the unemployment levels of persons with disabilities might be even higher today.

Despite the existence of the [2000 Employment Equality Directive](#), there still seem to be [lack of awareness over the provision of reasonable accommodations and the prohibition of discrimination](#) on the basis of disability in the workplace. Persons with psychosocial disabilities face additional barriers in accessing and remaining into the open labour market. Stigma and the misconception of being “unfit” to work remain a pervasive attitude that hinders the employment of people with psychosocial disabilities. Discrimination towards employees with disabilities is still widespread. This can lead to fear of repercussions, stigma, and unfair treatment, and prevents people with psychosocial disabilities from disclosing their disability status and requesting reasonable accommodations.

Suggested question:

What concrete measures and timeline will the EU take to increase the equitable employment of persons with disabilities, including tackling disability-specific barriers like those faced by people with psychosocial disabilities?

Article 29: Participation in political and public life

Some persons with disabilities, including persons with psychosocial disabilities, still cannot fully enjoy their right to political participation across the EU. At the last elections of the European Parliament in 2019, [18 EU Member States](#) had legislation in place that excluded hundreds of thousands citizens from the possibility to vote on the ground of disability (namely because of being placed under plenary or partial guardianship). Moreover, this does not include those persons who, even if not deprived of their legal capacity, could not vote because of being institutionalised.

This is not only a violation of the UN CRPD, but also of EU Treaties and the EU Charter on Fundamental Rights, which recognise the right of persons with disabilities to exercise their citizenship rights, including the right to vote and stand for elections.

Suggested questions:

How does the Commission plan to support the right to vote and stand as a candidate to persons with disabilities in European elections?

How will the Commission ensure the accessibility of European elections for all persons with disabilities?

Article 31: Statistics and data collection

EU-wide official data are mainly collected through Eurostat, the statistical office of the EU. Data are collected on the basis of disability in the area of social policy (e.g. on poverty and social exclusion) and are disaggregated by gender. However, data are not disaggregated by the type of disability and are collected by households, therefore leaving out those people living in institutions.

Suggested question:

What data collection efforts will the EU undertake to address the major gaps in availability, reliability and comparability of data relating to the living conditions of persons with disabilities in Europe, including disaggregating data by the type of disability and people living in institutions?

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