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NOTE

from:	The Presidency
to:	COUNCIL
Subject:	Ratification and Implementation of the UN Convention on the Rights of People with Disabilities - Information from the Commission

Delegations will find attached a note from the Commission in view of the EPSCO Council on 21 June 2012 (Any other business item).

**Information Note from the Commission
on progress in implementing the UN Convention
on the Rights of Persons with Disabilities (UNCRPD)**

1. Introduction

This note, which is based on the fifth report from the Disability High Level Group (DHLG)¹, outlines progress made by the Member States in ratifying the UNCRPD as well as the formal confirmation by the EU, including the prospects for finalisation of the process. It also reports on developments in national and EU implementation and monitoring of the UNCRPD.

Like this year's DHLG Report, the present note focuses on the national and the EU legal and regulatory frameworks to promote accessibility. Furthermore it provides information on national strategies and actions developed in order to effectively put in practice the UNCRPD in the area of accessibility.

2. Ratification/formal confirmation/accession

As already reported before, the Convention has been signed by the European Union and all its Member States. Significant **progress** has been achieved **since** the publication of the **previous DHLG Report** (May 2011). Bulgaria, Cyprus, Estonia and Luxembourg have ratified the UNCRPD and the Optional Protocol. Belgium, Czech Republic, Germany, Denmark and United Kingdom have submitted their first report to the United Nations.

¹ http://ec.europa.eu/justice/discrimination/files/dhlg_5th_report_en.pdf.

The report goes into more detail on the state of play in the conclusion of the Convention and the Optional Protocol and provides a detailed overview of progress in national implementation and monitoring of UNCRPD, containing both governance aspect as covered by Article 33 as well as information on national strategies and actions developed in order to effectively put in practice the UNCRPD.

The current situation is²:

- All Member States and the EU have signed the Convention.
- 22 Member States have signed the Optional Protocol to the Convention³.
- 20 Member States have ratified the Convention. (Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Germany, Denmark, Spain, France, Hungary, Italy, Lithuania, Luxembourg, Latvia, Portugal, Romania, Slovenia, Sweden, Slovakia, United Kingdom). The President of Estonia has proclaimed the Act of ratification in March 2012; the instrument of ratification was prepared and submitted to the President, who will sign it before submitting it to the depositary (situation in May 2012). On 11 April 2012 the Greek Parliament enacted Law 4074 / 2012 ratifying the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto; the instrument of ratification of both the Convention and the Optional Protocol is expected to be deposited with the Depositary of the Convention by the end of June.
- 16 Member States have ratified the Optional Protocol (Austria, Belgium, Cyprus, Germany, Spain, France, Hungary, Italy, Lithuania, Luxembourg, Latvia, Portugal, Sweden, Slovenia, Slovakia, United Kingdom).
- 9 Member States have submitted their first report to the United Nations (Austria, Belgium, Czech Republic, Germany, Denmark, Spain, Hungary, Sweden, United Kingdom).
- In September 2011 the examination of the report of Spain (as the first EU Member State) took place in the 6th meeting of the Committee on the Rights of Persons with Disabilities under the UNCRPD.

² Annex 1 to the Fifth DHLG Report provides a table with a detailed overview.

³ Estonia has completed the internal procedure of accession of the Optional Protocol but the instrument of accession has not submitted to the depositary yet (situation in May 2012).

The Convention entered into force with respect to the EU on 22 January 2011⁴. The EU is bound by the Convention to the extent of its competences. The Declaration of competence in Annex II to the Decision 2010/48/EC illustrates the competences transferred to the EU by the Member States in the areas covered by the Convention. The EU will have to submit its first Report to the UN Committee in Geneva in 2013.

With respect to the Representation of the EU vis-à-vis the UN in UNCPRD matters within EU competence, the Member States and the EU are bound by the duty of loyal cooperation and the principle of unity in the external representation of the Union and these principles should permeate their cooperation. In particular a Code of Conduct between the Commission, the Council and Member States sets out the framework for implementation of the Convention within the EU as regards e.g. coordination, representation, voting and speaking arrangements in the UN.

In 2011, for the first time since the entry into force of the Convention, the Commission represented the EU in the fourth Conference of State Parties, where it made statements on the European Disability Strategy 2010-2020 and the DHLG Report. It was also the first time that the Code of Conduct was applied in the preparation for the Conference. The first experience with sharing of information on matters like the composition of delegations, the intention to present a statement and the texts of the statements would suggest that for the next Conference of State Parties it will be important to improve coordination so as to allow for an efficient flow of information and to build up good cooperation practices during preparation and during the Conference itself in order to make the provisions of the Code of Conduct truly operational.

⁴ On 26 November 2009 the Council Decision concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities was adopted (Decision 2010/48/EC). On 2 December 2010 the Commission, Council and Member States agreed on a Code of Conduct setting out internal arrangements for the implementation by and representation of the EU relating to the UNCPRD, Council of the European Union, 16243/10. This enabled the EU to complete the procedure of conclusion of the Convention by depositing its instruments of formal confirmation with the UN Secretary General in New York on 23 December 2010.

The proposal for EU accession to the Optional Protocol, adopted by the Commission on 29 August 2008⁵ and transmitted to the European Parliament and the Council is still with the Council. Now that the Convention has been formally concluded and has entered into force, the Commission considers that the process of accession of the EU to the Optional Protocol should be continued.

The process of ratification of the Convention is on-going in 6 Member States (plus Estonia). As the UN Convention came into force on 3 May 2008 the Commission encourages its swift ratification by the remaining Member States.

3. The process

The ministers gathered at the first informal ministerial meeting on disability issues on 11 June 2007 organised under the German Presidency mandated the DHLG⁶ to report annually on the progress by the EU and the Member States in implementing the UNCRPD.

The first joint DHLG Report was discussed by the ministers responsible for disability issues, in Kranjska Gora on 22 May 2008 under the Slovenian Presidency.

The second DHLG Report of 2009 responded both to the Council's requests in its recent Resolution⁷ to assess how national actions reflect the commitments entered into by the European Union and the Member States with a view to implementing the UNCRPD, and to the Slovenian Presidency's Conclusions⁸.

⁵ COM (2008) 530 final. The proposal was endorsed by the European Parliament on 24 April 2009.

⁶ HLG comprises Member State experts and stakeholders.

⁷ Resolution of the Council of the European Union and the representatives of the Governments of the Member States, meeting within the Council of 17 March 2008 on the situation of persons with disabilities in the European Union, OJ C 75, 26.3.2008, p. 1.

⁸ http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/ns_invalidi_sklepi_220508_en.pdf.

The third DHLG Report, published in 2010, had an additional focus on procedural matters and governance aspects.

The fourth DHLG Report examined in detail the interface between the implementation of the UNCRPD and the Europe 2020 headline targets for education, employment and poverty, addressing the gap between persons with disabilities and the general population.

The fifth DHLG Report, adopted this year, focuses on the national legal and regulatory frameworks to improve accessibility. Furthermore it provides information on national strategies and actions developed in order to effectively put in practice the UNCRPD in the area of accessibility.

The five DHLG Reports not only contribute to the implementation of the EU Disability Strategy 2010-2020, but will also serve as input to the preparation of a European Accessibility Act, which the European Commission plans to propose by the end of 2012. The Reports also aim to facilitate reporting to the United Nations under the Convention's obligations.

4. Implementation and monitoring of the UNCRPD

The efforts to implement the Convention in the Member States and the EU are ongoing and advancing. In most cases, the signature or ratification of the Convention have stimulated a process of reflection and policy redefinition leading to the adoption or preparation of multiannual, cross-sectoral action plans and strategies. These plans are designed to support the progressive implementation of the Convention. They are underpinned by the paradigm change marked by the Convention and translate its principles and objectives into concrete actions and measurable targets.

As required by Article 33 of the Convention, most Member States have established governance structures and processes (focal points, coordination mechanisms, frameworks to promote, protect and monitor the Convention and independent mechanisms), while others are in the process of doing so.

Since 2010, the European Commission has organised an annual Work Forum to bring together the relevant mechanisms (Article 33 UNCRPD), as well as persons with disabilities, disabled persons' organisations (DPOs), service providers and other stakeholders in order to share national experiences and promote mutual learning in implementing the Convention. The second Work Forum, held in October 2011, focussed on coordination issues, both within the Member States and in the EU as well as between Member States and the EU, and how to effectively engage civil society. The Work Forum also discussed the reporting to the UN (Article 35 UNCRPD), looking at the experience of those Member States that have already prepared and submitted their State Report. In particular, Spain gave insights into its experience in reporting, the examination by the UN Committee on the Rights of Persons with Disabilities as well as the civil society participation.

At the EU level, as provided for in Paragraph 13 of the Code of Conduct,⁹ the Commission has examined the requirements of Article 33(2) and identified four existing EU institutions and bodies that exercise the tasks of promotion, protection and monitoring under their respective mandates.

The Commission's proposal was presented to the Member States in the Council Working Party on Human Rights (COHOM) on 25 January 2012 and is still under discussion.

The Commission aims to ensure a simple, efficient and practical framework which, while respecting the separation of competences between the EU and the Member States, acts in complementarity with the frameworks and Independent Mechanisms established at Member States' level, maximises the synergies between the work of existing bodies and institutions, and avoids an undue administrative and financial burden¹⁰.

⁹ 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, OJ C 340, 15.12.2010, p. 11.

¹⁰ As stated in the European Disability Strategy 2010-2020, Communication from the Commission to the European Parliament, The Council, the European Economic and Social Committee and the Committee of the Regions, "A renewed commitment to a barrier-free Europe", COM(2010) 636 final.

The EU framework's mandate covers areas of EU competence, and it is a complement to the national frameworks and independent mechanisms which bear the main responsibility for the promotion, protection and monitoring of the UNCPRD in the Member States.

The EU framework will carry out its tasks with respect to:

- EU legislation and policy¹¹ in those areas where the Member States have transferred competences to the EU. This will be the main area of the framework's actions;
- the implementation of the Convention by EU institutions in their capacity as Public Administration (for example in relation to their employees and in their interaction with the public).

5. Actions undertaken to implement the Convention in the area of accessibility

5.1 Legal and regulatory frameworks for accessibility

In EU Member States accessibility is dealt with at different levels in the national legal and regulatory frameworks. In most countries general accessibility requirements have been established in various acts as part of statutory law; however, more detailed requirements of technical nature are only defined in regulations, or by the adoption or the creation of standards.

Accessibility rules are included in legislation whose main purpose is protection against discrimination in several countries, such as in the United Kingdom, Sweden and Estonia (often limited to the areas of education and employment). In some limited cases, as explained in the detailed country reports, although statutory law does not recognise lack of accessibility as an instance of discrimination, it may be construed as such.

Moreover, standards developed at national level complement or implement existing international and European standards.

¹¹ As illustrated in the EU declaration of competences annexed to Council Decision 2010/48 for conclusion of the Convention.

5.2 Changes in legislations due to UNCRPD implementation

Everywhere in Europe, the ratification and implementation of the Convention has helped raise awareness of disability issues, including on accessibility. This has already led to changes in policy priorities, and will increasingly bring about changes in the legal and regulatory frameworks of the EU Member States. These changes have already affected accessibility requirements and will do so increasingly in the future.

The provisions of the UNCRPD have inspired amendments in statutory law in certain Member States, including Spain, Slovenia and the United Kingdom – in some cases these were related to accessibility. Since signing the Convention, several changes to legislation have occurred in the Czech Republic. A review of legislation is well advanced in Finland, in order to ensure compliance before ratification. The revision is about to start in Italy, and Luxembourg has also announced a major review of disability-related legislation within the next five years. Remarkably, the Convention has also inspired self-regulation in some sectors (e.g. the postal sector in Slovakia).

5.3 Services and goods regulated for accessibility

Public services regulated for accessibility include, in most Member States, education and healthcare – lack of equal access to these services constitutes an instance of discrimination under many legal systems.

The built environment is usually regulated at national level, with fewer international rules. In this field, national, regional and local legislation, regulations and standards are often enforced by municipalities and local authorities.

Public spaces as well as open-to-the-public private buildings providing specific services (hotels, restaurants, supermarkets, etc.) need to follow detailed guidelines in order to secure access for persons with disabilities. Regulations of public buildings and open-to-the public private buildings include some construction products such as doors, ramps, and others. Lifts are regulated by means of a European Directive.

The services of telecom providers and media outlets are regulated in several EU countries to enhance accessibility, following and complementing EU legislation with national provisions. Some national accessibility regulations include the requirement to subtitle television programmes, including in the country's national language, for a certain percentage of total airtime (e.g. in Finland and in the Netherlands).

EU policy developments in the area of the Information Society have had considerable influence in the development of national regulatory frameworks for web accessibility. European standards under Mandate 376 are in the making based on international standards from the World Wide Web Consortium – WCAG (Web Content Accessibility Guidelines). Various Member States have already developed national rules for the websites of national and local public administrations based also on the above mentioned guidelines.

The transport sector is also regulated in detail. The importance of EU action is particularly evident in the area, where four EU level Regulations have direct effect in Member States (No 1107/2006 on air transport; No 1371/2007 on rail transport; No 1177/2010 on waterborne transport; No 181/2011 on bus and coach transport) and largely define rules for assistance to passengers with reduced mobility.

These EU regulations are often complemented by national rules of accessibility for transport. Goods associated with the provision of transport services (buses, trams, trains, as well as furniture in stations or at bus stops) are also covered in extensive detail in many Member States, in some instances following EU Regulations (e.g. an EU Directive related to low-platform buses contains clear and detailed accessibility rules).

Consumer goods, on the other hand, usually follow general manufacturing standards which do not necessarily cater specifically for the needs of persons with disabilities – and often lack accessibility features which would extend their usability to wider segments of the population.

The national accessibility legislations differ in terms of material and personal scope and as regards the substance of the accessibility requirements.

5.4 *Enforcement, non-compliance and litigation*

Enforcement of accessibility legislation, regulations and standards mostly happens at the administrative level. In the construction sector, for instance, many countries have adopted detailed standards, which must be complied with in order to obtain a new building permit or renovation permit. Non-compliance may result in fines or, in some cases, requests to rectify insufficient accessibility solutions. However, persons with disabilities have insufficient means of redress, an issue that is often raised by them and by their organisations.

When accessibility requirements set by law are not met, legal action may be possible, yet is rare in practice. For example, if the organisation responsible for the shortcomings is a public body, complaints may be filed at the Ombudsperson's office, in the countries where this function exists.

6. Conclusions

- Ratification of the UNCRPD is progressing; the five Member States that have not ratified yet are encouraged to do so. In the context of the UN Conference of State Parties, proper coordination between the Commission and the Member States is needed so as to ensure effective and coherent action and unity in the external representation of the Union.
- The implementation of the Convention in the areas where the Member States have transferred competences to the EU calls for enhanced cooperation between the Member States and the EU.
- Implementation of the obligations in the UNCRPD will lead to changes in policy and legislation; these will have an impact on accessibility requirements.
- The role of EU regulations is particularly important in sectors such as transport.
- In the building sector, regulation is mainly national, although there is also EU legislation on construction products.

- European harmonised accessibility standards can make an important contribution to achieving coherent implementation of accessibility in Europe, facilitating free movement of persons with disabilities.
 - The information gathered for the preparation of the progress report confirms the relevance for Member States of dealing with accessibility at EU level, as also acknowledged by Member States in line with the EPSCO Council Conclusions of 17 June 2011.
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