European Network of (Ex-) Users and Survivors of Psychiatry (ENUSP)

ENUSP Proposals for the List of issues on the European Union, CRPD Committee, 13th session

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This submission seeks to provide supplementary information to the Committee on implementation of the UN CRPD in the European Unionfor consideration in the compilation of the list of issues for the European Union.

The **European Network of (Ex-) Users and Survivors of Psychiatry (ENUSP**) is the grassroots, independent representative organisation of mental health service users and survivors of psychiatry at a European level. ENUSP's members are regional, national and local organisations and individuals based in European countries. Since its foundation in 1991, ENUSP has campaigned for the full human rights and dignity of mental health service users and survivors of psychiatry and the abolition of all laws and practices that discriminate against us. ENUSP is currently a consultant to the European Commission, the European Union Fundamental Rights Agency, and the World Health Organization-Europe. ENUSP is a member of European Disability Forum (EDF) and European Patients' Forum (EPF) and part of the World Network of Users and Survivors of Psychiatry (WNUSP).

This submission is highlighting key issues that will be raised more extensively in the upcoming parallel report by ENUSP, expected in June 2015.

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Part 1

General obligations (art 1-4), equality and non-discrimination (art 5) and awareness raising (art 8)

The EU claims to promote equality and non-discrimination (EU policies), but fails to adequately protect persons with psychosocial disabilities from discrimination.

1.1 Conditions for EU membershipare based on a discriminatory treaty

Article 6 of the Treaty on European Union (Maastricht Treaty) mentions that signing the **European Convention on Human Rights (ECHR)** is a condition for EU membership. Also, accession of the European Union to the ECHR is being considered[1](see also para 4.2 at page 15).

Art 5 of ECHR mentions:

> "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
> (…) ECHR art 5.1.e: the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants."

ECHR Art 5.1.e provideslegitimate grounds for deprivation of liberty based on psychosocial disability andis contrary to CRPD Article 14 which prohibits all detention based on psychosocial disability[2], and which the CRPD Committee has already applied to EU member states in its Concluding Observations[3].

The ECHR is drafted by Council of Europe.Although the EU is independent from Council of Europe, they share purpose and ideas especially on rule of law, human rights and democracy. In 2007, the EU and the Council of Europereinforced their cooperation and declared the intention to draw from each other's experiences.[4, 5]

1.2 EU ispromoting discrimination by embracing a sequence of inadequate frames and mechanisms

The EU claims to protect the rights of its citizens by several independent European mechanisms. However, the stigmatizing language in the main European treaty(ECHR, art 5.1.e) has laid the basis for a larger sequence of discriminatory policies and practices across the EU, including by independent European mechanisms, leading to ongoing discrimination and abuse, and inadequate European guidelines and policy standards concerning the rights of

[1]Court of Justice of EU rejects draft agreement for EU Accession to ECHR
http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-12/cp140180en.pdf

[2]CRPD Committee's statement on Article 14

[3]CRPD Committee's Concluding Observations on: Austria, Spain, Sweden, Denmark

[4]Press release 331(2007) The Council of Europe and the European Union sign an agreement to foster mutual cooperation
https://wcd.coe.int/ViewDoc.jsp?Ref=PR331(2007)&Language=lanEnglish&Ver=original&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE&ShowBanner=no&Target=_self

[5]Memorandum of Understanding between the Council of Europe and the European Union
https://wcd.coe.int/ViewDoc.jsp?id=1130667&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864

persons with psychosocial disabilities. By using the European Convention, and subsequently the sequence of European mechanisms, the EU is actually taking part in **promoting and facilitating exclusion and institutionalization**:

- 1.2.1 EU maintains several conventionswithout proper adjustment to norms prescribed by the CRPD, such as:
    - Council of Europe - **European Convention on Human Rights**, art 5.1.e
    - Council of Europe - **Convention on Human Rights and Biomedicine** (Oviedo Convention), which prescribesbinding standardsthat run contrary to the CRPD, such as, amongst others:
        - substitute decision-making "because of a mental disability, a disease or for similar reasons"under "protection of persons not able to consent" (art 6),
        - non-consensual interventions and treatment without consent under"protection of persons who have a mental disorder" (art 7),
        - substitute decision-making for "persons not able to consent"on scientific researchand organ removal as a living donor (art 17,20)

    - In May 2013, the Council of Europe- Committee on Bioethics (DH-BIO) has started work, with the assistance of a Drafting Group, on the preparation of **a draft Additional Protocol to the Convention on Human Rights and Biomedicine (Oviedo Convention), concerning the protection of the human rights and dignity of persons with mental disorders with regard to involuntary placement and involuntary treatment**. This work is based on the existing provisions of the Convention on Human Rights and Biomedicine (CETS n°164) and of the European Convention on Human Rights (CETS n° 5).[6] A preliminary draft was expected in May 2014,[7]but cannot be found in the public domain yet.
        - EU Fundamental Rights Agency (FRA, see also next para 1.2.3) Director Mr. Morten Kjaerumcommented on the draft Additional Protocol in June 2014 at the 81st Steering Committee for Human Rights (CDDH) meeting, Council of Europe, Strasbourg:"FRA has contributed to processes at the Council of Europe as part of the EU response on the preliminary draft Additional Protocol to the Convention on human rights and biomedicine. Drawing on our work on involuntary placement and treatment of people with mental health problems, FRA highlighted the importance of reflecting the profound changes in human rights protection for persons with disabilities brought about by the UN CRPD. All States Parties to the CRPD will need to harmonise their existing legislation with CRPD standards. In our view, this could make adopting the draft Additional Protocol in its current form a challenge for those Member States which have ratified the CRPD."[8]

[6] http://mdac.org/sites/mdac.org/files/ingos_e3.pdf
[7] http://www.coe.int/t/dghl/standardsetting/cddh/CDDH-DOCUMENTS/CDDH(2014)002_EN.pdf
[8] http://fra.europa.eu/en/speech/2014/intervention-mr-morten-kjaerum-steering-committee-human-rights-cddh

- 1.2.2 EU maintains a framework of jurisprudence and monitoring without proper adjustment to norms prescribed by the CRPD:
    - Jurisprudence of the **European Court of Human Rights (ECtHR)** is based on ECHR.
        - ECtHR continues to apply art. 5.1.e to endorse and tolerate mental health detention, which violates the right to liberty under CRPD Article 14.
        - ECtHR has interpreted Article 3 on freedom from torture and ill-treatment to permit restraint and forced psychiatric drugging based on a doctrine of "medical necessity" [9] which has been repudiated by the UN Special Rapporteur on Torture[10].
    - Monitoring of human rights of persons detained in institutions is done by the **European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**(CPT, established by Council of Europe)and is based on ECHRart 3.The CPT still uses outdated standards[11] which allow for substitute decision-making, involuntary placement and treatment, and seclusion and restraints, contrary to the CRPD. CPT's standards on involuntary placement:
        - "The procedure by which involuntary placement is decided should offer guarantees of independence and impartiality as well as of objective medical expertise. […] the formal decision to place a person in a psychiatric hospital should always be based on the opinion of at least one doctor with psychiatric qualifications, and preferably two, and the actual placement decision should be taken by a different body from the one that recommended it".(more on CPT in paragraph 4.3)

- 1.2.3 EU maintains structures, directives, policies, guidelines, etc. without proper adjustment to the norms of the CRPD:
    - Within the EU and its member states, the **Council of Europe Committee of Ministers -Recommendation Rec(2004)10 concerning the protection of the human rights and dignity of persons with mental disorder**[12]is binding European law, which links "protection of vulnerable persons with a mental disorder" to non-consensual interventions, involuntary placement and treatment, and substitute decision-making, which is in line with CoE standards, but is contrary to the UN CRPD, mentioning:
        - Guidelines for involuntary placement and involuntary treatment (para. III),
        - Guidelines for substitute decision-making for "persons with mental disorder who do not have the capacity to consent" (para. IV),

[9] Herczegfalvy

[10] Nowak para 49, Mendez

[11] European Committee on the Prevention of Torture (CPT) – The CPT standards: http://www.cpt.coe.int/en/documents/eng-standards-scr.pdf

[12] Recommendation Rec(2004)10https://wcd.coe.int/ViewDoc.jsp?id=775685

- Guidelines for the application of restraint and seclusion and non-consensual irreversible and intrusive treatment (para. V)

Policy and developments at relevant EU institutions:

- **European Commission (having legislative initiative)– Mental Health Policy**[13]:
  - The European Commission's Green Paper on improving the mental health of the population (2005)[14] served to launch a debate, and mentioned briefly the issue of compulsory placement and involuntary treatment as an option of "last resort". The EC Green Paper was followed by:
  - **The European Pact for Mental Health and Well-Being (2008-2011)**[15] and the **EU Compass for Action on Mental Health and Well-being**[16]**,** and the **Joint Action on Mental Health and Well-being (2013-16)**[17]**,** which cover five priority areas for mental health and wellbeing in the European Union and its member states:
    1. Depression, suicide and E-Health
    2. Community based approaches,
    3. Mental health at workplaces,
    4. Mental health in schools,
    5. Mental health in all policies,

    The Mental HealthPolicy of the European Commission doesnot mention any priority or action against substitute decision-making,involuntary placement or involuntary treatment. The serious human rights violations by forced institutionalization and forced treatments of persons with psychosocial disabilities seems to get no attention at EU policy level, despite ratifying the CRPD(more on European Commission's Mental Health Policy in para 3.6).

- **EU Fundamental Rights Agency**[18], a decentralized EU agency established in 2007, collects and analyses data, and providesexpert advice to assist EU institutions and EU Member States in understanding and tackling challenges to safeguard the fundamental rights of everyone in the EU.The FRA agencyacknowledgesseveral human rights violations in light of the UN CRPD committedagainst persons with psychosocial disabilities across the EU in their 2012 report on involuntary placement and involuntary treatment of persons with mental health problems [19]. However, the FRA agency's recommendationsdo not have any legal implication or legislative initiative,

[13] http://ec.europa.eu/health/mental_health/policy/index_en.htm
[14] EC Green Paper: http://ec.europa.eu/health/ph_determinants/life_style/mental/green_paper/mental_gp_en.pdf
[15] European Pact for Mental Health and Well-Being http://ec.europa.eu/health/mental_health/docs/mhpact_en.pdf
[16] EU Compass for Action on Mental Health and Well-being http://ec.europa.eu/health/mental_health/eu_compass/index_en.htm
[17] Joint Action on Mental Health and Well-being http://www.mentalhealthandwellbeing.eu/
[18] http://fra.europa.eu/en/about-fra
[19] EU FRA 2012 report: Involuntary placement and involuntary treatment of persons with mental health problems http://fra.europa.eu/en/publication/2012/involuntary-placement-and-involuntary-treatment-persons-mental-health-problems

which in fact means that the advancement of protection of fundamental human rights in the EU is in practice reduced to a "good advice" instead of a right that can be enforced.

- 1.2.4 EU maintains a discriminatory andpaternalistic medical model approach in present structures of funding.
    - Funding by **EU Structural Funds**, is used to maintain institutionalization and paternalistic medical model approaches across the EU. [20,21,22]

The European mechanisms and policies - in varying severity- fail to protect and promote the human rights of persons with psychosocial disabilities across the EU and EU member states. As a state party to the UN CRPD, the EU has taken up a responsibility to ensure an adequate European human rights framework which fully protects the rights of persons with psychosocial disabilities on an equal basis with others, across the EU and EU member states.

[20] European Coalition on Community Living (ECCL): 2010 report: "A wasted opportunity – wasted time, wasted money, wasted lives" A Focus Report on how the current use of Structural Funds perpetuates the social exclusion of disabled people in Central and Eastern Europe by failing to support the transition from institutional care to community-based services, http://community-living.info/wp-content/uploads/2014/02/ECCL-StructuralFundsReport-final-WEB.pdf

[21] UN OHCHR Regional office for Europe: 2012 report: Getting a life – Living Independently and Being Included in the Community. A Legal Study of the Current Use and Future Potential of the EU Structural Funds to Contribute to the Achievement of Article 19 of the UN CRPD. http://www.europe.ohchr.org/documents/Publications/getting_a_life.pdf

[22] Open Society Foundation (OSF): 2012 report:The European Union and the Right to Community Living - Structural Funds and the European Union's Obligations under the UN CRPDhttp://www.unhcr.org/refworld/type,REGIONALREPORT,,,4fbcc96d2,0.html

Proposed questions on articles 1-5

- **What steps is the EU taking to promote harmonization of the ECHR with the CRPD, and in particular to nullify or derogate the Article 5.1.e provision authorizing detention on the basis of psychosocial disability? In addition, what interim measures are being taken to ensure that member states are applying the CRPD standard which prohibits all detention and non-consensual treatment in mental health services, and that they are not relying on ECHR Article 5.1.e to continue justifying these practices in direct contradiction to CRPD Article 12 and 14?**

- Which steps are being taken by EU to adjust the conditions for EU membership to be in line with the UN CRPD, especially regarding theprovisions of ECHR art 5.1.e?

- Which steps are being taken by EU to ensure that the CRPD standards for the protection of the rights of persons with psychosocial disabilities supersede the Council of Europe standards for the "protection of human rights and dignity of persons with mental disorder" within the EU and in member states?

- What steps will be taken by the EU in case the Additional Protocol to the Council of Europe Convention on Human Rights and Biomedicine (Oviedo Convention) is demonstrated to be not in line with the CRPD?

- What steps is the EU taking to promote harmonization with the CRPD by independent European mechanisms on which it relies to monitor and enforce the human rights of people with disabilities?

- What steps is the EU taking to ensure that its own policies and directives conform to the CRPD, particularly with respect to CRPD Articles 12, 14 and 15, and the prohibition of substitute decision-making, detention and institutionalization in mental health facilities, and non-consensual treatment?

- What steps is the EU taking to ensure meaningful involvement of persons with psychosocial disabilities in the development and implementation of legislation, policies and other decision-making processes at EU level and in EU member states, including which steps is the EU taking to ensure that persons with psychosocial disabilities are enabled to organize and represent themselves through their respective local, regional, national and European organizations?

Proposed question on article 8

- Which steps are taken by EU to ensure that a perceived or actual diagnosis or disability does not lead to a loss of fundamental human rights for EU citizens, and tocounterthe profiling of stereotypes and stigmatization of persons with psychosocial

disabilities, including by ending doctrines of “unsound mind”, “danger to self or others”, “need for treatment”, and “incapable of consenting”, across all layers of the EU?

Proposed questions on art 7 are included at paragraph 2.7, page 9.

Proposed questions on art 9 are included in paragraph 3.1, page 10.

Part 2

Right to life (art 10), Equal recognition before the law (art 12), Liberty and security of the person (art 14), Freedom from torture or cruel, inhuman or degrading treatment or punishment (art 15), Freedom from exploitation, violence and abuse (art 16), Protecting the integrity of the person (art 17) and Access to Justice (art 13)

Involuntary treatment is widespread across the EU.

Involuntary/forced treatments are executed against the will of persons with psychosocial disabilities on a large scalethroughout all EU member states.[23]

Several binding European mechanisms by the Council of Europe provide guidelines for involuntary treatment (see Part 1), which carry a wrong signal to member states as if involuntary treatments could be a so-called "good practice", instead of it being recognized as a core human rights violation. These guidelines invoke the practice of involuntary treatments.

As a form of violence against persons with psychosocial disabilities, psychiatric institutionalization and forced interventions, including forced drugging and electroshock, solitary confinement and restraint, forced body cavity searches, etc., are devastating and have a terrible cost to humanity in lives lost, psychic and physical harm, destruction of family relationships and curtailment of opportunities for education, work and recognition of one's achievements and potential.

Despite the significant shift in international law brought about by the CRPD, EU States Parties have not moved to abolish by law these violent practices. EU member states have not enacted laws prohibiting these acts of violence, but instead have enacted laws authorizing them, giving rise to state responsibility for acts amounting to torture and ill-treatment.

Even aftersigning or ratifying the CRPD, several of the EU countries have continued to draft laws that allow for substitute decision-making and forced interventions[24], flagrantly violating their obligations as States Parties or Signatories to this treaty.

2.1 Deadly psychiatric interventions

ENUSP members report ondreadful practices throughout the EU, where institutionalization and forced psychiatric interventions,includingthe direct use of force, violence, restraints, medication and negligencehas caused the death of persons with psychosocial disabilities. Exact numbers are unknown, but according to the information of ENUSP members, it appears that in every EU country cases of deadly psychiatric interventions on persons with psychosocial disabilitiesare known, and in some institutions mortality rates are significant.

[23] EU Fundamental Rights Agency (FRA), 2012 report: Involuntary placement and involuntary treatment of persons with mental health problems: http://fra.europa.eu/en/publication/2012/involuntary-placement-and-involuntary-treatment-persons-mental-health-problems

[24] Amongst others:France, Ireland, the Netherlands, Norway are States Parties or Signatories to CRPD that have enacted or are considering draft mental health legislation that maintains forced psychiatric interventions and institutionalization.

Some of these cases are reported in the media. The upcoming ENUSP Parallel report will give more information on deadly psychiatric interventions in the EU.

In the large majority of these cases there is impunity for the psychiatric (or other) staff who perpetrated or directly participated in the intervention that directly led to the death of the person with psychosocial disabilities, as is reported by ENUSP members and other sources in various EU member states.

In 2014, the European Court of Human Rights for the first time recognized a violation of the Right to Life due to inadequate psychiatric treatment, in the case of Câmpeanu v. Romania.[25]ENUSP hopes that this judgement will result in a better protection of the lives of persons with psychosocial disabilities.

Proposed questions on article 10

- Which steps will the EU take to protect the lives of persons at risk of dying by forced or otherwise harmful psychiatric interventions or other violence in the EU and its member states?

- What steps will the EU take to ensure thatpersons who engage in actions, including psychiatric interventions,which result in the death of persons with psychosocial disabilities, including when they are psychiatric or other staff, are held responsible for these actions under the domestic and European law?

2.2 Substitute decision-making and guardianship regimes for persons with psychosocial disabilities exist in all EU member states. Plenary substitute decision-makingexists inat least 25 EU member states[26] .The EU institutions and EU governments have legal obligations towards upholding human rights including the CRPD as the highest applicable international law on the rights of persons with disabilities.[27,28](also see Part 4).

The ECHR does not explicitly guarantee the right to legal capacity. The European Court on Human Rights has read the right to legal capacity into Article 8 of the ECHR: Respect for private and family life.[29] ECHR Article 8 adopts a liberal perspective towards a person's private choices and protects against arbitrary State interference.Since the right to legal capacity has been connected via this provision to the right to respect for private and family life, home and correspondence, if State interference does not impinge upon these areas, then no infringement of the right to legal capacity is seen. Consequently, the manner in which the presence or absence of legal capacity impacts on other rights has not been exposed and recognised.

[25]European Court of Human Rights, judgement on violation of the Right to Life (art 2 ECHR) by inadequate psychiatric treatment in Romania, 2014 Application No. 47848/08, submitted by the Romanian NGO CLR on behalf of Mr Câmpeanu: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-145577#{"itemid":["001-145577"]}

[26]Mental Health Europe (MHE): 2012 report: Mapping Exclusion, p22.

[27]EU website, How the EU works, Human rights and equality: http://europa.eu/about-eu/index_en.htm

[28]EU website, How the EU works, Human rights and equality: http://europa.eu/about-eu/index_en.htm

[29]*Shtukaturov v Russia,* Application no. 44009/05, judgment of 27 March 2008, para 90

Proposed questions on article 12

- Which steps are being taken by EU to ensure that EU member states repeal all forms of guardianship and substitute decision-making and that they promote and realise support systems which respect the will and preferences of the person concerned?

- Which steps are taken by EU to adopt a legal framework which enforces that involuntary treatment is a human rights violation and not a "good practice" within the EU, and whichenforces a prohibition against involuntary treatment and involuntary institutionalization, which violate the human rights of people with psychosocial disabilities under the CRPD?

- What steps are being taken by the EU to adopt a legal framework that explicitly protects the right to legal capacity for all persons, including all persons with psychosocial disabilities on an equal basis? And in addition, which steps are being taken by the EU to address the key role of the right to legal capacity conditional for the enjoyment of other rights, and to ensure that violations of the right to legal capacity against persons with psychosocial disabilities are recognized, prohibited and remedied?

2.3 Deprivation of liberty based on psychosocial disabilities, either initself, or in combination with other criteria such as presumed dangerousness or need for treatment, istaking place in all EU member states.[30]

Proposed questions on article 14

- Which steps are being taken by EU to ensure liberty and security of persons with psychosocial disabilities across the EU on an equal basis with others, and to ensure that institutionalization and treatment without the free and informed consent of persons with psychosocial disabilities is repealed?

- Which steps are being taken by EU to ensure that member states repeal legal provisions that authorize deprivation of liberty based on a psychosocial disability, including provisions in Mental Health Acts that characterize individuals as being in need of care or treatment or as being likely to cause harm to themselves or others, and including provisions that allow third parties such as guardians or family members to consent to hospitalization or institutionalization on the person's behalf?

- How will the EU promote compliance by its member states with the prohibition of detention or compulsory treatment in mental health services that is found in CRPD Article 14?

[30] EU Fundamental Rights Agency (FRA), 2012 report: Involuntary placement and involuntary treatment of persons with mental health problems: http://fra.europa.eu/en/publication/2012/involuntary-placement-and-involuntary-treatment-persons-mental-health-problems

2.4 Torture and cruel inhuman or degrading treatment and punishmentare taking place against persons with psychosocial disabilities across all EU member states.

The European binding conventions and directives (ECHR, Oviedo Convention, Rec(2004)10) allow for forced treatments and interventions, including long-term deprivation of liberty, the use of solitary confinement, restraint and non-consensual irreversible and intrusive treatments,includingnon-consensual administration of psychotropic medication, non-consensual electroconvulsive therapy (ECT) and non-consensual abortion and sterilization of persons with psychosocial disabilities.

The independent European mechanisms to monitor and enforce human rights in Europe (ECtHR, CPT) still maintain the doctrine of "medical necessity" to allow the deprivation of rights of persons with psychosocial disabilities, based on art 5.1.e of ECHR, the Oviedo conventionand the jurisprudence of the European Court of Human Rights under ECHR article 3.This remains the case while current human rights standards of the UN require a ban on involuntary psychiatric treatments, as declared by the CRPD Committee in General Comment No. 1 paragraph 42, and by the Special Rapporteur on Torture in paragraph 89(b) of his 2013 thematic report[31].

Proposed question on article 15

- Which steps are being taken by EU to ensure that an absolute ban on all forced medical interventions against persons with disabilities, including a ban on solitary confinement, restraints, non-consensual administration of electroconvulsive therapy (ECT), non-consensual administration of psychiatric and other medication, forced body cavity searches, forced abortion and forced sterilization, is enacted and enforced in all member states in the EU?

2.5 Protecting the integrity of the person

The medical model-approach of "persons of unsound mind" gave rise to a biomedical industry, which has developedmany harmful,invasive and irreversible treatments, such as electroconvulsive therapy (ECT), neuroleptics and other harmful psychopharmaceutic drugs, with the aim to correct the disability. The biomedical explanation of the word'dignity' isoften misused against persons with psychosocial disabilities in order to promote non-consensual invasive and irreversible interventions aimed at repairing, correcting or alleviating a psychosocial disability, instead of the human rights based approach to dignity as the lived experience of the person.

Proposed question on article 17

[31] A/HRC/22/53 Special Rapporteur on Torture (Mendez), 2013 thematic report: Torture in health care settings http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf

- What is EU doing to promote the human rights based concept of dignity of a person with psychosocial disabilities, and to prohibit the wrongful biomedical paradigm of 'dignity' depending on health status?

2.6 The problem of access to justice

Stigma and exclusion impose significant barriers on access to justice for persons with psychosocial disabilities across EU member states. The incapacity-approach towards persons with psychosocial disabilities generally results in a culture of procedures and attitudes that do not take persons with psychosocial disabilities seriously as litigants for the protection of their human rights in the courts, which prevents access to justice.

Additionally, since the ECHR, the Oviedo Convention, and CoE directives such as Rec(2004)10, are required to be incorporated into the domestic law of member states of the CoE, which include all member states of the EU, both at the European level and at the domestic level, the existence of legal norms contrary to the CRPDis an insurmountable barrier to access to justice for people with psychosocial disabilities, and results in impunity for serious and widespread human rights violations.

The ECHR and the European policies and mechanisms based on it clearly fail to protect the rights of persons with psychosocial disabilities to equal recognition before the law, liberty and security of the person, and freedom from torture and ill-treatment, and yet, the EU still embraces these instruments and mechanisms as a framework for justice on universal human rights.

Abolition of the offending laws is a first and necessary step in reparations. In addition, reparations and remedies for the harm that has already been committed must be provided as set out in the Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations on Human Rights and Serious Violations of International Humanitarian law of 2006.[32]

Proposed questions on article 13

- Which steps are being taken by the EU to ensure legal accountability and remedies at the European level and at the domestic level for acts that violate the human rights of persons with disabilities, including widespread and severe violations of the rights to recognition before the law, liberty and security of the person, and freedom from torture and ill-treatment?

2.7 Children with psychosocial disabilities

Throughout the EU member states, a large number of children with psychosocial disabilities are subjected to forced psychiatric measures that are harmful to their wellbeing and development, such as institutionalization and mind-altering psychopharmaceutic medication

[32] A/RES/60/147.

aimed at correcting or alleviating the psychosocial disability without the free and informed consent of the child.

Proposed questions on article 7

- Which steps are being taken by the EU to ensure that in EU member states, children with psychosocial disabilities are not deprived of their evolving legal capacity or their liberty based on psychosocial disability, and to ensure that any violation of these rights in the EU is sanctioned?

- Which steps are being taken by the EU to ensure that children with disabilities enjoy protection of the integrity of the person, including protection against treatments, including the administration of psychopharmaceutic medication,to correct a psychosocial disability without the free and informed consent of the child concerned?

- Which measures are taken by the EU to prohibit all forms of non-consensual psychiatric interventions on children with psychosocial disabilities?

- Which steps are being taken by the EU to ensure effective access to justice for children with psychosocial disabilities, including when deprived of the legal capacity to which they are entitled on an equal basis with other children by national legislation in member states?

Part 3

Accessibility (art 9), Living independently and being included in the community (art 19), Freedom of expression and opinion, and access to information (art 21), Respect for privacy (art 22), Respect for home and the family (art 23), Education (art 24), Health (art 25), Habilitation and rehabilitation (art 26), Work and employment (art 27), Adequate standard of living and social protection (art 28), Participation in political and public life (art 29), Participation in cultural life, recreation, leisure and sport (art 30)

3.1 Inaccessibility and segregation

In many EU member states, citizens with psychosocial disabilities are either institutionalized (with or without consent, for short or long term) or left without sufficient support in the community. In most EU member states no alternative option to the medical model is available.

By the nature of confinement in social care institutions, segregation and separation from society, persons with psychosocial disabilities are denied the right to participate in community life, interacting with people of their choosing and establishing and maintaining relations with other human beings and the outside world.[33]The negative effects of institutionalisation- the lack of activities, stimulation, interaction with the wider community, self-determination, self-actualisation - have been widely recognised.

Even when not institutionalized, persons with psychosocial disabilities face a large amount of barriers in regards to participation and inclusion in the community. Overall, stigma, fear and discrimination towards persons with psychosocial disabilities are widespread and embedded in the communities in the EU. The lack of care in the community hinders one's ability to pursue, enrich and fulfil their personality and personal development through participation and membership in the life of the community.

The upcoming parallel report of ENUSP will give more information on the variety of discriminatory practices against persons with psychosocial disabilities in communities across the EU.

Proposed question on article 9

- Which measures are being taken by EU to prevent ongoing segregation and exclusion across the EU and to remedy the lack of community support, emphasizing alternatives to the medical model of mental health in EU member states?

3.2 De-institutionalization and inclusion

[33]*Niemietz v Germany*, Application no 13710/88, judgment of 16 December 1992, para 29; *Sidabras and Dziautas v Lithuania*, Applications nos. 55480/00 and 59330/00, judgment of 27 April 2004, para 43

As a result of history up to today (also known as the 'Great Confinement'), persons with psychosocial disabilities have traditionally not been part of diversity in the communities across the EU so far.

Currently, under the flag of de-institutionalization initiatives, severalinstitutional habits are finding a way into the community, such as segregation in smaller-sized institutions, sheltered unpaid /underpaid work, and outpatient forced treatment such as Community Treatment Orders (CTOs), which impliesconditional liberty, and which continues to result in side-lining, marginalization and violation of the rights of persons with psychosocial disabilities.

Proposed questions on article 19

- Which steps are taken by EU to ensure clear guidance to de-institutionalization and inclusion across the EU, and to ensure that EU Structural Funds cannot be used for initiatives that maintain social inequality and segregation of persons with psychosocial disabilities?

- What steps are being taken by the EU to combat outpatient forced treatment orders such as Community Treatment Orders (CTOs) and to ensure that all mental health services are provided based on the free and informed consent of the person concerned?

- Which steps are being taken by EU to enforce that inclusion is a human right for persons with psychosocial disabilities in the EU?

Proposed question on article 23

- What steps are taken by the EU to stop forced family separation of persons with psychosocial disabilities, based on psychosocial disability? And in addition, what is EU doing to realise and promote support for parenthood for persons with psychosocial disabilities, and to prevent forced family separation on the basis of psychosocial disability?

Proposed question on article 26

- Which steps are being taken by EU to ensure that persons with psychosocial disabilities can attain and maintain their full potential in all aspects of life in the EU, and that voluntary community based services are in place in EU member states, which support the person to attain and maintain maximum independence, ability, inclusion and participation in all aspects of life, in accordance with the will and preferences of the person concerned?

3.5 Right to health and community based support

Across the EU,many non-consensual medical interventionsare performedwithout the free and informed consent of the person concerned, includingnon-consensual administration of

psychotropic medication, electroconvulsive therapy (ECT) and forced abortion. In many EU member states national legislation allows for substitute decision-making in regard of medical interventions on persons with psychosocial disabilities. Non-consensual medical interventions on persons with psychosocial disabilities are generally aimed at correcting or alleviating (the consequences of) a psychosocial disability, in order to nullify the social support needs of persons with psychosocial disabilitiesinstead of supporting the wellbeing of the person concerned.

Proposed questions on article 25

- Which steps are taken by the EU to ensure that all mental health services are provided based on the free and informed consent of the person concerned, and that violation of this rightis effectively prohibited in the EU?

- Which steps are being taken by the EU to ensure high quality services for persons with psychosocial disabilities in the community,which support the wellbeing of the person concerned in accordance with the will and preferences of the person concernedin EU member states?

- Which steps are being taken by the EUto ensure that mental health services adhere to the core principle of "doing no harm"? In addition, which steps are taken by the EU to supportalternatives to the medical model of mental health, including peer support?

3.6 Right to education,Work and employment, and Adequate standard of living and social protection

The Mental Health Policy of the European Commission does cover the areas of mental health in youth and education and mental health in workplace settings (also see para 1.2.3), however it is mainly focussing on promoting mental health at these locations and the prevention of mental health problems, and falls short in protecting the rights of all persons with psychosocial disabilities.

Proposed questions on article 24, 27 and 28

- What steps are taken by the EU to revise the Mental Health Policy of the European Commission, in order to move away from a location-bound approach of mental health and to ensure a human rights-based approach in the protection of the rights of persons with psychosocial disabilities in all aspects of life?

- What steps are taken by the EU to guarantee that persons with psychosocial disabilities are not discriminatorily denied access to education, work and employment based on psychosocial disability in EU member states?

- Which steps are being taken by the EU to ensure reasonable accommodation in all aspects of education, hiring and employment practices, including which steps are being taken to examine the experiences of persons with psychosocial disabilities in EU

member states with respect to education and employment to develop specific recommendation for policies and guidelines as to reasonable accommodation as well as measures to eliminate institutional and attitudinal discrimination?

- What steps are taken by the EU to guarantee that all persons with psychosocial disabilities receive payment, rights and benefits for work and employment on an equal basis with others in EU member states?

- What steps are taken by the EU to ensure that persons with psychosocial disabilities have an adequate standard of living on an equal basis with others, including access to sufficient income to obtain independent living detached from any services?

3.7 Participation in political life

Proposed questions on article 29

- What steps are taken by the EU to ensure inclusion of all persons with psychosocial disabilities in the EU for the European and local voting processes?

- How will the EU ensure that persons with psychosocial disabilities have access to resources to organize and represent themselves through their respective local, regional, national and European organizations? And in addition, how will the EU guarantee that the 20-80 ratio for European funding[34] does not constitute a barrier for the respective organizations of persons with psychosocial disabilities, especially when they may not have any other resources?

[34]European funding requires that applicants have 20% of the total budget of the funding application themselves, and European funding can supply the remaining 80% of the total budget of the funding application.

Part 4

Statistics and data collection (art 31), International cooperation (art 32), and National implementation and monitoring (art 33)

4.1 "Nothing about us, without us"

David Webb (2010): "The essential experiential data of consciousness are subjective, invisible and unmeasurable **first-person data** which cannot be reduced to third-person data without losing their most important properties, which are the subjective value and meaning of an experience to those who live it. The reductive, third-person methods of traditional science will simply not help us to understand, describe and explain the first-person, lived experience of consciousness. "

Beresford and Boxall (2013): "The dominant epistemology has worked to prohibit mental health service users from being producers or knowers of their own knowledges. Psychiatric knowledge has been based on **the 'knowledge claims' of others** about the experience of mad people and mental health service users. They have played the key role in interpreting service users' experience, while the latter's own interpretations have, as has been argued, been excluded or devalued."

Maria Liegghio (2013). "For psychiatrized people, being constructed as 'incompetent' and 'dangerous' becomes a powerful mechanism leading to their **disqualification** as legitimate knowers". "[Epistemic violence] is a very denial of a person's legitimacy as a knower – their knowledge and their ways of knowing – that renders that person out of existence, unable to be heard and to have their interest count."

Proposed question on article 31:

- Which steps are being taken by the EU to eliminate epistemic violence towards persons with psychosocial disabilities, and to ensure that the lived experience of persons with psychosocial disabilities plays a key role in data collection, research, implementation and monitoring of the rights of persons with psychosocial disabilities?

4.2 Implementation of the rights of persons with psychosocial disabilities in the EU

The EU, the EU institutions and the EU governments have legal obligations to uphold human rights.The EUstates:

> "One of the EU's main goals is to **promote human rights** both internally and around the world. Human dignity, freedom, democracy, equality, the rule of law and respect for human rights: these are the core values of the EU. Since the 2009 signing of the Treaty of Lisbon, the **EU's Charter of Fundamental Rights**[35] brings all these rights together in a single document. The EU's institutions are legally bound to uphold them, as are EU governments whenever they apply EU law." [36]

[35] Charter of Fundamental Rights of the European Union http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:EN:PDF

[36] EU website, How the EU works, Human rights and equality: http://europa.eu/about-eu/index_en.htm

In 2012, the **EU Fundamental Rights Agency (FRA)**published acritical report on Involuntary placement and involuntary treatment of persons with mental health problems[37], stating:

> "The paradigm shift to a rights-based approach to disability encapsulated by the CRPD poses potential challenges for the existing legal frameworks governing involuntary placement and involuntary treatment. This has significant implications for the European Union (EU) and its Member States. (…) As the CRPD Committee starts to develop its interpretation of the convention on the basis of State Party reports, the key fundamental rights questions associated with compulsory placement and treatment will be brought into ever sharper focus. These questions will have to be addressed by EU Member States as they assess the compliance of their current and proposed legislation with the CRPD. **The further development of EU law and policy, including in the area of non-discrimination, could play a major role in this process**."

The focal point for implementation of the CRPD in the EU is the European Commission's Unit on the Rights of Persons with Disabilities[38]. The Council Working Group on Human Rights (COHOM)[39] has been established as the formal coordination mechanism with the Member States. The Group is responsible for human rights issues in the EU's external relations and does not have a mandate to work on EU internal human rights issues, which is the mandate ofthe Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons (FREMP).

The Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons (FREMP)has been established to secure compliance with the Charter of Fundamental Rights of the European Union, also in connection with preparatory work in the legislative procedures of the Council. FREMP also considers the question of the EU's accession to the European Convention on Human Rights[40] even though the ECHR, especially article 5.1.e, is not in line with the CRPD (also see the questions raised at Part 1, page 5).The Court of Justice of the EU delivered its opinion on the draft agreement on the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms and identifies problems with regard to its compatibility with EU law.[41]

Proposed questions on article 33 (also see next page):

- What steps has the EU taken toensure that the focal point and coordination mechanism has a mandate and resources to follow the FRA recommendation and develop EU law and policy to end involuntary confinement, involuntary treatment, and all forms of

[37] EU Fundamental Rights Agency (FRA), 2012 report: Involuntary placement and involuntary treatment of persons with mental health problems,http://fra.europa.eu/sites/default/files/involuntary-placement-and-involuntary-treatment-of-persons-with-mental-health-problems_en.pdf

[38] European Commission's Unit on the Rights of Persons with Disabilities http://ec.europa.eu/social/main.jsp?catId=1137&langId=en

[39] EU Council Working Group on Human Rights, http://eeas.europa.eu/human_rights/workgroup/index_en.htm

[40] http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2016573%202012%20INIT

[41] Court of Justice of EU rejects draft agreement for EU Accession to ECHR http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-12/cp140180en.pdf

substitute decision-making in compliance with the jurisprudence of the CRPD under Articles 12, 14 and 15, including General Comment No. 1 and the Concluding Observations issued by the CRPD Committee to EU member states?

- What steps are taken by the EU to ensure that accession of the European Union to the European Convention on Human Rights does not conflict with the ratification of the CRPD, and in particular what measures are being taken to nullify or derogate the ECHR Article 5.1.e provision authorizing detention on the basis of psychosocial disability, and which steps to ensure that member states are applying the CRPD standard which prohibits all detention and non-consensual treatment in mental health services, and that they are not relying on ECHR Article 5.1.e to continue justifying these practices in direct contradiction to CRPD Article 12 and 14?

4.3 Monitoring of the rights of persons with psychosocial disabilities in the EU

The **EU Framework Programme Evaluation and Monitoring**[42] undertakes activities for EU Framework Programmes evaluation and monitoring to support the implementation and management of the EU Framework Programmes (FP) and the development of research policy.

Besides that, the European mechanism for monitoring the human rights of persons deprived of their liberty, including in mental health care institutions, is the **European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment** (CPT, established by Council of Europe).

The CPT still uses outdated standards which allow for substitute decision-making and involuntary placement and treatment:

> "The procedure by which involuntary placement is decided should offer guarantees of independence and impartiality as well as of objective medical expertise. […] the formal decision to place a person in a psychiatric hospital should always be based on the opinion of at least one doctor with psychiatric qualifications, and preferably two, and the actual placement decision should be taken by a different body from the one that recommended it" [43, 44]

Proposed questions on article 33 (also see previous page):

- Which steps are being taken to ensure an adequate monitoring of the UN CRPD across the EU?

- Which steps are being taken to ensure that the EU Monitoring Framework monitors forced treatments and placements taking place in the EU? What steps is the EU taking to ensure that the Member States treat all instances of compulsory treatment in mental

[42] EU Framework Programme Evaluation and Monitoring, http://ec.europa.eu/research/evaluations/index_en.cfm

[43] See, for example: Council of Europe, CPT (2011), para. 189 or Council of Europe, CPT (2010b), para. 108.

[44] EU Fundamental Rights Agency (FRA), 2012 report: Involuntary placement and involuntary treatment of persons with mental health problems, p 35. http://fra.europa.eu/sites/default/files/involuntary-placement-and-involuntary-treatment-of-persons-with-mental-health-problems_en.pdf

health services as serious human rights violations infringing the right to be free from torture and ill-treatment, as they are described in CRPD General Comment No. 1?

- Which steps are being taken to ensure that the existing European monitoring mechanisms are harmonizing their standards with the CRPD, and are there any plans for a prompt adjustment of the role or the standards of the CPT in its approach to monitoring psychiatric institutions in EU member states? In particular, are there any plans to encourage the CPT to treat all instances of deprivation of liberty in mental health facilities as arbitrary detention contrary to international human rights law, and to treat all instances of compulsory treatment in mental health services as serious human rights violations infringing the right to be free from torture and ill-treatment, as they are described in CRPD General Comment No. 1?

ENUSP is preparing a parallel report which will give more information on these issues (in June 2015).

- end of submission-