**Subject:** Objection to the “Draft Additional Protocol to the Oviedo Convention on Human

Rights and Biomedicine concerning the protection of human rights and dignity of persons with

mental disorder with regard to involuntary placement and involuntary treatment”

To:

• Member(s) from your country of the Council of Europe Committee on Bioethics

• Minister of Health

• Minister of Foreign Affairs

• Ombudsperson of your country

• National Prevention Mechanism against Torture in your country

• National Disability Councils

• DPOs

• Associations of Lawyers

• Organisations working in the mental health field

• Organisations working in favour of on the rights of LGBTI persons

• Any other organisation working in favour of the rights of vulnerable groups,

We are writing to you on behalf of the national/regional/local organization of mental health service users, ex-users and survivors of psychiatry …. , and as a member of the European Network of (Ex-)Users and Survivors of Psychiatry (ENUSP), which is the grassroots, independent representative organisation of mental health service users, ex-users and survivors of psychiatry at a European level.

We are aware that the Bioethics Committee has been working since 2014 on the Draft Additional Protocol to the Oviedo Convention on Human Rights and Biomedicine concerning the protection of human rights and dignity of persons with mental disorder with regard to involuntary placement and involuntary treatment[[1]](#footnote-2) and the members of the Committee are expected to provide their feedback with regard to the Draft Protocol.

We take this opportunity to inform you that the Draft Additional Protocol is not going to protect our rights and the rights of people we represent, rather it will hinder the reforms, support the status quo and lead to further human rights violations in psychiatry by the creation of double human rights standards and confusion in the legal field.

The decision to elaborate a legally binding instrument on “the Protection of Human Rights and Dignity of Persons with Mental Disorder with regard to Involuntary Placement and Involuntary Treatment” was taken based on observations of the Steering Committee on Bioethics (CDBI) which found legal gaps in certain Member States of the Council of Europe in the implementation of Recommendation (2004)10 on the protection of human rights and dignity of persons with mental disorders. However, this recommendation was developed before the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD), and is based on now outdated standards which run contrary to the UN CRPD.

It is important to recall that 46 out of 47 Member States of the Council of Europe have ratified the UN CRPD and therefore they have an obligation to implement it and refrain from acts that would defeat the object and purpose of this UN Convention.

The position of the Bioethics Committee, that the Draft Additional Protocol is allegedly compatible with the UN CRPD does not reflect the true state of affairs. The CRPD Committee itself has stated in several Concluding Observations, as well as in their General Comment No. 1[[2]](#footnote-3) and in their Guidelines on CRPD Art. 14[[3]](#footnote-4), that forced treatment by psychiatric or other health and medical professionals is a violation of the right to equal recognition before the law and not consistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment pursuant to article 15 of the CRPD.

The UN CRPD guarantees the equal enjoyment of all human rights and all fundamental freedoms on an equal basis with others to all persons with disabilities. Among these rights are legal capacity, liberty, freedom from torture and other ill-treatment, and the right to health care based on free and informed consent. There is no room under the UN CRPD for a separate and unequal regime of non-consensual interventions applicable solely to persons with alleged mental disorders, contrary to Article 7 of the Oviedo Convention and to the object and scope of the Draft Protocol.

We fully understand the difficulty in the field of mental health policies which now have to meet these high standards of care without all of the proper services, knowledge and national legislation yet in place, but we firmly believe that all of these problems can be overcome by means of reforms, research and expansion of the existing good practices and planning of services in co-operation with organizations of mental health service users and (ex-)users and survivors of psychiatry in our country. Examples of existing good practices are: the Personal Ombudsman in Sweden, Intentional Peer Support (IPS), WRAP (Wellness Recovery Action Plan), Family Group Conferencing, Open Dialogue, Soteria houses, peer-run respite-houses, community support and also some practices of progressive, community-based, professional, voluntary mental health support.

We remind you, that the issue of personal responsibility and danger can be addressed in a way compatible with the UN CRPD, without putting labels on and creating separate legislation for one specific group of people such as is the case in the Draft Additional Protocol.

In terms of the consequences, the adoption of the Draft Additional Protocol instead of helping will create two conflicting tracks of human rights legislation causing much confusion and jeopardizing reforms already started in many countries.

From the legal perspective, the UN CRPD as the newest and most specialized international instrument on the human rights of persons with disabilities should, based on *lex posterior* and *lex specialis* principles, supersede provisions of regional instruments in case of conflict.

Many important organisations have already voiced similar concerns and called the Bioethics Committee to withdraw the Draft Additional Protocol, including the European Disability Forum (EDF), ENUSP[[4]](#footnote-5), Mental Health Europe (MHE)[[5]](#footnote-6), the OHCHR, the UN CRPD Committee, the Special Rapporteur for the Rights of Persons with Disabilities, MDAC, Human Rights Watch, and more. Among Council of Europe Members, Portugal has officially stated that it will not vote in favour of the Draft Protocol.

Given the reasons mentioned above, we call on you not to support the Draft Additional Protocol during upcoming consultations.

Thank you for your attention. We remain available, together with ENUSP, to answer any questions you may have regarding the content of this letter or for any other questions or information.

Sincerely yours,

1. <https://www.coe.int/en/web/bioethics/news/-/asset_publisher/EV74osp47zWZ/content/public-consultation-on-a-working-document?inheritRedirect=false> [↑](#footnote-ref-2)
2. CRPD Committee General Comment no.1 on article 12 Equal recognition before the law (April 2014) [↑](#footnote-ref-3)
3. CRPD Committee’s Guidelines on article 14 Liberty and security of person (September 2015) [↑](#footnote-ref-4)
4. <http://enusp.org/wp-content/uploads/2016/03/ENUSP_response-to-draft-Protocol-Oviedo_2017.pdf>, <http://enusp.org/wp-content/uploads/2016/03/ENUSP_response-to-draft-Protocol-Oviedo_involuntary-2015.pdf> [↑](#footnote-ref-5)
5. <https://mhe-sme.org/statement-of-enusp-and-mental-health-europe-on-additional-protocol/> [↑](#footnote-ref-6)