



# MHE Input to the European Disability Rights Strategy 2021-2030

November 2020



## About Mental Health Europe

[Mental Health Europe](#) (MHE) is the largest European independent network organization representing mental health users, their families and carers, health professionals, volunteers, and service providers across Europe. For 35 years MHE has been actively promoting mental health and advocating for the protection of the rights of people with mental health problems. We have developed comprehensive programs to combat social exclusion, stigma and prejudices that people with mental health problems often face and supported the development of quality human rights-based community services. Mental Health Europe is a member of the European Disability Forum (EDF).

MHE's work is underlined and guided by the **United Nations Convention on the Rights of Persons with Disabilities** (UN CRPD), which states that people with disabilities, including people with psychosocial disabilities, must fully enjoy their human rights. As part of our work, we monitor and provide expert advice on the implementation of the UN CRPD by the EU. It is crucial that European policies reflect and respect the obligations to which the EU committed when it ratified the UN CRPD in 2010 and the subsequent recommendations it received from the UN Committee on the Rights of Persons with Disabilities.<sup>i</sup>

## General Recommendations

As a member of EDF, MHE endorses the recommendations made by EDF. It supports the notion that the EU has the ability to be a leading driver to the full realisation of the UN CRPD, aligning with EU treaties and the 2030 Agenda for Sustainable Development. In order to be ambitious yet realistic, the strategy should be comprehensive and include clear objectives, timelines, resource allocation, a governance and accountability mechanism, and should be equipped with sufficient budgeting. Mental Health Europe commends the consultative steps undertaken by the European Commission, in particular through the engagement with the High-Level Group on Disability. **Full participation of persons with disabilities and their representative organisations, including persons with psychosocial disabilities, needs to be ensured throughout the implementation up to the evaluation of the strategy.**<sup>ii</sup>

The outbreak of the COVID-19 pandemic exposes all human beings to a shared vulnerability when their most valued universal asset, health, is at stake. The pandemic, however, disproportionately hits people who are already in a vulnerable situation, including people with psychosocial disabilities. In addition to common risks and challenges, people with mental ill-health face a disruption of support and services and are at increased risk of violence and further discrimination. As demonstrated through the Disability Rights Monitor, people living in institutions are at increased risk of abuse or neglect as visits are restricted and supervision by families or a support network are lacking. Coercive measures such as forced placement,

treatment or restraint seem to be on the rise as they are considered the ‘easy’ solution due to staff shortage or disruption of community-based services. People in institutions are also at increased risk of infection due to overcrowded and often unhygienic conditions with poor access to health care.<sup>iii</sup> **Despite the proven effectiveness of prevention and early intervention when it comes to mental health problems, support for people experiencing distress or people with psychosocial disabilities is insufficiently prioritised in current policy responses.**

The impact of COVID-19 on the 84 million people with mental health problems in the European Union alone should not be underestimated.<sup>iv</sup> The current crisis will bring unprecedented social and economic consequences to our societies, and even more so to people with psychosocial disabilities who are at increased risk of poverty and social exclusion. Adding to a likely rise of demands for psychosocial support in the aftermath of COVID-19 crisis, **governments need to act now if they want to ensure that the current public health crisis does not become a long-term mental health and social crisis.**<sup>v</sup>

In general, MHE welcomes the approach taken by the Commission to take into account all provisions established in the UN CRPD, including a lifecycle perspective. Recalling the evaluation of the Strategy 2010-2020 (which at the time of writing was not published yet)<sup>vi</sup>, **MHE would like to remind of the importance to consider persons with disabilities in their full diversity, thus acknowledging the diversity of barriers.** This is particularly important for persons with psychosocial disabilities often considered as persons with invisible disabilities. For example, accessibility issues might not necessarily be placed in the physical environment, but rather in negative attitudes and stigma towards persons with psychosocial disabilities and persons with mental health problems.<sup>vii</sup>

With regards to coordination, the strategy needs to establish disability focal points across the EU institutions, delegations and all Directorates-General, as recommended by the UN CRPD Committee’s Concluding Observations to the EU.<sup>viii</sup> **MHE would like to particularly highlight the importance to establish a disability focal point within the DG Justice, touching upon questions of equality such as legal capacity, access to justice and the security and liberty of the person.** The UN CRPD also requires all Member States to establish focal points. Each focal point should have sufficient human and financial resources to effectively coordinate the implementation of the UN CRPD. In this, the strategy should have the ability to smoothly integrate future recommendations from the upcoming UN CRPD review process, general comments by the UN CRPD Committee and among others the recommendations by the UN Special Rapporteurs touching upon disability rights.

While the EU continues to discuss the structures and objectives of funding under the new Multi-annual Financial Framework (MFF), the Disability Rights Strategy 2021-2030 needs to be considered in coherence and thus harmonized with several other key EU strategies. These include the new Gender Equality Strategy,<sup>ix</sup> the EU Anti-racism Action Plan 2020-2025, the

Victim's Rights Strategy, the New Pact on Migration and Asylum and the Action Plan on Migration and Integration,<sup>x</sup> Strategy on Children Rights, the Child Guarantee, the LGBTI Strategy, post-2020 EU Framework on Roma Equality and Inclusion Strategies and other relevant upcoming policy initiatives.

## Specific Recommendations regarding the Rights of Persons with Psychosocial Disabilities

The following recommendations were stated during the four consultations rounds with the High-Level Group on Disability in October and November 2020. The list thus needs to be considered non-exhaustive.

### Education and employment

Persons with psychosocial disabilities can face gaps in work history, which often lead to negative assumptions by employers, putting pressure on people in reflecting on the disclosure of disability. When employed, many times persons with psychosocial disabilities find it difficult to access further employment opportunities and responsibilities within the organisation. An employer might be willing to hire a person with a psychosocial disability for a junior-level position. However, often there is a lack of support towards higher level roles. Often mental health problems are perceived as reasons why people cannot be given public-facing roles or higher, managerial positions.

MHE recommends the EU to invest in evidence-based **programmes tackling stigmatisation and support advocacy campaigns and awareness-raising both at the national and the local levels**. In line with the Employment Equality Directive Article 13 on social dialogue, we recommend to embed initiatives into the strategy to promote diversity trainings that would take into account the situation and wishes of colleagues with psychosocial disabilities. This includes supporting member states to improve access to technical and vocational training (VET) and placement services, as well as strengthening peer support initiatives. Finally, the EU should play a key role to strengthen the mandate of National Equality Bodies to support persons with disabilities who have made experiences of discrimination at the workplace.

Another point to employment includes the aspect of self-employment. **An issue for Member States to remember is that denial of legal capacity can limit a person with a psychosocial disability's to enter in contracts or start their own business**. These are central barriers to self-employment, entrepreneurship, the development of cooperatives and the starting of businesses. Thus, the strategy should support initiatives that remove the denial of legal capacity and instead encourage the establishment of supported-decision making schemes that break down barriers for people with psychosocial disabilities who wish to, for example, start their own business.

## Deinstitutionalisation (DI) & Independent Living

Mental Health Europe is member to the [European Expert Group on the Transition from Institutional to Community-based Care](#) (EEG). Within the group, MHE recommends the strategy to take into account the following recommendations:

1. Person-centred and individualised support should be provided to all, including people with complex support needs. The way care is being provided, the quality of support, and their outcomes in terms of quality of life are key indicators;
2. There is need for more data and information on people's lived experiences in terms of choice and control, inclusion, and participation. Understanding the impact of policies on the lives of people should be a key target. Clear definitions and shared terminology are fundamental elements to achieve this;
3. Appropriate housing policies, investment in affordable community-based and social housing are key;
4. National strategies on DI need to comprise adequate funding, concrete implementation and a monitoring mechanism.

The COVID-19 crisis has severely impacted persons with disabilities and their families, and intensified the problems of institutionalisation with higher health risks for those living in institutions. It is time for the EU to intensify the DI effort in order to provide community-based services to all, keeping conditionality of EU funding, including of the corona-related, to the respect of the UN CRPD, with proper monitoring and implementation. Families and carers need support and continuity of community-based support. Investment is needed in the transition, diversification on quality service models (early childhood intervention, day-care, respite care, distance support), and in training of the workforce and management.

**The new strategy should include EU actions showing vision, leadership and commitment to DI, with a Communication on Independent Living and by addressing legal capacity for persons with disabilities, which is key for effective DI.** There is need for synergies with other initiatives, such as the Child Guarantee, that are aimed at inclusion of children with disabilities and their access to free or affordable services (e.g. education, including early childhood education & care; healthcare, nutrition & housing; and culture & leisure activities).

## Equality & non-discrimination

MHE encourages the Commission to include a strong commitment **to foster equality legislation in the EU, in particular through upholding the Horizontal Directive, and including intersectional discrimination.** Furthermore, the strategy should accede to and fully implement the Council of Europe **Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)** as a step to combating violence against women and girls with disabilities (Article 6 CRPD).

### Legal capacity<sup>xi</sup>

Many persons with psychosocial disabilities are deprived of their legal capacity due to a so-called mental health condition. Under the UN CRPD this can be considered as depriving equal recognition before the law because of a disability. We understand that legal capacity is an area in which the EU does not have full competences and it remains within national powers. **However, people deprived of their legal capacity are also deprived of their rights enshrined in European Union treaties and legislation.** Mental Health Europe has reported several positive practices in EU member states that move towards supported decision making regimes, not only legal revisions but also policies and concrete practices.<sup>xii</sup> **We like to encourage a proactive stance that goes beyond legal obligations and considers a number of ways that the Commission and the EU could support implementation at the national level.** For example, to advance the understanding of autonomy and its relationship to the use of coercion in mental health care, the EU could promote and organise:

1. Cross-national training programmes to educate the judiciary and medical professionals across Europe;
2. Exchange of good practices;
3. Awareness raising activities to promote the paradigm shift enshrined in the UN CRPD; and
4. Financial support for joint actions which could help Member States implementing good practices on supported decision-making for people with psychosocial disabilities.

### Access to justice

Persons with psychosocial disabilities face many barriers when seeking justice. Such barriers include restrictions on the exercise of legal capacity; obstacles in accessing legal assistance and representation; negative attitudes and lack of training for professionals working in the field of justice. In particular, women and girls with psychosocial disabilities face negative attitudes.

Combined with the efforts mentioned before on legal capacity, the strategy should include:

- Providing affordable and independent representation and legal aid (for example by training members of the judiciary and lawyer associations);
- Making a strong connection with the recommendations made in this strategy and the [Victim's Rights Strategy under DG Justice](#) that was recently launched, especially its priorities 1 and 4.

## Further civil rights under Articles 14-16 UN CRPD – ending coercion in the EU

MHE notes with great concern the continuation of the development of the draft additional protocol to the Oviedo Convention by the Bioethics Committee at the Council of Europe. We highly recommend the Commission to add to the strategy **concerted efforts to opposing the draft additional protocol**, for example through communication and information sessions between the unit and respective national focal points for the implementation of the CRPD, of course with the involvement of concerned civil society. **At MHE we cannot stress enough that the ongoing work contravene states' obligation to make the full UN CRPD a reality.**<sup>xiii</sup>

MHE also encourages the Commission to make **concerted efforts in ending coercive treatment against persons with psychosocial disabilities in mental health care and psychiatry**. Possible measures are:

1. The creation of a European expert platform to end forced treatment in mental health care systems and psychiatry, with the involvement of civil society;
2. Fostering the links between national disability focal points with ministries of health;
3. The financial support of local programs, in particular by persons with lived experiences, that end the use of coercion;
4. Initiate awareness raising campaigns to overcome the medical approach to mental health.<sup>xiv</sup>

## Humanitarian Action

MHE encourages the strategy to also consider Article 11 of the UN CRPD within the EU context, in particular in light of humanitarian activities in the migration response. **Thus the strategy should connect Article 11 of the UN CRPD to the newly launched Pact on Asylum and Migration and strengthen relevant actors (such as the European Asylum Support Office EASO) to adapt their activities to systematically address migrants and asylum seekers with disabilities arriving to the EU.** The strategy should also encourage that all funding under the European Civil Protection and Humanitarian Aid Operations (ECHO) is monitored with regards to disability inclusion, in particular monitoring how humanitarian actors funded under ECHO take into account the [Inter Agency Standard Committee Guidelines on Inclusion of Persons with Disabilities in Humanitarian Action](#).

For further information, kindly reach out to

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<sup>i</sup> CRPD General Comments: <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx>

<sup>ii</sup> EDF input to the European Disability Rights Agenda can be found here: <http://www.edf-feph.org/european-disability-rights-agenda-post-2020> .

<sup>iii</sup> Report by the Disability-Rights Monitor: <https://www.covid-drm.org/statements/covid-19-disability-rights-monitor-report-highlights-catastrophic-global-failure-to-protect-the-rights-of-persons-with-disabilities>

<sup>iv</sup> OECD/European Union (2018): Health at a Glance: Europe 2018. State of Health in the EU Cycle: [https://ec.europa.eu/health/sites/health/files/state/docs/2018\\_healthatglance\\_rep\\_en.pdf](https://ec.europa.eu/health/sites/health/files/state/docs/2018_healthatglance_rep_en.pdf)

<sup>v</sup> MHE Statement Let`s not forget about people with psychosocial disabilities, now and in the aftermath of Covid-19: <https://www.mhe-sme.org/wp-content/uploads/2020/06/MHE-Statement-COVID-19-upd.pdf>

<sup>vi</sup> For the former Disability Strategy 2010-2020, MHE drafted a position paper assessing the impact of the strategy on persons with psychosocial disabilities in the EU: <https://mhe-sme.org/wp-content/uploads/2019/04/Assessment-of-the-European-Disability-Strategy-2010-2020.pdf> .

<sup>vii</sup> In September 2020, MHE together with persons with lived experience published “more than a ramp: rethinking accessibility for persons with psychosocial disabilities” <https://www.mhe-sme.org/new-reflection-paper-accessibility/> .

<sup>viii</sup> CRPD Committee Concluding Observations to the EU (2015) CRPD/C/EU/CO/1: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CRPD%2FCO%2FEU%2FCO%2F1](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CRPD%2FCO%2FEU%2FCO%2F1)

<sup>ix</sup> MHE’s read on the EU Gender Equality Strategy: <https://www.mhe-sme.org/mhes-analysis-of-the-new-eu-gender-equality-strategy-2020-2025/>

<sup>x</sup> In 2019 MHE conducted a research on EU funding to migrants` mental health, with general recommendations: <https://www.mhe-sme.org/eu-funds-for-migrants-mental-health/> .

<sup>xi</sup> In 2017 MHE published a position paper on Art. 12 UNCRPD – legal capacity: <https://mhe-sme.org/wp-content/uploads/2019/01/Position-Paper-on-Article-12.pdf>

<sup>xii</sup> In June 2020 MHE launched a collection of good practices in supported decision making, including a series of short videos: <https://www.mhe-sme.org/supported-decision-making/>

<sup>xiii</sup> From the start MHE was part of the alliance opposing the development of the draft additional protocol to the Oviedo Convention: <https://www.mhe-sme.org/drop-draft-oviedo-convention/>

<sup>xiv</sup> In 2019 MHE collected promising practices in the prevention, reduction and elimination of coercion in Europe: <https://mhe-sme.org/wp-content/uploads/2019/01/Coercion-Report.pdf> This work is accompanied by its Mapping Exclusion Report, updated in 2017: <https://mhe-sme.org/mapping-exclusion/>