

**The European Union and the CRPD:
EU opportunities to influence the domestic
implementation of independent living rights**

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The candidate confirms that the work submitted is his own and that appropriate credit has been given where reference has been made to the work of others.

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¹ 'Guide to the Thesis Examination Process for Postgraduate Researchers (PGRs)' (University of Leeds 2018) 17
<https://ses.leeds.ac.uk/downloads/download/526/the_guide_to_the_thesis_examination_process_for_students_which_includes_the_thesis_format_requirements> accessed 1 November 2019 The page limit does not include the bibliography.

² 'Zotero' <<https://www.zotero.org/>> accessed 1 November 2019.

³ 'Grammarly' <<https://www.grammarly.com/>> accessed 1 November 2019.

⁴ 'Proof-Reading Policy' (University of Leeds 2015)
<https://www.leeds.ac.uk/secretariat/documents/proof_reading_policy.pdf> accessed 1 November 2019.

Foreword

The CRPD is a legal instrument that is going to be implemented at the domestic level. I mean there's people, and people live in countries. They don't live in the EU as a governance body. Therefore, if the CRPD is going to make a difference to people in the EU, it is going to make a difference to them in their towns and cities and local communities. So if you are not engaging at the national level then you are not going to be making much of a difference vis a vis the CRPD.

Interviewee 1

To ensure that citizens' rights are complied with, you have to scrutinise what happens in the Member States.

Interviewee 2

Because it falls under national competence. So we do try to expand our scope in that light but it's not legislatively very easy. It has to be done through soft diplomacy and soft law.

Interviewee 4

I mean ultimately we want, you know, to make people's lives better, just I mean, that's what counts, doesn't matter what policies you have in place or funding systems, if it doesn't affect individual people in the Member States or it doesn't mean anything to them on an everyday basis then it doesn't really matter.

Interviewee 7

I really think that for the majority of us the meaning of the acronym "CRPD" is unknown. I personally know what it is because of a previous office, but I can assure you that it has never emerged during the works on the Semester.

Interviewee 9

Acknowledgments

I dedicate this thesis to my father. He would have been the first one to raise his glass to this achievement. Cheers Guido.

I am particularly grateful to the four wonderful persons that supervised this PhD project: Professor Anna Lawson and Doctor Gauthier De Beco, who accepted the research proposal and supported the first half of the path; Professor Luke Clements and Professor Mark Priestley, who bolstered the second half of the study and drove it to conclusion. They gave me a lot, starting with professional competence and human patience.

I am in debt with the EU-level professionals that kindly participated in this research project as interviewees and informants. I hope they have the chance to scroll these pages and that they might appreciate the result.

I have to say thank you to the University of Leeds and to its School of Law in particular. The quality of the services I received was excellent, and the kindness of the officers was simply superb.

I must thank my family for having supported the choice to conduct this PhD. I guess they were glad when I started this project, but I am sure they are happier now that I am concluding it.

Abstract

The European Union's (EU) commitment to human rights has become a fundamental value stated in its Treaties. It arises from several instruments, among which is the accession to United Nations (UN) agreements. The EU is obliged to respect, protect, and fulfil the principles included in the human rights treaties it concludes. So far, the Union has acceded to only one UN human rights treaty: the Convention on the Rights of Persons with Disabilities (CRPD). However, the fact that the EU has partial legal competences on human rights may be a barrier to realise its duties under international law. The thesis explains that such a limitation can be overcome by alternative procedures to guarantee the implementation of the Convention.

This situation represents a general trend of the EU, which tends to enlarge its fields of action through the development of soft procedures. On one hand, these allow the Union to engage in issues under national and local competence. On the other hand, they promote processes that alter the classic ideas of power and international relations. For this reason, the thesis refers to a theoretical framework that includes classic power theories as well as modern studies about soft law, experimentalist governance, and international networks. This research both explains real situations in the light of theories and verifies academic studies through observations.

This thesis assesses the impact of EU soft processes concerning the implementation of the CRPD. The primary assumption is that these processes are effective when they influence the national and local levels on harmonising their policies with those of the Union. In order to facilitate the search of evidence, the assessment focuses on a specific principle of the Convention: independent living rights. Furthermore, the research includes the analysis of interviews that engaged EU top-level professionals, who offered invaluable insights to understand underlying processes and confirming theoretical hypotheses. In addition to evaluating the EU conclusion of the CRPD, the findings of the research enhance the knowledge about international relations through governance processes, suggesting best practices and predicting new courses.

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List of acronyms

ANED	Academic Network of European Disability experts
COHOM	Working Party on Human Rights of the EU Council
CPR	Common Provisions Regulation (Council Regulation 1303/2013 OJ L 347/320)
CRPD – The Convention	Convention on the Rights of Persons with Disabilities
CSF	Common Strategic Framework
CSO	Civil Society Organisation
CSR	Country-Specific Recommendation
DG	Directorate General
DHLG	Disability High Level Group
DI	Deinstitutionalisation
DISG	Disability Inter-service Group
DPO	Disabled People Organisation
ECCL	European Coalition for Community Living
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
EDF	European Disability Forum
EEG	European Expert Group on the Transition from Institutional to Community-based Care
EMPL, DG/Committee	Employment and Social Affairs
ENIL	European Network on Independent Living
ENO	European Network of Ombudsmen
EO	European Ombudsman
ESI Funds	European Structural and Investment Funds
ESO	European Semester Office
EU – The Union	European Union
FRA – The Agency	Fundamental Rights Agency
ICT	Information and Communication Technology
IL	Independent Living
IMCO, Committee	Internal Market and Consumer Protection
JUST, DG/Committee	Justice
MEP	Member of the European Parliament
NRP	National Reform Programme

OP	Operational Programme
PA	Partnership Agreement
PETI, Committee	Petition
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
TO	Thematic Objective
UN	United Nation
WF	Work Forum

Chapter 1

Introductory chapter

1.1 Introduction

This first chapter introduces the thesis. It describes the research: (i) topic; (ii) question; (iii) design; and (iv) methodology. This chapter aims to outline the logical flow of reasoning that started and structured the research. Figure 1-1 visually summarises the contents and the structure of this chapter.

In addition to this introduction and the concluding remarks, this chapter includes four sections. Section 1.2 describes the topic of the research in order to frame the context of the study from the outset. Section 1.3 explains that the research topic is relevant to contemporary international debates; it also raises the research question and describes the design and methodology. Section 1.4 introduces the nature and purpose of the interviews, which form a crucial component of the research. Lastly, section 1.5 outlines the structure of the thesis.

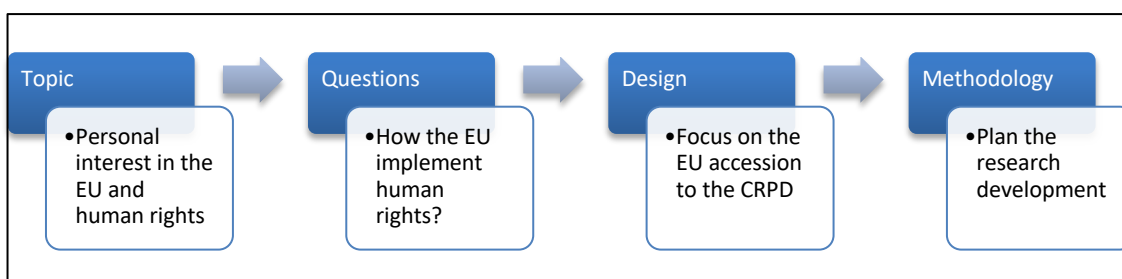


Figure 1-1 - Visual content chart of the research project flow of reasoning

1.2 Introducing the thesis

The impetus for the research arose from a personal interest in the European Union's commitment to international human rights. This thesis aims to explain whether and how the EU can effectively implement international human rights. International human rights are principles included in international human rights conventions.¹ The highest EU commitment to international human rights is

¹ 'International Human Rights Law' (OHCHR)
<<https://www.ohchr.org/en/professionalinterest/pages/internationallaw.aspx>> accessed 27

probably the accession to international agreements. This opportunity is admitted by Article 216 of the TFEU, as amended by the Treaty of Lisbon, entered into force in December 2009.²

The accession to any human rights treaty would bind the EU to respect, protect, and fulfil the principles included in that treaty itself. This consideration means that the EU should “undertake to put into place domestic measures and legislation compatible with [the] treaty obligations and duties”.³ Also, the Vienna Declaration affirms that “the human person is the central subject of human rights and fundamental freedoms, and consequently should be the principal beneficiary”.⁴ This entails that *domestic measures and legislation* must reach persons in order to guarantee a valid human rights implementation. Moreover, the TFEU states that “every person holding the nationality of a Member State shall be a citizen of the Union”.⁵ This implies that the EU should have a direct obligation towards all its citizens when it concludes any human rights treaty. However, concluding any international treaty does not, in itself, widen or broaden existing EU competences. As such, the EU Member States’ national and local authorities lay in the middle between the Union and its citizens. This hierarchy results in the fact that the EU might not establish *domestic measures and legislation* that directly benefit its citizens when the relevant matters are subject to national competence.

The EU Treaties state that “to exercise the Union’s competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions”.⁶ Regulations, directives, and decisions are binding instruments that are either directly applicable in the EU Member States or in need of being transposed into national legislation.⁷ As such, the Union can establish EU law that binds its Member States.

April 2019. Usually, “human rights” is used in international law, and “fundamental rights” is used in EU law. The locution “fundamental rights” emphasises the fact that these rights are constitutional rights in the EU. However, the research focuses on the EU implementation of human rights as part of international law.

² Consolidated Version of the Treaty on the Functioning of the European Union 2012 (OJ C 326/47).

³ ‘International Human Rights Law’ (n 1).

⁴ Vienna Declaration and Programme of Action 1993 Preamble.

⁵ TFEU Art 20.1.

⁶ *ibid* Art 288.

⁷ Klaus-Dieter Borchardt, *The ABC of European Union Law* (Publications Office of the

Besides, the EU Treaties establish that the Union can legislate only in those areas where it has competence,⁸ and the TFEU does not include the implementation of international human rights among the Union's competences.⁹ The TEU also states that "competences not conferred upon the Union in the Treaties remain with the Member States".¹⁰ This statement seems to mean that the EU cannot establish legislation that binds its Member States to international human rights.

These considerations shape the conundrum that has sparked interest in this thesis' topic:

what does it mean for the EU to respect, protect, and fulfil the principles included in a human rights convention through domestic measures and legislation that would guarantee its practical implementation?

In 2011, the EU¹¹ acceded for the first time to a human rights treaty:¹² the UN Convention on the Rights of Persons with Disabilities.¹³ Besides, the CRPD is the only human rights convention concluded by the Union at the time of conducting this research. Therefore, an analysis of the EU implementation of the CRPD represents the first occasion to answer the question above.

The initial assumption of the thesis is that if the EU cannot directly put in place *domestic measures and legislation* to implement the CRPD, it might influence national and local authorities in respecting, protecting, and fulfilling the principles included in the Convention. Lastly, the research aims to explain and verify this assumption.

European Union 2010) 87–95 <https://euicc-ks.com/wp-content/uploads/2016/03/abc_eng.pdf> accessed 29 April 2019.

⁸ TFEU Art 2.

⁹ *ibid* Artt 3-6.

¹⁰ Consolidated Version of the Treaty on European Union 2012 (OJ C 326/13) Art 5.2.

¹¹ Several authors prefer to make clear that the European Community, instead of the European Union, concluded the CRPD. This clarification is historically correct, and it may be relevant to specific studies. However, the emphasis on this distinction is useless for of this thesis, and it will be avoided to facilitate the reading.

¹² EU Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities 2010 (2010/48/EC [OJ L 23/35]).

¹³ UN General Assembly Resolution, Convention on the Rights of Persons with Disabilities and Optional Protocol 2006 (A/RES/61/106).

1.3 The research question, design, and methodology

The initial personal interest in the topic of the thesis was followed by a preliminary study to assess the opportunity to develop this three-year research. This section summarises that preparatory work, which produced a workable project that confirmed the opportunity to develop robust research.

1.3.1 Rationale of the research

The questions, design, and methodology of this research take inspiration from the Guide of the Office of the High Commissioner on Human Rights (OHCHR) on human rights indicators.¹⁴ This Guide defines human rights indicators as “specific information on the state or condition of an object, event, activity or outcome [...] that can be used to assess and monitor the promotion and implementation of human rights”.¹⁵ Adhering to this definition, this research assesses the EU opportunities to implement international human rights.

The Guide clarifies that indicators can be either quantitative or qualitative, and fact-based or judgement-based.¹⁶ In line with this classification, this research is a qualitative fact-based study. The thesis describes and explains real situations “as a narrative, in a categorical form, and based on information on objects, facts or events that are, in principle, directly observable and verifiable”.¹⁷ This aspect will be clarified throughout the section.

The use of common indicators to measure the realisation of human rights is a useful instrument to harmonise the implementation and monitoring of international human rights.¹⁸ The realisation of human rights satisfies the duties of respecting, protecting and fulfilling the international principles that rule human rights legislation.¹⁹ The Maastricht Guidelines state that “the failure by a State

¹⁴ ‘Human Rights Indicators - A Guide to Measurement and Implementation’ (UN Office of the High Commissioner on Human Rights 2012) HR/PUB/12/5
<https://www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf>
accessed 1 April 2019.

¹⁵ *ibid* 16.

¹⁶ *ibid* 16–19.

¹⁷ *ibid* 18.

¹⁸ *ibid* 2.

¹⁹ ‘Maastricht Guidelines on Violations of Economic, Social and Cultural Rights’ (UN Economic and Social Council 2000) E/C.12/2000/13 17
<https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2F2000%2F13&Lang=en> accessed 1 April 2019.

party to comply with a treaty obligation concerning economic, social and cultural rights is, under international law, a violation of that treaty”.²⁰ Therefore, the parties of international human rights conventions are duty bearers towards the principles contained in the concluded treaties.

This research focuses on one specific duty bearer: the European Union. The EU implementation of the CRPD is the real situation that this research analyses in order to assess the Union’s opportunities to fulfil its obligations as a duty bearer of international human rights.

One way to assess the realisation of human rights by duty bearers “is to measure the enjoyment of rights by rights holders”.²¹ As “human rights are universal legal guarantees protecting individuals”,²² the rights holders are individuals. Hence, if duty bearers have obligations towards rights holders, then the treaties’ parties have obligations towards individuals. Therefore, the EU has obligations towards its citizens when it concludes international human rights treaties. However, national and local authorities are in the middle between the EU and its citizens because there is a competence issue to consider.

The Guide of the OHCHR states that “the realization of human rights requires continuous efforts on the part of the duty bearer [...] to respect, protect and fulfil them”.²³ Three kinds of indicators can measure the duty bearers’ *continuous efforts*: (i) structural, (ii) process; and (iii) outcome.²⁴ In brief: (i) structural indicators “reflect the ratification and adoption of legal instruments and the existence as well as the creation of basic institutional mechanisms”;²⁵ (ii) “process indicators measure duty bearers’ ongoing efforts to transform their human rights commitments into the desired result”;²⁶ and (iii) “outcome indicators capture individual and collective attainments that reflect the state of enjoyment”.²⁷ In line with this categorisation, this research assesses the EU implementation of the CRPD through an analysis of relevant structures,

²⁰ *ibid* 17.

²¹ ‘Human Rights Indicators - A Guide to Measurement and Implementation’ (n 15) 28.

²² *ibid* 10.

²³ *ibid* 33.

²⁴ *ibid* 34.

²⁵ *ibid*.

²⁶ *ibid* 36.

²⁷ *ibid* 37.

processes, and outcomes. Lastly, the concluding chapter of the thesis will follow the tripartite scheme of the indicator framework to summarise the crucial findings of this study.

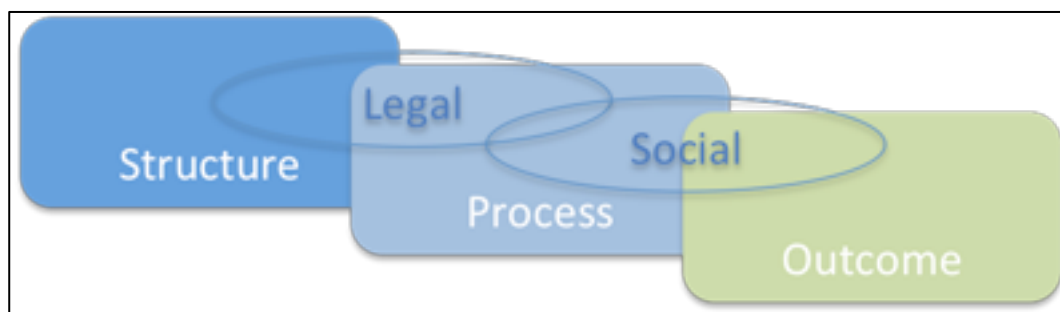


Figure 1-2 - Structure-Process-Outcome indicator framework

Also the EU Fundamental Rights Agency has adopted the OHCHR indicator framework to develop indicators for the realisation of EU fundamental rights, which the Agency summarises with the figure above.²⁸ It is interesting to note that the three indicators (structure, process, and outcome) cross two broad areas that are the legal and the social ones. Besides, the figure visually suggests some conceptual overlapping between structure and process, and between process and outcome. One reason for this overlapping is the presence of an implicit cause-effect relationship between the three indicators and the legal and social areas. This consideration means that outcomes depend on processes, which in turn depend on structures. However, there may be several intervening variables influencing the alleged linearity of this cause-effect relationship.

To conclude, this research presents a qualitative fact-based socio-legal study interpreting the EU opportunities to meet its obligations as a party to an international human rights treaty. Its investigation of structures, processes, and outcomes follows a presumed sequence of four passages: (i) the EU accession to an international human rights treaty; (ii) the EU legal and structural implementation of the treaty; (iii) the EU creation of processes to reach the national and local levels; and (iv) the achievement of outcomes concerning the fulfilment of international human rights by EU citizens. The thesis aims to analyse

²⁸ 'Fundamental Rights Indicators' (*European Union Agency for Fundamental Rights*) <<https://fra.europa.eu/en/project/2011/fundamental-rights-indicators>> accessed 2 April 2019.

these four passages and their web of influence and interactions showing the relevant contribution to the EU implementation of international human rights.

1.3.2 Research aim and question

This research aims to describe and explain EU opportunities to implement international human rights, and it does that through the CRPD case study. The central assumption of the study is that the EU has the opportunity to implement the CRPD in a way that might influence the national and local levels.

Figure 1-2 suggested that this EU influence may be a three-step exercise: (i) creating structures; (ii) developing governance processes; and (iii) promoting evaluations of outcomes. These three steps inspired three analytical perspectives to study the EU implementation of the CRPD: (i) the creation of EU CRPD-related structures and processes; (ii) the CRPD mainstreaming within existent EU structures; and (iii) the CRPD mainstreaming within consolidated EU processes. The analytical chapters of the thesis explore each of these three perspectives.

The desire to evaluate outcomes stimulated the pragmatic focus of the project on one specific principle of the Convention. The researcher, suggested by his Supervisors, decided to focus on Article 19 CRPD: living independently and being included in the community. This choice moved from preliminary considerations that arose during the initial phases of the project. For instance, FRA stated that “the EU and its Member States have prioritised efforts supporting the right to independent living, underlining how central this right is to the effective implementation of the CRPD”.²⁹ Therefore, the idea was that these *prioritised efforts* could have stimulated the production of independent living rights policies, where the research could have looked for data and evidences. Also, Article 19 CRPD is a good example where the competences of the EU and its Member States are shared and this aspect is central for the investigation of the research. The shared competence issue will be explored in depth in Section 2.5.

The research’s primary assumption and pragmatic focus are the bases of this thesis’ research question:

²⁹ ‘The Right to Independent Living of Persons with Disabilities’ (*European Union Agency for Fundamental Rights*) <<http://fra.europa.eu/en/project/2014/right-independent-living-persons-disabilities>> accessed 10 October 2018.

how is the EU exercising influence on the domestic implementation of the CRPD and independent living rights?

This question: (i) is original because it addresses a topic that has not been researched before; (ii) is significant because it is relevant to contemporary social situations beyond academia; and (iii) is rigorous due to the research's design and methodology, which will be exposed in the next sub-sections.³⁰

1.3.3 States obligations under the CRPD and its Article 19

This sub-section provides a short contextualisation of the States obligations under the CRPD in general and its Article 19 in particular. This introduction might be useful to situate eventual uninitiated readers by depicting one of the crucial topics of the research. More detailed descriptions of these background issues are included in Chapter 2.

The CRPD is a UN human rights convention, and it was the last one adopted at the time of this research.³¹ As introduced in Section 1.2, UN conventions are international treaties that states can ratify in order to adhere to shared principles to pursue. When states become parties to human rights conventions, they commit themselves to implement the treaties' principles and guaranteeing their fulfilment by citizens.

The CRPD is the first UN convention that is open for signature by regional integration organisations.³² Thanks to this opportunity, the EU could conclude the CRPD as a mixed agreement with its Member States. This means the EU has duties within the limits of the competences that the EU Member States conferred on the Union itself. Following Article 44 CRPD, the EU is considered a

³⁰ The assessment of the originality, significance, and rigour of the research project referred to official guidelines i.e. 'REF 2021' (*Research Excellence Framework*) <<https://www.ref.ac.uk/>> accessed 3 April 2019; Mark Reed, 'How to Write a 4* Paper for #REF' (*Twitter*, 23 November 2016) <<https://twitter.com/profmarkreed/status/801348612345253888>> accessed 5 April 2019.

³¹ The list of the UN human rights conventions includes: the International Covenant on Economic, Social and Cultural Rights (1966); the International Covenant on Civil and Political Rights (1966); the International Convention on the Elimination of All Forms of Racial Discrimination (1969); the Convention on the Elimination of All Forms of Discrimination against Women (1979); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1985); the Convention on the Rights of the Child (1989); the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990); and the Convention on the Rights of Persons with Disabilities (2006).

³² UN CRPD Art 42.

“State Party” when it has the formal competence to implement specific principles of the Convention. As previously explained, competences can be exclusive and shared, and their borders are often blurred. This thesis illustrates how the Union acts as a State Party to the CRPD when implementing a shared competence principle, namely living independently and being included in society.

Article 4 CRPD states the general obligations that the States Parties have to respect. It emphasises that the central aim of the Convention is the full realisation of the human rights of persons with disabilities. Also, it clarifies that the States Parties have to adopt *legislative, administrative and other measures for the implementation* of the Convention. In particular, international cooperation is a crucial resource to implement the treaty provisions. The thesis assumes and explains that cooperative instruments can offer valid opportunities to implement the CRPD that are no less effective than legislative provisions.

After the initial general provisions of the CRPD, the second cluster of articles states more specific rights of persons with disabilities. Among these, Article 19 refers to the right to living independently and being included in the community. The obligations of the States Parties under Article 19 are explained in the relevant General Comment,³³ where there is a reference to the distinction between goals that are immediately applicable and progressively achievable.

The immediate duty to respect entails that the States Parties must not interfere with the right of persons with disabilities to live independently and be included in the community. In particular, “States parties need to phase out institutionalization”.³⁴ In line with this objective, the duty to protect includes a strict control over funds that must not be “spent on maintaining, renovating, establishing building or creating any form of institution or institutionalization”.³⁵

The determined focus on deinstitutionalisation implies the progressive realisation of alternative measures to substitute institutions. For this reason, the duty to fulfil indicates a series of programmatic actions aiming at developing the

³³ ‘General Comment No. 5 (2017) on Living Independently and Being Included in the Community’ (Committee on the Rights of Persons with Disabilities 2017) CRPD/C/GC/5 <https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/5&Lang=en> accessed 10 October 2018 Part III.

³⁴ *ibid* 10.

³⁵ *ibid* 11.

conditions for persons with disabilities to living independently within their communities.

As emphasised by the CRPD Committee, the realisation of the rights stated in Article 19 CRPD is subject to both negative and positive obligations. This means that the States Parties must refrain from doing something (i.e. institutionalisation) and must plan the adoption of correct solutions (i.e. community services). Also, Article 19 is subject to a competence that is shared between the EU and its Member States.³⁶ This complex texture depicts an uncertain situation where the EU might favour soft strategies over hard methods in order to realise its duties as State Party to the CRPD. This assumption stimulated the research design to focus on the EU opportunities to implement the principles stated in Article 19 CRPD.

1.3.4 Research design and approaches

The rationale of the research has shaped the socio-legal approach of this study. Coherently, the thesis describes and explains relationships between international law and the social environment. The research question identifies the EU as a hub where these causal relationships take place. In particular, the research question assumes that the mediation of international human rights legislation by EU law can influence the realisation of human rights principles at the national and local levels.

The design of this research as an interdisciplinary study has influenced its approaches. For instance, Tobi and Kampen suggested that interdisciplinary studies put the research question at the centre and use different approaches to answer it.³⁷ To do this, the study needs to consider both observable variables and theories.³⁸ This consideration means that interdisciplinary research adopts two approaches, at least: (i) inductive when specific situations verify academic theories; and (ii) deductive when academic theories explain specific situations.³⁹

³⁶ 'Consideration of Reports Submitted by States Parties under Article 35 of the Convention - Initial Report of States Parties Due in 2012 - European Union' (Committee on the Rights of Persons with Disabilities 2014) CRPD/C/EU/1 28
<https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FEU%2F1&Lang=en> accessed 10 October 2018.

³⁷ Hilde Tobi and Jarl K Kampen, 'Research Design: The Methodology for Interdisciplinary Research Framework' (2018) 52 *Quality & Quantity* 1209, 1211.

³⁸ *ibid* 1212.

³⁹ David A De Vaus, *Research Design in Social Research* (SAGE 2001) 5–6.

This thesis is a fact-based qualitative study, which means that it analyses a specific situation with qualitative methods through inductive and deductive approaches. The specific situation analysed in this study is the one depicted in the research question. This situation entails that the research seeks shreds of evidence concerning the EU implementation of the CRPD, and that it interprets the findings when evidence is debatable.

On one hand, the choice of the specific situation frames the background knowledge, which needs to include notions about three domains: (i) the EU commitment to human rights; (ii) the EU accession to the CRPD; and (iii) the EU relevance to independent living rights. These three domains are described in Chapter 2. Besides, the three analytical perspectives indicate structures (entities) and processes that need adequate background study before developing any analysis. In detail: (i) Chapter 4 focuses on the EU CRPD-related governance; (ii) Chapter 5 investigates the CRPD mainstreaming within existent EU entities; and (iii) Chapter 6 explores the CRPD mainstreaming within consolidated EU processes. The background knowledge about all these topics represents the descriptive⁴⁰ stance of the research.

On the other hand, the choice to analyse the specific situation concerning its influencing characteristics shapes the borders of the thesis' theoretical framework. This framework needs to define influence and to investigate how influence can be exercised in the international sphere: (i) soft law; (ii) governance processes; and (iii) networking opportunities. The theoretical framework of the research is included in Chapter 3.

The thesis acquires an explanatory⁴¹ trait through: (i) the deductive use of theories to explain the specific situation; and (ii) the inductive use of evidence in the specific situation to verify and enlarge theories. In general terms, the explanations of the thesis regard the evolution of EU policy-making, from hard to soft processes, that derives from an increasing need for flexibility.⁴² Therefore, the thesis frames the specific situation about the EU accession to the CRPD into this evolutionary framework of the EU governance.

⁴⁰ *ibid* 1–2.

⁴¹ *ibid* 2–3.

⁴² Carol Harlow, 'Three Phases in the Evolution of EU Administrative Law' in Paul Craig and Gráinne De Búrca (eds), *The Evolution of EU Law* (2nd edn, Oxford University Press 2011) 455–463.

The conceptual design of the thesis includes background and theoretical existent knowledge. Also, it considered the generation of new data as a pivotal factor for a complete understanding of the thesis' topics. The research supplements deductive and inductive approaches with other kinds of reasoning in order to reveal underlying and unpredictable social situations. In short, abductive reasoning can promote intuitive conclusions when documents suggest outcomes without providing evidences. On the other hand, intuitions may need to be strengthened, and this can be done by generating new data that promote retroductive reasoning. For this reason, the research included de-structured interviews that could have generated new data able to explain unclear and underneath processes.⁴³

In sum, the research design has been developed to ensure that the answers to the research question will be "as unambiguous as possible".⁴⁴ To achieve this aim, the research includes descriptive and explanative sections. In addition, it uses different analytical approaches concerning the kind and use of data. The research design has identified the data and the means to collect and analyse such data. The next part of this sub-section will describe the methodology to develop the research design described above.

1.3.5 Methodology, data collection and generation

This research is a fact-based qualitative socio-legal study. It aims to answer the question of how the EU influences the implementation of the CRPD and independent living rights. The consideration that influence results from socio-political interactions suggested the need to focus on such interactions to answer the research question. The design of the research has indicated the necessity to use different analytical approaches to reach an answer. The use of different approaches shapes the methodology of the study.

Given suggested that "methodology consists of the actions to be taken in the study and the reasons for these actions in testing or generating theory".⁴⁵ In addition, the author argued that "qualitative research typically includes positivist,

⁴³ Norman WH Blaikie, *Approaches to Social Enquiry* (2nd edn, Polity 2007).

⁴⁴ De Vaus (n 41) 9.

⁴⁵ Lisa M Given, *The SAGE Encyclopedia of Qualitative Research Methods* (Sage Publications Inc 2008) 517.

interpretivist, constructionist, critical, and participatory paradigms”.⁴⁶ Her definition of *critical paradigms* refers to international structures and processes that influence the social level. Also, she considered the involvement of “participants as partners in uncovering and addressing power imbalances”.⁴⁷ The similarities between these explanations and the thesis’ design led this research methodology to draw inspiration from Given’s work.

Her methodology to develop qualitative research includes the choice of a study sample.⁴⁸ The study sample of this research begins with the selection of the EU accession to the CRPD. A focus on independent living rights supplements this selection. This focus was considered a necessary method to concentrate the efforts in order to find real examples of EU influences. As a consequence, the EU implementation of the CRPD and independent living rights indicates the perimeter of the background knowledge and the interviews’ study population.⁴⁹

Following Kharel, this study is a non-doctrinal legal research as “it observes relevant social facts interrelated with law”.⁵⁰ This definition reflects the multidisciplinary approach of the study. The data collection of a multidisciplinary study includes multiple sources, and this qualitative research collects primary and secondary data from literature review and interviews.

The literature review undertaken to contextualise the research question adopts a pluralistic approach, as suggested by Given.⁵¹ In fact, it includes three main areas: (i) qualitative research methods; (ii) background knowledge about the fact-based study; and (iii) theoretical framework. These three areas of the literature review constitute the primary basis of the first three chapters of the thesis. These adopt an explicative narrative that defines the literature boundaries.⁵²

The literature review was useful in learning about the thesis’ topics and research development. Also, the support of this study’s supervisors and

⁴⁶ *ibid* 518.

⁴⁷ *ibid*.

⁴⁸ *ibid* 520.

⁴⁹ *ibid*.

⁵⁰ Amrit Kharel, ‘Doctrinal Legal Research’ [2018] SSRN 2
<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3130525#> accessed 11 April 2019.

⁵¹ Given (n 47) 489.

⁵² *ibid*.

informants was the most important primary source for developing the research with a proper method.

The literature review was essential for the research's background and theoretical framework. This part of the literature review gathered data from available primary and secondary sources. Primary sources are international and EU legislation and judgements. Secondary sources are publications that may be either institutional or academic. Institutional publications are reports of international bodies. Also their websites were essential sources of secondary institutional data. Lastly, academic publications are the secondary sources that this research used to develop its theoretical framework. The concepts included in the theoretical framework are the basis of this thesis analysis.

The analysis of this research integrates its background knowledge with its theoretical framework in order to develop deductive and inductive reasoning. Besides, it includes abductive and retroductive thoughts. These mainly derive from the consideration of two sets of primary sources. The first set includes the minutes of international meetings and reported speeches. The second set refers to the conducted interviews. This second set represents the original data generated by the research.⁵³ The next section focuses on the interviews' design.

1.4 The interview design and methodology

The interviews design and methodology build upon the research design and methodology. Section 1.3.3 suggested that this study needs to go beyond the existent knowledge to answer the research question. For this reason, the research includes interviews to generate new data and knowledge, supplementing the sources of the literature review.

However, the interviews are not the centre of the research. Instead, they are instruments to develop the analysis of the thesis. This aspect is crucial because it shapes the design and methodology of the interviews first and then their analytical application. In fact, the thesis does not include any data analysis of the interviews, as with NVivo for instance.⁵⁴ Instead, it uses their original data

⁵³ *ibid* 193–194.

⁵⁴ A NVivo analysis was a considered option during the early stages of the study and the researcher attended relevant training. However, the analysis adopted a different approach after the completion of the interviews and the evaluation of the collected material.

as primary sources to supplement the literature review. This method aims to develop an analysis of the research question that can be as complete as possible.

1.4.1 The interview design

Since the interviews were conducted to supplement the background research, the identification of the interviewees resulted from the background research itself. This is because the role of the interviewees was to explain the uncertainties of underlying processes. As such, underlying processes are the topics to explore with the interviews.

The interviews supported the analysis of this study, which includes an investigation of EU entities and processes concerning the implementation of the CRPD and independent living rights. Therefore, the identification of these entities and processes represents the first step to generate a list of possible interviewees.

The entities and processes identified and analysed in this study are: (i) in Chapter 4 (a) the EU CRPD focal point, (b) the EU CRPD monitoring framework, and (c) the EU CRPD coordination mechanism; (ii) in Chapter 5 (a) the European Commission, (b) the European Parliament, (c) the European Ombudsman, and (d) the EU Fundamental Rights Agency; lastly in Chapter 6 (a) the European Semester, and (b) the European Structural and Investment Funds. The documentary research concerning these entities and processes allowed the identification of relevant officers as possible interviewees.

The identification of the possible interviewees resulted in a list of almost 250 officers. All these persons were relevant to the entities and processes considered in the study and listed above. They were mentioned in the public documents that are primary sources of this thesis. The attendance lists of meeting minutes were the most useful sources from which names that were relevant to this research were collected. Other significant sources were: (i) organisation charts; (ii) authorship of reports; and (iii) personal suggestions. When thought relevant, the public sources that allowed the creation of the confidential list of possible interviewees are indicated alongside the descriptive parts of the thesis.⁵⁵

⁵⁵ See Sections 4.3.3.1; 4.4.3.2; 4.4.4.1; 5.2.1.1; 5.2.2.3; 5.3.1; 5.3.2.1; and 6.2.2.

Among the officers included in the confidential list, nearly 50 were contacted. The selection of the persons to contact took into account: (i) a fair distribution among the analysed entities and processes; (ii) the potential contribution to the research; and (iii) the hierarchical position of individuals. The first round of contacts involved only higher position officials engaged with the entities and processes listed above. This choice was made to confer legitimation and prestige on the research itself. Among the 50 contacted officers, 15 agreed to proceed with the interview.⁵⁶

The difficulties in approaching top EU-level officers, in persuading them about the relevance of this study, and in organising the interviews were time and resource consuming. The small size of the population⁵⁷ did not offer alternatives to the selected group. The choice to interview key informants at the EU level was the most critical factor in limiting the number of the interviewees. However, the amount of the interviewees is satisfying because the 15 interviewed top officials are relevant to almost all the entities and processes analysed in this study.⁵⁸ This process aimed to guarantee that the insights supporting the analysis of this research belong to persons that materially oversee the EU implementation and monitoring of the CRPD during the time of this research.

1.4.2 The interview methodology

The rationale of the research first suggested that this study would have met qualitative standards. The design of the research confirmed this characteristic. Also the design of the interviews pointed towards a qualitative approach. Coherently, the methodology to conduct the interviews followed qualitative methods. In addition to the adherence to a rationale, other two pragmatic reasons

⁵⁶ Among the 15 interviews, 3 written contributions involved whole offices. In these cases, several persons worked together to answer the questions of the interview. Although they worked together, they have been counted as one single interview. As such, the total number of the interviews (15) stands for the amount of the contributions only. The real number of the persons that contributed either singularly or jointly might be 20 people, at least. In addition, the total number of the contacted persons may be around 50 people. This amount includes those who merely forwarded the first-contact email and those who have never replied to it.

⁵⁷ Given (n 47) 645.

⁵⁸ Among all the entities and processes described in the thesis, only one institutional office had no representatives in the interviews because its officials preferred not to be involved. This research's unrecorded informants have provided insights about this unrepresented office.

justify this choice: (i) the small dimension of the population; and (ii) the search for underlying processes.

The 250 names that fill the confidential list of possible interviewees were filtered to select adequate persons following the criteria illustrated in the previous sub-section. The suitable ones were top EU-level officers belonging to the entities and processes analysed in the thesis who were overseeing the implementation and monitoring of the CRPD and independent living rights. Besides, particular attention was paid to having a fair distribution of the interviewees among the entities and processes analysed in the thesis and listed in the previous sub-section. The officers with these characteristics were few, and they worked far away from one another and the researcher's location.⁵⁹ These essential characteristics of the design of the interviews are not in line with quantitative research methods.⁶⁰ As such, a qualitative approach was the only alternative.

Frey described quantitative research as objective and statistical.⁶¹ On the contrary, this study's interviews generated data that were subjective and interpretive. "Qualitative methods can bring to the forefront knowledge about phenomena that are not understood or that have not been explored".⁶² This is the reason why the research design includes a qualitative method to generate data. Given explained that "to generate data from a sampled data source, researchers interact with the data source using qualitative research methods within an overall strategy of inquiry".⁶³ "Interviews are an example of a data generation method".⁶⁴ The author added that the term generation has two meanings: (i) the research creates data that are not available in the literature review; and (ii) the researcher stimulates new lines of reasoning in the

⁵⁹ The interviews of this research involved people from: Brussels, London, Rome, Sofia, Strasbourg, and Vienna. The headquarters of the entities analysed in this study are located in these cities. The location of the researcher was the University of Leeds in England.

⁶⁰ Bruce B Frey, *The SAGE Encyclopedia of Educational Research, Measurement, and Evaluation* (Sage Publications Inc 2018).

⁶¹ *ibid* 1349.

⁶² *ibid* 1340.

⁶³ Given (n 47) 193.

⁶⁴ *ibid*.

interviewees' minds, who create new insights. These considerations have also shaped the qualitative methodology used to conduct the interviews.

The need for deepening the understanding of the structures and processes investigated by the literature review was the main reason for conducting the interviews. For this reason, the interviews had to meet the topics that were relevant to answering the research question. The interviews' questions were open-ended, giving the interviewees the possibility to generate and share new insights. These characteristics led to the choice of semi-structured interviews.⁶⁵

1.4.3 The sampling criteria

The research aimed to find evidence about EU influences on the implementation of the CRPD and independent living rights. Since citizens fulfil human rights, this kind of outcome might be evident at the local level. This entails that the analysis should have revealed influences that: (i) start in the EU arena; (ii) are mediated by mainstreamed entities; and (iii) impact on the local level. The initial aim of the interviews was to reveal this chain of influence by involving actors that were relevant to these three steps.

Bearing this in mind, the criteria to select the interviewees could have adopted two alternative approaches: the first one was top-down starting from the EU CRPD-related governance policy-making and verifying eventual outcomes; the second one was bottom-up starting from some local outcome and verifying eventual EU influences. The researcher, in accord with his supervisors, chose the top-down approach due to the following reasons.

First of all, the main interest of the thesis focuses on the EU level. Therefore, this should have been the natural starting point for the interview process. Also, starting with the local level had the fatal risk of not having time to reach the EU level, and this eventuality could have severely damaged the whole research. A second weakness of the bottom-up approach concerned the identification and choice of the outcomes from where starting. This would have entailed a preliminary study of the independent living policies in the 28 EU Member States in order to find the best examples. However, this effort was dramatically time and resource-consuming and not feasible for the research. The

⁶⁵ *ibid* 811.

researcher tried a preliminary study on three EU Member States (Bulgaria, Italy and the UK). Again, the search for promising outcomes was not satisfactory enough despite the dedicated resources. The last factor that made the bottom-up approach unfeasible was the actual possibility that national and local policymakers would have unlikely admitted of having been influenced by the EU, and this would have severely affected the finding of evidence.

After these preliminary considerations, the search for the suitable interviewees started from the bodies that are part of the EU CRPD-related governance: (i) focal point (EU Commission); (ii) monitoring framework (EU Parliament, EU Ombudsman, FRA, and EDF); and (iii) coordination mechanism (DISG, COHOM, DHLG, and Work Forum). Therefore, the suitable interviewees would have worked for these bodies on the implementation of the CRPD and independent living rights.

Then, the documentary study allowed to depict an intermediate level between the EU and the national level, starting from the liaison offices of several EU bodies. These included specific offices of the EU Commission, such as Country Desks, European Semester Offices, and responsible units of the ESI Funds management (i.e. the OPs' Contact Points). The EU Parliament and FRA have their National Liaison Officers as well. Also, several networks act as bridges between the EU and the national level. For example, the EU Ombudsman leads the European Network of Ombudsmen. Besides, non-institutional networks are no less critical, like the European Network of National Human Rights Institutions (ENNHRI), the European Network of Equality Bodies (Equinet), the European Disability Forum (EDF), and the European Network on Independent Living (ENIL).

The search for possible interviewees within all these bodies produced a list of 250 names. At this stage, the researcher received the favourable opinion of the Ethics Committee⁶⁶ and, in accord with his Supervisors, he decided to start to contact a selection of the identified officers. The selection would have considered a fair balance between the different bodies and offices. The idea was to postpone the identification of national-level interviewees after having evaluated the results of two rounds of interviews: the first round involving

⁶⁶ See Annex I: 'Ref. AREA 17-044 - Favourable Ethical Opinion'.

interviewees from the EU CRPD-related governance, and the second round interviewing officers belonging to the intermediate level. The expectation was that the upper-level interviewees could have suggested lower-level colleagues.

First round interviews: EU CRPD-related governance				
Body	Contacts	Correspondence	Interview	Modality
EDF	3 officers	Feb – Mar 2018	2 interviewees 14 March 2018	Video call
EU Commission	3 officers DG EMPL C3	Feb – Apr 2018	NO	
EU Parliament	3 MEPS PETI Com	Feb – Mar 2018	NO	
EU Parliament	1 MEP EMPL Com	Feb – Mar 2018	NO	
EU Parliament	4 MEPS Disability Intergroup	Feb – Mar 2018	1 interviewee 20 March 2018	Video call
EU Ombudsman	3 officers	Feb – Mar 2018	2 interviewees 7 March 2018	In person Brussels
FRA	3 officers	Feb 2018	1 interviewee 1 March 2018	In person Vienna
Second round interviews: intermediate level entities				
Body	Contacts	Correspondence	Interview	Modality
Equinet	3 officers	April – June 2018	1 interviewee 15 June 2018	Written reply
ENIL	2 officers	April – June 2018	1 Interviewee 25 June 2018	In person London
ENNHRI	2 officers	April – June 2018	NO	
EU Commission	8 Eur Semester National Officers	April – June 2018	3 interviewees 15 May 2018 19 June 2018	Written replies
EU Commission	2 officers DG EMPL F1	April – May 2018	1 interviewee 11 May 2018	Written reply
EU Commission	4 officers DG REGIO B3	April – June 2018	1 interviewee 4 June 2018	Written Reply
EU Commission	4 DG EMPL National Officers	April – August 2018	2 interviewees 30 April 2018 3 August 2018	Written Replies
FRA	3 National liaison Officers	April 2018	NO	

Figure 1-3 - Summary of the interview schedule

The development of these two rounds of the interviews started approximately at the beginning of 2018 (with the first contact email sent to the potential interviewees) and lasted until the end of the year (with the evaluation of the gathered material). The table below summarises the main passages of the interview schedule. At the end of this period, the researcher, in accord with his Supervisors, decided to stop the interviews, skipping the third round involving national actors. The decision arose from both timing concerns related to the research schedule, and considerations about the concluded experience and the gathered data.

The crucial factor is that the conduction of the interviews was challenging and it required more time than planned. In short, the contacts with the potential interviewees were prolonged and, as a consequence, requests for replies were a constant. Also, the results of the interviews were somehow unexpected, and thus a change in their strategy was inevitable. On one hand, several interviewees were very talkative, providing pages of insights each. On the other hand, other interviewees were not very keen on being interviewed and offered few data if none at all. Therefore, after several months of work, the decision was to take stock of the gathered material and start the research analysis phase.

For example, interviewing the EU Commission officers were tremendously complicated. Some of them seemed like scared of someone asking questions. For instance, the Disability Unit officers (after months of emailing and despite the intercession of the Supervisors) refused the interview. This aspect affected the research because the Disability Unit is a central topic of the thesis. Also, several intermediate entities did not want to be involved, as the ENNHRI and the contacted FRA Liaison Offices. Others, like Equinet, offered very basilar insights without any possibility to add original data to the thesis.

To conclude, the sample of the interviews has some criticality that influenced the final design and analysis of the research. Despite this, the interviews are satisfying because they provided original material for the analysis. They also offered a pioneering perspective to study on the implementation of human rights that can be useful to conduct further research, which might implement this thesis, starting from filling the criticalities illustrated in this subsection.

1.4.4 The interview process

The process of the interviews started with their design and concluded with their transcription. It lasted for almost one year.

The 50 selected possible interviewees were contacted by an email previously approved by the AREA Faculty Research Ethics Committee.⁶⁷ This email explained the aims of the research and the reasons why the study needed to conduct interviews. Also, the email clarified the forms of the interviews.⁶⁸ In detail, it explained that the interviews could have been carried out either in face-to-face interactions or through internet video calls. Despite this, some of the contacted persons expressed a preference to reply in writing, and their request was accepted. Therefore, the conducted semi-structured interviews took these three different forms.

When selected for the first contact, the 50 EU-level officers had public profiles and did not belong to any vulnerable group as identified by the University of Leeds guidelines.⁶⁹ Who had agreed to proceed received a second email,⁷⁰ which included an information sheet and a consent form for their recruitment.⁷¹ They were asked to sign the consent form to start the interviews and to allow their use for this thesis. The signed consent forms are confidential material.

The information sheet explained that the interviews would be a single one-hour interaction. In addition, it clarified that the questions would be sent in advance. Although personalised, the questions were similar for all the interviewees. This is because they aimed to investigate the underlying processes that allow the EU to influence the implementation of the CRPD and independent living rights. The choice to ask similar questions was also instrumental in collecting comparable data. Comparable data was useful during the analysis to explain similarities and differences between the studied entities and processes.

⁶⁷ See Annex I: *ibid.*

⁶⁸ Given (n 47) 471.

⁶⁹ 'Policy on Safeguarding Children, Young Persons and Adults in Vulnerable Circumstances' (University of Leeds)
<http://www.leeds.ac.uk/secretariat/documents/safeguarding_policy.pdf> accessed 18 April 2019.

⁷⁰ 'Approaching and Recruiting Research Participants' (*Leeds University*)
<http://ris.leeds.ac.uk/info/71/good_research_practice/104/planning_your_research/3>
accessed 18 April 2019; Marcello Sacco, 'Ethical Review Form' 6.

⁷¹ Marcello Sacco, 'Info Sheet & Consent Form'.

Similar questions aimed to verify the interviewees' conscious exercise of influence. Their consciousness would have implied an understanding of the difference between hard and soft instruments as well as the intentional use of specific strategies to reach the national and local levels. In addition, all the interviewees were asked to describe their strategies and explain barriers and catalysts for the EU influence. Furthermore, all of them were asked about real examples that could verify their explanations.

The interviews were audio-recorded and transcribed. The audio records are strictly confidential material and were not used for the analysis. The raw transcriptions are confidential as well, but they constitute the original primary sources that support the analysis of this thesis.⁷² The transcriptions are literal instead of interpretive. Their interpretation was left to the analytical part of the research.

1.4.5 The interview ethical considerations

Since the interviews involved living human participants, the methodology to conduct the interviews required ethical considerations.⁷³ These considerations satisfied the University of Leeds guidelines and requirements. Among such requirements, an ethical application was submitted before starting the interviews to the Faculty Research Ethics Committee,⁷⁴ which approved the project.⁷⁵

This research does not address sensitive ethical issues as the interviews did not involve children, hospitals, or any other case indicated as sensitive by the University of Leeds guidelines.⁷⁶ Despite this, the study respects ethical protocols to protect the persons involved, who are international professionals.

The interviewees were selected from a small population with specific characteristics. Their identification from the text is the main ethical issue that the methodology of the interviews had to prevent. No other hazards have been

⁷² Given (n 47) 471.

⁷³ 'Does My Project Need Ethical Approval?' (*Leeds University*)
<http://ris.leeds.ac.uk/info/70/ethics/100/does_my_project_need_ethical_approval>
accessed 18 April 2019.

⁷⁴ Sacco, 'Ethical Review Form' (n 72).

⁷⁵ See Annex I: 'Ref. AREA 17-044 - Favourable Ethical Opinion' (n 68).

⁷⁶ 'UOL Guidance on Identifying Ethical Issues' (University Research Ethics Committee 2016)
UREC/08/21
<http://ris.leeds.ac.uk/downloads/download/108/uol_guidance_on_identifying_ethical_issues>
accessed 18 April 2019.

identified. In order to avoid the identification of the interviewees, the study needed to pay attention to three principles: (i) confidentiality; (ii) anonymity; and (iii) pseudonymity.⁷⁷ The application of these three principles might limit the possibility that third parties could identify the interviewees.

Although all the primary sources (voice records and transcriptions) are strictly confidential, the research refers to the contents of the interviews. The participants were informed about this limit of confidentiality in their information sheet. To avoid any inconvenience, the interviewees received the transcriptions of their interviews to retract or clarify any passage. The participants were informed that also anonymity could have been only partially guaranteed by the research. This issue is due to the so-called *deductive disclosure* principle. This principle refers to the possibility to deduce the interviewees' identity from the indirect information provided in the text. One of the main issues that encourage deductive disclosure is "participants having jobs that are not widespread".⁷⁸

The research design predicted this issue. In fact, the choice to interview EU top officials targets participants who occupy positions that have no equal. The prediction of a possible ethical issue allowed to explain it to the participants in their information sheet. The interviewees were also informed about the methodology to prevent their disclosure. In detail, their direct data have been substituted by pseudonyms both in the transcriptions and in the written replies. The re-identification is possible with a cypher that is strictly confidential. This means that the research analysis grabbed data from documents that include no direct data of any interviewee. As a consequence, the text of the thesis does not provide any direct data that may allow the identification of the interviewees.

Records, anonymised documents, and signed consent forms are confidential files that are stored in the researcher's M: drive of the University of Leeds, protected by ID and password. Also the electronic correspondence between the researcher and the interviewees is confidential. It is securely stored in the personal mailbox of the University of Leeds, protected by ID and password. All the collected primary data are used for this research only.

⁷⁷ 'Confidentiality and Anonymisation Guidance' (University Research Ethics Committee 2016) <http://ris.leeds.ac.uk/downloads/download/925/confidentiality_and_anonymisation_guidance> accessed 18 April 2019.

⁷⁸ *ibid* 3.

To conclude, the researcher attended specific workshops to address the ethical requirements of the University of Leeds adequately. Besides, the researcher followed training in the correct way to manage data. On this, he prepared a Data Management Plan and submitted it to the Research Data Leeds Office,⁷⁹ which approved the Plan.⁸⁰ Lastly, the researcher compiled a Fieldwork Assessment Form in order to prevent any hazard during the interviews.⁸¹ This document revealed no dangers for both the researcher and the interviewees.

1.5 Structure of the thesis

In addition to its introductory and concluding chapters, this thesis includes five other chapters. Among these, the first two describe and explain the background and theoretical frameworks of the research, and the other three include the analysis of the research.

Chapter 1, this introductory chapter, has described and explained the basis of the thesis. It outlined the logical steps that start with the identification of an international issue that is worthy of a three-year research, and it went on introducing the research question, design, and methodology.

Chapter 2 includes the background knowledge of this thesis. It introduces the EU commitment to human rights and explains that the accession to international human rights treaties is part of this commitment. Then the chapter focuses on the CRPD because this is the study case of the research. It also presents the institutional difficulties the EU faces to implement the Convention due to the conferral principle. The conferral may be a significant problem, especially when dealing with shared competence issues. Article 19 CRPD, which states independent living rights, is an example of shared competence issues. For this reason, the chapter includes a focus on independent living rights that aims to depict their relevance within the EU borders.

Chapter 3 includes the theoretical framework of this thesis. It explains the difference between power and influence, stating that while hard (coercive) processes exercise power, soft (non-coercive) processes exercise influence.

⁷⁹ Marcello Sacco, 'Data Management Plan'.

⁸⁰ Marcello Sacco, 'MSacco RDM' (11 October 2017).

⁸¹ Marcello Sacco, 'Fieldwork Assessment Form'.

This difference is pivotal and relevant to the conferral issue. In fact, the conferral is an example of hard law that may be a barrier for the EU to implement international human rights. However, the EU may foster the implementation of human rights principles through soft processes rather than hard ones. In addition to the definition of influence, the chapter introduces three concepts that concern the exercise of influence in the international sphere: (i) soft law; (ii) experimentalist governance; and (iii) networks. The analytical chapters will use these concepts to explain how the EU can implement the CRPD exercising influence instead of power.

Chapter 4 is the first of the three analytical chapters of the thesis. It focuses on the EU CRPD-related governance, which includes the EU CRPD: (i) focal point; (ii) monitoring framework; and (iii) coordination mechanism. Chapter 5 is the second among the three analytical chapters of the thesis. It investigates the CRPD mainstreaming within the four EU institutions and bodies that are part of the EU CRPD focal point and monitoring framework: (i) the EU Commission; (ii) the EU Parliament; (iii) the EU Ombudsman; and (iv) the EU Fundamental Rights Agency. Chapter 6 is the last of the three analytical chapters of the thesis. It explores the CRPD mainstreaming within two crucial processes of the EU governance that are: (i) the European Semester and (ii) the ESI Funds.

The three analytical chapters describe the entities and processes on which they are focused. The descriptions frame the discussion and show if these entities and processes can exercise influence. In addition to descriptions, the analytical chapters include explanations that offer reasoning about the effective exercise of influence on the domestic level in implementing the CRPD and independent living rights.

The explanations of the three analytical chapters build upon the comparison between the three groups of sources of the research: (i) background knowledge; (ii) academic theories; and (iii) new data from interviews. The explanations can develop from each of these three groups of sources. However, any explanation may adopt different approaches depending on the group of sources that allows developing the explanation itself. This consideration means that: (i) background knowledge may support inductive and intuitive explanations; (ii) academic theories may purport deductive explanations; and (iii) new data from interviews may suggest retroductive explanations.

Chapter 7 is the last of the thesis, and it includes the conclusions of the research. The conclusions build upon the developed analytical explanations to create new knowledge about the evolution of the EU opportunities to exercise its influence on the implementation of international human rights principles. The concluding chapter reinterprets the analytical findings in light of the structure-process-outcome indicator framework, which inspired the development of the research.

1.6 Concluding remarks

This introductory chapter explained that the thesis is based on a robust preliminary research project. The project started with a personal interest in the opportunity for the EU to conclude international human rights treaties. Such interest raised some questions about the practical possibility for the EU to meet its obligations as duty bearer following its accession to an international human rights treaty. The main issue is that such obligations would be satisfied with the fulfilment of human rights by EU citizens. However, the Union may have competence issues to reach individuals with its human rights policies. This is because the full breadth of international obligations have to be overlaid on a complex set of governing structures that only affords the EU legal competence in some areas. Therefore, the Union is driven to seek soft power ways of nudging change to implement the CRPD. The preliminary project of this research assumed that a specific study on the EU implementation of the CRPD could have verified the EU opportunities to conclude international human rights treaties.

This preliminary assumption developed a research question as well as the design and methodology to answer such a question reliably. This introductory chapter explained that the research question is relevant to the contemporary international socio-political debates on human rights legislation. In addition, the chapter illustrated that the answers to the research question result from design and methodology that are both original and rigorous. They are original because of their mix of approaches and the interviews that generate new data. They are rigorous due to the background knowledge and academic theories that support the analysis of the study.

The preparation of the research project included in this introductory chapter has been instrumental in developing a reliable and coherent research.

The preliminary project clarified the ideas about what to study and how to study it. Lastly, the project suggested the thesis' structure in order to have a clear and consequential exposition of the contents.

Chapter 2

The background of the research

2.1 Introduction

This chapter describes the topics of the research. Its structure moves from broad to focused topics. This choice reflects the research design's flow of reasoning, which started with a question about the EU opportunity to conclude international human rights treaties, and it narrowed to the specific case concerning the EU accession to the CRPD with a focus on independent living rights. This background chapter frames these topics.

The research's broad domain concerns the EU opportunity to implement international human rights. For this reason, Section 2.2 explains that the Union's commitment to the promotion of human rights rests on three pillars: (i) the jurisprudence of the ECJ; (ii) the inclusion of fundamental rights in the EU Treaties; and (iii) the EU conclusion of international human rights conventions.

This research later focuses on this third pillar and on the EU opportunities to implement the international human rights treaties it concludes. Its focus on the CRPD case aims to find evidence to such possibilities. Section 2.3 describes the main effects of the EU accession to the CRPD. It originally presents a group of three effects: (i) legal; (ii) institutional; and (iii) political. The section introduces these three effects together with one of their limits: the principle of the conferral.

Building upon the principle of the conferral, Section 2.4 investigates the competence issue that characterises the legal relationship between the EU and its Member States. Due to the competence issue, the EU cannot legislate all of the CRPD principles, but it may supplement its legislative prerogatives with institutional and political processes. This case mainly reflects the situation of shared competence issues. Independent living rights are among shared competence issues, and Section 2.5 addresses this matter.

Lastly, section 2.6 focuses on independent living rights in the EU, and it narrows down to two topics relevant to this principle: deinstitutionalisation and personal assistance. The aim of the section is twofold: on one hand, it describes

the topics; on the other hand, it emphasises the vital role of the EU to correctly implement the CRPD principles at the national and local levels.

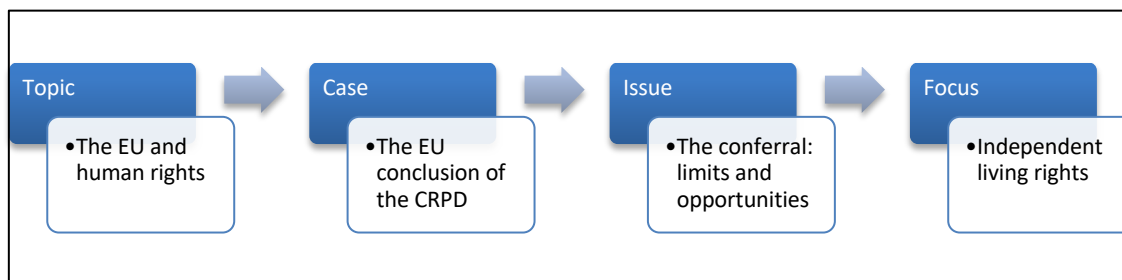


Figure 2-1 - Visual content chart of Chapter 2

2.2 The EU commitment on human rights

The European Union¹ has primarily economic and commercial roots. The Union builds upon the Treaty of Rome,² which had commercial purposes mostly. Despite this, the EU commitment to the promotion of human rights has been increasing over time. Examples of its engagement can be found: (i) in the jurisprudence of the European Court of Justice; (ii) in the EU Treaties; and (iii) in the EU accession to international human rights treaties. This section describes these three different domains of the EU effort to realise international human rights.

The EU commitment to human rights started with the pioneering case law of the ECJ. The Court “shall ensure that in the interpretation and application of the Treaties the law is observed”.³ This means that the ECJ interprets what appears in the Treaties but also what is unwritten. Its mandate is to guarantee univocal interpretations of the Treaties.

For instance, in the early '60s, the ECJ had to defend the doctrine of supremacy by insisting the EU is underpinned by general principles of law that include human rights. In this respect, the jurisprudence refers to two leading cases establishing that: (i) the EU legislation is directly applicable in the EU

¹ The emphasis on the distinction between the European Community and European Union is not necessary for this thesis, and it will be avoided to facilitate the reading. In spite of this choice, some direct quotations may include the word Community.

² The Treaty of Rome, signed the 25 March 1957 and entered into force the 1 January 1958, includes: (i) the Treaty establishing the European Economic Community (TEEC); and (ii) the Treaty establishing the European Atomic Energy Community (Euratom).

³ Consolidated Version of the Treaty on European Union 2012 (OJ C 326/13) Art 19.

Member States;⁴ and (ii) the EU legislation enjoys primacy over national law even when constitutional.⁵ Grimm affirmed that the EU Treaties had been interpreted with a constitutional approach since these two judgements.⁶

In the beginning, the established supremacy of the EU legislation concerned only the contents of the EU Treaties that were merely economic and commercial. Subsequently, in 1970, the ECJ stated that “respect for fundamental rights forms an integral part of the general principles of law protected by the Court of Justice. The protection of such rights, whilst inspired by the constitutional traditions common to the Member States, must be ensured within the framework of the structure and objectives of the Community”.⁷ Therefore, the limits of the ECJ competence do not derive from a strict reading of the EU Treaties but from the general principles of EU law.

At first, the ECJ drew inspiration by the EU Member States’ constitutions to develop the general principles of EU law. Then, the Court contemplated also international treaties for its interpretations.⁸ The fact that the majority of the EU Member States ratified the same human rights conventions persuaded the ECJ to consider those treaties as general principles of EU law.⁹ In this way, human rights have become a legal matter of the EU through the case-law of the ECJ.

Defeis stated that “the Maastricht Treaty, adopted in 1992, converted the obligation to respect human rights previously articulated by the European Court of Justice (ECJ), into a treaty obligation”.¹⁰ In fact, “with the Treaty of Maastricht, the Community clearly went beyond its original economic objective, i.e. creation of a common market, and its political ambitions came to the fore”.¹¹ Since the

⁴ *Van Gend en Loos v Administratie der Belastingen* [1963] ECJ Case 26/62, ECR-2.

⁵ *Costa v ENEL* [1964] ECJ Case 6/64, ECR-587.

⁶ Dieter Grimm, ‘The Democratic Costs of Constitutionalisation: The European Case: Democratic Costs of Constitutionalisation’ (2015) 21 *European Law Journal* 460, 460.

⁷ *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1970] ECJ Case 11/70, ECR-1126.

⁸ *R & V Haegeman v Belgian State* [1974] ECJ Case 181-73, ECR-450.

⁹ *Nold KG v Commission* [1973] ECJ Case 4/73, ECR-493.

¹⁰ Elizabeth F Defeis, ‘Human Rights, the European Union, and the Treaty Route: From Maastricht to Lisbon’ (2017) 35 *Fordham International Law Journal* 1207 <<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2597&context=ilj>> accessed 30 April 2019.

¹¹ ‘Treaty of Maastricht on European Union’ (*EUR-LEX*, 2010) <http://publications.europa.eu/resource/cellar/23e2e276-05ee-49f6-b3ca-d6db7e3b2738.0005.02/DOC_2> accessed 1 October 2017.

Treaty of Maastricht,¹² the EU primary legislation mentions fundamental rights. In fact, Article F.2 TEU as amended by the Maastricht Treaty stated that “the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law”.

While the Treaty of Maastricht opened the doors to human rights, the Treaty of Amsterdam¹³ represented a real shift. Its Article F TEU, as amended by the Amsterdam Treaty, stated that the EU is grounded “on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law”. Article F introduced the possibility to take action against those EU Member States that did not respect its dispositions. Besides, the new Article 6.a TEC stated to “take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”.

In 2000, the Charter of Fundamental Rights of the European Union¹⁴ was proclaimed in Nice with a non-binding force. After the 2004 failure to be inserted in the EU Constitution, the Charter was amended and proclaimed again in 2007.¹⁵ It finally became binding on the 1 December 2009 with the Treaty of Lisbon,¹⁶ which is into force at the time of developing this research.

Article 6 TEU, as amended by the Lisbon Treaty, gives the status of primary legislation to the Charter. However, Article 51 of the Charter limits its competence “only when implementing Union law”. This is because the EU Treaties do not explicitly confer the promotion of human rights on the EU.

Also on this issue, the ECJ offered its interpretation by stating that the EU Member States shall respect the EU Charter even when national legislation links to EU law without implementing.¹⁷ This case-law means that the ECJ expanded

¹² Treaty on European Union (Maastricht Text) 1992 (OJ C 191/1).

¹³ Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts 1997 (OJ C 340/1).

¹⁴ Charter of Fundamental Rights of the European Union 2000 (OJ C 364/1).

¹⁵ ‘The Protection of Fundamental Rights in the EU’ (European Parliament 2019) 3 <http://www.europarl.europa.eu/ftu/pdf/en/FTU_4.1.2.pdf> accessed 2 May 2019.

¹⁶ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community 2007 (OJ C 306/1).

¹⁷ *Åklagaren v Hans Åkerberg Fransson* [2010] ECJ Case C-617/10, ECLI:EU:C:2013:105 [19];

its prerogatives to the EU general principles in 1970, and it has further enlarged its competence to the scope of EU law since 2010.¹⁸

This section has revealed that the evolution of the EU commitment to human rights rests on the relationship between the EU primary legislation and the ECJ jurisprudence. Furthermore, the conclusion of international human rights conventions represents a third opportunity for the EU to reinforce its engagement in human rights. This third opportunity is the main focus of the thesis, and the next section includes an overview of the case concerning the EU accession to the CRPD.

2.3 The EU accession to the CRPD: origins and effects

The commitment of the EU to disability rights can be divided into four periods:¹⁹ from the 1980s to the middle 1990s following the wave of the UN Decade for Persons with Disabilities;²⁰ (ii) the mid-1990s when the EU Commission²¹ asked for a stronger effort;²² (iii) the period following the Amsterdam Treaty²³ due to its anti-discrimination provisions; and (iv) from both the Treaty of Lisbon²⁴ and the EU conclusion of the CRPD²⁵ on.

The EU was an active stakeholder during the drafting of the CRPD.²⁶ It strongly supported the opportunity for the Convention to “be open for signature

Joined Cases HK Danmark [2013] ECJ C-335/11 and C-337/11, OJ C 156/08.

¹⁸ Francesca Ferraro and Jesús Carmona, ‘Fundamental Rights in the European Union’ (European Parliament 2015) PE 554.168
<[http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/554168/EPRS_IDA\(2015\)554168_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/554168/EPRS_IDA(2015)554168_EN.pdf)> accessed 2 May 2019.

¹⁹ Bjørn Hvinden and Rune Halvorsen, ‘Which Way for European Disability Policy?’ (2003) 5 *Scandinavian Journal of Disability Research* 296, 304–305; Mark Priestley, ‘In Search of European Disability Policy: Between National and Global’ (2007) 1 *Alter* 61.

²⁰ UN General Assembly Resolution, World Programme of Action concerning Disabled Persons 1982 (A/RES/37/52).

²¹ EU Commission Communication, Equality of opportunity for people with disabilities 1997 (COM(96) 406 final [OJ C 12/01]).

²² Eilionóir Flynn, *From Rhetoric to Action: Implementing the UN Convention on the Rights of Persons with Disabilities* (Cambridge University Press 2011) 63–64.

²³ Treaty of Amsterdam.

²⁴ Treaty of Lisbon.

²⁵ EU Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities 2010 (2010/48/EC [OJ L 23/35]).

²⁶ Gráinne De Búrca, ‘The EU in the Negotiation of the UN Disability Convention’ (2010) 35 *European Law Review* <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1525611>

by all States and by regional integration organisations”.²⁷ Finally, the CRPD is the first human rights treaty of the United Nations that allows such an opportunity. The EU signed the CRPD on its opening day for signature on 30 March 2007, approved the conclusion of the Convention on 26 November 2009,²⁸ and formally deposited the relevant documents on 23 December 2010.²⁹ After the deposit of all the instruments of accession, the CRPD entered into force in the EU legislation on 22 January 2011. The CRPD is the first human rights treaty concluded by the EU and by any regional integration organisation.

The possibility for the EU to conclude international treaties is now stated in the EU Treaties.³⁰ The Treaty of Lisbon has conferred legal personality on the EU,³¹ and this status allows the EU to negotiate and conclude international treaties.³² As the negotiation of the CRPD took place before the ratification of the Treaty of Lisbon, the legal basis for the EU to engage in such unprecedented competence derived from Article 13 TEC.³³ The assumption was that Article 13 TEC authorised to “take appropriate action to combat discrimination based on [...] disability”, and De Búrca considered the conclusion of the CRPD as such appropriate action.³⁴

The EU accession to the CRPD brings with it effects that are more or less evident. This section originally divides such effects into three groups: (i) legal; (ii) institutional; and (iii) political.

accessed 10 October 2018.

²⁷ UN General Assembly Resolution, Convention on the Rights of Persons with Disabilities and Optional Protocol 2006 (A/RES/61/106) Art 42.

²⁸ EU Council Decision 2010/48/EC.

²⁹ ‘Status of Treaties, Convention on the Rights of Persons with Disabilities’ (*United Nations, Treaty Collection*) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en> accessed 10 October 2018.

³⁰ Consolidated Version of the Treaty on the Functioning of the European Union 2012 (OJ C 326/47) Part Five Title V Artt 216-217.

³¹ TEU Art 47.

³² ‘Glossary of Summaries, Legal Personality of the Union’ (*EUR-Lex, Access to European Union law*) <https://eur-lex.europa.eu/summary/glossary/union_legal_personality.html> accessed 10 October 2018.

³³ EU Council Decision 2010/48/EC.

³⁴ De Búrca (n 26) 8.

2.3.1 Legal effects

The two direct legal effects that derive from the EU accession to the CRPD are that: (i) the EU institutions have to respect the CRPD, and (ii) the EU Member States might comply with the CRPD when implemented by EU law.

These effects derive from the TFEU, establishing that “agreements concluded by the Union are binding upon the institutions of the Union and on its Member States”.³⁵ Also, the ECJ case-law states that “the provisions of the agreement, from the coming into force thereof, form an integral part of Community Law”.³⁶ Craig and De Búrca assumed that “as agreements entered into by the Community, they can be viewed as sharing some of the key characteristics of EC law, and in particular could be capable of direct effect and enforcement by individuals whenever sufficiently precise and unconditional”.³⁷

However, the real terms are more controversial than the quotations above seem to suggest. For this reason, the EU has to address the competence issue when legislating on the CRPD principles. The next section deepens this aspect.

An interesting legal aspect of the EU ratification of the CRPD links to the hierarchy of the EU legislative sources. Within such a hierarchy, the EU Commission inserts the CRPD between EU primary and secondary law.³⁸ This positioning means that: (i) the EU secondary law has to comply with the CRPD, and it is interpreted through the lenses of the CRPD itself;³⁹ and (ii) the EU primary law includes provisions that the implementation of the CRPD has to respect. While the next section will investigate this second point, the first point suggests the following reasoning.

As explained in Section 2.2, the ECJ has the competence to interpret the EU secondary law, and the Court emanates general principles in line with recognised international principles. Therefore, the ECJ interprets EU secondary

³⁵ TFEU Art 216; See also: Treaty of Amsterdam Art 300(7).

³⁶ *R. & V. Haegeman v Belgian State* (n 8) Para 5.

³⁷ Paul Craig and Gráinne De Búrca, *EU Law: Text, Cases, and Materials* (4th edn, Oxford University Press 2008) 207.

³⁸ ‘Consideration of Reports Submitted by States Parties under Article 35 of the Convention - Initial Report of States Parties Due in 2012 - European Union’ (Committee on the Rights of Persons with Disabilities 2014) CRPD/C/EU/1 para 14
<https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FEU%2F1&Lang=en> accessed 10 October 2018.

³⁹ Alan Dashwood and Derrick Wyatt, *Wyatt & Dashwood's European Union Law* (6th edn, Hart 2011).

law taking into consideration the CRPD principles. For this reason, the EU Commission itself stated that “in accordance with CJEU case law, such agreements prevail over provisions of Union secondary legislation. This means that such provisions must be interpreted and applied in a manner that is consistent with those agreements”.⁴⁰

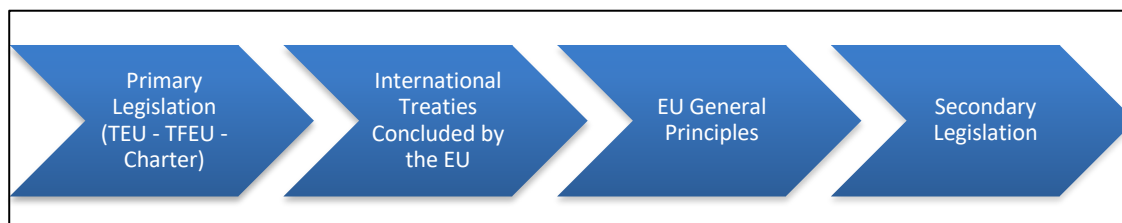


Figure 2-2 - Hierarchy of EU legislative sources

The ECJ has already referred to the CRPD and developed a relevant jurisprudence. For instance, the Court mentioned the Convention as an appropriate legal context in a 2013 judgement⁴¹ concerning the interpretation of an EU Directive.⁴² In detail, the ECJ looked at the CRPD to define two concepts: disability and reasonable accommodation. About disability, the judgement states that the “Directive 2000/78 must, as far as possible, be interpreted in a manner consistent with the convention”.⁴³ Since “the concept of ‘disability’ is not defined by Directive 2000/78 itself”,⁴⁴ it must be interpreted in the light of the definition stated in the CRPD.⁴⁵ About reasonable accommodation, the judgement repeats using the Convention for its meaning.⁴⁶ This example shows how the interpretations of the ECJ strengthen the link between EU law and the CRPD.

The just described case of the ECJ introduces a challenge. At the year of the mentioned judgement, several EU Member States had not ratified the CRPD yet. However, the Court stated that they had to respect the quoted EU Directive consistently with the CRPD provisions. In other words, the EU Member States

⁴⁰ ‘Consideration of Reports Submitted by States Parties under Article 35 of the Convention - Initial Report of States Parties Due in 2012 - European Union’ (n 38) para 14.

⁴¹ *C-335/11 and C-337/11* (n 17) paras 3–5.

⁴² EU Council Directive, establishing a general framework for equal treatment in employment and occupation 2000 (2000/78/EC [OJ L303/16]).

⁴³ *C-335/11 and C-337/11* (n 17) para 32.

⁴⁴ *ibid* 36.

⁴⁵ *C-335/11 and C-337/11* (n 17) Judgement Pt 1.

⁴⁶ *ibid* Judgement Pt 2.

had to respect the CRPD principles as EU law without having ratified the Convention itself as an international treaty. This concrete example is a reminder of the so-called direct effect principle of the international agreements concluded by the EU.⁴⁷ In particular, as Cremona explained, “the Court is not merely discussing the relationship between an international legal obligation and the Community legal order: it is determining the relationship between an international agreement (which has become part of the Community legal order) and the domestic legal orders of the Member States”.⁴⁸ The ECJ case-law is an example of international human rights implementation with the mediation of EU law.

Another example of how the CRPD is mediated via EU law is the EU Regulation that governs the ESI Funds.⁴⁹ This Regulation considers the respect of the CRPD as an ex-ante conditionality for any EU Member State to receive funding.⁵⁰ The legal effect of this ex-ante conditionality is a direct consequence of the EU conclusion of the CRPD. It entails that any EU Member State should respect the CRPD provisions, independently of their ratification of the Convention, in case they want to accede to ESI Funds. Chapter 6 will explain this aspect in detail.

2.3.2 Institutional effects

In addition to legal effects, the EU accession to the CRPD brings with it institutional effects. In fact, for its implementation and monitoring, the Convention establishes international offices⁵¹ and requires the creation by its Parties of focal points, monitoring frameworks, and coordination mechanisms.⁵² De Beco

⁴⁷ ‘Summaries of EU Legislation, The Direct Effect of European Law’ (*EUR-Lex, Access to European Union law*) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A114547>> accessed 10 October 2018.

⁴⁸ Marise Cremona, ‘External Relations and External Competence of the European Union’ in Paul Craig and Gráinne De Búrca (eds), *The evolution of EU law* (2nd edn, Oxford University Press 2011) 234.

⁴⁹ EU Parliament and Council Regulation, laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (1303/2013 [OJ L 347/320]).

⁵⁰ *ibid* Annex XI Part II Area 3.

⁵¹ UN CRPD Artt 34-40.

⁵² *ibid* Art 33.

suggested that this variety of institutional bodies is the most complete ever in the context of the UN human rights treaties.⁵³ As a consequence, the EU modified its institutional organisation to meet its duties as Party to the CRPD.

To do this, the EU established under Article 33 CRPD: (i) a focal point; (ii) a monitoring framework; and (iii) a coordination mechanism. The thesis refers to these three entities taken altogether as the EU CRPD-related governance, which is analysed in Chapter 4. The EU CRPD-related governance is mainstreamed within the existing organisation of the EU governance. This consideration means that the EU CRPD-related governance involves actual offices of institutions and bodies. These have additional tasks to oversee, and they might provide adequate resources to meet their new duties. This condition entails: (i) dedicating offices and staff to the EU CRPD-related governance; (ii) modifying the mandate of existing offices to include CRPD-related tasks; and (ii) linking these offices with the others to make them work together.

The EU established its CRPD-related governance as follows: (i) the EU focal point for the implementation of the CRPD is the EU Commission;⁵⁴ (ii) the framework that monitors the implementation of the CRPD includes: (a) the EU Parliament, (b) the EU Agency for Fundamental Rights, (c) the European Disability Forum, and (d) the European Ombudsman;⁵⁵ lastly (iii) the coordination mechanism includes: (a) the Commission Inter-Service Group on Disability, (b) the Human Rights Working Group of the Council, (c) the Disability High Level Group, and (d) the Work Forum.⁵⁶

It is interesting to summarise the main steps of the process that led to the EU CRPD-related governance's establishment. In 2009, the EU Council Decision on the conclusion of the CRPD indicated the EU Commission as the unique EU

⁵³ Gauthier De Beco, 'Study on the Implementation of Article 33 of the UN Convention on the Rights of Persons with Disabilities in Europe' (UN Office of the High Commissioner on Human Rights 2014) 4
<<https://nhri.ohchr.org/EN/ICC/GeneralMeeting/25/Meeting%20Documents/Study%20on%20the%20Implementation%20of%20Article%2033%20of%20CRPD.pdf>> accessed 10 October 2018.

⁵⁴ EU Council Decision 2010/48/EC Art 3.

⁵⁵ 'EU Framework for the UN Convention on the Rights of Persons with Disabilities' (*European Union Agency for Fundamental Rights*) <<http://fra.europa.eu/en/theme/people-disabilities/eu-crpd-framework>> accessed 10 October 2018.

⁵⁶ 'Consideration of Reports Submitted by States Parties under Article 35 of the Convention - Initial Report of States Parties Due in 2012 - European Union' (n 38) 64.

focal point.⁵⁷ Then a Code of Conduct “sets out the arrangements between the Council, the Member States and the Commission on [...] the implementation of the Convention”.⁵⁸ These arrangements mainly focus on the collaboration between the EU and its Member States to implement and monitor the Convention. Such cooperation is necessary because of the overlapping of competences. In 2012, the EU Commission proposed the new framework monitoring system,⁵⁹ which became operative one year later.⁶⁰ Although the CRPD asks for the adoption of a coordination mechanism and even when the mentioned Code of Conduct refers to it, no official coordination instrument was initially provided.

Such absence and other concerns were underlined in 2015 by the CRPD Committee. Among its Concluding Observations, the Committee pointed out that: (i) the framework should conform with the Paris Principles; (ii) the EU Commission, being the focal point, should not be a member of the framework (as it was initially); (iii) there should be more than one focal point; and (iv) the whole CRPD-related governance must be adequately funded.⁶¹ Following these concerns, the EU Commission left the framework,⁶² and a kind of coordination mechanism was presented. Other measures to meet the CRPD Committee Concluding Observations are impossible to evaluate because they are contemporary with this research.

The EU CRPD-related governance and its effects will be extensively explained in Chapters 4 and 5. The important point to clarify at this stage is that the EU accession to the CRPD has been modifying some institutional processes

⁵⁷ EU Council Decision 2010/48/EC Art 3.

⁵⁸ EU Council Communication, 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 2010 (2010/C 340/08 [OJ C 340/11]) para 1.

⁵⁹ EU Commission Non Paper Setting-up at EU level of the Framework required by Art. 33.2 of the UN Convention on the Rights of Persons with Disabilities 2012.

⁶⁰ EU Council Note Set up of the EU-level Framework required by Art. 33.2 of the UN Convention on the Rights of Persons with Disabilities 2013.

⁶¹ ‘Concluding Observations on the Initial Report of the European Union’ (Committee on the Rights of Persons with Disabilities 2015) CRPD/C/EU/CO/1 <https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fEU%2fCO%2f1&Lang=en> accessed 10 October 2018.

⁶² ‘Minutes of the EU High Level Group on Disability Meeting’ (EU Commission 2016) 2 <<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=1259>> accessed 10 October 2018.

of the EU itself. These changes have two main goals: (i) the implementation of the CRPD; and (ii) the monitoring of the CRPD implementation. Since the Convention finds realisation with its fulfilment by EU citizens, the EU CRPD-related governance might aim to enter into contact with national and local authorities to reach their domestic level with its human rights policies.

The effects of institutional contacts between the EU and the national and local levels are different from the legal effects described in the previous subsection. The assumption is that while legal implications have a binding force by definition, institutional effects may impact on the national and local levels with instruments that are different from the binding force of law. If this assumption was confirmed, it could be possible to state that the EU can implement and monitor the CRPD with either binding or non-binding means. This distinction is the cornerstone of the next chapter's theoretical discussion about the dichotomy between power and influence. As the thesis explores EU possibilities to influence the CRPD implementation, this background information about the difference between legal and institutional effects represents a cornerstone of the whole study.

2.3.3 Political effects

In addition to legal and institutional effects, there are political effects that derive from the EU conclusion of the CRPD. The main political effect is the inclusion of the implementation of CRPD principles in the political agenda of the EU. In reality, disability issues were part of the EU political agenda well before the conclusion of the CRPD. For instance, as explained in Section 2.2, the Treaty of Amsterdam introduced the concept of non-discrimination against persons with disabilities, among other categories. Besides, its Article 13 TEC led to a package of two directives and one action plan to be approved.⁶³ The action plan introduced both the European Year for People with Disabilities in 2003 and a subsequent multi-year action plan with the time horizon of 2010.⁶⁴

⁶³ 'Article 13. Proposals from the European Commission for Combating Discrimination' (Commission for Racial Equalities 2000) <<http://www.runnymedetrust.org/uploads/publications/pdfs/article13.pdf>> accessed 10 October 2018.

⁶⁴ EU Commission Communication to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - Equal opportunities for people with disabilities: A European Action Plan 2004 (COM(2003) 650 final [OJ C96/24]).

After its accession to the Convention, the EU launched a new Disability Strategy.⁶⁵ The adoption of the 2010-2020 Strategy represents the EU's political commitment to implement the CRPD.⁶⁶ "The Commission has identified eight main areas for action: Accessibility, Participation, Equality, Employment, Education and training, Social protection, Health, and External Action".⁶⁷ With a focus on these eight priority areas, the Disability Strategy defined goals to be reached at the EU level and suggested actions to be taken by the EU Member States.⁶⁸ While the 2003 plan involved the EU Commission only, the 2010 strategy engages with the EU Member States. This change is significant because it shows planned cooperation between the Union and the national and local levels to implement the CRPD.

A five-year plan set out the implementation of the Disability Strategy.⁶⁹ This plan contained a list of actions to pursue, among which there was a political commitment to optimising the use of ESI Funds.⁷⁰ In this respect, Section 4.4.3.1 shows real examples of political discussions about the drafting of the ESI Funds Regulation. This Regulation obliges the EU Member States to respect CRPD-related conditionalities in order to obtain any EU funding. Thus, the political commitment that derives from the EU conclusion of the CRPD affected the drafting of an EU Regulation that now exercises its legal effects on the EU Member States. Also, the need to implement the Regulation implies the necessity to establish offices that modify the institutional organisation of EU institutions and bodies. Similar to the institutional effect, the political impact works through means that are not binding but persuasive. This consideration enters into the distinction between power and influence that will be explained in the next chapter.

The political commitment may impact on the EU institutional organisation. For instance, the EU Disability High Level Group (DHLG) has changed its role

⁶⁵ EU Commission Communication, European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe (COM(2010) 636 final).

⁶⁶ *ibid* 2.

⁶⁷ *ibid*.

⁶⁸ Flynn (n 22) 68.

⁶⁹ EU Commission, Initial plan to implement the European Disability Strategy 2010-2020 - List of Actions 2010-2015 (SEC(2010) 1324 final).

⁷⁰ *ibid* 18.

from sharing information⁷¹ to discussing the implementation of both the Disability Strategy and the CRPD.⁷² The DHLG is a network that includes EU and national top-level authorities that oversee disability-related policies. The DHLG joins the EU with the national and local levels to discuss the implementation of the Convention. For this reason, the Group is part of the EU CRPD coordination mechanism, which will be explained in Chapter 4.

The European Economic and Social Committee “proposes linking the implementation of the [European Disability Strategy] to that of the Europe 2020 Strategy”.⁷³ Europe 2020 is “a strategy for smart, sustainable and inclusive growth”.⁷⁴ Any strategy of the Union is a common political agenda on which the EU national governments agree. The strategies are a reference framework, and their specific targets are implemented at the EU, national, and local levels. Such implementation is regularly reported to verify that everyone meets the undertaken political commitments.⁷⁵

In 2010, the proposal for establishing the European Semester aimed “to put Europe on the path of smart, sustainable and inclusive growth”.⁷⁶ Since 2015, the Europe 2020 Strategy is implemented and monitored through the European Semester.⁷⁷ The European Semester is a governance architecture for open coordination. Chapter 6 will describe how the European Semester may have a political effect on the domestic level in respect to the CRPD provisions.

⁷¹ EU Commission Communication, COM (2003) 650 Para 4.1.2.

⁷² European Disability Strategy 2010-2020 Para 2.2.4.

⁷³ ‘EESC Opinion: European Disability Strategy 2010-2020’ (European Economic and Social Committee 2011) SOC/403 para 1.2 <<https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/european-disability-strategy-2010-2020>> accessed 4 March 2019.

⁷⁴ EU Commission Communication, Europe 2020 A strategy for smart, sustainable and inclusive growth 2011 (COM(2010) 2020 final [OJ C 88/27]).

⁷⁵ ‘Europe 2020 Strategy’ (*European Commission*) <https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester/framework/europe-2020-strategy_en> accessed 4 March 2019.

⁷⁶ ‘Mastering Economic Interdependence: Commission Proposes Reinforced Economic Governance in the EU’ (*European Commission*, 12 May 2010) <https://ec.europa.eu/commission/presscorner/detail/en/IP_10_561> accessed 1 March 2019.

⁷⁷ EU Commission Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Since 2015, the implementation and monitoring of the Europe 2020 Strategy is part of the European Semester (COM/2015/0100 final).

The political effects of the EU accession to the CRPD work through non-binding processes as the institutional effects do as well. The question is: why using non-binding methods to implement an international human rights convention? There are two main reasons. The first reason is that political and institutional processes are law-making instruments, which means that legal provisions result from political and institutional processes. The second reason is that the EU does not have the competence to legislate on all the CRPD principles, which means that political and institutional processes need to substitute the legal provisions that the Union cannot emanate because of a lack of competence to do it. This issue of competence is investigated in the next section.

2.4 The EU competence issue and the CRPD

Like the EU, all the EU Member States are Parties to the CRPD.⁷⁸ The common status of being Parties to the CRPD implies that the Union and its Member States are peers within the framework of the Convention. Being peers means that there is no hierarchy between them in this context, where they have a horizontal stance with respect to the CRPD.

On the other hand, the EU and its Member States need to agree on the division of their competences concerning matters that are relevant to the implementation of the Convention itself.⁷⁹ Generally speaking, the division of competences between the EU and its Member States is stated in the EU Treaties, and it realises the so-called principle of conferral.⁸⁰ As anticipated in the previous section, the EU cannot legislate on each topic of the Convention, and this section explains the legal reason for this.

The EU Treaties confer the power of action in defined areas on either the EU or its Member States in either exclusive or shared prerogatives. However, the division of competences, as stated in the EU Treaties, widely covers limited areas, and it does not define their possible overlapping. For instance, the

⁷⁸ 'Status of Treaties, Convention on the Rights of Persons with Disabilities' (n 29).

⁷⁹ Jennifer W Reiss, 'Innovative Governance in a Federal Europe: Implementing the Convention on the Rights of Persons with Disabilities: Innovative Governance in a Federal Europe' (2014) 20 *European Law Journal* 107, 114.

⁸⁰ TEU Artt 4-5; TFEU Part I Title I.

principle of non-discrimination has an uncertain competence because it is intersectional⁸¹ and transversal.⁸² This uncertainty means that the competence concerning the principle of non-discrimination (among others) is subject to interpretation. Ultimately, the European Court of Justice is in charge of guaranteeing univocal interpretations.⁸³

Article 44 CRPD includes an attempt to clarify the question of competences when it asks its Parties to “declare [...] the extent of their competence with respect to matters governed by the present Convention”. As a consequence, the EU elaborated a Declaration of Competence,⁸⁴ formalising the conclusion of the Convention as a mixed agreement.⁸⁵

“When participating in ‘mixed’ agreements [...] the Union and its Member States are subject to a duty of sincere cooperation”.⁸⁶ Sincere cooperation is a legal duty stated in the EU Treaties.⁸⁷ Therefore, the Code of Conduct’s⁸⁸ reference to coordination may aim to manage the sincere cooperation between the EU and its Member States in implementing the CRPD. In addition, the Code of Conduct explains that two goals of such sincere cooperation are: (i) the elaboration of common positions about CRPD issues;⁸⁹ and (ii) the co-working on monitoring and reporting.⁹⁰

At the time of writing this thesis, the mentioned Declaration of Competence is under revision by the EU Commission because the CRPD Committee asked

⁸¹ Dagmar Schiek and Anna Lawson (eds), *European Union Non-Discrimination Law and Intersectionality: Investigating the Triangle of Racial, Gender and Disability Discrimination* (Ashgate 2011).

⁸² Sylvaine Laulom, ‘French Legal Approaches to Equality and Discrimination for Intersecting Grounds in Employment Relations’ in Dagmar Schiek and Victoria Chege (eds), *European Union non-discrimination law: comparative perspectives on multidimensional equality law* (Routledge-Cavendish 2008) 283.

⁸³ TEU Art 19.

⁸⁴ EU Council Decision 2010/48/EC Annex II.

⁸⁵ Reiss (n 79) 112; Lisa Waddington, ‘The European Union and the United Nations Convention on the Rights of Persons with Disabilities: A Story of Exclusive and Shared Competences’ (2011) 18 *Maastricht Journal of European and Comparative Law* 431, 438.

⁸⁶ ‘Consideration of Reports Submitted by States Parties under Article 35 of the Convention - Initial Report of States Parties Due in 2012 - European Union’ (n 38) para 15.

⁸⁷ TEU Art 4.3.

⁸⁸ EU Council Communication 2010/C 340/08.

⁸⁹ *ibid* 2–9.

⁹⁰ *ibid* 12.

to update such a document.⁹¹ The review of the Declaration of Competence should have been submitted one year after the publication of the CRPD Committee Concluding Observations.⁹² However, the revised document was still not provided at the time of conducting this research because the “discussion will imply longer time than the year given for reporting”, as an EU Commission officer publicly declared.⁹³ An informant of this research revealed that a draft of the revised document was circulating, but it was informal and difficult to define. Indeed, the division of competences deals with the constitutional Treaties of the EU, and their re-discussion must involve all the EU Member States, which should act unanimously to decide on them. Therefore, any matter that consists of the division of competences between the EU and its Member States is a delicate issue.

The Convention to which the EU has acceded includes issues that are outside the competences of the Union itself, notably those that touch social policies. Despite this, the EU made no official reservations due to competence issues when concluding the CRPD.⁹⁴ Therefore, the EU is committed to the whole Convention insofar as it has the competence to take action, as made it clear in the Declaration of Competence. Therefore, the only way to meet its duties is to face the competence issue somehow. This thesis assumes that the EU promotes its institutional and political opportunities to implement the Convention when the conferral limits its legal opportunities to do that. It also explains that the EU works in this direction by exercising influence on the implementation of the CRPD.

To conclude, the division of competences between the EU and its Member States is defined in the EU Treaties. These also state a duty to sincerely cooperate in working on those areas that flow from the EU values although having uncertain competence. Therefore, it might be useful to explore both the principle of sincere cooperation and the opportunity to interpret the conferral.

⁹¹ ‘Concluding Observations on the Initial Report of the European Union’ (n 61) para 17.

⁹² *ibid* 90.

⁹³ ‘Minutes of the EU High Level Group on Disability Meeting’ (n 62) 2.

⁹⁴ ‘Status of Treaties, Convention on the Rights of Persons with Disabilities’ (n 29).

2.4.1 The duty of sincere cooperation

As illustrated above, the EU and its Member States concluded the CRPD as a mixed agreement. This definition entails that the Convention touches areas that are subject to different levels of competence. In theory, this means that the EU and its Member States can take action only in those areas where they have or share competence. In reality, since they ratified the CRPD and share the commitment to implementing the Convention, “pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other”.⁹⁵

The ECJ linked the principle of sincere cooperation to the correct implementation of mixed agreements. For instance, it stated that “this duty of genuine cooperation is of general application and does not depend [...] on competence”.⁹⁶ This seems to mean that, despite the conferral, the EU and its Member States have to cooperate in issues concerning the EU’s international representation.⁹⁷

Van Elsuwege suggested that the duty of sincere cooperation entails positive and negative obligations insofar as the EU Member States should: (i) take actions that are consistent with the policies of the Union; and (ii) refrain from actions that put into question the policies of the EU.⁹⁸ There is a kind of *effect utile* aiming at promoting the legal personality of the Union.⁹⁹ In turn, the loyalty of the EU Member States may cause a *competence creep* because their behaviour is affected by EU actions despite any conferral issue.¹⁰⁰

As illustrated above, the Union drew up a Declaration of Competence and a Code of Conduct. While the former strictly addresses the principle of the conferral, the latter seems to focus on the principle of sincere cooperation. The Code of Conduct emphasises the establishment of common positions as a crucial factor of the cooperation between the EU and its Member States. These

⁹⁵ TEU Art 4.3.

⁹⁶ *Commission v Germany* [2005] ECJ Case C-433/03, ECLI:EU:C:2005:462 [64].

⁹⁷ Peter Van Elsuwege, ‘The Duty of Sincere Cooperation and Its Implications for Autonomous Member State Action in the Field of External Relations: Member State Interests and European Union Law’ in Marton Varju (ed), *Between Compliance and Particularism: Member State Interests and European Union Law* (Springer 2019) 283.

⁹⁸ *ibid* 284.

⁹⁹ *ibid* 292.

¹⁰⁰ *ibid* 284.

should be consistent when implementing mixed agreements by sharing the fundamental values and aims of the ratified treaties.

Regardless of the competence on specific matters, the Union and its Member States have to work in the same direction when implementing mixed agreements. This entails that they have to coordinate their policies in order to avoid contradictions and pursue consistent courses at the international level. This coordination results from soft processes that supplement the policy-making arena of the Union and national governments. For instance, Chapter 4 illustrates several situations that aim to reach common positions, as emerged during the analysis of the EU CRPD monitoring framework and COHOM.

The doctrines of mixed agreements and shared competences are separate, although interrelated. For instance, the CRPD is not a mixed agreement in itself, but the EU and its Member States ratified the Convention as a mixed agreement because it includes areas with a concurrent jurisdiction based on the competences that sovereign states conferred on the Union. This entails that a mixed agreement includes shared competence areas, as the CRPD includes independent living rights.

As Waddington explained about the CRPD, the definition of the legal predominance (between the EU and its Member States) in shared competence areas might be a complex exercise involving several variables.¹⁰¹ However, the principle of sincere cooperation bypasses this complexity because of fostering soft processes aiming at finding accord on the actions to pursue. The thesis explains that the establishment of soft processes based on cooperation is a deliberate strategy of the Union to implement the CRPD and independent living rights.

Even though sincere cooperation might lead to desired outcomes, it cannot substitute the conferral although supplementing it. For this reason, the next sub-section focuses on how competences can be interpreted.

¹⁰¹ Lisa Waddington, 'The European Union and the United Nations Convention on the Rights of Persons with Disabilities: A Story of Exclusive and Shared Competences' (2011) 18 *Maastricht Journal of European and Comparative Law* 431, 449–452.

2.4.2 The interpretation of EU competences

The Council Decision on the conclusion of the CRPD states that “competences are, by their nature, subject to continuous development”.¹⁰² Therefore, any doubt on the conferral is subject to interpretation, and this interpretation gives way to the continuous development of the competences. As such, it seems interesting to understand how competences may be interpreted. Also in this case, it is possible to distinguish between legal discourses and institutional-political ones.¹⁰³

The legal discourse about the interpretation of EU competences concerns the action of the ECJ. When the Court decides on EU competences, it gives interpretations that expand the meaning of the Treaties’ articles that deal with the principle of the conferral.¹⁰⁴ This situation has been already introduced in Section 2.2 when describing how human rights issues entered in the EU legal framework. In brief, the ECJ cannot alter the competences that are stated in the Treaties, because only the EU Member States can modify the EU primary legislation. However, the ECJ applies a kind of *competence creep* that may expand the action of any EU competence through its interpretation.¹⁰⁵ Any understanding of the conferral made by the Court is legally binding and represents a development of the EU competences.

The described action of the ECJ is very straightforward as the Court decides whether the EU has the competence on specific matters or not. Usually, the EU and its Member States find agreement on the limits of their competences without complaining to the ECJ. For instance, in areas of shared competence, the EU Member States might act: (i) individually; (ii) collectively; or (iii) with the EU.¹⁰⁶ In shared competence areas, the interpretation of the conferral starts at institutional and political levels because the EU and its Member States agree on common courses of action. Such agreements limit uncertainty and allow them to take action. Therefore, it would be incorrect to label the uncertainty of the

¹⁰² EU Council Decision 2010/48/EC Annex II Introduction.

¹⁰³ Cremona (n 48) 247.

¹⁰⁴ *ibid* 247–251.

¹⁰⁵ Stephen Weatherill, ‘Competence Creep and Competence Control’ (2004) 23 *Yearbook of European Law* 1.

¹⁰⁶ Waddington (n 85) 438–439.

conferral with a negative stance only. In fact, this thesis looks at uncertainty as a prerequisite to adopting governance processes that somehow complement and substitute the legal rigidity of the conferral. Section 3.4 will theoretically explain this idea.

The EU Declaration of Competence includes a brief explanation of the shared competence issue. It states that: (i) on those matters that affect common rules the EU has exclusive competence; (ii) on those matters that affect minimum standards the EU Member States have competence although the EU is free to act; and (iii) on the other matters the EU Member States have competence.¹⁰⁷ These three points establish a sort of priority to govern the matters of shared competence included in the CRPD. As a consequence, the interpretation of different issues as governed by either common rules or minimum standards is essential development of the EU competences, as Waddington explained.¹⁰⁸

In addition to this, following Cremona, further two key points are useful to understand the nature of any shared competence matter. The first key point is the existence of relevant legislation.¹⁰⁹ This circumstance means that: (i) in the absence of EU legislation, the EU Member States have competence on any topic in respect of the principle of subsidiarity;¹¹⁰ however (ii) in the absence of national legislation, the EU may occupy the field to fill a legislative vacuum. The second key point is the existence of EU objectives on the matter itself. In this case, the competence of the EU increases as much as needed for achieving the relevant targets. This situation reflects the so-called *effect utile*¹¹¹ that derives from the principle of proportionality.¹¹²

The concepts mentioned above (common rules versus minimum standards, and subsidiarity versus proportionality) coexist in a concurrent and dynamic dimension. As Craig explained, while a rigid conferral produces hard hierarchy, a flexible competence concurrence produces flexible governance. While the former would tend to uniform, the latter would aim to harmonise the domestic

¹⁰⁷ EU Council Decision 2010/48/EC Annex II.

¹⁰⁸ Waddington (n 85).

¹⁰⁹ Cremona (n 48) 221.

¹¹⁰ TEU Art 5.3.

¹¹¹ Cremona (n 48) 221.

¹¹² TEU Art 5.3.

levels of the EU Member States.¹¹³ This means that cooperation is the basis of shared-competence matters.¹¹⁴ As a consequence, the power balance in shared-competence issues depends on the cooperation between the EU and its Member States.

To give an example, national legislations concerning persons with disabilities did not consider anti-discrimination approaches when the EU declared it was a goal of its policies. As stated at the beginning of this chapter, the EU commitment to disability rights includes four periods. While the first two periods were merely cooperative, the last two were based on primary law principles. Such principles fall under shared competences mainly. In implementing them, the establishment of strategies represents an exercise to share minimum standards. Following these strategies, the ratification of relevant EU secondary law represents an exercise to set common rules. Therefore, there is a sequence from cooperation, to minimum standards, to common rules. This sequence moves the predominance on matters of shared competence towards the EU.

Once the EU has established common rules on specific matters, the EU Member States may complain before the ECJ against the competence of the EU to act in that direction. Due to the mentioned *effect utile*, the ECJ tends to expand the action of the EU itself.¹¹⁵ For this reason, the legal appeals of the EU Member States may finish with them losing any competence in the matter at stake. This possibility could be the reason why the EU Member States prefer to maintain shared competence matters within the political sphere. To do this, they may try to balance the EU's attempt to establish its predominance with their effort to preserve a certain level of independence. This political game takes place in the soft governance of the EU.

To conclude, the competences concerning the CRPD provisions are mainly shared between the EU and its Member States, notably in areas of social policy. Where existing EU law touches such provisions, the EU has a predominant competence. Where no EU law is active, the EU Member States should legislate

¹¹³ Paul Craig, 'Institutions, Power, and Institutional Balance' in Paul Craig and Gráinne De Búrca (eds), *The evolution of EU law* (2nd edn, Oxford University Press 2011) 63.

¹¹⁴ Cremona (n 48) 253.

¹¹⁵ Grimm (n 6) 466.

on the matter at stake, following the subsidiarity principle. When this is the case, the EU seems not to be obliged to take any initiative. However, the EU shows the tendency to pre-empt its Member States action to lead harmonisation processes.¹¹⁶ This pre-emption has to respect the balance of powers between the EU Member States subsidiarity prerogative and the EU harmonisation goal. Such means include the use of coordination and governance instruments that substitute legally binding provisions. This thesis evidences how the EU can implement international human rights with governance processes. The explanation focuses on the EU implementation of the CRPD and independent living rights. Their implementation is mainly shared between the EU and its Member States.

2.5 The shared competence on Article 19 CRPD

The EU Commission stated that the “EU competence for the promotion of independent living and inclusion in the community is shared with the Member States”.¹¹⁷ Parker and Bulic suggested that the extent of this sharing should be somehow put into practice to be understood.¹¹⁸ This is because shared competence matters need detailed guidelines that clarify the duties of the EU and those of the EU Member States.

In its report to the CRPD Committee, the EU Commission emphasised the role of the ESI Funds to support the transition from institutions to community-based services.¹¹⁹ Since a legal provision includes the principle of this transition,¹²⁰ it might be classified as a common rule with the predominant competence of the EU. However, it is crucial to understand this issue properly. The point is that the EU has put into place norms that try to exclude the possibility that the EU Member States use EU money to institutionalise people. This

¹¹⁶ Waddington (n 85) 448.

¹¹⁷ ‘Consideration of Reports Submitted by States Parties under Article 35 of the Convention - Initial Report of States Parties Due in 2012 - European Union’ (n 38) 28.

¹¹⁸ Camilla Parker and Ines Bulic, ‘Realising the Right to Independent Living: Is the European Union Competent to Meet the Challenges?’ (ENIL - ECCL 2014) <<http://www.enil.eu/wp-content/uploads/2012/06/Shadow-Report-11-04-2014-final-WEB-1-1.pdf>> accessed 10 October 2018.

¹¹⁹ ‘Consideration of Reports Submitted by States Parties under Article 35 of the Convention - Initial Report of States Parties Due in 2012 - European Union’ (n 38) 28–31.

¹²⁰ EU Parliament and Council Regulation 1303/2013.

situation is very different from saying that the EU prohibits its Member States from developing institutions. In other words, the EU cannot prohibit its Member States from developing institutions; therefore, the EU needs alternative means to harmonise its Member States' policies against the development of institutions.

In this context, the EU Ombudsman affirmed that “the fact that the Commission is not directly responsible for managing the funds should never be used as a reason for not acting if fundamental rights have been, or risk being violated”.¹²¹ As the EU has full competence in the use of EU money, it is responsible for how this is expended. If any EU Member State used EU money to finance institutions, the Union would risk being indirectly in breach of Article 19 CRPD. Thus, to respect the Convention, the EU needs to guarantee that no EU money would be spent to finance institutions. In doing this, the EU would indirectly influence its Member States on finding alternatives to institutions. However, the competence to decide on institutions remains with the EU Member States.

For this reason, the CRPD Committee, in its 2015 Concluding Observations on the EU, did not recommend the Union to forbid institutions, but it underlined the direct responsibility on the use of ESI Funds.¹²² The Committee knew that the EU cannot coerce its Member States into closing institutions, and it suggested to “guide and foster deinstitutionalisation” by making sure that no EU money is spent in the wrong way. This complex architecture summarises very well the difficulty of dealing with shared competence matters, but it also demonstrates how resourceful and creative the EU can be in getting around these rules. Also, it is necessary to remember that the ESI Funds themselves are subject to shared management, and this aspect further complicates the picture. A more in-depth analysis of the ESI Funds opportunities to influence the CRPD implementation is included in Chapter 6.

Also the principle of personal assistance concerns Article 19 CRPD. Despite this, the EU Commission's position is that “EU law does not directly address the issue of personal assistance schemes, which are a matter of national

¹²¹ ‘Decision of the European Ombudsman Closing Her Own-Initiative Inquiry OI/8/2014/AN Concerning the European Commission’ (*European Ombudsman*, 11 May 2015) <<https://www.ombudsman.europa.eu/en/decision/en/59836>> accessed 23 January 2019.

¹²² ‘Concluding Observations on the Initial Report of the European Union’ (n 61) paras 50–51.

competence”.¹²³ It follows that Article 19 is subject to different levels of competence sharing. Indeed, the CRPD Committee did not make observations on the EU with respect to personal assistance. It is interesting that the CRPD Committee Concluding Observation on the EU emphasised deinstitutionalisation rather than personal assistance, although the latter is explicitly mentioned in Article 19 CRPD while the former is not. There may have been either a matter of priority or a pure question of competence.

The previous section described the competence issue that derives from the EU conclusion of the CRPD, this section has focused on the difficulty to understand the legal extent of the shared competence on Article 19, and the next section will describe the relevance of independent living rights in the EU.

2.6 Independent living rights in the EU

This section contextualises independent living rights in the EU area, intending to show that it is vital that the Union engages with their implementation. Concerning independent living, Ratzka suggested that “no piece of legislation by itself will automatically guarantee our equal rights unless each of us in his or her everyday life actively claims and uses these rights”.¹²⁴ For this reason, the section explores the pragmatic situation of independent living rights in the EU. The aim is to reveal that their realisation matters to persons, and it is not only a legal and competence issue.

During the 1970s in the US, the Independent Living Movement first started to claim the right to independence for persons with disabilities.¹²⁵ Ten years later, that movement inspired the increasing activism of the European civil society. In April 1989, the first European Independent Living Conference took place in Brussels.¹²⁶ After some decade of activism, by 2010, the European Independent Living Movement was a consolidated reality.¹²⁷

¹²³ ‘Consideration of Reports Submitted by States Parties under Article 35 of the Convention - Initial Report of States Parties Due in 2012 - European Union’ (n 38) 31.

¹²⁴ Adolf D Ratzka, ‘Independent Living’ (1994) 36 *World Leisure & Recreation* 37, 38.

¹²⁵ Sarah Gillinson, Hannah Green and Paul Miller, *Independent Living: The Right to Be Equal Citizens* (Demos 2005) 17.

¹²⁶ Debbie Jolly, ‘Independent Living Manual’ (European Network on Independent Living 2015) 16 <<http://www.enil.eu/wp-content/uploads/2012/06/Independent-Living-Manual-FINAL.pdf>> accessed 10 October 2018.

¹²⁷ *ibid* 21.

As Gillinson, Green, and Miller explained, “independent living is a philosophy; a manifesto for empowerment, self-determination and self-fulfilment; and a way of being”.¹²⁸ This means that such an abstract concept needs to be translated into practical terms. For this reason, ENIL listed pragmatic pillars “that are necessary to fully achieve independent living”.¹²⁹ Those pillars have in common that institutionalised persons can achieve none of them. For this reason, the CRPD Committee clarified that deinstitutionalisation, although not mentioned in the CRPD, is the necessary prerequisite to fulfil independent living rights.¹³⁰

Deinstitutionalisation is a negative right, in the sense that governments cannot institutionalise people. However, the fulfilment of independent living rights needs also positive actions, such as the creation of personal assistance services. Deinstitutionalisation and personal assistance are the two topics of the independent living principle on which this research focuses in order to find real examples of EU influences. The following sub-sections will describe the situation of these two topics in the EU.

2.6.1 Deinstitutionalisation in the EU

ENIL defines deinstitutionalisation as “a political and a social process, which provides for the shift from institutional care and other isolating and segregating settings to independent living”.¹³¹ The thesis adheres to this definition.

Deinstitutionalisation is a recent priority in the EU area. As Mansell stated, “in Europe, residential institutions have been the typical response to the needs of disabled people needing accommodation and assistance [outside family support] with daily living since the early 19th Century”.¹³² In the meantime, civil

¹²⁸ Gillinson, Green and Miller (n 127) 9.

¹²⁹ ‘Understanding and Countering Multiple Discrimination Faced by Young People with Disabilities in Europe’ (European Network on Independent Living 2014) DDCP/YD/S (2014) 12 <<https://rm.coe.int/16806fd5c0>> accessed 10 October 2018.

¹³⁰ ‘General Comment No. 5 (2017) on Living Independently and Being Included in the Community’ (Committee on the Rights of Persons with Disabilities 2017) CRPD/C/GC/5 <https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CRPD/C/GC/5&Lang=en> accessed 10 October 2018.

¹³¹ ‘Definitions’ (*European Network on Independent Living*, 2012) <<https://enil.eu/independent-living/definitions/>> accessed 1 January 2019.

¹³² Jim Mansell and others, ‘Deinstitutionalisation and Community Living – Outcomes and Costs: Report of a European Study. Volume 2: Main Report.’ (Tizard Centre, University of Kent 2007) 1 <https://www.kent.ac.uk/tizard/research/DECL_network/documents/DECLLOC_Volume_2_

society movements have positively increased their pressure on institutions with regards to decision-making processes.¹³³ Finally, it is necessary to enter into the new millennium to see a consolidated widespread interest in the matter.

Following the impetus of the 2003 European Year of People with Disabilities, the EU Commission funded a project that showed, among other findings, that few data were available about the multitude of institutions across Europe.¹³⁴ This project raised awareness of a dramatic situation that was mostly unknown and would have required further urgent studies.¹³⁵ Due to this reported and concerning status, the EU Commission included deinstitutionalisation in its 2003 Action Plan.¹³⁶ The first consistent action was the launch of another project named “Included in Society”. This project aimed to collect data to have a more precise situation about institutionalised people in Europe.¹³⁷

The project included two action points. The first action point was the introduction of standard definitions to simplify data comparison. The second action point was a shared classification of the reasons why people were institutionalised. The realisation of these two action points involved European bodies, civil society experts, and national governments.¹³⁸

The report of the project was published in 2007, and it showed that 1.2 million persons with disabilities were living in *residential establishments* in 24 EU Member States (out of 27) plus Turkey. Several countries did not have any data to submit. Such shortage was reported about the data on: (i) the establishments;¹³⁹ (ii) the age of the institutionalised persons;¹⁴⁰ (iii) their gender;¹⁴¹ and (iv) their disabilities even.¹⁴²

Report_for_Web.pdf> accessed 10 October 2018.

¹³³ *ibid.*

¹³⁴ ‘Included in Society - Results and Recommendations of the European Research Initiative on Community-Based Residential Alternatives for Disabled People’ (EU Commission 2003) 28 <http://www.enil.eu/wp-content/uploads/2012/07/ECCL_Included-in-Society.pdf> accessed 10 October 2018.

¹³⁵ *ibid.* 32.

¹³⁶ EU Commission Communication, COM (2003) 650 6.

¹³⁷ Mansell and others (n 134) 3.

¹³⁸ *ibid.* 11.

¹³⁹ *ibid.* 26.

¹⁴⁰ *ibid.* 27.

¹⁴¹ *ibid.* 28.

¹⁴² *ibid.* 29.

The EU, by commissioning the mentioned research, allowed revealing a widespread situation of segregation, which was mostly unknown. The mediation of the EU brought the issue on the table. Even with no competence to directly legislate on the matter, the EU enabled private professionals to collect and disseminate concerning data as a consequence of which deinstitutionalisation has become an EU priority.

Despite this, recent research revealed that institutionalisation was a common practice in several EU Member States. For instance, Bulgaria was improving the quality of institutions instead of funding community-based services, and this policy increased the residential care beneficiaries of 25%.¹⁴³ Similarly, Slovenia established a national programme on personalised funding to foster deinstitutionalisation,¹⁴⁴ which aimed to support institutions' residents in reality.¹⁴⁵

Often, the inconsistency between national legislation and its local implementation prevents effective deinstitutionalisation policies. There are concerns about this issue for Finland¹⁴⁶ and Sweden,¹⁴⁷ for instance. This issue may also result in governments submitting national monitoring reports that do not represent the local situation.¹⁴⁸ Also FRA stated that "the absence of coordination [among the different levels] can be a major barrier to the implementation of effective deinstitutionalisation".¹⁴⁹

¹⁴³ Kapka Panayotova, 'ANED Country Report on the Implementation of Policies Supporting Independent Living for Disabled People: Bulgaria' (Academic Network of European Disability experts 2009) 8 <<http://www.disability-europe.net/downloads/311-bg-6-request-07-aned-2009-task-5-template-bulgaria-to-publish-to-ec>> accessed 10 October 2018.

¹⁴⁴ 'Second Disability High Level Group Report on Implementation of the UN Convention on the Rights of Persons with Disabilities' (Disability High Level Group 2009) 192 <<https://ec.europa.eu/social/BlobServlet?docId=2790&langId=en>> accessed 22 February 2019.

¹⁴⁵ 'Study on Challenges and Good Practices in the Implementation of the UN Convention on the Rights of Persons With Disabilities VC/2008/1214' (European Foundation Centre) 104 <http://www.cjwalsh.ie/wp-content/uploads/2011/02/EFC_UNCRPD-Implementation_FINAL-REPORT_October-2010.pdf> accessed 10 October 2018.

¹⁴⁶ *ibid* 105.

¹⁴⁷ 'Concluding Observations on the Initial Report of Sweden' (Committee on the Rights of Persons with Disabilities 2014) CRPD/C/SWE/CO/1 para 7 <https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CRPD/C/SWE/CO/1&Lang=En> accessed 10 October 2018.

¹⁴⁸ Ciara Brennan and others, 'How Can States Ensure Access to Personal Assistance When Service Delivery Is Decentralized? A Multi-Level Analysis of Iceland, Norway and Sweden' (2017) 19 *Scandinavian Journal of Disability Research* 334.

¹⁴⁹ 'From Institutions to Community Living. Part I: Commitments and Structures' (EU Agency for Fundamental Rights 2017) 16 <<http://fra.europa.eu/en/publication/2017/independent->

Institutionalisation is a national competence, but it is an EU matter as well. In fact, although committed to raising awareness on the issue, the EU indirectly supported institutionalisation. This incoherence derived from the use of ESI Funds by national governments to either renovate or build institutions during the financial period 2007/13.¹⁵⁰

Also FRA emphasised the importance of ESI Funds for promoting deinstitutionalisation policies. In its 2017 reports, the Agency highlighted that 12 EU Member States stated their commitment against institutionalisation due to the new ESI Funds Regulation's dispositions.¹⁵¹

Besides, FRA revealed that several EU Member States adopted national strategies that include measures against institutionalisation. However, the Agency expressed concerns about these strategies as well as the absence of coordination and monitoring.¹⁵² For instance, institutions are still a national choice in Slovakia and Sweden,¹⁵³ while Denmark and Hungary show ongoing re-institutionalisation processes.¹⁵⁴

Ten years after Mansell's report, FRA showed that EU citizens still lived in institutions and that several major problems were unchanged, among which the difficulties to collect data and develop common policies. On the other hand, FRA also mentioned positive examples such as Finland and Bulgaria, which closed 25 institutions for children.¹⁵⁵

It happens that the lack of alternatives to institutions may force persons in need to choose institutions as the place where to live.¹⁵⁶ In addition, even when people do not live in institutions, but they are isolated from society with limited

living-structures> accessed 10 October 2018.

¹⁵⁰ Camilla Parker and Ines Bulic, 'Briefing on Structural Funds Investments for People with Disabilities: Achieving the Transition from Institutional Care to Community Living' (ENIL - ECCL 2013) 7 <<http://www.enil.eu/wp-content/uploads/2013/11/Structural-Fund-Briefing-final-WEB.pdf>> accessed 10 October 2018.

¹⁵¹ 'From Institutions to Community Living. Part I: Commitments and Structures' (n 151) 10.

¹⁵² *ibid* 11–14.

¹⁵³ *ibid* 13.

¹⁵⁴ *ibid* 14.

¹⁵⁵ FRA, 'From Institutions to Community Living - Part III: Outcomes for Persons with Disabilities' (EU Agency for Fundamental Rights 2017) 16–17 <<http://fra.europa.eu/en/publication/2017/independent-living-outcomes>> accessed 10 October 2018.

¹⁵⁶ Parker and Bulic (n 120) 19.

control over their lives, they may be defined as institutionalised.¹⁵⁷ These considerations underline the need for alternatives to institutions to fulfil independent living rights. Personal assistance services represent one of these alternatives. Their situation in the EU is described in the next sub-section.

2.6.2 Personal assistance in the EU

The CRPD Committee stated that “personal assistance refers to person-directed/‘user’-led human support available to a person with disability and is a tool for independent living”.¹⁵⁸ The thesis adheres to this definition.

Article 19 CRPD includes negative and positive rights.¹⁵⁹ Generally speaking, negative rights are immediately applicable, while positive rights are subject to progressive realisation.¹⁶⁰ With regard to independent living, positive rights should guarantee adequate community-based services that substitute institution-based services. Article 19 CRPD states that community-based services include “personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community”. Also FRA classified community-based services as: (i) personal assistance services; (ii) physical adjustments; and (iii) assistive devices.¹⁶¹

The medical approach to disability looked at the institutionalisation of persons with disabilities as a correct solution for them. This misconception caused social inaccessibility and the absence of alternatives because the available resources were invested in institutions. For this reason, it is incorrect to state that institutions were the answer to social inaccessibility and the absence of alternatives. The CRPD now recognises a human rights approach to disability. This approach requires personal-assistance measures that respect the

¹⁵⁷ ‘The Convention on the Rights of Persons with Disabilities’ (Office of the High Commissioner of Human Rights 2012) HR/P/PT/19 8–9 <http://www.ohchr.org/Documents/Publications/CRPD_TrainingGuide_PTS19_EN%20Accessible.pdf> accessed 10 October 2018.

¹⁵⁸ ‘General Comment No. 5 (2017) on Living Independently and Being Included in the Community’ (n 132) para 16 (d).

¹⁵⁹ ‘From Institutions to Community Living - Part II: Funding and Budgeting’ (EU Agency for Fundamental Rights 2017) 10 <<http://fra.europa.eu/en/publication/2017/independent-living-structures>> accessed 10 October 2018.

¹⁶⁰ ‘Report of the United Nations Commissioner for Human Rights’ (UN Economic and Social Council 2006) E/2006/86 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/403/50/PDF/N0640350.pdf?OpenElement>> accessed 1 January 2019.

¹⁶¹ FRA (n 157) 20.

independence of individuals. As the independence of persons starts in the places where they live, and since these places should not be institutions, personal assistance services should include both home and community services. The availability of these services measures the possibility for people with disabilities to live within their chosen environment maintaining control over their life.¹⁶²

Personal assistance is not a defined service; instead, it refers to a whole system to provide and receive services. Personal assistance is the result of an interaction between the provider and the receiver, where the latter has full control over the provided services. Personal assistance “means the user is customer or boss”.¹⁶³ Personal assistance schemes may require that: (i) services are not standardised; (ii) people can access services, including economic and logistic issues; and (iii) services are designed to be enjoyed actively within the community.¹⁶⁴ Central is the possibility of choice for the individual. While the medical model caused passive attitudes, the possibility to choose fosters proactive feelings.¹⁶⁵ The possibility to choose makes persons with disabilities individuals and active citizens, in antithesis with the active paternalism of states.¹⁶⁶ In the context of personal assistance, citizens can be active individuals in three different ways: (i) they need to do something to receive services; (ii) they are empowered to organise their services; and (iii) they are emancipated struggling for their self-determination.¹⁶⁷

Askheim suggested that personal assistance “is the child of the Independent Living movement”.¹⁶⁸ This has fostered solutions to allow persons with disabilities to live independently in the society, among which personal

¹⁶² Steven Mendelsohn, William N Myhill and Michael Morris, ‘Tax Subsidization of Personal Assistance Services’ (2012) 5 *Disability and Health Journal* 75.

¹⁶³ Adolf D Ratzka, ‘Model National Personal Assistance Policy’ <<https://www.independentliving.org/docs6/ratzka200410a.pdf>> accessed 10 October 2018.

¹⁶⁴ ‘The Convention on the Rights of Persons with Disabilities’ (n 159) 28–29.

¹⁶⁵ Teodor Mladenov, ‘Personal Assistance for Disabled People and the Understanding of Human Being’ (2012) 32 *Critical Social Policy* 242.

¹⁶⁶ Karen Christensen, Ingrid Guldvik and Monica Larsson, ‘Active Social Citizenship: The Case of Disabled Peoples’ Rights to Personal Assistance’ (2014) 16 *Scandinavian Journal of Disability Research* 19, 22.

¹⁶⁷ *ibid* 23.

¹⁶⁸ Ole Petter Askheim, Hans Bengtsson and Bjarne Richter Bjelke, ‘Personal Assistance in a Scandinavian Context: Similarities, Differences and Developmental Traits’ (2014) 16 *Scandinavian Journal of Disability Research* 3, 5.

assistance services. Due to the duty to close institutions in order to fulfil Article 19 CRPD, personal assistance services might increase while institutions decrease. In addition, personal assistance services should be present before the closure of any institution in order to avoid any gap in delivering services for people in need.¹⁶⁹

Therefore, if personal assistance services should be available before the closure of any institution, the initial investment in personal assistance services would be simultaneous with the temporary maintenance of the institutions that host persons.¹⁷⁰ Usually, the cost of institutions puts a burden on public finances. These might also sustain the transition from institutions to community services through a critical economic effort. This aspect may be a barrier or an excuse for national governments to avoid the mentioned transition.¹⁷¹ On the other hand, it may represent an opportunity for the EU to intervene in national and local matters providing economic support.

Also the private sector may be fostered to enter into this new market, and it would support the transition and erode the public monopoly on disability-related services.¹⁷² However, while the private sector may improve personal assistance services for persons with disabilities, it might be too market-oriented with the risk to be not as socially-supportive as public schemes.¹⁷³ Indeed, this process would involve a different approach to welfare, which needs a different relationship with public and private service providers.¹⁷⁴ Also in this case, the EU may give its support by providing guidelines. Besides, looking at personal assistance services as a market opportunity could increase the competence of the Union, offering a new perspective to the development of community services.

As FRA ascertained, EU data on personal assistance services are challenging to find and compare.¹⁷⁵ This difficulty causes issues in monitoring

¹⁶⁹ 'From Institutions to Community Living - Part II: Funding and Budgeting' (n 161) 9.

¹⁷⁰ Mansell and others (n 134).

¹⁷¹ 'From Institutions to Community Living - Part II: Funding and Budgeting' (n 161) 9.

¹⁷² Teodor Mladenov, 'Governing through Personal Assistance: A Bulgarian Case' (2017) 19 *Scandinavian Journal of Disability Research* 91.

¹⁷³ Jan Andersen, Agneta Hugemark and Bjarne R Bjelke, 'The Market of Personal Assistance in Scandinavia: Hybridization and Provider Efforts to Achieve Legitimacy and Customers' (2014) 16 *Scandinavian Journal of Disability Research* 34.

¹⁷⁴ Askheim, Bengtsson and Richter Bjelke (n 170).

¹⁷⁵ 'From Institutions to Community Living - Part II: Funding and Budgeting' (n 161) 21.

the correct implementation of Article 19. Despite this, FRA suggested that “some form of personal assistance is available in 22 Member States”.¹⁷⁶ Also, the Agency stated that persons with disabilities firmly ask for more personal assistance services.¹⁷⁷ This situation means that the Union may have room to take action. For instance, the EU Commission finances the Academic Network of European Disability Experts (ANED), which collects data on personal assistance in its annual country reports.¹⁷⁸ The 2019 synthesis report “about the progress being made across Europe to respect, protect and ensure the rights of persons with disabilities to live independently and to be included in the community”¹⁷⁹ includes an overview of personal assistance schemes developed at the national and local levels.¹⁸⁰

To conclude, the positive and progressive realisation of the right to access personal assistance services seems more articulated than the negative and immediate obligation to close institutions. Although not exhaustive, these two sub-sections revealed that the EU started its deinstitutionalisation policies in 2003, but its commitment to personal assistance services is still embryonic at the time of conducting this research. Despite this, the Union can occupy a field in which the national and local levels have difficulties to invest.

These considerations suggest that the analysis of the research may find more evidence about EU influences on deinstitutionalisation than on personal assistance. On one hand, this would be coherent with the narrative of this section. On the other hand, it would mean that the transition from institutions to community-based services risks to be unbalanced and not as effective, as a consequence. This assumption will be verified in the analytical chapters of the thesis.

¹⁷⁶ FRA (n 157) 20.

¹⁷⁷ *ibid* 22.

¹⁷⁸ ‘Countries’ (*The Academic Network of European Disability experts*) <<https://www.disability-europe.net/country>> accessed 1 July 2019.

¹⁷⁹ Neil Crowther, ‘The Right to Live Independently and to Be Included in the Community in European States - ANED Synthesis Report’ (*The Academic Network of European Disability experts 2019*) 4 <<https://www.disability-europe.net/downloads/1040-task-year-4-2018-19-policy-theme-il-synthesis-report>> accessed 1 August 2019.

¹⁸⁰ *ibid* 51.

2.7 Concluding remarks

This background chapter explored the topics underpinning the research design, and it showed their importance. Their relevance arises from three main aspects: (i) internationality; (ii) timing; and (iii) impact. In fact, this thesis concerns the current relationship between the international, EU, and national-local levels that influences the individuals' fulfilment of their independent living rights.

These topics are significant also to the contemporary academic and socio-political debates. For instance, although long-time debated, there are still uncertainties about the opportunity for the EU to accede to the ECHR.¹⁸¹ As known, the presence of a Court is an essential difference between the ECHR and the CRPD. However, this thesis focuses on the EU opportunities to implement international human rights with means that are different from the recourse to hard enforcement. This is an alternative perspective to consider the EU contribution to the realisation of international human rights that goes beyond the presence of any Court.

For this reason, the theoretical understanding of the possibilities to implement international law without hard instruments is a cornerstone of this thesis. Such an understanding is provided in the next chapter, which theoretically explains how the EU could use non-coercive means to reach its citizens with its human rights policies.

¹⁸¹ Rafał Mańko, 'EU Accession to the European Convention on Human Rights (ECHR)' (European Parliament 2017) PE 607.298 7 <[http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/607298/EPRS_BRI\(2017\)607298_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/607298/EPRS_BRI(2017)607298_EN.pdf)> accessed 25 March 2019.

Chapter 3

The theoretical framework of the thesis

3.1 Introduction

The previous chapter described the contemporary international situation about the EU opportunity to implement international human rights. In short, these are fulfilled by individuals, but the Union does not have all the legal competences it needs to reach its citizens with its human rights policies.

Section 2.3 inferred that the EU has the opportunity to implement the CRPD through three kinds of instruments: (i) legal; (ii) institutional; and (iii) political. The Union does not have the necessary competences to legislate on the implementation of the CRPD and independent living rights. This limitation suggests that the EU may use institutional and political instruments instead. These alternative instruments enhance the exercise of influencing processes. This chapter aims to introduce these influencing processes theoretically.

Section 1.3.4 suggested that this multidisciplinary study should have adopted a pluralistic approach to replying to its research question. This is because the question stimulates an explanation of a social situation that may have different theoretical interpretations. For this reason, this theoretical chapter includes and links different academic areas developing a peculiar explicative framework. The theoretical framework of the thesis explores four macro-areas that are originally linked to one another: (i) power theories; (ii) soft law; (iii) experimentalist governance; and (iv) international networks. Each of these is investigated in a dedicated section.

Section 3.2 includes a dense review of power theories' classic authors. The theories addressed the concepts of power and influence with different perspectives that share the attention to several topics, among which coercion. The section introduces the original assumption that influence is like power without coercion. Also, it theoretically explains how influence can be exercised.

The emphasis on coercion summarises the dichotomy between soft and hard power. Section 3.3 reveals the increasing importance of soft power (influence) in the international sphere. This is because international relations are

horizontal situations between sovereign governments, which influence one another using different strategies as the emanation of international agreements.

UN human rights conventions are examples of international agreements. Their implementation requires soft influencing instruments, among which governance processes. Section 3.4 illustrates that both the EU and the CRPD develop governance processes. It also reveals that these processes are similar to the theoretically introduced *experimentalist* governance.

International relations and governance systems have one common factor: they network different entities. For this reason, Section 3.5 depicts the influencing characteristics of international networks. It introduces the hypothesis that the world's architecture is evolving from hard and vertical to soft and horizontal.

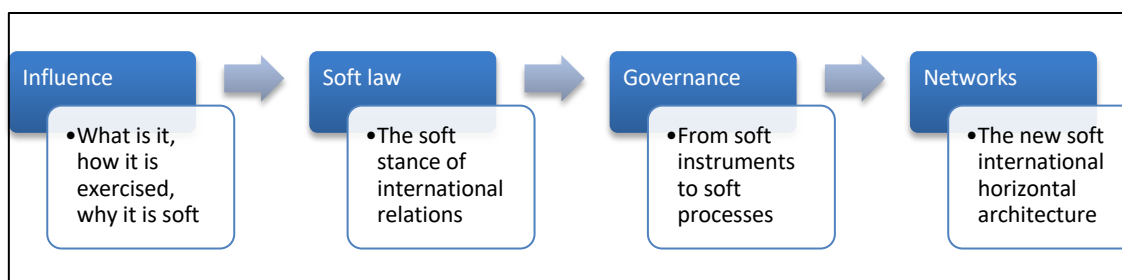


Figure 3-1 - Visual content chart of Chapter 3

3.2 Influence and power

This research aims to show EU opportunities for implementing international human rights through means that are different from hard law. Thus, influence is a crucial concept of the thesis. For this reason, this section includes a theoretical study of influence as defined by power theories.

Lukes stated that power is an “essentially contested concept”.¹ The literature review included in this section confirms his statement. As such, the assumption that influence is like power without coercion will find theoretical verification from the critical comparative analysis of several classic authors.

¹ Steven Lukes, *Power: A Radical View* (2nd edn, Palgrave Macmillan 2004) 30.

3.2.1 A definition for influence

The concepts of influence and power are part of the same academic debate. For instance, Wrong said that influence might be seen as interchangeable with power.² On the other hand, Lasswell and Kaplan suggested that power is a form of intended influence,³ which is linked to social behaviours.⁴ Differently, Lukes thought that power includes influence.⁵ In detail, this author introduced a difference between power and coercion. Therefore, if power includes influence, then influence excludes coercion.⁶ His consideration moves from Bachrach and Baratz, stating that influence exists where A, “without resorting to either a tacit or an overt threat of severe deprivation, causes B to change his course of action”.⁷

While the conceptual difference between influence and power has several interpretations, at least one common factor between the two concepts seems accepted by several authors: the link with social changes. For instance, Nye did not distinguish influence from power and said they represent “the capacity to do things and in social situations to affect others to get the outcomes we want”.⁸ Already Foucault suggested that “the exercise of power [...] is a way in which certain actions modify others”.⁹ Even, Wrong reminded that also a classic like Weber had linked power to the capacity to make social changes.¹⁰ Lastly, Lukes recalled Scott to suggest that also the capacity to resist a social change can be interpreted as an exercise of influence/power.¹¹

This review is the basis of the original definition of influence that has been developed for this thesis:

² Dennis H Wrong, *Power: Its Forms, Bases and Uses* (Blackwell 1979) 4; Joseph S Nye, *The Future of Power* (1st edn, PublicAffairs 2011) 6.

³ H. Lasswell and A. Kaplan as quoted in: Wrong (n 2) 21.

⁴ *ibid* 6–10; Keith M Dowding, *Rational Choice and Political Power* (Edward Elgar 1991) 23–29.

⁵ Steven Lukes, ‘Power’ (2007) 6 *Contexts* 59.

⁶ Lukes (n 1) 21.

⁷ Peter Bachrach and Morton S Baratz, *Power and Poverty: Theory and Practice* (Oxford University Press 1970) 30.

⁸ Nye, *The Future of Power* (n 2) 6.

⁹ Michel Foucault, ‘The Subject and Power’ (1982) 8 *Critical Inquiry* 777, 788.

¹⁰ Max Weber as quoted in: Wrong (n 2) 21.

¹¹ Lukes (n 5) 59.

the exercise of influence is the capacity to make or resist a social change without the use of coercive means.

This definition of influence complements the contents of the previous two chapters and explains what the research is seeking. In detail, Section 2.3 suggested that the EU has the opportunity to implement the CRPD through legal, institutional, and political processes. Legal processes are typical coercive instruments. Thus, they exercise power. Institutional and political processes use means that are not coercive. Hence, they exercise influence. As a consequence, the research seeks examples of EU institutional and political processes that can change the social situation of independent living rights.

3.2.2 Influence as a matter of social sciences

The definition to make or resist a change can define power in the natural sciences as well as in the social sciences. Lukes quoted a classic like Aristotle pointing out that “unlike natural powers, such as the power of fire to burn wood, there are human powers that are typically ‘two-way powers, powers which can be exercised at will’”.¹² In fact, natural sources of power cannot choose their courses of action. On the other hand, human beings can choose to act in order to obtain or resist a change. Weber said that “an Action is ‘social’ if the acting individual takes account of the behaviour of others and is thereby oriented in its course”.¹³ It follows that the definition to make or resist a change addresses social sciences when it reflects a relationship between human beings. This consideration explains the social approach of the research.

In sum, the exercise of influence is a social relationship between an agent, who wants a specific outcome, and a target, whose change is the outcome the agent wants.¹⁴ Therefore, there is no influence without a relationship. As such, the only way to exercise influence is to establish any social relationship. Influencing relationships start because an agent wants a change that involves a target. The concepts of these two paragraphs entail that the exercise of influence is intentional.

¹² Lukes (n 1) 71.

¹³ Max Weber, *Basic Concepts in Sociology* (Owen 1962).

¹⁴ Wrong (n 2) 3–5; Foucault (n 9) 788. Other authors prefer the dichotomy principal/subaltern. However, the terms agent and target seem to better represent the situation in which a social actor can choose specific courses of action to make or resist changes.

The idea of intentionality is controversial because it may link influence with its effective exercise. For instance, Foucault operated a classification of social situations before stating that “power exists only when it is put into action”.¹⁵ On the other hand, Lukes talked about an “exercise fallacy” when theorising power as a dispositional concept.¹⁶ However, intentionality and effectivity are detached concepts. While agents and targets can intentionally choose to exercise influence, the effectiveness of their action may depend on the others’ action. Despite this, one active influence always results from influencing relationships: either that of the agent making changes or that of the target resisting changes. This idea is summarised by the original figure below.

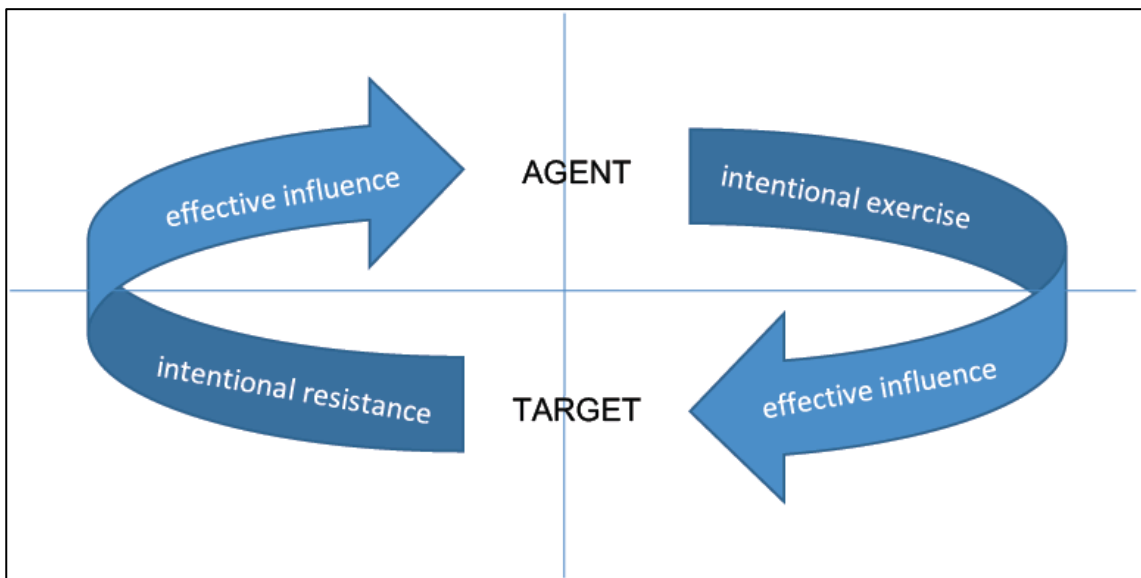


Figure 3-2 - The social relationship of influence

Scott thought that intentionality is a critical element of influence.¹⁷ In accord with him, this thesis refers to the intended social influence. This perspective collocates influence into a causal dimension where either an actor causes a change on another,¹⁸ or an actor resists a change another wants.¹⁹ As Bloom suggested, influence “and resistance commonly represent an ironically

¹⁵ Foucault (n 9) 788.

¹⁶ Lukes (n 5) 59.

¹⁷ John Scott, *Power* (Polity 2001) 1–2.

¹⁸ John Scott, ‘Power, Domination and Stratification: Towards a Conceptual Synthesis’ [2007] *Sociologia, problemas e práticas* 25, 1.

¹⁹ Lukes (n 1) 69; Peter Bloom, ‘The Power of Safe Resistance’ (2013) 6 *Journal of Political Power* 219.

stable relationship”.²⁰ Within such a relationship, agents and targets know their status. This is because only their consciousness confirms their intentionality to cause or resist a change. Also Lukes suggested that it should be better to talk about manipulation instead of influence when the target is unconsciously targeted and cannot choose to resist as a consequence.²¹

Among others, Foucault underlined that agents and targets might be individuals as well as collective entities.²² Lukes specified that “the latter can be of many kinds: states, institutions, associations, alliances, social movements, groups, clubs and so on”.²³ As individual and collective entities are aware of their status within an influencing relationship, they recognise themselves reciprocally. As Wrong suggested, this means the intended social influence does not cause loss of compliance between the actors involved in the relationship. He defined the relationship as “intensive” when agents and targets recognise the right of the counterpart to exercise influence.²⁴

The previous sub-section assumed that the EU could implement the CRPD and independent living rights when it develops institutional and political processes that influence the national and local levels. This sub-section has clarified that the research looks at institutional and political processes as relationships where agents and targets try to make or resist social changes.

3.2.3 The social relationship of influence

This sub-section investigates the characteristics of the causal relationship between agents and targets. Maclver wrote that “society is the system of social relationships in and through which we live”.²⁵ In his book, he also explained that such a system is always changing. This thesis looks at influence as a specific kind of social relationship, and at the exercise of influence as an attempt to change society in the desired way.

The exercise of influence to make or resist change is a course of action that is put into place by individuals and collective entities. These take advantage

²⁰ Bloom (n 19) 225.

²¹ Lukes (n 1) 22.

²² Dowding (n 4) 84; Foucault (n 9).

²³ Lukes (n 1) 72.

²⁴ Wrong (n 2) 14–21.

²⁵ Robert M Maclver, *Society: A Textbook of Sociology* (Farrar & Rinehart 1937) 18.

of opportunities to change the social environment in desired ways. For instance, such opportunities are identified by Lukes as social situations,²⁶ and by Dowding as structures.²⁷ Situations and structures allow and incentivise social actors to impose their will on the ongoing social evolution.²⁸ This explanation is coherent with Nye suggesting that the study of influence might consider two issues: (i) what are the actors in the relationship; and (ii) what is the situation of the relationship.²⁹

Besides, the influencing relationship can be either direct or indirect: (i) it is direct when agents exercise their influence on targets; (ii) it is indirect when agents exercise influence on a third party that can influence the real targets. As Wrong suggested, the causalities within influencing relationships may be challenging to understand.³⁰ Nye explained that such difficulty increases in the case of indirect relationships because their situations involve several variables.³¹ Lastly, Dowding pointed out that the difficulty of quantifying influence is not a measure for its exercise.³² It follows that the presence of an influencing relationship is a sufficient condition to prove the presence of influence.

The central role of the social relationship is supported by Clegg, saying that “power is not a thing: it is relational”.³³ Therefore, the assumption that the EU tries to implement the CRPD making changes at the national and local levels implies by itself the presence of influencing relationships. For this reason, the thesis does not need to quantify influence to state its exercise; instead, it can just show the presence of influencing relationships in the context of the EU implementation of the CRPD and independent living rights to prove the exertion of influence.

Nye explained that any social situation involves four variables: (i) the domain; (ii) the means; (iii) the place; and (iv) the time.³⁴ Such variables include

²⁶ Lukes (n 1) 25–29.

²⁷ Dowding (n 4) 5–8.

²⁸ *ibid* 18.

²⁹ Nye, *The Future of Power* (n 2) 6.

³⁰ Wrong (n 2) 82–83.

³¹ Nye, *The Future of Power* (n 2) 94–95.

³² Dowding (n 4) 5; Nye, *The Future of Power* (n 2) 81–82.

³³ Stewart Clegg, ‘Circuits of Power/Knowledge’ (2014) 7 *Journal of Political Power* 383.

³⁴ Joseph S Nye, *The Future of Power* (1st edn, PublicAffairs 2011) 7.

the concept of resources that may be used to exercise influence.³⁵ Resources reflect the capacity to influence. However, Lukes, Wrong, and Dowding pointed out that resources themselves do not guarantee any exercise³⁶ of influence but only its latency³⁷ and relevant dispositional properties.³⁸ Foucault suggested that resources might be used with strategies to exercise intended social influence,³⁹ and Nye explained that such strategies have the precise aim to reach desired outcomes.⁴⁰ Lastly, strategies move the action of any actor that wants to exercise influence to make or resist any social change.⁴¹

The elaboration of strategies may depend on the mentioned four variables. For instance, Saunders thought that the place of the actors is essential to define strategies, as actors may be inside or outside any social situation.⁴² Depending on the place of the actors: (i) the domain of the outsiders is the situation they want to change in order to join it; and (ii) the domain of the insiders is a specific topic of the situation of which they are part. Dowding distinguished these two cases as situational and outcome strategies.⁴³ Bearing in mind Figure 1-2 and its Structure-Process-Outcome indicator framework, it can be assumed that situational strategies target structures while outcome strategies target processes. Only the effectivity of these two strategies can produce desired outcomes.

In this respect, an example (which is only a simplification of the real facts) may be useful to understand the issue. As an outsider, the EU persuaded the United Nations to include the possibility for regional integration organisations to conclude the CRPD in the Convention itself. As an insider, now that it is part of the structure of the CRPD, the Union can use its authority to influence the implementation of specific topics of the Convention. Building on this idea, the

³⁵ *ibid* 8; Dennis H Wrong, *Power: Its Forms, Bases and Uses* (Blackwell 1979) 125–145.

³⁶ Lukes (n 1) 41–44.

³⁷ Wrong (n 2) 125–130.

³⁸ Dowding (n 4) 4–5.

³⁹ Foucault (n 9) 793–795.

⁴⁰ Nye, *The Future of Power* (n 2) 8.

⁴¹ Dowding (n 4) 23; Foucault (n 9) 788.

⁴² Clare Saunders, 'Insiders, Thresholders, and Outsiders in West European Global Justice Networks: Network Positions and Modes of Coordination' (2014) 6 *European Political Science Review* 167.

⁴³ Dowding (n 4) 47–49.

next sub-section will investigate the difference between persuasion and authority.

3.2.4 The exercise of influence through authority and strategies

The previous sub-sections explained that influence is consciously exercised without coercion. Differently: without consciousness, there is the exercise of manipulation; and with coercion, there is the exercise of power. On the other hand, influence can be exercised through persuasion and authority.⁴⁴

The last paragraph of the previous sub-section showed a practical example that suggested a difference between persuasion and authority. Such example introduced two alternatives: (i) if the EU is party to an international human rights treaty, it can use its authority to implement the treaty; but (ii) if the EU is not party to an international human rights treaty, it might use its persuasion instead. Since this research investigates the EU opportunities for implementing a concluded international human rights treaty, it follows that authority might be the best strategy for the Union to implement the CRPD with non-coercive means.

As any power-related concept, the definition of authority is subject to different interpretations. For instance, Wrong suggested that authority can be exercised in five forms: (i) coercion; (ii) inducement; (iii) legitimation; (iv) competence; and (v) personality.⁴⁵ This explanation means that authority can be an expression of both hard power and soft influence. However, the thesis is interested in influence only, thus in three forms of authority: (i) legitimation; (ii) competence; and (iii) personality.⁴⁶

Besides, Nye suggested that influence can be exercised through the legitimacy and credibility of agents.⁴⁷ He explained that these two characteristics are essential because targets are not coerced; therefore, the influencing relationship is based on these two pillars.⁴⁸ Legitimacy is directly connected with the situation, whereas credibility is a characteristic of the actor that depends on resources like benignity, competence, and charisma.⁴⁹ Nye stated that targets

⁴⁴ Wrong (n 2) 21–24.

⁴⁵ *ibid* 35–64.

⁴⁶ Dowding (n 4) 143–144.

⁴⁷ Nye, *The Future of Power* (n 2) 83, 103.

⁴⁸ *ibid* 84.

⁴⁹ *ibid* 92.

could be influenced by agents only when agents are legitimate and credible, and targets acknowledge their legitimation and credibility.⁵⁰

The fact that social actors can use authority to exercise either power or influence suggests that the same resources can be used in different ways. Nye and Wrong suggested that: (i) resources that allow the exercise of hard power may be: (a) force, and (b) money; while (ii) resources that allow the exercise of soft power may be: (a) knowledge, (b) values, and (c) legitimacy,⁵¹ as well as (d) mobilisation,⁵² (e) skill monopoly,⁵³ and (f) numbers.⁵⁴ However, only the use of resources defines the hard or soft nature of their exercise.

Nye added that strategies define the use of resources.⁵⁵ The author called “smart power” the ability to combine resources with the right strategy to achieve desired outcomes.⁵⁶ The confidence in the available resources allows elaborating and realising smart strategies.⁵⁷ Smart strategies follow a rational five-point scheme: (i) what the desired outcome is; (ii) what the resources and the situation are; (iii) what the position and preference of the target are; (iv) use of either hard or soft means; and (v) what the probability of success is.⁵⁸ It should be evident that the use of strategies entails the intentionality of the action. Lastly, the use of smart strategies implies a certain kind of professionalisation to elaborate on the strategies themselves.

To conclude, Nye also suggested that authoritative strategies may aim at: commanding change,⁵⁹ controlling agendas,⁶⁰ and establishing preferences,⁶¹ interests, and needs.⁶² In sum, the EU exercises its influence on the

⁵⁰ *ibid* 93.

⁵¹ *ibid* 21–22.

⁵² Wrong (n 2) 148; Dowding (n 4) 146.

⁵³ Wrong (n 2) 137.

⁵⁴ *ibid* 197.

⁵⁵ Nye, *The Future of Power* (n 2) 21–22.

⁵⁶ *ibid* 23, 207–208.

⁵⁷ *ibid* 24.

⁵⁸ *ibid* 208–209.

⁵⁹ *ibid* 11; Wrong (n 2) 128.

⁶⁰ Nye, *The Future of Power* (n 2) 12; Wrong (n 2) 129–130.

⁶¹ Nye, *The Future of Power* (n 2) 11–13.

⁶² Dowding (n 4) 30–46.

implementation of the CRPD and independent living rights when it puts into practice soft strategies that use authoritative resources.

3.3 Influence and international soft law

The previous section introduced an original meaning for influence. The thesis aims to show examples of EU efforts to implement the CRPD and independent living rights through influencing processes. These represent a soft (non-coercive) way to exercise power. For this reason, the thesis gives the same meaning to influence and soft power.

This section investigates the idea of *soft* when connected to international power and law. This investigation is necessary because it explains that soft processes have always been part of human society, but that the current international architecture is affecting the balance between soft and hard powers promoting the development of influencing processes.

3.3.1 The “rise” of soft power

Soft power is a concept introduced by Nye in 1990.⁶³ In 2004, the author published a new book to enhance the concept, which is defined as “the ability to get what you want through attraction rather than coercion or payments”.⁶⁴ Although the concept is recent, Nye pointed out that “Rome did not succumb to the rise of another empire”.⁶⁵ This historical link means that the exercise of soft power is part of human history. As such, this sub-section does not describe the historical rise of soft power, but it focuses on the rise of the consciousness of the importance of soft power. This consciousness is the basis of the intentionality to use soft power itself, which is the real novelty of our time. The establishment of soft international law is evidence of the intentionality to use soft power. As Galbraith and Zaring stated, “the turn to soft law in international governance has been one of the signature developments in the field over the past forty years”.⁶⁶

⁶³ Joseph S Nye, *Bound to Lead: The Changing Nature of American Power* (Basic Books 1990).

⁶⁴ Joseph S Nye, *Soft Power: The Means to Success in World Politics* (Public Affairs 2004) x.

⁶⁵ *ibid.*

⁶⁶ Jean Galbraith and David Zaring, ‘Soft Law as Foreign Relations Law’ (2014) 99 *Cornell Law Review* 735, 745.

These two authors suggested that the intentional use of soft power is increasing in contemporary times. Such an increase is due to several reasons, among which an alleged crisis of hard power.⁶⁷ Gallarotti pointed out that the reasons underpinning the crisis of hard power are linked to the rapidity and complexity of contemporary society, which can be better managed with soft means.⁶⁸

Nye suggested that soft power works through imitation and attraction.⁶⁹ He also added that soft power is different from hard power and economic power. As illustrated in Figure 3-3,⁷⁰ economic power includes inducement, which occurs when agents pay targets to obtain desired outcomes. As payments exclude threat, they cannot be classified as hard power. Also, they are not to be classified as soft power either, as they lack imitation and attraction.

	Behaviors	Primary Currencies	Government Policies
Military Power	coercion deterrence protection	threats force	coercive diplomacy war alliance
Economic Power	inducement coercion	payments sanctions	aid bribes sanctions
Soft Power	attraction agenda setting	values culture policies institutions	public diplomacy bilateral and multilateral diplomacy

Figure 3-3 - Three types of power

⁶⁷ *ibid* 744.

⁶⁸ Giulio M Gallarotti, 'Soft Power: What It Is, Why It's Important, and the Conditions for Its Effective Use' (2011) 4 *Journal of Political Power* 25, 25–26.

⁶⁹ Nye, *Soft Power: The Means to Success in World Politics* (n 64).

⁷⁰ *ibid* 31.

In sum, the behaviour of targets can be changed by coercing, paying, or attracting them. However, as explained in Section 3.2, only the use of resources identifies the variable of the exercised power. For instance, money is a resource with which: (i) one may buy a gun to coerce another; (ii) one may induce (pay) another; or (iii) one may attract another as a social example. For the purposes of this thesis, only the last of these three cases concerns soft power.

As stated in the first paragraph of this sub-section, the interest in soft power started with analyses of international politics. This interest was due to national security matters as well as new international relations practices. Nye explained that also the increased importance of information and communication technology (ICT) had intensified the intentional use of soft power in international relations.⁷¹

The use of power and influence in international relations is possible due to the relational nature of power and influence. As such, this thesis considers that:

international soft power is an influencing social relationship between two actors that belong to two different international entities.

The fact that the relationship is influencing clarifies that the two entities establish their relationship to make or resist social changes.

Shaw explained that the classic approach to sovereign states looks at states as independent entities. Sovereign states are hierarchical organisations where hard power usually prevails. On the other hand, the relationships between sovereign states should be horizontal and use soft power in order to avoid conflicts.⁷² Gallarotti argued that these international horizontal relationships create structures with boundaries and spaces that are subject to continuous reciprocal influences.⁷³

Nye suggested that the increased use of ICT has been creating a new globalised dimension with new flexible borders and new actors that are different from national states. Soft power seems to be more important than hard power within such a new dynamic globalised dimension.⁷⁴ Part of its importance is a

⁷¹ *ibid* 30–32.

⁷² Malcolm N Shaw, *International Law* (6th edn, Cambridge University Press 2008) 6.

⁷³ Gallarotti (n 68) 28–29.

⁷⁴ Nye, *Soft Power: The Means to Success in World Politics* (n 64) 90–97.

consequence of data control and sharing. On one hand, ICT allows easier access to data. On the other hand, too much information causes scarcity of attention. As a consequence, attention becomes a valuable resource for controlling data. It may be manipulated by propaganda, and propaganda is effective when conducted by credible actors. For this reason: (i) influence can be exercised by undermining the credibility of others;⁷⁵ and (ii) influence can be exercised by enhancing one's credibility. Credibility can be increased by being legitimate parties to social structures and by respecting commitments, for instance.⁷⁶

National governments adapt their strategies to the globalised dimension. In addition to increasing their use of soft power, they take into account new influencing competitors as non-state actors. Among the soft strategies to develop, Nye suggested that multilateralism is a major one. Multilateralism includes the establishment of networks to foster strategic diplomacy where communication and data exchange become vital resources to exercise soft power.⁷⁷ The importance of international networks will be further explained in section 3.5. When multilateral networks are regulated, they are governed by international law, which is the focus of the next sub-section.

3.3.2 International (soft) law

Shaw originally described international law as an attractive means to establish relationships between states. It follows that international law primarily targets countries instead of citizens as national law does.⁷⁸ While national law includes legislative, executive, and judiciary competences, international law usually does not.⁷⁹ As a result, Craig and De Búrca talked about a democratic deficit of international law.⁸⁰ The reason for this is that international law usually does not rise from politicians but from agreements between the executive branches of two

⁷⁵ *ibid* 106–107.

⁷⁶ Kenneth W. Abbott and Duncan Snidal, 'Hard and Soft Law in International Governance' (2000) 54 *International Organization* 421, 426–430.

⁷⁷ Nye, *Soft Power: The Means to Success in World Politics* (n 64) 107–112.

⁷⁸ Shaw (n 72) 1.

⁷⁹ *ibid* 3.

⁸⁰ Paul Craig and Gráinne De Búrca, *The Evolution of EU Law* (2nd edn, Oxford University Press 2011) 28–31.

or more countries,⁸¹ and this distance from citizens characterises its lack of democracy.

Shaw stated that “the current trend in international law is to restrict the use of force as far as possible”.⁸² Thus, the current trend is to use soft instruments. This means that soft international law exerts attraction. This attraction concerns the governments’ feeling that they may take advantage of their inclusion in situations established by international law. As such, respecting international law is a direct consequence of the recognition that its situation is a potential advantage.⁸³

As authors like Abbott and Snidal suggested, this means that international law is usually soft, while national law is ordinarily hard.⁸⁴ Shaw mentioned another difference between national and international law that is the relationship between law and politics.⁸⁵ The critical point is that politics adopt legal instruments, which in turn bind politics. In sum, although a recognised definition of soft law is still under debate,⁸⁶ and even contested,⁸⁷ one of the differences between hard law and soft law may be the relationship between law and politics.

Following the contents of Section 3.2.4, if the law is a resource to exercise power or influence, its hard or soft nature is not intrinsic, but a consequence of the strategies for using the resource itself. Therefore, a classification of legal instruments between hard and soft laws might not be reliable without considering the situation in which the legal instruments allow to make or resist changes. For instance, any EU Member State that is in breach of any EU law could go straight to the EU Court of Justice. This situation would be a hard use of the law. In reality, any EU Member State that is in breach of any EU law is usually subject to a political debate that may avoid the recourse to the ECJ.⁸⁸ This situation is a soft use of the law.

⁸¹ Galbraith and Zaring (n 66) 739.

⁸² Shaw (n 72) 5.

⁸³ *ibid* 11.

⁸⁴ W. Abbott and Snidal (n 76) 422.

⁸⁵ Shaw (n 72) 11–13.

⁸⁶ Abraham Newman and Elliot Posner, *Voluntary Disruptions: International Soft Law, Finance, and Power* (1st edn, Oxford University Press 2018) ch 1.

⁸⁷ Fabien Terpan, ‘Soft Law in the European Union—The Changing Nature of EU Law’ (2015) 21 *European Law Journal* 68, 70.

⁸⁸ Consolidated Version of the Treaty on the Functioning of the European Union 2012 (OJ C

Terpan suggested that the enforcement of the Stability and Growth Pact is an emblematic case for the difference described above.⁸⁹ In other words, stating that the EU Member States must not infringe EU law is different from affirming that they should not, but it would be possible to open political debates if it happened. The key points are: (i) the different situations that guarantee the respect for the law; and (ii) the different reasons why the law is respected. In the case of hard use of the law: (i) courts are the situation that guarantees the respect for the law; and (ii) the law is respected to avoid coercive courses of action. In the case of soft use of law: (i) politics is the situation that guarantees the respect for the law; and (ii) the law is respected to take advantage of soft courses of action. The soft use of the law is the typical situation of international law. As it avoids coercive courses of action, international law is respected mainly due to its influence.

This original idea about the distinction between hard and soft laws depending on the situation seems to explain definitions like those of Terpan about “binding norms with a soft dimension” and “non-binding norms with legal relevance”.⁹⁰ For instance, the author pointed out that although soft law often does not refer to any relevant court, courts may refer to soft law to explain their judgements. When this happens, the nature of soft norms intrinsically changes because its legal relevance has been officially recognised.⁹¹ In this respect, Section 2.2 described that human rights discourses entered into the EU legislation through the ECJ case law, which gave EU legal relevance to soft international law. For Terpan, the concept of enforcement is central because “enforcement goes from monitoring to more coercive mechanisms, including judicial control and sanctions”.⁹² This suggests that monitoring is a soft strategy to enforce international law.

To conclude, both hard and soft laws appear as written documents that create behavioural expectations. The critical difference is that soft law does not admit the use of coercion, although establishing a kind of obligation.⁹³ Figure 3-

326/47) Art 258.

⁸⁹ Terpan (n 87) 78–80.

⁹⁰ *ibid* 71.

⁹¹ *ibid* 71–72.

⁹² *ibid* 73.

⁹³ *ibid* 75.

4 suggests that soft law is in between hard law and social norms.⁹⁴ This idea reminds of the socio-legal nature of this study about influence, as introduced in Section 1.3.1.

Type of norm	Nature of the obligation	Nature of the enforcement mechanism
Hard law	Hard obligation	Hard enforcement
Soft law	Hard obligation	Soft enforcement No enforcement
	Soft obligation	Hard enforcement Soft enforcement No enforcement
	No obligation	Soft enforcement
Non-legal norm	No obligation	No enforcement

Figure 3-4 - Criteria for defining soft and hard law

3.3.3 International soft law instruments

Newman and Posner classified soft law instruments as: (i) best practices; (ii) policy guidelines; (iii) technical standards; (iv) prescriptive standards; and (v) advisory guidance.⁹⁵ This classification follows their definition of soft law as a “set of written advisory prescriptions”. Although sharable, a similar rigid classification does not adhere to the explanations of the previous sub-section that considered the situation of the enforcement as an essential variable to define soft law.

In fact, other authors like Abbott and Snidal described soft law instruments focusing on the political opportunity to engage in them. To do so, the authors suggested the characteristics of soft law instruments instead of listing them. For instance, they said that the more difficult the political relationship, the softer the relevant legal instrument. They also suggested that the softness of legal instruments may be measured by three variables and their balance: (i) obligation; (ii) precision; and (iii) delegation.⁹⁶

To synthesise: the lower the value of these three variables, and the softer the legal instrument. The softer the legal instrument, the easier the engagement. On this, Abbott and Snidal suggested that soft law instruments allow national

⁹⁴ *ibid* 76.

⁹⁵ Newman and Posner (n 86) chs 1–2.

⁹⁶ W. Abbott and Snidal (n 76) 421–424.

governments to save contracting and sovereignty costs when compared to hard means.⁹⁷ Also, soft law instruments allow for avoiding uncertainties due to the lack of any agreement. Uncertainties are politically and economically more expensive than soft law instruments, which result in convenient compromises.⁹⁸

This consideration means that the exclusion from a situation governed by soft law results in a cost. This idea describes the “penalty default” principle of Ayres and Gertner.⁹⁹ In sum, international entities promote and respect soft law instruments because the promotion of and respect for such instruments avoid extra costs. Abbott and Snidal added that soft law instruments are flexible and they establish relationships that would be problematic to maintain in other ways. Lastly, soft law instruments may be the first step leading to the adoption of hard options.¹⁰⁰

Also, Newman and Posner suggested two opportunistic motivations to adopt international soft law instruments instead of hard ones: (i) the involved actors are aware of the cooperative advantages of soft instruments; and (ii) the involved actors want to be as free as possible not to respect the prescriptions due to the agreements’ soft nature.¹⁰¹ In the same direction, Galbraith and Zaring stated that soft law instruments “can be negotiated and renegotiated with greater ease and violated with lower reputational costs-and therefore they can potentially contain stronger substantive provisions”.¹⁰² This idea is interesting because it suggests that the soft nature of instruments incentivises the parties to agree on principles that would not be otherwise included in hard agreements. As suggested above, soft instruments can change and harmonise the attitudes about specific principles, and this represents an opportunity to influence.

To conclude, Galbraith and Zaring stated that “the rise of international soft law has been accompanied by the need to implement it domestically. This raises

⁹⁷ *ibid* 434–441.

⁹⁸ *ibid* 441–444.

⁹⁹ Ian Ayres and Robert Gertner, ‘Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules’ (1989) 99 *The Yale Law Journal* 87.

¹⁰⁰ W. Abbott and Snidal (n 76) 444–450; Luca Barani, ‘Hard and Soft Law in the European Union: The Case of Social Policy and the Open Method of Coordination’ [2006] *Constitutionalism Web-Papers* 20 <<https://www.wiso.uni-hamburg.de/fachbereich-sowi/professuren/wiener/dokumente/conwebpaperspdfs/2006/conweb-2-2006.pdf>> accessed 10 October 2018.

¹⁰¹ Newman and Posner (n 86) chs 1–2.

¹⁰² Galbraith and Zaring (n 66) 748.

the question of what laws or framework of laws can be used for its implementation”.¹⁰³ This is precisely the question that this thesis wants to answer. In particular, the research aims to show that the EU can use its influence instead of *laws or framework of laws* to impact on the implementation of international human rights principles.

3.4 Influence and international governance

Section 3.2 explained that the difference between power and influence is the use of coercion in social relationships that aim to make or resist changes. Such distinction reflects the dichotomy between the hard and soft use of resources and strategies. Section 3.3 explained that this difference is observable in international legal discourses, where soft law is increasing its importance. As such, the conscious use of influence is a crucial factor in international relations.

This section suggests that the rise of soft law in international relations has a main institutional consequence. This outcome is the development and establishment of governance architectures that develop and implement soft law. The Canadian Institute on Governance suggests that “governance is how society or groups within it, organise to make decisions”.¹⁰⁴ Craig and De Búrca emphasised that EU governance systems work in parallel with the classic hard governmental architecture.¹⁰⁵ Also, the authors referred to supranational and multi-level governance to emphasise the involvement of transnational actors, which are state, sub-state, and non-state entities.¹⁰⁶ The thesis adheres to these definitions.

3.4.1 The EU: from soft law to soft governance

It is possible to argue that the EU primary legislation has included examples of hard and soft legal instruments since the Treaty of Rome. In fact, the EU Treaties establish five forms of legal instruments: (i) regulations; (ii) directives; (iii) decisions; (iv) recommendations; and (v) opinions. However, among these, the

¹⁰³ *ibid* 749.

¹⁰⁴ ‘What Is Governance?’ (*Institute on Governance*, 2019) <<http://iog.ca/what-is-governance/>> accessed 1 February 2019.

¹⁰⁵ Paul Craig and Gráinne De Búrca, *EU Law: Text, Cases, and Materials* (4th edn, Oxford University Press 2008) ch 5.

¹⁰⁶ Craig and De Búrca (n 80) 21–26.

Treaties state that recommendations and opinions do not have any binding force.¹⁰⁷ The EU Parliament stated that “recommendations and opinions do not confer any rights or obligations on those to whom they are addressed, but may provide guidance as to the interpretation and content of Union law”.¹⁰⁸ In line with the explanations of the previous section, recommendations and opinions can be classified as examples of soft law.

Terpan underlined that the EU is an original form of supranational organisation. On one hand, the EU Treaties establish a hard architecture that confers legislative, executive, and judiciary competences on the Union. On the other hand, new forms of coordination have been emerging since this hard architecture has become a limit for the integration of the EU Member States.¹⁰⁹

Barani explained that the EU had developed new soft law instruments to face the complexity of contemporary society by increasing its flexibility. The author assumed an ongoing passage from “supranational to intergovernmental methods”.¹¹⁰ Sabel and Zeitlin added that the complexity of contemporary society had increased the need to consult experts. The permanent link between the EU and civil society experts has created platforms that can influence the EU policy- and law-making processes.¹¹¹ About this, Cullen, Harrington, and Renshaw stated that “experts become powerful, their power lying in their control over knowledge and information and their consequent capacity to determine policy”.¹¹² This confirms the link between knowledge and power introduced in Section 3.2.

Barani affirmed that the EU started to use non-binding intergovernmental agreements in the 1980s. These aimed to avoid rigidities in favour of flexibility.¹¹³ Such agreements developed networks between sub-state actors. These networks included monitoring procedures. One example of this form of soft

¹⁰⁷ TFEU Art 288.

¹⁰⁸ ‘Sources and Scope of European Union Law’ (European Parliament 2018) <http://www.europarl.europa.eu/ftu/pdf/en/FTU_1.2.1.pdf> accessed 10 October 2018.

¹⁰⁹ Terpan (n 87) 69.

¹¹⁰ Barani (n 100) 2–3.

¹¹¹ Charles F Sabel and Jonathan Zeitlin, ‘Learning from Difference: The New Architecture of Experimentalist Governance in the EU’ (2008) 14 *European Law Journal* 271, 278.

¹¹² Holly Cullen, Joanna Harrington and Catherine Renshaw, *Experts, Networks and International Law* (Cambridge University Press 2017) 2.

¹¹³ Barani (n 100) 13.

intergovernmental instrument is the Open Method of Coordination (OMC).¹¹⁴ Terpan classified the OMC as a soft law instrument due to its monitoring procedures.¹¹⁵

The EU Parliament stated that “the OMC [...] is a method of soft governance which aims to spread best practice and achieve convergence towards EU goals in those policy areas which fall under the partial or full competence of Member States”.¹¹⁶ This statement shows the intention to use a soft method to influence the EU Member States bypassing the limits of the conferral, as suggested by Szyszczak.¹¹⁷ Barani pointed out that the limits of the conferral correspond with the limits between hard law and soft law.¹¹⁸

Terpan explained that the OMC is not subject to the ECJ, and also the EU Commission and the EU Council have a limited role. This architecture creates a horizontal situation where destructured entities of the EU Member States are peers that decide and monitor common courses of action.¹¹⁹ Lastly, the Lisbon European Council listed the four main characteristics of the OMC: (i) establishment of common goals; (ii) identification of best practices; (iii) domestic personalised implementation; and (iv) mutual learning processes.¹²⁰ These are very similar to the main features of experimentalist governance architectures, as described in the next sub-section.

3.4.2 Experimentalist governance

As said in the previous section, Newman and Posner suggested two opportunistic motivations to adopt international soft law instruments instead of hard ones: (i) cooperative advantages; and (ii) unsanctioned infringements.¹²¹ Sabel and Zeitlin emphasised the first reason when pointing out the EU needs to

¹¹⁴ *ibid* 4–9.

¹¹⁵ Terpan (n 87) 81.

¹¹⁶ ‘The Open Method of Coordination’ (European Parliament 2014)
<<http://www.europarl.europa.eu/EPRS/EPRS-AaG-542142-Open-Method-of-Coordination-FINAL.pdf>> accessed 10 October 2018.

¹¹⁷ Erika Szyszczak, ‘Experimental Governance: The Open Method of Coordination’ (2006) 12 *European Law Journal* 486, 489–493.

¹¹⁸ Barani (n 100) 21.

¹¹⁹ Terpan (n 87) 81.

¹²⁰ ‘Lisbon European Council 23 and 24 March 2000, Presidency Conclusions’
<http://www.europarl.europa.eu/summits/lis1_en.htm> accessed 10 October 2018.

¹²¹ Newman and Posner (n 86) chs 1–2.

develop a new flexible governance to reach shared decisions.¹²² The EU Commission itself confirmed its aim to “bring greater flexibility into how Community legislation can be implemented in a way which takes account of regional and local conditions”.¹²³ Sabel and Zeitlin named *experimentalist* this kind of new governance based on flexibility.¹²⁴

De Búrca, Keohane, and Sabel said there is a global experimentalist governance that involves state, sub-state, and non-state actors with the attempt to decide common courses of action.¹²⁵ Multi-level and non-hierarchical relationships between the involved actors are the key characteristics that define experimentalist governance. Such relationships create informal processes of “networked deliberative decision making”.¹²⁶

Experimentalist governance processes need two main pre-conditions: (i) strategic uncertainty; and (ii) multi-polar distribution of power.¹²⁷ Generally speaking, forms of experimentalist governance are undertaken: (i) when hard processes are uncertain; (ii) when hard processes are counterproductive; and (iii) when the cooperation of states with sub-state and non-state actors is indispensable to set the agenda and solve problems.¹²⁸

Sabel and Zeitlin explained that experimentalist governance processes follow a four-step scheme: (i) common goals are established; (ii) lower-level units are free to choose how to reach these goals; (iii) lower-level units must report on their results, which are peer-reviewed; and (iv) a general evaluation of the process offers the opportunity to establish new common goals.¹²⁹ As such, experimentalist governance processes are open-ended processes.¹³⁰ The similarity between this four-step scheme and the characteristics of the OMC may

¹²² Sabel and Zeitlin (n 111).

¹²³ EU Commission Communication, European Governance, A White Paper 2001 (COM(2001) 428 final [OJ C 287/01]) 4.

¹²⁴ Sabel and Zeitlin (n 111) 305–309.

¹²⁵ Gráinne De Búrca, Robert O Keohane and Charles Sabel, ‘Global Experimentalist Governance’ (2014) 44 *British Journal of Political Science* 477.

¹²⁶ Sabel and Zeitlin (n 111) 273.

¹²⁷ *ibid* 280.

¹²⁸ De Búrca, Keohane and Sabel (n 125) 484.

¹²⁹ Sabel and Zeitlin (n 111) 274.

¹³⁰ De Búrca, Keohane and Sabel (n 125) 477.

suggest that the EU is developing experimentalist governance processes. This suggestion is what Zeitlin illustrated with the figure below.¹³¹

In addition, Sabel and Zeitlin explained that experimentalist governance processes promote “the emergence of new forms of dynamic accountability”.¹³² The reciprocal monitoring through peer review causes a “shift from accountability as rule following to accountability as the justifiable exercise of discretion subject to peer review”.¹³³ Accountability can be linked with the concept of credibility as a resource to influence, introduced in Section 3.2.

De Búrca, Keohane, and Sabel stated that “peer review is thus a mechanism for both learning systematically from diverse experience and holding actors accountable for their actions”.¹³⁴ Positive peer reviews recognise the accountability of actors that strengthen their legitimation within the process and avoid any penalty default.¹³⁵ Concerning this, Section 3.2 described legitimation as a resource to influence.



Figure 3-5 - The EU experimentalist governance

¹³¹ Jonathan Zeitlin, ‘New Forms of Governance: Beyond Hierarchy?’ (2016).

¹³² Sabel and Zeitlin (n 111) 276.

¹³³ *ibid* 307.

¹³⁴ De Búrca, Keohane and Sabel (n 125) 479.

¹³⁵ *ibid* 478.

Sabel and Zeitlin looked at transparency and participation as necessary characteristics of experimentalist governance processes.¹³⁶ On one hand, transparency is necessary for accountability. On the other hand, participation in soft governance processes shall be open to state, sub-state, and non-state actors based on the contribution they can give to the process. De Búrca, Keohane, and Sabel added that transparency and participation might fill the democratic deficit of networked deliberative decision-making processes.¹³⁷

Sabel and Zeitlin explained that experimentalist governance processes are deliberative because they reach decisions. These result from compromises and reciprocal influences. Such decisions are revised at the beginning of each new deliberative cycle through influencing processes.¹³⁸ The opportunities to exercise influence on the deliberative cycle pass through the maintenance of credibility and legitimation, which are maintained if the common goals are reached.

The agreement on common aims does not exclude that the flexibility of experimentalist governance processes respects the differences of the actors involved in the process.¹³⁹ This peculiarity means that the actors involved in governance processes can pursue harmonised results with personalised courses of action. This situation means that the EU CRPD-related governance indicates common goals to implement the Convention, and then the national and local levels can decide on how to reach those goals. The next analytical chapters will provide explanations for this assumption.

3.4.3 EU experimentalist governance and the CRPD

The previous sub-section summarised the key features of a new form of international governance that several authors agree to term experimentalist. This kind of governance aims to find international convergence avoiding the use of coercive means. In other words, its processes exercise influence rather than power. As previously stated, Sabel and Zeitlin observed characteristics of this

¹³⁶ Sabel and Zeitlin (n 111) 313–315.

¹³⁷ De Búrca, Keohane and Sabel (n 125) 484.

¹³⁸ Sabel and Zeitlin (n 111) 274.

¹³⁹ *ibid* 275.

new governance architecture in the EU. Besides, De Búrca analysed the CRPD experimentalist characteristics, and this sub-section builds upon her work.

In sum, De Búrca argued that the EU exported its anti-discrimination regime's experimentalist governance characteristics to the CRPD. The author suggested that the unconventional methods of the EU anti-discrimination regime were unintentional means to overcome the limits of the existent top-down architecture.¹⁴⁰ Due to these limits, the EU was finding difficulties in ruling second- and third-generation discrimination matters after having already legislated first-generation rights. Thus, the EU needed bottom-up insights, and this openness fostered the reinterpretation of its hard architecture.¹⁴¹

De Búrca defined the 1997 Amsterdam Treaty as the turning point that gave way to the EU anti-discrimination regime.¹⁴² She interpreted the inclusion of Article 13 as a victory of civil society against the classic powers of states and lobbies.¹⁴³ Particularly, De Búrca listed five critical characteristics of the EU anti-discrimination regime: (i) the legitimised involvement of non-state actors; (ii) the legitimisation and funding of international networks; (iii) the central role of information exchange and its legitimised alternative to hard dispute-resolution processes; (iv) the continuous review of the meaning of discrimination and its application at both vertical and horizontal levels; and (v) the transition from negative to positive norms.¹⁴⁴

The author observed that these five characteristics could also be noted in the CRPD drafting and governance processes.¹⁴⁵ As the EU was involved in the Convention's drafting process, De Búrca analysed the CRPD negotiation archives and conducted interviews to understand if the EU had exported experimentalist features of its anti-discrimination regime to the Convention.¹⁴⁶

¹⁴⁰ Gráinne De Búrca, 'Stumbling into Experimentalism: The EU Anti-Discrimination Regime' in Charles F Sabel and Jonathan Zeitlin (eds), *Experimentalist governance in the European Union: towards a new architecture* (Oxford University Press 2012) 215.

¹⁴¹ *ibid* 216–218.

¹⁴² See also Section 2.2.

¹⁴³ De Búrca, 'Stumbling into Experimentalism: The EU Anti-Discrimination Regime' (n 140) 218–221.

¹⁴⁴ *ibid* 221–226.

¹⁴⁵ Gráinne De Búrca, 'The EU in the Negotiation of the UN Disability Convention' (2010) 35 *European Law Review* 2 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1525611> accessed 10 October 2018.

¹⁴⁶ *ibid* 3.

From her investigation, it emerged that the EU was not in favour of the new Convention at the outset, but then it changed its mind looking at the opportunity to export its anti-discrimination model at the UN level.¹⁴⁷

In the 2015 revision of her analysis, De Búrca observed an EU “downloading” of experimentalist features by the CRPD after the previous “uploading” of its anti-discrimination governance.¹⁴⁸ This idea is very similar to the one that inspires this thesis. In fact, the research seeks evidence of the EU *downloading* of human rights principles from the Convention to their implementation. This perspective suggests that this study is following the footprints of De Búrca’s analysis.

Besides, research interview is a method that this thesis has in common with De Búrca’s work. The author shared the feeling that her interviewees: (i) were not fully conscious of being part of a unique international governance architecture; (ii) showed different degrees of uncertainty that seemed to derive from overlapping between hard and soft roles; and (iii) expressed enthusiasm for positive processes as the exchange of best practices and participation.¹⁴⁹ Interestingly, the interviews conducted under this research suggest similar insights. One probable reason for this is that the populations of the two sets of interviews belong to similar quasi-experimentalist governance entities.

Lastly, De Búrca concluded that feelings like unconsciousness and uncertainty were caused by the “embryonic stage” of the new governance regime.¹⁵⁰ However, the similarities with findings from this thesis’ interviews may support different ideas. For instance, the open-ended character of the experimentalist governance entails that the *embryonic stage* of this kind of governance is somehow intrinsic. If any deliberative cycle establishes new goals to reach, there is a constant necessity to develop new methods to reach such goals. Hence, uncertainty seems unavoidable. In fact, Sabel and Zeitlin talked

¹⁴⁷ *ibid* 7.

¹⁴⁸ Gráinne De Búrca, ‘Experimentalism and the Limits of Uploading’ in Jonathan Zeitlin (ed), *Extending experimentalist governance?: the European Union and transnational regulation* (OUP Oxford 2015).

¹⁴⁹ De Búrca, ‘Stumbling into Experimentalism: The EU Anti-Discrimination Regime’ (n 140) 226–231.

¹⁵⁰ *ibid* 231.

about “destabilisation” because the starting point of any cycle can *destabilise* the certainties achieved with the experience of the previous cycle.¹⁵¹

To conclude, the rise of soft power fostered the emanation of soft law and the establishment of flexible governance architectures. These may have different characteristics that allow their theoretical classification. However, they have a common starting point, which is the capacity to network international entities.

3.5 Influence and international networks

The previous sections of this chapter described the exercise of influence as a relationship between two actors that try to make or resist social change through soft resources and strategies. Once legitimised, this kind of relationship creates soft law instruments. Once institutionalised, they create flexible governance architectures. The contemporary international sphere sees increasing use of soft law and governance. This soft international architecture includes infinite influencing relationships between state, sub-state, and non-state entities that network with one another. These destructured entities restructure new networked international relationships. This is how this section approaches and explains international networks.

The distinction between network and governance systems is very narrow. In fact, the previous section concluded with the idea that governance architectures network international entities. Hence, governance can be explained as a specific structure of networks, which in turn can be generically defined as “a collection of points joined together in pairs by lines”.¹⁵² In detail, this thesis refers to social networks¹⁵³ where *points* are social entities and *lines* are their relationships. In particular, this research is interested in influencing relationships.

Blanco, Lowndes, and Pratchett suggested an exciting difference between policy networks and governance networks, affirming that governance networks represent an alternative to “the growing difficulties of traditional government” while policy networks aim to influence traditional governments more than substitute them.¹⁵⁴ This idea is coherent with that of deliberative governance

¹⁵¹ Sabel and Zeitlin (n 111).

¹⁵² Mark Newman, *Networks* (2nd edn, Oxford University Press 2018) 1.

¹⁵³ *ibid* 47.

¹⁵⁴ Ismael Blanco, Vivien Lowndes and Lawrence Pratchett, ‘Policy Networks and Governance

introduced in Section 3.4.2, and it offers a new perspective to understand the complexity of the power balance in the international sphere.

3.5.1 Influence and social networks

Foucault affirmed that social networks include individuals as well as collective entities, and “power relations are rooted in the system of social networks”.¹⁵⁵ Wrong confirmed that social networks are themselves collective entities, and the promotion of collective entities is a smart strategy to exercise influence.¹⁵⁶

Dowding talked about policy-making networks. He said that these networks develop various levels of independence from the control of consolidated institutional decision-makers.¹⁵⁷ Nye explained that this happens because the parties to any network are peers that share the same goals. As a consequence, networks become independent collective entities that aim to realise the common goals of its constituent entities. It follows that the independence of any network is a pivotal factor in exercising influence and realising its goals.¹⁵⁸ Consequently, influencing smart strategies should consider the opportunity to create and manage social networks.¹⁵⁹

Nye described the capacity to make or resist a social change with either coercive or non-coercive means as either hard power or soft power.¹⁶⁰ This thesis assumes that soft power is equivalent to influence. Nye explained that soft power is more diffuse and less hierarchical than hard power and that the action of social networks fosters this difference.¹⁶¹ The author added that social networks have been increasing their importance due to technology.¹⁶² Burkhardt and Brass described technology as a new resource that has been shaping new smart strategies that involve the use of soft means to exercise influence.¹⁶³ In

Networks: Towards Greater Conceptual Clarity’ (2011) 9 Political Studies Review 297.

¹⁵⁵ Foucault (n 9) 793.

¹⁵⁶ Wrong (n 2) 134.

¹⁵⁷ Dowding (n 4) 118.

¹⁵⁸ Nye, *The Future of Power* (n 2) 108.

¹⁵⁹ *ibid* 17–18.

¹⁶⁰ *ibid* 16–21.

¹⁶¹ *ibid* 101.

¹⁶² *ibid* 114–118.

¹⁶³ Marlene E Burkhardt and Daniel J Brass, ‘Changing Patterns or Patterns of Change: The Effects of a Change in Technology on Social Network Structure and Power’ (1990) 35 *Administrative Science Quarterly* 104.

particular, a specific branch of technology known as information and communication technology (ICT) plays a prominent role in social inclusion.

Warschauer stated that social inclusion refers “to the extent that individuals, families, and communities are able to fully participate in society and control their own destinies, taking into account [...] civic engagement”.¹⁶⁴ In short, ICT allows such participation by creating social networks that share data. The possibility to access and modify data have been re-shaping the contemporary social relationships from hierarchical to horizontal.¹⁶⁵ In the words of Maoz, “we typically think of a network as a collection of units [...] that have ties with one another. These ties determine how information and influence flow in the global village”.¹⁶⁶

Blooms thought that ICT spreads knowledge because it allows collecting and sending data. Access to knowledge offers the opportunity to exercise influence.¹⁶⁷ With regard to ICT, Allen introduced a new idea for space. He said that the physical space is no more a condition to exclude any actor from any situation, and the inclusion in relevant networks is a precious resource to exercise influence.¹⁶⁸ Nye agreed on this when suggesting that the technological space has become an independent geography where both information and the control of information are resources to exercise influence.¹⁶⁹ Non-territorial dimensions are increasing their importance. This shift is so radical that Keohane and Nye referred to this evolution as the end of the post-feudal-time era.¹⁷⁰ The authors assumed that interdependence is the central resource to succeed in non-territorial dimensions. Therefore, they said that international strategies prefer influence to power because coercion causes dependence instead of interdependence.¹⁷¹

¹⁶⁴ Mark Warschauer, *Technology and Social Inclusion: Rethinking the Digital Divide* (MIT 2004) 8.

¹⁶⁵ *ibid* 24–30.

¹⁶⁶ Zeev Maoz, *Networks of Nations: The Evolution, Structure, and Impact of International Networks, 1816-2001* (Cambridge University Press 2011) 5.

¹⁶⁷ Bloom (n 19) 225–226.

¹⁶⁸ John Allen, ‘Three Spaces of Power: Territory, Networks, plus a Topological Twist in the Tale of Domination and Authority’ (2009) 2 *Journal of Power* 197, 202–205.

¹⁶⁹ Nye, *The Future of Power* (n 2) 122–132.

¹⁷⁰ Robert O Keohane and Joseph S Nye, ‘“Power and Interdependence” Revisited’ (1987) 41 *International Organization* 725, 727.

¹⁷¹ *ibid* 730.

Also, Nye argued that these new horizontal situations offer the opportunity to include new actors in decision-making processes. Among these new actors, civil society is increasing its influence by creating more or less favourable consensus for institutional decision-makers.¹⁷² On the other hand, institutional decision-makers may use civil society to gain credibility and indirectly influence other targets.¹⁷³ For instance, the aforementioned De Búrca's analysis of the CRPD drafting process did not clarify whether the EU took advantage of the civil society representatives' presence or vice versa. Probably, there were reciprocal conveniences from their networking due to their shared goal to be included in the CRPD governance.

When international entities network, they may try to regulate their relationships heading to soft law and governance, the establishment of which is subject to the exercise of influence.

3.5.2 Soft law and networks

Section 3.3 has already introduced the idea of Galbraith and Zaring that regulatory networks create soft international law.¹⁷⁴ The authors explained that the starting point of any international law process is that two or more states establish common goals to reach. Since not far ago, the typical means to conclude international affairs in any topic was through ambassadors and hard agreements. The establishment of regulatory networks has gradually substituted this habit. This new approach means that when two or more states want to establish an international agreement on a specific topic, the national executive branches that oversee the relevant issue interact to define the extent of the agreement.¹⁷⁵

Usually, the executive branches that contribute to drafting international agreements are also the entities in charge of their implementation. This combination means that these sub-state entities create international networks with two main goals: the first goal is the writing of an international agreement (regulative networks), and the second goal is its implementation once approved

¹⁷² Nye, *The Future of Power* (n 2) 101.

¹⁷³ *ibid* 103.

¹⁷⁴ Galbraith and Zaring (n 66) 746.

¹⁷⁵ *ibid* 743.

(executive networks). In addition to sub-state entities, international networks may also include non-state actors as interest groups.¹⁷⁶

Galbraith and Zaring emphasised that international regulatory networks tend to gain independence both from the entities that established them and from the entities that constitute them. Further, such networks independently define new goals to reach, exercising their influence on the international sphere to achieve their aims. Newman and Posner suggested that the international landscape has become “softly dynamic”.¹⁷⁷ They affirm that such dynamism derives from: (i) legitimacy claims; and (ii) political arena expansions.¹⁷⁸

These conclusions are coherent with the contents of the previous sections. In sum, soft international law is valid because international entities respect it in order to increase their legitimacy and to affect the political arena. In other words, any international entity that aims to exercise influence needs to be part of international networks that can influence international law. Although assuring legitimacy, inclusion is not enough to guarantee the exercise of influence. In fact, the opportunity to influence soft law also derives from a reputation that derives from the respect of soft law itself. Here it is a good reason to respect soft international norms.

De Búrca, Keohane, and Sabel suggested that the described evolution of international relations has made “the relations *between* entities, rather than the entities or organisations themselves” relevant sources of influence.¹⁷⁹ The authors confirmed that “technological change helped to alter the relationships among international organizations and their role in world politics”.¹⁸⁰ They also stated that “entities other than states now often have authority in part because other actors defer to them as legitimate rule makers”.¹⁸¹

International networks have already been categorised as regulatory, executive, and deliberative international entities. In short, they can produce outcomes. Also, Druzin explained that networks have intrinsic effects that foster

¹⁷⁶ *ibid* 745–746.

¹⁷⁷ Newman and Posner (n 86) 24.

¹⁷⁸ *ibid* 24–29.

¹⁷⁹ De Búrca, Keohane and Sabel (n 125) 480 (emphasis original).

¹⁸⁰ *ibid*.

¹⁸¹ *ibid* 481.

self-standardisation.¹⁸² Self-standardisation means that the international entities that are part of networks choose to change because distinctive external characteristics attract them. Section 3.3 described attraction as a resource to influence. Self-standardisation is necessary to join networks and to maintain credibility and legitimation within networks. The more extensive the network, the more it is attractive and it will produce self-standardisation.

Druzin stated that “policy-makers can learn to surf this structural undercurrent and strategically harness network effects to promote legal harmonization”.¹⁸³ The author suggested that the attraction of international networks produces effects that can exercise influence. He said that the establishment of soft law instruments usually follows the promotion of standards by networks. However, the use of soft law “would have to be carefully weighed” because the effects of networks can be more influencing than any legal instrument.¹⁸⁴ For instance, the self-standardisation of the candidate countries to join the EU may be more influencing than the respect for EU law after their accession to the Union.

Druzin classified three main intrinsic effects of networks: (i) they have a lock-in effect, meaning that the entities that joined a network cannot easily leave it; (ii) they may favour power-brokers, which are entities that try to exercise their influence; and (iii) they may head to over-standardisation with the risk to ignore differences.¹⁸⁵ Following the explanations of the previous sections, the use of networks as strategies to exercise influence might take these effects into account.

3.5.3 Influence and the new world order

This last sub-section draws inspiration from the work of Slaughter.¹⁸⁶ In brief, she described a new world order where state, sub-state, and non-state entities create international networks that exercise their influence on the international sphere and from there on national and local levels.

¹⁸² Bryan H Druzin, ‘Why Does Soft Law Have Any Power Anyway?’ (2017) 7 *Asian Journal of International Law* 361, 367.

¹⁸³ *ibid* 373.

¹⁸⁴ *ibid* 374.

¹⁸⁵ *ibid* 375–377.

¹⁸⁶ Anne-Marie Slaughter, *A New World Order* (Princeton University Press 2004).

The author pointed out that governments must have a global reach in the contemporary world where the national territoriality overcomes the borders of national states. As they cannot use hard power in international relations to avoid conflicts, they need to develop soft resources as persuasion and information. International agreements allow national governments to reach and influence the domestic level of other countries. In short, this can be done through international networks.¹⁸⁷

The ideas of Slaughter confirm the contents of the previous sections explaining that international relations are not limited to contacts between foreign offices or embassies; instead, they now involve state, sub-state, and non-state actors that are in touch with one another based on their expertise. This situation does not preclude the existence of national states, but it disaggregates them into semi-independent entities that can play at the international level on relevant issues.¹⁸⁸ This international networking of disaggregated entities based on their expertise seems like a corporatist approach to international governance explanations.¹⁸⁹

In her book, Slaughter described horizontal and vertical networks. Both horizontal and vertical networks can be: (i) information networks to exchange information and best practices; (ii) enforcement networks to enable the domestic level; and (iii) harmonisation networks to promote standard courses. Besides, vertical networks become supranational when pieces of national sovereignty are conferred on them.¹⁹⁰

The author suggested that the establishment of any international network usually has three goals: (i) creating convergence or “informed divergence” at least; (ii) improving compliance with agreed standards; and (iii) increasing international cooperation. In addition, she talks about a kind of “regulatory export” when international networks influence other entities on adopting rules.¹⁹¹ This consideration reminds the mentioned self-standardisation of Druzin as well as

¹⁸⁷ *ibid* 4.

¹⁸⁸ *ibid* 5–6.

¹⁸⁹ *ibid* 9.

¹⁹⁰ Slaughter (n 186).

¹⁹¹ *ibid*.

De Búrca's uploading and downloading activities of the EU networking with the CRPD.

Slaughter argued that international networks might aim to set "informed divergence". In sum, international networks might be flexible enough to accept differences and allow non-compliance when explained with persuasive authority during peer review processes.¹⁹² This idea is in line with the experimentalist governance characteristics. Therefore, it seems possible to argue that non-compliance can show the need to change the future goals of the network. Therefore, difference and non-compliance are not always negative patterns. On the contrary, they may exercise influence when defended within peer-review processes.

Slaughter explained that international networks include three kinds of entities: (i) executive; (ii) legislative; and (iii) judiciary. This differentiation means that the three powers of national states appear like disaggregated units at the international sphere rather than like national monoliths represented by unitary ambassadors. Also, these three disaggregated power-area units are disaggregated into subject-areas. The entities that belong to each disaggregated subject-area re-aggregate themselves in the international arena creating relevant subject-area networks. Lastly, these subject-area networks may include entities that would have formally belonged to different power-areas as well as to none of them (non-state actors). Such subject-area networks develop a soft international governance that complements the hard power of national governments. The complexity of international networks has been causing the disaggregation of networks themselves with the consequent creation of networks of networks.¹⁹³

The described shift of the world order from hard and vertical to softly disaggregated and networked is ongoing and unpredictable. At the time of conducting this research, the classic hard architecture is coexisting with its soft counterpart. Building upon this, the next analytical chapters will show how the EU is taking advantage of disaggregated architectures to exercise its influence on the implementation of the CRPD and independent living rights.

¹⁹² *ibid* 75–78.

¹⁹³ Slaughter (n 186).

3.6 The application of the background and theoretical frameworks in the analysis

This section aims to explain how the analysis of the next three chapters uses the concepts that have been illustrated in the just concluded three chapters about the background and theoretical frameworks. This section might be useful to prepare the readers for understanding what they are going to read next and what is the approach of the thesis. The following explanations touch three issues: (i) the structure-process-outcome indicator framework; (ii) examples of influence; and (iii) the interpretation of impact.

3.6.1 The structure-process-outcome in practice

Section 1.3.1 explained that the thesis takes inspiration from the structure-process-outcome indicator framework of the OHCHR.¹⁹⁴ This does not mean that the research develops indicators; instead, it entails that it uses the indicator framework approach in order to answer the research question. The underlying hypothesis is that if the EU implements the CRPD and independent living rights with soft resources and strategies, then the research should find soft structures, processes and outcomes that are relevant to that aim. The eventual confirmation of this hypothesis might confirm the validity of the indicator framework and stimulate the development of specific indicators about soft resources and strategies.

Article 31 CRPD asks the States Parties to gather statistics and data as a means *to give effect* to the Convention. This duty represents a formal step of human rights implementation that is part of international debates since the 1980s. The critical factor is that the collection and use of information must respect international standards in order to be reliable and valid. For example, data should be comparable between states and throughout years. For this reason, there is an increasing interest in methodologies about human rights data collection. Even, it seems to be “fair to say that there is an emerging market in human rights indicators”.¹⁹⁵

¹⁹⁴ ‘Human Rights Indicators - A Guide to Measurement and Implementation’ (UN Office of the High Commissioner on Human Rights 2012) HR/PUB/12/5 34
<https://www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf>
accessed 1 April 2019.

¹⁹⁵ Margaret Satterthwaite and Annjanette Rosga, ‘The Trust in Indicators: Measuring Human

Satterthwaite and Rosga wrote an interesting critic about the use of indicators, which were initially described as “abstract, quantifiable, and putatively transferable data bits”.¹⁹⁶ Indicators were expected to provide a limpid measure for quantifying the states’ implementation of human rights. The authors argued that the implementation of human rights is a qualitative issue, and they questioned how quantitative data could adequately reflect this. They suggested that indicators should not be an attempt to shame states but to engage with them in constructive dialogues.¹⁹⁷ The authors described the OHCHR debate, for instance, about the structure-process-outcome idea.¹⁹⁸

The crucial reasoning about indicators is that it is “impossible to guarantee that a specific cause and effect relationship will be captured in relation to a specific right”.¹⁹⁹ The next chapters illustrate evidence of influences that are part of cause and effect relationships without the presumption of exhausting all the intervening variables. A social situation is not an algebraic formula where a result follows defined operations, but it is a dynamic and unstable construction where different actors contribute with their more or less visible courses of action.

This is why the OHCHR moved its emphasis from the final data to the participation in producing such data, because it recognised the need for including the actors involved in human rights implementation.²⁰⁰ Coherently, the next chapters look at participation as both a process and an outcome, stimulating actions and approaches that would be otherwise missed. This conceptual evolution increases the attention to qualitative indicators and concrete factors, despite the risk of reducing their abstract and objective measurability.²⁰¹ The thesis enters in this debate by suggesting the importance of qualitative analyses for soft resources and strategies to measure the effort of states in implementing human rights treaties.

Qualitative studies of soft courses of action may be challenging because these are often unmeasurable. As illustrated in Section 3.2.3, the difficulty in

Rights’ (2008) 12 International Law and Justice Working Papers 2.

¹⁹⁶ *ibid* 4.

¹⁹⁷ *ibid* 36–38.

¹⁹⁸ *ibid* 42.

¹⁹⁹ *ibid* 43.

²⁰⁰ *ibid* 43–44.

²⁰¹ *ibid* 45–47.

quantifying influence does not measure its presence and effectiveness. This entails that quantitative outcomes (i.e. the number of closed-down institutions) may be linked to spurious indicators only because measurable, thus ignoring concurrent unmeasurable factors and misleading the genuine cause and effect relationships. Therefore, the quantitative nature of indicators should be profoundly questioned. Also, the structure-process-outcome framework might need a serious reflection about the classification of structures, processes, and outcomes. This research contributes to developing such a reflection.

The design of this thesis took inspiration from the OHCHR indicator framework, but it somehow suffered the limits of an approach that is mainly quantitative. Although the categories of indicators include objective and subjective approaches,²⁰² the OHCHR Guide does not focus on qualitative assessments. However, if states parties fulfil their treaty obligations by both guaranteeing the enjoyment of rights and demonstrating effort on compliance,²⁰³ how *effort* can be qualitatively measured? This research focuses on the EU effort to implement the CRPD with soft resources and strategies. In doing this, it demonstrates the importance of adopting qualitative approaches, and it aims to stimulate further debates about the indicators methodologies.

The theoretical framework included in this chapter allows interpreting the structure-process-outcome indicator framework in the light of influence. This means that it entails uncountable factors and qualitative approaches. In line with this, the next chapters do not include definitive statements about cause and effect relationships. Instead, they show several attempts by different international entities to implement the CRPD and independent living rights through soft and unmeasurable means. This approach represents both the originality of the thesis and its challenging perspective.

Following what illustrated above, in the next chapters: (i) structural indicators evaluate the presence of human rights-related governance architectures and networks; (ii) process indicators investigate the soft work of relevant international entities; and (iii) outcome indicators assess the impact of

²⁰² 'Human Rights Indicators - A Guide to Measurement and Implementation' (UN Office of the High Commissioner on Human Rights 2012) HR/PUB/12/5 18
<https://www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf>
accessed 1 April 2019.

²⁰³ Satterthwaite and Rosga (n 195) 41.

the considered structures and processes. Lastly, the next sub-sections illustrate the various layers of influence (soft power) and impact that the thesis adopts in its analysis.

3.6.2 Influencing resources and strategies in practice

The thesis argues that the EU is committed to the implementation of the CRPD and independent living rights by exerting influence. Its theoretical framework investigated what influence is and how it can be exercised at the international level. The previous sections of this chapter linked three theoretical areas to influence: (i) soft law; (ii) international governance; and (iii) policy networks. The attempt was to explore the resources and strategies that international entities can employ to obtain desired outcomes without using coercive instruments. This sub-section translates some theoretical explanation into practice, and it is preparatory to the analytical chapters.

As depicted in the previous sub-section, structural indicators evaluate the presence of governance systems and networks. This is because they can be the hub of influencing relationships. As explained in Sections 3.4 and 3.5, governance systems and networks have several characteristics where, probably, the crucial one is participation. Indeed, participation allows the establishment of relationships that would be otherwise missed. Since influence has a relational nature,²⁰⁴ the development of soft international situations that foster participation is a pivotal influencing strategy that this thesis investigates.

The Union and its entities exert influence when they successfully develop and lead soft international situations that promote participation. This is because participation entails modifying agendas and priorities. Also, it enhances dialogues and the establishment of common positions about issues that would be otherwise addressed with different approaches and sensitivities. Participating in soft international situations is not compulsory; therefore, there is a need for influencing strategies that encourage participation. This is another aspect enlightened in the analytical chapters.

The establishment of structures and the development of processes need participation as a precondition to obtaining desired outcomes. Starting with an

²⁰⁴ See Section 3.2.3: Stewart Clegg, 'Circuits of Power/Knowledge' (2014) 7 *Journal of Political Power* 383.

example, Section 2.6.1 mentioned a report commissioned by the EU Commission that raised awareness on the conditions of institutionalised persons with disabilities in Europe. The Union had no formal competence to conduct that investigation; thus, it commissioned the study to external experts. These professionals used the received EU money to engage with national authorities that had to work with standard indicators. In short, the report achieved two desired outcomes: (i) it collected data about institutions that national authorities had not gathered and shared yet; and (ii) it persuaded on the necessity to develop common policies about deinstitutionalisation in order to change the concerning status quo. This example shows several soft resources and strategies that are recurrent in the analytical chapters and that are worth a preliminary introduction.

First of all, knowledge is a crucial resource to exert influence and the establishment of processes that create and manage knowledge is a crucial strategy to the same end. The EU institutions have their internal research centres, but they can also commission studies to external experts (i.e. ANED²⁰⁵). Also, the Union has several agencies with top-level expertise on specific topics (i.e. the EU FRA²⁰⁶). The EU uses knowledge to exert influence when it deliberately generates data that are useful to achieve its aims.

Knowledge reveals real situations, and it can also suggest solutions to face social challenges. The Union can exercise its influence by promoting standard solutions to similar problems. This entails that it harmonises the approaches of national authorities to specific social issues. To achieve this aim, the EU can offer opportunities to exchange best practices (i.e. the DHLG²⁰⁷ and the Work Forum²⁰⁸), and it can also economically support the work of CSOs (i.e. EDF²⁰⁹ and ENIL²¹⁰). The underlying influencing strategy is that of developing processes that might indirectly promote the goals of the EU. The next chapters reveal several examples of this kind of soft strategy.

²⁰⁵ See Section 6.2.2.1.

²⁰⁶ See Section 5.5.

²⁰⁷ See Section 4.4.3.

²⁰⁸ See Section 4.4.4.

²⁰⁹ See Sections 4.3 and 5.3.2.3 (among others)

²¹⁰ See Section 5.2.2.2.

What emerges is that the EU using money to generate and manage knowledge is a precious strategy to increase its opportunities to influence. Even when dealing with shared and national competences, the Union can suggest valid solutions based on its expertise. Its authority might persuade the EU Member States on adhering to soft standards and they, de facto, harmonise their policies to the desired outcomes of the Union.

With money, the EU also finances its Member States. In this case, the Union can establish some conditionality concerned about the use of funds. This is a consolidated practice of the EU external action, where it offers support to developing countries in exchange for internal reforms. The same reasoning explains the economic influence of the Union on its Member States (i.e. ESI Funds²¹¹). The strategy is to harmonise the use of money with soft standards that include the respect of fundamental rights and, as far as this research is concerned, the CRPD implementation.

To conclude, the next chapters reveal influencing opportunities of the EU that raise from its soft capacity of aggregating actors and harmonising their courses of action. These goals are achieved through the establishment of international situations where the Union legitimately controls knowledge and money. Since it is impossible to depict definitive cause and effect relationships, the next sub-section illustrates the kinds of outcome that satisfy this thesis' analysis.

3.6.3 The impact of EU influence in practice

As previously explained, the use of indicators tends to look at outcomes as a tick in a box. Such a quantitative approach was instrumental to the necessity of creating standards and collecting transferable and easy-to-read data. However, the practice of human rights implementation might be more complicated than a binary value. First of all, how are the CRPD States Parties' duties met? As depicted, indicators can focus on the real enjoyment of human rights and the visible effort of governments on compliance.²¹²

The focus on efforts seems preferable when the principle of progressive realisation prevails over that of direct applicability. For instance, independent

²¹¹ See Section 6.3.

²¹² Satterthwaite and Rosga (n 195) 41.

living rights need progressive structural and cultural changes that might require decades. Therefore, it seems crucial that progressivity is somehow measured by indicators to confirm the correct commitment of the CRPD States Parties. Therefore, the establishment of processes is a crucial outcome in the short period by realising a step on the way of implementation. Also for this reason, the OHCHR started to consider qualitative indicators that can be objective (fact-based) and subjective (judgement-based).²¹³

This thesis adopts a qualitative approach to analyse the EU influence on the CRPD implementation. This entails that its findings evaluate the EU progressive effort (development of structures and processes) to respect, protect and fulfil the rights of the Convention. The analytical evaluation considers the real or presumed impact on concrete situations as the realisation of desired outcomes. The qualitative measure of impact relies on three factors: (i) evidence; (ii) theoretical possibilities; and (iii) insights from interviews.

(i) Evidence is any fact-based condition that shows EU attempts to influence the CRPD implementation. EU attempts to influence can take many forms as public pressures, the publication of reports, policy-making processes, and organisation of events. The next chapters reveal several situations that can be classified as EU attempts to influence, although their practical impact cannot be abstractly measured and quantified.

For instance, the EU Commission organises the Access City Award,²¹⁴ and the research considers the high participation of cities as a measure for the impact of the initiative. This is because the qualitative evaluation considers the effort of the EU to comply with the Convention that is remarkable, although unmeasurable. Another example refers to the evidence that several entities engaged in CRPD-related processes to achieve desired outcomes. Any emphasis on attempts to influence does not entail that a specific action caused any outcome, but that the considered entity gave its soft contribution to reach any desired result.

(ii) Theoretical possibilities link observed situations to the concepts investigated in the theoretical framework in order to evaluate any influencing opportunity. The previous sections of this chapter introduced several

²¹³ 'Human Rights Indicators - A Guide to Measurement and Implementation' (n 202) 18.

²¹⁴ See Section 5.2.2.3.

characteristics of soft situations that might foster influence, as producing soft law outcomes, developing cyclical experimentalist processes, setting common goals, and networking destructured entities. When EU CRPD-related soft situations show specific characteristics, their impact can be valuable and vice versa. Also in this case, the cause and effect quantification is unmeasurable, but this limitation should not refrain from conducting this kind of evaluation.

For instance, the EU Ombudsman²¹⁵ and the PETI Committee²¹⁶ produce soft law outcomes that are not binding instruments but represent attempts to influence the EU implementation of the CRPD. Also, several EU CRPD-related entities show different experimentalist characteristics that might suggest about the effectiveness of their processes. In addition, the observation of real situations can develop inductive reasoning about the validity of academic theories. For example, peer review mechanisms are expected to produce impacting outcomes. On one hand, the processes that include peer review can exercise valid influences; on the other hand, the absence of peer review (among other characteristics) raises critical questions that the analysis tries to formulate and answer.

(iii) Insights from interviews about the EU implementation of the CRPD are the qualitative and subjective data that this research generates. The OHCHR considers this kind of indicators as “based on information that is a perception, opinion, assessment or judgement”.²¹⁷ Therefore, personal insights are intrinsically arguable. However, they are a precious resource to reveal underlying processes and subtle strategies. This research conducted and analysed interviews in order to assess the EU effort to implement the CRPD qualitatively. Section 1.4.3 described some challenges deriving from the sampling criteria and the gap between the initial design of the interviews and the final result. Despite these challenges, the interviews revealed several EU opportunities to influence the implementation of the CRPD.

The word of the interviewees is reliable because the interviews involved top-level officers working on CRPD-related issues. It follows that their insights are competent, although not precisely uninterested. As clarified above, the

²¹⁵ See Section 5.4.

²¹⁶ See Section 5.3.2.2.

²¹⁷ ‘Human Rights Indicators - A Guide to Measurement and Implementation’ (n 202) 18.

revelation of influencing situations does not entail exclusive causalities but only the contribution to processes that concluded with desired outcomes. Generally speaking, the interviewees were conscious of their role. For instance, an officer of FRA suggested that Bulgaria may have modified a law due to their work, but she honestly underlined the impossibility of verifying the cause and effect relationship.²¹⁸ In other cases, the analysis linked the interviewees' insights to observed situations and theoretical ideas to provide mutual enforcement.

To conclude, this thesis identifies the impact of the EU influence on the CRPD implementation with qualitative approaches that consider the effort on achieving desired outcomes. Even when such an effort is not evident, the attempt to influence always represents a positive indicator, although unmeasurable.

3.7 Concluding remarks

This theoretical chapter defined influence and explained how it could be exercised in the international sphere to reach the national and local levels. The research question, of how the EU may influence the implementation of the CRPD and independent living rights, has already found a theoretical reply in this chapter. The hypothesis is that it may happen through: (i) smart strategies; (ii) soft law; (iii) governance processes; and (iv) networking opportunities. The next analytical chapters will verify the validity of this hypothesis.

The explanations of this chapter developed an original theoretical framework, within the boundaries of which different academic areas link to one another. This openness offers a more realistic picture of the contemporary and sophisticated international architecture than the adherence to one single academic topic would have done. In this way, the next analytical chapters will have the possibility to pragmatically answer the research question in light of different theoretical approaches. Therefore, they will provide a complete understanding of the EU influence on the implementation of the CRPD and independent living rights.

The theoretical framework sets the boundaries of the analysis, and it also collocates the research in the relevant academic debates. Such debates inspired the study, which in turn has the ambition to complement their consolidated

²¹⁸ See Section 5.5.1.

findings. Therefore, the next analytical chapters will explain the situations described in the background chapter in light of the theoretical framework (deductive approach). Besides, they will expand the theoretical approaches included in this chapter, building upon the observations concerning the EU accession to the CRPD (inductive approach).

Chapter 4

Influence of the EU CRPD-related governance on the implementation of the CRPD and independent living rights

4.1 Introduction

This chapter is the first of the three analytical chapters of the thesis. It assesses the opportunities of the EU CRPD-related governance to influence the implementation of the CRPD and independent living rights. Section 2.4 clarified that the EU and its Member States are peers in the context of the Convention. It also explained that the EU and its Member States mainly share the competences concerning the CRPD implementation. Therefore, if the EU CRPD-related governance wanted to pursue specific courses of action, it could not impose any measure on its Member States. Instead, it needs to establish influencing relationships with the national and local levels trying to harmonise the policies about the implementation of the Convention.

Section 2.3.2 described the EU CRPD-related governance as an institutional effect of the EU accession to the CRPD. Due to this effect, as required by the Convention,¹ the Union established its CRPD-related governance that includes: (i) a focal point; (ii) a monitoring framework; and (iii) a coordination mechanism. Each of these three constituent parts of the EU CRPD-related governance is investigated in a dedicated section of the chapter. The attempt is to show their influence on the national and local levels.

It is possible to define the three constituent parts of the EU CRPD-related governance as international entities. Chapter 3 assumed that international entities and their relations could be sources of influence. The chapter seeks verification of this general assumption exploring the existing situations. In sum, this chapter aims to investigate examples of EU influences as findings from: (i) the documentary research; (ii) the conducted interviews; and (iii) the comparison between pieces of evidence and theories.

¹ UN General Assembly Resolution, Convention on the Rights of Persons with Disabilities and Optional Protocol 2006 (A/RES/61/106) Art 33.

The nature of this chapter's sources is varied. Also, the availability of primary sources influenced the analytical approach of the different sections. The non-homogeneous availability and nature of sources was an issue, and the use of different analytical approaches was the only method to analyse the three entities in the same chapter. On one hand, two consequences are that the analytical approaches are not homogeneous throughout the chapter and that the available sources have forced their choice. On the other hand, the use of different approaches allowed studying the EU CRPD-related governance from different perspectives. This aspect is positive because it enriches the research. Furthermore, any finding can earn reliability when different approaches reach similar conclusions.

4.2 The EU CRPD focal point

This section focuses on the EU CRPD focal point exercising its influence on the national and local levels in implementing the Convention and independent living rights. The analysis is affected by a lack of available public documents as outcomes of the EU CRPD focal point. Also the conducted interviews obtained few insights about this topic. Therefore, it is possible to affirm that both the documentary research and the conducted interviews confirm a general tendency of the EU CRPD focal point towards confidentiality. As a consequence, the section takes this aspect into account in developing its analysis.

The international entity *EU CRPD focal point* is constituted by an EU body. In fact, "the Commission shall be a focal point for matters relating to the implementation of the UN Convention in accordance with Article 33.1".² This statement is included in "the Council Decision concerning the conclusion, by the European Union, of the CRPD [that] designates the Commission as the focal point for the implementation of the Convention at EU level".³ These quotations reveal that the EU Commission has been conferred the mandate to act as the

² EU Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities 2010 (2010/48/EC [OJ L 23/35]) Article 3.

³ 'Consideration of Reports Submitted by States Parties under Article 35 of the Convention - Initial Report of States Parties Due in 2012 - European Union' (Committee on the Rights of Persons with Disabilities 2014) CRPD/C/EU/1 63
<https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CRPD%2FC%2FEU%2F1&Lang=en> accessed 10 October 2018.

EU CRPD focal point. The analysis of this section explains what this means, and it seeks shreds of evidence of influences on the national and local levels. The section includes three sub-sections that use three different approaches.

The first sub-section suggests a meaning for *implementation of human rights*. This attempt is relevant because the CRPD does not provide any explanation for implementation, although it links the role of the focal point with “matters relating to the implementation”.⁴ The investigation aims to confirm if the implementation of human rights includes the opportunity to influence the national and local levels in order to reach individuals. If this assumption was confirmed, then the EU CRPD focal point’s *matters relating to the implementation* could include such an opportunity.

The second sub-section explores the constituent documents of the EU CRPD focal point. The analysis considers three official documents in its explanation: (i) the Council Decision on the EU conclusion of the CRPD; (ii) the Code of Conduct between the EU and its Member States; and (iii) the EU report to the CRPD Committee. The analysis is exhaustive because there are no other official documents found that explain the EU CRPD focal point. Besides, the analysis is inductive because it investigates the contents of the considered documents to confirm the opportunity to influence.

The third sub-section investigates two sets of primary sources and will present controversial findings. Due to the scarcity of sources, the analysis is abductive and suggests intuitive conclusions. In sum, while the constituent documents of the EU CRPD focal point identify the broad EU Commission as the focal point, meeting notes and interviews suggest the leading role of a specific unit acting under the mandate of the EU CRPD focal point. The sub-section questions why there is no official designation, and it explains that confidentiality can be both a necessity and a strategy.

4.2.1 Implementation implies influencing the national and local levels

The EU CRPD focal point oversees the implementation of the Convention, but the CRPD itself does not clarify what the duty to implement entails. This thesis assumes that the EU CRPD focal point can implement the Convention also by

⁴ UN CRPD Art 33.1.

exercising its influence on the national and local levels. This sub-section investigates such an assumption to deduce an interpretation of the matter. In detail, if it was possible to state that implementing UN human rights treaties may also mean influencing national and local policies, then it could be inferred that this is a strategy to implement UN human rights treaties. This deductive condition would confirm that the EU CRPD focal point has the legitimate opportunity to influence the national and local levels on the implementation of the Convention's principles. As such, this sub-section establishes two theoretical links: (i) the first one is between implementation and influence; and (ii) the second one is between implementation and the national and local levels.

4.2.1.1 The link between implementation and influence

The link between the human rights' implementation and influence follows the explanations of Chapter 3 about the exercise of influence through soft resources and strategies. As such, if the general understanding of implementation included the use of soft resources and strategies, it could be possible to assume the link between implementation and influence.

For instance, Humphrey suggested exciting reasoning about the meaning of implementation as different from that of enforcement. He said that the latter implies "an element of coercion or compulsion which is lacking in" the former.⁵ The author explained that the duties that follow the conclusion of international human rights treaties include law enforcement as well as "certain procedures and organized social pressures like the force of public opinion which a lawyer might not recognize as legal institutions [and like] periodic reporting [and] public exposure".⁶

The suggested difference between enforcement and implementation mirrors the difference between power and influence, as described in Section 3.2.1. These differences lay on the presence or absence of coercion. Therefore, the parties to international treaties may be asked either to enforce or to implement the concluded agreement. As such, while enforcement includes hard (coercive) means, implementation includes soft (influencing) instruments. Also, Humphrey listed some of these influencing instruments, which interestingly recall

⁵ John P Humphrey, 'The Implementation of International Human Rights Law' (1978) 24 New York Law School Law Review 31, 34.

⁶ *ibid.*

some ideas of the previous chapter. For instance, *periodic reporting* reminds the third step of the experimentalist governance processes, as explained by Sabel and Zeitlin,⁷ who also address the role of transparency as necessary *public exposure* to gain accountability.⁸ Therefore, the duty to implement international human rights entails governance processes that the theories included in Chapter 3 described as potentially influencing.

In short, the CRPD asks its parties to implement its principles, and the established focal points oversee the implementation processes. The Convention does not ask its parties to enforce its principles because it provides no enforcement measures as courts and sanctions. Thus, the EU CRPD focal point can meet its duties on the implementation of the Convention through the exercise of its influence.

As defined in Section 3.2.1, exercising influence means to make or resist social changes without the use of coercion. Coherently with this definition, the German Human Rights Institution states that “to implement human rights treaties domestically, duty bearers have to:

- adapt existing laws or pass new laws;
- change or adapt administrative or financial measures;
- issue national action plans and similar programmes;
- [...];
- regularly review and evaluate the results of these measures”.⁹

In sum, implementation means to promote soft processes that aim to make social changes. Since these processes take place without coercion, they represent examples of intended social influence. Also, the first three points of the list above suggest that: (i) adapting or passing laws is a legal effect; (ii) changing or adapting administrative measures is an institutional effect; and (iii) issuing action plans is a political effect. Section 2.3 described these three kinds of effects on the EU conclusion of the CRPD. This convergence confirms that effective implementing measures have legal, institutional, and political effects. In addition,

⁷ See Section 3.4.3: Charles F Sabel and Jonathan Zeitlin, ‘Learning from Difference: The New Architecture of Experimentalist Governance in the EU’ (2008) 14 *European Law Journal* 271, 274.

⁸ See Section 3.4.3: *ibid* 313–315.

⁹ ‘How Are Human Rights Implemented and How Is This Monitored?’ <<https://www.institut-fuer-menschenrechte.de/en/topics/development/frequently-asked-questions/5-how-are-human-rights-implemented-and-how-is-this-monitored/>> accessed 30 November 2018.

the last point about the revision and evaluation of results reminds the idea of peer review processes as described in Section 3.4.3 and analysed later on in this chapter.

4.2.1.2 The link between implementation and the national and local levels

The link between the human rights' implementation and the national and local levels moves from the consideration that the human rights' holders are individuals.¹⁰ Therefore, human rights principles are fulfilled by individuals, and individuals do not live in the international level but in countries and towns. This consideration is a cornerstone of the thesis as it is part of the research rationale described in Section 1.3.1. It means that the EU CRPD focal point's policies might influence the national and local levels to reach the recipients of human rights policies. On this, one interviewee expert in human rights affirmed that:

the CRPD is a legal instrument that is going to be implemented at the domestic level. I mean there's people, and people live in countries. They don't live in the EU as governance body. Therefore, if the CRPD is going to make a difference to people in the EU, it is going to make a difference to them in their towns and cities and local communities. So if you are not engaging at the national level then you're not going to be making much of a difference vis a vis the CRPD.¹¹

The interpretation of the duty to implement is a crucial factor in defining the borders of the duty bearers obligations. For instance, the Icelandic Human Rights Centre defines implementation "in reference to actual compliance with human rights standards [...] as well as *all initiatives* [...] to enhance respect for human rights and prevent violations".¹² It goes on suggesting that the implementation "depends to a large extent on the political will [and] a co-operative network of non-state actors and international institutions all ensure the

¹⁰ See Section 1.1: Vienna Declaration and Programme of Action 1993 Preamble.

¹¹ 'Interviewee 1' (1 March 2018) 2.

¹² 'Implementation' (*Mannréttindaskrifstofa Íslands*) <<http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/part-i-the-concept-of-human-rights/implementation>> accessed 30 November 2018 (emphasis added).

effective implementation of the international norms and standards”.¹³ Also, “to implement international human rights standards, states must affirmatively incorporate them into domestic law”.¹⁴

In sum, the Icelandic Human Rights Centre suggests that the implementation of human rights treaties is also a matter of cooperation. It is interesting to note that the Centre points to the cooperation between disaggregated international entities, reminding the concept introduced in Section 3.5.3 with the ideas of Slaughter. Such international cooperation aims to incorporate human rights principles into national and local law. This because national and local courts can enforce human rights principles after their incorporation into domestic law. Therefore, the implementation of international human rights treaties aims to make changes at the national and local levels also to confer hard power on international human rights principles. This explanation means that the EU CRPD focal point can exercise its influence to implement the CRPD in order to incorporate its principles into law provisions that can be enforced at the domestic level of the EU Member States. This idea recalls Section 2.4.2, suggesting a sequence from cooperation, to minimum standards, to common rules. Before establishing common rules, it is essential to cooperate and agree on minimum standards.

4.2.2 The role of the EU CRPD focal point from its constituent documents

The previous sub-section explained that the EU CRPD focal point efforts on the implementation of the CRPD might include the exercise of influence on the national and local levels. The previous sub-section was mostly theoretical. Differently, this sub-section analyses the constituent documents of the EU CRPD focal point to develop inductive reasoning about the opportunity to influence the implementation of the Convention.

The EU Council Decision concerning the conclusion of the CRPD designated the EU Commission as EU CRPD focal point.¹⁵ As such, the EU Commission should oversee the implementation of the Convention by the EU. A

¹³ *ibid.*

¹⁴ *ibid.*

¹⁵ EU Council Decision 2010/48/EC Article 3.

Code of Conduct followed the Council Decision on the EU conclusion of the CRPD. It “sets out the arrangements between the Council, the Member States and the Commission on [...] the implementation of the Convention”.¹⁶ This document confirms that “the Commission shall be a focal point for matters related to the implementation of the Convention”.¹⁷ It also asks for cooperation between the EU’s and the EU Member States’ focal points “whenever the matter falls under shared competence”,¹⁸ and during monitoring and reporting procedures.¹⁹

Apart from the CRPD, no other international human rights treaty has similar institutional cooperation between the treaty parties. This peculiar situation is a direct consequence of the EU accession to the Convention, which requires coordination with the EU Member States. In addition to this consideration, the quotation above about shared competence matters is the only indirect link of this sub-section to independent living rights. This because the constituent documents of the EU CRPD focal point set up an institutional architecture and do not address any specific human rights principle. This consideration will be valid also for the EU CRPD monitoring framework and coordination mechanism analysed in the next sections.

Generally speaking, “as focal point, the Commission promotes cross-sectoral coordination between its departments, with the other EU institutions and bodies, and between the EU and the Member States”.²⁰ This description is how the EU Commission summarised its role as focal point to the CRPD Committee. Essentially, it mentioned only one task (promoting cross-sectoral coordination) to be fulfilled: (i) within the Commission; (ii) within the EU institutions; and (iii) within the EU borders. This third point indicates that the action of the EU CRPD focal point should reach national and local policies. As far as coordination is concerned, Section 2.4.2 suggested that the relationship between the EU and the national level usually moves from cooperation to minimum standards and

¹⁶ EU Council Communication, 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 2010 (2010/C 340/08 [OJ C 340/11]) para 1.

¹⁷ *ibid* 11 (a).

¹⁸ *ibid* 11 (c).

¹⁹ *ibid* 12.

²⁰ ‘Consideration of Reports Submitted by States Parties under Article 35 of the Convention - Initial Report of States Parties Due in 2012 - European Union’ (n 3) 64.

common rules. Therefore, it is possible to interpret the EU CRPD focal point coordination with the national level as the first step of this process.

The EU CRPD focal point needs to use coordination and influence instead of coercion and power. This because the designation of the EU Commission as the focal point regards “matters falling within the Community’s competence and without prejudice to the respective competences of the Member States”.²¹ This clarification means that the conferral principle affects the establishment of the EU CRPD-related governance. As explained in Section 2.4, the division of competences between the EU and its Member States is not neat. Due to this, the designation of the EU Commission as the EU CRPD focal point establishes uncertain tasks with the risk of increasing the distribution of power.

As explained by Sabel and Zeitlin, uncertainty and multi-polar distribution of power are pre-conditions of experimentalist governance processes.²² This consideration means that the establishment of the EU CRPD focal point creates a situation that can nurture the raise of experimentalist governance architectures. Therefore, the need for soft resources and strategies is a consequence of a situation where the use of hard processes is uncertain and may be counterproductive even. However, the research found not many public documents released by the EU CRPD focal point, which contrasts with the principle of transparency as a necessary characteristic of experimentalist governance processes.²³ The absence of official deliverables suggests probable difficulties of the EU Commission in realising experimentalist governance processes fully.

4.2.3 The EU CRPD focal point and the *Disability Unit*

The previous sub-section explained that official documents had established the broad EU Commission as the EU CRPD focal point. However, a pragmatic approach would suggest that there may be a specific office that oversees the relevant tasks. The intuitive findings presented in this sub-section confirm this assumption.

²¹ EU Council Decision 2010/48/EC Article 3.

²² See Section 3.4.3: Sabel and Zeitlin (n 7) 280; See also: Gráinne De Búrca, Robert O Keohane and Charles Sabel, ‘Global Experimentalist Governance’ (2014) 44 *British Journal of Political Science* 477, 848.

²³ See Section 3.4.3: Sabel and Zeitlin (n 7) 313–315.

Article 33 CRPD asks the States Parties to “designate one or more focal points within government”.²⁴ As the EU Commission is the “principal executive body of the European Union”,²⁵ its designation seems in compliance with the Convention’s request. However, the request is to establish the focal point within the government rather than designating the whole government. The CRPD Committee’s guidelines themselves clarify that “focal points could be a section or a person within a ministry or cluster of ministries, an institution, such as a disability commission, or a particular ministry, such as a ministry for human rights or a ministry for persons with disabilities, or a combination of the three”.²⁶ On this, De Beco’s study found that “in all EU member States Parties to CRPD, the focal points are the ministries responsible for persons with disability”²⁷ rather than the governments in full.

Therefore, the designation of the broad EU Commission as the only EU CRPD focal point is an interesting choice. May it be a signal that the entire executive branch of the EU is committed to the implementation of the CRPD? How does this work in practice? Despite the documentary search found no official designations of any specific unit, some primary sources indicated that a specific unit of the EU Commission has a leading role under the mandate of the EU CRPD focal point. As such, the investigation of this sub-section uses an abductive approach and reaches intuitive conclusions from the analysed documents and interviews.

As for documents, the 2016 meetings’ minutes of the Disability High Level Group (analysed in detail in Section 4.4.3) show the leading presence of the DG EMPL Unit C3.²⁸ “As focal point, the Commission promotes cross-sectoral coordination”, and leading the DHLG is part of this task.²⁹ Therefore, it is

²⁴ UN CRPD Art 33.

²⁵ ‘The European Commission’ (European Parliament 2018)
<http://www.europarl.europa.eu/ftu/pdf/en/FTU_1.3.8.pdf> accessed 30 November 2018.

²⁶ ‘Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and Its Optional Protocol’ (Secretariat for the Convention on the Rights of Persons with Disabilities 2007) 14 94 <<http://archive.ipu.org/PDF/publications/disabilities-e.pdf>> accessed 12 December 2018.

²⁷ *ibid.*

²⁸ ‘Minutes of the EU Disability High Level Group Meeting’ (EU Commission 2016) 1
<<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=1259>> accessed 18 December 2018.

²⁹ ‘Consideration of Reports Submitted by States Parties under Article 35 of the Convention - Initial Report of States Parties Due in 2012 - European Union’ (n 3) 64.

reasonable to infer that the DG EMPL Unit C3 acts under the mandate of the EU CRPD focal point when leading the DHLG.

Also the webpage of the DHLG indicates EMPL as “Lead DG” because “the senior Commission representative will normally be the Director responsible for disability issues in the DG (since 1.1.2015, Employment, previously Justice)”.³⁰ Besides, some of the DG EMPL’s activities concerning disability matters are published on a webpage titled “Persons with Disabilities”.³¹ This webpage includes basic information about the EU implementation of the CRPD, but there is no disclosure about this being the official webpage of the EU CRPD focal point. As such, this assumption can only be inferred. However, an informant of this thesis confirmed that the webpage could be considered a public outcome of the DG EMPL Unit C3 acting under the mandate of the EU CRPD focal point.

As for interviews, the interviewees broadly referred to the EU Commission as the EU CRPD focal point. However, two interviewees mentioned EMPL C3 as the hub of the EU Commission’s activities as CRPD focal point. In detail, one civil society representative said that decisions are:

*made by the Disability Unit which is also the focal point for the CRPD;*³²

moreover, one EU Commission officer stated that their link with the EU CRPD focal point:

*takes place through the relevant policy unit in EMPL, i.e. C3.*³³

Also several informants of this thesis confirmed the activity of the Disability Unit. They also confirmed that EMPL C3 is generally considered the EU CRPD focal point despite the absence of official designations. This uncertain situation probably results from the difficulties of the EU Commission to undertake informal processes on matters that have unclear competences. It is probable that there

³⁰ ‘High Level Group on Disability’ (*Register of Commission Expert Groups*)
<<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=1259>> accessed 17 December 2018.

³¹ ‘Persons with Disabilities’ (*Employment, Social Affairs & Inclusion*)
<<https://ec.europa.eu/social/main.jsp?catId=1137&langId=en>> accessed 9 January 2019.

³² ‘Interviewee 7’ (25 June 2018) 13.

³³ ‘Interviewee 11’ (11 May 2018) 2.

are contacts, meetings, and decisions, but they remain off-the-record. As Cram explained, “it is argued that the Commission has always operated in ‘the shadow of hierarchy’ (Scharpf 1994), with member states able to limit the available capacity of formal competences”.³⁴ This aspect represents the counter effect of soft governance processes, and it is a practical example of the democratic deficit situation described by Craig and De Búrca.³⁵

4.3 The EU CRPD monitoring framework

This section focuses on the EU CRPD monitoring framework exercising its influence on the implementation of the Convention and independent living rights. The analysis of this section is supported by a more significant number of documents than the previous section’s one. The greater availability of documents means that the work of the EU CRPD monitoring framework is less confidential than that of the EU CRPD focal point. Among other aspects, the section addresses this difference between the two entities.

Four bodies constitute the international entity *EU CRPD monitoring framework*: (i) the EU Parliament; (ii) the EU Ombudsman; (iii) the EU Agency for Fundamental Rights (FRA); and (iv) the European Disability Forum (EDF). Initial discussions about the establishment of the EU CRPD monitoring framework show that the EU Commission insisted on the informality of the new entity and on being part of it. On the other hand, civil society representatives asked for a real independent entity, and they expressed doubts about the presence of the focal point in the monitoring framework.³⁶ Among the two, the approach of the EU Commission initially prevailed, and it “identified five separate EU institutions and bodies that together would form ‘the EU framework’. These bodies are independent of each other and have the freedom to define their activities related to the UNCRPD within their current mandates and resources”.³⁷

³⁴ Laura Cram, ‘In the Shadow of Hierarchy: Governance as a Tool of Government’ in Renaud Dehousse (ed), *The ‘Community Method’: Obstinate or Obsolete?* (Palgrave Macmillan UK 2011) 151.

³⁵ See Section 3.3.2: Paul Craig and Gráinne De Búrca, *The Evolution of EU Law* (2nd edn, Oxford University Press 2011) 28–31.

³⁶ ‘Draft Minutes of the EU Disability High Level Group’ (EU Commission 2012) 5 <<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=1259>> accessed 18 December 2018.

³⁷ EU Commission Non Paper Setting-up at EU level of the Framework required by Art. 33.2 of

The EU Commission was one of the five. However, after the formal concerns of the CRPD Committee about the inclusion of the EU CRPD focal point in the EU CRPD monitoring framework,³⁸ in 2016, the EU Commission withdrew the framework³⁹ without being replaced by any other member. Therefore, the EU CRPD monitoring framework now includes four members.

The section includes three sub-sections that analyse the EU CRPD monitoring framework with different approaches. The first sub-section analyses the constituent documents of the framework to reach inductive conclusions. The second sub-section compares the design of the framework with the theoretical characteristics of international networks to develop deductive reasoning. Lastly, the third sub-section investigates the available primary sources to suggest intuitive considerations.

4.3.1 The role of the EU CRPD monitoring framework from its constituent documents

This first sub-section analyses the EU CRPD monitoring framework's constituent documents. The analysis aims to explain that the EU CRPD monitoring framework's mandate offers opportunities to influence the national and local levels on the implementation of the CRPD and independent living rights. Generally speaking, the Convention states that the monitoring frameworks shall "promote, protect and monitor implementation".⁴⁰ As the previous section concluded that the implementation of the CRPD entails a certain level of influence on the national and local levels, then the effort to *promote, protect and monitor implementation* should concern the influence on the domestic level of the EU Member States. The sub-section explores this assumption.

the UN Convention on the Rights of Persons with Disabilities 2012 1.

³⁸ 'Concluding Observations on the Initial Report of the European Union' (Committee on the Rights of Persons with Disabilities 2015) CRPD/C/EU/CO/1 paras 76–77
<https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fEU%2fCO%2f1&Lang=en> accessed 10 October 2018.

³⁹ 'Minutes of the EU High Level Group on Disability Meeting' (EU Commission 2016) 2
<<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=1259>> accessed 10 October 2018.

⁴⁰ UN CRPD Art 33.2.

4.3.1.1 Soft stance and independence of the EU CRPD monitoring framework

The constituent document of the EU CRPD monitoring framework is the 2012 Commission Non Paper.⁴¹ In 2013, a Council Note made the framework operative.⁴² The Non Paper states that the members of the framework shall work in autonomy within their current mandates and resources.⁴³ For this reason, “there does not appear to be a need for any new legal instrument in order to set up the framework”.⁴⁴ Coherently, a document called Non Paper can be hardly classified as a hard legal instrument: it has not been published on the EU Official Journal, and it has no reference number even. It could be defined as a soft law instrument instead. Therefore, the soft document Non Paper constituted the soft entity EU CRPD monitoring framework. Following the conclusions of Chapter 3, soft governance entities exercise influence.

This section’s introduction referred to meeting notes that show different preferences about providing independence to the EU CRPD monitoring framework as an international entity. It is evident that if the members of the framework “are independent of each other and have the freedom to define their activities related to the UNCRPD within their current mandates and resources”,⁴⁵ the framework is not independent of its members. The independence of its members can prevent the independence of the framework, which would not be free to promote peculiar activities. However, Dowding and Nye suggested that international entities usually tend to acquire independence from their constituent members and that their independence is proportional to their capacity to exert influence.⁴⁶ This statement will be verified later on in this section in relation to the EU CRPD monitoring framework.

⁴¹ EU Commission Non Paper Setting-up at EU level of the Framework required by Art. 33.2 of the UN Convention on the Rights of Persons with Disabilities.

⁴² EU Council Note Set up of the EU-level Framework required by Art. 33.2 of the UN Convention on the Rights of Persons with Disabilities 2013.

⁴³ EU Commission Non Paper Setting-up at EU level of the Framework required by Art. 33.2 of the UN Convention on the Rights of Persons with Disabilities 1.

⁴⁴ *ibid* 2.

⁴⁵ *ibid* 1.

⁴⁶ See Section 3.5.1: Keith M Dowding, *Rational Choice and Political Power* (Edward Elgar 1991) 118; Joseph S Nye, *The Future of Power* (1st edn, PublicAffairs 2011) 108.

The analysed constituent documents show four matters of fact: (i) the EU Commission is the EU CRPD focal point; (ii) the monitoring framework should monitor the focal point; (iii) the EU Commission decided to be included in the framework against the opposition of other actors; and (iv) the EU Commission decided on the independence of the framework's members. These four matters of fact describe the exercise of a situational strategy as defined by Dowding.⁴⁷ It is probable that the EU Commission recognised the potential influence of the constituting EU CRPD monitoring framework, and it tried to join the situation either to resist or to take advantage of the potential influence of the new entity. As such, the CRPD Committee asking and obtaining the withdrawal of the EU Commission from the EU CRPD monitoring framework can be explained in terms of influencing relationships.

Also some interviewees expressed concerns about the few independence of the EU CRPD monitoring framework. For instance, one interviewee who participated in the framework activities held the view that the framework's members have no new mandates, which means that:

*[their] role within the framework is merely an extension of [their] main mandate.*⁴⁸

In addition to independence and mandate, also the availability of resources is a pivotal condition to perform additional tasks. On this, two interviewees highlighted that neither the framework nor the four members had additional resources, affecting their possibilities to produce outcomes.⁴⁹

As suggested in Section 3.3.1, control over economic resources can be a strategy to exercise influence. This consideration allows inferring that the EU Commission wanted to maintain its control over the economic resources of the EU CRPD monitoring framework as a strategy to preserve its leading stance. On this, Nye talked about economic power as different from hard and soft power.⁵⁰ Therefore, any dispute about the resources of the EU CRPD monitoring

⁴⁷ See Section 3.2.3: Dowding (n 46) 47–49.

⁴⁸ 'Interviewee 1' (n 11) 1.

⁴⁹ *ibid* 3; 'Interviewee 7' (n 32) 2.

⁵⁰ See Section 3.3.1: Joseph S Nye, *Soft Power: The Means to Success in World Politics* (Public Affairs 2004) 2.

framework could be an influencing relationship that affects the balance of power between different entities.

With limited independence and resources, the EU CRPD monitoring framework needs other means to exercise its influence. For instance, it might promote networking processes. Sabel and Zeitlin suggested that networking under common aims is the first step to establish experimentalist governance processes.⁵¹ The authors argued that weak independence and resources entail uncertainty, which is pre-condition for experimentalist governance.⁵² The need for soft processes increases the dispositional opportunities to exercise influence, and the following sub-sections will seek verification of this assumption.

4.3.1.2 The complementarity of the EU CRPD monitoring framework

The constituent documents of the EU CRPD monitoring framework conferred few independence and resources on the new entity. Despite this, they included two fields of action in the mandate of the framework: (i) within the areas where the EU has competence; and (ii) within the EU administration.⁵³ The first field of action includes the areas of shared competence, which involve the EU Member States. Therefore, the activities of the EU CRPD monitoring framework should somehow interact with their domestic level. For this reason, the Non Paper states that the EU and the EU Member States CRPD monitoring frameworks are complementary.⁵⁴ Besides, one interviewee who participated in the EU framework's meetings clarified that:

[also the framework members'] complement each other's work.⁵⁵

This part of the sub-section investigates the effects of these two kinds of complementarity: (i) external between the EU and the EU Member States monitoring frameworks; and (ii) internal between the four members of the EU CRPD monitoring framework.

⁵¹ See Section 3.4.3: Sabel and Zeitlin (n 7) 274.

⁵² See Section 3.4.3: *ibid* 280.

⁵³ EU Commission Non Paper Setting-up at EU level of the Framework required by Art. 33.2 of the UN Convention on the Rights of Persons with Disabilities 3.

⁵⁴ EU Commission Non Paper Setting-up at EU level of the Framework required by Art. 33.2 of the UN Convention on the Rights of Persons with Disabilities.

⁵⁵ 'Interviewee 5' (14 March 2018) 1.

(i) The external complementarity between the EU and the EU Member States monitoring frameworks promotes an influencing relationship where the EU has a leading role. Generally speaking, to complement means to make something better by adding anything that was formerly lacking. Therefore, the interaction between the EU and the EU Member States CRPD monitoring frameworks should add value to their individual action.

The idea of complementarity is mentioned several times in the 2012 Non Paper⁵⁶ that describes the role of the EU CRPD monitoring framework. Previously, the 2010 Code of Conduct⁵⁷ stated the importance of cooperation between the EU and its Member States, especially to reach common positions for shared competence matters. Therefore, it is probable that the idea of complementarity is an evolution of the stated need for cooperation to reach common positions. As such, common positions between the EU and the EU Member States CRPD monitoring frameworks would be the added value resulting from their complementarity.

The previous section explained that the cooperation to reach common positions could be an influencing relationship in which the EU has a leading role. What explained for the EU CRPD focal point can be valid also for the EU CRPD monitoring framework. Therefore, this can lead to common positions when complementing the EU Member States CRPD monitoring frameworks. Leading common positions is a strategy to influence the national and local levels, and it is a pre-condition to set minimum standards first and then common rules.

(ii) The internal complementarity between the four members of the EU CRPD monitoring framework limits the independence and influence of the framework itself. In fact, leading to common positions would mean to deliver public outcomes. However, an interviewee activist for disability rights revealed that:

[from the EU CRPD monitoring framework] you don't hear any joint kind of statement, there's no communication, something public [...] they simply meet and then brief each other on what each part of

⁵⁶ EU Commission Non Paper Setting-up at EU level of the Framework required by Art. 33.2 of the UN Convention on the Rights of Persons with Disabilities.

⁵⁷ EU Council Communication 2010/C 340/08.

*the mechanism has done in the period between then and the last meeting.*⁵⁸

This situation happens because the EU CRPD monitoring framework is not an independent entity, and its members act under their separate mandates. For this reason, the previous interviewee wondered:

*[if the four members of the framework] would have done it whether they were part of [the framework] or not.*⁵⁹

This idea means that if the members of the EU CRPD monitoring framework act under their usual mandates, they would probably undertake the same actions despite being or not part of the framework. On the same matter, another interviewee who was involved in the framework activities confirmed that:

*independently from [the members'] role in the CRPD monitoring framework for the EU, [they] have a role in terms of supporting Member States to implement the CRPD within the context of the CRPD as this is a mixed agreement.*⁶⁰

Which confirms the concerns of the previous interviewee. However, working together should provide positive outcomes. Lastly, a third interviewee who was an EU officer participating in the framework's meetings explained that:

*these organisations come together in the European monitoring framework and what [they do] is kind of complement each other's work.*⁶¹

In short, these three interviewees explained that the EU CRPD monitoring framework's mandate does not prevail over the single mandate of its members. This condition is because the Non Paper is a soft law instrument, and it cannot prevail over the EU Treaties stating the hard mandate of the EU Parliament and Ombudsman, for instance. This situation causes issues because the four

⁵⁸ 'Interviewee 7' (n 32) 2.

⁵⁹ *ibid.*

⁶⁰ 'Interviewee 1' (n 11) 1.

⁶¹ 'Interviewee 5' (n 55) 1.

members of the EU CRPD monitoring framework work within their different official mandates. For this reason, EDF raised the concern that “the mandate of the framework as set out in the note endorsed by the Council does not seem to correspond to the mandates of the individual members”,⁶² and this may affect the role of the framework itself. This situation prevents the EU CRPD monitoring framework from publishing its peculiar outcomes because any outcome would include issues on which some of its members have no competence. However, the members complement each other’s work. This consideration means that the outcomes of the framework are its four members’ separate outcomes when deriving from previous coordination within the framework.

This issue explains why an EU-officer interviewee pointed out that the mandate of any framework’s member is a barrier for the member itself to exercise the broad mandate of the EU CRPD monitoring framework.⁶³ Therefore, while the members cannot commit to the framework’s broad mandate, the realisation of the framework’s broad mandate depends on the complementarity of the four members. Coherently, another interviewee confirmed that:

*unfortunately, the EU framework has no mandate to really –how to say?– to really independently look at the implementation of for example Article 19 within the European Union, so this will be the work that the separate members are doing separately.*⁶⁴

The Non Paper states that each member of the framework “will be able to maximise the effectiveness of its own relevant activities and to co-ordinate them with the other participants”,⁶⁵ which summarises the clear will to avoid the establishment of an independent entity. On the other hand, coordinated activities should maximise the effectiveness of the single members’ efforts on the monitoring of the CRPD implementation.

⁶² ‘Meeting of the EU Framework to Promote, Protect and Monitor the UN CRPD’ (EU CRPD Framework 2015) 5 <<http://fra.europa.eu/en/theme/people-disabilities/eu-crpd-framework/resources>> accessed 11 December 2015.

⁶³ ‘Interviewee 3’ (7 March 2018) 3.

⁶⁴ ‘Interviewee 5’ (n 55) 1.

⁶⁵ EU Commission Non Paper Setting-up at EU level of the Framework required by Art. 33.2 of the UN Convention on the Rights of Persons with Disabilities 3.

As for the focal point, De Beco explained that also the EU CRPD monitoring framework is very different from the solutions adopted by the EU Member States. In detail, these have adopted two alternatives: either (i) they have expanded the mandate of their NHRIs, equality bodies, and Ombudsmen; or (ii) they have established a new body with the univocal mandate of monitoring the implementation of the CRPD.⁶⁶ As such, the informality of the EU CRPD focal point and monitoring framework seems to adhere to the same strategy that has been preferring soft governance instruments to hard solutions.

4.3.2 Networks' features of the EU CRPD monitoring framework

The previous sub-section presented the concerns of some interviewees about the EU CRPD monitoring framework not being a formal and independent governance entity. Also the documentary investigation confirmed that the framework coordinates the outcomes of its four members instead of producing distinctive outcomes. However, this coordinative work can offer opportunities to exercise some influence. For instance, the EU CRPD monitoring framework shows characteristics of international networks, and Section 3.5 explained that these could exercise influence on the national and local levels. As such, this sub-section assesses the framework's opportunities to influence through its comparison with the influencing features of international networks.

Section 3.5 described international networks as independent and deliberative entities that exercise influence. However, the previous sub-section explained that the EU CRPD monitoring framework is neither independent nor deliberative. Therefore, the framework cannot be adequately described as an international network, even if it shows some characteristics of international networks. For instance, the Non Paper establishes horizontal relationships between four international entities in order to share information,⁶⁷ and this aspect recalls Slaughter's description of horizontal information networks.⁶⁸ Besides, the

⁶⁶ Gauthier De Beco, 'Study on the Implementation of Article 33 of the UN Convention on the Rights of Persons with Disabilities in Europe' (UN Office of the High Commissioner on Human Rights 2014) 47
<<https://nhri.ohchr.org/EN/ICC/GeneralMeeting/25/Meeting%20Documents/Study%20on%20the%20Implementation%20of%20Article%2033%20of%20CRPD.pdf>> accessed 10 October 2018.

⁶⁷ EU Commission Non Paper Setting-up at EU level of the Framework required by Art. 33.2 of the UN Convention on the Rights of Persons with Disabilities 3.

⁶⁸ See Section 3.5.3: Anne-Marie Slaughter, *A New World Order* (Princeton University Press

importance of information sharing was addressed by Warschauer and Maoz when stating that it promotes horizontal relations⁶⁹ and supports the control of the flow of influence.⁷⁰ This is because access to information is a resource to exercise soft power, as explained by Nye.⁷¹ This means that although the Non Paper does not create an independent international network, it establishes a horizontal relationship between different entities that handle an influencing resource as information.

On the other hand, the fact that the EU CRPD monitoring framework is not an independent entity is the principal limit to define it as an international network. This limit affects its vertical effects. Slaughter explained that the vertical effects of international networks could promote enforcement and harmonisation.⁷² If the framework cannot deliberate, the attempt to enforce and harmonise policies remains on its members' activities. However, the coordination promoted by the EU CRPD monitoring framework exercises a positive influence on its members' complementary work. The Non Paper states that "by acting within a coordinated work plan [...] each of them will be able to maximise the effectiveness of its own relevant activities".⁷³

As said in the previous sub-section, the Non Paper denies additional resources to both the EU CRPD monitoring framework and its members. Also the CRPD Committee expressed its concerns about this issue.⁷⁴ The lack of resources is an evident limit to the exercise of influence. However, Lukes, Wrong, and Dowding pointed out that the availability of resources does not guarantee any exercise⁷⁵ of influence but only its latency⁷⁶ and relevant dispositional

2004).

⁶⁹ See Section 3.5.1: Mark Warschauer, *Technology and Social Inclusion: Rethinking the Digital Divide* (MIT 2004) 24–30.

⁷⁰ See Section 3.5.1: Zeev Maoz, *Networks of Nations: The Evolution, Structure, and Impact of International Networks, 1816-2001* (Cambridge University Press 2011) 5.

⁷¹ See Section 3.3.1: Nye (n 50) 30–32.

⁷² See Section 3.5.3: Slaughter (n 68).

⁷³ EU Commission Non Paper Setting-up at EU level of the Framework required by Art. 33.2 of the UN Convention on the Rights of Persons with Disabilities 3.

⁷⁴ 'Concluding Observations on the Initial Report of the European Union' (n 38) paras 76–77.

⁷⁵ See Section 3.2.3: Steven Lukes, *Power: A Radical View* (2nd edn, Palgrave Macmillan 2004) 41–44.

⁷⁶ See Section 3.2.3: Dennis H Wrong, *Power: Its Forms, Bases and Uses* (Blackwell 1979) 125–130.

properties.⁷⁷ This consideration means that the EU CRPD monitoring framework networking opportunities to influence are affected by a lack of resources, but they are present and latent. For instance, Galbraith and Zaring suggested that international networks tend to gain independence from the entities that establish and constitute them.⁷⁸ Therefore, the EU CRPD monitoring framework may try to improve its independence as a resource to exert influence. The verification of this assumption is part of the next sub-section's analysis.

As said, the EU CRPD monitoring framework cannot be appropriately defined as an international network. However, it networks. This characteristic means that it establishes relationships between international entities. For instance, the Non Paper mentions the four members of the EU CRPD monitoring framework as well as other international bodies that are part of the established monitoring net. Nye explained that the opportunity to create and manage social networks is a strategy to exercise influence.⁷⁹ Therefore, it is possible to argue that the EU CRPD monitoring framework creates and manages networking opportunities to influence.

For instance, the Non Paper states that COHOM discussed the design of the EU CRPD monitoring framework.⁸⁰ COHOM is the Working Party on Human Rights of the EU Council. It "handles all human rights aspects of the external relations of the European Union and supports the Council's decision-making process in this area".⁸¹ COHOM promotes, protects, and monitors human rights as a mandate. Also, it has direct links with the United Nations, the EU institutions and bodies, and the EU Member States governments. The next sub-section will show that COHOM actively engages with the EU CRPD monitoring framework. In addition to COHOM, "while not formally a part of the EU framework in order to respect its judicial independence, the Court of Justice of the European Union (ECJ) contributes [...] complementing the role of the EU framework".⁸²

⁷⁷ See Section 3.2.3: Dowding (n 46) 4–5.

⁷⁸ See Section 3.5.2: Jean Galbraith and David Zaring, 'Soft Law as Foreign Relations Law' (2014) 99 *Cornell Law Review* 735, 746.

⁷⁹ See Section 3.5.1: Nye (n 46) 17–18.

⁸⁰ EU Commission Non Paper Setting-up at EU level of the Framework required by Art. 33.2 of the UN Convention on the Rights of Persons with Disabilities 1.

⁸¹ 'Working Party on Human Rights (COHOM)' (*EU Monitor*) <<https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vh7ej5swx01d>> accessed 5 December 2018.

⁸² EU Commission Non Paper Setting-up at EU level of the Framework required by Art. 33.2 of

Furthermore, the Non Paper mentions several international networks as: (i) the European Disability Forum (member of the framework); (ii) the Network of European Ombudsmen⁸³ (established by the EU Ombudsman); and (iii) the Fundamental Rights Platform⁸⁴ (led by FRA). In this case, the framework seems like Slaughter would define a network of networks.⁸⁵

4.3.3 The reported work of the EU CRPD monitoring framework

This sub-section includes an analysis of the primary sources that report the EU CRPD monitoring framework activities. It aims to show evidence that supports the deductive and inductive reasoning of the previous two sub-sections. The investigation of this third sub-section is possible because a member of the EU CRPD monitoring framework acts as the official secretariat, and it publishes some outcomes of its activity. FRA was the secretariat of the framework at the time of this research. The published outcomes can be divided into two groups: (i) meetings' minutes; and (ii) work programmes. As such, the sub-section includes this brief introduction and two parts: (i) the first part analyses the meetings' minutes; and (ii) the second part focuses on the work programmes of the EU CRPD monitoring framework.

The previous sub-section assumed that the EU CRPD monitoring framework tries to gain independence from the entities that established and constitute it. This because the framework has some dispositional properties of international networks. These properties can promote processes that improve independence and influence. The first evidence that supports the assumption is that the members of the EU CRPD framework agreed on standard Operational Provisions, which include hierarchic roles. In synthesis, "the Chair of the EU Framework is appointed for two years and is subject to a rotation system [...] FRA is currently Chair of the Framework. The EU Framework Secretariat, also appointed for two years, coordinates the organisation and preparation of meetings. FRA is currently Framework Secretariat".⁸⁶ This internal organisation

the UN Convention on the Rights of Persons with Disabilities 9.

⁸³ *ibid* 4, 6.

⁸⁴ *ibid* 4.

⁸⁵ See Section 3.5.3: Slaughter (n 68).

⁸⁶ 'EU Framework for the UN Convention on the Rights of Persons with Disabilities' (*European Union Agency for Fundamental Rights*) <<http://fra.europa.eu/en/theme/people-disabilities/eu-crpd-framework>> accessed 10 October 2018.

is an evident attempt to set a minimum of independence, which can be a resource to influence.

On the other hand, the Operational Provisions state that “the role of the Chairperson shall not go beyond tasks related to the conduct of its meetings”, and that “the Secretariat will [...] carry out organisational tasks”.⁸⁷ This means that the two roles have the only function to coordinate the meetings of the framework’s members, without further mandates to represent the framework itself. This clarification limits the independence of chairperson and secretariat, and that of the EU CRPD monitoring framework as a consequence. However, the framework’s members coordinate their activities through work programmes that result from meetings that are organised by the chairperson and the secretariat.⁸⁸ Lastly, the secretariat has the task to maintain the webpage of the framework.⁸⁹ This webpage includes the documents analysed in this sub-section.

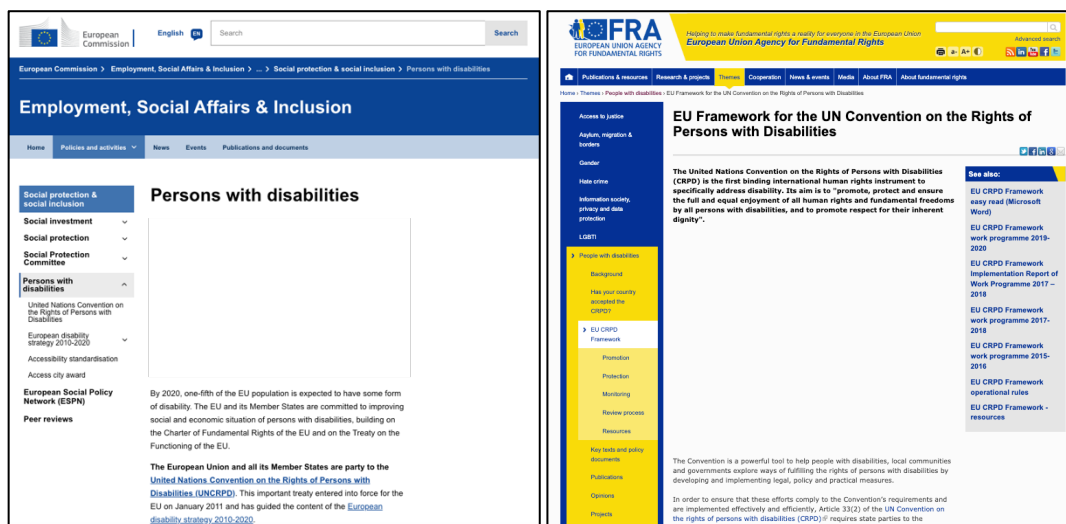


Figure 4-1 - Comparison between the webpages of the EU CRPD focal point and the EU CRPD monitoring framework

The presence of a webpage that is explicitly dedicated to the EU CRPD monitoring framework and that includes reported outcomes represents an essential difference with the EU CRPD focal point.⁹⁰ The screenshots above

⁸⁷ 'Operational Provisions' (EU CRPD Framework) 1–2 <<http://fra.europa.eu/en/theme/people-disabilities/eu-crpd-framework>> accessed 11 December 2018.

⁸⁸ *ibid* 3.

⁸⁹ *ibid* 4.

⁹⁰ See Section 4.2.3.

visually compare the two webpages. On the one left, the figure does not indicate the belonging to the EU CRPD focal point. On the other right, there is a clear title that names the EU CRPD monitoring framework, and also a banner with links to documents concerning the same entity.

This difference may represent a different strategy on transparency. Also, the publication of a dedicated webpage could be proof of independence. In turn, the presence of a dedicated webpage can improve the independence of the EU CRPD monitoring framework as well as the transparency of its outcomes. Besides, independence and transparency can improve the framework's opportunities to influence.

On the other hand, the structure of the webpage does not mirror the independence of the framework. In fact, it includes an introductory home page⁹¹ and five thematic pages: (i) promotion;⁹² (ii) protection;⁹³ (iii) monitoring;⁹⁴ (iv) review process;⁹⁵ and (v) resources.⁹⁶ The first three thematic pages have the same sub-structure, including four sub-pages: one for each of the four framework's members. This division shows that promotion, protection, and monitoring are not tasks of the framework, but they are duties of its members singularly taken in the remits of their different mandates. Therefore, the question is: what are the tasks of the EU CRPD monitoring framework?

The documents uploaded on the webpage include: (i) the framework meetings' agendas and minutes; and (ii) the work programmes as agreed during those meetings. The documentary search of this research concluded in December 2018, when there were 17 reports and two work programmes

⁹¹ 'EU Framework for the UN Convention on the Rights of Persons with Disabilities' (n 86).

⁹² 'EU CRPD Framework - Promotion' (*European Union Agency for Fundamental Rights*) <<http://fra.europa.eu/en/theme/people-disabilities/eu-crpd-framework/promotion>> accessed 11 December 2018.

⁹³ 'EU CRPD Framework - Protection' (*European Union Agency for Fundamental Rights*, 11 December 2018) <<http://fra.europa.eu/en/theme/people-disabilities/eu-crpd-framework/protection>> accessed 11 December 2018.

⁹⁴ 'EU CRPD Framework - Monitoring' (*European Union Agency for Fundamental Rights*) <<http://fra.europa.eu/en/theme/people-disabilities/eu-crpd-framework/monitoring>> accessed 11 December 2018.

⁹⁵ 'EU CRPD Framework - Contribution to EU Review Process' (*European Union Agency for Fundamental Rights*) <<http://fra.europa.eu/en/theme/people-disabilities/eu-crpd-framework/review-process>> accessed 11 December 2018.

⁹⁶ 'EU CRPD Framework - Resources' (*European Union Agency for Fundamental Rights*) <<http://fra.europa.eu/en/theme/people-disabilities/eu-crpd-framework/resources>> accessed 11 December 2018.

uploaded on the website and available for consultation. As the framework's constituent meeting took place the 23 January 2013, the framework's members had met three times a year so far. Among the 17 meetings, 2 involved the EU Member States' CRPD monitoring frameworks and 1 involved the EU CRPD focal point.⁹⁷ The following inductive analysis includes an investigation of all these documents, and it is exhaustive of the available sources as a consequence.

Lastly, the minutes of the framework's meetings include the name of the participants. These names had been included in the list of possible interviewees for the research.

4.3.3.1 The EU CRPD monitoring framework meetings' minutes

This part of the sub-section analyses the meetings' minutes of the EU CRPD monitoring framework. The documentary search concluded in December 2018; as a consequence, it includes the 17 meetings' minutes published until that date. The investigation is exhaustive because it considers all the documents available at the time of the research. The exposition respects the chronology of the meetings in order to show the development of specific issues. The analysis aims to find shreds of evidence that support the assumptions of the previous sub-sections about the EU CRPD monitoring framework opportunities to influence.

During the 2013 constituent meeting of the EU CRPD monitoring framework, the EU Commission's opinion was that the Non Paper would have strengthened the role of the framework's members rather than enforced a new entity. The EU Commission stated that "working together as EU framework these bodies will create synergies and enhance the impact of their individual activities".⁹⁸ The view of the EU Commission was that the framework's actions "would have to be as 'light' as possible".⁹⁹ On the contrary, the other participants in the meeting would have preferred a different approach. For instance, "the PETI Committee [...] emphasised its preference for a pragmatic approach", "the

⁹⁷ As far as the meeting with the focal point is concerned, it took place the 3 October 2017 but only the agenda is available, whereas the minutes are not.

⁹⁸ 'Minutes of the Constituent Meeting of the EU Framework to Promote, Protect and Monitor the UNCRPD (Art. 33.2 CRPD)' (EU CRPD Framework 2013) 2
<<http://fra.europa.eu/en/theme/people-disabilities/eu-crpd-framework/resources>>
accessed 11 December 2018.

⁹⁹ *ibid* 4.

Ombudsman welcomed the opportunity to work with the other bodies”, and “FRA and EDF emphasised the significance of appropriate coordination in the Framework in order for the EU to become a best practice example for other state parties”.¹⁰⁰

These short quotations show the exercise of situational influence¹⁰¹ on the establishment of the new entity.¹⁰² For instance, it is possible to read the word *light* with the meaning of *soft*, which links to influence. As such, it might be argued that the EU Commission preferred to establish a non-independent entity to confer only light (soft) power on it. In addition, FRA and EDF explicitly referred to the opportunity to influence national authorities declaring that the framework should have become a best practice example. This idea reminds Newman and Posner when classifying best practices as a soft law instrument,¹⁰³ as well as Slaughter in stating that information networks spread best practices.¹⁰⁴ It also recalls the experience of the OMC as an instrument to identify and spread best practices.¹⁰⁵ On this, EDF showed a piece of evidence of this kind of influence because it “noted that a member State had used the membership of the European Commission in the EU framework to justify its government participation in the national framework”.¹⁰⁶

Also during the second meeting of the EU CRPD monitoring framework, some members expressed their concerns about the non-independence of the new entity. As suggested in the previous parts of this section, independence can be a resource for influencing. Therefore, increasing independence is a strategy to improve influencing opportunities. For instance, “PETI asked to put more emphasis on the principle that members contribute collectively to the Framework’s tasks, [and] EDF suggested the publication of an annual report of

¹⁰⁰ *ibid* 2–3.

¹⁰¹ See Section 3.2.3: Dowding (n 46) 47–49.

¹⁰² See Section 4.3.1.1

¹⁰³ See Section 3.3.3: Abraham Newman and Elliot Posner, *Voluntary Disruptions: International Soft Law, Finance, and Power* (1st edn, Oxford University Press 2018) chs 1–2.

¹⁰⁴ See Section 3.5.3 and 4.3.2: Slaughter (n 68).

¹⁰⁵ See Section 3.4.1

¹⁰⁶ ‘Meeting of the EU Framework to Promote, Protect and Monitor the UNCRPD’ (EU CRPD Framework 2013) 3 <<http://fra.europa.eu/en/theme/people-disabilities/eu-crpd-framework/resources>> accessed 11 December 2018.

Framework's activities".¹⁰⁷ It seems that EDF would have liked to have public outcomes authored by the framework as an independent entity, and the probable reason for this was to increment its independence and consequent opportunities to influence.

As explained in Section 4.3.1.2, this is not possible due to the internal complementarity of the framework. This explanation finds confirmation through the inductive investigation of the 2014 meeting minutes. In fact, "the EO and FRA underlined that their respective mandates do not allow them to issue recommendations and opinions as part of the Framework".¹⁰⁸ However, this limit should have been clear from the outset because the Non Paper established a non-independent entity.

Section 4.3.2 included the hypothesis that the EU CRPD monitoring framework might have tried to emancipate itself from its members due to its properties as an international network. The 2015 meetings' minutes document an attempt to gain independence. These show a proposal about the possibility of a joint press release. However, the framework's members found it challenging to deliberate on the proposal because they were unsure about the logo(s) to include in the document.¹⁰⁹ As such, the attempt failed, but the theoretical tendency to gain independence has been verified and explained as a strategy to increase influencing opportunities.

In addition, "FRA underlined that although elaborating a common position is difficult, it is in favour of organising a discussion between different actors. FRA added that it is the implementation of existing legislation at national and local level across the EU that is problematic".¹¹⁰ Therefore, "the members agreed that contacts with national monitoring mechanisms should be more structured and frequent".¹¹¹ In line with the explanation of the previous sub-section, what FRA seems to suggest is to take advantage of the networking opportunities of the

¹⁰⁷ *ibid* 4.

¹⁰⁸ 'Meeting of the EU Framework to Promote, Protect and Monitor the UNCRPD' (EU CRPD Framework 2014) 4 <<http://fra.europa.eu/en/theme/people-disabilities/eu-crpd-framework/resources>> accessed 11 December 2018.

¹⁰⁹ 'Meeting of the EU Framework to Promote, Protect and Monitor the UN CRPD' (EU CRPD Framework 2015) 3 <<http://fra.europa.eu/en/theme/people-disabilities/eu-crpd-framework/resources>> accessed 11 December 2018.

¹¹⁰ 'Meeting of the EU Framework to Promote, Protect and Monitor the UNCRPD' (n 108) 5.

¹¹¹ 'Meeting of the EU Framework to Promote, Protect and Monitor the UN CRPD' (n 62) 6.

framework to gain independence and exercise influence on the national and local levels.

Moreover, the meetings also focused on the lack of resources. On this, already in 2013, “EDF pointed out that without additional funding it is difficult [...] to have the capacity to carry out this role, and noted that the option to establish funding for this had not been considered”.¹¹² Two years later, once again, “EDF highlighted [that] the secretariat function should be provided with sufficient resources”.¹¹³ Without independence and resources, the EU CRPD monitoring framework might hardly exercise its influence. On the other hand, it can try to improve its independence and resources by promoting soft processes. As explained by De Búrca, Keohane, and Sabel, the need for soft resources and strategies is a pre-condition to undertake experimentalist governance processes.¹¹⁴

The 2016 meeting involved the national CRPD monitoring frameworks. The participants agreed that it would have been significant “prioritising certain thematic areas [and] concentrating their work on these issues [and] collaborating with partners [...] to pool resources and increase impact”.¹¹⁵ Sabel and Zeitlin suggested that networking and sharing common aims is the first step to establish experimentalist governance processes.¹¹⁶ Also, the quotation shows a clear will to pool resources in order to increase influence. This finding means that the participants wanted to take advantage of their collaboration as a resource to influence. This consideration confirms the pre-condition of intentionality to define any influencing relationship, as suggested by Scott.¹¹⁷

This meeting with the EU Member States CRPD monitoring frameworks influenced the EU CRPD monitoring framework. This deduction is because the 2016 meeting minutes include suggestions to focus on thematic areas in order to improve cooperation. Furthermore, the participants decided on a joint

¹¹² ‘Meeting of the EU Framework to Promote, Protect and Monitor the UNCRPD’ (n 106) 3.

¹¹³ ‘Meeting of the EU Framework to Promote, Protect and Monitor the UN CRPD’ (n 62) 5.

¹¹⁴ See Section 3.4.3: De Búrca, Keohane and Sabel (n 22) 484.

¹¹⁵ ‘Meeting of the EU Framework with the National Monitoring Mechanisms for the UN Convention on the Rights of Persons with Disabilities’ (EU Commission 2016) 3 <<http://fra.europa.eu/en/theme/people-disabilities/eu-crpd-framework/resources>> accessed 12 December 2018.

¹¹⁶ See Section 3.4.3: Sabel and Zeitlin (n 7) 274.

¹¹⁷ See Section 3.2.2: John Scott, *Power* (Polity 2001) 1–2.

newsletter.¹¹⁸ Finally, the EU CRPD monitoring framework had its first distinctive outcome. The winter 2016-2017 newsletter was “the first of what will be a regular newsletter giving updates on the EU Framework’s activities”.¹¹⁹ This means that the EU CRPD monitoring framework considered to produce independent activities.

In 2017, the “EU Framework members discussed options for a thematic focus for the meeting. Given that the CRPD Committee has just adopted a draft General Comment on Article 19 of the CRPD, it was proposed to focus on the theme of independent living”.¹²⁰ This thematic meeting involved the national frameworks. During the meeting, a member of the CRPD Committee introduced the Draft General Comment on Article 19. In addition, the participants agreed on reaching a common position on specific topics of the Draft. Furthermore, a civil society activist talked about ESI Funds to support independent living, and the participants agreed that “it would be useful for national frameworks to be informed of how the monitoring of the funds functions”.¹²¹ This meeting is a real example of influence from the EU CRPD monitoring framework on the national level. In detail, the framework took advantage of its networking prerogatives to organise a meeting with experts and national representatives. Then it used the meeting to share information. Lastly, it led the sharing of common positions on the matters at stake. This episode seems a *smart strategy*¹²² that uses the available resources to exercise influence.

For the first time, the minutes of the 2017 meeting include an action point that refers to the EU CRPD monitoring framework individually. It says that “the Framework met with the Council’s working group on human rights (COHOM) to

¹¹⁸ ‘Meeting of the EU Framework to Promote, Protect and Monitor the UN Convention on the Rights of Persons with Disabilities’ (EU CRPD Framework 2016)
<<http://fra.europa.eu/en/theme/people-disabilities/eu-crpd-framework/resources>>
accessed 12 December 2018.

¹¹⁹ ‘Subject: Winter 2016/2017 – News from the EU CRPD Framework’
<<https://fra.europa.eu/en/theme/people-disabilities/eu-crpd-framework/resources>>.

¹²⁰ ‘Meeting of the EU Framework to Promote, Protect and Monitor the UN Convention on the Rights of Persons with Disabilities’ (EU CRPD Framework 2017) 2
<<http://fra.europa.eu/en/theme/people-disabilities/eu-crpd-framework/resources>>
accessed 12 December 2018.

¹²¹ ‘Meeting of the EU Framework with the National Monitoring Mechanisms for the UN Convention on the Rights of Persons with Disabilities’ (EU CRPD Framework 2017) 4–5
<<http://fra.europa.eu/en/theme/people-disabilities/eu-crpd-framework/resources>>
accessed 12 December 2018.

¹²² See Section 3.2.4: Nye (n 46) 24.

discuss the EU's ratification of the Optional Protocol. It also provided a CEPOL webinar on how EU agencies and bodies can better implement the convention in their work".¹²³ This finding means that there are off-the-record activities of the framework. Also, this action point emphasises that the use of technology is an essential resource for the EU CRPD monitoring framework. On this, it created its webpage, its newsletter, and a webinar to train EU staff members. This consideration confirms Burkhardt and Brass describing technology as a resource that shapes smart strategies to exercise influence.¹²⁴

4.3.3.2 The EU CRPD monitoring framework work programmes

This part of the sub-section analyses the work programmes of the EU CRPD monitoring framework. The documentary search concluded in December 2018; as a consequence, it includes documents published until that date. The documentary search found two work programmes as well as other primary sources about the work programmes themselves. The two available work programmes are biannual planning, and they cover two two-year periods: 2015-2016,¹²⁵ and 2017-2018.¹²⁶ Their analysis aims to find shreds of evidence that support the assumptions of the previous sub-sections about the EU CRPD monitoring framework opportunities to influence.

The Operational Provisions state that "the members of the Framework undertake to share information about their respective work programmes with a view to identify relevant activities for a coordinated annual work programme of the Framework".¹²⁷ They add that "the members will carry out their respective activities and tasks individually within their remit and under their sole

¹²³ 'Meeting of the EU Framework with the National Monitoring Mechanisms for the UN Convention on the Rights of Persons with Disabilities' (n 121) 2.

¹²⁴ See Section 3.5.1: Marlene E Burkhardt and Daniel J Brass, 'Changing Patterns or Patterns of Change: The Effects of a Change in Technology on Social Network Structure and Power' (1990) 35 *Administrative Science Quarterly* 104.

¹²⁵ 'EU Framework to Promote, Protect and Monitor the Implementation of UN CRPD: Review of Work Programme 2015 – 2016' (EU CRPD Framework 2016)
<<http://fra.europa.eu/en/theme/people-disabilities/eu-crpd-framework/resources>>
accessed 12 December 2018.

¹²⁶ 'EU Framework to Promote, Protect and Monitor the Implementation of the CRPD: Work Programme 2017 – 2018' (EU CRPD Framework 2017)
<<http://fra.europa.eu/en/theme/people-disabilities/eu-crpd-framework/resources>>
accessed 12 December 2018.

¹²⁷ 'Operational Provisions' (n 87) 3.

responsibility”.¹²⁸ The Provisions mention “activities that will be implemented by [...] the Framework as a whole [but only] on a case-by-case basis”.¹²⁹ Lastly, they add that “the complementarity of the EU Framework with national Frameworks and monitoring mechanisms will also be reflected in the work programme”.¹³⁰ These passages emphasise issues like the independence of the framework and its networking opportunities.

The meetings’ minutes of the EU CRPD monitoring framework show several discussions about the work programmes and an evolution of the approach on the work programmes themselves. For instance, in 2013, the EU Commission stated that “the annual work programme should not be too formal but rather reflect the effort of dovetailing the agenda of the different members”.¹³¹ Instead, in 2018, the members agreed on implementing their coordinated work programme during “a political meeting of the EU Framework [...] to discuss modalities for possible Framework engagement in key files”.¹³² This different approach to the work programme entails the attempt to gain independence by increasing the opportunities to influence as a consequence.

It is interesting to highlight that the EU Commission withdrew the framework in 2016.¹³³ Therefore, it is probable that the 2018 attempt to engage *in key files* was an opportunity enabled by the EU Commission leaving the framework. This because the EU Commission left the situation and the opportunity to exercise its *outcome influence*.¹³⁴

As said, discussions about the work programme are included in several meetings’ minutes.¹³⁵ These show three main lines of discussion: (i) decisions

¹²⁸ *ibid.*

¹²⁹ *ibid.*

¹³⁰ *ibid* 3; ‘Meeting of the EU Framework to Promote, Protect and Monitor the UNCRPD’ (n 106) 4.

¹³¹ ‘Minutes of the Constituent Meeting of the EU Framework to Promote, Protect and Monitor the UNCRPD (Art. 33.2 CRPD)’ (n 98) 4.

¹³² ‘Meeting of the EU Framework to Promote, Protect and Monitor the UN Convention on the Rights of Persons with Disabilities’ (EU CRPD Framework 2018) 2
<<http://fra.europa.eu/en/theme/people-disabilities/eu-crpd-framework/resources>>
accessed 12 December 2018.

¹³³ See the introduction of this section.

¹³⁴ See Section 3.2.3: Dowding (n 46) 47–49.

¹³⁵ ‘Meeting of the EU Framework to Promote, Protect and Monitor the UNCRPD’ (n 106) 5–7;
‘Meeting of the EU Framework to Promote, Protect and Monitor the UNCRPD’ (n 108) 2–4;
‘Meeting of the EU Framework to Promote, Protect and Monitor the UN CRPD’ (n 62) 2–5;
‘Meeting of the EU Framework to Promote, Protect and Monitor the UN Convention on the

on action points; (ii) evaluation of implemented actions; and (iii) decisions on new action points. These lines of discussion remind the scheme with which Sabel and Zeitlin described experimentalist governance processes.¹³⁶ As such, this verifies what assumed in Section 4.3.1 about the EU CRPD monitoring framework showing similarities to experimentalist governance processes.

The work programmes are based on the framework's mandate. As stated in Article 33 CRPD, the framework's mandate is to promote, protect, and monitor the implementation of the Convention.¹³⁷ Based on this mandate, "the members discussed their ideas for a work programme [...] divided between the three main functions of Article 33 of the Convention"¹³⁸ in order "to reflect the CRPD Committee's designation of promotion, protection and monitoring activities".¹³⁹ For this reason, the two work programmes have the same structure, which includes three parts: (i) promotion; (ii) protection; and (iii) monitoring. However, the 2017-2018 work programme also includes a fourth part about the "coordination and operation of the framework".¹⁴⁰ This addition can be interpreted as another attempt to increase the independence of the EU CRPD monitoring framework.

The three different parts of the two work programmes (promotion, protection, and monitoring) include four items: (i) framework's activities; (ii) responsible member(s); (iii) timeframe; and (iv) updates and notes. The figure below illustrates this organisation.

Rights of Persons with Disabilities' (n 118) 1–5; 'Meeting of the EU Framework to Promote, Protect and Monitor the UN Convention on the Rights of Persons with Disabilities' (n 120) 3–4; 'Meeting of the EU Framework to Promote, Protect and Monitor the UN Convention on the Rights of Persons with Disabilities' (EU CRPD Framework 2017) 1–3 <<http://fra.europa.eu/en/theme/people-disabilities/eu-crpd-framework/resources>> accessed 12 December 2018; 'High-Level Meeting of the EU Framework to Promote, Protect and Monitor the United Nations Convention on the Rights of Persons with Disabilities' (EU CRPD Framework 2015) 3–4 <<http://fra.europa.eu/en/theme/people-disabilities/eu-crpd-framework/resources>> accessed 12 December 2018; 'Meeting of the EU Framework to Promote, Protect and Monitor the UN Convention on the Rights of Persons with Disabilities' (n 132) 2–4.

¹³⁶ See Section 3.4.3: Sabel and Zeitlin (n 7) 274.

¹³⁷ UN CRPD Art 33.2.

¹³⁸ 'Meeting of the EU Framework to Promote, Protect and Monitor the UNCRPD' (n 108) 2.

¹³⁹ 'Meeting of the EU Framework to Promote, Protect and Monitor the UN Convention on the Rights of Persons with Disabilities' (n 118) 1.

¹⁴⁰ 'EU Framework to Promote, Protect and Monitor the Implementation of the CRPD: Work Programme 2017 – 2018' (n 126) 6–7.

Two considerations on the first and fourth items seem interesting. First, some of the framework's activities included in the work programmes can be classified following the classification of international networks as suggested by Slaughter: (a) inform; (b) enforce; and (c) harmonise.¹⁴¹ For instance: (a) the maintenance of the website aims to inform; (b) the analysis of EU legislation "to ensure compliance with the CRPD" is an enforcing measure; and (c) "develop and disseminate information and training material" is a strategy to harmonise relevant policies. This correspondence verifies that the EU CRPD monitoring framework takes advantage of its networking opportunities as resources to increase its independence and influence.

Second, updates and notes explain more in detail what the responsible member(s) should do to perform their activities. The need for these more in-depth explanations is a consequence of the fact that the work programmes are widespread. In fact, the framework's activities do not address any specific topic of the Convention. For instance, the 2017-2018 work programme suggests the activity to "collect data on and assess the application of EU law related to the implementation of the CRPD".¹⁴² Under this activity: (i) the EU Parliament will screen documents; (ii) EDF will produce a human rights report; (iii) FRA will publish its "indicators on implementation of Article 19 CRPD in all 28 EU Member States"; and (iv) the EU Ombudsman is not mentioned, probably because it has no mandate on this activity.¹⁴³ The quotation of Article 19 represents the only case in which the work programmes refer to a specific right of the Convention.

The fact that the work programmes are not detailed can be a missed opportunity to exercise influence. On this, an interviewee was concerned about the lack of focus on specific topics of the Convention. In particular, this civil society activist said that:

[the EU CRPD monitoring framework's members] should be more proactive to identify some issues that require more attention, that

¹⁴¹ See Section 3.5.3: Slaughter (n 68).

¹⁴² 'EU Framework to Promote, Protect and Monitor the Implementation of the CRPD: Work Programme 2017 – 2018' (n 126) 5.

¹⁴³ *ibid* 6.

are problematic and then they should pursue that together, to have a correct plan.¹⁴⁴

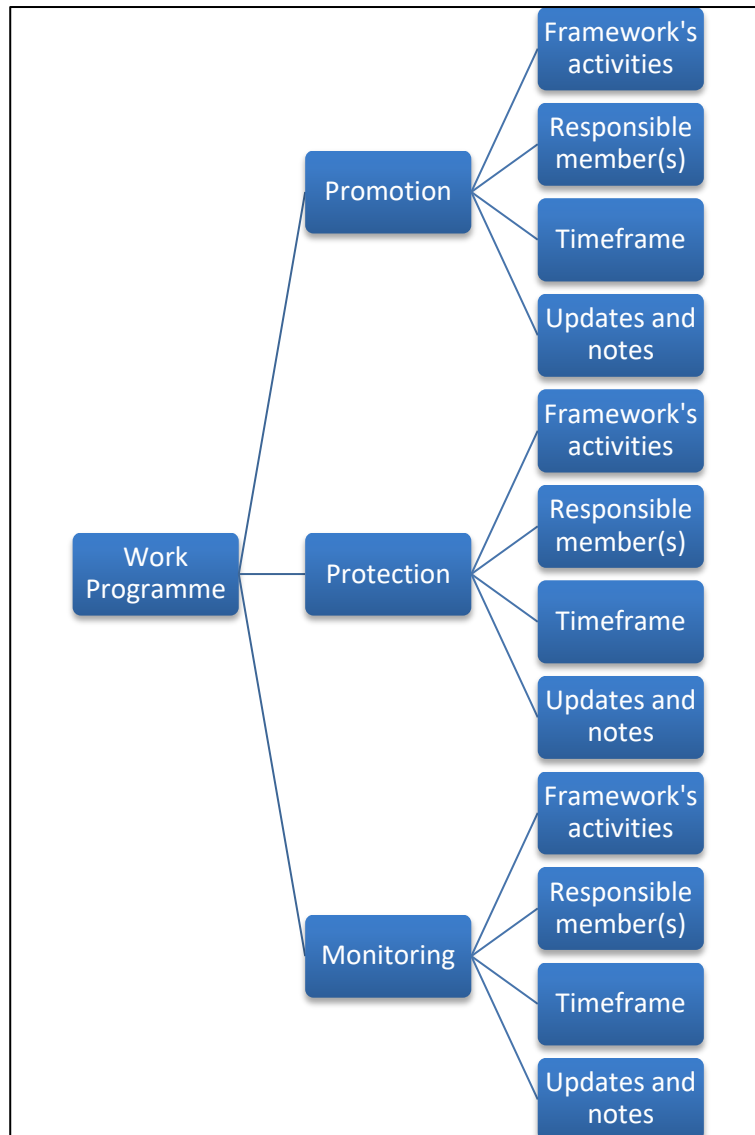


Figure 4-2 - Organisation of the analysed EU CRPD monitoring framework's work programmes

The critical point is that each right included in the CRPD should be promoted, protected, and monitored. As such, the work programmes should be more specific and explain the engagement of the framework on each principle of the Convention. This alternative organisation (see figure below) could strengthen the role of the framework and lead the internal complementarity of its members. In this way, each member would engage in every CRPD principle within the

¹⁴⁴ 'Interviewee 7' (n 32) 2.

remits of its mandate. With this alternative organisation, the members would complement their activities with regard to each right of the Convention.

This alternative organisation might enhance the influencing role of the framework by clarifying the tasks of each member about every principle of the Convention. However, it is unlikely that the EU CRPD monitoring framework could perform a similar organisation without increasing its independence and resources.

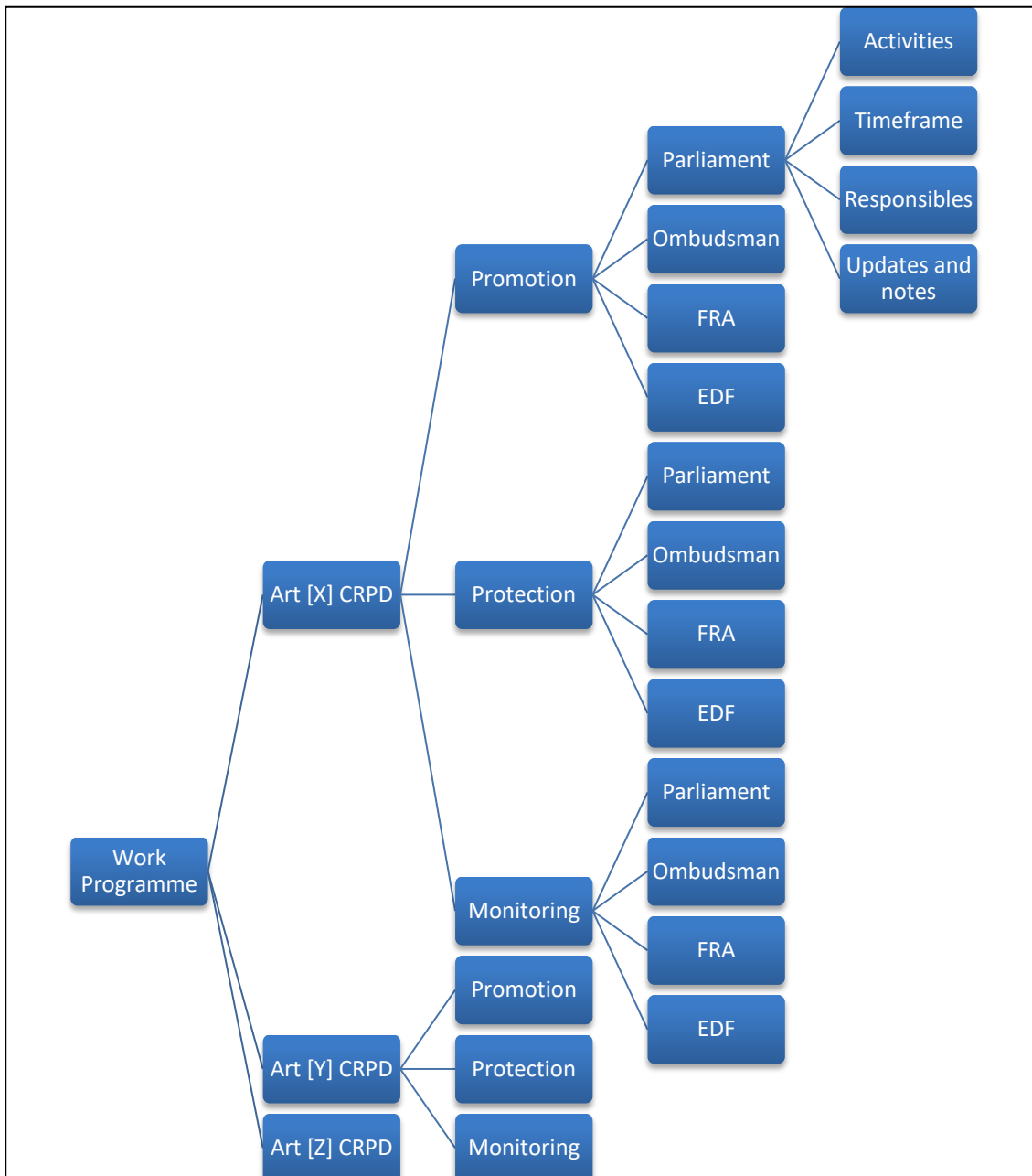


Figure 4-3 - Alternative organisation of the EU CRPD monitoring framework's work programmes

4.4 The EU CRPD coordination mechanism

This section focuses on the EU CRPD coordination mechanism exercising its influence on the implementation of the Convention and independent living rights. Four bodies constitute the international entity *EU CRPD coordination mechanism*: (i) the EU Commission's Inter-Service Group on Disability; (ii) the EU Council Human Rights Working Group; (iii) the Disability High Level Group; and (iv) the Work Forum.

The analysis of these four bodies is affected by the availability of public documents, which is not uniform. In fact, the EU CRPD coordination mechanism does not produce distinctive outcomes. On the other hand, only the Disability High Level Group and the Work Forum share public outcomes about their coordination on the Convention. This consideration means that the EU CRPD coordination mechanism's members have different levels of confidentiality. Among other aspects, the section addresses this characteristic.

In 2014, the EU Commission communicated to the CRPD Committee that: (i) "the Commission's Inter-Service Group on Disability plays an important coordination role" within the Commission itself; (ii) "formal coordination with the Member States is ensured through the human rights working group (COHOM) of the Council"; (iii) "issues relating to the implementation of the CRPD are also regularly discussed at the DHLG with representatives of the Member States and their national focal points"; and (iv) "to facilitate the exchange and mutual learning between the EU and the Member States on the governance of the CRPD, the Commission has since 2010 hosted a Work Forum on the Implementation of the UN Convention".¹⁴⁵ The EU Commission included these four bodies under the heading "coordination mechanism". Therefore, it seems possible to infer that the totality of their CRPD-related activities represents the activities of the EU CRPD coordination mechanism, even if this has not been officially established. As such, this section includes four sub-sections, one for each of these bodies.

A preliminary remark seems interesting. The CRPD asks its Parties to establish "a coordination mechanism within government to facilitate related

¹⁴⁵ 'Consideration of Reports Submitted by States Parties under Article 35 of the Convention - Initial Report of States Parties Due in 2012 - European Union' (n 3) 64.

action in different sectors and at different levels”.¹⁴⁶ The CRPD Committee explained that these different levels involve three dimensions: (i) intra-governmental; (ii) inter-governmental “coordination at the local, regional and national/federal levels”; (iii) and extra-governmental involving civil society actors.¹⁴⁷ Therefore, the EU CRPD coordination mechanism should involve the national and local levels based on the second dimension. This mandate is broader than that of the EU CRPD monitoring framework, which has a limited interference on those levels.¹⁴⁸ The section investigates if this different mandate develops opportunities to influence the implementation of the CRPD and independent living rights.

4.4.1 The EU Commission’s Inter-Service Group on Disability

This first sub-section analyses the contribution of the EU Commission Inter-Service Group on Disability (DISG) on the EU CRPD coordination mechanism. As no outcomes of the DISG are public and available, the following abductive analysis focuses on other kinds of sources.

The EU Commission explained to the CRPD Committee that the role of the DISG is “ensuring that the needs and rights of people with disabilities are taken into consideration in the formulation and implementation of legislative proposals and policy initiatives”.¹⁴⁹ The EU Parliament states that “the Commission is the EU institution that has the monopoly on legislative initiative”,¹⁵⁰ on the bases of Art 17.2 TEU. Besides, they establish five legal instruments that bind and influence national governments.¹⁵¹ Therefore, if the DISG influences the legislative initiatives of the EU Commission on respecting the CRPD, then any direct influence of the DISG on EU legislation represents an indirect influence on the implementation of the Convention. However, the

¹⁴⁶ UN CRPD Art 33.1.

¹⁴⁷ ‘Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and Its Optional Protocol’ (Secretariat for the Convention on the Rights of Persons with Disabilities 2007) 14 94–95
<<http://archive.ipu.org/PDF/publications/disabilities-e.pdf>> accessed 12 December 2018.

¹⁴⁸ EU Commission Non Paper Setting-up at EU level of the Framework required by Art. 33.2 of the UN Convention on the Rights of Persons with Disabilities.

¹⁴⁹ ‘Consideration of Reports Submitted by States Parties under Article 35 of the Convention - Initial Report of States Parties Due in 2012 - European Union’ (n 3) para 222.

¹⁵⁰ ‘The European Commission’ (n 25) 1.

¹⁵¹ Consolidated Version of the Treaty on the Functioning of the European Union 2012 (OJ C 326/47) Art 288.

absence of public documents that confirm any attempt of the DISG to influence the EU Commission's legislative initiative prevents any verification of the suggested intuitive reasoning.

"The first meetings of the Inter Service Group on Disability started approximately in 1996".¹⁵² The establishment of this Group probably resulted from the renewed commitment of the EU Commission on disability issues.¹⁵³ Also, the DISG was a tool of the 2003 EU Disability Action Plan to reinforce the structures of the EU Commission and mainstream disability issues.¹⁵⁴ In 2009, an evaluation of the Action Plan was published.¹⁵⁵ This report includes several positive evaluations about the coordinative action of the DISG. Lastly, the 2012 Non Paper about the EU CRPD framework briefly mentioned the DISG about its mainstreaming role of the Convention principles within EU law and policy-making.¹⁵⁶ In the same year, the EU Commission mentioned the DISG in its report to the CRPD Committee, as quoted in the first paragraph of this subsection.

The EU Commission's Inter-Service Group on Disability has no official webpages, and no public document reports its activities. Unfortunately, the interviews did not add any substantial information about the activities of the DISG either. The confidentiality and informality of this Group remind some of the characteristics of the EU CRPD focal point that were explained in Section 4.2. On this, the Disability Unit may have a leading role within the DISG due to its specific expertise. Unfortunately, this intuition cannot be verified due to the absence of pieces of evidence. The fact that both the DISG and the Disability Unit concern the EU Commission's internal governance shows the preference to

¹⁵² 'InterService Group on Disability' (*VOICE Project*)

<<http://www.voiceproject.eu/isgd/home.htm>> accessed 12 December 2018.

¹⁵³ EU Commission Communication, Equality of opportunity for people with disabilities 1997 (COM(96) 406 final [OJ C 12/01]).

¹⁵⁴ EU Commission Communication to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - Equal opportunities for people with disabilities: A European Action Plan 2004 (COM(2003) 650 final [OJ C96/24]) 24.

¹⁵⁵ 'Mid-Term Evaluation of the European Action Plan 2003-2010 on Equal Opportunities for People with Disabilities' (EU Commission 2009).

¹⁵⁶ EU Commission Non Paper Setting-up at EU level of the Framework required by Art. 33.2 of the UN Convention on the Rights of Persons with Disabilities 4.

confidentiality and informality as a recurring strategy of the EU Commission about its CRPD-related governance.

To conclude, it is reasonable to explain the DISG as an informal group that includes representatives of the different Commission's Directorates-General in order to assure that the CRPD principles are always respected in the legislative initiatives of the EU Commission itself. This interpretation suggests that the DISG gives its contribution to the implementation of the CRPD with a potential indirect influence on the national and local levels when respecting EU law.

4.4.2 The EU Council Human Rights Working Group

This second sub-section explores the role of the EU Council Human Rights Working Group (COHOM) as part of the EU CRPD coordination mechanism. As for the DISG, also COHOM has no published outcomes about its coordinative role on the CRPD. For this reason, the following analysis focuses on other kinds of sources.

The EU Commission explained to the CRPD Committee that “formal coordination with the Member States is ensured through the human rights working group (COHOM) of the Council”.¹⁵⁷ Besides, the webpage of COHOM states that “the Working Party on Human rights [is a working group of the EU Council that] deals with human rights aspects of the external relations of the EU and supports the Council’s decision-making process in this area”.¹⁵⁸ “This body is composed of experts from each member state and is chaired by the delegate of the country holding the rotating six-month presidency of the Council”.¹⁵⁹

These general descriptions show a formal link between COHOM and the national level. In short, the working group networks experts from each member state. This characteristic reminds Slaughter and her ideas about the international networking of disaggregated national entities based on their expertise.¹⁶⁰ Also Sabel and Zeitlin talked about the importance of consulting experts in

¹⁵⁷ ‘Consideration of Reports Submitted by States Parties under Article 35 of the Convention - Initial Report of States Parties Due in 2012 - European Union’ (n 3) para 220.

¹⁵⁸ ‘Working Party on Human Rights (COHOM)’ (*European Council*) <<https://www.consilium.europa.eu/en/council-eu/preparatory-bodies/working-party-human-rights/>> accessed 17 December 2018.

¹⁵⁹ ‘Working Party on Human Rights (COHOM)’ (n 81).

¹⁶⁰ See Section 3.5.3: Slaughter (n 68) 5–6.

international governance processes.¹⁶¹ Experts are so crucial that they can influence policy and law-making processes, as suggested by Cullen, Harrington, and Renshaw.¹⁶² Therefore, the coordination promoted by COHOM can exercise influence because it entails expertise and knowledge, which are precious resources, as explained by Nye.¹⁶³

The coordination promoted by COHOM with national experts is vertical as it connects the EU with the national level. Moreover, COHOM is part of the EU CRPD-related governance, which entails horizontal coordination. This peculiarity can support the achievement of common positions on the implementation of the CRPD. This assumption finds confirmation in the Code of Conduct explaining the role of COHOM under the section about the “establishing of positions”.¹⁶⁴ As explained about the EU CRPD focal point and monitoring framework, common positions are the first step to establish political strategies and to set minimum standards. Therefore, COHOM can influence national and local authorities on the implementation of the CRPD due to its coordinative role in reaching common positions on the Convention itself.

Such a possibility finds confirmation in the EU CRPD monitoring framework meetings’ minutes that mention COHOM several times. For instance, they report that COHOM consulted the EU Member States about the EU report to the CRPD Committee that was written by the EU Commission.¹⁶⁵ Also, COHOM invited the EU CRPD monitoring framework in a meeting that “would be an opportunity to orientate Member States” about their cooperation with the framework itself.¹⁶⁶ The mentioned meeting was scheduled for the 12 July 2016,¹⁶⁷ and the framework members met beforehand to agree on the topics to

¹⁶¹ See Section 3.4.1: Sabel and Zeitlin (n 7) 278.

¹⁶² See Section 3.4.1: Holly Cullen, Joanna Harrington and Catherine Renshaw, *Experts, Networks and International Law* (Cambridge University Press 2017) 2.

¹⁶³ See Section 3.2.4: Nye (n 46) 21–22.

¹⁶⁴ EU Council Communication 2010/C 340/08 12–13.

¹⁶⁵ ‘Meeting of the EU Framework to Promote, Protect and Monitor the UNCRPD’ (n 106) 6.

¹⁶⁶ ‘Meeting of the EU Framework to Promote, Protect and Monitor the UN Convention on the Rights of Persons with Disabilities’ (EU CRPD Framework 2016) 2
<<http://fra.europa.eu/en/theme/people-disabilities/eu-crpd-framework/resources>>
accessed 12 December 2018.

¹⁶⁷ ‘Meeting of the EU Framework to Promote, Protect and Monitor the UN Convention on the Rights of Persons with Disabilities’ (EU CRPD Framework 2016) 3
<<http://fra.europa.eu/en/theme/people-disabilities/eu-crpd-framework/resources>>
accessed 12 December 2018.

raise, among which “the importance of the EU Framework acting as a positive example, additional resources for the EU Framework to fulfil its role, and a possible legal basis”.¹⁶⁸ As the previous section explained, these three topics affect the opportunities of the EU CRPD monitoring framework to exercise influence. Therefore, if the framework wanted to discuss such topics with COHOM, it implies that COHOM has the opportunity to exercise its influence to support the framework itself.

Another informal meeting between COHOM and the EU CRPD monitoring framework took place the 7 April 2017 focusing, among other topics, on “updating the declaration of EU competence with respect to the CRPD”.¹⁶⁹ Besides, “the Framework met with the Council’s working group on human rights (COHOM) to discuss the EU’s ratification of the Optional Protocol”.¹⁷⁰ Unfortunately, no minutes of any meeting between the EU CRPD monitoring framework and COHOM are available for consultation. However, findings suggest that these kinds of meetings took place with the probable attempt to influence the updating of the Declaration of Competence and the ratification of the Optional Protocol.

The EU Monitor website dedicates a webpage to COHOM, on which the agenda of the group’s meetings are uploaded.¹⁷¹ These show that COHOM meets two or three times a month. Unfortunately, the minutes of these meetings are not available. While searching such minutes, the documentary research found a denied request of access to these documents.¹⁷² The EU Council replied this request that “these reports include information, that is intended to be discussed internally, on preparation or assessment of negotiations [...] release of the information contained in these documents would prejudice the EU’s ability to negotiate effectively in these multilateral fora”.¹⁷³ This documentary finding is

¹⁶⁸ ‘Meeting of the EU Framework to Promote, Protect and Monitor the UN Convention on the Rights of Persons with Disabilities’ (EU CRPD Framework 2016)
<<http://fra.europa.eu/en/theme/people-disabilities/eu-crpd-framework/resources>>
accessed 12 December 2018.

¹⁶⁹ ‘Meeting of the EU Framework to Promote, Protect and Monitor the UN Convention on the Rights of Persons with Disabilities’ (n 120) 1.

¹⁷⁰ ‘Meeting of the EU Framework with the National Monitoring Mechanisms for the UN Convention on the Rights of Persons with Disabilities’ (n 121) 2.

¹⁷¹ ‘Working Party on Human Rights (COHOM)’ (n 81).

¹⁷² ‘Minutes of COHOM Meetings’ (*Ask The EU*, 10 March 2018)
<https://www.asktheeu.org/en/request/minutes_of_cohom_meetings> accessed 17 December 2018.

¹⁷³ ‘Reply to Request of Documents - Ref. 18/0501-Nh/Dm’ (26 April 2018)

the evidence that COHOM uses confidentiality and informality as resources that increase its opportunities to influence.

This evidence reveals that transparency may be counterproductive in specific governance processes. The quotation above of the EU Council seems to state that they do not want any public exposure because it may affect their opportunities to exercise influence. A possible explanation is that the publication of informal talks could expose participants to national and international pressures. In theory, pressures may stimulate governance processes. In practice, pressures may discourage participation in meetings that touch politically sensitive issues.

4.4.3 The Disability High Level Group

This third sub-section focuses on the contribution of the Disability High Level Group (DHLG) to the EU CRPD coordination mechanism. Differently from the DISG and COHOM, the DHLG publishes documents that are available on the web. Similarly to the EU CRPD monitoring framework, there are two kinds of published outcomes. In detail, the DHLG produces: (i) meetings' minutes; and (ii) annual reports. As such, this sub-section includes a brief introduction and two parts that analyse the two kinds of available primary sources.

The EU Commission explained to the CRPD Committee that “issues relating to the implementation of the CRPD are also regularly discussed at the DHLG with representatives of the Member States and their national focal points, the Commission and CSOs and DPOs”.¹⁷⁴ Therefore, the coordination of the DHLG entails coordination with the national and local levels.

Information about the DHLG is available on a specific webpage of the EU Commission website.¹⁷⁵ This webpage explains that: (i) the group has its bases in the 1996 Equality of Opportunities Resolution;¹⁷⁶ (ii) it was a useful tool to implement the EU Disability Action Plan;¹⁷⁷ and (iii) it now focuses on the CRPD principles. As said in Section 4.4.1, also the EU Commission DISG was

https://www.asktheeu.org/en/request/minutes_of_cohom_meetings accessed 17 December 2018.

¹⁷⁴ ‘Consideration of Reports Submitted by States Parties under Article 35 of the Convention - Initial Report of States Parties Due in 2012 - European Union’ (n 3) para 221.

¹⁷⁵ ‘High Level Group on Disability’ (n 30).

¹⁷⁶ Equality of opportunity for people with disabilities pt III.

¹⁷⁷ EU Commission Communication, COM (2003) 650.

established in 1996. It is possible to assume that the two bodies have had a similar evolution with a mandate that focused on EU disability law first, and then on the EU implementation of the CRPD. This evolution is an example of the institutional effect of the EU accession to the Convention, as described in Section 2.3.2.

The evolution of the DHLG emerges from the analysis of primary sources. For instance, the 2003 EU Disability Action Plan described the DHLG as “an expert group chaired by the Commission and gathering Member States governmental disability experts [that] should exchange information”.¹⁷⁸ On the other hand, the 2010 EU Disability Strategy stated that “the implementation of this Strategy and of the UN Convention will be regularly discussed at the DHLG with representatives of the Member States and their national focal points, the Commission, disabled people and their organisations and other stakeholders”.¹⁷⁹ Therefore, the DHLG mandate has changed from sharing disability-related information to discussing the implementation of the CRPD. Also, the inclusion of DPOs in the DHLG is a probable institutional effect of the EU conclusion of the CRPD because the Convention asks to include DPOs in its monitoring and coordinative mechanisms.¹⁸⁰

4.4.3.1 The DHLG meetings’ minutes

This part of the sub-section analyses the DHLG meetings’ minutes. The documentary search concluded in December 2018; as a consequence, it includes documents published until that date. What follows results from the exhaustive investigation of the ten meetings’ minutes that were available on the DHLG webpage at the time of this research.¹⁸¹ The exposition respects the chronology of the meetings in order to show the development of specific issues. The analysis aims to find pieces of evidence about possible influences of the DHLG on the implementation of the CRPD.

¹⁷⁸ *ibid* 4.1.2.

¹⁷⁹ EU Commission Communication, European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe (COM(2010) 636 final) para 2.2.4.

¹⁸⁰ UN CRPD Art 33.3.

¹⁸¹ ‘High Level Group on Disability’ (n 30).

As explained on its webpage, the Group meets two times a year, but the literal “minutes of meetings are not public”.¹⁸² However, the meetings’ agenda and the minutes’ summaries are uploaded on the webpage and available for consultation. The available documents refer to the years from 2012 to 2016; hence, the 2017 and 2018 ones were missing. The 2012 and 2013 ones include a presence list that suggested names as possible interviewees of this research. The following exposition tries to respect the chronology of the meetings in order to show developmental aspects.

The analysis of the DHLG meetings’ minutes shows that the meetings usually last two days. The first day welcomes EU institutions and bodies together with EU Member States representatives, while the second day also welcomes members of civil society. This aspect shows that although the process appears to be transparent, the institutions have maintained a space for themselves only. Building upon the conclusions of Section 4.4.2 about the strategy on transparency, it is possible to assume that although the institutions are available for confrontation with non-state actors, they prefer to avoid excessive pressures setting up two separate meetings on the same issues.

Almost all the minutes show that the exchange of practices is one of the main activities during the meetings. This finding reminds Slaughter stating that information networks spread best practices.¹⁸³ In short, the DHLG seems like an international network. A similar consideration was formulated about the EU CRPD monitoring framework. However, there is an essential difference between the two entities: the DHLG produces a distinctive outcome, which is an annual report. The next part of this sub-section will analyse the annual reports. At this stage, it is crucial to affirm that the DHLG can take advantage of its networking with the national and local levels to exercise influence on the implementation of the CRPD. Besides, several minutes show that the DHLG exercises its influence on the agenda of the Work Forum, which is the focus of the next sub-section.

An essential difference between the minutes of the EU CRPD monitoring framework and the DHLG is that the latter ones include specific topics. The final part of Section 4.3 suggested that the potential influence of the framework is affected by the fact that it does not address specific principles of the Convention.

¹⁸² *ibid.*

¹⁸³ See Section 3.5.3 and 4.3.2: Slaughter (n 68).

Therefore, if addressing specific topics is directly proportional to the opportunities to exercise influence, it could be assumed that the DHLG has more opportunities than the framework to influence because it addresses specific topics. This assumption is verified by the following analysis of the available DHLG meetings' minutes. In fact, these reveal that several meetings focused on the drafting of the ESI Funds Regulation and, in particular, on the CRPD-related ex-ante conditionalities. Section 2.3.3 mentioned this finding as an example of political discussions that influenced a matter concerning the implementation of the CRPD. The following analysis shows the influence of the DHLG on this specific topic.

The May 2012 DHLG meeting minutes state that the “ex-ante conditionalities on disability and accessibility were removed from the latest draft of the general regulation in a compromise text negotiated by the Danish Presidency. The Members noted the merit of the ex-ante conditionalities as a mainstreaming tool [and] the Commission stressed the importance of supporting preservation of the horizontal ex-ante conditionalities in the General Regulation”.¹⁸⁴ This quotation shows an attempt to exercise *situational influence*, as defined by Dowding.¹⁸⁵ This finding means that national governments tried to avoid constraints deriving from the developing ESI Funds situation. However, the DHLG exerted influence on the EU Commission to maintain the CRPD-related ex-ante conditionalities in the new Regulation. The influence of the DHLG was valid because the EU Commission confirmed its commitment to the inclusion of the CRPD-related ex-ante conditionalities in the ESI Funds Regulation during the April 2013 meeting.¹⁸⁶ One year later, within the DHLG, the EU Commission finally presented the new Regulation, which includes the CRPD-related ex-ante conditionalities.¹⁸⁷

The described three-year-long sequence of events demonstrates the direct influence of the DHLG on the drafting of the ESI Funds Regulation. As the

¹⁸⁴ ‘Draft Minutes of the EU Disability High Level Group’ (n 36) 6–7.

¹⁸⁵ See Section 3.2.3: Dowding (n 46) 47–49.

¹⁸⁶ ‘Draft Minutes of the EU Disability High Level Group Meeting’ (EU Commission 2013) 2 <<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=1259>> accessed 18 December 2018.

¹⁸⁷ ‘Draft Minutes of the EU Disability High Level Group Meeting’ (EU Commission 2014) 6–7 <<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=1259>> accessed 18 December 2018.

EU Member States shall respect this Regulation, the DHLG direct influence on the EU Commission can be considered an indirect influence on their domestic level. Therefore, this is a crucial finding of the research.

3. Disability	The existence of a mechanism which ensures effective implementation and application of the UN Convention on the rights of persons with disabilities. ⁷¹	<ul style="list-style-type: none"> – Effective implementation and application of the UN Convention on the rights of persons with disabilities is ensured through: <ul style="list-style-type: none"> – Implementation of measures in line with Article 9 of the UN Convention to prevent, identify and eliminate obstacles and barriers to accessibility of persons with disabilities; – institutional arrangements for the implementation and supervision of the UN Convention in line with Article 33 of the Convention; – a plan for training and dissemination of information for staff involved in the implementation of the funds; – measures to strengthen administrative capacity for implementation and application of the UN Convention including appropriate arrangements for monitoring compliance with accessibility requirements.
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Figure 4-4 - General ex-ante conditionality No 3: Draft 6 October 2011

3. Disability	The existence of administrative capacity for the implementation and application of the United Nations Convention on the rights of persons with disabilities (UNCRPD) in the field of ESI Funds in accordance with Council Decision 2010/48/EC (!)	<ul style="list-style-type: none"> – Arrangements in accordance with the institutional and legal framework of Member States for the consultation and involvement of bodies in charge of protection of rights of persons with disabilities or representative organisations of persons with disabilities and other relevant stakeholders throughout the preparation and implementation of programmes; – Arrangements for training for staff of the authorities involved in the management and control of the ESI Funds in the fields of applicable Union and national disability law and policy, including accessibility and the practical application of the UNCRPD as reflected in Union and national legislation, as appropriate; – Arrangements to ensure monitoring of the implementation of Article 9 of the UNCRPD in relation to the ESI Funds throughout the preparation and the implementation of the programmes.
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Figure 4-5 - General ex-ante conditionality No 3: Adopted 20 December 2013

It is possible to develop a more profound step of the analysis concerning the DHLG influence on the ESI Funds Regulation. This further passage derives from the comparison between the CRPD-related general ex-ante conditionality included in the 2011 draft of the Regulation (Figure 4-4)¹⁸⁸ with the 2013 final version of the Regulation (Figure 4-5).¹⁸⁹ Such a comparison reveals differences

¹⁸⁸ EU Commission Communication, Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1083/2006 (COM(2011) 615 final) 152.

¹⁸⁹ EU Parliament and Council Regulation, laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and

between the two texts that are the result of the influences exercised during the drafting process.

These differences result from negotiations on the contents of the ex-ante conditionality. As dialogues take regularly place within the DHLG, it is probable that also some of those negotiations developed during the meetings of the DHLG. In detail, the 2011 draft is stronger than the 2013 final version. For instance, the 2011 draft referred to “the existence of a mechanism which ensures effective implementation and application [...]”, while the 2013 final version asks for “the existence of administrative capacity for the implementation and application [...]” which is a softer provision than the previous one.

As explained in Section 3.3.2, national governments may prefer to avoid international situations that require substantial commitments. For instance, the described example confirms that EU national governments did not want to commit to a rule that was too hard for them. After having softened the same rule, they gave their approval to the new Regulation. Furthermore, this example supplements what described in Section 3.3. While the theoretical descriptions divided between hard and soft instruments, this example shows that hard instruments have different levels of hardness that depend on how law-makers draft them.

So, the DHLG focuses on specific topics, and this allows the Group to exercise its influence effectively. This interpretation arises from the analysis above concerning the drafting of the ESI Funds Regulation. In addition to the new ESI Funds Regulation, the DHLG meetings minutes show a specific interest in independent living rights. As such, the following part of the DHLG meetings minutes’ analysis explores possible influences of the Group on independent living rights.

For instance, during the May 2012 DHLG meeting, FRA presented its “draft report on involuntary placement”.¹⁹⁰ The probable aim of this presentation was to take advantage of the Group to share information about a bad practice to tackle. In October 2014, once again, FRA “informed about its new project on the

Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (1303/2013 [OJ L 347/320]) 455.

¹⁹⁰ ‘Draft Minutes of the EU Disability High Level Group’ (n 36) 7.

right to live independently and to develop human rights indicators on Article 19 of CRPD”.¹⁹¹ This time, the Agency tried to spread good practice instead. The strategy aims to use the networking opportunities of the Group as a resource to increase the possibility to exercise influence.

The same 2014 meeting’s minutes show that also civil society took advantage of the Group’s networking opportunities to raise awareness on independent living rights. For instance, three DPOs presented their shadow reports to the CRPD Committee, among which ENIL’s one focused on independent living rights.¹⁹² During this meeting, there were also new discussions about ESI Funds concerning deinstitutionalisation¹⁹³ and personal assistance schemes.¹⁹⁴ The debate on the ESI Funds Regulation probably moved from its drafting to its application. Therefore, the DHLG can focus on the use of ESI Funds about specific principles of the Convention, as deinstitutionalisation and personal assistance.

Also during the April 2015 DHLG, both EASPD and ENIL took the opportunity to denounce that “because of austerity measures there are tendencies to re-institutionalisation and thus the Article 19 (on independent living) of UNCRPD is not being implemented satisfactory”.¹⁹⁵

In sum, the DHLG is a vital arena to raise awareness on specific topics of the Convention. Within this arena, the DHLG participants want to exercise their influence on relevant matters. The example of the ESI Funds Regulation reveals that their influence can be tangible sometimes. Other times their influence is impossible to evaluate as the examples concerning independent living topics show. However, as explained in Section 3.2.3, the verification of the presence of intentional influencing relationships is enough to prove that influence is exerted, although impossible to measure. Lastly, this consideration allows classifying the DHLG as an influencing situation.

¹⁹¹ ‘Minutes of the EU Disability High Level Group Meeting’ (EU Commission 2014) 1
<<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=1259>> accessed 18 December 2018.

¹⁹² *ibid* 3.

¹⁹³ *ibid* 4.

¹⁹⁴ *ibid* 5.

¹⁹⁵ ‘Minutes of the EU Disability High Level Group Meeting’ (EU Commission 2015) 3
<<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=1259>> accessed 18 December 2018.

4.4.3.2 The DHLG Annual Reports

The DHLG also publishes Annual Reports.¹⁹⁶ The documentary search concluded in December 2018 and found nine Annual Reports. The available versions were from 2008 to 2016. These include a contact-details section that suggested names as possible interviewees of this research. The following analysis is exhaustive because it investigated all the available Annual Reports at the time of the research. It maintains the chronological order of the reports to highlight developmental aspects. The analysis aims to show and explain opportunities to influence the implementation of the CRPD. Two brief remarks precede the analysis of the available DHLG Annual Reports.

The first remark is that the available Annual Reports are not uploaded on the DHLG dedicated webpage together with the meetings' minutes. This difference is remarkable, and there are no official explanations for this choice. On the other hand, there is also a similarity between Reports and minutes: in both cases, the 2016 version is the last one available. This similarity suggests that some policy has changed since then. On this, the documentary search found an administrative change that can be relevant to explain the new policy on transparency. In fact, documents show that the chair of the Group has changed since 2016. Although the DHLG is always led by the EU Commission, the DHLG meetings' presence lists reveal that the responsible DG Units have been: (i) JUST D3 until 2014;¹⁹⁷ (ii) EMPL D4 in 2015;¹⁹⁸ and (iii) EMPL C3 since 2016.¹⁹⁹ Has EMPL C3 modified the previous policy on transparency as a deliberate strategy?

The second remark is that the *DHLG Annual Reports on implementation of the CRPD* started in 2008. This data is interesting because it means that the Group started its CRPD-related coordinative effort before the EU formal accession to the Convention in January 2011.²⁰⁰ Due to this, the EU Member States cooperated in drafting the Annual Reports despite some of them and the EU itself were not CRPD Parties yet. For instance, Ireland ratified the CRPD in

¹⁹⁶ 'High Level Group on Disability' (n 30).

¹⁹⁷ 'Minutes of the EU Disability High Level Group Meeting' (n 192) 1.

¹⁹⁸ 'Minutes of the EU Disability High Level Group Meeting' (n 196) 1.

¹⁹⁹ 'Minutes of the EU Disability High Level Group Meeting' (n 28) 1.

²⁰⁰ See Section 2.3.

2018²⁰¹ (the last among the EU Member States), but it was explaining how it was implementing the Convention already in 2009.²⁰² This situation results from the leading role of the EU, and it is a piece of evidence of DHLG's influencing processes on the EU Member States.

Generally speaking, the DHLG Annual Reports include four topics: (i) state of the play on signature, ratification, reporting and examination of the Convention; (ii) actions undertaken to implement and monitor the Convention; (iii) thematic chapter; and (iv) contacts and links. The Annual Reports investigate these four topics comparing the data of the EU Member States. They share information and spread good practices, and this characteristic of the DHLG is in common with the international networks described by Slaughter.²⁰³ Besides, the national governments' reporting to the Annual Reports looks like a sort of coordinated peer review. As suggested by De Búrca, Keohane, and Sabel "peer review is thus a mechanism for both learning systematically from diverse experience and holding actors accountable for their actions".²⁰⁴

As a coordinative international entity, the DHLG deliberates on publishing informative reports. However, Sabel and Zeitlin referred to deliberative processes when these decide on the goals of the new cycles of the process itself.²⁰⁵ Therefore, the possibility of deliberating is essential, but the matter of the deliberation is pivotal to understand processes. The DHLG informative reports are prerogative of the Group; in fact, the CRPD does not ask for anything like that. Thinking about the different strategies on transparency, the DHLG Annual Reports promote best practices and expose bad practices to public pressures. This process can be enough to exercise the influence of soft international law, as explained by Newman and Posner.²⁰⁶

²⁰¹ 'Status of Treaties, Convention on the Rights of Persons with Disabilities' (*United Nations, Treaty Collection*)

<https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en> accessed 10 October 2018.

²⁰² 'Second Disability High Level Group Report on Implementation of the UN Convention on the Rights of Persons with Disabilities' (Disability High Level Group 2009) 95
<<https://ec.europa.eu/social/BlobServlet?docId=2790&langId=en>> accessed 22 February 2019.

²⁰³ See Section 3.5.3 and 4.3.2: Slaughter (n 68).

²⁰⁴ See Section 3.4.3: De Búrca, Keohane and Sabel (n 22) 479.

²⁰⁵ See Section 3.4.3: Sabel and Zeitlin (n 7) 274.

²⁰⁶ See Section 3.3.3: Newman and Posner (n 103) chs 1–2.

The 2008 DHLG Annual Report²⁰⁷ is an example of how new soft governance processes can start. Coherently with Sabel and Zeitlin's explanations,²⁰⁸ the Report describes that different actors get together around a common topic to decide shared courses of action and agree on being reciprocally peer-reviewed. In this specific case, the common topic is the implementation of the CRPD. Also, the Report identified some priorities for the national governments. Among such priorities, there was the implementation of independent living rights.²⁰⁹

As said in the analysis of the DHLG meeting minutes, the Group tends to focus on specific topics, and this first Report confirms such a tendency. The result of this coordination is that the EU Member States are influenced on the promotion of domestic consultations about the agreed topics. Furthermore, the domestic efforts should be peer-reviewed as a way to share the results but also as an incentive to commit and produce outcomes.

Following this last consideration, a piece of positive evidence is that the 2009 Annual Report describes "progress in implementation of UN Convention in areas identified as priorities in the first HLG Report pointing at various actions undertaken on different levels".²¹⁰ As independent living rights were one of these priorities, the Report includes the submissions of each EU Member State plus the EU and civil society representatives about their commitment on the matter. On the whole, the submissions were very detailed in presenting data and describing projects on deinstitutionalisation and personal assistance. This reporting is an example of sharing best practices and peer review that could exercise influence due to its networking and governance dispositional properties. It is possible to say that the 2009 Annual Report shows a coordinated effort on specific independent living topics as nowhere else in this chapter and in the EU CRPD-related governance as a consequence. Without the coordination of the

²⁰⁷ 'First Disability High Level Group Report on Implementation of the UN Convention on the Rights of Persons with Disabilities' (Disability High Level Group 2008) <<https://ec.europa.eu/social/BlobServlet?docId=2293&langId=en>> accessed 22 February 2019.

²⁰⁸ See Section 3.4.3: Sabel and Zeitlin (n 7) 274.

²⁰⁹ 'First Disability High Level Group Report on Implementation of the UN Convention on the Rights of Persons with Disabilities' (n 208) 36.

²¹⁰ 'Second Disability High Level Group Report on Implementation of the UN Convention on the Rights of Persons with Disabilities' (n 203) 4.

DHLG, the EU Member States would not have probably produced these kinds of outcomes.

Unfortunately, independent living rights are a secondary topic in the 2010²¹¹ and 2011²¹² Annual Reports. These are mainly focused on the “progress in national implementation and monitoring of UNCRPD, containing both governance aspect as covered by Article 33, as well as information on national strategies”.²¹³ Although this exchange of information was relevant because the CRPD-related governances were on their planning phase at that time, it substituted the just started coordination on independent living rights. As such, the DHLG strategically changed its priorities. This change was either intentional or forced. It may have been due to a lack of resources to effectively discuss several topics altogether. Therefore, the DHLG chose to focus on the constituting CRPD-related governances because of a matter of timing and opportunity. As such, scarcity of resources caused the interruption of the coordinated focus on independent living rights, and the initial efforts remained without follow-ups as a consequence.

From 2011 on, the DHLG Annual Reports have included a thematic chapter: (i) the Europe 2020 Headline Targets, in 2011;²¹⁴ (ii) Article 9 CRPD, in 2012;²¹⁵ (iii) Article 32 CRPD, in 2013;²¹⁶ (iv) the Europe 2020 Strategy, in 2015;²¹⁷ and (v) the participation in employment, in 2016.²¹⁸ Therefore, this is a

²¹¹ ‘Draft Minutes of the EU Disability High Level Group Meeting’ (n 188).

²¹² ‘Fourth Disability High Level Group Report on Implementation of the UN Convention on the Rights of Persons with Disabilities’ (Disability High Level Group 2011) <<https://ec.europa.eu/social/BlobServlet?docId=6851&langId=en>> accessed 22 February 2019.

²¹³ ‘Draft Minutes of the EU Disability High Level Group Meeting’ (n 188) 4.

²¹⁴ ‘Fourth Disability High Level Group Report on Implementation of the UN Convention on the Rights of Persons with Disabilities’ (n 213) 106–131.

²¹⁵ ‘Fifth Disability High Level Group Report on Implementation of the UN Convention on the Rights of Persons with Disabilities’ (Disability High Level Group 2012) 118 <http://edz.bib.uni-mannheim.de/daten/edz-k/gdj/12/dhlg_5th_report_en.pdf> accessed 22 February 2019.

²¹⁶ ‘Sixth Disability High Level Group Report on Implementation of the UN Convention on the Rights of Persons with Disabilities’ (Disability High Level Group 2013) 126 <http://ec.europa.eu/justice/discrimination/files/dhlg_6th_report_en.pdf> accessed 10 October 2018.

²¹⁷ ‘Seventh Disability High Level Group Report on Implementation of the UN Convention on the Rights of Persons with Disabilities’ (Disability High Level Group 2015) 120 <<https://ec.europa.eu/social/BlobServlet?docId=14328&langId=en>> accessed 22 February 2019.

²¹⁸ ‘Eight Disability High Level Group Report on Implementation of the UN Convention on the

new attempt to focus on specific topics. However, it is possible to assume that this strategy had a fatal flaw to exercise influence. Looking at the explanations of Sabel and Zeitlin, any governance cycle should include the revision of the previous cycle to develop new aims and improve the process.²¹⁹ Without this revision, it is impossible to assess the impact of any activity, and the upcoming cycle does not build upon the previous experience. In simple words, it is not a process, it does not include revisions, and it is not a cyclical governance.

As such, although focusing on important specific issues, the thematic chapters of the 2011-2016 DHLG Annual Reports are disconnected from one another and do not critically engage with the national and local levels. Due to the absence of cyclical build-up, the DHLG Annual Reports' thematic chapters do not take advantage of all the potential influencing opportunities of peer-reviewed cyclical governances. However, the positive result is that the EU Member States develop research and report on topics that would have had a different interest and exposure without the coordination to publish the DHLG Annual Reports.

These considerations supplement what previously assumed about the importance of focusing on specific topics to increase the opportunities to influence. In fact, the potential advantages of focusing on specific topics are less practical without the correct strategies and governance processes. This consideration confirms the authors cited in Sections 3.2.3 and 3.2.4 about the importance of using resources with the right strategies to effectively exercise influence.

Lastly, the 2016 Eighth Annual Report includes a focus on the EU Member States that received the CRPD Committee Concluding Observations.²²⁰ In detail, the EU Member States are asked to comment on the Observations they received in the Annual Report. Therefore, when the Concluding Observations raise concerns about the implementation of independent living rights (which always happens because the Concluding Observations usually dedicate a paragraph for each Article of the CRPD), the EU Member States should report on their action

Rights of Persons with Disabilities' (Disability High Level Group 2016) 92–319
<<https://ec.europa.eu/social/BlobServlet?docId=16331&langId=en>> accessed 22 February 2019.

²¹⁹ Sabel and Zeitlin (n 7) 274.

²²⁰ 'Eight Disability High Level Group Report on Implementation of the UN Convention on the Rights of Persons with Disabilities' (n 219) 11–71.

points in the DHLG Annual Report. The Convention does not require this kind of follow-up, but it is a new coordinative strategy which is distinctive of the DHLG.

As such, the 2016 one starts a new phase of the DHLG Annual Reports with an attempt of integration with the CRPD Committee Concluding Observations. The strategy probably aims to fill the previously mentioned absence of follow-ups processes. In fact, due to its scarce resources, the DHLG builds upon the work of the CRPD Committee and acts as an additional step of the Concluding Observations process. This additional step is a peer-review process that engages with the national level. Therefore, the DHLG leaves the revision process to the CRPD Committee and saves resources. Then, it builds upon the Concluding Observations and uses its resources to develop potentially influencing activities on the national and local authorities. Nye defined this kind of effective use of resources as a *smart strategy*.²²¹

Unfortunately, the unavailability of the 2017 and 2018 Annual Reports prevents to analyse developments of this new strategy. However, their absence raises one question: may this new phase of the DHLG Annual Reports have suggested a different strategy on transparency, increasing their level of confidentiality? The analysis of the DHLG meeting minutes has already revealed that the EU Member States tend to maintain a certain level of confidentiality when involved in the EU CRPD-related governance processes. Has this aspect been exported in the Annual Reports due to their new peer review process on the CRPD Committee Concluding Observations?

4.4.4 The Work Forum

This fourth sub-section investigates the activities of the Work Forum (WF) as part of the EU CRPD coordination mechanism. After a brief introduction, the following analysis builds upon the available primary sources of the Forum. The EU Commission explained to the CRPD Committee that “to facilitate the exchange and mutual learning between the EU and the Member States on the governance of the CRPD, the Commission has since 2010 hosted a Work Forum on the Implementation of the UN Convention”.²²² As such, the EU Commission has

²²¹ See Section 3.2.4: Nye (n 46) 24.

²²² ‘Consideration of Reports Submitted by States Parties under Article 35 of the Convention - Initial Report of States Parties Due in 2012 - European Union’ (n 3) para 223.

been promoting an international entity that appears like an information network. It aims to spread information from the EU to the national and local levels with the probable attempt to harmonise courses of action.

The EU Commission clarified that “the Forum gathers representatives of the governance mechanisms established under Article 33 CRPD, CSOs, DPOs, NHRIs, EU institutions and relevant international bodies. Civil society, in particular DPOs, is involved in the preparation of the conference, including the agenda setting”.²²³ As such, the WF seems the enlarged version of the DHLG. While the DHLG gathers the bodies that oversee the CRPD implementation, the WF assembles the entities that deal with the implementation and monitoring of the Convention. As an interviewee who participated in the WF stated:

*of course, one of the very good things that the EU does is to bring together the Member States [...] like [during] the Work Forum.*²²⁴

In short, the WF offers networking opportunities that would be missed without the effort of the EU Commission to promote this getting together. This situation is unusual because the previous sections affirmed that the EU Commission has strategies that use confidentiality as a resource. On the other hand, the WF looks like an instrument to encourage transparency. It is probable that different kinds of situations handle different kinds of information that require different strategies on transparency.

4.4.4.1 The Work Forum web contents

The documentary search concluded in December 2018, and it revealed that six Work Forums had taken place since 2013. Each of the six WFs’ meetings has a dedicated webpage hosted on the EU Commission website. Generally speaking, each webpage includes: (i) a brief explanation of the WF; (ii) the programme of the meeting; (iii) the presentations of the leading conference; and (iv) a summary report. The following analysis respects the chronological order of the meetings with the attempt to show the development of similar matters.

Although the minutes do not provide complete lists of the participants, the names of the presenters are mentioned, and they suggested possible

²²³ *ibid.*

²²⁴ ‘Interviewee 1’ (n 11) 4.

interviewees for the research. This part of the sub-section analyses the primary sources that are available on the WF webpages. It seeks shreds of evidence about any opportunity to influence the implementation of the CRPD and independent living rights.

The 2013 WF webpage describes the Forum as “a great opportunity to share experiences in order to find solutions to similar questions that Member States and the EU face in the implementation of the UNCRPD”.²²⁵ There is an explicit purpose stated that is *to find solutions to similar questions*. On one hand, the establishment of common aims represents the first step to start governance processes.²²⁶ On the other hand, the aim of promoting standard solutions is different from the aim of sharing information. On this, the promotion of shared solutions reminds Slaughter’s idea of harmonisation networks,²²⁷ which fits better with the mentioned WF’s aims.

Therefore, the EU Commission promotes a network that aims to harmonise national and local policies. As suggested in Section 3.3.3, soft instruments can influence and harmonise the attitudes on specific principles. On this, Waddington stated that the EU shows the tendency to pre-empt its Member States action in order to lead harmonisation processes.²²⁸ Besides, Craig explained that governance processes could harmonise policies.²²⁹ In sum, these considerations suggest that the EU Commission promotes the WF to stimulate harmonised policies. Therefore, the Forum has been probably established to offer opportunities to influence national and local authorities on harmonising their policies concerning the implementation of the CRPD.

The 2014 WF webpage emphasises that “the Work Forum allowed to share experiences on the practical implementation and monitoring of the

²²⁵ ‘2013 Work Forum on the Implementation of the UNCRPD in the EU’ (*Employment, Social Affairs & Inclusion*)
<<https://ec.europa.eu/social/main.jsp?langId=en&catId=88&eventsId=1026&furtherEvents=yes>> accessed 21 December 2018.

²²⁶ See Section 3.4.3: Sabel and Zeitlin (n 7) 274.

²²⁷ See Section 3.5.3: Slaughter (n 68).

²²⁸ See Section 2.4.2: Lisa Waddington, ‘The European Union and the United Nations Convention on the Rights of Persons with Disabilities: A Story of Exclusive and Shared Competences’ (2011) 18 *Maastricht Journal of European and Comparative Law* 431, 448.

²²⁹ See Section 2.4.2: Paul Craig, ‘Institutions, Power, and Institutional Balance’ in Paul Craig and Gráinne De Búrca (eds), *The evolution of EU law* (2nd edn, Oxford University Press 2011) 63.

Convention”.²³⁰ The word *practical* suggests that the 2014 WF discussion addressed concrete courses of action on specific topics. As stated in the previous sections, the focus on specific topics can increase the opportunities to influence. In addition to this, the summary report of the 2014 WF states the importance “to ensure that implementation of the Convention is harmonious across all States Parties [there is] the need for complementarity and structured cooperation [because] without such cooperation, there is a great risk that many of the obligations contained in the Convention will not be implemented in a proper manner”.²³¹ Once again, the aim to promote harmonisation appears at the core of the WF.

The quotation suggests that harmonisation results from complementarity and structured coordination. Complementarity has already been explained as a vital principle of the EU CRPD monitoring framework; cooperation is the principal mandate of the WF itself as part of the EU CRPD coordination mechanism. Section 4.2 explained that cooperation is also an essential resource for the EU CRPD focal point to implement the Convention. Also, Section 2.4.2 introduced the idea that the EU policy and law-making processes start with cooperation, and move to minimum standards and common rules. As such, the WF gathers entities that have different kinds of opportunities to influence the implementation of the CRPD. Therefore, the WF promotes harmonisation processes that use complementarity and coordination as resources to exercise influence.

The 2015 WF webpage explains that “the Work Forum aimed at ensuring that the UN Convention is fully implemented”.²³² This is a definite purpose for the meeting, at the limits of any realistic expectation even. However, it is interesting that such a statement appears on the website of the EU Commission, which is usually very careful when matters touch on competence issues. Since the WF

²³⁰ ‘2014 Work Forum on the Implementation of the UNCRPD in the EU’ (*Employment, Social Affairs & Inclusion*)
<<https://ec.europa.eu/social/main.jsp?langId=en&catId=88&eventsId=1025&furtherEvents=yes>> accessed 21 December 2018.

²³¹ Andrea Broderick, ‘Report on the 2013 Work Forum on the Implementation of the UN CRPD in the EU’ (EU Commission) 21–22
<<https://ec.europa.eu/social/main.jsp?langId=en&catId=88&eventsId=1025&furtherEvents=yes>> accessed 21 December 2018.

²³² ‘Work Forum on the Implementation of the UN Convention on the Rights of Persons with Disabilities’ (*Employment, Social Affairs & Inclusion*)
<<https://ec.europa.eu/social/main.jsp?langId=en&catId=88&eventsId=1038&furtherEvents=yes>> accessed 21 December 2018.

uses soft strategies, the EU Commission expectations on the Forum reflect its expectations on the opportunity to influence through soft harmonisation policies. As such, this description of the WF by the EU Commission is interesting as it implies the existence of soft strategies.

Among other topics, the April 2015 Forum focused on “improving synergies between the EU and the national level in the implementation of the UN Convention [because] the implementation of the UN Convention is a shared task”.²³³ Thus, the implementation of the CRPD is here explained as a *shared task*. This idea reminds the shared competence issue, but the consideration of the CRPD implementation as a *shared task* goes beyond the limits of the conferral. In October of the same year, during the DHLG, the EU Commission stated that “the implementation of the Convention is a shared responsibility of the EU and its Member States which requires close cooperation between the two levels”.²³⁴ It is possible to infer that the EU Commission tries to find an alternative soft principle to the hard principle of the conferral. Therefore, the EU and its Member States should cooperate because they share the task and the responsibility of implementing the CRPD. Lastly, such cooperation encourages influencing processes promoting harmonisation policies.

The 2016 WF webpage revealed that EDF supported the EU Commission in the organisation of the Forum.²³⁵ This finding shows that the setting up of a coordinative body is managed by implementing and monitoring bodies in synergy. It also reveals that the WF is not an independent entity with all the limits of the case, as already outlined about the EU CRPD monitoring framework. In addition, during her welcome speech of the Forum, an EU Commission DG EMPL Director emphasised to “know that the implementation of the Convention is a continuous process. And governance is an essential part of this process. Not only is governance required by Convention. It is also necessary to ensure proper implementation, coordination and cooperation between the different levels and

²³³ *ibid.*

²³⁴ ‘Minutes of the EU Disability High Level Group Meeting’ (EU Commission 2015) 2 <<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=1259>> accessed 18 December 2018.

²³⁵ ‘2016 Work Forum on the Implementation of the UN Convention on the Rights of Persons with Disabilities’ (*Employment, Social Affairs & Inclusion*) <<https://ec.europa.eu/social/main.jsp?langId=en&catId=88&eventsId=1112>> accessed 21 December 2018.

players like national authorities”.²³⁶ This statement confirms that the EU Commission officers know they need to play with soft cards to meet their duties. However, Section 4.2 showed that the hard mandate of the EU Commission forces its officers to play under the table and to maintain confidential their soft and informal activities.

The quoted Director refers to the need to use soft governance processes as well as to engage with *different levels*. She also defined the process as continuous. This terminology is significant because it reminds Figure 3-5 summarising the circularity of EU governance processes, as suggested by Zeitlin. Also De Búrca, Keohane, and Sabel assumed that experimentalist governance promotes open-ended processes.²³⁷ The question is: is the Work Forum an open-ended governance process? It seems so because it calls on further activities. However, is it an experimentalist governance process? It does not seem so because the experimentalist meaning for open-ended is that the process evolves from the revision of reached aims to the establishment of new goals. On the other hand, the Forum is more like a conference where selected presenters expose their papers. If the WF were like an experimentalist governance process, it would include any instrument to review the efforts to harmonise CRPD and independent living policies.

To conclude the round-up, the 2017²³⁸ and 2018²³⁹ WF webpages include nothing that adds anything to what already explained. In short, the Work Forum is a vital instrument to exercise influence. However, getting together without establishing and revising common goals may limit the possibility to effectively harmonise national and local policies concerning the CRPD and independent living rights.

²³⁶ Manuela Geleng, ‘Welcome Speech to the Work Forum’ (Work Forum, Charlemagne Building, 10 June 2016) 2
<<https://ec.europa.eu/social/main.jsp?catId=88&langId=en&eventsId=1112&moreDocuments=yes&tableName=events>> accessed 22 December 2018.

²³⁷ See Section 3.4.3: De Búrca, Keohane and Sabel (n 22) 477.

²³⁸ ‘2017 Work Forum on the Implementation of the UN Convention on the Rights of Persons with Disabilities in the EU and the Member States’ (*Employment, Social Affairs & Inclusion*) <<https://ec.europa.eu/social/main.jsp?langId=en&catId=88&eventsId=1207>> accessed 22 December 2018.

²³⁹ ‘2018 Work Forum on the Implementation of the UN Convention on the Rights of Persons with Disabilities in the EU and Its Member States’ (*Employment, Social Affairs & Inclusion*) <<https://ec.europa.eu/social/main.jsp?langId=en&catId=1137&eventsId=1326&furtherEvents=yes#navItem-presentations>> accessed 22 December 2018.

4.5 Concluding remarks

This chapter is the first of the three analytical chapters of the thesis. It explored the international entities that shape the EU CRPD-related governance with an attempt to show their opportunities to influence the implementation of the CRPD and independent living rights.

Generally speaking, the analysis explained that the EU CRPD-related governance has different opportunities to exercise its influence. However, the EU CRPD-related governance tends to address general topics and barely focuses on specific principles. Probably, independent living rights is the most cited CRPD principle in the analysed documents. Despite this, it appears sporadically, and the analysis found no coordinated projects on its implementation and monitoring. Besides, the two topics of independent living rights (deinstitutionalisation and personal assistance) are almost absent from the analysed discussions. This peculiarity shows that the more specific the topic, the less probable its mention in the EU CRPD-related governance. Despite this, the analysis showed several attempts to focus on independent living rights. However, the scarcity of resources forces a focus on priorities, which change quite often.

The impact of the EU CRPD-related governance opportunities to exercise influence has been assessed with three different methods: (i) the confrontation between the observed situations and the theoretical framework of the thesis; (ii) the use of the interviews; and (iii) the search for evidence.

(i) The confrontation between the observed situations and the theoretical framework of the thesis clarified that the EU CRPD-related governance is a soft instrument that produces soft law material and takes advantage of some dispositional influencing properties of experimentalist governance processes and international networks.

(ii) The interviews confirmed the intentionality to develop the EU CRPD-related governance opportunities to influence. The interviewees revealed that the division of competences between the EU and its Member States promotes the establishment of soft procedures, which increase informality but cause a drop in the level of transparency.

(iii) The search for evidence was affected by the low level of transparency. Despite this, the analysis showed findings of real and attempted influences of

the EU CRPD-related governance on the national and local levels. Probably, the most crucial evidence is that of the DHLG influence on the inclusion of the CRPD-related ex-ante conditionality in the ESI Funds Regulation.

Chapter 5

Influence of the EU CRPD-related governance's members on the implementation of the CRPD and independent living rights

5.1 Introduction

This chapter is the second of the three analytical chapters of the thesis. It focuses on the four EU institutions and bodies that are part of the EU CRPD focal point and monitoring framework. In particular, the chapter investigates their opportunities to influence the implementation of the CRPD and independent living rights. The four EU institutions and bodies analysed in this chapter are: (i) the EU Commission; (ii) the EU Parliament; (iii) the EU Ombudsman; and (iv) the EU Fundamental Rights Agency (FRA).

Each of these four EU institutions and bodies is investigated in a dedicated section of the chapter, aiming to reveal opportunities to influence. Every section includes a brief description of the institutional mandate and one or more analytical sub-sections.

As the previous chapter focused on the EU CRPD-related governance in itself, this chapter focuses on four of its members singularly taken. As the previous chapter explained how the EU CRPD-related governance exercises its influence on the implementation of the CRPD and independent living rights, this chapter develops a similar explanation about four members of that governance. This chapter aims to show examples of EU influences as findings of: (i) the documentary research; (ii) the conducted interviews; and (iii) the comparison between pieces of evidence and theories.

The analysis of this chapter is mainly inductive. As such, it explains situations building upon the available primary sources. Besides, it uses observations to develop conclusions that expand the theoretical framework of the research. On several occasions, the interviews will be essential in understanding the explored processes.

5.2 The EU Commission

This section focuses on the EU Commission, which is the established EU CRPD focal point.¹ While the previous chapter explained the designed role of the EU CRPD focal point, this section investigates the individual contribution of the EU Commission to the implementation of the Convention. The analysis seeks pieces of evidence concerning the EU Commission's opportunities to influence the implementation of the CRPD and independent living rights. This section includes two sub-sections. The first sub-section is an overview of the EU Commission and its governance. The second sub-section explores the role of the thematic unit of the EU Commission that oversees CRPD-related issues.

The EU Commission is one of the seven institutions of the EU.² The EU Commission is the "principal executive body of the European Union".³ The EU Parliament elects the President of the Commission.⁴ The EU Council and the President of the Commission "shall adopt the list of the other [...] members of the Commission".⁵ The President appoints Vice-Presidents⁶ as well as allocates responsibilities among the members of the Commission.⁷ Also, the President of the Commission is a member of the European Council.⁸ As established by the EU Treaties, the EU Commission "shall oversee the application of Union law".⁹ On this matter, the EU Commission shall oversee the application of the CRPD,

¹ EU Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities 2010 (2010/48/EC [OJ L 23/35]) Article 3.

² Consolidated Version of the Treaty on European Union 2012 (OJ C 326/13) Art 13.1.

The seven institutions of the European Union are: (i) the European Parliament; (ii) the European Council; (iii) the Council; (iv) the European Commission; (v) the Court of Justice of the European Union; (vi) the European Central Bank; and (vii) the Court of Auditors.

³ 'The European Commission' (European Parliament 2018)
<http://www.europarl.europa.eu/ftu/pdf/en/FTU_1.3.8.pdf> accessed 30 November 2018.

⁴ TEU Artt 14.1, 17.7.

⁵ TEU Art 17.7.

⁶ *ibid* Art 17.6.

⁷ Consolidated Version of the Treaty on the Functioning of the European Union 2012 (OJ C 326/47) Art 248.

⁸ TEU Art 15.2.

⁹ *ibid* Art 17.1.

within the remit of its mandate,¹⁰ since the EU conclusion of the CRPD has made the Convention a source of Union law.¹¹

Also, the EU Treaties state that the EU Commission “shall execute the budget and manage programmes”.¹² In exercising these tasks, budget and programmes should respect the CRPD due to the EU accession to the Convention.¹³ Lastly, the EU Commission has the monopoly of the legislative initiative.¹⁴ Following the EU conclusion of the CRPD, any of its legislative initiatives should comply with the Convention because the EU Commission must respect the international treaties to which the EU has acceded.¹⁵ This last aspect is deepened in the following sub-section.

5.2.1 An overview of the EU Commission’s governance

As explained in Section 4.2.1, the incorporation of human rights principles into hard law is an implementation strategy that aims to change the legislative nature of those principles themselves. Generally speaking, human rights are stated by international treaties that are classified as international law. As explained in Section 3.3, several authors interpret international law as a soft instrument with opportunities to exercise influence on the national and local levels. Section 4.2.1 suggested that this influence is part of the duties to implement the treaties. Therefore, one way to realise the duty to implement human rights treaties is by influencing the incorporation of their principles into domestic hard law. This because human rights principles can be enforced at the domestic level after becoming hard law.

As a consequence, the process to incorporate the CRPD principles into EU law is an implementation duty that derives from the EU conclusion of the

¹⁰ EU Commission Non Paper Setting-up at EU level of the Framework required by Art. 33.2 of the UN Convention on the Rights of Persons with Disabilities 2012 6.

¹¹ Helga Stevens, ‘Report on Implementation of the European Disability Strategy (2017/2127(INI))’ (European Parliament 2017) A8-0339/2017 6
<<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2017-0339+0+DOC+PDF+V0//EN>> accessed 10 October 2018; ‘Draft Minutes of the EU Disability High Level Group’ (EU Commission 2012) 2
<<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=1259>> accessed 18 December 2018.

¹² TEU Art 17.1.

¹³ TFEU Art 216.2.

¹⁴ TEU Art 17.2.

¹⁵ TFEU Art 216.2.

Convention. The EU Commission shall meet this duty because it has been established as the EU CRPD focal point. Besides, as stated in the introduction of this sub-section, the EU Commission can meet this duty also because it is the EU institution with the legislative initiative. In brief, any CRPD principle can be incorporated into EU law through legislative proposals of the EU Commission. The legislative proposals of the EU Commission must be approved by the EU Parliament and Council to become EU law, but any legislative initiative officially starts from the EU Commission. Once incorporated into EU law, any CRPD principle can be enforced because subject to the Court of Justice jurisdiction and binding on the EU Member States as a consequence.

Influencing relationships govern the process that develops the EU Commission legislative proposals. Therefore, the influencing relationships that take place within the EU Commission can reach the national and local levels through EU law. This sub-section includes an inductive analysis of the process that develops the EU Commission legislative proposals to show the actors involved and their relevance to the EU CRPD-related governance.

Generally speaking, the governance of the EU Commission includes a political level and an operational level, and it is described as an example of corporate governance.¹⁶ The political level regards the President and the Commissioners, and it takes overall political responsibility. The operational level refers to the institutional departments, and it has to implement the political decisions.¹⁷ The policy departments of the EU Commission are called Directorates-General (DGs). At the time of conducting this research, these are 31 in total,¹⁸ and each of them oversees a different policy area of the EU Commission.¹⁹ The political and operational levels have an advisory body each (within the dotted ellipses in the figure below) that supports their work, which is

¹⁶ EU Commission Communication, Streamlining and strengthening corporate governance within the European Commission 2018 (C(2018) 7704 final) 2–4.

¹⁷ *ibid.*

¹⁸ 'The European Commission' (n 3) 3.

On the whole, there are 31 policy departments (DGs), 16 special departments (services), and 6 executive agencies.

¹⁹ 'Departments and Executive Agencies' (*European Commission*) <https://ec.europa.eu/info/departments_en> accessed 7 January 2018.

also subject to independent scrutiny.²⁰ Figure 5-1 shows this general description.²¹

The figure also shows the presence of a Corporate Management Board, established in 2018.²² Its role is a consequence of the fact that the decentralised decision-making model of the EU Commission governance needs overall coordination on corporate management issues.²³ Coordination is necessary because there are specific issues that should be correctly mainstreamed within the political and operational processes. Other groups and sub-groups were already performing this coordinative effort, and they now support the Corporate Management Board.²⁴ For instance, “the Group of Directors-General [...] meets regularly to discuss issues of horizontal interest”.²⁵

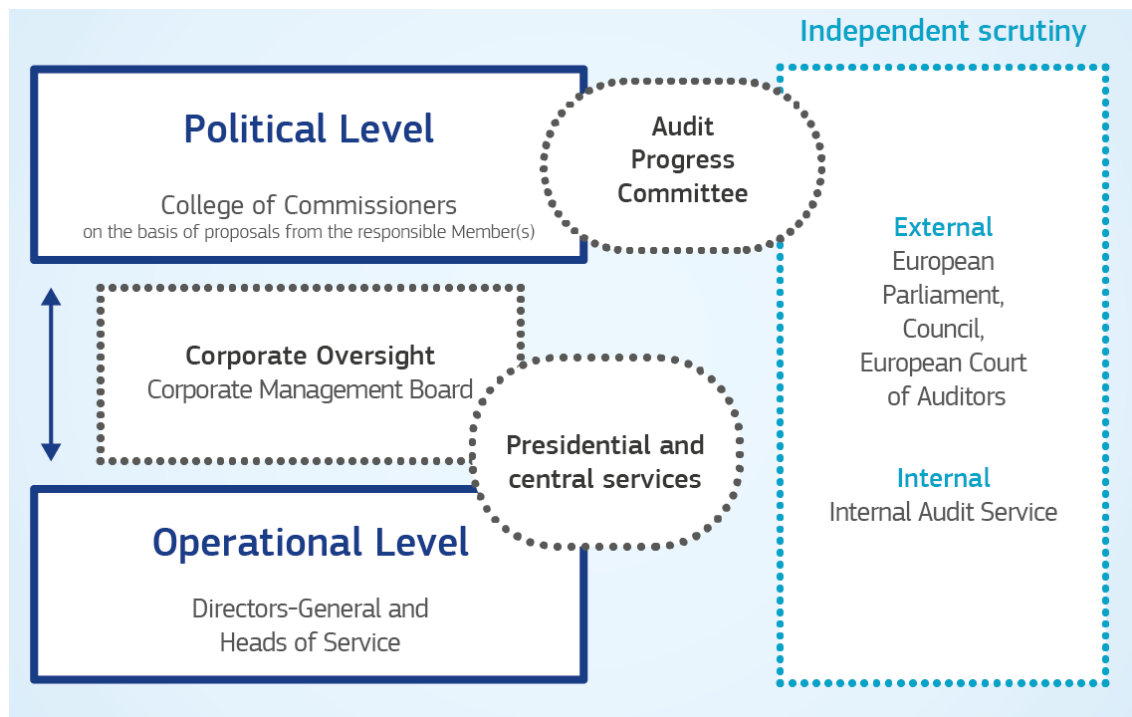


Figure 5-1- The Commission’s Governance Model

Among the issues of horizontal interest, there is the implementation of the CRPD because the whole EU Commission governance should respect the

²⁰ Streamlining and strengthening corporate governance within the European Commission 4.

²¹ *ibid* 3.

²² EU Commission Decision on the Corporate Management Board 2018 (C(2018) 7706 final).

²³ *ibid*.

²⁴ EU Commission Communication, Governance in the European Commission 2018 (C(2018) 7703 final) 6.

²⁵ Streamlining and strengthening corporate governance within the European Commission 13.

Convention. The coordination on the implementation of the CRPD within the EU Commission governance is officially performed by the Inter-Service Group on Disability (DISG), which is part of the EU CRPD coordination mechanism, as explained in Section 4.4.1. The previous explanation of the DISG included the intuition that the Group itself is supervised by the coordinative work of the DG EMPL Disability Unit, which acts under the mandate of the EU CRPD focal point.

The previous chapter already emphasised that the DISG and the Disability Unit publish few official outcomes. Also the interviewees had difficulties in talking about the confidential and informal processes of the EU Commission. Fortunately, this research is also supported by informants, who confirmed the intuitions of the previous paragraph.

As such, the process that summarises the EU Commission legislative initiative to include CRPD principles into EU law can be described as it follows: (i) “the Commission [is] the focal point for the implementation of the Convention at EU level”;²⁶ (ii) one of the duties to implement international human rights is to “adapt existing laws or pass new laws”;²⁷ (iii) the DISG shall ensure that the CRPD is “taken into consideration in the formulation and implementation of legislative proposals [of any DG]”;²⁸ and (iv) the DG EMPL Disability Unit supervises the DISG to support the inclusion of CRPD principles into the legislative proposals of the EU Commission.

Although the EU legislative initiative is a prerogative of the EU Commission, official invitations to start legislative initiatives can be sent to the EU Commission by: (i) the EU Council; (ii) the Council of the EU; (iii) the EU Parliament; and (iv) the EU citizens.²⁹ Besides, it is reasonable to assume that informal pressures can reach and influence the EU Commission legislative initiative. Therefore, the

²⁶ See Section 4.2: ‘Consideration of Reports Submitted by States Parties under Article 35 of the Convention - Initial Report of States Parties Due in 2012 - European Union’ (Committee on the Rights of Persons with Disabilities 2014) CRPD/C/EU/1 63 <https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FEU%2F1&Lang=en> accessed 10 October 2018.

²⁷ See Section 4.2.1: ‘How Are Human Rights Implemented and How Is This Monitored?’ <<https://www.institut-fuer-menschenrechte.de/en/topics/development/frequently-asked-questions/5-how-are-human-rights-implemented-and-how-is-this-monitored/>> accessed 30 November 2018.

²⁸ See Section 4.4.1: ‘Consideration of Reports Submitted by States Parties under Article 35 of the Convention - Initial Report of States Parties Due in 2012 - European Union’ (n 26) para 222.

²⁹ ‘Planning and Proposing Law’ (*European Commission*) <https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law_en> accessed 19 August 2019.

previously described process aiming to include CRPD principles into the EU legislative proposals is a formal monopoly of the EU Commission but is also informally open to the influence of other actors.

5.2.1.1 The internal and external dimensions of the EU Commission governance

The contents of the previous paragraphs suggest that the implementation of the CRPD by the EU Commission develops in two dimensions: internal and external. It is internal when it concerns the institution's organisation and employees. It is external when it regards the EU Member States.

Besides, the legislative initiative of the EU Commission is linked with the competence issue because it must concern matters on which the EU can legislate.³⁰ The Declaration of Competence clarifies that the EU "has an exclusive competence [...] with respect to its own public administration", but it "shares competence with Member States as regards action to combat discrimination on the ground of disability".³¹

This principle means that the EU Commission has different opportunities to implement the CRPD in its internal and external dimensions. In detail, it can fully implement the Convention when producing legislative proposals on its organisation. However, it needs to consider the competence issue when its law involves the EU Member States. This situation can create issues when the EU Commission has an internal approach to the CRPD that it cannot use in legislative initiatives that involve its Member States.

For instance, the EU has full competence on the European Schools and it is responsible for their correct implementation of the Convention. However, the EU Member States have exclusive competence on national education systems where the EU Commission cannot initiate CRPD-related hard legislation. In similar cases, the EU Commission can use informal instruments to influence national and local authorities.³² In turn, the need for informal instruments to influence might explain the confidentiality of the relevant processes. What follows

³⁰ See Section 2.4.

³¹ EU Council Decision 2010/48/EC Annex II.

³² As for education and other areas, Art 6 TFEU states that the Union shall "support, coordinate or supplement the actions of the Member States", which entails the use of soft instruments.

is an analysis that builds upon the few available primary data that the research has collected about the (i) internal and (ii) external EU Commission CRPD-related governance.

(i) The internal governance of the EU Commission seems characterised by confidentiality because the documentary search found few primary sources explaining its organisation in detail. For this reason, internal procedures and processes can be only inferred combining the few available information. Interviewees and informants have been essential to depict how the EU Commission internally works. In sum, the implementation of the CRPD is a horizontal issue of the EU Commission's internal dimension that needs specific coordination to reach any DGs and all their units. The internal implementation of the CRPD is necessary to set the conditions to exercise influence on other entities in implementing the Convention.

The difficulties in finding documents about the internal organisation of the EU Commission forced to ask a relevant question during the interviews. However, the interviewees were careful about sharing this kind of information. In turn, their difficulty is a possible confirmation of the existent friction between the official and unofficial activities of the EU Commission. Despite this, some interviewees' insight helped to fill some gaps in the inductive analysis. For example, an EU Commission policy officer explained that:

*[the Directorates-General have] geographic units and thematic units. It can sometimes be useful to think of one as vertical and one as horizontal. The integration of both is of course key, and thus we also have coordination units!*³³

This clarification is significant. For instance, it allows classifying the Disability Unit as a thematic unit that oversees CRPD-related issues. The Disability Unit supervises the DISG's horizontal effort to mainstream the CRPD in the EU legislative initiatives, as previously explained. The interviewee also mentioned geographic units and vertical activities. This mention entails that the Disability Unit could be vertically connected with the national and local levels through geographic units as well as through specific activities. Such a connection

³³ 'Interviewee 13' (30 April 2018) 1.

is not hierarchical because it does not entail a power relation. Instead, it may involve authority and exercise influence.

An informant of this research confirmed the explanation of the previous paragraph. He added that the horizontal effort of the Disability Unit includes training the EU Commission's staff, as he was involved in a training session some years ago as an external expert. Training sessions are an authoritative way to exert influence. This informal insight confirms that international entities need to consult external experts about complex topics. Due to their peculiarity, experts become part of the internal governance of such international entities and can influence them, as suggested by Sabel and Zeitlin³⁴ as well as by Slaughter.³⁵

The same informant was concerned when asked to comment on the declaration of an interviewee who talked about her geographic unit saying that:

*for the majority of us the meaning of the acronym 'CRPD' is unknown.*³⁶

The concern of the informant reflected what was previously affirmed about the need for effective internal implementation of the CRPD as a pre-condition to influence other entities on the implementation of the Convention itself. The informant tried to explain this situation with the consideration that the staff of the EU Commission is subject to a periodic rotation, which may cause the need for constant training.

This kind of periodic rotation was also mentioned by an interviewee talking about the Disability Unit. This interviewee was concerned that some officers of the Disability Unit used to work in different fields and were relocated despite having no specific expertise on the CRPD.³⁷ Unfortunately, this insight by a third party had not the possibility to be verified.

³⁴ See Section 3.4.1: Charles F Sabel and Jonathan Zeitlin, 'Learning from Difference: The New Architecture of Experimentalist Governance in the EU' (2008) 14 *European Law Journal* 271, 278.

³⁵ See Section 3.5.3: Anne-Marie Slaughter, *A New World Order* (Princeton University Press 2004) 5–6.

³⁶ 'Interviewee 9' (15 May 2018).

³⁷ 'Interviewee 7' (25 June 2018) 13.

The critical point is that a periodic rotation of staff makes continuous training essential. As such, the support of external experts is a constant need. As a consequence, the influence of external experts on the EU Commission should be considered an integral part of the EU Commission's internal governance.

(ii) The external governance of the EU Commission seems as confidential as the internal one because the documentary search found few primary sources explaining its organisation in detail. The documentary search included an investigation of the organisational charts of the DGs for General and Urban Policy (REGIO),³⁸ and for Employment Social Affairs and Inclusion (EMPL)³⁹ to identify possible interviewees.⁴⁰ The idea was that the interviewees could have explained existing links between the EU Commission CRPD-related internal governance with the national and local levels. Unfortunately, the interviewees were not so inclined to talk about their governance processes. They tended to suggest to look at reports, but reports do not focus on processes and do not explain informal activities either. As such, what follows is a paraphrase of four EU Commission officers' interviews that try to explain how the CRPD-related activities of the EU Commission can reach the national and local levels.

The implementation of the CRPD is an internal horizontal theme within the EU Commission. Internal activities can reach the national and local levels through geographic units that are like institutional bridges between the EU and its Member States.⁴¹ These bridges allow the flow of information from the EU Commission to national governments and vice versa. This flow of information brings EU policies at the national and local levels, and it gathers domestic concerns to the EU Commission.⁴² This flow of information may be either formal or informal. This aspect means that it can produce either formal outcomes or informal dialogues. Formal outcomes can be reports, which are analysed by the

³⁸ 'DG REGIO Organisational Chart'
<https://ec.europa.eu/regional_policy/sources/dgs/organigramme_en.pdf> accessed 8 January 2019.

³⁹ 'DG EMPL Organisational Chart'
<<http://ec.europa.eu/social/BlobServlet?docId=2796&langId=en>> accessed 8 January 2019.

⁴⁰ See Section 1.4.1.

⁴¹ 'Interviewee 12' (4 June 2018) 2; 'Interviewee 11' (11 May 2018) 2.

⁴² 'Interviewee 13' (n 32) 1.

thematic units to prepare evaluative analyses that are useful to work on new policy cycles.⁴³ On the other hand, informal dialogues are something about the interviewees did not talk in detail. However, these take regularly place, and the previous chapter mentioned several occasions for the EU Commission to develop informal dialogues, as the Disability High Level Group and the Work Forum.

5.2.2 The EU Commission Disability Unit

Sections 4.2.3 and 5.2.2 indicated that the DG EMPL C3 is the EU Commission Disability Unit acting under the mandate of the EU CRPD focal point, at the time of conducting this research. Section 4.2.3 explained that, officially, the EU Commission had been established as the EU CRPD focal point. This designation is included in the Council Decision on the conclusion of the CRPD, which states that “the Commission shall be a focal point”.⁴⁴ The documentary search found no official documents declaring that a specific unit oversees the tasks of the EU CRPD focal point. However, Section 4.2.3 included intuitive conclusions and insights of interviewees and informants confirming that the Disability Unit is like the centre of influence of the EU CRPD focal point and that it was relocated from DG JUST to DG EMPL.

The study found no official document that confers the mandate to act as the EU CRPD focal point on the Disability Unit. This non-finding means that this unit has an institutional role that is an informal mandate towards the CRPD. This kind of informality can promote the use of strategies that aim to influence. In turn, it may limit the possibility to publish outcomes. Why has the Disability Unit an informal mandate?

De Beco stated that “in all EU member States Parties to CRPD, the focal points are the ministries responsible for persons with disabilities. These ministries are almost always either the ministries of social affairs or ministries with broader competences including that of social affairs”.⁴⁵ Also, “the United

⁴³ ‘Interviewee 12’ (n 40) 1–2.

⁴⁴ EU Council Decision 2010/48/EC Art 3.

⁴⁵ Gauthier De Beco, ‘Study on the Implementation of Article 33 of the UN Convention on the Rights of Persons with Disabilities in Europe’ (UN Office of the High Commissioner on Human Rights 2014) 42
<<https://nhri.ohchr.org/EN/ICC/GeneralMeeting/25/Meeting%20Documents/Study%20on%20the%20Implementation%20of%20Article%2033%20of%20CRPD.pdf>> accessed 10

Kingdom designated the Office for Disability Issues (ODI), which is a cross-governmental body working with different ministries”.⁴⁶ Differently, the Council Decision on the conclusion of the CRPD states that “the Commission shall be a focal point”,⁴⁷ without mentioning any DG or specific unit.

Differently, in the Non Paper that established the EU CRPD monitoring framework, the EU Commission indicated the EU Parliament PETI Committee as a member of the EU CRPD monitoring framework instead of the broad institution.⁴⁸ Such designation means that a specific office was formally entrusted with the mandate of representing its institution in the EU CRPD-related governance. This suggests that the designation of a specific DG or unit as the EU CRPD focal point could have been a feasible option. Therefore, the EU Commission chose to remain vague officially, and then to informally confer the mandate on the Disability Unit.

One probable explanation for this choice is that the EU Commission had the strategy to preserve flexibility. Several authors cited in Chapter 3 explained that flexibility is a crucial characteristic of international soft law and governance. Coherently, the CRPD asks its parties to establish forms of governance. Also, Section 4.2.1 explained that the implementation of the CRPD entails the exercise of influence, and Section 3.2.1 clarified that influence is exercised through soft resources and strategies. Therefore, the strategy to establish a flexible focal point seems coherent with the duty to implement the Convention. In turn, the flexibility of a formal institution is an informal resource that incentives confidentiality, which complicates the evaluation of the Disability Unit activities.

The DHLG Annual Reports’ analysis included in Section 4.4.3.2 showed that the chair of the Group had changed three times so far: (i) JUST D3 until

October 2018.

⁴⁶ *ibid.*

⁴⁷ EU Council Decision 2010/48/EC Art 3.

⁴⁸ EU Commission Non Paper Setting-up at EU level of the Framework required by Art. 33.2 of the UN Convention on the Rights of Persons with Disabilities 1.

2014;⁴⁹ (ii) EMPL D4 in 2015;⁵⁰ and (iii) EMPL C3 since 2016.⁵¹ This change is the evidence that the mandate to act under the EU CRPD focal point has been informally conferred on different DG units over time. Thus, this is an example of how the EU Commission has taken advantage of the flexibility with which it established its CRPD focal point.

The following part of this sub-section explores possible reasons for and presumed consequences of the institutional position of the Disability Unit within the EU Commission governance. The assumption is that the position of the Disability Unit in different DGs can modify the EU Commission approach to the CRPD and to its implementation as a consequence.

5.2.2.1 The institutional position of the Disability Unit

The EU Commission Disability Unit appears to act under the mandate of the EU CRPD focal point, and it can be explained as a thematic unit that collects and spreads CRPD-related issues in order to support the coordination of the CRPD implementation. At the time of developing this research, the unit DG EMPL C3 is the EU Commission Disability Unit.

Some of the activities of the Disability Unit are published on a webpage titled “Persons with Disabilities”.⁵² Due to the informality and confidentiality that characterise the work of the Disability Unit, it is probable that the information uploaded on this webpage are not exhaustive. Some of the uploaded activities will be investigated in the last part of this sub-section. However, this part includes reasoning about the institutional position of the Disability Unit within the EU

⁴⁹ See Section 4.4.3.2: ‘Minutes of the EU Disability High Level Group Meeting’ (EU Commission 2014) 1
<<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=1259>> accessed 18 December 2018.

⁵⁰ See Section 4.4.3.2: ‘Minutes of the EU Disability High Level Group Meeting’ (EU Commission 2015) 1
<<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=1259>> accessed 18 December 2018.

⁵¹ See Section 4.4.3.2: ‘Minutes of the EU Disability High Level Group Meeting’ (EU Commission 2016) 1
<<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=1259>> accessed 18 December 2018.

⁵² See Sections 4.2.3 and 4.3.3: ‘Persons with Disabilities’ (*Employment, Social Affairs & Inclusion*) <<https://ec.europa.eu/social/main.jsp?catId=1137&langId=en>> accessed 9 January 2019.

Commission governance and the consequent possible influence on the approach to the CRPD.

May the institutional position of the Disability Unit be relevant to the EU implementation of the CRPD and influence the national and local levels? For instance, the institutional position of the Disability Unit under DG EMPL could suggest that the EU Commission considers the implementation of the Convention as a social matter rather than as a human rights issue. Otherwise, the Disability Unit would have been placed within DG Justice and Consumers (JUST), which focuses explicitly on the respect, protection, and fulfilment of human rights.⁵³ An EU Commission's social approach to the CRPD implementation could be considered a best practice by the EU Member States, which could be influenced and follow the EU Commission example as a consequence.

An example of the best-practice EU Commission influence on national governments emerged during an EU CRPD monitoring framework meeting. In that occasion, EDF "noted that a member State had used the membership of the European Commission in the EU framework to justify its government participation in the national framework".⁵⁴ Thus, the 2014 conclusion of De Beco about the EU Member States' CRPD focal points being in the ministries concerning social affairs⁵⁵ may show the result of influence from the best-practice EU on the national level. Since, in 2015, the Disability Unit was flexibly relocated from DG JUST to DG EMPL,⁵⁶ also the opposite is possible: that the EU Commission modified its initial preference after being influenced by the establishment of the CRPD focal points in the ministries concerning social affairs.

The following analysis investigates the impact of the harmonisation to a social approach on the CRPD implementation. This aspect is essential because

⁵³ 'Justice and Fundamental Rights' (*European Commission*) <https://ec.europa.eu/info/topics/justice-and-fundamental-rights_en> accessed 8 January 2019.

⁵⁴ See Section 4.3.3.1: 'Meeting of the EU Framework to Promote, Protect and Monitor the UNCRPD' (EU CRPD Framework 2013) 3 <<http://fra.europa.eu/en/theme/people-disabilities/eu-crpd-framework/resources>> accessed 11 December 2018.

⁵⁵ See above: De Beco (n 44) 42.

⁵⁶ See above and Section 4.2.3: 'High Level Group on Disability' (*Register of Commission Expert Groups*) <<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=1259>> accessed 17 December 2018.

a purely social approach to the Convention contradicts the Chair of the CRPD Committee, who hoped for a “understanding of the CRPD [...] that [...] goes beyond the social model of disability and codifies the human rights model of disability”.⁵⁷ The choice between the social-based and human rights-based approach to disability may have practical consequences on the implementation of several CRPD principles, like independent living rights.

The comparison between Denmark and Sweden can infer an example of practical consequences that the approach to the CRPD implementation has on independent living national policies. The former has a social-based while the latter has a human rights-based approach to independent living policies. One of the differences is the fact that complaints go to the national social board in Denmark and to the court in Sweden.⁵⁸ The previous quotation of the CRPD Committee Chair suggests that the Swedish approach would be the preferred one. Also the explanation of Section 4.2.1 about implementation as the incorporation of human rights into hard law enforced by courts supports the Swedish approach.

However, the institutional position of the EU Commission Disability Unit suggests a social-based approach of the Union to the CRPD and independent living policies. Due to the usual consideration of the EU example as a best practice to follow, the Danish system would be endorsed while Sweden could gradually change its approach. Similarly, any EU Member State would probably tend to consider the EU Commission’s social-based approach when starting new domestic independent living policies. This is because the EU example pre-empts national choices and leads harmonisation processes, as explained by Waddington.⁵⁹ Harmonisation would promote minimum standards, which are pre-conditions to set common rules.⁶⁰ Thus, the institutional position of the EU Commission Disability Unit promotes a social approach to the CRPD

⁵⁷ Degener Theresia, ‘Disability in a Human Rights Context’ (2016) 5 *Laws* 3
<<https://www.mdpi.com/2075-471X/5/3/35>> accessed 7 January 2019.

⁵⁸ Karen Christensen, Ingrid Guldvik and Monica Larsson, ‘Active Social Citizenship: The Case of Disabled Peoples’ Rights to Personal Assistance’ (2014) 16 *Scandinavian Journal of Disability Research* 19, 24–26.

⁵⁹ See Section 2.4.2: Lisa Waddington, ‘The European Union and the United Nations Convention on the Rights of Persons with Disabilities: A Story of Exclusive and Shared Competences’ (2011) 18 *Maastricht Journal of European and Comparative Law* 431, 448.

⁶⁰ See Section 2.4.2.

implementation that can influence national and local policies on independent living rights.

Some concerns of the CRPD Committee prove the importance of this issue. In fact, in 2015, it asked the EU to “indicate what practical initiatives the European Union is taking to ensure the understanding and use of the human rights-based approach to disability at all levels”.⁶¹ In its reply, the EU Commission did not deepen this aspect.⁶² Its reply was followed by the CRPD Committee Concluding Observations on the EU, which stated that “the Committee is concerned at [...] the lack of human rights indicators”,⁶³ and it “recommends that the European Union develop an approach to guide and foster deinstitutionalisation”.⁶⁴ In line with the CRPD, the approach to guide and foster deinstitutionalisation should be a human rights-based approach. However, can the EU develop a correct human rights-based approach to deinstitutionalisation if a social-based unit oversees the relevant policies? Would it be different if the Disability Unit had remained under DG JUST?

Shreds of evidence show that the Disability Unit was under DG JUST, and then it was relocated to DG EMPL. Also the webpage of the DHLG explains that “the senior Commission representative will normally be the Director responsible for disability issues in the DG (since 1.1.2015, Employment, previously Justice)”.⁶⁵ This means that the *Director responsible for disability issues* has changed DG, and the Disability Unit was relocated. The DHLG meetings’ attendance lists confirm the mentioned relocation.⁶⁶ Lastly, the fact itself that the relocation of the Disability Unit took place is the evidence that its institutional position somehow matters.

⁶¹ ‘List of Issues in Relation to the Initial Report of the European Union’ (Committee on the Rights of Persons with Disabilities 2015) CRPD/C/EU/Q/1 1 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/098/84/PDF/G1509884.pdf?OpenElement>> accessed 7 January 2019.

⁶² ‘Replies of the European Union to the List of Issues’ (Committee on the Rights of Persons with Disabilities 2015) CRPD/C/EU/Q/1/Add.1 5–8 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/151/57/PDF/G1515157.pdf?OpenElement>> accessed 7 January 2019.

⁶³ ‘Concluding Observations on the Initial Report of the European Union’ (Committee on the Rights of Persons with Disabilities 2015) CRPD/C/EU/CO/1 para 72 <https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fEU%2fCO%2f1&Lang=en> accessed 10 October 2018.

⁶⁴ *ibid* 51.

⁶⁵ ‘High Level Group on Disability’ (n 55).

⁶⁶ See above.

The reasoning included in this part was outlined by Waddington already in 2011. In fact, she wrote that “the EU disability policy was primarily an element of social policy – and for a long time the Disability Unit was included within DG Employment, Social Affairs and Inclusion”. However, “with the conclusion of the CRPD by the EU, [the] EU disability policy must be seen from the perspective of a human rights policy. This is [...] reflected in the recent move of the Disability Unit to the newly created DG Justice”.⁶⁷ Waddington had a limpid expectation from the move of the Disability Unit that mirrors the concerns expressed in these last pages.

5.2.2.2 The DG EMPL activity plans

The activities of the Disability Unit are mostly informal and confidential. This is the reason why there are few deliverables, and the interviewees were cautious about providing insights on the matter. However, having placed the Disability Unit within DG EMPL offers the opportunity to analyse the documents of this DG to find and deduct information that can be relevant to the Disability Unit itself. Such an investigation is the purpose of this part of the sub-section.

For instance, all the EU Commission Directorates-General prepare: (i) multi-annual plans; (ii) annual plans; and (iii) annual reports.⁶⁸ Therefore, it is possible to consult these documents to see if and how DG EMPL plans and reports its activities under the mandate of the EU CRPD focal point. As the documentary search concluded in December 2018, the ensuing investigation considers the most recent documents on that date.

(i) The DG EMPL Strategic Plan 2016-2020 barely mentions disability.⁶⁹ The Plan states that DG EMPL is committed to protecting persons with disabilities in their workplace,⁷⁰ and on improving social policies and social protection for persons with disabilities.⁷¹ The CRPD is mentioned only once

⁶⁷ Lisa Waddington, ‘The European Union and the United Nations Convention on the Rights of Persons with Disabilities: A Story of Exclusive and Shared Competences’ (2011) 18 *Maastricht Journal of European and Comparative Law* 431, 452.

⁶⁸ ‘Strategy Documents’ (*European Commission*) <https://ec.europa.eu/info/strategy/strategy-documents_en> accessed 10 January 2019.

⁶⁹ ‘Strategic Plan 2016-2020 - Employment, Social Affairs and Inclusion DG’ (EU Commission 2016) Ares(2016)1275012 <https://ec.europa.eu/info/sites/info/files/strategic-plan-2016-2020-dg-empl_march2016_en.pdf> accessed 11 January 2019.

⁷⁰ *ibid* 4.

⁷¹ *ibid* 16.

without clarifying the planned contribution to the implementation of the Convention.⁷²

(ii) Also the DG EMPL Management Plan 2018 includes few items about disability.⁷³ In detail, the Plan schedules an evaluation of the Disability Strategy,⁷⁴ the financial support of disability-related CSOs (i.e. the European Network of Academic Experts),⁷⁵ and the promotion of the European Day of Persons with Disabilities and the Access City Award.⁷⁶

(iii) Lastly, the DG EMPL 2017 Annual Activity Report summarises the realisation of the previous year's planned activities. As the planned disability-related activities were a few, it is comprehensible why also the Report includes few mentions on disability.⁷⁷

Therefore, the analysis of the DG EMPL planned and reported activities shows that, officially, there is no clear commitment to the respect, protection, and fulfilment of the human rights of persons with disabilities. This finding is surprising after having said that the DG EMPL hosts the EU Commission Disability Unit, which acts under the mandate of the EU CRPD focal point. However, the probable explanation for this finding is that the promotion of informal activities counterbalances a few mentions in official documents. Once again, the informality and confidentiality of the EU Commission governance affect this research's analysis, which needs to deduct its conclusions.

As suggested by the DG EMPL Management Plan 2018, the DG EMPL can finance CSOs, NGOs, and DPOs. The Plan expressly referred to ANED, which shows the tendency of the EU Commission to consult external experts, as mentioned in Section 5.2.1.1. In addition to experts, often "the Commission

⁷² *ibid.*

⁷³ 'Management Plan 2018 - Employment, Social Affairs and Inclusion DG' (EU Commission 2017) Ares(2017)6261754
<https://ec.europa.eu/info/sites/info/files/file_import/management-plan-empl-2018_en.pdf>
accessed 10 January 2019.

⁷⁴ *ibid* 13.

⁷⁵ *ibid.*

⁷⁶ *ibid* 24.

⁷⁷ 'Annual Activity Report 2017 - Employment, Social Affairs and Inclusion DG' (EU Commission 2018) Ares(2018)2935868
<https://ec.europa.eu/info/sites/info/files/empl_aar_2017_final.pdf> accessed 10 January 2019.

financially supports [...] organisations' advocacy capacity and their EU-wide network",⁷⁸ as confirmed in the Non Paper.

During the interviews, several questions focused on the use of funding because the control of money can be a resource to influence, as suggested by Nye.⁷⁹ Replying to one of these questions, a civil society activist interviewee explained that:

[when it comes to financing disability-related CSOs] the decision about the funding is made by the Disability Unit, which is also the focal point for the CRPD.⁸⁰

This point is exciting, and it is a finding of the research because this is the evidence that the Disability Unit is a deliberative entity. The interviewee's insight inspired a documentary search about the allocation of funding. For instance, documents show that: on one hand, the European Disability Forum (EDF) received more than one million euros both in 2017⁸¹ and in 2018;⁸² on the other hand, the European Network on Independent Living (ENIL) received two hundred thousand euros in 2017⁸³ and nothing in 2018.⁸⁴

In one of its newsletters, ENIL expressed its concerns and stated that "a number of MEPs have sent a written question to the European Commission, asking the Commission why it stopped funding ENIL at the end of 2017".⁸⁵ Probably, this means that ENIL had previously asked some MEPs to put pressure on the Disability Unit about the issue. As a result, seven MEPs wrote the EU Commission asking "[...] why has the Commission cut its support to the only fully user-led cross-disability network at EU level, given that ENIL is a well-

⁷⁸ EU Commission Non Paper Setting-up at EU level of the Framework required by Art. 33.2 of the UN Convention on the Rights of Persons with Disabilities 9.

⁷⁹ See Section 3.3.1: Joseph S Nye, *Soft Power: The Means to Success in World Politics* (Public Affairs 2004) 2.

⁸⁰ 'Interviewee 7' (n 36) 13.

⁸¹ 'Grants Awarded as a Result of the Call for Proposals VP/2016/013' (EU Commission 2017) 2–3 <<https://ec.europa.eu/social/BlobServlet?docId=17843&langId=en>> accessed 10 January 2019.

⁸² 'Grants Awarded as a Result of the Call for Proposals VP/2016/013' (EU Commission 2018) 5–6 <<https://ec.europa.eu/social/BlobServlet?docId=19758&langId=en>> accessed 10 January 2018.

⁸³ 'Grants Awarded as a Result of the Call for Proposals VP/2016/013' (n 80) 1.

⁸⁴ 'Grants Awarded as a Result of the Call for Proposals VP/2016/013' (n 81).

⁸⁵ 'ENIL's Members Mailing #3' (16 January 2019).

respected organisation, and that hundreds of thousands of persons with disabilities in the EU still live in long-stay residential institutions or without adequate support [...]?”⁸⁶ The DG EMPL Commissioner replied that “[...] ENIL’s application was carefully evaluated by a committee against pre-announced criteria related to relevance, quality, EU added value, results and cost-effectiveness. ENIL’s application did not reach the minimum score for award and was rejected”.⁸⁷

However, the civil society activist interviewee observed:

*that the evaluation is not done by independent evaluators but by the same unit who is meant to implement the CRPD.*⁸⁸

In sum, the interviewee is suggesting that the EU Commission Disability Unit uses its economic power⁸⁹ to exercise its influence on entities that have the mandate to monitor its work as EU CRPD focal point. The research has already reached a similar conclusion in Section 4.3.1.1 about the EU Commission that assigned no additional resources to the EU CRPD monitoring framework and its members. Therefore, the research has revealed two situations where the EU Commission tries to exert its legitimate control over resources to influence entities that concern the implementation and monitoring of the CRPD.

It would be interesting to understand what was the work of ENIL that could have been affected by this suspension of funding. Such an understanding would suggest what the real target of the EU Commission’s attempt to influence was. It is possible to infer its real target by the October 2015 DHLG meeting’s analysis. In fact, during this meeting, ENIL presented its outcomes as a result of the EU Commission sponsorship. These were two reports on independent living rights, one of which focused on the use of ESI Funds.⁹⁰ Since ENIL was using the EU

⁸⁶ ‘Parliamentary Questions - Question for Written Answer E-005505/2018 to the Commission’ (*European Parliament*, 29 October 2018) <http://www.europarl.europa.eu/doceo/document/E-8-2018-005505_EN.html> accessed 16 January 2019.

⁸⁷ ‘Parliamentary Questions - Answer given by Ms Thyssen on Behalf of the European Commission - Question Reference: E-005505/2018’ (*European Parliament*, 9 January 2019) <http://www.europarl.europa.eu/doceo/document/E-8-2018-005505-ASW_EN.html> accessed 16 January 2019.

⁸⁸ ‘Interviewee 7’ (n 36) 13.

⁸⁹ See Section 3.3.1: Nye (n 78) 31.

⁹⁰ ‘Minutes of the EU Disability High Level Group Meeting’ (EU Commission 2015) 4

Commission funding to monitor the EU Commission itself on the use of ESI Funds, did ENIL's funding suspension aim to avoid external monitoring on the ESI Funds governance?

This intuition might be just speculative if it was not supported by the feeling of the previously quoted interviewee who admitted that:

since [ENIL] launched this EU Funds For Our Rights campaign, I think that was the nail in the coffin. [ENIL's activists] were consistently really criticising [the Disability Unit].⁹¹

These pieces of evidence prove the existence of influencing relationships that can be harsh, although belonging to soft governance processes.

5.2.2.3 The Disability Unit's events

As suggested by the DG EMPL Management Plan 2018, the DG EMPL can finance CSOs and events. Among the events, the Plan emphasises the European Day of Persons with Disabilities and the Access City Award.⁹² The relevant Budget Report shows that these two events cost seven hundred thousand euros in 2017.⁹³ Since the previous part of this sub-section concluded that the Disability Unit tends to use money as a resource to influence, it is probable that it invests in these two events with the attempt to exercise its influence. This part of the sub-section seeks verification of this assertion.

The following inductive analysis suggests that the two events are soft instruments that promote the implementation of the CRPD at the national and local levels. As such, their organisation is a strategy of the EU Commission Disability Unit to exercise its influence. The DG EMPL thematic webpage on disability includes information about: (i) the European Day of Persons with Disabilities; and (ii) the Access City Award.⁹⁴

(i) The European Day of Persons with Disabilities was mentioned by Priestley, revealing that "in 1993 a Disabled People's Parliament was held to

<<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=1259>> accessed 18 December 2018.

⁹¹ 'Interviewee 7' (n 36) 13.

⁹² 'Management Plan 2018 - Employment, Social Affairs and Inclusion DG' (n 72) 24.

⁹³ EU Commission Communication, 2017 Annual Management and Performance Report for the EU Budget 2018 (COM(2018) 457 final) 56.

⁹⁴ 'Persons with Disabilities' (n 51).

mark the first European Day of Disabled People, at which around 500 participants agreed recommendations to the Commission”.⁹⁵ Since that first time, 3 December celebrates the European Day of Persons with Disabilities. This initiative took inspiration by the United Nations, which “proclaim[ed] 3 December as the international Day of Disabled Persons” the previous year.⁹⁶

The DG EMPL thematic webpage on disability includes information about the European Day of Persons with Disabilities for the years from 2014 to 2018.⁹⁷ Mostly, these are conferences that focus on disability-related vital issues. The available documents include the conferences’ programmes and reports. These show the names of the conference speakers, which have been included in this thesis’ list of potential interviewees.⁹⁸

Although independent living rights were not among the significant issues of the last five conferences, several panellists talked about them. In particular, the 2018 event hosted a seminar of FRA that “provid[ed] an opportunity to discuss how policymakers and practitioners can implement successful deinstitutionalisation processes”.⁹⁹ The pictures of the event show that several

⁹⁵ Mark Priestley, ‘We’re All Europeans Now! The Social Model of Disability and European Social Policy’ in Colin Barnes and Geoffrey Mercer (eds), *The Social Model of Disability: Europe and the Majority World* (The Disability Press 2005) 21 <<https://disability-studies.leeds.ac.uk/wp-content/uploads/sites/40/library/Barnes-EMW-Chapter-2.pdf>> accessed 8 January 2019.

The recommendations to the EU Commission can be found here:

‘First European Disabled People’s Parliament’ (1993)
<<http://www.disability.co.uk/sites/default/files/resources/first%20European%20Disabled%20People%27s%20parliament.pdf>> accessed 8 January 2019.

⁹⁶ UN General Assembly Resolution, International Day of Disabled Persons 1992 (A/RES/47/3).

⁹⁷ ‘European Day of Persons with Disabilities 2014’ (*Employment, Social Affairs & Inclusion*) <<https://ec.europa.eu/social/main.jsp?catId=88&langId=en&eventsId=1063&furtherEvents=yes>> accessed 10 January 2019; ‘European Day of Persons with Disabilities 2015’ (*Employment, Social Affairs & Inclusion*) <<https://ec.europa.eu/social/main.jsp?langId=en&catId=88&eventsId=1069&furtherEvents=yes>> accessed 10 January 2019; ‘European Day of Persons with Disabilities 2016’ (*Employment, Social Affairs & Inclusion*) <<https://ec.europa.eu/social/main.jsp?langId=en&catId=88&eventsId=1152&furtherEvents=yes>> accessed 10 January 2019; ‘European Day of Persons with Disabilities 2017’ (*Employment, Social Affairs & Inclusion*) <<https://ec.europa.eu/social/main.jsp?catId=88&eventsId=1264&furtherEvents=yes&langId=en>> accessed 10 January 2019; ‘European Day of Persons with Disabilities 2018’ (*Employment, Social Affairs & Inclusion*) <<https://ec.europa.eu/social/main.jsp?langId=en&catId=1137&eventsId=1352&furtherEvents=yes>> accessed 8 January 2019.

⁹⁸ See Section 1.4.1.

⁹⁹ ‘European Day of Persons with Disabilities 2018’ (n 96).

hundreds of persons attended the conference. They also show urgent attention to accommodate any linguistic difference in order for everyone to properly understand the issues at stake.¹⁰⁰

The event is an occasion to share best practices and to harmonise the approach to similar issues. The European Day of Persons with Disabilities seems the enlarged version of the Work Forum, which in turn looks like the enlarged version of the Disability High Level Group.¹⁰¹ This scaling up aims to involve different actors, and they have both horizontal and vertical effects. The horizontal effect enlarges the public to any disability-related organisation. The vertical effect enlarges the public to any local level organisation.

This consideration means that, for instance, the mentioned seminar offered by FRA trained national and local organisations about implementing and monitoring deinstitutionalisation policies. In turn, this is the first step of harmonisation processes, which represent an opportunity to influence the implementation of the CRPD and independent living rights.

Lastly, as explained in Section 4.3.2 about the EU CRPD monitoring framework, the European Day of Persons with Disabilities offers networking opportunities that other entities can exploit to supplement their scarce resources and increase their chances to exercise influence. Therefore, the creation and management of international networks is a constant strategy of the EU CRPD-related governance to reach and possibly influence the national and local levels.

(ii) The European Day of Persons with Disabilities hosts the prize-giving ceremony of the Access City Award. The EU Commission clarified that “the Access City Award is one of the actions foreseen in the EU disability strategy¹⁰² that aims at making Europe barrier-free for persons with disabilities”.¹⁰³ The planning of an award is a different strategy from the establishment of a network. Generally speaking, while networks spread best practices, contests reward best

¹⁰⁰ ‘European Day of Persons with Disabilities 2018’ (*flickr*)
<<https://www.flickr.com/photos/socialeurope/sets/72157704220670424/>> accessed 10 January 2019.

¹⁰¹ See Section 4.4.4.

¹⁰² EU Commission, Initial plan to implement the European Disability Strategy 2010-2020 - List of Actions 2010-2015 (SEC(2010) 1324 final) 5, 17.

¹⁰³ ‘Disabilities: Access City Award 2016 for Accessible-Friendly Cities Goes to Milan!’ (*Employment, Social Affairs & Inclusion*)
<<https://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=2410&furtherNews=yes>> accessed 10 January 2019.

practices. As the Award targets cities, the measure is specifically designed to involve the local level.

The local level shows interest in the initiative, as proved by the fact that “more than 250 EU cities have participated in [...] 6 editions of the Access City Award”.¹⁰⁴ A 2016 study revealed that “there are over 800 cities with more than 50,000 inhabitants in the European Union”,¹⁰⁵ which implies that almost one out of three EU cities participated in the Access City Award. “The Access City Award recognises and celebrates efforts by European cities to improve accessibility and promote inclusion”.¹⁰⁶ Such efforts are published and represent examples of best practices upon which European cities can build their experience.¹⁰⁷

Therefore, the Access City Award is a new and exciting strategy of the EU Commission to influence the local level on the correct implementation of the CRPD. First of all, the initiative reaches the local level bypassing national governments and the competence issue. Second, cities focus on CRPD-related issues not because obliged but because stimulated. Third, the competition promotes an intense production of original outputs that are shared as best practices. Lastly, every city involved in the Award starts domestic processes that go beyond the event itself. Probably, the best result of the Access City Award is a positive influence on the disability-sensitive culture. It is not a matter of EU funding; it regards culture and values instead.

Lastly, it is interesting to mention the 2019 attempt of the Disability Unit to create an Access City Award Network.¹⁰⁸ As pointed above, the establishment of international networks is a constant strategy of the EU CRPD-related governance. This new network confirms such a tendency. In fact, although the

¹⁰⁴ *ibid.*

¹⁰⁵ Kersten Nabilek, David Hamers and David Evers, ‘Cities in Europe - Facts and Figures on Cities and Urban Areas’ (PBL Publishers) 10
<https://ec.europa.eu/futurium/en/system/files/ged/pbl_2016_cities_in_europe_23231.pdf>
accessed 30 December 2019.

¹⁰⁶ ‘Access City Award’ (*Employment, Social Affairs & Inclusion*)
<<https://ec.europa.eu/social/main.jsp?catId=1141>> accessed 1 February 2019.

¹⁰⁷ ‘Access City Awards - Winners and Finalists’ (*European Commission*)
<https://ec.europa.eu/info/publications/access-city-award-winners-showcase_en>
accessed 10 January 2019.

¹⁰⁸ ‘Access City Award 2019 - Boosting the Access City Award Network!’ (*Employment, Social Affairs & Inclusion*)
<<https://ec.europa.eu/social/main.jsp?langId=en&catId=1141&eventsId=1346&furtherEvents=yes>> accessed 10 January 2019.

Award is a different kind of strategy, it offered the opportunity to create a network, and the Disability Unit took advantage of the opportunity. In turn, this newly established international network will probably increase the opportunities of the Award to exercise its influence on the local level.

5.3 The EU Parliament

This section focuses on the EU Parliament, which is a member of the established EU CRPD monitoring framework. While the previous chapter explained the role of the EU CRPD monitoring framework in the EU CRPD-related governance, this section investigates the individual contribution of the EU Parliament to the implementation of the Convention. The analysis seeks pieces of evidence about the EU Parliament's opportunities to influence the implementation of the CRPD and independent living rights. This section includes two sub-sections. The first sub-section is a brief overview of the EU Parliament and its governance. The second sub-section investigates the role of the principal EU Parliament's committees and intergroups that oversee CRPD-related matters.

The EU Parliament is one of the seven institutions of the EU.¹⁰⁹ "The European Parliament is the EU's law-making body".¹¹⁰ "As an institution representing the citizens of Europe, Parliament forms the democratic basis of the European Union".¹¹¹ The EU Parliament is composed of Members of the European Parliament (MEPs) who represent the Union's citizens.¹¹² These elect MEPs for five-year terms.¹¹³ "The European Parliament shall, jointly with the Council, exercise legislative and budgetary functions".¹¹⁴ This means that while

¹⁰⁹ TEU Art 13.1.

The seven institutions of the European Union are: (i) the European Parliament; (ii) the European Council; (iii) the Council; (iv) the European Commission; (v) the Court of Justice of the European Union; (vi) the European Central Bank; and (vii) the Court of Auditors.

¹¹⁰ 'European Parliament' (*European Union*) <https://europa.eu/european-union/about-eu/institutions-bodies/european-parliament_en> accessed 14 January 2019.

¹¹¹ 'The European Parliament: Powers' (European Parliament 2018) 1 <http://www.europarl.europa.eu/ftu/pdf/en/FTU_1.3.2.pdf> accessed 14 January 2019.

¹¹² TEU Art 14.2.

¹¹³ *ibid* Art 14.3.

¹¹⁴ *ibid* Art 14.1.

the EU Commission has the monopoly of the legislative initiative,¹¹⁵ its proposals must be voted by the EU Parliament and Council in order to become EU law. Once approved, the EU Commission shall implement EU law.¹¹⁶ The process about the Parliament and Council jointly voting legislative proposals is the “ordinary legislative procedure”,¹¹⁷ also known as “co-decision procedure”.¹¹⁸ Besides, the EU Treaties establish that “any citizen of the Union [...] shall have the right to address [...] a petition to the European Parliament on a matter which comes within the Union’s fields of activity”.¹¹⁹ Furthermore, the EU Parliament elects the EU Ombudsman.¹²⁰ Lastly, following the EU conclusion of the CRPD, any outcome of the EU Parliament should comply with the Convention because the EU Parliament has the duty to respect the international treaties the EU has acceded to.¹²¹

5.3.1 The EU Parliament governance: committees and intergroups

“The organisation and operation of the European Parliament are governed by its Rules of Procedure.¹²² The political bodies, committees, delegations and political groups guide Parliament’s activities”.¹²³ An understanding of the Parliament’s institutional organisation is essential to explain how its activities could influence the implementation of the CRPD.

As the EU Commission, also the EU Parliament includes a political level and an operational level. While the elected MEPs represent the political level, the operational level regards the institutional secretariat that shall assist MEPs.¹²⁴ However, the operational levels of the EU Commission and Parliament have very different missions. In fact, while the EU Commission’s operational level

¹¹⁵ *ibid* Art 17.2.

¹¹⁶ *ibid* Art 17.1.

¹¹⁷ TFEU Art 289.

¹¹⁸ ‘The European Parliament: Powers’ (n 110) 2.

¹¹⁹ TFEU Art 227.

¹²⁰ *ibid* Art 228.

¹²¹ *ibid* Art 216.2.

¹²² ‘Rules of Procedure of the European Parliament’ (European Parliament 2018) <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+RULES-EP+20180731+0+DOC+PDF+V0//EN&language=EN>> accessed 14 January 2019.

¹²³ ‘The European Parliament: Organisation and Operation’ (European Parliament 2018) 1 <http://www.europarl.europa.eu/ftu/pdf/en/FTU_1.3.3.pdf> accessed 14 January 2019.

¹²⁴ ‘Rules of Procedure of the European Parliament’ (n 121) Rule 222.

shall support the political level and oversee the implementation of EU law, the EU Parliament's Secretariat has no implementation duties. This because only the EU Commission has the mandate to implement and monitor EU legislation. As such, while the previous section investigated the operational level of the EU Commission, this section primarily focuses on the EU Parliament's political level.

The governance of the EU Parliament's political level includes: (i) political bodies; (ii) committees and sub-committees; (iii) delegations; (iv) political groups; and (v) intergroups. (i) The political bodies are offices with specific institutional mandates that are led by MEPs.¹²⁵ (ii) The committees are groups of MEPs that focus on specific policy areas, for which they "examine proposals for legislation, and [...] can put forward amendments or propose to reject a bill".¹²⁶ (iii) The "delegations are official groups of MEPs (Members of the European Parliament) who develop relations with the parliaments of non-EU countries, regions or organisations".¹²⁷ (iv) Political groups¹²⁸ include MEPs according to their political affinities.¹²⁹ Lastly, (v) Intergroups unofficially gather MEPs with "the purpose of holding informal exchanges of views on specific issues across different political groups, drawing on members of different parliamentary committees, and of promoting contact between Members and civil society".¹³⁰

An interviewed MEP was asked to clarify the difference between committees and intergroups, and the following explanation summarises her reply. Intergroups have no formal mandate or power. They gather MEPs from different committees to discuss topics that have horizontal consideration. After having discussed within intergroups, MEPs bring the outcomes of these discussions to the committees they belong to. The result is that the law-making work of the committees includes and considers previous discussions taken within the different intergroups. This process entails that any intergroups' topic should

¹²⁵ 'The European Parliament: Organisation and Operation' (n 122) 3.

¹²⁶ 'European Parliament' (n 109).

¹²⁷ 'Delegations - Introduction' (*European Parliament*) <<http://www.europarl.europa.eu/delegations/en/about/introduction>> accessed 14 January 2019.

¹²⁸ 'About Parliament - The Political Groups of the European Parliament' (*European Parliament*) <<http://www.europarl.europa.eu/about-parliament/en/organisation-and-rules/organisation/political-groups>> accessed 14 January 2019.

¹²⁹ 'Rules of Procedure of the European Parliament' (n 121) Rule 32.

¹³⁰ *ibid* Rule 34.

be mainstreamed within any committees' draft law. Therefore, although not having a formal mandate or power, intergroups have an important soft role.¹³¹

In short, intergroups are like corporatist networks¹³² that try to lobby and influence the work of committees. In turn, committees work on the legislative proposals of the EU Commission,¹³³ and they can influence the co-decision procedure.¹³⁴ Therefore, intergroups and committees can exercise their influence to include CRPD principles into EU law. As explained in Section 4.2.1, the incorporation of human rights principles into hard law is an implementation strategy. Section 5.2.1 explained that this strategy starts with the official legislative initiative of the EU Commission. Therefore, the work of EU Parliament intergroups and committees is another step of the same strategy. This strategy is pivotal to influence the national and local levels because, as the interviewed MEP pointed:

*all of the rules and regulations and laws which are adopted, included the ratification of the CRPD, will have an impact on the national level.*¹³⁵

Also the documentary search has gathered interesting information about committees and intergroups, which are the main focus of the following parts of this section. The documentary investigation found 23 EU Parliament committees,¹³⁶ and 28 EU Parliament intergroups.¹³⁷ Only a few of them focus on CRPD-related issues.

As far as committees are concerned, the Non Paper entrusted the Petition (PETI) Committee with the task of representing the EU Parliament in the EU CRPD monitoring framework.¹³⁸ In addition, the framework's meeting minutes

¹³¹ 'Interviewee 4' (20 March 2018) 1.

¹³² See Section 3.5.3: Slaughter (n 34) 9.

¹³³ See Section 5.2.1.

¹³⁴ See above.

¹³⁵ 'Interviewee 4' (n 130) 1.

¹³⁶ 'Committees - Parliamentary Committees' (*European Parliament*) <<http://www.europarl.europa.eu/committees/en/parliamentary-committees.html>> accessed 14 January 2019.

¹³⁷ 'About Parliament - The Intergroups of the European Parliament' (*European Parliament*) <<http://www.europarl.europa.eu/about-parliament/en/organisation-and-rules/organisation/intergroups>> accessed 14 January 2019.

¹³⁸ EU Commission Non Paper Setting-up at EU level of the Framework required by Art. 33.2

show that, in 2013, PETI was substituted by the Employment and Social Affairs (EMPL) Committee.¹³⁹ Therefore, this is evidence that these two committees are related to the EU CRPD-related governance more than others. For this reason, the analysis narrows its focus on these two committees. Lastly, as the PETI¹⁴⁰ and EMPL¹⁴¹ Committees' members' identities are in the public domain, they have been included in this thesis' list of potential interviewees.¹⁴²

As far as intergroups are concerned, the documentary search discovered that one EU Parliament intergroup focuses explicitly on disability issues. For this reason, the following analysis explores the activities of this Disability Intergroup. Its list of members is public,¹⁴³ and they have been included in this thesis list of potential interviewees.¹⁴⁴ Besides, it is possible to consult a "declaration of financial interest" stating that the Disability Intergroup has its expenses covered either by MEPs or by the European Disability Forum.¹⁴⁵ This link between EDF and the EU Parliament is actual because the Forum "cooperates closely with the Disability Intergroup and acts as its Secretariat".¹⁴⁶ Therefore, it will be interesting to explore also this cooperation.

5.3.2 The EU Parliament EMPL Committee, PETI Committee, And Disability Intergroup

This sub-section includes three parts that analyse the opportunities to influence the implementation of the CRPD of: (i) the EMPL Committee; (ii) the PETI Committee; and (iii) the Disability Intergroup. Also, this introduction presents two

of the UN Convention on the Rights of Persons with Disabilities 1.

¹³⁹ 'Meeting of the EU Framework to Promote, Protect and Monitor the UNCRPD' (EU CRPD Framework 2014) 2 <<http://fra.europa.eu/en/theme/people-disabilities/eu-crpd-framework/resources>> accessed 11 December 2018.

¹⁴⁰ 'Committees - PETI - Members' (*European Parliament*) <<http://www.europarl.europa.eu/committees/en/peti/members.html>> accessed 14 January 2019.

¹⁴¹ 'Committees - EMPL - Members' (*European Parliament*) <<http://www.europarl.europa.eu/committees/en/empl/members.html>> accessed 14 January 2019.

¹⁴² See Section 1.4.1.

¹⁴³ 'About Parliament - The Intergroups of the European Parliament' (n 136).

¹⁴⁴ See Section 1.4.1.

¹⁴⁵ 'About Parliament - The Intergroups of the European Parliament' (n 136).

¹⁴⁶ 'Disability Intergroup of the European Parliament' (*European Disability Forum*) <<http://www.edf-feph.org/disability-intergroup-european-parliament>> accessed 14 January 2019.

preliminary remarks about the EMPL and PETI Committees. The two remarks are about the relocation of the EU Parliament delegate within the EU CRPD monitoring framework from the PETI to the EMPL Committee. Reasoning on this is interesting because the situation is similar to the relocation of the Disability Unit from DG JUST to DG EMPL.¹⁴⁷

The first remark starts with the consideration that the Non Paper designated the PETI Committee as a member of the EU CRPD monitoring framework.¹⁴⁸ Then, the EU Parliament Conference of Presidents¹⁴⁹ entrusted the EMPL Committee with the task.¹⁵⁰ As suggested in Section 4.3.1.1, the Non Paper can be described as a soft law document. Thus, the unilateral decision to relocate the delegate has been possible only due to the soft nature of the Non Paper. In fact, the soft Non Paper set up a soft governance architecture, which is characterised by flexibility. As theorised by Sabel and Zeitlin, flexibility is a crucial characteristic of the new EU governance.¹⁵¹ The relocation revealed how the EU Parliament used this flexibility.

Sections 5.2.2 and 4.2.3 emphasised that the EU Council Decision entrusted the broad EU Commission with the EU CRPD focal point mandate.¹⁵² On the other hand, the Non Paper designated a specific body of the EU Parliament to represent the institution in the EU CRPD monitoring framework.¹⁵³ The opportunity for the Non Paper to include more specific provisions is a consequence of its soft stance. The EU Council Decision is hard law, and the relocation of the Disability Unit could not have been decided on soft bases if the Decision had been more specific. As Newman and Posner suggest, soft law is simpler to ratify because it can be infringed.¹⁵⁴ This case shows that *infringe* may

¹⁴⁷ See Section 5.2.2.1.

¹⁴⁸ EU Commission Non Paper Setting-up at EU level of the Framework required by Art. 33.2 of the UN Convention on the Rights of Persons with Disabilities 1.

¹⁴⁹ 'Rules of Procedure of the European Parliament' (n 121) Rule 26. "The Conference of Presidents shall consist of the President of Parliament and the Chairs of the political groups [...]"

¹⁵⁰ 'Meeting of the EU Framework to Promote, Protect and Monitor the UNCRPD' (n 138) 2.

¹⁵¹ See Section 3.4.3: Sabel and Zeitlin (n 33).

¹⁵² EU Council Decision 2010/48/EC Article 3.

¹⁵³ EU Commission Non Paper Setting-up at EU level of the Framework required by Art. 33.2 of the UN Convention on the Rights of Persons with Disabilities 1.

¹⁵⁴ See Section 3.4.3: Abraham Newman and Elliot Posner, *Voluntary Disruptions: International Soft Law, Finance, and Power* (1st edn, Oxford University Press 2018) chs 1–2.

mean that a situation is flexible and easy to adapt. Therefore, this inductive analysis has explained that the need for flexibility can be satisfied with hard norms when not too specific, as well as with soft norms in any case.

The second remark is about the reasons underpinning the decision to substitute the PETI with the EMPL Committee as a delegate in the EU CRPD monitoring framework. Since the research found no official document explaining such a decision, any reason can be only inferred. For instance, one possible reason is that the relocation of the task to the EU Parliament EMPL Committee was an attempt to harmonise with the relocation of the EU Commission Disability Unit within the DG EMPL. This possibility is supported by the fact that the two institutional changes occurred in the same year. Informal agreements with the two institutions probably took place beforehand. Section 5.2.2.1 suggested that the institutional position of the offices with CRPD-related mandates can reflect the approach to the implementation of the Convention. Therefore this harmonisation between the EU Parliament and Commission confirms the EU tendency to approach the implementation of the Convention with a social prerogative.

The previous section showed that the approach of the EU could influence the national and local levels. In addition to this, there is also a competence issue that derives from the approach to the Convention. For instance, an interviewed European parliamentarian was asked how the EU Parliament can influence the implementation of independent living rights, and the reply was that:

[independent living rights are considered social affairs, as such] the Council and all the Member States say that social affairs are our competence [...] with social affairs it's national competence, [the EU Parliament] can't touch it, [the EU Parliament] can try to influence it.¹⁵⁵

The interviewee said that they could not force, but they can influence the implementation of independent living rights. Indeed, this idea is at the basis of this research.

¹⁵⁵ 'Interviewee 4' (n 130) 2.

This finding entails that the EU social approach to the CRPD implementation: on one hand (i) can exercise influence through suggesting best practices to import; on the other hand (ii) can affect the interpretation of the conferral about the duties to implement the Convention. On this, the interviewee was clear:

*the barriers to my work are the EU Treaties saying that social affairs are a national competence.*¹⁵⁶

The interviewee is right. However, does the EU interpretation of the CRPD implementation as a social matter instead of as a human rights issue increase or decrease the opportunities of the EU-CRPD related governance to influence the implementation of the Convention?

This question suggests the exercise of situational influence.¹⁵⁷ In fact, the harmonised approach to the CRPD implementation sets a situation within which influencing relationships take place. The borders of these influencing relationships are affected by the approach to the CRPD implementation because *social affairs are national competence*. As such, the EU social approach to the CRPD implementation can be: either (i) the successful strategy of the EU to increase its influence on the EU Member States; or (ii) the successful strategy of the EU Member States to resist the EU influence. Therefore, it is probable that the decisions to relocate the EU Commission and Parliament CRPD-related centres of influence under their EMPL departments are part of the same strategy.

5.3.2.1 The EMPL Committee's opportunities to influence

This part of the sub-section focuses on the EMPL Committee of the EU Parliament with the attempt to show its opportunities to influence the implementation of the CRPD and independent living rights. The following inductive analysis considers the available documents as well as the relevant passages of the conducted interviews.

The EMPL Committee has a dedicated webpage, which revealingly states the aim “to influence and to determine the legislative framework in the areas for

¹⁵⁶ *ibid* 4.

¹⁵⁷ See Section 3.2.3: Keith M Dowding, *Rational Choice and Political Power* (Edward Elgar 1991) 47–49.

which it is responsible”.¹⁵⁸ As for any committee, the Rules of Procedure of the European Parliament lists such areas. Surprisingly, the EMPL list of areas of competence mentions neither disability nor the CRPD.¹⁵⁹ However, this thesis’ documentary search has already established the relevance of the EMPL Committee for CRPD-related matters due to its mandate within the EU CRPD monitoring framework.

The EMPL Committee’s on-line tool¹⁶⁰ includes two reports on disability issues: the 2016 report focuses on the EU implementation of the CRPD,¹⁶¹ and the 2017 one is about the implementation of the Disability Strategy.¹⁶² As these two reports seem to be the most important and official outcomes of the EMPL Committee about disability, they are worth an investigation.

The 2016 report recommends a Parliamentary Resolution¹⁶³ on the 2015 CRPD Committee Concluding Observations on the EU.¹⁶⁴ For the purposes of this thesis, the report’s key passages are: (i) the recognition of the CRPD as EU law hierarchically superior to secondary legislation;¹⁶⁵ (ii) the need for a human-rights approach to disability;¹⁶⁶ (iii) the recognition of ESI Funds as a means for implementing the Convention and independent living rights;¹⁶⁷ (iv) the urgency to foster deinstitutionalisation;¹⁶⁸ (v) the need for a stronger EU CRPD-related

¹⁵⁸ ‘Committees - EMPL - Highlights’ (*European Parliament*)
<<http://www.europarl.europa.eu/committees/en/empl/home.html>> accessed 15 January 2019.

¹⁵⁹ ‘Rules of Procedure of the European Parliament’ (n 121) Annex V.

¹⁶⁰ ‘Committees - EMPL - Documents’ (*European Parliament*)
<<http://www.europarl.europa.eu/committees/en/empl/search-in-documents.html>> accessed 15 January 2019.

¹⁶¹ Helga Stevens, ‘Report on the Implementation of the UN Convention on the Rights of Persons with Disabilities, with Special Regard to the Concluding Observations of the UN CRPD Committee (2015/2258(INI))’ (European Parliament 2016) A8-0103/2016
<<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2016-0203+0+DOC+PDF+V0//EN&language=EN>> accessed 15 January 2019.

¹⁶² Stevens (n 11).

¹⁶³ EU Parliament Resolution, Implementation of the UN Convention on the Rights of Persons with Disabilities 2016 (P8_TA(2016)0318).

¹⁶⁴ ‘Concluding Observations on the Initial Report of the European Union’ (n 62).

¹⁶⁵ Stevens (n 160) 6.

¹⁶⁶ *ibid* 10–11.

¹⁶⁷ *ibid* 24–25.

¹⁶⁸ *ibid* 25.

governance;¹⁶⁹ and (vi) the recognition of the importance of the PETI Committee in protecting EU citizens against a wrong implementation of the Convention.¹⁷⁰

The 2017 report recommends a Parliamentary Resolution¹⁷¹ on the implementation of the European Disability Strategy.¹⁷² For the purposes of this thesis, the report's key passages are: (i) the recognition of the CRPD as an instrument of EU secondary legislation;¹⁷³ (ii) the recognition of a human rights approach to disability and independent living;¹⁷⁴ (iii) the recognition of ESI Funds as a means for implementing the Convention and independent living rights;¹⁷⁵ (iv) the need for deinstitutionalisation as well as for alternative measures;¹⁷⁶ and (v) the narrow linkage between the Disability Strategy and the CRPD.¹⁷⁷

In addition to the listed vital passages, the 2016 and 2017 reports have two crucial common points.

(i) The first common point is that both the reports show a monitoring prerogative because they stress and urge the EU Commission to implement CRPD-related measures. On this matter, Section 4.3 explained that the EU CRPD monitoring framework does not author reports because it is not an independent entity. Also Priestley, Raley, and De Beco pointed out that “the Framework has no competence to formulate any significant joint opinion or initiative since each member may act only in accordance with their respective individual mandate”.¹⁷⁸ As such, the mentioned two reports are an example of the individual monitoring initiative of an EU CRPD monitoring framework's member. In fact, the framework meetings' minutes show that these two reports

¹⁶⁹ *ibid* 29–30.

¹⁷⁰ *ibid* 30–31.

¹⁷¹ EU Parliament Resolution, Implementation of the European Disability Strategy 2017 (P8_TA(2017)0474).

¹⁷² EU Commission Communication, European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe (COM(2010) 636 final).

¹⁷³ Stevens (n 11) 6.

¹⁷⁴ *ibid* 7.

¹⁷⁵ *ibid* 11.

¹⁷⁶ *ibid* 17.

¹⁷⁷ *ibid* 22.

¹⁷⁸ Mark Priestley, Meredith Raley and Gauthier De Beco, 'The Protection Role of the Committee on Petitions in the Context of the Implementation of the UN Convention on the Rights of Persons with Disabilities - 2016 Update' (European Parliament 2016) 16 <[http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571384/IPOL_STU\(2016\)571384_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571384/IPOL_STU(2016)571384_EN.pdf)> accessed 21 January 2018.

were discussed during the meetings themselves. On those occasions, the reports were presented as monitoring measures under the framework work programme.¹⁷⁹ Therefore, the mentioned two reports are essential not only for their contents but also for showing how the broad mandate of the EU CRPD monitoring framework is practically exercised through the individual initiative of its members.

(ii) The second common point between the two reports is that they call on both the EU and its Member States to correctly implement the CRPD. This finding is significant because it shows that also the external complementarity of the EU CRPD monitoring framework (explained in Section 4.3.1.2) passes through its members' individual activities. This consideration is striking also because the interviewee quoted above suggested that *the EU Parliament can't touch it*. However, the reports show that at least it tries to touch the CRPD implementation at the national level. Probably, the fact that Parliamentary Resolutions are not binding allows the EU Parliament to address topics of national competence. Coherently, the same interviewee clarified that:

*[the EU Parliament Resolutions are a means to] put pressure on the Member States.*¹⁸⁰

Therefore, they cannot coerce, but they can try to influence. In sum, the EU Parliament can exercise its influence on the national level, either directly addressing its Resolutions to the EU Member States or indirectly addressing its Resolutions to the EU Commission.

How can the influence of Parliamentary Resolutions be exercised? The EU Parliament Resolutions are not legislative acts; thus, they are not binding. Not being EU law, the EU Commission does not monitor their implementation. In

¹⁷⁹ 'Meeting of the EU Framework with the National Monitoring Mechanisms for the UN Convention on the Rights of Persons with Disabilities' (EU Commission 2016) 2 <<http://fra.europa.eu/en/theme/people-disabilities/eu-crpdp-framework/resources>> accessed 12 December 2018; 'Meeting of the EU Framework to Promote, Protect and Monitor the UN Convention on the Rights of Persons with Disabilities' (EU CRPD Framework 2017) 3 <<http://fra.europa.eu/en/theme/people-disabilities/eu-crpdp-framework/resources>> accessed 12 December 2018; 'Meeting of the EU Framework to Promote, Protect and Monitor the UN Convention on the Rights of Persons with Disabilities' (EU CRPD Framework 2017) 2 <<http://fra.europa.eu/en/theme/people-disabilities/eu-crpdp-framework/resources>> accessed 12 December 2018.

¹⁸⁰ 'Interviewee 4' (n 130) 1.

addition, the EU Parliament is not an executive branch, so it does not monitor their implementation either. This unclear situation is not explored in any official document. For this reason, an interviewed MEP was asked to explain how they monitor and evaluate the efficacy of their Resolutions.

In sum, the interviewee clarified that they do not monitor and evaluate the efficacy of their Resolutions because it is not their mandate. However, this is done by civil society organisations.

That's actually EDF's responsibility and their member organisations to follow up. So, we did our part. And then it's up to them to follow up with their national governments saying to look at these two Resolutions that were passed by the European Parliament. [...] There should be that sort of interaction in terms of how things move forward, right. So we take a step, they take a step, and then we take another step. So it's a collaborative effort.¹⁸¹

In sum, the interviewee's explanation depicted a kind of cycle: (i) CSOs put pressure on MEPs about specific topics; (ii) MEPs agree on the raised topics' urgency and take action; (iii) CSOs monitor that the MEPs' actions are followed up; and (iv) CSOs report to MEPs and ask for new actions. This cycle is similar to the EU experimentalist governance represented in Figure 3-5.¹⁸² It explains how the EMPL Committee can exercise its influence on the national and local levels in implementing the CRPD through its cooperation with CSOs. An example of this cooperation was the ENIL's funding issue when MEPs wrote the EU Commission asking why they suspended financing ENIL.¹⁸³

At the end of the interview, the MEP revealed that:

I just want to add a thing related to the CRPD follow up: we also have set up a CRPD Network. So the European Parliament has I think three representatives and then there are individuals from the Commission and the Council, but I think the Commission has withdrawn because their role is quite different. So this network is

¹⁸¹ *ibid* 5–6.

¹⁸² See Section 3.4.3: Jonathan Zeitlin, 'New Forms of Governance: Beyond Hierarchy?' (2016).

¹⁸³ See Section 5.2.2.2.

*another way that we're trying to follow up on the CRPD implementation. Yeah, we meet two times a year. And it's from the Employment Committee.*¹⁸⁴

The interview had no time left to deepen the topic. However, this has been investigated with a supplementary documentary search because it is interesting that a CRPD-related outcome of the EMPL Committee is the establishment of a network.

The CRPD Network was created in 2015 “in order to promote public debate and the political role of the EP in the implementation of the CRPD [and it is] assisted by the Committee Secretariats”.¹⁸⁵ The EU “Parliament has – independently of its role in the Framework –, set-up an inter-committee CRPD Network at political level [...]. The CRPD Network is, by analogy to Parliament’s membership of the Framework, chaired by EMPL”.¹⁸⁶ Therefore, the CRPD Network’s organisation is like that of the DISG of the EU Commission, which was explored in Sections 4.4.1 and 5.2.1. Probably their role is similar as well. Differently from the DISG, the CRPD Network has a dedicated webpage (subject file) from which grabbing information.¹⁸⁷ This webpage includes the list of MEPs who are members of the CRPD Network.¹⁸⁸ These have been included in this thesis list of potential interviewees.¹⁸⁹

The CRPD Network webpage includes its meetings’ minutes. Generally speaking, the analysed minutes are concise, preventing to evaluate any discussion. However, they show that CRPD matters are drawn from the EU CRPD-related governance to the attention of the different EU Parliament Committees. The minutes of the first meeting include an explanation of the CRPD

¹⁸⁴ ‘Interviewee 4’ (n 130) 8.

¹⁸⁵ ‘Committees - EMPL - Subject Files - CRPD Network’ (*European Parliament*) <<http://www.europarl.europa.eu/committees/en/empl/subject-files.html?id=20170322CDT01321>> accessed 16 January 2019.

¹⁸⁶ Irmgard Anglmayer, ‘EU Implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD)’ (European Parliament 2016) PE 536.347 13 <[http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/536347/EPRS_IDA\(2016\)536347_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/536347/EPRS_IDA(2016)536347_EN.pdf)> accessed 31 January 2019.

¹⁸⁷ ‘Committees - EMPL - Subject Files - CRPD Network’ (n 184).

¹⁸⁸ ‘CRPD Network - List of Members’ <http://www.europarl.europa.eu/cmsdata/115768/List%20of%20Members_CRPD%20Network.pdf> accessed 16 January 2019.

¹⁸⁹ See Section 1.4.1.

Network activity as it follows: “committees participating in the CRPD Network should send information on their disability related activities [...] to the EMPL Secretariat [...]. Information received will be summarised by the EMPL Secretariat and sent to the Members of the CRPD Network. This first database will be updated four times per year”.¹⁹⁰

The described process aims to create a database. This archive classifies the CRPD Network as an information network, following the classification of networks by Slaughter.¹⁹¹ In fact, the CRPD Network webpage shares five inherent kinds of documents: (i) adopted reports; (ii) adopted opinions; (iii) adopted resolutions; (iv) studies – hearings – petitions; and (v) ongoing – planned activities.¹⁹² Probably, this is a useful tool to verify the correct mainstreaming of the CRPD within the work of all the EU Parliament committees. As the EMPL Committee can influence the CRPD implementation with its soft and law-making activities, the CRPD Network aims to export this practice to all the other EU Parliament Committees.

In sum, the CRPD Network is an innovative and promising initiative of the EU Parliament EMPL Committee. As Priestley, Raley, and De Beco suggested, “the Parliamentary CRPD Network should be encouraged to continually update and maintain its webpage highlighting the ongoing work of Members in such summaries, as well as planned activities”.¹⁹³

5.3.2.2 The PETI Committee’s opportunities to influence

This part of the sub-section analyses the activities of the PETI Committee of the EU Parliament in order to find opportunities to influence the implementation of the CRPD and independent living rights. The inductive analysis considers primary and secondary sources to find pieces of evidence that confirm the role of the PETI Committee in the EU CRPD-related governance.

¹⁹⁰ ‘Minutes - Meeting of the CRPD Network’ (European Parliament 2015) 2
<http://www.europarl.europa.eu/cmsdata/115782/minutes_230915.pdf> accessed 16 January 2019.

¹⁹¹ See Section 3.5.3: Slaughter (n 34).

¹⁹² ‘Committees - EMPL - Subject Files - CRPD Network’ (n 184).

¹⁹³ Mark Priestley, ‘2018 Update of the Study on the Protection Role of the Committee on Petitions in the Context of the Implementation of the UN Convention on the Rights of Persons with Disabilities’ (European Parliament 2018) 8
<[http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/608830/IPOL_BRI\(2018\)608830_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/608830/IPOL_BRI(2018)608830_EN.pdf)> accessed 21 January 2018.

“The Petitions Committee is the bridge between the EU citizens and the EU institutions”.¹⁹⁴ Therefore, it has a direct link with the national and local levels by mandate. The PETI Committee is responsible for: (i) petitions; (ii) citizens’ initiatives’ public hearings; and (iii) relations with the EU Ombudsman.¹⁹⁵ The relations with the EU Ombudsman are emphasised by the PETI membership to the European Network of Ombudsmen,¹⁹⁶ which will be described in the next section.

The Rules of Procedure of the European Parliament explain the petitions’ process.¹⁹⁷ This process can be summarised as it follows: (i) EU citizens can address a petition about any EU topic that affects them;¹⁹⁸ (ii) the PETI Committee considers the admissibility of petitions and opens a public procedure for each of them; (iii) the PETI Committee may involve the Commission, the Council, and the petitioners’ EU Member State in answering the petition; and (iv) the PETI Committee may either reply to the petitioner with its opinion or decide to take further initiatives like motions and reports. Figure 5-2¹⁹⁹ summarises the described process.

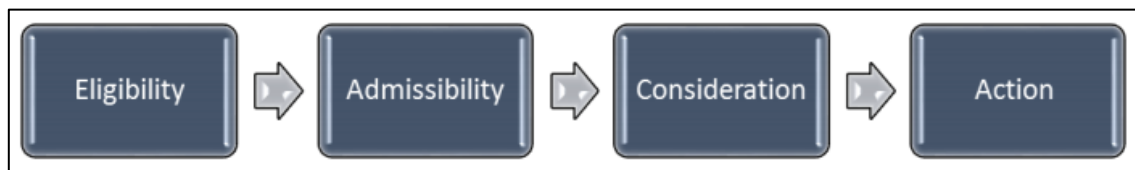


Figure 5-2 - Stages in the petition process

It is essential to clarify the nature of the EU topics that can be the object of a petition. These mainly regard matters of EU law implementation. “The petition may present an individual request, a complaint or observation concerning the application of EU law or an appeal to the European Parliament to adopt a position on a specific matter”.²⁰⁰ The application of EU law concerns both

¹⁹⁴ ‘Committees - PETI - Members’ (n 139).

¹⁹⁵ ‘Rules of Procedure of the European Parliament’ (n 121) Annex V.

¹⁹⁶ Priestley, Raley and De Beco (n 177) 22.

¹⁹⁷ ‘Rules of Procedure of the European Parliament’ (n 121) Title 9.

¹⁹⁸ Complying with: TFEU Art 227.

¹⁹⁹ Mark Priestley, Meredith Raley and Gauthier De Beco, ‘The Protection Role of the Committee on Petitions in the Context of the Implementation of the UN Convention on the Rights of Persons with Disabilities’ (European Parliament 2015) PE 536.465 22
 <[http://www.europarl.europa.eu/RegData/etudes/STUD/2015/536465/IPOL_STU\(2015\)536465_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/536465/IPOL_STU(2015)536465_EN.pdf)> accessed 16 January 2019.

²⁰⁰ ‘At Your Service - Be Heard - Petitions’ (European Parliament)

the EU and its Member States. This principle means that EU citizens can address a petition to the EU Parliament because concerned about how their government implements EU legislation. As the EU legislation shall be consistent with the CRPD principles, petitions might complain about the national and local implementation of CRPD principles mediated via EU law. This consideration is the critical point of investigation in this second part of the sub-section.

While it was previously affirmed that the EU Parliament does not monitor the implementation of EU law, the PETI Committee's mandate seems to have this monitoring prerogative. In reality, the monitoring initiative is on citizens. In fact, the PETI Committee does not take any initiative, but it executes the monitoring activities as requested by citizens in their petitions. This process is a bottom-up link between civil society and the EU Parliament. Differently, the previous explanation of the EMPL Committee showed a top-down connection between the EU institution and the national and local levels.

As the EU law implementation involves both the EU and its Member States, "such petitions give the European Parliament the opportunity of calling attention to any infringement of a European citizen's rights by a Member State or local authorities or other institution".²⁰¹ Therefore, the possibility to influence the national and local levels is intrinsic to the PETI Committee's mandate. It is essential to highlight that the outcomes of the PETI Committee are not binding. For this reason, its possibilities to affect the national and local levels regard influence instead of coercion. In other words: when EU citizens think that there is any infringement of EU law, they can choose to complain either to the PETI Committee with a petition or to the ECJ with litigation. These two opportunities are very different from one another with different procedures and outcomes. Among the two, the outcomes of the PETI Committee represent a powerful kind of soft law, which can exercise influence.

This brief introduction has explained that the PETI Committee can influence the EU Member States' implementation of EU legislation. May the PETI Committee also influence the implementation of the CRPD? Since the EU Parliament seems to consider the CRPD as an instrument of EU secondary

<<http://www.europarl.europa.eu/at-your-service/en/be-heard/petitions>> accessed 18 January 2019.

²⁰¹ *ibid.*

legislation,²⁰² the answer to this question might be consequentially positive. The analysis of various reports of the EU Parliament Think Tank can support the investigation of this assumption. Among the key findings of these reports, it is stated that “petitions to the EP are one of several mechanisms for raising CRPD concerns”,²⁰³ and that “PETI has referred to disability equality issues throughout the past year, while providing a strong focus for discussion in specific events and reports”.²⁰⁴ Therefore, if petitions address CRPD-related issues and the petition process can exercise influence, it can be deduced that the PETI Committee can exercise its influence on CRPD-related issues. Probably, this is the main reason for which the PETI Committee was initially entrusted with the membership in the EU CRPD monitoring framework. Coherently, the Council Note clarified that PETI “contributes to the protection against Member States breaches of the Convention when implementing EU law”.²⁰⁵

The PETI Committee receives a significant number of petitions on disability issues. Priestley quantified them as it follows: 19 in 2012;²⁰⁶ 45 in 2013; 37 in 2014; 28 in 2015; 37 in 2016; and 13 in 2017.²⁰⁷ The author confirms that between 2012 and 2014, 17 petitions concerned the EU, and 92 were about alleged EU Member States’ infringements.²⁰⁸ This finding means that, between 2012 and 2017, there were 92 bottom-up attempts to use the PETI Committee in order to exercise influence on the national and local levels in CRPD-related issues.

Priestley, Raley, and De Beco stated that “examples of relevant petitions illustrate [...] how the EU’s participation in the CRPD may expand the scope of the EP’s concern with disability issues in areas of shared competence”.²⁰⁹ The independent living principle belongs to this area. On this, Priestley’s analysis

²⁰² Stevens (n 11) 6.

²⁰³ Priestley, Raley and De Beco (n 198) 16.

²⁰⁴ Priestley (n 192) 8.

²⁰⁵ EU Council Note Set up of the EU-level Framework required by Art. 33.2 of the UN Convention on the Rights of Persons with Disabilities 2013 3.

²⁰⁶ Priestley, Raley and De Beco (n 198) 24.

²⁰⁷ Priestley (n 192) 4.

²⁰⁸ Priestley, Raley and De Beco (n 177) 29–30. Please note that some petitions are joint procedures, which means that they have been counted more than once.

²⁰⁹ Priestley, Raley and De Beco (n 198) 24.

revealed that 11 petitions concerned Article 19 CRPD.²¹⁰ As such, their investigation can show opportunities to influence the implementation of independent living rights.

Among the 11 petitions about independent living rights:²¹¹ (i) Petition 0475/2012 addressed the national home care system;²¹² (ii) Petition 1459/2012 denounced the national use of ESI Funds to develop institutions;²¹³ (iii) Petition 0355/2013 argued against the national habit on institutionalisation;²¹⁴ (iv) Petition 1576/2013 complained about inefficient local social housing support;²¹⁵ (v) Petition 2137/2013 denounced the worsening of national legislation;²¹⁶ (vi) Petition 1912/2014 linked national parking permits with independent living;²¹⁷ (vii) Petition 2260/2014 complained about inefficient local social housing support;²¹⁸

²¹⁰ Priestley (n 192) 5.

²¹¹ Priestley, Raley and De Beco (n 198) 49–63. The classification of these petitions as relevant to Article 19 CRPD belongs to the referenced report and has not been further investigated a part from verifying the existence of the petitions themselves and the consistency of titles and topics.

²¹² *ibid* 49. The database of the PETI Committee starts from 2013. As this petition is a 2012 one, it has been impossible to reference the official document.

²¹³ *ibid* 33–35, 51. The database of the PETI Committee starts from 2013. As this petition is a 2012 one, it has been impossible to reference the official document.

²¹⁴ ‘Petition 0355/2013 by Bruno Terriou (French) Concerning the Commitment of His Brother, Who Suffers from Smith-Magenis Syndrome, to an Institution for Persons with Disabilities.’ (*European Parliament*)
<<https://petiport.secure.europarl.europa.eu/petitions/en/petition/content/0355%252F2013/html/Petition-0355%252F2013--by-Bruno-Terriou-%2528French%2529-concerning-the-commitment-of-his-brother%252C-who-suffers-from-Smith-Magenis-syndrome%252C-to-an-institution-for-persons-with-disabilities.>> accessed 18 January 2019.

²¹⁵ ‘Petition 1576/2013 by Marco Caruso (Italian), on Personal Problems Related to Disability’ (*European Parliament*)
<<https://petiport.secure.europarl.europa.eu/petitions/en/petition/content/1576%252F2013/html/Petition-1576%252F2013-by-Marco-Caruso-%2528Italian%2529%252C-on-personal-problems-related-to-disability>> accessed 18 January 2019.

²¹⁶ ‘Petition 2137/2013 by Silviu Timoftei (Romanian) on Amendments to Romanian Legislation on the Classification of People with Disabilities’ (*European Parliament*)
<<https://petiport.secure.europarl.europa.eu/petitions/en/petition/content/2137%252F2013/html/Petition-2137%252F2013-by-Silviu-Timoftei-%2528Romanian%2529-on-amendments-to-Romanian-legislation-on-the-classification-of-people-with-disabilities>> accessed 18 January 2019.

²¹⁷ ‘Petition No 1912/2014 by Helmuth Brückner (German), on Parking Permits for Disabled People in North Rhine-Westphalia’ (*European Parliament*)
<<https://petiport.secure.europarl.europa.eu/petitions/en/petition/content/1912%252F2014/html/Petition-No-1912%252F2014-by-Helmuth-Br%25C3%25BCckner-%2528German%2529%252C-on-parking-permits-for-disabled-people-in-North-Rhine-Westphalia>> accessed 18 January 2018.

²¹⁸ ‘Petition No 2260/2014 by Marco Caruso (Italian), on Disability and His Personal Situation in Pistoia (Italy)’ (*European Parliament*)
<<https://petiport.secure.europarl.europa.eu/petitions/en/petition/content/2260%252F2014/html/Petition-No-2260%252F2014-by-Marco-Caruso-%2528Italian%2529%252C-on->

and (viii) Petition 1394/15 asked for persons with disabilities to have a voice on the services they receive.²¹⁹

As Priestley explained, this last petition “claimed that national interpretation resulted in disability discrimination in the provision of housing choices and support services for community living. In this example, the Commission took the view that they could not evidence a breach of EU law while PETI Members were greatly concerned by the disability rights issues”.²²⁰ As such, this episode reveals disagreement between the EU Commission and the PETI Committee. Besides, it deserves a more profound investigation because it confirms some findings of this research.

“The petitioner states that the EU’s Procurement Directive (2014/24/EU) allows for erroneous interpretations at national level regarding the organisation of housing services for the disabled”.²²¹ In short, the petitioner argued that some Finnish private personal assistance services did not respect the rights included in the CRPD. As a consequence, she asked the EU to influence the Finnish government on changing the national Procurement Act by clarifying the meaning of the EU Directive.

First, the topic of the Petition is coherent with the concern (held in Section 2.6.2) that private services may be too market-oriented and risk to underestimate the rights of persons.²²² Second, the EU Commission affirms that this social issue

disability-and-his-personal-situation-in-Pistoia-%2528Italy%2529> accessed 18 January 2019.

²¹⁹ ‘Petition No 1394/2015 by Pia Matihaldi (Finnish) on Behalf of Service Foundation for People with an Intellectual Disability and Approximately 10 Signatures, on the European Union’s Procurement Directive and Its National Implementation Which Causes Discrimination Based on Disability’ (*European Parliament*) <[²²⁰ Priestley \(n 192\) 7.](https://petiport.secure.europarl.europa.eu/petitions/en/petition/content/1394%252F2015/html/Petition-No-1394%252F2015-by-Pia-Matihaldi-%2528Finnish%2529-on-behalf-of-Service-Foundation-for-People-with-an-Intellectual-Disability-and-approximately-10-signatures%252C-on-the-European-Union%25E2%2580%2599s-Procurement-Directive-and-its-national-implementation-which-causes-discrimination-based-on-disability-> accessed 21 January 2019.</p></div><div data-bbox=)

²²¹ ‘Petition No 1394/2015 by Pia Matihaldi (Finnish) on Behalf of Service Foundation for People with an Intellectual Disability and Approximately 10 Signatures, on the European Union’s Procurement Directive and Its National Implementation Which Causes Discrimination Based on Disability’ (n 218).

²²² See Section 2.6.2: Jan Andersen, Agneta Hugemark and Bjarne R Bjelke, ‘The Market of Personal Assistance in Scandinavia: Hybridization and Provider Efforts to Achieve Legitimacy and Customers’ (2014) 16 *Scandinavian Journal of Disability Research* 34.

is a national competence,²²³ which recalls the importance of the approach to disability.²²⁴ Third, the missed mediation of the Convention via EU law is a crucial element of this case.

In fact, although Article 19 CRPD affirms that “persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement”,²²⁵ the EU Commission replied to the petitioner that the service recipients’ “consultation [about their living arrangements] is not expressly provided for by the EU legal framework”.²²⁶ This means that the EU’s Procurement Directive (2014/24/EU) seems not correct to implement Article 19 CRPD, and the national level is not bound under EU law to respect it as a consequence.

This situation could represent an EU indirect infringement of the Convention. For this reason, “the petitioner wishes that the EU would influence the revising of Finland’s current procurement act so that the disabled people’s right to be heard can be considered”.²²⁷ In accordance with the petitioner, the PETI Committee stressed “the importance to comply with the UNCPRD”.²²⁸

The presence of disagreement between the PETI Committee and the EU Commission is a pre-condition of reciprocal attempts to influence. Slaughter explained that informed divergence could be a decisive factor in the international sphere because it highlights issues that need attention.²²⁹ With regard to this case, the PETI Committee could include the matter in its political agenda and try to exercise its influence (i.e. through EDF and the EP Disability Intergroup)²³⁰ to

²²³ ‘Petition No 1394/2015 by Pia Matihaldi (Finnish) on Behalf of Service Foundation for People with an Intellectual Disability and Approximately 10 Signatures, on the European Union’s Procurement Directive and Its National Implementation Which Causes Discrimination Based on Disability’ (n 218) See the Notice to members.

²²⁴ See Sections 5.2.2.1 and 5.3.2.

²²⁵ UN General Assembly Resolution, Convention on the Rights of Persons with Disabilities and Optional Protocol 2006 (A/RES/61/106) Art 19 (a).

²²⁶ ‘Petition No 1394/2015 by Pia Matihaldi (Finnish) on Behalf of Service Foundation for People with an Intellectual Disability and Approximately 10 Signatures, on the European Union’s Procurement Directive and Its National Implementation Which Causes Discrimination Based on Disability’ (n 218) See the Notice to members.

²²⁷ *ibid.*

²²⁸ *ibid* See the Minutes of the committee meeting.

²²⁹ See Section 3.5.3: Slaughter (n 34) 75–78.

²³⁰ ‘Petition No 1394/2015 by Pia Matihaldi (Finnish) on Behalf of Service Foundation for People with an Intellectual Disability and Approximately 10 Signatures, on the European

satisfy the petitioner. In sum, this example represents an EU opportunity to influence the implementation of independent living rights.

5.3.2.3 The Disability Intergroup's opportunities to influence

This part of the sub-section explores the opportunities that the Disability Intergroup of the EU Parliament has to influence the implementation of the CRPD and independent living rights. Also in this case, the analysis is inductive and moves from the available sources.

Priestley, Raley, and De Beco explained that “members of the European Parliament interact also in a Disability Intergroup, first established in 1980 and re-launched in January 2015 [...]. This cross-cutting forum of more than one hundred Members from eight political groups reflects the broad consensus in support of disability rights”. Besides, the authors highlight that “the Intergroup holds no formal status in the EU’s CRPD Framework”.²³¹ Despite this, the Disability Intergroup of the EU Parliament is an important instrument to implement and monitor the CRPD, as explained here below.

The introduction of this sub-section examined the difference between committees and intergroups following the clarification of an interviewed MEP. The same interviewee added two exciting considerations on the Disability Intergroup, which are worth mentioning because they show opportunities to influence CRPD-related topics.

(i) Her first consideration focused on the importance of the presence of MEPs that are disabled and experts on disability-related matters. They might preferably constitute a group of interest because this would be the best way to take advantage of the Disability Intergroup. At the time of the interview, their presence was small²³² but sufficient to exert influence on CRPD-related issues. Coherently, the interviewee was sure that:

Union’s Procurement Directive and Its National Implementation Which Causes Discrimination Based on Disability’ (n 218) See the Minutes of the committee meeting.

²³¹ Priestley, Raley and De Beco (n 198) 20.

²³² The data search looked for destructured figures about the number of MEPs with disabilities without success.

*[their presence is already] challenging [the non-disabled MEP's] attitudes and opinions.*²³³

(ii) Her second consideration explained that attitudes and opinions are difficult to influence and change. For example, the interviewee stated that the Disability Intergroup tried to enter into the discussion about the European Disability Act without satisfactory results because the law-making process of the Act was given to the IMCO²³⁴ instead of to the EMPL Committee. The interviewee explained that:

*the Disability Intergroup then tried to influence colleagues in relation to the European Disability Act, we tried to talk with the rapporteur and some other MEPs about that file. But it very much depends on the attitude of those involved. The rapporteur on that file [...] refused to engage with the Disability Intergroup. Refused to engage with the European Disability Forum until the very last moment when there wasn't any possibility to implement any change. My feeling was that he knowingly kept us at bay until the very end of the process so that he could then just tick the box and say yes I did consult with the various interest groups.*²³⁵

In sum, the interviewee described a real influencing relationship where the Disability Intergroup tried to exercise its influence on a target, which opposed resistance. Several authors quoted in Section 3.2 have defined influence as a social relationship that causes or resists changes. The episode of the IMCO rapporteur that resisted the influence of the Disability Intergroup is the practical evidence of such a kind of social relationship. The interviewee who illustrated the episode was conscious of the fact that:

*our influence was not very strong because of the attitude of some of the policymakers and they frankly didn't want to listen.*²³⁶

²³³ 'Interviewee 4' (n 130) 7.

²³⁴ Internal Market and Consumer Protection

²³⁵ 'Interviewee 4' (n 130) 1–2.

²³⁶ *ibid* 2.

On one hand, the use of the term *influence* by the interviewee is coherent with the definition of influence that is promoted by this thesis. On the other hand, the consideration that *they didn't listen* is probably too simplistic because it does not consider the willingness to resist the influence. Section 3.2 described the intentionality of the action as a pre-requisite to identifying influencing relationships. Therefore, instead of saying that the rapporteur *didn't listen*, it would be better to think about the rapporteur as a member of a group of interest that wanted to exercise its influence on the European Disability Act. It is also probable that the influencing relationship started beforehand, entrusting the IMCO instead of the EMPL Committee with the revision of the Act. In fact, this probable situational influence set the basis to limit the influence of the Disability Intergroup on the Act in favour of other groups of interest.

As observed about the EMPL and PETI Committees, also the Disability Intergroup has an active link with civil society. In particular, EDF officially acts as the secretariat of the Disability Intergroup. It is interesting to remind that EDF is financed by the Disability Unit of the EU Commission.²³⁷ There again, the EU CRPD focal point has a kind of economic control over entities that are expected to monitor its activities.

The EDF website hosts a page that is dedicated to the Disability Intergroup.²³⁸ Such a webpage shows that the Disability Intergroup has an established bureau as well as planned activities and annual plans. For instance, the 2017-2019 work plan includes a commitment to independent living rights and on the new EU multiannual financial framework.²³⁹ The same document also shows the Rules of Procedure of the Disability Intergroup. These explain that the cooperation between the Intergroup and EDF does not regard secretarial tasks only. Instead, it is a proactive effort among peers aimed at both mainstreaming the CRPD principles within all the EU Parliament committees, and generally promoting and monitoring the implementation of the CRPD.²⁴⁰

²³⁷ See Section 5.2.2.2.

²³⁸ 'Disability Intergroup of the European Parliament' (n 145).

²³⁹ 'Disability Intergroup of the European Parliament - Work Programme 2017-2019' <http://www.edf-feph.org/sites/default/files/disability_intergroup_work_programme_2017-2019_1.doc> accessed 21 January 2019.

²⁴⁰ *ibid* 10.

When asked about this relationship between the Disability Intergroup and EDF, an interviewed MEP confirmed that:

that's correct, and it works vice-versa as well. It's a win-win situation both for the Disability Intergroup and EDF. Because we depend on their inputs and through our work we can feed them to follow up certain things on a national level. So we try to send out a coherent message between the Disability Intergroup and EDF, so that all the national governments are getting the same message.²⁴¹

Therefore, the relationship between the Disability Intergroup and EDF is an opportunity to reach and influence the national level. The interviewee explained the role of EDF in terms of its networking opportunities with national organisations. Thanks to these, national governments can receive the same inputs from the EU level and their domestic level. The strategy to take advantage of networks and increasing the opportunities to influence has been explained by Nye,²⁴² and verified in several parts of the thesis.

The Disability Intergroup itself can be described as a network. Although officially established, its work is soft and informal. For this reason, it is complicated to evaluate its opportunities to influence. However, it has been explained that they are real and potentially valid on the national and local levels through: (i) the law-making work of committees mainstreaming CRPD-related principles; (ii) national governments jointly with CSOs; and (iii) the political groups of the EU Parliament, which in turn may export best practices to national political parties.

5.4 The EU Ombudsman

This section focuses on the EU Ombudsman, which is a member of the established EU CRPD monitoring framework. The section aims to show and explain the EU Ombudsman opportunities to influence the implementation of the CRPD and independent living rights. The section includes this brief introduction and an analytical sub-section.

²⁴¹ 'Interviewee 4' (n 130) 3.

²⁴² See Section 3.5.1: Joseph S Nye, *The Future of Power* (1st edn, PublicAffairs 2011) 17–18.

“The European Ombudsman is an independent and impartial body that holds the EU’s institutions and agencies to account”.²⁴³ The EU Parliament lays down the rules that govern this independent body. Also, it elects the Ombudsman for the duration of its term.²⁴⁴ In brief, the “European Ombudsman [is] empowered to receive complaints from any citizen of the Union [...] concerning instances of maladministration in the activities of the Union institutions, bodies, offices or agencies, with the exception of the Court of Justice of the European Union acting in its judicial role”.²⁴⁵

Therefore, the mandate of the EU Ombudsman is similar to that of the PETI Committee. Generally speaking, both the bodies receive complaints by EU citizens who address: (i) the PETI Committee when regarding the application of EU law; and (ii) the EU Ombudsman when concerning the maladministration of EU institutions and bodies.

While the EU Ombudsman is linked with the local level by its direct dialogue with the EU citizens, it has a mandate that excludes any investigation on the EU Member States. This characteristic represents a difference with the PETI Committee, which can report on presumed infringements of EU law by any EU Member State.

For this reason, an interviewee who was an EU Ombudsman officer declared that:

*probably, the first barrier, I mean, it’s our mandate, I would say. Because our work is not to address the Member States. So the main barrier is this one. But on the other hand, it could reach the domestic level, as we said, indirectly through the Commission.*²⁴⁶

As suggested in Section 3.2.3, the exercise of influence can be either direct or indirect. Therefore, the interviewee confirmed that the EU Ombudsman influence could indirectly reach the national and local levels passing through the EU Commission. The next sub-section seeks evidence that assesses the EU

²⁴³ ‘About - Role and Strategy’ (*European Ombudsman*)
<<https://www.ombudsman.europa.eu/en/our-strategy/home/en>> accessed 22 January 2019.

²⁴⁴ TFEU Art 228.

²⁴⁵ *ibid* Art 228.

²⁴⁶ ‘Interviewee 3’ (7 March 2018) 3.

Ombudsman opportunities to influence the implementation of the CRPD and independent living rights.

5.4.1 The EU Ombudsman's opportunities to influence

In order to assess the influence of the EU Ombudsman on the implementation of the CRPD and independent living rights, it is necessary to explore the EU Ombudsman activities about CRPD-related issues. The main activities of the EU Ombudsman concern: (i) the complaints about EU bodies' maladministration; (ii) the launch of strategic initiatives and inquiries; and (iii) the leading of the European Network of Ombudsmen.²⁴⁷

5.4.1.1 CRPD-related complaints to the EU Ombudsman

As far as complaints are concerned, it is possible to confirm that they can address CRPD-related issues. For instance, the cases 1418/2016/JN and 101/2017/JN regarded an alleged infringement of the CRPD by an EU Member State. This accusation is curious because, in theory, the EU Ombudsman should not consider complaints against the EU Member States. In fact, "the complainant said that [...] the UNCRPD forms part of EU law and [...] since the EU forms an area of freedom, security and justice, the issue at hand should not be considered merely as an internal matter" but as an EU competence.²⁴⁸ Therefore, the matter of the complaint concerned the competence issue on the implementation of the Convention. The EU Ombudsman confirmed that the EU Commission had no competence to intervene on the matter at stake.

As explained in Section 2.4, the competence issue is a cornerstone of the cooperation between the EU and its Member States to implement the CRPD. Therefore, any decision on competences concerns the power balance between the EU and its Member States on the CRPD implementation. This conclusion means that any decision stating that the EU has no competence implies that the competence belongs to the EU Member States. Therefore, it is true that the mentioned cases of the EU Ombudsman decided on the EU Commission non-

²⁴⁷ 'What We Do' (*European Ombudsman*) <<https://www.ombudsman.europa.eu/en/home>> accessed 22 January 2019.

²⁴⁸ 'Decision in Cases 1418/2016/JN and 101/2017/JN on the Commission's Handling of Complaints Concerning the United Nations Convention on the Rights of Persons with Disabilities' (*European Ombudsman*, 11 May 2017) <<https://www.ombudsman.europa.eu/en/decision/en/79080>> accessed 22 January 2019.

competence. However, it is also true that the same decisions indirectly confirmed the EU Member States' competence. In theory, the EU Ombudsman could have declared the complaint inadmissible because the TFEU states that decisions on competence issues are under the jurisdiction of the ECJ.²⁴⁹

In 2019, the EU Ombudsman decided on a complaint concerning the mandate of the EU Commission on the use of ESI Funds by its Member States about disability rights. In short, “the Ombudsman finds it concerning that the Commission’s interpretation [about deinstitutionalisation] is at odds with that of the UN Committee”. However, “the Ombudsman accepts that, in this case, the Commission does not have a legal basis that enables it to recover the EU funds spent on the social care institution”.²⁵⁰

This decision entails that the ex-ante conditionalities²⁵¹ of the ESI Funds Regulation are not enough to guarantee that no EU money be spent for building or renovating institutions in breach of Article 19 CRPD. In addition, this example is similar to the previous one about the informed divergence between the PETI Committee and the EU Commission. In fact, also in this case, the EU Commission refuses any responsibility on social issues because subject to national competence. Furthermore, also in this case, the EU law seems not to implement the CRPD correctly, and this prevents EU citizens from fulfilling independent living rights. For this reason, “the Ombudsman invites the Commission to [...] consider the need to address the lack of an appropriate legal basis identified in this case to ensure that the spending of EU funds complies fully with the CRPD”.²⁵²

5.4.1.2 CRPD-related initiatives and inquiries of the EU Ombudsman

As far as the EU Ombudsman’s strategic initiatives and inquiries are concerned, at least two examples built upon the CRPD Committee Concluding Observations on the EU. The first example regards a formal approach by the EU Ombudsman

²⁴⁹ TFEU Art 263.

²⁵⁰ ‘Decision in Case 417/2018/JN on How the European Commission Dealt with Concerns Raised about Alleged Human Rights Abuses in a Social Care Institution That Had Received EU Funding’ (*European Ombudsman*, 17 September 2019) <<https://www.ombudsman.europa.eu/en/decision/en/119185>> accessed 30 October 2019.

²⁵¹ See Sections 4.4.3.1 and 6.3.

²⁵² ‘Decision in Case 417/2018/JN on How the European Commission Dealt with Concerns Raised about Alleged Human Rights Abuses in a Social Care Institution That Had Received EU Funding’ (n 249).

to the EU Commission about the CRPD Committee's concerns on European Schools. The EU Commission replied and guaranteed compliance with the CRPD.²⁵³ In December 2018, the EU Ombudsman asked for a follow-up, which was still ongoing at the time of concluding this research.²⁵⁴ The second example is about the EU Ombudsman investigation on the EU Commission website's accessibility as a consequence of the CRPD Committee's concerns.²⁵⁵ The initial informal correspondence became an inquiry, which ended with a decision of the EU Ombudsman that addressed recommendations to the EU Commission.²⁵⁶

It is interesting to note that the earliest correspondence of both these examples underlines the role of the EU Ombudsman as a member of the EU CRPD Framework. Section 5.3.2.1 explained that two reports of the EMPL Committee represented the monitoring initiative of the EU Parliament as a member of the EU CRPD monitoring framework. Similarly, also the mentioned two strategic inquiries of the EU Ombudsman show the independent activity of a member of the framework that acts under the mandate of the framework itself. In fact, the EU Ombudsman reported on these activities during the meetings of the EU CRPD monitoring framework, as documented by the available minutes.²⁵⁷

As far as strategic initiatives and inquiries are concerned, there is another example that is worth mentioning because it is about the use of ESI Funds. In its assessment, the EU Ombudsman stated that the EU Commission "should do all in its power to ensure respect for fundamental rights as the money is spent. The fact that the Commission is not directly responsible for managing the funds should never be used as a reason for not acting if fundamental rights have been,

²⁵³ 'United Nations Convention on the Rights of Persons with Disabilities: European Schools (Case SI/1/2016/EA)' (*European Ombudsman*, 5 October 2016) <<https://www.ombudsman.europa.eu/en/case/en/48406>> accessed 22 January 2019.

²⁵⁴ 'United Nations Convention on the Rights of Persons with Disabilities ("UNCRPD") and the European Schools (Case SI/4/2018/EA)' (*European Ombudsman*, 19 December 2018) <<https://www.ombudsman.europa.eu/en/opening-summary/en/108529>> accessed 30 October 2019.

²⁵⁵ 'United Nations Convention on the Rights of Persons with Disabilities: Accessibility for Persons with Disabilities of Websites and Online Tools Managed by the Commission (Case SI/2/2016/EA)' (*European Ombudsman*, 16 February 2016) <<https://www.ombudsman.europa.eu/en/case/en/48410>> accessed 23 January 2019.

²⁵⁶ 'Decision of the European Ombudsman Closing Her Strategic Inquiry OI/6/2017/EA on How the European Commission Ensures That Persons with Disabilities Can Access Its Websites' (*European Ombudsman*, 20 December 2018) <<https://www.ombudsman.europa.eu/en/decision/en/107967>> accessed 22 January 2019.

²⁵⁷ 'Meeting of the EU Framework to Promote, Protect and Monitor the UN Convention on the Rights of Persons with Disabilities' (n 178) 3; *ibid* 1.

or risk being violated”.²⁵⁸ In brief, the EU Ombudsman stated that the EU Commission should “strictly and without exception” apply its control on the use of EU money by the Member States in respect of the disability-related ESI Funds ex-ante conditionalities.²⁵⁹

Also on this occasion, the EU Ombudsman addressed its assessment to the EU Commission, but the implications for the national and local levels should be evident. An interviewed officer of the EU Ombudsman was asked to provide insights on this relevant matter. The interviewee declared that:

*when we started doing this, we didn't do it thinking about the Article 19 of the CRPD. This was launched because the new legal framework about these funds, Cohesion funds, so the whole platter of funds.*²⁶⁰

The link with independent living rights is a probable consequence of the inquiry's public consultation. This involved international agencies and civil society organisations as the OHCHR, FRA, EDF, and ENIL-ECCL. Among these, “several respondents referred to the use of ESI Funds to maintain or extend the institutionalisation of children and disabled persons”.²⁶¹

The interviewee explained that:

*when the Member States implement this law about funds, and they disburse money, European money, so they should ensure compliance with the fundamental rights of the Charter. And the Commission has an obligation to scrutinise the Member States.*²⁶²

It follows that if the EU Commission does not meet its obligation, it would be subject to the EU Ombudsman scrutiny for maladministration. Therefore, the EU Ombudsman verifies that the EU Commission control the national and local

²⁵⁸ ‘Decision of the European Ombudsman Closing Her Own-Initiative Inquiry OI/8/2014/AN Concerning the European Commission’ (*European Ombudsman*, 11 May 2015) <<https://www.ombudsman.europa.eu/en/decision/en/59836>> accessed 23 January 2019.

²⁵⁹ *ibid.*

²⁶⁰ ‘Interviewee 2’ (7 March 2018) 1.

²⁶¹ ‘Decision of the European Ombudsman Closing Her Own-Initiative Inquiry OI/8/2014/AN Concerning the European Commission’ (n 257) para 28.

²⁶² ‘Interviewee 2’ (n 259) 1.

authorities when spending EU money in compliance with independent living rights. This example explains how the influence of the EU Ombudsman can indirectly reach the national and local levels.

In addition, the inquiry of the EU Ombudsman is not only a form of control, but it is also an instrument to guide the EU Commission. As explained by the interviewee:

*the Commission's role is also giving guidelines, providing some needs for the Member States: how they should understand this human rights compliance.*²⁶³

Therefore, the EU Ombudsman directly provides guidance to the EU Commission that indirectly reaches national governments. As explained in several parts of Chapter 3, knowledge and expertise are essential resources to exercise influence. Also Newman and Posner classified policy guidelines as a form of soft law.²⁶⁴ As such, the guidance offered by the EU Ombudsman is a strategy to influence the EU Commission that can have effects also at the national and local levels.

Interestingly, the 2015 inquiry about ESI Funds seems to be devalued by the 2019 decision, which was investigated at the end of the previous part of this sub-section. In fact, the inquiry is very straightforward about the EU Commission responsibilities on the use of ESI Funds. On the other hand, the decision seems to erode the 2015 *strictly and without exception* approach. Unfortunately, the interviews took place before this decision was given. Otherwise, it would have been interesting to collect insights comparing the two documents.

Lastly, the interviewee described also a direct influence of the EU Ombudsman on the national and local levels by involving the national Ombudsmen and supporting their control over domestic institutions. The interviewed officer explained that:

all funds, all European funds and Cohesion funds, are under shared management between the administration from the European Union

²⁶³ *ibid* 2.

²⁶⁴ See Section 3.3.3: Newman and Posner (n 153) chs 1–2.

*in Brussels and the Member States. So we thought that it would be good to engage national Ombudsmen into that exercise.*²⁶⁵

*So once we have funds, which should be administrated by national administration, the national Ombudsman should have a control over this national administration. And we only as a supervisor, we stay as the supervisor of the Commission.*²⁶⁶

*Because we interested the national Ombudsmen, to whom the subject was completely unknown in that time to them. They didn't know how even that the funds required human rights compliance [...] and they know now.*²⁶⁷

5.4.1.3 The European Network of Ombudsmen

The involvement of national Ombudsmen introduces the following discussion about the European Network of Ombudsmen (ENO). The interviewed EU Ombudsman officer explained that:

*when we started the Network it was in 1995 [...] it was a brilliant idea to ensure implementation of European law at the national level. To ensure that citizens' rights are complied with, you have to scrutinise what happens in the Member States.*²⁶⁸

As such, the establishment of the Network was an intentional strategy to exercise influence on the national and local levels. Sections 5.2 and 5.3 showed that the strategy to use international networks to reach and influence the national and local levels is in common with the EU Commission and Parliament. Besides, Section 5.5 will explain that also FRA adopts the same strategy. Therefore, each of the four analysed EU institutions and bodies take advantage of the influencing opportunities of international networks to influence the implementation of the CRPD. This evidence confirms the theoretical contents of Section 3.5 about the incremental use of international networks to exercise influence.

²⁶⁵ 'Interviewee 2' (n 259) 1.

²⁶⁶ *ibid.*

²⁶⁷ *ibid.* 2.

²⁶⁸ *ibid.*

Officially, the EU Ombudsman explains that “the ENO helps to share information about EU law and its impact in EU Member States. It facilitates cooperation between ombudsmen, with a view to safeguarding the rights of EU citizens and individuals under EU law”.²⁶⁹ Therefore, the EU Ombudsman tries to exercise its influence by offering cooperation and guidance to the national and regional Ombudsmen through the European Network of Ombudsmen. As the interviewee emphasised:

*the national Ombudsmen, in many, many of their complaints, cases, they have to implement European law as well, and they would need some guidance on this, how to do it.*²⁷⁰

Lastly, the interviewee also explained that the European Network of Ombudsmen supports the development of parallel investigations. These represent an innovative opportunity for the national Ombudsmen to involve the EU Ombudsman on national cases concerning EU law. The interviewee said that:

*the Court of Justice of the European Union can reply [national Courts], and they cannot have together cases, while we could. So this is very, very important: the flexibility of the European Ombudsman, that we could engage with national Ombudsmen on cases which are somehow common to both of us.*²⁷¹

Therefore, in addition to international networks, the EU Ombudsman takes advantage of another crucial characteristic of the new EU governance, which is flexibility.²⁷² Thanks to its flexibility, the EU Ombudsman can develop soft strategies to influence the implementation of the CRPD even if the hard mandate does not confer on it such a competence.

²⁶⁹ ‘What We Do - European Network of Ombudsmen’ (*European Ombudsman*) <<https://www.ombudsman.europa.eu/en/european-network-of-ombudsmen/about/en>> accessed 23 January 2019.

²⁷⁰ ‘Interviewee 2’ (n 259) 2.

²⁷¹ *ibid.*

²⁷² See Section 3.4.3: Sabel and Zeitlin (n 33).

5.5 The EU Fundamental Rights Agency

This section focuses on the EU Fundamental Rights Agency (FRA), which is a member of the EU CRPD monitoring framework as well as its chair and secretariat at the time of this research.²⁷³ The section aims to show and explain FRA's opportunities to influence the implementation of the CRPD and independent living rights. The section includes this brief introduction and an analytical sub-section.

The EU Agency for Fundamental Rights was established in 2007 through an EU Regulation.²⁷⁴ It built upon the existing European Monitoring Centre on Racism and Xenophobia²⁷⁵ expanding its mandate to the whole range of human rights. "The objective of the Agency shall be to provide the relevant institutions, bodies, offices and agencies of the Community and its Member States when implementing Community law with assistance and expertise relating to fundamental rights".²⁷⁶ Therefore, FRA has a clear mandate to interact with the EU Member States on the implementation of EU law concerning fundamental rights. Also, its mandate confers on FRA soft resources to meet its objective: (i) data analysis; (ii) surveys; (iii) thematic reports; and (iv) public awareness.²⁷⁷ As such, the following sub-section seeks the confirmation that these soft resources can offer opportunities to influence the implementation of the Convention and independent living rights.

5.5.1 The EU Fundamental Rights Agency's opportunities to influence

In 2017, FRA published a Programming Document that explains that "the agency situates its work in the wider context of the Charter of Fundamental Rights of the

²⁷³ 'Programming Document 2018-2020' (EU Agency for Fundamental Rights 2017) 42 <https://fra.europa.eu/sites/default/files/fra_uploads/programming-document-2018-2020_en.pdf> accessed 24 January 2019.

²⁷⁴ EU Council Regulation establishing a European Union Agency for Fundamental Rights 2007 (168/2007 [OJ L 53/1]).

²⁷⁵ EU Council Regulation establishing a European Monitoring Centre on Racism and Xenophobia 1997 (1035/97 [OJ L 151/1]).

²⁷⁶ EU Council Regulation establishing a European Union Agency for Fundamental Rights Art 2.

²⁷⁷ *ibid* Art 4.

European Union”.²⁷⁸ However, “United Nations instruments also guide FRA’s work in the strategic area of operation of equality and non-discrimination. These include the Convention on the Rights of Persons with Disabilities (CRPD)”.²⁷⁹

The search for sources in FRA’s website concluded with several examples of the Agency’s commitment to the implementation and monitoring of the CRPD and independent living rights. For instance: (i) in 2012, FRA wrote a report on independent living rights in nine EU Member States;²⁸⁰ (ii) “in 2014, FRA began implementing a multi-annual project on the right to independent living of persons with disabilities, as set out in Article 19 of the CRPD, [...] the findings of this project illustrate how a commitment made at international level [...] translates into concrete action taken at local level”;²⁸¹ and (iii) since 2016, FRA has been dedicating a chapter of its annual report to the “developments in the implementation of the Convention on the Rights of Persons with Disabilities”.²⁸²

The findings of the multi-annual project that began in 2014 are relevant to this thesis. In detail, FRA’s project included three phases: (i) it started developing human rights indicators on Article 19 CRPD; (ii) it undertook country studies; and (iii) it focused on disseminating the results. An interviewee who worked on the project clarified that these three phases include three modalities to engage with the national and local levels: data collection, data analysis, and data dissemination.²⁸³

(i) Human rights indicators are “a tool to assess progress in implementing fundamental rights and formulating rights-based public policies [...] they facilitate comparability between Member States thus permitting systematic identification

²⁷⁸ ‘Programming Document 2018-2020’ (n 272) 8.

²⁷⁹ *ibid* 19.

²⁸⁰ ‘Choice and Control: The Right to Independent Living’ (EU Agency for Fundamental Rights 2012) <<https://fra.europa.eu/en/publication/2012/choice-and-control-right-independent-living>> accessed 24 January 2019.

²⁸¹ ‘Programming Document 2018-2020’ (n 272) 39.

²⁸² ‘Fundamental Rights Report 2016’ (EU Agency for Fundamental Rights) 183–197 <<https://fra.europa.eu/en/publications-and-resources/publications/annual-reports/fundamental-rights-2016>> accessed 24 January 2019; ‘Fundamental Rights Report 2017’ (EU Agency for Fundamental Rights) 223–238 <<https://fra.europa.eu/en/publication/2017/fundamental-rights-report-2017>> accessed 24 January 2019; ‘Fundamental Rights Report 2018’ (EU Agency for Fundamental Rights) 225–237 <<https://fra.europa.eu/en/publication/2018/fundamental-rights-report-2018>> accessed 24 January 2019.

²⁸³ ‘Interviewee 1’ (1 March 2018) 2.

of good practices”.²⁸⁴ In particular, the human rights indicators on Article 19 CRPD might “allow EU Member States, national human rights bodies, Article 33 monitoring bodies, academics, civil society organisations, disabled persons organisations and others to apply the indicators in practice”.²⁸⁵

Therefore, Priestley has explained that FRA’s indicators on Article 19 CRPD “aim to assist in monitoring the extent to which EU Member States fulfil their obligations under Article 19 of the convention”.²⁸⁶ Thus, the development by the Agency of human rights indicators on Article 19 CRPD could be seen as a soft strategy to influence the national level on the implementation of independent living rights. Also, FRA’s indicators are accurate as they include concrete topics as deinstitutionalisation and personal assistance.²⁸⁷ The final part of Section 4.3 suggested that any activity that considers specific topics can be more influencing than generic measures. The assumption was confirmed by the analysis of the DHLG in Section 4.4.3. Therefore, the fact that FRA’s indicators address specific topics can increase their opportunities to influence the implementation of deinstitutionalisation and personal assistance policies.

(ii) The country studies developed by FRA under its project on independent living include: (a) an overview of institution-based and community-based services in all the EU Member States; and (b) detailed case studies on five EU Member States. About the overview, it is possible to consult the

²⁸⁴ ‘Using Indicators to Measure Fundamental Rights in the EU: Challenges and Solutions’ (EU Agency for Fundamental Rights 2011) 4
<https://fra.europa.eu/sites/default/files/fra_uploads/1697-FRAsymp2011-outcome-report.pdf> accessed 24 January 2019.

²⁸⁵ ‘The Right to Independent Living of Persons with Disabilities - Indicators’ (*European Union Agency for Fundamental Rights*) <<https://fra.europa.eu/en/project/2014/rights-persons-disabilities-right-independent-living/indicators>> accessed 24 January 2019.

²⁸⁶ Mark Priestley and others, ‘From Institutions to Community Living: Development of Statistical Outcome Indicators’ (EU Agency for Fundamental Rights 2018) 5
<<https://fra.europa.eu/en/project/2014/rights-persons-disabilities-right-independent-living/indicators>> accessed 24 January 2019.

²⁸⁷ ‘Human Rights Indicators on Article 19 of the CRPD’ (EU Agency for Fundamental Rights) <<https://fra.europa.eu/en/project/2014/rights-persons-disabilities-right-independent-living/indicators>> accessed 24 January 2019.

research's raw material²⁸⁸ and the final report.²⁸⁹ The raw material includes one report for each EU Member State written by national contractors following a standard scheme. The final report is not a mere summary, but it suggests shared parameters to define institutions and community-based services, which include personal assistance schemes. In the same way, about the five case studies, it is possible to consult the research's raw material²⁹⁰ and the final report.²⁹¹ Also in this case, the raw material includes one report for each EU Member State written by national contractors following a standard scheme. The final report is not a mere summary; instead, it is a critical comparative analysis that suggests general monitoring methodologies as well as specific good practices to pursue deinstitutionalisation and to promote personal assistance schemes.

(iii) The dissemination of FRA's outcomes starts with the publication of its reports. For instance, the mentioned reports about indicators and country studies are public and available on the Agency's website. Besides, the Agency has published three thematic reports on: (a) services' structures;²⁹² (b) funding;²⁹³ and (c) outcomes.²⁹⁴ These three reports build upon the previous work on

²⁸⁸ 'Country Studies for the Project on the Right to Independent Living of Persons with Disabilities: Summary Overview of Types and Characteristics of Institutions and Community-Based Services for Persons with Disabilities Available across the EU' (*European Union Agency for Fundamental Rights*, 2017) <<https://fra.europa.eu/en/country-data/2017/country-studies-project-right-independent-living-persons-disabilities-summary>> accessed 24 January 2019.

²⁸⁹ 'Summary Overview of Types and Characteristics of Institutional and Community-Based Services for Persons with Disabilities Available across the EU' (EU Agency for Fundamental Rights 2017) <<https://fra.europa.eu/en/country-data/2017/country-studies-project-right-independent-living-persons-disabilities-summary>> accessed 24 January 2019.

²⁹⁰ 'Country Studies for the Project "The Right to Independent Living of Persons with Disabilities" - Case Study Reports' (*European Union Agency for Fundamental Rights*, 2018) <<https://fra.europa.eu/en/country-data/2018/country-studies-project-right-independent-living-persons-disabilities-case-study>> accessed 24 January 2019.

²⁹¹ 'From Institutions to Community Living for Persons with Disabilities: Perspectives from the Ground' (EU Agency for Fundamental Rights 2018) <<https://fra.europa.eu/en/publication/2018/independent-living-reality>> accessed 24 January 2019.

²⁹² 'From Institutions to Community Living. Part I: Commitments and Structures' (EU Agency for Fundamental Rights 2017) <<http://fra.europa.eu/en/publication/2017/independent-living-structures>> accessed 10 October 2018.

²⁹³ 'From Institutions to Community Living - Part II: Funding and Budgeting' (EU Agency for Fundamental Rights 2017) <<http://fra.europa.eu/en/publication/2017/independent-living-structures>> accessed 10 October 2018.

²⁹⁴ FRA, 'From Institutions to Community Living - Part III: Outcomes for Persons with Disabilities' (EU Agency for Fundamental Rights 2017) <<http://fra.europa.eu/en/publication/2017/independent-living-outcomes>> accessed 10 October 2018.

indicators and country studies. They present findings with a thematic perspective that may be easier to share and disseminate. The effort to make findings available to all is confirmed by the publication of the three reports' easy-to-read versions.²⁹⁵ These findings are presented at institutional meetings and public events as well.²⁹⁶ All the relevant publications of FRA may be considered as resources to exercise influence on the implementation of independent living rights, and they need to be disseminated with valuable strategies.

An interviewee who was personally involved in FRA's project on independent living explained that the Agency offers guidance: (i) directly to national and local authorities; or (ii) to EU bodies to indirectly reach the national and local levels.²⁹⁷ This indirect approach is similar to that of the EU Ombudsman addressing the EU Commission, which was explained in the previous section. Furthermore, the described initiative of the EU Ombudsman about ESI Funds included a public consultation to which FRA submitted its contribution. This shows that indirect influences might pass through several passages.

The interviewee highlighted that FRA's expertise is probably their main resource to influence:

*so, in that way it's also about being an authoritative and respected and informed voice in those discussions.*²⁹⁸

It is interesting the use of the word *authoritative* as it links this insight with the contents of Section 3.2.4 about the exercise of influence through authority. In particular, Wrong²⁹⁹ and Dowding³⁰⁰ suggested that authority derives from: (i)

²⁹⁵ 'The Right to Independent Living of Persons with Disabilities - Publications' (*European Union Agency for Fundamental Rights*) <<https://fra.europa.eu/en/project/2014/rights-persons-disabilities-right-independent-living/publications>> accessed 25 January 2019.

²⁹⁶ 'The Right to Independent Living of Persons with Disabilities - Events' (*European Union Agency for Fundamental Rights*) <<https://fra.europa.eu/en/project/2014/rights-persons-disabilities-right-independent-living/events>> accessed 25 January 2019.

In addition to the meetings listed on the events' webpage, there are those within the EU CRPD governance introduced in the previous chapter, among others.

²⁹⁷ 'Interviewee 1' (n 282) 5.

²⁹⁸ *ibid.*

²⁹⁹ See Section 3.2.4: Dennis H Wrong, *Power: Its Forms, Bases and Uses* (Blackwell 1979) 35–64.

³⁰⁰ See Section 3.2.4: Dowding (n 156) 143–144.

legitimation; (ii) competence; and (iii) personality. Due to its authority, the outcomes of FRA are widespread, as the interviewee said:

in terms of the evidence, yes there's lot of different ways in which you can see the value of FRA's work and if you look at the EU Disability Strategy for example, it's making reference to our research, it's calling on FRA to do certain things. If you look at resolutions of the European Parliament, it's drawing on FRA's findings to say the EU needs to do this or the Member States need to do that, on the basis of this report by FRA. Or look at the Council conclusions on independent living at the end of last year, they are making reference to FRA's reports on deinstitutionalisation published last year.³⁰¹

As argued by Nye, authoritative strategies aim to influence: (i) changes; (ii) agendas; and (iii) preferences.³⁰² The fact that FRA focuses on specific topics is enough to turn on the light on such topics. As a consequence, they enter in the agendas of several actors and alter their preferences. Therefore, the influence of FRA probably starts before the publication of any deliverable.

An interviewed officer of FRA confirmed this consideration:

[the work on specific topics] enables us to bring together all of the key actors in this area in each country and really to discuss with them, you know, what the findings of your research are, what the issues in that country are, who we need to reach out to, who needs to take responsibility for implementing Article 19.³⁰³

The feeling is that the networking that results from the engagement on FRA's projects is as important as the final publication of any report. Indeed, it is during the work on projects that national and local authorities face issues that they may not have touched without the operative stimulus offered by FRA.

The interviewee put a strong emphasis on this aspect and explained that:

³⁰¹ 'Interviewee 1' (n 282) 5.

³⁰² See Section 3.2.4: Nye (n 241) 11–13.

³⁰³ 'Interviewee 1' (n 282) 4.

*even though these people sit in the same city they don't necessarily meet each other, they don't necessarily talk each other. And so when we come we organise this meeting [...] they actually get together and they discuss these issues in a way they don't necessarily normally do.*³⁰⁴

Sometimes, national authorities may not agree on specific topics:

*When it comes to intense discussions on the national level, having an EU body come in can actually be really effective in terms of, sort of facilitating discussions [...] being viewed more as a kind of neutral voice, and expert voice in domestic developments and so, hopefully, being able to effect a change in that way.*³⁰⁵

This getting together offered by FRA influences national policies:

*I mean, in terms of Bulgaria, they have just published a new strategy on deinstitutionalisation of adults. [...] Now, that came about a week before our meeting. Was that strategy approved at that point because we were going to Sofia? [...] The publication of that strategy coincides with the work that we're doing. We hear informally from contacts in Bulgaria that it was our reports, that our reports made a difference in the drafting of this strategy.*³⁰⁶

This strategy to engage with the national and local levels can have influencing effects as those just described. However, it can be complicated because:

*the EU is very diverse. The twenty-eight Member States are very different as the challenges they face. While there are commonalities, there are also differences.*³⁰⁷

As the interviewee clarified, the real barrier for FRA's activities is another:

³⁰⁴ *ibid* 6.

³⁰⁵ *ibid* 4.

³⁰⁶ *ibid* 6.

³⁰⁷ *ibid*.

*it is that there is a resource question.*³⁰⁸

FRA's website reveals that the Agency has 90 staff members.³⁰⁹ It is not a significant number to monitor the implementation of all human rights in all the EU Member States. They are aware of this limit and develop strategies to overcome it. Among such strategies, the interviewee emphasised networking opportunities:

*so, basically, a lot of the times what we are doing is using networks where we kind of get into the countries [...] we can use them as multipliers for the findings that we have, and have more of an impact at the domestic level.*³¹⁰

As seen for the EU Commission, Parliament, and Ombudsman, also FRA intentionally uses the opportunities of networking to reach and influence the national and local levels. Section 3.5 explained that international networks represent a vital and low-cost opportunity to exercise influence. Networking is so crucial to FRA that the Agency has established: (i) National Liaison Officers;³¹¹ (ii) a multidisciplinary research network (FRANET);³¹² and (iii) a cooperation network with CSOs named Fundamental Rights Platform.³¹³ In addition, FRA works in collaboration with external international networks as those of National Equality Bodies, National Human Rights Institutions, and National Ombudspersons.³¹⁴

When we talk about engaging at the EU level, we are not just talking about engaging with the EU institutions as "the EU" but those EU

³⁰⁸ *ibid.*

³⁰⁹ 'Who We Are' (*European Union Agency for Fundamental Rights*) <<https://fra.europa.eu/en/about-fra/who-we-are>> accessed 14 February 2019.

³¹⁰ 'Interviewee 1' (n 282) 3.

³¹¹ 'National Liaison Officers' (*European Union Agency for Fundamental Rights*) <<https://fra.europa.eu/en/cooperation/eu-member-states/national-liaison-officers>> accessed 25 January 2019.

³¹² 'FRANET' (*European Union Agency for Fundamental Rights*) <<https://fra.europa.eu/en/research/franet>> accessed 25 January 2019.

³¹³ 'Civil Society and the Fundamental Rights Platform' (*European Union Agency for Fundamental Rights*) <<https://fra.europa.eu/en/cooperation/civil-society>> accessed 25 January 2019.

³¹⁴ 'National Human Rights Bodies' (*European Union Agency for Fundamental Rights*) <<https://fra.europa.eu/en/cooperation/national-human-rights-bodies>> accessed 25 January 2019.

*institutions are always engaging with the Member States, so that makes a big difference. Then, for FRA we have a number of networks that we co-ordinate that enable us to reach out at the national level.*³¹⁵

*A lot of the time, the impact that you have may not be so tangible. It might not be written in black and white, but it's the presentations you give at an important meeting, it's the conversations that you have with the people that are devising law and policy.*³¹⁶

As suggested by Dowding, the difficulty of quantifying influence is not a measure for its exercise.³¹⁷ Therefore, *black and white* pieces of evidence are necessary but not essential to state that the authoritative work of FRA on independent living rights is influencing the implementation of that principle.

5.6 Concluding remarks

This chapter is the second among the three analytical chapters of the thesis. It analysed four EU institutions and bodies that are members of the EU CRPD-related governance: (i) the EU Commission; (ii) the EU Parliament; (iii) the EU Ombudsman; and (iv) the EU Fundamental Rights Agency. The chapter explained how these four EU institutions and bodies can independently influence the implementation of the CRPD and independent living rights.

The analysis of the chapter revealed that the investigated four EU institutions and bodies have opportunities to exercise their influence. This conclusion is similar to the one of the previous chapter, but their preliminary analyses are different. In fact, while the previous chapter explored EU soft entities, this chapter investigated EU institutions and bodies that are established by hard norms. These hard norms confer mandates that should limit the fields of activities of the established entities.

In the previous chapter, this limit was described as a barrier for acting under the broad mandate of the EU CRPD-related governance. It was explained

³¹⁵ 'Interviewee 1' (n 282) 4.

³¹⁶ *ibid* 5.

³¹⁷ See Section 3.2.3: Dowding (n 156) 5.

that the broad mandate of the EU CRPD-related governance was met through the complementarity of its single members. This chapter unpackaged such complementarity and it analysed the CRPD-related activities of the single members. The direct consequence of exploring the activities of single entities is that the analysis found little correspondence with the governance theories included in Chapter 3. This because governance systems include several actors, but the analysis of single actors may shadow their external situation and show internal processes only. On the other hand, the analysis of single entities allowed discovering their effort to increase their networking opportunities. Such internal effort is the basis to develop governance systems, as explained in Chapter 3.

This chapter showed examples of EU influences as findings from: (i) the documentary research; (ii) the conducted interviews; and (iii) the comparison between evidence and theories. The conducted interviews offered the main findings of the analysis. This because the interviewees allowed the development of retroductive reasoning that relocated the EU opportunities to influence to a deeper level.

For instance, the previous chapters explained that guidelines are forms of soft law that can influence national and local policies. However, this chapter revealed that developing guidelines offer preliminary networking that influences as much as the final deliverables. Also, the analysis suggested that the EU entities can influence CRPD-related issues proportionally with the number of persons with disabilities that they include. This consideration relocates the possibility to influence from abstract entities to real persons who, at the end of the day, are just a few at the EU level.

Chapter 6

Influence of EU governance processes on the implementation of the CRPD and independent living rights

6.1 Introduction

This chapter is the last of the three analytical chapters of the thesis. It explores two crucial processes of the EU governance: (i) the European Semester; and (ii) the ESI Funds. The exploration aims to assess their opportunities to influence the implementation of the CRPD and independent living rights.

While the previous chapters investigated the EU CRPD-related governance and four institutional members of this governance, this chapter focuses on two EU governance processes that are not CRPD-related but that are expected to give their contribution to the implementation and monitoring of the Convention. This expectation derives from the analysis of the previous chapters. These explained the duties and the efforts to implement the CRPD in any EU policy.

Therefore, the focus on the European Semester and the ESI Funds assesses the level of the CRPD implementation within these two processes. Such an assessment verifies if the EU CRPD-related governance either is influencing the broad EU governance or is a close box disconnected from the other processes of the EU governance. Building upon the explanations included in the previous chapters, the assumption is that the EU CRPD-related governance is trying to exercise its influence on the European Semester and the ESI Funds. The chapter seeks verification of this assumption from: (i) the documentary research; (ii) the conducted interviews; and (iii) the comparison between pieces of evidence and theories.

Two sections follow this introduction. The first one is about the European Semester, and the second one focuses on the ESI Funds. Both the sections include an introductory description of the process and three analytical subsections. The analyses are mainly inductive as they start from observed situations to develop general understanding. The provided explanations are often intuitive and seek verification from the comparison between the different

sources (documents and interviews) as well as from the findings of the previous chapters.

6.2 The European Semester

“Introduced in 2010, the European Semester enables the EU member countries to coordinate their economic policies throughout the year and address the economic challenges facing the EU”.¹ As Maatsch explained, “the European Semester constitutes a soft governance tool: the Commission monitors compliance with ‘hard’ (budgetary) and ‘soft’ (socio-economic) criteria, but it cannot veto national budgets which are (still) tailored by national governments”.² Therefore, the European Semester cannot coerce the EU Member States on any course of action, but it can try to influence them. As such, the European Semester is relevant to the thesis because it is an example of EU soft governance.

Thus, if the European Semester included CRPD principles in its processes, it could exercise influence on their implementation. For instance, “in core policy areas of the European Semester, thematic factsheets provide cross-country information on economic or social challenges”.³ This means that the European Semester includes a social dimension. Sections 5.2.2.1 and 5.3.2 explained that the EU Commission and Parliament show a social approach to the CRPD implementation. Therefore, the European Semester may concern social matters that are relevant to the Convention.

For example, the European Semester thematic factsheet on social inclusion mentions disability several times. It concludes with the request of “ensuring that [disabled] people have access to health services as close as possible to their community (including in rural areas), institutionalisation can be

¹ ‘The European Semester: Why and How’ (*European Commission*) <https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester/framework/european-semester-why-and-how_en> accessed 4 March 2019.

² Aleksandra Maatsch, ‘Effectiveness of the European Semester: Explaining Domestic Consent and Contestation’ (2017) 70 *Parliamentary Affairs* 691, 692.

³ ‘Thematic Factsheets’ (*European Commission*) <https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester/thematic-factsheets_en> accessed 21 August 2019.

avoided”.⁴ Although not mentioning the CRPD, this quotation concerns a principle that directly connects with the implementation of the Convention and independent living rights.

Generally speaking, the European Semester represents the response of the EU to the economic crisis of the last decade. In extreme synthesis, the EU Commission describes the European Semester as “an annual cycle of coordination and surveillance of the EU’s economic policies”⁵ that have reformed the “stick-based”⁶ Stability and Growth Pact and introduced the macroeconomic imbalance procedure⁷ as well as a new Treaty on Stability.⁸

The description of the European Semester as a governance cycle reminds the explanations of Chapter 3 about governance processes. For instance, Figure 3-5 suggested a cyclical scheme that illustrates the EU tendency to develop governance cycles. As the following explanations will confirm, the cyclical scheme suggested by Zeitlin⁹ can summarise the general characteristics of the European Semester. The cyclicity of governance processes is an essential influencing strategy because it sets common priorities to implement at the national and local levels, and it includes peer review mechanisms that evaluate results and correct strategies with a mutual learning principle.

Verdun and Zeitlin suggested that “although the Semester involves no legal transfer of sovereignty from the member states to the EU level, it has given the EU institutions a more visible and authoritative role than ever before in monitoring, scrutinizing and guiding national economic, fiscal and social policies,

⁴ ‘Social Inclusion’ (EU Commission 2017) European Semester Thematic Factsheet 10 <https://ec.europa.eu/info/sites/info/files/file_import/european-semester_thematic-factsheet_social_inclusion_en_0.pdf> accessed 10 January 2019.

⁵ ‘The EU’s Economic Governance Explained’ (*European Commission*) <https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester/framework/eus-economic-governance-explained_en> accessed 4 March 2019.

⁶ Valentin Kreilinger, ‘National Parliaments, Surveillance Mechanisms and Ownership in the Euro Area’ (Jacques Delors Institut 2016) 13 <https://www.delorsinstitut.de/2015/wp-content/uploads/2016/03/Nat.Parl_.SurveillanceOwnership-Kreilinger-JDIB-Mar16.pdf> accessed 5 March 2019.

⁷ ‘The EU’s Economic Governance Explained’ (n 5).

⁸ Treaty on Stability, Coordination and Governance in the Economic and Monetary Union 2012 (Document 42012A0302(01)). At the time of this research, all the EU Member States ratified this Treaty except for the UK, the Czech Republic, and Croatia.

⁹ See Section 3.4.3: Jonathan Zeitlin, ‘New Forms of Governance: Beyond Hierarchy?’ (2016).

especially within the euro area”.¹⁰ Wrong explained that authority is a resource that allows the exercise of influence.¹¹ As such, the establishment of the European Semester can be interpreted as a strategy to increase the EU’s authority and influencing opportunities.

During the European Semester cycle, “the Commission also monitors Member States’ efforts in working towards ‘Europe 2020’”.¹² The Europe 2020 Strategy¹³ is a political agenda for “smart, sustainable and inclusive growth” on which the EU Member States have agreed.¹⁴ The Europe 2020 Strategy represents a common framework to guide the efforts of the EU Member States’ governments towards the same priorities. These priorities are the main targets of the Strategy.¹⁵ These targets are translated into national strategies that are implemented through National Reform Programmes (NRPs).¹⁶

On this, the European Economic and Social Committee suggested that the “Member States should include specific targets for persons with disabilities in their National Reform Programmes” due to a close link between the European Disability Strategy¹⁷ and the Europe 2020 targets.¹⁸ As the Disability Strategy is one of the EU strategies to implement the CRPD,¹⁹ some principles of the Convention may be included in the NRPs and discussed during the European

¹⁰ Amy Verdun and Jonathan Zeitlin, ‘Introduction: The European Semester as a New Architecture of EU Socioeconomic Governance in Theory and Practice’ (2018) 25 *Journal of European Public Policy* 137, 138.

¹¹ See Section 3.2.4: Dennis H Wrong, *Power: Its Forms, Bases and Uses* (Blackwell 1979) 21–24.

¹² ‘The EU’s Economic Governance Explained’ (n 5).

¹³ EU Commission Communication, Europe 2020 A strategy for smart, sustainable and inclusive growth 2011 (COM(2010) 2020 final [OJ C 88/27]).

¹⁴ ‘Europe 2020 Strategy’ (*European Commission*) <https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester/framework/europe-2020-strategy_en> accessed 4 March 2019.

¹⁵ EU Commission Communication COM(2010) 2020 final Annex I. The UK is the only country that has not adopted the targets of the Europe 2020 Strategy.

¹⁶ *ibid* 29.

¹⁷ EU Commission Communication, European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe (COM(2010) 636 final).

¹⁸ ‘EESC Opinion: European Disability Strategy 2010-2020’ (European Economic and Social Committee 2011) SOC/403 2 <<https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/european-disability-strategy-2010-2020>> accessed 4 March 2019.

¹⁹ European Disability Strategy 2010-2020 para 2.

Semester as a consequence. This consideration has been confirmed by an interviewed officer of the EU Commission, who held the view that:

the European Semester as a framework for assessing reform policies is also a tool for assessment of the implementation of the European Disability Strategy.²⁰

This insight confirms that, although tailored for economic issues, the European Semester can offer occasions to discuss the implementation of the Convention.

6.2.1 The European Semester governance process

The European Semester governance process respects a precise timeline, which is summarised by Figure 6-1.²¹ The yearly cycle of the European Semester includes four passages, which are the so-called: (i) autumn, (ii) winter, (iii) spring, and (iv) summer packages.

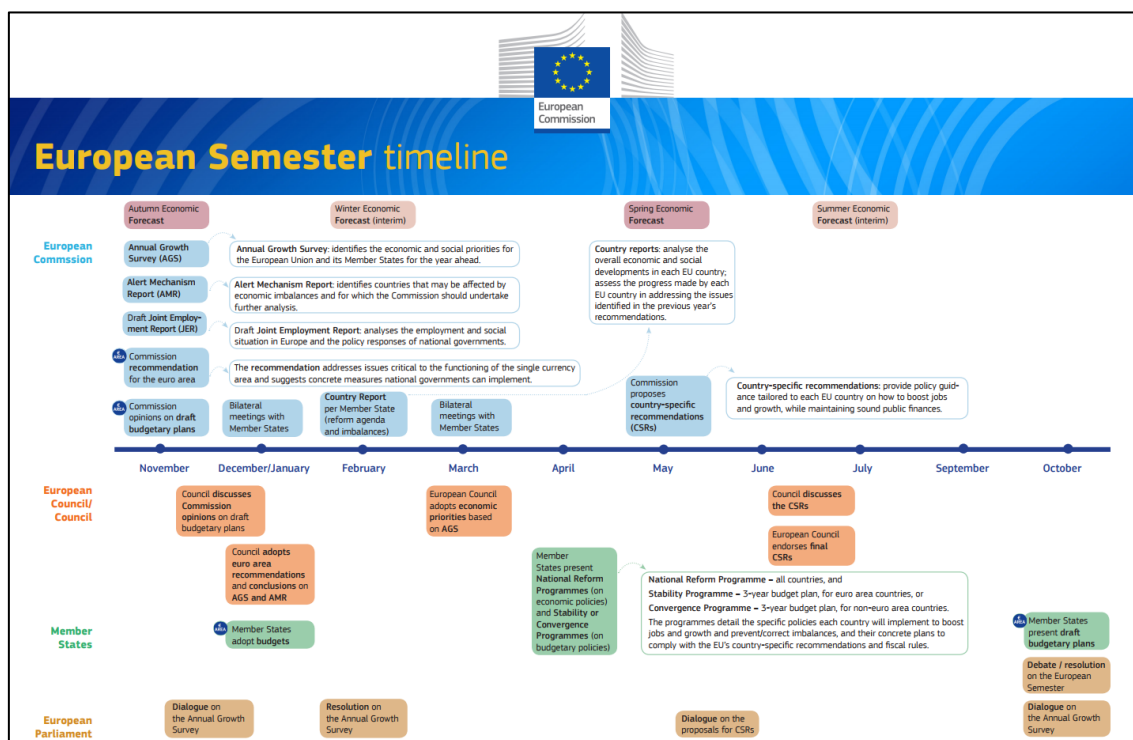


Figure 6-1 – The European Semester Timeline

²⁰ 'Interviewee 14' (3 August 2018) 3.

²¹ 'Visual Presentation of the European Semester Economic Coordination Cycle' <https://ec.europa.eu/info/files/2018-european-semester-timeline_en> accessed 5 March 2019.

(i) The autumn package gives the start to the European Semester annual cycle. In this occasion, the EU Commission sets out the shared priorities that the EU Member States are asked to pursue. These priorities are explicated in a series of five documents: (a) the Annual Growth Survey; (b) the Alert Mechanism Report; (c) the draft Joint Employment Report; (d) recommendations for the Euro area; and (e) opinions on the national Draft Budgetary Plans for the Euro area only.²² The inclusion of CRPD-relevant matters in these documents could offer the EU opportunities to influence the implementation of the Convention.

(ii) During the winter package, the EU Commission publishes a country report for each EU Member State to assess the progress on structural reforms as identified in the previous year's recommendations. Besides, an in-depth review is addressed to the countries mentioned in the Alert Mechanism Report.²³ The inclusion of issues regarding the implementation of the Convention could be the occasion to exercise influence.

(iii) The spring package sees the EU Member States submitting to the EU Commission their national reform programmes (NRPs) together with their stability (Euro area) or convergence (non-Euro Area) programmes. Such programmes should be the national translation of the dialogues that took previously place at EU level. The NRPs develop around the Europe 2020 targets, whereas the stability/convergence programmes are three-year budget plans.

(iv) During the summer package, the EU Commission sends country-specific recommendations (CSRs) as the result of the comparison between the national programmes and the EU priorities. The CSRs aim to suggest realistic achievements with a 12-18 month time horizon, and national governments should formally adopt them in July.²⁴

²² 'Setting the Priorities' (*European Commission*) <https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester/european-semester-timeline/setting-priorities_en> accessed 5 March 2019.

²³ 'The Analysis Phase' (*European Commission*) <https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester/european-semester-timeline/analysis-phase_en> accessed 5 March 2019.

²⁴ 'EU Country-Specific Recommendations' (*European Commission*) <https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester/european-semester-timeline/eu-country-specific-recommendations_en> accessed 5 March 2019.

However, the formal domestic adoption is a voluntary choice of national governments because the CSRs are non-legally binding Recommendation of the EU Council. In fact, the EU Treaties state that the EU Recommendations are formal acts without binding force.²⁵ For this reason, Section 3.4.1 suggested that they are a kind of soft law. This non-coercive situation classifies the European Semester as a form of soft governance. Therefore, if the CSRs included CRPD-related issues, national governments could be influenced on their adoption. This explanation means that the CSRs can be targeted by groups of interest that want to exert influence on the implementation of the CRPD and independent living rights.

It is interesting to mention a briefing report of the European Parliament stating that “the CSRs are politically binding [and] a failure to implement the recommendations might result in further procedural steps”.²⁶ In essence, the EU Member States must respond to the received recommendations in the following year, or report on them at least. The idea of politically versus legally binding is fascinating. It reflects the dichotomy soft versus hard EU law that is one of the cornerstones of this thesis.²⁷ In short, the quoted report promotes the interpretation that political agreements can be binding. Such an interpretation would suggest that governance processes’ outcomes can be binding as well. As governance processes can influence but cannot coerce, then influence can be binding as a consequence.

Such an interpretation assumes that the European Semester can produce political recommendations that exercise their binding influence on the national and local levels. The assumed *binding* stance of politics’ influence does not derive from coercive procedures but is a probable consequence of the “penalty default” principle of Ayres and Gertner.²⁸ In short, the CSRs can have a binding

²⁵ Consolidated Version of the Treaty on the Functioning of the European Union 2012 (OJ C 326/47) Art 288.

²⁶ M Hradisky and M Ciucci, ‘Country-Specific Recommendations: An Overview’ (European Parliament 2018) 3
<[http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/624404/IPOL_BRI\(2018\)624404_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/624404/IPOL_BRI(2018)624404_EN.pdf)> accessed 7 March 2019.

²⁷ See Section 3.3.2.

²⁸ See Section 3.3.3: Ian Ayres and Robert Gertner, ‘Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules’ (1989) 99 *The Yale Law Journal* 87.

force insofar it is more convenient to respect than ignore them. This understanding is impressive and confers strategic importance on the CSRs.

With regard to the CSRs, an interviewee who was engaged in the European Semester process explained that:

in the framework of the European Semester, the Country Desk together with other services of the Commission contribute to the preparation of the [CSRs]. It analyses the National Reform Programme, the implementation of CSR, and monitors the progress in the reform priorities.²⁹

An interviewed colleague of the previous officer clarified that:

the thematic units might wish to submit significant detail [to be added to the CSRs].³⁰

Section 5.2.1.1 classified the EU Commission Disability Unit as the thematic unit that oversees CRPD-related issues. Thus, these interviewees' insights suggest that sharing information with the Country Desks to write the CSRs is an essential task of that Unit. This finding of the conducted interviews depicts a procedure that does not appear in any official document analysed during this research. On the other hand, confirmation arrived from an informant of the research. This situation means that the Disability Unit can try to exercise its influence on the Country Desks to include CRPD-related issues in the CSRs, which they contribute to preparing for the European Semester.

6.2.2 The European Semester and the EU CRPD-related governance

The previous sub-section explained that the deliverables of the European Semester process might influence the implementation of the CRPD when including relevant topics. This possibility is a consequence of the effectiveness of the governance process at stake. However, such effectiveness is put into question by several authors. For instance, Kreiling explained that the European Semester has critical weaknesses, among which he emphasised the national implementation of the CSRs. The author summarised the results of his research

²⁹ 'Interviewee 14' (n 20) 3.

³⁰ 'Interviewee 13' (30 April 2018) 2.

with the table below,³¹ which shows that the majority of the EU Member States implemented less than 50% of the 2013 CSRs.

Therefore, the inclusion of CRPD-related topics in the CSRs does not guarantee their implementation at the national level. This because, as previously explained, national governments are not bound to implement the recommendations they receive. However, the inclusion of relevant topics in the CSRs is the obvious pre-requisite for their implementation. As such, the inclusion of CRPD-related topics in the CSRs is the first challenge. For this reason, the CRPD-related governance entities try to exercise their influence on the inclusion of relevant recommendations in the European Semester CSRs. The research found several shreds of evidence of this kind of activity as revealed here below.

LOW	MEDIUM	HIGHEST
Belgium Bulgaria Czech Republic Hungary Italy Luxembourg Slovakia Slovenia	Austria France Germany Latvia Lithuania Malta Poland Romania Sweden United Kingdom	Denmark Estonia Finland Netherlands Spain

Figure 6-2 - Progress on the CSRs implementation (2013)

Asked about the inclusion of independent living rights' topics in the CSRs, an interviewee civil society activist was concerned that:

*the European Semester is a lot of work for very few results.*³²

Where the *lot of work* stands for the interviewed activist's attempts to influence the EU Commission on the inclusion of few words in the CSRs about independent living rights. Besides, the *few results* are confirmed by the EU Commission itself, as documented in the following passage.

³¹ Kreiling (n 6) 45. Low = less than 37.5% ; Medium = between 37.5 and 50% ; Highest = more than 50%

³² 'Interviewee 7' (25 June 2018) 8.

During the 2012 DHLG, the EU Commission reported about the just concluded cycle of the Semester. It admitted that “the European Semester concentrates on economic policy coordination, which explains relatively few mentions of disability [however] attention is systematically drawn to disability issues in internal discussions”.³³ This emphasis on *internal discussions* can be connected with the contents of Section 5.5.1 about the opportunities to influence that start before the publication of any deliverable. In fact, the networking that coordinates the preparation of the CSRs can raise awareness on specific topics even if not subsequently included (for any reason) in the recommendations themselves. In addition to this consideration, the DHLG meetings minutes include pieces of evidence that the Group tried to exercise its influence on the European Semester process.

During the first 2013 DHLG, several members underlined that a stronger focus of the European Semester on disability could have avoided horizontal spending cuts on services for persons with disabilities during the last economic crisis. On this, the EU Commission confirmed its commitment to include disability issues in the European Semester process.³⁴ At the following meeting, “some DHLG members proposed to put the European Semester process at least once a year on the agenda of the DHLG. The Commission requested DHLG members to reflect on possible recommendations the DHLG could make to better integrate disability related issues in the European Semester”.³⁵

During the first 2014 DHLG, “the Commission presented the state of play of the European Semester process and gave information on JUST D.3 involvement in the European Semester process from a disability perspective”.³⁶ As inferred in previous sections,³⁷ JUST D.3 was the unit of the EU Commission

³³ ‘Draft Minutes of the EU Disability High Level Group Meeting’ (EU Commission 2012) 5
<<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=1259>> accessed 18 December 2018.

³⁴ ‘Draft Minutes of the EU Disability High Level Group Meeting’ (EU Commission 2013) 2
<<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=1259>> accessed 18 December 2018.

³⁵ ‘Draft Minutes of the EU Disability High Level Group Meeting’ (EU Commission 2013) 7
<<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=1259>> accessed 18 December 2018.

³⁶ ‘Draft Minutes of the EU Disability High Level Group Meeting’ (EU Commission 2014) 8
<<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=1259>> accessed 18 December 2018.

³⁷ See Sections 4.2.3; 4.3.3; 4.4.3.2; and 5.2.2.

entrusted with the mandate of the EU CRPD focal point before the relocation to EMPL C3. The minutes also reveal that “JUST D.3 makes systematically use of information and data of the Academic Network of European Disability experts (ANED)”.³⁸ This revelation suggests that ANED supported the EU CRPD focal point in the attempt to exercise influence on the inclusion of disability-related issues in the CSRs and in their preliminary analyses.

In sum, the documentary findings explored above show that the EU CRPD-related governance tries to exercise its influence on the European Semester process. However, the DHLG minutes that follow the quoted 2013 and 2014 ones present a decreased focus on the European Semester, but the fact that discussions are not reported does not mean they did not take place. As inferred at the end of Section 4.4.3.2, it seems that the policy on the transparency of the DHLG’s chair changed with the 2015 relocation of the EU CRPD focal point from DG JUST to DG EMPL. Is this another example of the increased confidentiality of the new course?

Unfortunately, the interviews provided no answer to this question. However, an interviewee and an informant of the research clarified that there are three main ways to influence the European Semester on the inclusion of CRPD-related issues in its deliverables: (i) through the DG EMPL C3 unit (the Disability Unit of the EU Commission); (ii) through the DG geographic units; and (iii) through the European Semester national offices.³⁹ The European Semester national offices are part of the EU Commission representation offices, which are listed on the EU Commission website together with their employees.⁴⁰ These were included in this thesis’ list of possible interviewees.

The suggested three ways to influence the CSRs have in common an established cooperation between the Disability Unit and the country desks, as explained at the end of the previous sub-section. Therefore, it is possible to presume that what arrives at the Disability Unit also reaches the country desks and vice versa. As such, it is vital to understand how CRPD-related information

³⁸ ‘Draft Minutes of the EU Disability High Level Group Meeting’ (n 36) 8.

³⁹ ‘Interviewee 7’ (n 32) 8.

⁴⁰ ‘Local Offices in EU Member Countries’ (*European Commission*) <https://ec.europa.eu/info/about-european-commission/contact/local-offices-eu-member-countries_en> accessed 7 March 2019.

that concern the European Semester reach: (i) the Disability Unit; (ii) the DG geographic units; and (iii) the European Semester National Offices.

6.2.2.1 Influencing the CSRs through the Disability Unit

The first way to influence the CSRs drafting on the inclusion of CRPD-related issues is passing through the EU Commission Disability Unit. For instance, it seems that ANED can be an example of this kind of process. Section 5.2.2.2 explained that the Disability Unit supports the financing of the Academic Network of European Disability Experts. In turn, “ANED provides a coordinating infrastructure of academic support for implementation of the European Disability Strategy and the [CRPD]”.⁴¹ At the time of writing, ANED has a website that shows three main instruments of its infrastructure: (i) DOTCOM; (ii) thematic reports; and (iii) country reports on the European Semester.

(i) DOTCOM is a “database of information about [among others] national laws, policies, strategies and initiatives in the Member States of the European Union”.⁴² Therefore, it offers impartial transparency concerning the national implementation of disability-related measures.

(ii) ANED’s thematic reports address 12 thematic areas, among which: EU 2020, and independent living rights.⁴³ Its research on EU 2020 includes country reports as well as EU-level syntheses of the mainstreaming of disability-related issues within the European Semester.⁴⁴ Its research on independent living rights consists of two series of reports (2011 and 2019) that analyse the implementation of independent living rights in each EU Member State.⁴⁵

(iii) ANED’s country reports on the European Semester are yearly reports about the national implementation of the CRPD via the EU Disability Strategy as included in the Europe 2020 targets.⁴⁶ These are the reports that ANED submits

⁴¹ ‘About Us’ (*The Academic Network of European Disability experts*) <<https://www.disability-europe.net/about-us>> accessed 6 March 2019.

⁴² ‘DOTCOM’ (*The Academic Network of European Disability experts*) <<https://www.disability-europe.net/dotcom>> accessed 6 March 2019.

⁴³ ‘Themes’ (*The Academic Network of European Disability experts*) <<https://www.disability-europe.net/theme>> accessed 6 March 2019.

⁴⁴ ‘EU2020’ (*The Academic Network of European Disability experts*) <<https://www.disability-europe.net/theme/eu2020?page=4>> accessed 6 March 2019.

⁴⁵ ‘Independent Living’ (*The Academic Network of European Disability experts*) <<https://www.disability-europe.net/theme/independent-living>> accessed 6 March 2019.

⁴⁶ ‘EU2020’ (n 44).

to the Disability Unit to suggest CRPD-related issues that could be included in the European Semester deliverables.

In sum, ANED “was established by the European Commission in 2008 to provide scientific support and advice for its disability policy Unit”.⁴⁷ In turn, the Disability Unit uses ANED’s deliverables to exercise its influence on the inclusion of disability-related issues in the European Semester outcomes. Also, ANED’s deliverables are published on a dedicated website.

An informant of the research revealed that the effort on web transparency is a crucial part of ANED’s contract with the EU Commission. This insight is confirmed by the relevant original tender, dated 2007.⁴⁸ The informant added that this contractual aspect has become more significant over time. On this, the webpage that summarises the contractual details of the second (2014) tender shows that ANED’s funding is increased.⁴⁹ Following the informant’s insights, it can be assumed that part of the rise has supported the development of new research as well as its publication on the existent website. Coherently, the new tender asks to produce the new series of country reports for input in Europe 2020 European Semester process.⁵⁰ Besides, it requires the development of a website “for data gathering, analysis and sharing of the information on the situation of people with disabilities”.⁵¹ This means that the Disability Unit of the EU Commission is financing the development and publication of reports that monitor the activities of the EU Member States in relation with disability rights within the EU2020 and the European Semester frameworks.

Section 5.2.2.2 explained that the Disability Unit of the EU Commission acts under the mandate of the EU CRPD focal point and deliberates on ANED’s funding. Sections 4.2 and 5.2.2 emphasised the confidentiality of the EU

⁴⁷ This quotation is the chapeau of almost all the ANED’s country reports.

⁴⁸ ‘Tender No VT/2007/005 - Academic Network of European Disability Experts’ (EU Commission 2007) <<https://ec.europa.eu/social/BlobServlet?docId=1026&langId=en>> accessed 31 January 2019.

⁴⁹ ‘Services - 285196-2015’ (*TED Tenders Electronic Daily*, 2015) <<https://ted.europa.eu/udl?uri=TED:NOTICE:285196-2015:TEXT:EN:HTML>> accessed 1 August 2019. ANED’s yearly funding has increased from 500 to 700 thousand Euro.

⁵⁰ ‘Tender JUST/2014/RDIB/PR/EQUA/0062’ (EU Commission 2014) 7–8 <<https://www.pdfFiller.com/jsfiller-desk16/?projectId=331527481&expld=5459&expBranch=3#f470f5dd9764a76636b15cfcf68290c7>> accessed 1 August 2019.

⁵¹ *ibid* 10.

Commission Disability Unit, which in turn finances the transparency of ANED. This exciting aspect is not contradictory, and it can be explained by the fact that ANED's website publishes thematic studies and country reports without including works that directly monitor the EU CRPD focal point. This consideration means that ANED does not screen the work of the Disability Unit. In turn, the Unit uses the authoritative and transparent work of ANED to investigate the EU Member States implementation of the CRPD. With the data provided by ANED, the EU Commission has the opportunity to exercise its influence through the European Semester. As a consequence, this is an evidence how the EU Commission uses transparency with influencing strategies.

6.2.2.2 Influencing the CSRs through the DG geographic units

The second way to influence the European Semester on the inclusion of CRPD-related issues in its deliverables is through the EU Commission geographic units. For instance, an interviewee revealed to work for a network of CSOs that works in this direction.⁵² This international network is named European Expert Group on the Transition from Institutional to Community-based Care (EEG), and it focuses on independent living rights. The EEG includes 12 organisations, among which there are EDF and ENIL.⁵³

The same interviewee explained the EEG effort to engage with the European Semester, and she argued that their scarce resources oblige them to focus on a few countries only. Generally speaking, the interviewee was concerned about their opportunities to influence the EU Commission on mentioning independent living issues in the CSRs. In detail:

*you can send them a hundred-page report about institutions to get maybe the word into the country report.*⁵⁴

Besides, even when getting *the word* into the initial country report, the final CSRs may ignore the point. The interviewee explained that:

⁵² 'Interviewee 7' (n 32) 8.

⁵³ 'From Institutions to Living in the Community' <<https://deinstitutionalisation.com/>> accessed 1 August 2019.

⁵⁴ 'Interviewee 7' (n 32) 8.

[the CSRs] are so focused on employment that we just don't find them relevant for people in institutions. [...] They are not going to be caught by these measures. They need so much more than employment. Without support you cannot have employment anyway.⁵⁵

We've done a lot of discussions with the Commission about how can we make sure that deinstitutionalisation gets into the European Semester and through the country specific recommendations and they told us it's very difficult, it's, they even told us, don't bother, kind of don't waste your time.⁵⁶

To verify the concerns of this interviewee, a personal analysis of the 2018 CSRs⁵⁷ verified that: (i) none of them directly touches deinstitutionalisation; (ii) 1 of them mentions disability with regard to pensions;⁵⁸ (iii) 5 of them address disability in liaison with employment;⁵⁹ (iv) 6 of them quote disability as a matter of poverty;⁶⁰ and (v) 1 of them named disability and the school system.⁶¹ Therefore, the concerns of the interviewee seem to be well-founded. Would it be different if the EEG addressed its reports to the EU Commission Disability Unit instead of to the geographic units, as ANED does?

6.2.2.3 Influencing the CSRs through the European Semester national offices

The third way to influence the European Semester on the inclusion of CRPD-related issues in the CSRs may pass through the European Semester national offices. Also in this case, the conducted interviews supported the analysis of the

⁵⁵ *ibid* 7.

⁵⁶ *ibid* 8.

⁵⁷ '2018 European Semester: Country Specific Recommendations / Council Recommendations' (*European Commission*) <https://ec.europa.eu/info/publications/2018-european-semester-country-specific-recommendations-council-recommendations_en> accessed 6 March 2019.

⁵⁸ Slovenia [10];

⁵⁹ Romania [11]; Netherlands [11]; Malta [9]; Ireland [16]; Denmark [6]

⁶⁰ Romania [12]; Lithuania [13]; Latvia [10]; Estonia [8]; Croatia [10]; Bulgaria [11]

⁶¹ Malta [10]

thesis. For instance, an interviewee from one of these national offices explained that:

the European Semester Officers (ESOs) are locally active members of so called Country Teams based in the Brussels headquarters. We provide country-specific knowledge to the Teams. Our role is, through the added value of local presence, to enhance the analysis, reporting and communication of the “European Semester”, including the “Country Specific Recommendations” and the implementation of the “Europe 2020 Strategy”.⁶²

In extreme synthesis, they provide information to the EU from the national and local levels and vice versa. It seems interesting to note that when asked how the ESOs may promote the implementation of the CRPD and independent living in national and local policies, the interviewee replied:

(a) via topical events [...]; (b) awareness raising actions [...]; and (c) dialogue with relevant stakeholders [...].⁶³

In sum, the interviewee did not mention the CSRs. This consideration means that they probably do not even try to get independent living topics in the CSRs. Which is coherent with their colleagues suggesting the EEG activists *don't waste your time*.⁶⁴ However, the interviewee listed three strategies to engage with the national and local levels, which means that the European Semester governance process uses soft instruments to exercise its influence.

On the other hand, the interviewee clarified that:

the European Semester Officer has the task to monitor, analyse, assess and report on macroeconomic and budgetary developments, as well as relevant microeconomic and socio-economic issues.⁶⁵

⁶² 'Interviewee 15' (19 June 2018) 1.

⁶³ *ibid* 2.

⁶⁴ See above.

⁶⁵ 'Interviewee 15' (n 62) 2.

This description seems to exclude any social dimension of the European Semester. This interpretation confirms the concerns of the previous EEG activist, and it questions about how the implementation of the Europe 2020 Strategy is interpreted by the interviewed EU Commission local officers.

In line with these concerns, the interviewed officer declared that they are in contact neither with the EU CRPD focal point nor with the EU CRPD monitoring framework.⁶⁶ On the other hand:

*we are in continuous contact with various [local] authorities and actors, in the role of organisers or participants in events, roundtables, seminars, bilateral exchanges, etc.*⁶⁷

As the same interviewee admitted, this networking could have the opportunity to exercise influence on the implementation of the CRPD and independent living rights.⁶⁸ The problem is that the data of this research suggest that the European Semester national offices do not engage on the topic, and they do not liaise with the EU CRPD-related governance either. Therefore, this situation looks like a missed opportunity.

A second interviewee from a different European Semester national office confirmed the absence of any link between the ESOs and the EU CRPD-related governance, explaining that they communicate with the EU Commission geographic units instead.⁶⁹ The interviewee added that the national and local debates influence the ESOs' activities. Therefore, if these are not concerned with CRPD and independent living rights, the ESOs may not address the issue either. This because:

*in order to have impact these recommendations need to focus on a very few number of economic issues and ideally issues on which the Member State in question is ready to take ownership and take action.*⁷⁰

⁶⁶ *ibid.*

⁶⁷ *ibid.*

⁶⁸ *ibid* 3.

⁶⁹ 'Interviewee 10' (15 May 2018) 1.

⁷⁰ *ibid* 2.

This insight entails that little influence on the implementation of the CRPD and independent living rights is exerted through the European Semester national offices. The interviewee held the view that the European Semester does not have any competence on these issues when stating that:

*the European Semester process seeks to promote domestic policy that can improve the economic performance of each of the Member States, tackling the key challenges that hinder improved economic performance.*⁷¹

The introduction to this section explained that the European Semester has a social dimension that this interviewed officer seemed to ignore. This situation may derive from a lack of adequate training. However, the EU Commission shall train the ESOs on CRPD-related topics. As explained in section 5.2, training the staff is essential to interpret and implement the Convention correctly. Despite this, a third interviewee declared that:

*[the CRPD] has never emerged during the [ESO's] works on the Semester [because disability-related issues are] totally out from our competence.*⁷²

In sum, all the interviewees from the three contacted ESOs confirmed that they do not engage with any CRPD-related matter. This finding shows a gap that may reduce the influence of the European Semester on the implementation of the Convention and independent living rights.

6.2.3 The European Semester's opportunities to influence

The previous sub-sections explained that the European Semester has exciting potentialities to promote and monitor the implementation of the CRPD and independent living rights. However, such potentialities face several barriers that limit the exercise of its influence on disability-related issues. This sub-section suggests further opportunities (used or lost) that may derive from the European Semester. The following discussion builds primarily upon the conducted

⁷¹ *ibid.*

⁷² 'Interviewee 9' (15 May 2018) 1.

interviews. These offered original insights that public documents usually do not include.

For instance, an interviewee who participated in the EU CRPD-related governance explained that:

the European Semester is actually a tool and an instrument that allows to sort of bypass the issue of EU competence in some specific areas of work very important for the implementation of Article 19. [...] And I say bypass the issue of EU competence because usually the European Union doesn't have direct competence on giving direction to Member States in these field, but being the European Semester they do an analysis of the situation in the countries, highlighting problems, also with regard to the possibility to live independently in the community for people. [...] It is an important hub because it gives the opportunity to influence national reforms.⁷³

This quotation supports the assumptions of the thesis. The interviewee is saying that the EU cannot use hard instruments to force on the implementation of independent living rights because of the conferral principle. This issue was explained in Chapter 2. Despite this, the EU Commission has developed the European Semester as a governance process that *bypasses* the competence issue. Such an expedient allows the EU Commission to lead coordinating activities with the EU Member States on issues on which it cannot legislate with hard measures. This coordination offers the occasion to harmonise policies and to influence the national and local levels as a consequence. Therefore, it can be affirmed that the European Semester is a strategy of the EU Commission to influence the domestic level of the EU Member States. As such, the EU CRPD-related governance and civil society activists can target the EU Commission to influence the implementation of the CRPD and independent living rights.

The same interviewee provided an example of this influencing process:

we facilitated, for instance, a meeting between our Latvian members, and the European Commission official responsible for

⁷³ 'Interviewee 6' (14 March 2018) 1.

*using the [ESI] Funds in Latvia. [...] So the minister had this meeting to highlight the importance of promoting deinstitutionalisation in Latvia to the attention of the commissioner, and then this resulted in a concrete country specific recommendation given to the Latvian government of investing in a national reform on deinstitutionalisation.*⁷⁴

This episode confirms the previously mentioned interviewee saying that the CSRs address topics on which the national governments already agree.⁷⁵ This issue is important because it explains the European Semester as a continuous dialogue. The process is not an infringement procedure, it is a circular and cyclical strategy to reach agreement.

This evidence of the research suggests one question, at least: if the CSRs include recommendations on which the national governments already agree, is it correct to talk about CSRs' influence? With regard to the Latvian example, there were several actors involved that agreed on the urgency of addressing deinstitutionalisation, and they put it down in black and white. This finding complicates the identification of any influence. This is because it relocates the influence on deinstitutionalisation to a moment before the publication of the relevant CSR.

The fact that the CSRs are not unilateral acts allows to describe them as the result of a governance cycle. As explained by Figure 3-5, different actors decide on common courses of action to be implemented and reciprocally revised. As such, the CSRs are documents that formalise previous informal agreements on specific topics between the EU Commission and national governments. The written and public formalisation of such agreements is in itself the result of previously occurred influencing processes. However, having specific written commitments can strengthen the enforcement of the already exercised influence, and it can give the start to a new cycle.

The interviewee remembered that Latvia received the recommendation on deinstitutionalisation:

⁷⁴ *ibid* 3.

⁷⁵ 'Interviewee 10' (n 69) 2.

*a long time ago when the country specific recommendations that were given to the country were more in number.*⁷⁶

European Semester	Total number of CSRs	Number of Member States	Minimum number of CSRs per Member State	Maximum number of CSRs per Member State		
2012	138	23	4	DE, SE	8	ES
2013	141	23	3	DK	9	ES, SI
2014	157	26	3	DK	8	ES, HR, IT, PT, RO, SI
2015	102	26	1	SE	6	FR, HR, IT
2016	89	27	1	SE	5	FR, HR, IT, CY, PT
2017	78	27	1	DK, SE	5	HR, CY
2018	73	27	1	DK, SE	5	CY

Figure 6-3 - CSRs - some stylized facts

On this, the figure above⁷⁷ shows that the total number of CSRs halved from 2014 to 2018. Vanhercke, Zeitlin and Zwinkels suggested that the reduction of the CSRs aimed to focus on actionable and monitorable priorities, but it reduced the social engagement of the European Semester.⁷⁸ Therefore, it reduced the possibilities that disability-related issues could be mentioned in the CSRs and the opportunities to influence the implementation of the CRPD and independent living rights as a consequence.

Hradisky and Ciucci emphasised that the Juncker Commission also modified the timing of their publication.⁷⁹ In detail, the CSRs are delivered earlier in the European Semester “in order to leave more time for review across national delegations”, as explained by Vanhercke, Zeitlin and Zwinkels.⁸⁰ This finding supports the assumption that the CSRs are part of an ongoing cyclical dialogue that continues from one year into the next. The CSRs are the conclusion of an analytical process and the stimulus for the new cycle starting with the autumn package.

⁷⁶ ‘Interviewee 6’ (n 73) 3.

⁷⁷ Hradisky and Ciucci (n 26) 2.

⁷⁸ Bart Vanhercke, Jonathan Zeitlin and Astrid Zwinkels, ‘Further Socializing the European Semester: Moving Forward for the “Social Triple A”?’ (European Social Observatory 2015) <http://www.ose.be/files/publication/2015/vanhercke_zeitlin_2015_EuropeanSemester_report_dec15.pdf> accessed 7 March 2019.

⁷⁹ Hradisky and Ciucci (n 26) 1–2.

⁸⁰ Vanhercke, Zeitlin and Zwinkels (n 78) 8.

On the other hand, the interviewee expressed some concern about this timing issue. On this, the released insight was:

that actually due to time constraint, officials need to work in parallel, so in some cases the conclusions are already drawn before having the analyses. Although we are talking about such long-term reforms, it's very easy to have the conclusions without waiting for the result of the analysis.⁸¹

It follows that the redefinition of the timing has increased the opportunities to dialogue for certain actors at the expenses of others. This situation appears to be a situational influence⁸² that relocates the opportunities to impact on the CSRs. The absence of time to discuss the analyses increases the importance of informal dialogues. This finding means that an excellent informal relationship with EU Commission key units and officers can be more effective than *a hundred-page report about institutions*,⁸³ which nobody has the time to read. In turn, this aspect increments the importance of the EU CRPD-related governance. Lastly, this awareness might develop more targeted strategies than those explored in the previous sub-section in order to have *the word* in the CSRs.

To conclude, despite the expressed concerns about the European Semester relevance to the implementation of the CRPD and independent living, an interviewed civil society activist declared a positive feeling about the future development of this governance process. This because:

the European Semester will play a bigger role with the CSRs.⁸⁴

For example, the European Semester can be the future arena to discuss the partnerships agreements for accessing ESI Funds and verifying their correct use,

[and] this wasn't the case in the previous programming period.⁸⁵

⁸¹ 'Interviewee 6' (n 73) 4.

⁸² See Section 3.2.3: Keith M Dowding, *Rational Choice and Political Power* (Edward Elgar 1991) 47–49.

⁸³ See above.

⁸⁴ 'Interviewee 7' (n 32) 7.

⁸⁵ *ibid.*

This finding opens to new opportunities for the European Semester to exercise its influence, and immediately links to the next section about ESI Funds.

6.3 The European Structural and Investment Funds

Section 2.6.1 revealed that it happened that ESI Funds had financed the development of institutions during the financial period 2007/13.⁸⁶ To avoid such a misuse, Section 4.4.3.1 disclosed that the 2013 ESI Funds' Regulation had included disability-related ex-ante conditionalities to promote the use of funds in accordance with the CRPD. The same section presented pieces of evidence about the DHLG influence on the drafting of the new Regulation.

In its Concluding Observations to the EU, the CRPD Committee recommended to “develop an approach to guide and foster deinstitutionalization and to strengthen the monitoring of the use of the European Structural and Investment Funds. [...] The Committee also recommends that the European Union suspend, withdraw and recover payments if the obligation to respect fundamental rights is breached”.⁸⁷ This recommendation was delivered after the ratification of the new ESI Funds' Regulation. It is worth highlighting that the Committee did not ask for new rules but to enforce the just approved ones. Section 5.4.1.1 investigated a decision of the EU Ombudsman⁸⁸ stating that the norms of the ESI Funds Regulation are not enough to guarantee that no EU money be spent to build or renovate institutions. This section tries to verify if the ESI Funds-related governance has any opportunity to exercise influence on the implementation of the CRPD and independent living rights taking advantage of the Regulation's novelties and despite its limits.

⁸⁶ See also: Camilla Parker and Ines Bulic, 'European Structural and Investment Funds and People with Disabilities in the European Union' (European Parliament 2016) PE 571.386 <https://enil.eu/wp-content/uploads/2016/06/COMMITTEES_PETI_2016_11-09_Study-EUFunds-Disabilities.pdf> accessed 1 August 2019.

⁸⁷ 'Concluding Observations on the Initial Report of the European Union' (Committee on the Rights of Persons with Disabilities 2015) CRPD/C/EU/CO/1 para 51 <https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fEU%2fCO%2f1&Lang=en> accessed 10 October 2018.

⁸⁸ See Section 5.4.1.1: 'Decision in Case 417/2018/JN on How the European Commission Dealt with Concerns Raised about Alleged Human Rights Abuses in a Social Care Institution That Had Received EU Funding' (*European Ombudsman*, 17 September 2019) <<https://www.ombudsman.europa.eu/en/decision/en/119185>> accessed 30 October 2019.

The *ESI Funds* is a policy framework for five different EU Funds.⁸⁹ The policy is regulated by a specific EU Regulation (CPR).⁹⁰ Since this Regulation is an instrument of EU secondary legislation, it shall respect and protect the rights of persons with disabilities stated in the CRPD.⁹¹ This is because the Convention is an international treaty concluded by the EU, which became part of the EU legislative sources.⁹² It is also for this reason that Article 7 of the ESI Funds Regulation states that “the Member States and the Commission shall take appropriate steps to prevent any discrimination based on [...] disability [...] during the preparation and implementation of programmes”.⁹³ Attention to persons with disabilities is paid in several articles of the Regulation, and this confirms the intentionality to use ESI Funds in respect of their rights.

Section 4.4.3.1 explained that the DHLG exercised its influence on the EU Commission during the drafting of the ESI Funds Regulation. In detail, several members of the Group asked to include conditionalities that the EU Member States should have respected before obtaining any funding. As a consequence, the observance and monitoring of such conditionalities shape governance processes that aim to implement the ESI Funds Regulation itself correctly. As some of the conditionalities specifically mention the CRPD and independent living rights,⁹⁴ it can be affirmed that they represent an example of how an international treaty concluded by the EU is mediated via EU legislation. On this, Section 4.2.1 suggested that this mediation is an implementation duty that follows the conclusion of human rights treaties.

⁸⁹ (i) European Regional Development Fund (ERDF); (ii) European Social Fund (ESF); (iii) Cohesion Fund; (iv) European Agricultural Fund for Rural Development; and (v) European Maritime and Fisheries Fund.

⁹⁰ EU Parliament and Council Regulation, laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (1303/2013 [OJ L 347/320]). CPR stands for Common Provisions Regulation

⁹¹ UN General Assembly Resolution, Convention on the Rights of Persons with Disabilities and Optional Protocol 2006 (A/RES/61/106) Art 19.

⁹² See Section 2.3.1.

⁹³ EU Parliament and Council Regulation 1303/2013 Art 7.

⁹⁴ *ibid* Annex XI Part I TO9, Annex XI Part II Area 3.

The EU Commission “shall oversee the application of Union law”,⁹⁵ as stated in the EU Treaties and explained in Section 5.2. As Union law is stating how EU money can be used at the national and local levels, there may be some EU Commission process in place that verifies the correct supply and expenditure of EU Money. This situation is what the section seeks to analyse.

The ESI Funds Regulation regulates seven-year funding periods. While the 2007/13 cycle mainly focused on cohesion policies, the 2014/20 one “aims to maximise their contribution to the Europe 2020 strategy”.⁹⁶ At the time of writing this thesis, the 2014/20 cycle is close to its conclusion and discussions on the 2021/27 Regulation drafting have just been launched. The re-negotiations of the cycle for the funding period 2021-27 officially started the 2 May 2018 with the publication by the EU Commission of a package of legal proposals.⁹⁷ Here, “the Commission proposes to strengthen the link between the EU budget and the European Semester of economic policy coordination, which takes regional specificities into account”.⁹⁸ This confirms the insights of the interviewees and informants mentioned at the end of the previous section about this probable novelty of the new ESI Funds cycle.

The websites of the EU Council⁹⁹ and Parliament¹⁰⁰ include information about the ongoing negotiations. Besides, the EDF website has a page that is dedicated to the post-2020 financing period,¹⁰¹ showing the civil society’s lobbying on this significant revision process. It will be interesting to analyse this

⁹⁵ Consolidated Version of the Treaty on European Union 2012 (OJ C 326/13) Art 17.1.

⁹⁶ ‘European Structural and Investment Funds 2014-2020’ (EU Commission 2015) 16
<https://ec.europa.eu/regional_policy/sources/docgener/guides/blue_book/blueguide_en.pdf>.

⁹⁷ EU Commission Communication, Proposal for a Council Regulation laying down the multiannual financial framework for the years 2021 to 2027 2018 (COM(2018) 322 final); EU Commission Communication, A Modern Budget for a Union that Protects, Empowers and Defends - The Multiannual Financial Framework for 2012-2027 2018 (COM(2018) 321 final).

⁹⁸ EU Commission Communication COM(2018) 321 final 9.

⁹⁹ ‘Multiannual Financial Framework for 2021-2027: Negotiations’ (*European Council*)
<<https://www.consilium.europa.eu/en/policies/eu-budgetary-system/multiannual-financial-framework/mff-negotiations/>> accessed 1 August 2019.

¹⁰⁰ ‘Legislative Train Schedule - MFF 2021-2027’ (*European Parliament*)
<<http://www.europarl.europa.eu/legislative-train>> accessed 1 August 2019.

¹⁰¹ ‘EU Budget Post 2020’ (*European Disability Forum*) <<http://www.edf-fehp.org/eu-budget-post-2020>> accessed 1 August 2019.

revision process once concluded because a similar study appears still overhasty at the time of writing this thesis.

6.3.1 The ESI Funds governance process

To access ESI Funds, the EU Member States have to respect guiding principles as the Common Strategic Framework (CSF) that is part of the ESI Funds Regulation itself.¹⁰² The CSF “provide[s] strategic guiding principles [...] in line with the policy objectives and headline targets of the Union strategy for smart, sustainable and inclusive growth”.¹⁰³ This idea links to the Europe 2020 Strategy already mentioned in the previous section about the European Semester, explaining that it includes the implementation of the EU Disability Strategy and the CRPD.

Also, if the EU Member States want to access ESI Funds, they have to respect the conditionalities that are stated in the ESI Funds Regulation.¹⁰⁴ Such conditionalities are named *ex-ante* because they are conditions that the governments need to demonstrate before being funded. If the conditions are not respected, governments can receive ESI Funds after submitting a National Reform Programme (NRP) that explains how they intend to satisfy the conditionalities during the funding period. This process is a concrete example of how the EU tries to influence national policies because funding opportunities are subject to EU harmonisation goals.

Section 3.3.1 mentioned Nye and his classification of economic (soft) power.¹⁰⁵ The ESI Funds governance is an example of economic influence where the EU Member States are not coerced on any harmonisation process. However, they have to adhere to EU minimum standards if they want the money. As anticipated above, specific *ex-ante* conditionalities touch on the CRPD and independent living rights. Therefore, the ESI Funds governance can influence on these matters because the EU Member States receive money if their application “includes measures for the shift from institutional to community based care”.¹⁰⁶ No EU law obliges national governments to *shift from institutional to community*

¹⁰² EU Parliament and Council Regulation 1303/2013 Annex I.

¹⁰³ *ibid* Annex I Para 1.

¹⁰⁴ *ibid* Annex XI.

¹⁰⁵ Joseph S Nye, *Soft Power: The Means to Success in World Politics* (Public Affairs 2004) 2.

¹⁰⁶ EU Parliament and Council Regulation 1303/2013 Annex XI Part I TO9.

based care because this is a national competence; but, if they want EU money, they need to conform. This is influence, as defined in Section 3.2.1.

Based on both the Common Strategic Framework and the ex-ante conditionalities, any EU Member State concludes a Partnership Agreement (PA) with the EU Commission. “The Partnership Agreement should translate the elements set out in the CSF into the national context and set out firm commitments to the achievement of Union objectives through the programming of the ESI Funds”.¹⁰⁷ This is interesting because it states that the EU money shall be spent to achieve *Union objectives*, not national ones. Therefore, the national PAs are the domestic transposition of the EU CSF and have to respect the ex-ante conditionalities together with their disability-related dispositions.

The Partnership Agreement is a “document prepared by a Member State with the involvement of partners in line with the multi-level governance approach”.¹⁰⁸ Chapter II of the ESI Funds Regulation explains in detail the procedure to prepare the PAs. The procedure concludes with the EU Commission that approves the PAs after making observations about their consistency with the relevant National Reform Programme, Country Specific Recommendation, and ex-ante evaluations.¹⁰⁹ The observations are part of a process where the EU could influence the implementation of the CRPD and independent living rights. This process is like a dialogue, similarly to what explained about the European Semester CSRs in the previous section.

The *multi-level governance approach* mentioned in the ESI Funds Regulation,¹¹⁰ reflects the shared management principle that characterises the ESI Funds governance. This approach entails that, on one hand, the Regulation is an EU hard law emanated under the exclusive competence of the EU and legally binding on the EU Member States. On the other hand, “Member States and the Commission shall be responsible for the management and control of programmes in accordance with their respective responsibilities”.¹¹¹ In detail,

¹⁰⁷ *ibid* Preamble Para 20.

¹⁰⁸ *ibid* Art 2.20.

¹⁰⁹ *ibid* Artt 16-17.

¹¹⁰ See above.

¹¹¹ EU Parliament and Council Regulation 1303/2013 Art 73.

“Member States shall fulfil the management, control and audit obligations, and assume the resulting responsibilities”.¹¹²

It seems relevant to link the shared management principle with the ideas about the shared tasks and responsibilities between the EU and its Member States on the implementation of the CRPD.¹¹³ Indeed, these situations seem to share the same critical factor: to substitute the word *competence* with softer concepts that reflect governance processes more than conferral duties. The case of the ESI Funds Regulation is paradigmatic because it is hard law, but it is programmatic rather than prescriptive only.

Literature about EU environmental law describes the programmatic approach of law as “requiring Member States to draw up plans and programmes for the achievement of EU [...] goals”.¹¹⁴ Also, “the programmatic approach allows room for flexibility [...] this latter aspect is referred to as adaptability or adaptiveness”.¹¹⁵ Flexibility links to the experimentalist governance theories included in Chapter 3. In fact, von Homeyer suggested the emerging of experimentalist features in the EU environmental law.¹¹⁶ This original link between environmental and ESI Funds governance suggests a general trend of the EU towards the development of legal instruments that do not coerce and sanction but that establish soft management processes *for the achievements of EU goals*. Within this framework, the ESI Funds Regulation develops soft shared management processes that aim to harmonise the national and local levels to the minimum standards required to access funding. Among these minimum standards, there is “the shift from institutional to community based care”.¹¹⁷

An interviewee who oversaw Regional Development Fund’s programmes explained

¹¹² *ibid* Art 74.1.

¹¹³ See Section 4.4.4.1.

¹¹⁴ Lorenzo Squintani and Marleen van Rijswijk, ‘Improving Legal Certainty and Adaptability in the Programmatic Approach’ (2016) 28 *Journal of Environmental Law* 443, 443.

¹¹⁵ *ibid* 444.

¹¹⁶ Ingmar von Homeyer, ‘Emerging Experimentalism in EU Environmental Governance’ in Charles F Sabel and Jonathan Zeitlin (eds), *Experimentalist governance in the European Union: towards a new architecture* (Oxford University Press 2012).

¹¹⁷ EU Parliament and Council Regulation 1303/2013 Annex XI Part I TO9.

*the principle of shared management: there is a programme about which agreement has been reached between the European Commission and the Member State, after which a managing authority in the Member State carries out the programme, while the European Commission monitors. Other crucial elements are the regular reporting as well as the monitoring committees.*¹¹⁸

This means that the EU Member States prepare national Operational Programmes (OPs) based on their Partnership Agreements. The ESI Funds Regulation states that “each programme shall set out a strategy for the programme’s contribution to the Union strategy for smart, sustainable and inclusive growth consistent with this Regulation, the Fund-specific rules, and with the content of the Partnership Agreement”.¹¹⁹ Once the PAs are operative, the OPs must comply with them, and they can receive funding.

However, “the Commission may decide, when adopting a programme, to suspend all or part of interim payments to the relevant priority of that programme. [...] The failure to complete actions to fulfil an applicable ex ante conditionality which has not been fulfilled [...] shall constitute a ground for suspending interim payments by the Commission”.¹²⁰

¹¹⁸ ‘Interviewee 12’ (4 June 2018) 1.

¹¹⁹ EU Parliament and Council Regulation 1303/2013 Art 27.1.

¹²⁰ *ibid* Art 19 Para 5.

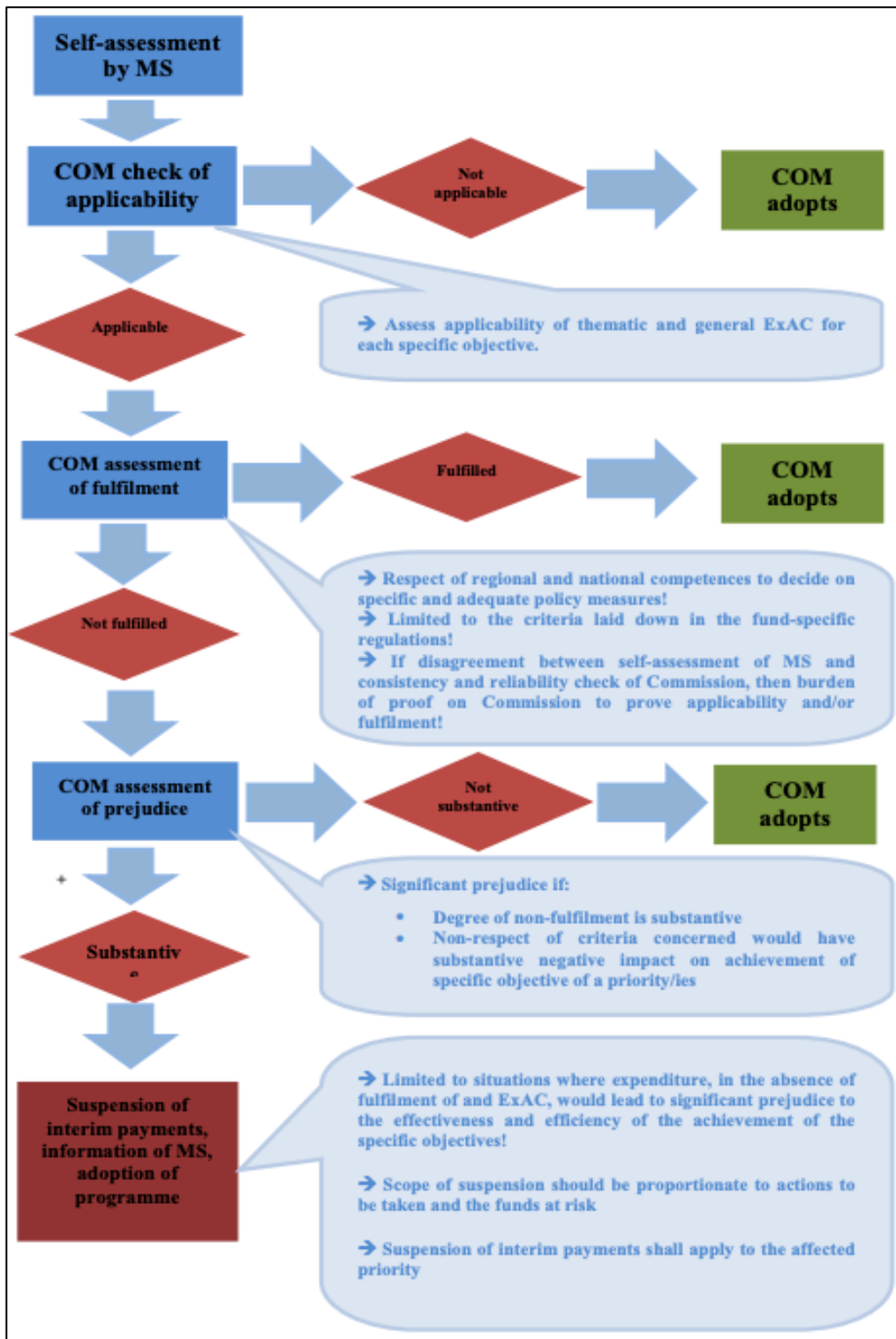


Figure 6-4 - Procedure for assessment of the fulfilment of ExACs

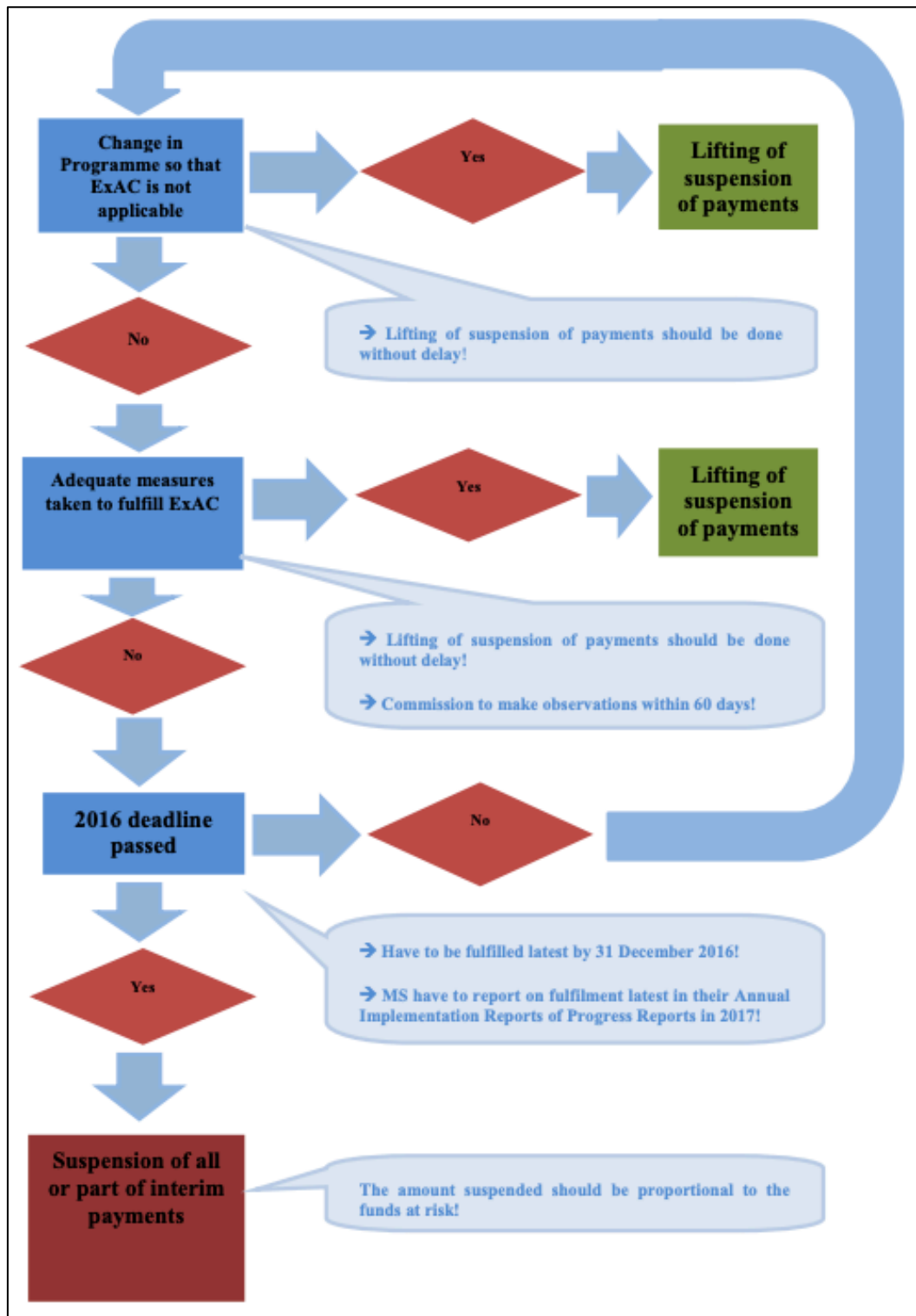


Figure 6-5 - Procedure for lifting of suspension of interim payments

The need to respect conditions and monitor such respect implies the establishment of a governance process that is summarised by the two figures here above.¹²¹ The monitoring part is mostly in charge of the national and local authorities and only supervised by the EU Commission. As suggested by Bachtler and Ferry, this procedure may cause principal-agent issues.¹²² However, national and local authorities should also be monitored by CSOs. Besides, the national CRPD monitoring frameworks could investigate if the expenditure of ESI Funds is in line with the Convention. In case of issues, the national CRPD monitoring frameworks could ask the EU CRPD-related governance to take action.

As a matter of example, ANED's European Semester country reports¹²³ include a section about the implementation of the ESI Funds in relation to disability. These reports are sent to the EU CRPD focal point, and the EU Commission Disability Unit should follow up presumed infringements. In addition, ENIL launched its campaign *EU Funds for our rights* "to encourage the European Commission and the Member States to improve the monitoring and complaints system, in order to ensure that Structural Funds are used to support the rights of people with disabilities, rather than restrict them".¹²⁴

6.3.2 The ESI Funds and the CRPD

In writing their Partnership Agreements, the EU Member States need to consider the 11 Thematic Objectives (TOs) that are listed in Article 9 of the ESI Funds Regulation.¹²⁵ TOs 9 and 10 are close to disability-related matters. These two

¹²¹ 'Internal Guidance on Ex Ante Conditionalities for the European Structural and Investment Funds - Part I' (EU Commission 2014) 23–24
<https://ec.europa.eu/regional_policy/sources/docgener/informat/2014/eac_guidance_esif_part1_en.pdf> accessed 12 March 2019.

¹²² John Bachtler and Martin Ferry, 'Conditionalities and the Performance of European Structural Funds: A Principal-Agent Analysis of Control Mechanisms in European Union Cohesion Policy' (2015) 49 *Regional Studies* 1258.

¹²³ See Section 6.2.2.1.

¹²⁴ 'EU Funds for Our Rights' (*ENIL – European Network on Independent Living*)
<<https://enil.eu/campaigns/eu-funds-for-our-rights/>> accessed 1 August 2019.

¹²⁵ (1) strengthening research, technological development and innovation; (2) enhancing access to, and use and quality of, ICT; (3) enhancing the competitiveness of SMEs, of the agricultural sector (for the EAFRD) and of the fishery and aquaculture sector (for the EMFF); (4) supporting the shift towards a low-carbon economy in all sectors; (5) promoting climate change adaptation, risk prevention and management; (6) preserving and protecting the environment and promoting resource efficiency; (7) promoting sustainable transport and removing bottlenecks in key network infrastructures; (8) promoting sustainable and quality employment and supporting labour mobility; (9) promoting social

TOs link to the ex-ante conditionalities that are relevant to disability-related matters. In particular, all the three ex-ante conditionalities of TO 9 ask to invest in “the shift from institutional to community based care”.¹²⁶

In addition to thematic conditionalities, there are also area conditionalities. These are more general and are relevant to each TO because concerning horizontal areas.¹²⁷ Among these, the third general ex-ante conditionality is about the disability area. In detail, it asks for “the existence of administrative capacity for the implementation and application of the United Nations Convention on the rights of persons with disabilities”.

In sum, these are examples of CRPD implementation through the inclusion of its principles in the EU legislation. Section 4.2.1 suggested that the EU Commission has the duty to include CRPD principles in its legislative proposals because it is the established EU CRPD focal point. It explained that this kind of implementation allows the enforcement of soft principles that are included in hard law through courts and sanctions. On the other hand, the previous sub-section explained that the programmatic approach of the ESI Funds Regulation adds a step between the adoption of hard law and its enforcement: the shared management. As such, the enforcement of the ESI Funds Regulation (that means the adoption of the coercive measure that it entails, as the suspension of the funding) may remain a programmatic matter of soft governance.

This is why guidelines explain how completing the shared management tasks, satisfying the duties of the Regulation as a consequence. Among these guidelines,¹²⁸ one explores the ex-ante conditionalities’ rationale, and it includes assessment grids.¹²⁹ This internal guidance includes explanations about: (i) the TO 9 ex-ante conditionality, and (ii) the disability area ex-ante conditionality.

inclusion, combating poverty and any discrimination; (10) investing in education, training and vocational training for skills and lifelong learning; (11) enhancing institutional capacity of public authorities and stakeholders and efficient public administration.

¹²⁶ EU Parliament and Council Regulation 1303/2013 Annex XI Part I.

¹²⁷ *ibid* Annex XI Part II.

¹²⁸ ‘Guidance on European Structural and Investment Funds 2014-2020’ (*European Commission*) <https://ec.europa.eu/regional_policy/en/information/legislation/guidance/> accessed 13 March 2019.

¹²⁹ ‘Internal Guidance on Ex Ante Conditionalities for the European Structural and Investment Funds - Part II’ (EU Commission 2014) <https://ec.europa.eu/regional_policy/sources/docgener/informat/2014/eac_guidance_esif_part2_en.pdf> accessed 13 March 2019.

(i) The explanations about the TO 9 ex-ante conditionality include definitions that are relevant to independent living rights, for instance: (a) institution; (b) community based services; (c) deinstitutionalisation; and (d) transitional period.¹³⁰ This policy is significant because if the EU Member States want to access ESI Funds, they should harmonise their independent living rights policies with these definitions. Also, the text of Article 19 CRPD itself is part of the guideline explanations as a legal basis that supports the conditionality itself.¹³¹ The guideline shows how the EU looks at the Convention as a legislative source to respect and implement. This clarification means that the implementation of the ESI Funds Regulation (spending EU money) promotes the implementation of independent living rights principles as stated in the CRPD and included in the Regulation itself.

(ii) The explanations about the disability area ex-ante conditionality include the definition of persons with disabilities stated in the Convention.¹³² Also, the guidance explains that “effective implementation and application of the UN CRPD will facilitate the implementation of the horizontal principle of equality and non-discrimination”.¹³³ This will guarantee the correct use of EU money. In fact, “the ex-ante conditionality sets out the minimum requirements which need to be fulfilled ex ante to ensure that there is full compliance with the UN CRPD in areas that fall under EU competence”.¹³⁴ Among these areas, the EU Commission “should do all in its power to ensure respect for fundamental rights as the money is spent”.¹³⁵ “ESI Funds therefore have to be implemented in accordance with the obligations stemming from the Convention”.¹³⁶

In short, the ex-ante conditionalities are minimum standards to which the EU Member States need to harmonise in order to obtain ESI Funds. The importance to set minimum standards to exercise influence on the national and

¹³⁰ *ibid* 259.

¹³¹ *ibid* 265.

¹³² *ibid* 351.

¹³³ *ibid*.

¹³⁴ *ibid*.

¹³⁵ See Section 5.4.1: ‘Decision of the European Ombudsman Closing Her Own-Initiative Inquiry OI/8/2014/AN Concerning the European Commission’ (*European Ombudsman*, 11 May 2015) <<https://www.ombudsman.europa.eu/en/decision/en/59836>> accessed 23 January 2019.

¹³⁶ ‘Internal Guidance on Ex Ante Conditionalities for the European Structural and Investment Funds - Part II’ (n 129) 352.

local levels has been explained in Section 2.4.2 and described as a strategy of the EU to influence issues where it has not full competence. This situation entails that the EU is taking advantage of its economic resources to influence independent living issues, where it shares the competence with its Member States.¹³⁷

Due to the importance of the ESI Funds to implement independent living rights, several interviewees were asked to confirm the findings of the documentary analysis. For instance, a participant in the EU CRPD-related governance emphasised that:

*the Commission disburses money if there is compliance, and if the Commission sees that there is no compliance they have rights to suspend funding.*¹³⁸

As an interviewee quoted in the previous section said that the European Semester is a process that bypasses the competence issue, another interviewee used the same idea for the ESI Funds when stating that:

*independent living is not about EU competence as such, you know, they have to be linked to structural funds or they have to be linked to something that is within the EU competence.*¹³⁹

These interviewees confirm the conclusions above: (i) the EU has not full competence on the CRPD and independent living rights, but it has to respect a treaty it concluded; (ii) the EU is directly responsible for the use of ESI Funds and cannot finance projects that do not respect the CRPD and independent living rights; and (iii) if the EU Member States want EU money, the use of this money should respect the Convention and independent living rights. In this way, without coercion, the EU exercises its influence on national and local policies.

An interviewee that monitored the use of ESI Funds revealed that:

the structural funds being used for deinstitutionalisation, it's something very specific to the EU. You don't get this anywhere else

¹³⁷ See Section 2.5.

¹³⁸ 'Interviewee 2' (7 March 2018) 1.

¹³⁹ 'Interviewee 7' (n 32) 4.

*in the world: somebody actually giving you money to change the way the system works.*¹⁴⁰

This quotation describes the ESI Funds governance as an EU strategy that uses money as a resource to exercise influence. At the beginning of the previous section, this aspect was linked to Nye's classification of economic (soft) power.¹⁴¹ However, while the previous interpretation was that the EU Member States were attracted by the opportunity to be funded, this interviewee overturns the perspective suggesting that the EU induces national governments *to change the way the system works*. This perspective raises the question about what happens when the EU stops to pay. The next sub-section will try to offer answers to this doubt.

An officer of the EU Commission responsible for Social Fund programmes explained that:

*ESF Regulation is implemented in line with Treaty provisions and CRPD is a) part of legislative acquis b) the only UN convention so far in which EU as such is party.*¹⁴²

The legal consequences of the EU conclusion of the CRPD were explained in Section 2.3.1. This quotation is significant because it clarifies that the correct implementation of the ESI Funds Regulation must respect the Convention. This conclusion means that all the EU Commission and national officers that work on the shared management of the ESI Funds should be aware of the CRPD and its principles.

Besides, two interviewees revealed that 12 countries have deinstitutionalisation in their Partnership Agreements as a funding priority for the financing period 2013/20.¹⁴³ When asked why only 12 countries, one of the two interviewees explained that there was much public attention on those 12 countries at the time of drafting their PAs. Several CSOs focused their resources on these countries to have deinstitutionalisation in their PAs, and they were

¹⁴⁰ *ibid* 5.

¹⁴¹ See Section 3.3.1: Nye (n 105) 2.

¹⁴² 'Interviewee 11' (11 May 2018) 1.

¹⁴³ 'Interviewee 7' (n 32) 5; 'Interviewee 11' (n 142) 2.

successful.¹⁴⁴ This example implies that the attraction and inducement of EU money is not enough to plan national independent living policies with the use of ESI Funds. The influence of CSOs is always essential to promote and monitor these kinds of policies.

In this case, the influence of CSOs took advantage of the EU CRPD-related governance to reach the EU Commission. As the interviewed campaigner explained:

*the Commission has much more influence when it comes to Partnership Agreements, then the Operational Programmes are much more Member States' job. So you have to influence whoever has the biggest role. There are the Partnership Agreements and the Operational Programmes, this is where the Commission has influenced. After that it's gone, pretty much. So that's why we are so focused especially on Partnership Agreements because the Operational Programmes are mainly, I mean, they are completely drawn by the Member States.*¹⁴⁵

Coherently with this explanation, an interviewee that worked in the EU Commission explained about the 12 countries that included deinstitutionalisation in their partnership agreements:

*the Commission can push [these 12 countries] to use ESF money for DI. [The other countries] are not amongst those MS, hence [the Commission] cannot push them.*¹⁴⁶

This insight entails that the influence on the drafting of the Partnership Agreements can be classified as a situational strategy as defined by Dowding.¹⁴⁷ Successful situational influences set situations that allow the exercise of influence on specific topics, which would be otherwise prevented.

¹⁴⁴ 'Interviewee 7' (n 32) 7.

¹⁴⁵ *ibid.*

¹⁴⁶ 'Interviewee 11' (n 142) 2.

¹⁴⁷ See Section 3.2.3: Dowding (n 82) 47–49.

FRA stated that “the most significant example of the EU’s obligations under the CRPD concerning deinstitutionalisation is ESIF”.¹⁴⁸ In its report, the Agency explained that “the European Commission identified a need for measures for the shift from institutional to community based care in 12 EU Member States: Bulgaria, Croatia, the Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia”.¹⁴⁹ This sub-section has explained that the quoted *the European Commission identified* is, in reality, the result of influencing relationships that include several actors.

To conclude, the Partnership Agreements between the EU Commission and the EU Member States are uploaded on a webpage of the EU Commission website together with the EU Commission Observations on the governments’ drafts.¹⁵⁰ It could be intriguing to compare: (i) the draft PAs; (ii) the EU Commission Observations; and (iii) the final PAs. Such comparison could reveal possible influences of the EU Commission on the inclusion of independent living principles in the final agreements. Unfortunately, the draft documents are not available, and this kind of complete comparison is not possible as a consequence.

6.3.3 The ESI Funds’ opportunities to influence

The previous sub-sections explained that the ESI Funds governance has compelling potentialities to promote and monitor the implementation of the CRPD and independent living rights. However, such potentialities face several barriers that limit the exercise of their influence on disability-related issues. This sub-section analyses these barriers to suggest further opportunities (used or lost) that can derive from the ESI Funds to promote the implementation of the CRPD and independent living rights.

The sub-section includes two parts: (i) the first part builds upon the conducted interviews; and (ii) the second part presents some good practice example and develops some inductive reasoning.

¹⁴⁸ ‘From Institutions to Community Living. Part I: Commitments and Structures’ (EU Agency for Fundamental Rights 2017) 10 <<http://fra.europa.eu/en/publication/2017/independent-living-structures>> accessed 10 October 2018.

¹⁴⁹ *ibid.*

¹⁵⁰ ‘Partnership Agreements on the European Structural and Investment Funds’ (*European Commission*) <https://ec.europa.eu/info/publications/partnership-agreements-european-structural-and-investment-funds_en> accessed 15 March 2019.

6.3.3.1 Insights on the ESI Funds governance

Due to the importance of the ESI Funds for the correct implementation of the CRPD and independent living rights, several interviewees were asked to share their insights on the matter. This part of the sub-section analyses the results of the conducted interviews.

An interviewee officer of a European DPO explained that:

[the ESI Funds] in theory it is a very good tool. In practice the barriers at national level have been in terms of lack of awareness about what independent living implies, and what financing independent living services actually means.¹⁵¹

This consideration raises two interpretations: (i) the first is that national and local officials may not be adequately trained; and (ii) the second is that they may try to resist European harmonising influences.

(i) About the training of national and local officers, it can be emphasised that the general ex-ante conditionality on disability requires “arrangements for training for staff of the authorities involved in the management and control of the ESI Funds”.¹⁵² Also, training is a measure that can be financed by the ESI Funds themselves. Indeed, the ESI Funds Regulation includes several dispositions that allow financing capacity building about the shift from deinstitutionalisation to community-led services.¹⁵³ Therefore, the Regulation includes training within the conditionalities to obtain funding, but it also provides money to promote training opportunities. Training means that national and local officers learn and follow EU guidelines. As suggested by Newman and Posner, policy guidelines are a form of soft law that can exercise influence.¹⁵⁴ As such, promoting training means to exert a strategy on harmonisation.

¹⁵¹ ‘Interviewee 6’ (n 73) 2.

¹⁵² EU Parliament and Council Regulation 1303/2013 Annex XI Part II.

¹⁵³ Among others: *ibid* Art 35; See also: ‘Draft Thematic Guidance Fiche for Desk Officers - Transition from Institutional to Community-Based Care (de-Institutionalisation - DI)’ (EU Commission 2014) <https://ec.europa.eu/regional_policy/sources/docgener/informat/2014/guidance_deinstitutionalisation.pdf> accessed 22 March 2019.

¹⁵⁴ See Section 3.3.3: Abraham Newman and Elliot Posner, *Voluntary Disruptions: International Soft Law, Finance, and Power* (1st edn, Oxford University Press 2018) chs 1–2.

(ii) The national and local acceptance of such harmonisation is not always guaranteed. This situation would represent a resistance to EU influences. On this, an interviewee activist of civil society confirmed that:

the way deinstitutionalisation is being interpreted by the Member States is the problematic part because of course Member States they want the money but they don't want to change too many things.¹⁵⁵

This interviewee is not talking about the *lack of awareness* suggested by the previously quoted one. Instead, this professional is highlighting that the point is political and cultural. This clarification entails that national governments are aware of their internal situations as well as of the EU attempts to change them by influencing on the adherence to EU minimum standards. So the critical factor is that national governments want EU money, but they are not always willing to harmonise their policies to EU objectives. This clarification seems to put national governments in a bad light. In reality, an interviewed human rights expert explained that:

all Member States have services for people with disabilities, all Member States have institutional services, and all Member States have community-based services. I mean, they are experts or people in that country are experts to the extent that they run those services. Are they expert in the CRPD? Not necessarily. Do you have to be an expert in the CRPD to run those services? I mean, that's an open question.¹⁵⁶

This perspective entails that the resistance of any national government to the EU harmonising policies on independent living rights is a matter of local culture, traditions, and beliefs that nurture interpretations that may diverge. Local interpretations can legitimately diverge because independent living issues are national competence. For instance, Section 5.2.2.1 revealed that Sweden has a human rights approach to independent living while other countries and the Union

¹⁵⁵ 'Interviewee 7' (n 32) 6.

¹⁵⁶ 'Interviewee 1' (1 March 2018) 8.

have a social approach. Should Sweden harmonise its approach to the EU example?

Even when national governments are not interested in harmonising their policies to the EU ones, they may be interested in the economic opportunities offered by the ESI Funds. On this, an interviewee that developed research on the topic suggested that:

the use of the funds or any specific tool can be very much useful in supporting concrete change, especially in those countries where they don't have financial resources.¹⁵⁷

Therefore, this supports the previous consideration about the ESI Funds being an EU Commission strategy to exercise economic influence on the implementation of the CRPD and independent living rights. Another interviewed civil society activist held the view that:

[money] it's the reason why a lot of Member States don't want to close down institutions, develop alternatives, they say they don't have funding, that's the excuse. So obviously structural funds being available for this purpose is really a big opportunity [...] especially when it comes to this transition period when you have higher costs while keeping the old system and already putting into place the new services.¹⁵⁸

However, this situation has the risk that national governments may promote deinstitutionalisation policies for economic opportunities more than for political and cultural beliefs. This links to the question raised in the previous sub-section about what happens when the EU stops to pay.

On this, the interviews suggested a darker side of a situation where the implementation of human rights is based on economic convenience more than on political and cultural values. In fact:

[national governments] want to keep the old system still and then they want to have some new services, and of course that is

¹⁵⁷ 'Interviewee 6' (n 73) 5.

¹⁵⁸ 'Interviewee 7' (n 32) 5.

*completely unsustainable, they cannot afford that, and once the structural money runs out they cannot afford to continue funding new services if they keep pouring money into the old system so that's the problem.*¹⁵⁹

This revelation means that some national government may use ESI Funds to add services taking advantage of EU money without thinking about definitely shifting from deinstitutionalisation to community services.

Furthermore:

*a lot of the Member States are actually building small institutions as an alternative to large institutions, so just moving people around into these building groups, moving people around in there.*¹⁶⁰

Also in this case, the domestic interpretation of independent living rights diverges from the harmonisation to EU guidelines. The border between small institutions and community services can be the object of never-ending discussions. Besides, Parker and Bulic suggest another issue laying in the fact that, usually, institutions are a public property where public workers are employed.¹⁶¹ This issue may cause local bureaucratic resistances that cause or support the political choice to maintain the status quo.

In addition to the just described issues, the previous interviewee suggested other weaknesses of the ESI Funds governance. For instance:

*that's kind of the contradictory part within the structural funds system, it's actually the managing authorities that have to monitor themselves, that's a bit ridiculous but that's the way it works but it doesn't work.*¹⁶²

As explained in the previous section, the PAs are the result of a dialogue between the EU Commission and the national governments. However, the OPs are monitored by the national managing authorities, the assessments of which

¹⁵⁹ *ibid* 6.

¹⁶⁰ *ibid*.

¹⁶¹ Parker and Bulic (n 86) 37.

¹⁶² 'Interviewee 7' (n 32) 3.

are subject to the EU Commission audit. This situation illustrates the principal-agent issue within the ESI Funds governance.¹⁶³

An interviewee that oversaw Social Fund programmes revealed that:

*the assessment of conformity with the EaCs is a one-off exercise at the beginning of the programming period that allows MS to access and use ESF money and we can see that a number of MS tend to forget their obligations.*¹⁶⁴

This insight stimulated a second question to confirm if the EU Commission is used to suspending the funding when its officers *see that a number of MS tend to forget their obligations*. Unfortunately, the interviewee did not reply to this additional question.

The emphasis of this last quotation suggests that the probability of suspending any funding is remote. In fact, the documentary search found no cases concerning any funding suspension.¹⁶⁵ On one hand, the avoidance to suspend funding is challenging to understand because it has been described as a powerful instrument. On the other hand, the shared management of the ESI Funds has been previously explained as a programmatic governance process where the dialogue is expected to substitute coercive measures.

The implementation of the ESI Funds Regulation as a soft governance tool rather than its enforcement as a hard legal instrument increases the flexibility of the instrument itself. For instance, an interviewee was concerned that:

what the Commission has introduced was the ex-ante conditionalities, you know, the pre-condition of having strategies in place. But you have strategies of varying quality in the Member States. I mean they're not in line with the CRPD necessarily. I mean some have been criticised by the CRPD committee but they were still accepted as a fulfilment of the ex-ante conditionalities. So yes,

¹⁶³ Bachtler and Ferry (n 122).

¹⁶⁴ 'Interviewee 11' (n 142) 2.

¹⁶⁵ The conducted documentary search on this matter was explicative.

*this should have been a way to ensure that actually Member States have a plan and that there is a kind of common agenda there.*¹⁶⁶

Although *not in line with the CRPD necessarily*, Member States have a plan on deinstitutionalisation due to the opportunities of the ESI Funds governance more than because adhering to any CRPD Committee concern. This perspective highlights an EU opportunity to influence the implementation of the Convention and independent living rights.

6.3.3.2 An original illustration of the ESI Funds' area of influence

The interviews and the documentary research revealed some actual examples that confirm assumptions and insights about the influencing role of the ESI Funds governance on the implementation of the CRPD and independent living rights. This part of the sub-section presents an explicative approach and builds some deductive and inductive conclusions upon those examples.

For instance, the country studies developed by FRA under its project on independent living¹⁶⁷ revealed the following compelling case of Bulgaria. In 2007, Bulgaria was at the centre of severe scandals for breaching independent living rights. “The need of change in the institutional approach of taking care of people with disabilities was triggered by a BBC documentary ‘Bulgaria’s Abandoned Children’ which provoked immense backlash both in-house and internationally”.¹⁶⁸ As suggested in the previous sub-section, the role of civil society to public scandals is crucial to raise awareness and to push the EU to intervene. In fact, during the 2007/13 funding period, the EU contributed through the ESI Funds to tackle the institutionalisation of children in Bulgaria. The results were so positive that the experience was included in the 2014/20 funding period guidelines for the use of ESI Funds as an excellent practice to replicate.¹⁶⁹ This successful example is a piece of evidence of EU influence on the national and

¹⁶⁶ ‘Interviewee 7’ (n 32) 6.

¹⁶⁷ See Section 5.5.1.

¹⁶⁸ Maria Doichinova, ‘From Institutions to Community Living: Drivers and Barriers of Deinstitutionalisation - Case Study Report: Bulgaria 2018’ (EU Agency for Fundamental Rights 2018) 5 <https://fra.europa.eu/sites/default/files/fra_uploads/bulgaria-independent-living-case-study-report_en.pdf> accessed 22 March 2019.

¹⁶⁹ ‘Draft Thematic Guidance Fiche for Desk Officers - Transition from Institutional to Community-Based Care (de-Institutionalisation - DI)’ (n 153) 7.

local levels in implementing the CRPD and independent living rights through the targeted use of ESI Funds.

The case of Bulgaria seems to be an example of good practice where civil society, domestic and EU authorities cooperated within the ESI Funds governance to allow the fulfilment of independent living rights by Bulgarian children with disabilities. On this, an interviewee that was responsible for Bulgarian Regional Fund programmes was satisfied that:

*it is now considered that Bulgaria has fulfilled all the ex-ante conditionalities. We discuss horizontal policies with the managing authorities and they are covered in the annual reporting documents.*¹⁷⁰

Although Bulgaria indeed closed all the institutions for children, the report of FRA about this case concluded that “civil society organisations and DPOs have raised concern that the DI policy in Bulgaria [...] substitut[es] bigger with smaller institutions keeping people with disabilities isolated from the community, and falling short to obligations enshrined in Article 19 of the Convention on the Rights of persons with disabilities”.¹⁷¹

In addition, the 2018 Fundamental Rights Report of FRA stated that “Bulgaria, Estonia and Sweden [are] the only three Member States yet to appoint monitoring bodies [for the implementation of the CRPD]”.¹⁷² This situation reveals that Bulgaria seems not to be fully respecting the general ex-ante conditionality on disability asking for “the existence of administrative capacity for the implementation and application of the United Nations Convention on the rights of persons with disabilities”.¹⁷³

These data show that: (i) the Bulgarian managing authorities are reporting that Bulgaria respects the ex-ante conditionalities to access ESI Funds; (ii) the EU Commission DG unit that oversees Bulgarian funding programmes confirms that Bulgaria respects the ex-ante conditionalities; but (iii) independent

¹⁷⁰ ‘Interviewee 12’ (n 118) 2.

¹⁷¹ Doichinova (n 168) 5.

¹⁷² ‘Fundamental Rights Report 2018’ (EU Agency for Fundamental Rights) 233
<<https://fra.europa.eu/en/publication/2018/fundamental-rights-report-2018>> accessed 24 January 2019.

¹⁷³ EU Parliament and Council Regulation 1303/2013 Annex II Part II.

monitoring activities suggest a different reality. This situation reflects and verifies the concerns expressed in the final paragraphs of the previous part of this subsection.

Despite this, the interpretation of the ESI Funds Regulation as a programmatic instrument¹⁷⁴ suggests a different approach. For instance, FRA's Fundamental Rights Report clarifies that "preparations in Bulgaria took a step forward with the establishment of an interagency working group to design the coordination and monitoring mechanisms".¹⁷⁵ This means that Bulgaria shows an evolving situation that may have been enough to satisfy the EU Commission. Therefore, even if decontextualized situations may show critical points that civil society activists contest, the whole picture can highlight ongoing processes that slowly tend to harmonise national and local policies with EU guidelines.

In order to promote these processes, the ESI Funds governance must maintain a *lock-in effect* with the meaning that Druzin suggested for this idea.¹⁷⁶ In sum, it is possible to interpret the ESI Funds governance as an international network that national governments join when they ask for EU money. This interpretation would explain the adherence to any ex-ante conditionality as a *self-standardisation effect*¹⁷⁷ of the networking properties of the ESI Funds governance. Following this reasoning, exceeding over-standardisation may prevent the national governments' participation in the network because the opportunity cost could be imbalanced.

This assumption reminds Abbott and Snidal when suggesting that the success of soft instruments also depends on the convenient cost opportunity to engage on them. The authors explained that soft instruments are successful when politically and economically more convenient than hard ones.¹⁷⁸ The ESI Funds Regulation is a hard instrument with a programmatic approach that promotes its implementation with soft governance processes.¹⁷⁹ This interpretation entails that the shared management of the ESI Funds has to

¹⁷⁴ See Section 6.3.1.

¹⁷⁵ 'Fundamental Rights Report 2018' (n 172) 233.

¹⁷⁶ See Section 3.5.2: Bryan H Druzin, 'Why Does Soft Law Have Any Power Anyway?' (2017) 7 *Asian Journal of International Law* 361, 375–377.

¹⁷⁷ See Section 3.5.2: *ibid* 367.

¹⁷⁸ See Section 3.3.3: Kenneth W. Abbott and Duncan Snidal, 'Hard and Soft Law in International Governance' (2000) 54 *International Organization* 421, 434–441.

¹⁷⁹ See above.

promote solutions that national governments consider convenient. Only this consideration would promote the participation in the funding framework giving the start to self-standardisation (harmonisation) effects.

These assumptions offer alternative perspectives to interpret the described Bulgarian example. It is probable that the domestic effort to promote the mentioned successful deinstitutionalisation policies for children has been the result of opportunity cost strategies that included political and economic considerations. This idea implies that over-standardisation duties may have prevented the opportunity to adhere to the ESI Funds governance and to obtain first-step results as the closure of institutions for children.

This assumption can be generalised to suggest that the domestic availability towards change is subject to evaluations about the opportunity cost of receiving EU money versus adhering to EU standards. The distinctive Gauss chart below visually shows this inductive conclusion. Its bell curve suggests that national and local authorities judge the opportunity cost of accessing ESI Funds advantageous when it is: (i) beyond a certain amount of money; but (ii) before a limit towards harmonisation. Also, the two vertical dotted bands highlight that the economic opportunity cost can be altered by socio-political pressures as the raise of public scandals as well as lobbying and electoral schemes.

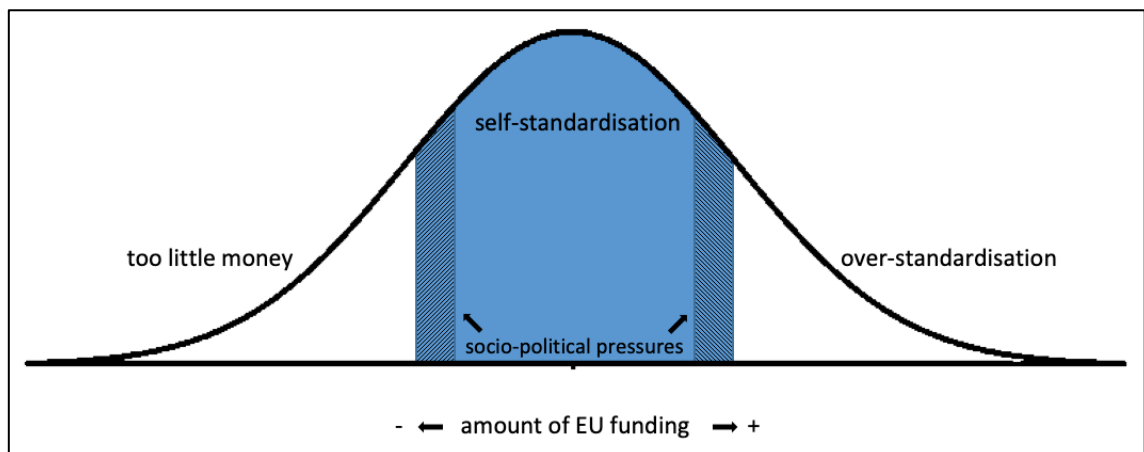


Figure 6-6 - The opportunity cost of accessing ESI Funds

The coloured area of this original chart also represents the ESI Funds opportunity to influence the national and local levels on the minimum standards included in its ex-ante conditionalities. This is because domestic authorities are available to harmonise their policies to such EU conditionalities only: (i) if the

amount of money is worth the value; and (ii) if the necessary harmonisation is not excessive.

As said, the financing period 2014/20 is finishing, and there are ongoing consultations to draft the new regulation. An interviewee that was lobbying to include more CRPD-related provisions revealed that:

now they're going to change it in the new period again: instead of "ex-ante conditionalities" they will have "enabling conditions" which will be supposedly monitored throughout the programming period. So there won't be just one point where they're ticking the box and then it's done. So potentially that could work better.¹⁸⁰

In accordance with the chart above, this novelty may risk reducing the coloured area from its right-hand side because it entails significant national and local efforts on harmonisation to EU standards.

However, these notable efforts may be compensated by an increase of the EU budget from 959 billion Euros for the MFF 2014-20¹⁸¹ to 1,135 billion Euros for the MFF 2021-27.¹⁸² Depending on their allocation (which is under negotiation while conducting this research), these additional funding may be used to expand the coloured area from its left-hand side. Furthermore, the ESI Funds governance will link to the European Semester cycles. This new situation may expand the area of the two vertical dotted bands because of the influencing opportunities of the Semester itself. The figure below illustrates the inclusion of these last considerations in the chart above. It graphically predicts the evolution of the EU strategy to influence the national and local levels through the ESI Funds governance.

The two charts are illustrative and have been originally generated from the inductive analysis of this section. Although resulting from a research with a specific focus, they suggest the general idea that the actual influence of agents depends on a cost opportunity calculus of targets.

¹⁸⁰ 'Interviewee 7' (n 32) 6.

¹⁸¹ 'Multiannual Financial Framework for 2014-2020' (*European Council*) <<https://www.consilium.europa.eu/en/policies/eu-budgetary-system/multiannual-financial-framework/mff-2014-2020/>> accessed 1 August 2019.

¹⁸² 'Multiannual Financial Framework for 2021-2027: Negotiations' (n 99).

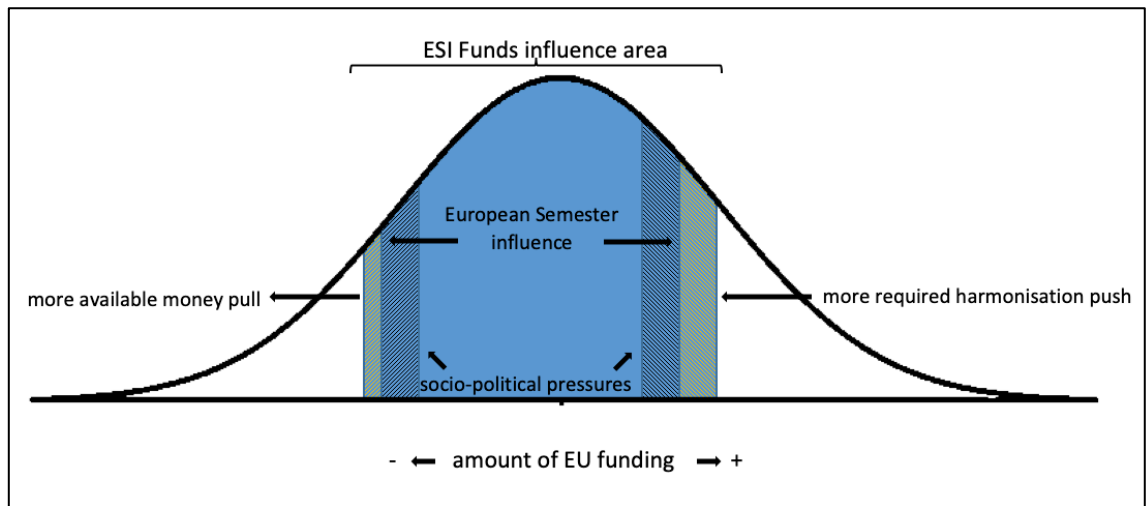


Figure 6-7 - The evolution of the ESI Funds influencing strategy

6.4 Concluding remarks

This chapter is the third and last analytical chapter of the thesis. It investigated the European Semester and the ESI Funds processes to show and explain how they can influence the implementation of the CRPD and independent living rights.

The analysis of the chapter assessed the influence of the European Semester and the ESI Funds processes with an explicative approach. The approach established a link between the two processes and the CRPD, and their connection with the CRPD-related governance. Such a connection has been challenging to show because it mainly develops through informal activities. For this reason, the interviews offered outstanding support to this chapter.

The explorations of the previous pages revealed the implementation of the Convention within EU governance processes that are not CRPD-related. They explained that these processes could be relevant to the implementation of the Convention if the CRPD-related entities monitor and lobby to obtain desired results. The goal of the chapter has been to reveal these underlying influencing relationships. The explicative approach of this chapter's analysis can be the basis to develop more in-depth research on the importance of the European Semester and of the ESI Funds for the implementation of the CRPD.

The investigation of such underlying influencing relationships offered the opportunity to establish links between the European Semester and the ESI Funds with the contents of the previous chapters. For instance, it has been

explained that the Disability Unit has the opportunity to influence the European Semester. As far as ESI Funds are concerned, they exert economic influence, but they are the result of situational influences where the EU CRPD-related governance plays an important role.

Another interesting analytical finding of this chapter is the consideration of the ESI Funds Regulation as a programmatic instrument. This consideration explains that its enforcement is a matter of soft governance processes. In addition, the accession to funding is subject to pre-conditions that are like goals to achieve. This perspective explains the possibility to be financed as a reward after reaching EU objectives. This idea of awarding instead of punishing also concluded the previous chapter, and this is emblematic of its probable importance. Is this the EU governance's new course, based on an awarding approach?

Chapter 7

Conclusions

7.1 Introduction

This study started with the idea that the EU is committed to international human rights, but it has only partial competences to emanate relevant hard legislation. This limitation could prevent the Union from correctly fulfilling its obligations under international law. The research question concerned the translation into practice of the EU commitment to international human rights when the Union cannot legislate specific principles. The thesis' initial assumption was that the EU might use non-coercive instruments to achieve its aims. Lastly, the whole research revolved around this hypothesis to explain the Union's non-coercive opportunities to implement international human rights.

The verification of the initial assumption has been challenging. The originality of the approach made a significant preparatory work necessary to set the hypothesis in a real context and a theoretical framework. The context is the EU implementation of the CRPD (the only international human rights treaty concluded by the Union at the time of this research) and its Article 19 concerning independent living rights. The theoretical framework is an innovative linkage between four different areas: (i) power theories; (ii) soft law; (iii) experimentalist governance; and (iv) international networks. The theoretical framework chapter suggested that the EU can exert soft influence (instead of hard power) to implement international human rights. Also, it proposed that the EU opportunities to influence derive from strategies that use the resources of soft law, experimentalist governance, and international networks.

The analytical part of the work explored documents and interviews to find evidence concerning the EU actual use of influencing strategies to implement the CRPD and independent living rights. The interviews are a crucial element of the research. Since soft processes are often informal, insights from active actors are essential to understand the EU processes. Finally, the search for evidence produced an impressive amount of original material. This supports the idea that the Union can implement international human rights through the exercise of its

influence, partially bypassing the competence issue. Lastly, the research confirmed its initial assumption, revealing that the EU has several soft opportunities to respect, protect, and fulfil human rights principles. These conclusions take stock of the main analytical findings and suggest some future policy and research agenda.

7.2 The trust in influence to realise human rights compliance

The typical approach to study the implementation of human rights looks at the ratification of relevant hard legislation and the adoption of judgements and sanctions to make such legislation respected. This research criticised the prevalence of this hard approach by arguing that social actors can agree on sharable principles through alternative softer procedures.

The awareness that soft power can be as concrete as hard power represents a radical shift because of giving a choice to policymakers that they have unlikely considered so far. The importance of this factor is paramount due to its impact on political strategies and allocation of resources. For instance, if governments privileged hard power to implement human rights, they would invest in hard legislation, controls and sanctions. However, if governments considered soft power to implement human rights, they would invest in influencing instruments.

This thesis revealed the EU effort to implement the CRPD through influencing instruments, and it showed that soft power matters. The increasing use of soft resources and strategies was a response to the limits of hard power, and it originated from actual necessities. These have become inextricable factors of the current governance of the Union, among others: (i) knowledge; (ii) flexibility; (iii) accountability; (iv) participation; and (v) conditionality. Any study on the EU effort to implement the CRPD must address soft power in order to assess the Union compliance with the Convention adequately. This research aims to be an example of conducting studies that focus on influence.

The EU CRPD-related governance is a pioneering case that canalises and exerts influence on human rights implementation. However, the assessment of its impact is a compound exercise that implies a conceptual shift from hard to soft powers. For example, laws that prevent institutionalisation are a tick in the boxes of indicators that look for hard outcomes. However, can a meeting about

deinstitutionalisation between EU representatives and the 28 Member States be classified as a soft outcome? Indeed, the thesis argued that this kind of effort could be valuable insofar as it allows the development of common positions and goals, and it exposes policymakers to public pressures aiming at the realisation of the undertaken commitments.

The CRPD duty bearers realise their obligations when persons with disabilities enjoy their human rights. However, the CRPD duty bearers satisfy their obligations when demonstrating solid effort towards human rights fulfilment. This should be implicit when considering the progressive realisation of human rights, which entails a road map heading from the commitment to the realisation. Such a road map includes strategies that can be hard or soft. Deliberated choices about strategies take into account their chance of success. This thesis revealed the EU effort to develop soft strategies aiming at realising CRPD principles.

The monopoly of hard power caused issues at the EU level when the differences among its Member States were so deeply-rooted that any hard obligation to uniform could have caused centrifugal non-compliance. Then, the Union started to use soft strategies to incentivise dialogue and cooperation about sensitive issues in order to harmonise national policies to shared and centripetal standards. This successful strategy inspired trust in influencing instruments, which are now the usual means to set common priorities between the EU and its Member States.

On one hand, the use of hard power is consolidated, and it results from well-built structures and processes that belong to the legislative, executive and judicial branches. On the other hand, the deliberated use of soft power is still embryonic, and the structures and processes that exert influence have no standard architectures yet. Despite this, the EU has developed its CRPD-related governance which supplements hard government procedures and somehow enters in competition with them. There seems to be an indefinite balance between the EU hard and soft powers and the thesis suggested an increasing use of influencing resources and strategies to implement the CRPD.

The EU conclusion of the Convention impacted on the Union's structures and processes by fostering the development of a related governance. In turn, this impacts on the CRPD implementation with its soft action that mainly aims to coordinate and harmonise the policies of the Union and its Member States. Such

coordination needs to be strategically planned to optimise its potential influence. The thesis revealed that the strategies of the Union adopt models that are theorised by experimentalist governance authors. The next section suggests a conclusive reflection about this theoretical convergence.

7.3 The EU experimentalist CRPD-related governance and beyond

The research emphasised the EU need for flexibility to govern its complex society. For this reason, the Union takes advantage of soft instruments despite its institutional rigidity, which is bypassed through the establishment of governance architectures. The thesis explained that the EU uses its influence to implement the CRPD and that, for this reason, it needs governance structures and processes that can foster soft instruments. This research considers the effort to develop the EU CRPD-related governance as a strategy to satisfy its obligations as State Party to the Convention.

The theoretical framework of the thesis illustrated the main characteristics of the experimentalist governance model, and it suggested that the EU shares some of them in its soft architecture. The analysis allowed to explain real situations in light of experimentalist theories and, vice versa, to create new thinking about the model.

The comparison between the studied situation and the theories revealed that some processes of the EU CRPD-related governance adopt methods that show pieces of experimentalist governance characteristics. This consideration entails that none of the observed processes perfectly adheres to the theoretical model. Therefore, it seems relevant to question why there is a gap between theories and reality in order to suggest a future research agenda on the topic.

First of all, the analysis inferred a natural and partially unconscious tendency towards the theoretical experimentalist model. Such a tendency is due to the observed presence of favourable pre-conditions. For instance, the competence issue causes an uncertain distribution of power which can incentivise alternative governance processes. Also, the strategic uncertainty that derives from limited resources can be a valid reason to innovate classic processes.

The research inferred that the EU CRPD-related policies that develop experimentalist governance structures and processes are unconscious in the sense that they do not seem to move from the will to develop that specific model. The adoption of any experimentalist procedure probably represents a natural solution for the involved actors to achieve their aims. This perspective bolsters the experimentalist governance model because of appearing as a natural evolution, which is a consequence of the raise of soft law in the international sphere.

On the other hand, the analysis revealed some critical factors that cause discrepancies between observations and theories. The research suggested that the central criticality is that the leading entities of the EU CRPD-related governance are institutions with hard mandates to respect. This finding entails that hard competences may affect the full potentialities of soft structures and processes. Also, the availability of adequate resources to sustain governance architectures is a significant burden to realise the experimentalist model in full. Indeed, the experimentalist model includes several procedural passages (involvement of actors, establishment of common aims, domestic implementation, peer review, assessment of results) that are resource consuming and cannot function without adequate resources.

For instance, theorists depicted experimentalist governance as cyclical processes. This idea implies that new governance cycles build upon the results of the concluding cycles. However, the processes of the EU CRPD-related governance seemed more circular than cyclical. As such, they take place with regularity (one or more times a year), but their starting points usually do not build upon previous cycles.

The analysis highlighted several difficulties in developing cyclical processes. The critical factor is that the outcomes of any cycle should be revised and included in the goals of the upcoming cycle. Also, the horizontality of governance processes implies that the revision of outcomes is an exercise among peers. For this reason, experimentalist governance theorists considered peer review as a necessary step of the model. However, the investigation of the EU CRPD-related governance found no well-established experimentalist peer-review processes. The analysis suggested that this absence was due to a lack of resources and transparency.

Resources have already been considered as essential to sustaining the different steps of any governance architecture. In particular, peer-review processes require valuable resources because of entailing the contribution of an extensive range of actors and the moderation of a leading entity. This exercise is expensive and, therefore, it cannot be taken for granted as the experimentalist theories seem to do. On one hand, the CRPD Committee takes advantage of peer review when drafting its comments and observations. Its processes are transparent, and every document is available on the web for consultation. On the other hand, the EU CRPD-related governance does not show a similar engagement on peer review.

Transparency would be essential to providing the material for peer-review processes and disseminating its results. Also, it would improve accountability and partially fill the democratic deficit of governance processes, as suggested by experimentalist governance theorists. However, the analysis inferred that transparency could be a potential barrier to establish and manage governance processes. This issue probably derives from the hard mandate of the institutions that lead governance structures that limits their flexibility and explicit recourse to soft mechanisms. The problem is that the absence of transparency prevents the dissemination of documents and the realisation of public peer-review processes as a consequence.

The peculiar finding of the research is that EU CRPD-related governance processes are undertaken notwithstanding the highlighted difficulties. The observations suggested that: (i) if transparency is an obstacle to participation and flexibility; (ii) if non-transparency prevents the development of peer-review processes; and (iii) if the absence of peer-review processes does not allow the establishment of cycles; (iv) then it may be challenging to promote pure experimentalist governance processes even with fulfilling resources. This conclusion might both stimulate new research on experimentalist governance and suggest EU policymakers about their ongoing effort on the CRPD implementation.

7.4 A new EU soft-law-making agenda based on participation

The thesis emphasised the increasing importance of the EU soft power and the consequent need for structures and processes that develop and implement soft

law. The analysis explained the EU effort to implement the CRPD in the light of influencing opportunities arguing that it might satisfy the obligations of the Union as State Party to the Convention. The crucial underlying factor of the discussion lays on the deliberate strategy to invest in governance systems because of entailing an EU soft-law-making agenda.

The EU strategy to develop soft structures and processes has several examples, among others: the Open Method of Coordination, the European Semester, and the CRPD-related governance. These systems are very different from one another because there is no standard model for governance architectures yet. While the concept of government has constituent factors (i.e. the division of powers between legislative, executive and judicial), the idea of governance can be defined as still embryonic. This situation reflects the historical domain of hard power over soft power, and the thesis inferred an ongoing evolution.

The CRPD includes human rights principles and suggests constituent factors for its governance system. This shows a tripartite scheme which includes a focal point, a monitoring framework, and a coordination mechanism. May this scheme represent an attempt to set a balance of soft powers? How can the experimentalist governance theories consider any division of powers? What might be any starting point for the EU soft-law-making agenda?

Participation is an underlying thread that links the CRPD, governance theories and all the pages of this thesis. Participation could be the starting point of any soft power strategy and a desired outcome as well. Indeed, participation is the antithesis of hard power where the vertical and pyramidal decision-making elite excludes rights holders from any opportunity of cooperation and imposes laws through coercive instruments.

Nothing about us without us is a slogan that persons with disabilities have been campaigning to ask for more participation in the decision-making processes that concern their lives. It seems relevant to interpret that slogan in light of the dichotomy between hard and soft power. This is because one of the reasons for the exclusion of persons with disabilities from decision-making processes was the hard structure of governments. The participation of civil society is a soft wedge that undermines the monopoly of hard power because this is conceptually based on centralisation instead of multilateralism.

Democratic policymakers cannot ignore structured and competent requests for participation. This is mainly due to two reasons that are linked to the balance of powers. The first reason is political because ignoring social categories might not be convenient for electoral purposes. The second reason is that social categories have a monopoly on direct knowledge concerning their matters. Saying *nothing about us without us*, persons with disabilities have meant to ask them what is right for them because they know it. Democratic systems (seem to) have welcomed this request for participation with the consequent enlargement of the policy-making arena and the need for soft governance architectures that handle increasing participation.

The whole thesis illustrated this situation in the EU CRPD-related context and the picture suggested an irreversible scenario. This consideration about disability policies can be expanded to any other social category where the relevant actors want to participate in the decision-making processes that impact on their lives. Indeed, social campaigns about issues like gender, environment, elderly, and racism all ask for more participation in policy-making processes in order to have the opportunity for giving a contribution.

This entails that the Union soft-law-making agenda could and should develop around the principle of participation. The idea is that the identification of standard structures and processes for governance architectures might not be as constitutional as the observance of the principle of participation seems to be. With this in mind, it can be argued that any governance system is active when social categories are satisfied with the opportunities to participate in their relevant policy-making arena. Since governance architectures are horizontal, the involved actors should have the flexibility to develop the structures and processes that best suit their needs.

This approach depicts a new model for democracy that emphasises participative and corporatist principles. The EU Commission has already been defined as a corporatist entity where different DGs underpin the interests of relevant social categories. If the DGs were like governance architectures, they would allow the transparent participation of stakeholders in their decision-making processes. This means that citizens may not need the mediation of political parties because of having the opportunity for participating in the executive branch where fostering their interests.

Such a scenario is revolutionary, but only because it was impossible to avoid representative parliamentarians since not far ago. Nowadays, technology could allow single citizens to participate in any meeting and peer review any draft law. Also, citizens can rely on representative organizations where they can elect and be elected as a spokesperson. Indeed, representative organisations can be as powerful as political parties and enter in competition with them. Organisations can network, become international influencing actors and be crucial entities of governance architectures. Reliable and active participation (direct or through representative organisations) might complement the democratic deficit caused by the increasing pervasiveness of soft power.

Such an evolutionary reality is what this thesis investigated and explained as the contemporary effort of the EU to implement the CRPD.

7.5 Conclusion

This research demonstrates that the EU exercises profound influences at the domestic level of its Member States on the implementation of the CRPD and independent living rights. It has identified the many levers available to the EU and explained how their strategic use could impact on the enjoyment of human rights principles by the EU citizens. The EU's adoption of the CRPD was an unprecedented and historical act. It raised many questions, starting from the purpose of this gesture. Was it symbolic, or an act of substance? If it was the latter, how could the Union fulfil its obligations under the Convention given the complexities of its jurisdiction based on the competence issue?

In 1532, Machiavelli wrote *Il Principe*, where he stated that “sono dua generazioni di combattere: l'uno con le leggi, l'altro con la forza”.¹ The Middle Ages had just ended, and the citizens of Europe had only known hard laws and sharp swords. In Machiavelli's opinion, states could be governed only by coercive means: either hard laws or repressive measures. After the Thirty Years' War, the Westphalian sovereignty principle exported this approach to international relations. In short, states could not interfere on the internal matters of other states, unless they wanted to start a conflict. After three centuries and

¹ Which translates as “there are two kinds of combat, one by means of laws and the other by force”.

the two World Wars, the flags of the United Nations and European Union have been giving the illusion that something is changing in power relations among states and between governments and citizens.

The research underpinning this thesis strongly suggests there is much more than *leggi* (law) and *forza* (coercion) that can be used to govern society. As such, states' intervention is no longer to be conceptualised in terms of battlefield only. Also, the phenomena of globalisation are blurring the borders of jurisdiction and opening the gates of policy-making arenas. Within these arenas, influence is outclassing coercion.

This thesis illustrates that the EU's success in achieving its mandate has been through the innovative use of soft mechanisms that harmonise the domestic policies of its Member States by incentivising participation. In turn, participation encourages the rise of policy-making arenas, where the exercise of influence is legitimised in all its subtle semblances. As Churchill observed, "many forms of government have been tried, and will be tried in this world of sin and woe [...] democracy is the worst form of government except for all those other forms". This thesis suggests that democracy could be reinterpreted as a form of influencing governance, bypassing the monopoly of coercive government. Is it time for new forms of participative democracy? Will human beings be able to overcome the *sound and fury* of their souls, enhancing influence over power?

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Annex I

Area 17-044 – Favourable ethical opinion

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UNIVERSITY OF LEEDS

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**ESSL, Environment and LUBS (AREA) Faculty Research Ethics Committee
University of Leeds**

21 December 2017

Dear Marcello

Title of study:	Deinstitutionalisation and Personal Assistance: How the Implementation of an International Human Rights Treaty by the European Union May Influence Domestic Decision Making Processes and Outcomes
Ethics reference:	AREA 17-044
Grant reference:	N/A

I am pleased to inform you that the above research application has been reviewed by the ESSL, Environment and LUBS (AREA) Faculty Research Ethics Committee and I can confirm a favourable ethical opinion as of the date of this letter. The following documentation was considered:

Document	Version	Date
Ethical Review Form	1.0	19/10/2017
Data Management Plan	1.0	19/10/2017
Ethical Review Info & Form	1.0	19/10/2017
Fieldwork Assessment Form _ Medium Risk	1.0	19/10/2017

Committee members made the following comments about your application:

- This is a well thought through study, which will involve the recruitment of EU experts accustomed to talking about the study topic, and all ethical considerations have been attended to. Additional anonymization in reporting on interview content is advised
- Given that this sample will be drawn from a relatively small potential participant group, you would be advised to engage in additional anonymization in any written work when reporting on interview content. You may wish to change details such as age and gender of the participant, which will not affect the meaning of your analyses

Please notify the committee if you intend to make any amendments to the information in your ethics application as submitted at date of this approval as all changes must

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Annex I

Area 17-044 – Favourable ethical opinion

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UNIVERSITY OF LEEDS

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**ESSL, Environment and LUBS (AREA) Faculty Research Ethics Committee
University of Leeds**

21 December 2017

Dear Marcello

Title of study:	Deinstitutionalisation and Personal Assistance: How the Implementation of an International Human Rights Treaty by the European Union May Influence Domestic Decision Making Processes and Outcomes
Ethics reference:	AREA 17-044
Grant reference:	N/A

I am pleased to inform you that the above research application has been reviewed by the ESSL, Environment and LUBS (AREA) Faculty Research Ethics Committee and I can confirm a favourable ethical opinion as of the date of this letter. The following documentation was considered:

Document	Version	Date
Ethical Review Form	1.0	19/10/2017
Data Management Plan	1.0	19/10/2017
Ethical Review Info & Form	1.0	19/10/2017
Fieldwork Assessment Form _ Medium Risk	1.0	19/10/2017

Committee members made the following comments about your application:

- This is a well thought through study, which will involve the recruitment of EU experts accustomed to talking about the study topic, and all ethical considerations have been attended to. Additional anonymization in reporting on interview content is advised
- Given that this sample will be drawn from a relatively small potential participant group, you would be advised to engage in additional anonymization in any written work when reporting on interview content. You may wish to change details such as age and gender of the participant, which will not affect the meaning of your analyses

Please notify the committee if you intend to make any amendments to the information in your ethics application as submitted at date of this approval as all changes must

