



## Centre for Disability Studies Bochum:

### Position on the European Commission proposal for a regulation on jurisdiction, applicable law, recognition and enforcement of measures, and cooperation in matters relating to the protection of adults COM (2023) 280.

The Centre for Disability Studies Bochum has taken notice of the European Commission's proposal for a regulation on the jurisdiction, applicable law, recognition and enforcement of measures and cooperation in matters relating to the protection of adults COM (2023) 280. We are concerned that the directive would violate the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD); should it enter into force

The proposed regulation aims to implement the 2000 Convention on the International Protection of Adults of the Hague Conference on Private International Law (HCCH Convention). This HCCH Convention is to be considered superseded by the UN CRPD, adopted six years later in 2006, as it considers as ordinary legal practice legal constructs that are questionable from a human rights perspective, such as guardianship and other forms of deprivation of legal capacity. Similarly, the forced placement and institutionalization of disabled adults are codified as generally recognized legal practices under international private law.

These rather procedural rules undermine the human rights standard set by the UN CRPD. Article 12 of the UN CRPD grants all persons with disabilities equal legal capacity and obliges member states to replace all forms of deprivation of legal capacity with forms of supported decision-making. This was clearly expressed by the CRPD Committee<sup>1</sup> in its General Comment No. 1 adopted in 2014 and in numerous concluding observations on state reporting procedures.<sup>2</sup>

Other human rights codified in the UN CRPD that are called into question by the HCCH Convention are the right to freedom from (forced) institutionalization (Art. 14), the right to Independent Living (Art. 19), and the right to protection from discrimination (Art. 5). The UN Special Rapporteur on the rights of persons with disabilities (Gerard Quinn) and the Independent Expert on the enjoyment of all human rights by older persons (Claudia Mahler) pointed this out in 2021 and recommended a clarifying harmonization of these international legal sources, which reaffirms the primacy of the UN CRPD.<sup>3</sup> In a second joint statement from 2023, they reinforced their concerns

---

<sup>1</sup> Convention on the Rights of Persons with Disabilities

<sup>2</sup> UN Committee on the Rights of Persons with Disabilities, General Comment No 1 (2014) Equal recognition before the law, [CRPD/C/GC/1](#), 19 May 2014; Degener, Theresia; Uldry, Marine (2018): [Auf dem Weg zu inklusiver Gleichheit](#): 10 Jahre UN-Ausschuss für die Rechte von Menschen mit Behinderungen. Hg. v. Theresia Degener. Bochum

<sup>3</sup> Joint statement by the Special Rapporteur on the rights of persons with disabilities, Gerard Quinn, and the



and called for a clarifying revision of the proposed regulation. In particular, externally determined representation and institutionalization of adults should be declared incompatible with the UN CRPD in the main text of the proposed regulation.

BODYS agrees with this legal assessment and recommends that the German government advocate for the European Commission's proposed regulation to be amended accordingly or rejected altogether if a UN CRPD-compliant amendment to the draft regulation is not agreed upon.

The EU and Germany are parties to the UN CRPD and were reviewed by the UN CRPD Committee of Experts in 2015, Germany for a second time in August 2023. In all reporting procedures, it was recommended that the deinstitutionalization of people with disabilities in the EU and Germany be conducted more effectively in favor of self-determined, inclusive lifestyles. All three review procedures called for the abolition of guardianship and other systems of substitute decision-making. The abolition of institutionalization and coercive treatment was called for in all three review procedures.<sup>4</sup>

Institutionalization of disabled people in homes and other special institutions and deprivation of legal capacity through legal representation are two harmful practices of the European and German welfare traditions. Because of their tenacity, which has grown out of over 100 years of legal policy and practice, breaking with this tradition is of the utmost importance. The reforms initiated in Germany with the BTHG and the care law reform are a step in the right direction. The European Commission's draft regulation jeopardizes this reform process.

Bochum, 28. Juni 2024

Prof. Dr. Theresia Degener & Prof. Dr. Kathrin Römisch  
(Leitung BODYS)

---

Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler (8 July 2021) [Toward Greater Coherence of International Law](#). Reflections on the Hague Convention (2000) on the International Protection of Adults.

<sup>4</sup> UN Committee on the Rights of Persons with Disabilities, [Concluding observations on the initial report of the European Union](#), 2 October 2015, CRPD/C/EU/CO/1; UN Committee on the Rights of Persons with Disabilities, [Concluding observations on the initial report of Germany](#), 13 May 2015, CRPD/C/DEU/CO/1; UN Committee on the Rights of Persons with Disabilities, [Concluding observations on the combined second and third periodic reports of Germany](#), 3 October 2023, CRPD/C/DEU/CO/2-3.