V. National Monitoring Mechanisms

In line with the Art. 33 Para. 2. of the CPRD, SPs shall, in accordance with their legal and administrative systems, designate or establish a framework, including one or more Independent Mechanisms to promote, protect and monitor the implementation of the CPRD. Designated or established mechanisms should be in line with the Principles relating to the status and functioning of national institutions for protection and promotion of human rights. Consequently, in the present chapter, I elaborate on the composition, resources and mandate of each designated or newly established Monitoring Mechanism by analysing their compliance with the Paris Principles and the CPRD Committee Guidelines on independent MFs and their participation in the work of the Committee on the Rights of DPs. Furthermore, I, in the final part of this chapter, carry out a comparative evaluation of their efficacy in considering the given legal and political system of Germany, Austria and Denmark.

1. Structure of National Monitoring Mechanisms

1.1 German National Monitoring Body

1.1.1 Legal status and system

The initiative of establishing a National Human Rights Institute in Germany was started by the civil society and a decade ago found support of MPs of the German Parliament,[977] which approved its establishment in 2000.[978] As a result, the GIHR was accredited with A(R)-status in 2001.[979] In 2008, the federal cabinet decided to designate the GIHR as the Monitoring Body under the CPRD, which established a separate Unit, named National Monitoring Body for the CPRD (NMB). It started its work in May of the following year.[980]

977 Mertus, 2009: 106 – 128.
978 Bt-Drucksache 14/4801.
979 A(R) means A-status with reservation; SCA, Report, April 2001.
980 Aichele, 2015.

As the reaccreditation report of 2008 shows, the SCA had reservations regarding the legal status, composition and mandate of the GIHR.[981] Most particularly, it expressed concerns that the GIHR is founded by a Motion of the German parliament[982] and stressed the "importance for the GIHR to further broaden its mandate to include complaint handling functions".[983] Evidently, these reservations made the SCA to defer the 2013 reaccreditation request of the GIHR.[984] As a result, the German Federal Parliament adapted the Law on the Legal Status and the Mandate of the German Institute for Human Rights (DIMR-Act) in 2015,[985] with which it acquired its reaccreditation with A-status.[986] Nevertheless, concerns regarding the limited scope of its mandate and local accessibility and multi-level functionality for discharging its duties remained.[987]

In fact, The GIHR has been designated as the "National" Independent Monitoring Mechanism under the CPRD,[988] but since its establishment, it did not have a system that could be fully considerate of particular political set-up of the SP.[989] Even after the designation of the GIHR as the NMB it did not "set up local or regional sections to assist it in discharging its functions" as it is suggested by the Paris Principles.[990] To this end, the interpretation that the mandate of the GIHR includes the promotion, protection and monitoring of all provisions of the CPRD at all governmental levels[991] might be put under question as it is not in the position to discharge its functions properly at the federal, state and local levels.[992] The absence of the NMB at the Länder-level might be viewed as problematic especially in considering the federal administrative structure of Germany[993] and the

981 SCA, Report, November 2008, 4.3.
982 Ibid.; BT-Drucksache 14/4801.
983 SCA, Report, November 2008, 4.3.
984 SCA, Report, November 2013, 3.3.
985 Federal Law Gazette 2015 I p. 1194.
986 SCA, Report, November 2015, 3.1.
987 Ibid.
988 Law on the Legal Status and Mandate of the German Institute for Human Rights (Gesetz über die Rechtsstellung und Aufgaben des Deutschen Instituts für Menschenrechte, DIMRG), Bundesgesetzblatt Teil I (Federal Gazette Part I) 2015, p. 1194). §2.4.
989 Vienna Declaration and Programme of Action. Para. 36.
990 Principles relating to the Status of National Institutions. Methods of operation E.
991 Aichele, 2015: 85 – 90.
992 For details see sections below; for the requirement see, CRPD/C/1/Rev.1, annex. Para. 18.
993 See chapter IV part on Germany.

fact that there are a number of essential policy field's e.g., primary and secondary education that fall under the exclusive legislative and executive powers of federal states.

1.1.2 Pluralist representation and the method of appointment/dismissal

The governing structure of the GIHR is based on three main organs[994]- general assembly, Board of Trustees and the Board of Directors. The latter achieves plural representation by means of election.[995]

The general assembly and Board of Trustees, unlike the staff of the GIHR,[996] include diverse federal level CSOs and DPOs representation, as it is required by the Paris Principles and CPRD Committee.[997] The interests of DPs in the general assembly are represented by Prof. Dr. Theresia Degener, Interessenvertretung Selbstbestimmt Leben in Deutschland e. V., Netzwerk Artikel 3 – Verein für Menschenrechte und Gleichstellung Behinderter e.V., as well as by non-self-help organizations such as Bundesverband evangelische Behindertenhilfe e. V. and Caritas Behindertenhilfe und Psychiatry e.V.[998]

The Board of Trustees is composed of 18 members with voting rights and 9 members without.[999] Members with voting rights include 3 members of the Human Rights Forum, 2 members of the federal parliament's Committee on Human Rights and Humanitarian Aid, 3 representatives of scientific institutions with a connection to human rights and 3 civil society representatives nominated by the parties of the parliament, as well as a representative of the German Disability Council and 6 members of the

994 Satzung des Vereins Deutsches Institut für Menschenrechte (revidierte Fassung vom 29.10.2020), §7.

995 Ibid., §12; For varying types of ensuring pluralism of governing organs, see SCA, General Observations, 2.1.

996 Second-level-interview DE/A 1, on 31.01.2016, Q. 9; see also statement of the SCA on GIHR in its November 2008 report, 4.3; for the requirements see SCA, General Observations, 4.1; for the actual list of NMB employees refer to GIHRwebpage on its Team | Deutsches Institut für Menschenrechte at: https://www.institut-fuer-menschenrechte.de/das-institut/team (Last accessed on 01.07.2022).

997 Principles relating to the Status of National Institutions (Composition); CPRD Committee, General Comment No. 7, Paras. 37 and 38; CRPD/C/1/Rev.1, annex, Paras. 2 and 20.

998 For the full list of members see: https://www.institut-fuer-menschenrechte.de/das-institut/gremien/mitglieder-des-vereins (Last accessed on 01.07.2022).

999 Satzung des Vereins Deutsches Institut für Menschenrechte, §24.

general assembly. To this end, 8 out of 18 members with voting rights of the main deciding organ, namely the Board of Trustees come from or are appointed by the federal parliament, whereas it is quorate if at least half of its members with voting rights are present.[1000] While it might be argued that the Federal Parliament is the most legitimate organ to nominate the members, the number of representation definitely goes over the allowed limit of representation from the state organs,[1001] especially if we take into account that the Board also includes 8 representatives of federal government without voting rights.[1002] Already in November 2008, the SCA in its report pointed out that Art. 24(1) of GIHR's statute indicates that two of the GIHR's Trustees must be members of the German federal parliament's Committee on Human Rights and Humanitarian Aid. The statute does not exclude these representatives from voting on decisions made by the Board of Trustees,[1003] whereas "government representatives and members of parliament should not be members of, nor participate in, the decision-making of organs of an NHRI. Their membership of, and participation in, the decision-making body of the NHRI has the potential to impact on both the real and perceived independence of the NHRI".[1004] Therefore, the CPRD Committee is critical about the participation of executive actors in the MFs.[1005] However, their involvement in advisory bodies might be beneficial for building a bridge between the NMB and the executive organs of the government.[1006]

Notwithstanding the fact that the GIHR as the 'NHRI' should discharge its functions at all governmental levels, both the list of members to its governing organs and Länder-level DPO[1007] representatives revealed that despite the requirement to ensure the full involvement and meaningful participation of DPs and their representative organizations in all areas of the MF work and in all stages of the monitoring processes,[1008] neither the

1000 Ibid., §27.2.
1001 SCA, General Observations, 1.9 and 2.5.
1002 For the full list of Kuratorium members see: https://www.institut-fuer-menschenrechte.de/das-institut/gremien/kuratorium (Last accessed on 01.07.2022).
1003 SCA, Report, November 2008, 4.3.
1004 SCA, General Observations, 1.9; See also Murray, 2007.
1005 CRPD/C/1/Rev.1, annex. Paras. 9 and 22.
1006 Beco/Murray, 2014.
1007 For more see chapter VI.
1008 CRPD/C/1/Rev.1, annex. Para. 20; See also CPRD Committee, General Comment No. 7. Paras. 39 and 94j.

General Assembly[1009] nor the Board of Trustees[1010] include Länder-level DPO representatives, whereas a member of the Federal Council is represented (without voting rights in the Board of Trustees).[1011] As a result, the Länder-level DPOs remain out of MF as their involvement is not ensured even through their umbrella organizations,[1012] whereas the Länder-level DPOs inclusion and participation is indispensable, especially in view of exclusive legislative powers of federal states and the federal administrative structure of Germany.[1013]

The appointment of the members to the main governing organs of the GIHR takes place through a democratic process.[1014] Detailed rules of their dismissal, instead, can be found neither in the bylaws of the GIHR[1015] nor in the Law on the Legal Status and the Mandate of the German Institute for Human Rights,[1016] which might make possible the forced resignation of its uncomfortable leaders.[1017]

While the appointment of the GIHR governing members is clearly regulated, the appointment procedure of the NMB department head is not even mentioned in the GIHR regulations, whereas the CPRD Committee underlines that the members of the MFs should be appointed in a public, democratic, transparent and participatory manner,[1018] which should, preferably, be approved by the parliament upon the nomination of the civil

1009 For the full list of members see the GIHR webpage on members at: https://www.institut-fuer-menschenrechte.de/das-institut/gremien/mitglieder-des-vereins (last accessed on 01.07.2022).
1010 Satzung des Vereins Deutsches Institut für Menschenrechte. §24.
1011 Ibid., §24 (2).
1012 See Chapter VI Part on Germany.
1013 For more see Chapter IV Part on Germany.
1014 Satzung- DIMR, §12 and §23 (1b); For the requirements see the Principles relating to the Status of National Institutions (Composition).
1015 See for example Satzung- DIMR, §24 (4).
1016 For the requirements see the SCA, General Observations, 2.1.
1017 Mertus, 2009: 121–123.
1018 CRPD/C/1/Rev.1, annex. Para 15a; According to SCA, General Observations, 1.8, these requirements can be achieved by:
a) Publicizing vacancies broadly;
b) Maximizing the number of potential candidates from a wide range of societal groups;
c) Promoting broad consultation and/or participation in the application, screening, selection and appointment process;
d) Assess applicants on the basis of pre-determined, objective and publicly available criteria.

society.[1019] As a result, the DPOs get informed about the appointment or resignation of NMB heads only after the decisions have been made,[1020] which might affect its public legitimacy.[1021]

1.2 Austrian Monitoring Framework

1.1.1 Legal status and system

In order to comply with the requirement of the Art. 33 Para 2 of the Convention, the Federal Disability Act (BBG) has been amended to provide for a Federal Monitoring Mechanism.[1022] As a result, the independent MC for the promotion, protection and monitoring of the implementation of the Convention has been established. The legal anchorage of FMC ensured the required legal status of the committee.[1023] However, composition, set scope of mandate and methods of operation of the FMC was insufficient[1024] for getting any status accreditation of the Paris Principles. Most particularly, it was assigned to the Federal Disability Council (Bundesbehindertenbeirat) and located in the Federal Ministry of Labour, Social Affairs and Consumer Protection (BMASK). This has been persistently criticized both by the FMC members[1025] and the CPRD Committee.[1026]

In 2017, the federal government reamended the Federal Disability Act to allow the establishment of a private non-profit legal entity to manage the organization of the MC (Verein zur Unterstützung des Unabhängigen Monitoringausschusses).[1027] However, the MC continues to be assigned to the BMASK despite the explicit recommendation of the CPRD Committee

1019 Carver, 2000: 14.
1020 Miles-Paul, 2020a; Miles-Paul, 2020b.
1021 Carver, 2005.
1022 BGBl. I No. 109/2008.
1023 SCA, General Observations, 1.1; see also chapter II the part on National Human Rights Institutions.
1024 See below; for the requirements see SCA, General Observations, 1.2, 1.7 – 1.10.
1025 See the minutes of the Monitoring Committee meeting in the period of 2008 to 2016. Available at: https://www.monitoringausschuss.at/protokolle/. (Last accessed on 01.07.2022).
1026 CRPD Committee, Concluding observations on the initial report of Austria, Para. 52 and 53.
1027 The Federal Disability Act (BBG)-BGBl. I Nr. 155/2017, §13l (1).

to ensure the full independence of the MC in accordance with the Paris Principles.[1028]

Some years after the CPRD ratification, almost all provincial governments amended their disability laws to establish MCs.[1029] In 2012, for example, the Tyrolean Anti-Discrimination Act (Tiroler Antidiskriminierungsgesetz 2005) has been amended to task the office of the Anti-discrimination Commissioner with the responsibility of monitoring of the CPRD.[1030] As a result, a new MC has been built. With the 2017 amendment of BBG, the establishment of MCs in the policy fields falling under the legislative power of the federation, became obligatory for the provinces.[1031] With this, Austria intended to implement the requirements of both the CPRD Committee and the Paris Principles of establishing Monitoring Mechanisms, according to which, within the framework of its operation, "(…) local or regional sections should be set up to assist it in discharging its functions".[1032] Nonetheless, the provincial governments in designating MCs did not only opt for varying structural arrangements,[1033] but also did not consider the recommendations of the CPRD Committee.[1034] As a result, the established MCs have legal status, but their composition, infrastructure, set scope of mandate and methods of operation is not sufficient for acting as an independent or autonomous institution.[1035]

1028 BBG, §13g (1); concluding observations on the initial report of Austria, Para. 52 and 53.

1029 Federal Monitoring Committee, CPRD Report, 2018: Article 33 (2); see also Schulze, 2013.

1030 LGBl. Nr. 150/2012.

1031 BGBl. I Nr. 155/2017.

1032 Principles relating to the Status of National Institutions. Methods of operation E; Guidelines on independent MFs and their participation in the work of the Committee on the Rights of DPs, Para. 18.

1033 FMC, 2018, Article 33.

1034 CPRD Committee, Concluding Observations on the Initial Report of Austria, Paras. 53 and 54.

1035 For details see sections below; E/CN.4/1992/43, 16 December 1991. Para. 29; See also the statement of the CPRD Committee, CRPD/C/1/Rev.1, annex. Para. 15.

1.2.2 Pluralist representation and the method of appointment/dismissal

1.2.2.1 Federal Monitoring Committee

Since its establishment, the FMC was composed in consideration of the rules of plural representation.[1036] It has eight members with voting rights.[1037] These include two representatives from different CSOs, a representative from an academic institution and four representatives from DPOs. The representatives of DPOs are proposed by the organization of the Austrian society of Rehabilitation.[1038] The privileged disabled members of the Committee are proud of this arrangement.[1039] However, there are no set rules for the selection and nomination of the Committee members by the Austrian Society of Rehabilitation. This makes the plurality of the FMC questionable,[1040] especially in considering that the required respect for the diversity of DPs and their accessibility needs,[1041] proves not to be sufficiently ensured: an interviewee stated that the membership of deaf persons to the Committee fails due to missing readiness to cover the high costs for sign language translation.[1042] The membership of learning disabled, albeit as a stand-in member, became possible only with the fourth election period of the FMC.[1043] The representation of non-Austrian/EEA Citizens has been banned by the 2017 BBG amendment.[1044] In fact, the CPRD made it clear that the rights of disabled non-citizens shall not only be considered within the domestic law,[1045] but their participation in monitoring and decision-making processes has to be ensured.[1046] This becomes even more

1036 Principles relating to the Status of National Institutions (Composition); CRPD/C/1/Rev.1, annex. Para. 20.
1037 BBG, §13g (1).
1038 BBG, §13j (1).
1039 Third-level-interview AT/A 3, on 25.05.2016, Q. 6; Third-level-interview AT/A 1, on 23.05.2016, Qs. 6 and 12.
1040 Schulze, 2013 (Membership and Composition).
1041 CRPD/C/1/Rev.1, annex. Paras. 20, 23c; CPRD Committee, General Comment No. 7, Paras. 36 – 39.
1042 Third-level-interview AT/A 2, on 23.05.2016, Q. 13.
1043 The Committee first convened on 10 December 2008.
1044 BBG, §13j (3).
1045 CPRD Committee, Concluding observations on the combined second and third periodic reports of Australia, Para. 35; CPRD Committee, Concluding Observations on the Initial Report of Germany, Paras. 15, 17c and 39.
1046 CPRD Committee, General Comment No. 7, Para. 50; see also SCA, General Observations, 1.5.

important if we consider the large number of disabled and traumatised person's immigration to western EU Member States.

Besides, The FMC includes representatives from appropriate Federal Ministries with advisory rights.[1047] This could be seen as a positive co-operation opportunity,[1048] if not the additional appointment and dismissal powers of the Minister of Labour, Social Affairs and Consumer Protection[1049] that impedes the independence of the MCs.[1050] To this end, The FMC cannot be seen as a distant body that acts as a bridge or mediate between government and non-government entities – a partner – trusted yet separate from both.[1051]

1.2.2.2 Provincial Monitoring Committeess

The structural inconsistency of provincial MCs is more visible:[1052] The TyroleanMonitoring Committee (TMC), for example, took considerable efforts to ensure the diverse representation of DPs.[1053] However, it, in addition to infrastructural subordination, is chaired by the Anti-discrimination Commissioner, who is appointed by the Tyrolean provincial Government.[1054] She nominates other members of the MC that are approved by the state government.[1055] The latter can also dismiss the members of the MC.[1056] These include an academic expert, a human rights expert and five DPs.[1057] Hereby the self-representation should be thought.[1058] This means that they should not represent a DPO, but the criteria of the selection are not transparent. Accordingly, the access of more vulnerable groups of DPs to the MC

1047 BBG, §13g (1).
1048 Beco/Murray, 2014.
1049 BBG, §13j (1 and 8).
1050 SCA, General Observations, 1.9; See also SCA, General Observations, 2.3 that states: "government members should not have decision-making (…) capacity"; CRPD/C/1/Rev.1, annex). Paras. 9 and 22.
1051 E/CN.4/1992/43, 16 December 1991. Paras. 111 – 128; See also, Smith, 2006; SCA, General Observations, 1.9; Beco, 2007; Beco/Murray, 2014.
1052 Federal Monitoring Committee, CPRD Report, 2018: Article 33 (2).
1053 Second-level-interview AT/B-T 1, on 30.10.2015, Q. 9.
1054 Tiroler Antidiskriminierungsgesetz 2005, §15.(1).
1055 Ibid., §16a (3).
1056 Ibid., §16a (7c).
1057 Ibid., §16 A (2).
1058 Ibid., §16a (3).

might be denied, which would hinder the broad and diverse participation of DPs.[1059]

1.3 Danish Monitoring Framework

1.3.1 Legal status and System

Denmark was long among the states that were against the establishment of an internationally recognised Human Rights Institution. Its main argument was that there is no reason for establishing local human rights committees in Denmark since such committees cannot be expected to have any practical significance alongside the judicial system, the parliament, the mechanisms under the European Human Rights Convention, the free press,[1060] and constitutionally stipulated Parliamentary Ombudsman.[1061] Later, however, it followed the international trend of establishing NHRIs by setting up the Danish Centre for Human Rights in 1987,[1062] which was renamed the Danish Human Rights Institution (DIHR) in 2002.[1063]

Following the CPRD ratification, Denmark designated a national MF composed of DIHR, Danish Parliamentary Ombudsman and the DDC.[1064] Accordingly, all three bodies have been established by a legal act as it is required by the SCA General Observations[1065] and existed before the ratification of the CPRD.[1066] However, the Danish Parliamentary Ombudsman and the DDC as state bodies should exercise their discretionary powers in such a way that their actions conform to International Law, which is known as the rule of instruction, but they are guided by and based exclusively on

1059 CRPD/C/1/Rev.1, annex, para. 20.
1060 Pohjolainen, 2006; 34 – 39.
1061 The office of the Danish Parliamentary Ombudsman was established in 1955 by incorporating it in the amended Danish Constitution of 1953 see Gøtze, 2009; Mørup, 2017.
1062 Parliamentary Act of 5 May 1987.
1063 Lov nr 411 af 06/06/2002 om etablering af Dansk Center for Internationale Studier og Menneskerettighede.
1064 Parliamentary Decision B15 of 17 December 2010.
1065 SCA, General Observations, 1.1.
1066 Ventegodt Liisberg, 2013.

domestic law[1067] and in case of conflict of norms the domestic law prevails over the provisions of non-incorporated treaty such as the CPRD.[1068]

The DIHR is also a state institution, but after a long and thorny path, it has been recognized as an independent institution: In 2001, it had only B-status[1069] and due to domestic existential challenges connected with the government policy of non-tolerance against minorities,[1070] was first reaccredited with A-Status in 2007.[1071] Nevertheless, the SCA noted the financial issues, inadequate composition, including appointment/dismissal discrepancies, and lack of legal mandate ensuring parliamentary accountability.[1072] As a result, the parliament amended the law establishing the DIHR, with which the status of the DIHR has been improved,[1073] but the majority of concerns raised by the SCA have not been addressed. Accordingly, its 2017 reaccreditation was deferred to the second SCA session of 2018,[1074] where the DIHR was again reaccredited with an A-status with a note that it still has issues concerning its protection and monitoring mandate, as well as the appointment and dismissal regulations.[1075]

The narrow scope of protection and monitoring mandate of the MF becomes visible especially in assessing its structural configuration across the state: all designated actors of the MF operate at the national level. The DDC cooperates with 98 municipal disability councils,[1076] which are neither a part of the MF nor have the adequate composition, mandate and infrastructure to act as Monitoring Bodies in their jurisdiction. The capacity of the Danish Parliamentary Ombudsman to address issues falling under the responsibility of the municipalities should be in line of the

1067 Harhoff, 1996: 151 – 182; Supreme Court case 52/2010 (dom af 18–10–2011). See also chapter IV part on Denmark.

1068 See for example 'Henvisning af autistisk bam til specialskole ffem for enkeltintegrering i friskole', Ombudsmandens afgorelse af 24. September 2009, j.nr. 2009–1787–710; see also Björgvinsson, 2015: 89 – 103.

1069 SCA, Report, April 2001.

1070 Mertus, 2009: 14 – 37.

1071 SCA, Report, October 2007, 3.3.

1072 Ibid.

1073 Act on the Danish Institute for Human Rights, Act no. 553 of 18 June 2012. It should be noted that from January 2003 until January 2013, the DIHR was part of the Danish Centre for International Studies and Human Rights. This act reestablished the DIHR as a separate institution.

1074 SCA, Report, November 2017, 3.2.

1075 SCA, Report, October 2018, 3.1; For more see below.

1076 BEK nr 897 af 12/05/2021, Sec. 31 PCS 2 and Sec.35 PCS 2.

special conditions under which these authorities' function,[1077] whereas the DIHR as the only Paris Principle compliant institution has not even a possibility to promote, protect and monitor the implementation of the CPRD at the municipal level.[1078] Unfortunately, this has been neither thematised during the state reporting process nor found consideration by the CPRD Committee in its Concluding Observations on the Initial Report of Denmark. This might be caused by the assumption that Denmark has a central government system and there is no need of explicit mentioning of municipal-level competencies of the designated MF, whereas the high level of local autonomy,[1079] especially in the field of education and fiscal decentralization,[1080] and the unwillingness of the Danish municipalities to adhere to the norms of the International Law regulations,[1081] seriously jeopardise the ability of the MF to discharge its duties under the CPRD, which, in turn, leads to poor or even non-implementation of the CPRD at the municipal-level.[1082]

In addition, only DIHR has been assigned as the NHRI of the self-governing Greenland,[1083] whereas there is no such an institution in Faroe Islands.[1084]

1077 Act No. 473 of 12 June 1996 concerning the Ombudsman as amended by Consolidated Act No. 556 of 24 June 2005, Consolidated Act No. 502 of 12 June 2009, Consolidated Act No. 568 of 18 June 2012 and Consolidated Act No. 349 of 22 March 2013, Sec. 8.

1078 See the Act no. 553 of 18 June 2012 on the Danish Institute for Human Rights – Denmark's National Human Rights Institution, as amended by Act no. 656 of 12 June 2013; Bylaws of the DIHR (Objectives and responsibilities) as amended on 25 May 2018; Second-level-interview DK/A 2, on 01.12.2016, Q. 5: "No. so it has not but we as an institute have not been very good at promoting human rights at no local levels because we are a state institution and we find it very difficult really to work with all the municipalities. There are 98 and it's really difficult for us (…) we think, work with individual Municipalities but (…) So basically the answer to this question is that we are not monitoring the implementation at the local level, but we are trying to do it better".

1079 Ladner et al. 2016.

1080 Ivanyna and Shah, 2014; Rodden, 2004.

1081 See for example Folketingets Ombudsmand, FOB 2005.14 – 1, tilgngelig pä:: https://www.ombudsmanden.dk/find/udtalelser/beretningssager/alle_bsager/05-425/#cp-title (Last accessed on 01.07.2022); See also Andersen, 2016, 6. udgave, S. 50.

1082 See chapter IV part on Denmark.

1083 Act no. 656/2013; Royal decree no. 393/2014.

1084 Danish Institute for Human Rights, 2014: 4.

1.3.2 Pluralist representation and method of appointment/dismissal

1.3.2.1 Danish Institute of Human Rights

The day-to-day management of the DIHR is in the hand of its director, whose acting capacities are framed by the main decision-making organ of the DIHR, is being selected through a process of public advertisement and appointed by the Board.[1085] This means that its pluralist representation has been ensured through the appointment procedures.[1086] The dismissal of the director and further members of the DIHR, however, have not been legally regulated. This, in view of the past problems of the DIHR,[1087] might be seen as problematic.

The main decision-making body of the DIHR is the Board.[1088] Its chairperson is elected from within its members.[1089] Overall, it includes a representative of the Human Rights Council of Greenland, a representative of employees of the DIHR and 6 representatives of Danish universities.[1090] In this case, however, the bylaw of the DIHR does not require consideration of its special mandates, which means that there is no requirement that at least one member of the university appointees should be disability rights experts holding UN or supranational posts on human rights of DPs, whereas the involvement of such an expert is imperative for ensuring not only CPRD-based work and research orientation of the DIHR but also for helping to establish links with human rights Monitoring Mechanisms.[1091]

The representation of civil society is ensured through 6 representatives of the Human Rights Council of the DIHR.[1092] As of 2012, one of the nominated representatives of the Human Rights Council should also be a member suggested by the Danish Disability Organization.[1093] However, the number of members of the Board might be reduced, which would

1085 Bylaws of the DIHR, Sec. 22.
1086 SCA, General Observations, 1.7.
1087 Mertus, 2009: 14 – 37.
1088 Bylaws of the DIHR, Sec.6.
1089 Ibid., Sec.6 and Sec.11.
1090 Ibid., Sec.8.
1091 Beco/Murray, 2014.
1092 Bylaws of the DIHR, Sec. 8.1 (1).
1093 Ibid., Sec. 8.3; Ventegodt Liisberg, 2013.

lead to ceasing of the DPO representation,[1094] thus affecting the positive cooperation between the DIHR and the DPOD.[1095]

According to the bylaws of the DIHR, the appointing parties should ensure that the nomination follows the Paris Principles requirements for openness and transparency with a view to maximising the number and diversity of candidates.[1096] However, the SCA noted that appointing parties do not have unified selection criteria, which may hinder the Paris Principles compliant selection and nomination process.[1097] For instance, the DPOD might nominate a representative to the DIHR Board, but it is not clear how it selects and nominates its representative to the DIHR Board. In any case, it will not represent a non-member, which inhibits other DPOs from being included in the work of the DIHR, whereas the CPRD Committee requires a broad involvement of DPOs in all the processes of the DIHR regardless of the participation of the umbrella organization.[1098]

The sufficient acting period of the Board members has been ensured[1099], but if there are justified doubts about a member's independence and integrity, the Board might initiate his/her resignation.[1100] Nevertheless, there is no further clarification on set criteria for independence and integrity, whereas in the interests of clarity and consistency, the DIHR is encouraged to provide greater precision in its bylaws or in another binding administrative guideline on the scope of this ground.[1101]

Much more pluralistic representation of civil society and public authorities (with no voting rights) is ensured through the advisory organ of the DIHR- the Council for Human Rights.[1102] It is composed of representatives of civil society, including a few disability-related organizations and the DPOD, research institutions, political parties and human rights advocates and institutions, as well as the Danish Parliamentary Ombudsman, the DDC and representatives of the ministries and municipalities.[1103] The

1094 Ventegodt Liisberg, 2013; Second-level-interview DK/A 2, on 01.12.2016Q. 6.
1095 Third-level-interview DK/A 1, on 02.12.2016Q. 15.
1096 Bylaws of the DIHR, Sec.10.3.
1097 SCA, Report, November 2017, 3.2 Point 1.
1098 CRPD/C/1/Rev.1, annex, Para. 20; CPRD Committee, General Comment No. 7, Para. 12a.
1099 Bylaws of the DIHR, Sec.8.2.
1100 Ibid., Sec.9.
1101 SCA, Report, October 2018, 2.1 point 3.
1102 Bylaws of the DIHR, Sec.14.
1103 Ibid., Sec.15(1).

representatives of public authorities participating in the meetings of the Council do not have a right to vote.[1104] Nevertheless, even here the required broad diversity of DPs has not been ensured.[1105]

1.3.2.2 Danish Parliamentary Ombudsman

The ombudsman is elected by the Danish parliament for a legislative period.[1106] This might be seen as ensuring the pluralist representation,[1107] if not the missing guaranties for the inclusivity of its staff.[1108]

The ombudsman might be dismissed by the Folketing if he ceases to enjoy its confidence.[1109] Hereby the Ombudsman's Act does not lay down the concrete actions and circumstances that might lead to dismissal despite the requirement of the Paris Principles to ensure an independent and objective dismissal process, with reasons clearly defined, and not left to the discretion of those appointing the members.[1110] This makes the dismissal of uncomfortable ombudsmen visibly easier.

1.3.2.3 Danish Disability Council

The Danish Disability Council (DDC) has been established in 1980.[1111] It is structured into two organs, the secretariat and the Advisory Board.[1112] The head of the secretariat is appointed and might be dismissed by the Minister of Social Affairs and Interior.[1113]

1104 Ibid., Sec.19.
1105 For the list of the members, see the web page of the DIHR at: https://menneskeret.dk/om-os/raadet-menneskerettigheder (Last accessed on 01.07.2022).
1106 Act No. 473 of 12 June 1996 concerning the Ombudsman as amended by the Consolidated Act No. 349 of 22 March 2013. Sec.1.
1107 SCA, General Observations, 1.7.
1108 Act No. 473 of 12 June 1996 concerning the Ombudsman, Sec.26; The Danish Parliamentary Ombudsman, Annual Report 2018, publisht in 2019: 130 – 133; CRPD/C/1/Rev.1, annex). Para. 20.
1109 Act No. 473 of 12 June 1996, Sec.2 (3).
1110 SCA, General Observations, 2.1.
1111 Ventegodt Liisberg, 2013.
1112 Bekendtgørelse om retssikkerhed og administration på det sociale område- BEK nr 897 af 12/05/2021, Sec. 38 and Sec.40.
1113 Ibid., Sec.40.

The Board is composed of 17 members.[1114] These include the chairperson, 2 representatives of the government,[1115] representatives of various social forces, municipalities, regions, disability-related researchers and five DPOD nominated representatives. As of December 2015, the DDC had representative members from the organization of persons with autism, organizations of persons with visual impairment, cerebral palsy, brain injury and ADHD.[1116] Non-DPOD members, as it was in the case of the DIHR, cannot be appointed to the Advisory Board of the DDC. As a result, the door to promotion activities under the CPRD remains firmly closed for other disability organizations.

All members including the chairperson are appointed by the Minister of Social Affairs and Interior.[1117] This gives serious reasons to doubt its independence.[1118]

As of 2007, the municipal governments also had to establish disability councils.[1119] Municipal level councils are partly composed of civil servants and politicians and partly of the representatives of the disability organizations.[1120] However, they are neither the part of the National MF,[1121] nor have the necessary independence and financial capacity to promote, protect and monitor the rights of DPs.[1122]

2. Resources of National Monitoring Mechanisms

2.1 German National Monitoring Body

The GIHR, as it is required by the principles relating to the status of national institutions,[1123] has been provided with resources for performing the tasks assigned to it at the federal level since its establishment. The per-

1114 Ibid., Sec.38.
1115 Ibid., Sec.38 PCS. 3; Second-level-interview DK/A 1, on 01.12.2016, Q. 14.
1116 Second-level-interview DK/A 1, on 01.12.2016, Q. 9.
1117 BEK nr 897 af 12/05/2021, Sec.38 (1).
1118 SCA, General Observations, 2.1.
1119 BEK nr 897 af 12/05/2021, capitel 8; Ventegodt Liisberg, 2013.
1120 BEK nr 897 af 12/05/2021, Sec. 29; Second-level-interview DK/A 1, on 01.12.2016, Q. 15.
1121 Second-level-interview DK/A 1, on 01.12. 2016Q.s 8 and 10.
1122 Second-level-interview DK/A 1, on 01.12.2016, Q. 15; Second-level-interview DK/A2, on 01.12.2016, Q. 5.
1123 Paris Principle B.2; SCA, General Observations, 1.10.

manent funding of the GIHR has been ensured by the DIMR-Act of 2015. However, the SCA noted in its 2015 reaccreditation report that "the GIHR has been entrusted with several new responsibilities", but "no increase in funding has been provided for the (…) newly-mandated tasks".

In fact, after the designation of the GIHR as the NMB under the CPRD in 2009, it got temporary separate annual funding from Federal Ministry of Labour and Social Affairs amounting to EUR 453.000 till December 31 2015.[1124] This covered also the human resources, the number of which grew gradually from 1 to 12:[1125] unlike the members of the GIHR Board of Trustees,[1126] its directors, department's heads and their stuff get remuneration, which helps in avoiding conflict of interests, ensuring stable mandate for the members, regular and appropriate direction for staff and the ongoing and effective fulfilment of the NMB functions.[1127]

With the DIMR-Act of 2015 the operation of the CPRD unit of the GIHR has been ensured on a permanent basis through the general institutional funds allocated to the GIHR by the federal government.[1128] This caused tangible doubts and insecurity: "we are no longer safe in this form of financing (…) now there is only one general budget[1129] (…) and it is an internal question (…) if the extent of our resources will be the same as before".[1130] To this end, the NMB does not have a separate budget line over which it has absolute management and control.[1131] To this end, it might be assumed,

1124 Second-level-interview DE/A 1, on 31.01.2016, Q. 7.

1125 Two out of 12 employees are responsible for Länder-level projects. For more see: https://www.institut-fuer-menschenrechte.de/das-institut/abteilungen/monitoring-stelle-un-behindertenrechtskonvention (Last accessed on 01.07.2022).

1126 Satzung-DIMR, §24 (6).

1127 For the requirements see SCA, General Observations, 2.7 – 2.9.

1128 In 2019 the General budget amounted to a total of EUR 2.657 million. See the second and third combined periodic report of Germany (zweiter und dritter Staatenbericht der BRD zum UN-BRK) Para. 36.

1129 As of 2019, the total annual fund allocated to the GIHR amounted to EUR 2.657 million, See Deutscher Bundestag, Drucksache 19/11745, on 18.07.2019. Q. 36.

1130 Second-level-interview DE/A 1, on 31.01.2016, Q. 7. The original reads as follows: "Wir sind jetzt in dieser Finanzierungsform nicht mehr sicher. Wir sagen, wir wollen nicht schlechter gestellt werden als vorher, innerhalb der Gesamtorganisation, aber es gibt jetzt eben nur noch einen Gesamthaushalt. Es gibt nur noch den Haushalt für das Institut für Menschenrechte. Und das ist eine interne Frage, die zu beantworten ist, ob wir nach wie vor, in diesem Umfang, auf die Mittel zurückgreifen können, wie früher".

1131 For the requirements see: SCA, General Observations, 1.10; See also CRPD/C/1/Rev.1, annex. Para. 17.

overall, that the NMB has adequate resources to discharge its federal-level functions in policy fields directly affecting DPs, but it is, evidently, inactive in indirect policy fields e.g., cultural rights.[1132]

In addition, the DIMR-Act of 2015 does not provide regulations regarding funding of the NMB to carry out its responsibilities at the Länder-level in all 16 federal states, whereas in view of exclusive legislative and executive powers of these in a number of policy fields e.g., education, accessibility of administration and infrastructure,[1133] they might be viewed as the primary actors for ensuring operational functionality of NMB at the state and municipal levels as it is required by the CPRD Committee[1134] and the SCA.[1135] Nevertheless, the efforts of the NMB to increase its capacity to monitor the Länder-level CPRD implementation[1136] has not been successful.[1137] This means that, it, except 2 permanent[1138] and 1 temporary[1139] monitoring Länder-level agreements, as well as a few action-plan evaluation orders of some federal states, including hesse and Thuringia[1140], does not receive constant funding[1141] for carrying out the tasks assigned to it at the Länder-level despite the explicit concern[1142] and call of the CPRD Commit-

1132 For more see sections below.
1133 Welti, 2019.
1134 CRPD/C/1/Rev.1, annex. Para. 18; Concluding observations on the initial report of Germany. Para. 62c.
1135 SCA, Report, November 2015, 3.1.
1136 Second-level-interview DE/A 1, on 31.01.2016Q. 11.
1137 See the answer of the federal government in the zweiter und dritter Staatenbericht der Bundesrepublik Deutschland zum UN-BRK. Para. 36.
1138 Federal states of Nordrhein-Westfalen and Saarland. For more see: https://www.institut-fuer-menschenrechte.de/das-institut/abteilungen/monitoring-stelle-un-behindertenrechtskonvention/verbaendekonsultation (Last accessed on 10.07.2022).
1139 In Berlin as of 2012. For more see:https://www.institut-fuer-menschenrechte.de/das-institut/abteilungen/monitoring-stelle-un-behindertenrechtskonvention/verbaendekonsultation (last accessed on 10.07.2022).
1140 For the full list of Action Plans for the federal government and the federal states see: https://www.institut-fuer-menschenrechte.de/das-institut/abteilungen/monitoring-stelle-un-behindertenrechtskonvention/bund-und-laender-im-vergleich (last accessed on 10.07.2022).
1141 See the response of the SP in the Combined second and third periodic reports (Deutscher Bundestag, Drucksache 19/11745), on 18.07.2019. Q. 36.
1142 CRPD Committee, Concluding observations on the initial report of Germany. Para. 61:
"The Committee is concerned … that the SP does not provide the adequate resources on a permanent basis to support the independent monitoring mechanism's work in accordance with Article 33 (2)".

tee to ensure the availability of resources for more comprehensive and effective monitoring at the Land and municipal levels:[1143] "There are many possibilities of counseling, intervention and providing commentaries on legislative projects or writing concepts for example in the field of education, where there is a big movement and extensive developments, but we cannot be everywhere simultaneously as we have not enough human and financial resources".[1144]

Actually, Germany introduced a similar institution at the federal level with the General Equality Law in 2006.[1145] In 2011, the federal Antidiscrimination Body launched the Antidiscrimination Coalition, which is a nationwide offensive for a non-discriminatory society. As of spring 2021, 11 federal states, including Hesse and Thuringia joined the Coalition and financed the establishment and operation of antidiscrimination bodies in their federal states.[1146] This arrangement corresponds to the Art. 84 Sentence 1 GG, which means that "where the Länder execute federal laws in their own right, they shall provide for the establishment of the requisite authorities and regulate their administrative procedures". The provision allowing the federation to regulate the administrative procedure with no possibility of separate Land legislation in exceptional cases, does not apply to the establishment of Länder-level institutions.[1147]

1143 CRPD Committee, Concluding observations on the initial report of Germany. Para. 62 C; See also CRPD/C/1/Rev.1, annex, Para. 18.

1144 Second-level-interview DE/A 1, on 31.01.2016Q. 10. The original reads as follows: "Die Schwäche ist ein Mal, dass wir eben nicht überall gleichzeitig sein können und die Entwicklungen im Bereich Bildung sind sehr weitreichend. Da ist schon Bewegung drin und das ist sehr groß, ne? Das ist die größte Schwäche, dass wir nicht hinreichend viele Leute haben, um die Sachen zu überblicken. und es gibt viele Prozesse und Möglichkeiten der Beratung und der Intervention oder Einladung zu Vorträgen. Oder auch die Möglichkeit Gesetzgebungsvorhaben zu kommentieren oder Konzepte zu schreiben, die wir nicht wahrnehmen können, weil wir keine Kapazitäten haben"; Second-level-interview DE/A 1, on 31.01.2016Q. 4.

1145 AGG, as amended on 23.05.2022 by BGBl. I S. 768, §25.

1146 The scope of their mandate varies from Federal State to Federal State. For more see the Federal States' declarations of Intend (Absichtserklerungen der Bundesländer) at: https://www.antidiskriminierungsstelle.de/DE/was-wir-machen/projekte/koalition-gegen-diskriminierung/koalition-gegen-diskriminierung-node.html;jsessionid=6057E1E642F7FEBE0D8A8283E6322F6A.intranet222 (Last accessed on 10.07.2022).

1147 BeckOK Grundgesetz/Suerbaum, 41. Ed. 15.5.2019, GG Art. 84 Rn. 1–66.

2.2 Austrian Monitoring Framework

The Austrian FMC started its work without its own budget.[1148] The BMSK announced however, that it, in acting as the bureau of the Committee, would assume the prior agreed costs associated with the work of the Committee. The members of the MC, including the chairperson, had to serve pro bono.[1149] With the 2010 amendment of the Federal Disability Act (BGBLA_2010_I_81), the chairperson began to receive an expense allowance, including travel costs. According to the 2012 report of the Committee, its scarce resources also affected the accessibility of the Committee meetings. Most specifically, the comprehensive communicative accessibility, especially for persons with learning disabilities could not be guaranteed.[1150]

It took a couple of years before the federal government addressed the requirement of ensuring permanent funding of the FMC.[1151] The 2017 amendment of the Federal Disability Law allowed setting up a private non-profit legal entity that is jointly governed by the BMASK and the members of the MC.[1152] As of 2018, the entity is being allocated EUR 300.000 yearly for salary and office costs. Accordingly, it formed its first paid staff, including an employee of press and public relations, a lawyer and a secretary.[1153] Moreover, it moved to its own accessible office in November 2018. The amendment also provided for a reimbursement provision of travel and subsistence expenses for the members of the MC.[1154] However, the fact that the funding of the MC is under the sole control of the appropriate ministry and that the federal government is founding member of the non-profit legal

1148 See the minutes of the Monitoring Committee meeting on 10.12.2008. retrieved from: https://www.monitoringausschuss.at/protokolle/. (Last accessed on 01.07.2022).

1149 Ibid.

1150 Unabhängiger Monitoring Ausschuss, Bericht an den Bundesbehindertenbeirat, 10. Dezember 2012. Retrieved from: https://www.monitoringausschuss.at/dokumente/berichte/ (Last accessed on 01.07.2022).

1151 For the requirement see CRPD/C/1/Rev.1, annex, Para. 15; SCA, General Observations, 1.10.

1152 The Federal Disability Act (BBG), §13l (1).

1153 See Monitoring Ausschuss, Rückblick auf unsere Tätigkeiten seit 2018. Retrieved from: https://www.monitoringausschuss.at/rueckblick-auf-die-taetigkeiten-des-monitoring-ausschusses-seit-2018/ (Last accessed on 01.07.2022).

1154 The Federal Disability Act (BBG), §13j (6).

entity,[1155] gives serious reason to doubt its ability to act independent of the federal government.[1156]

The situation at the Länder-level is even more inadequate:[1157] The TMC, for instance, had no legally stipulated funding until 2017. Its operation was enabled through the financial means of the office of the Antidiscrimination Commissioner.[1158] This was satisfactory for the functioning of the MC, but not enough for big projects.[1159] The 2018 amendment of Tiroler Antidiskriminierungsgesetz- TADG[1160] did not make tangible changes in this respect; it just added a provision, according to which the functioning of the TMC should continue being attached to, and located in the office of the Anti-discrimination Commissioner and be supported by the Tyroleangovernment.[1161] The members of the MC, except the Commissioner, would continue working pro bono. This gives tangible reasons to conclude that the Länder-level MCs do not have the necessary infrastructure[1162] to discharge their monitoring responsibilities.

2.3 Danish Monitoring Framework

All actors of the Danish MF have legally regulated funding. The DDC has governmental funding, covering its activities and employees of the secretariat, as well as reasonable accommodation of unremunerated members of the council.[1163] The annual funding amounts to DKK five point nine million- about EUR 8.000000.[1164] The work and staff of the Danish Parliamentary Ombudsman is financed through the parliamentary budget.[1165]

1155 Federal Disability Act (BBG), §13l (1).
1156 Principles relating to the Status of National Institutions (Composition); SCA, General Observations 1.10; See also, CRPD/C/1/Rev.1, annex. Paras. 15B – E and 17; OHCHR, National Human Rights Institutions, 41.
1157 Federal Monitoring Committee, 2018: Art. 33 (2).
1158 Second-level-interview AT/B-T 1, on 30.10.2015Q. 7.
1159 Second/third-level-interview AT/B-T 2, on 27.10.2015Q. 8.
1160 LGBl. Nr. 144/2018.
1161 Tiroler Antidiskriminierungsgesetz, §16 (5).
1162 Principles relating to the Status of National Institutions (Composition); SCA, General Observations 1.10; See also, CRPD/C/1/Rev.1, annex. Para. 15 B – E.
1163 BEK nr 897 af 12/05/2021, Sec. 42 PCS. 2.
1164 Second-level-interview DK/A 1, on 01.12.2016, Q. 7.
1165 Act No. 473 of 12 June 1996 concerning the Ombudsman as amended by the Consolidated Act No. 349 of 22 March 2013. Chapter 1.

The 2018 appropriation, for example, amounted to DKK 84,700.000.[1166] However, the financial means provided to these actors are under control of the executive/legislator, which aggravates their independence.[1167]

The DIHR also has permanent governmental funding. This allows the DIHR to have its own employees, premises and not be subject to strict financial control that may affect its independence. To this end, the supervision of the DIHR assigned to the Ministry of Foreign Affairs is carried out in consideration of the independence of the DIHR and its self-governing nature.[1168] However, the governmental funding covering the domestic activities amounted to only 9 percent in 2007, which was criticised by the SCA.[1169] Nevertheless, this tendency continued until 2017 and slightly improved in 2020, when the governmental allocation amounted to about 28.8 percent of its overall budget.[1170] This was one of the reasons for deferring the DIHR reaccreditation in 2017.[1171] Besides, the DIHR does not have additional funding for its mandate under the CPRD, whereas the SCA states that "if the NHRIs are given with additional responsibilities e.g., CPRD, it should be allocated additional financial resources to discharge these functions.[1172] Accordingly, the CPRD related actions should be financed through the general funds, which might eventually lead to prioritization of other tasks over the responsibilities under the CPRD. In addition, the limited domestic funds, evidently, hinder the DIHR as the only human-rights-based and Paris Principle compliant body to carry out capacity building activities for the diverse groups of DPs and their organizations, as a result of which the DPOs did not develop a human rights-oriented action policy.[1173]

1166 The Danish Parliamentary Ombudsman, Annual Report 2018: 124 -129.
1167 Principles relating to the Status of National Institutions (Composition); SCA, General Observations 1.10; See also, CRPD/C/1/Rev.1, annex. Paras. 15B – E and 17; OHCHR, 2009, 41.
1168 Bylaws of the DIHR, Sec.34.
1169 SCA, Report, October 2007, 3.3.
1170 DIHR, 2020 Annual report to the Danish parliament, 37.
1171 SCA, Report, November 2017, 3.2- Point 6.
1172 `SCA, General Observations, 1.10; See also CRPD/C/1/Rev.1, annex. Para. 11.
1173 For more see chapter VI part on Denmark.

3. Mandate of National Monitoring Mechanisms

3.1 German National Monitoring Body

Since its establishment, the sphere of competence[1174] of the GIHR did not include protection responsibilities.[1175] The adoption of the DIMR-Act of 2015, with which the GIHR has been designated as the NMB of Germany[1176] both at the federal and Länder-levels,[1177] did not expand the mandate of the GIHR although the CPRD Committee underlines that the mandate of the MFs should "encompass the promotion, protection and monitoring of all rights enshrined in the Convention".[1178]

3.1.1 Promotion

In accordance with Section 2 of the DIMR-Act, the NMB provides information to various actors at the horizontal and vertical governmental levels,[1179] carries out applied research,[1180] and provides human rights trainings. These, however, proved to be not as comprehensive as it has been required by the CPRD.[1181] This affects and is visible especially in indirect policy fields e.g., education at the Länder-level.[1182]

1174 Principles relating to the Status of National Institutions. Competence and responsibilities 2.
1175 SCA, Report, November 2008, 4.3.
1176 DIMRG, §1.
1177 Aichele, 2015, 85–95.
1178 CRPD/C/1/Rev.1, annex. Para. 15; the SCA, General Observation 1.2 provide for only promotion and protection Competencies, although it enlists 'monitoring' under the protection competence.
1179 Second-level-interview DE/A 1, on 31.01.2016Q. 19.
1180 Aichele, 2015; For the full research List, see: Publikationen | Deutsches Institut für Menschenrechte at: https://www.institut-fuer-menschenrechte.de/publikationen (Last accessed on 01.07.2022).
1181 See the appropriate requirements in CPRD. Art. 4.1I, Art. 8.2 B and D, Art. 13.2, Art. 24.4; CRPD/C/1/Rev.1, annex. Para. 23 K and L; in 2011, the requirement was also reconfirmed by the UN Declaration on Human Rights Education and Training *adopted by the General Assembly on 19 December 2011 (A/RES/66/137);* Principles relating to the Status of National Institutions Competence and responsibilities 3 f; Vienna Declaration and Programme of Action. Para. 36.
1182 For more see chapter IV part on Germany.

Although there is no formal regulation on responding or complying to advice and requests, the NMB,[1183] provided advice and comment on federal-level draft laws concerning DPs directly.[1184] The actions of the NMB in indirect policy fields, instead, are not visible: for instance, the policy-making processes of the Federal Ministry of Education and Research, which oversees the field of vocational and higher education, contain no written commentaries of the NMB.[1185] Similarly, the involvement of the NMB in the public hearings of the Bundestag in direct policy fields is ensured,[1186] whereas in Committees that do not concern DPs directly but have essential importance for their development e.g., vocational and higher education, its participation has not been ensured.[1187]

Neither the DIMRG[1188] nor the statutes of the GIHR contain provisions regulating the scope, form and extent of the "National" Monitoring Body in carrying out its tasks in the federal states. Accordingly, only a few out of 16 federal states adopted laws allowing permanent or temporary NMB monitoring at the Länder-level.[1189] Other federal states, including Hesse and Thuringia, have had only a punctual cooperation with the NMB.[1190] This means that in these federal states there is no Independent Mechanism that could conduct effective promotion, protection and monitoring of the implementation of the CPRD.[1191] Accordingly, the measures taken by the federal states to develop and implement CPRD-conform policies differ

1183 SCA, General Observations, 1.6; CRPD/C/1/Rev.1, annex. Para. 16.

1184 For more refer to BMAS website on laws (Gesetze und Gesetzesvorhaben) at: https://www.bmas.de/DE/Service/Gesetze-und-Gesetzesvorhaben/gesetze-und-gesetzesvorhaben.html (Last accessed on 01.07.2022).

1185 For more see the webpage of the Federal Ministry of education and research containing documents on the developed laws Gesetze – BMBF at: https://www.bmbf.de/bmbf/de/service/gesetze/gesetze_node.html (Last accessed on 01.07.2022).

1186 E.g., Bundesteilhabegesetz: Ausschussdrucksache 18(11)801; Barrierefreiheitsstärkungsgesetz: Ausschussdrucksache 19(11)1137; Entwurf für ein Gesetz zur Umsetzung der Richtlinie (EU) 2019/882 des Europäischen Parlaments und des Rates über die Barrierefreiheitsanforderungen für Produkte und Dienstleistungen und zur Änderung des Jugendarbeitsschutzgesetzes: Ausschussdrucksache 19(11)113.

1187 BT-Drucksache 19/8749; BT-Drucksache 19/14431; BT-Drucksache 19/15273.

1188 BGBl I 2015, 1194.

1189 For more see: https://www.institut-fuer-menschenrechte.de/das-institut/abteilungen/monitoring-stelle-un-behindertenrechtskonvention/berlin (Last accessed on 01.07.2022).

1190 Ibid.

1191 First-level-interview DE/B-H 1, on 14.01.2016, Q. 6; First-level-interview DE/B-T 2, on 23.05.2018, Qs. 3, 4 and 6.

from federal state to federal state. For instance, the State of Hesse did not assess if the state laws comply with the CPRD provisions neither before nor after the ratification, but it commissioned the Max Planck Foundation for International Peace and the Rule of Law, to develop a check-list, which had to help in identifying the discrepancies of the Hessian Laws with the CPRD.[1192] The Thuringian government, in its turn, commissioned the NMB to evaluate the compliance of selected laws falling under its exclusive legislative and executive powers, including School Law.[1193] However, in amending the School Law, the recommendations of the NMB have not been taken into account as they have been considered to be very radical.[1194] Besides, both federal states by setting the framework of assessment commissioned the NMB to evaluate the Action Plans on the implementation of the CPRD.[1195] The evaluations, during which the NMB conducted expert interviews with 5/6 ministerial representatives and 5/6 representatives of the civil society and reviewed relevant documents of the federal states, showed that Action Plans were built up on already existing measures, did not provide exact information on actors responsible for execution, budgetary issues and the timeline of the target actions and contained measures that were not based on human rights norms stipulated by the CPRD e.g., inclusive education.[1196] In response to the evaluation report on the Action Plan, the Hessian State government announced the development of the concretized Action Plan 2.0, which has not been developed as of summer 2022. The Thuringian State government, instead, by following the advice of the NMB, adopted the second Action Plan in 2018 containing a number of improvements but failed in enlisting measures aimed at ensuring inclusive schooling. The presence of the NMB in the parliamentary processes of two examined federal states has not been ensured either.

1192 First-level-interview DE/B-H 1, on 14.01.2016, Q. 3.
1193 First-level-interview DE/B-T 2, on 23.05.2018, Q. 3; For the list of evaluated laws see: Thüringer Ministerium für Arbeit, Soziales, Gesundheit, Frauen und Familie (TMASGFF) 2. Thüringer Maßnahmenplan zur Umsetzung der UN-Behindertenrechtskonvention, Erfurt: 2018. S. 20.
1194 First-level-interview DE/B-T 2, on 23.05.2018, Q. 4.
1195 Monitoring-Stelle UN-Behindertenrechtskonvention (2013): Evaluationsbericht der Monitoring-Stelle zur UN-Behindertenrechtskonvention zum Hessischen Aktionsplan zur Umsetzung der UN-Behindertenrechtskonvention,2016: Evaluationsbericht der Monitoring-Stelle zur UN-Behindertenrechtskonvention zum Thüringer Maßnahmenplan zur Umsetzung der UN-Behindertenrechtskonvention.
1196 Ibid.

To this end, it becomes evident that the actions taken by the NMB to promote the rights of DPs through advisory procedures, addressed mainly the direct policy fields of the federal executive and legislative organs, whereas efforts taken to promote the provisions of the CPRD, including civil, political, economic, cultural and social rights at the state and municipal levels[1197] were not sufficient enough to induce the desired paradigm shift.

3.1.2 Monitoring

The GIHR as a NHRIs did not have an explicit[1198] mandate to monitor compliance with human rights Treaties. However, with its designation as the Independent Monitoring Body under the Art. 33 of the CPRD, it, most precisely, its NMB department, developed a system to assess the conformance of domestic legislation and policies with the CPRD, laid down indicators and benchmarks, and maintains website containing information on practices related to the implementation of the Convention.[1199] It was also able to measure the impact of disability-specific policies through thematic studies and annual reports, as well as disability action plans of some federal states and federation. However, its impact assessment of indirect policies and programmes on DPs as it is required by the CPRD Committee[1200] included selected essential policy fields e.g., education but failed in evaluating these in the light of structural configuration of the SP. For the successful performance of this, the NMB would have to maintain permanent collaboration with all relevant Länder-level actors,[1201] including administrative organs and the DPOs, which has not been ensured since its establishment. Accordingly, the requirement to ensure the identification and bridging the gaps that prevent DPs — as rights holders — from fully enjoying their rights, as well as the gaps that infringe on duty bearers to fully discharge their legal obligations to respect, protect and fulfil the rights of DPs[1202] in

1197 CRPD/C/1/Rev.1, annex. Paras. 15 And 18; Principles relating to the Status of National Institutions Competence and responsibilities 3a; Vienna Declaration and Programme of Action. Para. 36.
1198 SCA, General Observations, 1.6.
1199 See the CPRD Committee requirement in CRPD/C/1/Rev.1, annex. Para. 13.
1200 CRPD/C/1/Rev.1, annex. Para. 39D.
1201 CRPD/C/1/Rev.1, annex. Para. 38.
1202 CRPD/C/1/Rev.1, annex. Para. 39c.

all policy fields and at all governmental levels with the direct involvement of DPOs[1203] could not been sufficiently fulfilled.

In addition, the NMB as the Independent Monitoring Mechanism under the CPRD submits parallel reports to the CPRD Committee independent of the SP by providing a human-rights-oriented and research-based standpoint on the implementation of the CPRD provisions. It also contributes to the preparation of lists of issues, both for the general and the simplified reporting procedures and answers the list of questions as it is required by the CPRD Committee.[1204]

3.1.3 Protection

In fact, the GIHR has been established to serve as a research institution[1205] and up-to-day it preserves its research profile despite the critique of the SCA[1206] and explicit requirement of the CPRD Committee to empower the NMB with the proactive and reactive protection competencies.[1207] Most particularly, the capacity of the GIHR to conduct ex-officio investigations, despite its proven importance for the protection of human rights,[1208] has neither been explicitly stated in the DIMR-Act nor regulated by any other legal document as it is for example the case with the federal and Länder-level disability commissioners, who, in carrying out their responsibilities, are empowered with requesting all authorities and other public bodies to provide the necessary information and to grant access to the relevant documents.[1209] Accordingly, the GIHR in general and NMB in particular, cannot protect proactively the rights of DPs as it does not have "expeditious and full access to information, databases, records, facilities and premises, such as care homes, psychiatric institutions and sheltered workshops, as well as

1203 CRPD/C/1/Rev.1, annex. Paras. 2, 3, 5, 20, 39[E]; See also CPRD Committee, General Comment No. 7. Paras. 34 – 39.

1204 CRPD/C/1/Rev.1, annex. Para 23 d, f and g; See also, SCA, General Observations, 1.4.

1205 Rudolf, 2011.

1206 SCA, Report, November 2008, 4.3.

1207 CRPD/C/1/Rev.1, annex. Para. 13.

1208 See for example: Brodie, 2015, 1223.

1209 See for example: BGG, §18 (3): "Alle Bundesbehörden und sonstigen öffentlichen Stellen im Bereich des Bundes sind verpflichtet, die beauftragte Person bei der Erfüllung der Aufgabe zu unterstützen, insbesondere die erforderlichen Auskünfte zu erteilen und Akteneinsicht zu gewähren."

regular and special schools both in urban and rural or remote areas".[1210] This means that the NMB cannot collect information on violations and issue/publish reports on considered and processed complaints which could be another proactive way of preventing violations as it might expose the wrongdoings of the state and thus serve as a costly naming and schaming strategy.[1211]

Furthermore, the GIHR, including NMB does not have a mandate to handle individual complaints as it is suggested by the Paris Principles[1212] and required by the CPRD Committee.[1213] The resistance to empower the NMB with complaint handling competence might be explained by the perception that "for a clear line" between the role of an NHRI and the judiciary, the NHRI should not have judicial powers[1214] or by the argument that human rights protection is based exclusively on the judicial system and the Constitutional Court[1215]. While these assumptions might be valid, the quasi-judicial mandate of NMB is seen as key to its public legitimacy[1216] since it could serve as an accessible[1217] and independent instrument for protecting the rights of DPs across the state. In fact, the need for such an instrument has been recognized[1218] and as a consequence introduced and assigned to the Federal Disability Commissioner with the Federal Participation Law of 2016, but its scope is limited to only violations concerning federal-level public authorities.[1219] Accordingly, in case of violations within the realm of the exclusive legislative powers of federal states e.g., accessibility and reasonable accommodation in the schools, DPs and their families do not have easily accessible and uncomplicated access to justice.[1220]

The NMB department of the GIHR, as a registered non-governmental human rights organization, could, in fact, use legal representation options

1210 CRPD/C/1/Rev.1, annex. Para. 12.
1211 For more on naming and shaming strategy see Franklin, 2015.
1212 SCA, General Observations, 1.6 and 2.9.
1213 CRPD/C/1/Rev.1, annex. Para. 13.
1214 Amnesty International, para. 4.D.1.
1215 Nußberger, 2012.
1216 Carver, 2000; Pegram, 2011; Linos/Pegram, 2015; for the general discussion on legitimacy see, Goodman and Pegram, 2012.
1217 Carver, 2000: 83.
1218 Welti et al., 2014.
1219 BGG, Para. 16; Behindertengleichstellungsschlichtungsverordnung.
1220 Welti et al, 2014: 294; Schroeder, et al., 2014; See also European Union Agency for Fundamental Rights, 2011.

provided by domestic law[1221] to initiate direct strategic litigation[1222] concerning important human rights violations of DPs. Instead, the NMB, in over 11 years of its establishment, contented with a few domestic[1223] and international[1224] initiatives of third-party interventions, where it was not a full party to the proceedings.

3.1.4 Multi-level Cooperation with state and non-state bodies

The GIHR in general, and the NMB in particular, is obligated to collaborate with all the actors responsible for the promotion, protection, implementation and monitoring of human rights of DPs.[1225] To fulfil its international-level responsibilities,[1226] the NMB interacts with the Committee in the framework of the state reporting procedure by submitting parallel reports and participating in the dialogue between the Committee and the delegation of the SP.[1227]

At the EU level, the NMB is a member of the European NHRIs. Accordingly, it actively participates in all disability-related activities, including third-party interventions before the ECJ and ECTHR.

1221 VwGO, §67 (2.2.6); SGG, §73 (2.8); BGG, §14, §15 and §16 (3. The Labour courts (ArbGG, as amended on 5.10.2021 by BGBl. I S. 4607, §11) Federal Constitutional Court (Section 22 BverfGG, as amended on 20.11.2019 by BGBl. I S. 1724) and constitutional courts of federal states (E.G. Section 20 StGHG, as amended on 1.04.2022 by GVBl. S. 184, 204; Section 17 ThürVerfGHG, as amended on 8.08.2014 by GVBl. S. 469) do not envisage such an opportunity.

1222 Welch/Haglund, 2017.

1223 E.g., Amicus-Curiae-Stellungnahme: Wahlrechtsausschlüsse nach dem Bundeswahlgesetz (BWahlG) im Wahlprüfbeschwerdeverfahren (Bundesverfassungsgericht, 2 BvC 62/14); Amicus-Curiae-Stellungnahme: Diskriminierung durch Kündigung wegen HIV (Bundesarbeitsgericht, 6 AZR 190/12); Bedeutung der UN-Behindertenrechtskonvention/Zugang zur Regelschule (Verwaltungsgerichtshof Hessen).

1224 E.g., Stellungnahme: Sterilisierung ohne Einwilligung (Europäischer Gerichtshof für Menschenrechte).

1225 SCA, General Observations, 1.4 and 1.5; CRPD/C/1/Rev.1, annex; CPRD Committee, General Comment No. 7 Paras. 36 – 38.

1226 CRPD/C/1/Rev.1, annex. Part IIIa.

1227 CRPD/C/1/Rev.1, annex. Part IIIa.

At the national level, the NMB collaborates with the executive organ designated as the FP.[1228] In the framework of its cooperation, it also prepares state reports on behalf of the SP,[1229] which is seen critical by the SCA.[1230]

The NMB maintains regular contact also with the Federal Disability Commissioner, who is appointed as the CM under the Art. 33 Para. 1 of the CPRD and is an advisory member of the GIHR Board of Trustees. It is also an advisory member of the NAP Committee governed by the federal FP,[1231] but in general the interaction does not take place in formalized manner, e.g., through legislation regulations or a duly authorized executive agreement and directive.[1232] Cooperation with the similar bodies at the Länder-level either takes place in a limited extent e.g., in the framework of Länder-level action plans evaluations or does not take place at all. In reviewing the legislative processes both at the vertical and horizontal governmental levels, as well as in evaluating the multi-level and multi-actor interviews I could not identify constant and formalised cooperation of the NMB with public authorities responsible for development and administration of policies addressing DPs indirectly.

The collaboration with the civil society takes place, in addition to their inclusion in the governing bodies of the GIHR, through regular SC consultations on various CPRD-related subjects in Berlin. It takes part three times a year and in principle, is open to any civil society organization that has an interest in working resolutely for the implementation of the CPRD and the desire to exchange experiences concerning the rights of DPs with other relevant actors.[1233] Although the consultations are open in format, participation is by invitation only and no organization can be represented by more than one person. There are over 60 organizations which are regularly invited to participate in the consultations. These include organizations representing the interests of service providers and family members and federal level self-help umbrella organizations, which were,

1228 Second-level-interview DE/A 1, on 31.01.2016Q. 14.
1229 Second-level-interview DE/A 1, on 31.01.2016, Q. 13; Third-level-interview DE/A 4, on 04.06.2018, Q. 12.
1230 SCA, General Observations, 1.4.
1231 NAP 2.0, §5.4.2 (NAP-Ausschuss).
1232 See the statement of the CPRD Committee, CRPD/C/1/Rev.1, annex. Para. 21.
1233 For more on the Civil Society Consultations, refer to: Verbändekonsultation | Deutsches Institut für Menschenrechte at: https://www.institut-fuer-menschenrechte.de/das-institut/abteilungen/monitoring-stelle-un-behindertenrechtskonvention/verbaendekonsultation (Last accessed on 01.07.2022).

overall, satisfied with the structural implementation of and cooperation with the NMB.[1234] Länder-level DPOs, thus, do not have direct access to the civil society consultations of the NMB.[1235] Consequently, the views of the Länder-level DPOs on the Länder-level-specific issues with regard to the implementation and monitoring of the Convention are being considered only in the framework of the evaluation reports of the NMB, where the participation of the Länder-level DPOs is very limited and perceived to be not only ineffective but also inaccessible for some groups of disabilities: e.g., hearing impaired.[1236] This, in view of the federal structure of Germany, might put its efficacy under question as cooperation with the DPOs is not only obligatory under the CPRD,[1237] but also seen as one of the fundamental elements for its successful functioning and public legitimation.[1238]

Besides, the NMB, despite its explicit obligation to ensure accessibility in all the stages of its work,[1239] appeared to be inaccessible for DPOs. Most particularly, it was underlined that the DPO consultation venue was not accessible for wheelchair users, materials of the NMB were not readable for the blind, and learning disabled did not have easy-to-understand language translators to participate meaningfully.[1240] The inaccessibility is also visible on some pages of its website and in its thematic and state-related studies.

The NMB also coordinates efforts of DPOs involvement in the preparation of state reports as it is suggested by the CPRD Committee.[1241] However, it is not clear to what extent the NMB contributes to the encouragement of the departments or units responsible for drafting the reports to ensure participatory and transparent consultation processes and informing and

1234 Third-level-interview DE/A 4, on 04.06.2018Q. 4; for more see the chapter VI part on Germany.
1235 Third-level-interview DE/B-H 1, on 05.07.2016Q. 6; Third-level-interview DE/B-H 2, on 30.05.18Q.15; Third-level-interview DE/B-H 3, on 14.06.2018 Qs. 6 and 15.
1236 Ibid.
1237 CPRD, Art. 33 (3); Principles relating to the Status of National Institutions. Methods of operation G.
1238 Renshaw, 2012.
1239 CRPD/C/1/Rev.1, annex. Paras. 20, 23c; CPRD Committee, General Comment No. 7 Paras. 36 – 39.
1240 Third-level-interview DE/A 4, on 04.06.2018, Q. 12; Third-level-interview DE/A 5, on 04.06.2018, Q. 12. With regard to getting easy-to-read/understand training material there was also positive experience, Third-level-interview DE/A 1, on 15.05.2018, Q. 12.
1241 CRPD/C/1/Rev.1, annex. Para. 23c; See also, Müller/Seidensticker 2007.

supporting the civil society in developing an alternative report.[1242] In any case, it is an indisputable fact that the local-level DPOs have been completely left out of reporting procedures.[1243]

3.2 Austrian Monitoring Framework

Since the establishment of the FMC in December 2008,[1244] its mandate has been limited to the matters falling under the jurisdiction of the federation. To this end, in fulfilling the obligation of protecting and monitoring the CPRD in matters falling within the core legislative competences of the federation, the provinces (Länder) have to establish or designate bodies that meet the requirements of an Independent Mechanism under the Art. 33 of the CPRD.[1245] This applies also to matters, where the federation has the legislative competence and the provinces (Länder) are entitled with the implementation competences.[1246] As a result, the provincial governments, after long hesitation tasked the antidiscrimination commissioners with competences under the Art. 33.3 CPRD.[1247] For instance, The Tyrolean-government designated the Antidiscrimination Commissioner with CPRD monitoring responsibilities, but its mandate has not been regulated by the law.[1248] After the amendment of the Tyrolean Anti-Discrimination Act in 2017,[1249] the mandate of the MC has been legally stipulated. Nevertheless, as the sections below show, the legal framework of Austrian MF is not as broad as it is required.[1250]

1242 CRPD/C/1/Rev.1, annex. Para. 23c; See also, Müller/Seidensticker 2007; Kjaerum, 2009a: 17 – 24.
1243 For more see chapter VI part on Germany.
1244 Schulze, 2013.
1245 The Federal Disability Act (BBG), §13h.
1246 Ibid., §13i.
1247 Federal Monitoring Committee, 2018: Article 33 (2).
1248 Second-level-interview AT/B-T 1, on 30.10.2015Q. 7.
1249 TADG LGBL. Nr. 127/2017.
1250 Principles relating to the Status of National Institutions. Competence and responsibilities 2; CRPD/C/1/Rev.1, annex. Para. 15; SCA General Observation 1.2.

3.2.1 Promotion

In order to promote awareness about the rights of DPs, Austrian FMC, unlike the TMC, submits reports on its activities and concerns to the federal Minister of Social Affairs. The report is being published, which might have awareness raising effects for a few relevant actors, but it cannot, definitely, substitute the effect caused by the tabling in parliament.[1251] The Austrian MCs also publish thematic reports covering the specific rights of the CPRD and organize public debates, which can encourage broader discussions and thus contribute to the awareness raising among public. However, due to their inadequate and dependent position, the MCs are unable to take on their important role of providing human rights education and training[1252] to the state officials, civil servants, judges, law enforcement officials, professionals and staff in the education system, as well as DPOs.[1253] The lack of human rights education and capacity building is visible especially in the disability organizations that are not represented in the MCs, which results in their incapacity of voicing their views in state reporting procedures[1254] on an equal footing with the disability organizations represented in the MCs. Accordingly, the shadow report submitted by the disability organizations is almost identical to that of the FMC's report.

In promoting the federal-level implementation of the CPRD, the FMC submits opinions on the legal and administrative rules in force as well as corresponding practice and issue recommendations (Stellungnahmen) for amendments in all matters that fall under the legislative and administrative competence of the federation or administrative competence of provinces.[1255] Within this legal framework, the FMC also submits commentaries (Begutachtungen) on draft laws concerning direct and indir-

1251 Brodie, 2015: 1242–1243.

1252 Principles relating to the Status of National Institutions Competence and responsibilities 3 f; UN Declaration on Human Rights Education and Training, Art. 9; Vienna Declaration and Programme of Action. Para.36; CRPD/C/1/Rev.1, annex. Para. 23 E, K, L and N.

1253 CPRD, Art. 4 (1I), Art. 8 (2 B and D), Art. 13 (2), Art. 24 (4); CRPD/C/1/Rev.1, annex. Para.23 E, K, L and N; In 2011, the requirement was also reconfirmed by the UN Declaration on Human Rights Education and Training *adopted by the General Assembly on 19 December 2011 (A/RES/66/137).*

1254 See the CPRD Committee requirement in the CRPD/C/1/Rev.1, annex. Para.23 E, K, L and N.

1255 BBG, §13g (2.1).

ect e.g., education policy fields both at the federal and Länder-levels.[1256] The TMC also has similar competencies.[1257] Nevertheless, it avoids expressing explicit criticism against Tyroleangovernment:[1258] e.g., in case of the amendment of the Tyrolean Anti-Discrimination Act, it remained silent, whereas the FMC Committee submitted a commentary on the draft law of the Tyrolean Anti-Discrimination Act by criticising provisions regulating the composition, member selection process, mandate and financial control of the TMC.[1259] The act was adopted without taking into account any of the recommendations of the FMC.[1260]

Besides, the multi-actor interviews and analysis of legislative processes allow the assumption that, due to their subordinate position, composition and research incapacity, the advice and commentaries of the Austrian MCs are addressed more as the voice of civil society than as of independent human rights institution.[1261]

3.2.2 Monitoring

The legal acts regulating the Austrian multi-level MF do not provide a collaborative possibility[1262] of developing a data collection system[1263] that could help in measuring the impact of direct and indirect policies and programmes on DPs,[1264] and facilitate the identification of gaps that infringe

1256 BBG, §13g (2.2). For the list of opinions and commentaries (available only in German language), refer to: https://www.monitoringausschuss.at/dokumente/berichte/ (Last accessed on 01.07.2022).

1257 Tiroler Antidiskriminierungsgesetz 2005, §16b (1); For the list of opinions and commentaries (available only in German language), refer to: https://www.tirol.gv.at/gesellschaft-soziales/gleichbehandlung-antidiskriminierung/tiroler-monitoringausschuss/stellungnahmen/ (Last accessed on 01.07.2022).

1258 Second/third-level-interview AT/B-T 2, on 27.10.2015, Q.12.

1259 Unabhängiger Monitoring Ausschuss zur Umsetzung der UN-BRK, "Stellungnahme zum Entwurf der Novelle zum Tiroler Antidiskriminierungsgesetz und zum Entwurf der Novelle zum Gesetz über den Tiroler Volksanwalt", 9.08.2017.

1260 To follow the 2017 legislative process of the Tyrolean Anti-Discrimination Act, refer to legal information system (Rechtsinformationssystem-RIS), which provides information on federal and state law and EU law, as well as case law, selected legal norms of municipalities and Federal Ministries.

1261 First-level-interview AT/A 1, on 27.04.2016, Qs. 14 and 17; Second-level-interview AT/B-T 1, on 30.10.2015, Q. 10.

1262 BBG, §13g (2); Tiroler Antidiskriminierungsgesetz, §16b).

1263 CRPD/C/1/Rev.1, annex. Para.38.

1264 CRPD/C/1/Rev.1, annex. Para. 39D.

on duty bearers to fully discharge their legal obligations to respect, protect and fulfil the rights of DPs.[1265] Neither do the Austrian MCs have the necessary qualified staff and appropriate financial resources[1266] to develop needed data collection system independently. As a result, the focused studies and parallel reports submitted by Austrian MF are more experienced reports than scientifically analysed bassline studies.

3.2.3 Protection

The limited mandate[1267] of Austrian MCs becomes visible especially in reviewing their protection competences: the FMC, for example, can obtain statements of the public authorities concerning the CPRD and thereby access all the necessary information and documentation.[1268] This could, in fact, serve as an effective proactive protection instrument if not for the subordinate structure of the Committee, the partiality of which might rightly be called into question. The TMC does not even have such a possibility.[1269]

The Austrian MF also does not have the needed[1270] capacity to handle complaints or petitions from individuals or groups regarding the alleged violation of their human rights[1271] despite the proven benefit of this instrument for public legitimacy.[1272] The MCs also do not take efforts to engage in direct litigation[1273] and submitting third-party interventions before international, supranational or national courts. This gives reasons to assume that the composition, infrastructure and mandate of the Austrian multi-level MF do not allow sufficient protection of DPs from violations.

3.2.4 Multi-Level Cooperation

The FMC cooperates with the CPRD Committee in the framework of the state reporting procedure as a fundamental element of its responsibilit-

1265 Ibid. Para. 39c.
1266 See section 2.2. of this chapter.
1267 BBG, §13g (2); Tiroler Antidiskriminierungsgesetz 2005, §16b (1).
1268 BBG, §13g (2.1) und (4).
1269 Tiroler Antidiskriminierungsgesetz 2005, §16b (1).
1270 CRPD/C/1/Rev.1, annex, Para.13.
1271 BBG, §13g (2); Tiroler Antidiskriminierungsgesetz, §16b.
1272 Carver, 2000; Pegram, 2011; Linos/Pegram, 2015; For the general discussion on legitimacy see, Goodman and Pegram, 2012.
1273 Welch/Haglund, 2017.

ies.[1274] Due to its non-Paris Principles compliant status, the Austrian MF does not have access to the European Network of National Human Rights Institutions[1275] and its disability-related activities.

After the designation of Länder-level MCs, the FMC started cooperating with them as it is required by the CPRD Committee.[1276] For instance, the TMC organized a public meeting in 2018 with the FMC.[1277] Nevertheless, it, despite being asked for cooperation, did not participate in the first parallel reporting as "the initial state report was already submitted and there was not much to do",[1278] but it took part at the second parallel reporting process.[1279]

The formalised cooperation and interaction of the MF with the FP and CM[1280] is regulated by the law and takes place, mainly, through the mutual participation in the MC and the Federal Disability Advisory Board.[1281] Tyrol does not have a FP. Instead, it has designated a CM,[1282] which cooperates with the designated MC through the Antidiscrimination Commissioner and within the legislative processes.[1283] To this end, it might be assumed that the ability of the MCs to cooperate on an equal footing with the FP/CM is highly jeopardised due to their structural dependency, non-neutrality of the Committee members and controlled funding.

1274 CRPD/C/1/Rev.1, annex. Part III.
1275 For more see the Members of ENNHRI at: https://ennhri.org/our-members/. (Last accessed on 01.07.2022).
1276 CRPD/C/1/Rev.1, annex, Para. 14.
1277 For more info refer to the webpage of the Tyrolean Monitoring Committee on Public Meetings at:: https://www.tirol.gv.at/gesellschaft-soziales/gleichbehandlung-antidiskriminierung/tiroler-monitoringausschuss/oeffentliche-sitzungen/ (Last accessed on 01.07.2022).
1278 Second-level-interview AT/B-T 1, on 30.10.2015Q. 13. The original reads as follows: "Wir sind eingerichtet worden, da war der Staatenbericht schon abgeschlossen, deswegen war dann nicht sehr viel. (…) Und also zur Stellungnahme wurden wir aufgefordert damals als Antidiskriminierungsbeauftragte auch.".
1279 The 2018 commentary on formation of a New Government (Stellungnahme zur Regierungsbildung). Retrieved from the webpage of the Tyrolean Monitoring Committee on commentaries at: https://www.tirol.gv.at/gesellschaft-soziales/gleichbehandlung-antidiskriminierung/tiroler-monitoringausschuss/stellungnahmen/ (Last accessed on 01.07.2022).
1280 CRPD/C/1/Rev.1, annex. Para. 21.
1281 See BBG, §9 (1).
1282 For more see chapter IV.
1283 Second-level-interview AT/B-T 1, on 30.10.2015, Q. 14.

The MF shall also consult and cooperate with other bodies responsible for the promotion and protection of human rights.[1284] In particular, it should collaborate with the ombudsmen office. This becomes much more important especially in taking into account that Austria, instead of maintaining a single human rights institution, has multiple accountability structures, whereas Richard Carver argues that generally the model of a single NHRI is likely to lead to greater effectiveness.[1285] For instance, Austria instead of designating the B-status ombudsmen Board as the CPRD MF and strengthening its independence, it established a new FMC that does not even have a B-status. As a result, it maintains multiple disability-related protection bodies with overlapping functions.[1286] In view of this, the mutual cooperation of these bodies became unavoidable and legally regulated,[1287] which does not necessarily lead to its effective functioning as none of them has the required A-status.[1288]

As it was mentioned above, since its establishment, the Austrian multi-level MF has been composed of representatives of selected disability organizations, many of whom are members of the Committee from the first nomination turn. This of course leads to close cooperation between the FMC and the represented DPOs.[1289] However, it should be considered that due to non-changing members, other disability groups and their organizations do not have an opportunity to work with the FMC, except for a few public meetings[1290] that were not accessible to all groups of DPs due to the absence of necessary funding.[1291]The cooperation is even more irregular and loose at the provincial level: for instance, the TMC does not have a legal mandate to collaborate and include DPOs. It tries to ensure dialogue with various affected groups by organizing public discussions at least twice annually.[1292]

1284 Principles relating to the Status of National Institutions. Methods of operation F.
1285 Carver, 2011.
1286 Schulze, 2013, B. Independent Mechanism (Article 33 2) CRPD).
1287 The cooperation takes place through the Federal Disability Board and Both the chairperson of the FMC and the federal disability ombudsmen are its members (BBG, §9 (1 Ns. 8 and 10); See also BBG, §13c (4).
1288 CRPD/C/1/Rev.1, annex. Para.14.
1289 Principles relating to the Status of National Institutions. Methods of operation G; CRPD/C/1/Rev.1, annex. Paras. 2, 3, 5, 20, 39[E]; See also CPRD Committee, General Comment No. 7. Paras. 34 – 39.
1290 For the full list of public meetings see: https://www.monitoringausschuss.at/sitzungen/ (Last accessed on 01.07.2022).
1291 Schulze, 2013.
1292 Second-level-interview AT/B-T 1, on 30.10. 2015, Q.s 9 and 14.

However, it avoids direct collaboration with Länder-level DPOs based on the presumption that "they perceive their own interests, which has nothing to do with the CPRD".[1293]

Thus, it becomes evident that the entangled position, controled inclusion and underfinanced mandate hinder the Austrian multi-level MF in ensuring broad participation of DPOs. This weakens their legitimacy and allows an assumption that they are a pawn of the state.[1294]

3.3 Danish Monitoring Framework

The parliamentary Decision B15 of 17 December 2010, establishing the Danish MF accorded varying, and in some responsibility fields also overlapping competencies to the designated actors.[1295] However, as the sections below show, the mandates of the DIHR, Danish Disability Council (DDC) and Danish Parliamentary Ombudsman is de facto not as broad as it is required.[1296]

3.3.1 Promotion

The responsibility of promoting the Convention is mainly assigned to the DDC and DIHR. The task of the DDC is to advise the central public administration, ministries and the parliament in matters concerning DPs.[1297] Since the recommendations of the Council shall reflect the interests of all its members, they undergo a difficult coordination process.[1298] Therefore, the effect of the recommendations on the decisions of the government

1293 Second/third-level-interview AT/B-T 2, on 27.10.2015Q. 15. The original reads as follows:
"Ich habe nicht das Gefühl, dass die Behindertenorganisationen selber den Kriterien entsprechen, die die BRK vorsieht (…) Menschen mit Behinderungen – ja, aber nicht die Organisation. Organisationen haben oft eigene Ziele bei uns in Österreich, eigene Interessen. Die Lebenshilfe beispielsweise (…)".

1294 Renshaw, 2012.

1295 Ventegodt Liisberg, 2013.

1296 Principles relating to the Status of National Institutions. Competence and responsibilities 2; CRPD/C/1/Rev.1, annex. Para. 15; The SCA General Observation 1.2 provide for only promotion and protection Competencies, although it enlists 'monitoring' under the protection competence.

1297 BEK nr 897 af 12/05/2021. Secs.34, 35 and 37.

1298 Second-level-interview DK/A 1, on 01.12.2016, Q. 12.

and/or the parliament is hard to discern.[1299] The Council should also ensure dialogue and evaluate the disability-related processes within the society in light of the CPRD, promote inclusion and carry out awareness raising activities to eradicate discriminatory attitudes toward DPs.[1300] Nevertheless, as of December 2015, the Council did not make campaigns on the rights of DPs under the Convention and it has not taken the resources to inform about the Convention as such.[1301]

The promotion competence of the DIHR comprises, primarily, providing information and advice on human rights of DPs to all the relevant actors through its thematic studies and press releases.[1302] It also informs the general public about the rights of DPs by submitting focused reports to the media and papers in academic journals[1303] and through its own website.

As its task to promote the rights stipulated by the CPRD, the DIHR counsels the parliament and the government by advising and commenting on draft laws that might be important for ensuring and implementing the human rights of DPs in both disability-specific and indirect policy fields.[1304] However, the government's practice of accepting and applying the provided advice is "quite depressing".[1305] For instance, the DIHR pointed out the unacceptability of the use of force in psychiatry,[1306] and managed to persuade the government to amend the guidelines on support for disabled parents to underline that disabled parents have a right to support, to be parents.[1307] Moreover, the DIHR criticized the fact that there is no ban on discrimination on the grounds of disability outside of the labour market, as a result of which, in 2018, the government adopted a new law prohibiting discrimination on the grounds of disability that made it possible to file a complaint on the basis of disability discrimination outside of the labor market to the Danish Board of Equal Treatment.[1308] Nevertheless, the DIHR was not successful in convincing the government to include a requirement

1299 Ibid.
1300 BEK nr 897 af 12/05/2021, Section 35.
1301 Second-level-interview DK/A 1, on 01.12.2016, Q. 19.
1302 Bylaws of the DIHR, Sec. 2; see also Ventegodt Liisberg, 2013.
1303 Second-level-interview DK/A 2, on 01.12.2016, Q. 7.
1304 Bylaws of the DIHR. Sec, 5 (1.3).
1305 Second-level-interview DK/A 2, on 01.12.2016, Q. 19.
1306 Second-level-interview DK/A 2, on 01.12.2016, Q. 7.
1307 Second-level-interview DK/A 2, on 01.12.2016, Q. 17.
1308 Danish Institute for Human Rights, annual report to the Danish Parliament. 2019.

for reasonable accommodation[1309] that falls under the administrative powers of municipalities.[1310] In indirect policy fields e.g., school education also falling under the administrative powers of municipalities, the DIHR did not achieve much success.[1311]

While at the national level there is at least an opportunity and legally stipulated mandate to advise the government, the required functionality in general and advisory capacity in particular of the DIHR at the municipal level has not been ensured:[1312] "we as an institute have not been very good at promoting human rights at any local level because we are a national institution and we find it very difficult really to work with all the 98 municipalities (…) so basically (…) we are not carrying out our responsibilities under the CPRD at the local level".[1313] Accordingly, the promotion of the rights of DPs does not take place at the administrative level, which in view of the governmental structure of Denmark,[1314] might be seen as a serious inhibition of the effective implementation of the CPRD at the administrative level.

3.3.2 Monitoring

The MFs under this competence should develop a system for assessing the impact of the implementation of direct and indirect legislation and policies; develop indicators and benchmarks; and maintain databases containing information on practices related to the implementation of the Convention.[1315] This means that they shall, in cooperation with relevant actors, including

1309 Ibid.
1310 DPOD, 2013: 8 – 9.
1311 Second-level-interview DK/A 2, on 01.12.2016, Q. 15.
1312 Second-level-interview DK/A 1, on 01.12.2016, Q. 10; Second-level-interview DK/A2, on 01.12.2016, Qs. 5 and 7.
1313 Second-level-interview DK/A 2, on 01.12.2016, Q. 5. The original reads as follows: "No, so it has not but we as an institute have not been very good at promoting human rights at no local levels because we are a state institution and we find it very difficult really to work with all the municipalities. There are 98 and it's really difficult for us… we think, work with individual Municipalities but we try to work with the disability councils at the local level". "So basically, the answer to this question is that we are not monitoring the implementation at the local level, but we are trying to do it better. And become more active with these disability councils at the local level".
1314 See chapter IV part on Denmark.
1315 CRPD/C/1/Rev.1, annex. Paras.13 and 39d.

DPOs, FPs and CMs, continuously develop a data collection system[1316] to facilitate the identification and bridging the gaps that prevent DPs — as rights holders — from fully enjoying their rights, as well as the gaps that infringe on duty bearers to fully discharge their legal obligations to respect, protect and fulfil the rights of DPs.[1317]

The duty to monitor the implementation of the Convention in Denmark has been primarily assigned to the DIHR.[1318] Accordingly, it collaborated with the Danish social research institute to develop the gold indicators.[1319] This helps in measuring the developments in 10 thematic areas.[1320] It also publishes annual status reports that are based on surveys and statistics provided by DIHR as well as other organizations or institutions, including ministries, other government agencies, universities and civil society organizations.[1321] For example, it conducted surveys of how municipalities act in relation to elderly persons/employees or how the public authorities and private companies undertake positive action.[1322]

The DIHR also uses its right of contributing to the reporting processes[1323] by submitting well-reflected parallel reports in relation to state reports to the CPRD Committee.

More specific, namely the monitoring responsibility under the Art. 16 Para. 3 CPRD[1324] is assigned to the Danish Parliamentary Ombudsman, who has been given a mandate to promote equal treatment of DPs based on the 1993 Parliamentary Decision establishing the Centre for Equal Treatment of DPs.[1325] Before getting a mandate under the Art. 33.2 of the CPRD,[1326] the ombudsman was assigned as the national preventive body

1316 CRPD/C/1/Rev.1, annex. Para.38.
1317 CRPD/C/1/Rev.1, annex. Para. 39c.
1318 Parliamentary Decision B15 of 17 December 2010.
1319 Second-level-interview DK/A 2, on 01.12.2016, Q. 13.
1320 For more see: https://www.humanrights.dk/news/gold-indicators-measuring-10-key-thematic-areas-improve-situation-persons-disabilities (Last accessed on 01.07.2022).
1321 Ibid.
1322 Second-level-interview DK/A 2, on 01.12.2016, Q. 11.
1323 CRPD/C/1/Rev.1, annex. Para. 23 d, f and g; See also, SCA, General Observation 1.4.
1324 See the following section on Protection.
1325 Act on Danish Parliamentary Ombudsman, No. 473 of 12 June 1996.
1326 The initial report of Denmark, Para.386.

under the Optional Protocol to the UN OPCAT 2009[1327] and in 2012, he received a mandate to monitor the rights of children.[1328]

3.3.3 Protection

In fact, only the Danish Parliamentary Ombudsman has a protection mandate. He has the required access to and interaction with any person, governmental organ, information, databases, records, facilities and premises.[1329] Most particularly, he carries out inspections of public administration, including psychiatric wards, and private institutions, where persons are or may be deprived of their personal liberty and private institutions responsible for tasks directly related to children.[1330] The inspections under OPCAT are carried out in dialogue with the Danish Rehabilitation Centre for Torture Victims and the Danish Institute for Human Rights.[1331] The ombudsman also examines the accessibility of the public authority buildings,[1332] and conducts investigations,[1333] handles individual complaints alleging breaches of the rights of DPs under the domestic law[1334] as it is required by the CPRD Committee.[1335] In case of violation, he makes recommendations and/or reports the matter to the Legal Affairs Committee of the Danish Parliament (Folketing), the minister, municipal council or regional council concerned.[1336] The recommendations of the Danish Parliamentary Ombudsman are not binding, but are perceived to be effective.[1337] However, in view of the fact that the Danish Parliamentary Ombudsman does not fully fulfil the principles concerning the formal institutional safeguards of

1327 Lov nr. 502 AF 12. Juni 2009, som aendrer Lov om Folketingets Ombudsmand.
1328 Supplementary Report of the Danish Parliamentary Ombudsman to the UN Committee on the Rights of the Child on Denmark's Fifth Periodic Report to the Committee. Doc.no. 16/03550–47, 2/23, Para. 4.
1329 CRPD/C/1/Rev.1, annex. Para. 12.
1330 The Act on Danish Parliamentary Ombudsman, No. 473 of 12 June 1996. Chapter 6 Sec. 19.
1331 See The page of the Ombudsman on Monitoring Visits at: https://en.ombudsmanden.dk/introduction/Monitoring_visits/ (last accessed on 01.07.2022).
1332 Ibid.
1333 The Act on Danish Parliamentary Ombudsman, No. 473 of 12 June 1996. Chapter 5.
1334 The Act on Danish Parliamentary Ombudsman, Chapter 4.
1335 CRPD/C/1/Rev.1, annex. Para. 13.
1336 The Act on Danish Parliamentary Ombudsman, Chapter 7.
1337 Abraham, 1968: 55–61.

a NHRI, it can neither be expected that he ensures impartial complaint case selection and or admission process nor that the decisions made will reflect the human-rights-based understanding of discrimination. The latter is best shown in his decision of September 2009, where he considered the right to education under Art. 24 in a complaint concerning an autistic child who had been placed in a school for disabled children against the will of its parents.[1338] The ombudsman came to the conclusion that the right to inclusive education under Art. 24 CPRD was just a right to be included in the Danish educational system, but it did not give a right to be placed in an ordinary school.

The jurisdiction of the parliamentary ombudsman extends to all parts of the public administration except the parliament, courts of justice, boards, which make satisfactory decisions on disputes between private parties and private entities.[1339] In examining the local government, the ombudsman acts in accordance with the special operational conditions of the local government.[1340]

The DIHR, as part of its tasks, provides general advice to persons that have been discriminated on the ground of disability,[1341] but it does not have a mandate to conduct independent examinations of discrimination and handle complaints related to violations of CPRD provisions[1342] as it does in relation to protection against discrimination on the grounds of gender and race where the Institute has been appointed as the Equality Body.[1343]Nevertheless, it tries to carry proactive protection by interpreting its mandate more broadly. It, for example, documents the breaches of human rights through applied research, issues annual parliamentary reports on occurring violations and publishes them both in the national language and in English,[1344] which exposes the wrongdoings of the state that might be costly and politically sensitive for the SP.[1345]

1338 "Henvisning af autistisk bam til specialskole ffem for enkeltintegrering i friskole", Ombudsmandens afgorelse af 24. September 2009, j.nr. 2009–1787–710.
1339 The Act on Danish Parliamentary Ombudsman, Chapter 2.
1340 The Act on Danish Parliamentary Ombudsman, Sec. 8.
1341 BYLAWS of THE DIHR. Sec. 5 (1).
1342 SCA Report, November 2017, 3.2 Point 4.
1343 Ibid., Para. 5 (2).
1344 DIHR publications can be found at: https://www.humanrights.dk/publications (Last accessed on 01.07.2022).
1345 Kjaerum, 2009b.

The DIHR also applies a reactive protection instrument[1346] by litigating violations of human rights of DPs before the domestic and international courts and participates in third-party interventions.[1347] This certainly contributes to the domestic implementation of human rights of DPs,[1348] but it cannot replace the efficacy of the directly available and inclusively composed human-rights-based complaint mechanism at the domestic level, especially if we take into account the long-waiting time of international proceedings.

Although the DDC might treat general disability-related problems by requesting information on the decisions made,[1349] it does not have protection competence.[1350]

3.3.4 Multi-level cooperation with state and non-state bodies

In accordance with its obligation, the Danish MF cooperates and interacts with all relevant institutions both at the international, supranational and national levels. The required cooperation with the international actors, especially the CPRD Committee[1351] takes place through DIHR in the framework of state reporting, contribution to general discussions and General Comments, as well as support in communication and inquiry procedures under the Optional Protocol to CPRD. The DIHR is also the voting member of the European National Human Rights Institutions[1352] and participates at the annual CPRD Work Forum on the EU's implementation of the CPRD,[1353] which brings together a wide range of civil society organizations, NHRIs and EU actors.

1346 CRPD/C/1/Rev.1, annex. Para. 15.
1347 See for example: Supreme Court of Denmark, Case no. 16/2016. Judgment delivered on 22 December 2016; ECTHR Judgment Strøbye and Rosenlind v. Denmark, applications (nos. 25802/18 and 27338/18).
1348 Welch/Haglund, 2017.
1349 BEK nr 897 af 12/05/2021, Sec. 36 PCS. 2.
1350 Bek nr 1635 af 22 December 2010, kapitel 11; BEK nr 897 af 12/05/2021, Sec.35 PCS.3.
1351 CRPD/C/1/Rev.1, annex. Part III.
1352 See the webpage of ENNHRI voting members at: https://ennhri.org/our-members/ (Last accessed on 01.07.2022).
1353 For more see: https://www.euro.centre.org/projects/detail/3373 (Last accessed on 01.07.2022).

At the national level, Denmark ensured the required[1354] mutual collaboration and coordination between the designated MF actors through meetings and/or being a member in each other's organs. Consultations with other bodies responsible for the promotion and protection of general human rights[1355] is also ensured.

The MF also collaborates with the executive and legislative organs. The cooperation with the legislator takes place through the DIHR annual reports to the parliament.[1356] The regular and timely cooperation and interaction of the MF with the executive branch and its FP and Coordinating Mechanism takes place through the formalized structures as it is suggested by the CPRD Committee.[1357] Most particularly, the DIHR and the Ministry of Social Affairs concluded a memorandum of understanding on their cooperation, which envisages 2 annual meetings and regular exchanges of information and opinions.[1358] Nevertheless, The Danish government did not consult the DIHR during the preparation of the initial state report except an open meeting.[1359] The access of the DIHR to such processes seems to be rather limited, which means that it complies with the requirement that NHRIs should neither prepare the country report nor report on behalf of the government.[1360]

The mutual collaboration between DDC and the central, regional and municipal governments is ensured through its composition.[1361] Nevertheless, the collaboration of the DDC with the FP is based more on and governed by the principle of subordination, whereas the DIHR, thanks to its independence, enjoys equal-level positioning in collaborating with the government.

The necessary close collaboration of the Danish MF with the DPOs[1362] takes place through DIHR and DDC. The DDC is the main actor responsible for DPO involvement in the monitoring processes.[1363] However,

1354 CRPD/C/1/Rev.1, annex, Para. 14.
1355 Principles relating to the Status of National Institutions. Methods of operation F.
1356 Bylaws of the DIHR, Sec. 5.3.
1357 CRPD/C/1/Rev.1, annex. Para. 21.
1358 Ventegodt Liisberg, 2013.
1359 Ventegodt Liisberg, 2013.
1360 SCA, General Observations, 1.4.
1361 BEK nr 897 af 12/05/2021, Sec.38.
1362 CRPD/C/1/Rev.1, annex. Paras. 2, 3, 5, 20, 39e; See also CPRD Committee, General Comment No. 7. Paras. 34 – 39.
1363 Initial report of Denmark, Para.384.

the DPO appointment is limited to exclusive nomination right of the DPOD.[1364] The Danish Parliamentary Ombudsman office cooperates with the Danish Rehabilitation Centre for Torture Victims and the DIHR,[1365] but there is no formal cooperation with the DPOs or their umbrella organization. The collaboration of the DPOs in the promotion and monitoring work of the DIHR is limited to the single representative of the umbrella organization of DPOs. Regular involvement and cooperation with DPOs outside of this national structure has not been envisaged. In the best case, they might take part at irregular focused meetings of the DIHR.

Accordingly, the required[1366] inclusion of DPOs in the independent MF and the work thereof has been ensured only for selected DPOD member organizations and in a few responsibility fields falling under the promotion mandate of the DDC. Their involvement in the human rights oriented promotion, protection and monitoring activities is not ensured, whereas the CPRD Committee states, "independent MF should ensure the full involvement and participation of DPs and their representative organizations in all areas of its work".[1367] Besides, the exclusive participation and nomination rights, apparently, hinders the comprehensive and effective access of multi-level and diverse DPOs to all working processes[1368] of the Danish MF, whereas the CPRD Committee in its General Comment No. 7 explicitly states that "the existence of umbrella organizations within SPs should not, under any circumstances, hinder individuals or organizations of DPs from participating in consultations or other forms of promoting the interests of DPs".[1369] The lack of involvement and collaboration, in turn, impede the national and especially municipal DPOs from developing a human-rights-based understanding of disability, which leads to weaker (if any) implementation of the CPRD at the municipal level.

1364 BEK nr 897 af 12/05/2021, Sec.38 PCS 2.1.
1365 See The page of the Ombudsman on Monitoring Visits at: https://en.ombudsmanden.dk/introduction/Monitoring_visits/ (Last accessed on 01.07.2022).
1366 CRPD/C/1/Rev.1, annex. Para.20; See also CPRD Committee, General Comment No. 7. Paras. 39 and 94j.
1367 CRPD/C/1/Rev.1, annex, Para. 20.
1368 CRPD/C/1/Rev.1, annex. Para. 20; See also CPRD Committee, General Comment No. 7. Paras. 39 and 94j.
1369 CPRD Committee, General Comment No. 7, Para. 12a.

4. Comparative Evaluation

In the aftermath of World War II, a large number of states took the path of fundamental rights,[1370] by signing and ratifying International Treaties on individual human rights of specific groups,[1371] as well as enshrining the right to equal treatment[1372] and respect for human rights in their constitutions. This allowed judicial consideration of human rights, but did not prevent human rights violations at the domestic level.[1373] Accordingly, the United Nations initiated the promotion of the establishment of the NHRIs, and laid down a framework for NHRI design.[1374] To this end, the OPCAT contained a provision ensuring a domestic monitoring mechanism.[1375] However, soon it became clear that effective implementation of International Human Rights Treaties cannot be reached solely by installing Paris Principles compliant NHRIs. There was rather a need for an inclusive domestic structure that would enable comprehensive and systematic monitoring across the SP. The term "inclusive domestic structure" hereby addresses the form, methods, capacity and possibility of these actors in interacting with multi-sectoral and multi-level constitutional organs of states and non-state actors.

With the adoption of the CPRD in 2006, the inclusive monitoring structure became a binding requirement.[1376] Nevertheless, in analysing the structural implementation of the Monitoring Mechanisms under the Art. 33 Para. 2 CPRD from a comparative standpoint, it becomes clear that, by and large, each SP has chosen a different way of implementation. Even SPs that have similar political structures like Germany and Austria went different ways in ensuring formal institutional safeguards. This, as the evaluation that has been carried out based on an adjusted analytical framework of Katerina Linos and Tom Pegram's model,[1377] will show below, impacts the efficacy of designated/established Monitoring Mechanisms.

1370 Boli/Thomas, 2000.
1371 Simmons, 2009.
1372 Elkins/Ginsburg/Simmons, 2013; Ramirez/Soysal/Shanahan, 1997.
1373 See e.g., Hafner-Burton/Tsutsui, 2007; Hathaway, 2002; Christopher J. Fariss, 2014; Goodman/Jinks, 2003.
1374 See Linos/Pegram, 2016.
1375 OPCAT, Art. 3.
1376 CPRD, Art. 33.
1377 Linos/Pegram 2017.

4.1 Legal Status

In laying down the principles relating to the status of NHRIs, the drafters agreed that the higher the status of the instrument establishing the National Institution in a country's legislative hierarchy, the easier it would be for the institution to ensure that its independence was respected.[1378] All three examined SPs regulated the status and mandate of the designated/established monitoring actors through legislative texts. The federal government of Austria, however, opted for a new body and merged its regulation with the Federal Disability Act (BBG), which might make easier the amendment to the status, mandate and composition of the FMC.

4.2 Multi-level competence

In consideration of particular needs at the national level,[1379] the SPs to the CPRD with federal or decentralized administrations should ensure that the established or designated federal or national MFs "can properly discharge their functions at the federal, state, provincial, regional and local levels".[1380] For this purpose, the SPs might establish NHRI that shall, within the framework of its operation,"... set up local or regional sections to assist it in discharging its functions".[1381]

The examination shows, however, that the Monitoring Mechanisms do not have the needed multi-level functionality: for instance, the German Monitoring Mechanism has an established position at the federal level, but its consistent, comprehensive and permanent functionality at the Länder-level has been ensured only in 2 out of 16 federal states. I observed a similar picture also in Denmark, where the MF has an explicit mandate at the central government level, but no access to municipalities, which have autonomous powers to administer almost all disability-related policies. The FMC of Austria has been given mandate to promote and monitor the CPRD only at the federal level. Accordingly, the Länder-level monitoring has become possible only after 8 Austrian provincial Monitoring Mechan-

1378 E/CN.4/1992/43, 16 December 1991. Paras. 26, 27 and 111 -167; see also Meuwissen, 2015.
1379 Vienna Declaration and Programme of Action. Para. 36.
1380 CRPD/C/1/Rev.1, annex. Para. 18.
1381 Principles relating to the Status of National Institutions. Methods of operation E.

isms have been given legal status,[1382] but these were and still are very limited.

Thus, it might be assumed that the SPs ensured, if not inclusive, but at least adequate promotion and monitoring structures at the national/federal governmental level. However, the regulations that would ensure functionality or work of these bodies at the state/provincial and municipal levels has been either not ensured or have been adopted with considerable delay and weakness. This, presumably, affected the understanding, acceptance and implementation of the human rights of DPs at the state/local levels of SPs with federal or decentralized political structures: in over 12 years of CPRD ratification, the provision of accessibility and inclusive education has not been ensured in 16 federal states of Germany. Similar picture can be observed also in Austria. Besides, laws of 9 Austrian provinces regulating support measures for DPs are not based on a human rights understanding of disability and vary from province to province; rules of effective and inclusive access to and assistance for the primary and secondary schools differ across the 98 municipalities of Denmark.[1383]

4.3 Broad Mandate

The next important measure for ensuring an effective and functional Monitoring Mechanism is to guaranty the de jure broad mandate,[1384] encompassing the promotion, protection and monitoring of all rights enshrined in the Convention.[1385] Nevertheless, it became clear that the designated/established Monitoring Mechanisms do not have the required broad mandate.

All in all, all examined Monitoring Mechanisms have de jure promotion competences, but the scope of their responsibilities deviates from the CPRD Committee requirements.[1386]

1382 In over 11 years of CPRD ratification, 8 out of 9 provinces have more or less functional monitoring mechanisms. Corinthian monitoring committee started its work only in June 2020, whereas Monitoring Mechanism in Upper Austria is, in fact, inactive after its establishment due to lack of infrastructural safeguards. For more see the 2018 parallel report of the FMC.

1383 For more see chapter IV.

1384 Principles relating to the Status of National Institutions. Competence and responsibilities 2.

1385 CRPD/C/1/Rev.1, annex. Para. 15.

1386 CRPD/C/1/Rev.1, annex. Para. 13.

4.3.1 Promotion mandate

The GIHR, for example, has a comprehensive federal-level mandate to promote the CPRD implementation, whereas the Danish MF does not offer special trainings on CPRD. Austrian MF has promotion competence, but these activities are, on the one hand, based solely on experiences of selective affected persons, on the other hand, limited to participation at the legislative processes and awareness raising activities through public meetings. It offers neither a general nor specific human rights training on the CPRD. Most possibly, this impacts the human rights understanding of disability in the decisions and actions of both the federal and provincial state actors responsible for policy fields not affecting DPs directly, as well as non-state actors,.[1387] I observed a similar tendency at the state and/or municipal levels of Germany and Denmark.[1388] I observed the same at the state and/or municipal levels of Germany and Denmark.[1389] In addition, the regulation on Austrian MF does not envisage reporting to the federal/provincial parliaments, whereas it is perceived to be one of the effective instruments for informing the general public and legislators about the human rights violations of the SP and making recommendations for effective redress.[1390]

4.3.2 Monitoring mandate

All Monitoring Mechanisms have monitoring competences, but their functionality does not fully comply with the CPRD Committee requirements.[1391]

For instance, the GIHR/NMB and DIHR have developed evaluation systems, whereas, I could not discern a clearly defined human rights measurement system in the evaluation work of the Austrian MF. Albeit not comprehensive but all Monitoring Mechanisms have access to programs serving DPs, but access to facilities serving DPs is ensured only in public facilities of Denmark and Austria.[1392] This means that Germany does not have an

1387 For more see chapters IV and VI part on Austria.
1388 See Chapters IV and VI.
1389 See Chapters IV and VI.
1390 Brodie, 2015: 1242–1243.
1391 CRPD/C/1/Rev.1, annex. Paras. 12 and 13; CPRD, Art. 16 (3).
1392 This task, however, has been assigned to the Austrian Ombudsman Board, which unlike the MF has Paris Principles B-status.

Independent Mechanism that would monitor the human rights compliance of disability related facilities that fall under the legislative powers of federal states. Even the two federal states that mandated the GIHR/NMB with the monitoring of the CPRD implementation did not foresee such a function. Accordingly, the irregularities or even severe human rights violations persist up to date.[1393] And normally do not become subject of judicial proceedings. Therefore, there is a need for further examinations concerning the role and possibilities of Independent Mechanisms in preventing violence and human rights violations in facilities for DPs.

4.3.3 Protection mandate

According to the CPRD Committee, the MF shall handle individual and group complaints alleging violations of the rights guaranteed under the Convention either by referring the cases to the judiciary, including as part of its ability to follow up on its own recommendations[1394] or by acting as a quasi-judicial body. For this purpose they "must have expeditious and full access to information, databases, records, facilities and premises, both in urban and rural or remote areas; it must have unrestricted access to and interaction with any persons, entities, organizations or governmental bodies with which it requires to be in contact; its requests are addressed properly and in a timely manner by implementing bodies".[1395] The present examination showed, however, that none of the designated/established MFs comply with this requirement.

The GIHR/NMB does not have a protection mandate, but it submits third-party interventions both at the domestic and international levels. Although the Austrian MF has access to all documents and facilities, it does not have a de jure protection mandate and de facto does not take steps to protect the rights of DPs through litigation. Denmark, instead, assigned the protection competence to the Danish Parliamentary Ombudsman, which means that human-rights-based protection has not been ensured in cases of conflicts of norms.[1396] Nonetheless, the DIHR tries to reach human rights enforcement through strategic litigation by interpreting its mandate broadly.

1393 Schröttle et al., 2014; Wazlawik/Freck, 2016; Lorenz, 2020.
1394 SCA, General Observations I.6.
1395 CRPD/C/1/Rev.1, annex. Para. 12.
1396 For more see chapter IV Part on Denmark.

Actually, the protection mandate as such is optional under the Paris Principles[1397] and seen as an unnecessary instrument in liberal democracies with established judicial systems,[1398] but as Felix Welti puts it, "the consideration of the CPRD by the judges of the social justice system cannot be taken for granted because, on the one hand, the CPRD cannot have been the part of their legal education and traineeships, on the other hand, the CPRD can be unknown to judges outside of Social Law (e.g., educational, administrative, construction and building laws) since the judges who work according to the specialist chamber principle perceive new legal instruments, primarily, when it affects their particular area".[1399] Besides, as the present study showed, the inconsistent and ineffective consideration of the CPRD in areas not affecting DPs directly might be even stronger in the SPs, where CPRD has been ratified but not incorporated, such as in Denmark or in SPs with shared or exclusive legislative and/or administrative powers of the state/provincial/municipal governments. In view of this, I find that the human-rights-based multi-level complaints handling mechanism assigned to an independent Paris Principle compliant institution could not only raise public legitimacy of these mechanisms[1400] but also be an effective way to implement the human rights of DPs across the SPs.

4.4 Inclusive composition and independence

Scholars believe that the value of a NHRI is that its distance, conversely, enables it to act as a bridge or mediate between government and non-government entities – a partner – trusted yet separate from both.[1401] This means that they have to have a capacity of independent collaboration both with the state and non-state actors. Independence, hereby, plays a decisive role and is subject to strict regulations requiring plural representation of CSOs and DPOs, in this case, as well as inclusion of governmental/parliamentary representatives with an advisory vote or simply in advisory organs of the Monitoring Mechanisms. The CPRD Committee, in fact, does not welcome

1397 Beco/Murray, 2014: 101–112.
1398 Nußberger, 2012.
1399 Welti, 2016: 635–658.
1400 Carver, 2000; Pegram, 2011; Linos/Pegram, 2015; For the general discussion on legitimacy see Goodman and Pegram, 2012.
1401 Beco, 2007; Beco/Murray, 2014.

this arrangement,[1402] but the Art. 33 of the CPRD requires establishment of a hybrid national structure which, in addition to CSO/DPO collaboration, denotes cooperative links to the executive and legislative organs of the state in so far as its efficacy is concerned.

The present study showed, however, that not all SPs guaranty the right balance between state and non-state actors and fail, by and large, in ensuring multi-level representation of CSOs and especially DPOs.

4.4.1 Non-state actors

The German NMB, for example, fulfils the requirement of plural DPO representation both through inclusion in its main decision-making organ and through regularly organized meetings with the federal-level DPOs. The DPO representative in the main decision-making organ of the GIHR comes from the German Disability Council. Nevertheless, organizations of and for DPs of the federal states remain outside of this framework. Denmark has a comprehensive representation of CSOs in the DIHR, but the DPO representation is limited to umbrella DPO. Similar structure is in place also in the DDC, which includes 5 members of national DPO that are nominated by the umbrella DPO. Local level disability councils have a similar composition, but they are not part of the national MF of Denmark. The regular representation of CSOs in the work of the Danish Parliamentary Ombudsman is not ensured.

The path chosen by Austrian MF diverge from that of German NMB and Danish MF: here the number of DPO representatives is equal to that of other members, but they should, similar to Denmark, be nominated by the umbrella DPO and by a provincial Antidiscrimination Commissioner. It is worth of mentioning that the Austrian FMC explicitly forbids the membership of non-Austrian/EU citizens.[1403]

The comparison, in the first place shows the dissimilar practises of MFs in including DPOs in their work: while GIHR, in general, has a broad federal-level involvement structure, Denmark and Austria maintain controlled, in transparent and limited inclusion frameworks. As a result, only privileged organizations have access to MFs and the rest, namely the overwhelming majority of DPOs do not have a possibility to participate in the human-rights-based monitoring processes. Accordingly, they have no

1402 (CRPD/C/1/Rev.1, annex), Para. 22.
1403 BBG, §13 J (3).

opportunity to develop human rights understandings of disability, which affects the comprehensive implementation of the CPRD.

Besides, the special route taken by Austria, namely ensuring the majority of disability organizations in the FMC, might be in line with the CPRD requirement,[1404] but the overrepresentation of DPOs is in contrast to the requirement of independence as it functions more as a substitute of the CSOs/DPOs than as a neutral body. Accordingly, the Austrian FMC does not have the weight of the GIHR/DIHR since it is seen primarily as a representative body of the civil society.

4.4.2 State actors

The NMB does not have representatives of the executive with voting rights. 2 out of 8 parliamentary appointees are NPS of the federal parliament. It also includes a member of the Federal Council and several governmental commissioners, including the Federal Disability Commissioner. The Danish Parliamentary Ombudsman has his own staff, but the Ombudsmen Law does not contain a provision on plurality thereof. The members of the DDC Advisory Board include central and local level governmental representatives. The DIHR not only has governmental representation with a voting right on its decision-making organ, but also allows the governmental representative to chair its decision-making organ. After long criticism, the Austrian federal government refrained from governmental representation with voting rights to the MC with the 2017 amendment of the BBG. The provincial antidiscrimination commissioners, who are appointed by the government, chair the provincial MCs. They, normally, nominate the committee members.

Against this background, it becomes clear that all examined actors of the MFs maintain some sort of governmental representation. This, in combination with other factors e.g., in transparent nomination, governmental appointment and dismissal practices, or dependant infrastructure lead to disproportional representation of the state organs, which constitutes a serious obstacle for the independence of the MFs.[1405]

In evaluating the inclusion of state and non-state actors in the work of the MFs, the study revealed convergence in non-existent or weak inclusive structures at the state/provincial and municipal levels: despite the federal

1404 Beco, 2011.
1405 See below.

structure of Germany and highly decentralised administrative structure of Denmark, the local presence of both German and Danish MFs has not been ensured. Instead, the national MFs opted for their representation at the federal/national governmental level. This, in fact, can raise the legitimacy of MFs among state actors, but in the case of Germany, where federal states have extensive disability-related and disability specific exclusive legislative and administrative powers, it cannot replace their direct involvement in the local-centred Paris Principles compliant sub-MFs. The representation of the state actors in the non-Paris Principles compliant MF, instead, might lead to subordination as the case of Tyrol clearly shows.

A similar picture could be observed with regard to state/provincial/municipal level DPO inclusion: while the GIHR ensured the comprehensive inclusion of federal-level DPOs, all interviewed DPOs had a solid understanding of human rights of DPs and effectively applied it during policy-making processes, whereas the Länder-level DPOs were aware of CPRD, but as the evaluation of legislative processes in Hesse and Thuringia showed, it has not been applied in the policy fields not affecting DPs directly.[1406] As a consequence, the provisions of the CPRD that fall under the legislative powers of the federal states, e.g., school education and accessibility have not found adequate implementation in over 12 years of ratification.[1407] Human rights understanding of disability at the national/federal level in Denmark and Austria could be discerned only in organizations that have been involved in MFs. Sub-nationally active organizations instead appeared not to apply the CPRD in their work.[1408] Accordingly, in policy fields that fall under the legislative powers of the federal states or administrative powers of municipalities, no significant dynamics of CPRD implementation could be identified.[1409]

1406 Grigoryan, 2021.
1407 See chapter IV part on Germany.
1408 It should be underlined that the TyroleanMonitoring Committee, for example includes DPs, but not DPOs. For more on the work of Austrian DPOs see Chapter VI.
1409 See chapter IV Parts on Austria and Denmark.

4.5 Appointment and dismissal

To ensure the independence and public legitimacy of MFs,[1410] their members are to be nominated in a public, democratic, transparent and participatory manner,[1411] the nomination should, preferably, be approved by the parliament.[1412] Executive approvals have to be avoided since these practices are perceived as political bias.[1413] The legislation establishing the NHRIs should also contain independent and objective dismissal procedures, with reasons "clearly defined", and not left to the discretion of those appointing the members.[1414] To this end, the dismissal should be based only on "serious grounds of misconduct or incompetence" and enacted with "fair procedures".[1415] Besides, the dismissal of members by the executive is incompatible with the independence of the MFs.[1416]

The comparative examination showed, however, that the designated/established MFs, by and large, do not follow these rules: for instance, the nomination of a representative of the German Disability Council to the decision-making organ of the GIHR, functions on the rotation principal,[1417] whereas half of the members to the decision-making organ of the GIHR are approved by the federal parliament, two of which are MPs of the Bundestag, the remaining 6 are nominated by the represented parties of the Bundestag. However, there is no regulation specifying the nomination procedure and setting-up human rights orientation of the nominees. The Danish and Austrian umbrella DPOs and the Austrian Antidiscrimination Commissioners also do not have clear nomination regulations for the MFs. The Danish Parliamentary Ombudsman is elected and can be dismissed by

1410 Carver, 2005.
1411 CRPD/C/1/Rev.1, annex. Para 15a; According to SCA General Observations 1.8, these requirements can be achieved by:
A. Publicizing vacancies broadly;
B. Maximizing the number of potential candidates from a wide range of societal groups;
C. Promoting broad consultation and/or participation in the application, screening, selection and appointment process;
D. Assess applicants on the basis of pre-determined, objective and publicly available criteria.
1412 Carver, 2005: 14.
1413 Ibid.
1414 SCA, General Observations 2.1.
1415 Ibid.
1416 SCA, General Observations 2.1.
1417 For more see chapter VI part on Germany.

the parliament. Nonetheless, the reason of the justified dismissal is unclear. The DDC secretariat and Board are located in and governed by the Social Ministry. The members of the DDC Advisory Board are approved and dismissed by the Minister of Social Affairs. The federal/national governments of Germany and Denmark have no say in dismissal procedures of NMB and DIHR members. The members to the Austrian MF are approved and dismissed by the federal government.

Thus, it becomes clear that all three MFs of the SPs do not have transparent nomination procedures. This, on the one hand, puts the legitimacy and the independence of designated/established MFs under question. On the other hand, it prevents plural representation of social forces. The none-transparent nomination practises, besides, raise the influence of the government, as it is the case in the Länder-level in Austria or the governing party as it is in Germany.

In addition, all designated Monitoring Mechanisms except DIHR and GIHR, maintain appointment and dismissal rules that make them subordinate to and functionally dependant on the executive.

4.6 Adequate infrastructure

In order to be independent of the government and not be subject to financial control that might affect its independence, the MFs should have adequate funding that would enable them to have their own staff and premises,[1418] This means that they shall have complete financial autonomy as a guarantee of their overall freedom to determine their priorities and activities.[1419] If the NHRIs are given additional responsibilities e.g., CPRD monitoring, it should be allocated additional financial resources to discharge these functions[1420] at all governmental levels.[1421]

In evaluating the financial equipment of the MFs, it became clear that German and Danish MFs had federal/national level funding from the beginning of their designation. Local level funding has been either completely missing as it was the case with the DDC and DIHR or available for highly limited/punctual parts of the SP, as it is in Germany. Federal level funding

1418 Principles relating to the Status of National Institutions (Composition); SCA, General Observations, 2.7 – 2.9.
1419 SCA, General Observations 1.10; See also, CRPD/C/1/Rev.1, annex. Para. 15 B – E.
1420 SCA, General Observations 1.10; See also CRPD/C/1/Rev.1, annex. Para. 11.
1421 (CRPD/C/1/Rev.1, annex), Paras, 18 and 19.

has been ensured starting in 2018, whereas the guaranty of financial independence at the local level still hangs in the air.

From the examined Monitoring Mechanisms only GIHR and DIHR have their own premises as of their designation. Austrian FMC obtained this opportunity only in 2018.

German and Danish MFs have paid staff. Austrian FMC, instead, might have three employees starting from 2018, whereas the local level does not have paid staff.

While initially the GIHR received an additional budget for the CPRD Mandate, as of 2016 it, similar to Danish MF, gets general allocations. The Austrian MF, as such, does not have funding for its activities.

In evaluating the infrastructure of the three MFs in light of their mandate and functionality, I could observe two similarities: the German and Danish MFs, where at least 1 mechanism is a NHRI, have, by and large, adequate human and financial resources for carrying out their mandate at the federal/national-level: while the German and Danish MFs became an indivisible and influential part of the legal and political processes, the Austrian MF still struggles with the issue of getting structural and financial independence that would ensure its human-rights-based and CPRD-compliant functioning.

However, the failure of Germany and Denmark to ensure the same level of structural and financial independence of the Monitoring Bodies at the state and municipal levels leads to convergence with Austrian structural implementation at the Länder-level: at this level the Monitoring Mechanisms of all SPs are not in the position to discharge their comprehensive responsibilities under Art. 33 Para. 2 of the CPRD.

4.7 Accessibility

In assessing the accessibility of designated/established MFs, I could observe far-reaching negative convergence: for instance, the deaf and learning disabled are, as a matter of fact, not included in the work of the MFs, primarily, because of costs connected with the sign/easy-to-speak language translation. The disability-specific assistance of disabled members has been explicitly regulated for DDC[1422] and at the Länder-level in Tyrol, whereas

1422 Bekendtgørelse om retssikkerhed og administration på det sociale område, Sec. 40 PCS. 2.

the coverage of the voluntary work of DPs in the NMB and DIHR has not been clarified.[1423]

Unlike the DIHR all other Monitoring Mechanisms can be accessed by physically disabled, whereas the comprehensive accessibility and usability of all MFs for otherwise DPs has not been ensured. The websites and their content, including reports and thematic studies of non-disability specific Monitoring Mechanisms are not accessible.[1424]

To this end, it might be assumed that the National Human Rights Institutes in comparison to disability-specific Monitoring Mechanisms, if well equipped, can have considerable weight in promoting and monitoring the rights of DPs, but their structural accessibility is not ensured for all disabled groups. As a consequence, the required[1425] plural participation of DPs in all stages of the work of MFs does not take place. This, in turn, might make the voices of the most vulnerable disabled groups unheard.

4.8 Cooperation at the vertical and horizontal governmental levels

The close collaboration with relevant international, supranational and national actors is an indivisible part of the MFs responsibilities. In general, the collaboration is based on four main pillars, namely the CPRD Committee, relevant supranational actors, national FPs/CMs and DPOs.

In examining the collaboration with the CPRD, I could observe positive convergence: all MFs carried out their reporting obligations on time and objectively. Full supranational collaborations have been ensured in German and Danish cases, whereas the participation of the Austrian MF in the supranational cooperation structures is limited due to their unrecognized status. Accordingly, it has no access to litigation efforts of ENNHRI.

At the national level, all MFs have maintained the required[1426] links to other relevant actors at the federal/national level, but efforts ensuring effective, comprehensive and multi-sectional cooperation at the state/provincial/municipal levels could not be identified.

1423 For more see chapter VI.
1424 The GIHR started to address the web accessibility only as of September 2020.
1425 (CRPD/C/1/Rev.1, annex) Para. 20.
1426 Principles relating to the Status of National Institutions. Methods of operation F.

The cornerstone of Art. 33 is based, in fact, on the requirement of close collaboration with the FPs/CMs.[1427] This, however, has been comprehensively ensured only at the federal/national level. At the state/provincial and municipal level, the cooperation has proved to be either incomprehensive or punctual, as it is the case with Germany, subordinate as it is in Austria or completely missing as it is with all administrative levels of SPs.

The institutional cooperation with the DPOs outside of the structural framework of the MFs is ensured only at the federal level in Germany. Austria holds public meetings and Danish MF maintains irregular meetings with interested DPOs. The local level external cooperation is convergent with the internal DPO cooperation, meaning that it is almost non-existent.

Against this background, it might be assumed that the stipulated structural change has been effective at the federal/national level. However, this, in view of legal and political structures of SPs cannot be viewed as sufficient since the envisaged structural cooperation with other more relevant executive, legislative and/or administrative organs of SPs does not take place.

1427 It should be noted that not all SPs designated separate CMs. None of the SPs has a state/provincial/municipal CM. The Danish CM has been perceived as dysfunctional. For more see chapter IV.