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**Reshaping Disability Policy Making in Italy:  
The ‘Focal Point’, the National Observatory on the  
Situation of Persons with Disabilities, and... the  
Absence of Regions?**

by

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## Abstract

On 30 March 2007, Italy signed the UN Convention on the Rights of Persons with Disabilities (CRPD) and ratified it by Law 18/2009. Through this, Italy has committed itself to reforming the structure of its own policy making process. It seems that Italy has taken its international commitment seriously, in compliance with Art. 117(1) of the Italian Constitution, for the last years have witnessed attempts to ‘re-imagine’ the configuration of the whole ‘institutional’ disability domain. It is nonetheless surprising that the efforts at national level are not counterbalanced by identical commitments in the Regions (despite their important powers in the disability domain).

This essay aims to investigate the most intriguing aspects of current disability policy making, without neglecting empirical insights and dropping some comparative hints. This article is divided into six sections. After a succinct introduction, the main features of the Convention will be recalled. Then, the CRPD will be framed to fit the Italian legal order. Section 4 and 5 focus on how disability policy making has been reshaped in the process of the implementation of Art. 33 CRPD in the Italian legal system. Section 6 will provide concluding remarks.

## Key-words

UN Convention on the Rights of Persons with Disabilities, Focal Point, National Observatory on the Situation of Persons with Disabilities, Disability Policy Making



## 1. Introduction

On 30 March 2007, Italy signed the UN Convention on the Rights of Persons with Disabilities (hereafter CRPD, or simply “the Convention”) and ratified it by Law 18/2009.<sup>1</sup> By acceding to the Convention, Italy has committed itself not only to higher standards of non-discrimination with respect to persons with disabilities and to improving accessibility and social inclusion, but also to reforming the structure of its own policy making process. The CRPD contains specific provisions that respond to the need to translate the rights of disabled people into concrete domestic law, policies and good practices. In particular, in addition to the international monitoring system and quasi-judicial mechanism set forth, respectively, in Art. 34 CRPD and in the Optional Protocol, Art. 33 CRPD requires Parties to create or designate specific national institutions which will be responsible for implementation and a framework which will be in charge of ‘monitoring’, with the former being placed under government oversight and the latter independent and inclusive of civil society organisations (Stein and Lord, 2010; Marchisio et al., 2010; de Beco, 2012).

In line with the call from the Office of the High Commissioner of Human Rights (OHCHR) to consider Art. 33 CRPD a priority (UN Human Rights Council, 2010), Italy has started the implementation process by ‘reshaping’ its own disability policy making. In spite of the harsh economic crisis that has deeply affected the country, the focal point and the coordination mechanism were designated and a monitoring body, the “National Observatory on the Situation of Persons with Disabilities” (*Osservatorio Nazionale sulla condizione delle persone con disabilità* – hereafter National Observatory), was set up through the ratification instrument. Additionally, Italy is (slowly) commencing to reform the legislation in force, with the view of realising the objectives of the Convention.

Italy has taken its international commitments seriously, in compliance with Art. 117(1) of the Italian Constitution: these years have witnessed some attempts to ‘re-imagine’ the configuration of the whole disability domain, and so far the prospects for an efficient implementation of the CRPD are quite encouraging<sup>11</sup>. Nonetheless, even if there has been a general presumption of compliance of these structures with the Convention, there is still a considerable gap between the aspirations of Art. 33 and Italy’s achievements. Looking



closely at both the designated focal point and the National Observatory, several weaknesses could be identified. In particular, on the one hand there is a weak involvement of the Regions, and, on the other hand, the National Observatory appears as a hybrid body (to some extent, it seems more similar to the ‘coordination mechanism’), which *de jure* and *de facto* can hardly be considered in compliance with Art. 33(2) CRPD.

Thus, the time seems ripe for a more robust debate among legal scholars and a more reflective advocacy to expand the reach and the effectiveness of the disability policy making structure created subsequent to the entry into force of the Convention.

This essay aspires to be read as a basis for future academic exploration. It aims to investigate the most intriguing ‘institutional’ aspects of current disability policy in Italy, without neglecting empirical insights and comparative hints. The implementation of Art. 33 CRPD at the national level will be critically discussed *vis-à-vis* the lack of involvement of the Regions.

With regard to its structure, this essay is divided into further five sections, following this brief introduction. First, the main features of the Convention will be recalled (Section 2). Then, Section 3 will ‘frame’ the CRPD in light of the Italian legal order: both the ratification process and the status of the Convention will be discussed briefly. Section 4 and 5 will focus on how disability policy making has been ‘reshaped’ in the process of implementation of Art. 33 CRPD. Finally, Section 6 will conclude with some general remarks.

## 2. The CRDP: Principles, Main Features and “Policy Making Obligations”

In December 2006, the CRPD and its Optional Protocol were approved by the UN General Assembly. The Convention, which entered into force on 3 May 2008, is the first human rights treaty of the 21<sup>st</sup> century and represents a landmark piece of international law (Quinn, 2009, 89). Traditionally, both national and international norms have tended to think of the disadvantageous situation of disabled persons as reflecting their specific impairments, physical or mental, rather than as a result of discrimination or otherwise inadequate respect for human rights (Quinn and Arnardottir, 2009: *passim*). By contrast, the CRPD embodies the official recognition of disability as a human rights issue, and affirms



the ‘social’ model as opposed to the ‘medical’ model of disability (Barnes and Mercer, 2010: 18 *et seq.*).<sup>III</sup> The scope of the Convention is extremely broad: the text does not simply prohibit disability discrimination, but it also covers civil, political, economic, cultural and social rights and is built upon the core and manifold concepts of the dignity of each individual, autonomy, and self-determination.

The Convention includes an introductory set of provisions outlining its purpose and key definitions (Arts. 1-2). Art. 2 provides, *inter alia*, a comprehensive definition of discrimination, including ‘any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms’. Articles 3-9 CRPD set out general provisions to be applied throughout the treaty text. In view of the subsequent analysis, it must be observed that Art. 4 CRPD requires Parties to: take measures to abolish disability discrimination; engage in the research and development of accessible goods, services and technology for persons with disabilities and to encourage others to undertake such research; provide accessible information about assistive technology to persons with disabilities; promote professional and staff training on the Convention rights for those working with persons with disabilities; and to consult and involve persons with disabilities in developing and implementing legislation and policies and in decision-making processes concerning CRPD rights. Significantly, Art. 4 further requires Parties to adopt an inclusive policy approach to protect and promote the rights of persons with disabilities in all laws and programmes. This suggests the need for a screening exercise to assess policy and laws *vis-à-vis* the Convention, and programming inclusion across sectors. This, on the one hand, suggests the very idea of mainstreaming and, on the other hand, obliges States to ‘re-think’ their whole disability policy making.

Arts. 10 through 30 enumerate the specific substantive rights, which are formulated as obligations upon States: the right to life (Art. 10), freedom from torture (Art. 15) and other forms of abuse (Art. 16), the right to education (Art. 24), employment (Art. 27), political participation (Art. 29), legal capacity (Art. 12), access to justice (Art. 13), freedom of expression and opinion (Art. 21), privacy (Art. 22), participation in cultural life, sports and recreation (Art. 30), respect for home and family (Art. 23), personal integrity (Art. 17), liberty of movement and nationality (Art. 18), liberty and security of the person (Art. 14), and adequate standard of living (Art. 28).



In addition, the Convention pays attention not merely to what ‘ought to be done’ but also to the institutional preconditions necessary to ensure that it ‘can be done’ at the domestic level (Quinn, 2009a: 215). Gerard Quinn has emphasised these as striking ‘process-based innovations’ (Quinn, 2009b: 215). In particular, the need to translate the Convention’s provisions into hard domestic law, policies and good practices is embedded in the final provisions, namely in Arts. 31-40 CRPD. Among these provisions, Art. 33 is certainly the most relevant. It sets forth a complex mechanism of internal follow-up procedures. As mentioned above, it requires Parties to intervene in the very structure of their policy making process to make the rights of people with disability really effective (Seatzu, 2009).

Art. 33(1) CRPD states that Parties to the Convention must designate ‘one or more focal points within their governments for matters relating to the implementation of the Convention’. The OHCHR envisages several focal points, plus an overall focal point which responds to the need to ensure the existence of a general oversight and promotion role (UN Human Rights Council, 2010). The focal point(s) must be situated at governmental level and should develop and coordinate a coherent national policy on the Convention. In other words, the focal point(s) should both drive and execute national disability policies. According to Art. 33(1) CRPD, Parties to the Convention can also designate a “coordination mechanism”. The creation of such a coordination mechanism is desirable but not compulsory. If created, the coordination mechanism should be located within the government and perform the tasks of further supporting and coordinating (as its denomination suggests) the implementation of the CRPD across all sectors and levels of government. However, there is no clear distinction between the focal point and the coordination mechanism, neither from the point of view of structural requirements nor as regards the functions to be performed.

Art. 33(2) requires Parties to designate or establish a ‘framework, including one or more independent mechanisms’, to promote, protect and monitor the implementation of the Convention. Parties enjoy significant latitude regarding what this framework should consist of. The wording of the Convention seems to leave the door open to: the creation of a new *ad hoc* framework, which includes a new, independent mechanism and other new bodies; the designation as a framework of a single, existing or new independent mechanism; or to the sharing of tasks among different (existing and new) entities, which



should form a coherent whole. It is fairly clear that the framework must be capable of carrying out the functions explicitly indicated in Art. 33(2) and must include one or several independent mechanisms. It is well established that, in designating or establishing such a mechanism, Parties to the Convention ‘shall take into account’ the *Principles relating to the Status and Functioning of National Institutions for the Promotion and Protection of Human Rights*.<sup>IV</sup> These principles, known as the *Paris Principles*, provide for the responsibilities, composition and working methods of National Human Rights Institutions (NHRIs) according to the following headings: competence and responsibilities; composition and guarantees of independence and pluralism; methods of operation; and principles concerning the status of commissions with quasi-judicial competence (the latter being only optional).<sup>V</sup> This reference to the *Paris Principles* can raise criticism: it is not clear whether it is really possible to apply these principles to actors other than NHRIs nor, from a more substantive point of view, who will evaluate the compliance of independent mechanisms with them. In addition, the use of the expression ‘shall take into account’ literally seems to mean that the *Paris Principles* provide a source of inspiration, rather than a compulsory parameter, in transposing Art. 33(2) CRPD. Despite this criticism, it is now accepted that ‘the *Paris Principles* provide important guidance to identify the characteristics the framework should overall possess, while accepting that not all components of the framework need to be fully compliant with the *Paris Principles*’. In other words, the OHCHR clarifies that the *Paris Principles* should apply, without any distinction (UN Human Rights Council, 2010), to the independent mechanisms, including to mechanisms other than NHRIs (De Beco, 2011).

Art. 33(3) provides that ‘civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process’. This provision thus further specifies the general principle of participation of people with disabilities (Article 3(c) CRPD), as well as the general obligation to consult with and actively involve persons with disabilities, including children with disabilities, through their representative organisations in “the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities” (Article 4(3) CRPD). In light of these provisions, persons with disabilities and their representative organizations must be involved in the implementation process carried out by the governmental structures established under Art. 33(1). In this respect, the wide consultation of a variety of interested



parties is an important means of ensuring that measures taken are acceptable and practically workable for persons with disabilities.

Finally, it is worth recalling that, whilst the Convention lacks a judicial enforcement system, Art. 34 provides for an international para-judicial monitoring mechanism (the “Committee on the Rights of Persons with Disabilities”), itself regulated by the Optional Protocol. Art. 35 provides for a reporting system: according to this provision, each State Party must submit a comprehensive report to the Committee on measures taken to give effect to its obligations under the Convention and on the progress of the implementation process.

### **3. Framing the CRPD and the International Obligation to Intervene on Disability Policy Making in the Italian Legal System**

#### **3.1 The ratification of the CRPD**

As mentioned above, Italy ratified the CRPD through Law 18/2009, two years after signing, and within three years of UN approval (de Amicis, 2009). No reservations to the Convention were made upon signature and ratification.

The ratification process was quite quick if compared to that of other European countries, some of them still in the process of concluding the Convention.<sup>VI</sup> The inherent importance of the CRPD and the need to radically change the detrimental situation experienced by the majority of people with disabilities (Chiatti and Lamura, 2010)<sup>VII</sup> was acknowledged by all political parties. A— considering the troubled Italian political system — extraordinary consonance was found in both chambers and can be read as a signal of the perception of the seminal ideological shift inherent in the Convention. The Senate, almost unanimously, approved the ratification bill presented by the Government in January 2009, rejecting the criticism raised regarding the limited presence of people with disabilities within the National Observatory and its inadequate financial equipment (which was ensured by extracting money from the social fund).

Even if a study to assess the overall compliance of domestic legislation and policies with the CRPD was carried out in 2008 by the Institute of International Legal Studies at the National Research Council (*Istituto di Studi Giuridici Internazionali, ISGI; Consiglio*



*Nazionale delle Ricerche, CNR*) upon the request of the Ministry of Labour and Social Policies (ISGI, 2007), no amendments or other actions to eliminate the few inconsistencies highlighted by this study were provided for. No preliminary scrutiny of regional laws took place beforehand. It seems that the organizations representing people with disabilities (DPOs) did not enforce a comprehensive preliminary scrutiny of all national and regional rules on disability since they feared this would have delayed the approval of the ratification bill.

Notably, the negotiation of the Convention was conducted within the framework of the European Union (EU). Whereas this circumstance has not *per se* accelerated the process of ratification, it is safe to say that strong coordination at EU-level has created not only a positive attitude towards ratification, but also an additional commitment to ratify the CRPD, in compliance with the principle of sincere cooperation enshrined in Art. 4(3) TEU<sup>VIII</sup>.

### 3.2 Status and effects of the CRPD

The Convention was ratified through an ordinary law in compliance with Art. 80 of the Italian Constitution and enjoys *prima facie* the same position in the hierarchy as other ordinary laws. However, ever since the 2001 constitutional reform, Art. 117(1) provides that 'legislative powers shall be vested in the State and the Regions in compliance with the Constitution and within the constraints deriving from EU legislation and international obligations'.<sup>IX</sup> This provision seems to establish a higher status (namely a sub-constitutional one) for international sources of law.

Up to now, the most of the Constitutional Court's judgments interpreting Art. 117(1) have pertained to the European Convention on Human Rights (ECHR; *e.g.* cases No. 348 and 349/2007 and the subsequent decisions No. 311/2009, No. 317/2009, No. 80/2011 and No. 113/2011). Nonetheless, they provide a firm guidance for determining the status of the CRPD in the Italian legal order. It must be recalled that, ever since the 'overcommented' twin cases No. 348 and 349/2007, the Court has shown an increasing openness towards international law (*inter alia* Ruggeri, 2008, Pollicino, 2008; Martinico and Pollicino, 2010). The Court firmly stated that Art. 11 Const. does not apply to the ECHR, nor to other international treaties (irrespective of their subject matter).<sup>X</sup> As noted by Fontanelli and Biondi, the Court restated the plain 'general rule according to which, in the



absence of any specific constitutional provision, international norms enter the Italian system with the same rank as the Italian legal acts that implement them', but affirms that '[t]he platform of Article 117(1) guarantees an infra-constitutional standing to international treaty law (ECHR included) within the Italian legal order' (Fontanelli and Biondi Dal Monte, 2008). There is a difference of treatment of EU law, which is considered to have quasi-constitutional status and, consequently, to be subordinated not to the entire Constitution, but only to its fundamental principles (this is the famous counter-limits doctrine). In addition, the Court's formal hierarchy-based approach excludes any power for common judges to set aside national legislation in conflict with the ECHR (and, of course, with other international treaties, including the CRPD).

From this it can be inferred that the national norms ratifying the CRPD (like norms ratifying and executing other international treaties) cannot be abrogated by a subsequent law (i.e. *resistenza passiva all'abrogazione*). In addition, with regard to the Constitutional Court's judgments, it has emerged that national judges have to interpret, as far as possible, domestic provisions in a manner consistent with international provision (D'Amico e Randazzo, 2009). When such an interpretation is not feasible, or when a judge doubts an international norm's constitutionality, a constitutional review is necessary on the basis of a potential violation of Art. 117(1) of the Italian Constitution.

However, the status and the effects of the CRPD cannot simply be those of other international sources. This is so because the CRPD is a mixed agreement<sup>XI</sup>, thus it is, at least partially, EU law and should be treated as such. Could we then argue that national judges, in situations governed by EU law, are under the obligation to disallow a domestic provision that contradicts with the CRPD? Indeed not. Because, *in abstracto*, the CRPD seems capable, in light of its objectives and spirit, of conferring rights upon individuals, but the provisions are literally addressed to the Parties. Thus, it might be argued that none of its provisions is sufficiently clear, precise and unconditional to have direct effect under the standard established long ago by the ECJ. Only the ECJ can consider whether or not an international provision has direct effect. Thus, in situations governed by EU law (e.g. State aid), a judge suspecting a contradiction between a domestic provision and the CRPD should probably ask for a preliminary ruling under Art. 267 TFEU. In areas that are clearly outside of EU competence, the judge should first attempt to interpret the national provision in a manner consistent with the Convention. If, despite this attempt, a



contradiction between a domestic provision and the CRPD still persists, the judge should ask for a constitutional review.

Up to now, Italian judges have resolutely applied the principle of consistent interpretation. After the entry into force of the CRPD, many significant cases issued in front of lower courts have interpreted Italian law in light of the principles enshrined in the Convention. One of the first and most relevant cases was the decision issued by the *Tribunale di Varese* on 6 October 2009, in which the court stated that the pragmatic features (modalities) of the ‘support administration’ provided for in Arts. 405 *et seq.* of the Italian civil code must be determined with regard to the CRPD (Falletti, 2010; Ferrando, 2010).<sup>xii</sup> In recent decisions, administrative tribunals have interpreted the provisions on public contributions to cover the cost of residential treatment for people with disabilities (Art. 3(2-ter) of Legislative Decree 109/1998 and Art. 6 of Law 328/2000) in light of the CRPD.<sup>xiii</sup> The Italian Constitutional Court (ICC) has also relied on the CRPD. It is worth recalling its decision of 22 February 2010,<sup>xiv</sup> when the ICC declared unconstitutional a provision of the Budget Law 2008 (namely Art. 2(413) and (414) of Law 244/2007) which fixed the number of support teachers for children with disabilities in public schools and abolished the possibility (provided for in Art. 40 of Law 104/1992) to hire additional support teachers with fixed-term contracts in order to provide specific additional educational assistance to children with serious disabilities (Troilo, 2012). The ICC declared that Art. 2 of the Budget Law infringed upon the right to education of children with disabilities, which is set forth in Art. 38(3) and (4) of the Constitution<sup>xv</sup>, and the principle of equality. Nonetheless, in defining the content of the fundamental right to education, and as part of its *ratio decidendi*, the Court referred to Art. 24 of the CRPD.

## 4. Reshaping Italian Disability Policy Making

### 4.1 The Directorate-General for Inclusion and Social Policies as a Focal Point

As mentioned above, Italy has taken the obligation to ‘re-shape’ disability policy making very seriously. It thus started the CRPD implementation process by designating the focal point and the coordination mechanism: both of them coincide with the Directorate-General for Inclusion and Social Policies (hereafter ‘the Directorate’), which recently replaced and absorbed both the Directorate-General for Inclusion, Social Rights and Social



Responsibility and the Directorate-General for Governing the Social Policy Fund and Monitoring Social Expenses<sup>XVI</sup>. Unsurprisingly, as in the majority of EU Member States<sup>XVII</sup>, Italy thus designated as focal point for matters relating the implementation of the Convention an internal organisation of the Ministry of Labour and Social Policies, and it seems that no other options had been considered.

The Directorate has (probably) been deemed by the Italian authorities to be the most appropriate focal point since it has traditionally been in charge of disability matters. Nonetheless, even if the requirement that the focal point(s) must be at governmental level is fully accomplished, this choice could be questioned.

In general, the preference for a social affairs-related structure has been criticised by many commentators (EFC, 2010) and by DPOs since this does not fully reflect the comprehensive human rights approach to disability envisaged by the CRPD. It was suggested that the focal point should have been placed within ministries dealing with justice, human rights or under the jurisdiction of the office of the Prime Minister to symbolize the rejection of the outdated model of compartmentalising persons with disabilities solely based on their perceived inadequacies.<sup>XVIII</sup> As regard Italy, the scope of action of the Directorate may seem, at a first sight, too weak to transform (or, better still, to revolutionize) the still limited scope of disability policy. One might also sustain that the Directorate is too ‘specialized’: it does not cover all the fields touched upon by the Convention, but mainly addresses issues related to employment, social affairs, and non-discrimination without any (at least explicit) wide-ranging rights-based approach. It might also be argued that, in view of effectively implementing the CRPD’s far-reaching provisions, other structures should have been elected as ‘focal point’: e.g. the Interministerial Committee for Human Rights (*Comitato interministeriale per i diritti umani, CIDU*) attached to the Ministry of Foreign Affairs<sup>XIX</sup>. This body could be deemed more appropriate to reflect the human rights-based approach of the Convention. In addition, the CIDU already plays the role of focal point as regards other UN treaties and the Council of Europe and, in any event, it will be in charge of submitting/presenting a report to the CRPD Committee as well as preparing answers and explanations if requested so by the UN organ. Another option that would have deserved to be explored is the choice of the Presidency of the Council of Ministers (i.e., the Prime Minister) as focal point: in this case,



the focal point would have had the significant power to require cooperation from other ministries, thus mainstreaming disability.

Despite this criticism, it must be recognised that the choice does not automatically neglect the conception of disability as a human rights issue, nor the social model itself. The Directorate fulfils many of the expectations as to what a focal point should do, and its mandate includes the tasks to build capacity within the government on disability-related issues and to contribute to the development of policies and legislation that affect disabled people. In addition, from the very beginning the Directorate has pursued the aim of implementing the social model of disability as envisaged by the Convention and, since it also acts as the secretariat within the National Observatory (as it will be discussed further),<sup>xx</sup> has attempted to create fruitful conditions in order to mainstream the rights of people with disability.

Like other countries<sup>xxi</sup>, Italy clearly opted for a single focal point: unlike for example in France,<sup>xxii</sup> where all administrations, services and bureaus involved in disability policy are responsible for matters related to the implementation of the CRPD, no other focal points at the ministerial level were formally appointed; nor were regional focal points designated.

Even if there is no fixed scheme, different horizontal focal points dealing transversally with disability policy within their respective competences have been considered a viable and remarkable solution, in particular to foster the implementation of the social model envisaged by the CRPD (de Beco, Hoefmans 2009). In this respect it might be noted that the Italian option of a single focal point at the ministerial level can prove useful for rationalising and centralising all possible institutional players involved in disability policy and represents considerable strengths. A single focal point can be the driver of a consistent national disability policy agenda and may be more efficient, since it avoids duplication of functions. By contrast, a proliferation of focal points may seriously endanger the efficiency and effectiveness in the implementation of the Convention. A single focal point minimises the risk that when many are competent, in the end no one is really responsible for the proper transposition of the CRPD into the domestic legal framework. Moreover, in times of economic crisis, a single focal point is probably 'less expensive' and makes it possible to devote resources to the substantive implementation rather than to structural aspects. Lastly, it is easier both for persons with disabilities and international institutions to identify the body responsible for implementation.



In any case, and regardless of any reproach that can be raised, the capacity of the Directorate as a focal point to competently and resourcefully carry out the tasks provided for in Art. 33(1) and to mainstream disability is to be verified *in concreto* and in the long run. Up to now, there are no major achievements directly and exclusively attributable to the Directorate itself.<sup>xxiii</sup> However, the Directorate has occasionally collected suggestions for legislative reform by civil society actors, thereby maintaining a link with NGOs and citizens. In addition, and as we will discuss in the subsequent section, in its capacity of technical secretariat to the National Observatory (Art. 4 of Decree 167/2010), it has provided a remarkable contribution to preparing the biannual action plan on disability.

#### 4.2 Where Are the Regions?

Several focal points covering each of the different layers of government (local, provincial, regional, national) have also been envisaged to ensure the implementation of the CRPD in regional or federal states, involving all territorial administrations which have relevant competences in the fields covered by the CRPD (de Beco, Hoefmans, 2009: *passim*). In order to ensure the respect of their territorial structures, some EU States have opted for several focal points, for example the UK<sup>xxiv</sup>, Belgium<sup>xxv</sup> or Austria<sup>xxvi</sup>. By contrast Italy, which can certainly be described as a regional (Anzon-Demmig, 2008; Caretti and Tarli Barbieri, 2009) or even a ‘*de facto* federal system’ (Bilancia et al., 2010), chose quite surprisingly to create a single focal point, and this choice cannot but be questioned.

It should be recalled that the legislative competence over disability matters is shared between the State and the Regions, and that the boundaries between their respective competences are not clear as they pretend to be. Art. 117 of the Italian Constitution gives the State the exclusive legislative power over the ‘determination of the basic level of benefits relating to civil and social entitlements to be guaranteed throughout the national territory’ (so called *LEP*). According to this provision, national law must define binding financial thresholds which are essential to guaranteeing civil and social rights. The Regions cannot limit or condition these thresholds (*ex pluribus* Guiglia, 2007). In addition, the State has exclusive legislative power on ‘general provisions on education’ and ‘social security’. The competence on ‘job protection and safety’, ‘education, subject to the autonomy of educational institutions and with the exception of vocational education and training’, ‘large transport and navigation networks’, ‘communications’, ‘national production, transport and



distribution of energy’, ‘complementary and supplementary social security’, ‘co-ordination of public finance and taxation system’, and on the ‘enhancement of cultural and environmental properties, including the promotion and organisation of cultural activities’ is shared between State and Regions. Moreover, the ‘Regions have legislative powers in all subject matters that are not expressly covered by State legislation’.

The State certainly has strong legislative powers over disability issues, since it is in charge of the ‘determination of the basic level of benefits relating to civil and social rights’. Such a cross-cutting national competence implies that whenever a regional law provides for benefits related to civil or welfare rights, it must be subordinated to the national law that establishes the minimum standards with regard to those rights<sup>xxvii</sup>. Up to now, the Constitutional Court has recognised this key responsibility of the State in legislating on disability. Accordingly, it has so far rejected a constitutional review for violation of the division of competences of the most important national pieces of legislation on disability, the abovementioned Law 104/1992, and of other national laws. However, there is a myriad of regional laws and regulations governing the situation of people with disabilities, and coordination between State and Regions is essential to exert the full potential of the CRPD.

Representatives of the so called State-Regions Conference (*Conferenza Stato-Regioni*)<sup>xxviii</sup>, a cooperative body established to discuss issues of regional interest, are included in the National Observatory, which is preparing the future national action plan for disability. Thus, a certain degree of coordination is achieved within the National Observatory. However, it is fairly unclear whether and how further and additional contacts with the Regions will take place. Moreover, at present, there is no sign of projects or attempts to appoint regional focal points.

It seems at least regrettable that there is no formal and explicit involvement of the Regions in the implementation process. The lack of regional focal points can (potentially) cause gaps and inconsistencies and may jeopardize the attainment of the objectives of the Convention, but more generally it can hamper the realization of an effective disability policy making structure. In addition, this choice seems to frustrate the subsidiarity principle and the principle of autonomy, expressly affirmed in the Italian Constitution<sup>xxix</sup>.

Thus, even if the choice of electing a single focal point is formally obedient to Art. 33(1) CRPD and brings considerable practical (and financial) advantages, it is uncertain whether this solution really fits into the Italian system in the same manner as it might be



adequate for States with a minimum level of decentralization (traditionally referred to as unitary).

#### 4.3 The Directorate-General for Inclusion and Social Policies as a Coordination Mechanism: What kind of coordination will be provided?

As regards the designation of the Directorate as coordination mechanism, a few remarks can be added.

First, it is useful to recall that the Convention does not provide for a clear distinction between the focal point and the coordination mechanism, neither from the point of view of the structural requirements nor the functions to be performed. The doctrine has also been quite vague. Even the OHCHR study has not provided a fruitful and lucid guidance, since it advocates the designation of an overall focal point, *in toto* similar to the coordination mechanism, and it is unclear how this would distinguish itself from the coordination mechanism, where it exists (UN Human Rights Council, 2010, para. 33). The Italian choice to designate the same Directorate reflects this substantial lack of clarity.<sup>xxx</sup>

It must be noted that the Directorate should carry out horizontal coordination (i.e. among different Ministries within the Government). However, it is not certain how this is taking place. Despite the fact that informal coordination has taken place up to now, no relations with other bodies or directorates in other Ministries have been formalized. In addition, there is no involvement of parliamentary structures. That is quite surprising given that Parliament alone enjoys legislative power, i.e. the capacity to adopt appropriate laws to implement the Convention.

As regard vertical coordination (i.e. cooperation among different level of governments), there seems to be, at present, no open cooperation with the Regions. This is probably so because, as we will see in the subsequent section, such coordination is taking place within the National Observatory, which is a true composite body in which representatives of the government, local authorities and civil society try to find a synthesis to implement the goals put forward by the CRPD.

The coordination mechanism should have been an opportunity to reinforce the cooperation among different ministries (an explicit commitment of the Directorate in this respect in view of fully implementing the Convention), but also to reinforce vertical coordination among different territorial administrations. However, it appears that the



formal coincidence among focal point and coordination mechanism and the substantial absence of coordination with the Regions blur the situation and ultimately frustrate the spirit of Art. 33(1) CRPD in this respect.

## 5. Independent Monitoring or Government Control over the Convention?

### 5.1 The National Observatory on the Situation of Persons with Disabilities: A Brief Overview

The complexity of the transposition of Art. 33(2) CRPD is well known and recognised by both scholars and DPOs. The difficulty of setting up an independent mechanism compliant with the *Paris Principles*, especially for those countries which do not have a National Human Rights Institution (NHRI) (de Beco, 2011; de Beco, 2008), and the need for a framework capable of carrying out the complex tasks mentioned under Art. 33(2) have challenged several States. Many of them, also within the EU, are still in the process of choosing whether to designate or establish a framework, as well as examining how to set up an independent mechanism. Even in Sweden, a country with a strong welfare structure and an efficient and well-rooted disability policy, the implementation of Art. 33(2) has encountered some troubles.

By contrast, Italy did not vacillate and, from the very beginning, opted for setting up a new structure, the National Observatory on the Situation of Persons with Disabilities (*Osservatorio nazionale sulla condizione delle persone con disabilità*).

The National Observatory was envisaged in the ratification law (i.e. in Art. 3 of Law 18/2009) and then created by a specific bylaw, Decree No. 167 of 6 July 2010 (Regulation of the National Observatory, hereinafter Decree 167/2010),<sup>xxxI</sup> which entered into force in October 2010. The text of the Regulation was preceded by a consultation process which involved all major DPOs and is the result of a common will to create an adequate body to fully implement the Convention.<sup>xxxII</sup> Nevertheless, it seems that no other options but the creation of this Observatory were taken into consideration: neither the creation of an NHRI nor the creation of a framework was examined. A subsequent Ministerial Decree of 30 November 2010 set up the National Observatory and nominated its members.



With regard to its structure, the Observatory is organisationally placed within the Ministry of Labour and Social Policies in Rome (Art. 1 of Decree 167/2010) and also financed by it. In compliance with Art. 4(1) of Decree 167/2010, the Directorate-General for Inclusion and Social Policies functions as the Observatory's technical secretariat.

According to Law 18/2009, the number of members should not exceed 40 and must respect the principle of equal opportunities between men and woman. The Decree of 30 November nominated 40 members, which included nine representatives of various ministries, two representatives of local authorities (of Province and Municipalities, respectively), two representatives of the Conference State-Regions, two representatives of the Social Security Institutions (*INPS* and *INPDAP*), one representative of the National Statistics Institute (*ISTAT*), seven representatives of social partners (trade unions and industry organisations), 14 representatives of organisations of persons with disabilities (many of them part of the National Council on Disability, the *Consiglio Nazionale sulla Disabilità CND*)<sup>xxxiii</sup> as well as three independent experts. The National Observatory also includes ten permanent guest members (*invitati permanenti*), without voting rights, who are mainly representatives of civil society<sup>xxxiv</sup>. It is not clear what the function of these participants is, but they certainly increase the inner pluralism of the body and could provide input and feedback on the activities carried out. The National Observatory is chaired by the representative of the Ministry (Art. 3 (2) of Law 18/2009).

Within the National Observatory, according to Art. 3 (1) of the Decree 167/2010 a Scientific Committee was constituted. This Scientific Committee is composed of two representatives of the Ministries (namely one representative of the Ministry of Labour and Social Policies and one representative of the Ministry of Health), one representative of the Regions and one of the local authorities, three representatives of organizations of disabled persons, and three experts (chosen by the Ministry). Its task is to determine the technical orientation of the Observatory.

With regard to its mandate, Art. 1 of Decree 167/2010 expressly defines the National Observatory as a consultative body in charge of technical-scientific support for the elaboration of national disability policies. Its tasks are namely to promote the implementation of the Convention, to prepare the biannual action plan for promoting rights of persons with disabilities, to monitor disability policies in Italy, and to promote



studies and research activities on disability, including the collection of statistical data on the situation of persons with disabilities.<sup>xxxv</sup>

The preparation of a biannual action plan is certainly one of the most noteworthy tasks. In particular, the plan is to be discussed in and prepared by the National Observatory. It is then to be adopted by Decree of the Presidency of the Republic upon the proposal of the Ministry of Labour and Social Policies, after approval by the Council of Ministers, thus taking the rank of a bylaw.

It must be noted that the National Observatory is provided with an annual budget of 500.000 EUR, from 2009 to 2014, funded by the general budget of the Ministry; decisions on the use of funds are taken by the Ministry and the Observatory (by consensus)<sup>xxxvi</sup>. In 2010, almost the whole annual budget was spent on an agreement with the Institute for the development of vocational training of workers (*Istituto per lo sviluppo della formazione professionale dei lavoratori- ISFOL*) for the preparation of the biannual action plan. In 2011, most of the budget was allocated for an agreement with ISTAT on the collection of updated statistical data on disability.

Remarkably, the National Observatory has started to operate relatively quickly after its creation, not least thanks to the pressure placed on it by DPOs. After its first meeting, which took place on 16 December 2010, the National Observatory began to elaborate a procedural document to establish its own working scheme. On May 2011, Methodological Notes on the organization of the work of this body were released, approved on 6 July 2011. The latter (soft law) document was the first tangible act of the National Observatory itself, and shows a strong commitment to the preparation of the report to be submitted to the CRPD Committee, to the biannual disability action plan setting forth policy priorities as well as to the revision of statistical indices to monitor the implementation of the Convention more effectively. Through these Notes, six working groups were constituted, each of them 'chaired' by a DPO member. Each group undertook a separate line of analysis with a somewhat different purpose, and the results of each have been gathered to contribute to the elaboration of the State report to be submitted to the CRPD Committee.

## 5.2 Strengths and Weaknesses of the National Observatory

Since Italy does not have a NHRI and the wording of the Convention leaves the door open to the designation of a single existing (or new) independent mechanism as a



framework, the choice to create a new body was probably the most suitable and easiest way to implement Art. 33(2). Nevertheless, from the overview provided above, it lucidly appears that the National Observatory is an ‘odd’, hybrid body, more similar to the coordination mechanism of Art. 33(1) than to the monitoring mechanism envisaged in Art. 33(2). It is certainly an interesting body and presents considerable strengths, but also important weaknesses and a substantial lack of compliance with the *Paris Principles*.

As mentioned above, according to these principles, independence and pluralism of a mechanism must be guaranteed. In particular, independence has a triple meaning in the *Paris Principles*: functional independence (i.e. freedom from governmental interference), personal independence (i.e. the members of the mechanism should be able to act in a pressure-free environment and be appointed according to a fair and clear procedure), and financial independence (i.e. the independent mechanism must have sufficient resources at its disposal and manage its own budget, that is decide by itself how best to allocate funding).

It appears at first glance that the composition of the National Observatory is plural and ensures appropriate inputs from different sectors in society while offering an opportunity to confront different perspectives, but that is also ensures the mainstreaming. In addition, it is remarkable that representatives of the Regions are also part of this body. This can help to ensure a certain degree of coordination in implementing the Convention, especially in areas of regional competence. The number of people with disabilities appointed as members is also noteworthy, especially considering that initially it was provided that only a minimum of 20% of DPO members should sit within the National Observatory<sup>xxxvii</sup>.

But even if a pluralist representation of social forces is ensured, functional and financial independence is far from guaranteed. Government departments are heavily represented and, differently from what happens for example in the Austrian *Monitoringausschuss*, they also participate in the deliberations. As mentioned, this considerable presence of members of the bureaucracy makes the Observatory an amalgam, more similar to a coordination body than to the framework/independent mechanism provided for in Art. 33(2). In addition, the National Observatory is not given a fully independent budget: the amount allocated to it comes from the budget of the Ministry, even if expenditures are agreed concomitantly.



The Scientific Committee inside the National Observatory also has a pluralist composition: it creates the impression of a sort of ‘small Observatory’. It is notable that the Committee is linked to civil society: the fact that three of its members come from DPOs unequivocally shows an effort to include persons with disabilities in the monitoring process, as required by Art. 33 CRPD. It is also apparent that the Committee is intended to be a technical body, but it is not really clear whether it should represent an independent mechanism. It is evident that in terms of lacking organizational and functional independence this does not comply with the *Paris Principles*. A crucial point is that, again, many of its members are representatives of the ministries and, more generally, of the public administration. In addition, the tasks given to the Scientific Committee consist more in technical advice to the implementation process of Convention, rather than in monitoring, promoting and protecting it.

Even if the terms ‘framework, including one or more independent mechanisms’ may be considered ambiguous, it has been underlined by many scholars that such a framework must include truly independent mechanisms, since the promotion, protection and monitoring of the implementation of the Convention must be carried out by bodies that fully comply with the *Paris Principles*. Although the wording of Art. 33(2) leaves the Parties with a great deal of flexibility and allows the inclusion in the framework of different organs and institutions (e.g. parliamentary commissions, judicial organs...), it imposes the designation and establishment of one (or several) independent mechanism(s) fully compliant with the *Paris Principles*. The National Observatory and its Scientific Committee are quite far away from being free from any governmental interference

Finally, as regards the Observatory’s tasks, Art. 33(2) makes it clear that there are three distinct (but inextricably linked) dimensions of the assignment to be carried out by any framework: protect, promote and monitor the implementation of the CRPD. In this respect, the OHCHR study affirms that ‘promotion’ includes a broad range of activities, from awareness raising to scrutiny for compliance of existing national legislation, regulations and practices (UN Human Rights Council, 2009, para. 64).<sup>xxxviii</sup> Analogously, the task of ‘protection’ includes investigation and examination of individual and/or group complaints, the provision of mediation, strategic litigation, and even representing plaintiffs in front of courts and tribunals (UN Human Rights Council, 2009, para. 66). Lastly, the OHCHR study explicitly states that ‘monitoring’ can only be achieved through assessing



progress, stagnation or retrogression in the enjoyment of rights over a certain period of time (UN Human Rights Council, 2009, para. 77).<sup>XXXIX</sup> The activities of the National Observatory, mentioned in Art. 3(5) of Law 18/2009, allude to the monitoring of the implementation of the Convention, as well as to promotion of the rights of persons with disabilities. But the task of protection is not even mentioned. Certainly the framework is unable to carry out any form of quasi-judicial function.

This analysis of the National Observatory makes apparent there was a valuable attempt to create a pluralist, participatory, specialized and multifunctional body. However, due to its substantive lack of compliance with the *Paris Principles*, one may easily conclude that Italy has not properly implemented Art. 33(2) CRPD yet.

### 5.3 Is there Room for Improvement?

On the basis of the arguments cited thus far, the establishment of the National Observatory is (at least) insufficient to comply with Art. 33(2) CRPD, as it was also noted in the *ISGP's* study<sup>XI</sup>. Since at this stage a modification of the body is unlikely to happen, an easy way out would be to create, in addition, a truly independent para-judicial body, i.e. an independent administrative authority, modelled after other administrative authorities (e.g. the Antitrust Authority, or the Data Protection Authority). This means that it should be authorized to hear and consider complaints and petitions and conciliate or issue binding decisions – the National Observatory does not have any of these prerogatives.

The creation of an NHRI would, probably, be the best option *in abstracto* (better even than the setting up of an independent administrative authority), but it is difficult to predict whether this is feasible. Indeed, a new law on the creation of an Italian NHRI is currently under consideration in the Senate, but it is not clear when (and if) it will be approved.<sup>XLI</sup> It must be noted that the bill under discussion is the latest in a series of drafts never passed: a first draft law was already approved in April 2007 by the Chamber of Deputies, but remained to be endorsed by the Senate. Another draft was introduced into the Senate in late 2009 and discussed in February 2010. The current bill, presented on 5 May 2011, is going through a complex parliamentary *iter*: the upcoming elections and the harsh economic crisis are quite likely to delay its final endorsement.

The formal involvement of the judiciary (almost absent, up to now) could also be an option, even if the form of such an involvement should be carefully considered. Certainly



the creation of ‘extraordinary or special judges’ is forbidden by Art. 102 of the Constitution. However, since specialised sections for specific matters within the ordinary judicial bodies may be established, such an option (its pros and cons) should be explored.

In addition, relations between the National Observatory and other bodies already in place (such as the *Istituto per lo sviluppo della formazione professionale dei lavoratori* (ISFOL), which will, according to the Methodological notes, carry out the legislative analysis for the report to be submitted to the CRPD Committee, or the Permanent Observatory on Integration of Pupils with Disabilities - *Osservatorio permanente per l'integrazione degli alunni con disabilità*)<sup>XLII</sup>) should be optimized and clarified. Up to now, an informal collaboration with the Observatory on Infancy and Adolescence (*Osservatorio per l'Infanzia e l'Adolescenza*)<sup>XLIII</sup> has been conducted, but a formal and more transparent partnership is advisable.

## 6. Concluding Remarks

Perhaps it is too early to examine whether the ‘reshaping’ of Italian disability policy making has been conducive to a proper implementation of the CRPD and to, ultimately, empower persons with disabilities. The changes that have taken place indisputably require long-term evaluation. However, the overview provided for here allows us to draw some concluding remarks.

The ratification of the CRPD in Italy has not led to substantial processes of change, but it has certainly led to a partial reassessment of disability policy making which has involved only the State. The Regions have been substantially absent from this process. No regional focal points have been established. This is particularly regrettable considering the relevant competences that Regions possess in social matters and areas like culture or territorial organisation, which are crucial for implementing the Convention.

All in all, it can be noted that the implementation of Art. 33(2) is revealing to be problematic. The National Observatory as a sort of consultative participatory structure (regardless of its lack of compliance with Art. 33(2) CRPD) is just the starting point, but cannot be considered a point of arrival. Still Italy is not fully in compliance with the CRPD, it should more convincingly engage in the construction of a true framework formed by a network of structures to capture the transformative potential of the CRPD.



\* PhD in European and Italian Constitutional Law, Attorney at Law (Verona Bar). All translations from an original Italian text, other than the Italian Constitution (including the decisions commented), are mine. The English translation of the Italian Constitution is published by the Parliamentary Information, Archives and Publications Office of the Senate Service for Official Reports and Communication and can be found at <[http://www.senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](http://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf)>. I am indebted to researchers at the Centre for Disability Law and Policy of the National University of Ireland, Galway, for their comments on a first draft. Of course, all errors and opinions remain my own.

<sup>i</sup> Law of 3 March 2009 n.18 ‘*Ratifica ed esecuzione della Convenzione delle Nazioni Unite sui diritti delle persone con disabilità, con Protocollo opzionale, fatta a New York il 13 dicembre 2006 e istituzione dell’Osservatorio nazionale sulla condizione delle persone con disabilità*’, in G.U. n. 61 of 14 March 2009.

<sup>ii</sup> The changes that are taking place have been boosted by civil society actors, trade unions and by organizations that represent people with disabilities who aim to combat discrimination and marginalization: all of these actors form networks, mobilize campaigns that advance disability rights through advocacy, and try to communicate with public institutions with a great emphasis on the Convention.

<sup>iii</sup> The ‘medical’ model tends to view persons with disabilities as ‘objects’ who are to be managed or cared for. The ‘social’ or ‘human rights’ model views persons with disabilities as subjects and not objects, emphasising respect for the equal human rights of persons with disabilities.

<sup>iv</sup> This formulation recalls the one used in the Optional Protocol to the Convention against Torture (OPCAT), which requires States to give due consideration to these Principles when designating or establishing national prevention mechanisms.

<sup>v</sup> United Nations General Assembly A/RES/48/134 85<sup>th</sup> plenary meeting, 20 December 1993. The *Paris Principles* were defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris on 7-9 October 1991 and adopted by United Nations Human Rights Commission Resolution 1992/54 of 1992 and General Assembly Resolution 48/134 of 1993.

<sup>vi</sup> Estonia and Greece completed the ratification process in May 2012. The Netherlands is still in the process of ratifying the Convention.

<sup>vii</sup> ISTAT 2003, see <<http://www.disabilitaincifre.it/prehome/quantidisabiliinitalia.asp>> (accessed 10 August 2012).

<sup>viii</sup> According to the European Court of Justice, the principle of sincere cooperation governs relations between the EU and the Member States during all phases of an international agreement to which both the EU and the Member States are going to be parties to (see *inter alia* Opinion 1/78, *International Agreement on Natural Rubber*, 1979 E.C.R. 2871).

<sup>ix</sup> On Article 117(1) of the Constitution, introduced after the 2001 constitutional reform, there has been a flushed debate among scholars. According to some scholars, Art. 117(1) should be referred to only as regards the relationship between State and Regions because its purpose is not that of governing the hierarchy of sources (Pinelli, 2001; Cannizzaro, 2001). Others (e.g. Guazzarotti, 2006: 505) argued that norms implementing international law obligations into the domestic order can serve as an interposed standard of review (an interpretation which has then been adopted by the Italian Constitutional Court).

<sup>x</sup> Art. 11 reads as follows: ‘Italy rejects war as an instrument of aggression against the freedom of other peoples and as a means for the settlement of international disputes. Italy agrees, on conditions of equality with other States, to the limitations of sovereignty that may be necessary to a world order ensuring peace and justice among the Nations. Italy promotes and encourages international organizations furthering such ends’.

<sup>xi</sup> ‘Mixture’ refers to the fact that one part of an international agreement falls within the scope of the powers of the EC/EU while another part falls within the scope of the powers of Member States (on mixed agreements see *inter alia* Heliskoski, 2001; Hillion, Koutrakos, 2010).

<sup>xii</sup> <<http://www.altalex.com/index.php?idstr=127&cidnot=47673>> (accessed 30 July 2012). Another recent important decision of *Tribunale di Varese* was recently released: Decree of 9 July 2012, see at <<http://www.personaedanno.it>> (accessed 25 August 2012).

<sup>xiii</sup> *Inter alia Consiglio di Stato* 16 March 2011, n. 1607; *Consiglio di Stato*, sez. III, 10 July 2012, n. 4085 at <<http://www.giustizia-amministrativa.it/>> (accessed 30 July 2012).

<sup>xiv</sup> Case 80/2010 of 22 February 2010 at <<http://www.cortecostituzionale.it/>> (accessed 30 July 2012).

<sup>xv</sup> Art. 38(3) affirms that ‘disabled and handicapped persons are entitled to receive education and vocational training’. According to Art. 38(4) ‘Responsibilities under this article are entrusted to entities and institutions established by or supported by the State’.

<sup>xvi</sup> Art. 10 of the Decree of 7 April 2011 No. 144 (in GU 197 of 25 August 2011) re-organized the Ministry of Labour and Social Policies. See <[http://www.lavoro.gov.it/Lavoro/Istituzionale/Ministero/AmministrazioneCentrale/DG\\_Inclusione.htm](http://www.lavoro.gov.it/Lavoro/Istituzionale/Ministero/AmministrazioneCentrale/DG_Inclusione.htm)> (accessed 28 August 2012).



xvii Many (in fact, almost all) of them designated as focal point for matters relating the implementation of the Convention the Ministry of Welfare, Labour, Social Affair/Policy (different according to each national denomination), or an internal structure of the Ministry itself (e.g. Romania), generally pre-existing, or a specific body within the Ministry or somewhat linked to it (e.g., Spain).

xviii Open-ended consultation on National Frameworks for the Implementation and Monitoring of the Convention on the Rights of Persons with Disabilities organised by the OHCHR, Geneva, October 26 2009, at <<http://www2.ohchr.org/english/issues/disability/docs/ReportConsultation26102009.doc>> (accessed 20 March 2012).

xix The Committee was originally created by the Ministerial Decree of 15 February 1978, No. 519, then modified in 2007 by Ministerial Decree <<http://www.cidu.esteri.it/ComitatoDirittiUmani/>>. The Committee of Ministries for Orientation and Strategic Guidance on Human Rights Protection (*Comitato dei Ministri per l'indirizzo e la guida strategica in materia di tutela dei diritti umani*), created in 2007 by a Decree of the Presidency of the Council of Ministers and attached to the Presidency of the Council of Minister, could also have represented a good option. It must be noted, however, that at present this Committee has 'disappeared' from the structure of the Presidency.

xx See also <<http://www.lavoro.gov.it/Lavoro/md/AreaSociale/Disabilita/>> (accessed 28 August 2012).

xxi E.g. in Spain a single focal point for matters relating to the implementation of the Convention has been designated. It is the *Consejo Nacional de la Discapacidad* (National Disability Council), now regulated by Royal Decree No. 1855/2009 of 4 December 2009).

xxii See the Third Disability High Level Group report on the implementation of the CRPD in the Member States (2010), available at <<http://ec.europa.eu/social/BlobServlet?docId=5070&langId=en>> (accessed 30 August 2012).

xxiii The Directorate (and the whole Ministry) is promoting studies on disability. It deserves to be mentioned that a new report on disability has been published on the website of the Ministry of Labour and Social Policies. G. Gori (ed), *Il sistema di protezione e cura delle persone non autosufficienti Prospettive, risorse e gradualità degli interventi*, at <<http://www.lavoro.gov.it/Lavoro/Strumenti/StudiStatistiche/>> (accessed 10 May 2012).

xxiv The UK designated the Office for Disability Issues (ODI)<sup>xxiv</sup>, a cross-government organisation set up in January 2005. ODI works with government departments, disabled people and a wide range of external groups. Separate focal points were also appointed for devolved administrations in Scotland, Wales and Northern Ireland, and the ODI itself functions as regional focal point for England. Several focal points were considered necessary to respect the UK devolutionary system and competences of sub-national entities, which touch upon many areas covered by the Convention (e.g. education, housing or social work).

xxv This choice was made because disability policies are a mix of policy measures belonging to the competency of the federal state (e.g. anti-discrimination law, quotas for federal civil servants, disability benefits), the regions (e.g. wage subsidies) or the communities (e.g. vocational training, culture and leisure). All the structures indicated as focal points were already pre-existing. At the federal level, the General Administration of Persons with Disabilities (*Direction générale des Personnes handicapées*), within the Federal Public Service Social Security (*SPF Sécurité sociale*)<sup>xxv</sup> was designated. In the Flemish Region, the Flemish Agency for Disabled People (*Vlaams Agentschap voor Personen met een Handicap*, VAPH) was designated. In the Walloon region and in the German-speaking community the focal points are, respectively, the Agency for the Integration of Persons with Disabilities (*Agence Wallonne pour l'Intégration des Personnes handicapées*)<sup>xxv</sup> and the Authority for Persons with Disabilities (*Dienststelle für Personen mit Behinderung*). The Francophone Brussels Service for Persons with Disabilities (*Service bruxellois francophone des personnes handicapées*) is responsible for implementing disability policy in Brussels, but it has not yet formally been appointed as focal point.

xxvi The *Länder* are on the way to establish their own focal points. At present, the Austrian focal point is the Federal Ministry of Labour, Social Affairs and Consumer Protection (BMASK) together with the Federal Social Office, which has nine Offices as local contact points.

xxvii *Ex pluribus* on this competence, see the Constitutional court's decisions No 248/2006; No. 50/2008; No. 207/2010; No. 248/2011.

xxviii <<http://www.statoregioni.it/>> (accessed 31 August 2012).

xxix Art. 118 and Art. 5 of the Italian Constitution.

xxx Best practices seem to be those of States which experimented with 'mixed bodies' for coordination. For example, Denmark, with only a single focal point, has decided to set up a coordination mechanism to deal with horizontal coordination of disability issues within the government, i.e. to facilitate contacts among different ministries. The Danish inter-ministerial committee of civil servants on disability matters within the Ministry Social Affairs is not devoted to coordinate the activities of focal points, since there is only one focal point, but instead has to facilitate cross-cutting activities in different sectors, share knowledge about the individual ministries' tasks in order to increase awareness of when a problem affects several sectors, and to solve ad hoc tasks for the government of disability. It includes representatives of all ministries, and disability organisations are also involved in the committee's work. In this inter-ministerial committee persons with disabilities take up an essential role in caring for general interests together with public authorities.



xxxI Ministerial Decree of 6 July 2010, No. 167 *Regolamento recante disciplina dell'Osservatorio nazionale sulla condizione delle persone con disabilità ai sensi dell'articolo 3 della legge 3 marzo 2009, n. 18* (Entry into force 23/10/2010), available at <<http://www.lavoro.gov.it/Lavoro/md/AreaSociale/Disabilita/Osservatorio/>> (accessed 20 July 2012).

xxxII See reply of the Vice-Ministry of Labour, Michel Martone, to the Deputee of the radical party Luca Coscioni, on 16 April 2012.

xxxIII The DPOs represented are: FAND (*Federazione Associazioni Nazionali Disabili*), UIC (*Unione Italiana Ciechi*), ENS (*Ente Nazionale Sordi*), ANMIL (*Associazione Nazionale Mutilati e Invalidi Lavoro*), UNMS (*Unione Nazionale Mutilati per Servizio*), ANMIC (*Associazione Nazionale Mutilati e Invalidi Civili*), FISH (*Federazione Italiana Superamento Handicap*), FAIP (*Federazione Associazioni Italiane Para-Tetraplegici*), EDF (European Disability Forum), DPI (Disabled Peoples' International), FIADDA (*Famiglie Italiane Associate per la Difesa dei Diritti degli Audiolesi*), ANFFAS (*Associazione Nazionale di Famiglie di Persone con Disabilità Intellettiva e/o Relazionale*), *Autismo Italia*, FIABA (*Fondo Italiano Abbattimento Barriere Architettoniche*), COORDOWN, UNIAMO F.I.M.R. Onlus (*Federazione Italiana Malattie Rare*) and *Gli Amici di Luca*.

xxxIV Art. 2 of the Decree of 30 November 2010.

xxxV Art. 3 (5) of Law 18/2009.

xxxVI Art. 8 of Decree 167/2010.

xxxVII See reply of the Vice-Ministry of Labour, Michel Martone, to the Deputy of the radical party Luca Coscioni, on 16 April 2012.

xxxVIII UN Human Rights Council, *Thematic study by the Office of the United Nations on the structure and role of national mechanisms for the implementation and monitoring of the Convention on the Rights of Persons with Disabilities*, para. 64.

xxxIX In the 2010 Guide for Monitoring released by the OHCHR, it is expressly stated that: 'Monitoring activities could: Provide national monitoring mechanisms with information on the state of implementation of the Convention; Provide information to the Committee for its constructive dialogue with States; Identify potential breaches of the rights of individuals under the Convention which could form the basis of a communication to the Committee under the Optional Protocol if the State concerned has ratified it; Identify reliable information on grave or systematic violations of the Convention which could be submitted to encourage the Committee to undertake an inquiry under the Optional Protocol if the State concerned has ratified it; Follow up on recommendations of the national monitoring mechanisms and the Committee to strengthen implementation of the Convention' (OHCHR, 2010: 32-33).

xl. See supra ft. 13.

xl.I Bill on the setting up of the National Commission for the promotion and protection of human rights (DDL C4534 *Istituzione della Commissione nazionale per la promozione e la protezione dei diritti umani*) <<http://www.senato.it/leg/16/BGT/Schede/Ddliter/37199.htm>> (accessed 31 August 2012).

xl.II In January 2012 a Permanent Observatory on Pupils with Disabilities (*Osservatorio permanente per l'integrazione degli alunni con disabilità*) has been established within the Ministry of Education. The functioning of this Observatory is still unclear. However, this body could certainly be part of the network.

xl.III <<http://www.minori.it/osservatorio>>.

## References

- Anzon-Demmig Adele, 2008, I poteri delle Regioni. Lo sviluppo attuale del secondo regionalismo, Giappicchelli, Torino
- Barnes Colin - Mercer Geof, 2010, Exploring Disability, Polity Press, Cambridge
- Bilancia Paola, Palermo Francesco, Porchia Ornella, 2010, 'The European Fitness of Italian Regions', *Perspectives on Federalism*, at [http://www.on-federalism.eu/attachments/063\\_download.pdf](http://www.on-federalism.eu/attachments/063_download.pdf)
- Biondi Dal Monte Francesca – Fontanelli Federico, 2008, 'The Decisions No. 348 and 349/2007 of the Italian Constitutional Court: The Efficacy of the European Convention in the Italian Legal System', *German Law Journal*, 889
- Cannizzaro Enzo, 2001, 'La riforma federalista della Costituzione e gli obblighi internazionali', *Rivista di Diritto Internazionale*, 921
- Caretti Paolo - Tarli Barbieri Giovanni, 2009, *Diritto regionale*, Giappicchelli, Torino
- Chiatti Carlos– Lamura Giovanni, 'I nodi dell'Italia', in Gori Cristiano(ed), *Il sistema di protezione e cura delle persone non autosufficienti Prospettive, risorse e gradualità degli interventi*, at <http://www.lavoro.gov.it/NR/rdonlyres/6AA4CC82-3B9F-4270-9ECB-8C552C417DFE/0/RicercaIRSsullanonautosufficienzaott2010.pdf>
- D'Amico Marilisa, Randazzo Barbara (eds.), 2009, *Interpretazione conforme e tecniche argomentative*, Giappicchelli,



Torino

- De Amicis Alessandro, 2009, 'La l. 3 marzo 2009, n. 18 di ratifica della Convenzione delle Nazioni Unite sui diritti delle persone con disabilità: i principi e le procedure', *Giurisprudenza di merito*, 2378
- De Beco Gauthier, 2012, *Study on the Implementation of Art. 33 of the UN Convention on the rights of persons with Disabilities*, Study compiled for the UN Human Rights Council - Office of the High Commissioner of Human Rights
- De Beco Gauthier, 2011, 'Article 33(2) of the UN Convention on the Rights of Persons with Disabilities: Another Role for National Human Rights Institutions?', 29 *Netherlands Quarterly of Human Rights*, 84.
- De Beco Gauthier, 2008, 'Networks of European National Human Rights Institutions', 14 *European Law Journal*, 860
- De Beco Gauthier - Hoefmans Alexander, *The UN Convention on the Rights of Persons with Disabilities: an Integral and Integrated Approach to the Implementation of Disability Rights*, Background Document prepared for the 'Work Forum for the Implementation of the UN Convention on the Rights of People with Disabilities' (18-19 November 2010, Brussels, Belgium), Study Commissioned by the Belgian Federal Public Service Social Security
- EFC, 2010, *Study on 'Challenges and good practices in the implementation of the UN Convention on the Rights of Persons with Disabilities'*, at [http://www.efc.be/programmes\\_services/resources/Documents/UN\\_Convention\\_Summary\\_EN.pdf](http://www.efc.be/programmes_services/resources/Documents/UN_Convention_Summary_EN.pdf)
- Falletti Elena, 2010, 'Il matrimonio della disabile sofferente della sindrome di Down', 4 *Giurisprudenza Italiana*, 846.
- Ferrando Giovanni, 2010, 'L'amministrazione di sostegno nelle sue recenti applicazioni', *Famiglia, Persone e Successioni*, 836.
- Guazzarotti Andrea, 2006, 'La CEDU e l'ordinamento nazionale: tendenze giurisprudenziali e nuove esigenze teoretiche', *Quaderni Costituzionali*, 505
- Guiglia Giovanni, 2007, *I livelli essenziali delle prestazioni sociali alla luce della recente giurisprudenza costituzionale e dell'evoluzione interpretativa*, Giuffrè, Milano.
- Heliskoski Joni, 2001, *Mixed Agreements as a Technique for Organizing the International Relations of European Community and its Member States*, Kluwer, The Hague
- Hillion Christophe - Koutrakos Panos (ed.), *Mixed Agreements Revisited: The EU and its Member States in the World*, Oxford University Press, Oxford
- ISGI, *La Convenzione delle Nazioni Unite del 2007 sui diritti delle persone con disabilità; modalità di recepimento, attuazione a livello nazionale e regionale, strumenti di monitoraggio*, at <http://www.isgi.cnr.it/studi-ricerche/progetti-conclusi/la-convenzione-dellonu-sui-diritti-delle-persone-con-disabilita/>
- Marchisio Sergio - Cera Rachele - Della Fina Valentina, 2010 *La Convenzione delle Nazioni Unite sui diritti delle persone con disabilità. Commentario*, Aracne, Roma
- Martinico Giuseppe - Pollicino Oreste, 2010, 'Report on Italy', in O. Pollicino, G. Martinico, *The National Judicial Treatment of the ECHR and EU Laws*, Europa Law Publishing, Groningen, 269
- Pinelli Cesare, 2001, 'I limiti generali alla potestà legislativa statale e regionale e di rapporti con l'ordinamento internazionale e comunitario', *Foro Italiano*, 194
- Pollicino Oreste, 2008, 'The Italian Constitutional Court at the Crossroad Between Constitutional Parochialism and Cooperative Constitutionalism. Case note on judgments no. 348 and 349 of 2007', *European Constitutional Law Review*, 363
- Quinn Gerard - Arnardottir Mioll Oddny (eds.), 2009, *The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives*, Brill-Martinus Nijhoff Publishers, The Hague
- Quinn Gerard, 2009a, 'A Short Guide to the United Nations Convention on the Rights of Persons with Disabilities', in L. Waddington and G. Quinn (eds.), *European Yearbook of Disability Law vol. I*, Intersentia, Antwerp, 89
- Quinn Gerard, 2009b, 'Keynote Address - Implementing the UN Convention on the Rights of Persons with Disabilities - The Institutional Architecture for Change', Jacobus ten Broek Disability Law Symposium, NFB Headquarters Baltimore, Maryland, USA April 17, 2009, at [http://www.nuigalway.ie/cdlp/staff/gerard\\_quinn.html](http://www.nuigalway.ie/cdlp/staff/gerard_quinn.html)
- Ruggeri Antonio, 2008, 'Ancora in tema di rapporti tra CEDU e Costituzione: profili teorici e questioni pratiche', 3(2008) *Politica e Diritto*, 443
- Seatzu Francesco, 2009, 'La Convenzione delle Nazioni Unite sui diritti delle persone disabili: diritti garantiti, cooperazione, procedure di controllo', *Diritti umani e diritto internazionale*, 259
- Stein Michael - Lord Janet, 2010, 'Monitoring the Convention on the Rights of Persons with Disabilities: Innovations, Lost Opportunities, and Future Potential', *Human Rights Quarterly*, 691
- Troilo Silvio, 'I 'nuovi' diritti sociali: la parabola dell'integrazione scolastica dei disabili', Speech at the



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Conference held in Trapani on 7-8 June 2012, at <[http://www.gruppodipisa.it/wp-content/uploads/2012/08/Troilo.DEF\\_.pdf](http://www.gruppodipisa.it/wp-content/uploads/2012/08/Troilo.DEF_.pdf)>(accessed 5 September 2012).

- UN Human Rights Council, 2010, *Human rights of persons with disabilities: national implementation and monitoring and introducing as the theme for 2011 the role of international cooperation in support of national efforts for the realization of the rights of persons with disabilities*, at <<http://www.unhcr.org/refworld/docid/4bd6ac702.html>>
- UN Human Rights Council, 2009, *Thematic study by the Office of the United Nations on the structure and role of national mechanisms for the implementation and monitoring of the Convention on the Rights of Persons with Disabilities*, at <<http://www.ohchr.org/EN/Issues/Disability/Pages/ThematicStudies.aspx>>