



EDF Guidance document on the Convention on the rights of persons with disabilities

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"States should recognise the rights of organisations of persons with disabilities to represent persons with disabilities at national, regional and local levels. States should also recognise the advisory role of organisations of persons with disabilities in decision-making on disability matters."

Rule 18 of the United Nations Standard Rules on the Equalisation of Opportunities for Persons with Disabilities

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1. Introduction

The Convention on the Rights of Persons with Disabilities (CRPD) is to become the international reference document on disability. Undoubtedly, the CRPD will produce over time a large numbers of interpretations, analysis, toolkits produced by scholars, organisations of persons with disabilities, and others.

Although the Convention is undoubtedly a very significant document with potential high impact on general awareness, court decisions, and government policies and legislations, it is also important to fully understand the limits of its application to make the best use of it.

Being party to a human rights convention imposes obligations on member States. Some are immediate (e.g non discrimination or equal recognition before the law), some will need progressive realisation (e.g measures to support victims of violence and abuse).

However there is no monetary or legal sanction against a state that does not respects or ensures respect of human rights. The sanction comes from the bad publicity that a State may get because of negative reports from the Treaty body or actions and complaints presented by organisations or citizens.

The more a country has a positive track record on disability rights, and organisations of people with disabilities and other human rights defenders are active, the more Governments will be sensitive to criticisms and as a consequence the Convention is likely to have a greater impact.

This is very different from EU legislation that imposes direct legal obligations on states, and where non respect does lead to sanctions (in some cases even leading to fines of millions of euros a day).

The current text does not seek to interpret the Convention but seeks to identify the immediate steps that need to be taken by National and European disability organisations.

The objectives to be achieved are at this stage 3.

- 1) to ensure a swift signature by your country of the Convention.
- 2) to follow closely and promote a swift but effective ratification process
- 3) to ensure the adequate impact resulting from the ratification of the Convention.



The process of ratification of the Convention varies among countries. However, whatever the procedure in place, when ratifying a country declares and presents evidence that it is in compliance with the rights enshrined in the Convention and commits to implement other provisions which will need progressive realisation. As a consequence the ratification implies a revision of laws, policies and programs (before and after ratification). This document gives some guidelines to that effect.

This document does not deal with the international monitoring provisions of the CRPD and the tools at the disposal of national organisations if your State is not meeting the commitments made by ratifying the Convention, which will be the subject of a later document.

2. Signature of the Convention

The CRPD and the optional protocol has been opened for signature on March 30 2006.

It is important to find out the process that is to be followed in your country which will authorise your Government to sign the Convention. In many countries this is a Government decision, requiring no decision by the Parliament. It can therefore be a rather swift process.

For EU countries, a Council decision last February allowed the European Community (EC) to sign the Convention as well as the EU Member States. All EU member States have been invited to sign at the opening date for signature (30 March) both the Convention and the Optional Protocol..

In signing the Convention, States commit themselves not to undertake any action which is inconsistent with the objectives of the Convention. It is also to be seen as a signal that they have started the process of ratification. But signing itself does not oblige States to the commitments included in the Convention.

It is important to remember throughout the process that your Government should sign and ratify not only the Convention, but also the Optional Protocol to it, with no reservations made to the text. Bear in mind that the proposal made at EU level is to sign both instruments without reservations.

Finally the signature should be publicised in your country. General awareness will be key to its implementation.

Action: Find out what procedure is being followed to allow your Government to sign the Convention and the Optional Protocol. Ensure that the signature of the Convention is publicised adequately in your country.

3. Translation of the Convention

The CRPD is currently available in the 6 official UN languages (of which 3 English, French and Spanish are official languages in some of the EU countries), which are all equally authentic.

The process of translating the CRPD into their national language(s) to produce the official national versions has started in most countries. This important and welcome process has its own risks. The production of the 6 official versions has shown that national disability organisations have to carefully monitor the translation process, as there are many new and complex concepts which might be translated wrongly.

If we don't carefully monitor the translation into our national language, some of the achievements of the Convention might be lost in certain countries.

It is important to remember that the original language is English. Ask for help of EDF, as we have followed the process from the beginning and know the history behind the different terms.

Most of the wording also comes from previous human rights Treaties. Previous translations in your languages of these documents might be helpful.

Action: Ask our Government to be part of the translation process, at least ensuring that the translation is not made official, before it has been proof-read by the national council.

Do not restrain your contribution to disability terms, but ask for the support of legal experts.

4. Ratification of the Convention

This is the actual relevant decision, as it will commit a State to the Convention and to the Optional Protocol.

It is important that national councils become familiar with the process to be followed at national level for the ratification. In most, if not all of the countries, the ratification requires a decision by Parliament.

Another Council decision will be adopted on the issue of ratification by Member States and the European Community. EDF will keep you informed on that, and on possible lobbying actions towards your Government.

In terms of time required for ratification, one year seems to be a realistic estimation. However, this will vary depending on the procedure used (see section on Status of the Convention), but also on existing legal provisions in each country.

The sooner a country ratifies, the sooner the Convention will apply to its citizens. However if a review of legislation and policy is not properly conducted, before ratification, it is highly unlikely that the Government will engage later in such a process. Organisations will have then to rely on Court action to address non compliance of legislation and policies to the Convention.

Disabled People's organisations have been greatly involved in the negotiation of the Convention at all stages, setting an important precedent in the United Nations proceedings. This approach should also be followed at national level. You should therefore claim to be involved in the process and visible when the decision is actually taken.

Action: Approach your Government to find out the procedure to be followed for approving the ratification of the Convention. Ask to be part of this process, especially the steps to be taken in the national parliament. Ask them to publicise widely the process and the moment of ratification.

5. Reservations

According to article 19 of the Vienna Convention on the Law of Treaties, “A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation.” Reservations may not be incompatible with the object and purpose of the treaty.

However, all reservations will need to be carefully scrutinised, and the compatibility might not always be so obvious.

A State may oppose the reservation made by another State. This can of course contribute to peer pressure and consequent civil society pressure against the Government involved. However its impact is not to be overestimated. Reservations may be withdrawn at any stage.

In general, it is better if States ratify without any reservation, as usually these statements limit the obligations reflected in the Convention.

At the adoption by the General Assembly, several States made these types of statements. On the following direct link of the UN ENABLE website you can find these statements:

<http://www.un.org/esa/socdev/enable/convstatementgov.htm>

The European Commission has suggested EU Member States to ratify without any reservation, supported by Germany as the Presidency of the European Union.

Action: Approach your Government and ask not to make any reservation neither on the Convention, nor on the Optional Protocol which will limit any of the acknowledged rights. In case reservations are made ask for advice on the legitimacy of the reservations and inform EDF.

6. Conference of State Parties and establishment of Treaty Governing body

The UN is working under the assumption that the CRPD will come into force in 2007. This is provided that at least 20 UN member States ratify the Convention.

One of the benefits of an early ratification is that it gives the State the opportunity to nominate experts to the Treaty Monitoring Body. EU Member States belong to two different regional groupings, and will have to coordinate within their group in order to push forward their candidates.

The first Conference of States Parties (COP) will have to be convened no later than 6 months after the entry of force of the Convention (it might nevertheless also be convened before. The UN is planning in any case to organise one before end of 2007) and will have as its main mandate to elect the first Committee in charge of monitoring the implementation of the Convention, unless it take place before the entry into force of the Treaty.

Nominations for the Committee will be received 2 months before the meeting of the COP, which means that States wanting to take part in the COP will need to have ratified the CRPD at least 2 months before the meeting of the COP.

Action: Remind your Government that late ratification implies not being able to take part in the establishment of the Treaty Monitoring Body.

7. Status of the Convention in relation to national legislation

Conventions do not prescribe to States how they have to implement the Convention, as this will vary among different legal systems.

It seems vital that national disability organisations have a clear understanding of the legal impact resulting from the ratification of the Convention. This is a mainly legal matter and it is an issue common to all international human rights treaties.

Due to the relevance of the issue, this section includes a rather long elaboration and explanation of the issue in order to give sufficient guidance to national organisations in their own research.

The following text taken from a document on the Convention on the Rights of the Child gives quite a clear overview of the different existing approaches.

"In comparative law, three approaches can be distinguished as regards the relation between national law and international law: the "dualistic" approach, the "intermediate" approach, and the "monistic" approach.

States that follow the dualistic approach make a clear distinction between domestic law and international law. International treaty obligations have effect in the domestic legal system only after they have been transposed into national law. In such a system the domestic legal effect of the various rights laid down in the CRC derive from domestic legal provisions only.

In States that follow the intermediate approach the CRC as a whole has to be transformed into a national law, but as soon as this has happened the CRC's provisions are part of the domestic legal order.

In States that follow the monistic approach, international law and domestic law are considered as one legal system and such transformation of the CRC is not necessary. The CRC as a whole is incorporated into domestic law.

In States that follow either the intermediate or the monistic approach, individual children derive rights directly from the CRC. In national procedures he or she may therefore directly invoke provisions of the CRC, which must be applied by the national courts and to which they usually must give priority in the event of conflict with national legislation.

The following extract from a publication by Philip Alston provides a complementary explanation:

"The status of treaties in national law is determined by two different constitutional techniques, sometimes referred to as "legislative incorporation" and "automatic incorporation". In some states the provisions of ratified treaties do not become (part of the national normative system) unless they have been enacted as legislation by the normal method. ... This method, referred to as "legislative incorporation" is used, inter alia, in the UK, ... and Scandinavian countries. In other states, which have (an automatic incorporation) system, ratified treaties become domestic law by virtue of ratification. This method is

method adopted, inter alia, by France, Switzerland, the Netherlands.... Even in such states, however, some treaty provisions require implementing legislation before they will be applied in courts. Such provisions are categorized as “non-self-executing.

International law does not dictate that one or the other of the methods of legislative or automatic incorporation must be used. Either is satisfactory assuming that the norms of the treaties effectively become part of national law. Conversely, neither method is ipso facto satisfactory under international law, if, in practice, the norms of ratified treaties are not applied by national judges and administrators. ...

.... In states with the system of automatic incorporation, legislative consent by at least one house of the legislature is generally required before the executive may ratify treaties. In states with the system of legislative incorporation, ratification of treaties is frequently a purely executive act not requiring prior approbation of the legislature.

.. (In this case) two different situations have to be distinguished. In States with a monist tradition like Belgium, Luxemburg or the Netherlands, the rights and freedoms of the Convention (are) applied by the courts immediately after ratification. In States favouring a dualist approach to international law such as Germany, Italy and most of the States of Eastern and Central Europe, the Convention (has) to be ‘transformed’ into domestic law. It is usually the parliamentary act of ratification, i.e the law approving the treaty and authorizing the deposit of the instrument of ratification which makes the Convention’s provisions applicable in domestic law.

There may, however, be cases of a clear-cut conflict between domestic legislation and the Convention. Here, the national judge has to decide. Where, according to the constitutional law of the State concerned, the provisions of the Convention take precedence over domestic legislation, the national judge must disregard the national law and apply the Convention instead.

Their precedence over conflicting legislation, both prior and subsequent to the ratification of the Convention, is in principle recognised in (Austria), Belgium, Cyprus, the Czech Republic, France, Greece, Lithuania, Luxemburg, Malta, (Netherlands), Portugal, Romania, Spain and Switzerland.”

Also, interesting, the following extract from general recommendation 9 by the Committee on Economic, Social and Cultural Rights:

“B. The status of the Covenant in the domestic legal order

6. An analysis of State practice with respect to the Covenant shows that States have used a variety of approaches. Some States have failed to do anything specific at all. Of those that have taken measures, some States have transformed the Covenant into domestic law by supplementing or amending existing legislation, without invoking the specific terms of the Covenant. Others have adopted or incorporated it into domestic law, so that its terms are retained intact and given formal validity in the national legal order. This has often been done by means of constitutional provisions according priority to the provisions of international human rights treaties over any inconsistent domestic laws. The approach of States to the Covenant depends significantly upon the approach adopted to treaties in general in the domestic legal order.

7. But whatever the preferred methodology, several principles follow from the duty to give effect to the Covenant and must therefore be respected. First, the means of implementation chosen must be adequate to ensure fulfilment of the obligations under the Covenant. The need to ensure justiciability (see para. 10 below) is relevant when determining the best way to give domestic legal effect to the Covenant rights. Second, account should be taken of the means which have proved to be most effective in the country concerned in ensuring the protection of other human rights. Where the means used to give effect to the Covenant on Economic, Social and Cultural Rights differ significantly from those used in relation to other human rights treaties, there should be a compelling justification for this, taking account of the fact that the formulations used in the Covenant are, to a considerable extent, comparable to those used in treaties dealing with civil and political rights.

8. Third, while the Covenant does not formally oblige States to incorporate its provisions in domestic law, such an approach is desirable. Direct incorporation avoids problems that might arise in the translation of treaty obligations into national law, and provides a basis for the direct invocation of the Covenant rights by individuals in national courts. For these reasons, the Committee strongly encourages formal adoption or incorporation of the Covenant in national law.”

And, finally, the abstract from the General Comment 31 of the Human Rights Committee:

“13. Article 2, paragraph 2, requires that States Parties take the necessary steps to give effect to the Covenant rights in the domestic order. It follows that, unless Covenant rights are already protected by their domestic laws or practices, States Parties are required on ratification to make such changes to domestic laws and practices as are necessary to ensure their conformity with the Covenant. Where there are inconsistencies between domestic law and the Covenant, article 2 requires that the domestic law or practice be changed to meet the standards imposed by the Covenant's substantive guarantees. Article

2 allows a State Party to pursue this in accordance with its own domestic constitutional structure and accordingly does not require that the Covenant be directly applicable in the courts, by incorporation of the Covenant into national law. The Committee takes the view, however, that Covenant guarantees may receive enhanced protection in those States where the Covenant is automatically or through specific incorporation part of the domestic legal order. The Committee invites those States Parties in which the Covenant does not form part of the domestic legal order to consider incorporation of the Covenant to render it part of domestic law to facilitate full realization of Covenant rights as required by article 2. “

The following conclusions can be drawn from these documents:

- The process of incorporation operates differently and national disability organisations need to find out how it works in their country, on the basis of what the country did in relation to previous international human rights treaties;
- Countries which incorporate the Convention into their legal system on ratification (automatic incorporation or through domestic law with the full text of the Convention) will require parliamentary approval prior to the ratification, in line with any other law that a country adopts. Self executing provisions of the CRPD will then be applicable, but others will require further development. In any case, a process of law reform, abolishing inconsistent legislation and developing provisions which are not self-executing is required apart from any other non legislative steps;
- Countries that need to modify their national legislation (legislative incorporation) will need to engage in a law reform process to adapt their legislation to the Convention. In order not to be in violation of the Convention, many countries might decide to finalise this process of law reform before ratification of the Convention. This might mean that ratification by these countries will be slower than by others. This seems also the approach that will be taken by the European Community for its own ratification.

Action: Find out the technique followed by your country when ratifying international human rights treaties. Meet with your Government to confirm your analysis and relevant conclusions in terms of timing of ratification, law reform and other related processes.

8. Dissemination of the Convention

The dissemination of the Convention is a vital task to make it known to the wide society.

Dissemination is something that has to be seen as a process which will start during the signature and ratification process (benefiting from the discussion in Parliament, for instance) and will go beyond.

Dissemination of the Convention is an excellent opportunity to raise awareness among all relevant stakeholders of the human rights based approach to disability.

Public funds will need to be allocated to this dissemination process, which should include general mass media campaigns, as well as more specific actions targeting key players (judges, lawyers, architects, local and regional policy makers).

9. Ensuring the adequate implementation of the Convention

In this section, we provide a number of recommendations of action which should help achieving the desired impact of a full implementation of the Convention.

9.1. Training on the Convention

The first thing which is required is that national DPOs have a full and in depth understanding of the Convention.

In order to be able to influence and monitor the actions by Government, national disability organisations need to become experts on the Convention text.

Action: National organisations shall organise training sessions to increase the understanding of the Convention. EDF can suggest experts from other countries that can provide support on specific issues.

9.2. Abolishment of legislation which constitutes discrimination

Paragraph b) of article 4 says: “States Parties undertake to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs or practices that constitute discrimination against persons with disabilities.”

This means that any discriminatory provision based on disability should be withdrawn and this would mean not just laws, but also all other provisions, like programs and even practices.

Action: National councils should engage already now in a process of identifying provisions in breach of the Convention.

9.3 Revision of national disability laws

In many countries, there exist, in one way or the other, national disability laws. Probably, it will be one of the first pieces of legislation that will need to be put in accordance with the CRPD.

The principles in this general law should mirror those included in article 3 of the CRPD (respect for inherent dignity, individual autonomy, freedom of choice, non discrimination, full inclusion in society, respect for difference, equality of opportunity, accessibility, equality between men and women, respect for children). In this respect, there are many issues to be considered, including the following 2:

- Definition of persons with disabilities

There is actually no real definition of “person with disabilities” in the Convention.

However, preamble paragraph d) includes recognition of the social model of disability.

Moreover, article 1 establishes a non exhaustive list of types of disabilities covered by the CRPD. This list means that national definitions of “people with disabilities” have to include at least these groups, but may of course go beyond these groups. While the concept “mental” is not the preferred one by people with psychosocial disabilities, we have to fight to ensure that persons with psychosocial disabilities (and others, like persons with autism, brain injury) are covered under the term “mental” and therefore protected by the Convention.

- Prevention of disability

Many national disability laws and programs include the prevention of disability as one of its objectives or strands. The CRPD deals with the human rights of people with disabilities and therefore does not deal with prevention.



National councils might want to consider lobbying their Governments to take prevention out of the scope of their national disability policy, and rather included in public health policies for instance.

9.4 Comprehensive anti discrimination legislation

While the CRPD is not only about discrimination, it is strongly based on a non discrimination approach. It seems therefore advisable that comprehensive disability anti discrimination legislation including all the anti discriminatory provisions included in the Convention is enacted.

This is also in line with our one million signature campaign. Also the European Communities will accede to the Convention mainly on the basis of their competence on non discrimination. A coordinated approach at EU level, defining a common framework would ensure uniform coverage of disability rights across the EU. In addition, no EU country does at the moment have a fully comprehensive legislation.

The definition of discrimination included in the Convention is a very broad one and should be the basis for any national definitions.

Two elements of the definition are especially relevant:

- The definition includes the denial of reasonable accommodation, in line with the EC directive 2000/78. This was a big fight and we have managed to extend this concept to all areas of life and not just employment and vocational training;
- The definition refers to discrimination on the basis of disability, which would also include discriminatory actions faced by persons who are not disabled themselves, but associated to a person with a disability, supposed to have a disability or who had a disability in the past or in the future (genetic discrimination).

However it is important to note that the Convention establishes a general right that needs to be spelled out through concrete provisions.

Action: To propose to your Government the need to adopt a EU (and national) comprehensive anti discrimination legislation covering all the areas of the CRPD.

9.5 The Convention as a benchmark

The Convention has to be seen as a reference point for any future legislative (or other) development, which will need to be done respecting the Convention.

The effective implementation of the CRPD is not just about making legislative changes, but also about allocating resources, creating or modifying programs, which will meet the objectives established by the Convention.

Action: To check all future legislation, policies and programs to see if they comply with the principles and rights enshrined in the CRPD. Ensure that adequate resources are available to implement rights that need progressive realisation.

9.6 Consultation with NGOs

Article 4 of the CRPD indicates clearly that representative NGOs of persons with disabilities have to be an active part in the implementation of the Convention and in any other decision making process that affects persons with disabilities.

Combined with the references to mainstreaming (also in article 4), this should mean in many countries a revision on how this structured consultation with disability NGOs is taking place.

Action: In view of how currently consultation is undertaken, national disability organisations should prepare a proposal on how to strengthen the consultation mechanisms, especially ensuring an adequate mainstreaming.

9.7 National implementation

Article 32 of the Convention refers to the need to have 3 different mechanisms in place:

- a coordination structure within the Government;



- a meeting point between Government and disability NGOs;
- an independent mechanism which will be in charge of monitoring the implementation of the Convention.

Most countries have 1 or 2 of these structures in place, but very few countries have all 3 of them.

It is also important to ensure that whatever governmental department leads on the issue, there is a good representation covering all fields (not only social).

In addition expertise not only on disability (in its various aspects and forms) but also human rights, and involvement of disabled people are critical for the Independent monitoring mechanism.

Action: national disability organisations should prepare a proposal on how to (re)organise the current system to respond to the 3 dimensions included in article 32.

10. Some specific examples

This section includes a short list of examples taken from the CRPD. There are much more areas than those listed here, but these examples are only meant to generate a reflection by national disability organisations on the type of work that needs to be undertaken.

10.1 Revision of systems of guardianship

One of the areas which most likely will need to be revised in every country of the world is the area on legal capacity (article 12 of the CRPD).

While, some will argue that guardianships are not prohibited, it is obvious that the shift from a substituted decision making model towards a supported decision making model will need to be undertaken.

This is clearly an area where the Convention has established the framework, but each country will need to establish its own system. This might not happen at once and might require a number of gradual steps.

Undoubtedly, this is one of the most challenging areas for Governments and one that requires special attention by national councils.

Many other articles of the CRPD are connected to article 12. For instance, the issue of informed consent to any health treatment, the choice among different living arrangements and others will only be really in place if the provisions of article 12 are fully implemented.

While this is a matter which is especially relevant for certain groups of people with disabilities, the whole national disability movement needs to be supporting this struggle. In addition, we have been reported cases of denial of legal capacity based on disability for different groups of disabled people (including physical and sensory).

Action: review your national legislation in the light of the Convention with the help of organisations of persons with intellectual disabilities, mental health, autism or chronic illness. EDF has material prepared by some of its European or national organisations that we can send you.

10.2 Sign language

Article 21 includes a paragraph which refers to the recognition of sign language.

This provision should be interpreted as requiring all States Parties (if not yet done so) to give formal recognition to sign language. This official recognition will have very relevant consequences, both in terms of education, in terms of provision of sign language interpreters, in terms of making it compulsory to public authorities to be able to interact through sign language.

Action: If sign language is not yet formally recognised in your country, propose your Government to enact legislation in this respect.

c) Development cooperation

The Convention establishes an obligation for States which provide development cooperation funds to include disability as a transversal issue.

If this is not already the practice in your country, national councils should approach the national development cooperation agencies to start doing this.

Action: Approach your national development cooperation agency to require them to include disability as a transversal issue in all relevant projects, as well as to provide funding for disability specific projects, especially in the area of empowerment.

10.3 Community living

Article 19 of the Convention establishes the obligation for States to provide a range of living options for persons with disabilities.

Action: national disability organisations shall prepare a proposal on what additional living options are required to allow adequate choice by persons with disabilities. In particular, independent living systems should be created where these do not yet exist.

11. Actions at EU level

EDF will continue to follow up and inform you of developments at EU level in terms of signature and ratification.

In particular it is important to ensure that the Convention is high on the EU agenda including when EU member States discuss disability issues. In particular it will be important to ensure that a annual meeting in the implementation of the Convention is held annually with the adoption of conclusion, and that cooperation among Member States on this matter is formally established.



EDF will mark the signature of the Convention as well as the entry into force of the Convention with awareness raising actions building with its one million signature campaign.

EDF will gather materials on specific provisions in the Convention from organisations and legal experts to support the implementation process, and will disseminate them to its members.

EDF will also be a contact point for dissemination of the different steps identified within this guidance note.

EDF will also use the Convention as a benchmark for monitoring and amending proposed EU legislation. In particular the European Commission will table a proposal next spring on ratification for the European Communities highlighting main areas of competence.

In doing so, all areas of legislation and EU competence will have to be mapped through a screening exercise.

However a 'conservative' approach is to be expected and EDF will have to do its own mapping. Such a mapping will have to look both at existing and at future legislation.

Finally it will be important to ensure that the competences of the EU Fundamental Rights Agency also cover the Convention, so as to have a more independent monitoring of its implementation within the European Union, as well as towards its external partners.



APPENDIX – About EDF and other documentation

1 About EDF

The European Disability Forum (EDF) is the European umbrella organisation representing the interests of 50 million disabled citizens in Europe. EDF membership includes national umbrella organisations of disabled people from all EU/EEA countries, accession countries and other European countries, as well as European NGOs representing the different types of disabilities. The mission of the European Disability Forum is to ensure disabled people full access to fundamental and human rights through their active involvement in policy development and implementation in Europe.

2 Other relevant EDF documents:

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More information about EDF is available on the EDF homepage at: www.edf-feph.org

Should you have any problems in accessing the documentation, please contact the EDF Secretariat.