



European
Social
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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

**DECISION ON ADMISSIBILITY AND
IMMEDIATE MEASURES**

19 October 2022

Defence for Children International (DCI), European Federation of National Organisations working with the Homeless (FEANTSA), *Magistrats Européens pour la Démocratie et les Libertés* (MEDEL), *Confederación Sindical de Comisiones Obreras* and International Movement ATD Fourth World v. Spain

Complaint No. 206/2022

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 330th session attended by:

Karin LUKAS, President
Eliane CHEMLA, Vice-President
Aoife NOLAN, Vice-President
Giuseppe PALMISANO, General Rapporteur
József HAJDU
Barbara KRESAL
Kristine DUPATE
Karin Møhl LARSEN
Yusuf BALCI
Tatiana PUIU
Paul RIETJENS
George THEODOSIS
Mario VINKOVIC
Miriam KULLMANN

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having regard to the complaint registered on 2 March 2022 as No. 206/2022, lodged by Defence for Children International (DCI), European Federation of National Organisations working with the Homeless (FEANTSA), *Magistrats Européens pour la Démocratie et les Libertés* (MEDEL), *Confederación Sindical de Comisiones Obreras* and International Movement ATD Fourth World against Spain and signed by Abdul Manaff Kemokai and Margaret Tuite on behalf of DCI, Kjell Larsson on behalf of FEANTSA, Filipe Marques on behalf of MEDEL, Cristina Faciabén on behalf of CCOO and Bruno Dabout on behalf of ATD Fourth World, asking the Committee to find that the situation in Spain is not in conformity with Articles 11, 15, 16, 17, 20, 23, 27, 30 and 31 alone as well as Article E, in conjunction with each provision concerned of the Revised European Social Charter (“the Charter”);

Having regard to the observations of the Government of Spain (“the Government”) on admissibility of the complaint and the request for immediate measures, registered on 31 May 2022;

Having regard to the Charter, and in particular to Articles 11, 15, 16, 17, 20, 23, 27, 30, 31 and E, which read as follows:

Article 11 – The right to protection of health

Part I: “Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.”

Part II: “With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia:

1. to remove as far as possible the causes of ill-health;
2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.”

Article 15 – The right of persons with disabilities to independence, social integration and participation in the life of the community

Part I: “Disabled persons have the right to independence, social integration and participation in the life of the community.”

Part II: “With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:

1. to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private;
2. to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services;

3. to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.”

Article 16 – The right of the family to social, legal and economic protection

Part I: “The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.”

Part II: “With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.”

Article 17 – The right of children and young persons to social, legal and economic protection

Part I: “Children and young persons have the right to appropriate social, legal and economic protection.”

Part II: “With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

1. a to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;

b. to protect children and young persons against negligence, violence and exploitation;

c. to provide protection and special aid from the state for children and young persons temporarily or definitely deprived of their family’s support;

1. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.”

Article 20 – Right to equal opportunities and equal treatment in employment and occupation without sex discrimination

Part I: “All workers have the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex.”

Part II: “With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:

a access to employment, protection against dismissal and occupational reintegration;

b vocational guidance, training, retraining and rehabilitation;

c terms of employment and working conditions, including remuneration;

d career development, including promotion.

Article 23 – The right of elderly persons to social protection

Part I: "Every elderly person has the right to social protection."

Part II: "With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

- to enable elderly persons to remain full members of society for as long as possible, by means of:
 - a. adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;
 - b. provision of information about services and facilities available for elderly persons and their opportunities to make use of them;
- to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:
 - a. provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;
 - b. the health care and the services necessitated by their state;
- to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution."

Article 27 – The right of workers with family responsibilities to equal opportunities and equal treatment

Part I: "All persons with family responsibilities and who are engaged or wish to engage in employment have a right to do so without being subject to discrimination and as far as possible without conflict between their employment and family responsibilities."

Part II: "With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:

- 1 to take appropriate measures:
 - a. to enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;
 - b. to take account of their needs in terms of conditions of employment and social security;
 - c. to develop or promote services, public or private, in particular child daycare services and other childcare arrangements;
- 2 to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice;
- 3 to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment...."

Article 30 – The right to protection against poverty and social exclusion

Part I: "Everyone has the right to protection against poverty and social exclusion."

Part II: "With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

- a. to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;
- b. to review these measures with a view to their adaptation if necessary."

Article 31 – The right to housing

Part I: "Everyone has the right to housing."

Part II: "With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. to promote access to housing of an adequate standard;
2. to prevent and reduce homelessness with a view to its gradual elimination;
3. to make the price of housing accessible to those without adequate resources."

Article E – Non-discrimination

"The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status."

Having regard to the 1995 Additional Protocol to the European Social Charter providing for a system of collective complaints ("the Protocol");

Having regard to the Rules adopted by the Committee on 29 March 2004 at its 201st session and last revised on 6 July 2022 at its 328th session ("the Rules"), in particular to Rules 26 and 36, which read as follows:

Rule 26: Order in which to examine a complaint

Complaints shall be registered with the Secretariat in the order in which they are received. The Committee shall deal with complaints in the order in which they become ready for examination. It may, however, decide to give priority to the examination of a particular complaint.

Rule 36 – Immediate measures

"1. At any stage of proceedings, the Committee may, at the request of a party, or on its own initiative, indicate to the parties any immediate measure, the adoption of which is necessary to avoid irreparable injury or harm to the persons concerned.

2. In case of a request for immediate measures made by a complainant organisation, the request shall specify the reasons therefore, the possible consequences if it is not granted, and the measures requested. A copy of the request shall forthwith be transmitted to the respondent State. The President shall fix a date for the respondent State to make written submissions on the request of immediate measures.

3. The Committee's decision on immediate measures shall be accompanied by reasons and be signed by the President, the Rapporteur and the Executive Secretary. It shall be notified to the parties. In the decision, the Committee shall fix a deadline for the respondent State to provide comprehensive information on the implementation of the immediate measures."

Having deliberated on 19 October 2022;

Delivers the following decision, adopted on this date:

1. The complainant organisations allege that power outages, which started in October 2020 and are still ongoing, affect parts of the Cañada Real Galiana shantytown in Madrid, Spain, and have a serious negative impact on the lives of at least 4,500 inhabitants, including about 1,800 children, constituting a breach of several provisions of the Charter, namely Articles 11, 15, 16, 17, 20(a), 23, 27§1(a), 30 and 31 taken alone or in conjunction with Article E.

2. The complainant organisations further ask the Committee to indicate immediate measures to the Government in accordance with Rule 36 of the Committee's Rules. The complainant organisations argue that with a view to avoiding serious and irreparable injury to the life, physical and moral integrity of the population concerned, the Government should immediately:

- ensure that all concerned persons have access to electricity and heating, taking into account the needs of the vulnerable groups concerned (including children, persons with disabilities and elderly persons); and
- ensure that any measures adopted are based on a coordinated approach by the competent authorities at national, regional and municipal levels.

3. Finally, the complainant organisations ask the Committee to decide to give priority to the examination of the complaint in view of the seriousness of the situation, pursuant to Rule 26 *in fine*.

4. In its observations, the Government does not contest the admissibility of the complaint. However, as regards immediate measures the Government considers that the request should be rejected for several reasons. It states in particular that the issues raised by the request are inextricably linked to the assessment of the merits of the complaint. Moreover, it argues that the conditions prevailing during the winter 2020-21 were extraordinary and unlikely to occur again. It further states that several domestic court rulings have already addressed the issues raised by the request. Finally, the Government states that many different measures have been taken to mitigate the adverse effects of the power outage. Sector 5 does have electricity and, in the case of an outage, it is restored promptly. As regards sector 6, the Government asserts that electricity cannot be restored, but several remedial measures have been taken and there is a plan to reallocate the families living there.

THE LAW

As to the admissibility conditions set out in the Protocol and the Committee's Rules

5. The Committee observes that Spain accepted the collective complaints procedure by a declaration made at the time of ratification of the Revised Charter on 19 May 2021 and that this procedure entered into force in respect of Spain on 1 July 2021. In accordance with Article 4 of the Protocol, the complaint has been submitted in writing and concerns Articles 11, 15, 16, 17, 20, 23, 27, 30 and 31 of the Charter, provisions accepted by Spain when it ratified this treaty on 19 May 2021, as well as Article E. Spain is bound by these provisions since the entry into force of the treaty in its respect on 1 July 2021.

6. The Committee notes that, in accordance with Articles 1 (b) and 3 of the Protocol, Defence for Children International (DCI), European Federation of National Organisations working with the Homeless (FEANTSA), *Magistrats Européens pour la Démocratie et les Libertés* (MEDEL) and International Movement ATD Fourth World are international non-governmental organisations with participatory status with the Council of Europe. They are included on the list established by the Governmental Committee of international non-governmental organisations entitled to lodge complaints before the Committee.

7. Regarding the particular competence of the above-mentioned organisations within the meaning of Article 3 of the Protocol, it further notes that:

- Concerning DCI, the Committee has already considered its particular competence in the framework of the collective complaints procedure (DCI v. Belgium, Complaint No. 69/2011, decision on admissibility of 7 December 2011, §7; DCI v. the Netherlands, Complaint No. 47/2008, decision on admissibility of 23 September 2008, §5). In this instance, the Committee considers that the complaint relates to a matter in which DCI has particular competence.
- Concerning FEANTSA, the Committee has also already found its particular competence in the framework of the collective complaints procedure (see, inter alia, FEANTSA v. Belgium, Complaint No. 203/2021, decision on admissibility of 6 July 2022, §5; FEANTSA v. Czech Republic, Complaint No. 191/2020, decision on admissibility of 9 December 2020, §7; FEANTSA v. the Netherlands, Complaint No. 86/2012, decision on admissibility of 1 July 2013, §11; FEANTSA v. Slovenia, Complaint No. 53/2008, decision on admissibility of 2 December 2008, §6; FEANTSA v. France, Complaint No. 39/2006, decision on admissibility of 19 March 2007, §6). In this instance, the Committee considers that the complaint relates to a matter in which FEANTSA has particular competence.
- Concerning ATD Fourth World, the Committee has also already noted the particular competence of ATD Fourth World in the framework of the collective complaints procedure (see ATD Fourth World v. France, Complaint No. 33/2006, decision on admissibility of 12 June 2006, §6). In this instance, the Committee considers that the complaint relates to a matter in which ATD Fourth World has particular competence.
- Concerning MEDEL, the Committee notes that it is an organisation founded in 1985 which currently brings together 23 organisations of judges and prosecutors, representing 18,000 judges from 16 European countries. According to its statutes, one of MEDEL's objectives is to ensure defence of the rights of minorities and of differences, particularly the rights of immigrants and the most deprived, in a perspective of social emancipation of the weakest. On

this basis, the Committee considers that the complaint relates to a matter in which MEDEL has particular competence within the meaning of Article 3 of the Protocol.

8. With regard to *Confederación Sindical de Comisiones Obreras* (CCOO), the Committee notes that this is a trade union confederation which has more than one million members and it is the largest trade union in Spain in terms of membership and delegates elected in trade union elections. The CCOO is affiliated to the European Trade Union Confederation (ETUC). Moreover, since it exercises its activities in Spain, CCOO is a trade union within the jurisdiction of this country as required by Article 1 (c) of the Protocol. In this context, the Committee therefore considers that CCOO is a representative trade union for the purposes of the collective complaints procedure.

9. The complaint is signed by Abdul Manaff Kemokai, President of DCI, and Margaret Tuite, Vice President Europe of DCI, who are entitled to represent DCI under Article 37 of its Statutes and who received a mandate from the DCI International Executive Council on 2 March 2022 to represent DCI in this complaint. The complaint is also signed by Kjell Larsson, President of FEANTSA, who is entitled to represent FEANTSA before any authority or court under Article 18 of its statutes and whose FEANTSA Administrative Council decided to join the present complaint by a vote on 9 February 2022. The complaint is also signed by Filipe Marques, President of MEDEL, who is MEDEL's legal representative pursuant to Article 5.6 of its articles of association and who, following a vote by MEDEL's board of directors on 5 January 2022, has been mandated to represent MEDEL in this complaint. The complaint is also signed, on behalf of CCOO, by Cristina Faciabén who was mandated for this purpose on 18 October 2017 by Unai Sordo Calvo, Secretary General of CCOO, pursuant to Article 32 of its statutes. Finally, the complaint is signed by Bruno Dabout, General Delegate of the International Movement ATD Fourth World, who, according to the Statutes of the Movement and by virtue of Article 6a of its Rules, can act as its legal representative. The Committee therefore considers that the complaint complies with Rule 23 of its Rules.

10. The Committee notes that for each of the provisions invoked, the grounds of the complaint are indicated, detailing in what respect the complainant organisations allege that Spain has not ensured the satisfactory application of the Charter as follows:

- Violation of Article 11, and particularly §§1 and 3, because the power outages have had a clear negative impact on the health of the affected persons, including an increase in respiratory infections, cold-related dermatologic and circulatory diseases, difficulties in the use of essential medical devices, cases of carbon monoxide poisoning, burns, etc.
- Violation of Article 15, and particularly Article 15§3, as the lack of electricity prevents persons with disabilities from fully exercising their right to independence, social integration and participation in the life of the community;
- Violation of Article 16 of the Charter, as the power outages in Sectors 5 and 6 of the Cañada Real and the State's failure to guarantee the participation of family associations when formulating policies related to the neighbourhood amount to a continuing breach of this provision, read alone and in conjunction with Article E;

- Violation of Articles 17§1(a) and (b) and 17§2 because without access to electricity, the full development of the personality of children and young persons is hindered and the resulting living conditions impact their access to education, fostering absenteeism and making it harder to study, revise or do homework;
- Violation of Articles 20(a) and Article 27§1(a) as the power outages have a disproportionate effect on the lives of women workers, including those with family responsibilities, inasmuch as they carry out most of the housework and unpaid work, which in turn makes it harder for them to enter, remain in or re-enter employment. This also amounts to intersectional discrimination of the women workers concerned;
- Violation of Article 23 because the State has failed to implement adequate measures designed to protect older persons affected by the power outages;
- Violation of Article 30 because the State has failed to take measures within the framework of an overall and coordinated approach to promote the effective access of people living in Sectors 5 and 6 of the Cañada Real to electricity and, thus, to enjoyment of basic human rights, failing to protect them against poverty and social exclusion;
- Violation of Article 31, because the State has not adopted any effective measures to prevent the interruption of essential services, including supply of electricity.

11. On this basis, the Committee considers that the complaint satisfies Article 4 of the Protocol for the purposes of admissibility.

As to the request for immediate measures

12. The Committee underlines the exceptional character of immediate measures. The adoption of said measures must appear “necessary to avoid irreparable injury or harm to the persons concerned” (Rule 36§1), insofar as “the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact” (International Commission of Jurists v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32).

13. Any request for immediate measures must establish a tangible situation in which the persons concerned by the complaint find themselves at risk of serious irreparable injury or harm (Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013, decision on immediate measures of 25 October 2013, §2; Association for the Protection of all Children (APPROACH) Ltd v. Belgium, Complaint No. 98/2013, decision on immediate measures of 2 December 2013, §2).

14. The Government objects to the request for immediate measures as it considers that the immediate measures requested are inextricably linked to the assessment of the merits of the complaint. The Government also points to the fact that domestic courts have had an opportunity to review the situation, including in respect of whether and to what extent the power outages are the result of the operation of extensive marijuana plantations and other illegal activities (see also supra at §4).

15. The Committee notes that the complainant organisations allege that the situation is tangible and presents a clear risk of serious and irreparable harm, leading to serious medical problems and worsening pre-existing health conditions, as well as precarious

living conditions and inadequate standards of living affecting particularly vulnerable groups. The complainant organisations state that this is the result of the prolonged deprivation of electricity.

16. The Committee further notes that the Government acknowledges the seriousness and complexity of the situation and the need for a solution to the precarious, unhealthy and inadequate living conditions of the residents of the specific sectors concerned of Cañada Real Galiana. However, the Government asserts that the power outage is no longer ongoing in sector 5 except very occasionally, and that it would be impossible to safely restore the electricity in sector 6 due to the fact that the high energy demand leads to the immediate activation of the overload protection mechanisms. The Government states that electricity therefore cannot be restored in sector 6 and that this is why a decision has been taken to dismantle that sector and to rehouse the residents of that section over the course of the next five to eight years. Moreover, other grants and measures to provide for laundry services, distribution of firewood, catalytic cookers, butane bottles and financing of basic goods for vulnerable families have been put in place, together with specific measures for individuals or families in particularly vulnerable situations. According to the Government, during the severe Storm Filomena of January 2021, accommodation and maintenance facilities were installed, as well as cookers, blankets and the distribution of food and water to alleviate the effects of this extraordinary circumstance.

17. The Committee finally notes that there has been a long-standing lack of electricity in parts of the Cañada Real Galiana shantytown. This has affected the lives of at least 4,500 inhabitants, including about 1,800 children, as well as members of other different vulnerable groups, including older persons, persons with disabilities, persons with medical conditions, persons of foreign origin and Roma.

18. The Committee considers that the prolonged and recurrent lack of electricity has had a very serious negative effect on living conditions of the population concerned by the complaint, especially in respect of the housing, heating and health of the population concerned. It recalls that “living conditions are a clear aggravator and, most likely, the root cause of (...) illness” (International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, decision on admissibility and on immediate measures of 23 May 2019, Complaint No.173/2018, §14). The Committee considers that the residents of the Cañada Real Galiana shantytown who are wholly or partially deprived of electricity are at risk of serious and irreparable harm to their lives due to the lack of access to electricity. This is particularly so given the approaching winter 2022-2023 and the persistent risk of adverse climate conditions that may further exacerbate the situation of the population.

19. While the Committee notes the domestic court rulings cited by the Government, it recalls that the Charter sets out international law obligations which are legally binding on the States Parties. Furthermore, the Committee has a treaty-based and exclusive responsibility for making legal assessments of whether the Charter’s provisions have been satisfactorily applied. It also falls to the Committee to decide on whether immediate measures are necessary to avoid irreparable injury or harm to the persons concerned. As such, the existence of domestic decisions related to the issue under consideration does not prevent the Committee from indicating immediate measures in the context of the collective complaints procedure.

20. Under these conditions, the Committee considers it necessary to indicate immediate measures.

21. For these reasons, the Committee, on the basis of the report presented by Aoife NOLAN, and without prejudice to its decision on the merits of the complaint,

DECLARES THE COMPLAINT ADMISSIBLE

In accordance with Rule 26 *in fine* and in view of the seriousness of the allegations, decides to give priority to this complaint and thus sets time limits for the proceedings which will not be extended.

Pursuant to Article 7§1 of the Protocol, requests the Executive Secretary to notify the complainant organisation and the Respondent State of the present decision, to transmit it to the parties to the Protocol and the States having submitted a declaration pursuant to Article D§2 of the Charter, and to publish it on the Council of Europe's Internet site.

Invites the Government to make written submissions on the merits of the complaint by 15 December 2022.

Invites the ERRC to submit a response to the Government's submissions by a deadline which the Committee shall determine.

Invites the Parties to the Protocol and the States having submitted a declaration pursuant to Article D§2 of the Charter to notify by [15 December 2022] any observations they may wish to submit.

Pursuant to Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the European Social Charter to make observations by 15 December 2022.

UNANIMOUSLY DECIDES THAT IT IS NECESSARY TO INDICATE IMMEDIATE MEASURES TO THE GOVERNMENT WHICH SHOULD BE ADOPTED AS FOLLOWS:

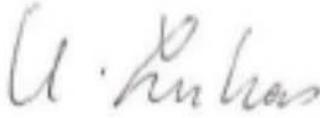
- Adopt all possible measures with a view to avoiding serious, irreparable injury to the integrity of persons living in the *Cañada Real Galiana* shantytown who do not have adequate access to electricity and therefore are exposed to risks to life and physical and moral integrity, in particular:

- to ensure that all affected persons have access to electricity and heating, in particular taking into account the needs of the vulnerable groups concerned (including children, persons with disabilities, persons with medical conditions, persons with foreign origin, older persons and Roma);
- to offer appropriate alternative accommodation to the affected persons where it is not possible, to safely ensure access to electricity and heating.

- Ensure that all the relevant public authorities are made aware of this decision and inform the Committee by 15 December 2022 of the measures foreseen to implement it.



Aoife NOLAN
Rapporteur



Karin LUKAS
President



Henrik KRISTENSEN
Deputy Executive Secretary