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Member States' Policies for Children with Disabilities

STUDY

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Member States' Policies for Children with Disabilities

EUROPEAN PARLIAMENT

DIRECTORATE GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT C: CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS

CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

Member States' Policies for Children with Disabilities

STUDY

Abstract

This study presents the comparative analysis of case studies conducted in 18 Member States regarding their policy for children with disabilities. Member States' and the Union's legal frameworks were examined in relation to the obligations arising from the United Nations Conventions on the Rights of the Child and on the Rights of Persons with Disabilities. The research identified a broad recognition of the rights of children with disabilities under national legal systems either through general or specific legislation. However, their practical implementation revealed to be problematic in most Member States resulting in obstacles faced by children with disabilities in their day to day life. This led to a set of recommendations for EU action to enhance the situation of children with disabilities. The 18 country reports are made available separately.

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LIST OF ABBREVIATIONS

Art.	Article
Charter	The Charter of Fundamental Rights of the European Union
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CJEU	Court of Justice of the European Union
CRC	United Nations Convention on the Rights of the Child
CRPD	United Nations Convention on the Rights of Persons with Disabilities
EC	European Communities
ECHR	Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms
EDF	European Disability Forum
EP	European Parliament
EU	European Union
FRA	European Union Agency for Fundamental Rights
MS	Member States
NGO	Non-Governmental Organisation
No	Number
TBC	To be confirmed
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation

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EXECUTIVE SUMMARY

There are about 100 million children in the European Union and about 80 million European persons with disabilities. While the number of children and the number of persons with disabilities is well documented, the same cannot be said of children with disabilities. Children with disabilities combine different factors of vulnerability. As children the protection of their rights requires the adoption of special measures that are recognised by the UN Convention on the Rights of the Child (CRC). As individuals with disabilities, they are particularly vulnerable EU citizens who deserve specific safeguards and protection as acknowledged by the UN Convention on the Rights of Persons with Disabilities (CRPD).

Children with disabilities and their families face on a daily basis specific problems such as the lack of assistance and support for their inclusion in schools, experiences of violence and the lack of proper tools for reporting them, difficulties in accessing buildings or services or troubles in being heard and participating in decisions affecting their lives.

The Conventions include provisions addressing these concerns and providing protection to the right to enjoy all human rights and freedoms with no discrimination ensuring

- equality of opportunities and accessibility,
- the best interests of the child as a consideration in all actions concerning them,
- the evolving capacities of children with disabilities as a consideration in decisions affecting them,
- the right to be heard in proceedings and decision-making processes affecting the child and the right to a full and effective participation,
- the right to family life,
- the right to effective access to education and inclusive education,
- the right to health care,
- the right to assistance, and
- freedom from violence.

This study is structured to mirror the requirements of both conventions reflecting the main rights of children with disabilities to be implemented generally in the EU due to the high rate of ratification by EU Member States. Moreover, in December 2010, the European Union became a party to the CRPD. In doing so, the EU recognised the challenges persons with disabilities face in securing the fulfilment of their rights and assumed the responsibility for its implementation alongside Member States. The EU's responsibility towards the implementation of the CRC is of a different scale. Despite the lack of ratification by the EU, the CRC rights and principles guide the EU policies and action since the Treaty recognises the rights of the child as an EU objective.

This study assesses the current situation with respect to the rights of children with disabilities in the EU and the need for EU legislation or for other measures. The options to act at EU level are framed within the extent of the competences conferred by the Treaties, which can be exclusive, shared or supporting competences (Article 2 TFEU).

The current EU legislative and policy framework give recognition to the Conventions' rights and principles applicable to children with disabilities and a certain degree of implementation. However, the existing EU legislation relevant to this area is mainly sectoral (i.e., employment or immigration). The legislation addresses the situation of persons with disabilities separately from the rights of the child, whereas there is a need to consider children with disabilities as they face multiple discrimination, on the basis of age as well as disability, and to tailor measures to ensure that their rights are respected.

A. Comparative analysis of national legal frameworks

The comparative analysis of the national legal frameworks on children with disabilities' rights in 18 Member States[1] is based on a set of criteria developed to enable an assessment of comparable data reported in each national study. The criteria are based on the requirements within each right and principles identified as pertinent to the situation of children with disabilities.[2] The criteria are derived from the text of both conventions and the CRC General Comments on their interpretation.

Overall, the 18 Member States have in place comprehensive legal frameworks reflecting the main aspects of the rights and principles identified under the CRPD and CRC. While it may be stated that the rights of children with disabilities are broadly recognised under national legal systems either through general or specific legislation, their practical implementation revealed to be problematic in most Member States.

Consideration of the **principle of best interests of the child** is generally recognised under national laws. However, implementation is mostly limited to family and social protection decisions affecting children and the specific needs of children with disabilities are not recognised. The country studies found a lack of understanding of what the principle entails, along with insufficient development of the concept through law or jurisprudence and an overall lack of implementing rules.

The **right to non-discrimination** based on disability or age is reflected in national legislations, however, the implementation of the right is generally only partial and the reasonable accommodation measures are generally insufficient to guarantee the right. In practice, accessibility remains a key problem in most Member States. Reference to the multi-discrimination factors faced by children with disabilities or girls with disabilities is rarely acknowledged. There is a lack of monitoring results and of data on cases of right's violations that could help define more effective measures.

Most countries partially take account of the **evolving capacities** of the child mainly on the basis of considerations of age, maturity and development of the child. However, the situation of children with disabilities is not specifically acknowledged. The implementation is limited to a certain type of decisions and Member States tend to primarily take into consideration the child's age, which for children with disabilities may not be relevant and which can effectively exclude them from decision making processes that affect them.

[1] For this study 18 Member States legal frameworks have been analysed: Belgium, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Ireland, the Netherlands, Malta, Poland, Romania, Slovenia, Spain, Sweden and the United Kingdom. Those countries have been selected by the European Parliament in the Terms of Specifications of this study.

[2] 8 rights and principles have been identified as most relevant to the situation of children with disabilities: the best interests of the child, the right to non-discrimination, the consideration of evolving capacities, the right to participation/to be heard, the right to be free from violence, the right to family life, the right to assistance and the right to education.

The **rights to participation and to be heard** in decision making processes affecting children with disabilities are recognised under the legislation of the 18 Member States. However, their implementation is often limited to some sectoral procedures mostly regarding family law and at a certain extent in education. In practice, children with disabilities are not systematically involved and do not get to participate in public and private life at the same level than their able-peers.

In general **freedom from violence** is recognised by Member States' legislation. However, abuse against children with disabilities is a key problem acknowledged in all country reports. Violence occurring in institutions is of particular concern. The lack of systematic data and the difficulty for victims to report abuses do not allow an overview of the situation needed for the adoption of appropriate policies and measures.

The **right to family life** is widely recognised in the laws of the selected Member States. However, insufficient guidance and support to families for the integration of the child with disabilities and for helping them in their day to day lives is a key problem in most of the 18 Member States. Without proper assistance, families with difficulties might give up on their responsibility leading to a situation where alternative options are unlikely and institutionalisation is the only response available.

Overall the right to various forms of **assistance** (financial, social, health care, etc.) both for children with disabilities and for their families is recognised in legislation or regulatory rules. However, again in most cases assistance is sectoral (mainly social and health) and insufficient (financially and human assistance). The economic crisis is contributing to the removal and reduction of assistance in most Member States. Access to assistance is often perceived not as an instrument enabling protection of rights but rather as a discretionary measure subject to budget constraints.

All Member States recognise the **right to education** in their Constitutions or legal frameworks; however, the ability to access the school of choice for children with disabilities remains very challenging in practice. Mainstream schools remain largely inaccessible to children with disabilities in many Member States, while in other countries schools have insufficient resources and support for the child with disabilities is scarce. In addition, teachers in mainstream schools lack training and awareness on the needs of children with disabilities and programmes are not systematically adapted to them.

Compliance mechanisms are weak and lack adaptation to the situation of children with disabilities. Lack of information and guidance to families with children with disabilities on their rights, procedures and competent authorities decreases their ability to access these tools.

On the basis of these findings, the study sets forth conclusions and recommendations for EU action, taking into account the competence of the EU conferred by the Treaties on a range of policy areas, including disability and children's rights.

B.1 The role of the European Union

The EU has no explicit competence on children with disabilities. However the EU framework contains provisions recognising the EU's role to promote the protection of the rights of the child as an EU objective as well as its competence to combat discrimination based on disability. Furthermore, the Charter of Fundamental Rights of the European Union, with similar legal value as the Treaties, recognises the right to non-discrimination on ground of disability in Article 21 and the rights of the child under its Article 24. This recognition, while important, cannot extend the competences of the EU as conferred by the Treaties.

The EU, together with Member States in areas of shared competence or national competence, is bound by the CRPD obligations and is required to take the necessary measures to combat discrimination on the grounds of disability within the framework of Article 19 TFEU or in other matters falling within EU competence. Article 19(1) TFEU provides the legal basis for EU action (see among others the proposal for equal treatment Directive of 2008[3]) but the unanimity requirement makes achieving agreement under this legal base difficult. Article 19(2) provides the possibility for the EU to adopt basic principles and incentive measures to support Member States' action to combat discrimination through the ordinary legislative procedure.

Neither the above mentioned proposal for an equal treatment Directive nor any other EU measures provide for a **definition of disability**. Prior to the adoption of the CRPD, in a judgment in July 2006, the Court of Justice of the European Union (CJEU) defined disability in the same sense as the CRPD within the context of employment policy as 'a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life'.[4] Recently, the CJEU has further developed this concept[5] stating that disability results from barriers hindering the full and effective participation of the person concerned in professional life *on an equal basis with other workers* and calling on the employer to take reasonable accommodation measures.

EU action is also possible when linked to other policy areas of EU competence. Several issues related to the rights of the child with disabilities are linked to EU policies such as social policy, economic, social and territorial cohesion, transport, freedom, security and justice all of which are shared competence. In addition, the EU has the option to take action to support Member States policies in a number of areas affecting children with disabilities such as education, sports, youth or health.

B. 2 Existing relevant EU secondary legislation

The **best interests of the child as primary consideration in actions relating to children** is a fundamental requirement recognised in EU legislation. Article 7 of the Mediation Directive 2008/52[6] requires the mediator to take into account the best

[3] Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM/2008/0426 final, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008PC0426:en:NOT (last accessed 6.5.13).

[4] Judgment C-13/05 of the Court (Grand Chamber) of 11 July 2006, *Sonia Chacón Navas v Eurest Colectividades*, pt 43.

[5] Judgment of the Court, Joint cases C-335/11 and C-337/11 of 11 April 2013, *HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab* (C-335/11) and *HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening acting on behalf of Pro Display A/S* (C-337/11), pt 47.

[6] Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters.

interests of the child when deciding whether the child can give evidence in judicial proceedings. The Family Reunification Directive[7] requires Member States' authorities to consider the best interests of children when examining an application for family reunification (Article 5)[8]. The protection of the best interests of the child is explicitly mentioned in Council Directive 2004/81/EC[9] on victims of trafficking in human beings.

Non-discrimination at EU level is currently addressed by four EU Directives to combat discrimination on the basis of protected grounds such as sex, racial or ethnic origin, religion or belief, age and sexual orientation, most of them restricted to the area of employment.[10] They lay down rules 'for combating discrimination (…) with a view to putting into effect in the Member States **the principle of equal treatment**'.[11] Disability is recognised as grounds for discrimination under Directive 2000/78/EC and, furthermore, protection of equality between men and women in matters of employment and occupation under Directive 2006/54/EC applies to persons with disabilities. Directive 2000/43/EC on equal treatment between persons irrespective of racial or ethnic origin does not include disability as a protected ground. Directive 2004/113/EC on equal treatment between women and men in access to supply of goods and services refers to discrimination on grounds of sex but not on age or disability.

The European Commission has acknowledged the differences of protection provided across the various grounds and published a proposal for a Directive in 2008 aiming at completing the legal framework on anti-discrimination law and providing for a more equal level of protection across the grounds[12].

Other measures in policy areas such as the internal market or transport have an impact on children with disabilities' access to services with no-discrimination. For example, Directive 2001/85/EC on the carriage of passengers, requires accessibility features for persons with reduced mobility and visually impaired persons. Other instruments cover rights of persons with disabilities when travelling by air, accessibility to lifts, in carrying out public procurement or in measures for telecommunication[13].

Within the remit of its competences, the EU's action to combat discrimination is complemented with activities by the EU Institutions to improve knowledge about discrimination (e.g. by raising awareness), support intermediary actors (e.g. NGOs, social partners and equality bodies) to improve their capacity to combat discrimination and to encourage the exchange of national good practices.

[7] Council Directive 2003/86/EC, on the right to family reunification.
[8] 'Developing indicators for the protection, respect and promotion of the rights of the child in the European Union' FRA, March 2009, available at http://fra.europa.eu/sites/default/files/fra_uploads/358-RightsofChild_summary-report_en.pdf.
[9] Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who has been the subject of an action to facilitate illegal immigration.
[10] Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast directive); Directive 2004/113/EC on the principle of equal treatment between women and men in the access to and supply of goods and services; Directive 2000/43/EC on the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.
[11] Article 1 Directive 2000/43/EC.
[12] Proposal for a Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)426). It is currently blocked in the Council.
[13] 'Study on challenges and good practices in the implementation of the UN Convention on the Rights of Persons with Disabilities VC/2008/1214', European Commission, Brussels, 2010, Executive Summary available at http://www.efc.be/programmes_services/resources/Documents/UN_Covention_Summary_EN.pdf.

The consideration of children's **evolving capacities** is recognised in the Brussels II*bis* Regulation 2201/2003 which requires courts to hear the view of the child according to his/her age or degree of maturity. The same formulation is found in EU legislation concerning immigration and asylum in relation to unaccompanied minors.

Children's right **to participation** is recognised in some Commission strategic documents including the 2005 'European policies concerning youth', the 2006 'EU strategy on the rights of the child', the Youth in Action Programme and the EU Agenda for the Rights of the child of 2011. EU legislation on immigration and asylum recognise the right of the child to be heard during proceedings under the Brussels II*bis* Regulation 2201/2003.

The EU has adopted a number of measures on the **protection of children from violence**[14] relating to child trafficking, to the sexual exploitation of children and to the protection of victims including several Directives[15] that have been adopted to replace some of these instruments. For example, the Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, focus on the protection of children which are more vulnerable than adults and establishes more severe penalties when the offence is committed against vulnerable persons such as children and persons with disabilities.

The Directive 2012/29/EU establishing minimum standards on the rights, support and protection of the victims of crime recognises that a victim of crime should be treated without discrimination based on any ground including age and disability. Lastly, Directive 2011/92/EU on combating sexual abuse, the sexual exploitation of children and child pornography[16] provides the need for specific protection of children with disabilities.

The **right to family life** and the maintenance of the child in family context is at the heart of Council Regulation 2201/2003 Brussels IIbis (EC)[17]. In the field of immigration policies, the right of the child to family life is ensured by the rules on family reunification[18] and the provisions of the Directives on asylum[19] regarding unaccompanied

[14] Framework Decision 2002/629/JHA on combating trafficking in human beings; Council Directive 2004/81/EC on the residence permit issued to third-country nationals victims of trafficking in human beings; Council Framework Decision 2004/68/JHA on combating sexual exploitation of children and child pornography; Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings; Council Resolution 2001/C 283/01 on the contribution of civil society in finding missing or sexually exploited children. Decision No 1351/2008/EC establishing Safer Internet Programme 2009-2013.

[15] Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography and replacing Council Framework Decision 2004/68/JHA, Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

[16] Article 1 Directive 2011/92/EU.

[17] Council Regulation (EC) No 2201/2003, concerning jurisdiction, recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility.

[18] Council Directive 2003/86/EC on the right to family reunification; Council Regulation (EC) No 343/2003, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national; Council Directive 2004/83/EC of on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who need international protection; Directive 2008/115/EC, on common standards and procedures in Member States for returning illegally staying third-country nationals.

[19] Council Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons; Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers; Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals, stateless persons or refugees as persons who otherwise need international protection; Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting or withdrawing refugee status.

minors and the respect for the family unit.

The principle of **maximum inclusion in society** of children with disabilities is reflected in strategy documents such as the Disability Strategy 2010-2020[20] and the EU 2020 Programme in relation to education and training[21]. The 2003 Council Resolution on equal opportunities for Pupils and Students with Disabilities [22] addressed the problem of access to education by children with disabilities. In 2010, the Resolution of the European Parliament on mobility and inclusion of children with disabilities[23] stressed the need to ensure full respect for the rights of the child, including the right to education and the right to participate in community life of children with disabilities. The EU Institutions also support the **European Agency for Development in Special Needs Education,** the independent organisation acting as a platform for collaboration on special educational needs and the promotion of full participation within mainstream education and training[24].

C. Recommendations for EU action

When evaluating the need for specific recommendations aimed at improving the situation of children with disabilities, it is important to highlight that children with disabilities are first and foremost children with the same needs as any other children and who should be beneficiaries of all rights recognised by the CRC. Their intrinsic difference with their peers needs to be recognised for designing appropriate legislative and policy measures.

Horizontal issues

- As a first and general recommendation, all EU Member States which have not already done so should ratify the two conventions referred to in this study and implement their provisions by adopting national legislation and ensuring its practice.
- The European Commission, liaising with the UN Secretariat for the CRPD and the UN Secretariat for the CRC, should ensure Member States understanding and implementation of several definitions of the Conventions that are cornerstones for the implementation of the rights of children with disabilities, namely the definition of "disability", the "best interests of the child" and the "evolving capacities of the child". They should lead the development of initiatives to ensure that the specificities of children with disabilities are taken into account.

  To that end, it is recommended that the Commission takes the initiative to provide clarification at EU level of the CRDP definition of "disability" as it is considered to be too broad in practice and its implementation at national level is therefore difficult. The development of guidance documents, exchange of best practices and promotion of existing manuals are recommended.
- The European Commission should take action to promote that children with disabilities are considered in existing mainstreaming initiatives for non-discrimination and equal treatment.

[20] Area of action 5 of the Commission Communication European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe COM(2010) 636 final.
[21] Council Conclusions of 12 May 2009 on a strategic framework for European cooperation in education and training ('ET 2020'), 2009/C 119/02, OJ C 119/2, of 28 May 2005.
[22] Council Resolution of 5 May 2003 on equal opportunities for pupils and students with disabilities in education and training, 2003/C 134/04.
[23] European Parliament Resolution of 25 October 2011 on mobility and inclusion of people with disabilities and the European Disability Strategy 2010-2020 (2010/2272(INI)).
[24] European Agency for Development in Special Needs Education website available at http://www.european-agency.org/about-us.

- The EP, the Council and the Commission should promote the development of national information tools to assist families with children with disabilities to understand the legal frameworks applicable to them, including access to assistance measures, competent authorities, procedures and compliance mechanisms. Specific tools addressed to these families could include an EU web portal which could be linked, where possible, to national portals providing full information on rights, requirements, criteria for implementation, competent authorities, and coordination systems. This initiative could bring citizens closer to the EU.
- The EU Institutions should take a leading role in promoting awareness-raising on issues concerning the rights of children with disabilities, their interests and specific needs in order to promote the full implementation of the principle of best interests of children with disabilities. The EP and the Council could also use their budgetary powers to provide for financing of awareness-raising campaigns.

Best interests of the child

- While most countries have legislation recognising the principle of best interests of the child, only few Member States contain in their legislation a general requirement for its systematic consideration in all decisions affecting children. Some Member States (such as Sweden and the UK) have introduced child impact assessments of proposed legislation. It is recommended that the European Commission promotes the exchange of these initiatives and develops a guide on methodologies for carrying out these child impact assessments implementing the best interests of the child principle.

Right to non-discrimination

- The concept of reasonable accommodation in relation to the specific situation of children with disabilities needs clarification and further development to define the boundaries for the use of disproportionate burden. The EU, through the Commission, could support this through exchange of best practices at national level on the implementation of reasonable accommodation covering different situations. This would help defining the baselines from which the respect of the right requires public authorities' action and prevents it from being subject to arguments of disproportionate costs.
- The 2008 Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, if adopted, has the potential of addressing the situation of children with disabilities. Amendment 37 introduced by the European Parliament refers to multiple discrimination. Within this context, clarification could be introduced in the recitals of the proposed Directive in order to ensure that the situation of children with disabilities is considered as a part of its scope.
- The European Commission's draft for an upcoming European Accessibility Act should explicitly cover children with disabilities' access to goods and services, at least with a reference to multiple discrimination cases.

Evolving capacities of children with disabilities

- The EP should consider ways to raise awareness and promote taking into account the evolving capacities of children, including children with disabilities, with the aim to have the principle applied in all decision making processes affecting them.

- Any new legislation on child-friendly justice should include consideration of the ability of the child with disabilities to be heard in judicial proceedings affecting them. The Commission should ensure that these provisions are included in the anticipated EU law on special safeguards for suspected or accused persons who are vulnerable, including children, or the anticipated EU law for the recognition and enforcement of decisions on parental responsibility.
- Furthermore, it is recommended that the European Commission, the Council and the EP promote the use of the Council of Europe Guidelines on child-friendly justice and support training for the relevant professionals at all levels.

Right of participation of children with disabilities

- The anticipated European Accessibility Act could provide for the development of tools to ensure the participation of children with disabilities in the consultation processes of the legislative and policy initiatives affecting them.
- The EP should explore ways to raise awareness on the requirements needed to ensure the right of participation of children with disabilities through concrete measures such as simulation of plenary meetings in the EP involving children with disabilities, guaranteeing physical access to the EP buildings or designing tools to ensure non-physical participation.

Right to be heard of children with disabilities

- In order to enable effective implementation of the right to be heard by children with disabilities, changes in the attitudes of judicial, administrative and enforcement officers are needed. To that end, the EP, the Council and the Commission should encourage Member States to develop awareness-raising actions and training addressed at public authorities.
- The Commission in preparing legislation on child-friendly justice, should ensure that adequate steps are taken to identify the ability of the child to express his/her views in judicial proceedings affecting them, enabling a climate of trust between the child and the judicial and enforcement officers and providing reasonable accommodation to ensure the effective right to be heard of children with disabilities.

Freedom from violence

- It is recommended that the EP, the Council and the Commission promote the development of statistical information on the situation of violence affecting children, and in particular children with disabilities. Furthermore, they should promote the development of indicators (such as disability, children, girls, family environment) to be mainstreamed in other policy or general surveys so as to provide systematic data on the situation of children with disabilities.
- The European Commission and the EP should promote FRA to examine the situation of violence against children, particularly in institutions, including children with disabilities as they are particularly vulnerable. The necessary funding should be proposed to the budgetary authority.
- The European Commission should consider in particular the need for measures at EU level aimed at reducing the number of cases of violence against children, especially

children with disabilities, in Member States (both in a domestic context and in public institutions). The Commission could start preparatory work by organising working groups with Member States experts to consider:

  - proposals for ensuring that Member States set up preventive measures and proper monitoring systems to detect cases of violence and abuse against children;
  - the set up of control mechanisms and regular inspections;
  - peer reviews or the Open Method of Coordination for implementation of proposals;
  - access to information and communication services targeted at improving the system of complaints concerning children's right to freedom from violence.

- The Commission could promote the organisation of specialised EU-wide training and workshops amongst professionals to share knowledge on complaint procedures, reporting measures and accessibility of communication services for children with disabilities, especially for children with severe disabilities or intellectual impairments. The budgetary authority should provide adequate funding for these activities.

Right to family life of children with disabilities

- The Commission, the Council and the EP should encourage Member States to set up appropriate support structures for families with children with disabilities in order to reduce the risks of the child losing family life while safeguarding the best interests of children with disabilities.
- Within the Open Method of Coordination, the Commission should develop Guidelines on minimum requirements of residential institutions with regards to children with disabilities. The Guidelines would aim at ensuring that residential care centres have a small number of users and the capacity to host children with autism or with intellectual disabilities.
- The Commission should propose to the budgetary authority the use of EU funds for the protection of children's right to family life, prioritising funds for families while ensuring that the good quality of the institutions is maintained.

Access to assistance

- A special single national body (with regional offices) responsible for the management of services, budget and assistance of children and their families should be established in order to ensure consistency, coordination, effectiveness, increase accessibility and better guidance for families on the funding support available.
- The EP should continue to lead actions on children with disabilities to inform Member States on the negative impacts of budget cuts on implementation of their rights, especially in the field of education, social protection and health care.
- Within the European Semester process, the Commission should provide appropriate recommendations to Member States on how to use existing resources effectively instead of just cutting the necessary assistance for children with disabilities who belong to the most vulnerable citizens.

Access to inclusive education

- The Commission should develop actions to support Member States in improving

education systems for children with disabilities through the Open Method of Coordination or peer review while respecting their general competence for matters related to education. Action at EU level could include:

- Development of best practice guides and recommendations on the minimum type of resources needed in mainstreaming schools, and on the role of parents and children with disabilities in decision-making processes affecting children with disabilities or the development of education objectives;
- Promotion of training for teachers on better understanding of children with disabilities' needs and evolving capacities, teaching methodologies and handling of children with specific disabilities in a class together with their able-peers;
- Promotion of teaching tools that help the inclusion of children with disabilities in schools and outside of schools such as the Council of Europe's COMPASS manual;
- Promotion of anti-bullying and anti-stigmatisation initiatives, including awareness-raising campaigns promoting inclusion of children with disabilities; and
- Development of quality objectives for education offered to children with disabilities and the promotion of initiatives to maintain the support for higher education.

EU Funding

- The EP, the Council and the Commission should promote among Member States the use of the Structural Funds to foster the development of quality social services provided for children with disabilities, while facilitating the implementation of the Voluntary European Quality Framework for Social Services;
- The EP, the Council and the Commission should promote the development of family and community-based alternatives with the purpose of de-institutionalisation.
- The EP, the Council and the Commission should encourage the use of structural funds for improving accessibility and inclusive education.

1. INTRODUCTION

Children with disabilities combine different factors of vulnerability. As children, they require the adoption of special measures to ensure the protection of their rights as recognised by the UN Convention on the Rights of the Child (CRC). As individuals with disabilities, they are particularly vulnerable children who deserve specific safeguards and protection as acknowledged by the UN Convention on the Rights of Persons with Disabilities (CRPD).

Persons with disabilities represent 15% of the whole population in Europe, amounting to about 80 million Europeans. There are over 100 million children in the European Union (EU).[25] Currently no aggregated data are available concerning how many children with disabilities are in the EU. The only data available concern children with special educational needs (SEN), which cover only a limited number of children with disabilities. It is estimated that 15 million European children have special educational needs.[26] The number of children with disabilities might be considered low in relation to the whole population of persons with disabilities. However, the relevance lies in the fact that they will live with disabilities for all or most of their lives in comparison with the larger group of people who experience disabilities when reaching the age of 65 or over or those whose disability came sometime during adulthood, either accidentally or by disease. Therefore all policies, legislation and measures adopted at EU or national level will have an impact on them lasting their whole lives.

It is commonly recognised that children with disabilities are five times more likely to be victims of abuse.[27] Whether it is from bullying at school, economic exploitation, sexual or physical violence, abuse or neglect, children with disabilities are particularly vulnerable to various forms of violence. The situation of girls with disabilities with regards to violence in institutions is of particular concern. However, no data are available. As an indicator, the European Parliament report published in 2004[28] 'on the current situation in combating violence against women and any future action', stated that almost 80% of all women with disabilities suffer violence and are four times more likely to suffer sexual violence than other women. In addition, children with disabilities face significant barriers to full inclusion into society, whether it is physical access to buildings, participation in cultural or sport activities, education or health care.[29] As a result, children with disabilities require specific attention and protection from national authorities, as well as at the European level.

[25] Data for 2009 from Eurochild and Euronet, European Parliament Election Manifesto, <http://www.crin.org/docs/EurochildManifestoEP2009.pdf> (last accessed on 28 January 2013).

[26] Data for 2012. European Commission, Press release, Special needs children and disabled adults still getting a raw deal from education, 10 July 2012, IP/12/761, available at <http://europa.eu/rapid/press-release_IP-12-761_en.htm> (last accessed on 28 January 2013).

[27] General Comment No. 9 'The rights of children with disabilities', UN Committee on the Rights of the Child, 2006, available at http://tb.ohchr.org/default.aspx?Symbol=CRC/C/GC/9 (last accessed on 24 November 2012).

[28] The European Parliament Committee on Women's Rights and Gender Equality, 'Report on the current situation in combating violence against women and any future action', 2005, available at http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2005-0404+0+DOC+PDF+V0//EN (last accessed on 21 February 2013).

[29] Commission staff working document accompanying the communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe, available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2010:1323:FIN:EN:PDF (last accessed on 24 November 2012).

The latest Eurobarometer[30] on discrimination in the European Union in 2012 shows that the three most widely perceived grounds for discrimination are 'ethnic origin' (56%), 'disability' (46%) and 'sexual orientation' (46%). According to the report, the levels of discrimination experienced in 2012 are very similar to those reported in 2009, when 16% of EU citizens reported to have personally suffered discrimination. Out of those, Europeans with disability (28%) are most likely to report experiencing discrimination.

In December 2010, the European Union became a party to the CRPD. In doing so, the EU recognised the challenges persons with disabilities face in securing the fulfilment of their rights, and brought to the forefront of the European Union's agenda the need for EU actions in that area, alongside Member States. All 27 EU Member States signed the Convention and the majority of them have already ratified it.[31]

The CRPD provides a legal framework for the protection of the rights of children with disabilities as particularly vulnerable EU citizens. Its Article 7 is specifically devoted to children with disabilities and requires Member States to take all necessary measures to ensure that children with disabilities can fully enjoy all human rights and fundamental freedoms on equal footing with other children. These obligations relate, *inter alia*, to the right to education and the respect for the evolving capacities of children with disabilities, the right to family life and care within the community, the right to health and access to goods and services including leisure activities. In addition, Article 16 requires States Parties to take all necessary measures to protect children with disabilities from exploitation and abuse.

The EU ratification of the CRPD along with the requirement to combat discrimination based on disability under Article 10 TFEU requires the EU to take action against discrimination based on disability when defining and implementing its policies. Within this framework, Article 19 of the TFEU enables the EU to take appropriate action to combat discrimination based on *inter alia*, disability, by adopting measures through the special legislative procedure. Furthermore, the EU can take measures adopting basic principles by ordinary legislative procedure excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objective to combat discrimination.

While the EU has not concluded the CRC, all the EU Member States have ratified the Convention. The CRC explicitly recognises the rights of children with disabilities under its Article 23. In addition, Article 2 prohibits discrimination on the grounds of disability and Article 3 calls for the best interests of the child to be at the heart of any decision affecting children, including those with disabilities. At EU level, Article 3 TEU defines the protection of the rights of the child as a European Union objective which requires to actively develop appropriate legislative or policy initiatives according to its competences.

In this context, this study, aims to provide an overview of the situation of children with disabilities in a wide selection of EU Member States[32], with a view to evaluating the need for EU legislation or measures to enhance the rights of children with disabilities in the EU.

[30] Special Eurobarometer 393, 'Discrimination in the EU in 2012', November 2012, available at http://ec.europa.eu/public_opinion/archives/ebs/ebs_393_sum_en.pdf (last accessed on 24 November 2012).
[31] Finland, Ireland and Netherlands have signed but not yet ratified.
[32] For this study 18 Member States legal frameworks have been analysed: Belgium, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Ireland, the Netherlands, Malta, Poland, Romania, Slovenia, Spain, Sweden and the United Kingdom.

To this end, it assesses the implementation of the legal obligations derived from the CRPD and CRC and the rights and principles enshrined in them regarding children with disabilities.

The comparative analysis of Member States' legal frameworks and the effectiveness in their practical implementation are the basis for the analysis of the need for the European Union's action within the remit of EU competences. The conclusions and recommendations for EU level measures take due account of the principle requiring the EU to act in so far as the objectives of the measure cannot be sufficiently achieved by the Member States, acting either at central, regional or local level, but can, by reason of scale or effects of the proposed action, be better achieved at Union level.

Due to the scale of this subject and the scarcity of materials available, the scope of this study does not cover in detail the wide range of issues arising from and relating to the situation of children with disabilities. It does not aim to provide an in-depth analysis but rather an overview of the situation of children with disabilities' rights in 18 EU Member States. This study presents a snapshot of some of the major issues and obstacles faced by children with disabilities and their families, a legal analysis of the implementation of the main rights and principles recognised in the CRC and CRPD and relevant in the context of the situation of children with disabilities and points to some potential solutions at national and EU level to improve their situation.

2. THE METHODOLOGY FOR THE STUDY

This study analyses the existing national legal, policy and institutional frameworks to point out where discriminatory practices, obstacles and problems for full enjoyment of children rights may lie and where regulation may be needed.

The overall framework of the study is based on legal desk research and analysis of literature, and consultations with experts at national and EU level on the situation of children with disabilities to uncover particular difficulties, as well as to identify possible recommendations.

The study analyses the national implementation of key obligations derived from the rights and principles relevant for children with disabilities as recognised under the CRC and the CRPD. Special focus is given to specific issues relevant to the situation of children with disabilities in relation to the Conventions' provisions: children as vulnerable suspects, violence, gender vulnerability, and inclusive education (as requested by the technical specifications for this study). Indeed, children with disabilities are often victims of sexual or physical violence or other types of abuse, and as highlighted by the European Disability Strategy 2010-2020, access to adequate and inclusive education is still difficult for children with disabilities in Europe.[33]

The study assesses whether the 18 selected EU Member States have appropriate child protection systems in place in order to guarantee the needs and rights of children with disabilities. It analyses the legal and institutional framework in the Member States based on information on the application of such a framework. It also reviews the mechanisms in place to implement the legal framework, highlighting gaps, problems and best practices in order to improve the implementation of children with disabilities' rights.

The framework for assessing the situation with respect to the rights of children with disabilities at national level, and therefore the structure of the national reports, is based on the obligations derived from the following mandatory principles and rights enshrined in the CRC and CRPD:

- Best interests of the child;
- Right to non-discrimination;
- Evolving capacities of the child;
- Child participation/ right to be heard;
- Freedom from violence;
- Right to family life;
- Access to assistance;
- Right to inclusive education.

The research has been guided by the definition of disability provided by the European

[33] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: European Disability Strategy 2010-2020- A renewed commitment to Barrier-Free Europe, COM(2012)636 final.

Disability Forum (EDF) as follows: '*the result of the interaction between the individual's impairment and the barriers created by society (be social, environmental and attitudinal)*'.[34]

The 18 national reports on which this study is based provide for more detailed information on the national legal and institutional systems in place to ensure the protection of children with disabilities' rights and identify specific problems, difficulties and best practices in particular Member States. Some of these difficulties have been highlighted in the special Eurobarometer on discrimination in the EU in 2012 showing that 31% of public opinion considers that the efforts made in their country to fight all forms of discrimination are not effective and that the economic crisis is contributing to more discrimination. National reports describing the situation at national level are also published separately to this report.

The study is structured as follows:

Subsequent to the introduction and presentation of methodology, Section 3 and 4 present a description of the international and EU legal instruments that are relevant in this field. They highlight existing international mandatory requirements, obligations and rights set in both the CRC and the CRPD, and the EU legal instruments relevant to the rights of children with disabilities.

Section 5 provides an overview of the national legal measures in place in the 18 Member States, which are in line with the rights and principles guaranteed in the CRC and CRPD. They serve as the basis for the comparative analysis of the effectiveness of the legal frameworks and their practical implementation. This comparative analysis is based on specific criteria developed in order to ensure comparability of the information received. They were drawn from the text of both Conventions and the comments on the interpretation of the CRC by the UN Committee on the Rights of the Child.

Section 6 provides an assessment of the EU competence and the type of measures the EU can take to improve the situation of children with disabilities' rights.

Section 7 describes the need for Union's action within the remit of EU competences, providing short conclusions and specific recommendations for action at EU level.

[34] The definition can be found at European Disability Forum, available at http://www.edf-feph.org/Page_Generale.asp?DocID=30471 (last accessed on 9 August 2012).

3. THE LEGAL FRAMEWORK OF CHILDREN WITH DISABILITIES AT THE INTERNATIONAL LEVEL

KEY FINDINGS

- Children with disabilities' rights are enshrined in the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child.
- The CRPD is a mixed agreement which has been ratified by the EU and it is therefore part of EU law. The EU is responsible for its implementation to the extent of its exclusive, shared or supporting competences conferred by the Treaty, according to Article 2 TFEU. The CRC standards and principles guide EU policies and actions with an impact on children's rights whose protection is an EU objective.
- All EU Member States have ratified the CRC and have competence to implement it as well as the CRDP provisions of national competence for which the EU has not exercised its shared competence yet.
- Both Conventions provide the framework for this study setting obligations on States Parties to ensure full enjoyment of the rights and freedoms for children with disabilities including: the right to enjoy all human rights and freedoms without discrimination ensuring equality of opportunities and accessibility, the best interests of the child as consideration in all actions concerning them, the evolving capacities of children with disabilities as consideration in decisions affecting them, the right to be heard in any proceedings and decision-making processes affecting the child, the right to express their views and to a full and effective participation, full and effective inclusion in society, equality of opportunities, accessibility, the right to effective access to education, the right to health care, the right to assistance, the right to family life, freedom from violence and recognition of the special needs of children with disabilities.

The rights of children with disabilities are enshrined at international level in two important conventions: the United Nation Convention on the Rights of Persons with Disabilities (CRPD) and the United Nations Convention on the Rights of the Child (CRC).

This study is structured to reflect both conventions requirements as they have a high rate of ratification by EU Member States. Moreover, the CRPD has been signed and ratified by the European Union.[35] As a result, the CRPD is part of EU Law and the EU is responsible for its implementation to the extent of its competences. The requirements under the Conventions are applicable under EU law and prevail over secondary legislation which should comply with them and be interpreted according to its provisions.

The Court of Justice of the EU has repeatedly recognised the high ranking status of international agreements signed by the EU in the hierarchy of the EU legislative system.

[35] All the 27 Member States have ratified the CRC, and all 27 Member States have signed the CRPD (Finland, Ireland and the Netherlands have signed but not yet ratified).

In the case IATA and ELFAA v. Department of Transport (C-344/04) the Court stated:

Article 300(7) TEC provides that 'agreements concluded under the conditions set out in this Article shall be binding on the institutions of the Community and on Member States'. In accordance with the Court's case-law, those agreements prevail over provisions of secondary Community legislation.[36]

However, EU action would be framed within the extent of the European Union's competences in the relevant policy areas (see section 6 on options for EU actions). In this sense, the CJEU has stated that mixed agreements concluded by the EU, its Member States and non-member countries 'have the same status in the Community legal order as purely Community agreements in so far as the provisions fall within the scope of Community competence'.[37]

3.1. CRPD

While general human rights instruments may apply to persons with disabilities, it is only recently that an international agreement has been adopted establishing obligations to States Parties and recognising the particular challenges faced by persons with disabilities, their specific needs and their rights. The **United Nations Convention on the Rights of Persons with Disabilities** was open for signature on 13 December 2006 and entered into force on 3 May 2008.

All 27 Member States have signed the CRPD and the majority of them have ratified it[38]. The Convention obligations are binding in Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Germany, Estonia, France, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. For countries which have a monist system of international law[39] the Convention, once ratified, is directly applicable and can be invoked before national Courts. For countries with a dualist system[40], the adoption of national legislation is required for any international agreement to have full effect in the national legal system.

The **EU concluded the CRPD on 30 March 2007 and ratified it on 23 December 2010**.

The CRPD is a mixed agreement, meaning that some provisions would be related to policy areas under EU competence and others would fall under Member States competences. It covers areas where the EU has exclusive competence, policy issues of shared competence with the Member States and others where the EU has coordination or supporting competence conferred by the Treaties as defined under Article 2 TFEU. In an area of shared competence, both the EU and the Member States may legislate, but

[36] Case C-61/94 Commission v Germany [1996] ECR I-3989, paragraph 52, and Case C-286/02 Bellio F.lli [2004] ECR I-3465, paragraph 33.
[37] See Case 12/86 Demirel [1987] ECR 3719, at 9, C-13/00 Commission v Ireland [2002] ECR I-2943, at 14 [C-239/03, Etang de Berre, at (25)].
[38] Finland, Ireland and Netherlands have signed but not yet ratified.
[39] The following EU countries have a monist system: Austria, Belgium, Bulgaria, Czech Republic, Cyprus, Estonia, France, Greece, Luxembourg, Latvia, Lithuania, Poland, Portugal, Slovenia, Slovakia, Spain and Romania. The Netherlands has a limited monist system where only CRC provisions of general binding nature have direct effect.
[40] The following EU countries have a dualist system: Denmark, Finland, Germany, Hungary, Italy, Ireland, Malta, Sweden and the United Kingdom.

Member States will not be able to act on those areas where the EU has already exercised its competences by adopting legislation.

The Declaration of Competence annexed to Council Decision 2010/48/EC provides some guidance on the EU competence listing some instruments already adopted by the EU and relevant to CRPD provisions. However, the Council Decision should be read according to the provisions of the Lisbon Treaty and the list of EU instruments cannot be considered exhaustive as the scope of the EU competence, by its own nature, is subject to continuous development.

The Convention builds upon previous non-legally binding international instruments (so-called 'soft-law' instruments) declaring the need for people with disabilities to be recognised as rights holders which require specific protection measures. Those instruments include:

- The 1971 Declaration on the Rights of Mentally retarded Persons, stating that person with an intellectual impairment are rights' holders[41];
- The 1975 Declaration on the Rights of Disabled Persons[42], setting standards for equal treatment and access to services of all disabled persons, and declaring persons with disabilities as civil and political rights holders;
- The 1993 United Nations Standard Rules on the equalisation of opportunities for Persons with disabilities[43], which provide detailed guidelines for policy development and implementation;
- 1994 UNESCO Salamanca Statement and framework for action on special needs of education[44], which acknowledges the principle of inclusive education;
- And finally, resolutions 1998/31 and 2000/51[45] by the Human Rights Commission on the Human Rights of Persons with Disabilities.

Those instruments stated some general principles related to persons with disabilities and called on States to implement them, even if they were not legally binding. The United Nations Standard Rules and the UNESCO Salamanca Statement are the most relevant to children with disabilities, as they set out the importance of ensuring access to education (with a focus on inclusive education) and health care for children with disabilities.

The CRPD refers to persons with disabilities in its Article 1 as '*including those who have long-term physical, mental, intellectual or sensory impairments which in interaction with*

[41] The Declaration on the Rights of Mentally retarded Persons, General Assembly of the United Nations, 20 December 1971, available at http://www.hrea.org/index.php?base_id=104&language_id=1&erc_doc_id=553&category_id=32&category_type=3&group=Human%20rights%20treaties%20and%20other%20instruments (last accessed 17 May 2013).
[42] The Declaration on the Rights of Disabled Persons, General Assembly of the United Nations, 9 December 1975, available at http://www.hrea.org/index.php?base_id=104&language_id=1&erc_doc_id=548&category_id=32&category_type=3&group=Human%20rights%20treaties%20and%20other%20instruments (last accessed 17 May 2013).
[43] Standard Rules on the Equalization of opportunities for Persons with Disabilities. General Assembly Res. 48/96, annex, 20 December 1993. It can be found at: http://www.un.org/disabilities/default.asp?id=26.
[44] UNESCO, The Salamanca Statement and Framework for Action on Special Needs Education, 1994, available at http://www.unesco.org/education/pdf/SALAMA_E.PDF (last accessed on 21 February 2013).
[45] United Nations Commission on Human Rights (1998), Resolution 1998/31, U.N. Doc.E/CN.4/1998/31. United Nations Commission on Human Rights (2000), Resolution 2000/51, UN Doc.E/CN.4/Res/2000/51, available at http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.RES.2000.51.En?Opendocument.

various barriers may hinder their full and effective participation in society on an equal basis with others'.

Article 3 CRPD recognises the following **principles** of the Convention where some are also obligations on its States Parties or rights of children with disabilities:

- Respect for inherent dignity, individual autonomy including freedom to make one's own choices, and independence;
- Non-discrimination;
- Full and effective participation and inclusion in society;
- Respect for difference and acceptance of persons with disabilities;
- Equality of opportunity;
- Accessibility;
- Equality between men and women; and
- Respect for evolving capacities of children with disabilities and respect for their right to preserve their identities.

Under the Convention, States Parties undertake 'to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability', notably by means of:

- Adopting all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the CRPD;
- Taking into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes; and
- Taking appropriate measures to eliminate discrimination on the basis of disability.[46]

While all the provisions in the CRPD apply to children and adults alike, Article 7 and 23 directly target the specific needs of children with disabilities. **Article 7** requires States Parties to take all the necessary measure to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an **equal basis** with other children. The provision recalls the principle of the best interests of the child as a primary consideration in all actions concerning children with disabilities. Finally, Article 7(3) recognises the right of children with disabilities to **express their views** freely on all matters affecting them. **Article 23** ascertains that children with disabilities have equal right with respect to family life. 'With a view to realising these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families'.

The right to education is enshrined in Article 24 of the Convention. It places the emphasis on access to **inclusive education** and requires that children with disabilities are not excluded from free and compulsory education on the basis of disability. Reasonable accommodation and adequate support within the general education system

[46] Article 4 of the CRPD.

should be provided to ensure the effective implementation of the right. The effectiveness of the support and accommodation needed is measured by developing environments 'that maximise academic and social development, consistent with the goal of full inclusion'.

Other relevant obligations on Member States and the EU derived from key CRPD provisions require them to:

- Adopt awareness-raising measures fostering at all levels of education system an attitude of respect for the rights of persons with disabilities (Article 8(2)(b));
- Take effective child-focused legislation and policies to ensure freedom from exploitation, violence and abuse (Article 16(5));
- Recognise the right of persons with disabilities to liberty of movement, to a nationality and to choose their residence (Article 18);
- Take effective measures to eliminate discrimination against persons with disabilities in matters relating to family life so as to ensure the rights of children with disabilities to retain their fertility on an equal basis with others (Article 23(1)(c)); provide early and comprehensive information, services and support to children with disabilities and their families (Article 23(3)); ensure protection for the child being separated from his or her parents against their will; ensure that any decision of separation shall be for the best interests of the child and cannot be based on a disability of either the child or one or both of the parents (Article 23(4));
- Take all appropriate measures to ensure access for persons with disabilities to their right to health, including early identification and intervention as appropriate, and services designed to minimise and prevent further disabilities (Article 25);
- Take the necessary measures to provide financial and/or the necessary assistance to ensure that children with disabilities enjoy all the rights provided by the convention (Articles 4, 7, 9, 19, 20, 23 and 28);
- Take all appropriate measures with a view of enabling children with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, including those activities in the school system (Article 30(5)).

3.2. CRC

The **United Nations Convention on the Rights of the Child**, and its two Optional Protocols, is the cornerstone instrument at international level, providing a comprehensive framework of child-specific rights. The Convention recognises civil, political, social and economic rights for children and requires States Parties to the Convention to adopt measures to attain the highest protection of the rights of the child.

All 27 EU Member States have **ratified the Convention** and **signed** the Convention's two additional Optional Protocols on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict.[47] While the EU is not a

[47] The Czech Republic, Ireland and Finland have signed the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography but have not yet ratified it. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict has been signed and ratified by all 27 EU Member States.

party to the CRC[48], the European Commission considers that the 'standards and principles of the CRC must continue to guide EU policies and actions that have an impact on the rights of the child'.[49] Article 3 (3) and (5) TEU recognises the protection of the rights of the child as an objective of the EU, both internally and in its external relations. In addition, the Court of Justice of the European Union (CJEU) has expressly recognised the need to respect children's rights and requires EU law to take due account of the CRC.[50] Further details can be found under Section 6 of this report.

An EU unilateral declaration regarding the CRC would clarify the situation and effectively 'fill the gap between EU and international legal standards for the protection of children' and enhance EU's role in promoting the protection children's rights within and outside the European Union.[51]

The Convention defines a child as 'every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier'.[52]

Articles 2 and 23 apply directly to the situation of children with disabilities. **Article 2** states the **principle of non-discrimination** on the grounds of disability. This provision is interpreted as requiring States Parties to the Convention to:

(1) explicitly include the principle of non-discrimination on the basis of disability in constitutional provisions and/or anti-discrimination laws;

(2) provide effective remedies from violations of the rights of children with disabilities; and

(3) prevent de facto discrimination through awareness-raising tools.[53]

Under **Article 23** States Parties recognise the rights, principles and obligations to ensure that **children with disabilities** enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community'.

To this end, the special needs of children with disabilities are recognised by States Parties which are required to provide assistance free of charge whenever possible to ensure that the child with disabilities has 'effective access to and receives education, training, heath care services, rehabilitation services, preparation for employment and recreation opportunities in a manner to achieve the child's fullest possible social integration and individual development, including his or her cultural and spiritual development'.

The Convention requires States Parties to ensure rights of children with disabilities to non-discrimination, consideration of the best interests of children in all actions that may

[48] The CRC is open for signature and accession to States only, although the EU could bind itself to its provisions through unilateral declaration.
[49] European Commission (2011), Communication from the Commission to European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: 'An EU Agenda for the Rights of the Child', COM(2011) 60, 3.
[50] E.g., case C-540/03, *European Parliament v Council of the European Union* [2006] ECR 5769, 50.
[51] European Parliament, Note, 'EU Framework of Law for Children's Rights', authored by Emanuela Canetta, Nathalie Meurens, Paul McDonough, and Roberta Ruggiero, 2012, p.27.
[52] Article 1 of the CRC.
[53] General Comment No. 9 'The rights of children with disabilities', UN Committee on the Rights of the Child, 2006.

affect them, consideration of the evolving capacities of the child and respect of their views.

The Convention recognises additional rights and principles that are applicable to children with disabilities as follows:

- non-discrimination (Article 2);
- the best interests of the child (Article 3);
- right to life (Article 6);
- right to grow up in a family context and not to be separated from their family (Article 9);
- right to be heard and to express their own views (Article 12);
- assistance to parents and legal guardians in their child-rearing responsibilities (Article 18);
- protection from abuse and neglect (Article 19);
- special protection and assistance for children deprived of family environment (Article 20);
- right to the enjoyment of the highest attainable standard of health (Article 24);
- right to a periodic review of the treatment for children who have been placed for the purposes of care, protection or treatment (Article 25);
- right to education (Articles 28 and 29);
- right to participate fully in cultural, artistic, recreational and leisure activity (Article 31);
- protection from sexual abuse (Article 34);
- protection from torture and exploitation (Articles 36 and 37);
- right to recovery and social reintegration of a child victim of abuse (Article 39);
- right to a fair trial in the judicial context (Article 40).

3.3. Common rights and principles

Both the CRPD and the CRC recognise general principles and rights, which are applicable to children with disabilities together with those tailored to the particular situation of children with disabilities through specific provisions and references. Those rights and principles are the basis for specific obligations imposed on States Parties to the Conventions such as:

- non-discrimination on the grounds of disability (Article 2 CRC; Articles 3 and 5 CRPD);
- respect for the best interests of the child (Article 3 CRC; Article 7 CRPD);
- respect for the evolving capacities of the child based on the child's age and maturity (Article 5 CRC; Article 3 CRPD);
- right of the child to participate in society/in the Community (Article 23 CRC; Articles 1, 3 and 19 CRPD);

- right of the child to express her/his view (Article 12 CRC; Articles 7 and 30 CRPD);
- right to protection from violence (Article 19 CRC; Article 16 CRPD);
- rights to family life (Article 9 CRC; Article 23(3) CRPD);
- access to assistance (Article 23(2)(3) CRC; Articles 23(5), 26 and 28 CRPD);
- right to education and inclusion (Articles 23(3), 28 and 29(1)(a) CRC; Article 24 CRPD); and
- right to health care (Articles 23 and 24 CRC; Article 25 CRPD).

The CRC requires States Parties to recognise that children with disabilities have the right to enjoy a full and decent life in conditions which ensure dignity, promote self-reliance and facilitate active participation in the community. 'The measures taken by States Parties regarding the realisation of the rights of children with disabilities should be directed towards this goal. The core message of this paragraph [i.e. paragraph 1 of Article 23] is that children with disabilities should be included in society'.[54] As a result, States Parties to both conventions must aim towards the inclusion of children with disabilities in society through measures and decisions affecting them.[55]

[54] General Comment No. 9 'The rights of children with disabilities', UN Committee on the Rights of the Child, 2006.
[55] Ibid.

4. THE LEGAL FRAMEWORK ON CHILDREN WITH DISABILITIES AT THE EU LEVEL

KEY FINDINGS

- The Treaties define the competences and provide the legal framework for EU action on the protection of children with disabilities, which currently has a focus on non-discrimination.
- Rights and principles relevant to children with disabilities are recognised and implemented in the EU legislative and policy framework. They include the principle of best interests of the child, the right to equality, the right to non-discrimination, the consideration of evolving capacities, the right to participate, protection from violence, the right to family life, and inclusion in society (inclusive education).
- The EU has been active on disability issues with some references to children, notably with the establishment of an EU Disability Strategy. The EU has also established a prohibition of discrimination on the grounds of disability in employment and vocational training. The EU has also been active on issues related to children and in particular on unaccompanied minors, child victims of crimes, protection of children from sexual abuse from the internet or on media content.
- However legislation needs to consider more carefully children with disabilities' situation based on multiple factors of discrimination, namely for reasons of disability and age.

The EU ratified the CRPD in December 2010 and since then it is responsible for the implementation of the Convention's obligations to the extent of its competencies. Under Article 5(1) TEU, the limits of Union competences are defined by the principle of conferral; competences not conferred upon the European Union in the Treaties remain with the Member States (Article 5(2) TEU).

On that basis, EU legislative acts must always be based on specific legal provisions of the Treaties, establishing the EU competence. In some issues, the EU might have exclusive competence, and in others, the competence will be in the Member States or will be shared between the EU and the Member States. According to Article 2 of the TFEU, when the Treaty defines a shared competence, both the EU and the Member States may legislate in those areas but Member States can only exercise their competence to the extent that the European Union has not exercise its competence. In other words, the extent of the area of shared competence of the EU is further defined by the EU acts adopted and must be assessed by reference to the precise provisions of each measure, and in particular, the extent to which these provisions establish common rules that are affected by the provisions of the Convention. The scope and the exercise of EU competences are, by their nature, subject to continuous development.

In the current case, Council Decision 2010/48/EC published on 26 November 2009 adopting the CRDP included a Declaration in an Annex, setting out the distribution of competences and internal arrangements for the implementation of the Convention.

However, the Council Decision 2010/48/EC is outdated and needs to be interpreted in light of the developments introduced by the Lisbon Treaty and the legislative acts adopted since December 2009.

This section presents the legal framework, measures and EU actions undertaken by the EU in the field of children with disabilities on the basis of the competences conferred upon the European Union by the Treaties.

4.1. EU Treaty and Charter provisions on disabilities

Before the Amsterdam Treaty, the EU initiatives relating to disability were limited to strategies and action programmes (such as the 1996 Commission Communication on Equality of Opportunity for People with Disabilities)[56] or other non-legally binding instruments (such as the Council Recommendation on Employment).[57]

Discrimination based on disability was explicitly mentioned for the first time in primary EU law in the Amsterdam Treaty. The Amsterdam Treaty introduced the legal basis for the EU to take action within the limits of the powers conferred by the Treaties to combat discrimination on the grounds of inter alia disability. That provision is now found in **Article 19 TFEU** (ex-Article 13 TEC) which has provided the legal basis for Directive 2000/78 establishing a general framework for equal treatment in employment and occupation, and requires reasonable accommodations in favour of persons with disabilities at work. This article provided also the legal basis for the 2008 proposal for an EU non-Discrimination Directive[58] on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation.

Neither the proposal for an equal treatment Directive nor any other EU measures provide for a **definition of disability**. Prior to the adoption of the CRPD, in a judgment in July 2006, the Court of Justice of the European Union (CJEU) defined disability in the same sense as the CRPD within the context of employment policy as 'a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life'.[59] Recently, the CJEU has further developed this concept[60] stating that disability results from barriers hindering the full and effective participation of the person concerned in professional life *on an equal basis with other workers*. In addition, it stated that Directive 2000/78/EC requires the employer to take reasonable accommodation measures to enable a person with a disability to have access to employment.

A Declaration regarding persons with a disability was part of the Amsterdam Treaty requiring the EC (now EU) institutions to 'take account of the needs of persons with a disability'[61] in drawing up measures under Article 100a EC (now Article 114 TFEU) on the

[56] Commission Communication on Equality of Opportunity for People with Disabilities, 'A New European Community Disability Strategy', COM(96) 406 final.
[57] Council Recommendation 86/3179/EEC of 24 July 1986 on the employment of disabled people in the Community, available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31986H0379:EN:NOT.
[58] Proposal for a Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)426). The EP delivered its first reading on 2 April 2008. It is currently blocked by Council.
[59] Judgment C-13/05 of the Court (Grand Chamber) of 11 July 2006, *Sonia Chacón Navas v Eurest Colectividades*, pt 43.
[60] Judgment of the Court, C-335/11 on 11 April 2013.
[61] Treaty of Amsterdam Declaration regarding persons with a disability, available at http://eur-

approximation of laws.

The **Lisbon Treaty** does not introduce any additional legal basis aimed specifically at children with disabilities, but it does include specific provisions that provide competence to act on issues with an impact on children's rights and the rights of persons with disabilities.

The entry into force of the Lisbon Treaty resulted in a new reference to disability in the **Article 10 TFEU** (non-discrimination), which requires the EU to combat discrimination based on, among others, disability when defining and implementing its policies and activities. Furthermore, it recognised the legally binding force of the Charter of Fundamental Rights of the European Union (**the EU Charter**), whose Article 21 recognise the right to non-discrimination and Article 26 to the integration of persons with disabilities.

The EU Charter, in Article 21, prohibits discrimination based on any ground, including disability. Under Article 26, the EU is bound to respect 'the rights of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community'. These obligations also extend to Member States when implementing EU law. The CJEU has confirmed that as defined in Article 51(1) of the EU Charter 'the applicability of European Union law entails applicability of the fundamental rights guaranteed by the Charter', but '[w]here, on the other hand, a legal situation does not come within the scope of European Union law, the Court does not have jurisdiction to rule on it'.[62]

Other provisions of the **EU Charter** are relevant to disability issues, including: Article 3, which ensures the right to respect for physical and mental integrity, Article 14, which guarantees the right to education and Article 34, which recognises the right to social and housing assistance so as to ensure a decent existence.

The **Lisbon Treaty** introduces a number of provisions which may have a positive impact on the rights of persons with disabilities. Article 2 TEU refers to the 'respect for human dignity, freedom, democracy, equality and respect for human rights'. These values are recognised as common to the Member States in 'a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail'. Furthermore, Article 3(3) TEU states `[The Union] shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between woman and men, solidarity between generations and protection of the rights of the child'.

The **social clause** requires the European Union to take into account the requirements linked to the guarantee of adequate social protection and the fight against social exclusion when defining and implementing its policies and activities (Article 9 TFEU).

Other Treaty provisions applicable to children with disabilities include Article 9 TEU requiring the European Union to 'observe the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies'. The Treaty ensures that the principle of participatory democracy is respected by consulting and providing appropriate means for interested parties, such as citizens and stakeholder organisations, to express their views (Articles 10 and 11 TEU).

lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html#0135030039 (last accessed on 22 November 2012).

[62] Judgment of the Court (Grand Chamber) of 26 February 2013, Åklagaren v Hans Åkerberg Fransson, C-617/10.

The European Union has also used **other legal bases within the Treaty**, notably with regard to the internal market and transport competences, to adopt legislation which refers to persons with disabilities. Some of this legislation refers to children with disabilities. One example of EU legislative instruments which refers explicitly to persons with disabilities is Directive 2001/85/EC, relating to special provisions for vehicles used for the carriage of passengers comprising more than eight seats which requires accessibility features for persons with reduced mobility and visually impaired persons.

4.2. Treaty and EU Charter provisions on children's rights

Prior to the entry into force of the Lisbon Treaty, the EU developed various instruments aimed at the protection of children's rights. The EU instruments in this field were based on the Article 6(2) TEU, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the provisions of the CRC and the EU Charter of Fundamental Rights.

Before the Lisbon Treaty, EU actions on children's rights were adopted predominantly under the EU Treaty's third pillar relating to police and judicial cooperation in criminal matters.[63]

The Lisbon Treaty introduces provisions directly or indirectly aiming at the protection of children's rights. **Article 3 TEU** requires the EU to protect the rights of the child and to contribute to their protection in its relation to the wider world. **Article 21 TEU** grants human rights and fundamental freedoms the status of guiding principles of EU action on the international scene and creates the obligation for the EU to consolidate and support human rights in its policies, codifying the jurisprudence by the Court of Justice of the EU.

Article 216 of the TFEU allows the EU to conclude international conventions within the framework of its policies or one of the EU's objectives. This article can be the basis for the EU to sign additional international human rights instruments, such as the CRC. The CRPD was concluded by the EU just before the entry into force of the Lisbon Treaty on the basis of Article 19 TFEU (non-discrimination), Article 114 (internal market) and Article 218 (procedure for negotiation and conclusion of international agreements).

The Lisbon Treaty incorporated also **the Charter of Fundamental Rights of the European Union** (the EU Charter) becoming then part of the EU legal framework on the basis of Article 6 TEU and effectively becoming directly binding on all EU Institutions and Member States when they implement EU law.[64] **Article 6 TEU** requires the EU to accede to the ECHR.[65] The EU Charter highlights the rights of the child, recognising that EU policies which directly or indirectly affect children must be designed, implemented and monitored taking into account the principle of the best interests of the child.

[63] European Parliament, Note, 'EU Framework of Law for Children's Rights', authored by Emanuela Canetta, Nathalie Meurens, Paul McDonough, and Roberta Ruggiero, 2012, p.13.
[64] European Commission, DG Justice, Fundamental Rights, available at http://ec.europa.eu/justice/fundamental-rights/index_en.htm (last accessed on 21 February 2013).
[65] The EU is currently under negotiation with the Council of Europe for its accession to the ECHR.

Article 24 of the EU Charter – Rights of the child

It upholds important principles on the rights of the child:

- Children's right to protection and care is necessary for their well-being. They may express their views freely which shall be taken into consideration on matters which concern them in accordance with their age and maturity.
- In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
- Children have the right to maintain on a regular basis a personal relationship and direct contact with both their parents, unless it is contrary to their interests.

The EU Charter recognises specific rights that are relevant to children: Article 14 establishes the **right to education** and Article 32 prohibits child labour and provides guarantees for the protection of young people at work. Further provisions provide for EU action in specific areas, which are referred to in the next section.

4.3. EU legislation: children with disabilities' principles and rights

Certain general principles and rights established at EU level are applicable and particularly relevant to children with disabilities. They have been complemented with the rights and principles recognised in the CRPD or CRC that have found their equivalence in the EU framework. This section identifies the rights and principles recognised in the EU legislative and policy framework that are relevant for children with disabilities; namely the best interests of the child, the right to equality, the right to non-discrimination, the consideration of evolving capacities, the right to participate, to protection from violence, to family life, and to inclusion (inclusive education).

4.3.1. Best interests of the child

The **best interests of the child as primary consideration in actions relating to children** is a fundamental requirement stemming from the rights of the child recognised under Article 3 CRC and enshrined in Article 24 of the EU Charter.

According to the CRC Committee General Comment No 5, the requirement of the consideration of the best interests of the child applies to actions taken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. It requires systematic consideration of how children's rights and interests will be affected by certain decisions; including those which affecting children indirectly[66].

The Charter requires EU policies affecting children with disabilities directly or indirectly to be designed, implemented and monitored taking into account the principle of the best interests of the child and guarantee the right to such protection and care.[67]
Furthermore, **Article 3 TEU** requires the EU to protect the rights of the child. However,

[66] Ruxton S., 'What about us? Children's Rights in the European Union next steps', available at http://www.nspcc.org.uk/Inform/publications/downloads/whataboutus_wdf48010.pdf.
[67] European Parliament, Note, 'EU Framework of Law for Children's Rights', authored by Emanuela Canetta, Nathalie Meurens, Paul McDonough, and Roberta Ruggiero, 2012, p.19.

the best interest of the child is specifically taken into account in several legislative instruments, which are considered below.

Recital 12 of **Council Regulation 2201/2003 Brussels IIbis** (EC) concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility states that the grounds of jurisdiction in matters of parental responsibility are based on the consideration of the best interests of the child.[68] Article 7 of the **Mediation Directive 2008/52**[69] establishes the mediator to take into account the best interests of the child when deciding whether the child can give evidence in judicial proceedings regarding information arising out a mediation process. [70]

The **Family Reunification Directive**[71] contains specific measures in relation to minors, and it states that Member States' authorities must consider the best interests of minors when examining an application for family reunification (Article 5).[72] The protection of the best interest of the child is explicitly mentioned in **Council Directive 2004/81/EC**[73] **on victims of trafficking in human beings**.[74]

4.3.2. Equality

The European Union is founded on the recognition of **equality** as one of the indivisible universal values, codified in the Charter of Fundamental Rights of the EU (the Charter). The CJEU expressly recognised the 'general principle of equality' as 'one of the fundamental principles' of EU law in the case of *Ruckdeschel.*[75] The concept of equality is closely linked to the concept of non-discrimination discussed below and encompasses two dimensions. Achieving equality involves ensuring equal treatment but may require treating persons, such as persons with disabilities, differently in order to establish equality of opportunity (or non-discrimination); although, the differential treatment must be objectively justified.[76]

Equality is recognised within EU law mostly in relation to citizenship and equality between men and women, especially in the working environment. Article 8 TFEU establishes as the aim of the EU to eliminate inequalities and to promote equality between men and women, which is further referred to in relation to labour market and work (Articles 153 and 157 TFEU). Article 9 TEU enshrines the principle of equality of all EU citizens. The

[68] Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, OJ L 338 of 23 December 2003.
[69] Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, OJ L136/3 of 24 May 2008.
[70] European Union Agency for Fundamental Rights (FRA) 'Developing indicators for the protection, respect and promotion of the rights of the child in the European Union', March 2009, available at http://fra.europa.eu/sites/default/files/fra_uploads/358-RightsofChild_summary-report_en.pdf.
[71] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L251/12 of 3 October 2003.
[72] European Union Agency for Fundamental Rights (FRA) 'Developing indicators for the protection, respect and promotion of the rights of the child in the European Union' March 2009, available at http://fra.europa.eu/sites/default/files/fra_uploads/358-RightsofChild_summary-report_en.pdf.
[73] Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, OJ L261/19 of 6 August 2004.
[74] Communication from the Commission: An EU Agenda for the Rights of the Child COM(2011) 60 final.
[75] Joined cases 117/76 and 16/77 *Ruckdeschel v Hauptzollamt Hamburg-St.Annen* (1977) ECR 1753, par. 7.
[76] McCrudden, C. and Prechal, S., *The Concepts of Equality and Non-Discrimination in Europe: A practical approach* (European Commission, DG for Employment, Social Affairs and Equal Opportunities, Unit G.2, 2009).

Charter contains a number of provisions which could be applied to the specific needs and interests of children with disabilities. For example under Chapter III on Equality, provisions regulating non-discrimination on grounds of age and disability, the rights of child and the integration of persons with disabilities are established. The concept of equality, recognised as a fundamental right within EU law, can act as a driving force for legislative, judicial and institutional change.

4.3.3. Non-discrimination

As mentioned above, the EU is a party to the CRPD, and thus bound by the obligations found in the Convention to the extent of its competences. The right of all persons to protection against discrimination constitutes a universal right, as recognised by the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), to which all Member States are signatories and to which the EU is in current negotiation for accession.

Article 21 of the Charter establishes the prohibition of discrimination on the grounds of disability and age. While the recognition of the right to non-discrimination in the Charter is particularly significant, its provisions only apply to Member States when they implement EU legislation and are binding towards the EU institutions. Hence, its scope is limited to EU competence.

Alongside the Charter, the EU Treaties also recognise the right to non-discrimination in number of provisions. Article 10 TFEU requires the EU to combat discrimination based on disability when defining and implementing its policies and activities, while Article 18 and 19 TFEU gives the EU competence to adopt legislation to combat discrimination for reasons of disability, age or nationality. Other provisions prohibiting discrimination exist in the Treaties; for example in relation to consumers and producers (Article 40 TFEU) or discrimination of workers based on nationality (Article 45 TFEU).

Under EU law, equal treatment means that 'there shall be no direct or indirect discrimination'. **Direct discrimination** occurs 'where one person is treated less favourably than another […] in a comparable situation' and **indirect discrimination** 'occur[s] where an apparently neutral provision, criterion or practice would put persons […] at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary'.[77]

Discrimination can be as simple as an unjustified restriction of access to employment, to public amenities, or to education on the basis of a protected ground.[78] The CRPD defines discrimination on the grounds of disability as

> '*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 in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation'*.[79]

[77] Article 2 of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.
[78] A protected ground refers to a personal characteristic which the legislation protects discrimination from. It may include, age, sex, disability, ethnicity, etc.
[79] Article 2 CRPD.

Hence, the full implementation of the right to non-discrimination on the grounds of disability would require **reasonable accommodation**, which the **CRPD defines** as

> '*necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms'*.[80]

The requirement of reasonable accommodation is recognised by Directive 2000/78/EC on equal treatment in employment and occupation.[81]

Four Directives exist within EU law to combat discrimination on the basis of protected grounds such as sex, racial or ethnic origin, religion or belief, age and sexual orientation.[82] They lay down rules 'for combating discrimination (…) with a view to putting into effect in the Member States **the principle of equal treatment**'.[83] The Directives prohibit discrimination in relation to employment, occupation and vocational training, social protection and access to goods and services. Disability is recognised as protected grounds on equality between men and women in matters of employment and occupation under Directive 2000/78/EC and its Recast Directive (2006/54/EC) applies to persons with disabilities. Directive 2000/43/EC on equal treatment between persons irrespective of racial or ethnic origin applies to education as well, but it does not include disability as protected ground. Directive 2004/113/EC on equal treatment between women and men in access to supply and services refers to discrimination on grounds of sex but not on age or disability.

Member States are free to adopt stronger protection for non-discrimination than provided for under EU law, thus the protection provided by Member States across the EU is not uniform. Furthermore, the European Commission has acknowledged the differences of protection provided across the various grounds and published a proposal for Directive aiming to complete the legal framework on anti-discrimination law, provide for a more equal level of protection across the grounds and put an end to the current perceived hierarchy of protection across the grounds.[84]

Other measures have been taken in policy areas such as internal market or transport that have an impact on children with disabilities' access to services without discrimination. For example, Directive 2001/85/EC, relating to special provisions for vehicles used for the carriage of passengers comprising more than eight seats which requires accessibility features for persons with reduced mobility and visually impaired persons. Other instruments cover rights of persons with disabilities when travelling by air, lifts accessibility, public procurement or electronic and telecommunication.[85]

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[80] Ibid.

[81] Article 5 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

[82] Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast directive); Directive 2004/113/EC on the principle of equal treatment between women and men in the access to and supply of goods and services; Directive 2000/43/EC on the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (the Employment Equality Directive).

[83] Ibid., Article 1.

[84] Proposal for a directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)426).

[85] 'Study on challenges and good practices in the implementation of the UN Convention on the Rights of Persons with Disabilities VC/2008/1214', European Commission, Brussels, 2010, Executive Summary available at

In addition, within the remit of its competences the EU's action to combat discrimination is complemented with activities by the Commission or the European Parliament to:

- improve knowledge of discrimination (e.g. by raising awareness);
- support intermediary actors (e.g. NGOs, social partners and equality bodies) to improve their capacity to combat discrimination;
- encourage the exchange of good practices at national level; and
- push for business-oriented management of diversity.

Lastly, the CJEU has expressly stated that fundamental rights include the general principles of equality and non-discrimination.[86]

4.3.4. Evolving capacity

While the principle is not explicitly recognised, Article 24 of the **Charter** refers to obligation to take into account children's views 'on matters which concern them **in accordance with their age and maturity**'.

The principle of evolving capacity of the child was first introduced by the CRC and recognises that, as children grow, they develop greater understanding of the world and gain competencies, and this should be accompanied by recognition of their greater capacity to take decisions and responsibility. This evolving capacity should then be translated in a reduced need for protection and increased acknowledgement and consideration of their views.[87] The evolving capacity of children with disabilities needs to be recognised in a different context and not based on their age compared with their peers.

The EU Treaty does not refer specifically to the evolving capacities of the child either; however reference to the fact that the opinion of children needs to be taken into account, according to their age and maturity, is found in EU legislation and policies that affect, directly or indirectly, the interests of children. For example, the Brussels II*bis* Regulation 2201/2003[88] on the jurisdiction, recognition and enforcement of judgments in matrimonial matters and in matters of joint parental custody of children requires courts to hear the views of the child **according to his/her age or degree of maturity**.[89] The same formulation is found in EU legislation concerning immigration and asylum where, under the provisions relating to unaccompanied minors, it is required that the best interests of the child are taken into account according to his age or degree of maturity.[90]

4.3.5. Participation

The participation of children with disabilities in society is recognised in the EU Charter in Article 26, read in conjunction with Article 24. Article 26 recognises the rights of children

http://www.efc.be/programmes_services/resources/Documents/UN_Covention_Summary_EN.pdf.

[86] Case C-442/00 *Caballero v Fondo de Garantia Salarial (Fogasa).*

[87] Gerison Lansdown, 'The evolving capacities of the child', UNICEF, 2005, available at http://www.unicef-irc.org/publications/pdf/evolving-eng.pdf (last accessed on 05 November 2012).

[88] Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.

[89] Ruxton S., 'What about us? Children's Rights in the European Union next steps', available at http://www.nspcc.org.uk/Inform/publications/downloads/whataboutus_wdf48010.pdf.

[90] See for example Council Directive 2003/9, Directive 2004/83, Directive 2001/55.

with disabilities and calls for measures to guarantee their participation in the life of the community. Article 24(1) of the EU Charter requires that **children's views are taken into considerations** on matters which concern them.

As mentioned previously, the EU Charter is only binding for Member States when they implement EU legislation and applies to the EU institutions themselves. Article 165 (2) TFEU states that Union action must aim at encouraging the **participation of young people in democratic life in Europe**. Paragraph four of the same article describes the competences of the European Union in this field, underlining that the EU should adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States. The role of the EU is, therefore, limited to adopting incentive measures that could stimulate participation of young people in democratic life and develop cooperation.[91]

Children's participation in society is considered important not only because it sets the grounds for democratic behaviour but also because it can contribute to children's development, enabling them to acquire knowledge and skills and to extend their interests and gain confidence in their own capacities. Children's participation in society has an added value in improving decision-making in matters that concern children's lives.[92]

The work of the European Union on children's participation and active citizenship has gradually increased in recent years:

- The 2005 Commission Communication on 'European policies concerning youth', aimed at promoting the participation of young people in civil and political life at local level focused on involving young people in representative democracy mechanisms through the provision of supporting tools to participate. According to the Communication, access to information was one of the aspects that needed to be improved in order to guarantee adequate participation of young persons in civil and political life. The Communication refers specifically to people with disabilities, underlining the Commission's support to specific activities aiming at the inclusion of disadvantaged groups, such as young people with disabilities, in the processes that lead to careers in science.[93]
- The 2006 Communication of the Commission on the 'EU strategy on the rights of the child' underlines that children are able to exercise their rights only if they are aware of them. The Commission's goal was therefore to raise awareness and improve knowledge on children's rights and to contribute to exchanging experience and good practice among interested parties.[94]
- In the same year, Decision 1719/2006/EC of the European Parliament and the Council established the Youth in Action Programme. Some of the general objectives of the Programme were: promoting young people's active (in particular European) citizenship, developing solidarity, and promoting tolerance among young people in order to reinforce social cohesion in the EU. It also stated the aim

[91] Ibid, S. Ruxton, 'What about us? Children's Rights in the European Union next steps'.
[92] European Union Agency for Fundamental Rights (FRA) 'Developing indicators for the protection, respect and promotion of the rights of the child in the European Union' March 2009, available at http://fra.europa.eu/sites/default/files/fra_uploads/358-RightsofChild_summary-report_en.pdf.
[93] Communication from the Commission on European policies concerning youth. Addressing the concerns of young people in Europe – implementing the European Youth Pact and promoting active citizenship, COM(2005) 206 final of 30 May 2005.
[94] Communication from the Commission: Towards an EU Strategy on the Rights of the Child COM(2006) 367 final of 4 July 2006.

to fight against all discrimination, including discrimination based on disability.[95]

- The recent Communication of the Commission 'An EU Agenda for the Rights of the Child' of 2011 committed once again the EU to the protection of the rights of the children, underlying that children must be heard and that their participation in decision making processes on issues regarding them such as, for example education, health or environment policies, should be guaranteed.[96]

Concerning the right to participation, it is worth mentioning the provisions foreseen in a number of Directives focusing on immigration and asylum that guarantee the right of the child to be heard during proceedings.[97] Furthermore, the right of the child to be heard during proceedings is also protected by the Brussels II*bis* Regulation 2201/2003[98] on the jurisdiction, recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility requires the courts to hear the views of the child according to his/her age or degree of maturity.[99] The right of the child to have their views taken into account is also protected by the Directives on protection of victims[100] and on sexual abuse of children[101].

4.3.6. Right to protection from violence

Article 24 of the Charter guarantees the rights to protection and care necessary for the child's well being. The broad wording seems to include protection from, neglect, abuse and violence. Most of the measures realising this right are directed at protection from violence.

Article 79 TFEU requires the Parliament and the Council to adopt measures to combat trafficking in persons, in particular women and children. Article 82 (2) recognises the EU competence on mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension. Article 83 of the TFEU refers to the establishment of minimum rules concerning the definition of criminal offences and sanctions for particularly serious crimes, such as trafficking in human beings and sexual exploitation of women and children.

The recent EU Directives combating children's sexual exploitation, trafficking in human beings and protecting victims refer specifically **to the protection of children and to people with disabilities.**

With the Stockholm Programme, the European Council reaffirmed the importance of the creation of an area of freedom, security and justice and called upon the European institutions to identify measures to protect and promote the rights of the child,

[95] Decision no 1719/2006/EC of the European Parliament and of the Council of 15 November 2006 establishing the 'Youth in Action' programme for the period 2007 to 2013, O.J. OJ L 327 of 24 November 2006, p.30.
[96] Communication from the Commission: An EU Agenda for the Rights of the Child COM(2011) 60 final of 15 February 2011.
[97] European Commission, DG Home Affairs, Asylum, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm (last accessed on 21 February 2013).
[98] Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.
[99] Ibid, Ruxton S., 'What about us? Children's Rights in the European Union next steps'.
[100] Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 14.11.2012.
[101] Directive 2011/92/EU of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, OJ L 335, 17.12.2011.

underlining that children in particularly **vulnerable** situations, such as the ones victims of sexual exploitation and abuse, as well as children victims of trafficking, should receive special attention.[102]

Since 2001, the EU has adopted a number of measures[103] relating to child trafficking, to children sexual exploitation and to protection of victims. Their legal bases are defined according to the objective to strengthen coordination and cooperation between investigation authorities in order to give a criminal justice response to child trafficking.[104] Furthermore, in recent years, there has been an increasing effort and several Directives[105] have been adopted to replace some of the above-mentioned instruments on trafficking, child sexual exploitation and crime victims. In particular, three Directives require an individual assessment of the **victim** to determine their needs. Such an assessment should take into account specified characteristics including age and disability.

The **Directive on preventing and combating trafficking in human beings** and protecting its victims focuses in general on the need to protect children, which are more vulnerable than adults and, therefore, are at greater risk of becoming victims of trafficking in human beings. The Directive also establishes that penalties should be more severe when the offence is committed against particularly vulnerable persons such as children and people with disabilities. The individual needs are to be assessed taking into consideration, among other factors, **age and disability**.

The **Directive establishing minimum standards on the support and the rights, support and protection of victims of crime** recognises that a victim of crime should be treated in a respectful manner without discrimination based on any grounds included **age and disability**. It specifically recognises that communication issues may arise and that authorities need to take into consideration the needs of people with disabilities when ensuring their rights to understand and to be understood.[106] Moreover it states that a child sensitive approach should be used taking into consideration his/her **age maturity, views and needs**.[107] The Directive provides that an individual assessment should be carried out in order to identify specific protection needs and particular attention should be paid to victims that are particularly vulnerable because they suffered a crime committed with a discriminatory motive, such as disability.[108]

[102] European Council the Stockholm Programme — An Open and Secure Europe Serving and Protecting Citizens.
[103] Framework Decision 2002/629/JHA on combating trafficking in human beings; Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities; Council Framework Decision 2004/68/JHA on combating the sexual exploitation of children and child pornography; Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings; Council Resolution 2001/C 283/01 on the contribution of civil society in finding missing or sexually exploited children; Decision No 1351/2008/EC establishing a multiannual Community programme on protecting children using the Internet and other communication technologies (Safer Internet Programme 2009-2013).
[104] European Union Agency for Fundamental Rights (FRA) 'Developing indicators for the protection, respect and promotion of the rights of the child in the European Union' March 2009, available at http://fra.europa.eu/sites/default/files/fra_uploads/358-RightsofChild_summary-report_en.pdf (accessed on 05 November 2012).
[105] Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography and replacing Council Framework Decision 2004/68/JHA, Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.
[106] Article 3 Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.
[107] Article 1 Directive 2012/29/EU.
[108] Article 22 Directive 2012/29/EU.

Directive 2011/92/EU on combating the sexual abuse, and sexual exploitation of children and child pornography referring to Article 24(2) of the EU Charter, provides rules concerning criminal offence and sanction in the area of sexual abuse and exploitation of children and child pornography[109], but it goes further and addresses directly the need for specific protection of children with disabilities. In fact in the preamble it is stated that the abuse of the existence of a disability in order to engage in sexual activities with a child should be **criminalised**. Member States are required to adopt measures establishing specific terms of imprisonment for the act of engaging in sexual activities with a child abusing of his/her mental physical disability[110] and to consider an aggravating circumstance (in case it does not form already part of the offence) the fact that the offence was committed against a child in a vulnerable situation such as a child with a mental or physical disability.[111]

Furthermore, in the area of Information Society and Media, the Parliament, jointly with the Council, adopted Directive 2010/13/EU (Audiovisual Media Services Directive). The Directive contains comprehensive rules seeking to protect minors from inappropriate on-demand media audio-visual services.

The Directives on combating trafficking in human beings and on sexual abuse and exploitation of children foresee also the creation of **mechanism of prevention**. They both require Member States to take appropriate measures such as **education and training** to discourage and reduce the demand that foster all forms of exploitation related to trafficking in human beings and of sexual exploitation of children. Member states should take action to increase **awareness and information campaign** involving civil society organisation and stakeholders, Member States should also provide **adequate training** to officials that are likely to come into contact with victims.[112] The Directive on abuse and sexual exploitation of children goes further requiring Member States to provide a personalised preventive intervention to those persons that fear that they might commit offence related to sexual abuse of children providing effective intervention mechanism in order to evaluate and prevent the risk of such offences being committed.[113]

In 1996, the European Parliament established the Daphne Initiative that was intended to support NGOs in tackling violence against children, young people and women. In 2007 the European Parliament and the Council adopted a Decision establishing the **Daphne III programme**, building on the achievement of the Daphne I and II programmes. The main objective of the Daphne Programme are: developing and implementing targeted awareness-raising actions; developing and implementing support programmes for victims and people at risk, and intervention programmes for perpetrators; and designing and testing awareness-raising and educational materials.[114]

[109] Article 1 Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography.
[110] Article 3 Directive 2012/29/EU.
[111] Article 9 Directive 2012/29/EU.
[112] Article 18 Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims; Article 23 Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography.
[113] Article 22 Directive 2011/92/EU.
[114] European Commission, Daphne III Funding Programme, available at http://ec.europa.eu/justice/grants/programmes/daphne/index_en.htm (last accessed on 7 November 2012).

4.3.7. Right to family life

Provisions at EU level guarantee the right to family life to a child, which includes children with disabilities, even if there is no express reference to them. Article 24(3) of the Charter guarantees the maintenance of family ties between the child and both parents, which is crucial in the context of children with disabilities who may be placed in institutional care.

Articles 79 and 81 TFEU make a specific reference to family reunification and family law in issues concerning immigration policy and judicial cooperation in civil matters.

With regard to judicial cooperation in civil matters, the **Brussels II*bis* Regulation**[115] provides common rules on jurisdiction; the main principle is that the court that is closest to the child (based in the first place on the habitual residence of the child) is competent to deal with a case of parental responsibility. The Regulation also protects the right of the child to maintain contact with both parents after the parents split up or divorce, when the parents live in different Member States.

In the field of immigration policies, the right of the child to family life is ensured by the rules **on family reunification**.[116] The Directives focusing on **asylum**[117] also contain specific provisions on children, in particular unaccompanied minors, and they insist on respect for the family unit.[118] In both the fields of immigration and asylum, the provisions about unaccompanied minors foresee that such minors must be placed with adult relatives, with a foster family or in reception centres which has special provisions for minors.[119]

In the field of family law, an important role is played by the EuroMed Justice III project, on the development of a Euro-Mediterranean area of cooperation in the field of justice. The EuroMed Justice III project aims to develop judicial cooperation in civil matters, in particular through assistance in the field of family law, focusing in particular on the resolution of cross-border family conflicts. [120]

[115] Ibid, Ruxton S., 'What about us? Children's Rights in the European Union next steps'.
[116] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L251/12 of 3 October 2003; Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, OJ L50/1 of 25 February 2003; Council Directive 2004/83/EC of 29th April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ L 261/19.of 30 September 2004; Directive 2008/115/EC of the European Parliament and the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals OJ L348/98, of 24 December 2008.
[117] Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, OJ L 212, 7 August 2001; Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, OJ L 31, 6 February 2003; Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted; Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting or withdrawing refugee status, OJ L 326, 13 December 2005.
[118] Commission Staff Working Document accompanying the Communication from the Commission towards an EU Strategy on the Rights of the Child. Preliminary Inventory of EU Actions Affecting Children's Rights COM(2006) 367 final.
[119] Ibid.
[120] Euromed Justice III Project, available at http://euromed-justice.eu/sites/all/themes/framework/files/Euromed3_Triptic_Ingles.pdf.

The European Commission is also actively promoting bilateral cooperation in the field of family law within the European Neighbourhood Policy. This cooperation is aimed at providing practical solutions to family disputes over issues of parental responsibility in order to guarantee the child regular contacts with both parents after the separation, through the facilitation of cross-border visiting rights.[121]

4.3.8. Inclusion (right to inclusive education)

The principle of maximum inclusion in society of persons with disabilities is reflected in Article 26 of the EU Charter. It is particularly relevant in the context of education of children with disabilities to ensure that children with disabilities attend mainstream schools to maximise their integration in society. The Article provides a guiding principle for EU legislative and policy measures to support the full inclusion of children with disabilities. This is also reflected in the Disability Strategy 2010-2020.[122]

Article 26 - Integration of persons with disabilities

The European Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

Article 165 TFEU confers only a supporting competence upon the EU in the field of education. Hence, the European Union can only encourage cooperation between Member States by supporting and supplementing their action, where necessary, and must respect the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity.

As early as 2003, a Council Resolution[123] on equal opportunities for Pupils and Students with Disabilities addressed the problem of access to education by children with disabilities, and invited the Member States and the Commission to 'encourage and support the full integration of children and young people with special needs in society through their appropriate education and training, and their insertion in a school system which is […] adapted to their needs'.[124]

In 2010, the Resolution of the European Parliament on mobility and inclusion of children with disabilities[125] stressed the need to ensure full respect for the rights of the child in the case of children with disabilities, including the right to education and the right to participate in community life.

The Disability Strategy 2010-2020 recognises that access to mainstream education for children with severe disabilities is difficult; it states clearly that children with disabilities

[121] Commission Staff Working Document accompanying the Communication from the Commission towards an EU Strategy on the Rights of the Child. Preliminary Inventory of EU Actions Affecting Children's Rights COM(2006) 367 final.
[122] Area of action n° 5 of the European Disability Strategy 2010-2020; Commission Communication European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe COM(2010) 636 final.
[123] Council Resolution of 5 May 2003 on equal opportunities for pupils and students with disabilities in education and training, 2003/C 134/04, OJ C134/6 of 7 June 2003.
[124] Ibid.
[125] European Parliament resolution of 25 October 2011 on mobility and inclusion of people with disabilities and the European Disability Strategy 2010-2020 (2010/2272(INI)).

need to be integrated into the general education system and provided with individual support. This is in the best interest of the child. The Disability Strategy commits the EU to support, through the Educational and Training 2020 programme[126], the efforts of the Member States to remove legal and organisational barriers to people with disabilities entering the general education and lifelong learning systems, and to guarantee them **inclusive education** and personalised training through the help of professionals working at all levels of education.[127]

The EU 2020 Programme states that education and training policy should enable all citizens, regardless of their personal, social or economic situation, to acquire, update and develop skills and competences. Disadvantages in learning should be addressed by providing high quality early childhood education and support, and **by promoting inclusive education**. Education and training systems should ensure that all learners, including those with special needs, like students with disabilities for example, complete their education, if necessary through second chance education and the provision of more personalised learning programmes. Education should promote respect for fundamental rights and combat all forms of discrimination.[128]

The EU Institutions also support the **European Agency for Development in Special Needs Education** that is an independent and self-governing organisation acting as a platform for collaboration regarding the development of provision for learners with special educational needs. The Agency's aim is to facilitate the collection, processing and transfer of information and experience in order to guarantee the promotion of the full participation of learner with special needs within mainstream education and training.[129]

4.4. Existing policy instruments on disability

The Commission adopted the **European Community Disability Strategy**[130] in 1996, endorsing the principles set in the UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities. The Strategy called upon Member States to recognise the rights of people with disabilities by promoting equal opportunities and eliminating discrimination. The strategy focused on the various barriers which prevented people with disabilities from achieving equality of opportunity.

Further, the Commission developed the **Disability Action Plan**[131] (2004-2010) encompassing three central objectives implemented in three successive phases: 1) to

[126] Council conclusions of 12 May 2009 on a strategic framework for European cooperation in education and training ('ET 2020'), 2009/C 119/02, OJ C 119/2, of 28 May 2005.
[127] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe COM(2010) 636 final, of 15 November 2010.
[128] Council conclusions of 12 May 2009 on a strategic framework for European cooperation in education and training ('ET 2020'), 2009/C 119/02, OJ C 119/2, of 28 May 2005.
[129] The European Agency for Development in Special Needs Education website available at http://www.european-agency.org/about-us (last accessed on 18 November 2012).
[130] A new European Community disability strategy. Communication of the Commission. COM (96) 406 final, 30 July 1996, draft resolution, available at http://aei.pitt.edu/3953/1/3953.pdf (last accessed on 27 November 2012) and executive summary, available at http://ec.europa.eu/employment_social/soc-prot/disable/com406/index_en.htm (last accessed on 14 November 2012).
[131] Commission Communication of 30 October 2003, Equal opportunities for people with disabilities: a European action plan COM(2003) 650, available at http://europa.eu/legislation_summaries/employment_and_social_policy/disability_and_old_age/c11414_en.htm.

implement fully the Directive on Equal Treatment in Employment and Occupation[132], 2) to reinforce **mainstreaming** of disability issues in the relevant Community policies and 3) to improve **accessibility** for all.

The most recent effort from the Commission is the **European Disability Strategy 2010-2020.** The strategy builds on the CRPD and takes into account the experience of the Disability action Plan (2004-2010). Its overriding objective is to 'empower people with disabilities so that they can enjoy their full rights'.[133] The Strategy takes notes of the remaining obstacles preventing people with disabilities from fully exercising their fundamental rights (i.e. the right to free movement, to choose where and how to live, and to have full access to cultural, recreational, and sports activities). The Strategy provides a framework for action at EU level and supplemented action at national level, in order to implement the CRPD. The focus of the Strategy is **to eliminate barriers for people with disabilities**, by identifying eight areas for action: Accessibility, Participation, Equality, Employment, Education and Training, Social Protection, Health and External Action.

The Strategy highlights the multiple vulnerability of children or young people with disabilities, by addressing their general participation in society (e.g. living in institutional or community-based care), with the view to support the development of community-based services, access to education and training (as education is often segregated or mainstream education is difficult to access) and the often difficult transition from education to employment.

4.5. Existing policy instruments on children's rights

The European Commission has been active in the field of the rights of the child. First, with the 2006 Commission Communication **'Towards an EU Strategy on the Rights of the Child'** proposing to establish a comprehensive EU strategy to promote and safeguard the rights of the child in the European Union. Specific objectives of the strategy included:

- Mainstreaming EU policies regarding the rights of the child;
- Ensuring efficient coordination and expertise on the rights of the child;
- Reinforcing competence and expertise on the rights of the child;
- Communicating more effectively on the rights of the child; and
- Promoting the rights of the child in the field of external relations.

An overview of the situation of children is detailed under 'the issues at stake' within the strategy and special attention is paid to the children who deserve particular attention, e.g. children who are living with serious disabilities.[134]

A most recent effort is the Communication '**An EU Agenda for the right of the child**' which describes 11 concrete actions aimed at further protecting and promoting the rights

[132] Council Directive 2007/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.
[133] European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe, COM(2010) 636 final, 2. Objectives and Actions.
[134] According to the Strategy, there were over 200 million children living with serious disabilities in 2006 globally.

of children in all relevant EU policies and actions.[135]

The Europe 2020 strategy sets concrete targets for children and youth with a focus on education and training such as reduction of early school leavers to less than 10% and giving all children access to early childhood education and care.[136] The Agenda recognises **the particular vulnerability of children with disabilities in need of special protection**. However, it does not set any specific action to ensure such special protection. The Agenda lists as a matter of priority the need to improve reliable, comparable and official data regarding the situation and needs of the most vulnerable groups of children, in order to develop effective policies.

Aside the above mentioned legislation on sectoral EU policy areas, the Commission has also adopted soft law initiatives in those specific areas of concern for children's rights describe below.

The Commission **Action plan on unaccompanied minors** (2010-14)[137] aims to improve coherence and cooperation across EU legislative and financial instruments that deal with the significant number of unaccompanied or stateless minors who arrive in the EU each year. The approach of the action plan is based on the respect for the rights of the child as set out in the EU Charter of Fundamental Rights and the CRC. The action plan has three main strands for action: prevention, protection and durable solutions. The plan recommends early profiling of the type of minor from the first encounter to help identifying the most vulnerable unaccompanied minors.

In 2009, the EU launched the Children in the European Union: Rights and Empowerment initiative (**CURE**), which has the mission to raise awareness on best practices to protect the child victim within the criminal justice system.[138]

The European Parliament has been one of the main actors in promoting children's rights. It adopted the Resolution '**An EU strategy for youth- Investing and empowering**' with a focus on education and training, participation and social inclusion. The Resolution is related to Article 14 of the Charter (the right to education) and on its own initiative following a Commission Communication.[139]

Another relevant instrument in this field is the Resolution on **EU strategy on Roma** adopted by the Parliament on its own initiative procedure following a Commission Communication, including a specific focus on the education of Roma children and youth.[140]
The Parliament also voted Resolutions on **the situation of single mothers** with specific

[135] Communication from the Commission to European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions An EU Agenda for the Rights of the Child, COM(2011) 60.
[136] European Commission (2010), Communication from the Commission, EUROPE 2020: A strategy for smart, sustainable and inclusive growth, COM(2010) 2020.
[137] European Commission (2010), Communication from the Commission to the European Parliament and the Council: Action plan on unaccompanied minors, COM(2010) 213.
[138] Crime Victim Compensation and Support Authority, CURE project recommendations.
[139] European Parliament resolution of 18 May 2010 on 'An EU Strategy for Youth – Investing and Empowering'; European Commission (2009), 'Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions An EU Strategy for Youth – Investing and Empowering A renewed open method of coordination to address youth challenges and opportunities', COM(2009) 200.
[140] European Parliament resolution of 9 March 2011 on the EU strategy on Roma inclusion; European Commission (2010), Communication from the Commission 'The social and economic integration of the Roma in Europe', COM(2010) 0133.

regards to ensure access to affordable and quality childcare, the elimination of discrimination and social exclusion, as well as Parliament Resolutions on preventing trafficking in human beings and on the European Platform against poverty and social exclusion providing further protection for children.[141]

Among other activities, the European Parliament recently set up an informal cross-party and cross-committee group aiming at mainstreaming children's rights across EU actions and programmes, and at improving the quality of work of the European Parliament on protection of children's rights.[142]

The **Action Plan Implementing the Stockholm Programme 2010** created by the Commission aims to deliver the priorities of the Stockholm Programme, which are to develop an area of freedom, security and justice for Europe's citizens. It sets out to achieve this goal by providing measures for:

- Evaluating justice, freedom and security policies and mechanisms;
- Training legal judicial and law enforcement authorities;
- Public awareness-raising activities;
- Dialogue with civil society; and
- New financial programmes.

The impetus behind the Stockholm Programme and its Action Plan is the EU overriding objective of achieving a 'people's Europe'. Essential components of this objective are to ensure that fundamental rights are protected and to provide a common area of protection. Within the Action Plan the Commission vows to apply a 'Zero Tolerance Policy' as regards violations of the Charter of Fundamental Rights. It focuses on children in vulnerable situations bringing a specific attention to the issues of children victims of sexual exploitation and abuse, child pornography, as well as children victims of trafficking and unaccompanied minors.

The Programme notes: 'The rights of the child, namely the principle of the best interests of the child being the child's right to life, survival and development, non-discrimination and respect for the children's right to express their opinion and be genuinely heard in all matters concerning them according to their age and level of development as proclaimed in the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child, concern all Union policies. They must be systematically and strategically taken into account with a view to ensuring an integrated approach'.[143]

[141] European Parliament resolution of 25 October 2011 on the situation of single mothers; European Parliament resolution of 10 February 2010 on preventing trafficking in human beings; European Parliament resolution of 15 November 2011 on the European Platform against poverty and social exclusion.
[142] 'EP alliance to protect children in Europe and beyond', available at http://www.europarl.europa.eu/news/en/headlines/content/20110328STO16533/html/EP-alliance-to-protectchildren-in-Europe-and-beyond.
[143] The Stockholm Programme adopted by the European Council (2010/C 115/01), available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:en:PDF.

5. COMPARATIVE ANALYSIS OF THE LEGAL AND PRACTICAL IMPLEMENTATION

KEY FINDINGS

- Overall the 18 Member States have in place comprehensive legal frameworks reflecting the rights and principles identified under the CRPD and CRC. Hence, it may be stated that children with disabilities' rights are effectively recognised through general or specific legislation. However, their practical implementation revealed to be problematic in most MS.

- Consideration of the **best interests of the child** is in general recognised under national laws. However, they are mostly limited to family and social protection decisions affecting children. There is a lack of understanding of what the principle entails, being insufficiently elaborated. Implementing rules are lacking overall. The principle is rarely put into practice by the legislative bodies.

- **Prohibition of discrimination** based on disability or age is reflected in national legislation even if there is rarely an explicit reference to children with disabilities. The implementing legislation of the right and the requirement of reasonable accommodation are generally limited in scope. In practice, accessibility remains a key problem in most MS.

- The consideration of the **evolving capacities** of the child is recognised in most MS, mostly based on consideration of age, maturity and development of the child. However, the implementation is limited to certain types of decisions and MS tend to primarily take into consideration the child's age, which for children with disabilities may not be relevant.

- **The right to participate/to be heard** in all matters affecting a child is effectively recognised under the 18 MS legislations but often limited to sectoral safeguards. In practice, children with disabilities are not systematically involved and do not get to participate in public and private life at the same level than their peers.

- In general, **freedom from violence** is guaranteed by MS's legislation. However, abuse against children with disabilities is a key problem recognised in all MS. Violence occurring in institutions is of particular concern. The lack of systematic data and the difficulty for victims to report abuse does not allow having a clear picture of the situation enabling the adoption of policies and measures.

- The **right to family life** and to measures ensuring maintenance of family ties are widely recognised by MS. Institutionalisation is the biggest barrier to the effective right to family life in practice, but yet often the only option. Insufficient support to families for the maintenance of the child within the family is the root cause.

- Overall, the right to various forms of **assistance** (financial, social, health care, etc.) for both children with disabilities and their families is reflected in national laws. However, in most cases assistance is sectoral and insufficient. The system is often fragmented where assistance must be sought before different authorities and regional disparities exist. The economic crisis is contributing to the removal or

reduction of assistance in most MS.

- Most MS recognise the right to **inclusive education**. However, the ability to access the school of choice remains very challenging in practice. Mainstream schools are largely inaccessible to children with disabilities in many MS and in those where it is possible, support for the child in mainstream schools is often insufficient. Teachers in mainstream schools lack training and awareness on the needs of children with disabilities. Programmes are not systematically adapted to children with disabilities.

For the comparative analysis of the national legal frameworks ensuring children with disabilities' rights and principles in the 18 Member States, we have developed criteria enabling a comparative assessment of the information reported in each national study. The criteria are based on the requirements within each right and principle, derived from the text of both conventions and their interpretation according to the CRC Committee General Comments.

5.1. The best interests of the child

The obligation to act in the best interests of the child should be at the heart of any decision affecting children with disabilities adopted either by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.

All States must ensure that the best interests of the child constitute a primary (but not the sole) consideration in all actions concerning children, including children with disabilities. The CRC specifically requires to consider the best interests of the child with respect to decisions and actions in the following areas: separation from parents (Article 9), parental responsibilities for their children (Article 18), deprivation of family environment (Article 20); adoption (Article 21); separation from adults in detention (Article 37 (c)); and presence of parents at court hearings for criminal matters involving a child (Article 40 (2)(b)(iii)).

The implementation of the principle requires to systematically considering 'how children's rights and interests are or will be affected by legislative, administrative and judicial body or institution decisions and actions'.[144]

Actions in the 'best interests' refer to actions promoting the well-being of a child. The best interests are determined by a wide range of individual factors such as the age, the level of maturity of the child, the presence or absence of parents, the child's environment and experiences.[145]

[144] CRC Committee General Comment No 5 'General measures of implementation of the Convention on the Rights of the Child', p.4, available at http://www2.ohchr.org/english/bodies/crc/comments.htm.
[145] UNHCR Guidelines on Determining the Best Interests of the Child, May 2008, p. 20, available at http://www.unhcr.org/4566b16b2.pdf (last accessed on 26 November 2012).

The Council of Europe's Commissioner for Human Rights has stated, as a starting point towards a definition of the best interests of the child, that this principle reflects the '*total sum of the rules in the Convention [on the Rights of the Child]'*.[146]

Thus for example, it is in the best interests of the child to: receive education (Art. 28); have family relations (Art. 8); or to be heard in matters concerning him or her (Art. 12).

There is not a single definition of the best interests of the child or tightly defined criteria for determining how the principle should be implemented in general and concerning children with disabilities in particular. As mentioned above, the UN, the UNHCR and the Council of Europe as well as some national bodies have developed a number of guidelines or criteria which should be used in order to ensure the principle is applied effectively.

5.1.1. Legal framework

For the purposes of this study, our assessment is based on the processes to ensure the systematic consideration of the best interests of the child in the legal framework of the 18 Member States as well as through the individual decisions affecting children. The criteria below set out two key indicators for how States Parties to the CRC, should ensure the best interests of the child. The assessment in the table below is based on the information included in each national report. While this principle is applicable to children with disabilities, it does not explicitly refer to them.

- **Criterion n°1: Systematic consideration of the child's best interests**

The legal frameworks of the Member States are analysed to verify if a general provision is in place in the national legislation (in the national Constitution or primary legal acts) referring to the child's best interests as a primary consideration in all actions concerning them. To guide our assessment we consider whether a general provision requires a systematic consideration of the child's best interests, meaning that such consideration covers all actions and decisions affecting the child. An assessment of the legal implementation of this criterion is reflected in Table 9 in the Annex.

- **Criterion n°2: Procedural safeguards**

The implementation of this criterion requires that specific procedural provisions, safeguards and processes are defined in national legislation which ensures that the best interests of the child are taken into account when decisions are taken. More specifically, this criterion implies that the child's best interests are considered in proceedings related to the most important aspects affecting child's life, i.e. family, education, criminal and social aspects, by public or private social welfare institutions, courts of law, or administrative authorities.[147] An assessment of the legal implementation of this criterion is reflected in Table 10 in the Annex.

The table below presents an overall assessment of the legal implementation of the principle of the best interests of the child in the 18 Member States.

[146] Commissioner for Human Rights, Council of Europe, 'Council of Europe: The best interests of the child - what it means and what it demands from adults', 2008, available at http://www.crin.org/resources/infoDetail.asp?ID=17649 (last accessed on 21 February 2013).
[147] Article 3 CRC.

Table 1: Overall assessment of the legal implementation of the principle of the best interests of the child.

MS	The child's best interests		
	Criterion n°1	Criterion n°2	Overall Implementation
BE	Yes	Partial	Partial
CZ	Partial	Partial	Partial
DE	Partial	Partial	Partial
EE	Yes	Yes	Yes
EL	Partial	Partial	Partial
ES	Yes	Partial	Partial
FI	No	Partial	Partial
FR	Yes	Partial	Partial
HU	No	Partial	Partial
IE	Partial	Partial	Partial
IT	Partial	Partial	Partial
MT	No	Partial	Partial
NL	Partial	Partial	Partial
PL	Partial	Yes	Partial
RO	Yes	Yes	Yes
SE	Partial	Yes	Partial
SI	Partial	Yes	Partial
UK[148]	No	Partial	Partial

From our research, the principle of best interests of the child appears to have received a partial implementation in the legal framework of the 18 Member States analysed, with the exception of Romania and Estonia, which have fully implemented the principle.

Five Member States (i.e. Belgium, Estonia, Spain, France and Romania) contain in their legislation a general requirement for systematic consideration of the best interests of the child (**the first criterion for the assessment** of this principle).[149] Legislation of those Member States (either in the Constitution or in major legal acts) explicitly states that the best interests of the child should be a primary consideration of all decisions that concern children.

[148] Except Scotland.
[149] For details see Table 9 in the Annex.

In two Member States (Germany and Italy), the principle has not been expressly established in constitutional provisions, however Constitutional Courts have affirmed it as a guiding principle of national legal system which has been accounted as partial implementation. In France, the Council of State and Court de Cassation held that Article 3 of the CRC is directly applicable and can be invoked in Courts.

In the rest of the Member States, no general provision of systematic consideration of the best interests of the child has been incorporated in the national legislation. However, some of them have developed specific provisions applying the principle in few areas related to the child, mainly in the field of family law and social protection or providing for procedural safeguards of the child's best interests rather than a systematic consideration. Hence, in such cases, partial implementation has been concluded.[150]

Five Member States do not have provisions recognising the primary consideration of the best interests of the child. As in the case of the United Kingdom and Ireland, when national legislation uses other terms such as the 'well-being' or 'welfare' of the child or 'the interests of the child' it has been accounted as no implementation.

Ten of the eighteen Member States[151] have a monist international law system, meaning that ratified international agreements, including the CRC and/or the CRPD, constitute part of the national legal system, take precedence over ordinary laws and can be invoked directly in Courts. However, according to our approach, in order to recognise the implementation as fully effective, relevant provision(s) of the CRC and the CRPD should be reflected directly in the national law. When the legislation does not include general and systematic recognition of the principle, the implementation is assessed as partial with regard to those countries (i.e. the Czech Republic, Greece, Poland, Slovenia, the Netherlands).

With regard to the specific procedural safeguards related to the best interests of the child (**second criterion in the assessment** of the principle), it can be concluded that special safeguards are overwhelmingly implemented in family proceedings[152] and in social protection/welfare decisions[153]. However, in a significant number of the Member States such pattern is not clearly defined either in education decisions[154] or in criminal proceedings[155] concerning the child or in relation to both of those areas. The fact that no specific procedural safeguard is identified in educational matters or criminal procedure does not automatically mean that the best of interests of the child are not taken into account in practice in related decisions, in accordance with the general principle of the best interests of the child. Nevertheless, the absence of specific requirement or implementing rules represents a gap in the legal frameworks and is accounted as partial implementation.

[150] For details see table 9 in the Annex.
[151] Belgium, Czech Republic, Estonia, Spain, Greece, France, Poland, Romania and Slovenia. The Netherlands has a limited monist system where only CRC provisions of general binding nature have direct effect.
[152] In all Member States concerned except the United Kingdom (for more details see Table 10, as annexed).
[153] In all Member States except Greece, France, Ireland and the United Kingdom (for more details see Table 10 in the Annex).
[154] Member States which fully implemented this safeguard are the following: Estonia, France, Ireland, Poland, Romania, Slovenia and Sweden (for more details see Table 10 in the Annex).
[155] Member States which fully implemented this safeguard are the following: Estonia, Spain, Hungary, Malta, Poland, Romania, Sweden and Slovenia (for more details see Table 10 in the Annex).

Several Member States (Estonia, Poland, Romania, Sweden and Slovenia) have fully implemented the procedural safeguards in the four areas concerned (family and criminal proceedings, decisions concerning social protection and education of the child).

In conclusion, while the principle is general present in some form or another in MS legislation, there is overall either a lack of requirement for systematic consideration of the best interests of the child in all decisions affecting them or a lack of procedural rules to ensure the practical consideration of the principle in the main areas affecting the child. As a result, the overall implementation of the principle of the best interests of the child in the 18 Member States concerned is assessed as partial.[156]

See Table 9 and 10 in the Annex for detailed analysis of each criterion.

5.1.2. Practical implementation of the framework

Issues/gaps

The principle of best interests of the child is not defined by the legal acts recognising it nor have criteria for the principle's interpretation been subject to regulatory development. Without such criteria or implementation rules the practical implementation is left to the interpretation of authorities.

Certain problems concerning the **interpretation of the principle** of the best interests of the child have been identified. Since the elements of the concept are not sufficiently elaborated, it significantly affects proper application of the principle of best interests of the child and results in its superficial use in practice.

Overall, practical implementation of the principle of the best interests of the child is considered to be unsuccessful in the Member States concerned. Out of the 18 Member States examined, only a few have been explicitly shown by the country reports[157] that the best interests of the child are effectively taken into account by the competent national authorities with regard to the main areas concerning children's lives. In Italy, the Constitutional Court affirmed the principle in its several decisions, which are binding for future case-law. Similarly, in Malta, the principle of the best interests of the child has consistently been adjudged as a matter of great relevance in the courts. In the Netherlands which has a limited monist system resulting in the direct applicability of the CRC provisions of general nature. Article 3 CRC plays an important role in the case law. In a study analysing case laws of Dutch Courts between 2002 and 2010, this article is one of the provisions most invoked before Courts. In a certain number of cases, Article 3 is directly applied to render a national provision inapplicable or when there is a conflict between a national provision and the CRC.[158] In Spain, the Supreme Court has defined the criteria for implementation of this principle in issues of family law. In certain Member States, a number of policy documents have been issued[159] referring to the best interests

[156] See the Table 1 for the overall assessment.
[157] Italy, Sweden, Spain.
[158] See the Netherlands report and J. de Graaf, M. Limbeek, N. Bahadur and N. van der Meij, 'The application of the international convention on the rights of the child in the dutch law' (*De toepassing van het internationaal verdrag inzake de rechten van het kind in de nederlandse rechtspraak*), available at http://www.kinderrechten.nl/images/13/332.pdf (last accessed 17 January 2013), pp. 11-12.
[159] See: The National Strategy to Protect Children's Rights in Czech Republic, 'Making things better for our Children 2007-2032' Strategy in Hungary, The Programme for Children and Youth 2006–2016 in Slovenia.

of the child as the paramount consideration.

The general trend shows that, in practice, the best interests of the child are not being systematically considered by national authorities. This is largely due to the lack of specification of what the principle entails and lack of implementing criteria or rules.

An example of definition of the principle of best interests of the child can be found in a Spanish Supreme Court decision, which requests public authorities to apply the following criteria:

*a) the competent Authorities may act in a precautionary manner, b) it is necessary to balance the interests at stake, given that the **interest of the child is preferential** over the interest of the family, and c) that in all the rules on the protection of **the interest of the child** in similar circumstances, it is recommended that efforts be made to reintegrate the child in his/her own family, unless this would be contrary to his/her **interests**.*[160]

Another example can be found a regional Decree on youth welfare (Flanders, Belgium), which provides criteria for implementing the principle:

*The interest of the child is **determined in dialogue with the minor** him/herself. An **appropriate follow-up** is provided for the minor's opinion, given her/his age and maturity. In determining the child's interest, the **opinion and responsibility of the parents** must be respected.*[161]

Whereas it could be stated that the principle is often reflected in individual judicial or administrative decisions concerning children's well-being (the research shows that it is mostly in the area of family law), the bests interests of the child are not assessed by the governments in their legislative and policy-making actions. The fulfilment of the principle of the best interests of the child requires systematic assessment of the impact of State decisions and legislation on children, including children with disabilities. However, the child impact assessments of proposed legislation are not carried out to the sufficient extent and the principle of the best interests of the child is rarely put into practice by the legislative bodies.

Best practices

In order to foster the child impact assessment of a proposed legislation, the Finnish Ministry of Justice issued in 2007 instructions on how to assess such legislation at the central government level. These instructions include child impact assessment as part of the human impact assessment.[162] In Addition, in 2009, the General Synod of the Evangelical-Lutheran Church of Finland decided that church legislation and parish instructions should include child impact assessment for decisions.[163]

With a view of elaborating the concept of the best interests of the child and strengthening its application in practice, guidelines on how social services can live up to

[160] Ruling nº 84/2011 of 21 February 2011 of the Spanish Supreme Court, 1st chamber (Civil law).
[161] See Belgium report and Article 5 of the Flemish Decree of 7 May 2004 on the minor status with regards to integrated youth welfare.
[162] Ombudsman for Children in Finland, *Report to the UN Committee on the Rights of Child Supplementary report to Finland's 4th Periodic Report* (Publication by the Office of the Ombudsman for Children 2011:1, Jyväskylä) 17.
[163] Ibid.

the provision on the child's interest have been developed in Hungary[164] and in Sweden[165].

5.2. Right to non-discrimination

The rights established by the CRC and the CRPD should be respected and ensured by the States Parties to each child within their jurisdiction, without discrimination of any kind, i.e. irrespective of children's particular characteristics, such as racial or ethnic origin, religion, disability, age or sexual orientation.

Discrimination on the basis of disability means any distinction, exclusion or restriction on the grounds 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 in the political, economic, social, cultural, civil or any other field.[166] It includes **direct discrimination** as well as **indirect discrimination**, resulting from actions or decisions even if not directly addressed to the individual child or to children with disabilities in general.

The concept of discrimination also covers all forms of discrimination including denial of reasonable accommodation. Hence, the full implementation of the right to non-discrimination requires **reasonable accommodation** in the sense that 'necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, [must be made] where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms'.[167] As a result, the application of the right to non-discrimination 'does not mean identical treatment', it may require 'taking special measures in order to diminish or eliminate conditions that cause discrimination'.[168]

For example, with regard to education, reasonable accommodation can take the form of installing a ramp at the entrance of the refectory, a device available for the visually impaired students or extending the time of an exam for a dyslexic student. Reasonable accommodation is a measure, which takes into account the needs of children with disabilities to allow him/her to access schools (classes and refectory), to participate in classes and school activities and to progress (learn and succeed) on an equal basis compared to children without disabilities. The term reasonable refers not only to the cost of the accommodation but also other aspects such as not disturbing the organisation of classes or questioning the teaching. Moreover, it should not be a heavy burden for the school or the teacher.

However, recent jurisprudence at a national level[169] further defines this concept in relation to the right to education for children with disabilities. It requires the authorities to provide the assistance necessary to ensure appropriate conditions for the development

[164] Hungary: the guidelines are available on the website of the National Institute for Child Health, available at http://www.ogyei.hu/upload/files/gyermekb_modszertani_ajanlas.pdf (last accessed on 21 February 2013).
[165] Sweden: Guidelines from the National Board on Health and Welfare on the best interests of the child in the decision making process, available at http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/18734/2012-6-16.pdf (last accessed on 21 February 2013).
[166] Article 2 CRPD.
[167] Ibid.
[168] The CRC Committee General Comment No 5 on General measures of implementation of the Convention, p.4. available at http://www2.ohchr.org/english/bodies/crc/comments.htm (last accessed on 21 February 2013),
[169] Spanish Supreme Court, STS 9 May 2011, Case Appeal 603/2010.

of the right taking into account the starting point of inequality of children with disabilities. The right would be considered violated if those conditions were made conditional to budget constraints.

In relation to non-discrimination on **the grounds of disability**, gender issues deserve particular attention as women and girls with disabilities are frequently subject to multiple forms of discrimination, including on the basis of disability, on the basis of sex and sometimes on both grounds. Discrimination based on disability can take place in any place including school, the work place, housing, and public facilities. Hence, national authorities must pay particular attention to ensure equal treatment of persons with disabilities in all areas of public life.

The proposed Anti-Discrimination Directive understands reasonable accommodation as 'measures necessary to enable persons with disabilities to have effective non-discriminatory access to social protection, social advantages, health care, education and access to and supply of goods and services which are available to the public, including housing and transport, shall be provided by anticipation, including through appropriate modifications or adjustments. Such measures should not impose a disproportionate burden, nor require fundamental alteration of the social protection, social advantages, health care, education, or goods and services in question or require the provision of alternatives thereto'.

5.2.1. Legal framework

To assess the implementation of the right to non-discrimination, the presence of the following elements will be analysed per Member States:

- **Criterion n°1: General prohibition of discrimination on the grounds of disability**

A first criterion to verify the implementation of the right to non-discrimination is whether legal frameworks of the 18 Member States include a general right to non-discrimination *on the basis of disability*. In this context, provisions of the national Constitution or the highest law in the hierarchy of the national legal system, in general legislative Codes or specific anti-discrimination laws should reflect the right to non-discrimination. To assess the implementation, it is considered whether the prohibition of direct discrimination on the grounds of disability is *explicitly* expressed in the legislation and whether exemptions from the general prohibition are foreseen. For full implementation, the prohibition of direct discrimination should have a broad scope including prohibition of discrimination on the grounds of disability in areas such as education, access to health care, public transportation, and goods and services in general.

The assessment of the implementation of this criterion will also consider whether prohibition of discrimination on any other grounds would cover disability. An assessment of the legal implementation of this criterion is reflected in Table 11 in the Annex.

- **Criterion n°2: Prohibition of indirect discrimination on the grounds of disability**

Indirect discrimination occurs when a legal provision or condition, which appears neutral and is applied equally to everyone, cannot be met by a certain proportion of people from

a particular group, i.e. persons (including children) with disabilities. The explicit prohibition of indirect discrimination on the basis of disability in national legal frameworks is another requirement to assess the implementation of the right to non-discrimination. For full implementation, the prohibition of indirect discrimination on the grounds of disability should have a broad scope including in areas such as education, access to health care, public transportation, and goods and services in general. An assessment of the legal implementation of this criterion is reflected in Table 12 in the Annex.

- **Criterion n°3: Reasonable accommodation**

An important requirement for the application of the right to non-discrimination is the presence in the national legislation of an obligation of reasonable accommodation. This criterion has a practical impact on the effective enjoyment of rights by children with disabilities. Requirement of reasonable accommodation requires States Parties to provide relevant modifications in the environment in order to enable persons with disabilities to enjoy equal opportunities in social, economic and cultural life. In this sense, reasonable accommodation can contribute to appropriate access to public buildings, public transportation, schools or information through the adoption of appropriate measures and adjustments not imposing a disproportionate or undue burden. An assessment of the legal implementation of this criterion is reflected in Table 13 in the Annex.

- **Criterion n°4: Enforcement mechanism**

Effective implementation of the right to non-discrimination on the grounds of disability requires the presence of adequate enforcement mechanisms, complaint systems and remedies. It requires not only an effective access to ordinary judicial proceedings but also the establishment of specialised authorities, or the designation of equality/human rights bodies competent to receive complaints concerning breaches or non-application of the right to non-discrimination on the grounds of disability. This criterion also entails the requirement of access to legal aid for children themselves. An assessment of the legal implementation of this criterion is reflected in Table 14 in the Annex.

The table below presents an overall assessment of the legal implementation of the right to non-discrimination in the 18 Member States.

Table 2: Overall assessment of the legal implementation of the right to non-discrimination

MS	Non-discrimination				
	Criterion n°1	Criterion n°2	Criterion n°3	Criterion n°4	Overall Implementation
BE	Yes	Yes	Yes	Yes	Yes
CZ	Yes	Yes	Partial	Yes	Partial
DE	Yes	Yes	Partial	Yes	Partial
EE	Partial	Partial	Partial	Yes	Partial
EL	Partial	Partial	Partial	Yes	Partial
ES	Yes	Yes	Yes	Yes	Yes

MS	Non-discrimination				
	Criterion n°1	Criterion n°2	Criterion n°3	Criterion n°4	Overall Implementation
FI	Partial	Partial	Partial	Yes	Partial
FR	Yes	Partial	Partial	Yes	Partial
HU	Yes	Yes	Partial	Yes	Partial
IE	Yes	Yes	Yes	Yes	Yes
IT	Yes	Yes	Partial	Yes	Partial
MT	Yes	Yes	Yes	Yes	Yes
NL	Partial	Partial	Partial	Yes	Partial
PL	Partial	Partial	Partial	Yes	Partial
RO	Yes	Yes	Partial	Yes	Partial
SE	Yes	Yes	Partial	Yes	Partial
SI	Yes	Yes	Yes	Yes	Yes
UK[170]	Yes	Yes	Yes	Yes	Yes

It follows from the country studies and from the research that all the 18 Member States provide for an explicit prohibition of discrimination on the grounds of disability, either in their national Constitutions or major legal acts. However, in several Member States (Estonia, Greece and Poland) the legislation ensuring this right is limited to employment and vocational training. This is a result of the implementation of Directive 2000/78/EC on equal treatment in employment and occupation. Some countries' legislation prohibiting discrimination based on disability has slightly larger scope, although still limited to specific sectors, such as employment, education, housing/livelihood and transport (Finland and the Netherlands).

Pursuant to the legislation of some Member States, certain exemptions from the general prohibition of discrimination based on disability are allowed provided they are objectively justified and pursue legitimate aim (including Belgium, the Czech Republic, Slovenia) or when it is necessary to protect the safety and health (the Netherlands). In some Member States, preferential treatment linked to the disability is permitted (such as Belgium, Germany, Ireland, Malta, Romania).

Indirect discrimination on the grounds of disability is explicitly prohibited in a wide majority of the Member States.[171] However, for those countries which recognise the general prohibition of discrimination based on disability for the area of employment and vocational training only, the prohibition of indirect discrimination is similarly limited in scope.

[170] Except Scotland.
[171] For details see Table 12 in the Annex.

With respect to the requirement of reasonable accommodation, less than half of the Member States concerned (i.e. Belgium, Spain, Ireland, Malta, Slovenia and the United Kingdom) have fully implemented this legal obligation by formally ensuring universal access of persons (including children) with disabilities to major spheres of their lives. The implementation of the requirement of reasonable accommodation is assessed as partial in the remaining Member States, since the legislation of those countries has limited scope of application. To be more precise, in some Member States the requirement of reasonable accommodation applies only in employment sector (the Czech Republic, Finland, France, Italy and Poland) or to the accessibility of buildings (Germany, Estonia, Sweden), transportation (Germany, the Netherlands) or information (Greece). Moreover, a number of Member States do not recognise the principle explicitly in their legal systems (Germany, Estonia, Hungary, Romania).

Overall, the majority of the Member States' legislation guarantees full accessibility for persons with disabilities of public buildings, public services and means of transportation. Access to information and communication services is only occasionally ensured by national laws.[172]

All the 18 Member States have established effective **complaint mechanisms** to deal with discriminatory acts. For that purpose Member States have formally appointed various types of competent authorities, such as special equality bodies (e.g. CEOOR in Belgium, Anti-Discrimination Agency in Germany, UNAR in Ireland or the National Council for the Fight against Discrimination in Romania), Ombudsmen (e.g. in the Czech Republic, Finland, France, Slovenia), Ombudsmen for Children (e.g. in Greece, Poland), special disability authorities (e.g. the Commission for the rights and autonomy of persons with disabilities in France or the national Disability Council in Hungary) or the Chancellor of Justice (in Estonia and Finland). In the majority of the Member States concerned, more than one competent authority is operative in order to ensure the effective protection against discrimination. Different authorities have various competences, some ensure advice, assistance and support to victims of discrimination, and others intervene and investigate in cases of alleged discrimination, provide mediation services, take matters to courts, receive complaints or act on their own.[173] Regardless of their specific functions, they constitute part of national complaint mechanisms and ensure that adequate remedies are provided in case of the infringement of the right to non-discrimination. Finally, in all the 18 Member States proceedings before national courts can be initiated in order to seek redress.

In conclusion, the right to non-discrimination on the grounds of disability is recognised in all researched Member States. However, in some states it is limited in scope and does not pertain to sectors relevant to children with disabilities or only to a limited extent. The denial of reasonable accommodation is explicitly recognised as discrimination in four Member States (Belgium, Ireland, the Netherlands and Spain), while the remaining Member States require reasonable accommodation, accessibility or 'reasonable adjustment' for persons with disabilities. However, as mentioned above, in some Member States the requirement of reasonable accommodation is limited in scope. As a result the full implementation of the right to non-discrimination on the grounds of disability in all sectors relevant to children (including education and social services) is not yet achieved

[172] This requirement is expressly established by Greek, Hungarian, Irish, Italian, Spanish and Slovenian laws.
[173] For more details see Table 14 in the Annex.

in most of the 18 Member States.

5.2.2. Practical implementation of the framework

Issues/gaps

As found in the legal implementation section, Member States legislation analysed for this study provide for the prohibition of discrimination on the grounds of disability (including indirect discrimination) and establish relevant enforcement mechanisms as well as legal requirement of reasonable accommodation. In practice, however, the right to non-discrimination is not sufficiently implemented in the 18 Member States, rendering the situation of children with disabilities particularly problematic.

The key barriers identified in this study with regard to the practical implementation of the right to non-discrimination concern the insufficient provision of reasonable accommodation and the limited accessibility and reduced effectiveness of the enforcement mechanisms and complaint systems.

Most Member States' legal frameworks include the legal requirement of **reasonable accommodation**. The practical implementation of the laws ensuring the reasonable accommodation is problematic. However, the requirement of reasonable accommodation is considered to be relatively well applied and implemented in the area of education (access to schools, kindergartens, etc.) in some countries. In others progress is made through Courts. For example, the Supreme Court in Spain[174] recognised that the mere schooling of a child with disabilities is not enough to consider the right respected. The adoption of specific measures to ensure accessibility in all aspects is required to compensate the unequal starting point and should not be subject to budget constraints. In order to facilitate the school's tasks, the requirement of reasonable accommodation can be used to ensure that the burden on the school is not disproportionate but within the respect of the right itself.

The practical implementation of the requirement of reasonable accommodation is problematic. For example, in Belgium, most of the cases on discrimination in education received by the CEOOR were related to refusal or lack of reasonable accommodation. In addition, the right to reasonable accommodation is often misunderstood and sometimes perceived as a privilege for children with disabilities rather than a right. For example, the request for a child with special educational needs to be allowed an extended time to pass tests and exams is not always well received.

Another problem relates to **accessibility**. Despite the general wealth of legislation in this field, in most of the Member States, practical barriers to access public buildings and public transportation still exist, hampering significantly full integration of children with disabilities into society and increasing their separation from social, economic and cultural life, with the consequent impact on their right to participation. Accessibility to private buildings constitutes a significant issue limiting children with disabilities to fully participate in society.

Accessibility to information and communication technologies requires improvements in order to enable children with disabilities to fully participate in society. Some of the

[174] Spanish STS 9 May 2011, Case Appeal 603/2010.

Member States (Ireland, Romania) indicated that such problems exist mainly due to budget cuts. See *good practices* below on how to address this issue.

The lack of guidance, information and support to families has been reported as one of the main problems. The research shows that the enforcement and complaint procedures are not sufficiently accessible for both children with disabilities and their parents. They are neither well informed (nor aware) of the existing complaint systems nor sufficiently supported by public authorities to lodge complaints, once their rights have been violated. Many families are not in the position to fight for the rights of their child lost in a situation that is unknown to the majority of the population; that is, all those who do not have a family member with disabilities. Furthermore, it has been pointed out in the country reports that State bodies dealing with complaints are not sufficiently child friendly.

Judicial officials are not trained or sensitised to children with disabilities' needs. The possibility to file a complaint is even more limited for children living in institutions. As children with disabilities frequently do not have, in practice, appropriate and sufficient means to take an active role in initiating enforcement procedures, the violations of their rights often stay unreported, increasing their marginalisation.

It has been noticed that, although the social and public status of children with disabilities has improved over past years and their access to a wide range of services and public activities has increased, in practice they do not enjoy the same level of protection as their able-peers and the opportunities to participate in public life are not equal to the possibilities that other children enjoy. The provision of services for persons with disabilities may also vary within one country from one region to another.

Discriminatory attitudes of persons interacting with children with disabilities also constitute a problem towards inclusion of those children in society. From the country reports it follows that discrimination against children with disabilities is most commonly committed within the school environment. This includes not only discriminatory behaviours by other students but also difficulties in accessing inclusive education.

Nowadays, more and more often, cases of discrimination based on disability consist of offensive and discriminatory messages against children with disabilities published via Internet. In July 2012, the Italian equality body initiated a preliminary investigation against a website which published discriminatory information offending children with disabilities. At the end of the investigation a complaint was filed with the Internet police.

In some Member States, several policy documents have been adopted[175] focusing on children with disabilities and the principle of non-discrimination. They promote equal opportunities and non-discrimination of children with disabilities and strengthen their accessibility into society and public life. The existence and efficient application of such documents is desirable in all Member States as they increase public awareness of

[175] In Czech Republic, the National Strategy to Protect Children's Rights (Resolution No. 4 dated 4 January 2012) is based on the principle of equal opportunities for all children regardless of their gender, (dis-)abilities or ethnic origin. The policy paper 'Right to childhood - National Strategy Protecting Children' Rights' refers to equal opportunities as one of the main principles and commits to ensure equal opportunities for all children without prejudicies with regard to disability. In finland, main objectives of the govrenment programmes 'The Strong Basis for Inclusion and Equality: Finland's Disability Policy Programme VAMPO (2010–2015)' and 'Development Programme for the Child and Youth Policy' is promotion of accessibility, equality and non-discrimination. In Spain: The First National Accessibility Plan 2004-2012 and the Spanish Strategy on Disability 2012-2020 with key Actions on non-discrimination and accessibility.

problems faced by children with disabilities and, in a long run, may contribute to the more effective implementation of their rights in practice, even more if they have a specific budget for its implementation.

Good practices

With regard to the practical implementation of accessibility and the requirement of reasonable accommodation, in Sweden, the municipalities are required to adopt and implement accessibility plans on what work has to be done in order to make public facilities and public spaces more accessible for persons with disabilities. The Handisam report on the accessibility of authorities[176] found that, although not all authorities meet all the accessibility criteria developed by Handisam, more measures to improve the accessibility of persons with disabilities have been implemented in recent years than previously.

The implementation of the right to non-discrimination and access to assistance in Ireland has been improved with the introduction of the Personal Advocacy Service by the Citizens Information Act 2007. This Service is to provide an assistance and support for certain persons with disabilities who otherwise would have difficulties in accessing information, advice and advocacy services.

In order to ensure the effectiveness of complaint systems, enforcement bodies should be able to receive complaints through free phone numbers and user-friendly websites. For example, in the Czech Republic, the Ombudsman has a special subsection on the website containing simple and accessible instructions on how to lodge a complaint, i.e. through a special web-from, by an e-mail, by letter or in person. In Italy, an emergency Phone Service exist, run by a charitable association, which enables reporting for violations of children with disabilities' rights.

Relevant stakeholders and specialised organisations should be constantly available for children with disabilities and their parents in order to assist them with legal advice or to loge a complaint. As an example, in the Netherlands, 'the Defence for Children' and '*the Kinderrechtencollectief*' are particularly active in this field.

Finally, preventive actions are necessary in order to ensure the effective implementation of the non-discrimination principle. In order to change attitudes of persons interacting with children with disabilities and to shade more light on the status and problems of children with disabilities, adoption of awareness raising campaigns in all Member States is of great importance. This is an area in which need for action taken by the European Parliament is particularly vital.

[176] 'So accessible is the State' (*Så tillgänglig är staten – Uppföljning av statsförvaltningens tillgänglighetsarbete 2010-2012*) 2012, Handisam, available at: http://www.handisam.se/Publikationer-och-press/Rapporter/Arsredovisning-2006/Sa-tillganglig-ar-staten-2010-2012/ (last accessed on 21 February 2013).

5.3. Evolving capacities

The concept of evolving capacities of the child establishes that as children acquire enhanced competencies and experience, there is a reduced need for direction by persons legally responsible for a child (parents, family, legal guardians, etc.) and a greater capacity for children themselves to take responsibility for decisions affecting their lives.[177] The participation of children in decisions and actions concerning their lives, in accordance with their developing capabilities, acquired experience and level of maturity, is a key element in recognition of the children as active agents in realisation of their own rights and freedoms. The development of children with disabilities' capacities may differ according to the nature of their impairment as well as the culture and environment they have been raised in. Children with disabilities require **varying degrees of protection, participation and opportunities for autonomous decision-making**. The concept of evolving capacities of the child provides for an appropriate and balanced self-determination without exposing them prematurely to full responsibilities usually assigned to adults and/or persons with full intellectual, psychosocial, physical and legal capacities.

In the light of the CRC, the concept of evolving capacities of the child entails that parents (or persons legally responsible for the child) should have the right and duty to provide, in a manner consistent with the evolving capacities of the child, appropriate guidance in the exercise by the child of his/her rights.[178]

Concretely, to assess the implementation of this principle, we need to look at whether a **general provision** (criterion n°1) provides for the recognition of the evolving capacities of the child, and whether specific **procedural safeguards** (criterion n°2) are in place to ensure the respect for 'the evolving capacities of children to take increasing responsibilities for decision-making in their own lives'.[179] The concept of the evolving capacities of the child requires that the voice of the child is heard and taken into account in accordance to her/his age and maturity/discernment for decisions affecting the child, while ensuring sufficient protection. As a result, States Parties to the Conventions have an obligation 'to assess the capacity of the child to form an autonomous opinion to the greatest extent possible'. States Parties cannot make the assumption that a child is incapable of expressing her or his own views. The CRC Committee states that States 'should **presume that a child has the capacity to form her or his own views** and recognise that she or he has the right to express them; it is not up to the child to first prove her or his capacity'.[180] To this end, no age limit on the right of the child to express her or his views should be imposed by States. Since research has shown that a child's level of understanding is not uniformly linked to her/his biological age and that experience, environment, social and cultural expectations, and levels of support contribute to the development of a child's capacities, the CRC Committee recommends that the views of the child be assessed on a case-by-case examination.[181]

[177] Gerison Lansdown, 'The evolving capacities of the child'. UNICEF, 2005, available at http://www.unicef-irc.org/publications/pdf/evolving-eng.pdf (last accessed on 25 November 2012).
[178] Article 5 CRC.
[179] CRC Committee General Comment No. 9 on the rights of children with disabilities, available at http://www2.ohchr.org/english/bodies/crc/comments.htm (last accessed on 26 November 2012), p. 9-10.
[180] CRC Committee General Comment No. 12 on the right of the child to be heard, available at http://www2.ohchr.org/english/bodies/crc/comments.htm (last accessed on 26 November 2012), p. 9.
[181] Ibid.

5.3.1. Legal framework

To assess the implementation of the concept of evolving capacities, the presence of the following elements will be analysed per Member States:

- **Criterion n°1: General provision of evolving capacities of the child**

The recognition of the concept of evolving capacities of the child in the major legal acts provides a good indication of the implementation of this principle. The act should recognise greater self-determination of the child as the child's capacity evolves, without linking it to a particular age, but rather to ensure a case-by-case assessment of the child's capacity. In particular, such a principle should refer to the requirement to respect the views of children with disabilities in accordance with their evolving capacities when heard in all procedures affecting them.[182] An assessment of the legal implementation of this criterion is reflected in Table 15 in Annex.

- **Criterion n°2: Procedural safeguards related to children's evolving capacities**

The main indication of the implementation of the concept of evolving capacities is whether procedural safeguards are established to ensure that the evolving capacities of the child (her/his age, maturity and discernment) are duly taken into account in decisions related to the child (such as the adaptation of content of the education curricula, the provision of assistance by social security or participation in cases concerning custody, adoption or divorce of the parents) and in the manner in which the child's views are taken into account, which may imply training for families and professionals.[183] Procedural safeguards should also ensure that all is done to contribute to the development of the child and to support the child to make better choices, starting from the early years.[184] An assessment of the legal implementation of this criterion is reflected in Table 16 in Annex.

The table below presents an assessment of the legal implementation of the principle of evolving capacities of the child in the 18 Member States.

Table 3: Overall assessment of the presence of the principle of evolving capacities

MS	Evolving capacities		
	Criterion n°1	Criterion n°2	Overall Implementation
BE	Yes	Partial	Partial
CZ	Partial	Yes	Partial
DE	Partial	Yes	Partial
EE	Partial	Yes	Partial
EL	Partial	Partial	Partial

[182] Ibid.
[183] Ibid.
[184] Ibid.

MS	Evolving capacities		
	Criterion n°1	Criterion n°2	Overall Implementation
ES	Yes	Yes	Yes
FI	Yes	Partial	Partial
FR	Partial	Yes	Partial
HU	Partial	Yes	Partial
IE	Partial	Partial	Partial
IT	Partial	Partial	Partial
MT	Partial	Partial	Partial
NL	Partial	Partial	Partial
PL	Partial	Yes	Partial
RO	Partial	Yes	Partial
SE	Partial	Yes	Partial
SI	Partial	Yes	Partial
UK[185]	Partial	Yes	Partial

Overall, the principle of evolving capacities of the child is not expressly recognised in the Member States' legislation. Three Member States (Belgium, Spain and Finland) provide for the evolving capacities of the child (or rather for similar concepts) as a general consideration for the decision making process affecting children's lives.

Indeed, it should be underlined that most of the Member States[186] establish the respect of evolving capacities of the child by reference to similar concepts, such as taking into account the age, maturity, discernment or level of development of the child, or the requirement to take measures contributing to the development of the child. However, since such provisions are contained in specific secondary legislation, they account for procedural safeguards rather than for general recognition of the concept; hence the implementation of the general recognition of evolving capacities of the child is assessed as partial for a wide majority of the 18 Member States.[187]

The legal research shows that a wide majority of the Member States concerned establishes specific procedural safeguards for the implementation of the concept of evolving capacities, mainly in relation to civil proceedings (with particular emphasis on family matters)[188], education decision-making[189] and criminal proceedings[190]. In several

[185] Except Scotland.
[186] All member States, except Spain, Italy and Romania.
[187] For the details, see Table 15, as annexed.
[188] Including Belgium, Czech Republic, Estonia, Greece, Spain, France, Hungary, Ireland, Italy, Malta, Poland, Romania, Sweden, Slovenia and the UK.
[189] Including Belgium, Czech Republic, Spain, France, Hungary, Education, Sweden, Slovenia, and the UK.

Member States, the concept is legally ensured also with regard to social protection decisions.[191] However, as it has been indicated in the preceding paragraph, specific national provisions do not explicitly refer to the 'evolving capacities' (with exception of Spain, Italy and Romania), instead using comparable terms, such as abilities of the child, level of (individual and personal) development, degree of maturity, ability to have one's own opinion and consideration of the consequences of measures established. In a number of Member States, the status of the child or the ability to express his/her views in decisions affecting them is primarily established by age limit rather than by their evolving capacities.

In conclusion, the concept of evolving capacities lacks full recognition in all MS but Spain. In addition, national experts have indicated, for several Member States[192], a trend to primary take into account child's age rather that his/her evolving capacities.

5.3.2. Practical implementation of the framework

Issues/Gaps

According to Article 5 of the CRC, parents or persons legally responsible for the child have the right and duty to provide, in a manner consistent with the **evolving capacities of the child**, appropriate direction and guidance in the exercise of the child's rights. A child's level of understanding is not uniformly linked to her/his biological age and experience, environment, social or cultural expectations and levels of support contribute to the development of a child's capacities. The CRC Committee recommends that the views of the child be assessed using a case-by-case examination.[193]

As it has been indicated in the preceding section, the consideration of the evolving capacities of the child when adopting decisions affecting them is not explicitly recognised in most national legislations; instead Member States use similar expressions such as 'age', 'level of development' or 'degree of maturity', which do not entirely reflect all elements on which the concept of the evolving capacities is based.

Practical implementation of the concept of evolving capacities of the child is considered to be not fully effective in a vast majority of the Member States researched for this study. It follows from the research that the concept is not well understood by national authorities, including both legislative and enforcement bodies. The lack of relevant provisions in national legislation and the inadequate understanding of this concept jeopardise its practical implementation hampering children's rights protection.

In practice, the emphasis is often placed on children's ages rather than their evolving capacities. Therefore, due to the lack of relevant provisions in national legislation and improper understanding of the concept by local authorities and courts, practical implementation of the concept of evolving capacities is significantly limited, rendering the protection of children's rights incomplete, particularly in the field of the right to participate and right to be heard.

[190] For examples, in Belgium, Germany, Spain, Romania, Sweden, Slovenia and the UK.
[191] Germany, Estonia, Finland, France, Poland, Romania and the UK.
[192] Belgium, Estonia, Finland and Hungary.
[193] Ibid.

Best practices

In order to encourage the implementation of the concept of evolving capacities of the child, in the Czech Republic two policy documents have been issued. One of them explicitly refers to the evolving capacities of the child as a principle.[194] The other one calls for all entities providing protection of children to be aware of the evolutional needs of children and requires adequate measures to be taken to that end.[195] The existence of such documents may foster appropriate interpretation and application of the concept in practice.

In Italy, the educational plan establishing curriculum for a student with disability is in practice established by the family, the teachers and the competent authorities taking into account the opinion of the child according to his evolving capacities. This practice is considered to be a good example of how to incorporate the concept of evolving capacities of the child into decision-making concerning main aspects of children's life.

5.4. Right to participate / right to express view

Children with disabilities who are capable of forming their own opinion have a **right to freely express their views in all matters** concerning their life on an equal basis with other children. Views of children with disabilities must be given due weight in accordance with the age and maturity of the child. The principle of the right to be heard entails in particular the right of the child to be heard in all procedures affecting them, including judicial and administrative proceedings, but also in decision-making processes by social, education and health services. Children can express their opinion either directly or through a representative or appropriate body. However, the child has 'the right not to exercise this right'. States Parties to both UN conventions have to ensure 'that the child receives all necessary information and advice to make a decision in favour of her or his best interests'.[196]

The child's **right to participate in public, social and cultural life is** closely related to the right of the child to express her/his views as it aims to ensure that an opportunity is given to children to participate in any decisions concerning them and to make their views known.[197] The right to participate also entails an obligation upon States Parties to facilitate the child's active participation in the community and in all aspects of life on an equal basis with other able children of similar age.[198]

Children's participation is considered particularly important because it contributes to their development enabling them to acquire knowledge and skills as well as to extend their interests gaining confidence in their own capacities. The right to participate and to be heard should be applied in the light of the concept of evolving capacities of the child, as views and opinions of the children must be regarded by both parents and competent authorities in accordance with children's capabilities and a level of their intellectual and psychosocial development and understanding.

[194] The National Strategy to Protect Children's Rights (Resolution No. 4 dated 4 January 2012.
[195] Ministry of Labour and Social Affairs, Right to childhood - National Strategy Protecting Children's Rights, 2012, p. 3.
[196] CRC Committee General Comment No. 12 on the right of the child to be heard, available at http://www2.ohchr.org/english/bodies/crc/comments.htm (last accessed on 26 November 2012), p. 8.
[197] Article 9 CRC.
[198] Article 23 CRC, and Articles 1, 3, 9 and 19 CRPD.

5.4.1. Legal framework

To assess the implementation of the right to be heard and to participation, the following criteria will be analysed in the 18 Member States legal framework:

- **Criterion n°1: General recognition of the right to be heard**

To verify the implementation of the right to be heard, a first step is to check whether the Constitution or major legal Act recognises children's right to be heard. An indication of full implementation is whether the right of the child to be heard is recognised for all the decisions affecting her/him. An assessment of the legal implementation of this criterion is reflected in Table 17 in the Annex.

- **Criterion n°2: Procedural safeguards of the right to be heard**

The second criterion looks at the specific measures and procedures in place allowing children (with disabilities) to be heard in decisions affecting their lives. It implies verifying if such procedural safeguards are present in judicial and administrative proceedings, including civil and criminal cases, social protection and education. Full implementation requires that the right to be heard applies both to proceedings which are initiated by the child and to those initiated by others which affect the child, such as parental separation or adoption.[199] An assessment of the legal implementation of this criterion is reflected in Table 18 in the Annex.

- **Criterion n°3: General recognition of the right to participate**

For the third criterion, we want to identify whether the right to participate in public, social and cultural life is recognised in the Constitution and/or statutory acts applying to persons/children with disabilities. Participation is usually interpreted broadly as the inclusion of children with disabilities in decision-making processes, including within the family, in schools, as well as at local and national level.[200] An assessment of the legal implementation of this criterion is reflected in Table 19 in the Annex.

The table below presents an overall assessment of the legal implementation of the right to be heard and right to participate in the 18 Member States.

[199] CRC Committee General Comment No. 12 on the right of the child to be heard, available at http://www2.ohchr.org/english/bodies/crc/comments.htm (last accessed on 26 November 2012), p. 11.
[200] CRC Committee General Comment No. 12 on the right of the child to be heard, available at http://www2.ohchr.org/english/bodies/crc/comments.htm (last accessed on 26 November 2012), p. 21.

Table 4: Overall assessment of the legal implementation of the right to be heard and to participate

MS	Right to participate /Right to be heard			
	Criterion n°1	Criterion n°2	Criterion n°3	Overall Implementation
BE	Yes	Partial	Yes	Partial
CZ	Partial	Yes	Partial	Partial
DE	Partial	Partial	Yes	Partial
EE	Partial	Yes	Yes	Partial
EL	Partial	Partial	Yes	Partial
ES	Yes	Yes	Yes	Yes
FI	Partial	Partial	Yes	Partial
FR	Yes	Yes	Yes	Yes
HU	Yes	Yes	Partial	Partial
IE	Partial	Partial	Partial	Partial
IT	Partial	Yes	Yes	Partial
MT	Partial	Yes	Yes	Partial
NL	Partial	Partial	Partial	Partial
PL	Yes	Yes	Yes	Yes
RO	Yes	Partial	Yes	Partial
SE	Partial	Yes	Yes	Partial
SI	Partial	Partial	Partial	Partial
UK[201]	Partial	Yes	Yes	Partial

With regard to the general recognition of the right to be heard or express views in all decisions affecting them (the first criterion), five of the Member States concerned (Belgium, Spain, France, Hungary, Poland and Romania) have fully and effectively implemented the right to be heard for children in their legislation, either in the constitutional provisions (Belgium and Poland) or in major legal acts which expressly state that children have the right to be heard in all matters affecting them (France, Hungary, Spain and Romania).

Several Member States (Germany, Finland, Malta and the Netherlands) provide for the recognition of the right to be heard in their Constitutions. However, the constitutional provisions do not refer specifically to children. Therefore, in those cases the

[201] Except Scotland.

implementation is assessed as partial. The remaining part of the Member States provides for the right to be heard in specific secondary and/or sectoral legislation (mostly in Civil and Criminal Codes). This however, accounts rather for implementation of particular procedural safeguards rather than for general recognition of the right to be heard. In Italy, the Constitutional Court declared Article 12 of the CRC directly applicable and as such the right is recognised under Italian law.[202]

Overall, the Member States concerned have effectively established specific procedural safeguards related to the right to be heard by children. To be more precise, all Member States have in place relevant safeguards in civil proceedings (particularly in family matters, e.g. adoption and custody). The vast majority of them have effectively established specific provisions for criminal procedures[203] as well as social protection decisions[204]. In a considerable number of Member States[205], national legal frameworks require to hear children in relation to their education (for instance during the preparation of individual education program/plan).[206]

The research shows that the right to participate is largely recognised in the 18 Member States concerned. For some Member States (such as Belgium, Spain, Finland, Poland and Sweden), the right is reflected in constitutional provisions (either explicitly or by reference to the right to express his/her views), for others it is enshrined in major legal acts which, in general terms, provide for either children's participation in the preparation of policies and programmes that concern them or for their active involvement in the social, cultural and artistic life or in the life of the local community. For a considerable number of Member States, the right to participate is mostly recognised in relation to school and education. Relevant laws of the Member States refer broadly to children, however, it is implied that children with disabilities fall under the scope of the legislation in question.[207]

The right to be heard, to express views in decisions affecting them and the right to participate are recognised in all Member States mostly as procedural safeguards in proceedings affecting the child. However it is noted that only a few Member States ensures a general recognition of the right in their main national Acts or Constitution, and that some sectoral procedural safeguards are partly missing (mostly in education and social protection).

[202] For more details, see Table 17 in the Annex.
[203] All Member States except Finland, where the implementation has been assessed as partial, as, according to the Finnish Code of Judicial Procedure, for children under age of 15, representative of the child is being heard.
[204] All Member States expect Belgium, Greece, Ireland and Romania, where the implementation has been assessed as partial.
[205] In all Member States but Belgium, Germany, the Netherlands, Poland, Greece and Finland, where the implementation has been assessed as partial.
[206] For more details, see Table 18 in the Annex.
[207] For more details, see Table 19 in the Annex.

5.4.2. Practical implementation of the framework

Issues/Gaps

Most Constitutions and/or basic legal acts in the 18 Member States researched recognise, as fundamental rights, both the right to be heard as a procedural guarantee in decision making processes by competent authorities on issues affecting children, and the children's right to participate decisions affecting them, in legislative and policy, or in cultural, social and sport activities.

Despite the legal recognition of these rights, the research and conclusions drawn from the country reports show that the implementation of the right to be heard and the right to participate by children with disabilities requires significant improvements in order to become sufficiently effective in practice. National experts unanimously indicated that children with disabilities frequently face difficulties to participate in decision making related to certain aspects of their lives. In particular, they are **not systematically involved** and do not get to participate in public and social life to the same level as their peers. The right to participate in legal and policy decisions affecting children and specifically children with disabilities requires the development of consultation processes and the assessment of the impact of legislative or policy proposals. These measures are rarely taken in the Member States analysed under this study.

Right to be heard

In the Netherlands, children who stay in institutions have a legal status of patients, which, in practice, enables the caretakers and doctors to make decisions concerning children's lives without the consent of the child and his/her parents. In Slovenia, the representatives of the Human Rights Ombudsman explicitly stated that laws regulating participation of the child most often remain a dead letter.[208]

Another shortcoming relates to the **attitudes and insufficient expertise** of national authorities interacting with children with disabilities. It has been highlighted in several country reports[209] that, in practice, very often competent authorities are reluctant to take views of children with disabilities when aspects of their lives are being discussed. The Italian report indicated that such situation may be a result of a lack of appropriate training of national authorities. The Finnish report stated, as one of the reasons, the understaffing in social welfare. The assumption of the lack of understanding of the child with disabilities and the underestimation of their capacities to express themselves is assessed as one of the barriers to be heard in the Belgian report. In addition, a number of country experts[210] have observed that in practice views of parents are given priority over children's opinions or that age limits provide a great barrier to the right of the child to be heard.

The right to be heard seems to be well established in court and judicial proceedings in a number of Member States, particularly in the field of family law as well as in the area of education (especially in terms of participation of the child in the preparation of individual

[208] Human Rights Ombudsman of the Republic of Slovenia, 'Advocate – a child's voice', http://www.varuh-rs.si/index.php?id=1251&L=6 and in a brochure in Slovenian published by the Human Rights Ombudsman, available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/zagovornik/zlozenka_2008.pdf (last accessed on 1 October 2012).
[209] See country reports for Czech Republic, Estonia, Finland and Italy.
[210] See the report for France and Ireland.

curricula or educational plans). However, countries experience a certain number of issues in the practical implementation of the right.

In Belgium, the implementation of the right of children with disabilities to be heard in judicial proceedings is constrained due to the lack of sign language interpreters. The lack of sign language interpreters is a result of insufficient budget and investments in structures for sign language interpretation in judicial proceedings.

In Ireland, children with special educational needs do not have a legal right to appeal to the Special Educational Needs and Disability Tribunal. In France the right to be heard in administrative proceedings has not been effectively established. In Spain, the practice shows that neither parents nor children with disabilities are properly heard and involved in decision making regarding the school and education system for them. Children's views are often not taken into account in child protection units (Greece). Moreover, the Greek Supreme Court ruled that it could not examine lower courts' failure to listen to the child's views under Civil Code as the lower courts' assessments constitute assessments of factual situation which are not subject to review.[211] Consequently, the procedural and institutional shortcomings contribute to the relatively low level of protection of the child's right to be heard.

Best practices

With a view of improving the right to be heard of children in judicial proceedings in Germany, children are assisted by a 'counsel of the child' in family matters. Courts appoint a counsel if it is necessary to protect the interests of the child, for example when child's interests are contrary to interests of his/her parents. The assistance of the counsel is considered as being beneficial for the implementation of the right to be heard by children with disabilities.

In Spain, that is the role of the Public Prosecutor to guarantee children's rights and represent their views and interests in decision making processes.

Right to participate

Issues/gaps

Lack of the necessary means for **accessibility**, including physical access to public institutions, and support services (including communication support such as Braille translation or assistance of a scribe or a reader) have been indicated as the main reasons hampering effective implementation of the right to participate. Other barriers to participation identified include: **stigmatisation**, underestimating of children capacity to express their own opinion, lack of information and reception, geographical and cultural access, the need for creating a climate of trust, respect of the pace, time and stages, and lack of awareness of differences. The lack of inclusion in society, starting at schools is also one of the biggest challenges of children with disabilities' participation.

In order to enhance the participation of children with disabilities, there is a need for Member States to adopt guidelines and policy documents as well as to adopt measures aimed at enabling persons (and children) with disabilities to make their voice heard.

[211] Greek National Commission for Human Rights, 'Comments on the 3rd Greek Periodic Report to be Submitted to the Committee for the Rights of the Child (CRC)', adopted on 29 May 2008, p. 6.

Best practices

Several best practices have been identified with regards to participation of children; some from public authorities, some from private initiatives. In Estonia, children's participation is guided by the Code of Good Practices on Involvement.[212] Moreover, a special website has been established in order to encourage children's participation.[213]

In Italy, sport organisations, originally created for children with disabilities, have opened their doors to other children creating opportunities to exchange experiences and foster common participation in society.

In Ireland, a position of the Independent Reviewing Officer (IRO) has been established. IRO is responsible for the process of reviewing cases of children in care. According to the new guidelines specifying the role of IROs, IRO is also responsible for taking steps to ensure that the child's view is taken into account when the plan for his/her care is being established or reviewed.

In Sweden, the Swedish Agency for Disability Coordination was tasked by the government to provide information about how children with disabilities can influence decisions that affect them.

In several Member States, voluntary and non-profit organisations are active in the field of fostering participation of children with disabilities. In Germany, organisations such as Lebenshilfe or VDK provide advice and assistance for children with disabilities and their parents in expressing their views in practically all situations concerning children's lives. In Romania, Foundation Speranta works on inclusion of children with disabilities into the community and psycho-pedagogical personnel provides specialised support according to the individual needs of children.

The establishment of a Child and Youth Parliament, which would involve active participation of children with disabilities, constitutes an example of an initiative which may not only significantly enhance and promote participation of children with disabilities in public and social life but also provide basic information on how decision-making process is carried out.

An active role of the Ombudsmen (for Children) is indispensable in order to effectively support the implementation of the right to participate. For example, in Estonia, the Ombudsman (for Children) formed an Advisory Committees composed of children, including children with disabilities, whose role focus on assisting the Ombudsman in decision-making process. In Slovenia, the Ombudsman carries out a special initiative called 'The Advocate – a voice of the Child'. Based on this programme, a pilot project was carried out in four social services centres where services of the Children's Rights Advocate have been provided by an expert group for the duration of the project.[214]

[212] 'The Code of Good Practices on Involvement' ngo.ee available at http://www.ngo.ee/node/278 (last accessed on 30 September 2012).
[213] See Estonian OSALE website available at www.osale.ee (last accessed on 9 November 2012).
[214] More information about the project is available at http://www.varuh-rs.si/index.php?id=1251&L=6 and in a brochure in Slovenian published by the Human Rights Ombudsman, available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/zagovornik/zlozenka_2008.pdf (last accessed on 1 October 2012).

5.5. Freedom from violence

From the right to be free from violence enshrined in CRC stems **the duty of parents or legal guardians** and the competent national authorities to protect children with disabilities in their care against all forms of violence (physical, mental, injury or abuse, neglect or negligent treatment, maltreatment including sexual abuse). The CRC Committee specifies that no form of violence against children can be legalised.[215] Particular forms of physical violence to which children with disabilities were identified by the Committee are forced sterilisation, particularly of girls and violence in the guise of treatment (such as electroconvulsive treatment).[216] The **State** has the responsibility to guarantee freedom from violence, and is legally required to take all necessary measures (legislative, administrative, social and educational), including enforcement mechanisms, to ensure that the freedom from violence of children with disabilities is observed.

Article 16 CRPD places on States Parties to the Convention an obligation to take all appropriate measures to protect persons with disabilities against all form of violence, including their gender-based aspects, both within and outside home. Freedom from violence is an extremely significant right as persons and children with disabilities are at greater risk of violence and abuse than non-disabled persons. The context of disability includes factors such as inaccessibility of public buildings and information, reliance on support services, isolation, which increase the risk of violence against persons with disabilities. It must be noted that persons with disabilities experience forms of violence similar to those faced by people without disabilities as well as unique forms of abuse, such as disabling equipment, manipulating medications, or refusal to provide essential personal assistance.[217] Violence against women and girls with disabilities deserves special consideration. National authorities must take all those factors into account when determining their measures addressing violence against persons with disabilities.

5.5.1. Legal framework

As a result, the analysis of the implementation of the obligation derived from the right to be free from violence requires the assessment of the following criteria:

- **Criterion n°1: General recognition of freedom from violence**

The recognition of the right to be free from violence provides a good indication to assess the implementation of the right. To this end, we look at whether the Constitution, Criminal Code and/or major legal acts recognise the right of children's freedom from violence. In particular, does violence against a child accounts for an aggravating circumstance in a criminal conviction? An assessment of the legal implementation of this criterion is reflected in Table 20 in the Annex.

[215] CRC Committee General Comment No. 13 on the right of the child to freedom from all forms of violence, available at http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13_en.pdf (last accessed on 26 November 2012), p. 8.
[216] Ibid., p. 13.
[217] Laurie E. Powers, and Mary Oschwald, 'Violence and abuse against people with disabilities: Experiences, barriers and prevention strategies', available at http://phinational.org/sites/phinational.org/files/clearinghouse/AbuseandViolenceBrief%203-7-04.pdf (last accessed on 22 February 2013).

- **Criterion n°2: Specific procedural safeguards related to freedom from violence.**

An effective implementation of this right requires that *specific* measures and procedures are in place to protect children (with disabilities) from violence, including legislative (or administrative) and social measures. Monitoring measures are also required under Article 16 of the CRPD. An assessment of the legal implementation of this criterion is reflected in Table 21 in the Annex.

- **Criterion n°3: Domestic violence**

Since domestic violence may affect particularly children with disabilities, it is important that the legal framework include protection from domestic violence including against children (with disabilities) for an effective implementation of the right to be free from violence. Article 16 of the CRPD requires measures to be adopted on violence against girls/women. An assessment of the legal implementation of this criterion is reflected in Table 22 in the Annex.

The table below presents an overall assessment of the legal implementation of the right to be free from violence in the 18 Member States.

Table 5: Overall assessment of the legal implementation of the right to be free from violence

MS	Freedom from violence			
	Criterion n°1	Criterion n°2	Criterion n°3	Overall Implementation
BE	Yes	Yes	Partial	Partial
CZ	Yes	Partial	Partial	Partial
DE	Partial	Yes	Yes	Partial
EE	Yes	Yes	Partial	Partial
EL	Yes	Yes	Yes	Yes
ES	Yes	Yes	Yes	Yes
FI	Partial	Yes	Yes	Partial
FR	Yes	Yes	Partial	Partial
HU	Yes	Yes	Yes	Yes
IE	Yes	Yes	Yes	Yes
IT	Yes	Yes	Yes	Yes
MT	Yes	Yes	Yes	Yes
NL	Yes	Yes	Partial	Partial
PL	Yes	Yes	Yes	Yes

MS	Freedom from violence			
	Criterion n°1	Criterion n°2	Criterion n°3	Overall Implementation
RO	Yes	Yes	Yes	Yes
SE	Yes	Yes	Partial	Partial
SI	Yes	Partial	Yes	Partial
UK[218]	Yes	Yes	Yes	Yes

National legislation of the 18 Member States effectively provides for the general recognition of children's right to be free from violence, usually by legally ensuring physical integrity, human dignity or prohibiting humiliation. In several Member States general prohibition of violence against children is regulated under constitutional provisions which either directly refer to children (Constitutions of Belgium, Poland or Slovenia) or contain general prohibition of violence which applies also to children (Constitutions of Germany, Estonia, Spain, Ireland, Malta and Sweden). In addition, all Member States provide for the prohibition of violence against children in secondary legal acts, mainly through criminal legislation.[219]

A vast majority of the 18 Member States provides for violence against children as an aggravating circumstance. In addition, some Member States (including Belgium, the Czech Republic, Estonia, Greece, France, Italy, and Sweden) establish also disability (or vulnerable/defenceless situation of a person) as an aggravating factor.[220]

The research carried out for this study shows that in the legislation of all 18 Member States specific procedural safeguards are overwhelmingly present to ensure effective protection of children from violence. However, in Slovenia, an urgent need for inclusion of provisions prohibiting violence in social institutions has been identified. Also in the Czech Republic, no specific social measures addressing violence against children have been recognised.

A vast majority of the Member States have established specific mechanisms for notifying and reporting instances of violence committed against children to competent authorities. In general, public authorities have legal obligation to investigate cases of child abuse. In addition, in several Member States, including Belgium, Poland, Estonia and Romania, anyone who becomes aware of a child in need is required to immediately notify relevant authorities. In most Member States, specific reporting mechanisms are in place, as well as intervention measures and/or support services to assist children victims of maltreatment or negligence, including also violence committed in social facilities.[221] For instance, in France, the Service of Social assistance to childhood is responsible for catering for children who experienced threat to their health, security, morality or development. Similarly, in the Netherlands, the Youth Care and the Council for the Protection of Children are legally required to intervene in alleged cases of child abuse. In Malta, an accredited agency has responsibility to investigate any allegations of abuse in

[218] Except Scotland.
[219] For more details see Table 20 in the Annex.
[220] For more details see Table 20 in the Annex.
[221] For more details see Table 21 in the Annex.

any foster care facility. Also in Spain, special rules for state early intervention have been set up.

Pursuant to the legislation of all the Member States analysed, children are protected from various forms of violence, such as physical, emotional, sexual as well as violence occurring in education facilities (e.g. committed by teachers). However, in Finland, legislation directed at children exists only in a specific area, i.e. sexual crimes. With regard to the **prohibition of domestic violence**, it can be concluded that in the majority of the Member States children receive effective legal protection from domestic abuse. Relevant provisions are contained either in specific legal acts focused on regulating domestic violence or in Civil or Criminal Codes. However, in Belgium, the prohibition of corporal punishment is not legally recognised. In the Czech Republic and in Sweden, legislation does not explicitly prohibit domestic violence, instead it guarantees adequate and safe upbringing.[222] Moreover, it is worth to mention that most of the Member States' legislation on domestic violence is not tailored to the particular situation of children with disabilities, where such violence may be more difficult to detect due to lack of inclusion of the child with disabilities or lack of appropriate access to help and assistance.

5.5.2. Practical implementation of the framework

Issues/gaps

All 18 Member States recognise the prohibition of acts of torture, inhuman or degrading punishment or treatment. The legal frameworks in the Member States subject to analysis under this study include rules for the protection of children against violence from two different points of view: a punitive approach against the aggressor and state protective measures enabling the state to intervene where children are at risk or in distress, suffering from violence. The analysis of the legal frameworks with regard to violence show that most Member State have general legislation against violence but some of them lack sufficiently specific safeguards protecting children with disabilities from abusive acts. In certain Member States, this has been identified as a gap with the need to amend existing rules on violence against children in order to protect children with disabilities.

However, the practical implementation of the principle of freedom from violence for children with disabilities is considered one of the weak points raised by experts with regard to the situation of children with disabilities in their countries.

The research and the conclusions drawn from country reports highlight violence as a recurring issue. **Violence occurring in institutions** is particularly of concern. Acts of violence or abuse perpetrated in the care of social services and public officers constitute a significant concern in the majority of the 18 Member States. It has been indicated that such cases of violence very often remain hidden as abuses are rarely denounced and are usually not visible to the public. As a result, in many cases, no record of acts of violence committed by public officers is taken. Member States reports refer to the situation of violence and sexual abuse experienced by children with disabilities, especially girls, in institutional care, however no data could be found to support these information.

The lack of adequate monitoring systems providing data on regular basis on the situation

[222] For more details see Table 22 in the Annex.

of children with disabilities facing situations of violence is identified as a gap in many Member States. In addition, there is a need for a system of preventive measures against violence which contribute to the maintenance of mistreatment of children with disabilities in residential care.

The **lack of systematic data** is counteracted by the development of specific surveys carried out by Member States or international organisations. In this sense, the 'Report on Child Abuse in the Family in Spain' published in 2011 by the Centre Queen Sofia shows that the risk of abuse and violence is higher in children with disabilities experiencing rates of abuse of 23.08% compared to children who do not have disabilities (3.87%). The report describes the disability as a factor that increases the risk of abuse.[223]

The 2011 report on **gender violence** in Spain produced by the Observatory for violence identifies disability as a factor of risk of abuse. 18.8% of women with disabilities declared having suffered violence (versus 10.3% of women without disabilities) and 5.9% of women with serious disabilities suffered violence that year (versus 3% of women asked in the survey).[224]

Bullying and acts of abuse in school environment have been indicated as a common issue in the majority of the Member States concerned. Furthermore, continuous/repeated acts of **domestic violence** against children with disabilities have been identified in certain Member States (Hungary, Poland).

The multiplicity of cases of violence is frequently caused by the lack of effective support services, efficient reporting mechanisms and accessible assistance schemes for children experiencing abuse and mistreatment. Although, in a majority of the Member States, legal implementation of the procedural safeguards to protect the right to be free from violence has been assessed as satisfactory, it has been observed that, in practice, significant gaps exist in the way the services enforce legislation and deal with complaints of violence against children with disabilities.[225] Overall, victim support services are considered to be insufficient to meet children's needs.

Reporting systems very often involve the use of telephone or internet. Usage of such means of communication may, in many cases, be impossible or heavily restricted for children with disabilities, especially those suffering from severe disabilities or intellectual impairments. Therefore, adequate adjustments of the existing reporting systems as well as the establishment and functioning of effective monitoring systems and inspection procedures (especially in specialised facilities) is necessary in order to enable children with disabilities to effectively and timely signal cases of abuse or violence. For relevant examples, see the section on *Good practices* below.

Another issue hampering practical implementation of the right to be free from violence is the **paucity of qualified staff and the insufficient training** provided for persons having contact with children with disabilities (judicial and police authorities, teachers, social and health services, etc.). It has been indicated that the misapplication and/or

[223] Spanish Ministry of Health, Social and Equality Political, 'Child maltreatment in the family in Spain' (*Maltrato infantile en la familia en Espana*), 2011, available at: http://www.observatoriodelainfancia.msssi.gob.es/productos/pdf/malt2011v4_total_100_acces.pdf.

[224] For data please see Spanish Ministry of Health, Social and Equality Policy, 'Macro survey on gender violence 2011' (*Macroencuesta de violencia de género 2011*) http://www.observatorioviolencia.org/upload_images/File/DOC1329745747_macroencuesta2011_principales_resultados-1.pdf.

[225] See country reports for Greece, France, Hungary, Italy and Poland.

misunderstanding by the professionals of the aspect of data protection can hinder the proper implementation of the right to be free from violence. To be more precise, specialists dealing with children with disabilities often do not have sufficient knowledge as to when they can reveal information about the child and report cases of abuse to other specialists or services. Furthermore, frequently they are not sure or not aware as to which are the competent authorities they can turn to. It has been indicated that the authorities are slow and inactive in providing adequate protection against violence directed at children with disabilities; as such cases require usually more effort and resources than cases involving other children. The above shortcomings may result in the non-reporting of cases of violence, even though there are clear indications of abuse.

The research has shown that there exist gender implications concerning cases of violence committed against children with disabilities. Accordingly, girls with disabilities (especially with intellectual disabilities) are considered to be more vulnerable to acts of abuse and violence (especially sexual abuse).[226]

In a number of Member States[227], policy documents addressing the problem of violence against children with disabilities, who are perceived in this context as a particularly vulnerable group of the society, have been established. However, no detailed information about application of those documents in practice has been identified.

Best practices

In order to reduce the number of cases of violence committed by public officers against children with disabilities, especially against those children staying in institutions, regular **inspections and monitoring procedures** should be established and operated by Member States. The proper functioning of such systems is indispensable for the protection of children living in institutions, as cases of violence in such facilities frequently remain unrevealed, simultaneously increasing the risk of mistreatment and of marginalisation of children with disabilities form the society. In Ireland, the Health Information and Quality Authority has the power to inspect children's residential centres. Since 2013, it will be also operating in institutions catering for persons and children with disabilities. The introduction of this competence is considered to have immediate positive effects on the protection of children from violence.

Domestic violence against children with disabilities constitutes a significant issue - as it occurs in the family environment, it also very often remains unreported and unnoticed by the competent authorities. In addition, the importance to deal with child victims and witnesses of domestic violence should be highlighted, as it could lead to an intergenerational reproduction of such victimisation.[228] In order to combat domestic violence, in Poland, a special '**Blue Card' procedure** has been established, which should be initiated in each case of an alleged domestic violence. It introduces certain measures to deal with complaints of domestic violence, including remedial responses and cooperation with non-police entities. The procedure may be initiated, even without active participation or consent of the victim, by social workers, police, education or health institutions staff, whenever there is a reasonable suspicion of domestic violence.[229] In Slovenia, a number of implementing acts have been introduced and **multifunctional**

[226] See the country reports for Germany, Greece, Italy, the Netherlands, Spain and Sweden.
[227] See the country reports for Germany, Estonia, Finland, Ireland, the Netherlands, Spain and Slovenia.
[228] See Belgium report.
[229] For more details, see the Polish report.

teams have been established in order to address the problem of domestic violence. In Estonia, the Police and Border Guard Board have developed a procedure for reacting to incidents of domestic violence, exchange of information and involvement of victim support services.[230]

Information services should be functional in order to enable both children and third persons to immediately report acts of violence. In a number of Member States, special telephone lines have been introduced whereby children can free of charge and anonymously obtain necessary information and support as well as inform about cases of abuse or violence experienced by them or their peers.[231] In Hungary, in 2011, a first website[232] dedicated to violence against children aimed at children, parents and professionals in order to raise the awareness of the society and help prevent child abuse was established. Some countries have set up specific hotlines and websites for children to reach assistance such as in Belgium and the Netherlands. However, the accessibility of such communication services for children with disabilities requires certain adjustments for children with disabilities (e.g. providing reader and/or scribe services for children with vision impairments, providing special assistance for the use of multimedia services, etc.).

It is necessary to increase **awareness of the public**, and particularly of persons interacting with children with disabilities, in order to ensure a sufficient level of protection against violence and abuse. In Slovenia, the INSEM Project: Professional Training of Professionals in rearing and education in the field of strengthening competences for prevention of violence in the period 2010-2012 has been launched. It focuses on organising training programmes for professionals working with children with special needs in regular schools, special schools and institutions.[233] In Estonia, guidelines on identifying, notifying authorities and treating child victims, child offenders, victims of human trafficking have been developed. Furthermore, the Ombudsman for Children developed guidelines on data protection issues. To improve cooperation between professionals from different fields (health care, social services, education), pilot projects were initiated in 2010 to form and train diagnostic teams involving all the relevant specialists.[234]

Lastly, in the Netherlands, a reporting **code on domestic violence** and child abuse (*de meldcode*)[235] has been developed. The Code provides professionals in education, health care, youth care, welfare and justice with information and instruction on how they can report domestic violence and child abuse. Each organisation and professionals must tailor the reporting code to their own practice by deciding how the reporting mechanism will be coordinated within the organisation.

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[230] 'Lähisuhtevägivallajuhtumitelereageerimise, sellegaseotudinfovahetusekorraldamisejuhendjaohvriabile info edastamisekord' Police and Borderguard Board, 2010.

[231] In frames of the Action Plan to Protect Children and Juveniles against Sexual Violence and Exploitation the 'Number against problems' *(NummergegenKummer*)has been introduced in Germany; In Italy the TelefonoAzzurro reporting system is fully operative.

[232] Hungarian National Institute of Child Health website, available at www.gyermekbantalmazas.hu (last accessed on 23 February 2013).

[233] Institute for Psychological Consultational Development Projects, Catalogue of Training Programs, 2010, available at: http://www.insem.si/insem/images/stories/krepimo-druzine/splosno/Katalog_programov_usposabljanja.pdf (last accessed on 1 October 2012).

[234] 'Targadvanemad, toredad lapsed, tugevühiskond. Lastejaperedearengukava 2012–2020', Ministry of Social Affairs, 2011, https://valitsus.ee/UserFiles/valitsus/et/valitsus/arengukavad/sotsiaalministeerium/Laste%20ja%20perede%20arengukava%202012-2020.pdf(last accessed on 24 September 2012), pp 32-33.

[235] More information on the reporting code available at the Government's website http://www.rijksoverheid.nl/onderwerpen/huiselijk-geweld/hulp-bieden/meldcode (last accessed on 26.02.13).

5.6. Right to family life

The right to the family life primarily establishes that children with disabilities should have equal rights to live with and to be raised by his/her family. In order to ensure proper realisation of this right, Member States should provide early and comprehensive information, services and support to children with disabilities and their families in order to prevent concealment, abandonment, neglect and segregation of children with disabilities. The right to family life aims **to ensure the maintenance of family ties** between the child and both parents and to promote the upbringing of children by their families, which is crucial in the context of children with disabilities placed under institutional care. To that end, the disability of either the child or one or both parents should never be the basis of separating the child from the family.

5.6.1. Legal framework

To verify the implementation of the right to family life, the following criteria will be analysed:

- **Criterion n°1: General recognition of the right to the family life**

As for previous rights, effective implementation of the right to family life implies its recognition in the national Constitution and/or major legal acts. An assessment of the legal implementation of this criterion is reflected in Table 23 in the Annex.

- **Criterion n°2: Maintenance of family ties**

The maintenance of family ties between the child and the parents is an important element of the right to family life. Therefore, effective implementation requires its recognition under national law, in particular, the *right not to be separated* from parents. In case where the child is separated, the right to *maintain the link with the family* (regular personal relations and direct contact with parents) should be guaranteed under national law. An assessment of the legal implementation of this criterion is reflected in Table 24 in the Annex.

The table below presents an overall assessment of the legal implementation of the right to family life in the 18 Member States.

Table 6: Overall assessment of the legal implementation of the right to family life

MS	Right to family life		
	Criterion n°1	Criterion n°2	Overall Implementation
BE	Yes	Yes	Yes
CZ	Yes	Partial	Partial
DE	Yes	Yes	Yes
EE	Yes	Yes	Yes
EL	Yes	Yes	Yes
ES	Yes	Yes	Yes
FI	Partial	Yes	Partial
FR	Partial	Partial	Partial
HU	Yes	Partial	Partial
IE	Partial	Partial	Partial
IT	Yes	Partial	Partial
MT	Yes	Partial	Partial
NL	Partial	Partial	Partial
PL	Yes	Yes	Yes
RO	Yes	Yes	Yes
SE	Partial	Partial	Partial
SI	Yes	Yes	Yes
UK[236]	Yes	Yes	Yes

The right to family life is widely recognised in the Member States concerned by this study, mostly in their constitutional provisions. The provisions of the European Convention for Human Rights and Fundamental Freedoms, including provisions establishing the right to family life, are directly applicable in the Netherlands and in Ireland, as well as in countries having a monist system of international law which have ratified the ECHR.[237] However, pursuant to our approach, this accounts only for partial implementation. Moreover, in Ireland, the Constitution does not afford any recognition to family structures which fall outside the marital family. In Finland and in Sweden, lack of formal and general recognition of the right to family life has been identified, although the

[236] Except Scotland.
[237] Belgium, Czech Republic, Estonia, Spain, Greece, France, Poland, Romania and Slovenia have a monist system of international law. The Netherlands has a limited monist system where only CRC provisions of general binding nature have direct effect.

right can be implied from specific national laws.[238]

Legislation of a wide majority of the Member States analysed effectively ensures children's right not to be separated from their parents. In the light of the relevant national legal acts, children can be separated from their families against the latter's will only in cases specified by law (for instance when it is necessary for the best interests of the child) and only by decision of the competent authority. In Ireland, the right is enshrined in the amended Constitution, however the amendment is still not in force. Malta has incorporated the ECHR by the enactment of the European Convention Act which refers to the family life and prohibition of interference with the family life. This, however, accounts for partial implementation as no specific relevant measures have been identified in Maltese law.[239]

Implementation of the right to **maintain the link with the family** once the child has been separated seems to be problematic in a number of Member States. In France, the adoption of measures allowing the protection of family bonds is discretional upon the judge. In Malta and in the Netherlands, Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms is directly applicable, this, however accounts for partial implementation as no specific provisions regarding the right to maintain the link with the family once the child has been separated have been identified in those countries. Similarity, in the Czech Republic the CRC and CRPD apply directly, resulting in partial implementation. In Sweden, there is no special provision to maintain the link with the family, but it can be implied from the way the legislation is designed.[240]

5.6.2. Practical implementation of the framework

Issues/gaps

The child's right to family life is well enshrined in the legal framework of the 18 Member States and as such applies to children with disabilities. Member States' legislation reflects in general those CRC and CRPD provisions. In addition, MS policies aim at reducing institutionalisation and offering residential care as the last resource.

Institutionalisation of children with disabilities constitutes currently one of the most significant problems in relation to the effective implementation of the right to family life of children with disabilities. As it follows from the research and the country reports carried out for this study, the institutionalisation is frequently caused by the lack of adequate preventive measures offered by the State to the families, such as counselling services for the parents, the limited or unavailable provision of early intervention and financial, legal or psychological support. For example, in Belgium, it is reported that waiting lists to receive personal assistance budget force parents to turn to residential care for their child to receive adequate care.

However, it should be underlined that institutions are still needed in cases where the immediate family is unable to adequately take care of a child with disabilities, where alternative care within the extended family is not possible or alternative care within a

[238] For more details see Table 23 in the Annex.
[239] For more details see Table 24 in the Annex.
[240] For more details see table 24 in the Annex.

family in the closest community fails. Public authorities need to provide the services required to meet the concrete needs of the child and family in order to exhaust the possibilities of children with disabilities to remain in his/her family. In practice, there are not alternatives to the child's family for children with disabilities. Losing the family means losing the possibility to grow in a family environment and being separated from their families and placed in institutions.

Many institutions in Member States are of poor quality, low living conditions and cannot ensure basic needs of children with disabilities. In such institutions children are often segregated from the society and placed at direct risk of violence and abuse. A tendency to an unequal provision of family-based options for children with disabilities is recognised in all reports. As the result, a relatively low number of orphans with disabilities find adoptive parents, being put at the high risk of social exclusion and marginalisation.

Best practices

Alternative care: Some countries (including Ireland, Italy, Sweden) have applied a modern approach towards separation of children with disabilities from their parents and have developed family- or community-based care alternatives to institutionalisation. In case a family is unable to cater for the child, the priority is given to the custody of the child to a foster-family, family homes or small residential arrangements with special services provided by municipalities. For instance, in Sweden there are no institutions *sensu stricto* dedicated for children with disabilities. In Ireland, only children with severe and profound disabilities requiring around the clock care are institutionalised.

Family-based care is a form of alternative care where a child with disabilities is placed with the family other than the family of origin. Foster care placement can relate to a number of situations (emergency foster care, temporary or log-term foster care, therapeutic foster care). Kinship care is a form of family-based care whereby the child is placed in his/her extended family or with close friends of the family known to the child.[241]

Community-based care consist of services available and accessible for families of children with disabilities at the community/municipality level, such as family strengthening services: parenting courses, conflict resolution skills, opportunities for employment, and supportive social services, such as day care or financial assistance.[242]

In Malta, in order to increase the selection of alternative care placements offered to children with disabilities, voluntary organisations have engaged in running residential services dedicated for children with disabilities. For example, the Richmond Foundation of Malta runs a special facility for children with severe emotional and behavioural disabilities. The Foundation for Respite Care Services provides residential respite for children with disabilities. Similarly, in Romania, the Foundation Speranta was a pioneer in providing early intervention services to families.

De-institutionalisation is a key solution to the problem of institutionalisation of children with disabilities. De-institutionalisation is a policy-driven process which primarily aims to decrease reliance on institutional and residential care with a complementary

[241] United Nations Guidelines for the Alternative Care for Children, June 2009, A/HRC/11/L.13, par. 29.
[242] Eurochild, Working Paper – De-institutionalisation and quality alternative care for children in Europe. Lessons learned and the way forward, May 2012, p. 4.

increase in family- and community- based care and services, preventing separation of children from their parents and preparing a smooth transition towards independent living.[243] The process of de- institutionalisation must be carried out gradually and in parallel to the development of community- and/or family- based services and facilities. However, the absence of public funds allocated for this purpose has been highlighted in the country reports.

The process of de-institutionalisation has been commenced in the Czech Republic and Hungary. In the Czech Republic, the de-institutionalisation programme of 2009 has focused on three main areas: a reduction in the number of children raised in institutions, an improvement in preventive measures with parents and improvements in the cooperation between individual departments of competent authorities.[244] The stakeholders interviewed confirmed the efforts from regional authorities to slowly decrease the number of children placed in social care institutions and to provide them with alternative care.[245]

In Hungary, a new government plan foresees that from January 2013 no child under 12 years old will be placed in institution, but with foster parents. A gradual deinstitutionalisation process is planned, starting with children under three (from 1 January 2014). Older children (3 to 6 and 6 to 12 years old) will have to wait for their turn until 2015 and 2016, respectively.[246]

5.7. Access to assistance

The right to access to assistance aims to secure the inclusion of children with disabilities in wider society, encouraging them to be active in their own lives and within their community. Children with disabilities should be provided, subject to available resources (Article 23 CRC), with assistance appropriate to his/her condition and circumstance of his/her parents.

The focus of this principle is attached to the effective access of the child to 'education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development'.[247] To this end, the **special needs of children with disabilities should be recognised and accommodated** free of charge, whenever possible and taking into account the financial resources of the parents. The implementation of this principle entails an obligation on the State to provide alternative care for a child with disabilities if the immediate family is unable to care for that child.

The CRPD, in Article 30, recognises the right to participation in cultural life, *inter alia*, through the provision of assistance to enable an individual to access cultural, sporting and other recreational activities.

[243] Eurochild, Working Paper – De-institutionalisation and quality alternative care for children in Europe. Lessons learned and the way forward, May 2012, p.5.
[244] 'Proposed Measures for the Transformation and Integration of the System of Care for Vulnerable Children – Basic Principles'.
[245] For more details see the country report.
[246] For more details see the country report.
[247] Article 23.3. of the CRPD.

5.7.1. Legal framework

The implementation of the right to assistance can be assessed through the analysis of the following criteria:

- **Criterion n°1: Provision on special assistance**

This criterion aims to assess whether a national legislation guarantees the provision of special assistance for families/parents exercising their parental duties over children with disabilities. The type of assistance guaranteed may be a combination of general assistance to children and assistance to person with disabilities (also guaranteed for children with disabilities). An assessment of the legal implementation of this criterion is reflected in Table 25 in the Annex.

- **Criterion n°2: Nature of special assistance provided by the State**

Full implementation of the right to assistance requires different types of assistance to ensure the effective enjoyment of many rights guaranteed under the CRC and CRPD. Assistance should include financial support to children (with disabilities) and their parents, social assistance and medical coverage to access health care. An assessment of the legal implementation of this criterion is reflected in Table 26 in the Annex.

The table below presents an overall assessment of the legal implementation of the right to assistance in the 18 Member States.

Table 7: Overall assessment of the legal implementation of the right to assistance

MS	Access to assistance		
	Criterion n°1	Criterion n°2	Overall Implementation
BE	Yes	Yes	Yes
CZ	Yes	Partial	Partial
DE	Yes	Partial	Partial
EE	Yes	Yes	Yes
EL	Yes	Yes	Yes
ES	Yes	Yes	Yes
FI	Yes	Yes	Yes
FR	Yes	Partial	Partial
HU	Yes	Yes	Yes
IE	Yes	Yes	Yes
IT	Yes	Partial	Partial
MT	Yes	Yes	Yes

MS	Access to assistance		
	Criterion n°1	Criterion n°2	Overall Implementation
NL	Yes	Yes	Yes
PL	Yes	Yes	Yes
RO	Yes	Yes	Yes
SE	Yes	Yes	Yes
SI	Yes	Yes	Yes
UK[248]	Yes	Yes	Yes

The general right to assistance for children with disabilities is fully and effectively implemented throughout the 18 Member States, mainly in the social protection legislation or, occasionally, in the Constitutions (including Belgium, Poland and Romania).[249] In all the 18 Member States, the right to assistance is specifically recognised for children with disabilities and their families. In Greece, Romania, Slovenia and Estonia, persons raising children with disabilities can receive additional days off work or special leave. In Ireland, parents of children with disabilities may be able to avail of an Incapacitated Child Tax Credit. In France, additional compensation is foreseen for a child who suffers from particularly severe disabilities.

All the Member States concerned effectively provide for social assistance measures for children with disabilities. Pursuant to national legislation, social support usually takes a form of financial aid, such as special allowances (e.g. in Belgium, Greece, Hungary), compensation for additional costs related to disability (e.g. in Finland and France) or tax reductions (e.g. in Belgium and Ireland). Welfare assistance includes also all types of in-kind or human support, such as assistance with provision of food or with personal hygiene, counselling, personal assistance, technical aids and adaptation training, rehabilitation, etc.[250]

Also **health care services** and medical assistance for children with disabilities are sufficiently secured across the 18 Member States, usually through a general health insurance scheme that covers major health care expenses incurred by children with disabilities and their parents. Some Member States provide for specialised medical services directed at persons with disabilities. Accordingly, in Greece, persons with disabilities can receive special health treatment in centres of open or closed nature. In Hungary, children with disabilities receive supported medicines and medical supplies.[251]

In addition, Member States offer a wide range of services which aim at supporting children with families and their families, such as early assistance (the Czech Republic, Germany, Ireland, Poland, Slovenia), assistance for house adjustments (Belgium, France, Slovenia, UK), transport assistance (Finland, Hungary, Poland), interpretation services

[248] Except Scotland.
[249] See Table 25 in the Annex.
[250] For more details see Table 26 in the Annex.
[251] Ibid.

(Finland), consultancy with competent authorities (Romania).

5.7.2. Practical implementation of the framework

Issues/Gaps

When families face the diagnosis of the disability of their child, families will want to receive all the necessary information and guidance to understand what the needs of the child are and will be, how the family will be able to care and educate their child in accordance to his/her specific needs and where to obtain assistance to achieve it. The research carried out for this study shows that when facing the new situation after the diagnosis of their child, many families feel lost. The lack of **adequate guidance, information and support** to families is at the root of this problem.

All the 18 Member States recognise the right to assistance to families of children with disabilities and provide for specific safeguards in that respect. However the complexity of the national legal frameworks regulating access to assistance constitutes a first barrier is **accessing assistance**. In many countries[252], regulations setting up access to assistance are contained in a wide range of diverse legal acts and assign particular competences to various national, regional and local authorities. Cross-sectoral allocation of competences and lack of efficient coordination between competent authorities and relevant policies results in a duplication and dispersion of support and assistance offered for children with disabilities and their families.

Moreover, the lack of clarity and deficiency of information on benefits available contribute to a situation where parents of children with disabilities often do not understand what the competent authorities are and which benefits are applicable in given circumstances.

Lack of sufficient financial support or the existence of **fragmented and incoherent** systems of financial benefits have been recognised as major factors preventing children with disabilities from enjoying effective access to assistance services in the Member States concerned. Reduced accessibility and economic capacities has been acknowledged at both state level and family level. In the majority of Member States, municipalities are primary responsible for providing services for children with disabilities and cutbacks in their budget allocations have impacted negatively on the provision of assistance for children with disabilities, especially with regard to health care and social services.

In Greece, budget cuts have resulted in the closing of the existing health and social care structures. In the Czech Republic, financial benefits for parents caring for children with disabilities under 7 years old have been lowered. In Italy, recent economic cuts will reduce tax benefits for persons with disabilities.

Regional disparities and inequalities within one country as well as uneven capacity of local governments in providing assistance can significantly hinder effective and coherent access to the necessary support for children with disabilities living in the same Member State. Assistance provided to children with disabilities and their families vary from region to region and can go from comprehensive and effective to patchy and inefficient depending on sizes of the municipalities, the population and the financial resources

[252] See country reports for Belgium, Czech Republic, Germany, Finland, Ireland, Poland and Spain.

allocated to each region or municipality.

Moreover, lack of institutionally coordinated and geographically coherent system of assistance hinders the establishment of national strategies to provide necessary services.

In Romania, persons with disabilities living in rural areas have difficulties in accessing social protection services as offices of the relevant competent authorities are mostly located in the country's capital.

In order to address the shortcoming of the provision of social assistance, the National Strategy for the protection, integration and social inclusion of persons with disabilities in the period 2006-2013[253] establishes, as one of its objectives, to increase the institutional and administrative capacity of national authorities and to reform the institutions with competences in the field of protection of children with disabilities. However, no information about the practical implementation of the Strategy has been identified.

Overall, as a result of the above mentioned issues, the accessibility of health care and social services for children with disabilities has been considered by the experts as particularly insufficient and requiring improvements. Solely in a few Member States it has been explicitly stated in the country reports that the provision of the assistance can be assessed as 'quite-well developed' (Finland) and 'significant' (France).

Other difficulties identified by the experts and related to the implementation of the right to access to assistance are the following: **lack of specialised medico-social personnel** (such as in Greece, France, Hungary, Malta, Romania), deficiencies of children's psychiatric care (Hungary, Ireland, Sweden) and **waiting lists** for access to personal assistance budget or to residential care (Belgium).

On a positive side, in several Member States **voluntary organisations** enhance practical implementation of the right to assistance for children with disabilities. In Ireland, the National Federation of Voluntary Bodies' Informing Families project has produced best practice guidelines for how families are informed of their child's disability. In some countries such as in Spain and Poland, personal assistance and guidance to families is provided by non-governmental organisations.

Best practices

In Spain, healthcare is based on the **principle of universality**. It is not a contributory system and it is financed from the general state budget, reducing the weight of contributions levied on labour costs and thus increasing the competitiveness of enterprises. It recognises the right to health care to all Spanish and foreign citizens which are residents in the territory of Spain as it considers that all citizens residing in Spain are paying their own healthcare social security portion through their taxes. The universality of the right to health care is recognised in all cases of loss of health and the need to guarantee the substantial equality of all people in terms of health benefits and the absence of any discrimination in access to health services.

With a view of addressing the deficiencies in the provision of assistance for children with

[253] Government Decision no. 1175/2005 for the approval of the National Strategy for the protection, integration and social inclusion of persons with disabilities in the period 2006-2013, published in the Official Gazette of Romania, Part I, no. 919/2005, entry into force on 14.10.2005.

disabilities, and particularly in order to improve allocation of competences and coordination between national authorities, in Ireland, the government has introduced a fundamental reform whereby a delivery of child protection services is removed from the general Health Service Executive to a **specially dedicated for children Child Welfare and Protection Agency**. Such reform, focusing the provision of services for children under one agency, constitutes an example of best practice which may positively impact the practical accessibility of the assistance measures for children with disabilities.

In order to enhance support for children with disabilities, in Ireland, Children's Disability Teams are operative. These are specialised, multi-disciplinary teams, established by the Health Service Executive or by voluntary bodies, whose main objective is to provide comprehensive assistance to children aged 6-18 years of age. The teams, consisting of, *inter alia*, health care support workers and social workers, cooperate also with parents of children with disabilities and offer wide range of services, information and support. Similar teams operate in the United Kingdom.

5.8. Right to education and to inclusive education

Inclusive education is based on the principle that all children, regardless of their physical and mental capacities, should learn together and receive education on the basis of equal opportunities.[254] Inclusive education acknowledges that every child has unique characteristics, interests, abilities and learning needs and those learners with special education needs must have access to and be accommodated in the general education system. [255] In this way inclusive education takes an opposite approach to 'special education' system where children with disabilities are segregated from the common education system. Inclusive education, by taking into account the diversity among learners, seeks to combat discriminatory attitudes, create welcoming communities and achieve quality and effective education.[256] To that end the right to education entails that primary education should be compulsory and available for free for all children and that secondary education as well as appropriate educational and vocational information should be available and accessible for every child. Moreover, education should be directed to the development of the child's personality and mental and physical abilities to their fullest potential. In addition, necessary assistance and support, including reasonable accommodation, should be provided to the child to ensure that he/she receives effective access to education.

5.8.1. Legal framework

The implementation of the right to education can be assessed through the analysis of the following criteria:

[254] Salamanca Statement on Principles, Policy and Practice in Special Needs Education, para. 3.
[255] Vernor Muñoz, Implementation of general assembly resolution 60/251of 15 March 2006 entitled "Human Rights Council", The right to education of persons with disabilities, Report of the Special Rapporteur on the right to education, 19 February 2007, p. 6.
[256] UNESCO, *Guidelines for Inclusion: Ensuring access to education for all*, United Nations. Educational, Scientific and Cultural Organization, France, 2005, p. 9.

- **Criterion n°1: General recognition of the right to education and to inclusive education**

The recognition of right to education in the national Constitution and/or major legal acts provides for the effective implementation of this right. The right should recognise the freedom of the child and her/his legal representatives to freely choose the school of their choice, including the right to inclusive education. An assessment of the legal implementation of this criterion is reflected in Table 27 in the Annex.

- **Criterion n°2: Primary and secondary education**

In order to ensure that children with disabilities receive education at appropriate level, primary and secondary education must be compulsory and free of charge for all children. An assessment of the legal implementation of this criterion is reflected in Table 28 in the Annex.

- **Criterion n°3: Support and access to education**

The presence in national legislation of the obligation to provide support and/or assistance to facilitate effective education of children with disabilities represents a good indication of the effective implementation of the right to inclusive education. Support should take the form of architectural and sensorial assistance to access mainstream schools. The legal implementation of this criterion is reflected in Table 29 in the Annex.

- **Criterion n°4: Acceptance of children with disabilities at school**

Lastly, effective implementation requires that special legal measures or mechanisms are in place to ensure that children with disabilities are accepted at mainstream schools without discrimination based on their disability and the ability/requirement to make reasonable accommodation to welcome the child in the school. This includes the presence of appropriate complaint mechanisms. Similarly, the implementation of this criterion means that the legal framework should ensure the acceptance children in specialised schools as well. This criterion's legal implementation is found in Table 30 in the Annex.

The table below presents an overall assessment of the legal implementation of the right to education and to inclusive education in the 18 Member States.

Table 8: Overall assessment of the legal implementation of the right to education and to inclusive education

MS	Inclusive education				
	Criterion n°1	Criterion n°2	Criterion n°3	Criterion n°4	Overall Implementation
BE	Partial	Yes	Yes	Yes	Partial
CZ	Partial	Yes	Partial	Partial	Partial
DE	Partial	Yes	Partial	Partial	Partial
EE	Yes	Yes	Partial	Yes	Partial

MS	Inclusive education				
	Criterion n°1	Criterion n°2	Criterion n°3	Criterion n°4	Overall Implementation
EL	Partial	Yes	Partial	Partial	Partial
ES	Partial	Yes	Yes	Partial	Partial
FI	Partial	Yes	Partial	Partial	Partial
FR	Yes	Yes	Partial	Yes	Partial
HU	Partial	Yes	Partial	Yes	Partial
IE	Partial	Yes	Yes	Yes	Partial
IT	Yes	Yes	Partial	Partial	Partial
MT	Yes	Yes	Yes	Partial	Partial
NL	Partial	Yes	Partial	Yes	Partial
PL	Yes	Yes	Partial	Yes	Partial
RO	Partial	Yes	Partial	Partial	Partial
SE	Partial	Yes	Partial	Yes	Partial
SI	Partial	Yes	Yes	Yes	Partial
UK[257]	Partial	Yes	Yes	Yes	Partial

All of the 18 Member States effectively provide in their legislation for the general right to education and for equal access to schooling system, either in the constitutional provisions or in secondary legislation.

With respect to the specific right to inclusive education, 12 Member States have fully implemented the principle into their legal orders, mostly through specific education-related legislation.[258] However, in certain Member States, the right to inclusive education is not effectively and/or expressly ensured. In Belgium, while there is no formal right to inclusion, specific provisions ensure access to inclusive education, including the right to freely choose the school for the education of the child. In the Czech Republic, there is no definition of inclusive education and the national law, in general terms, states that education should be based on the principle of considering needs of individual. In Germany, the principle is only implemented in two *Länder*, whereas in Hungary, there is no legal obligation in place which would make inclusive education obligatory. The United Kingdom maintained two restrictions related to the right of inclusive education. However, it must be highlighted that, despite the lack of relevant provisions pertaining to the right to inclusive education, in practice, the principle may be achieved at the policy level (such as in the Netherlands).

[257] Except Scotland.
[258] See Table 27 in the Annex.

Several Member States do not explicitly protect **parents' right to choose a school** (either mainstream or special) for their child. In Germany, this comes as the result of the fact that education falls under the competence of the *Länder* and therefore right to education is subjected to regional differences. In Spain, Finland and Sweden, municipalities and/or local authorities can significantly influence the decision regarding a choice of a school for a child with disabilities. Similarly, in Greece, if parents wish to send their child with disabilities to a mainstream school without KEDDY's (Centres of Differential Diagnosis, Evaluation and Support) decision in this respect, they cannot benefit from the additional education support provided to children with disabilities who attend mainstream school.[259]

All Member States' legislation effectively recognises primary and secondary education as compulsory and free of charge for all children, including children with disabilities.[260]

Several Member States (including Belgium, Spain, Ireland, Malta, Slovenia and the UK) have fully reflected the obligation to provide **special support** and reasonable accommodation for children with disabilities in the field of education in their legislation.[261]

With respect to special education support, national legislation of a vast majority of Member States refers to various types of **assistance** offered to children with disabilities in order to guarantee effective realisation of their right to education, such as financial aid (loans, grants, compensation for the additional expenses caused by disability, special allocations), adaptation of curricula, teaching materials and methodology (such as one-to-one teaching or parallel support in the classroom), support of specialised staff (teachers, psychologists, etc.), preparation of individual education programmes, alternative testing methods or facilitating transport to school. However, in Belgium, the right to education support can be limited to certain amount of hours. In the Czech Republic, the assistance is not particularly directed at facilitating effective education for children with disabilities. Similarly, in Germany, the assistance is limited to certain forms of support, such as financial aid.[262]

Legal implementation of the requirement of **reasonable accommodation** in the area of education is significantly fragmented throughout the Member States concerned.[263] It follows from the legal research that, although Member States recognise in their legislation the general right to reasonable accommodation and/or accessibility, in some countries[264] the principle is not explicitly directed at accommodating education for children with disabilities.

A considerable number of the Member States have not taken **adequate measures** to ensure acceptance of children with disabilities in mainstream schools. For instance, Czech legislation allows schools to refuse providing inclusive education on the basis of insufficient material resources. In Finland, relevant complaint mechanisms are not fully implemented. In general, rules of administrative or judicial procedure may apply, this however accounts for partial implementation. On the other hand, in certain Member States there are in place effective procedures and remedies in order to ensure

[259] For the details see Table 27 in the Annex.
[260] For the details see Table 28 in the Annex.
[261] See Table 8 for the overall assessment.
[262] For details see Table 29 in the Annex.
[263] For details see Table 29 in the Annex.
[264] See country reports for Germany, Estonia, Finland, Romania, Sweden, the Netherlands.

acceptance of a child with disability at mainstream school. In Estonia, the decision concerning the acceptance of a pupil in a mainstream school should be made by a special body, upon agreement (or in consultation with) the parents. Similarly, in France, a parent must approve the decision of enrolling the child in a new/another school. In the Netherlands, as from August 2014, the school refusing a student will be legally obliged to find another education facility for that child. In Belgium, Ireland, Poland and the UK, specific complaint procedures have been established in order to protect children's right to access mainstream education.[265]

5.8.2. Practical implementation of the framework

Issues/Gaps

The right to inclusive education is set very **high on the agenda** of many of the Member States. The CRPD played also a large role in promoting the right inclusive education in the EU. In spite of a large number of legislative acts and actions undertaken by the governments, attendance of children with disabilities to mainstream education is in practice significantly limited. Although the number of children with disabilities attending mainstream schools has increased over the last years in several Member States[266], the country reports have clearly shown that, as a general trend, the majority of children with disabilities still go to **special schools**.[267] For example, in Belgium most children with disabilities go to special education schools (in the French Community of Belgium, it has been estimated that less than 1% of children with special educational needs were attending mainstream schools in 2010) and in Germany only 20% of children with disabilities attend mainstream schools. Similarly, in Romania, two thirds of all children with disabilities follow special education programmes.

However, certain Member States appear to be successful in the process of implementing the right to inclusive education. Italy is, so far, the only European country which reached 99.6% of inclusion of students with disabilities in mainstream schools.[268] In the light of the World Report on Disability, Sweden and Malta have the highest proportion of students with disabilities attending inclusive education amongst the 18 EU Member States covered by this study, [269] followed by Lithuania, Ireland, Finland, Scotland and Spain with less than 20% of children with disabilities attending special schools.

Access to inclusive education is particularly problematic for children with **intellectual disabilities** or children having challenging behaviour. It has been pointed out by the national experts that children with intellectual impairments tend to be more often excluded from the mainstream education. For instance, in the Czech Republic, cases of double segregation have been reported, where autistic children received education in special classes within special schools.
Lack of reasonable accommodation, physical accessibility and necessary infrastructure

[265] For details see Table 30 in the Annex.
[266] In France, the proportion of children with disabilities in inclusive education kept increasing from 2003. In Romania, a gradual increase has been observed since 1990s.
[267] See country reports for Belgium, Germany, Estonia, Greece, Czech Republic, Hungary, the Netherlands, Poland, Romania, Slovenia.
[268] 'International study on the implementation of the UN convention on the rights of persons with disabilities, Zero Project Report 2012' available at http://www.zeroproject.org/wp-content/uploads/2011/11/Zero-Project-Report-2012.pdf (last accessed on 1 October 2012).
[269] *World Disability Report.* World Health Organisation, 2011, available from http://www.who.int/disabilities/world_report/2011/en/index.html (last accessed 3rd October 2012).

(ramps, lifts, etc.) is considered as one of the prominent problems pertaining to the effective implementation of the right to inclusive education. Existing **barriers** in educational facilities restrain equal and free access of students with disabilities to mainstream schools and consequently, contribute to the great amount of students following special education, which is currently very often more accessible and adapted for their physical needs.

Deficiencies in the provision of **reasonable accommodation** concern also the organisation of transport to schools for children with disabilities. In Poland, instead of hiring an assisting person or arranging specialised means of transportation, communes reimburse bus tickets. In Sweden, the right to **special transport** for children with disabilities is restricted as it does not extend to outside of the municipality in which the child attends the school. The dysfunctional system of transportation for children with disabilities increases segregation of the children from the mainstream education. In Spain, the administrative decisions about the school for the children with disabilities often do not take into account the length of transportation requirements. In Belgium, the difficulty to find a school able to accommodate the child with disabilities close to home often leads to long daily journeys to and from schools of three or more hours.

In Ireland, reasonable accommodation usually takes the form of extra rest breaks, large-print exam papers or special services of a reader or a scribe. When a child with physical disabilities is admitted to a mainstream school, the school may apply to the Department of Education and Skills for a grant to make the premises accessible by, for example, putting in ramps or accessible toilet accommodation. It may include also special transport arrangements, such as escorts and safety harnesses.

In Spain, schools accepting children with disabilities may apply to the Ministry of Education for financial support and assistance for accessibility. However, in practice, schools might decide not to use it in order to avoid further requests.

Shortages of specialised staff and **lack of trainings** provided for professionals (teachers, psychologists and other personnel working at mainstream schools) are barriers to access inclusive education for children with disabilities. It has been indicated by the country experts that the mainstream school teachers frequently do not have sufficient skills and expertise to provide education for children with disabilities. As a consequence, the quality of education received by children with disabilities is very often lower that the education received by their peers. In Spain, despite the laws, the responsibility to learn about the teaching methodologies for educating children with special education needs or for understanding the child's special needs is left to their own interest and initiative. The Spanish organisation of representatives for people with disabilities (CERMI) concludes that the quality of education is lower for children with disabilities from the indicator that less than 20% of children with disabilities continue studies to higher education.

In Malta, support for children with disabilities attending inclusive schools is provided by *learning support assistants* who are required to have necessary expertise and knowledge indispensable for providing quality education for children with disabilities. In addition, a number of other services is provided in schools, i.e. the Early Intervention Service, Teachers for the Hearing and Visually Impaired, Autism Spectrum Support Team, Access to Communication and Technology Unit or Home Tuition and Hospital Classes[270].

In Poland, children with disabilities who attend mainstream schools can be mixed in the same class with able children in so called 'integration classes'. In each integration class, education is provided in parallel by two teachers – the leading one, who conducts the lecture, and the assisting one, whose role is to *ad hoc* support those children who have difficulties in following the lecture.

In France, the number of students with disabilities accompanied by an education specialised assistants has increased since 2005.[271]

In Hungary, a pupil with special educational needs with a mild intellectual disability, speech disorder or psychological developmental disorder must be considered as two children, while children with physical disability, sensorial disability, moderate intellectual disability, autism spectrum disorder or multiple disabilities must be considered as three children when determining the size of the group in preschools and schools.

In Belgium, a system of progressive transfer of children from specialised education to mainstream education has been established. A child can share the week between a mainstream and a specialised school, with the view to provide a smooth transfer. At the end of the temporary part-time inclusion experience, the child can either keep this part-time inclusion or fully integrate a mainstream or special school.

Incompatibility of **curricula and teaching materials** constitutes another problem with regard to the provision of support required by students with disabilities who attend mainstream schools. In spite of the fact that laws of a number of Member States require the establishment of individual curricula for each child with disability, it results from the country reports that study and teaching materials are not adequately and sufficiently adapted to the educational needs of children with disabilities. In France, a transition from primary to secondary school has been reported as being particularly problematic for children with intellectual disabilities as the content of the education programs is too rigid and does not leave enough room for adaptation to the special needs and rhythm of children with disabilities.[272] In Romania, curricula for children with disabilities have not been changed for the past 20 years, while the methodology used by teachers is more than 10 years old.[273] In Spain, reports from interviews highlight that, despite the laws, the programmes, exams or methods for exams are not adapted. Most children with disabilities do not continue secondary school in mainstream schools given the rigidity of the programmes and the lack of support to children from 16 years old.

[270] Ministry of Education and Employment of Malta, Student Services Department, available at https://www.education.gov.mt/Page.aspx?pid=318 (last accessed 3rd October 2012).
[271] See Annex 4 to the country report for France.
[272] In order to address this situation, a proposal has been submitted to designate 'reference' primary schools that would be organised and planned at the departmental level, and 'reference' secondary schools to be organised and planned at the regional level. (See: Paul Blanc (Member of the French Senate) (2007), p. 54.).
[273] Information collected from media (5 October 2012): TVR news, 'The teaching of children with special needs in after school programmes is two decades old', available at http://www.tvrinfo.ro/copiii-cu-nevoi-speciale-invata-dupa-programe-scolare-vechi-de-doua-decenii_22259.html (last accessed on 22 February 2013).

In Malta, the Policy of the Student Services Department assists students with disabilities in the process of drawing up of their Individual Educational Programmes and Making Action Plans to be carried out with the active participation of the student. Similarly, in Italy educational plans for a child with disabilities are prepared by his/her family, teachers and competent authorities, taking into account child's view.

Reduced economic capacities of Member States and insufficient material support offered for the families have been identified by the national experts as factors hindering effective access of children with disabilities to mainstream education.

In Italy, the exemption from tuition fees for students with heavy disabilities is in force, despite the continuous economic crisis.[274]

The research has shown that in certain Member States there are numerous gaps or inaccuracies in the **diagnosis** which is the basis for decisions regarding the requirement for special education needs. In Hungary, children with mild disabilities are often qualified as seriously impaired and, as a consequence, sent to special schools instead of mainstream facilities. In Romania, detailed methodology for such assessment has not been elaborated yet.

Acceptance of children with disabilities in mainstream schools is also problematic in practice. While parents of children with disabilities may have the right to freely choose a mainstream school suitable for their child, in practice cases of **denial of registration** or expulsion from mainstream schools of children with disabilities as well as incidents of pressure put by the school principals on parents to enrol the child in special education facilities have been reported in several countries, including Hungary, Poland, Romania, Spain, Sweden and Slovenia. Whereas it is, as a rule, possible to appeal such decisions of the school authorities, the procedures tend to be lengthy and parents are afraid of the impact on their children and the treatment received in the school, therefore their effectiveness may be limited.

Best practices

In order to enhance and encourage the establishment of inclusive education programmes, in the Czech Republic the League of Human Rights awards the '**Fair School Certificate**' for mainstream schools which ensure inclusion of, *inter alia*, children with disabilities.

A **cross-border project** called 'The School Bell Rings for Everyone' has been established between Hungary, Slovakia, Romania and Ukraine. It focuses on making education more available for children with disabilities by using adequate and differentiated teaching methodology. In frames of this programme, once a week an education specialist takes children with disabilities to mainstream schools and kindergartens in order to enable them common education and, ultimately, to prepare together a performance or a piece of art at the end of the school year.

In Italy, the Italian Constitutional Court[275] recognised in 1987 the full unconditional right

[274] Decree of the President of the Council of Ministers n. 172/2001 on uniformity of treatment on the right to study at University pursuant to Article 4 of Law n. 390 of 2 December 1991.
[275] Judgment of the Constitutional Court n. 215 of 3 June 1987.

of students with disabilities, even those with severe disabilities, to attend **secondary schools**, and imposing on all the competent authorities the duty to provide their services to support general inclusion in schools.[276] Nurseries, schools and universities, including private institutions, widely accept students with disabilities. Teachers together with families of children with disabilities establish **personal education plan** for the pupil with disability. Furthermore, the E-inclusion project has been launched which focuses on the dissemination of new technologies in Southern Italy, providing schools with hardware that aims to promote the educational inclusion of students with disabilities.[277]

In Malta, a position of **inclusion coordinator** has been introduced. Appointment of the inclusion coordinator in a mainstream school indicates that there is a professional who has sufficient expertise and training in the principles and practise of inclusive education and who can cooperate with senior management team as well as teachers and learning support assistants in the process of including students with disabilities into mainstream education system. Moreover, the revision of the job description of learning support assistants has been introduced.[278]

In order to enhance **knowledge of teachers** concerning children's disability, in Poland, the Minister of Science and Higher Education introduced disability issues to the programme of studies for pedagogues.

5.9. Children with disabilities as vulnerable suspects

This section assesses particular situations where the respect of the rights of children with disabilities might be at risk, i.e. children with disabilities being vulnerable suspects.

5.9.1. Legal framework

None of the 18 Member States have included specific provisions on children with disabilities as vulnerable suspects in their national laws. As a result, general rules on both children and persons with disabilities apply to children with disabilities.

Malta, Greece and Slovenia have attempted to consider the situation of children with disabilities as vulnerable suspects in their national legislation. However, the measures remain quite vague or only concern a certain type of disability. Maltese legislation only exempts from the punishment deaf-mute children under the age of 14 who acted without a mischievous discretion. In Slovenia, the Criminal Procedure Act refers to an obligation to pay special attention to the mental state of minors; however it does not target specifically children with disabilities but it rather addresses the fragile psychological nature of children in general.[279]

[276] 'International study on the implementation of the UN convention on the rights of persons with disabilities, Zero Project Report 2012' available at http://www.zeroproject.org/wp-content/uploads/2011/11/Zero-Project-Report-2012.pdf (last accessed on 01 October 2012).
[277] 'International study on the implementation of the UN convention on the rights of persons with disabilities, Zero Project Report 2012' available at http://www.zeroproject.org/wp-content/uploads/2011/11/Zero-Project-Report-2012.pdf (last accessed on 01 October 2012).
[278] *Supporting Learners in Independent Schools*, Ministry of Education, Culture, Youth and Sport, Floriana, Malta, 2007. Available from www.education.gov.mt/MediaCenter/Docs/1_Supporting%20Learners.pdf. (3 October 2012).
[279] 'See section 3.2.3 on children as vulnerable suspects in the Slovenian national Report: '(…)the court has to establish the child's age and circumstances important for assessment of his mental development, and verify the

Children with disabilities are also protected through the scope of national provisions for children in judicial proceedings. As a consequence, general mitigation measures for young suspects apply to them.

First of all, Member States' legislation greatly diverges regarding the **age** when a child can be held criminally responsible. The youngest age can be found in Malta where children who have reached the age of 9 can be criminally responsible. Ireland and the Netherlands have set the age of criminal responsibility at 12 years old. Belgium has the highest age of criminal responsibility amongst all the Member States concerned which is established at 18 years old. In Spain the age of criminal responsibility is also established at the age of 18 but criminal rules are not applicable to children below 14 years old. Most of the Member States have their threshold at 14 such as Estonia, the Czech Republic or Hungary or close to that age, France has it at 13 years old and Finland at 15 years old.

Mitigation measures taken towards children also result in the fact that children under a certain age are judged by the **juvenile courts** and are sent to special detention institutions created especially for children, where they are able to follow school classes. In Germany, a defence counsel has to be appointed when the victim is a minor.

Punishment is frequently adapted to the young age of the suspect. In Romania for example, the Court can either order an 'educational measure' or a punishment. In the Netherlands, in case of minor offences, the child can have the opportunity to make his wrongful act right again without a police record being opened. In the Greek legislation, special attention is drawn to the way minor suspects are treated. The Greek Police Code of Conduct requires the police to treat minors with understanding and compassion.[280]

Children with disabilities are also protected under the scope of provisions for persons with disabilities even if children with disabilities are not explicitly covered. Most Member States have included mitigation measures for persons with disabilities which, in practice, also apply to children with disabilities. In general, Member States' legislation does not fully hold accountable a **suspect** who, at the time of the act, had his discernment affected by an intellectual or psychosocial disorder. This especially aims to protect persons with intellectual or mental disabilities who cannot recognise the importance of their acts. This is the case for instance in Belgium, Spain, France and Greece.

In addition, **special arrangements**, for persons with disabilities exist in most Member States that apply as well to children with disabilities. For instance in Germany, the hearing-impaired or speech-impaired plaintiffs can be provided with an interpreter to be told certain parts of the pleadings. A blind or visually-impaired person can also require documents of the case to be accessible to his/her. In Italy, if the plaintiff needs psychiatric assistance, the judge informs the competent authorities.[281] The Italian judge can order temporary placement in a psychiatric hospital until the competent body takes a decision.[282]

environment and living conditions of the minor, and other circumstances that relate to his personality'.
[280] Article 5(3) and (4) of Presidential Decree 254/2004, Police Code of Conduct.
[281] Article 73 Code of Criminal Procedure.
[282] 'Country thematic reports on the fundamental rights of persons with intellectual disabilities and persons with mental health problems', available at http://fra.europa.eu/en/country-report/2012/country-thematic-reports-fundamental-rights-persons-intellectual-disabilities (last accessed on 3 October 2012).

5.9.2. Practical implementation of the framework

The issues and problems related to children with disabilities as vulnerable suspects needs to be addressed regarding both the young age of the suspect and his/her disability.

Children with disabilities can face **particular problems** when the disability has not been officially recognised, particularly concerning children with light mental disabilities. In this case, it can result for a child with disability being treated by the police as a non-disabled child or adolescent. In such situation, no care or specific attention will be provided or his behaviour can be considered as aggressive or not cooperative. This issue has been underlined in the Italian report. It showed the importance for police officers to be trained to detect disabilities, in particular intellectual disabilities such as autism.

Furthermore, children with disabilities also need particular attention due to their age. **Training of authorities** dealing with children should also be provided. Indeed, it has been reported in the French study that the police have a 'general negative attitude towards children, in particular adolescents'.[283] As a result the UN Committee on the Rights of the Child called the French State to take measures to condemn this intolerance and to promote a positive and constructive attitude of the police towards children and adolescents.[284] In Hungary, where 2012 was the year of child-friendly justice, a working group proposed to develop training for authorities dealing with children. At the moment, the arrest, the interrogation or the judgment of a child is not adapted to the specific needs of children. In Belgium, the lack of sign language interpreters in judicial courts can be a significant barrier for the child with hearing impairments in judicial proceedings.

In Romania, a 'guide for the hearing of the child in judicial procedures' has been issued by the judiciary authorities. It aims to facilitate the communication between the child and the judge or the prosecutor. This kind of initiative could thus be widened to children with disabilities.[285]

Children's **detention** has been pointed as an issue of concern in some countries. In Ireland, a report brought to light the information about the poor conditions in which some children were detained in St. Patrick's Institution.[286] The Spanish Ombudsman published in 2009 a report on the mistreatment of children in centres for offenders. [287]

5.10. Gender vulnerability

This section assesses particularly vulnerable children with disabilities whose rights might be subject to violation at a higher rate than their peers. It reflects a situation of multiple factors affecting the discrimination such as the age (children), disabilities and gender.

[283] Committee on the Rights of the Child (2009), p. 8.
[284] Committee on the Rights of the Child (2009), p. 8.
[285] See section 3.2.1 on children as vulnerable suspects of the Romanian national report (Information collected through stakeholder interview).
[286] Office of the Inspector of Prisons, 'Report on an Inspection of St. Patrick's Institution by the Inspector of Prisons' by Judge Michael Reilly, 2012, available at: http://www.inspectorofprisons.gov.ie/en/IOP/Appendix%20A%2005.10.pdf/Files/Appendix%20A%2005.10.pdf.
[287] Centros de protección de menores con trastornos de conducta y en situación de dificultad social". Informe monográfico del Defensor del Pueblo, 2009.

5.10.1. Legal framework

The legal framework protecting children with disabilities from gender vulnerability does not seem to be well-established in the Member States concerned. In most of the Member States, there are **no specific provisions** on gender vulnerability of children with disabilities. As a result, protection for children with disabilities in relation to gender vulnerability would fall under the scope of provisions on discrimination on grounds of disability or gender, or both if the country recognises multiple discriminations.

One of the main issues addressed regarding **girls** with disabilities is the higher probability of becoming victim of violence or sexual abuse. In most Member States, children with disabilities are not explicitly mentioned in national provisions regulating violence and need to invoke legislation against sexual harassment, sexual abuse or violence against women to be protected. However, provisions to protect people with disabilities against abuse and harassment can be found in some national provisions. For instance in Spain, the crimes of inducing or forcing children or persons with mental disabilities to prostitution are punished with a higher degree of **sanction**. Also in Spain, non-consensual sexual abuse covers as well those who due to their limited intellectual or physical development have been subject to a defenceless situation, including as a result, children with disabilities. In France, provisions regarding sexual harassment or sexual abuse result in more stringent penalties when those acts have been committed against children with disabilities like in France. Encouragement to discrimination or incitation to hatred against a person or group of persons because of age and disability can be punished by imprisonment and a fine in Belgium. Similarly, the neglect and abandonment of a child or vulnerable persons, or the abuse of vulnerability of a person is sanctioned in Belgium.

Sterilisation of young women is a preoccupying issue in the Member States. National legislations differ on the subject. In several Member States such as Poland, Romania, Sweden, Italy, Netherlands and Slovenia, no sterilisation programmes exist for young women. In Germany, the forced sterilisation of persons with disabilities is forbidden and can be punished. In case of a life-threatening or grievous danger to health for the person concerned, the Civil Code permits the sterilisation of adults who are unable to consent only subject to very strict prerequisites.[288] In Spain, sterilisation of persons with mental disabilities is also prohibited but can be accepted under very strict requirements such as the best interest of the person with disabilities. In that case, an authorisation by the Judge with two expert reports, the participation of the Public prosecutor and prior medical exploration of the child are required. In Ireland there is no legal provision on sterilisation of children with disabilities. Nevertheless, sterilisation of a woman under the age of 18 can occur through the parents' *patriae* jurisdiction at the Courts which will determine if the sterilisation is in favour of the best interests of the child or not.

Overall, a small number of national provisions have been enacted with regard to the specific issue of gender vulnerability of children with disabilities, showing that they face a

[288] Federal Ministry of Labour and Social Affairs, 'United Nations Convention on the Rights of Persons with Disabilities First State Report of the Federal Republic of Germany adopted by the Federal Cabinet on 3 August 2011' (Übereinkommen der Vereinten Nationen über Rechte von Menschen mit Behinderungen Erster Staatenbericht der Bundesrepublik Deutschland Vom Bundeskabinett beschlossen am 3. August 2011), p.40 < http://www.bmas.de/SharedDocs/Downloads/DE/staatenbericht-2011.pdf?__blob=publicationFile> (last accessed on 3. November 2012).

lack of recognition as a vulnerable group with particular needs.

5.10.2. Practical implementation of the framework

Gender vulnerability often lacks formal and legal recognition in Member States' legislation. In addition, the **deficiency of data** regarding gender vulnerability of girls and young women with disabilities renders the assessment of the issue more complex. Indeed, no systematic data concerning this matter is available in Member States. As a result, practical measures regarding gender vulnerability of children with disabilities cannot be designed or implemented.

Nevertheless, findings of existing data showed that girls with disabilities are more inclined to experience violence and abuse than young boys. **Girls with mental disabilities** are especially affected by abusive behaviours. National reports showed that maltreatment is committed generally by their peers, family or occurs inside the specific institutions. In response to this issue, it has been recognised that **sexual education programmes** would be a solution. However, in practice, the establishment of sexual education programmes remains rare or non-adapted to children with disabilities. Indeed, most of Member States do not have targeted sexual education programmes for children with disabilities. In some Member States like Romania or Sweden, no awareness tools or education programmes specific to children with disabilities exist. Education classes are often taught in mainstream schools but these lessons are not adapted to be understood by children with intellectual disabilities. Furthermore, those classes do not target the specific issues faced by children with disabilities. Often, children with disabilities do not follow this kind of classes as they are not part of their curricula.[289] Even when sometimes specific sexual education programmes are required by the law, in practice it is not always followed and taught by teachers, or such programme are limited to the initiative of some schools or institutions.

The issue of forced sterilisation of girls and women with disabilities remains worrying. Even if Member States' legislations forbid this practice or restrict it under severe conditions, **forced sterilisation** cases have been registered in some Member States. [290]

Interviews with stakeholders have revealed practices such as forced use of contraceptives for girls and young women when they reach fertile age.[291] In other cases, sterilisations of girls or young women are practiced outside the scope of therapeutic reasons such as to prevent pregnancy. Furthermore, young women with disabilities are more exposed to unwanted pregnancy and unrecorded abortions.[292]

Concerning this issue, in Germany, the Federal Ministry for Family Affairs, Senior Citizens Women and Youth conducted a study which found that girls with disabilities experienced physical **barriers** to access institutions, such as specialised centres for women. Institutions offering information and support to women are often not prepared and not specialised in problems related to disability and frequently not barrier-free. [293]

[289] Information collected through stakeholder consultations (Federation of Parents and Guardians of Persons with Disabilities).
[290] See the country report for Hungary and Ireland.
[291] Information collected through stakeholder interviews.
[292] Information collected through stakeholder consultations (Children's Ombudsman).
[293] Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, Information for girls and women with

Public opinion and discriminatory attitudes of the **society** also contribute to the insufficient number of measures addressing the problem of gender vulnerability of children with disabilities. It has been reported that people with disabilities are often perceived as 'asexual' and that they should not be able to found a family.[294] This perception can hinder the implementation of measures such as the creation of targeted sexual education classes for children with disabilities.

Best practices

One of the key responses to gender vulnerability identified in national reports is the need for specific and adapted sexual education classes. As it has been emphasised in the previous paragraphs, this measure is not well implemented in most Member States. However, a minority of Member States have set up initiatives in that field. In Malta, persons with intellectual disability sometimes receive sexual education classes which teach them how to **recognise abuse and maltreatment**. In Slovenia, some institutions carry out pilot reproductive education programmes. These programmes are especially addressed to children with disabilities, including children with intellectual disabilities. In Germany, awareness tools and reproductive education programmes especially targeted at girls and women with disabilities have been introduced by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth.[295] Amongst others, the Federal Government has been promoting the national network called '**Political Representation** of the Interests of Women with Disabilities – *Weibernetz e.V.*'[296] The network initiates projects to promote the participation of women with disabilities, in particular in the fields of working life, protection against violence, healthcare and parenthood.

On a broader basis, certain Member States have included in their legislation measures to address **discrimination on multiple grounds** such as gender and disability or gender and age (childhood). For instance, in Spain, the Strategy on Disability for the years 2012-2020 includes an Action plan which establishes the adoption of a Global Strategy against multiple discriminations in the areas of gender policy and childhood.[297] In Finland, the Government has put in place an Equality Programme (*Hallituksen tasa-arvo-ohjelma*) for the years 2012-2015 establishing measures to strengthen gender equality even if it mainly focuses on adult women.[298]

disabilities (Informationsbroschüre für behinderte Mädchen und Frauen "Einmischen-Mitmischen"), p. 156. http://www.bmfsfj.de/BMFSFJ/Service/Publikationen/publikationsliste,did=11376.html (last accessed on 7. November 2012).

[294] Waszkielewicz A. M., (ed) *Polish Way to the UN Convention on the Rights of Persons with Disabilities* (*Polska droga do Konwencji o prawach osób niepełnosprawnych ONZ)*, (Fundacja Instytut Rozwoju Regionalnego, Kraków, 2008), 123-124, availabale at: www.pfon.org/images/dodatki/2008_konwencja_onz_polska_droga.pdf (last accessed on 21 November 2012).

[295] Federal Ministry for Family Affairs, Senior Citizens, Women and Youth http://www.frauengesundheitsportal.de/themen/behinderung/ (last accessed on 3. November 2012).

[296] Association Weibernetz website available at http://www.weibernetz.de/association.html (last accessed on 7. November 2012).

[297] Spanish Strategy on disability 2012-2020, available at http://sid.usal.es/libros/discapacidad/26112/8-4-1/estrategia-espanola-sobre-discapacidad-2012-2020.aspx (last accessed on 22 February 2013).

[298] Sosiaali ja terveysministeriö, 'Equality Programme of the Government 2012-2015' (*Hallituksen tasa-arvo ohjelma 2012-2015*), Sosiaali- ja terveysministeriön julkaisuja 2012 :10, Sosiaali- ja terveysministeriö, Helsinki.

5.11. Other issues

This section has been added to the report to present issues and problems concerning children with disabilities that came up during the research and were initially not included in the structure of the report.

5.11.1. Lack of resources

One of the main issues with regards to the situation of children with disabilities identified by the national experts is the lack of resources directed at special assistance for children with disabilities and insufficient number of mainstream and special schools with places available for children with disabilities. Question of the availability of specialised schools and insufficient resources directed for this purpose has been raised by the national experts. Before a child is placed in such facility, his/her disability needs to be diagnosed. For this reason it is important that the diagnosis is conducted by a specialist in a due time, without unnecessary delay. Moreover, the need for cooperation between health and education services has been underlined in several instances.

National reports frequently refer to the on-going **economic crisis** as a one of the major factors hampering effective realisation of children's rights, especially with regard to the provision of specialised health care. For instance in Greece, families of children with disabilities do not receive enough financial support which would ensure special therapies for children that are not covered by the social insurance. Furthermore, health services provided to children with disabilities have been reduced in most Member States due to the economic crisis.

5.11.2. Discrimination of children with disabilities belonging to minority groups

Another issue raised by the national experts relates to the particularly vulnerable situation of children with disabilities belonging to minority groups or disadvantaged families.

Children with disabilities belonging to minority groups (especially **Roma** children) have even more difficulties to access education and to benefit from health services. These children require additional services that are specifically adapted to their needs. For instance, language barrier constitutes a significant problem for their integration into society. In Hungary, Roma children are overrepresented in schools for children with intellectual disabilities. Indeed, people with disabilities who belong to the Roma minority are in a specifically defenceless situation: their indices of education are dramatically lower in comparison to any other population group.[299]

5.11.3. Lack of data

The lack of systematic data, information and studies in relation to children with disabilities has been identified in almost all country reports. As it is difficult to obtain

[299] Civil Society Report: Hungary - Submission to the UN Universal Periodic Review 11th session of the UPR Working Group of the Human Rights Council November 2010, http://lib.ohchr.org/HRBodies/UPR/Documents/session11/HU/JS1_JointSubmission1-eng.pdf.

numbers or statistics on the situations of children with disabilities, their daily issues are often neglected and ignored.

5.11.4. Early intervention

Some reports refer to the need to develop early intervention measures. The Spanish organisations specialised on people with disabilities have been claiming action on this issue for years.

This concept refers to the set of interventions aimed at children of 0-6 years, their family and environment, intended to respond as soon as possible to transitional or permanent needs of children with developmental disorders or at risk of suffering them. The CRPD requires public authorities to ensure universal and free delivery of early intervention to all children and their families from the beginning of gestation in the place where they reside. It requires early diagnosis by specialised professionals, appropriate treatment and should also include early intervention in schools, to lay the grounds for social inclusion of the child. The CRPD refers to it especially in relation to habilitation and rehabilitation. "Habilitation and rehabilitation may include medical, psychological, social and technical support. Without this aid, people with disabilities may not realise their rights to accessibility, education and work."[300]

[300] UN, Department of Economic and Social Affairs (UN-DESA), the Office of the United Nations high Commissioner for human Rights (OHCHR) and the Inter-Parliamentary Union (IPU). De la exclusión a la igualdad: Hacia el pleno ejercicio de los derechos de las personas con discapacidad, Manual para parlamentarios sobre la Convención sobre los derechos de las personas con discapacidad y su protocolo facultativo, Ginebra, 2007, referred to in "Propuestas de mejora del marco normativo de los menores con discapacidad en España", Maria José Alonso Parreño, Octubre 2011, CERMI, Ediciones Cinca. Colección Convención ONU N° 7.

6. OPTIONS FOR EU ACTION

KEY FINDINGS

- EU competence to act to enhance the situation of children with disabilities in the EU requires an assessment of the competences conferred by the Treaty. There is no explicit EU competence on children with disabilities. However the EU framework contains provisions recognising the EU's role to promote the protection of the rights of the child as an objective of the EU and competence to combat discrimination based on disability.
- The Charter of Fundamental Rights of the European Union recognises the right to non-discrimination in Article 21 and the rights of the child under its Article 24. However, the provisions of the Charter cannot extend the competences of the European Union as defined by the Treaties.
- The European Union, together with the Member States in the areas of shared competence or national competence, is bound by the CRPD obligations and is required to take the necessary measures to combat discrimination on the grounds of disability within the framework of Article 19 TFEU or in other matters falling within EU competence.
- While the Lisbon Treaty introduced the protection of the rights of the child as an objective of the Union's internal and external action, neither the Charter nor the Lisbon Treaty define children's rights as a new policy area of EU competence. However, these provisions justify and enable EU actions protecting children's rights in existing areas of competence of the EU.
- There is no explicit EU competence on children with disabilities. However the EU framework contains provisions recognising the EU role to promote the protection of the rights of the child and the combat against discrimination based on disability as objectives of the EU.
- EU action on non-discrimination of children with disabilities would therefore be based on the scope under Article 19 TFEU or linked to the policy areas of EU competence. Certain issues related to the rights of children with disabilities are linked to social policy, economic, social and territorial cohesion policy, transport policy, policy on freedom, security and justice which are all shared competences. In addition, the EU has the option to take action to support Member States policies in a number of areas affecting children with disabilities: education, sports, youth and health.

6.1. Introduction

Section 5 of this study provides with an overview of the situation of children with disabilities in the 18 selected Member States, looking at their legal framework and the practical implementation of the regulations. The results of this exercise allowed to identify best practices, difficulties and gaps which feed into an assessment on the

conclusions and recommendations for EU action developed under Section 7 to address those gaps with a view to enhancing the situation of children with disabilities in the EU. However, this study first looks at the EU competence to act in the range of policy areas, which are currently split between actions on persons with disabilities rights and actions on children rights. **There is no explicit EU competence on children with disabilities**. The role of the various institutions and actors to adopt legislation and policies must also be taken into consideration.

6.2. EU competence on children with disabilities

Both the UN Convention on the Rights of the Child (CRC) and UN Convention on the Rights of Persons with Disabilities (CRPD) are International agreements, covering areas of Member States competence and others of shared competence between EU and Member States, as well as EU coordination or supporting competence to the Member States as conferred by the Treaties.

The EU can act to enhance the situation of children with disabilities only within the limits of the competences conferred by the Treaties, which can take the form of exclusive, shared or supporting competences (Article 2 TFEU). Furthermore, in areas outside of its exclusive competence, the EU is bound by the principle of subsidiarity, according to which the EU can only act as far as the objectives of the proposed action cannot be sufficiently achieved by the Member States' national, regional or local actions and would be better achieved at Union level.[301] On policies falling within shared competence the Member States can only act to the extent that the European Union has not exercised its competence. According to Article 2 of the TFEU, the EU has in practice exclusive competence on those specific areas determined by the existence of EU acts or provisions establishing common rules that are affected by the provisions of the Convention.

The EU competences are conferred by the provisions of the Treaty and, within those, the scope and procedures for exercising the European Union's competences are determined by the provisions relating to each area. Furthermore, the Treaty provides for competences to deal with specific issues outside any policy area such as combating discrimination based on disability.

The Lisbon Treaty lays down the European Union objectives to combat social exclusion and discrimination and the protection of the rights of the child. Furthermore, the Charter of Fundamental Rights of the European Union is legally binding as well. It recognises the right to non-discrimination in Article 21 and the rights of the child under its Article 24, requiring the best interests of the child to be a primary consideration in all actions relating to children taken by public authorities or private institutions. However, the provisions of the Charter cannot extend the competences of the European Union as defined by the Treaties.

There is no explicit EU competence referring to children with disabilities. However the EU framework contains provisions recognising the protection of the rights of the child as an objective of the EU and a competence to combat discrimination based on disability. As a result the protection and non-discrimination of children with disabilities shall be taken in consideration in the designing of EU policy and legislation.

[301] Article 5(3) TEU.

The EU competence to act in areas related to children with disabilities is assessed in relation to the range of policy areas split between actions on the rights of the child and actions targeting the rights of persons and children with disabilities.

6.2.1. EU competence on the rights of the child

The EU is not a party of the CRC but all Member States have signed and ratified the Convention. Although, the Lisbon Treaty acknowledges the importance of the rights of the child, it does not mention the rights of the child as a competence under Articles 3 to 6 of the TFEU and therefore do not provide for EU competence on the rights of the child as a general policy area.[302]

However, these legal provisions provide legal justification and grounds for EU action in the protection of children's rights on the basis of competences recognised in the Treaty. Certain issues related to the rights of the child are linked to social policy, economic, social and territorial cohesion policy, consumer protection policy, transport policy, and policy on freedom, security and justice which all are shared competences. In addition, issues related to the rights of the child are linked to human health, culture, education and vocational training, youth and sports which are policies where the EU has supporting and coordination competence.

This has been confirmed by the European Court of Justice[303] that has recognised the need to respect children's rights and requires EU law to take due account of the UNCRC.[304]

Therefore, the absence of specific EU competence to legislate on children's rights does not preclude the EU to take actions or adopt laws and policies affecting children's rights in the Member States[305]. For example, the EU has competence on judicial cooperation in criminal matters. The competence of the EU in this field remains limited to the aspects described in Articles 81 and 82(2) TFEU, namely:

(1) facilitating the mutual admissibility of evidence between the Member States in judicial procedures;

(2) supporting the rights of people during the civil and criminal processes;

(3) protecting victims of crime; and

(4) measures relating to family law, including matters relating to child custody, where they have cross-border effects or affect the common market.

Within this framework, child-friendly justice is an area where the EU has elaborated measures supporting the rights of the child in judicial proceedings.

[302] See also European Parliament, Note, 'EU Framework of Law for Children's Rights', authored by Emanuela Canetta, Nathalie Meurens, Paul McDonough, and Roberta Ruggiero, 2012, p.20.
[303] Case C-540/03 European Parliament v. Council of the European Union [2006] ECR 5769, paragraph 37.
[304] Save the Children (2011), Governance Fit for Children, To what extent have the general measures of implementation of the CRC been realised in the EU Institutions?, 12, available at http://europe.savethechildren.se/Global/scs/EUROPE/Our%20focus/Gov_for_children/EU_webb_final.pdf (25 September 2012).
[305] Communication from the Commission to European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions An EU Agenda for the Rights of the Child, COM(2011) 606.

In conclusion, while the Lisbon Treaty introduced the protection of the rights of the child as an objective of the Union's internal and external action, neither the Charter nor the Lisbon Treaty define children's rights as a new policy area of EU competence. However, these provisions justify and enable EU actions protecting children's rights in existing areas of competence of the EU.[306]

6.2.2. EU competence on children with disabilities' rights

The Treaty provides for competences not only on policies but also to address specific issues. In that sense, Article 19 TFEU recognises special competence to the EU **to take action to combat discrimination based on disability, among other grounds.** EU action on non-discrimination of children with disabilities would therefore be based on Article 19 TFEU or linked to the policy areas of EU competence conferred by the Treaties.

The CRPD[307] was approved by Council Decision 2010/48/EC on 26 November 2009 on the basis of 19 TFEU (on combating discrimination on the basis of disability) together with Article 114 TFEU (on the harmonisation of the internal market) and Article 218 TFEU (on agreement with international organisations). The EU Declaration on the conclusion of the CRPD annexed to Decision 2010/48/EC identifies the following areas of EU competence (prior Lisbon) being **exclusive or shared competence**:

- accessibility;
- independent living and social inclusion, work and employment;
- personal mobility;
- access to information;
- statistics and data collection; and
- international cooperation.

The Declaration recognises that on measures falling under the legal bases related to other policies such as employment or education policies, EU action is required in support or coordination with Member States.

Currently anti-discrimination legislation adopted by the EU is linked to areas related to employment relations and vocational training. Children with disabilities' rights, as well as other children's rights, are linked to the other relevant policy areas, including social policy, economic, social and territorial cohesion policy, consumer protection policy, transport policy, policy on freedom, security and justice which all are shared competences. In addition, EU has the option to take action to support Member States policies in number of areas affecting children with disabilities: education, sports, youth, health etc.

The table below shows in a nap-shot the most relevant policies affecting children with disabilities' rights where the EU has competence. Most of them belong to the category of shared or supporting competence, without much specific legislation already adopted by the EU on the issue.

[306] NSPCC, *The EU Lisbon Treaty – a positive step for children. Children's Charities Briefing*, available at: http://www.nspcc.org.uk/Inform/policyandpublicaffairs/europe/briefings/eu_reformtreaty_briefing_wdf54388.pdf (last accessed on 10 September 2012).
[307] Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities.

EU Competence Relevant to Children with Disability Issues

Exclusive competence	Shared competence	Supporting competence
Areas defined under Article 3 TFEU include: • compatibility of state aid with common market; • establishment of competition rules under the internal market; • common commercial policy; any provision that may affect common EU rules or alter their scope (including areas where the EU has legislated upon).	Areas under Article 4 TFEU covers: • internal market; • social policy, for the aspects defined in this Treaty; • economic, social and territorial cohesion; • consumer protection; • transport; • trans-European networks; • area of freedom, security and justice; • common safety concerns in public health matters, for the aspects defined in this Treaty.	Areas under Article 6 TFEU are: • protection and improvement of human health; • industry; • culture; • education, vocational training, youth and sport.

The legal basis for action is very much dependent on the specific type of action envisaged. In broad terms, Articles 10 and 19 TFEU establish the basic power to combat discrimination. Notably Article 19(1) requires the European Parliament involvement in the special legislative procedure by the provision of consent for the adoption of any legislation proposed on this bases and unanimity in the Council. This article provides the legal basis for a future EU non-Discrimination Directive (as proposed in 2008[308] Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation which was based on Article 13 TEC, now Article 19 TFEU). However, the unanimity requirement makes achieving agreement under this legal basis difficult. By way of derogation, Article 19(2) provides the possibility for the EU to adopt, using the ordinary legislative procedure, basic principles or EU incentive measures to support Member State action to combat discrimination. Such incentive measures cannot however take the form of harmonisation of the laws and regulations of the Member States. The ordinary legislative procedure applies also to other areas relating to disability issues such as criminal law. The provision in the Treaty allowing for the use of the ordinary procedure upon authorisation by the Council, known as **'passerelle clause'**[309] does not apply under Article 19 TFEU.

[308] Proposal for a Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)426). The EP delivered its first reading on 2 April 2008. It is currently blocked by Council.

[309] Article 48 TEU provides a general passerelle clause applying to all European policies to use the ordinary legislative procedure to areas for which the Treaties had laid down a special legislative procedure; activation of this clause must be authorised by a Decision of the European Council acting unanimously and Article 81(3)

EU action can take in the form of:

(a) legislative acts, such as regulations and directives;

(b) non-legislative acts: recommendations, resolutions, implementing or delegated acts;

(c) funding allocation;

(d) enforcement procedures of the EU legal framework, including the Charter.

Legislative measures are complemented with activities and practical measures by the European Commission, the Council and the Parliament to combat discrimination and raise awareness. The EU has financed various projects and research through a range of funding programmes including the fundamental rights and citizenship programme, specific programmes on criminal justice, civil justice, Daphne, as well as initiatives such as Access City Award which honour European cities that make changes to their urban environments in order to provide greater opportunities for people with disabilities.

In brief: Despite the lack of strong competence to legislate on the rights of children with disabilities, the EU legislation adopted in this field has had a strong impact on the law and policies that affect children with disabilities in the Member States. Further action should be considered within the described competence framework. Action is also required in other policies since, according to the Lisbon Treaty, all EU actions must be in line with the best interests of the child. The 2011 Commission Communication 'An EU Agenda for the Rights of the Child' recognises as well the need for action to ensure children with disabilities' special protection, as they are particularly vulnerable to the violation of their rights.[310]

6.3. The EU as actor to enhance children with disabilities' rights

6.3.1. The European Parliament

The European Parliament, as co-legislator, has the power together with the Council to adopt legislation, upon proposals from the Commission. In this capacity, the EP can also put forward amendments to proposed legislation or reject the proposal within the legislative procedure. Hence, the EP plays an important role in supporting legislative action or suggesting amendments. The European Parliament's budgetary powers, shared with the Council, can play a crucial role in setting budgetary priorities.

In addition, the EP has a right of legislative initiative through the legislative own initiative procedure. According to this procedure, the EP can request the Commission to submit a legislative proposal or to inform the European Parliament of the reasons for not submitting it (Article 225 TFEU).

TFEU, offering a passerelle clause on judicial cooperation in family law, where national Parliaments retain a right to object. See also, European Parliament, Note, 'EU Framework of Law for Children's Rights', authored by Emanuela Canetta, Nathalie Meurens, Paul McDonough, and Roberta Ruggiero, 2012, p.29.

[310] European Commission (2011), Communication from the Commission to European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: An EU Agenda for the Rights of the Child, COM(2011) 60, p.8.

The EP can also issue recommendations and resolutions to press EU actors and Member States to act, or to support a particular issue. It can develop own initiative reports or non-legislative reports highlighting issues of relevance to the European Parliament.

The EP Civil Liberties, Justice and Home Affairs Committee (LIBE Committee) works in the area of freedom, security and justice of the TFEU, which includes fundamental rights and measures to combat discrimination other than those occurring within employment relations. During the ordinary legislative procedure, the Committee plays a key role in preparing decisions of the European Parliament.

Members and political groups support as well civil society organisations like the Alliance for Children which has been established in 2011 to stand up for children's interests in internal and external policies of the EU and to support the mainstreaming of children's rights.

6.3.2. The Council of the European Union

As a legislative actor, the Council shares the power with the EP to adopt, amend or refuse legislative proposals and retains the legislative power on its own in matters of special legislative procedures after either consultation of the European Parliament or after its consent.

The Council is competent to conclude international agreements on behalf of the EU, such as the CRPD, which the Council concluded on 30 March 2007 and ratified on 23 December 2010.

The Council can adopt recommendations in accordance with Article 292 TFEU.

6.3.3. The European Commission

The Commission holds the power of legislative initiative to submit proposals to the European Parliament and the Council. The Commission can prepare legislative proposals on its own initiative or upon request from the European Parliament (Article 225 TFEU), a group of Member States, at the request of the Court of Justice or the European Investment Bank (Article 289(4)). EU citizens can call on the Commission to act via the European Citizen's Initiative (Article 11 TEU and Article 24 of the TFEU) where this is supported by at least one million citizens who are nationals of a significant number of Member States.[311] The European Disability Forum (EDF) led the 1million4disability campaign calling on the Commission to propose, inter alia, a disability–specific non-discrimination directive. The campaign collected almost 1.4 million signatures.[312] One of the Commission's responses to this request was to propose a multi-ground non-discrimination Directive[313] which has not been adopted, yet.

[311] Stalford, H., and Schuurman, M. (2011), *Are We There Yet?: the Impact of the Lisbon Treaty on the EU Children's Rights Agenda*, International Journal of Children's Rights 19387-389.
[312] The European Disability Forum (EDF) 1million4disability campaign available at http://www.1million4disability.eu/ (last accessed on 22 February 2012).
[313] Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM/2008/0426, available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008PC0426:en:NOT (last accessed on 12 November 2012).

The Commission has also a role of 'guardian of the Treaties' according to which it checks the implementation of EU legislation by Member States. The Commission is in charge of ensuring the conformity of all proposed EU legislation with fundamental rights. The mechanism of 'fundamental rights check' can play an important role in ensuring the effective inclusion of children's rights in relevant legislation.

Lastly, the Commission proposes the EU multi-annual and annual budgets and manages parts of EU funding, some of which in shared management, and can award grants for projects in specific areas such as for vulnerable children or commission studies.

6.3.4. The Court of Justice of the EU

The Court of Justice in interpreting EU law has developed jurisprudence in relation to fundamental rights, including right to non-discrimination and to a more limited extend children's rights[314].

6.3.5. EU agencies

The Fundamental Rights Agency (FRA) is in charge of collecting and analysing data in the EU and providing expertise to assist EU decision-making.

The FRA is currently preparing a study on targeted violence and hostility against children with disabilities.[315]

[314] As an example, the following decisions in the field of rights of the child were mentioned by European Parliament, Note, 'EU Framework of Law for Children's Rights', authored by Emanuela Canetta, Nathalie Meurens, Paul McDonough, and Roberta Ruggiero, 2012, p.17: C-491/10 PPU, *Aguirre Zarraga v Pelz* 22 December 2010; Case C-34/09, *Gerardo Ruiz Zambrano v Office national de l'emploi (ONEM)*, 8 March 2011; C-497/10 PPU, *Mercredi v Chaffe*, 2010; C-400/10 PPU, *J.McB v L.E*, 5 October 2010; C-211/10 PPU, *Doris Povse v Mauro Alpago*; Case C-256/09, *Purrucker v Pérez*.

[315] FRA study Children with disabilities: targeted violence and hostility, available at http://fra.europa.eu/en/project/2012/children-disabilities-targeted-violence-and-hostility.

7. CONCLUSIONS AND RECOMMENDATIONS

Children with disabilities combine multiple factors of vulnerability: their situation as children and as persons with disabilities. The protection of their rights requires the adoption of special measures as defined by the UN Convention on the Rights of the Child (CRC) and the UN Convention on the Rights of Persons with Disabilities (CRPD).

When evaluating the need for specific recommendations aimed at improving the situation of children with disabilities, it is important to highlight that children with disabilities are foremost children who have the same needs as any other children and who should be beneficiaries of all the rights recognised by the CRC. Within this context, their intrinsic difference from their peers needs to be recognised in order to design appropriate legislative and policy measures.

This section builds on the previous sections by proposing ways for the actors at EU level to continue promoting the respect and implementation of the principles and rights related to children with disabilities in the EU decision-making process.

7.1. Horizontal issues

7.1.1. Ratification and implementation of the CRC and CRDP

As a first and general recommendation, all EU Member States which have not already done so should ratify the two conventions referred to in this study and implement their provisions by adopting national legislation and ensuring its practice.

7.1.2. Understanding key definitions: Disability, the best interests of the child and the evolving capacities of the child

The research undertaken for this study revealed some problems in Member States' interpretation or understanding of a few key concepts that are cornerstones of the implementation of the rights of children with disabilities.

Definition of disability

The CRDP considers persons with disabilities as those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

This definition considers not only the person's limitations but also other external and social barriers that can cause or increase disability and therefore it implements the social model of disability. However, this definition is very broad and requires clarification for its proper implementation.

Most legislative frameworks of the countries subject to this study include one or several definitions of disability. However, in several Member States legislation does not comply with the CRDP definition. Certain Member States establish rules and procedures for the recognition of disability according to a specific degree of disability, expressed in a

percentage, based on technical criteria. This definition limits the consideration of a 'person with disability' to the person who obtains the legal recognition of a specific degree of disability through a decision following particular administrative procedures. The exclusion of certain children with disabilities that this definition can generate due to the degree of disability is of concern and does not comply with the CRDP. Furthermore, several Member States define disability in terms of ability to do certain tasks, e.g. walk or talk. In these cases, adaptations of the definition of disability are necessary for children, who, by nature, have different abilities to adults (whether disabled or not). Therefore the definition of disability needs to consider children's needs and capacities. In this complex situation the leading role of the EU institutions is crucial to ensure that Member States' laws defining persons with disabilities comply with the UN definition under the CRPD and that the specificities of children with disabilities are taken into account. As a party to the CRPD, the EU has a responsibility to ensure its implementation at EU level and support Member States' efforts.

It is therefore recommended that

- the Commission liaise with the UN Secretariat of the CRPD to lead on the development of Guidance documents or exchange of best practices that could improve a better understanding and implementation of this concept;
- the Commission provides clarification of the broad definition of disability in the CRDP at EU level;
- EU action promotes Member States' laws defining persons with disabilities in compliance with UN definition under the CRPD and take into account the specificities of children with disabilities;
- EU action promotes Member States' definitions which enable case-by-case implementation by assessing not only the child's impairment itself but also social factors including the family context affecting his/her capacity to participate in society.

Best interests of the child

As per the Council of Europe's Commissioner for Human Rights statement, the best interests of the child is a basic principle that reflects the total sum of the protection of a child's rights. In spite of the wealth of legislation and some jurisprudence recognising the principle of the best interests of the child, most countries do not define it. The country reports developed within the framework of this project show that the concept of the best interests of the child is not sufficiently and consistently developed and understood across the EU. The lack of criteria for the application of this principle in different contexts seems to be the root cause of the problems of implementation identified in the reports. In some cases, national courts undertake the responsibility to define those criteria. However, most Member States studied have insufficient procedural safeguards to ensure implementation of the principle.

Furthermore, even though children with disabilities' best interests are covered by this concept, none of the reports have identified cases defining the special needs and interests of children with disabilities.

It is recommended that

- the EP, the Council and the European Commission support the implementation of the

CRC and CRPD by ensuring a deeper understanding of the best interests of the child in the EU, and particularly in relation to children with disabilities;

- the European Commission facilitates the process by liaising with the UN Secretariat for the CRPD to promote the exchange of best practices and to support the understanding of this principle on the basis of current Guidelines developed by the Council of Europe and the UNHCR, possibly through the Open Method of Coordination.

Evolving capacities of the child

Similarly, several country reports identify problems in recognising and implementing the concept of the evolving capacities of the child. According to Article 5 of the CRC, parents or persons legally responsible for a child, have the right and duty "*…to provide in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the Convention*".

The lack of relevant provisions in national legislation and/or the inadequate understanding of this concept hamper its practical implementation with regards to children in general and specifically for children with disabilities whose evolving capacities might differ from their peers.

It is recommended that

- the European Commission undertakes the development of Guidelines and exchange of best practices to clarify the meaning of this concept and promote its implementation in relation to children and specifically children with disabilities whose capacities might evolve differently than their peers'.

7.1.3. Mainstreaming of children's rights

Some Member States' national strategy documents include the objective to mainstream disability concerns in other relevant policies or programmes, requiring that actions developed by public administrations are not limited to those measures designed exclusively for persons with disability rights. The situation is similar at EU level where the Commission has undertaken actions to promote gender or non-discrimination/equality mainstreaming through the adoption of a **Guide** and a compendium of best practices[316]. However, evidence show that the full implementation of this objective has not yet been achieved either at national or at European level.

While mainstreaming non-discrimination concerns at EU level, specific considerations should be made to children with disabilities as they reflect **multiple discrimination** factors on grounds of both age and disability. For example, actions for gathering data to guide the development of non-discrimination policies' would include indicators that provide information on the situation of children with disabilities, disaggregating girls, in a family context or in institutions. This approach avoids unnecessary administrative burden and complicated structures and processes in the policy and legislative processes.

[316] Inclusion Europe, 'European Commission published a guide on equality mainstreaming', available at http://www.e-include.eu/en/news/987-european-commission-published-a-guide-against-discrimination- (last accessed on 22 February 2013).

It is recommended that

- the European Commission takes action in promoting children with disabilities considerations in existing non-discrimination/equality mainstreaming objectives;
- the European Parliament's 'Alliance for children' and the LIBE Committee should likewise promote non-discrimination mainstreaming including children with disabilities as citizens subject to multiple discrimination;
- the EP should encourage national parliaments to follow the non-discrimination/equality mainstreaming Guide issued by the Commission and to include multiple discrimination considerations such as those related to children with disabilities in national legislation.

7.1.4. Information to families to overcome the complex legislative framework

The legal framework regulating the situation of children with disabilities consists of a complex array of overlapping sectoral and cross-sectoral laws and policies covering rights of children and disability rights as well as health, social care, education or criminal justice. The national studies report that children with disabilities and their families experience an uncertain and unclear legal framework which is not adequate to protect them.

Families with children with disabilities feel lost when confronted by the **large number of rules and structures**, which are often un-coordinated, too general and lacking regulatory development. In other cases, the laws are not backed up with sufficient resources to guarantee their implementation or structures may lack mechanisms to support compliance, including systems for reporting violations or failures in the judicial systems which make progress in the exercise of children with disabilities rights slow and insufficient.

The evidence in the national reports developed in this project indicates the need to adopt support measures for families with children with disabilities in order to fulfil the information needs on the legal frameworks, access to assistance, competent authorities, procedures and compliance mechanisms. Such an initiative would also bring citizens closer to the EU.

It is recommended that

- the EP, the Council and the European Commission promote the development of national information tools to assist families with children with disabilities to understand the legal frameworks applicable to them, access to assistance measures, competent authorities, procedures and compliance mechanisms;
- the Commission develops specific tools such as an EU web portal addressed to these families which could be linked, where possible, to national portals providing full information on rights, requirements, criteria for implementation, competent authorities, and coordination systems. This tool could bring citizens closer to the EU.

7.1.5. Awareness-raising campaigns on the rights of children with disabilities

The gaps and barriers for implementation of the rights of children with disabilities are often due to the lack of understanding and awareness by the general public of the situation, rights and needs of children with disabilities. Furthermore cultural and behavioural attitudes that need to be changed may require the adoption of legislative measures and awareness-raising campaigns.

It is recommended that

- the EU Institutions take a leading role in promoting awareness-raising campaigns targeted at European citizens on issues concerning children with disabilities from a rights perspective targeting the general public and presenting the multiple discrimination situation of children with disabilities. The EP and the Council should use their budgetary powers to provide for financing of awareness raising campaigns;
- the EP favours discussions including adults and children with disabilities on ways to take into account the best interests, evolving capacities and the need for reasonable accommodation of children with disabilities in legislation and its implementation;
- particular focus is made on raising awareness on the situation of children with intellectual disabilities.

7.2. The best interests of the child

This study shows that the concept of the best interests of the child is not sufficiently and consistently implemented. The country reports provide evidence that while most countries have legislation recognising the principle of best interests of the child; only few Member States contain in their legislation a general requirement for its systematic consideration by the competent national authorities, including the courts, with regard to all decisions affecting children. Some Member States (such as Sweden and the UK) have introduced child impact assessments of proposed legislation.

It is recommended that

- EU Institutions promote the implementation of the principle of the best interests of the child through different measures including current initiatives to introduce child impact assessments of proposed legislation;
- the European Commission, benefiting from the examples in Sweden or the UK, promotes the exchange of best practices on child impact assessments of proposed legislation and develops a Methodology guide for carrying them out implementing the principle of best interests of the child and taking into account the specific interest of children with disabilities;
- the EU Institutions to promote the development of awareness-raising campaigns on the interests (and situation) of children with disabilities taking into account the multiple vulnerability factors with regards to age and disability, in order to promote full implementation of the principle of the best interests of children with disabilities.

7.3. Right to non-discrimination

7.3.1. Framing reasonable accommodation

Despite the general recognition of the principle of non-discrimination by Member States in their Constitutions and legal systems, the implementation of this right is still significantly lacking with respect to children with disabilities. Indeed, national reports point out that **accessibility** is one of the areas subject to the greater number of complaints in the EU.

Children may suffer from various types of disabilities, from physical to intellectual or psychosocial or from light to heavy disability. Hence, measures required to ensure the full enjoyment of children rights will be different on a case-by-case basis and reasonable accommodation may vary from a small adjustment to a full tailored support.

In particular, the notion of **reasonable accommodation** is often misunderstood by the general population, which can perceive it as a privilege granted to children with disabilities rather than a right. For example, a request for children with special educational needs to be allowed a longer time to take an exam or test is often not well received from teachers and able-peers.

Furthermore, the country reports provide evidence of general problems to implement reasonable accommodation measures as they require adapting the physical and social environment and the behaviour patterns to the special needs of persons with disabilities, without requiring a disproportionate burden. The definition of reasonable accommodation in the proposed Anti-Discrimination Directive states that appropriate modifications or adjustments are to be provided by **anticipation** unless such measures would impose a disproportionate burden.

However, the concept of reasonable accommodation can be problematic as, arguably, it is framed in relation to a baseline determined by the definition of the right under consideration on a case by case basis. In those cases, the respect of the baseline would not be subject to the consideration of **disproportionate burden** as certain basic measures have to be adopted (whatever it takes) because the right requires them by definition. This baseline would not be therefore subject to cost consideration. Above the baseline, reasonable accommodation measures are subject to the consideration of the proportionality of the burden. For example, according to a national court[317] the right to education of a child with disability requires not only that the child is accepted in the school but that it provides the support the child needs for his/her education taking into account the starting situation of inequality of a child with disabilities.

In some Member States, several policy documents have been adopted[318] focusing on

[317] STS 9 May 2011, Case Appeal 603/2010.

[318] In Czech Republic, the National Strategy to Protect Children's Rights (Resolution No. 4 dated 4 January 2012) is based on the principle of equal opportunities for all children regardless of their gender, (dis-)abilities or ethnic origin. The policy paper 'Right to childhood - National Strategy Protecting Children' Rights' refers to equal opportunities as one of the main principles and commits to ensure equal opportunities for all children without prejudicies with regard to disability. In finland, main objectives of the govrenment programmes 'The Strong Basis for Inclusion and Equality: Finland's Disability Policy Programme VAMPO (2010–2015)' and 'Development Programme for the Child and Youth Policy' is promotion of accessibility, equality and non-discrimination. In Spain: The First National Accessibility Plan 2004-2012 and the Spanish Strategy on Disability 2012-2020 with key Actions on non-discrimination and accessibility.

children with disabilities and the principle of non-discrimination and equal opportunities including reasonable accommodation and accessibility.

Exchange of best practices at national level on the implementation of reasonable accommodation in different situations should be promoted to help define the baselines for the relevant rights concerning children with disabilities.

Furthermore, enforcement and complaint procedures on non-discrimination violations are not sufficiently accessible for children with disabilities and their parents.

Recommendations include therefore that the EU Institutions promote

- the implementation of reasonable accommodation for children with disabilities through the **exchange of best practices** including examples setting baselines for relevant children with disabilities' rights (i.e. right to education, protection against abuse) from which public authorities' action is required and it is not subject to disproportionate costs arguments;
- support measures and information systems for families with children with disabilities.

7.3.2. Adoption of the proposed anti-discrimination Directive

In 2008 the Commission presented to the EP and the Council a proposal for a Directive implementing the principle of equal treatment between persons irrespective of religion, or belief, disability, age or sexual orientation[319] (Anti-Discrimination Directive). The proposed Directive aims at combating discrimination in areas outside of employment and includes areas of particular relevance to children with disabilities:

- social protection, including social security and health care;
- social advantages;
- education;
- access to and supply of goods and services that are available to the general public, including housing.

The proposed Anti-Discrimination Directive understands discrimination as direct and indirect discrimination, harassment, instruction to discriminate and denial of reasonable accommodation. Both the public and private sector are covered.

The proposal, however, does not specifically address the situation of children with disabilities. Nevertheless, amendment 37 introduced by the European Parliament refers to multiple discrimination.

Within this context, it is recommended that

- a clarification is introduced in the recitals of the proposed Anti-Discrimination Directive in order to ensure that the situation of children with disabilities is considered as part of its scope.

[319] European Commission, Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion, or belief, disability, age or sexual orientation, COM (2008) 426 final, 02 July 2008.

7.3.3. Adoption of the European Accessibility Act

Given the implementation problems of the accessibility obligation in all Member States, the Commission is currently working on a legislative proposal to improve accessibility of goods and services in the internal market, the so-called European Accessibility Act.[320] The aim is to improve the inclusion and participation of persons with disabilities and to remove barriers preventing them from enjoying their rights in the internal market. However, it does not address the particular vulnerabilities of children with disabilities.

It is therefore recommended that

- the proposal for the European Accessibility Act explicitly covers the access of children with disabilities to goods and services, at least with a reference to multiple discrimination cases.

7.4. Evolving capacities

As mentioned above, a child's level of understanding is not uniformly linked to his/her age or type or disability but rather to experience, environment, social and cultural expectations. This is even more important for children with disabilities. An examination on a case-by-case basis is necessary to determine the capacities of the child to enjoy his/her rights since the capacity of children with disabilities to enjoy their rights tends to be largely underestimated. Often, age limits are used to determine the capacity of the child to, for example participate or express her/his views on decisions affecting them.

The capacity of the child to be heard in **judicial proceedings** affecting them needs particular consideration. Opportunities for EU action in this area include the anticipated EU law on special safeguards for suspected or accused persons who are vulnerable, including children and the anticipated EU law for the recognition and enforcement of decisions on parental responsibility.

It is recommended that

- the EP contributes to raising awareness and to promoting cultural changes needed to better recognise the evolving capacities of children, including children with disabilities, in decision making processes affecting them;
- the Commission ensures that the anticipated new legislation on child-friendly justice include provisions for the consideration of the ability of the child with disabilities to be heard in judicial proceedings affecting them;
- the EP, the Council and the European Commission promote the use of the Council of Europe Guidelines on child-friendly justice and to support training for the relevant professionals at all levels.

[320] Roadmap for the European Accessibility Act (last accessed on 22 February 2013) available at: http://ec.europa.eu/governance/impact/planned_ia/docs/2012_just_025_european_accessibiliy_act_en.pdf.

7.5. Participation / right to be heard

7.5.1. The right to participation

Many European Constitutions recognise the right to participate as an intrinsic element of democratic regimes. However, the development and implementation of this right requires public authorities' actions. Under the provisions of CRC and CRDP, public authorities have the responsibility to **remove barriers** to and to promote participation of children with disabilities in decision making and in the social, cultural and artistic life. The right of participation requires public authorities to guarantee the use of spaces and centres for children's social, cultural and artistic activities and to ensure universal accessibility. The needs of children with disabilities have to be considered when planning these spaces in order to ensure their participation.

Children can only participate in the decision making process of legislative or policy initiatives that concern them if public authorities take the initiative to carry out **consultation** processes. In this context, there is a regulatory gap for the implementation of this right since regular public consultation processes seldom target children and children with disabilities on issues affecting them. Exercise of this right is also very much linked to access to the necessary information tailored to the age, capacity and maturity of the children affected.

It is recommended that

- the anticipated European Accessibility Act requires the development of tools ensuring the participation of children with disabilities in consultation processes of legislative and policy initiatives affecting them;
- the EP helps raising awareness of the requirements needed to ensure the right of participation, for example by organising simulated plenary meetings in the EP involving children with disabilities, guaranteeing the accessibility to the buildings or by providing tools to ensure non-physical participation.

7.5.2. The right to be heard (and right to express views on all decisions affecting them)

The right to be heard, distinct from the right to participate but linked to it, represents a specific procedural safeguard for enabling the **expression of children's views**, opinions and feelings in all decisions affecting them. The right is applicable not only in judicial or administrative proceedings but also in decisions involving every day contacts of children with social services, education officers or teachers.

While the right of the child to express his/her views and to be heard in judicial proceedings (especially with regard to family matters) is largely implemented in the 18 Member States analysed for this study, in practice the implementation of the right to be heard is significantly limited for children with disabilities. The research shows that one of the primary barriers is the reluctant attitude of enforcement officers as well as the lack of sufficient training of persons interacting with children with disabilities. Public authorities frequently tend to disregard the views of children with disabilities when taking decisions concerning them, believing that their level of understanding does not enable them to

formulate valuable opinions.

It is recommended that

- the EP and the Commission encourage Member States to raise awareness, especially among enforcement officers dealing with children with disabilities and to support the development of specialised training addressed at public authorities;
- the Commission, when enacting legislation on child-friendly justice, ensures that adequate steps are taken to identify the ability of the child to express his/her views in judicial proceedings affecting them (child-friendly justice) enabling a climate of trust between the child and judicial or enforcement officers and providing reasonable accommodation to ensure the effective right to be heard of children with disabilities.

7.6. Freedom from violence

7.6.1. Collection of comparable data on the situation of children with disabilities and violence for effective policies and legislation

There is a lack of systematic data and information on the situation of violence affecting children, and in particular children with disabilities, which impedes the adoption of effective policies and legislation.

Some reports[321] confirm that disability is a factor that increases the risk of abuse while other studies on violence[322] against women and girls indicate increased vulnerability of women with disabilities regarding abuse and violence. They also highlight the lack of data on the number of children with disabilities that are victims of abuse.

It is recommended that

- the EP, the Council and the European Commission address the lack of data on violence affecting children with disabilities by promoting the gathering of statistical information on the situation of violence affecting children, and in particular children with disabilities;
- EU Institutions promote the development of indicators (such as disability, children, girls, family environment) to be mainstreamed in other policy or general surveys could help to provide systematic data on the situation of children with disabilities such as the mistreatment of children with disabilities in family context or in institutions and the situation of girls with disabilities in relation to violence or abuse in families or in institutions.

[321] Observatorio de la infancia website, available at http://www.observatoriodelainfancia.msssi.gob.es/productos/pdf/malt2011v4_total_100_acces.pdf (last accessed on 22 February 2013).
[322] CERMI, 'Violence against girls and women with disabilities in Spain. Submission to the Study on 'State responsibility for eliminating violence against women' to be drawn up by the Special Rapporteur on Violence against Women' July 2012, page 2.

7.6.2. Combating violence in the EU

Despite the lack of systematic data on violence, ad hoc reports show that children with disabilities experience violence and abuse at higher rates than their peers. Criminal legislation penalising violence against children with disabilities contains gaps and inefficiencies and is not adequate for preventing, monitoring and controlling violence both in domestic context and in institutions. Violence in care institutions for children as well as acts of violence perpetrated by social services and public officers constitute an issue of significant concern in the majority of Member States. As these abuses are rarely declared they are usually not visible to the general public. Deficient preventive measures and lack of adequate monitoring/inspection systems at national level contribute to the continuation of mistreatment of children with disabilities staying in residential care.

It is recommended that

- the European Commission and the EP should promote FRA to examine the situation of violence against children, particularly in institutions, including children with disabilities as they are particularly vulnerable. The necessary funding should be proposed to the budgetary authority;
- the European Commission should consider the need for measures at EU level aimed at reducing the number of cases of violence against children, especially children with disabilities in Member States (both in a domestic context and in public institutions). The Commission could start preparatory work by organising working groups with Member States experts to consider:
  - proposals for ensuring that Member States set up preventive measures and proper monitoring systems to detect cases of violence and abuse against children,
  - the set up of control mechanisms and regular inspections,
  - peer reviews or the Open Method of Coordination for implementation of proposals,
  - access to information and communication services targeted at improving the system of complaints concerning children's right to freedom from violence;
- the EP and the Commission organise and promote specialised EU-wide training and workshops where professionals working with children with disabilities would share knowledge on complaint procedures, reporting measures and accessibility of communication services for children with disabilities, especially for children with severe disabilities or intellectual impairments. The budgetary authority should provide adequate funding for these activities.

7.7. Right to family life

7.7.1. Assistance to families to ensure children with disabilities enjoy family life

The right of children with disabilities to enjoy family life requires taking into account additional considerations that are different to those of their peers and are generally not comprehensively regulated in national legislations.

In practice, there are not many alternatives to the biological family for children with disabilities. For that reason, it is important to evaluate the concrete needs required to

support children with disabilities and their families in order to reduce the risk that the child does not grow up in a family environment.

It is recommended that

- Member States should provide for the necessary specialized social services to assist families in ensuring that children with disabilities remain in the biological family while safeguarding the interest of the child with disability;
- the services should cover information, orientation, training for families and other technical and economic assistance according to the needs of children with disabilities and their families.

7.7.2. Promotion of de-institutionalisation

Institutionalisation is not adequate for meeting children's rights and development needs[323] and therefore competent authorities' action should be targeted at reducing institutionalisation and offering residential care as the last resort (CRC and CRPD).

However, those establishments are sometimes needed where the immediate family is unable to adequately take care of a child with disabilities, when alternative care within the extended family is not possible or when alternative care within a family in the closest community fails. In the case of children with disabilities, foster care and adoption becomes more difficult and complex when the child has severe behavioural problems.

In this context, organisations, NGOs as well as national local and municipal authorities are not always aware of the possibility of using the Structural Funds offered by the EU (European Social Fund or the European Regional Development Fund) for de-institutionalisation. The Structural Funds have been explicitly included as one of the areas of EU competence which are relevant to matters governed by the CRPD.[324]

It is recommended that

- for such cases, minimum requirements of residential institutions with regards to children with disabilities are developed under the auspices of the European Commission and within the Open Method of Coordination. These minimum requirements could include numbers of children with disabilities per residential care centres and on alternative communication measures for children with autism or with intellectual disabilities who do not use oral communication; other requirements could focus on the use of adequate and up to date methodologies to correct behavioural problems and violence, abuse or other forms of exploitation;
- the EP, the Council and the European Commission promote the use of EU funds for supporting measures to ensure children's right to family life protection, prioritising funds to family and therefore to support de-institutionalisation while ensuring on the other hand the maintenance of the good quality of the institutions that are necessary.

[323] Eurochild, Working Paper – De-institutionalisation and quality alternative care for children in Europe. Lessons learned and the way forward, May 2012, p. 7.
[324] The Toolkit on the Use of European Funds for the Transition from Institutional to Community-based Care and the Common European Guidelines on the Transition from Institutional to Community-based Care are available in English and a number of other languages at http://deinstitutionalisationguide.eu/ (last accessed on 22 February 2013), p. 10.

7.8. Access to assistance

7.8.1. Coordination of assistance

Many families feel lost when facing the diagnosis of the disability of their child. The lack of guidance, information and support to families is at the root of this problem.

Member States guarantee certain assistance to families with children with disabilities. However the lack of sufficient financial support and the complexity of the national legal frameworks regulating access to assistance prevent children with disabilities from enjoying effective access to assistance services[325]. These deficiencies translate into lack of coordination and consistency between measures and systems of financial benefits. Overall, as a result of the above mentioned issues, the accessibility of health care and social services for children with disabilities is considered particularly insufficient and requiring immediate improvements.

It is therefore recommended that

- a special single national body (with regional offices) responsible for the management of services, budget and assistance to children with disabilities and their families is established ensuring consistency, coordination, effectiveness, increase accessibility and better guidance for families on the funding support available.

7.8.2. Limitation of economic cuts

In recent years certain reforms have been introduced in the Social Security Systems and assistance schemes of most Member States as a result of the economic and financial crisis that began in 2008 globally. Significant structural reforms have been introduced through different legislative and regulatory national measures. This process is still ongoing and most Member States are introducing cutbacks in services and budgets allocations used for assistance. In some countries the budget cuts have resulted in closing existing health and social care structures. Others have reduced the levels of assistance or introduced systems requiring beneficiaries to pay a percentage of the services or medical products they need. According to a recent **report on the impact** of Member States' austerity plans on persons with disabilities, 'children with disabilities are increasingly and disproportionally affected by the austerity measures in some of the Member States'[326].

Education has been one of the targets of budget cuts, resulting in reduced salaries for teachers, larger classes with more students per class, reduced resources for children with special educational needs, suspension or reduction of inclusive education policies and increased referral of children with disabilities to specialised schools.

It is therefore recommended that

- the EP continues advocating for children's rights warning Member States that economic cuts in the field of support and assistance for children with disabilities

[325] See country reports for Czech Republic, Germany, Finland, Ireland, Poland and Spain.
[326] 'Assessing the impact of European governments' austerity plans on the rights of people with disabilities' ECF, 2012, p.45, available at http://www.efc.be/news_events/Pages/austerity-measures.aspx.

should not be applied as they significantly affect children's rights and living conditions;

- within the European Semester process, the Commission provides appropriate recommendations to Member States on how to use existing resources effectively instead of just cutting the necessary assistance for children with disabilities who belong to the most vulnerable citizens.

7.9. Right to education

7.9.1. The right to choose inclusive (mainstream) or specialised education

The educational modality for a child with disabilities is often decided by the public administration which can lead to several problems in practice. Some children may be assigned to special education schools even though their integration into mainstream schools would be the most appropriate form of inclusive education, simply because regular education schools do not have the necessary human and material **resources** or physical accessibility. Most Member States studied do not require all schools to have the human and material resources to achieve the integration of children with disabilities and ensure the implementation of the right to inclusive education. Therefore, the offer of mainstream schools is quite limited; students with special education needs are concentrated in a few schools and special education centres, which blocks the inclusion of children with disabilities in the mainstream education system. This problem is more acute in rural areas. Furthermore, in several Member States, the parents' role is reduced to choosing among a few special education centres which may be far from the residence of the child. **Transport** to school for children with disabilities thus constitutes an issue of particular concern and assistance with transport, if any, is often not tailored to the special needs of children with disabilities[327].

It is therefore recommended that

- the EP, the Council and the Commission support Member States to address issues related to the right to education of children with disabilities while respecting their general competence for matters related to education;
- through the Open Method of Coordination (OMC) Member States' exchange of information and development of best practice guides and recommendations could be enhanced regarding the minimum type of resources needed in mainstreaming schools, the role of parents and children with disabilities in the decision making processes on the schools for children with disabilities and the development of targets and action plans.

7.9.2. Training of teachers and support staff

Teachers in mainstream schools are seldom sufficiently trained for educating children with special education needs and the responsibility to learn about the teaching methodologies or for understanding the child's special needs is frequently left to their own interest and initiative. Measures to ensure the development of training programmes for teachers and families are needed. Moreover there is a lack of professionals in schools

[327] See country report for Poland and Sweden.

equipped to educate children with disabilities.

It is recommended to

- use the OMC for the promotion of training on teaching methodologies and handling children with specific disabilities in a class together with their able-peers in order to create a better understanding of children with disabilities' needs and evolving capacities;
- enhance the exchange of best practice in the framework of the OMC regarding the teaching tools promoting the inclusion of children with disabilities in schools and outside of schools activities;
- ensure Member States support anti-bullying and anti-stigmatisation initiatives, including raising-awareness campaigns promoting diversity and the inclusion of children with disabilities; the Council of Europe's COMPASS manual and its upcoming revision with a focus on gender are examples of comprehensive materials to promote inclusive education.

7.9.3. Access to higher education

The proportion of children with disabilities that continue to higher education is much lower than that of their peers.

It is therefore recommended that

- quality objectives for the education offered to children with disabilities and the promotion of initiatives to maintain the support for higher education for children with disabilities is explored through the OMC.

7.10. Children with disabilities as vulnerable suspects

When involved with the police, whether as victims, witnesses or suspects of an offence, children with disabilities should be treated with special care and sensibility. Particular care should be taken if, during their work, police, investigation and enforcement officers encounter a child with a disability that is not visible at first sight, e.g. a mild intellectual disability such as autism.

It is recommended that

- police and enforcement officers are trained on how to detect disability and, in general, on how to deal with children with disabilities and how to ensure that their rights are respected.

7.11. Gender vulnerability

General measures on non-discrimination on grounds of disability are applied in most Member States to both to men and women and to children. In addition, some Member States have developed legislation recognising the specific vulnerability of women and requiring public authorities to adopt additional positive action measures for those who objectively experience a greater degree of discrimination such as women with disabilities. Amendment 37 introduced by the European Parliament with respect to the proposal for an Anti-discrimination Directive referred to in section 6.1.3 requires specific action on cases of multiple discrimination such as the situation of girls with disabilities where factors of age, disability and gender all need to be taken into account.

The study found evidence of the increased vulnerability of women with disabilities regarding abuse and violence[328] along with lack of data on this situation. The report published by the European Parliament in 2004[329] on the situation in combating violence against women and any future action, stated that almost 80% of all women with disabilities suffer violence and they are four times more likely to suffer sexual violence than other women. While women with no disability are victims of violence perpetrated mainly by their partners or former partners, women with disabilities, of whom 68% live in institutions, are exposed to violence perpetrated by people around them, including health care personnel, or service staff.

EU-wide statistical information, reflecting comprehensive data gathered from all Member States, would constitute a powerful tool for combating discrimination on the grounds of gender multiplied by factors such as disability and age, reflecting the situation of children, including girls, with disabilities.

It is therefore recommended that

- the EP, the Council and the European Commission promote the gathering of systematic data on gender vulnerability and gender violence, e.g., through specialised surveys and data collection on children and disability, in the context of families as well as in institutions, in order to provide the necessary information to design effective laws and policies;
- indicators are developed and used in general surveys for other policies, to allow determining accurately the situation of girls and women with disabilities in any context and environment and to enable the adoption of effective policies and legislation.

[328] CERMI, 'Violence against girls and women with disabilities in Spain. Submission to the Study on 'State responsibility for eliminating violence against women' to be drawn up by the Special Rapporteur on Violence against Women', July 2012.
[329] European Parliament, Committee on Women's Rights and Gender Equality, 'Report on the current situation in combating violence against women and any future action', 2005.

7.12. Other issues: Use of EU funding

7.12.1. Use of the Structural Funds to invest in children with disabilities support

The problem of the **absence of sufficient public funds** allocated to children with disabilities has been highlighted in the country reports. Funds should be dedicated to developing community and family-based care and special counselling services. It has been observed that the development of family-based facilities does not require, in a long-term perspective, more State funding than investment in the already existing institutions.[330] However, the transitional costs from moving one system to another can constitute a financial burden for State budgets.

The Structural Funds (European Social Fund or European Regional Development Fund) can assist Member States to improve the quality and effectiveness of support services offered for children with disabilities by facilitating the implementation of Voluntary European Quality Framework for Social Services.[331] They can be used to foster the development of social services based on quality principles such as availability, affordability, accessibility and respect for users' rights, good working conditions and adequate physical infrastructure.[332]

The EU national programmes for the use of regional funds should also consider prioritising investments in improving universal accessibility including products, services, buildings and spaces in order to enable children with disabilities participate in social, cultural and political life. The use of EU funds could also be prioritised to ensure mainstreaming schools have enough resources to provide the support and assistance children with disabilities need for effectively exercising the right to inclusive education. Accessibility and Education are key factors of socio-economic development and should therefore be integrated in national plans taking into account children with disabilities.

It is recommended that

- the European Commission and the EP should promote and enhance the use by the Member States of the Structural Funds for the purpose of developing quality social services accessible for children with disabilities while facilitating the implementation of the Voluntary European Quality Framework for Social Services;
- they should encourage national programmes to include measures for improving accessibility and inclusive education.

7.12.2. Use of the Structural Funds for the purpose of de-institutionalisation

Organisations, NGOs as well as national local and municipal authorities are not always aware of the possibility of using the Structural Funds offered by the EU (European Social Fund or the European Regional Development Fund). The Structural Funds have been

[330] Eurochild, Working Paper. De-institutionalisation and quality alternative care for children in Europe. Lessons learned and the way forward, May 2012, p.12-13.
[331] The Social Protection Committee, 'A voluntary European quality framework for social services', 2010, available at http://ec.europa.eu/social/BlobServlet?docId=6140&langId=en.
[332] The Toolkit on the Use of European Funds for the Transition from Institutional to Community-based Care and the Common European Guidelines on the Transition from Institutional to Community-based Care are available at http://deinstitutionalisationguide.eu/ (last accessed on 22 February 2013), p. 14.

explicitly included as one of the areas of EU competence which are relevant to matters governed by the CRPD.[333]

It is recommended that

- the EP, the Council and the European Commission promote the adequate use of the Structural Funds for the purpose of de-institutionalisation and support to families while guaranteeing the quality of the institutions if they need to be maintained.

[333] The Toolkit on the Use of European Funds for the Transition from Institutional to Community-based Care and the Common European Guidelines on the Transition from Institutional to Community-based Care are available in English and a number of other languages at http://deinstitutionalisationguide.eu/.

8. SUMMARY OF THE RECOMMENDATIONS

8.1. Horizontal issues

1. All EU Member States which have not already done so should ratify the two conventions referred to in this study and implement their provisions by adopting national legislation and ensuring its practice.

2. The Commission should liaise with the UN Secretariat for the CRPD and for the CRC to ensure Member States understanding and implementation of some of the Conventions' definitions that are cornerstone for the implementation of children with disabilities' rights, namely the definitions of "disability", the "best interests of the child" and the "evolving capacities of the child". They should lead the development of initiatives to ensure that the specificities of children with disabilities are taken into account. The development of Guidance documents and exchange of best practices and the promotion of existing manuals are recommended.

3. The EP and the Commission should take leading roles to ensure that Member States' laws defining persons with disabilities comply with the UN definition under the CRPD and that the specificities of children with disabilities are taken into account. Furthermore it is recommended that the Commission takes the initiative to provide clarification of the CRDP definition of disability at an EU level as it is so broad that its implementation at national level is difficult.

4. The Commission should take action to promote children with disabilities considerations in existing non-discrimination/equality mainstreaming initiatives.

5. The EP, the Council and the Commission should promote the development of national information tools to assist families with children with disabilities to understand the legal frameworks applicable to them, access to assistance measures, competent authorities, procedures and compliance mechanisms. They should promote the development of specific tools such as EU web portal which could be linked, where possible, to national portals providing full information on rights, requirements, criteria for implementation, competent authorities, and coordination systems. This initiative could bring citizens closer to the EU.

6. The EU institutions take a leading role in promoting awareness-raising campaigns targeting European citizens on issues concerning children with disabilities from a rights perspective. The EP and the Council should use their budgetary powers to provide for financing of awareness raising campaigns.

7. The EP should favours discussions on ways to take into account the best interests, evolving capacities and the need for reasonable accommodation of children with disabilities in legislation and its implementation.

8.2. Best interests of the child

8. While most countries have legislation recognising the principle of best interest of the child, only few Member States contain in their legislation a general requirement for its systematic consideration in all decisions affecting children. The implementation of the principle of best interests of the child can be achieved through child impact

assessments of proposed legislation. The Commission should promote the exchange of existing best practices in carrying out appropriate child impact assessments and the development of a methodology guide. These actions should include consideration of the specific interests of children with disabilities.

9. The EU Institutions should promote development of awareness-raising campaigns on the interests of children with disabilities taking into account their multiple vulnerability factors with regards to age and disability in order to ensure full implementation of the rights of children including the principle of their best interests.

8.3. Right to non-discrimination

10. There is a need to clarify and further develop the concept of reasonable accommodation with respect to the situation of children with disabilities. Exchange of best practices at national level on the implementation of reasonable accommodation would help define the baselines from which the respect of the right requires public authorities' action and prevents it from being subject to disproportionate costs arguments.

11. The 2008 Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation has the potential of addressing the situation of children with disabilities. Amendment 37 introduced by the European Parliament refers to multiple discrimination. Within this context, it is recommended that clarification is introduced in the recitals of the proposed Directive in order to ensure that the situation of children with disabilities is considered as part of its scope.

12. The upcoming European Accessibility Act should explicitly cover children with disabilities' access to goods and services, at least with a reference to multiple discrimination cases.

8.4. Evolving capacities

13. The EP has an important role in raising awareness and promoting the concept of the evolving capacities of children, including children with disabilities, to be applied in all decision making processes affecting them.

14. Any new legislation on child-friendly justice should include consideration of the ability of the child with disabilities to be heard in judicial proceedings affecting them. The Commission should ensure that these provisions are included in the anticipated EU law on special safeguards for suspected or accused persons who are vulnerable, including children, or the anticipated EU law for the recognition and enforcement of decisions on parental responsibility.

15. Furthermore, it is recommended that the EP, the Council and the European Commission promote the use of the Council of Europe Guidelines on child-friendly justice and support training for the relevant professionals at all levels.

8.5. Right to participation / to be heard

16. The anticipated European Accessibility Act could provide for the development of tools to ensure the participation of children with disabilities in the consultation processes of the legislative and policy initiatives affecting them.

17. The EP should explore ways to raise awareness on the requirements needed to ensure the right of participation of children with disabilities in decision making procedures affecting them.

18. In order to enable effective implementation of the right to be heard by children with disabilities, changes in the attitudes of judicial, administrative and enforcement officers are needed. To that end, the EP and the Commission should encourage Member States to develop awareness-raising actions and training addressed at public authorities.

19. The Commission when enacting legislation on child-friendly justice, should ensure that adequate steps are taken to identify the ability of the child to express his/her views in judicial proceedings affecting them, enabling a climate of trust between the child and the judicial and enforcement officers and providing reasonable accommodation to ensure the effective right to be heard of children with disabilities.

8.6. Freedom from violence

20. The EP, the Council and the European Commission could promote the development of statistical information on the situation of violence affecting children, and in particular children with disabilities. Furthermore, they should promote the development of indicators (such as disability, children, girls, family environment) to be mainstreamed in other policy or general surveys so as to provide systematic data on the situation of children with disabilities.
21. The European Commission and the EP should promote FRA to examine the situation of violence against children, particularly in institutions, including children with disabilities as they are particularly vulnerable. The necessary funding should be proposed to the budgetary authority.
22. The European Commission should consider the need for legislative or other type of measures at EU level aimed at reducing the number of cases of violence against children, especially children with disabilities in Member States (both in a domestic context and in public institutions). The Commission could start preparatory work by organising working groups with Member States experts to consider:
    - proposals for ensuring that Member States set up preventive measures and proper monitoring systems to detect cases of violence and abuse against children,
    - the set up of control mechanisms and regular inspections,
    - peer reviews or the Open Method of Coordination for implementation of proposals,
    - access to information and communication services targeted at improving the system of complaints concerning children's right to freedom from violence,

23. The EP promotes the organisation of specialised EU-wide training and workshops, amongst professionals working with children with disabilities to share knowledge on complaint procedures, reporting measures and accessibility of communication services for children with disabilities, especially for children with severe disabilities or intellectual impairments. The budgetary authority should provide adequate funding for these activities.

8.7. Right to family life

24. The EP should encourage Member States to set up appropriate support structures for families with children with disabilities in order to reduce the risks of the child losing family life while safeguarding the best interests of children with disabilities.

25. Within the Open Method of Coordination, the Commission should develop Guidelines on minimum requirements of residential institutions with regards to children with disabilities aiming at ensuring that residential care centres have a limited and small number of users and have the capacity to host children with autism or with intellectual disabilities.

26. The EP and the European Commission should promote the use of EU funds for the protection of children's right to family life, prioritising funds for families and therefore supporting de-institutionalisation while ensuring the good quality of the institutions that are necessary.

8.8. Right to assistance

27. A special single national body (with regional offices) responsible for the management of services, budget and assistance of children and their families should be established in order to ensure consistency, coordination, effectiveness, increase accessibility and better guidance for families on the funding support available.

28. The EP should continue to lead actions on children with disabilities' rights warning Member States about the negative impacts of economic cuts on the situation of children with disabilities, especially with regard to the cuts in the field of education, social protection and health care.

29. Within the European Semester process, the Commission provides appropriate recommendations to Member States on how to use existing resources effectively instead of just cutting the necessary assistance for children with disabilities who belong to the most vulnerable citizens.

8.9. Right to Education

30. It is recommended to the Commission to develop through the Open Method of Coordination actions to support Member States in improving education systems for children with disabilities while respecting their general competence for matters related to education. Action at EU level could include:

- Development of best practice guides and recommendations on the minimum type of resources needed in mainstreaming schools, and on the role of parents and children with disabilities in decision-making processes affecting children with disabilities or the development of education objectives;
- Promotion of training for teachers on better understanding of children with disabilities' needs and evolving capacities, teaching methodologies and handling of children with specific disabilities in a class together with their able-peers;
- Support for and promote teaching tools to help the inclusion of children with disabilities in schools and outside of schools such as the Council of Europe's COMPASS manual;
- Promotion anti-bullying and anti-stigmatisation initiatives, including awareness-

raising campaigns promoting inclusion of children with disabilities;

- Development of quality objectives for education offered to children with disabilities and the promotion of initiatives to maintain the support for higher education.

8.10. Children with disabilities as vulnerable suspects

31. The EP should encourage Member States to carry out special training for police, investigation and enforcement officers on issues related to childhood in general, and to children with disabilities in particular including the specificities and nature of various impairments.

8.11. Gender vulnerability

32. The EP, the Council and the European Commission promote the development of statistical information on gender vulnerability, in particular girls with disabilities, in both family and institution contexts.

33. Mainstream indicators should be introduced in the development of surveys carried out in other policies to allow determining accurately the situation of girls and women with disabilities in any context and environment and to enable the adoption of effective policies and legislation.

8.12. Use of EU funding

34. The EP and the European Commission should promote among Member States the use of the Structural Funds to foster the development of quality social services provided for children with disabilities, while facilitating the implementation of the Voluntary European Quality Framework for Social Services;

35. The EP, the Council and the European Commission promote the adequate use of the Structural Funds for the purpose of de-institutionalisation and support to families while guaranteeing the quality of the institutions if they need to be maintained.

36. The European Commission and the EP should encourage the use of regional funds for improving accessibility and inclusive education.

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ANNEXES

Methodology for assessing the implementation in the annexed tables

For the comparative analysis, we have developed criteria for assessing the implementation of the rights and principles in each Member State in a comparable way. The criteria are based on the requirements within each right and principle, derived from the text of both conventions and the CRC General Comments on their interpretation.

The methodology for assessing each criterion is as follows:

- to assess a criterion as 'Yes', the provision must be fully and explicitly recognised in the national legal framework with a scope of application in all the areas relevant to children with disabilities (including education, civil, criminal and social areas);
- a criterion is assessed as 'Partial' when the principle or right is fully recognised by legislation but is limited in scope to specific issues or sectors, or that some elements of the criterion are reflected while others are missing, or where no explicit recognition of the right in question is identified, but it still can be inferred from the wording of the national provision and/or that certain safeguards are established which ensures the implementation of the right in practice;
- finally a criterion is assessed as 'No' when no legal provision recognising the criterion has been identified, it cannot be inferred from the national legal framework and no procedural safeguards are in place.

Whether or not the right or principle is fully implemented in practice is not taken into consideration in the assessment made in the tables below, as this aspect is dealt with under the specific heading 'practical implementation' for each right and principle.

Some Member States have a monist system[334], meaning that the provisions of the CRC and/or CRPD are directly applicable in the legal framework and can be invoked in Courts. In those countries, the assessment as 'Yes' requires that the provisions of the Conventions are reflected in the national legal framework. As a result, if the legislation of the MS does not recognise one of the rights or principles, the implementation is assessed always as 'Partial'. This approach is based on the fact that to ensure a full implementation of a right or principles, legal measures need to be taken at the national level, as the provisions of both Conventions are broad in nature.

For the assessment of the overall tables, the implementation has been assessed with a 'Yes' when all the criteria received an assessment of 'Yes'; as 'Partial' when one of the criteria received an assessment of 'Partial' or 'No', and as 'No' if all the criteria received an assessment of 'No'.

[334] The following EU countries selected for this study have a monist system: Belgium, Czech Republic, Estonia, France, Greece, Poland, Slovenia, Spain and Romania. The Netherlands has a limited monist system where only CRC provisions of general binding nature have direct effect.

Table 9: An assessment of the legal implementation of criterion n°1 of the principle of the best interests of the child

MS	Systematic consideration of the best interests of the child	
	Conformity	Comments
BE	Yes	Art. 22bis of the Constitution provides that the (best) interests of the child are to be considered in all decisions concerning the child.
CZ	Partial	The principle is stipulated in the Family Act and in the Act on social and legal protection of children. However, there are no overarching provisions ensuring systematic consideration. The Czech Republic has monist system, which means that the CRC and the CRPD constitute part of the national legal system and take precedence over ordinary laws. However, the existence of the monist system does not automatically render the implementation fully effective. Since there is no general provision in the national legislation ensuring systematic consideration of the best interests of the child, the implementation is assessed as 'Partial'.
DE	Partial	The Basic Law does not explicitly provide for the principle of the child's best interests; however the Federal Constitutional Court considered it as a guiding principle of the German legal order.
EE	Yes	The Child Protection Act provision states that 'the best interests of the child should be a primary consideration at all times and in all cases'.
EL	Partial	National legislation refers to the best interests of the child in several instances (the Civil Code, the Code of Civil Procedure), however there is no general provision stating that the best interests of the child are the primary consideration in all actions and decisions affecting them. Greece has monist system, which means that the CRC and the CRPD constitute part of the national legal system and take precedence over ordinary laws. However, the existence of the monist system does not automatically render the implementation fully effective. Accordingly, since there is no general provision in the national legislation ensuring systematic consideration of the best interests of the child, the implementation is assessed as 'Partial'.
ES	Yes	Best interests of the child are the guiding principle recognised in Article 2 of the Organic Law 1/1996 on the legal protection of minors. Furthermore, Article 11 of LO 1/1996, recognises the primacy of the interests of the child as one of the guiding principles of the public authorities' action.
FI	No	The Child Welfare Act includes the requirement of the best interests of the child as primary consideration in assessing the need of the child for welfare measures. Also, the Adoption Act provides that in all decisions and measures concerning adoption, the best interests of the child must be the paramount consideration. Finland has dualist legal system, where international agreements are not applicable directly, unless they have been implemented in national law. Since there is no comprehensive reference to the best interests of the child in Finnish legislation, the implementation is assessed as 'no'.
FR	Yes	According to the Social Action and Families Code, the interests of the child, his/her fundamental physical, intellectual, social and affective needs and respect of the rights of the child must guide any decision that concerns him/her. In addition, the Council of the State and the Court of Cassation have both held that Article 3 CRC is directly applicable and can be invoked in Court. Therefore authorities are bound to take into account the best interests of the child in their action.
HU	No	The Child Protection Act and the Family Act require authorities to take the best interests of the child in consideration when enforcing their rights and applying the Acts. This legislation, however, does not ensure systematic consideration of

MS	Systematic consideration of the best interests of the child	
	Conformity	Comments
		children's best interests in all actions concerning them. Hungary has dualist legal system, where international agreements are not directly applicable unless ratified. Since there is no comprehensive reference to the best interests of the child in Hungarian legislation, the implementation is assessed as 'no'.
IE	Partial	The Guardianship of Infants Act 1964 states that in any decision concerning a child, their 'welfare' must be of paramount consideration. However, there is no explicit reference to the best interests of the child. Under Article 41 of the Irish Constitution, it is presumed that the best interests of the child are served in the marital family. Article 42 A of the (amended) Constitution reflects the principle of the best interests of the child. However, this new constitutional provision still has not been inserted into the Irish Constitutions as there is a case challenging the outcome of the referendum being pursued before the courts.
IT	Partial	The Constitution does not explicitly mention the best interests of the child. However, the Italian Constitutional Court has affirmed that the principle of the best interests of the child as primary consideration is implicit in the Constitution.
MT	No	There is no clearly identifiable legal definition or reference to the systematic consideration of the best interests of the child in Maltese law, however numerous articles make reference to the 'welfare of the child', 'the interests' or, on occasion, 'best interests of the child'. (Best) interests of the child are referred to in case-law as being 'paramount' or 'supreme' in matters which affect the family. Malta has dualist legal system, where international agreements require ratification for their incorporation into domestic law. Since there is no comprehensive reference to the best interests of the child in Maltese legislation, the implementation is assessed as 'no'.
NL	Partial	No systematic consideration of the principle is ensured. The principle of the best interests of the child is present only in the Civil Code and in the Youth Care Act. This concerns matters of family law (divorce, separation and adoption) and youth care. Article 3 of the CRC is directly applicable in the Netherlands. However, it does not automatically render the implementation of the Convention fully effective. In order to recognise the implementation as effective, relevant provision(s) of the Convention should be reflected in the national law. There is no general provision in the national legislation ensuring systematic consideration of the best interests of the child. For those reasons the implementation is assessed as partial.
PL	Partial	The constitutional provisions provide that the Republic of Poland must ensure protection of the rights of the child. The constitutional principles relating to children are codified in a number of national laws such as the Family and the Guardianship Code, the Act on Social Assistance or the Act on the Education System and the best interests of the child are invoked throughout these acts. The best interests of the child are also recognised by the courts as general principle of Polish family law and a value overriding the interests of parents, guardians and other parties. However, the systematic consideration of child's best interests is not ensured with regard to all decisions concerning children's life. Poland has monist system, which means that the CRC and the CRPD constitute part of the national legal system and take precedence over ordinary laws. However, the existence of the monist system does not automatically render the implementation fully effective. Accordingly, since there is no general provision in the national legislation ensuring systematic consideration of the best interests of

MS	Systematic consideration of the best interests of the child	
	Conformity	Comments
		the child, the implementation is assessed as 'Partial'.
RO	Yes	The law on the Right of the Child states that the best interests of the child must prevail in all actions and decisions regarding children, performed by the public authorities and authorised private organisations, as well as in cases dealt with by the courts. The Romanian Civil Code holds that any measure regarding the child, irrespective of its author, must be taken with the observance of the best interests of the child.
SE	Partial	The Constitution states that the individual's well-being should be the fundamental objective of public activity. This principle applies both to adults and children. The Swedish Government affirmed that the best interests of the child is always a primary consideration, and implicit to all the legislation concerning children. Several acts on social measures and family require that for measures concerning children, special consideration must be given to the best interests of the child. However those are limited in scope, hence the implementation is assessed as partial.
SI	Partial	Several acts consider the best interests of the child as the principal guideline when it comes to actions and measures concerning children. (the Marriage and Family Relations Act, the Placement of Children with Special Needs Act, the Family Violence Prevention Act and the Civil Procedure Act). However those acts are limited in scope to family area and to some procedural safeguards. The Constitution also mentions the best interests of the child only in relation to limitation of parental rights. However, there is no requirement of systematic consideration of the principle. Slovenia has monist system, which means that the CRC and the CRPD constitute part of the national legal system and take precedence over ordinary laws. However, the existence of the monist system does not automatically render the implementation fully effective. Accordingly, since there is no general provision in the national legislation ensuring systematic consideration of the best interests of the child, the implementation is assessed as 'Partial'.
UK[335]	No	Legislation in England, Wales and Northern Ireland does not expressly incorporate the best interests' principle. However, a number of general provisions do provide for the welfare of children and well-being of the child. In the light of the UNHCR Guidelines on Determining the Best Interests of the Child, the notion of 'well-being' of the child is not identical to the 'best interests of the child', as the term 'best interests' broadly describes the well-being of a child.[336] The UK has dualist legal system, where international agreements are not applicable directly, unless they have been implemented in national law. Since there is no comprehensive reference to the best interests of the child in the UK legislation, the implementation is assessed as 'no'.

[335] Except Scotland.
[336] UNHCR Guidelines on Determining the Best Interests of the Child, May 2008, p. 14; available at: http://www.unhcr.org/4566b16b2.pdf.

Table 10: An assessment of the legal implementation of criterion n°2 of the procedural safeguards related to the best interests of the child

MS	Procedural safeguards				
	Conformity				Comments
	Family	Education	Criminal	Social	
BE	Yes	Partial	Partial	Yes	In family matters, specific safeguards are guaranteed by the Civil Code, which provides for the best interests principle in cases of adoption, filiation and separation of the parents. For family and 'criminal' matters, the Youth Protection Act uses the term 'in the interests of the child' and states that minors enjoy under the Act the rights and freedoms, which include those set forth in the Constitution and the Convention on the Rights of the Child. The Criminal Procedure Code uses the term 'in the interests of the child' in relation of the hearing of the child victim or witness. As a result, the implementation is effective for family matters. For criminal matters, the implementation is partial, since the Youth Act does not cover cases where a child is judged under 'adult' criminal law and it includes only specific safeguards. In social matters, the Act on family allowances uses the term 'in the interests of the child' to grant priority in the receipt of the allowances. For youth welfare services, the interests of the child are the primary consideration when providing assistance to youth. Hence the implementation is effective. No specific provision has been identified in relation to education, however the Constitutional provision and the CRC apply leading to a partial implementation.
CZ	Yes	Partial	Partial	Yes	The Family Act stipulates that 'the primary standpoint of the social and legal protection is the interests and well-being of the child'. It refers to the principle of child's interests in cases concerning, *inter alia*, custody, divorce of parents, contact with family members and choosing a legal representative instead of parents. The Criminal Code's purpose is to protect, *inter alia*, legitimate interests of both individuals and legal entities. No specific information has been identified with regard to education. Nevertheless, the CRC and CRPD directly apply in Czech Republic, as Czech Republic has monist legal system. Hence, the implementation is assessed as 'partial' in the area of education.
DE	Yes	Partial	Partial	Partial	The Civil Code provides for a number of obligations to protect the interests of the child, such as provisions on parental custody, child maintenance and child-friendly provisions in case of divorce. Social rights, a catalogue of social welfare benefits as well as special support for the upbringing of children with disabilities are provided, *inter alia*, in the First Book of the Social Code. No explicit provision of the best interests of the child

MS	Procedural safeguards				
	Conformity				Comments
	Family	Education	Criminal	Social	
					has been identified in relation to education. Educational matters are provided for in the respective school legislation of each Land. Regarding criminal proceedings, the best interests of the child as a victim is not explicitly mentioned; however, the principle can be inferred from several provisions of the Code of Criminal Procedures. The Federal Constitutional Court considered the best interests of the child as a guiding principle of the German legal order, which leads to a partial implementation in the areas of criminal procedures and education.
EE	Yes	Yes	Yes	Yes	The Family Law requires consideration of child's interests in cases concerning child's custody, his/her property, representation and adoption. The Social Welfare Act requires consideration of child's interests when providing certain social services and when separation from his or her home and family is discussed. In the light of national law, educational activities must comply with children's interests (the Pre-school Child Care Institutions Act). The Basic Schools and Upper Secondary Schools Act stipulates specifically that the organisation of studies must also take into account student's interests. The Code of Criminal Procedure refers to the interests of the child in several instances, e.g. a court may remove a minor from a public court session and may declare that a session be held *in camera* if this is necessary for the protection of the interests of the minor; the information concerning a pre-trail proceeding should not be disclosed if the disclosure may damage the interests of a minor.
EL	Yes	Partial	Partial	Partial	The best interests of the child must be taken into account in cases concerning, among others, custody and adoption (the Civil Code). With regard to educational aspects, the best interests of the child are not mentioned as such in the Law on Special Education (Law 3699/2008); however, it can be assumed that it is considered by relevant authorities in practice. The Criminal Code does not explicitly refer to the child's best interests in the section regulating the penal correction measures which can be imposed upon a child. However, it states that the court will consider the circumstances of the crime and the personality of the child when ordering the detention of minors who are above 15 years of age and have committed a felony (Article 127 Criminal Code). Furthermore, in case a child has committed an offence, the prosecutor can refrain from criminal proceedings if, taking into account the circumstances of the crime and the personality of the child, he/she concludes that prosecution is not necessary in order to prevent the child from committing new offences

MS	Procedural safeguards				
	Conformity				Comments
	Family	Education	Criminal	Social	
					(Article 45A Code of Criminal Procedure). Even though both these provisions do not explicitly refer to the best interests of the child, it can be deduced that the public prosecutor and the court consider them to the certain extent. No relevant provisions have been identified with regard to social protection. Nevertheless, the CRC and CRPD directly apply in Greece, as Greece has monist legal system. Hence, the implementation is assessed as 'partial' in the areas of education, criminal procedures and social protection.
ES	Yes	Partial	Yes	Yes	Procedural safeguards are expressly required and applied in relation to decisions regarding family law, custody of the children, placing the children under the guardianship of the public authorities in situation of abandonment, distress, host care and institutional care. The role of the Public Prosecutor is regulated by Law 54/81 in relation to the protection of children's interest covering all issues affecting children. The Law 5/2000 of 12 January on the Criminal Responsibility of Minors refers to the interest of the child and to the role of the Public Prosecutor (Ministerio Fiscal) in ensuring the children right's protection. Article 9 of LO 1/1996 recognises the right of minors to be heard in the family environment in any administrative or judicial proceedings conducing to decisions affecting the child by her/himself or by a person designated by her/him. When this is not possible or it is not in the best interests of the minor, the legal representatives can be heard. Article 21 of the LO 1/1996 recognises the need to have the experience of family life and the importance to ensure that the child remains interned for the shortest possible time, except in the best interests of the child. Article 156 of the Criminal Code requires the authorisation by a judge for the sterilisation of persons with mental disabilities in exceptional cases and if it is in the best interests of the person with disabilities.
FI	Yes	No	No	Yes	In all decisions and measures concerning adoption, the best interests of the child should be the paramount consideration. When child's need for protection and welfare is assessed, the best interests of the child should be regarded as the primary consideration. Finland has dualist legal system, where international agreements are not applicable directly, unless they have been implemented in national law. Since the domestic legislation does not explicitly require taking into account the best interests of the child in other spheres of life of the child, the implementation is

MS	Procedural safeguards				
	Conformity				Comments
	Family	Education	Criminal	Social	
					assessed as 'no' in the areas of education and criminal procedures.
FR	Yes	Yes	Partial	Partial	Law n° 2007-293 of 5 March 2007 that codifies childhood protection makes numerous references to the best interests of the child. For instance the child can be heard in all proceeding related to him when the interests of the child command it. It is assumed that this principle may be applied not only with regard to civil proceedings but also with regard to decisions concerning the child and his/her education. No specific provision has been identified with regard to criminal proceedings and social protection. However, the Council of the State and Court of Cassation have both held that Article 3 CRC is directly applicable and can be invoked in Court. Therefore authorities are bound to take the best interests of the child as a primary consideration in their action, which lead to a partial implementation assessment in the area of criminal procedures and social protection.
HU	Yes	Partial	Yes	Yes	The Family Act requires that the child's best interests should be taken into account, e.g. in cases of adoption and guardianship. Social and child care services should ensure that the child's best interests are taken into special consideration when taking relevant measures. The new Education Act does not make direct reference to the best interests of the child. However, it states that children with special educational needs should be paid particular attention and enabling their development is a prioritised duty of public education. There are several provisions (in the Criminal Code and Criminal Procedure) which protect the child's interests in criminal proceedings.
IE	Yes	Yes	Partial	Partial	The Guardianship of Infants Act 1964 states that in any decision concerning a child, their 'welfare' must be of paramount consideration. Similarly, according to the Child Care Act 1991, the welfare of the child must be treated as the first and paramount consideration in all child care proceedings as well as adoption proceedings. A *guardian ad litem* may be appointed for the child in family law proceedings, if it is necessary in the best interests of the child. The EPSEN Act provides that education of children with special education needs should be consistent with the best interests of the child. The Children Act 2001 indicates, as one of its principles, due regard to the interests of the victim.
IT	Yes	Partial	Partial	Yes	The Law on adoption and foster care provides that the principle of the best interests of the child has to be taken into account when a child needs to leave his family. The principle also needs to be reflected in proceedings concerning custody or parental

MS	Procedural safeguards				
	Conformity				Comments
	Family	Education	Criminal	Social	
					separation. Law on assistance, social integration and rights of people with disabilities establishes in Article 14 concerning inclusive education that three repetitions of a single class are allowed in the interests of the student. In the field of criminal law, the principle of best interests of the child has been affirmed by the Constitutional Court on issues concerning the immediate release from trial. The principle of best interests of the child is also the fundamental criterion of the social policies taken by local authorities in relation to childhood and adolescence support and promotion.
MT	Yes	Partial	Yes	Yes	The Civil Code refers to the principle of the best interests of the child in cases concerning the custody, access and separation of patents. The Foster care Act requires an accredited Agency to ensure that any foster care placement will be in the best interests of the child. The Criminal Code allows the Police to institute proceedings (even without the complaint of the private party) in certain cases giving particular consideration to the best interests of any minors involved. The principle of best interests of the child is not explicitly established in the field of education; however can be inferred for the spirit of the national law.
NL	Yes	Partial	Partial	Yes	The Civil Code provides for the best interests of the child in family matters. Pursuant to the Youth Care Act, Youth Care Services (in charge of the support of and assistance to children) have to act in the best interests of the child. In the legal framework concerning education and criminal proceedings, no specific mention is made to the best interests of the child. Nevertheless, Article 3 of the CRC is considered directly applicable in the Netherlands.
PL	Yes	Yes	Yes	Yes	The best interests of the child is frequently invoked throughout the Family Code, in particular in provisions concerning the relationship between parents and children, divorce, adoption, foster care, etc. Teachers in their teaching, educational and care activities have to be guided by the best interests of students (the Act on the Education System). In proceedings in juvenile cases, one should be guided first of all by the best interests of a child (the Act on Juvenile Justice). In social matters, the Act on Family Support and Foster Care System should be applied in the best interests and respecting the rights of the child. The Act on Social Assistance refers to the best interests

MS	Procedural safeguards				
	Conformity				Comments
	Family	Education	Criminal	Social	
					of the family and beneficiaries of the social assistance.
RO	Yes	Yes	Yes	Yes	In the light of national legislation, courts are obligated to apply the principle of child's best interests in cases where children are involved in judicial proceedings. In particular, principle of the best interests of the child governs all matters concerning children and which are subject to provision of Civil Code and Law on the Rights of Child.
SE	Yes	Yes	Yes	Yes	The principle of the best interests of the child is ensured in legislation affecting children, such as the Social Services Act, the Children and Parents Code, the Education Act, and the Ordinance on Preliminary Crime Investigation. For instance the Children and Parents Code requires the child's interests to be crucial to any decision on custody, residence and contact. In some cases the principle is explicitly mentioned, in others it can be inferred from the provisions of the law.
SI	Yes	Yes	Yes	Yes	The Marriage and Family Relations Act defines family as a social unit consisting of parents and children which, due to the best interests of the child, enjoys special protection. Under the Educational Placement of Children with Special Needs Act, the best interests of the child are among goals and principles of rearing and education of children with special needs. The Family Violence Prevention Act states that if the victim of violence is a child, the child's rights and best interests have priority over the interests and rights of other parties in the procedure. The Criminal Procedure Act contains several provisions that reflect the principle of the best interests of the child. Also Civil Procedure Act refers to the best interests of the child.
UK[337]	Partial	Partial	Partial	Partial	The Children and Young Persons Act 2008 and the Childcare Act 2006 place a general duty on the Secretary of State and local authorities to promote the well-being of children. Furthermore, the Children Act 1989 and the Childcare Act 2006 places a general duty on local authorities in England and Wales to improve the well-being of children in their areas. The Children (Northern Ireland) Order provides that child's welfare should be paramount consideration where a court determines any question with respect to the upbringing of a child or the administration of a child's property. Moreover, all persons and bodies exercising functions in relation to the youth justice system must have regard to the welfare of children. The aim of the Commissioner for Children and Young people is

[337] Except Scotland.

MS	Procedural safeguards				
	Conformity				Comments
	Family	Education	Criminal	Social	
					to safeguard and promote the rights and best interests of children and young persons. Although, there are certain safeguards, they tend to refer to the welfare and well-being of the child rather that to the best interests of the child. Hence, the implementation is assessed as 'partial'.

Table 11: An assessment of criterion n°1 of general prohibition of (direct) discrimination on the grounds of disability

MS	General prohibition of discrimination based on disability	
	Conformity	Comments
	Explicit prohibition	
BE	Yes	The Anti-discrimination Act prohibits discrimination on the grounds of disability. The Act applies, *inter alia,* to the provision of goods and services in the private and public sectors, employment, social security and health care. Regional anti-discrimination decrees prohibit discrimination on the grounds of disability in education. Some distinctions can be justified if it is objectively justified and pursues legitimate aims.
CZ	Yes	The Anti-Discrimination Act provides explicitly for prohibition of discrimination on the grounds of disability. The Act applies in all sectors (public and private). Some distinctions can be justified if it is objectively justified and pursues legitimate aims.
DE	Yes	According to the Basic Law, no person can be disfavoured because of disability. Article 3 of the Basic Law allows for preferential treatment linked to a disability. The General Anti-Discrimination Act permits different treatment of persons with and without disabilities if there is an objective reason.
EE	Partial	The Constitution does not enlist disability as a protected ground for the freedom from discrimination. However, a number of secondary legislative acts (the Child Protection Act, the Equal Treatment Act) refer explicitly to the prohibition of discrimination based on disability. However, with regard to discrimination based on disability, the Equal Treatment Act applies only in the employment sector.
EL	Partial	The Greek Constitution recognises all persons' equality before the law. Provisions on non-discrimination due to disability apply only to the areas of vocational training, employment and not in the fields of education/ social protection/ insurance/ benefits/ healthcare treatment (Law 3304/2005, transposing Directive 2000/78/EC). With respect to access to health services, the factor of disability is not explicitly mentioned; however, the State has the responsibility to provide health services to each citizen (Law 1397/1983).
ES	Yes	Article 14 CE embraces the right to non-discrimination for reason of disability, even if not expressly mentioned. Article 9(2) of CE requires the public authorities to guarantee the right to equality. Under Article 3 of LO 1/1996 children enjoy the rights under the CE. Number of secondary legislative acts refers explicitly to the prohibition of discrimination based on disability, e.g.:

MS	General prohibition of discrimination based on disability	
	Conformity: Explicit prohibition	Comments
		- The Law 13/1982 of 7 April 1982 on social integration of Persons with Disability (positive discrimination), - The Law 51/2003 of 2 December 2003 on equal Opportunities, non-discrimination and universal accessibility of persons with disabilities and its enabling regulations, - The Law 40/2007 of 26 December, establishing a regime of infractions and sanctions regarding equality of opportunities, non-discrimination and universal accessibility for the people with disabilities.
FI	Partial	The Constitution of Finland and the Non-discrimination Act explicitly prohibit discrimination based on a disability. However, the Non- discrimination Act has limited scope of application as it applies to public and private activities in the field of employment, livelihoods, business and training, as well as ethnic discrimination in some specific contexts.
FR	Yes	The Criminal Code prohibits discrimination on the grounds of, *inter alia*, sex, physical appearance, state of health, disability and genetic characteristics. Article 225-2 provides criminal sanctions for this offence (i.e. imprisonment up to five years and/or a fine up to EUR 45 000). The prohibition of discrimination applies to private and public persons. Law 2008-495 prohibits discrimination on the grounds of disability; however it is limited to employment and training.
HU	Yes	The Fundamental Law and the Equal Treatment Act explicitly prohibit discrimination based on disability. The Equal Treatment Act applies to employment, social services, including child care/protection services, health care, housing, education, vocational training, and goods and services. Based on Article 7(2) of the Equal Treatment Act, some exemptions can be allowed if they are objectively justified and pursue legitimate aims.
IE	Yes	There is a general equality guarantee under Article 40.1 of the Irish Constitution but there is no specific reference to disability. The Equal Status Acts prohibit discrimination on the basis of nine grounds, one of which is disability. The Act applies *inter alia* to access to public goods and services, housing/accommodation and education.
IT	Yes	The Constitution prohibits any kind of discrimination based on any ground, however it does not explicitly refer to the disability (it mentions personal and social conditions). The Law on the judicial protection of persons with disabilities victims of discrimination explicitly prohibits any kind of discrimination against people with disabilities.
MT	Yes	The Constitution contains prohibition of discrimination on a number of grounds, without explicit mention of disability. The Equal Opportunities Act prohibits discrimination based on disability. The Act applies to employment, education and access to goods, facilities and services, and accommodation. Certain exceptions from the general prohibition are allowed (such as positive discrimination).
NL	Partial	The grounds of disability is not included in the non-discrimination provision of the Constitution but laid down in a separate act, the Law of Equal Treatment (Disability or Chronic Illness), which has limited scope (employment, education, housing and public transport matters only). Exception to the prohibition of direct discrimination is allowed when it is necessary to protect the safety and health. Exception to indirect discrimination is allowed when it can be objectively justified

MS	General prohibition of discrimination based on disability	
	Conformity: Explicit prohibition	Comments
		by a legitimate aim and when the means of achieving that aim are appropriate and necessary.
PL	Partial	The Polish Constitution provides for a general anti-discrimination clause but does not refer explicitly to the disability ground. It stipulates that everyone is equal before the law and has the right to equal treatment by public authorities. It prohibits discrimination in political, social or economic life; it also guarantees equal access to free health care services and an universal and equal access to education for all citizens. The Act on Equal Treatment prohibits discrimination based on disability, however only with regard to employment, vocational training and access to labour market services. Discrimination based on disability in the fields of education, health care, social protection and housing is, hence, not addressed. The exceptions from the general prohibition are explicitly mentioned only in provisions relating to employment.
RO	Yes	The discrimination is defined in relation to the criteria of disability, as provided under the Government Ordinance regarding the prevention and sanctioning of all forms of discrimination and the Law on the Rights of Child. According to this Government Ordinance, positive measures adopted in order to ensure the equality of chances do not represent discrimination.
SE	Yes	The Constitution states that public institutions should combat discrimination on the grounds of, *inter alia*, disability. The Discrimination Act explicitly prohibits the discrimination based on disability in such areas as, for example, employment, education, membership of certain organisations, goods, services and housing, meetings and public events, health and medical care, social services, and social insurance.
SI	Yes	The Constitution as well as major sources of anti-discrimination law (e.g. the Implementing the Principle of Equal Treatment Act) explicitly prohibit discrimination based on disability. The Implementing the Principle of Equal Treatment Act also provides for exceptions under the general prohibitions under legitimate goals and proportionate means.
UK[338]	Yes	The Equality Act 2010 (in England and Wales) identifies age, disability and sex (amongst others) as 'protected characteristics' to which prohibition of discrimination applies in a number of areas including employment, education, and in the supply of goods, facilities and services. Also Northern Ireland, legislation establishes disability as one of the grounds on which the discrimination is prohibited.

[338] Except Scotland.

Table 12: An assessment of criterion n°2 of general prohibition of indirect discrimination on the grounds of disability

MS	Prohibition of indirect discrimination based on disability	
	Conformity	Comments
BE	Yes	The Anti-discrimination Act and regional anti-discrimination decrees prohibit indirect discrimination on the grounds of disability. The Act applies in access to public and private goods and services, social security, health care, employment and economic, social, cultural or political activities. The Decrees apply *inter alia* in education. This leads to a full implementation of this criterion.
CZ	Yes	The Anti-Discrimination Act prohibits indirect discrimination on the grounds of disability. The Act applies in all sectors (public and private).
DE	Yes	The Equal Opportunities for Persons with Disabilities Act prohibits indirect discrimination, i.e. cases where 'someone is disadvantaged by the application of a provision, a criterion or a procedure that appears neutral but that may put persons […] at a particular disadvantage'.
EE	Partial	The Child Protection Act and the Equal Treatment Act prohibit indirect discrimination based on disability. However, the Equal Treatment Act applies only with regard to employment.
EL	Partial	Provisions on non-discrimination, including prohibition of indirect discrimination, due to disability apply only to the areas of vocational training, employment and not in the fields of education/ social protection/ insurance/ benefits/ healthcare treatment (Law 3304/2005). Moreover, with regard to access to health services, the factor of disability is not explicitly mentioned.
ES	Yes	The Law 13/1982 of 7 April 1982 on social integration of Persons with Disability prohibits indirect discrimination based on disability. The Law 51/2003 of 2 December 2003 on equal opportunities, non-discrimination and universal accessibility of persons with disabilities and its enabling regulations includes measures for positive and negative discrimination to protect persons with disability from direct or indirect discrimination as a result of their disability.
FI	Partial	In the light of the Non-Discrimination Act, discrimination means 'that an apparently neutral provision, criterion or practice puts a person at a particular disadvantage compared with other persons, unless said provision, criterion or practice has an acceptable aim and the means used are appropriate and necessary for achieving this aim (indirect discrimination)'. However, the Non-discrimination Act has limited scope of application as it applies to public and private activities in the field of employment, livelihoods, business and training.
FR	Partial	There is no explicit prohibition of indirect discrimination. Nevertheless, French law contains several provisions that ensure the right to non-discrimination (for example in education and specific conditions when children pass exams: they have more time).
HU	Yes	In the light of Article 9 of the Equal Treatment Act '[p]rovisions that are not considered direct negative discrimination and apparently comply with the principle of equal treatment but put any person or groups having characteristics defined in Article 8 at a considerably larger disadvantage compared with other persons or groups in a similar situation, are considered indirect discrimination'.
IE	Yes	The Equal Status Acts prohibits direct and indirect discrimination. It states that indirect discrimination occurs when suspect measures effectively create a disadvantage to persons with disabilities.

MS	Prohibition of indirect discrimination based on disability	
	Conformity	Comments
IT	Yes	The Law on the judicial protection of persons with disabilities victims of discrimination provides protection to persons with disabilities against indirect discrimination.
MT	Yes	The Equal Opportunities (Persons with Disability) Act prohibits indirect discrimination.
NL	Partial	The Law of Equal Treatment (Disability or Chronic Illness) prohibits indirect discrimination, but only applies to employment, education, housing and public transport.
PL	Partial	The Labour Code prohibits indirect discrimination in employment, including on the grounds of disability. The Act on Equal Treatment, in general provisions, defines 'unequal treatment' as covering both direct and indirect discrimination, which is also adequately defined. This Act, however, does not prohibit discrimination based on disability in the fields of education, health care, social protection and housing, but only with regard to employment, vocational training, etc. It is unclear whether provisions on general prohibition of discrimination encompass also indirect discrimination.
RO	Yes	Reference to indirect discrimination is made in the national legislation.
SE	Yes	The Discrimination Act explicitly prohibits both direct and indirect discrimination based on disability.
SI	Yes	The Act Implementing the Principle of Equal Treatment states that indirect discrimination on any personal ground, including disability, occurs when a allegedly neutral provision, criterion or practice in equal or comparable situations and under similar conditions, puts a person with a certain personal circumstance in a less favourable position compared to other persons, unless that provision, criterion or practice is objectively justified by a legitimate objective and the means of achieving that objective are appropriate and necessary.
UK[339]	Yes	England, Wales and Northern Ireland legislation provides protection against direct and indirect discrimination, harassment and victimisation by those exercising public functions, those providing goods, facilities or services to the public, housing providers, employers, education providers, associations and public transport providers.

Table 13: An assessment of criterion n°3 of the presence of a requirement of reasonable accommodation

MS	Reasonable accommodation	
	Conformity	Comments
BE	Yes	Reasonable accommodation is provided under certain conditions foreseen by the Anti-Discrimination Act and the regional anti-discrimination decrees. The Act together with the decrees cover all the sectors (public and private). Hence, there is a full implementation of this criterion.
CZ	Partial	The requirement of reasonable accommodation regulation applies only to employment sector (the Anti-Discrimination Act).

[339] Except Scotland.

MS	Reasonable accommodation	
	Conformity	Comments
DE	Partial	The Equal Opportunities for Persons with Disabilities Act requires the Federal Government to build barrier-free buildings and to guarantee barrier-free access to means of transportation. There is no legal framework imposing on private owners of buildings and facilities to design them barrier-free. Reasonable accommodation in Germany is considered being achieved by the benefits and schemes which persons with a disability and those at risk of disability receive in order to promote their self-determination and equal participation in the life of society, to avoid or to counter disadvantages.
EE	Partial	The general obligation to ensure accommodation of public buildings, roads and means of transport used by children with disabilities for their movement by wheelchair, crutches or other aids is ensured by the law (the Child Protection Act). Moreover, in the light of the Social Welfare Act, local governments are to 'to provide disabled persons with equal opportunities with other persons, their active participation in community life and independent ability to cope'. The requirement of reasonable accommodation is, however, not explicitly spelled out in the national legislation.
EL	Partial	The physical accessibility of public buildings as well access to information, including educational materials and websites is ensured under national law (Law 2831/2000 and 3699/2008).
ES	Yes	Article 4 of Law 51/2003 states that denial to provide reasonable accommodation violates the right of people with disabilities to equal treatment. The Equal Opportunities Act aims to guarantee universal access for people with disabilities and defines reasonable accommodation referring to the disproportionate burden to ensure accessibility. The law mandates that access to buildings for persons with disabilities is guaranteed. However, levels of assistance and accessibility differ between regions. Accessibility to school is regulated through the Organic Law 2/2006 of 3 May on Education.
FI	Partial	In the light of national legislation, municipalities are required to ensure that the public municipal services are suitable for persons with disabilities. Moreover, municipalities must provide persons with severe disabilities with reasonable transport and related escort services, interpretation services and service accommodation. The Anti-discrimination requires taking any reasonable steps to help a person with disabilities to gain access to work or training. Thus, the requirement of reasonable accommodation is limited to employment, training and accessibility to municipal services.
FR	Partial	The Social Action and Families Code aims to ensure access for children with disabilities to all institutions open for the public, to inclusive education, work and life (by 2015). In addition, public transport services and collective transport must be adapted (by 2015). In the light of the national legislation, the creation and the functioning of the services of specialised transport for persons with disabilities and the use of individual vehicles and their parking must be eased. Eventually, public spaces in cities must be accessible to persons with disabilities. In addition, the allowances for the consequences of a person's disabilities aim to address the needs of the person with disabilities, including adjustments of the home or of the work place that are necessary in order to fully enjoy the citizenship and the capacity to be autonomous. Law 2008-496 requires appropriate measures to be taken, which are a form of reasonable accommodation. However, the prohibition and requirement to take appropriate measures are limited in scope to employment and training. Hence, the implementation is assessed as 'partial'.

MS	Reasonable accommodation	
	Conformity	Comments
HU	Partial	Hungarian law does not explicitly recognise the requirement of reasonable accommodation. The Disability Act ensures some types of accommodation to persons with disabilities, i.e. it establishes for persons with disabilities a right to obstacle-free, recognisable and safe environment, which applies especially to the arrangements for orientation concerning transport and access to public information, and to information related to the rights of persons with disabilities, and to services offered for them. However, the deadlines defined in the law for the implementation of accessibility measures are systematically disregarded. Legislation does not state that denial of reasonable accommodation constitutes discrimination.
IE	Yes	The Equal Status Acts impose requirements on service providers to do all that is reasonable to accommodate the needs of a person with a disability by providing special treatment or facilities. Denial to provide reasonable accommodation violates the principle of non-discrimination. Moreover, the Citizens Information Act 2007 provides for the introduction of a Personal Advocacy Service for certain people with disabilities, who would otherwise have difficulty in getting access to those citizens' information services.
IT	Partial	The Italian Constitution establishes that it is the duty of the Republic to remove obstacles of an economic or social nature which constrain the freedom and equality of citizens and impede the development of the human person. The Framework Law on assistance, social integration and rights of people with disabilities sets rules to promote the accessibility of people with disabilities to public or private buildings, including schools, and the provision of facilities in the use of public transport. The Law on access to informatics tools by people with disabilities provides specific rules aimed at enhancing access to ICT tools for persons with disabilities. However, the Italian legislation does not provide for a general requirement of reasonable accommodation in areas other than employment.
MT	Yes	The principle of reasonable accommodation is applied in all aspects of the Equal Opportunities (Persons with Disability) Act. Although the Act does not use the words 'reasonable accommodation' in all titles, the requirement is applicable to all aspects covered by the Act.
NL	Partial	Article 2 of the Law of Equal Treatment (Disability or Chronic Illness) provides that the necessary adjustments, and thus a form of reasonable accommodation, have to be made unless this means a disproportionate burden for the one who has to make these adjustments. However, the scope of the Act is limited to education, employment, housing and public transport. Hence the implementation is assessed as 'Partial'. Denial to provide reasonable accommodation violates the principle of non-discrimination.
PL	Partial	The Constitution obliges public authorities to provide assistance to persons with disabilities in order to ensure their subsistence, adaptation to work and social communication. Reasonable accommodation is explicitly provided by the Act on Vocational and Social Rehabilitation and Employment of Disabled Persons only for a person with disabilities who is employed, participates in the recruitment process or undergoes training, internship, etc. The Construction Law provides that buildings must be designed and constructed in a way ensuring necessary conditions for the use of public buildings and residential housing by persons with disabilities, in particular persons using a wheelchair. Pursuant to the Act on Transport, the carrier should facilitate the use of means of transport for persons with reduced mobility and with disabilities.

MS	Reasonable accommodation	
	Conformity	Comments
		The Act on the Education System provides for the obligation of adaptation of organisation of the education to the intellectual and physical capabilities of students. However, the requirement of reasonable accommodation is explicitly provided by the Act on Vocational and Social Rehabilitation and Employment of Disabled Persons only for a person with disabilities who is employed, participates in the recruitment process or undergoes training, internship, etc.
RO	Partial	The Law on the Rights of Child provides that local authorities are competent to initiate programmes and to allocate the necessary resources in order to ensure that the public services for children with disabilities make them autonomous and facilitate their integration in the community's life. However, the requirement of reasonable accommodation is not explicitly stated in the legislation.
SE	Partial	Swedish legislation ensures some forms of reasonable accommodation with regard to education and accessibility. The Swedish legislation requires higher education facilities to make 'reasonable adjustments' for persons with disabilities. However, this does not apply to children as they do not attend higher education until they are 19. The Planning and Building Act requires that new buildings are accessible to persons with disabilities. Work is currently on-going within the Government to determine whether denial of reasonable accommodation of persons with disabilities could be regulated as grounds of discrimination.
SI	Yes	The Equalisation of Opportunities for Persons with Disabilities Act contains a separate section dedicated to the duty of reasonable accommodation which includes, among others, ensuring access to information, communication and other services in urgent cases, removal of construction barriers in buildings where goods and services are made available to the public, the duty of appropriate accommodation in terms of accessibility of information by different types of scripts and technologies appropriate for different types of disabilities, the duty to make accessible the means of public transport for people with physical and sensory impairments, and the prohibition to charge extra for a wheel chair or a guidance dog.
UK[340]	Yes	Legislation in England and Wales (the Equality Act 2010) obliges service providers, public authorities, employers and education providers to make 'reasonable adjustments' for people to enable them to use their services/facilities. The same requirement is established by the Northern Ireland legislation (the Disability Discrimination Act 1995). The Equality Act 2010 makes provision for certain public transport vehicles (including taxis, buses and railways) to be accessible to persons with disabilities.

[340] Except Scotland.

Table 14: An assessment of criterion n°4 of the presence of enforcement mechanisms

MS	Enforcement mechanisms		
	Conformity		Comments
	Effective mechanism and remedies (Courts and others)	Competent authority	
BE	Yes	Yes	Complaints mechanisms are available before the following authorities: Courts, CEOOR and children's General Delegate/Commissioner. Complaints are filed by the legal representative of the child. In addition, the CEOOR monitors the implementation of the CRPD and the children's General Delegate/Commissioner oversees the implementation of the rights of the child.
CZ	Yes	Yes	Claims for damages or compensation for children's with disabilities rights violations can be brought both before civil courts at the district and regional level as well as before the administrative courts at the regional level. The Public Defender of Rights (Ombudsman) serves as a body ensuring advice, assistance and support to victims of discrimination. Moreover, complaints of parents and children against activities or negligence of authorities of social and legal protection can be submitted to the Ombudsman for consideration and improvement.
DE	Yes	Yes	In cases where children with disabilities are victims to discriminatory acts, they can submit a complaint to the Federal Anti-Discrimination Agency which also provides assistance with access the court system. Persons unable to afford legal representation and access to the court system may apply for legal aid pursuant to Section 114 of the Code of Civil Procedure.
EE	Yes	Yes	The Gender Equality and Equal Treatment Commissioner deals with complains regarding children with disabilities. He or she accepts applications from individuals and provides her/her opinion and recommendations on discrimination issues. He or she is also authorised to act on his/her own initiative. A discriminated person can also submit an application to the Chancellor of Justice, if person's rights have been violated by the State. In addition to accepting applications on possible infringements of fundamental rights and freedoms by a public authority, the Chancellor of Justice also accepts applications regarding the constitutionality or legality of legal acts. Finally, national courts are able to provide binding decisions and grant compensation in cases concerning discrimination based on disability.
EL	Yes	Yes	The Children's Ombudsman has the authority to intervene in cases involving both public bodies and private citizens where a child's rights have been violated. The Children's Ombudsman can propose any measure it considers necessary to ensure protection of children's rights (Law 3094/2003). Moreover, general national procedures and remedies are applicable.

MS	Enforcement mechanisms		
	Conformity		Comments
	Effective mechanism and remedies (Courts and others)	Competent authority	
ES	Yes	Yes	Law 40/2007 establishes a regime of infractions and sanctions regarding equality of opportunities and non-discrimination. It defines a number of infringements in cases where public administration is competent. It also defines penalties and injunctive relief. The law expressly recognises standing to the associations representing people with disabilities. It also ensures the implementation of rules on accessibility. Furthermore, Article 512 of the Criminal Code sanctions those persons that, while exercising their professional activity, refuse to provide a service to a person on grounds of disability with an occupational ban penalty of 1-4 years.
FI	Yes	Yes	Complaints regarding the activities of State authorities may be submitted to the Chancellor of Justice, the Parliamentary Ombudsman and State Provincial Offices. The Ombudsman also oversees the implementation of fundamental and human rights. The Ombudsman for Children oversees the implementation of children's best interests, but does not solve or provide legal assistance in individual matters. The National Supervisory Authority for Welfare and Health (*Valvira*) processes complaints filed against social welfare and health care professionals and units. Municipal social and patient ombudsmen are municipal officials providing assistance in situations of conflict related to these services. If a private service provider discriminates, the police can be asked to investigate the issue. If discrimination is related to the lack of assistance in basic education, a complaint can be filed through the administrative court system.
FR	Yes	Yes	Person whose rights have been breached by the public services can refer the issue to the Human Rights' Ombudsman who may also consider any case on its own motion. In addition, the Commission for the rights and autonomy of persons with disabilities is competent for the orientation of the person with disabilities and the measures aimed at ensuring the person's educational, professional or social inclusion. General court system is also available in cases concerning discrimination based on disability.
HU	Yes	Yes	The child has the right to submit complaints to certain authorities (determined by the Child Protection Act) and to initiate court and other proceedings in case of an infringement of his/her fundamental rights. The National Disability Council and the national interest representation organisations can initiate procedures against those violating the rights of persons with disabilities with a view to enforcing the rights of disabled persons, if the infringement concerns a larger group of people that cannot be precisely defined. The Ombudsman supervises compliance with the

MS	Enforcement mechanisms		
	Conformity		Comments
	Effective mechanism and remedies (Courts and others)	Competent authority	
			relevant legislation in the first instance to induce those to whom the relevant piece of legislation applies to comply with it voluntarily. Those who allege an infringement of their rights ensured in the Equal Treatment Act can turn to the Equal Treatment Authority. Persons with disabilities living in institutions may turn to the rights' representative appointed to facilitate the enforcement of rights for people living under the state care. Victims of discrimination may seek redress in civil courts under the general rules of the national law.
IE	Yes	Yes	In the light of national law, any case alleging discrimination on the grounds of disability can be taken before the Equality Tribunal in the first instance, as well as before the Irish Courts. Moreover, the Ombudsman's Office has the power to investigate complaints from persons with disabilities pertaining to access to services, buildings and information. The Office of the Ombudsman for Children has the power to investigate complaints concerning rights violations of any child in the country.
IT	Yes	Yes	Complaints on cases of discrimination can be filed with UNAR that is the equality body established under Directive 2000/43/EC. UNAR can receive complaints from victims or witnesses of cases of discrimination and it can file a complaint with the competent authorities. From 2010, UNAR has also started to receive complaints on cases of discrimination based on disability. Besides the special procedure before UNAR, regular court proceedings are available in case of the infringement of the non-discrimination principle.
MT	Yes	Yes	The National Commission for Persons with Disability is responsible for working for the elimination of discrimination and for taking steps to investigate allegations of discriminatory treatment. The Commission has the power to investigate these complaints and, if necessary, to take matters to court. Moreover, the Commissioner for Children is responsible for the promotion and protection of rights pertaining to all children.
NL	Yes	Yes	The Board of Human Rights handles complaints about violation of the Equal Treatment Acts, including the Law of Equal Treatment (Disability or Chronic Illness). Some forms of discrimination are made illegal under the Criminal Code which is enforced by the prosecution office and the courts.
PL	Yes	Yes	The Ombudsman for Children' Rights has a right to participate in proceedings before the Constitutional Court concerning children's rights or to file a cassation against a final and binding court judgment as well as to

MS	Enforcement mechanisms		
	Conformity		Comments
	Effective mechanism and remedies (Courts and others)	Competent authority	
			participate in civil, administrative and juvenile proceedings. The Commissioner for Civil Rights Protection may carry out investigations, issue recommendations, reports and petitions to relevant bodies for taking up legislative initiatives and may request that legal proceedings be instituted. S/he may also lodge a last resort appeal with the Supreme Court in penal cases and may participate in constitutional complaint proceedings before the Constitutional Tribunal. The Government Plenipotentiary for Equal Treatment is competent to 'take steps to eliminate or limit the consequences of a violation of the principles of equal treatment' - s/he may receive complaints and intervene by asking relevant bodies for explanations or recommending adequate changes. Victims of discrimination may seek redress in civil courts under the general rules of the civil law.
RO	Yes	Yes	The National Council for the Fight against Discrimination is in charge of supervising the implementation of the principle of non-discrimination in Romania. It receives petitions, has the right to investigate alleged cases of discrimination and issues decisions on this matter. Moreover, the Romanian Ombudsman can receive and decide on complaints filed by persons aggrieved by acts or omissions of the public administration authorities violating their civic rights or freedoms and to reinstate the complainant in his/her rights and redress the damage. In addition, national courts have general competence to receive complaints in the field of discrimination.
SE	Yes	Yes	The Equality Ombudsman can bring court action on behalf an individual who has been discriminated against. The Board against Discrimination is tasked with examining applications for financial penalties and appeals against decisions on financial penalty orders. The Equality Ombudsman can apply to the Board for a financial penalty to be decided against education providers and employers who do not comply with the non-discrimination principle. The Equality Ombudsman can also, in some cases, decide on financial penalties against education providers, employers, business providers, etc. A financial penalty, compensation for discrimination, can be imposed for infringements of the Discrimination Act. Proceedings before national courts can be commenced in cases of infringement of the non-discrimination principle.
SI	Yes	Yes	The Human Rights Ombudsman hears complaints on alleged violations of human rights protected by the national law. However, the Ombudsman cannot act in cases pending before courts (due to separation of powers rules) and is not competent for private sector. The

MS	Enforcement mechanisms		
	Conformity		Comments
	Effective mechanism and remedies (Courts and others)	Competent authority	
			Advocate of the Principle of Equality is competent to examine complaints on alleged discrimination on the grounds of disability in both public and private sphere. The procedure conducted by the Advocate is informal and free of charge. Discrimination may be challenged before inspectorates and before courts both in criminal and civil procedures. Moreover, relevant sanctions are foreseen in national law.
UK[341]	Yes	Yes	The Equality and Human Rights Commission (EHRC) (in England and Wales) and the Equality Commission (Northern Ireland), are responsible for enforcement of the anti-discrimination legislation. This is not limited to formal legal enforcement action, such as inquiries and investigations, but is supported by a range of activities such as the provision of advice, guidance and information. The Local Government Ombudsman deals with complaints on maladministration or poor service in public institutions. Particularly, they can investigate discriminatory behaviour of public officials. The Ombudsman might ask for: an apology, compensation or improved administrative procedures.[342] Moreover, as a general remedy, where a person has been affected by a particular decision, action or failure to act of a public authority, the Ombudsman can make an application for Judicial Review to the High Court. The High Court may provide a remedy if it decides that the authority has acted unlawfully. Failure to comply with non-discrimination legislation may also result in judicial enforcement through the national court system.

Table 15: An assessment of criterion n°1 of the presence of general provisions on evolving capacities of the child

MS	General provision of evolving capacities of the child.	
	Conformity	Comments
BE	Yes	The term 'evolving capacities' is not explicitly recognised, however the Constitution guarantees the right of the child's opinion to be taken into account in accordance to her/his age and discernment and the right of the child to benefit from measures contributing to her/his development.
CZ	Partial	No explicit mention of the principle in the Constitution and major sources of Czech law. Relevant legal acts refer broadly to 'the child's rights to favourable development and proper upbringing' and to the age and maturity of the child. They however account for specific procedural safeguards rather than for general recognition of the evolving capacities of the child.

[341] Except Scotland.
[342] See:http://www.adviceguide.org.uk/england/law_e/law_civil_rights_e/law_complaints_e/how_to_use_an_ombudsman.htm#local_government_ombudsman

MS	General provision of evolving capacities of the child.	
	Conformity	Comments
DE	Partial	No explicit reference of the principle in the Constitution and major sources of German law has been identified. The principle of the promotion of children with disabilities development from the outset and its strengthening to experience the diversity of human life is recognised in German legislation (the Encouragement and Care of Children Aged under Three Bill). National law also refers to the age and development of the child. It, however, accounts for specific procedural safeguards rather than for general recognition of the evolving capacities of the child.
EE	Partial	There are no explicit provisions in Estonian law referring to the evolving capacities of the child. However, the national legislation refers to the development, age and needs of the child in several instances. It, however, accounts for specific procedural safeguards rather than for general recognition of the evolving capacities of the child.
EL	Partial	No provision referring explicitly to the principle of evolving capacities of the child has been identified within Greek legislation. However, the Civil Code refers to the maturity of the child.
ES	Yes	The consideration of the evolving capacities of the child is explicitly recognised as a consideration under decision making processes affecting children. The progressive capacity of children to exercise their rights is recognised under Article 2 of the LO 1/1996 on the protection of children in general and within the context of judicial proceedings. The LO 2/2006 on Education requires the adaptation of the educational programmes, evaluations and methodologies to the objectives adapted individually to each child (inclusive education or vocational training).
FI	Yes	The Constitution stipulates that children 'shall be allowed to influence matters pertaining to them to a degree corresponding to their level of development'.
FR	Partial	No explicit reference of the principle in the Constitution and major sources of French law has been identified. Occasionally, national legislation refers to the evolution of the child and to the degree of his maturity. It, however, accounts for specific procedural safeguards rather than for general recognition of the evolving capacities of the child.
HU	Partial	No explicit reference of the principle in the Fundamental Law and major sources of Hungarian law has been identified. However, the Fundamental Law states that every child should have the right to the protection and care required for his or her proper physical, mental and moral development. The Child Protection Act also states that the child has the right to receive assistance to ensure the development and the unfolding of his/her personality.
IE	Partial	The principle is not explicitly reflected under Irish law. In the light of the Irish legislation, the age and maturity of the child must be taken into consideration in the context of the appointment of a *Guardian Ad Litem*. The Children's Act 2001 places a number of requirements on the *Garda Sıochana* and the courts to take into account the age and maturity of the child when dealing with them. It, however, accounts for specific procedural safeguards rather than for general recognition of the evolving capacities of the child. The amendment of the Constitution provides that once a child is capable of forming views, those views must be ascertained and given due weigh in proceedings before the court in accordance with the age and maturity of the child. However, the amendment is still not in force.
IT	Partial	There is no explicit reference to the principle of evolving capacities in the Constitution. However, the Constitution protects and promotes the development of the human personality. Moreover, principle of evolving capacities is reflected in statutory law. It, however, accounts for specific procedural safeguards rather

MS	General provision of evolving capacities of the child.	
	Conformity	Comments
		than for general recognition of the evolving capacities of the child.
MT	Partial	The concept is not explicitly recognised under national law. The Civil Code relates to 'understanding' and 'abilities' of the child. It, however, accounts for specific procedural safeguards rather than for general recognition of the evolving capacities of the child.
NL	Partial	No general and explicit provision has been identified. However, the Civil Code provides for the duty of parents to care and promote the development of the personality of the child. In addition, a minor can carry out different acts in law and as long as he has permission of his legal representative. It, however, accounts for specific procedural safeguards rather than for general recognition of the evolving capacities of the child.
PL	Partial	Polish legislation does not contain provisions explicitly referring to the 'evolving capacities of the child'. However, the Constitution obliges parents to respect child's level of maturity as well as his/her freedom of conscience and religion and his/her convictions. Moreover, several legal acts, in particular in the field of education and family law, refer to emotional and physical development of the child, intellectual and physical capabilities, individual developmental and educational needs and predispositions. They, however, account for specific procedural safeguards rather than for general recognition of the evolving capacities of the child.
RO	Partial	The principle is explicitly provided in the Law regarding the protection of the child only as an obligation of the parents, not as an obligation of authorities. Moreover, several provisions of national law relate to the child's maturity or individual and personal needs of the child. They, however, account for specific procedural safeguards rather than for general recognition of the evolving capacities of the child.
SE	Partial	No explicit reference to the principle in the Constitution and major sources of Swedish law. However, several laws refer to 'child's personal circumstances' and children's development or comprehensive personal development. They, however, account for specific procedural safeguards rather than for general recognition of the evolving capacities of the child.
SI	Partial	No explicit reference to the principle in the Constitution. However, several national provisions refer to the maturity and age of the child. They, however, account for specific procedural safeguards rather than for general recognition of the evolving capacities of the child.
UK[343]	Partial	No explicit reference to the principle in the national law. However, it refers in several instances to the minors' age, understanding or maturity. It, however, accounts for specific procedural safeguards rather than for general recognition of the evolving capacities of the child.

[343] Except Scotland.

Table 16: An assessment of criterion n°2 of the presence of procedural safeguards related to children's evolving capacities

MS	Procedural safeguards related to children' evolving capacities	
	Conformity	Comments
BE	Partial	Procedural safeguards exist in adoption, filiation, proceedings on the separation of the parents, disposition of goods when both parents are deceased (Civil Code), and in criminal proceedings (Criminal Code and Youth Protection Act). Lastly, education acts provide for individualised plan adapted to each student. The hearing of the child is often limited to children of 12 or above.
CZ	Yes	The School Act stipulates that education should be based on the principle of considering the educational needs of an individual and personal development of a human being. The Family Act states that the child has the right to be heard in every proceeding in which such affairs are being decided on if the child is able to have his or her own opinion and to consider consequences of measures concerning him or her. Also, in the light of the Family Act, parents must exercise their parental duties in accordance with the child's level of development. The Act on Social and Legal Protection of Children states that, for the purposes of social and legal protection, during the proceedings of all matters relating to the child, his/her opinion is given particular attention corresponding to his or her age or intellectual maturity.
DE	Yes	The Social Code stipulates that children with disabilities are to participate in the planning and design of individual assistance in accordance with their age and development. The Eighth Book of the Social Code stipulates in Section 8(1) that children are to be involved in all decisions affecting them in the area of public youth welfare, according to their level of development. A child will be heard in criminal matter depending on her/his age and maturity. In court family proceedings, if the child has not yet reached the age of 14, he or she is to be heard, if the inclinations, ties, or the wishes of the child are significant for the decision, or if it appears advisable for determining the facts of the case. A child can determine his or her religion at the age of 14.[344] At the age of 12 a child cannot be forced to practise a religion against his or her will.
EE	Yes	Estonian legislation stipulates that persons with disabilities should be assisted in their development (the Social Welfare Act) and that the purpose of education is to create favourable conditions for the development of the individual (the Republic of Estonia Education Act). The Civil Code establishes that a child less than 10 years can be heard if the development level of the child so permits. Similarly, in the light of the Social Welfare Act, "(…) upon separation of a child from his or her home and family, the wishes of a child who is less than ten years of age shall also be considered if the developmental level of the child so permits".
EL	Partial	The Civil Code provides that the opinion of the child must be sought and considered by the Court with respect to certain issues (e.g., custody, adoption) depending on his/her maturity.
ES	Yes	The Organic Law 1/1996 on the Legal protection of minors is based on the recognition of rights to children and to their progressive capacity to exercise them. This law regulates the right of the child to be heard in judicial proceedings and requires the hearings to be conducted in accordance to the situation and evolutionary development of the child. Furthermore, the law guarantees the child the possibility to exercise this right by him or herself or by appointing someone to represent him, when the child has enough judgement.

[344] § 5 Act on religious upbringing of children - *Gesetz über die religiöse Kindererziehung*.

MS	Procedural safeguards related to children' evolving capacities	
	Conformity	Comments
		The Civil Code states that when children have sufficient judgment, they must be heard always before decisions affecting them. Under the Civil Code, the placement of the person with disabilities in a mental health facility should be appropriate to her/his age requires judicial authorisation. The Organic Law 2/2006 on Education and the Royal Decree 1538/2006 access to inclusive education for children with disabilities require adaptation of the educational programmes, evaluations and methodologies to the objectives defined individually for each child.
FI	Partial	According to the Child Welfare Act, when assessing a child's need for protection, the view of the child must be taken into account, considering the age and level of his/her development. However, in the light of the overall legislative framework, the status of children is established by age limits rather than on their evolving capacities.
FR	Yes	The Social Action and Families Code provides that a revision of the curriculum and counselling decision taken by the Commission on the Rights and Autonomy of persons with disabilities can be revised upon request of the child, if his/her evolution justifies it. The Civil Code provides that parents should make a child a part of the judgments relating to him, according to his age and degree of maturity. In the light of the Education Code, a child benefiting from an adapted training project is entitled to an evaluation of his competences, needs, and measures. The periodicity of the evaluation is adapted to the situation of the child. According to the results of the evaluation, the child is proposed a training project that comprises an individual education project with the necessary adjustments.
HU	Yes	According to the Family Act, child's views must be given due weight in accordance with his/her age and maturity. The Civil Code provides that the legal representative of the child must take into account the opinion of the child who demonstrates sound judgment when making declarations which affect the child or his/her assets. The Fundamental Law declares that every person has the right to education according to his or her abilities.
IE	Partial	The Children's Act 2001 places a number of requirements on the *Garda Sıochana* and the courts to take into account the age and maturity of the child when dealing with them and making certain decisions, such as an appropriate sanction. The extent to which the evolving capacities of children are considered in family law proceedings, is something which is subject to judicial discretion.
IT	Partial	According to the Law on adoption and foster care, the opinion of the minor has to be taken into account according to his/her evolving capacities, at any stage of the procedure.
MT	Partial	The Civil Code provides that parents should provide maintenance of their children in accordance with the abilities, natural inclinations and aspirations of the children. Age and level of understanding of a child are factors that need to be taken by the court in adoption cases.
NL	Partial	With respect to consent to health treatment, children are given gradually greater capacities as they grow older. The principle is also reflected in the context of parental responsibility.
PL	Yes	In the light of Polish legislation, before taking a decision on important matters relating to the person or property of the child, parents should hear the child's view, if intellectual development, health and level of maturity of the child so permits (the Family and Guardianship Code).

MS	Procedural safeguards related to children' evolving capacities	
	Conformity	Comments
		The education system ensures the adaptation of the content, methods and organisation of education according to the intellectual and physical capabilities of students. The Act on Family Support and Foster Care System guarantees that the child's right to information and to expression of opinions in matters that concern her/him are taken into account, according to her/his age and level of maturity. In applying that law, due regard must be taken to the individuality of the child.
RO	Yes	The Law on Rights of the Child stipulates that the child's opinions, who has been heard in judicial and administrative proceedings, should be accordingly considered, with due regard of her/his age and maturity. The same provision is enshrined in the Civil Code.
SE	Yes	In education, all children should be given the guidance and encouragement they need in their learning and personal development so that they can develop as far as possible in accordance with the aim of the education (the Education Act). Students may be given special assistance instead of or in addition to the mainstream education. Furthermore, certain procedural safeguards exist in adoption, custody cases (the Children and Parents Code) and in criminal proceedings (the Ordinance on Preliminary Crime Investigations, the Young Offenders Act).
SI	Yes	In the preparation and monitoring of an individualised educational programme that the child is included in, the parents and the child have to be included, taking into account the maturity and the age of the child. The provisions referring to the evolving capacities of the child are also included in the Criminal Procedure Act and are followed by civil courts that deal with procedures involving parents and their children, such as determining custody in cases of parents' divorce.
UK[345]	Yes	The Children Act 1989 and the Children (Northern Ireland) Order 1995 provide that the courts must have regard to the ascertainable wishes and feelings of the child concerned, considered in the light of his age and understanding. In the light of the Children Act 1989, local authorities, before making any decision with respect to a child, should have due regard to his/hers age and un understanding. Furthermore, the Consolidated Criminal Practice Direction and the Northern Ireland Practice Direction No 2/11 require the court to take account of the defendant's age and maturity and of his or her ability to understand what is going on when making arrangements for trial. Section 176 of the 2002 Education Act requires that pupil's views must be considered in the light of their age and understanding.

Table 17: An assessment of criterion n°1 of general recognition of the right to be heard

MS	General recognition of the right to be heard	
	Conformity	Comments
BE	Yes	Constitutional provision recognises the right of the child to express his/her views in all decisions affecting her/him.
CZ	Partial	The right to be heard with regard to the child is not recognised directly in the Constitution. However, it is enshrined in several legal acts (the Family Act, the Act on Social and Legal Protection of Children, the School Act, the Civil Procedure

[345] Except Scotland.

MS	General recognition of the right to be heard	
	Conformity	Comments
		Code, the Juvenile Justice Act), which ensure that opinion as well as wishes and feelings of the child are given particular attention by relevant authorities. They however account for specific procedural safeguards rather than for general recognition of the right to be heard.
DE	Partial	The right to be heard is guaranteed by Article 103 (1) of the German Basic Law (Constitution) providing that '[i]n the courts every person shall be entitled to a hearing in accordance with the law'. Section 28 of the Administrative Procedure Act provides that before an administrative measure can be taken which interferes with a person's rights, the person must be provided the opportunity to be heard. However, since those provisions do not expressly refer to children, the implementation is assessed as partial.
EE	Partial	Sectoral legislation recognises the right to be heard with regard to children in general (what includes also children with disabilities). These laws, however, account for specific procedural safeguards rather than for general recognition of the right to be heard.
EL	Partial	The right to be heard is legislatively provided in major legal acts, such as the Civil Code and the Criminal Code. They however account for specific procedural safeguards rather than for general recognition of the right to be heard.
ES	Yes	National law (LO 1/1996) recognises the right of minors to be heard in the family environment as well as in any administrative or judicial proceedings conducing to decisions affecting the child personal, familiar or social sphere. Article 154 of the Civil Code recognises this principle stating that if children have sufficient judgment, they must be heard always before decisions affecting them.
FI	Partial	The Constitution states that the right to be heard should be laid down by an act. A number of statutory laws recognise the right to be heard with regard to children in general, including children with disabilities. They however account for specific safeguards rather than for general recognition of the right to be heard.
FR	Yes	The right to be heard by a child is recognised by number of national laws. In particular, the Civil Code provides that in all proceedings related to the child, a minor capable of discernment may be heard by the judge or the person appointed by the judge for that purpose when the interests of the child commands it.
HU	Yes	In the light of the Child Protection Act, children have the right to be heard on all matters affecting them and their opinion has to be taken into account.
IE	Partial	The Child Care Act contains a general rule that courts must give due consideration to the wishes of the child. However, currently children in Ireland do not have a general right to be heard in all matters affecting them. While there is some recognition of this right in the new Article 42A of the amended Constitution, this is limited to guardianship, custody, adoption and access cases. The new constitutional provision has not been so far inserted into the Irish Constitution.
IT	Partial	By the judgment of the Constitutional Court (1/2002), Article 12 of the CRC was declared immediately applicable and no further implementation measures are necessary. However, since there is no general provision in the national legislation ensuring the child's right to be heard, the implementation is assessed as 'partial'.
MT	Partial	Freedom of expression is ensured under the Constitution. Children fall under the scope of this article, however they are not explicitly mentioned. A number of

MS	General recognition of the right to be heard	
	Conformity	Comments
		statutory laws reflect this principle with regard to children. These laws, however, account for specific safeguards rather than for general recognition of the right to be heard.
NL	Partial	Article 12 CRC is, arguably, directly applicable in Dutch law. In addition children have an informal right to express their views before court in family law cases. In the youth care, the child has the right to express his/her views.
PL	Yes	The right of the children to express their opinion is granted by the Constitution, which stipulates that 'organs of public authority and persons responsible for children, in the course of establishing the rights of a child, shall consider and, insofar as possible, give priority to the views of the child' (Article 72(3)).
RO	Yes	Children's right to be heard is ensured under the Law on Rights of the Child and under the Civil Code.
SE	Partial	Children's participation and the right to express their views are ensured in several different areas, such as custody matters, visitation rights, adoption, and matters under the Social Protection Act and the Care of Young Persons Act. Children have a right to be heard in certain areas, such as education and measures undertaken by the social services. However, relevant national provisions account for specific procedural safeguards rather than for general recognition of the right to be heard.
SI	Partial	Children's right to be heard is ensured by a number of statutory law provisions which refer to specific procedural safeguards. However, since there is no general provision in the national legislation ensuring the child's right to be heard, the implementation is assessed as 'partial'.
UK[346]	Partial	The Human Rights Act 1998 makes a general provision for freedom of expression. Domestic legislation (for England, Wales and Northern Ireland) refers in number of instances to children's right to express their wishes, views and feelings. However, since there is no general provision in the national legislation ensuring the children's right to be heard, the implementation is assessed as 'partial'.

Table 18: An assessment of criterion n°2 of the presence of procedural safeguard to protect the right to be heard

MS	Procedural safeguards of the right to be heard				
	Conformity				Comments
	Civil/ Family	Crimi-nal	Social	Educa-tion	
BE	Yes	Yes	Yes	Partial	The Civil Code provides procedural safeguards in family matters (adoption, filiation and separation of the parents). The Youth Protection Act provides for the right to be heard during the process leading to decisions affecting them and to take part in this process, these rights and freedoms should have special guarantees (it applies to family, criminal matters and some social protection measures). Social services hear the child before applying measures.

[346] Except Scotland.

MS	Procedural safeguards of the right to be heard				
	Conformity				Comments
	Civil/ Family	Crimi-nal	Social	Educa-tion	
					Therefore this criterion is implemented fully in civil/family and criminal matters and in social matters. In all the Communities and Regions of Belgium, children have the ability to appeal decisions of the schools' board and to be included in schools' councils.
CZ	Yes	Yes	Yes	Yes	The Family Act stipulates children's right to obtain necessary information and express his or her opinion about all decisions and proceedings concerning his/her essential affairs. Under the Act on Social and Legal Protection of Children, the child has the right to freely express, during the proceedings, his or her opinion regarding all matters regulated by the Act. According to the School Act, children are entitled to express their opinions on all decisions concerning essential matters pertaining to their education and these opinions must be given appropriate attention. The Juvenile Justice Act also refers to the right to be heard.
DE	Yes	Yes	Yes	Partial	With respect to court proceedings in family matters, the national law (the Act on Court Procedure in Family Matters and Non-litigious Matters) stipulates that the court has to hear the child in person, if he or she has reached the age of 14. If the child has not yet reached the age of 14, he or she is to be heard, if the inclinations, ties, or the wishes of the child are significant for the decision, or if it appears advisable for determining the facts of the case. In addition, the institution of a 'counsel of the child' has been established in order to pursue the interests of the child in family matters. The Federal Constitutional Court, the Federal Court of Justice and the Higher Regional Courts presume that the courts are obliged to hear children in person from the age of 3 to 4 onwards. The criminal law provides certain safeguards in this respect. The Social Code stipulates that children are to be involved in all decisions affecting them in the area of public youth welfare, according to their level of development. The Act on Social and Legal Protection of Children states that, for the purposes of social and legal protection, during the proceedings of all matters relating to the child, his/her opinion is given particular attention corresponding to his or her age or intellectual maturity. The form of participation of the child in educational matters depends from a *Land* to another.
EE	Yes	Yes	Yes	Yes	The Family Law Act and the Code of Civil Procedure require a child to be heard in cases concerning, among others, adoption and custody. In all of these situations a child less than 10 years old could also

MS	Procedural safeguards of the right to be heard				
	Conformity				Comments
	Civil/ Family	Crimi-nal	Social	Educa-tion	
					be heard if the development level of the child so permits. There is no minimum age set for minors required to be heard during criminal proceedings – a general rules apply whereby a defendant or the victim have right to be heard and put forward his/her arguments. The Code of Civil Procedure and the Code of Criminal Procedure provide for accommodating measures for a participant in the proceedings who is deaf, mute or both. With regard to education, the Basic Schools and Upper Secondary Schools Act provides that proposals of students are taken into account where possible. The Social Welfare Act provides for the child to be heard in decisions concerning him/her personally.
EL	Yes	Yes	Partial	Partial	The opinion of the child should be sought in cases concerning custody and adoption (the Civil Code). In the light of Criminal Code, a child can be examined as a witness under certain conditions. The legislation does not provide that children have the right to be heard by the KEDDY in decisions affecting their education. The Law on special education affords parents/guardians with the right to participate in the drawing up of their children's special educational programme while a similar right is not afforded to the children (Law 3699/2008). However, the Law 1566/1986 stipulates that 'students' participation in the school life is essential'. No information regarding children's right to be heard by social services has been identified in the reviewed legislation. Nevertheless, the CRC and CRPD are directly applicable in Greece, hence the implementation in the area of social protection is assessed as 'partial.'
ES	Yes	Yes	Yes	Yes	The LO 1/1996 states that the child may exercise the right to be heard by her/himself or by a person designated by her/him. When this is not possible or it is not in the best interests of the minor, the legal representatives can be heard. The hearings of the court proceedings should be conducted taking into account the child's development and situation. The child may exercise this right by her/himself or by a person designated by her/him when he or she has enough judgment. The denial of the hearing need to be motivated and communicated to the Public Prosecutor and to the minor. The Civil Code recognises this principle stating that if children have sufficient judgment, they must be heard always before decisions affecting them.

MS	Procedural safeguards of the right to be heard				
	Conformity				Comments
	Civil/ Family	Crimi-nal	Social	Educa-tion	
FI	Yes	Partial	Yes	Partial	According to national legislation, in child welfare cases children are given opportunity to be heard, as well as with regard to matters concerning family (custody, right of access). Concerning education, the parents are heard. Under the Code of Judicial Procedure, for children under the age of 15, it is their representative who is being heard.
FR	Yes	Yes	Yes	Yes	In the light of the Civil Code parents should make a child a party to judgments relating to him/her, according to his/her age and degree of maturity. In addition, the child should be heard in all proceedings when the interests of the child command it. The Social Action and Families Code provides that the views of the child must be taken into account regarding the social compensation awarded. The views of the child must also be heard regarding her/his education project, however it seem that the national legislation tends to give priority to the parents views. The child with disabilities should be enrolled in the school that is the closest to his home and according to the child's choice (the Education Act). The Act on the prevention and punishment of sexual offenses and the protection of minors regulates conditions under which minors can be heard.
HU	Yes	Yes	Yes	Yes	The child's opinion is required in family law cases, for instance in court proceedings concerning child custody (the Family Act). The Child Protection Act declares the child's right to express his/her views and to be informed of his/her rights and the possibility to enforce them. The Education Act stipulates that children must have the right to express their opinion freely in all matters affecting them, including the teachers and the institution. Participation of a child in criminal cases is also regulated (the Act on Criminal Procedure, the Act on the Police). The Civil Code provides that children under the age of 14 are legally incompetent. However, the legal representative must take into account the opinion of the incompetent child who demonstrates sound judgment when making declarations which affect the child or his/her assets.
IE	Yes	Yes	Partial	Partial	The Child Care Act contains a general rule that courts must give due consideration to the wishes of the child. Also the Guardianship of Infants Act provides a similar right in guardianship, custody and access cases. The Constitutional Amendment 42 A provides for a

MS	Procedural safeguards of the right to be heard				
	Conformity				Comments
	Civil/ Family	Crimi-nal	Social	Educa-tion	
					right of the child to be heard in the family law cases. However, the constitutional provision is still not in force. In cases where children have been in conflict with the law, the Children's Act 2001 specifies that children have a right to be heard and to participate in any proceedings of the court that can affect them. No specific safeguards have been recognised in the field of education, besides certain provision regarding participation rather than the right to be heard as such.
IT	Yes	Yes	Yes	Yes	A number of sectoral laws guarantee the right of the child to be heard, i.e. the Framework Law on assistance, social integration and rights of people with disabilities; the Law on adoption; the Law on parental separation and shared custody as well as the Italian Procedural Criminal Code. With regard to education, education plans for children with disabilities are established taking into account opinion of the child and his/her parents (Law 104/1992). In addition, Article 12 of the CRC has a self-executing nature in Italy.
MT	Yes	Yes	Yes	Yes	The child's right to be heard is ensured with regard to civil proceedings concerning certain spheres of children's life (e.g. adoption). The principle is also provided under the Children and Young Persons Care Orders Act and the Foster Care Act. The Criminal Code provides that child victims can be present at the proceedings, engage a lawyer, examine or cross-examine witnesses and produce other evidence. The Police Act also makes special provision for the hearing of vulnerable witnesses, including children, through video conference. The policy of the Student Services Department is for students with individual educational who need to be involved in the drawing up of their respective Individual Educational Programme.
NL	Yes	Yes	Yes	Partial	Under the Youth Care Act, the child has the right to express his/her views for decisions affecting her/him. In custody cases and other family matters, children have an informal right to be heard. Before a juvenile court, a minor has a right to be heard. Many schools have participation programmes, but this is different for every school and not laid down in law. Article 12 of the CRC can be invoked in Courts.
PL	Yes	Yes	Yes	Yes	Before taking a decision on important matters relating to the person or property of the child, parents should hear the child's view and take into

MS	Procedural safeguards of the right to be heard				
	Conformity				Comments
	Civil/ Family	Crimi-nal	Social	Educa-tion	
					account, as far as possible, her/his reasonable wishes. The Act on Social Assistance ensures that the opinion expressed by the child is taken into consideration when providing assistance to the child's family or choosing a foster family for the child. The Act on Family Support and Foster Care System guarantees that the child's rights to information and to expression of opinions are taken into account. In juvenile proceedings, full freedom of the opinions of the child must be guaranteed. Also in the field of education, pupils have right to express their opinions (the Act on Education System).
RO	Yes	Yes	Partial	Partial	During the administrative or judiciary procedures which concern a child, hearing of a child who is 10 years old is compulsory. However, the child who is less than 10 years old can be heard, if the competent authority considers it necessary for solving the case. Any child can request to be heard. In case of the rejection, the competent authority must provide a reasoned opinion. Under the Civil Code, children have the right to be heard in any matter concerning her/him. The implementation is assessed as "Partial" due to the overly general nature of the national provisions, which do not establish sufficiently specific legal safeguards in the field of social protection and education. Nevertheless, the CRC and CRPD are directly applicable in Romania.
SE	Yes	Yes	Yes	Yes	In criminal proceedings, it is possible to videotape the questioning of the child instead of letting it appear in the court. The child can also be heard in the court without the perpetrator being present in the room. In family matters, social services should examine the child's views and present them to the court. The child may also be heard in the court on issues such as custody or visitation rights. In the light of the national legislation, children also have the right to influence their education process (the Education Act).
SI	Yes	Yes	Partial	Yes	When a decision on educational placement is taken, a transcript on the discussion with the child on the procedure of placement must be provided. A child has to be included in the preparation and monitoring of an individualised education programme. In determining custody of the children, the court takes into account the opinion of the child. The Criminal Procedure Act regulates the hearing of the child. Nevertheless, the CRC and CRPD are directly

MS	Procedural safeguards of the right to be heard				
	Conformity				Comments
	Civil/ Family	Crimi-nal	Social	Educa-tion	
					applicable in Slovenia. Hence the implementation is assessed as 'partial' in the area of social protection.
UK[347]	Yes	Yes	Yes	Yes	In the light of the Children Act 1989, local authorities should, before making any decisions with respect to a child whom they are looking after, ascertain the wishes and feelings of the child. According to the Children Act 1989 and the Children (Northern Ireland) Order 1995, the court, when making, varying or discharging certain orders, should have regard to the wishes and feelings of the child concerned. The Education Act 2002 states that the local education authority and the governing body of a maintained school are required to have regard to guidance about consultation with pupils, and that any such guidance must provide for a pupil's views to be considered in the light of their age and understanding. The important laws relating to the right to be heard when a child is in contact with the police and criminal courts are, among others, the Children and Young Persons Act 1933 (as amended by Police and Criminal Evidence Act 1984) and the Children Act 2004. The *Guardian Ad Litem* has a duty to represent the child's needs, wishes and feeling to the court in specified public law proceedings (Children (Northern Ireland) Order 1999) and in adoption proceedings (Adoption (Northern Ireland) Order 1987).

Table 19: An assessment of criterion n°3 of the presence of general recognition of the right to participation

MS	General recognition of the right to participate	
	Conformity	Comments
BE	Yes	The right to participation is recognised in the Constitution. In addition, some specific legislation (at the Regions and Communities level) ensures participation of children at schools and leisure activities. Hence, the implementation is effective.
CZ	Partial	The principle is not enshrined in the Constitution. Children's right to participate can be implied for the right to express his/her views, especially with regard to education and social protection.
DE	Yes	The Equal Opportunities for Disabled Persons Act aims for equal participation of all persons with disabilities in society, which includes also children. Moreover; the Federal Government plans to develop a concept for the direct participation of children and juveniles in 2013. The Eighth Book of the Social Code calls on child and youth welfare to play an active role in the design of child- and youth-friendly living environments and to

[347] Except Scotland.

MS	General recognition of the right to participate	
	Conformity	Comments
		create varied participation perspectives for young people.
EE	Yes	The Child Protection Act recognises the child's general right to 'seek, receive and impart diverse humanistic information and to engage in organisations and movements' and stipulates that that children have the 'right to participate in the development of child protection programmes either personally or through a representative selected by the child'.
EL	Yes	With regard to the education and involvement in the school life, the principle is envisaged in the national legislation according to which 'students' participation in the school life is essential' (Law 1566/1985). National programmes concerning public awareness and information campaigns addressing the problem of sexual exploitation and sexual abuse of children must be established taking into account children's view. The right to participation, recreation, leisure and sporting activities are protected by the State (Law 2725/1999), while children with disabilities can go to special summer camps, as do children without disabilities.
ES	Yes	Article 9 of the CE recognises the citizen's right of participation in the public political, cultural and social life. Other relevant provisions are: Article 20 CE on the right of freedom of expression, Article 21 CE on right to reunion and Article 22 CE on right to association. Article 11 of the LO 1/1996 requires public authorities to properly regulate spaces, centres and services with the view to ensure children's participation to enable full rights protection. They are also required to promote public participation and social solidarity. Article 7(1) of the LO 1/1996 recognises children's rights to fully participate in social, cultural and artistic life in their environment with a progressive incorporation into active citizenship. However, the implementation of this provision depends on the respect of the children right to universal accessibility.
FI	Yes	The Constitution protects the right of the children to influence matters pertaining to them to a degree corresponding to their level of development. National legislation requires municipalities to take into consideration the needs and views put forward by persons with disabilities themselves when developing the services and assistance to be provided for persons with disabilities. No age limit is specified for this participation. Children participation is also established with regard to matters concerning schooling and education.
FR	Yes	The Social action and families Code governs the national consultative counsel for persons with disabilities which ensures participation of persons with disabilities in the elaboration and implementation of the policies that concern them. The competent ministers can consult the national counsel on any project, programme or study that concerns persons with disabilities. The national counsel is responsible to evaluate the material, financial and moral situation of persons with disabilities and to present proposals to the Parliament and the Government.
HU	Partial	The Education Act stipulates that children have the right to take active part, personally or through representatives, in the decision-making on matters affecting them. Schools may create a forum for consultation with the children. The implementation is assessed as 'Partial' as the right to participate does not seem to include all major areas of children lives.
IE	Partial	The Education Act provides that students of post-primary schools may establish a student council. However, there is no general legal right of the child to participate in all matters affecting them in Ireland in the Constitution or

MS	General recognition of the right to participate	
	Conformity	Comments
		otherwise.
IT	Yes	The Law on the promotion of the rights and opportunities for children and adolescents provides for measures to encourage the participation of children and adolescents in the life of the local community. With regard to education, education plans for children with disabilities are established taking into account opinion of the child.
MT	Yes	In the light of the national legislation, the Commissioner for Children should ensure that that children are being given the opportunity to express their opinions and that these are in fact considered. According to the Education Act, the Directorate for Educational Services promotes, encourages and monitors the democratic governance of schools through School Councils with the active participation of parents, teachers and students.
NL	Partial	In some areas, the right of the child to participate is recognised. The National Youth Council is a platform where children can participate and be represented.
PL	Yes	The Constitution stipulates that 'organs of public authority and persons responsible for children, in the course of establishing the rights of a child, shall consider and, insofar as possible, give priority to the views of the child'. This principle is reflected by several legal acts in particular in the field of family law and social assistance.
RO	Yes	The Romanian Constitution states that 'public authorities are bound to contribute to secure the conditions for the free participation of young people in the political, social, economic, cultural and sporting life of the country' (Article 49(5). Romanian legislation (the Civil Code, the Law of Rights of the Child) provides for the right of the child to be informed and consulted on issues concerning her/him and to have the consequences of her/his views explained to her/him.
SE	Yes	The Constitution states that public institutions are to promote the opportunity for all to attain participation in society. It also ensures 'freedom of expression: that is, the freedom to communicate information and express thoughts, opinions and sentiments, whether orally, pictorially, in writing, or in any other way'. The right to participation of children is also ensured in different legal acts, such as the Education Act which encourages students' participation in influencing their education process.
SI	Partial	There is no general recognition of the right to participation but specific acts provide for this right. In the light of the Placement of Children with Special Needs Act, the child and his parents have to be involved in the preparation and monitoring of an individualised programme.
UK[348]	Yes	In the light of Northern Ireland legislation, public authorities must have due regard when carrying out their functions to encourage participation by people with disabilities in public life. Section 75 of the Northern Ireland 1998 requires public authorities to promote equality of opportunity and includes the requirement that public consultations be conducted with reference to a number of variables, including age. The Education Act 2002 (as amended) places a duty on school governing bodies to "invite and consider" children and young people's views about certain matters to be established in regulations. The Equality Act 2006 requires the Commission for Equality and Human Rights to establish a 'Disability Committee' and requires consultation with such

[348] Except Scotland.

MS	General recognition of the right to participate	
	Conformity	Comments
		Committee, as well as a five-year review of its activities, involving consultation with persons with disabilities "likely to have an interest".

Table 20: An assessment of criterion n°1 of the general recognition the right to be free from violence

MS	General recognition of freedom from violence		
	Conformity		Comments
	Violence as an aggravating circumstance	General provision	
BE	Yes	Yes	According to the Constitution, every child has the right to the respect for her/his moral, physical, psychological and sexual integrity. The Criminal Code foresees specific offences against children and considers as an aggravating circumstance committing certain offenses against a child. Taking advantage of the vulnerability of a person, due to age or disability, is considered an offence in and of itself in several cases and an aggravating circumstance.
CZ	Yes	Yes	The Charter of Fundamental Rights and Basic Freedoms protects, in Article 7, physical integrity of every individual and guarantees inviolability of the person and of his/her privacy. National legislation ensures the favourable development and proper upbringing of children so that their dignity is not violated (the Act on Social and Legal Protection). The Criminal Code penalises abuses (including sexual abuse) against children. Section 42 of the Criminal Code establishes violence against a child and person with disabilities as an aggravating circumstance.
DE	Partial	Yes	The Constitution provides that every person should have the right to life and physical integrity; however, no specific provision is foreseen with regard to children. The Criminal Code penalises offences against physical integrity and against sexual self-determination, including offences against minors and offences against persons with frailties or illnesses. Otherwise, violence against a child does not account for an aggravating circumstance in a criminal conviction. In particular, section 174a of the Criminal Code imposes punishment for the sexual abuse of patients and institutionalised persons.
EE	Yes	Yes	The Constitution provides that 'no one shall be subjected to torture or to cruel or degrading treatment or punishment'. The Child Protection Act sets a the general principle prohibiting humiliation, frightening or punishing a child in any way that abuses the child, causes harm or otherwise endangers his or her mental or physical health. The commission of an offence against a person who is less than 18 years of age or who is in need of assistance or has a severe mental disorder is considered as an aggravating

MS	General recognition of freedom from violence		
	Conformity		Comments
	Violence as an aggravating circumstance	General provision	
			circumstance.
EL	Yes	Yes	The Criminal Code and more specialised legislations regulate and penalise violence against children. With respect to certain offences (indecent assault, abuse of minors, child pornography), their commission against a child with disabilities constitutes an aggravating circumstance.
ES	Yes	Yes	Article 15 of CE states that none may 'be subject to torture, inhuman or degrading punishment or treatment'. The general provision for the protection of people with disabilities under Article 49 CE applies to situation of violence as well and requires public authorities to implement a policy of prevention, treatment, rehabilitation and integration of people with disabilities. Articles 12 to 22 of LO 1/1996 set up the rules applicable for state early intervention required to ensure the protection of children in situation of risk, to develop measures for the prevention and reparation of situation of risk. Specifically on domestic violence, the Law 54/2007 amended the Civil Code which used to enable parents to correct their children: Article 154 provides that "parental authority shall always be exercised for the benefit of the child, according to their personality, and with respect to their physical and psychological integrity". Law 51/2003 recognises the specific vulnerability of women with disabilities.
FI	Partial	Yes	The national legislation provides that the child may not be subordinated, punished corporally or otherwise be treated in a way hurting him/her. Violence against children is not directly mentioned as an aggravating circumstance, however, in the interpretation of the law it can be considered as such. Disability as a motive of crime is considered as an aggravating circumstance.
FR	Yes	Yes	There are no specific provisions that address the situation of children with disabilities who are victims of violence. However, the Criminal Code prohibits and sanctions physical and psychological violence in general (what applies also to children with disabilities). In addition, Article 221-4 sets as aggravating circumstance violence against a minor under 15 and a person vulnerable as a result of his/her age, illness or physical or intellectual deficiency.
HU	Yes	Yes	The Child Protection Act provides that the child has the right to respect for human dignity and protection against physical, sexual or psychological violence, abuse and neglect. The Criminal Code sanctions violence against minors more severely.
IE	Yes	Yes	The Constitution in its Preamble refers broadly to protection of the dignity of the individual but this is not justiciable. Some statutory law regulate protection of children from violence and abuse. For instance, the Criminal Law Act explicitly foresees

MS	General recognition of freedom from violence		
	Conformity		Comments
	Violence as an aggravating circumstance	General provision	
			the protection of mentally impaired persons from sexual abuse.
IT	Yes	Yes	There is no general principle of freedom from violence stated as such in the Italian legislation but specific laws deal with the issue of violence against children and persons with disabilities. Moreover, the Italian Constitution requires that human dignity is respected during medical or correctional treatment. According to the Italian Penal Code, any offence can be aggravated if the offender took advantage of his/her authority, such as parental guardianship, over the victim or he/she took advantage of personal conditions, such as the age or disability of the victim, diminishing the victim's defence.
MT	Yes	Yes	The Constitution provides that no one can be subjected to inhuman or degrading punishment or treatment. Children fall under the scope of this article. Furthermore, national law ensures protection of children from different forms of violence and abuse. Crimes committed against any person under 18 years of age is considered an aggravating circumstance (Article 202 of the Criminal Code).
NL	Yes	Yes	The Dutch Civil Code prohibits violence by a parent or caretaker against a child. In the Criminal Code, unlawful act of violence against children is considered as an aggravating circumstance.
PL	Yes	Yes	According to the Constitution, no one may be subjected to torture or cruel, inhuman, or degrading treatment or punishment. Moreover, the Constitution states that everyone has the right to demand from public authorities 'to protect children from violence, cruelty, exploitation, and depravity'. Corporal punishment is prohibited by the Constitution and by the Family and Guardianship Code. Every form of violence against children is penalised, and, pursuant to the Penal Code, committing an offence against a minor constitutes an aggravating circumstance.
RO	Yes	Yes	The national laws provide for the protection of children against any form of maltreatment, exploitation and abuse on both constitutional and statutory level. Violence against a minor is punished more severely under the national legislation (the Criminal Code).
SE	Yes	Yes	The Constitution states that everyone is protected against corporal punishment and in their relations with the public authorities against any physical violation. Violence against a child is not listed as an aggravating circumstance in the Criminal Code. However, it is an aggravating circumstance to abuse someone's defenceless position or difficulty to defend himself or herself. Furthermore, there is a prohibition against corporal punishment and other degrading treatment of children in the Children and Parents Code.

MS	General recognition of freedom from violence		
	Conformity		Comments
	Violence as an aggravating circumstance	General provision	
SI	Yes	Yes	The Constitution states that children should be guaranteed special protection from economic, social, physical, mental or other exploitation and abuse. Committing crimes against children is recognised as an aggravating circumstance for several crimes.
UK[349]	Yes	Yes	The Children and Young Persons Act 1933 and the Children and Young Persons Act (Northern Ireland) 1968 provide for offences in relation to cruelty to children. The Children Act 2004 and the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order (2006) also list those offences for which battery cannot be justified on the grounds of reasonable punishment. The Criminal Justice Act 2003 provides for increased sentences for aggravated crimes related to disability.

Table 21: An assessment of criterion n°2 of the presence of procedural safeguards to protect the right to be free from violence

MS	Specific procedural safeguards related to freedom from violence		
	Conformity		Comments
	Legislative/ Administrative	Social	
BE	Yes	Yes	The Youth Protection Act gives competence to the Youth Judge to order protection measures. Various social services exist to assist victims of violence, including specialised services for children victims of violence (including in children victims of domestic violence, abuse, sexual abuse and human trafficking). Hence, this criterion is implemented.
CZ	Yes	Partial	The Criminal Code penalises abuses (including sexual abuse) of children. The Ombudsman has developed public web page with guidelines for children themselves and their parents on how to submit complaints to the Ombudsman. It could be used also to notify relevant authorities about a child in need for protection.
DE	Yes	Yes	Youth aid must ensure the protection of the rights of the children and young persons in facilities against violence. Special criminal provisions exist in Germany to protect persons with disabilities in social facilities. The Act to Outlaw Violence in Education of 2000 introduced several amendments in German laws in order to protect children from violence.
EE	Yes	Yes	In the light of the Child Protection Act, person who becomes aware of a child who is in need of protection or assistance must immediately notify the relevant authorities. A child who was abused must be provided with the necessary assistance and must

[349] Except Scotland.

MS	Specific procedural safeguards related to freedom from violence		
	Conformity		Comments
	Legislative/ Administrative	Social	
			be placed in safety immediately without request of the consent of the child's parents or caregivers. The Victim Support Act provides for support services available to all who have fallen victim to negligence, mistreatment or physical, mental or sexual abuse. The Family Act specifies that any physical, intellectual and emotional abuse and application of other degrading educational measures should be prohibited. The Child Protection Act The CPA also requires protection of the child from all forms of sexual exploitation.
EL	Yes	Yes	Children with disabilities are explicitly protected from certain forms of violence under the Criminal Code. An obligation to report cases of domestic violence or abuse against students is imposed upon teachers and the KEDDY (Law 3699/2008). Corporal punishment at school is prohibited (Presidential Decree 497/2981) as well as any kind of violence between members of the family (Law 3500/2006).
ES	Yes	Yes	Articles 12 to 22 of the LO 1/1996 set up the rules applicable for state early intervention to a child needing it and ensure the protection of children in situation of risk or neglect, safeguarding the development of measures for the prevention and reparation of situation of risk. Throughout the process, the involvement of the Public Prosecutor is required. The LO 1/1996 applies to children victims of abuse or neglect, children in situation of adoption, custody or residential care. In addition, the law requires the authorities to carry out inspections of the centres where the child is placed every semester, if needed. Furthermore, the Public Prosecutor is responsible for the monitoring of all the centres hosting children. Therefore, violence in institutions is generally regulated under the Spanish legislation. Actions of violence against children are punished under the Spanish Criminal Code. The procedural guarantees under the Criminal Procedural Act would apply, including the right to be heard and the Public Prosecutor's intervention throughout the process. Law 1/2004 of 28 December on Integral Protection Measures against Gender Violence covers women with disabilities. This law modified Article 153 of the Criminal Code imposing tougher penalties for violence against women.
FI	Yes	Yes	Violence and abuse against a child is penalised by number of national laws (the Penal Code being the primary one). The Penal Code does not specifically mention general or domestic violence against a child, only sexual crimes against children; however, its general provisions are applicable also in cases of violence against children. In the light of the Child Welfare Act, violence against a child is one of the grounds for child protection measures.
FR	Yes	Yes	The Social Actions and Families Code organises the State's intervention when children are endangered. In that regard, the Service of Social Assistance to childhood is responsible for taking care of children who face threat to their health, security, morality or development. The Criminal Code punishes, among others, physical and

MS	Specific procedural safeguards related to freedom from violence		
	Conformity		Comments
	Legislative/ Administrative	Social	
			psychological violence, abuse of vulnerable people, abandonment, moral and sexual harassment.
HU	Yes	Yes	A child protection warning system operates under the Child Protection Act. The authorities have the responsibility to protect children who are mistreated or at risk of being mistreated and signal cases of mistreatment or other situations which endanger the child to the child welfare service and initiate the proceedings of relevant authorities. Under the Government Decree No. 149/2007, the guardianship authority takes active part in the prevention of child abuse. The Criminal Code sanctions more severely bodily harm and sexual offences committed against children.
IE	Yes	Yes	The Criminal Law Acts regulate protection of children with disabilities under criminal law. It explicitly foresees the protection of mentally impaired persons from sexual abuse and criminalises abuse against children. The Non-Fatal Offences Against the Person Act 1997 abolished the law under which teachers were immune from criminal liability in respect of physical chastisement of pupils. The Child Care (Special Care) Regulations (2004) regulate Special Care Units which provide secure residential care for a small number of non-offending children in need of special care or protection, and prohibit 'corporal punishment or any form of physical violence'.
IT	Yes	Yes	In sectorial law, violence related to sexual abuses of children is addressed. The Law on emergency measures in the field of public security and the fight against sexual violence and persecution established urgent measures to contrast sexual violence against minors. A Ministerial Directive deals with issues concerning bullying. It established a toll-free number to report cases of bulling and the creation of several regional observatories in order to ensure that bullying is monitored and to implement best practises. A judgment of the High Court established that any unnecessary coercion by those having legal authority over people with disabilities is punished as maltreatment. According to the Penal Code, abuses of legal authority over persons with disabilities are punished as private violence and false imprisonment.
MT	Yes	Yes	The Criminal Code contains a whole section regulating the infanticide and abandonment, exposure and ill-treatment of children. The Foster Care Act requires an accredited agency to investigate any allegations of abuse in any foster care facility.
NL	Yes	Yes	Legislation exists on the issue of violence/abuse against children for specific areas such as domestic violence. The juvenile court can also impose measures to protect the child from violence or abuse. The Youth Care and the Council for the Protection of Children are required to protect children from violence or intervene when they learn that a child is subjected to any type of abuse.
PL	Yes	Yes	The Act on Prevention of Domestic Violence ensures effective

MS	Specific procedural safeguards related to freedom from violence		
	Conformity		Comments
	Legislative/ Administrative	Social	
			protection of victims of domestic violence, especially children. The act provides for procedures aiming at prevention, protection and assistance to victims of violence, involving police, social and health services, education providers and local administration. Besides that, children and or/persons with disabilities are protected against violence under general rules of criminal law. If an offence has been committed against a minor, together with a minor or in circumstances which indicate the minor's depravity, the court or the prosecutor will inform the family court in order to undertake necessary measures provided for by family law and the Act on Juvenile Justice.
RO	Yes	Yes	The Romanian Criminal Code penalises any act of sexual violence against children and maltreatment of children. The national legislation provides for a general obligation of any public officer and any private person to require from the competent authorities to protect a child from violence. In addition, officers of any State institution have a specific obligation to inform the competent authorities immediately when they learn or suspect that a child is a victim of abuse, maltreatment or exploitation.
SE	Yes	Yes	Prohibition against sexual abuse of children is covered by the provisions of the Criminal Code while the right to a safe upbringing free from corporal punishment is ensured by the Children and Parents Code. The Children and Parents Code provides that social services have the responsibility to protect children who are mistreated or in risk of being mistreated and that a child has also the right to protection if he or she is a victim of a crime.
SI	Partial	Partial	Currently, only specific measures for cases of family violence and general measures, such as the Penal Code, are in place in Slovenia. There is a need for adoption of provisions prohibiting violence in social institutions. Under the Family Violence Prevention Act, there are multifunctional teams within the social services that provide support to children who are victims of family violence.
UK[350]	Yes	Yes	In England and Wales, the Children and Young Persons Act 1933 contains a list of offences against children. Sexual offences against children are regulated under the Sexual Offences Act 2003. The Children Act 1989 places duty on the authorities to investigate "if they have reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer, significant harm". The Education Act 1986 prohibits the use of corporal punishment in schools. In Northern Ireland, offences in relation to cruelty to children are primarily provided by the Children and Young Persons Act (NI) 1968, including assault, ill-treatment, neglect and abandonment. The Education and Inspections Act 2006 sets out the conditions for lawful disciplinary penalties, one of which is reasonableness.

[350] Except Scotland.

Table 22: An assessment of criterion n°3 of the presence of provisions on the protection from domestic violence

MS	Domestic violence	
	Conformity	Comments
BE	Partial	The Criminal Code sanctions more severely (up to double the sanction) domestic violence and violence against children (with disabilities). The prohibition of corporal punishment is, however, not explicitly recognised.
CZ	Partial	National legislation does not explicitly prohibit domestic violence against children; however, there are measures in place to guarantee that parents may use adequate upbringing measures so that the child's dignity is not violated and his or her health, emotional, intellectual and moral development is not endangered.
DE	Yes	The Civil Code recognises the right of the child to violence-free bringing up. The violence-free upbringing means: no emotional and physical punishment of children – from verbal degradation and minor corporal punishment to serious child maltreatment by parents or guardians.
EE	Partial	There are no specific measures directed at children with disabilities; however, there has been developed a Procedure on reacting to incidents of domestic violence as well as guidelines on exchange of information in relation to that and forwarding information to victim support services.[351]
EL	Yes	Children and persons with disabilities are protected under the Law on the management of domestic violence (Law 3500/2006).
ES	Yes	The Civil Code states that 'parental authority shall always be exercised for the benefit of the child, according to their personality and with respect to their physical and psychological integrity' (Article 154). The Criminal Code explicitly regulates domestic violence.
FI	Yes	Domestic violence against children is prohibited under the Child Custody and Right of Access Act.
FR	Partial	The Civil Code provides that parents who either by maltreatment, or by regular and excessive consumption of alcohol or drug addiction, or by a notorious misconduct or criminal activities or by lack of care or willingness for guidance, obviously endanger the security, health or morality of the child may be withdrawn from parental authority.
HU	Yes	The existing national legislation provides an alert system between authorities and the preventive restraining of the abusive relative (the Act on Restraining Orders because of Violence between Relatives). The new Criminal Code, effective from July 2013, will criminalise psychological domestic violence.
IE	Yes	The Domestic Violence Acts 1996-2002 give the HSE (Health Service Executive) certain powers to intervene in cases where the safety and welfare of a child is at risk in the family. The HSE must apply for various orders before the courts. The Child Care Acts also contain powers for the HSE and the *Gardai* to remove children from homes where their safety and welfare is at risk.
IT	Yes	There are no specific provisions regarding children with disabilities. However, the law ensures protection to children and to persons with disabilities from domestic violence. The Penal Code states that any offence can be aggravated if the offender took advantage of his/her authority, such as parental guardianship.
MT	Yes	The Domestic Violence Act regulates domestic violence. However, there is no

[351] ☐Lähisuhtevägivalla juhtumitele reageerimise, sellega seotud infovahetuse korraldamise juhend ja ohvriabile info edastamise kord' Police and Borderguard Board, 2010.

MS	Domestic violence	
	Conformity	Comments
		specific mention of disability.
NL	Partial	The Law on temporary prohibition to enter the home prohibits a parent or other caretaker to enter the home temporarily in order to protect the other family members against violence. The Criminal Code provides that violence against children is an aggravating circumstance with higher penalties as a result.
PL	Yes	The Act on Prevention of Domestic Violence defines duties of the government and local authorities with regard to counteracting domestic violence and provides for relevant procedures.
RO	Yes	The Law regarding the prevention of domestic violence provides for certain number of measures for protection of victims of domestic violence (the most important being the possibility to issue an order of protection against the aggressor).
SE	Partial	The right to a safe upbringing free from corporal punishment is enshrined in the Children and Parents Code. The provision applies to all children.
SI	Yes	The Family Violence Prevention Act refers to and provides for special protection measures for victims of domestic violence in general, including children.
UK[352]	Yes	The Family Law Act 1996 and the Family Homes and Domestic Violence (NI) Order 1998 regulate domestic violence.

Table 23: An assessment of criterion n°1 of general recognition of the right to family life

MS	General recognition of the right to the family life	
	Conformity	Comments
BE	Yes	Constitutional provision states that everyone has the right to the respect of private and family life. The provision is not specific to children; however, children fall under the scope of the article. In addition the CRC, CRDP and the ECHR directly apply in Belgium.
CZ	Yes	The Charter of Fundamental Rights and Basic Freedoms, which is part of the constitutional system of the Czech Republic, states that parenthood and family life are under protection of the law and children are guaranteed special protection as well as the right to upbringing and care from their parents.
DE	Yes	The Basic Law stipulates that upbringing of children is considered as 'the natural right of parents' and provides for the special protection of the family by the State. National legislation explicitly states that children with disabilities are to be enabled as far as possible to live with their families and parents.
EE	Yes	The Constitution states that 'everyone has the right to the inviolability of private and family life' and that the family should be protected by the State. The Child Protection Act recognises that family is a natural environment for the development and growth of the child.
EL	Yes	The right to family life as well as marriage, motherhood and childhood are protected by the Constitution.
ES	Yes	The right to family life is first enshrined in the Spanish Constitution under Article

[352] Except Scotland.

MS	General recognition of the right to the family life	
	Conformity	Comments
		39 requiring the public authorities to guarantee the legal, social and economic protection of the family and the protection of the child. It also recognises the parents' obligation to assist their children. This right is complemented by Article 15 which guarantees the right to life and to physical and moral integrity and by Article 18 on privacy in family life. The bulk of the provisions ensuring children with disabilities right to family life are in the LO 1/1996.
FI	Partial	The right to family is not explicitly recognised in the Constitution however, it states that 'the public authorities shall support families and others responsible for providing for children so that they have the ability to ensure the well-being and personal development of the children'. The right to family life is the spirit of the Child Welfare Act and other acts that establish services and support systems for the home care of persons with disabilities. However, the lack of formal recognition of the right, hence, the lack of capacity to claim its violation in court, leads to partial conformity.
FR	Partial	France is a monist country. Hence, the CRC, CRPD and ECHR, which all guarantee the right to family life, apply directly in France.
HU	Yes	The Fundamental Law states that everyone has the right to the respect of private and family life. It also states that the family is protected by the State. According to the Act on Protection of Families, the family is the most important national resource of Hungary, it is the basic unit of society and the natural environment of the development of human personality, which must be respected by the State.
IE	Partial	Currently, the Irish Constitution 1937 only recognises the family based on marriage as the natural primary and fundamental unit group of society and as such is protected under Article 41. There is also recognition of the birth mother and her child under the unenumerated personal rights provision under Article 40.3. However, there is no recognition of any family unit outside of the marital family. Ireland partially incorporated the European Convention on Human Rights and Fundamental Freedoms into Irish Law in 2003 via the European Convention on Human Rights Act. In accordance with Article 8 of the ECHR, courts should interpret national law and organs of State should operate in a way which complies with the obligation to respect a person's private and family life.
IT	Yes	The Constitution recognises the right to family life and states that 'it is the duty and right of parents to support, raise and educate their children, even if born out of wedlock'. Moreover, Italian law provides number of measures to support family life and family care for children and people with disabilities, such as optional work leave or special permission for the parents of children with disabilities; the possibility to choose a place of work closer to home; or psychological consultancy facilities.
MT	Yes	The Constitution ensures respect for the family life. Children fall under the scope of this article. The Schedule to the European Convention Act provides for the right to family life and prohibition of interference with the family life.
NL	Partial	In Dutch legislation, there is no specific right to family life, but article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms can be invoked before a Dutch court, as it is considered a provision which is directly applicable in the Dutch legal framework. However, since there is no general provision in the national legislation ensuring the right to family life, the implementation is assessed as 'Partial'.
PL	Yes	The Polish Constitution states that family, motherhood and parenthood are

MS	General recognition of the right to the family life	
	Conformity	Comments
		under the protection and care of the Republic of Poland and that the State, in its social and economic policy, should take into account the best interests of the family. Moreover, everyone has the right to legal protection of his/her private and family life. Several statutory acts reflect the principle of raising children in their own family.
RO	Yes	The right to the family life is a fundamental right, provided at constitutional level (Article 48). In addition, it is referred to by the Law on Rights of the Child and by the Civil Code, which refer specifically to children.
SE	Partial	The Swedish legislation stipulates that children have a right to a safe upbringing and that they are under the custody of their parents. Children with disabilities should as far as possible be given the opportunity to live with their families. However, the lack of formal recognition of the right to family life, hence, the lack of capacity to claim its violation in court, leads to partial conformity.
SI	Yes	The Constitution provides that the State protects the family, motherhood, fatherhood, children and young people and that parents have the right and duty to maintain, educate and raise their children. Those principles are further reflected in the statutory law.
UK[353]	Yes	The Children Act 1989 imposes a general duty on local authorities to promote the upbringing of children by their families. A similar provision is enshrined in the Children (Northern Ireland) Order 1995.

Table 24: An assessment of criterion n°2 of the right to maintain family ties and right not to be separated

MS	Maintenance of family ties		
	Conformity		Comments
	Right not to be separated	Right to maintain the link with the family	
BE	Yes	Yes	The Civil Code provides for the maintenance of personal relationship with parents and grand-parents in the case of separation of parents. In case of placement, the child has the right to communicate with any person of his/her choice during the period of placement. In addition, authorities should keep siblings together unless it is contrary to the interests of the child. In case of voluntary placement, the parents maintain their parental authority in all the aspects of the life of the child. Lastly, any measures taken by social authorities must aim at fostering the development of the child in his/her family environment (French Community) or being oriented on the family and limiting the distance between the location of where the measure is implemented and the home of the child (Flemish Community). While there is no formal recognition of the right, no child can be separated from their parents against the consent of the parents and the child, unless ordered by a judge. The legislation does not explicitly mention the right not to be separated in the situation of children with disabilities'

[353] Except Scotland.

MS	Maintenance of family ties		
	Conformity		Comments
	Right not to be separated	Right to maintain the link with the family	
			placement. However, placement other than voluntary may only occur under the oversight of a judge.
CZ	Yes	Partial	Young children may be removed from their parents' custody against their will only by the decision of a court on the basis of law. The provisions of the CRC and CRPD are directly applicable in the Czech Republic.
DE	Yes	Yes	National legislation (the Social Code) explicitly states that children with disabilities are to be enabled as far as possible to live with their families and parents. The Basic Law provides that '[c]hildren may be separated from their families against the will of their parents or guardians only pursuant to a law, and only if the parents or guardians fail in their duties or the children are otherwise in danger of serious neglect'. The contact between the child and a parent with a right of access is guaranteed.
EE	Yes	Yes	National law stipulates a number of criteria according to which a child may be separated from his/her family, such as the child's best interests. According to the Child Protection Act, a child who is separated from one or both parents has the right to maintain personal relations and contact with both parents and close relatives, except if such relations would harm the child.
EL	Yes	Yes	According to the Civil Code, children can be separated from their parents only with a court decision and parents have the right to be in contact with their children.
ES	Yes	Yes	Article 11 LO 1/1996 on the protection of the minor, recognises as guiding principles of the public authorities action the maintenance of the child in the family of origin unless it is in the best interests of the child and the child's family integration. Article 12 LO 1/1996 requires public authorities to guarantee child's protection through early intervention, the prevention and remedying of risk, and by providing accessible services, including the establishment of guardianship or in case of neglect assuming the custody of the child by public authorities. Article 21 of the LO 1/1996 deals with residential care recognising the need to have the experience of family life, especially in the early childhood, and the importance to ensure that the child remains interned for the shortest possible time, except in the best interests of the child.
FI	Yes	Yes	The separation from parents is based on an evaluation of the best interests of the child. The contact with parents after separation is guaranteed.
FR	Yes	Partial	The Civil Code provides that a child may not, without the

MS	Maintenance of family ties		
	Conformity		Comments
	Right not to be separated	Right to maintain the link with the family	
			permission of his/her parents, leave the family home and she/he may be removed from it only in cases of necessity as determined by statutory provisions. The Civil Code also provides that a judge of the *tribunal de grande instance* in charge of family cases 'shall settle issues brought before him/her in watching in particular over the safeguarding of the welfare of minor children. The judge may order measures that allow protecting continuity and effectiveness of the keeping of the bonds of the child with each of his parents'. Since such measures are discretional upon the judge, the assessment of the implementation is 'Partial'.
HU	Yes	Partial	According to the Family Act, the child can only be separated from his/her parents or other relatives in order to ensure his/her physical, emotional and intellectual development and only in cases provided by law. The child separated from his/her family must be returned within the shortest time possible. The State must take all necessary measures to facilitate the return.
IE	Partial	Partial	In the light with the amended Constitution (Article 42A), in case when parents fail in their duty towards their children to such extent that their safety or welfare are affected, the State, by a proportionate means as provided by law, endeavours to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child. This provision, however, so far, has not been inserted into the Constitution.
IT	Yes	Partial	The Law on Adoption and Foster Care promotes the right of the child to be raised and educated in its family and stresses explicitly that the poverty of the parents cannot constitute an obstacle to the right of the children to live with their family. When the unity of the family is in question, the best interests of the child must be given priority. In cases, when a family is unable to take care of the child, priority is given to the custody of a family or to a single person, able to afford maintenance and the emotional relationships. In the case where this is not possible, the child can be placed in a family community or in a specialised institution located close to the family of origin.
MT	Partial	Partial	The European Convention for the Protection of Human Rights and Fundamental Freedoms together with its first Protocol were incorporated into Maltese law by the enactment of the European Convention Act. The Convention refers in Article 8 to the family life and prohibition of interference with the family life. In the light of the national law, children separated from parents and placed in alternative care have a care plan drawn up in their best interests. Decisions regarding contact with parent(s) make up part of the care plan.

MS	Maintenance of family ties		
	Conformity		Comments
	Right not to be separated	Right to maintain the link with the family	
NL	Yes	Partial	The only way that a child can be separated from its parents without their consent is on the basis of a child protection order imposed by the juvenile courts, when that measure is deemed necessary in the interests of the child and where the statutory conditions are met. In addition, Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which is directly applicable in the Netherlands, refers to the family life and the prohibition of interference with the family life. However, since there is no specific provision in the national legislation ensuring maintenance of family ties, the implementation is assessed as 'Partial'.
PL	Yes	Yes	According to the Constitution, the limitation or deprivation of parental rights may be effected only in cases specified by a statute and only on the basis of a final court judgment. Pursuant to the Family and Guardianship Code, children and parents have the right and obligation to maintain contacts with each other, irrespective of parental authority. This right can be restricted only by a decision of a family court, in the best interests of the child. In case of divorce, separation or placement, siblings should grow up together unless it would be contrary to the best interests of the child (the Family and Guardianship Code). The Act on Family Support and Foster Care System provides that the child has the right to be brought up in the family, and if it is necessary to be brought up outside the family, the child has the right to receive care and education in the forms of foster care similar to family environment, if it complies with the best interests of the child. The child also has the right to return to the family, to maintain personal contacts with parents and to have access to information about his/her origins.
RO	Yes	Yes	In the light of the law regarding the protection of the child, the child has a right to grow up together with her/his parents. The Civil Code provides that the child cannot be separated from her/his parents, without their consent, except for the cases provided by the law (e.g. when life, health or mental condition of the child is put into danger). In case a child does not live together with her/his parents, she/he is entitled to a personal relation with them. If a child with disability cannot stay with his/her own family, the authorities must consider whether the child can be placed with a relative or a family member.
SE	Partial	Partial	Pursuant to the Social Services Act, the municipal social services are tasked with ensuring that all children, including children with disabilities, grow up in secure and good conditions and, in close co-operation with families, promoting the comprehensive development of children. The overarching principle regarding children with disabilities is that they should be living with their families.

MS	Maintenance of family ties		
	Conformity		Comments
	Right not to be separated	Right to maintain the link with the family	
			There are no special provisions on the right to maintain the link with their family, but it is implied in the way the legislation is designed.
SI	Yes	Yes	The right and duty of parents to maintain, educate and raise their children can be revoked or restricted only for such reasons as are provided by law in order to protect the child's interests. The Marriage and Family Relations Act specifically defines the right of a child to have contacts with both of his or her parents as well as to other persons who are close to him or her unless this is contrary to the best interests of the child.
UK[354]	Yes	Yes	The Children Act 1989 provides that a child may be separated from the parent(s) and kept away from home under certain circumstances established by the law (in accordance with directions specified in a court order, if it is necessary for the purpose of the assessment and for such period as may be specified in the order). The act provides that the child should be provided with accommodation by the competent authorities, if parents themselves did not provide the child with suitable accommodation and care. When the child is separated from home, the court provides for direction it thinks fit with regard to the contact that the child must be allowed to have with other persons. The Children (Northern Ireland) Order makes similar provision. The UK legislation strengthens the existing private fostering scheme.

Table 25: An assessment of criterion n°1 of provisions on special assistance

MS	Provision on special assistance	
	Conformity	Comments
BE	Yes	The Constitution guarantees every child the right to benefit from measures and services that contribute to their development. The Act on family allowances grants allowances to families with a child with disabilities. With regards to allowances, the child is defined as a person between the age from 0 to 21.
CZ	Yes	In the light of the Act on Social and Legal Protection of Children, the parent or another person responsible for the child is entitled to require assistance from competent authorities. Such authorities are obliged to provide the parent with any assistance necessary.
DE	Yes	The Social Code guarantees access to benefits for integration assistance to children with disabilities.
EE	Yes	National legislation provides for the support of social services and rural/city governments to assist children and persons raising children, to co-operate with family members or to provide necessary benefits to support them. The

[354] Except Scotland.

MS	Provision on special assistance	
	Conformity	Comments
		Employment Contract Act foresees additional beneficial treatment of persons raising a child with a disability by allowing them additional days off work.
EL	Yes	The National System of Social Care and numerous laws aim to relieve, even partially, children with disabilities and their families from disability-related expenses through the provision of various allowances. There are various provisions aimed at assisting working parents with the upbringing of children with disabilities (the Compulsory Law 1846/1951, Law 2527/1951, Law 3528/2007).
ES	Yes	The Law 39/2006 of 14 December 2006 on the promotion of personal autonomy and care of persons in situations of dependency establishes the System for Autonomy and Assistance for Dependency (SAAD) involving all competent authorities. Article 11(1) of the LO 1/1996 requires the action of competent authorities to support children with disabilities and their families. However, these provisions do not refer to the needs of children with disabilities.
FI	Yes	Families of children with disabilities are assisted by a system of services and social benefits that have their normative basis in various laws and are administered by diverse State institutions.
FR	Yes	In the light of the Social Action and Family Code, the family of children with disabilities is to receive support from the Departmental House of Persons with Disabilities and the Service of Social Aid to Childhood. Additional allowances are provided for the child who suffers from a particularly severe disability.
HU	Yes	The Child Protection Act declares that every child has the right to protection and care provided by the family, the State and the society which is necessary to the proper physical, intellectual and emotional development of the child. As regards children with disabilities, the Act declares that children with disabilities have the right to special care which facilitates their development and helps to unfold their personality. Families of children with disabilities receive family allowances pursuant to the Act on Support of Families.
IE	Yes	The Social Welfare (Consolidation) Act 2005 provides for financial support for persons with disabilities and their carers. Moreover, parents of children with disabilities may be able to avail of an Incapacitated Child Tax Credit.
IT	Yes	In the light of the Framework Law on assistance, social integration and rights of people with disabilities and the Law on adoption and foster care, various forms of assistance are provided to natural families of children with disabilities and also to the families that decide to adopt a child with disability.
MT	Yes	According to the Constitution, every citizen incapable of work and lacking the resources necessary for subsistence is entitled to maintenance and social assistance. Moreover, in the light of national legislation, families of children with disability receive a special children's allowance over and above the children's allowance for all children.
NL	Yes	Parents receive a child allowance. Additional support (financial and material) can also be obtained. The Social Support Act , Exceptional Medical Expenses Act and Regulation reimbursement costs of maintenance of children with disabilities living at home guarantee such assistance.
PL	Yes	The Polish Constitution states that public authorities have an obligation to ensure special health care to children and persons with disabilities and should provide, in accordance with a statute, assistance to persons with disabilities to ensure their subsistence, adaptation to work and social communication. Families

MS	Provision on special assistance	
	Conformity	Comments
		in financial and social difficulties, especially large families and single parents, as well as children deprived of parental care, have the right to special care and assistance from the public authorities.
RO	Yes	The Romanian Constitution establishes the obligation of the State to provide allowances for children with disabilities. It recognises the need of special protection for persons with disabilities. The Law on the public system of pensions and other social security rights provides that insured persons who are taking care of a child with a disability are entitled to leave and allowances until the child reaches the age of 18.
SE	Yes	The children and their families are entitled to receive assistance in the form of information, services and support so that they can achieve equality in living conditions (the Act Concerning Support and Service for Persons with Certain Functional Impairments and of the Social Services Act). Swedish legislation ensures the right to special assistance for families with children with disabilities. The special assistance can take form of a wide range of different measures, such as presence of a special assistant, adapting the home to the needs of the child, providing information and support to the family of the child.
SI	Yes	Under the Equalisation of Opportunities for Persons with Disabilities Act, an appropriate assistance needs to be provided to parents when they are coping with disability of their children. The Social Security Act provides that assistance to a family comprises assistance for home, assistance at home and social services. Longer maternity leave is provided for parents with children with disabilities and longer sick leave in case of sickness of the child with disabilities.
UK[355]	Yes	The Children Act 1989 and the Children (Northern Ireland) Order 1995 provide that every authority is required to safeguard and promote the welfare of children in its area who are in need, and to promote the upbringing of children in need by their families, by providing a range and level of personal social services appropriate to those children's needs.

Table 26: An assessment of criterion n°2 of the nature of special assistance provided

MS	Nature of special assistance provided by the State			
	Conformity			Comments
	Social	Health care	Other	
BE	Yes	Yes	Personal Assistance Budget	The Constitution guarantees the right to social security, health, housing and social development to everyone (including children). Families having children with disabilities receive financial support in the form of allowances, tax deductions and house-services tickets. For certain disabilities, children with disabilities are entitled to a budget of personal assistance. Hence, the criterion on social assistance is fully implemented by various social assistance laws. Access to health care and medical treatment is guaranteed (Act on mandatory health insurance). Hence, the criterion is fully implemented.

[355] Except Scotland.

MS	Nature of special assistance provided by the State			
	Conformity			Comments
	Social	Health care	Other	
CZ	Yes	Partial	Early interven-tion	Domiciliary and ambulatory services, provided according to the Social Services Act, include, *inter alia*, assistance with provision of food, assistance with personal hygiene and mediating contacts with the social environment. The early intervention services provided to children with disabilities and their families are also ensured. They include basic activities such as upbringing, educational and development activities, assistance with asserting rights, justified interests and looking after personal matters. The health services for underage patients are provided with the consent of their legal guardian, with the exception of cases when health services are possible to be provided without his/her consent.
DE	Yes	Partial	Early assistance for parents and children and social early warning systems	Persons with disabilities, including children who need assistance, have a right to integration aid provided by the State. The youth welfare office has the task to avert risks to the best interests of the child (the Social Code). No specific reference to children with disabilities has been identified with regard to the provision of health services.
EE	Yes	Yes	Rehabili-tation services	The Social Welfare Act ensures different social services and benefits including counselling, everyday life support services, community living services, childcare services and domestic services. Children with disabilities are covered by the solidarity-based health insurance that covers their healthcare costs for preventing and curing illnesses, and also medicines and medical aids.
EL	Yes	Yes	Education	In the light of national legislation, the provision of social care is the responsibility of the State and social care services are provided without discrimination, according to the personal, family, economic and social needs of the person. According to the Constitution, the State must care for the health of citizens and adopt special measures for the protection, amongst others, of the youth and disability. With regard to health care assistance, persons with disabilities can receive special treatment in residential and non-residential institutions. In general, assistance is mostly provided via financial aid (mainly in the form of allowances).
ES	Yes	Yes	See the comment	The Law 1/1996 deals with prevention and remedying of risk, requiring the competent authorities to provide accessible services in all areas affecting the development of the child. The Law 39/2006 refers to persons with mental deficiency or illness requiring assistance or support for ensuring their personal autonomy as a citizen right (financial or human support). This law provides for special protection scheme for minors under 3 years of age. It establishes the System for Autonomy and Assistance for Dependency (SAAD) involving all competent authorities. Article 1(2) of the General Health Act 14/1986 recognises the right to health protection. Article 3(2) establishes the

MS	Nature of special assistance provided by the State			
	Conformity			Comments
	Social	Health care	Other	
				principle of equality, access to benefits and the right to health care in conditions of effective equality. Article 10(3) of the LO 1/1996 and Article 12 (3) of the Organic Law 4/2000 on the rights and freedoms of foreigners in Spain establishes the right of foreign children at risk to health care and other public services.
FI	Yes	Yes	Transport and interpre-tation services	In the light of national law person with disability should be provided with rehabilitation counselling, adaptation training and other required services. Persons with severe disabilities have the right to personal assistance services in their daily activities, work and study, free time activities, participation in society or maintaining social interaction. The costs incurred by the person with disability in having to employ a personal assistant and to purchase devices, machines and equipment in order to manage his daily affairs are compensated fully or partially. The legislation establishes special health services for persons with intellectual disabilities.
FR	Yes	Partial	Adjustment of the child's house	Article 11 of the 1946 French Constitution provides that 'the Nation guarantees to all, among others to the child, to the mother (…) health protection, rest and leisure.' In the light of the Social Action and Family Code, the departmental houses for persons with disabilities support persons with disabilities. They provide information, advice and accompany persons with disabilities and their families. Any person with disabilities is entitled to receive compensation. Children's allocation is to be aligned with the allocation for adults (the Law on equal rights and opportunities, participation and citizenship for persons with disabilities). The allocation received by the child is meant to cover the needs related to adjustments of the home in order to be autonomous. Any person who is in charge of a child with disabilities is entitled to receive an allocation for the education of the child (the Social Action and Families Code).
HU	Yes	Yes	Education, children's day care services, travel discounts	In the light of the Child Protection Act, assistance provided to families raising a child with disabilities can be cash or in-kind assistance. Cash allowances include the family allowance (education allowance), child care allowance, nursing fee, discount of the kindergarten/school catering fee. Other types of assistance include children's day care services, free text books, medicines and medical supplies and day care service for persons with disabilities, parking card and travel discounts. The Equal Treatment Act establishes that based on disability, a government decree may grant additional benefits to specified groups of society within the framework of the social and health care system.
IE	Yes	Yes	Education, Early Interven-tion Teams and Children's	The Department of Social Protection provides financial support for persons with disabilities and their carers. The Health Service Executive (HSE) provides health and personal social services. Disability support services may be provided directly by the HSE, or more usually, by HSE-funded voluntary organisations (who work on of behalf of

MS	Nature of special assistance provided by the State			
	Conformity			Comments
	Social	Health care	Other	
			Disability Teams	the HSE).
IT	Yes	Partial	Education, technical aids, psychologi-cal consultancy	The Framework Law on assistance, social integration and rights of people with disabilities and the Law on adoption and foster care provides for assistance in the form of home care, personal help, technical aids, psychological consultancy facilities and economic support. No specific provisions regarding health services for children with disabilities have been identified.
MT	Yes	Yes	Education	Under the Equal Opportunities Act, the National Commission for Persons with Disability provides, where and as appropriate, assistance, including legal and financial assistance, to persons with disabilities in enforcing their rights. The Social Security Act guarantees entitlement to disability pension to a person with disability who has attained the age of 16 years. The act also provides entitlement to pension for a visually impaired person who has attained the age of 14 years. In general, health care is provided through the State funded health service, including the Child Development and Assessment Unit. All persons, including children with disabilities, are entitled to free health services and medical treatment.
NL	Yes	Yes	Early interven-tion	The Social Support Act, Exceptional Medical Expenses Act and Regulation reimbursement costs of maintenance of children with disabilities living at home guarantee various forms of assistance for children with disabilities. Health insurance is obligatory for every citizen, including children.
PL	Yes	Yes	Transport, Education, Early childhood develop-ment support	Persons with disabilities and families raisings children with disabilities have a right to assistance consisting of a system of family benefits, social assistance and allowances, social insurance and health care. The assistance is organised by the State and local authorities and is regulated by numerous legal acts, in particular, the Act on Social Assistance, the Act on Family Benefits, the Act on Social Pension, and the Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities and the Act on Healthcare Services. The Act on Education System ensures free transport for students with disabilities to school or educational/rehabilitation centre and assistance during the transport, or reimbursement of costs of travel of the student and his guardian. Children and persons with disabilities have the right to reduced fare (the Act on the right to reduced fare on public transport). Polish legislation regulates the social and vocational rehabilitation of persons with disabilities as well as disability assessment procedures. The rehabilitation means a combination of actions (organisational, medical, psychological, technical, training, educational, social) aimed at achievement, with the participation of persons concerned, the highest possible level of functioning, quality of life and social inclusion (the Act on Vocational and Social

MS	Nature of special assistance provided by the State			
	Conformity			Comments
	Social	Health care	Other	
				Rehabilitation and Employment of Persons with Disabilities).
RO	Yes	Yes	Consultancy with the competent authorities	The access of the child to medical care services and recovery, as well as to the medication corresponding to her/his state of illness is granted by the State, the related costs being incurred by the Unique National Fund of health insurances and by the State budget. Children with disabilities are entitled to special care adapted to their needs and can receive assistance at home as well as social assistance and social insurance, in accordance to their resources or the material situation of their family.
SE	Yes	Yes	Personal assistance	Families of children with disabilities have the right to receive assistance in the form of advice and personal support, as well as the right to health care services and to receive financial assistance to adapt their homes to the needs of the child. In those cases where the child cannot obtain appropriate care within the family, there are special family homes or residential arrangements with special services that are provided and financed by municipalities. The municipalities are required to establish accommodation with special services for those who are in need of such assistance (the Social Services Act).
SI	Yes	Yes	Early treatment and multidisciplinary permanent treatment	Under the Equalisation of Opportunities for Persons with Disabilities Act, people with disabilities have the right to health services without discrimination on the grounds of disability, while children have the right to receive special attention. A person with disabilities is entitled to appropriate specialist treatment. Children are also entitled to early treatment and multidisciplinary permanent treatment taking into account their special needs. Under the Social Security Act, in case of a child's disability, social assistance comprises first social aid, personal assistance, assistance to family and institutional care.
UK[356]	Yes	Yes	Practical assistance at home	Children with disabilities have a right to assessment of their healthcare and social assistance needs by local authorities. The NHS and Community Care Act imposes a duty on local authorities to carry out an assessment of needs for community care services with people who appear to them to need such services. If, during that assessment the person is identified as being 'disabled', that person has additional rights, as set out in section 47(2). This requires local authorities to make a decision as to the services required under section 4 of the Disabled Persons Act. Services and Consultation and Representation Act 1986, the Disabled Persons (Northern Ireland) Act 1989 and the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 also place a duty on local authorities to make a care assessment of people defined as 'chronically ill or disabled'.

[356] Except Scotland.

Table 27: An assessment of criterion n°1 of general recognition of the right to inclusive education

MS	General recognition of the right to inclusive education		
	Right to inclusive education	Right to choose a mainstream or special school	Comments
BE	Partial	Yes	The right to inclusive education is implied from the Constitutional right to education. In addition, students attending specialised schools can transfer to mainstream schools (on a full time or part time basis) (French and Flemish Community). While there is no formal right to inclusion, specific provisions ensure the access to inclusive education. Hence, the criterion is partially implemented. The principle of the free choice of parents on the school/education of the child is guaranteed by the Constitution and federated legislation; hence, the criterion is fully implemented.
CZ	Partial	Partial	There is no definition of inclusive education in the Czech law. However, it ensures equal access to education without any discrimination based, among others, on health condition or any other status of the citizen (the School Act). Moreover, Czech law provides that education should be based on the principle of considering needs of an individual. There are limited options for parents of children with disabilities to choose a school for their child.
DE	Partial	Partial	Although the CRPD is binding in Germany, education falls under the competence of the *Länder* and the right to inclusive education has not been established in all *Länder* (only in two of them).[357] Due to the regional differences the implementation is assessed as 'Partial'.
EE	Yes	Yes	The Constitution provides that 'everyone has a right to education'. In the light of the Child Protection Act, education should be provided on equal basis to children with disabilities. The Basic Schools and Upper Secondary Schools Act establishes the principle of inclusive studies. Children with disabilities should be able to attend regular schools and classes, but the formation of special groups or classes is also allowed. The Constitution states that 'parents shall have the final decision in the choice of education for their children'.
EL	Yes	Partial	The Greek Constitution explicitly protects the right of children with disabilities to education; Article 16(4) reads 'all Greeks are entitled to free education on all levels at State educational institutions. The State shall provide financial assistance to those who distinguish themselves, as well as to students in need of assistance or special protection, in accordance with their abilities'. Concerning children with disabilities, the Law 3699/2008 provides that special education aims to ensure that children with disabilities are effectively integrated or re-integrated in the mainstream schools, whenever this is possible, and that they are integrated in the education system according to their potential. In Greece the legislation does not explicitly provide whether parents of children with disabilities have the right to choose a mainstream or a special school for their child. In theory, parents

[357] Hamburg and Bremen are the only *Länder* which have established a legally binding right to inclusive education.

MS	General recognition of the right to inclusive education		
	Right to inclusive education	Right to choose a mainstream or special school	Comments
			have such right under the constitutionally protected right to education. However, if the KEDDY (Centres of Differential Diagnosis, Evaluation and Support) propose that the child attends a special school and the parents take it to a mainstream school, they cannot benefit from the additional educational support provided to children with disabilities which attend mainstream schools as there is no KEDDY decision in this respect.
ES	Yes	Partial	Article 27 of the Spanish Constitution recognises the fundamental right to education for 'all' which is compulsory and free of charge. The Organic Law 8/1985 regulating the right to education declares education as a right and a public service. Article 49 of the CE requires public authorities to promote a policy of integration of children with disabilities, providing them with the specialised care they need and ensuring they enjoy fundamental rights recognised in the Constitution, including the right to education. The Organic Law 2/2006 of 3 May on Education is the basic instrument regarding access to inclusive education for children with disabilities as it refers to the concept of special educational needs, regulated under Part II of the law. It is based on the principle of equality aiming at the same quality of education for all pupils and at equality of opportunities, educational inclusion and non-discrimination. Decisions regarding choice of a school (mainstream or special) for children with disabilities are primarily taken by the local administration.
FI	Yes	Partial	The Constitution provides that everyone has equal rights to basic education. The principle of inclusiveness is enshrined in the national legal framework. The municipalities, in consultation with parents, decide whether the child attends mainstream or special school.
FR	Yes	Yes	The Law on equal rights and opportunities, participation and citizenship for persons with disabilities clearly priorities the option of inclusive education. Inclusive education as a principle is also recognised in the Education Code. The child with disabilities should be enrolled in the school that is the closest to his home and according to the child's choice (the Education Code). In addition, '[i]f the needs of the child or teenager with disabilities require that he/she receives educational services in a specific environment, he/she can be enrolled in another school by the competent public authority, upon proposal of the school of the choice of the child or teenager and with the approval of his parents or tutor. This enrolment does not exclude that the child or teenager might return to the school of he/she choice.'
HU	Partial	Yes	National legislation prohibits discrimination in education but the requirement of equal access to education has not been included. There is no legal obligation in place which would make inclusive education mandatory. The principle of free choice of the parents for education of their child is guaranteed by the Fundamental Law (Article XVI (2)).

MS	General recognition of the right to inclusive education		
	Right to inclusive education	Right to choose a mainstream or special school	Comments
IE	Yes	Partial	The Education Act 1998 and Education for Persons with Special Educational Needs Act 2004 makes reference to inclusive education for children with disabilities. While parents have the right to choose whether they educate their child at home or at school under Article 42 of the Irish Constitution, the child must be able to benefit from such education. If a child has special educational needs, they may not benefit from mainstream schools' education, in which case their parents will have no choice but to place them in a special school.
IT	Yes	Yes	Under the Law on the assessment of students and the abolition of remedial examination and the Framework Law on assistance, social integration and rights of people with disabilities, children with disabilities, regardless of the type and degree of their disability, have the right to study in the mainstream education system from nurseries to the level of education that they are able to attain according to their personal capabilities. They are supported by specialised teachers and follow a personalised educational plan. Private and public schools of every level have the obligation to accept students with disabilities. The Single Act on the existing provisions in the field of education for all school levels describes the provisions applying to the few special schools for blind students, deaf students and students with disabilities, still existing in Italy. These schools are State or private schools recognised by the Ministry of Education and they often belong to medical or rehabilitation centres. The parents decide whether the student should attend these special schools or the normal schools. However, the number of students with disabilities that attend and spend the night in these special institutes is very limited as 99.6% of pupils with disabilities are included in mainstream schools.
MT	Yes	Yes	The Constitution makes provision for the right to (primary) education and the right of persons with disabilities to education, but these articles are part of Chapter II of the Constitution, which is declaratory in nature and not enforceable. The Education Act places an obligation on the Minister to ensure that the national policy on inclusive education is being applied in all schools. Parents of children with disabilities have a right to choose the schools for their child.
NL	Partial	Yes	There is an obligatory education requirement (parents are obliged to subscribe a child as a student of a school) but there is no general right to education foreseen in national legislation. The Dutch Constitution does not provide a right to education as such, but the government is responsible to provide education open to all with a certain level of quality. A Going to School Together Scheme has been set to facilitate the inclusion of children with special needs in mainstream schools. In addition a personal budget system has been established to support the child with special needs (however, this system will be abrogated by 2014). Parents of children with disabilities have a right to choose the schools for their child.

MS	General recognition of the right to inclusive education		
	Right to inclusive education	Right to choose a mainstream or special school	Comments
PL	Yes	Yes	The Polish Constitution guarantees to everyone the right to free education in public schools and states that public authorities have to ensure that all citizens have universal and equal access to education. To this end, they must establish and support systems for individual financial and organisational assistance to pupils and students. Polish legislation does not use the term 'inclusive education' – this kind of education is described as 'education in mainstream schools'. Polish education system also provides for education in integration schools or integration classes in mainstream schools. Polish law does not recognise a principle of inclusive education as such, instead it provides for an obligation of adjusted education for every child, which refers to every type of school, whatever choice is made by the child and the parents. The Act on the Education System stipulates that children with disabilities have the right to receive education in all types of schools and may choose to attend mainstream school or can apply for the provision of the special organisation of education and teaching methods ('special education'). Parents are free to decide which path they choose for their child. As the system is flexible, parents may decide to change the type of school at any stage of education.
RO	Yes	No	The right to education of children with disabilities is explicitly provided by the Law on Rights of the Child. Law no. 1/2011 regarding the national education establishes integration as being the leading principle, but provides also for the option of special educational formation. Special education can be integrated in the mainstream education. However, these legal provisions need further development in subsequent legislation.
SE	Yes	Partial	The right to inclusive education is recognised in the Education Act, which stipulates that children with disabilities primarily should attend mainstream schools. According to the School Act, the local municipality examines whether a child should be placed in a special school. If the examination shows that the child should be placed in a special school, the parents can object to that and the child is placed in a mainstream school. However, if there are exceptional circumstances, the municipality can go against the will of the parents and place the child in a special school.
SI	Yes	Partial	The Constitution states that physically or mentally impaired children and other persons with severe disabilities have the right to education and training for an active life in society. The Equalisation of Opportunities for Persons with Disabilities Act states that people with disabilities should be entitled to inclusion into education programs on all levels and into life-long learning programmes in the environment in which they live, under the conditions in place for all other citizens. The Placement of Children with Special Needs Act, however, does not include the principle of inclusive education, but the principles of equal opportunities, individual approach, the best interests of the child and the optimal development of each child.

MS	General recognition of the right to inclusive education		
	Right to inclusive education	Right to choose a mainstream or special school	Comments
UK[358]	Partial	Partial	The Special Educational Needs and Disability (Northern Ireland) Order 2005 provides for the rights of children with special educational needs (SEN) to attend mainstream schools. Similarly, the Education Act 1996 places a duty on schools to educate children with special educational needs in mainstream schools. Moreover, the Equality Act 2010 provides protection against discrimination by education providers. However, the UK government maintained two restrictions related to the right of inclusive education. It stated that '[t]he General Education System in the United Kingdom includes mainstream, and special schools, which the UK Government understands is allowed under the Convention' and that '[t]he United Kingdom reserves the right for disabled children to be educated outside their local community where more appropriate education provision is available elsewhere'. Parents of children with disabilities can state which school in the 'maintained sector' (funded by the central government) they would prefer their child to attend. Local authorities must meet the parents' preference unless: i) the school is unsuitable for the child's age, ability, aptitude or SEN; ii) the placement would affect the efficient education of other children; or iii) the placement would affect the efficient use of resources.

Table 28: An assessment of criterion n°2 of the provision of primary and secondary education

MS	Primary and secondary education		
	Conformity		Comments
	Primary	Secondary	
BE	Yes	Yes	Constitutional right to free education (primary and secondary).
CZ	Yes	Yes	According to the constitutional law, citizens have the right to free education at elementary and secondary schools, and depending on the citizen's ability and the potential of society, also at university-level schools.
DE	Yes	Yes	Education in Germany is within the mandate of the *Länder*. All children and juveniles in Germany have the right to free, suitable schooling, promotion and support. Every person, with and without disabilities, is obligated to attend school by the age of 6 for either nine or ten years, depending on the legislation of the respective *Länder*.
EE	Yes	Yes	Compulsory schooling (divided into primary and secondary level) begins at the age of 7 and continues until the conclusion of nine years of basic education. Education is free of charge in State and local government general education schools (the Constitution).
EL	Yes	Yes	Special Education, alike the general education, is compulsory and

[358] Except Scotland.

MS	Primary and secondary education		
	Conformity		Comments
	Primary	Secondary	
			constitutes an integral part of free, public education. Attendance at the primary school and the lower secondary school is compulsory as long as the student is below 16 years of age. The years of compulsory schooling may not be less than nine.
ES	Yes	Yes	The public mandatory right to education in Spain applies to children from 6 to 16 years of age. Education is compulsory and free of charge with regard to the basic education level and, where appropriate, professional training in the first degree. It recognises as well the right to access higher levels of secondary education, depending on children's skills and vocation without discrimination.
FI	Yes	Yes	Children with intellectual disabilities and children with a sensory disability have extended compulsory education of eleven years, whereas for other children compulsory education is nine years.
FR	Yes	Yes	School attendance is compulsory for children from 6 to 16 years of age.
HU	Yes	Yes	School education is compulsory until the age of 16 However, the compulsory education period for students with special educational needs may be extended up to the end of the school year in which they turn 23. The Education Act introduces mandatory preschool attendance from the age of 3 as of 2014.
IE	Yes	Yes	Under the Constitution, the State must provide free primary education to all children, including children with disabilities, up to the age of 18 years. In addition, from 2010 all children in Ireland are entitled to one year's free pre-school education.
IT	Yes	Yes	The Framework Law on assistance, social integration and rights of people with disabilities provides that the right to education of the persons with disabilities is guaranteed from nurseries to all levels of mainstream education and in the universities.
MT	Yes	Yes	The Constitution provides the right to primary education. Schooling is compulsory from the age 5 to 16.
NL	Yes	Yes	Primary and secondary education is free of charge and compulsory.
PL	Yes	Yes	Pursuant to the Constitution, education until 18 years of age is compulsory. Education in public schools is free of charge. Compulsory education begins in the year in which the child turns 5 years old.
RO	Yes	Yes	Primary and secondary education is free of charge and covers children from the age of 7 to 15 years old.
SE	Yes	Yes	Education is compulsory for children both in mainstream schools and special schools in accordance with the Education Act. Compulsory education starts when the child is 7, but may be subject to change if there are special circumstances. Education is compulsory until the child graduates from the ninth grade in mainstream schools or the tenth year in special schools.
SI	Yes	Yes	Nine-year basic education is compulsory and free of charge in Slovenia. Secondary education is also free of charge but is not compulsory.

MS	Primary and secondary education		
	Conformity		Comments
	Primary	Secondary	
UK[359]	Yes	Yes	The statutory school age of compulsory education in the UK is from 5 years to 16 years old.

Table 29: An assessment of criterion n°3 of support and access to education (reasonable accommodation)

MS	Support and access to education		
	Conformity		Comments
	Support	Reasonable accommodation	
BE	Yes	Yes	In all the Communities, some support and assistance is provided for students with disabilities attending mainstream schools. However, it can be limited to only a certain amount of hours and not the whole time of attendance of the child at school. Legislation provides that the refusal of reasonable accommodation is a form of discrimination. The legislation applies to education (Anti-discrimination decrees – French and Flemish Communities). Hence, the criterion on reasonable accommodation is fully implemented.
CZ	Partial	No	There is a general provision of the Act on Social and Legal Protection of Children which states that parent or another person responsible for the child is entitled to request competent authorities for assistance. Such authorities are obliged to provide the parent with any assistance necessary. However, this assistance is not particularly directed at facilitating effective education for children with disabilities. There are insufficient financial means distributed on regional level for mainstream schools to support the inclusion of children with disabilities into education. In cases of lack of financial means at the regional level, parents of children with disabilities have to contribute to the extra cost of providing their child with education in a mainstream environment. No provisions of reasonable accommodation have been identified in the field of education.
DE	Partial	Partial	There are established guidelines concerning the granting of loans and grants for the promotion of child and youth support through the child and youth plan of the Federation, which focus on programmes for young persons with disabilities to be included into the social life and mainstream education. By law, the Federal Government is obligated to ensure a barrier-free design and construction of public infrastructure and public transport and to provide barrier-free access to communication. However, accessibility of education facilities is not expressly mentioned.

[359] Except Scotland.

MS	Support and access to education		
	Conformity		Comments
	Support	Reasonable accommodation	
EE	Yes	Partial	National legislation promotes studies through partial compensation for the additional expenses caused by the disability. The Basic Schools and Upper Secondary Schools Act provides for the adjustments of the manner the education is delivered to children with disabilities, including teaching the child based on a simplified national curriculum or one-to-one teaching. Statutes of the schools and school curricula must reflect the measures taken with regard to special needs of children with disabilities. Local governments are to provide persons with disabilities with access to public buildings (the Social Welfare Acts), however, education facilities are not explicitly mentioned. The Basic Schools and Upper Secondary Schools Act foresees adjustments in the subject matter, process, duration, workload or environment of study (e.g. teaching materials, school rooms, language of communication, including sign language).
EL	Yes	Partial	Additional support via special education teachers, special staff and auxiliary staff when so required by the nature and extent of the special educational needs of the child are ensured. The national legislation provides that the special education or care or treatment afforded to children with physical or mental disabilities in schools is provided by the insurance organisation. Law 3699/2008 provides that schools should be accessible to students with disabilities.
ES	Yes	Yes	The Constitution requires public authorities to promote a policy of integration of children with disabilities, including the right to education. It was confirmed by the court judgment that this provision requires governments to provide assistance to guarantee the realisation of this right. Moreover, national law provides for the adaptation of inclusive educational programmes as well as the programmes in the centres of special education for the most severe mental disabilities. National law provides for physical accessibility to premises or centres and ensures accessibility in new schools and the establishment of programs to progressively make old buildings accessible.
FI	Yes	Partial	According to national legislation, a pupil who has difficulties in learning or in school going is entitled to a part-time special-needs education and enhanced support in accordance with individual learning plan. Moreover, the availability of trained personal assistants and school assistants must be guaranteed. Children with disabilities have the right to have an interpreter and assistant participating in instruction, other educational and pupil welfare services, assistive devices and technology and special instruction support services free of charge. School transport is free of charge for children with severe disabilities. The requirement of reasonable accommodation does not explicitly refer to accessibility of education facilities.
FR	Yes	Partial	The Education Code provides that the State devotes

MS	Support and access to education		
	Conformity		Comments
	Support	Reasonable accommodation	
			sufficient financial and human means that are necessary for the inclusive education of children, teenagers or adults with disabilities. Moreover, national law provides for specialised assistance and requires teachers to receive specific training regarding children with disabilities. Alternative testing methods for children with disabilities are established by the Education Code. These adjustments may include in particular the granting of additional time, the presence of an assistant, adapted communication systems, the provision of adapted equipment or the utilisation by the candidate of his own adapted equipment. Families can receive an allocation for the education of the child if the child does not live in an institution. According to the Education Code, if the education establishment is not accessible to children with disabilities, it is for the local municipality to bear the costs incurred by the transport to another education institution since local municipalities are responsible for guaranteeing accessibility to educational facilities. The requirement of reasonable accommodation does not explicitly refer to accessibility of education facilities.
HU	Yes	Partial	Children/students with special needs have the right to receive pedagogical, therapeutic educational, conductive educational service corresponding to their condition within the scope of special care. Budgetary funding is available for local governments which organise school and kindergarten activities aimed at the development of abilities of the child and integration of disadvantaged children. The Disability Act ensures equal access to public services, what also can cover education facilities.
IE	Yes	Yes	National law (the Education Act 1998-2012) requires that schools use their available resources to ensure the effective education of all pupils, including children with disabilities. However, the qualifications in the Education Act threaten this right by making references to 'as far as practicable' and 'having regard to available resources'. The Education for Persons with Special Educational Needs Act 2004 (EPSEN) provides a detailed framework for making adequate provision for children with disabilities in education up to the age of 18 years. The Equal Status Acts requires service providers to do all that is reasonable to accommodate the needs of a person with a disability by providing special treatment or facilities, including also access to education. The Visiting Teacher System provides a service to young children with visual and/or hearing impairment.
IT	Yes	Partial	The Framework Law on assistance, social integration and rights of people with disabilities as well as the Law on the assessment of students and the abolition of remedial examination provides for children with disabilities various forms of assistance and support in education, such as support of specialist teachers and staff who assists them during their daily activities. Schools are required to remove all barriers (architectural

MS	Support and access to education		
	Conformity		Comments
	Support	Reasonable accommodation	
			and sensorial) and to introduce any appropriate aids and subsidies to facilitate the education and training of students with disabilities. Local authorities are required to provide free transport for people with disabilities.[360] Teachers, professionals and families establish a personalised education plans for the student with disabilities. The requirement of reasonable accommodation does not explicitly refer to accessibility of education facilities.
MT	Yes	Yes	In the light of national legislation, the competent authorities should ensure that national policy on inclusive education is being applied in all schools and that there are available the resources, tools and facilities required. According to the Education Act, there should be established specialised centers of resources which support schools and Colleges in the implementation of the policy of inclusive education, which give a service to students having specific learning difficulties. According to the Constitution, persons with disabilities and persons incapable of work are entitled to education and vocational training. The principle of reasonable accommodation is applied in all aspects of the Equal Opportunities (Persons with Disability) Act, including education.
NL	Yes	Partial	Children who need additional support because of their disability receive a personal budget for this purpose, the so called '*rugzakje*'. This financial support ensures that appropriate measures can be taken to safeguard that the child can attend mainstream school despite of its disability. The legislation provides for equal access to education. Throughout the Netherlands, some support and assistance is provided for students with disabilities attending mainstream schools. The requirement of reasonable accommodation does not explicitly refer to accessibility of education facilities.
PL	Yes	Partial	The Constitution states that public authorities should establish and support systems for individual financial and organisational assistance to pupils and students. The conditions for providing of such assistance are specified by a statute. Polish legislation does not explicitly refer to the obligation of reasonable accommodation in the context of education. However, pursuant to the Act on Education System, education system ensures: - adaptation of content, teaching methods and organisation of work to intellectual and physical capabilities of students, as well as the possibility of getting the psychological and pedagogical support and special forms of teaching; - the possibility for children and youth with disabilities to

[360] European agency for development in special needs education, Legal system – Italy, available at http://www.european-agency.org/country-information/italy/national-overview/legal-system (last accessed on 04 October 2012)

MS	Support and access to education		
	Conformity		Comments
	Support	Reasonable accommodation	
			receive education in all types of schools, according to individual developmental and educational needs and predispositions; - and personalised learning process, forms and curricula and rehabilitation activities. Special education can be conducted in mainstream schools, integration schools or classes, special schools or classes or special educational centres. Moreover, mainstream schools are obliged to develop individual plans for pupils with disabilities, based on the assessment conducted by the multidisciplinary team of experts. In order to stimulate psychomotor and social development of the child, from the moment the disability was detected, early childhood development support teams can be created in kindergartens and primary schools, both mainstream and special, and in Psychological and Pedagogical Centres. Children and youth with profound intellectual disabilities may also participate in rehabilitation-educational classes. Communes have the duty to transport pupils with disabilities to schools and special centres free of charge and to provide assistance during the transport; in case the transport and assistance is provided by parents or guardians, they should be reimbursed the costs of travel.
RO	Yes	Partial	In the light of the national legislation, the child with disability has the right to education, adapted to her/his personal needs, in order to develop her/his personality. Ministry of Education is obligated to issue the methodology for the special education system, but has not done it yet. The requirement of reasonable accommodation does not explicitly refer to accessibility of education facilities.
SE	Yes	Partial	In the light of national legislation, students should be given support and encouragement so that they can develop as much as possible. An effort should be made to compensate for differences in the students' potential to benefit from the education. Special support should be given to students who are not able to reach the education requirements. For such students, programmes of measures are developed. No special provisions on accessibility of school facilities have been identified.
SI	Yes	Yes	In the light of the Constitution, the education and training for children with disabilities are financed from public funds. The Equalisation of Opportunities for Persons with Disabilities Act establishes that people with disabilities have the right to appropriate accommodation in inclusion in rearing, educational or studies process and the right to appropriate accommodation of school or study process to their individual needs.
UK[361]	Yes	Yes	The Equality Act 2010 and the Special Educational Needs and Disability (Northern Ireland) Order 2005 requires

[361] Except Scotland.

MS	Support and access to education		
	Conformity		Comments
	Support	Reasonable accommodation	
			responsible bodies for schools to take such steps to make reasonable adjustments and to ensure that persons with disabilities are not substantially disadvantaged. Under the Education Act 1996, local authorities have a legal obligation to see that suitable education is provided for children of compulsory school age who cannot attend school because of illness. The Education Act 2011 requires the Chief Inspector of schools to consider the emotional, moral, social and cultural development of students and to assess whether children's needs are being met by the school. Section 317(3A) of the Education Act 1996 (as amended) requires all mainstream schools to have an Special Educational Needs Coordinator (SENCO), with responsibility for coordinating the provision of education for pupils with special educational needs.

Table 30: An assessment of criterion n°4 of access of children with disabilities to mainstream schools

MS	Acceptance of children with disabilities at school	
	Conformity	Comments
BE	Yes	The legislation provides for equal access to education. In Flanders, a school may refuse a child with disabilities only in consultation with the parents and the Centre for Educational Support. In the French Community, parents are free to choose the school for their child. In addition, it is possible to transfer the child from a specialised school to a mainstream school. In the German Community, support and access to mainstream school is provided, but in practice, access remains difficult. Parents of children with disabilities may also complain before the Centre for Equal Opportunity and Opposition to Racism and before the Children General Delegate or Children Commissioner, in addition to complaints submitted before courts. Hence, the criterion is fully implemented.
CZ	Partial	'The Executive Ordinance of the Education Act (2004) allows schools to refuse providing integrated education on the basis of insufficient material resources which results in *de facto* exclusion of children with disabilities from mainstream schools remaining the norm'.[362] Nonetheless, the CRC and CRPD are directly applicable in the Czech Republic, hence, the implementation is assessed as 'partial'.
DE	Partial	Only two *Länder* recognise the right to inclusive education. However, efforts are being made to ensure broader access to mainstream schools for children with disabilities, including guidelines issued by the Commissioner for Persons with Disabilities.
EE	Yes	The local government must find a solution if the school refuses the acceptance of the child at school and is not able to provide education to children with special needs. The decision as to whether a student should study in the

[362] The UN Committee on the Rights of the Child, Fifty-seventh session, 30 May – 17 June 2011, Consideration of reports submitted by States parties under art. 44 of the CRC, Concluding Observations: Czech Republic, Para 51 a).

MS	Acceptance of children with disabilities at school	
	Conformity	Comments
		mainstream programme or not is made by the Counselling Council upon an agreement by parents (the Basic Schools and Upper Secondary Schools Act).
EL	Partial	Even though no provision has been identified in the reviewed legislation referring explicitly to the acceptance of children with disabilities at mainstream schools, arguably the support they receive by special educational teachers, special staff and auxiliary staff contributes towards their acceptance by their peers and teachers. Thus, schools are required to accommodate students by providing them with educational assistance in order to welcome children with disabilities at school (Law 3699/2008). While no specific complaints mechanisms have been identified, children with disabilities may submit their complaints via the same venues as children without disabilities, i.e., at the courts and at the Children's Ombudsman.
ES	Partial	Article 74 of the Organic Law 2/2006 on Education requires administrations to guarantee schooling of children in a system of non-discrimination and inclusive education unless the special educational needs cannot be reasonably met, in which case a special education system should be provided.
FI	Partial	The Constitution guarantees equal opportunity to receive educational services. Before a decision on the special-needs education is made, the education provider must hear the pupil and his or her parent, carer or legal representative and an assessment must be made. However, complaints mechanisms are not fully implemented.
FR	Yes	The Education Code ensures that if the needs of the child or teenager with disabilities require that she/he receives educational services in a specific environment, she/he can be enrolled in another school by the competent public authority, upon proposal of the school of its choice and with the approval of her/his parents or tutor. This enrolment does not exclude that the child or teenager might return to the school of her/his choice. It was confirmed by the case-law that refusal to enrol a child with disabilities in a school entails the State's liability.[363]
HU	Yes	If a kindergarten or school refuses to enrol a child, the expert committee notifies the local notary who is entitled to take further measures. Moreover, the child's parents can choose the institution providing special education from among those recommended by the expert committee.
IE	Yes	An appeal concerning the permanent expulsion, suspension or refusal to enrol may be made to the Secretary General of the Department of Education and Skills.
IT	Partial	All day nurseries, schools, universities, including private institutions, have the obligation to accept students with disabilities. No special legal measures are foreseen in case a school refuses to accept a child with disabilities. However, as in case of violation of national law, ordinary judicial proceedings can be commenced.
MT	Partial	The Ministry of Education has a Moderating Panel which considers applications for the provision of support for children with disabilities in mainstream schools. Parents whose children do not receive the level of support expected can appeal to the Appeals Board. Those who are given support but have a complaint about the quality of the support, can seek recourse through the National Commission for Persons with Disability. Parents may complain before courts.

[363] CE 8 avril 2009, *M. et Mme L.*, n° 311434.

MS	Acceptance of children with disabilities at school	
	Conformity	Comments
NL	Yes	In the light of the national legislation, a school cannot refuse a child because of its disability or lack of appropriate equipment. As from August 2014, the school has the responsibility to find another school, within the region of cooperation with other schools, that will accommodate the child, when it refuses to accept the child because of its disability or lack of appropriate equipment.
PL	Yes	Under Polish law, mainstream schools are obligated to enrol every child living in their districts. If they refuse, general rules of administrative procedure apply. In matters relating to the education system, children and parents (and relevant organisations) can avail themselves of an administrative appeal to the educational superintendent against opinions issued by the psychological-pedagogical counselling centres or to the local administration bodies in administrative and financial matters. All administrative decisions can be appealed against to the administrative courts. In addition, parents and children may seek legal advice and support of the Commissioner for Civil Rights Protection, the Ombudsman for Children's Rights, or a specialised NGO.
RO	Partial	The abusive exclusion of a child from a school can be appealed in front of the courts of law, but usually the procedures are lengthy, therefore the practical efficiency of such step can be very limited.
SE	Yes	The municipality investigates and decides whether a child should attend a school for children with learning disabilities. Such investigation should be carried out in consultation with the child's parents. If the parents are against placing the child in a special school, the child should be placed in the mainstream school unless there are exceptional reasons with regard to the child's best interests. It is also possible for the child to attend any of the schools (mainstream or special school) for a trial period of six months.
SI	Yes	The procedure regarding the placement of a child with disability at the National Education Institute is regulated under the Placement of Children with Special Needs Act.
UK[364]	Yes	Pursuant to the School Standards and Framework Act 1998, the School Admissions and the School Admission Appeals codes place requirements on school admission authorities and governing bodies to ensure that their admission arrangements are fair and do not disadvantage a child from a particular social or racial group, or a child with a disability or special educational needs.

[364] Except Scotland.

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