

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **C**
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



**Country Report on Sweden
for the Study on
Member States' Policies for
Children with Disabilities**

STUDY



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POLICY DEPARTMENT C: CITIZENS' RIGHTS AND
CONSTITUTIONAL AFFAIRS

CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

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Abstract

This study looks at the situation of children with disabilities in Sweden to identify the gaps in the legal frameworks and its implementation, the obstacles faced by children with disabilities and best practices. This country study is part of a larger study which analyses 18 Member States. Based on a comparative analysis of the country studies, the report 'Study on Member States' Policies for Children with Disabilities' provides some recommendations for EU action to enhance the situation of children with disabilities.

This document was requested by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs.

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LIST OF ABBREVIATIONS

Art. Article

Ch. Chapter

Charter The Charter of Fundamental Rights of the European Union

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

ECHR Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms

EU The European Union

S. Section

TEU Treaty on the European Union

TFEU Treaty on the Functioning of the European Union

UN United Nations

EXECUTIVE SUMMARY

The situation of children with disabilities in Sweden is relatively good and the legal framework in this area affords protection from discrimination and gives the right to assistance. The Government periodically adopts a new strategy for the implementation of disability policy, with the current one running from 2011 to 2016. Within this strategy, the Swedish Agency for Disability Coordination has been tasked by the Government with providing information about how children with disabilities can influence decisions that affect them. The strategy also aims at improving accessibility to school facilities, increasing knowledge about disabilities and tailoring education to the specific needs of the child.

The literature in the area of disabilities among children in Sweden is scarce. However, several studies and surveys covering this area have been conducted by authorities and health services. These surveys show that some of the biggest issues that children with disabilities face include problems with inclusion relating to lack of access to the entire school environment, gender related issues (such as boys getting more attention and receiving more interventions e.g. assistance than girls), lack of resources for psychiatric care, and difficulties for young offenders with psychiatric problems to receive appropriate care.

There are no institutions in Sweden for children with disabilities. Instead, children primarily live with their families. Families have the right to receive assistance in the form of advice and personal support, as well as the right 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.

Interviews with stakeholders, such as NGOs and authorities, show that there is need for action with regard to letting children be heard in all areas of society. However, in general, the stakeholders' view is that the situation of children with disabilities is relatively good and that they only start facing problems once they turn into adults. Most children with disabilities attend mainstream schools. Those who have severe intellectual disabilities attend special schools which do not give them the requisite skills to attend higher education. This leads to exclusion in the job market in the future.

Children with disabilities enjoy protection in Sweden through several legal acts, mainly in the areas of education, discrimination within education, social services, health care and right to assistance. The research shows that although children with disabilities enjoy protection, there are still some gaps to be filled and areas that need improvement. The NGO stakeholders interviewed for the purpose of this study have suggested that in Sweden barriers to realising the right to access should be implemented as grounds of discrimination, as persons with disabilities do not enjoy full access to all areas of the society.

Both CRPD and CRC have been ratified by Sweden; however, they have not been implemented. Swedish legislation provides for legal protection of children with disabilities, in line with most of the relevant provisions of the Conventions. In the best interests of the child, non-discrimination, children participation, freedom from violence, right to family life, access to assistance, and right to education and inclusion are all ensured in national law. Although there are no specific provisions in Swedish law with regard to the evolving

capacities of the child, these are ensured to some extent in the Children and Parents Code which stipulates that the custodians of a child have a responsibility for the child's circumstances and for ensuring that the needs of the child are satisfied.

Interviews with stakeholders, such as NGOs and authorities, have shown that there is an interest from their side for Sweden to implement the Convention on the Rights of the Child.

INTRODUCTION

In December 2010, the European Union (EU) became a party to the United Nations Convention on the Rights of Persons with Disabilities (CRPD). In doing so, the EU recognised the challenges persons with disabilities face in securing their rights and highlighted the need for EU actions in that to be firmly on the agenda of the European Union and its Member States.

Children with disabilities are already vulnerable because they are children. Their disability renders them particularly vulnerable. As such, they deserve specific safeguards and protection from the EU and its Member States.

The key legal framework for EU action in this field is the EU Decision ratifying the CRPD, the requirement under Article 10 TFEU for the EU to combat discrimination based on disability as well as the EU objective of promoting the rights of the child found under Article 3 TEU. This framework provides the EU with a unique position to push forward for further protection of the rights of children with disabilities, and to develop legislative or policy initiatives. The UN Convention on the Rights of the Child (CRC) provides another basis for action in this area.¹

This country report for Sweden is part of a larger study which aims at providing the European Parliament with an overview of the situation of children with disabilities in selected Member States, with a view to evaluating the need for European legislation to enhance the rights of children with disabilities in the European Union. The project reviews the existing legal, policy and institutional frameworks in 18 Member States. Each country report analyses the implementation of international principles and rights stemming from the CRPD and the CRC to uncover any particular issues that necessitate further policy and legislative actions at national and EU level. The results from the country reports also form the basis for the comparative analysis in the report 'Study on Member States' Policies for Children with Disabilities'.

The key elements deriving from the CRC and CRPD, with regard to children with disabilities include:

- The obligation to act in the best interests of the child;
- The right to non-discrimination;
- The consideration of the evolving capacities of the child;
- The right to participate/right to be heard;
- The right to be free from violence;
- The right to family life;
- The right to assistance;
- The right to education, including inclusive education.

Given their ratification of both UN Conventions, Member States are obliged to take

¹ All 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).

necessary measures to ensure the respect of the rights set forth for each child or person with disabilities within their jurisdiction. Member States should take the appropriate measures to ensure that children are protected against all forms of discrimination or violence, including adopting all appropriate legislative, administrative and other measures for the implementation of those rights. Moreover, the protection of the rights of children with disabilities should be mainstreamed in all policies and programmes in accordance with Article 4(3) of the CRPD on the involvement of persons with disabilities in all decision-making processes.

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 Sweden. 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.

Each country report is structured as follows: it first looks at the situation of children with disabilities at the national level. It describes the national legal and institutional framework for the protection of children with disabilities and analyses national implementation of principles and rights developed in the UN Conventions (CRC and CRPD). It then considers specific issues relevant to the situation of children with disabilities, including children as suspects, gender issues, violence and education. Finally, the report covers the mechanisms in place to implement the legal framework, highlighting gaps, problems, best practices, and recommendations found by the literature or via interviews with stakeholders.

1. OVERVIEW OF THE SITUATION AND CHALLENGES FOR CHILDREN WITH DISABILITIES IN SWEDEN

KEY FINDINGS

- National action focuses on the following areas: harassment and bullying at school, lack of expertise of teachers, gender issues, and lack of resources.
- The following gaps, problems and challenges have been identified: harassment and bullying at school mainly because of the lack of understanding from other children; teachers do not have enough expertise knowledge about different disabilities; girls are more often misdiagnosed or underdiagnosed than boys; and a lack of resources for certain facilities for children with disabilities.

1.1. Introduction to the situation of children with disabilities in Sweden

Swedish Government policy regarding all children, including children with disabilities, is based on the UN Convention of the Rights of the Child, which was ratified by Sweden in 1990 and entered into force shortly thereafter. The policy is oriented towards the following principles:

- No child should be discriminated against based on his/her national, ethnic or social origin, gender, religion, disabilities and alike.
- The child's best interests should always be the guiding principle in all decision making and all measures applying to children and youth.
- Children should be allowed to develop at their own pace and based on their own merits.
- Children should be given the opportunity to express their opinions on issues that affect them.²

1.2. Review of issues and identification of possible regulatory gaps

According to a study³ conducted by the Swedish National Institute of Public Health (*Folkhälsoinstitutet*), children with disabilities are less satisfied in school and are more exposed to bullying than children without disabilities. Children with neuropsychiatric disorders were less satisfied than those with physical disabilities. Furthermore, the study showed that children with disabilities have poorer health and are experiencing more

² 'Ambition and responsibility. National Strategy for the development of the society's efforts to individuals with mental illnesses and disabilities' (*Ambition och ansvar. Nationell strategi för utveckling av samhällets insatser till personer med psykiska sjukdomar och funktionshinder*), the Final report of the National Psychiatry Coordination, SOU 2006:100, Stockholm 2006, p.360.

³ 'The health of children and youth with disabilities' (*Hälsan hos barn och unga med funktionsnedsättning*), the national mapping of children and youth psychological health year 2009, A 2011:08, available at: <http://www.fhi.se/PageFiles/12282/A-2011-08-Halsan-hos-barn-o-unga-m-funktionsnedsattning-1-2.pdf>.

intellectual and psychosocial problems and stress-related symptoms than those without disabilities. However, the study also shows that, overall, most children with disabilities are happy in school.

Two surveys⁴ done by the Swedish Schools' Inspectorate (*Skolinspektionen*) show that Swedish **schools are not sufficiently adapted to children with disabilities**.⁵ One of the problems relates to staff expertise and ability in handling children with disabilities, especially expertise in how disabilities affect learning. Another problem relates to inclusion; children with disabilities do not always get access to their entire school environment. For example wheelchair bound children may not have lift access to upper floors. The surveys also show that in most cases the school facilities and teaching materials are not adapted to children with disabilities. The teachers do not have sufficient expertise and knowledge about disabilities and often do not follow the recommendations they have been given regarding their students with disabilities. No specific training courses for teachers in mainstream schools have been identified. In addition, the teachers often lack procedures ensuring that students with disabilities receive the same education as other students. There are no mechanisms in place to ensure that students with disabilities get equal education at municipal level as monitoring takes place at individual level. Finally, the surveys show that in some schools students without disabilities show little understanding regarding the needs of students with disabilities.

According to a study⁶ done by the National Board of Health and Welfare (*Socialstyrelsen*) on interventions pursuant to the acts regarding persons with disabilities fewer girls than boys receive assistance. In 2010, from children up to 10 years of age, 1118 girls received interventions compared to 2119 boys. In the age group from 11 to 20, 5106 girls received interventions compared to 8648 boys that same year.⁷ Another problem pointed out by the study is that **for some disabilities**, as in the case of autism, **girls are often underdiagnosed and misdiagnosed**. A study conducted at Sahlgrenska Hospital in Gothenburg showed that only 1 in 10 girls with autism had been correctly diagnosed before being referred to the neuropsychiatric clinic. Instead, they had been diagnosed with anxiety, depression, family related or adjustment problems.⁸ Wrong diagnosis affects the possibilities to obtain assistance in accordance with the law as well as getting the right care and treatment.

Another problem that has been pointed out in the literature is the **lack of resources for health care facilities** that deal with children with disabilities, such as the Swedish Authority of Child and Youth Psychiatry (*Barn- och ungdomspsykiatri*) which gives care to seriously ill children and youth who require extensive and advanced psychiatric care. The number of beds available at this authority has fallen by 60 per cent since 1996. Currently,

⁴ 'The school situation for students with disabilities in elementary school' (*Skolsituationen för elever med funktionsnedsättning i grundskolan*), Report 2009:6, available at: <http://www.skolinspektionen.se/Documents/Kvalitetsgranskning/Elever-medfunktionsnedsattning/Skolsituationen-elever-med-funktionsnedsattning.pdf> and 'The school situation for students with disabilities in upper secondary school' (*Skolsituationen för elever med funktionsnedsättning i gymnasieskolan*), Report 2010:4, available at <http://www.skolinspektionen.se/Documents/Kvalitetsgranskning/elever-med-funktionsnedsattning-gymn/webb-slutrapport-funktionsnedsattning-gymnasiet.pdf>.

⁵ The surveys are limited to students with seeing and hearing impairments and physical disabilities (students which use wheelchairs).

⁶ 'Interventions for women and men with disabilities. Survey and analysis of gender differences within the Act on support and service to certain disabled persons and the Social services Act' (*Insatser till kvinnor och män med funktionsnedsättning. Kartläggning och analys av könsskillnader inom LSS och SoL*), the National Board of Health and Welfare, 2011-12-22, available at: <http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/18538/2011-12-22.pdf>.

⁷ *Ibid.*, p.14.

⁸ *Ibid.*, p.29 and 30.

there are only 157 beds, with some counties not having any allocation at all.⁹ According to a report of the National Psychiatry Coordination, there is a small number of children with severe psychiatric problems who do not receive care by the child psychiatry services, either due to lack of space or because of absence of in-patient units able to deal with them. In some cases, these children are left to the care of other health care institutions or to their families.¹⁰ Several other surveys and reports describe the difficulties of getting appropriate care for young offenders with psychiatric problems who behave aggressively.¹¹ Although this problem has been highlighted by several Governmental inquiries, in 2006 the National Board of Institutional Care reported that nothing has been done to address these issues.¹²

⁹ 'A survey of the psychiatric day treatment. Child and youth psychiatry' (*Kartläggning av den psykiatriska heldygnsvården. Barn- och ungdomspsykiatri*), Sveriges Kommuner och Landsting, Diarienumr: 08/37/48, 2011. p.3.

¹⁰ 'Ambition and responsibility. National Strategy for the development of the society's efforts to individuals with mental illnesses and disabilities' (*Ambition och ansvar. Nationell strategi för utveckling av samhällets insatser till personer med psykiska sjukdomar och funktionshinder*), the Final report of the National Psychiatry Coordination, SOU 2006:100, Stockholm 2006, p.368.

¹¹ 'Care and support to mentally disordered offenders' (*Vård och stöd till psykiskt störda lagöverträdare*), SOU 2006:91, p.105 and 106.

¹² *Ibid.*

2. OVERVIEW OF THE LEGAL FRAMEWORK IN SWEDEN

KEY FINDINGS

- Sweden has a dualist legal system where international agreements are not directly applicable. Sweden has ratified the CRC and CRPD but they have not been incorporated into Swedish law.
- There are very few specific provisions relating to children with disabilities. Most of the legislation focuses either on people with disabilities or on children. Furthermore, there are no general rules in this area. The respective areas of interest, such as education, discrimination or social services, are governed by specific laws and regulations.

2.1. General overview of the national legal and institutional framework

The Swedish Constitution (*Grundlagen*) consists of four fundamental laws: the Instrument of Government, the Act of Succession, the Freedom of the Press Act and the Fundamental Law on Freedom of Expression.

There are four main sources of Swedish law: legislation, preparatory legislative materials (i.e. Government Bills), case law and literature. Legislation is the primary source of law, while preparatory legislative materials, case law and literature are used to interpret the law. Government bills are the most important preparatory documents when interpreting the law, which is unique for Sweden. However, case law from the supreme courts is more important in terms of interpreting older laws.

Sweden has a dualist legal system; international agreements are not directly applicable. They need to be either incorporated into Swedish law, i.e. stated in an act or ordinance that the provisions of the agreement are directly applicable in Sweden, or transformed, i.e. the text of the agreement is translated into Swedish and incorporated into the code of statutes or adopted as a Swedish act or ordinance. Sweden has ratified both the CRPD and the CRC; however, they have not been incorporated into Swedish law.

Sweden has two parallel types of court: general courts, which deal with criminal and civil cases; and general administrative courts, which deal with cases relating to public administration. The general courts are organised in a three-instance system: district courts, courts of appeal and the Supreme Court. Likewise, the administrative courts consist of county administrative courts, administrative courts of appeal and the Supreme Administrative Court. No public authority, not even the Parliament (Riksdag), may determine how a court of law shall adjudicate or otherwise apply a rule of law in a particular case.

The Chancellor of Justice, the General Prosecutor, the central administrative boards and the county administrative boards are accountable to the Government. Other state administrative authorities also are accountable to the Government, unless they fall under the Riksdag's authority according to the Instrument of Government (i.e. the Swedish

Constitution) or by virtue of other laws, such as the Act with Instructions for Parliamentary Ombudsmen. Administrative functions may be entrusted to a local authority or may be delegated to a limited company, association, foundation, collective, registered religious community or any part of its organisation, or to a private person. If such a function involves the exercise of public authority, delegation is made by virtue of law.

There are three levels of Swedish government: national, county and municipal. The central government is represented in the counties by County Administrative Boards whose function is to implement central policies and decisions. Local self-government is exercised by Sweden's municipalities and 21 county councils which are responsible for public services in a variety of welfare sectors. To a large extent, the municipalities are independent.

National boards and agencies are semi-independent. The Government may not instruct the boards as to how to deal with a particular case. The boards are completely free to take decisions within the framework of general principles and legislation. At county level, there are also a number of regional offices of national boards.

2.2. Children with disabilities specific legal and institutional framework

2.2.1. Legal framework

Children with disabilities enjoy legal protection in Sweden both in the Constitution, which prohibits discrimination on the grounds of disabilities, as well as in sectoral laws and regulations. The Swedish Constitution stipulates that the “public institutions shall promote the opportunity for all to **attain participation and equality** in society and for the rights of the child to be safeguarded. The public institutions shall combat discrimination of persons on grounds of [...] disability, [...] age or other circumstances affecting the individual” (ch.1 s.2 of the Instrument of Government). Furthermore, the overall goal of Swedish disability policy is to close the gap between people with disabilities, including children, and people with no disabilities.

In June 2011, the Swedish Government adopted a new strategy for the implementation of disability policy for 2011-2016.¹³ Within this strategy, the Swedish Agency for Disability Coordination (*Handisam*) has been tasked with providing information about how children and young people with disabilities can influence decisions that affect them. It also aims at improving the accessibility to school facilities for children with disabilities. Another targeted area of improvement is increasing knowledge about disabilities and tailoring education to the child's needs.¹⁴

Sweden has ratified both the CRPD and the CRC; however, these conventions have not been incorporated into Swedish law and are not directly applicable in Sweden. The most important legislation relating to children with disabilities is the following:

- **The Health and Medical Services Act (1982:763)** stipulates that the county councils, which are responsible for all publicly-financed health care, have an obligation to offer services tailored to the needs of children with disabilities. Such

¹³ 'A strategy for the implementation of disability policy, 2011-2016' (*En strategi för genomförande av funktionshinderpolitiken, 2011-2016*), the Ministry of Health and Social Affairs, 2011, available at: <http://www.regeringen.se/content/1/c6/17/12/69/847e537d.pdf>.

¹⁴ Ibid., p.22.

services include habilitation, aid to people with disabilities and interpreter services to deaf, blind and deafblind children. The aim of habilitation is to get the best possible performance in all aspects of a child's life through medical interventions, housing adaptation and aid to promote motor, linguistic, psychological and educational development.¹⁵

- **The Social Services Act (2001:453)** stipulates that the municipalities and the social services have the responsibility to give assistance and support to children with disabilities. The objective of the assistance pursuant to this act is that the families of children with disabilities achieve a reasonable standard of living. After conducting an investigation, it is up to the assistance officer at the social services to decide whether a family needs the assistance. It can include a service to accompany children with disabilities, contact person, housing with special services and subsidies for special household equipment.
- The objective of **the Act (1993:387) concerning Support and Service for Persons with Certain Functional Impairments** is that children with disabilities are able to live their lives just like other children. The families of children with disabilities can apply for assistance with social services pursuant to the act. However, not all children with disabilities are covered by this act. It applies to persons with intellectual disabilities, autistic persons or those who have a condition resembling autism, or "who have some other lasting physical or intellectual functional impairments which are manifestly not due to normal ageing, if these impairments are major and cause considerable difficulties in daily life and, consequently, an extensive need for support or service" (s.1 of the Act).

It is up to the assistance officer to decide on the measures to be taken. Such measures include advice and other personal support that requires special knowledge, help from a personal assistant, a service to accompany children with disabilities, help from a personal contact, relief service at home, short stay away from home, short period of supervision for schoolchildren over the age of 12 outside home during school day and holidays, and arrangements for living in a family home or in residential arrangements with special services for children and young people who cannot stay at their parents' home (s.9 of the Act).

- **The Education Act (2010:800)** stipulates that schools have an obligation to provide children with special support for their development. The support must be tailored to the child's needs and circumstances. If adequate support cannot be given in a regular school, the municipality is obliged to offer the child with disabilities place in a specialised school. Support must be provided from the time the child enters preschool, throughout the elementary and high school. The school shall investigate what kind of support the child needs and develop an action plan for the child. The child and their care takers have the right to participate in the development of the action plan. Special elementary schools and high schools (*särskola*) are for children with significant and persistent cognitive impairments. The school curriculum differs slightly from regular schools with more practical courses offered. An individual study plan is developed for each child. There are also special schools (*specialskola*) for deaf children, deafblind children, blind children who also have other impairments, and children with language impairments. The education in such schools must be equivalent to the education given in regular schools.

¹⁵ 'Social support for children with disabilities' (*Samhällsstöd till barn med funktionsnedsättning*), information on the website of the Swedish health care system, available at: <http://www.1177.se/Regler-och-rattigheter/Hjalp-till-barn-med-funktionsnedsattning/>.

- The purpose of the **Discrimination Act (2008:567)** is to “combat discrimination and in other ways promote equal rights and opportunities regardless of [...] disabilities, [...] or age” (ch.1 s.1 of the Discrimination Act). The Act prohibits discrimination in school against children participating or applying to the school.

Education providers are obliged to conduct goal-oriented work within the framework of their activities to actively promote equal rights and opportunities for all the pupils regardless of sex, disabilities, etc. Schools are also obliged to take measures to prevent any pupil from being subjected to harassment associated with disabilities. Each year, schools have to draw up a plan containing an overview of the measures needed to promote equal rights and opportunities and to prevent any harassment based on sex, disabilities, etc.

Furthermore, discrimination is prohibited with regard to health care and other medical services, social services activities and support, social insurance and the related benefit system, and state financial aid for studies. The Equality Ombudsman supervises compliance with the act.

In general, it can be said that the overall responsibility for legislation, general planning, distribution and social insurance lies with the central government, while municipalities (local authorities) are responsible for social services and county councils (regional government) are responsible for health care.¹⁶ The municipalities and county councils operate under the framework legislation which sets the overall principles and objectives of the activities. However, they are free to interpret the law and develop their own guidelines in this area.

2.2.2. Institutions and authorities

In Sweden, issues relating to children with disabilities are cross-sectoral, which means they are dealt by government bodies and different authorities within their areas of responsibility. These bodies and authorities have the obligation to safeguard the rights and interests of people with disabilities, including children, through co-ordinating, supporting and promoting issues relating to disabilities within their areas of responsibility.¹⁷

Matters relating to children with disabilities fall under the responsibility of the following institutions:

- The **Ministry of Health and Social Affairs**. The ministry is tasked with initiating, driving forward and coordinating processes to ensure that the spirit and intentions of the CRC are taken into consideration in all aspects of governmental policy and all community activities relating to children and youth.¹⁸ Coordination of disability policy within the Government is done by the Division for Family and Social Services of the Ministry of Health and Social Affairs. The Division also acts as a focal point for matters related to the CRPD. Furthermore, there are contact persons regarding children's rights in most of the ministries.

¹⁶ 'Swedish disability policy – service and care for people with functional impairments', the National Board of Health and Welfare, 2009, available at: http://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/8407/2009-126-188_2009126188.pdf.

¹⁷ Ibid.

¹⁸ 'Sweden's fifth periodic report to the UN Committee on the Rights of the Child 2007-2012' (*Sveriges femte periodiska rapport till FN:s kommitté för barnets rättigheter om barnkonventionens genomförande under 2007-2012*), p.4.

- The responsibility for providing support to children with disabilities falls under the **municipalities and county councils** where the child lives. The **social services** in the municipalities work towards ensuring everyone's equality and active participation in society. While taking measures, the child's best interests are to be taken into special consideration. The social welfare board is required under the law to pay special attention to children who show signs of adverse development.
- **Education providers** are responsible for preventing discrimination on the grounds of disabilities and arranging special support for the development children who need such support.
- The **Equality Ombudsman** supervises compliance with the Discrimination Act and tries in the first instance to induce those to whom the act applies to comply with it voluntarily. The Equality Ombudsman may also bring a court action on behalf of a person who consents to this.
- The **Ombudsman for Children** represents children with regard to their rights and interests based on the CRC. The Ombudsman is also tasked with monitoring how the CRC is complied with in Sweden and works towards ensuring that government agencies, county councils and municipalities implement it. The Ombudsman submits annual reports to the government analysing and proposing improvements for children, including recommending new legislation in the area of children's rights. The Ombudsman is tasked by law with providing information and analysing issues that are relevant to children's rights and interests.¹⁹ The Ombudsman represents the rights of all children, including children with disabilities.
- **The Swedish Agency for Disability Policy Co-ordination (*Handisam*)**, according to the Swedish disability policy, is tasked with coordinating the work on implementing and following up the disability policy, and helping to remove obstacles faced by people with disabilities.
- **The National Board for Health and Welfare** is responsible for the supervision and granting of permits under the Social Services Act (such as permits for special assistance homes) and the Act concerning Support and Service for Persons with Certain Functional Impairments (such as permits for activities involving personal assistance).
- **The Swedish Institute of Assistive Technology** is a national resource centre for assistive technology and accessibility for persons with disabilities which is run by the Ministry of Health and Social Affairs and the Swedish Association of Local Authorities and Regions.

2.2.3. Definitions

The Discrimination Act provides a **definition of disability**. According to the act, disability means "permanent physical, psychosocial or intellectual limitation of a person's functional capacity that as a consequence of injury or illness existing at birth, has arisen since then or can be expected to arise" (ch.1s.5 of the Discrimination Act).

The **definition of a child** can be found in several different acts. According to the Children and Parents Code (1949:381) a person "who is under 18 years of age (underage) is a

¹⁹ See the website of the Ombudsman for Children, available at: <http://www.barnombudsmannen.se/english/about-us/>.

minor and may not exercise control of their property or assume relations [...]” (ch.9 s.1 of the Children and Parents Code). Likewise, according to the Education Act, a child is “every person under 18 years of age” (ch.1 s.10 of the Education Act). The Social Services Act stipulates that a child is “every person under 18 years of age” (ch.1 s.2 of the Social Services Act).

3. LEGAL FRAMEWORK AND IMPLEMENTATION ASSESSMENT

KEY FINDINGS

- The implementation of CRPD and CRC rights and principles is overall of good quality. The Swedish legislation does not contain any provisions regarding respect for the evolving capacities of the child.
- The main issues faced by children with disabilities in Sweden are: lack of relevant training of those dealing with children with disabilities who are suspects of crime; increased likelihood of falling victim to violence and harassment as well as sexual abuse, lack of accessibility, restrictions with respect to the right to receive school bus service, restricted participation in society, and a “hierarchy” with respect to different kinds of disabilities.

3.1. Implementation of the provisions of the CRPD and CRC

3.1.1. Best interests of the child (Art. 3 CRC; Art. 7 CRPD)

There are several provisions in Swedish legislation referring to the best interests of the child. The Constitution states that the individual's well-being should be the fundamental objective of public activity (ch.1 s.2 of the Instrument of Government). This principle applies both to adults and children. The Children and Parents Code requires the child's interests to be crucial to any decision on custody, residence and concerning the child's contact with a parent (ch.6 s.2a of the Children and Parents Code).

The principle on the best interests of the child is reflected in the processes of decision making and legislation which concern children.²⁰ Some laws explicitly refer to the best interests of the child, e.g. legislation on issues such as custody, visitation rights, adoption, the name of the child (i.e. the child should be given a name which is not offensive or may lead to inconvenience for the child), immigration and social services. Other legislation does not explicitly refer to this principle, but where, nevertheless, the best interests of the child are reflected. For example, the legislation on care of young persons does not explicitly refer to the best interests of the child but stipulates that a young person should receive assistance if there is a risk of harm to his or her health or development.

According to the Swedish Government, inserting a provision on the best interests of the child in relevant legal acts is not always the best solution. Thus, according to the Government, it should be considered on a case to case basis whether the principle of the best interests of the child should be included or some other method should be chosen instead.²¹

The Social Services Act stipulates that when measures concern children, special consideration must be given to the best interests of the child (ch.1 s.2 of the Social Services Act). Furthermore, the National Board of Health and Welfare has developed

²⁰ Government Bill, 1997/98:182, p.14.

²¹ Ibid.

guidelines on how social services can implement the provision on the child's interests in the documentation of a case and in considerations whether offences against children have to be reported to the police.²² The best interests of the child must also be the guiding principle in the education and related activities under the Education Act (ch.1 s.9 of the Education Act), as well as in all the measures under the Act Concerning Support and Service for Persons with Certain Functional Impairments (s.6a). New guidelines have been issued providing guidance on how social services can ensure the best interests of the child in the decision making process and in their daily work.²³

The best interests of the child should also be the leading principle during criminal proceedings. This is ensured in different acts, such as the Ordinance on Preliminary Crime Investigations (*Förundersökningskungörelse* (1947:948)) which stipulates that the best interests of the child should be considered when questioning children, whether they are victims, witnesses or suspects of a crime (s.17).

When executing a court decision under the Children and Parents Code (e.g. decisions on custody or visitation rights), the child's best interests should be of primary concern. If the child has reached a certain age or maturity, a court decision may only be executed against the child's will if it is in the best interests of the child. However, if it is manifest that the execution of a court decision is not in the best interest of the child, the court should refuse the execution of the decision (ch.21 of the Children and Parents Code).

3.1.2. Non-discrimination (Art. 2 CRC; Arts. 3 and 5 CRPD)

The Swedish Constitution stipulates that the "public institutions shall promote the opportunity for all to attain participation and equality in society and for the rights of the child to be safeguarded. The public institutions shall combat discrimination of persons on grounds of [...] disability, [...] age or other circumstances affecting the individual" (ch.1 s.2 of the Instrument of Government).

Discrimination on the grounds of sex, transgender identity or expression, ethnicity, religion or other belief, disabilities, sexual orientation or age is prohibited under the Discrimination Act in Sweden. Discrimination includes **direct discrimination** – "that someone is disadvantaged by being treated less favourably than someone else is, has been or would have been treated in a comparable situation" (ch.1 s.4 point 1); **indirect discrimination** – "that someone is disadvantaged by the application of a provision, a criterion or a procedure that appears neutral but that may put people [...] at a particular disadvantage" (ch.1 s.4 point 2); **harassment** – "conduct that violates a person's dignity and that is associated with one of the grounds of discrimination" (ch.1 s.4 point 3); and **instructions to discriminate** – when a person "orders or instructs to discriminate against someone in a manner referred to in points 1-4 a person who is in a subordinate or dependent position or someone who has committed herself or himself to performing an assignment for that person" (ch.1 s.4 point 5).

The national law does not fully ensure that **reasonable accommodation**²⁴ is available for

²² The guidelines are available on the website of the National Board of Health and Welfare at: <http://www.socialstyrelsen.se/nyheter/2012juni/socialstyrelsenvaglederombarnetsbasta>.

²³ The 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>.

²⁴ 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]

children with disabilities allowing them to fully enjoy their rights. However, it ensures some forms of reasonable accommodation with regard to education and accessibility. To start with, the law stipulates that proper access to higher education should be ensured through reasonable measures (ch.2 s.5 of the Discrimination Act), but this provision only applies to higher education (e.g. university education) and, thus, does not apply to schools that children attend. Then, there are some provisions, such as the Planning and Building Act (*Plan- och bygglag* (2010:900)), which stipulate that buildings should be accessible for persons with reduced mobility and orientation (ch.8 s.1), and that they should have technical features which are necessary for such accessibility (ch.8 s.4). Moreover, most municipalities have implemented accessibility plans (*tillgänglighetsplaner*) in order to make municipal facilities and public spaces more accessible to persons with disabilities. However, a 2012 report by *Handisam* on the accessibility of authorities found that only 1 authority out of 4 meets at least 10 of the 13 accessibility criteria developed by *Handisam*.²⁵ On the positive side, the report found that more and more authorities fulfil the international criteria for the web accessibility and that in recent years more measures have been implemented to improve accessibility for persons with visual impairments, cognitive disorders, allergy and hypersensitivity than before.

3.1.3. Evolving capacities of the child²⁶ (Art. 5 CRC and Art. 3 CRPD)

There are **no specific provisions** in Swedish law regarding evolving capacities of the child. However, according to the Children and Parents Code, the custodians of a child have a responsibility for the child's personal circumstances and must ensure that the needs of the child are satisfied. In 2009, the Swedish Government adopted a national strategy for a developing parental support. The overarching objective of the strategy is to offer parents of children up to 17 years of age parental support. The objective of the parental support is to promote children's health and positive development.²⁷ In addition, the Social Services Act requires the social welfare committees in municipalities to promote, in close co-operation with families, a comprehensive personal development and favourable physical and social development of children and young persons, and to ensure that children and young persons who have shown signs of developing in an unfavourable direction receive the protection and support that they need (ch.5 s.1). The Education Act stipulates that education shall promote children's development and learning (ch.1 s.4).

3.1.4. The right to be heard/to participate (Art. 12 CRC; Arts. 7 and 30 CRPD)

Children's participation and the right to be heard are ensured in several areas, such as

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' (Article 2 CRPD). 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'.

²⁵ '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/>.

²⁶ The concept of evolving capacities of the child establishes that as children acquire enhanced competencies and experience, there is a reduced need for direction and a greater capacity for children to take responsibility for decisions affecting their lives. In light of the CRC, the concept of evolving capacities of the child entails that parents (or persons legally responsible) 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. See the report 'Study on Member States' Policies for Children with Disabilities' for more details on this concept.

²⁷ 'National strategy for a developed parental support – a win for everyone' (*Nationell strategi för ett utvecklat föräldrastöd – En vinst för alla*), the Ministry of Health and Social Affairs, 2009, available at: <http://www.regeringen.se/content/1/c6/12/35/03/2c7aef96.pdf>.

custody matters, visitation rights, adoption, and matters under the Social Protection Act and the Care of Young Persons Act. The Act concerning Support and Service for Persons with Certain Functional Impairments stipulates that the activities concerned should be based on respect for the individual's right to self-determination and privacy, and it should be, as far as possible, ensured that the person concerned is allowed to influence and jointly determine the measures to be undertaken (s.6).

Furthermore, when a measure concerns a child with disabilities, the child should **receive relevant information and be given the opportunity to voice their opinions**. The child's views should be given due weight in accordance with their age and maturity (s.8). The Education Act stipulates that the child's opinion should be as far as possible clarified and that children should have the opportunity to express their views in all matters affecting them (ch.1 s.10). This act also states that children should be given influence over their education and should be encouraged to take active part in efforts to further develop their training and to be kept informed of matters affecting them (ch.4 s.9). Schools are required to have **a forum for consultation with the children** (ch.4 s.13). Children who need special assistance should also be given the opportunity to express their views on the programme of measures developed for them by the school (ch.3 s.9).

3.1.5. Freedom from violence (Art. 19 CRC; Art. 16 CRPD)

The Children and Parents Code contains a ban on corporal punishment (ch.6 s.1). Furthermore, social services have the responsibility to protect children who are mistreated or in risk of being mistreated (ch.5 s.1 of the Social Services Act). The child has also the right to protection if he or she is a victim of a crime (ch.5 s.11 of the Social Services Act). Several studies and surveys have been conducted in Sweden regarding violence against children, including a survey by the Ombudsman for Children, which was a part of the Ombudsman's annual report to the Government in 2012.²⁸ The survey says, among other things, that children with disabilities often feel harassed and bullied at school.

Protection from sexual exploitation of children is ensured in the Criminal Code, which sets more severe penalties for sexual crimes when children are involved. Violence against a child is not listed as an aggravating circumstance in the Criminal Code. However, it is an aggravating circumstance to abuse someone on account of their defenceless position or difficulty to defend himself or herself. This includes children. Furthermore, it is considered as an aggravating circumstance to endanger the child's security and safety in relation to the child's close relative, which would involve violence against that relative (ch.29 s.2 Criminal Code). There are no specific provisions on violence against children in the Criminal Code. However, if the violence is directed against a child, it is often considered as a serious crime which foresees a more severe penalty. Furthermore, there is a prohibition of corporal punishment against children in the Children and Parents Code, which also stipulates that children are entitled to "care, security and a good upbringing" and that children should be treated with respect and may not be subjected to corporal punishment or other degrading treatment (ch.6 s.1).

²⁸ The report is available at: <http://www.barnombudsmannen.se/publikationer/bestall-och-ladda-ner/bakom-fasaden---barn-och-ungdomar-i-den-sociala-barnavarden-berattar/>.

3.1.6. Right to family life (Art. 9 CRC; Art. 23(3) CRPD)

In Sweden, most children with disabilities live with their families. There are no institutions as such for children with disabilities. However, those children who cannot live at home (e.g. because they attend school in a different area or because they have extensive medical needs) can live in so called family homes or in homes with special services for children and young persons (s.9 point 8 of the Act Concerning Support and Service for Persons with certain Functional Impairments). These homes are designed as and are supposed to function as an ordinary home. However, children with disabilities are primarily supposed to live with their own families. The children and their families are entitled to receive help in the form of information, services and support so that they can achieve equality in living conditions (s.5 and s.9 of the Act concerning Support and Service for Persons with Certain Functional Impairments and ch.3 s.6 of the Social Services Act). Furthermore, 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 (ch.5 s.1 of the Social Services Act).

3.1.7. Right to assistance (Art. 23 CRC; Arts. 23(5), 26 and 28 CRPD)

As mentioned in the previous point, children with disabilities and their families have the **right to receive assistance in the form of advice and personal support** that requires specialist knowledge, help from a personal assistant, a service to accompany children with disabilities, help from a personal contact, relief service at home, and arrangements for living in a family home or residential arrangements with special services for children who cannot stay with their families (s.9 of the Act concerning Support and Service for Persons with Certain Functional Impairments). The municipalities are required to establish accommodation with special services for those who need such assistance (ch.5 s.7 of the Social Services Act). However, when dealing with children with disabilities who cannot stay with their family, it should be considered, in the first instance, whether the child can stay with a relative or some other close person (ch.6 s.5 of the Social Services Act).

3.1.8. The right to inclusive education (Art. 28 CRC; Art. 24 CRPD)

The 1 to 9 grade primary school is compulsory to all children in Sweden. Children with disabilities attend regular schools, with the exception of children who are deaf, blind, deafblind, or have language impairment who attend special schools (*specialskola*), and children with learning disabilities who also attend special schools (*särskola*) provided that they cannot attend regular schools.

The municipality investigates and decides whether a child should attend a school for children with learning disabilities. Such investigation should be done in consultation with the child's parents (see more on this under section 3.2.4). The Education Act provides that all children should have equal access to education. The Discrimination Act prohibits discrimination in education.

3.2. Specific issues faced by children with disabilities

3.2.1. Gender vulnerability

There are no specific provisions in Swedish law regarding gender discrimination of children with disabilities. However, the general anti-discrimination provisions stipulate that discrimination based on sex, transgender identity or expression, disabilities, sexual orientation or age is prohibited in education, health and social services (ch.2 s.5 and 13 of the Discrimination Act). This also entails an obligation to prevent and hinder harassment.

There is no programme for sterilisation of young women in Sweden. According to the Sterilisation Act, only those who are more than 25 years old and apply for sterilisation may be sterilised. In special circumstances, those who are between 18 and 25 may also apply for sterilisation. However, this act does not provide any right to sterilisation of children.

No information has been found regarding reproductive education programmes or awareness raising tools targeting young persons with disabilities.

3.2.2. Violence

According to several surveys conducted by the Ombudsman for Children, children with disabilities fall victims to violence and harassment more often than other children.²⁹ A report³⁰ of the Swedish National Council for Crime Prevention (*Brottsförebyggande rådet*) shows that girls with disabilities are especially vulnerable and suffer from sexual assault more often than boys with disabilities. However, according to the report, there is no clear evidence that girls with disabilities become victims of sexual assault more often than girls without disabilities.³¹

Children with disabilities enjoy legal protection against harassment at school, including sexual harassment (ch.2 s.7 of the Discrimination Act). There are no other provisions in Swedish law in this area that are specific for children with disabilities. No information has been found regarding awareness campaigns, training of educators or prevention.

3.2.3. Children as vulnerable suspects

The Swedish Criminal Code does not contain any explicit provisions regarding children with disabilities who commit unlawful acts. It does, however, contain provisions regarding children and persons with intellectual disabilities ("serious mental disturbance").

Children under the age of 15 cannot be sentenced in Sweden (ch.1 s.6 of the Criminal Code). Children older than 15 may be punished but cannot be sentenced to jail. Young people between the age of 15 and 18 may not be sentenced in the same way as adults;

²⁹ E.g. 'Many are invisible but exist anyway' (*Många syns inte men finns ändå*), the Annual report of the Ombudsman for Children, 2002, available at: <http://www.barnombudsmannen.se/publikationer/bestall-och-ladda-ner/manga-syns-inte-men-finns-anda-2002/>.

³⁰ 'Violence against persons with disabilities' (*Våld mot personer med funktionshinder*), the Swedish National Council for Crime Prevention, Report 2007:26, 2007, available at: http://www.bra.se/download/18.cba82f7130f475a2f1800010148/2007_26_vald_mot_personer_med_funktionshinder.pdf.

³¹ *Ibid.*, p.7.

instead they are primarily handed over to the social services for care and treatment in accordance with their needs. The Swedish Criminal Code contains a special leniency provision for offenders with intellectual disabilities. According to the provision, special consideration must be given to offenders who have a markedly diminished capacity to control their actions as a consequence of serious intellectual and psychosocial disturbance. Such diminished capacity should be viewed as a mitigating circumstance (ch.29 s.3 of the Criminal Code).

Furthermore, an offender who has a serious intellectual and psychosocial disturbance should, primarily, be sentenced to a punishment other than jail (ch.30 s.6 of the Criminal Code). Only in exceptional circumstances may a person with intellectual disabilities be sentenced to jail. If the person with intellectual disabilities has committed a crime for which the punishment cannot be limited to a fine, the court may commit the offender for forensic psychiatric care combined with deprivation of liberty and other coercive measures (ch.31 s.3 of the Criminal Code).

Special provisions regarding investigation, retention, arrest and the judicial procedure regarding suspects younger than 21 years of age can be found in the Act on Certain Provisions on Young Offenders.

During the judicial procedure, the offender has the right to be supported by a counsel (*rättsombud*) (ch.12 s.1 of the Judicial Procedure Code). The Swedish National Association for Persons with Intellectual Disability (FUB) provides counsels for offenders with intellectual disabilities who are members of the organisation.³²

Interviews with NGO stakeholders have shown that there is a lack of education and training for those dealing with children with disabilities who are suspects of crime. There is no specific training for the police, judges or prosecutors. This affects, for example, how the children are questioned. The law does not make any distinction between children with disabilities and other children. When it comes to crime, the same rules apply to all children. According to the NGO stakeholders, one of the problems is that children with cognitive impairments, who commit crimes, have difficulties understanding the consequences of their actions. In this respect; the police are not specifically trained to respond to such situations taking into account the child's interests and needs. On the other hand, children with disabilities enjoy the same rights as other children with the exception of penalty issues, where, according to the NGO stakeholders, a distinction is made in practice with regard to children with disabilities.

3.2.4. Inclusive education

The Swedish approach is that **children with disabilities should primarily attend mainstream education**. However, there are special schools for children who are deaf and/or blind and for children with learning disabilities who are unable to reach primary school proficiency. The municipality investigates and decides whether a child should attend a school for children with learning disabilities. Such investigation should be done in consultation with the child's parents. If the parents object, the child should be placed in a mainstream school unless there are exceptional reasons with regard to the child's best interests (ch.7 s.5 of the Education Act). Notably, the child may attend any of the schools

³² Information available on the website of the Swedish National Association for Persons with Intellectual Disability: <http://www.fub.se/radgivning/texter/433>.

(mainstream or special school) for a trial period of six months (ch.7 s.8 of the Education Act).

All education institutions should take into account the different needs of the students. Furthermore, the 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 (ch.1 s.4 of the Education Act). The education should be equal regardless of the type of education taking the child's best interests as the starting point (ch.1 s.8 and 9 of the Education Act). Discrimination in education on the grounds of disabilities is prohibited (ch.1 s.8 of the Education Act). All students should be given the guidance and encouragement they need for their learning and personal development to develop to the best of their ability according to the aims of the education (ch.3 s.3 of the Education Act). Special support should be given to students who are not able to reach the education requirements. For such students, programmes of measures are developed. The child and their parents have the right to participate in the development of such programmes (ch.3 s.8-10 of the Education Act). All schools are required to hinder and prevent harassment and abusive behaviour (ch.6 s.10 of the Education Act). The national legislation stipulates that proper access to higher education should be ensured through reasonable measures (ch.2 s.5 of the Discrimination Act). However, this provision only applies to higher education (e.g. university education) and, thus, does not apply to schools that children attend.

The primary responsibility for education lies with the municipalities. However, the Swedish Government has recently proposed a new strategy for the implementation of disability policy for the period 2011 to 2016.³³ The strategy aims at, among others, improving education for children with disabilities. Furthermore, a special investigator appointed by the Government has recently concluded an inquiry regarding the future design of upper secondary school for children with learning disabilities.³⁴ The inquiry examined the reformed upper secondary school system introduced at the end of 2011 with the entry into force of the new Education Act, the possibility for students to choose to study in another municipality, rules on selection and admission, issues regarding subsidies, etc. The inquiry and the proposals of the investigator are currently reviewed by the Government.

3.2.5. Other particular issues faced by children with disabilities in Sweden

As mentioned before, several surveys show that children with disabilities feel harassed and bullied in school. They often feel that there is a lack of understanding from other children with regard to their disabilities.

According to the interviews with NGO stakeholders, more attention is paid to girls with disabilities who fall victims to sexual abuse. However, there are also boys who become victims of such crimes, but this is not a subject that has been highlighted. Furthermore, according to the stakeholders interviewed, children with disabilities more often suffer from organised paedophilia. The stakeholders also mentioned that girls with disabilities often fall victims to harassment and sexual abuse through online forums.

³³ 'A strategy for the implementation of disability policy, 2011-2016' (*En strategi för genomförande av funktionshinderpolitiken, 2011-2016*), the Ministry of Health and Social Affairs, 2011.

³⁴ 'The future special upper secondary school for pupils with learning disabilities – an equal education for young people with learning disabilities' (*Den framtida gymnasiesärskolan – en likvärdig utbildning för ungdomar med utvecklingsstörning*), SOU 2011:8, 2011, available at: <http://www.regeringen.se/content/1/c6/16/00/77/e8050ab2.pdf>.

According to the interviews with the NGO stakeholders, children with disabilities face some problems with regard to education. The parents of healthy children can choose which school they should attend. However, the parents of children with disabilities have a limited choice. The principal of the school can make a decision against the parents' will and decide that the child should attend a special school. It should be noted that such decisions can be appealed. There have also been cases, according to the stakeholders interviewed, where children had to be enrolled in regular schools, but were sent to special schools as these schools have more resources. This has been the case for children with certain disorders, such as the attention deficit disorder, who do not have any intellectual impairment and, thus, should attend mainstream schools. Special schools exclude children from university education, as they do not provide the knowledge and skills required to apply for higher education. Furthermore, they can affect the child's chances to find a job once the child reaches adulthood. Another obstacle highlighted by the NGO stakeholders is the lack of accessibility. If a school lacks accessibility, e.g. ramps or elevators, then in practice a child with a physical impairment might not be able to attend such school.

The NGO stakeholders also pointed out that children with disabilities have the right to use the school bus service but the exercise of this right is restricted to the territory of the municipality where the school is located. Thus, children whose parents are divorced and who live in different municipalities do not have the right to use the school bus if it is outside the municipality where they go to school.

Another issue that was highlighted during the interviews was that children with disabilities cannot fully participate in society. There is a so called 'hierarchy' of disabilities, which differentiates disabilities according to how society perceives and accepts people with those disabilities. Children with intellectual impairments often are at the lowest level of such hierarchy.

4. ASSESSMENT OF THE PRACTICAL IMPLEMENTATION OF THE RIGHTS AND LEGAL PRINCIPLES

KEY FINDINGS

- Bodies responsible for the reporting and enforcement are the Equality Ombudsman, which supervises the compliance with the Discrimination Act, and the National Board for Health and Welfare, which conducts surveys, evaluates activities and reforms related to issues of disabilities involving health and medical care. In the absence of a common definition of disability, there is no statistical data available on children with disabilities in Sweden.
- The literature recommends: educating the teachers about disabilities; improving the school environment for children with disabilities; and allocating more financial resources to activities involving children with disabilities.

4.1. Enforcement and reporting mechanisms

The legal acts relating to children with disabilities contain provisions on reporting procedures. The **Discrimination Act** stipulates that the Equality Ombudsman is responsible for the supervision of the compliance with the provisions of the act. Furthermore, the Equality Ombudsman may bring a case before the court on behalf of a child with disabilities if the child's custodian consents to this. The Equality Ombudsman may require anyone who is subject to the provisions of the Discrimination Act to provide information about their activities and to access their premises as well as to attend interviews with the ombudsman. The Ombudsman may require **complying with these requests subject to a penalty**. The Board against Discrimination examines applications for the financial penalties under the Discrimination Act and appeals of such decisions. Anyone who fails to fulfil their obligations under the Discrimination Act is **liable to pay compensation for discrimination** resulting from the infringement. The compensation is paid to the victim. The law does not specify the minimum or maximum amounts of the penalties. However, it stipulates that when determining the amount of the penalty, the aim of the act to prevent such discrimination should be considered (ch.5 s.1 of the Discrimination Act). Cases concerning discrimination in education are examined by a general court and dealt with in accordance with the provisions of the Code of Judicial Procedure in civil cases in which out-of-court settlement is permitted.

According to the **Education Act**, any employee at an education facility who learns about harassment or alleged harassment at school against a child is required to report it to the principal. The principal is required to report it to the provider of the education. The **education provider is obliged to promptly investigate** the circumstances surrounding the alleged violations and to take appropriate measures to prevent any harassment in the future. The same applies if the harassment falls under the provisions of the Discrimination Act. If the above is not complied with, the child has the right to compensation. Cases regarding compensation are examined by a general court. The Swedish Schools' Inspectorate may, with the child's consent or with the consent of its custodians if the child is under 16, represent the child in such cases. Decisions regarding issues such as admission to special school or the right to school bus service for children with disabilities may be

appealed to the Board of Appeal for Education (*Skolväsendets överklagandenämnd*) (ch.28 s.12 of the Education Act), which is an authority similar to a court.³⁵

The National Board of Health and Welfare is the authority responsible for the supervision of compliance of the social services activities under the Social Services Act (ch.13 s.1 of the Social Services Act). The Board has a national responsibility for issues related to disabilities which are carried out by social services and county councils. The Board has the right to inspect the activities of the social services. Children enjoy a special protection under the Social Services Act. According to the act, anyone who becomes aware of a situation involving a child where the social services should intervene should report this to the National Board of Health and Welfare. If an authority becomes aware of such a situation, it is obliged to report to the social services. Such obligation to report also applies to anyone who is employed in the area of education, health, medical care and social services, or any other area relating to children (ch.14 s.1). Decisions of a social welfare committee may be appealed before a general administrative court.

Monitoring of compliance with the provisions of the Act concerning Support and Service for Persons with Certain Functional Impairments is the responsibility of the county administrative boards. The supervision involves the review of the requirements and objectives of the activities carried out under the act. If the board identifies shortcomings, it requires that these are remedied. If the supervised activity concerns a child, the child may only be heard provided that the conversation will not harm the child. Those who act under this act, are obliged to give the board, if it requires so, all the relevant documents regarding their activities. The board also has the right to access the premises where the activity is carried out. The board has the right to require that any significant shortcoming that may lead to providing inadequate help is remedied. If not remedied, the board has the right to revoke the permit for the activity. Decisions under the Act concerning Support and Service for Persons with Certain Functional Impairments may be appealed before a general administrative court.

4.2. Gaps, problems and issues in the implementation

Although there are laws that ensure the protection of the rights of children with disabilities there are still some problems with the implementation. As mentioned above, one of the problems is related to the attendance of mainstream schools versus special schools. Parents have a limited right to choose the school for their children. Although the law stipulates that the best interests of the child should be the guiding principle in taking decisions that affect the child, it is not always clear what the best interests of the child are. According to NGO stakeholders, there have been some problems with the interpretation of this and other concepts. As mentioned before, the type of school the child attends affects his or her future. The knowledge and skills acquired in a special school for children with intellectual impairments is not sufficient to comply with the eligibility requirements of higher education institutions. Another problem mentioned was the limitation on the right to use the school bus service, as the service is limited to the municipality where the school is located.

³⁵ For further information see: www.overklagandenamnden.se.

4.3. Best practices

There are several stakeholders in Sweden that work with the rights of children and children with disabilities, such as the Ombudsman for Children and the Swedish National Association for Persons with Intellectual Disabilities. There are also several legal acts that ensure the rights of children with disabilities in education, right to assistance, right to health care, etc. Some of the acts go even further and it is possible for parents of children with disabilities to receive allowance to adapt their homes and cars to the needs of the child.

4.4. Data and monitoring mechanisms

As mentioned above, the Equality Ombudsman is responsible for the supervision of the compliance with the provisions of the Discrimination Act. The Equality Ombudsman may require those who are subject to the provisions of the Discrimination Act to provide relevant information or to grant access to their premises.

The National Board of Health and Welfare conducts surveys, evaluates activities and reforms related to issues of disabilities involving health and medical care. It maps the activities of municipalities in annual reports, which also include statistics and costs of those activities. The Board is responsible for national statistics concerning social services, health and medical care.³⁶

4.5. Recommendations given by the literature

It should be noted that literature on the situation of children with disabilities is very scarce in Sweden. Most of the literature on the subject consists of surveys and reports done by the Government and authorities. The literature points to some problem areas for children with disabilities, such as bullying at school and inadequate resources for schools. Furthermore, studies have shown that more interventions pursuant to the law are targeted towards boys than girls and that many girls with intellectual disabilities are often misdiagnosed or underdiagnosed.

The Swedish Schools' Inspectorate recommends that schools review their procedures regarding the speed at which they **adapt the school environment** and teaching for children with disabilities. Schools also need to work with their staff so that students' different conditions and capacities are taken into account. Furthermore, schools need to educate teachers how disabilities affect learning. Currently, schools only monitor the progress of individual students with disabilities. The Schools' Inspectorate recommends that monitoring and evaluation of efforts and results is improved and done on a higher level.

One of the problems addressed in the literature is the lack of sufficient resources for child and youth psychiatry services and insufficient care for young offenders who are, for example, aggressive. The proposed action includes more financial resources being allocated to these services. The relevant health care services also need to take more responsibility for the youth and not divest itself of responsibility by referring to the lack of resources and methods.³⁷

³⁶ For more information see the website of the National Board of Health and Welfare (*Socialstyrelsen*): www.socialstyrelsen.se.

³⁷ Ibid.

5. CONCLUSIONS

Children with disabilities enjoy legal protection in Sweden through several acts and ordinances which require that the best interests of the child are taken into consideration when taking a decision that concerns the child. However, according to stakeholders, this might sometimes be problematic as there is no definition of what is understood by the best interests of the child.

Monitoring and compliance is ensured by different authorities, depending on the legal act. Such authorities include the Equality Ombudsman and the National Board of Health and Welfare. Furthermore, decisions concerning the rights of children with disabilities can be appealed by their parents or legal custodians.

This study shows that although Sweden ensures satisfying level of protection for children with disabilities there is clear scope for improvement. Children with disabilities enjoy legal protection in areas such as education, discrimination and right to assistance. However, they face some difficulties in respect of the right to be heard, the right to choose a school, or the right to use the school bus service if they need to travel to another municipality. The interviewed stakeholders concluded that children with disabilities fare relatively well and do not face any major issues while growing up; however, they begin to face more problems as they enter adulthood.

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ANNEX 1 – SUMMARY TABLE

| Analysis of the legal implementation of CRPD and CRC rights and principles | |
|--|---|
| National legislation (translated in English) | Comments/assessment on the implementation |
| Best interests of the child | |
| <p>Ch.1 s.2 of the Swedish Constitution (the Instrument of Government) Public power shall be exercised with respect for the equal worth of all and the liberty and dignity of the individual. The personal, economic and cultural welfare of the individual shall be fundamental aims of public activity. [...]</p> <p>Ch.6 s.2a of the Children and Parents Code The child's interests shall be critical to any decision on custody, residence and contact. [...]</p> <p>Ch.1 s.2 of the Social Services Act When measures concern children, special consideration shall be given to the best interests of the child. [...]</p> <p>Ch.1 s.10 of the Education Act The child's best interests shall be the starting point in all education and other activities under this Act. [...]</p> <p>S. 6a of the Act Concerning Support and Service for Persons with Certain Functional Impairments When measures concern children, the child's best interests shall be given special consideration.</p> <p>S.1 of the Care of Young Persons Act [...] What is best for the young person shall be crucial for decisions under this Act. [...]</p> | <p>Incomplete implementation.</p> <p>The best interests of the child are ensured in several acts in Sweden relating to different areas of life, such as education, social services and special assistance.</p> <p>The systematic consideration of the child's best interests is not explicitly enshrined in the national legislation.</p> |
| Non-discrimination | |
| <p>Ch.1 s.1 of the Discrimination Act The purpose of this Act is to combat discrimination and in other ways promote equal rights and opportunities regardless of sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age.</p> | <p>Incomplete implementation.</p> <p>The non-discrimination principle has been implemented in several acts in Sweden such as</p> |

| Analysis of the legal implementation of CRPD and CRC rights and principles | |
|---|--|
| National legislation (translated in English) | Comments/assessment on the implementation |
| <p>Education Ch.2 s.5 of the Discrimination Act A natural or legal person conducting activities referred to in the Education Act (1985:1100) or other educational activities (an education provider) may not discriminate against any child, pupil or student participating in or applying for the activities. Employees and contractors engaged in the activities shall be equated with the education provider when they are acting within the context of their employment or contract. [...]</p> <p>Health and medical care and social services etc. Ch.2 s.13 of the Discrimination Act Discrimination is prohibited with regard to 1. health and medical care and other medical services, and 2. social services activities and support in the form of special transport services and national special transport services and housing adaptation allowances. However, these prohibitions do not apply to discrimination associated with age. The prohibitions applying to health and medical care and other medical services or social services activities do not prevent women and men being treated differently if there is a legitimate purpose and the means that are used are appropriate and necessary to achieve that purpose.</p> <p>Social insurance system, unemployment insurance and financial aid for studies Ch.2 s.14 Discrimination is prohibited with regard to 1. social insurance and related benefit systems; 2. [...] 3. state financial aid for studies. However, these prohibitions do not apply to discrimination associated with age. [...]</p> <p>The Act Implementing the Principle of Equal Treatment, Art.2 (1): Equal treatment shall be ensured regardless of sex, ethnicity, racial or ethnic origin, religion, belief, disability, age, sexual orientation or another personal ground...</p> <p>Art. 3 (1): In any field of social life ... the treatment that constitutes discrimination... shall be prohibited.</p> <p>The Equalisation of Opportunities for Persons with Disabilities Act, Art. 6 (1): Any kind of discrimination on the grounds of disability in the procedures before State bodies, local</p> | <p>the Education Act and Discrimination Act.</p> <p>However, the requirement of reasonable accommodation has not been fully implemented.</p> |

| Analysis of the legal implementation of CRPD and CRC rights and principles | |
|---|---|
| National legislation (translated in English) | Comments/assessment on the implementation |
| <p>self-governing bodies, bearers of public authority or providers of public services shall be prohibited.</p> <p>The Placement of Children with Special Needs, Art.4: Among the principles that have to be respected in decision-making on rearing and education of children with special needs there are also principles of equal opportunities with simultaneous regard for various needs of children, and individualised approach.</p> <p>The Act Implementing the Principle of Equal Treatment, Art.2.a (1): The provisions of this law do not prohibit differential treatment on the basis of a particular personal ground, if such differential treatment is justified by a legitimate goal and if the means to achieve this goal are appropriate and necessary.</p> <p>The Equalisation of Opportunities for Persons with Disabilities Act, Art. 8-16: Defines obligations of all State bodies to provide for accessibility in the field of communication, adaptation of vehicles, public transportation, buildings in public use.</p> | |
| <i>Evolving capacities of the child</i> | |
| <p>Ch.6 s.1 of the Children and Parents Code Children have the right to care, security and a good upbringing. Children should be treated with respect for their person and individuality [...]</p> <p>Ch.5 s.1 of the Social Services Act The social welfare committee shall endeavour to ensure that children and young persons grow up in secure and good conditions and promote, in close co-operation with families, a comprehensive personal development and favourable physical and social development of children and young persons [...]</p> <p>Ch.1 s.4 of the Education Act Education [...] shall encourage all children's and pupils' development and learning. [...] Different needs of the children and pupils shall be taken into consideration in the education. Children and pupils shall be given support and encouragement so that they can develop as much as possible. [...]</p> | <p>Incomplete implementation.</p> <p>The Swedish legislation does not contain any provisions regarding respect for the evolving capacities of the child. However, there are provisions in several acts that relate to the good development of children and youth.</p> |

| Analysis of the legal implementation of CRPD and CRC rights and principles | |
|---|--|
| National legislation (translated in English) | Comments/assessment on the implementation |
| <p>Art. 237: ...or in case a minor was questioned who could not understand the meaning of the right of not being obliged to testify ... the court may not base its decision on such testimony.</p> <p>The Marriage and Family Relations Act, Art. 64 (2): [In determining custody of the children, the] court takes into account also the opinion of the child if the child expressed such opinion on her/his own or through a person (s)he trusts and (s)he selected on her/his own and if (s)he is capable of understand their meaning and consequences.</p> | |
| <i>Right to participate/right to be heard</i> | |
| <p>S. 6 of the Act concerning Support and Service for Persons with Certain Functional Impairments [...] The individual shall, as far as possible, be given influence and co-determination regarding the measures offered. [...]</p> <p>S. 8 of the Act concerning Support and Service for Persons with Certain Functional Impairments [...]When a measure concerns a child, the child shall be given relevant information and the opportunity to express his/her views. The child's views shall be given due weight in relation to the child's age and maturity.</p> <p>Ch.1 s.10 of the Education Act The child's best interests shall be the starting point in all education and other activities under this Act. [...] The child's opinion shall as far as possible be clarified. Children shall have the opportunity to express their opinions freely in all questions that concern them. The child's views shall be given due weight in relation to the child's age and maturity.</p> <p>Ch.3 s.9 of the Education Act A programme of measures shall be developed for each student which is given special support. The programme should indicate what the needs are, how they shall be met and how the actions will be monitored and evaluated. The pupil and the pupil's guardian shall be given the opportunity to participate when the programme is drawn up. [...]</p> | <p>Incomplete implementation.</p> <p>Child participation is ensured in several acts in areas such as education and services for persons with disabilities.</p> <p>However, the general right of the child to be heard is not safeguarded by the legislation.</p> |

| Analysis of the legal implementation of CRPD and CRC rights and principles | |
|---|---|
| National legislation (translated in English) | Comments/assessment on the implementation |
| <p>Ch.4 s.9 of the Education Act Children and pupils shall be given influence over their education. They shall constantly be encouraged to take active part in efforts to further develop the education and shall be kept informed on matters affecting them. The information and forms for children's and pupil's influence shall be adapted to their age and maturity. The pupils shall always have the opportunity to take initiative on issues to be addressed within their framework of influence on education. The students' and associations of students' work with issues about influence shall be supported and facilitated. [...]</p> <p>Ch.4 s.13 of the Education Act At each pre-school and school unit there shall be one or more forums for consultation with children, pupils [...]. It will address such questions that are important for the unit's activity and that may be important for the children, pupils [...]. Within the framework for one or more such forums as provided for in the first paragraph, children, pupils and guardians shall be informed of proposals for decisions on such issues to be addressed there and shall be given the opportunity to comment before a decision is made. The principal is responsible for ensuring that there are forums for consultation under the first paragraph and for ensuring that the information and consultation obligations pursuant to the second paragraph are met. [...]</p> <p>S.1 of the Care of Young Persons Act [...] Consideration shall be given to the young person's will, taking into account his or hers maturity.</p> | |
| Right to be free from violence | |
| <p>Ch.6 s.1 of the Children and Parents Code Children have the right to care, security and good upbringing. Children shall be treated with respect for their person and individuality and may not be subject to corporal punishment or other degrading treatment.</p> <p>Ch.5 s.1 of the Social Services Act The social welfare committee shall endeavour to ensure that children and young persons grow up in secure and good conditions [...]</p> | <p>Effective implementation.</p> <p>Freedom from violence is ensured in Sweden.</p> |

| Analysis of the legal implementation of CRPD and CRC rights and principles | |
|---|--|
| National legislation (translated in English) | Comments/assessment on the implementation |
| <p>Ch.5 s.11 of the Social Services Act The social welfare committee shall take steps to ensure that persons subjected to criminal acts and their next-of-kin are supported and helped. [...]</p> | |
| Right to family life | |
| <p>S.9 of the Act concerning Support and Service for Persons with Certain Functional Impairments The measures for special support and special services are:</p> <ol style="list-style-type: none"> 1. Advice and other personal support that requires special knowledge about problems and conditions governing the life of a person with major and lasting functional impairments; 2. Help from a personal assistant or financial support for reasonable costs for such help to the extent that the need for financial support is not covered by assistance hours pursuant to the Assistance Benefit Act (1993:389); 3. A service to accompany children with disabilities; 4. Help from a personal contact; 5. Relief service in the home; 6. Short stay away from home; 7. Short period of supervision for schoolchildren over the age of 12 outside their own home in conjunction with the school day and during the holidays; 8. Arrangements for living in a family home or in residential arrangements with special services for children and young people who need to live away from their parental home; 9. [...]. <p>Ch.1 s.1 of the Social Services Act Public social services shall, on a basis of democracy and solidarity, promote people's:</p> <ul style="list-style-type: none"> - Economic and social security; - Equality of living conditions; - Active participation in the life of the community. <p>With due consideration for the responsibility of the individual for his own social situation and that of others, social services shall be aimed at liberating and developing the innate resources of individuals and groups. Activities shall be based on respect for people's self-determination and privacy.</p> | <p>Incomplete implementation.</p> <p>The spirit of the right to family life has been transposed into Swedish legislation, which provides for information, services and support to children with disabilities and their families.</p> <p>However, the lack of formal recognition of the right to family life (the lack of capacity to claim its violation in courts) leads to its partial conformity.</p> |

| Analysis of the legal implementation of CRPD and CRC rights and principles | |
|--|---|
| National legislation (translated in English) | Comments/assessment on the implementation |
| <p>Ch.3 s. 6 of the Social Services Act The social welfare committee should, by means of home-help services, daytime activities or other social service of a suchlike nature, assist the individual to live at home and to have contacts with others. The committee should also provide social services by means of counselling bureaux, social welfare centres and suchlike, emergency social services or comparable activities. The committee may appoint a particular person (a contact person) or a family to help the individual and his next-of-kin in personal affairs, if the individual requests or consents to such an arrangement. In the case of children under the age of 15, a contact person may be appointed only if the child's custodian requests or consents to the arrangement. If the child is 15 or over, a contact person may be appointed only if the child personally requests or consents to the arrangement.</p> <p>Ch.5 s.1 of the Social Services Act The social welfare committee shall endeavour to ensure that children and young persons grow up in secure and good conditions,</p> <ul style="list-style-type: none"> - Promote, in close co-operation, with families, the comprehensive development and favourable physical and social development of children and young persons; - [...]. <p>Ch.6 s.6 of the Social Services Act No child may, without the consent of the social welfare committee or a care decision, be admitted, for purposes of permanent care and upbringing, into a private home not belonging to either of his parents or to any other person having custody of him or her.</p> | |
| Right to assistance | |
| <p>S.9 of the Act concerning Support and Service for Persons with Certain Functional Impairments The measures for special support and special services are:</p> <ol style="list-style-type: none"> 1. Advice and other personal support that requires special knowledge about problems and conditions governing the life of a person with major and lasting functional impairments; 2. Help from a personal assistant or financial support for reasonable costs for such help to the extent that the need for financial support is not covered by assistance hours pursuant to the | <p>Effective implementation.</p> <p>Children who cannot live with their parents have the right to live with a family or in a special services home.</p> |

| Analysis of the legal implementation of CRPD and CRC rights and principles | |
|--|---|
| National legislation (translated in English) | Comments/assessment on the implementation |
| <p>Assistance Benefit Act (1993:389);</p> <ol style="list-style-type: none"> 3. A service to accompany children with disabilities; 4. Help from a personal contact; 5. Relief service in the home; 6. Short stay away from home; 7. Short period of supervision for schoolchildren over the age of 12 outside their own home in conjunction with the school day and during the holidays; 8. Arrangements for living in a family home or in residential arrangements with special services for children and young people who need to live away from their parental home; 9. [...]. <p>Ch.5 s. 7 of the Social Services Act The social welfare committee shall endeavour to ensure that persons who, for physical, mental or other reasons, encounter difficulties in their everyday lives are enabled to participate in the life of the community and to live like others. The social welfare committee shall help to ensure that the individual has a meaningful occupation and that he is housed in a manner appropriate to his need of special support. The municipality shall establish accommodation with special services for those who, by reason of such difficulties as are referred to in the foregoing, are in need of such assistance.</p> <p>Ch.6 s.1 of the Social Services Act The social welfare committee shall ensure that persons needing care or accommodation in homes other than their own are admitted to a family home or to a home for care or residence. [...]</p> <p>Ch.6 s.5 of the Social Services Act In the placement of children it should in the first instance be considered whether the child can be received by a relative or some other closely connected person. As provided in ch.1 s.2, however, account shall always be had of the best interests of the child.</p> | |
| <i>Right to education (including inclusive education)</i> | |
| <p>Ch.1 s.8 of the Education Act Everyone shall, regardless of geographical location and socio-economic conditions, have equal access</p> | <p>Incomplete implementation.</p> |

| Analysis of the legal implementation of CRPD and CRC rights and principles | |
|---|--|
| National legislation (translated in English) | Comments/assessment on the implementation |
| <p>to education in the school system, subject to specific provisions of this Act. The Discrimination Act (2008:567) contains provisions which aim to combat discrimination and in other ways aim to support equal rights and opportunities within the education system regardless of gender, gender identity and expression, ethnicity, religion or other belief, disability, sexual orientation or age.</p> | <p>The Swedish legislation reflects the requirement of the right to inclusive education.</p> <p>However, the right to choose a mainstream or special school for a child with disability as well as the requirement of reasonable accommodation in education are not fully implemented.</p> |

ANNEX 2 – STATISTICAL INFORMATION

| Number of violation ³⁸ | Violence | Gender discrimination | Other discrimination | Criminal suspects |
|-----------------------------------|----------|-----------------------|----------------------|-------------------|
| Year | | | | |
| 2007 | | | | |
| 2008 | | | | |
| 2009 | | | | |
| 2010 | | | | |
| 2011 | | | | |

No data identified on the table's issues.

³⁸ Cases reported to any relevant body; depending on the availability of data.

ANNEX 3 - STUDY ON MEMBER STATES' POLICIES FOR CHILDREN WITH DISABILITIES - 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 States³⁹ 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.⁴⁰ 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.

³⁹ 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.

⁴⁰ 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 2008⁴¹) 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'.⁴² Recently, the CJEU has further developed this concept⁴³ 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 2008/52⁴⁴ requires the mediator to take into account the best interests of the child when deciding whether the child can give evidence in judicial proceedings. The

⁴¹ 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).

⁴² Judgment C-13/05 of the Court (Grand Chamber) of 11 July 2006, *Sonia Chacón Navas v Eurest Colectividades*, pt 43.

⁴³ 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.

⁴⁴ Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters.

Family Reunification Directive⁴⁵ requires Member States' authorities to consider the best interests of children when examining an application for family reunification (Article 5)⁴⁶. The protection of the best interests of the child is explicitly mentioned in Council Directive 2004/81/EC⁴⁷ 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.⁴⁸ They lay down rules 'for combating discrimination (...) with a view to putting into effect in the Member States **the principle of equal treatment**'.⁴⁹ 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 grounds⁵⁰.

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 telecommunication⁵¹.

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.

The consideration of children's **evolving capacities** is recognised in the Brussels II*bis*

⁴⁵ Council Directive 2003/86/EC, on the right to family reunification.

⁴⁶ '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.

⁴⁷ 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.

⁴⁸ 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.

⁴⁹ Article 1 Directive 2000/43/EC.

⁵⁰ 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.

⁵¹ '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_Convention_Summary_EN.pdf.

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**⁵² relating to child trafficking, to the sexual exploitation of children and to the protection of victims including several Directives⁵³ 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 pornography⁵⁴ 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 II*bis* (EC)⁵⁵. In the field of immigration policies, the right of the child to family life is ensured by the rules on family reunification⁵⁶ and the provisions of the Directives on asylum⁵⁷ regarding unaccompanied minors and the respect for the family unit.

⁵² 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.

⁵³ 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.

⁵⁴ Article 1 Directive 2011/92/EU.

⁵⁵ Council Regulation (EC) No 2201/2003, concerning jurisdiction, recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility.

⁵⁶ 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.

⁵⁷ 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.

The principle of **maximum inclusion in society** of children with disabilities is reflected in strategy documents such as the Disability Strategy 2010-2020⁵⁸ and the EU 2020 Programme in relation to education and training⁵⁹. The 2003 Council Resolution on equal opportunities for Pupils and Students with Disabilities⁶⁰ 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 disabilities⁶¹ 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 training⁶².

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 CRPD 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.
- The EP, the Council and the Commission should promote the development of national

⁵⁸ 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.

⁵⁹ 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 2009.

⁶⁰ Council Resolution of 5 May 2003 on equal opportunities for pupils and students with disabilities in education and training, 2003/C 134/04.

⁶¹ 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)).

⁶² European Agency for Development in Special Needs Education website available at <http://www.european-agency.org/about-us>.

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.

ANNEX 4 - OVERVIEW OF RELATED STUDIES

| Name of the Study | PE number | ISBN number |
|--|-------------------|--------------------------|
| Study on Member States' Policies for Children with Disabilities | PE 474.416 | 978-92-823-4548-1 |
| Country Report on Belgium for the Study on Member States' Policies for Children with Disabilities | PE 474.417 | 978-92-823-4542-9 |
| Country Report on the Czech Republic for the Study on Member States' Policies for Children with Disabilities | PE 474.418 | 978-92-823-4549-8 |
| Country Report on Estonia for the Study on Member States' Policies for Children with Disabilities | PE 474.419 | 978-92-823-4561-0 |
| Country Report on Finland for the Study on Member States' Policies for Children with Disabilities | PE 474.420 | 978-92-823-4552-8 |
| Country Report on France for the Study on Member States' Policies for Children with Disabilities | PE 474.421 | 978-92-823-4562-7 |
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| Country Report on Greece for the Study on Member States' Policies for Children with Disabilities | PE 474.423 | 978-92-823-4563-4 |
| Country Report on Hungary for the Study on Member States' Policies for Children with Disabilities | PE 474.424 | 978-92-823-4554-2 |
| Country Report on Ireland for the Study on Member States' Policies for Children with Disabilities | PE 474.425 | 978-92-823-4564-1 |
| Country Report on Italy for the Study on Member States' Policies for Children with Disabilities | PE 474.426 | 978-92-823-4555-9 |
| Country Report on Malta for the Study on Member States' Policies for Children with Disabilities | PE 474.427 | 978-92-823-4565-8 |
| Country Report on the Netherlands for the Study on Member States' Policies for Children with Disabilities | PE 474.428 | 978-92-823-4556-6 |

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| Country Report on Poland for the Study on Member States' Policies for Children with Disabilities | PE 474.429 | 978-92-823-4566-5 |
| Country Report on Romania for the Study on Member States' Policies for Children with Disabilities | PE 474.430 | 978-92-823-4567-2 |
| Country Report on Slovenia for the Study on Member States' Policies for Children with Disabilities | PE 474.431 | 978-92-823-4557-3 |
| Country Report on Spain for the Study on Member States' Policies for Children with Disabilities | PE 474.432 | 978-92-823-4558-0 |
| Country Report on Sweden for the Study on Member States' Policies for Children with Disabilities | PE 474.433 | 978-92-823-4568-9 |
| Country Report on England, Wales and Northern Ireland for the Study on Member States' Policies for Children with Disabilities | PE 474.434 | 978-92-823-4559-7 |

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

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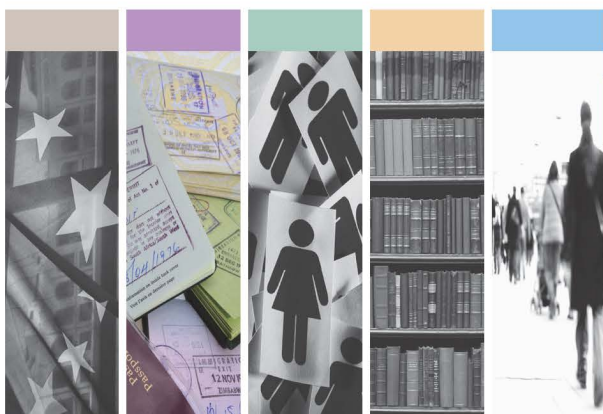
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