

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

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



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

STUDY



DIRECTORATE GENERAL FOR INTERNAL POLICIES
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 Poland 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.

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LIST OF ABBREVIATIONS

- Art.** Article
- 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
- NHF** National Health Fund
- s.** Section
- TEU** Treaty on the European Union
- TFEU** Treaty on the Functioning of the European Union
- UN** United Nations

EXECUTIVE SUMMARY

Overall, Polish legislation meets the requirements of the CRPD and CRC with regard to children with disabilities. Children and persons with disabilities enjoy protection of the State specified in the Constitution and several legal acts. In particular, the Ombudsman for Children's Rights provides special support and assistance for children with disabilities, and his extensive competences include a possibility to take up a child's case in administrative as well as court proceedings. However, apart from provisions on special education and social assistance, there are very few regulations addressing specifically children with disabilities.

In recent years, several legislative reforms and amendments have been adopted, showing the national policy's interest in the improvement of the situation of children with disabilities, in particular regarding equal educational opportunities, social assistance and prevention of domestic violence.

While the implementation of the CRPD and CRC rights and principles is generally satisfactory, there is still room for improvements. The anti-discrimination legislation, in particular, should be amended to cover discrimination on the ground of disability in all areas of life. Furthermore, stakeholders contacted for this study have recommended a better coordination of the social assistance system and an increase in services offered to promote independent living of persons and children with disabilities. The stakeholders also find that creating comprehensive and coordinated system of multidisciplinary, lifelong assistance for persons with intellectual disabilities and early support for parents is essential.

With regard to education of students with special needs, over the past 20 years the Polish system has evolved from a model of segregation towards a model of inclusion. The "in-between" integration model, introduced in the 1980s, in the opinion of the literature and the stakeholders, has not proved effective. In recent years, a number of legislative amendments have been adopted to improve the situation.

However, an analysis of the literature and opinions from stakeholders led to the conclusion that the implementation of the law is not sufficient and that the measures and tools provided by the legislation are not fully utilised. In particular, the legal framework providing for equal access to education in all types of schools for children with disabilities is not properly implemented. This is mainly due to a flawed system of financing education of children with special needs, resulting in a situation where the financial resources designated for these children do not always reach the schools accommodating them. Moreover, mainstream schools' teachers lack necessary experience and knowledge in dealing with children with disabilities.

On the whole, available literature concerning children with disabilities and their rights is scarce. Furthermore, even less research on their situation and practical implementation of their rights has been conducted. Recent literature focuses on educational opportunities but in many areas it is very difficult to assess the effectiveness of existing laws and to analyse their implementation in practice.

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 European Union 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 Poland 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 the 27 Member States have ratified the CRC, and all 27 Member States have signed the CRPD (Finland, Ireland and the Netherlands have signed but not yet ratified).

necessary measures to ensure the respect of the rights set forth for each child or person with a disability 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 Poland. 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 POLAND

KEY FINDINGS

- The national action focuses on the following areas: educational opportunities, prevention of domestic violence and social assistance.
- The following gaps, problems and challenges have been identified: flawed system of financing education of children with special needs, prone to maladministration of available resources; administrative officials (including teachers, enforcement officers, social services etc.) lack adequate knowledge as regards the needs and rights of children with disabilities.

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

Children enjoy a wide protection under Polish legislation. For a long period of time, the Polish policy concerning persons with disabilities was based on the caring approach, putting persons with disabilities in a position of subjects of social care institutions, as opposed to making them to be actors actively participating in public life.² This approach has been changing in recent years and the ratification of the CRPD will further stimulate this change and contribute to the creation of a more comprehensive approach to the problems of persons with disabilities.³

Overall, **the Polish legislation meets the requirements of the CRPD and CRC** with regard to children with disabilities. In addition, in recent years, several legislative reforms and amendments have been adopted, showing the national policy's interest in the improvement of the situation of children with disabilities, in particular as regards to equal educational opportunities, social assistance and prevention of domestic violence.

However, an analysis of available literature and opinions from stakeholders lead to the conclusion that the practical **implementation of the existing legislation is insufficient**, and the measures and tools provided by the legislation are not fully used. According to the study⁴ conducted by the Foundation Institute for Regional Development and the Polish Disability Forum, the vast majority of difficulties experienced by children with disabilities are the result of the shortcomings in the application in practice of the existing legislation, which stem from institutionalised prejudice.

² Explanatory statement to the Draft Act on Ratification of the Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006 in New York (*ustawa o ratyfikacji Konwencji o prawach osób niepełnosprawnych, sporządzonej w Nowym Jorku dnia 13 grudnia 2006 r.*), April 2012, available at: <http://orka.sejm.gov.pl/Druki7ka.nsf/0/A25E942EAA7F8651C1257A0100356633/%24File/408.pdf> (last accessed on 21 November 2012).

³ Ibid.

⁴ Waszkielewicz A. M., (ed) Polish Way to the UN Convention on the Rights of Persons with Disabilities (*Polska droga do Konwencji o prawach osób niepełnosprawnych ONZ*), (Fundacja Instytut Rozwoju Regionalnego, Kraków, 2008), available at: www.pfon.org/images/dodatki/2008_konwencja_onz_polska_droga.pdf (last accessed on 21 November 2012).

1.2. Review of issues and identification of possible regulatory gaps

Although the Polish Constitution prohibits discrimination of persons with disabilities in several areas, including education (the Act on Education System guarantees children with disabilities the possibility to study in all types of schools), there is **no statutory law explicitly prohibiting discrimination on the ground of disability in all spheres of life**. The Labour Code and the Act on Implementation of Certain EU Provisions Concerning Equal Treatment (hereafter "the Act on Equal Treatment") adopted in 2010 prohibits discrimination based on disability with regard to employment, vocational training and access to labour market services, etc. However, the scope of the Act on Equal Treatment does not cover discrimination based on, *inter alia*, disability in the fields of education, health care, social protection and housing.

With regard to education of students with special needs, during the past 20 years, the Polish system has evolved from a model of segregation towards a model of inclusion. The "in-between" integration model, introduced in the 1980s, has not proved effective, because, as suggested by the recent Commissioner for Civil Rights Protection report, the **mainstream schools have not been adequately prepared** and because the new approach was built on the foundation of a segregation model.⁵ In recent years, in particular since 2010, a number of legislative amendments have been adopted aiming at improving the situation in this regard, and in particular to:⁶

- Create a more flexible model of education which fits individual pupil's needs;
- Create conditions for a systematic improvement of teaching methods;
- Prepare pupils to make informed, vocational decisions;
- Provide better access to the early support in the development and education including early intervention and pre-school education;
- Provide forms and conditions of external exams adapted to the nature of the disability.

However, according to the literature and stakeholders,⁷ there are many shortcomings in the system as such and problems in implementing existing measures. The problem most often referred to is the faulty system of financing the special needs education, which leaves to the local administration the possibility of **misusing the education subsidies** received from the State budget by directing them to other purposes. This puts the school in a situation where it must meet statutory obligations towards a child with disabilities, in particular adapt the working methods and the physical environment, without receiving the necessary means and resources.⁸ This issue will be referred to in detail in section 4.2.

⁵ 'Equal access to education for persons with disabilities. Analysis and recommendations' (*Równe szanse w dostępie do edukacji osób z niepełnosprawnościami. Analiza i zalecenia*), Biuletyn RPO. Źródła 2012 nr 7, Warszawa 2012, report prepared for the Commissioner for Civil Rights, available at: www.rpo.gov.pl/pliki/13490881580.pdf (last accessed on 21 November 2012).

⁶ 'Children with special educational needs in Polish education system', conference paper: Raising Achievement for All Learners - Quality in Inclusive Education (RA4AL), European Agency for Development in Special Needs Education, June 2012, available at: <http://www.european-agency.org/agency-projects/ra4al/country-exhibition-materials> (last accessed on 21 November 2012).

⁷ Ministry, Children's Ombudsman, children's rights and persons with disability rights NGOs.

⁸ 'Equal access to education for persons with disabilities. Analysis and recommendations' (*Równe szanse w dostępie do edukacji osób z niepełnosprawnościami. Analiza i zalecenia*), Biuletyn RPO. Źródła 2012 nr 7,

Other drawbacks of the system frequently pointed out are the following: There is no **reliable system of information and early intervention measures** for parents of children with disabilities. Furthermore, **an institutionally coordinated system of assistance** for persons with, in particular intellectual, disabilities is needed from their birth to late adulthood. Presently, every institution works separately and rarely cooperates with other institutions which results in aid duplication and dispersion and a higher prevalence of abuse. The system of social support is ineffective and instead of providing necessary assistance, renders the lives of families more difficult and delays the child's development (many different therapies in different places; necessity of traveling with a child to different specialists, whose actions are not coordinated, resulting often in inconsistent therapeutic treatment).⁹

Finally, the reviewed literature criticises the **insufficient accessibility of services promoting independent living** of persons with disabilities and supporting their families. The system of financial support is fragmented and lacks coherence and flexibility. It is focused on providing financial benefits and not on delivering services supporting specific needs of persons with disabilities in terms of promoting independent and autonomous living.¹⁰

Warszawa 2012, report prepared for the Commissioner for Civil Rights, available at: www.rpo.gov.pl/pliki/13490881580.pdf (last accessed on 21 November 2012), p. 20; information collected through consultation with national stakeholders (Ministry, Children's Ombudsman, NGOs).

⁹ Information collected through consultation with national stakeholders.

¹⁰ Waszkielewicz A. M., (ed) 'Polish Way to the UN Convention on the Rights of Persons with Disabilities' (*Polska droga do Konwencji o prawach osób niepełnosprawnych ONZ*), (n 5) pp. 170-178; information collected through consultation with national stakeholders.

2. OVERVIEW OF THE LEGAL FRAMEWORK IN POLAND

KEY FINDINGS

- Poland is a unitary state with a continental legal system. Ratified and officially published international agreements form part of binding sources of law. Poland has ratified both the CRC and CRPD.
- Children and persons with disabilities enjoy protection of the State specified in the Constitution and several legal acts. The Ombudsman for Children's Rights provides special support and assistance to children with disabilities. Apart from provisions on special education and social assistance, there are only few provisions addressing specifically children with disabilities.

2.1. General overview of the national legal and institutional framework

The Republic of Poland is a unitary state, whose organisation is based on the principle of separation of powers. The legislative power is exercised jointly by the *Sejm* and the Senate, the lower and upper chambers of the Parliament. For a piece of legislation to be deemed adopted, both chambers must give their consent and it must be signed by the President. The President may employ a veto right, which can be rejected in Parliament. The executive power is vested in the President of Poland and the Council of Ministers (the Government), and the judicial power in the Supreme Court, the common courts, administrative courts and military courts. The legislative initiative is mostly exercised by the Government, but the Deputies, the Senate, the President and groups of at least 100,000 citizens also have the right to propose legislation.

Poland has a continental legal system. The main sources of universally binding law in Poland are: the Constitution, statutes/acts (*ustawy*), ratified international agreements, and regulations (*rozporządzenia*). They have to be published in the Journal of Laws (*Dziennik Ustaw*).

All other acts, such as resolutions (*uchwały*) adopted by the *Sejm*, Senate and the Council of Ministers or orders (*zarządzenia*) issued by the President, the Prime Minister and ministers, are part of "internal law" and bind only public administration. These acts are mostly published in the Official Gazette (*Monitor Polski*).

As regards international law, Polish legal system is a **mixture of the monist and the dualist** approach. According to the Polish Constitution, a ratified international agreement, once published in the Journal of Laws constitutes part of the domestic legal order and should be applied directly, unless its application depends on the enactment of a statute. Ratification is within the competence of the President. Some agreements require prior consent of the Parliament in the form of a statute. Such agreements prevail over statutes if their provisions cannot be reconciled.

However, all sources of international law, where the State's consent was expressed by other means, e.g. simple signature, acceptance, approval or accession, as well as

resolutions of international organisations, or international custom are not part of the domestic legal system by default. In order to be applicable, the norms provided therein have to be incorporated in the Polish legislation by a legally binding act, such as a statute or a regulation.

Legislative acts can be subjected to constitutional control exercised by the Constitutional Tribunal. Citizens are empowered to lodge an individual constitutional complaint with the Tribunal. The complaint may only challenge the constitutionality of a normative act, upon which a final decision infringing the rights or freedoms of a complainant was based. The infringement must result from a decision issued by a court or an organ of public administration in the individual case of the complainant.

Since 1999 the country is divided into three administrative levels: 16 provinces (voivodships - *województwa*), 379 districts/poviats (*powiaty*) and 2479 communes (*gminy*). The central government is represented by governors - voivode (*wojewoda*) appointed by the Prime Minister and supervising the lawfulness of the activities of the voivodship councils (self-governments of the provinces). Districts and communes are self-government units, ruled by their respective councils elected in universal and direct elections. The executive power in districts is vested in the office of *starosta*, elected by the district council. The executive power in communes is vested in mayors (in Poland they have different designations, depending on the size of a commune: *wójt* in village communes, *burmistrz* in towns, and *prezydent* in large cities). Mayors are elected in direct elections.

Poland ratified the United Nations Convention on the Rights of the Child (hereinafter called **CRC**) in June 1991. It **entered into force on 7 July 1991**, and was published in the Journal of Laws on 23 December 1991, thus becoming a part of Polish law.

Poland signed the United Nations Convention on the Rights of Persons with Disabilities (hereinafter called **CRPD**) (but not the Optional Protocol) on 30 March 2007. The Convention was ratified on 25 September 2012 and **entered into force on 25 October 2012** (that is on the 30th day after the deposit of the ratification instrument with the Secretary-General of the United Nations); it was published in the Journal of Laws on the same day.

2.2. Children with disabilities specific legal and institutional framework

2.2.1. Legal framework

Polish legislation offers a wide protection to children with disabilities. Generally, they enjoy the same rights as all other children and are provided with the same assistance offered to all persons with disabilities. In addition they benefit from specific rights granted solely to children with disabilities.

The Polish Constitution¹¹ prohibits discrimination on any ground, creates an obligation for public authorities to ensure special health care to children and persons with disabilities (Article 68) and to provide assistance to persons with disabilities to ensure their subsistence, and facilitate their adaptation to work and social communication (Article 69). Article 72 of the Constitution guarantees the most important children's rights:

¹¹ Dz.U.1997.78.483.

- 'The Republic of Poland shall ensure protection of the rights of the child. Everyone shall have the right to demand of organs of public authority that they defend children against violence, cruelty, exploitation and depravity.
- A child deprived of parental care shall have the right to care and assistance provided by public authorities.
- Organs of public authority and persons responsible for children, in the course of establishing the rights of a child, shall consider and, insofar as possible, give priority to the views of the child.'

According to **the Act on the Ombudsman for Children's Rights**,¹² the Ombudsman provides special care and assistance to children with disabilities (s.3).

Under **the Act on the Education System**¹³ complemented by the relevant executive regulations, children with disabilities are entitled to: early childhood development support (s.71b); education in all types of schools according to their individual developmental and educational needs and predispositions (s.1-5); adaptation of the content, methods and organisation of the education to the intellectual and physical capabilities of students, as well as the possibility to use psychological and pedagogical aid and special forms of teaching (s.1-4); realisation of personalised learning process, forms and curricula and rehabilitation activities (s.1-5a); and prolongation of every stage of education, assessment of their knowledge and qualifications in adapted forms and conditions, free accommodation in a special educational-pedagogical centre, free transport and assistance to school or special centre (s.14a and 17).

The Charter of Rights for Persons with Disabilities (a non-binding resolution of the *Sejm*),¹⁴ emphasises that persons with disabilities have a right to an independent, autonomous and active life, without any discrimination. The Charter enumerates ten rights, indicating the most important areas requiring government's action. The Charter acknowledges, *inter alia*, that persons with disabilities have:

- The right to a barrier-free environment, including access to public buildings, transport, information and means of communication;
- The right to education;
- To work in the open labour market in adapted conditions;
- The right to participation in public, social, cultural life, etc.

The government prepares annual reports on the fulfilment of the Charter.

The Act on Implementation of Certain EU Provisions Concerning Equal Treatment¹⁵ prohibits discrimination based on disability with regard to employment (including civil contracts and self-employment), vocational training and access to labour market services. However, the scope of the Act does not cover discrimination based on disability in the fields of education, health care, social protection and housing. The Act provides for a definition of

¹² Dz.U.2000.6.69.

¹³ Dz.U.2004.256.2572 j.t.

¹⁴ M.P.1997.50.475.

¹⁵ Dz.U.2010.254.1700.

direct and indirect discrimination, as well as the definition of 'unequal treatment'. According to the Act, in cases of infringement of the principle of equal treatment, the Civil Code and the Code of Civil Procedure¹⁶ apply accordingly (s.13 and 14 of the Act), which means that the provisions of the Act can be invoked in a lawsuit before a civil court.

The Act on Vocational and Social Rehabilitation and Employment of Persons with disabilities¹⁷ regulates the social and vocational rehabilitation and employment of persons with disabilities in Poland as well as disability assessment procedures; establishes the National Disabled Rehabilitation Fund (*Państwowy Fundusz Rehabilitacji Osób Niepełnosprawnych* - PFRON), a fund which distributes allowances and subsidies for various activities which aim to support and integrate persons with disabilities; establishes the Plenipotentiary for Persons with Disabilities in the rank of the State Secretary in the Ministry of Labour and Social Policy, as well as the National Consultative Council for Persons with Disabilities – an advisory body of the Government Plenipotentiary for Persons with Disabilities. The Act stipulates that "the rehabilitation of the persons with disabilities means a combination of actions (organisational, medical, psychological, technical, training, educational, social) aimed to achieve, with the participation of persons concerned, the highest possible level of functioning, quality of life and social inclusion" (s.7).

The Family and Guardianship Code¹⁸ regulates issues concerning: marriage, rights and responsibilities of spouses, property relations between spouses, termination of marriage, separation, maternity and paternity issues, the relationship between parents and children, adoption and obligation of maintenance. The Act also defines the rules for the custody of minors and the establishment of the custody or guardianship.

The Act on Family Support and Foster Care System¹⁹ regulates various forms of support for families experiencing difficulties in fulfilling their rights in regards to care and education. In addition this Act regulates principles and forms of foster care and specifies the eligibility criteria for candidates for a foster family.

The Act on Family Benefits²⁰ regulates the eligibility criteria for the entitlement to family benefits and the rules governing the award and payment of these benefits.

The Act on Social Assistance²¹ regulates the social assistance services and benefits eligibility criteria. It provides two forms of social assistance: financial benefits and non-monetary services (assistance in paying health insurance contributions, specialist counselling, family therapy, care services etc).

The Act on Prevention of Domestic Violence²² defines the duties of the government and local authorities in prevention of domestic violence and in regards to other relevant procedures.

Pursuant to the **Act on transport** of 15 November 1984²³ the carrier should take action to facilitate means of transport for persons with reduced mobility and with disabilities (s.14).

¹⁶ Code of Civil Procedure of 17 November 1964 (Dz.U.1964.43.296) (*ustawa z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego*).

¹⁷ Dz.U.2011.127.721 j.t.

¹⁸ Dz.U.2012.788 j.t.

¹⁹ Dz.U.2011.149.887.

²⁰ Dz.U.2006.139.992 j.t.

²¹ Dz.U.2009.175.1362 j.t.

²² Dz.U.2005.180.1493.

²³ Dz.U.2012.1173 j.t.

Children and person with disabilities have the right to reduced fare (s. 1-2 of the **Act on the right to reduced fare on public transport** of 20 June 1992).

The **Construction Law** of 7 July 1994 provides that buildings must be designed and constructed in a way that they ensure necessary conditions for the use of public buildings and residential housing for persons with disabilities, in particular persons using a wheelchair (s.5).

2.2.2. Institutions and authorities

Authorities and bodies dealing with matters concerning children and/or persons with disabilities are the following:

The Ombudsman – the Commissioner for Civil Rights Protection (*Rzecznik Praw Obywatelskich*) – is a **constitutional body** for safeguarding human and civic freedoms and rights specified in the Constitution and other legal acts. S/he is appointed by the *Sejm* with the consent of the Senate, but acts independently from other state authorities. The Ombudsman may take appropriate measures (carry out investigations, issue recommendations, reports, petitions to relevant bodies for taking up legislative initiatives, lodge a cassation, request that legal proceedings be instituted) upon a request from a citizen, an organisation, a self-government body, the Children's Rights Ombudsman or on his/her own initiative. In matters concerning children, the Ombudsman co-operates with the Children's Rights Ombudsman. The explanatory statement to the Draft Act on Ratification of the CRPD²⁴ proposed to designate the Ombudsman as the focal point for matters relating to the implementation of the Convention (Article 33 of the CRPD), but it has not been explicitly stated in any binding legal act.

The Ombudsman for Children's Rights (*Rzecznik Praw Dziecka*) is a **constitutional body** of state authority. The Ombudsman protects the children's rights referred to in the Constitution of the Republic of Poland, in the CRC and in other provisions of law.²⁵ S/he takes actions aimed at protecting children's rights such as the right to life and health care, the right to live in a family, the right to decent social conditions and the right to education. The Ombudsman also engages in actions aimed at protecting children against violence, cruelty, exploitation, demoralisation, neglect and other forms of maltreatment. The Ombudsman is particularly committed to providing care and assistance to children with disabilities, as well as to promoting and protecting their rights. In 2010, Polish legislation was amended to extend the scope of the Ombudsman's competences. Following those amendments, the Ombudsman has a right to participate in proceedings before the Constitutional Court concerning children's rights or to file a cassation against a final and binding court judgment and to participate in pending juvenile proceedings.

The Government Plenipotentiary for Persons with Disabilities is the Secretary of State in the Ministry of Labour and Social Policy responsible for supervising the implementation of the Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities of 1997. The Plenipotentiary is obliged among others to comment on legislation concerning employment, rehabilitation and living conditions of persons with disabilities and to draft government programmes concerning person with disabilities.

²⁴ Explanatory statement to the Draft Act on Ratification of the Convention on the Rights of Persons with Disabilities (n 2).

²⁵ Act on the Ombudsman for Children's Rights (*ustawa o Rzeczniku Praw Dziecka*) of 6 January 2000 (Dz.U.2000.6.69), s. 1.

The Minister of National Education is responsible for nearly the whole system of education, with the exception of higher education which is under the supervision of the Minister of Science and Higher Education. The Minister of National Education co-ordinates and carries out state education policy, supervises partially the work of education superintendents (*kuratoria*) and co-operates with other organisational bodies and units in the field of education.²⁶

The education superintendent (*kurator oświaty*) is the principal educational body at the regional level. S/he is responsible for the general administration of education in a voivodship. S/he is appointed by the voivode and implements the policy of the Minister of National Education. The education superintendent is responsible for, among others: pedagogical supervision over public and non-public schools and educational institutions, including central in-service teacher training institutions located in the given region; issuing administrative decisions in certain fields defined by the law and implementation of the state educational policy.²⁷

Local self-governments. The national educational policy is developed centrally, while the **administration** of education and the running of schools are decentralised. Districts (*powiaty*) exercise administrative control over upper secondary general and vocational schools, as well as over post-secondary schools and public special schools. They are also responsible for the management of artistic schools, sports schools, lifelong education centres, psychological and pedagogical guidance centres, and out-of-school education centres. Communes (*gminy*) are responsible for the administration of the pre-school institutions, primary schools and lower secondary schools (*gimnazjum*). All educational tasks carried out by the three levels of territorial self-government are **financed** in the framework of general subsidy from the state budget. The territorial self-government unit, as a body running or supporting the school, is responsible for the designing of a budget program for all schools and educational institutions in its respective area.²⁸

The Government Plenipotentiary for Equal Treatment (*Pełnomocnik Rządu do Spraw Równego Traktowania*) is a Secretary of State within the Chancellery of the Prime Minister. It is a position created in 2008 under a Government regulation, but the Act on Equal Treatment (2010) provides for new legal basis for its operation. The Plenipotentiary does not have its own office or budget and is affiliated to the office of the Prime Minister. The main task of the office is to implement the policy of the Government in the field of equal treatment. The principal task is the coordination of interdepartmental action on equal treatment, including counteraction of discrimination on the grounds of disability. The competences of the Plenipotentiary include preparing draft laws related to equal treatment and preparing opinions on such drafts; monitoring competences; promotion of the equal treatment; international cooperation; implementing projects that support equal treatment, and counteracting discrimination. Since her/his competences include "taking steps to eliminate or limit the consequences of a violation of the principles of equal treatment", s/he may receive complaints and intervene by asking relevant bodies for explanations or recommending adequate changes. However, s/he does not issue any binding decisions.²⁹

²⁶ 'General information – Poland. Responsibilities and administration', European Agency for Development in Special Needs Education, available at: <http://www.european-agency.org/country-information/poland/general-information> (last accessed on 10 November 2012).

²⁷ Ibid.

²⁸ Ibid.

²⁹ The Act on Equal Treatment of 2010; the Regulation of the Council of Ministers on the Government Plenipotentiary for Equal Treatment of 22 April 2008; the website of the Plenipotentiary, available at:

The Ombudsman for Patients' Rights is a governmental agency. Every citizen has the right to ask the Ombudsman for free-of-charge assistance to protect his or her rights regarding a medical treatment the citizen has received or wishes to obtain. The Ombudsman can also initiate an inquiry, based on substantiated information that a patient's right has been violated. A patient may appeal to the Ombudsman for Patients' Rights Medical Board against a medical opinion or a doctor's diagnosis, if such opinion or diagnosis affects the patient's rights or obligations. The Board is obligated to issue its decision promptly and in any case not later than within 30 days from the appeal date. The Ombudsman for Patients' Rights also employs a Spokesman for the Rights of Psychiatric Patients whose role is to protect the rights of patients who benefit from health services during hospitalisation in psychiatric hospitals.³⁰

2.2.3. Definitions

In Polish law, there is no uniform definition of the term '**disability**'. Several legal acts contain a definition of 'disability' for the purposes of a given subject matter. Indicated below is the selection of the most relevant examples.

The Charter of Rights for Persons with Disabilities of 1997 (a non-binding resolution of the Sejm) provides that 'persons with disabilities' are 'persons, whose physical, psychological or intellectual health permanently or temporarily hinders, restricts or prevents daily life, education, work, and performing of social roles, in accordance with legal and customary norms.'³¹

According to the Act on Vocational and Social Rehabilitation and Employment of Persons with disabilities of 1997 (hereafter 'Act on Social Rehabilitation'), 'disability' means 'permanent or temporary inability to perform social roles due to permanent or long-term impairment of the body, in particular resulting in an inability to work'.

Under the Act on Social Rehabilitation, 'persons under 16 years of age' are considered as suffering from disabilities 'if their physical or intellectual impairment – due to congenital defects, long-term illness or injury of the body, resulting in the need for care and assistance in meeting basic necessities of life in a manner exceeding the support necessary for a person of a certain age – is expected to last longer than 12 months' (s. 4a). In order to benefit from services and assistance provided under this and certain other legal acts, disability has to be certified by a competent authority (s. 1).

According to the Act on the Education System, a student with disabilities may require 'special organisation of education and teaching methods', described as '**special education**'. This means that those children require broad specialist support during their education, an adapted curriculum and adjusted learning conditions. The need for special education has to be confirmed by a decision of a psychological-pedagogical counselling centre. The decision also needs to contain a recommendation regarding the form of special

<http://rownetraktowanie.gov.pl/en/the-government-plenipotentiary-for-equal-treatment> (last accessed on 10 November 2012).

³⁰ 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 – Poland', 13th WG UPR, 08/03/2012, available at: www.ohchr.org/EN/HRBodies/UPR/Pages/PL-Session13.aspx (last accessed on 21 November 2012).

³¹ Charter of Rights for Persons with Disabilities (*Karta Praw Osób Niepełnosprawnych*), resolution of the Sejm of 1 August 1997, section 1.

education and whether it is to be provided in mainstream schools, inclusive schools or classes, in special schools or classes, or in special educational centres (s. 71b). Holding a disability certificate issued under the Act on Social Rehabilitation does not result automatically in issuing a decision on the need of special education. Therefore, for the purposes of the Act on the Education System, the term "a child with disabilities" has a broader meaning than "a child holding a decision on the need of special education".

The term '**children with special educational needs**' used in the Act on the Education System is even broader and includes children with long term illness, adaptive problems, specific learning difficulties, dyslexia, dysgraphia, dyscalculia, speech impairment, emotional and behavioural difficulties, etc.

Under the Civil Code,³² 18 years is the age of **majority** and attaining full legal capacity (s.10). Children under 13 have no legal capacity, children aged 13 – 17 have limited legal capacity (meaning the ability of concluding typical contracts in minor daily matters, disposing of one's earnings and certain properties (sections 12-22 of the Civil Code). However, different legal acts provide for a specific age with regard to certain rights and obligations. For example, education is compulsory until 18 years (s.15 of the Act on Education System); according to the Act on medical and dental professions of 5 December 1996³³, a minor of 16 years of age has the full right to obtain information on his/her state of health, the diagnosis, possible therapeutic methods, the foreseeable consequences of their application or termination, and the results of treatment and prognoses (s.31); the Labour Code of 26 June 1974³⁴ stipulates that a minor who attained 16 years of age may be employed under certain conditions (s. 190-191).

³² Civil Code of 23 April 1964 (Dz.U.1964.16.93) (*ustawa z dnia 23 kwietnia 1964 r. Kodeks Cywilny*).

³³ The Act on medical and dental professions of 5 December 1996 (Dz.U.2011.277.1634 j.t.) (*ustawa z dnia 5 grudnia 1996 r. o zawodach lekarza i lekarza dentystry*).

³⁴ The Labour Code of 26 June 1974 (Dz.U.1998.21.94 j.t.) (*ustawa z dnia 26 czerwca 1974 r. Kodeks pracy*).

3. LEGAL FRAMEWORK AND IMPLEMENTATION ASSESSMENT

KEY FINDINGS

- Overall, the legal framework is good, though improvements are needed in some areas, in particular as regards comprehensive social assistance and the system of support and guidance to children with disabilities and their parents. Anti-discrimination legislation should be amended to cover discrimination on the ground of disability in all areas of life.
- The implementation of the CRPD and CRC principles and rights is satisfactory. Practically all principles and rights have been transposed into Polish legislation. The existing difficulties result mainly from the way the law is applied in practice.
- The main issues faced by children with disabilities in Poland are difficulties in access to equal education and the lack of a comprehensive system of assistance.

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)

According to the Polish Constitution, the Republic of Poland ensures protection of the rights of the child (Article 72(1)). The best interests of the child are recognised by the courts. This is a general principle of Polish family law and an overriding value when compared to the interests of parents, guardians and other parties.³⁵ Pursuant to section 1(3) of the Act on the Ombudsman for Children's Rights, 'the Ombudsperson in the exercise of its powers is guided by the best interests of the child and takes into account that the natural environment for child's development is the family.'

Most of the constitutional principles relating to children are codified in the **Family and Guardianship Code** and the principle of the child's best interests is frequently invoked throughout the Code (e.g. provisions concerning the relationship between parents and children, divorce, adoption, foster care, etc. - parental authority should be exercised in the best interest of the child and the interest of society (s. 95(3)). The court may refuse to grant a divorce if the best interests of minor children of the spouses would be affected (s. 56(2), while the guardianship court will issue appropriate orders whenever the best interests of the child are at stake (s. 109(1)).

Respecting the best interests of the child is also the supreme ethical principle that must be followed by the welfare system, in education, in juvenile justice, as well as by the mental health system. The **Act on Family Support and Foster Care System** (in the preamble and in s.4) also states that the Act should be applied in the best interests and respecting the rights of the child, while the **Act on Social Assistance** refers to the best interests of the family and beneficiaries of the social assistance (s.100, 119). The **Act on Education System** stipulates that teachers in their teaching, educational and care activities have to

³⁵ See for example: Resolution of the Supreme Court (7 judges - legal principle) of 9 August 1952, C 1188/51; Resolution of the Supreme Court (7 judges - legal principle) of 21 November 1984, III CZP 47/84.

be guided by the best interests of students, the concern about their health and their moral and civic attitudes, and must respect the student's dignity (s.4). According to the **Act on Juvenile Justice**, in proceedings in juvenile cases, one should be guided first of all by the best interests of a child, aiming to achieve positive changes in personality and behaviour of the juvenile and, if necessary, to have parents or carers correctly fulfilling their child care duties (s.3 (1)).

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

The Polish Constitution provides for a general anti-discrimination clause in Article 32. More specific, it affirms gender equality in family, political, social and economic life and in particular as regards the fields of education, employment and social benefits, among others (Article 33). Furthermore, it provides for **equal access of every citizen to free health care services** (Article 68). As regards education, according to the Constitution, public authorities have to ensure that all citizens have a universal and **equal access to education** (Article 70). The Act on the Education System grants pupils with disabilities the right to choose between all kinds of schools, including mainstream, special and integration schools/classes (s1).

The Act on Equal Treatment transposes the equality provisions contained in various EU directives.³⁶ However, it **prohibits discrimination based on disability** (as well as sexual orientation, religion or age) **only with regard to employment**, vocational training and access to labour market services. Discrimination based on disability in the fields of education, health care, social protection and housing is, hence, not addressed. The Act on Equal Treatment defines 'direct' and 'indirect' discrimination, as well as 'harassment' and 'instruction to discriminate' (s.3). The Act designates the existing Ombudsperson office (the Commissioner for Civil Rights Protection) and the Government Plenipotentiary for Equal Treatment as the 'equality bodies'. Victims of discrimination may seek redress in civil court under the general rules of the civil law.

The **reasonable accommodation**³⁷ requirement was introduced by the Act on Vocational and Social Rehabilitation and Employment of Disabled Persons for persons with disabilities who are employed, participate in a recruitment process or undergo training, internship, etc. but not outside employment.

The Charter of Rights for Persons with Disabilities provides that persons with disabilities have the right to an independent, active life, **free from discrimination**. The Charter acknowledges, *inter alia*, that persons with disabilities have the right to a barrier-free environment, including access to public buildings, transport, information and means of communication; the right to education; the right to participation in public, social, cultural life, etc. The Charter, however, was adopted in the form of a resolution of the *Sejm*. It is, hence, not legally binding. Nevertheless, it declares the intention of the Parliament emphasising that its content results from already binding international obligations and calls on the Government to implement those rights and to submit an annual report in this

³⁶ Namely the following directives: 86/613/EEC, 2000/43/EC, 2000/78/EC, 2004/113/EC and 2006/54/EC.

³⁷ The right to non-discrimination requires reasonable accommodation in the sense that 'necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, [must be made] where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms' (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.'

matter.

The Act on the Education System provides for the obligation to adapt the organisation of education to the intellectual and physical capabilities of students. Pursuant to the Act on transport, the carrier should take action to facilitate means of transport for persons with reduced mobility and with disabilities (s.14). According to the Construction Law, buildings must be designed and constructed in a way that ensures necessary conditions for the use of public buildings and residential housing for persons with disabilities, in particular persons using a wheelchair (s.5).

However, there is no general anti-discrimination law which would explicitly prohibit discrimination on the grounds of disability in education and access to goods and services.

3.1.3. Evolving capacities of the child³⁸ (Art. 5 CRC and Art. 3 CRPD)

There are **no legal provisions** that would specifically mention evolving capacities of children with disabilities. However, several legal acts refer to the emotional and physical development of the child, in particular in the field of family law and education.

The Family and Guardianship Code stipulates that before taking a decision on important matters relating to the person or property of the child, parents should hear the child's view, if **intellectual development, health and level of maturity** of the child permits so (s. 95(4)). Parents must care for the physical and spiritual development of the child.³⁹ The Act on Family Support and Foster Care System guarantees that the child's right to information and to expression of opinions in matters that concern her/him are taken into account, according to her/his age and level of maturity (s. 4). In applying that law, due regard must be taken in regards to the individuality of the child.

According to the Act on the Education System, the education system ensures, in particular, the adaptation of the content, methods and organisation of education to the intellectual and physical capabilities of students; the possibility for children to receive education in all types of schools, according to individual developmental and educational needs and predispositions; the realisation of personalised learning processes, forms and curricula; and rehabilitation activities. Furthermore, the same act provides for a possibility to create support teams for early childhood development in mainstream and special kindergartens and schools, in order to stimulate psychomotor and social development of the child from the moment the disability was detected (s. 71b(2a)).

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

The right of the children to express their opinion is granted by the **Constitution**, which stipulates that 'organs of public authority and persons responsible for children, in the course of establishing the rights of a child, shall consider and, insofar as possible, give priority to the views of the child' (Article 72(3)). This principle is reflected by several acts,

³⁸ 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 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.

³⁹ s. 96(1) of the Family and Guardianship Code.

in particular in the fields of family law.

According to the Family and Guardianship Code, before taking a decision on important matters relating to the person or property of the child, parents should hear the child's view, if intellectual development, health and degree of maturity of the child so permits and take into account, as far as possible, her/his reasonable wishes (s.95(4)). The Act on Family Support and Foster Care System guarantees that the individuality of the child, the child's right to information and to expression of opinions in matters that concern her/him are taken into account, according to her/his age and degree of maturity (s.4). Similarly, the Act on Social Assistance ensures taking into consideration the opinion expressed by the child when providing assistance to the child's family or choosing a foster family for the child (s. 70 (3)). In juvenile proceedings, full freedom of the opinions of the child must be guaranteed (s.19 of the Act on Juvenile Justice). In the field of education, students have the right to express their opinion (s. 55 of the Act on the Education System).

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

According to the Constitution, everyone has the **right to demand from public authorities 'to defend children against violence, cruelty, exploitation, and neglect'** (Article 72 (1)). The amended Family and Guardianship Code prohibits corporal punishment of minors by persons who exercise parental or guardianship authority over them (s.96¹). The amended Act on Preventing **Domestic Violence** aims to 'increase prevention of domestic violence, ensure more effective protection of victims of violence, especially children, develop mechanisms that help separate offenders from victims and change the attitudes of people who resort to domestic violence through corrective and educational programmes'.⁴⁰

Children and or/persons with disabilities are also protected against violence outside the family under general rules of criminal law. In addition, according to numerous provisions of the **Criminal Code**, committing an offence against a minor constitutes an aggravating circumstance, and consequently the relevant punishment is higher. The punishment may also include prohibition of performing functions related to children (care, education, etc.). In addition, prescription periods in cases of offenses committed against a minor do not start running before his/her 18th birthday and the sentence cannot be erased from the register if the minor was under 15 (s. 101 and 106a of the Criminal Code). Pursuant to section 23 of the Code of Criminal Procedure, if an offence has been committed against a minor or in circumstances which indicate the minor's deprecation, the court or the prosecutor will inform the family court to undertake necessary measures.

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

The Polish law establishes the **primacy of raising children in their own family**. The Family and Guardianship Code, the new Act on Family Support and Foster Care System of 2011, as well as the Act on Social Assistance, reflect this principle. These are the main acts regulating the child care system. They provide support to biological families, and assistance to a child who cannot remain with his or her own family. The Act on Family Support, aims,

⁴⁰ 'National report submitted in accordance with paragraph 5 of the Annex to Human Rights Council resolution 16/21 - Poland', 13th WG UPR, 08/03/2012, available at: www.ohchr.org/EN/HRBodies/UPR/Pages/PLSession13.aspx (last accessed on 21 November 2012).

inter alia, to enhance prevention of domestic violence; to improve methods of working with a family experiencing problems in fulfilling its care and educative functions; to develop family forms of foster child care and to reduce the number and size of institutional care establishments. However, the Ombudsman for Children's Rights observed that very little orphans with disabilities find adoptive parents.⁴¹

Furthermore, according to the Family and Guardianship Code, children and parents have the **right and obligation to maintain contact with each other** (s.113). Divorce will be not allowed if the best interests of a minor child of spouses would be affected (s. 56(2)).

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

Article 68(3) of the Polish Constitution imposes an obligation on public authorities to ensure **special health care** to children and persons with disabilities, while Article 69 expressly guarantees public assistance for persons with disabilities, referring to the specific statutory provisions relating to securing their subsistence, adaptation to work and social communication. Furthermore, a child deprived of parental care has the right to the care and assistance of public authorities (Article 72(2) of the Constitution). According to the Act on the Ombudsman for Children's Rights, the Ombudsman provides special care and assistance to children with disabilities (s. 3 (4)).

Social assistance is organised by the State and local governments on different levels, often in cooperation with NGOs. Social assistance is a complex system of different allowances, benefits and subsidies, regulated by numerous statutes and regulations. The most important include: the Act on Social Assistance, the Act on Family Benefits, the Act on Social Pension of 2003, the Act on Vocational and Social Rehabilitation and Employment of Persons with disabilities, as well as the executive regulations to those acts.

Support for persons with disabilities in Poland is available mainly through **social insurance** (under the Act on Social Pension), the **family benefits and allowances system** (under the Act on Family Benefits) and the **social assistance** system (under the Act on Social Assistance). Social assistance consists of various categories of financial benefits and most of these services are means-tested. Persons with disabilities can also benefit from the family benefit system available to low income families with children. The income criterion for a family with a child with disability is less restrictive than it is for the other families. The amount of family allowance depends on the child's age. A number of supplements may be granted in addition to the family allowance, such as the supplement for the education and rehabilitation of a child with disabilities. Additionally, the family benefits system includes two non means-tested benefits: nursing allowance and nursing benefit.⁴²

In accordance with the Act on Healthcare Services, persons with disabilities can apply to the National Health Fund (NHF) for orthopaedic and assistive devices. NHF reimburses expenses up to a certain amount. Additional financing is possible, under certain conditions, from the State Fund for Rehabilitation of Persons with disabilities.

⁴¹ See the Ombudsman's Activity reports, available at: <http://www.brpd.gov.pl/detail.php?recid=43>.

⁴² Wapiennik E., 'ANED country report on the implementation of policies supporting independent living for disabled people. Poland', the Academic Network of European Disability experts, 2009, available at: www.disability-europe.net/content/aned/media/PL-8-ANED%202009%20Request-07%20Task%205%20request%20template_approved%20by%20author_to%20publish_to%20EC.pdf (last accessed on 21 November 2012).

However, the literature notes that **accessibility of services promoting independent living of persons with disabilities and supporting their families is far from satisfactory**. The system of financial support is fragmented and lacks coherence and flexibility. Moreover, it lacks services supporting the specific needs of persons with disabilities in terms of independent and autonomous living and social integration primarily outside the home: assistance in mobility, social communication, participation in social life and civil society.⁴³

Personal assistance is still a rather new and developing concept.⁴⁴ Although in recent years a new profession has been established, namely an assistant to a person with disabilities supporting and advising in the rehabilitation process, such service does not exist within the Polish legal framework. The existing services of personal assistant are mostly offered by non-governmental organisations and local governments and are organised according to different models.⁴⁵

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

The right of every citizen to education is a constitutional right. Article 70(1) of the Constitution provides: 'Everyone shall have the right to education. Education up to 18 years of age shall be compulsory.' Compulsory education begins in the year in which the child reaches 5 years old with one year in a kindergarten (s.14 of the Act on the Education System).

The Constitution further provides that '[p]ublic authorities shall ensure **universal and equal access to education** for citizens. To this end, they shall establish and support systems for individual financial and organisational assistance to pupils and students. The conditions for providing such assistance shall be specified by statute' (Article 70 (4) of the Constitution). Education to the age of 18 is free in state schools. Parents may choose private schools for their children (s. 1 (5)) of the Act on the Education System). For more information on this, see analysis indicated under Section 3.2.4 of this report.

3.2. Specific issues faced by children with disabilities

3.2.1. Gender vulnerability

Children with disabilities are **protected against gender discrimination and sexual abuse** under general anti-discrimination legislation and specific provisions addressing children. There are no specific regulations addressing children with disabilities in this matter. There have been several campaigns and government action programmes addressing discrimination on the ground of sex, as well as sexual violence against women. These were coordinated, *inter alia*, by the Government Plenipotentiary for Equal Treatment

⁴³ Waszkielewicz A. M., (ed) 'Polish Way to the UN Convention on the Rights of Persons with Disabilities' (*Polska droga do Konwencji o prawach osób niepełnosprawnych ONZ*), (Fundacja Instytut Rozwoju Regionalnego, Kraków, 2008), pp. 170-177, available at: www.pfon.org/images/dodatki/2008_konwencja_onz_polska_droga.pdf (last accessed on 21 November 2012).

⁴⁴ Wapiennik E., 'ANED country report on the implementation of policies supporting independent living for disabled people. Poland', the Academic Network of European Disability experts, 2009, p. 2, available at: www.disability-europe.net/content/aned/media/PL-8-ANED%202009%20Request-07%20Task%205%20request%20template_approved%20by%20author_to%20publish_to%20EC.pdf (last accessed on 21 November 2012).

⁴⁵ Ibid, p.13.

that also made number of interventions in individual cases.⁴⁶

According to stakeholders interviewed for this study and the information available, there is no difference in treatment and access to rights between girls and boys with disabilities and no incidents of discrimination of girls with disabilities has been notified to relevant bodies.

There is no programme for sterilisation of young women in Poland neither is there any reproductive programme targeted at girls with disabilities. Provisions concerning sexual education at school do not discriminate against persons with disabilities. However, public **opinion surveys** show that, according to social perception, persons with disabilities, in particular intellectual disabilities do not require sexual education as they are **perceived as 'asexual'**.⁴⁷ Such perception may in practice limit the access of those persons to necessary knowledge.

On signing the CRPD, Poland reserved the right not to apply Article 23.1(a) of the Convention until amendments of relevant domestic legislation will be made, namely s. 12(1) of the Family and Guardianship Code, which stipulates that a person whose disability results from a mental illness and who is of marriageable age, cannot marry without the court's approval confirming that the health or mental condition of that person does not constitute a danger to the marriage or the health of prospective children, provided that such a person has not been fully incapacitated.

3.2.2. Violence

Following an amendment to the Family and Guardianship Code in 2010, the Code now explicitly **prohibits corporal punishment** of minors by persons exercising parental, care or guardianship authority (s. 96¹). A public opinion survey conducted in 2011 for the Children's Rights Ombudsman indicates that the social acceptance of parents hitting their children has already begun to decrease following the prohibition. Previous research found that 78% of the public were accepting the "spanking" of children. The new study revealed that public approval for such activities had fallen to 69%. At the same time, the proportion of people expressing disapproval of "spanking" rose from 19% in 2008 to 27% in 2011. However, questions in both surveys were phrased differently, which does not allow drawing any meaningful conclusions. One of the press articles on the issue cites other surveys, carried out in 2001 and 2009, which did not study attitudes and opinions but actual behaviour, asking parents whether they do spank children. These studies show a decrease of parents spanking children from 80% to 70%, and those using a belt from 25% to 20%.⁴⁸

The Istituto Internazionale Maria Ausiliatrice reported in its submission to the Universal Periodic Review concerning Poland (Session 2012) that episodes of violence against children still occur mainly at home and that domestic violence is common, but not

⁴⁶ See the Plenipotentiary's website: <http://rownetraktowanie.gov.pl/>.

⁴⁷ Waszkielewicz A. M., (ed) 'Polish Way to the UN Convention on the Rights of Persons with Disabilities' (*Polska droga do Konwencji o prawach osób niepełnosprawnych ONZ*), (Fundacja Instytut Rozwoju Regionalnego, Kraków, 2008), pp. 123-124, available at: www.pfon.org/images/dodatki/2008_konwencja_onz_polska_droga.pdf (last accessed on 21 November 2012).

⁴⁸ Golus A., 'Corporal punishment in numbers or social acceptance of beating children' (*Kary cielesne w liczbach czyli społeczna akceptacja bicia dzieci*), *Nasze maluchy* 2012, available at: www.naszemaluchy.pl/arttykul/kary_cielesne_w_liczbach;jsessionid=54F914B9D84F9114F3164FC7EA9856F9 (last accessed: 20 November 2012).

exclusive, in cases of parents with drug and alcohol addictions.⁴⁹

However, the Government endeavours to provide better **assistance to victims of domestic violence** and to improve society's awareness and vigilance through number of legislative reforms as well as trainings and social campaigns, organised also in cooperation with NGOs.⁵⁰ The amended Act on the Prevention of Domestic Violence imposes new obligations on government and local administration, such as appointment of voivodship coordinators of the National Programme of Prevention of Domestic Violence. Communes, and poviats self-governments are obliged to develop local programmes of preventing domestic violence and to set up interdisciplinary teams to ensure more effective protection of victims of domestic violence. For example, it introduced a special 'Blue Card' procedure, which should be initiated whenever there is a suspicion of domestic violence. The Polish Criminal Code has also been amended several times to enhance the protection of children against sexual violence and to counteract paedophilia in the Internet.

With respect to children with disabilities, some stakeholders believe that violence against them does exist not only in family homes but also in certain social welfare homes, which are closed establishments where any dysfunctions are invisible to the public. However, there are apparently no relevant statistical data.⁵¹

3.2.3. Children as vulnerable suspects

Under the Criminal Code, a person **over the age of 17 can be criminally liable** for committing an illegal act. As an exception to this rule, a minor over 15 years of age who has committed the most severe crime can be held liable pursuant to the rules set out in the Criminal Code. A minor aged between 13 and 17 years who has committed an offence is not held criminally liable and is brought before a family court which decides on corrective or educative measures in respect to such an offender.

The Act on Juvenile Justice provides that in proceedings in juvenile cases the court is guided first of all by the best interests of a child, aiming at achieving positive changes in personality and behaviour of the juvenile and if necessary aiming at correctly fulfilling child care duties of parents or of carers, taking the public interest into account (s.3). The family court may apply corrective measures to juveniles aged 13 to 17 who commit a punishable offence and educational measures to juveniles under 17 who display indications of depravity (s.1).

With regard to persons with **mental disabilities**, section 31(1) of the Criminal Code stipulates that a person who, at the moment of committing an unlawful act, could not recognise the significance of the act or control his actions because of mental illness or other mental disturbance, is not criminally liable. If the ability to recognise the importance of the act or to control his actions was considerably reduced, the court may apply an extraordinary mitigation of punishment.

⁴⁹ 'Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 – Poland', 13th WG UPR, 12/03/2012, available at: www.ohchr.org/EN/HRBodies/UPR/Pages/PLSession13.aspx.

⁵⁰ 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 – Poland', 13th WG UPR, 08/03/2012, available at: www.ohchr.org/EN/HRBodies/UPR/Pages/PLSession13.aspx (last accessed on 21 November 2012).

⁵¹ Information collected through interviews with stakeholders (persons with disability rights NGOs).

There are very **little specific procedural provisions applying to persons with disabilities**.⁵² If there is a doubt as to the mental health of the suspect, the court asks for an expert opinion and the presence of an advocate during the proceedings is obligatory (s.79, 192 of the Code of Criminal Procedure). In case of a minor, his legal guardian may undertake procedural steps on his behalf. The proceedings in juvenile cases are conducted by family courts and are regulated by the Act on Juvenile Justice, which applies also in cases of juveniles with intellectual disabilities. This Act applies in cases when a minor committed an offence or shows signs of depravity. Pursuant to section 1 of the Act, a minor is a person:

- Under the age of 18 - for the purpose of preventing and combating depravity;
- Between the age of 13 and 17 - for the purpose of criminal proceedings;
- Up to the age of 21 - for the purpose of implementing educative and corrective measures.

'According to the current understanding of juvenile justice, a young offender is never treated as a guilty person but as an at risk person. Every child, whether they have mental problems or have developed normally, has to be protected by law and the State has to give them the best conditions and opportunities for treatment'.⁵³

In case a juvenile aged between 13 and 17 years old commits an offence, the family court orders a psychological assessment and analyses family and schooling history of the minor. If the results of the examination and interview indicate the existence of a mental illness or disorder, the family court rules on undertaking treatment and may decide to place him or her in a special therapeutic or revalidation centre. The treatment is seen as highly important. Depending on the type of intellectual disabilities and on the level of depravity of the juvenile, the family court rules an open, semi open or isolation treatment. After completion of the therapeutic process, the family court analyses the progress and only if it cannot establish any improvement, the court may rule to apply a corrective measure. If the juvenile's mental disorder is considered profound then the court will only apply a treatment measure, tailored to the individual situation of the juvenile. Placement in isolation is a last resort and is applied only when the other measures are not effective.⁵⁴

However, according to the report of the International Juvenile Justice Observatory, the above-mentioned principles are not always realised in practice, mostly due to the poor organisation of centres providing care, treatment and social rehabilitation. In general, these are **overcrowded facilities lacking competent** and motivated staff and applying inefficient therapy and rehabilitation methods. In addition, there are often conflicts between medical staff and pedagogical staff, and the living conditions are unfriendly. However, many directors of such centres are eager to cooperate with other centres and institutions which carry out educational, therapeutic and re-integrative actions. Cooperation with non-governmental organisations is also developed, but not to the required extent.⁵⁵

3.2.4. Inclusive education

⁵² The criminal law mostly uses terms such as mental handicap/impairments or insanity.

⁵³ Barciszewska M., and Sadowska J., 'Analysis of the current situation of young offenders with mental problems in Poland in Mental Health Resources and Young Offenders: State of art, challenges and good practices', the International Juvenile Justice Observatory (IJJO), November 2011, p. 271; available at: www.ipjj.org/fileadmin/data/documents/reports_monitoring_evaluation/IJJO_MentalHealthResourcesForYoungOffendersVol1_2011_EN.pdf (last accessed on 21 November 2012).

⁵⁴ Ibid.

⁵⁵ Ibid., p.275.

According to the Act on Education System and the implementing regulations, the Polish education system provides **adjusted education for every child**, appropriate to the age and the level of development reached, as well as adaptation of content, teaching methods and organisation of work regarding to the psycho-physical capabilities, together with the possibility of getting the psychological and pedagogical support and special forms of teaching. This obligation refers to every type of school, whatever choice is made by the child and the parents (s.1).

Students with disabilities may attend the schools of all levels and of all types of school: mainstream school, integration school or special school, according to individual developmental and educational needs and predispositions (s. 1(5)). Parents or guardians, respectively, are **free to decide which track they choose for their child**.

The following types of schools exist in Poland:

- Mainstream schools, providing inclusive education;
- Mainstream schools with integration classes;
- Integration schools;
- Special schools and residential special schools for: the blind and the visually impaired, the deaf and the hearing impaired, the intellectually disabled, the physically disabled, for the ill children (schools situated in hospitals) and centres for socially maladjusted youth.

According to section 3 of the Act on the Education System, a special school/class is a school/class for students holding a decision on the need of special education (see below in this section); an integration class is a class where students holding a decision on the need of special education study and develop together with other students; an integration schools is a school where all classes are integration classes.

In addition, children and youth with profound intellectual disabilities may also participate in rehabilitation-educational classes, which can be organised in public kindergartens and schools, in special educational care centres, non-governmental remedial centres, social care homes, or at the child's family home.⁵⁶

Children or young people have **special educational and/or developmental needs** if their opportunities for education, development and learning are limited to such an extent that they cannot meet educational requirements at mainstream schools without receiving additional assistance, both throughout the entire educational process (for example because of disability, specific learning difficulties) or during certain period of education (a child showing signs of emotional problems resulting from trauma). This term includes gifted children as well.⁵⁷

⁵⁶ Organised according to the Act on Mental Health Protection and the Regulation of the Minister of National Education on principles of organising rehabilitation and educational activities for children and young people with profound intellectual disabilities of 1997.

⁵⁷ 'Children with special educational needs in Polish education system', The European Agency for Development in Special Needs Education, June 2012, available at: <http://www.european-agency.org/agency-projects/ra4al/country-exhibition-materials> (last accessed on 8 October 2012); 'Special educational needs of children and youth. Legal ABC for directors of kindergartens, schools and institutions' (*Specjalne potrzeby edukacyjne dzieci i młodzieży. Prawne ABC dyrektora przedszkola, szkoły i placówki*) (Ministerstwo Edukacji Narodowej, Warszawa, 2010).

Pupils with special educational needs include children who require special organisation of education and teaching methods (special education).⁵⁸ This means that such children need a broad specialist support during their education, with adapted curriculum and adjusted learning conditions. This group include children with different kinds of physical and intellectual disabilities and impairments.

Literature considers the use of the term **'special education'** (meaning 'special organisation of education and teaching methods') **misleading** because may imply that a child requiring 'special education' must attend a special school. It therefore recommends changing the terminology.⁵⁹

Children's parents or guardians can apply for the provision of the special organisation of education and teaching methods ('special education') with the public psychological-educational counselling centres. These will base their decision on an assessment by multidisciplinary teams of experts.⁶⁰ In its decision, the psychological-educational centre recommends the form of special education to be provided and the school type. This recommendation, however, does not restrict the parents in their right to freely decide which school type they prefer for their child to attend. As the system is flexible parents may decide to change school types at any stage of education.

Under Polish law, **mainstream schools are obligated to enrol every child living in their districts**. They must ensure that students identified as having special educational needs receive education according to the recommendations in their assessment. Since 1 September 2011, mainstream schools are also obligated to **develop individual plans for pupils with disabilities based on the assessment** conducted by the above-mentioned multidisciplinary teams of experts. The Regulation on conditions in mainstream or integrated schools of 2010 does not impose an obligation on mainstream schools to hire specialists to work with pupils with disabilities and to support 'regular' teachers, unless they have integrated or special classes. Such specialists may, however, be employed, with the permission of the governing authority.⁶¹

Under the Act on the Education System, communes have the duty to **transport** pupils with disabilities to schools (or special centres) free of charge and to provide assistance during the transport; in case the transport and assistance is provided by parents or guardians, they should be reimbursed the costs of travel (s.14a and 17).

Stakeholders point out that, although the Polish education system increasingly considers inclusive education, individual principals of mainstream schools may **still put pressure on parents of children with disabilities to place the child in a special school** (see more in detail in Section 4.2).⁶²

⁵⁸Pursuant to section 71b of the Act on the Education System and the Regulation of the Minister of National Education on the organisation of education, upbringing and care for children and youth with disabilities and socially maladjusted in mainstream or integration kindergartens, schools and classes.

⁵⁹ Wdówik P., 'Education' (*Edukacja*) in Waszkielewicz A. M., (ed) 'Polish Way to the UN Convention on the Rights of Persons with Disabilities' (*Polska droga do Konwencji o prawach osób niepełnosprawnych ONZ*), (Fundacja Instytut Rozwoju Regionalnego, Kraków, 2008), p. 126.

⁶⁰ Pursuant to the Regulation of the Minister of National Education on assessments and opinions issued by the assessment teams in the public psychological-educational counselling centres.

⁶¹ 'DOTCOM: the Disability Online Tool of the Commission - Poland', available at: www.disability-europe.net/dotcom (last accessed on 20 November 12).

⁶² Information collected through interviews with stakeholders (Children's Ombudsman, children's rights NGO).

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

Some stakeholders⁶³ draw attention to the **insufficient institutional support** for parents and guardians of children with disabilities, in particular intellectual disabilities. According to the information collected through interviews, **existing structures are not efficient**, they do not have adequate instruments and resources to provide such wide range of assistance that parents need (psychological, but also concerning treatment, choice of education etc.), and in one place.

Comprehensive policy addressing all the needs of children (as well as adults) with **intellectual disabilities** is lacking. Existing infrastructure focuses on persons with mobility impairment. Furthermore, the social welfare system, as it stands now, is not effective as it concentrates on bureaucratic activities - paying out benefits, running registers - but offers no real assistance and guidance. A family assistant (as provided for in legislation, but not existing yet in practice), or an assistant for a child with disability could perform such functions.

The law provides for the possibility of creating early childhood development teams. However, according to stakeholders, there are **little provisions guaranteeing such support on every stage of life of a person with disability**.⁶⁴

Other issues mentioned concern the virtually non-existent offer of public television for children with disabilities, as well as problems with liquidating architectural barriers both in public places and at home, and difficulties in obtaining subsidies for rehabilitation devices.

⁶³ Children's Ombudsman, children's rights and persons with disability rights NGOs.

⁶⁴ Children's rights and persons with disability rights NGOs.

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

KEY FINDINGS

- The level of practical implementation of the legal framework is moderate. In particular in the field of education, the financial means destined to children requiring 'special education' do not reach the schools accommodating these children.
- The Ombudsman for Children's Rights has extensive competences to take up a child's cause in administrative as well as court proceedings.
- Literature based on research or statistical data is scarce.
- The literature recommends: 1. reforming the present system of financing education; 2. coordinating the fragmented system of social assistance and putting more emphasis on services promoting independent living; 3. creating comprehensive and coordinated system of multidisciplinary, lifelong assistance for persons with intellectual disabilities and early support for parents.

4.1. Enforcement and reporting mechanisms

All rights provided by law can be enforced in court proceedings. Under section 61 of the Code of Civil Procedure, NGOs whose statutory objectives include, *inter alia*, protection of equality and counteracting discrimination may, with the consent of the person concerned, institute judicial proceedings on behalf of the person or join the already pending proceedings.

Legal advice and support constitutes a considerable part of activities of organisations dealing with rights of children and/or persons with disabilities. This is, allegedly, a result of relatively low awareness of the legal context within society and, concerning cases of parents of children with disabilities, of their exhaustion and feeling of incapability to handle the matters regarding their children by themselves.⁶⁵

In matters relating to the **education system**, children and parents (and relevant organisations) can avail themselves of an administrative appeal to the educational superintendent against opinions issued by the psychological-pedagogical counselling centres; or to the local self-government in administrative and financial matters. All administrative decisions can be appealed against to the administrative courts.

As regards **domestic violence**, the Act on Prevention of Domestic Violence provides for a special procedure called "Blue Card" which defines a set of measures to deal with complaints of domestic violence, including remedial responses and cooperation with non-police entities. The procedure may be initiated, even without active participation or consent of the victim, by social workers, police, education or health institutions staff, whenever there is a reasonable suspicion of domestic violence. 'Main objectives of the Procedure are: stopping domestic violence; organised collection of information on the situation of each

⁶⁵ Information collected through interviews with stakeholders.

individual family; providing support to victims of domestic violence on possibilities for seeking assistance; taking intervention measures against the perpetrators of violence; making the diagnosis of family situation and preparing support plan that caters for the needs of all family members; launching a local family support system based on the cooperation of individual services'.⁶⁶

Children and parents can also seek help from or complain to the Commissioner for Civil Rights Protection, the Ombudsman for Children's Rights, or in specific cases, to the Ombudsman for Patients' Rights, the Government Plenipotentiary for Equal Treatment or the Government Plenipotentiary for Disabled Persons. The two Government Plenipotentiaries have, among others, monitoring functions with regard to the implementation of legislation and policy within their competences.

The Commissioner for Civil Rights Protection may carry out investigations, issue recommendations, reports, petitions to relevant bodies for taking up legislative initiatives and may request that legal proceedings be instituted. He may also lodge a last resort appeal with the Supreme Court in a penal case and may participate in constitutional complaint proceedings before the Constitutional Tribunal.

The competences of **the Ombudsman for Children's Rights** were considerably extended following legislative amendments in 2008 and 2010. Pursuant to section 10 of the Act on the Ombudsman for Children's Rights, he may:

- Examine each case on the spot even without prior notice;
- Require public authorities, organisations or institutions to submit explanation or give information, as well as to disclose relevant files and documents, including those containing personal data;
- Enter into proceedings before the Constitutional Tribunal initiated on the basis of an application submitted by the Human Rights Defender or in cases of constitutional claims concerning the rights of the child and participate in such proceedings;
- Request the Supreme Court to adjudicate cases of divergence in law interpretation with regard to regulations of law concerning the rights of the child;
- Lodge cassation or appeal against legally valid sentence on terms and under rules governed by separate regulations;
- Require that proceedings be instituted in civil cases and enter into pending proceedings with rights enjoyed by the prosecutor;
- Enter into pending proceedings in cases involving minors – with rights of the prosecutor;
- Require that preparatory proceedings be instituted by a competent prosecutor in cases of crime;
- Ask for instituting administrative proceedings;
- Lodge complaints to the administrative court and participate in those proceedings with the rights of the prosecutor;

⁶⁶ Sasal H.D., '<Blue Card> Procedure as an example of combining powers of various services' (*Procedura „Niebieskiej Karty” jako przykład łączenia kompetencji różnych służb*), available at: www.niebieska.pl/przewodnik_ustawa/poradnik_eksperti_radza/07_Hanna_Dorota_Sasal.pdf (last accessed on 20 November 2012).

- File an application on punishment in proceedings regarding offences on terms and under rules governed by separate regulations; order examinations and preparation of expert opinions and evaluations.

4.2. Gaps, problems and issues in the implementation

The research and the interviews with stakeholders conducted within the realm of this study lead to the conclusion that despite existing comprehensive and satisfactory legislation concerning education for children with disabilities, there are still many issues with its implementation in practice, and hence the reality departs from the vision of school established by the legislation and policy guidelines.

According to the literature and the stakeholders, this is mostly due to an imperfect mechanism for financing the specific needs of students with disabilities. Education is carried out by local authorities and financed by the State budget through the education subsidy. It is divided between the self-governments on the basis of the number of students studying in their district/commune. For a student with disability, the amount of education subsidy is from 1.4 to 9.5 times higher than for other students. Subsequently, the local authorities are supposed to transfer the funds to the respective schools. In theory the budget should be directed to the school chosen by the student. In practice, the subsidy is not divided between schools according to this formula. Instead, **local authorities use the education subsidy according to their own priorities**. In the best case, the part of the subsidy intended for education of students with disabilities supports education of healthy pupils.⁶⁷ This practice leaves the schools accommodating children with disabilities with increased expenses which are not compensated.

A decision about the need for special education imposes certain obligations on the school related with ensuring **adaptation of the curriculum**, methods of work, physical environment or hiring specialised staff. The school staff and management are often **reluctant to take on this burden**, in particular if they face the first case of disability in their school. The reason for their anxiety is often ignorance of the law, in particular their right to demand the mayor for all necessary funding and assistance to which the school and the child are entitled (as mentioned above in the section).

Since the relevant budget is not directed to the student's school automatically, the school principal is obliged to require increased funds to meet the increased expenses from the commune on a case-by-case basis. Some principals are not aware of those rights and obligations of the school; others prefer not to enter into conflict with a mayor who appoints principals.⁶⁸ Consequently they try to persuade the parents to withdraw their child from the school.

Similarly, the communes are **reluctant to spend the necessary budget to organise**

⁶⁷ 'Equal access to education for persons with disabilities. Analysis and recommendations' (*Równe szanse w dostępie do edukacji osób z niepełnosprawnościami. Analiza i zalecenia*), Biuletyn RPO. Źródła 2012 nr 7, Warszawa 2012, report prepared for the Commissioner for Civil Rights, available at: www.rpo.gov.pl/pliki/13490881580.pdf (last accessed on 21 November 2012), p. 20; information collected through interviews with stakeholders (Ministry, Children's Ombudsman, children's rights and persons with disability rights NGOs).

⁶⁸ Dudzińska A., 'The right of child with disabilities to education in mainstream school - guidelines for parents and guardians' (*Prawo dziecka niepełnosprawnego do nauki w szkole ogólnodostępnej – wskazówki dla rodziców i opiekunów*), 2011, available at: www.abcd.edu.pl/index.php/aspekt-prawny/22-komentarze-do-prawa/268-prawo-dziecka-niepenosprawnego-do-nauki-w-szkole-ogolnodostepnej-wskazowki-dla-rodzicow-i-opiekunow (last accessed on 20 November 2012).

transport to school for children with disabilities. Their main objective is to minimise the costs. Therefore, for example, instead of organising the proper transport and hiring an assisting person, they reimburse the bus tickets. This practice can put children from rural areas where the public transport is less efficient in a difficult situation. Because of transportation problems they often receive home schooling which deprives them of social integration and offers lower level of education

Nevertheless, the Ombudsman for Children's Rights observed that the number of complaints submitted to the Ombudsman on the incompatibility of educational institutions to the needs of children with disability is gradually decreasing, which may imply that the situation has been improving.⁶⁹

One of the stakeholders observed that the new Act on Family Support and Foster Care System is not being entirely implemented. The Act provides for a family assistant, whose task would be, among others, to support families having difficulties in meeting their care and educational obligations. Also in this case the main issue seems to be the lack of funding. Consequently, children with disabilities in need of around-the-clock care are often placed in social welfare homes, which are old-model institutional care closed establishments, which do not promote development.⁷⁰

4.3. Best practices

Several institutions and organisations in Poland work for the rights of children and children with disabilities. One of the most important is the Ombudsman for Children's Rights, whose competences have been considerably increased in recent years, allowing him to monitor and effectively enforce children's rights.

The Act on the Education System provides **for tools allowing to adjust the process of education**, forms and curricula to the individual needs of the child and to offer him/her the right kind of psychological and pedagogical assistance, including complementary classes. Notwithstanding the problems encountered in enforcing these rights (described above in section 4.2), there are many examples of communes where mainstream kindergartens and schools manage to fully satisfy the special needs of a disabled child.⁷¹

The Act on Family Support and Foster Care System provides for a **family assistant**, whose task would be, among others, to support families having difficulties in meeting their care and educational obligations. This function, once fully implemented, may prove extremely useful in providing the families with psychological assistance, as well as guidance as regards their rights and obligations under the law.

Teachers employed to work with student with disabilities should have **adequate qualifications**. Based on a recommendation by stakeholders, the Minister of National Education and the Minister of Science and Higher Education introduced disability issues to the programmes of studies for pedagogues.⁷²

⁶⁹ See the Ombudsman's Activity report for 2011, available at: <http://www.brpd.gov.pl/detail.php?recid=43> (last accessed on 21 November 2012).

⁷⁰ Information collected through interviews with stakeholders (persons with disability NGO).

⁷¹ Waszkielewicz H., (ed) 'Good practices of self-governments. Policy for the persons with disabilities' (*Dobre praktyki samorządów 2011. Polityka na rzecz osób niepełnosprawnych*), Fundacja Instytut Rozwoju Regionalnego, Kraków, 2011, available at: www.firr.org.pl/uploads/PUB/SRS%202011.pdf (last accessed on 21 November 2012).

⁷² Information collected through interview with stakeholders (Ministry).

4.4. Data and monitoring mechanisms

There is very **little data and research** concerning children with disabilities. None of the stakeholders could provide any statistical data relevant for this study. The Minister of National Education administers the Education Information System (SIO),⁷³ which includes, *inter alia*, data on students with special educational needs.⁷⁴ The purpose of SIO is to obtain data necessary to implement the state educational policy, to ensure quality and dissemination of education, and to improve the financing of educational tasks.⁷⁵ However, there is no system permitting to control or monitor the self-governments as regards the way they use the budget provided for special education, and in particular to verify how many students with special educational needs actually receive (through their school) all the funding they are entitled to.

Other bodies carry out *ad hoc* researches. By way of example, the Commissioner for Civil Rights Protection published recently a report on 'Equal access to education for persons with disabilities'.⁷⁶ The Commissioner and the Children's Ombudsman also publish annual reports on their activities, which include cases of interventions concerning children and/or person with disabilities, as well as general statements with regard to more systemic problems.⁷⁷

4.5. Recommendations given by the literature

As regards the existing non-discrimination legislation, stakeholders have not raised concerns. However, international bodies, in particular the UN Human Rights Committee in 2010 expressed its concern that the **Law on Equal Treatment was not exhaustive** and did not cover discrimination based on sexual orientation, disability, religion or age in the fields of education, health care, social protection and housing. It recommended that Poland further amends the law to cover discrimination based on all grounds and in all areas.⁷⁸

All stakeholders see the need for social campaigns and more **targeted trainings** for different groups (teachers, judicial officers, social workers) to **raise public awareness** of the rights of children with disabilities, and to improve knowledge about obligations of public institutions. Social campaigns should present children with disabilities not as victims, but equal citizens. Furthermore, stakeholders agree that supervision of local administration with regard to spending the education subsidies, or changing the system of financing education, is essential.

⁷³ Centrum Informatyczne Edukacji, System Informacji Oświatowej, available at: <http://www.cie.men.gov.pl/>.

⁷⁴ Education Information System: <http://www.cie.men.gov.pl/index.php/dane-statystyczne/139.html> (last accessed on 21 November 2012).

⁷⁵ 'Mapping the Implementation of Policy for Inclusive Education – Overview of Country Data Collection Work', European Agency for Development in Special Needs Education, Odense, 2011, available at: www.european-agency.org/agency-projects/mapping-the-implementation-of-policy-for-inclusive-education/MIPIE-Overview.pdf (last accessed on 21 November 2012).

⁷⁶ 'Equal access to education for persons with disabilities. Analysis and recommendations' (*Równe szanse w dostępie do edukacji osób z niepełnosprawnościami. Analiza i zalecenia*), Biuletyn RPO. Źródła 2012 nr 7, Warszawa 2012, report prepared for the Commissioner for Civil Rights, available at: www.rpo.gov.pl/pliki/13490881580.pdf (last accessed on 21 November 2012).

⁷⁷ See their respective websites: www.rpo.gov.pl, www.brpd.gov.pl (last accessed on 21 November 2012).

⁷⁸ 'Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 – Poland', 13th WG UPR, 13/04/2012, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/PLSession13.aspx> (last accessed on 21 November 2012).

In addition, stakeholders point at the need of teachers to better understand and support the families of children with disabilities. To this end, according to the stakeholders, the system should better exploit the experience, knowledge and potential of NGOs and teachers working in special schools and centres.⁷⁹

Some change in terminology used in the education legislation is proposed, since the term "special education", which refers to education in all types of schools, even in mainstream schools, strengthens existing stereotypes. The standpoints of literature and stakeholders differ, however, as to **the need to introduce into the Polish law the term and principle of primacy of inclusive education**. Some stakeholders consider this option to be favourable,⁸⁰ other argue that inclusive education is not always an optimum choice for every child, and the choice of school should be carefully considered on a case-by-case basis to best meet the needs of the child.⁸¹

The legislation on social assistance should include special services such as providing an assistant to a person with disabilities, a guide for a person with visual impairments or a sign language interpreter for hearing-impaired. The system of financial and material **assistance should be coordinated and be more flexible**, taking into consideration changing needs and living situations of a person.

⁷⁹ Information collected through interview with stakeholders (children's rights and persons with disability rights NGOs).

⁸⁰ Children's rights and persons with disability rights NGOs.

⁸¹ Information collected through interview with stakeholders (Ministry). See also Wiąckiewicz U., 'The role of the (special) school in representing the interests and meeting the needs of children and youth with disabilities and their families' (*Rola szkoły (specjalnej) w reprezentowaniu interesów i zaspokajaniu potrzeb niepełnosprawnych dzieci i młodzieży oraz ich rodzin*), in Podgórska-Jachnik D. (ed.), 'Problems of advocacy and representation of persons with disabilities' (*Problemy rzecznictwa i reprezentacji osób niepełnosprawnych*), wyd. EGP, WSP w Łodzi, Łódź 2009.

5. CONCLUSIONS

Children with disabilities enjoy protection under Polish legislation both on the constitutional level and on the level of statutory legislation, in particular in areas of education, social services and social assistance, and protection against violence. However, there is no statutory law explicitly prohibiting discrimination on the ground of disability in all spheres of life.

While the CRPD and CRC rights and principles are generally well reflected in the national legislation, the research and interviews with stakeholders conducted for this study indicate that there is a gap between the existing legal framework and its implementation. Implementation gaps could be identified in particular with respect to the access to inclusive education. To improve the application of the law and realisation of the national policy in this field, it is necessary to reform the present system of financing of 'special education', which leaves to the local administration the possibility of misusing the education subsidies received from the State budget for other purposes, and to raise awareness of teachers and parents as regards rights and obligations of schools and local authorities towards children with special needs.

Until recently, the prevailing national policy towards persons with disabilities placed them in a position of subjects of social care institutions, and not actors actively participating in social life. The ratification of the CRPD is expected to further stimulate the change of this approach and to contribute to building a more comprehensive policy addressing the needs of persons with disabilities. Nevertheless, the stakeholders suggest that the difficulties experienced by children with disabilities result in most cases from institutionalised prejudices which seem to be a consequence of this long-prevailing 'caring' approach.

The stakeholders also recommend reforming and coordinating the system of social assistance which lacks coherence and is governed by several legal acts and public institutions that rarely cooperate with each other. This often results in duplication and dispersion of aid, as well as in cases of abuse. The stakeholders and literature further recommend putting more emphasis on services promoting independent living of persons with disabilities. Additionally, a comprehensive system of multidisciplinary and lifelong assistance for persons with intellectual disabilities should be created, assisting them from the birth/diagnosis to late adulthood. The system of financial and material assistance should be better coordinated and be more flexible, taking into consideration changing needs and living situation of a person concerned.

Some stakeholders draw attention to the insufficient institutional support for parents and guardians of children with – in particular intellectual – disabilities. According to the information collected through interviews, existing structures are not efficient, they lack adequate instruments and resources to provide in one place all the assistance that parents need (psychological, but also concerning health treatment, choice of education etc.).

Finally, the study shows that there is very little data and research concerning children with disabilities, which makes it difficult to assess the implementation and effectiveness of existing laws in practice.

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ANNEX 1 – SUMMARY TABLE

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
Best interests of the child	
<p>The Polish Constitution Article 72(1): The Republic of Poland shall ensure protection of the rights of the child.</p> <p>Act on the Ombudsman for Children's Rights s. 1 (3): The Ombudsperson in the exercise of its powers is guided by the best interests of the child and takes into account that the natural environment for child's development is the family.</p> <p>Family and Guardianship Code s. 95 (3): Parental authority should be exercised in the best interest of the child and the interest of the society. s. 109 (1): If the best interest of the child is at stake, the guardianship court shall issue appropriate orders. s. 56 (2): [...] despite the complete and permanent breakdown of marriage, divorce shall not be allowed if the best interest of minor children of the spouses would be affected [...].</p> <p>Act on Education System s.4: Teachers in their teaching, educational and care activities have to be guided by the best interest of students, the concern about their health and their moral and civic attitudes and must respect the student's dignity.</p> <p>Act on Juvenile Justice s. 3 (1): In proceedings in juvenile cases one should be guided first of all by the best interest of a child, aiming at achieving positive changes in personality and behavior of the juvenile and, if necessary, correct fulfilling of child care duties by parents or cares, taking the public interest into account.</p>	<p>Incomplete implementation: The constitutional provisions provide that the Republic of Poland should ensure protection of the rights of the child.</p> <p>The best interests of the child are also recognised by the courts as general principle of Polish family law and a value overriding the interests of parents, guardians and other parties. However, the systematic consideration of child's best interests is not ensured with regard to all decisions concerning children's life.</p>

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
Non-discrimination	
<p>The Polish Constitution</p> <p>Article 32 (1): All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.</p> <p>Article 32 (2): No one shall be discriminated against in political, social or economic life for any reason whatsoever.</p> <p>Article 33 (1): Men and women shall have equal rights in family, political, social and economic life in the Republic of Poland.</p> <p>Article 68 (2): Equal access to health care services, financed from public funds, shall be ensured by public authorities to citizens, irrespective of their material situation. [...]</p> <p>Article 70 (1): Everyone shall have the right to education. [...]</p> <p>Article 70 (4): Public authorities shall ensure universal and equal access to education for citizens. To this end, they shall establish and support systems for individual financial and organizational assistance to pupils and students. [...]</p> <p>Act on Education System</p> <p>s. 1: The education system ensures, in particular:</p> <p>5. the possibility for children and youth with disabilities [...] to receive education in all types of schools [...].</p> <p>s. 17 (3a): The commune is responsible for:</p> <p>1) providing free transport and assistance during transport for students with disabilities [...] to the nearest primary school and lower secondary school, and for students with physical and intellectual disabilities [...] also to the nearest upper secondary school [...];</p> <p>2) providing for children and young persons with [severe] intellectual disability [and] with multiple disabilities, free transportation and assistance during transport to the centre enabling them to meet their school obligation [...];</p> <p>3) reimbursement of costs of travel of the student [...] and his guardian to the school or centre, [...] if the transport and assistance is provided by parents or guardians.</p> <p>Construction Law</p> <p>s. 5.1: A building (...) shall be designed and constructed (...) in a way that ensures: (...)</p> <p>1) necessary conditions for utilisation of public buildings and residential houses by persons</p>	<p>Incomplete implementation:</p> <p>Although the principle of non-discrimination is provided for in the Constitution, it does not refer to the ground of disability.</p> <p>The Act on Equal Treatment refers to the prohibition of discrimination on the basis of disability; however it does not cover discrimination based on disability in the fields of education, health care, social protection and housing. The Act on the Education System provides for the obligation of adaptation of organisation of education to the intellectual and physical capabilities of students.</p> <p>According to the Construction Law, buildings must be designed and constructed in a way that ensures necessary conditions for the use of public buildings and residential housing for persons with disabilities, in particular persons using a wheelchair.</p> <p>The Act on transport provides that the carrier should take action to facilitate transport for persons with reduced mobility and with disabilities.</p>

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>with disabilities, in particular by persons using a wheelchair.</p> <p>Act on transport</p> <p>s.14.2: The carrier should take actions to facilitate the use of means of transport, stops and platforms by persons with disabilities, in particular by persons using a wheelchair.</p>	
<i>Evolving capacities of the child</i>	
<p>Act on Education System</p> <p>s. 1: The education system ensures, in particular:</p> <p>4. adaptation of the content, methods and organisation of education to intellectual and physical capabilities of students, as well as the possibility to use psychological and pedagogical aid and special forms of teaching;</p> <p>5. possibility for children and youth with disabilities [...] to receive education in all types of schools, according to individual developmental and educational needs and predispositions;</p> <p>5a. the care of students with disabilities through enabling realisation of personalised learning process, forms and curricula and rehabilitation activities; [...].</p> <p>The Family and Guardianship Code</p> <p>s. 95 (1): Parents [...] must care for the physical and spiritual development of the child [...].</p> <p>s. 95 (4): Before taking a decision on important matters relating to the person or property of the child, parents should listen to her/him, if intellectual development, health and degree of maturity of the child so permits and take into account, as far as possible, her/his reasonable wishes.</p> <p>Act on Family Support and Foster Care System</p> <p>s. 4: In applying the law, regard must be had to the individuality of the child and the family and the child's right to:</p> <p>8) information and expression of opinions in matters that concern her/him, according to her/his age and degree of maturity; [...].</p>	<p>Incomplete implementation:</p> <p>The Polish legislation does not contain provisions explicitly referring to the evolving capacities of the child. However, there are several provisions, in particular in the field of education, relating to the physical and spiritual development of the child, intellectual and physical capabilities, individual developmental and educational needs and predispositions.</p> <p>The Family and Guardianship Code stipulates that before taking a decision on important matters relating to the person or property of the child, parents should hear the child's view, if intellectual development, health and level of maturity of the child so permits (s. 95(4)). Parents must care for the physical and spiritual development of the child. The Act on Family Support and Foster Care System guarantees that the child's right to information and to expression of opinions in matters that concern her/him are taken into account, according to her/his age and level of maturity (s. 4). In applying that law, due regard must be taken to the individuality of the child.</p>
<i>Right to be heard/to participate</i>	
<p>The Polish Constitution</p> <p>Article 72 (3): Organs of public authority and persons responsible for children, in the course</p>	<p>Effective implementation:</p> <p>Legislation in several areas requires that the child's</p>

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>of establishing the rights of a child, shall consider and, insofar as possible, give priority to the views of the child.</p> <p>The Family and Guardianship Code s. 95 (4): Before taking a decision on important matters relating to the person or property of the child, parents should listen to her/him, if intellectual development, health and degree of maturity of the child so permits and take into account, as far as possible, her/his reasonable wishes.</p> <p>Act on family support and foster care system s. 4: In applying the law, regard must be had to the individuality of the child and the family and the child's right to: 8) information and expression of opinions in matters that concern her/him, according to her/his age and degree of maturity; [...].</p> <p>Act on Social Assistance s. 70 (3): Providing assistance to [the family experiencing difficulties in fulfilling their tasks and the child of this family], regard should be had to the individuality of the child and the family and the right of the child to: 11) expression of opinions in matters that concern her/him; s. 73 (3): In choosing a foster family for the child, regard should be had to: 6) as far as possible, the opinion expressed by the child.</p> <p>Act on Juvenile Justice s. 19: During the hearing of the juvenile, full freedom of the opinions of the child must be guaranteed.</p> <p>Act on the Education System s. 55: 1) In school and school facility, student council shall be operative. 2) The student council shall be composed of all students of the school or school facility. 5) The Student council can submit to the school board (...) and the school principal opinions concerning all matters related to the school or school facility.</p>	<p>opinion must be heard and taken into consideration.</p>

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
Right to be free from violence	
<p>The Polish Constitution Article 72 (1): [...] Everyone shall have the right to demand of organs of public authority that they defend children against violence, cruelty, exploitation and depravity. Article 40: No one may be subjected to torture or cruel, inhuman, or degrading treatment or punishment. The application of corporal punishment shall be prohibited.</p> <p>The Family and Guardianship Code s. 96¹: Persons exercising parental authority, care or guardianship over the minor are forbidden from using corporal punishment.</p> <p>Criminal Code s. 198: Whoever, abusing vulnerability of another person or lack of capacity of that person to understand meaning of his/her acts resulting from the disability, leads to the sexual intercourse or other sexual activity, shall be sentenced for imprisonment from 6 months to 8 years. s. 208: Whoever physically or mentally abuses a member of the family (...) or a child or a person vulnerable due to his/her mental and physical state, shall be sentenced for imprisonment from 3 months to 5 years.</p>	<p>Effective implementation: In the light of the national legislation, children are effectively protected from violence and abuse.</p>
Right to family life	
<p>The Polish Constitution Article 18: [...] family, motherhood and parenthood, are under the protection and care of the Republic of Poland. Article 71: The State, in its social and economic policy, shall take into account the good of the family. [...]</p> <p>The Family and Guardianship Code s. 56 (2): [...] despite the complete and permanent breakdown of marriage divorce will not be allowed if the best interest of minor children of the spouses would be affected [...]. s. 58 (1): [...] Siblings should grow up together unless the best interest of the child requires</p>	<p>Effective implementation: The Constitution provides for the primacy of family environment as the best for the development of the child. Polish legislation in family and foster care matters provides for respect of the family, assisting the family in financial and social difficulties.</p>

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>a different solution.</p> <p>Act on family support and foster care system s. 4: In applying the law, regard must be had to the individuality of the child and the family and the child's right to:</p> <ol style="list-style-type: none"> 1) be brought up in the family, and if it is necessary to be brought up outside the family - to care and education in the family forms of foster care, if it complies with the best interests of the child; 2) return to the family; 3) maintaining personal contacts with parents, [...]. 	
<i>Right to assistance</i>	
<p>The Polish Constitution Article 68 (3): Public authorities shall ensure special health care to children, pregnant women, disabled persons and persons of advanced age. Article 69: Public authorities shall provide, in accordance with a statute, assistance to persons with disabilities to ensure their subsistence, adaptation to work and social communication. Article 72 (2): A child deprived of parental care shall have the right to care and assistance provided by public authorities.</p> <p>Act on the Ombudsman for Children's Rights s. 3 (4): The Ombudsman for Children's Rights provides special care and assistance to children with disabilities.</p> <p>Act on Education System s. 1: The education system ensures, in particular: 4. [...] the possibility to use psychological and pedagogical aid and special forms of teaching; [...].</p> <p>Act on Healthcare Services Financed from Public Funds s. 15 (1): Beneficiaries have [...] a right to health care services, aiming at preserving health,</p>	<p>Effective implementation: Polish legislation provides for a wide range of forms of assistance for children with disabilities (financial, educational, medical etc.).</p>

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>preventing diseases and injuries, early detection of diseases, treatment, care, as well as preventing and reducing disability.</p> <p>s. 27 (1): Services for preservation of health, disease prevention and early detection of diseases include: [...]</p> <p>2) early, multidisciplinary and comprehensive care of the child at risk of disability or with disabilities; [...].</p> <p>Act on Mental Health Protection</p> <p>s. 7 (1): Learning and rehabilitation and educational education classes are organised [...] for children and young persons with intellectual disabilities, regardless of the degree of impairment.</p> <p>Act on Family Benefits</p> <p>s. 4: Family allowance is intended to partially cover the cost of maintenance for the child.</p> <p>s. 8 (5): In addition, the family is entitled to an allowance for education and rehabilitation of a disabled child.</p> <p>s. 16: Nursing allowance is granted to partially cover the expenses arising from the need to provide care and assistance of another person who is unable to live independently.</p>	
Right to education (including inclusive education)	
<p>The Polish Constitution</p> <p>Article 70 (1): Everyone shall have the right to education. Education to 18 years of age shall be compulsory. [...]</p> <p>Article 70 (4): Public authorities shall ensure universal and equal access to education for citizens. To this end, they shall establish and support systems for individual financial and organizational assistance to pupils and students. [...]</p> <p>Act on Education System</p> <p>s. 1: The education system ensures, in particular:</p> <p>4. adaptation of the content, methods and organisation of education to intellectual and physical capabilities of students, as well as the possibility to use psychological and</p>	<p>Effective implementation:</p> <p>Polish legislation guarantees the right to study in every type of school, without putting emphasis on any type of education (neither inclusive nor special).</p> <p>Polish legislation does not use the term "inclusive education" – this kind of education is described in legislation as "education in mainstream schools". Polish education system also provides for education in integration schools or integration classes in mainstream schools. This is not the same as inclusive education and</p>

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>pedagogical aid and special forms of teaching; 5. the possibility for children and youth with disabilities [...] to receive education in all types of schools [...]. s. 71b (1): Special education covers children and young persons referred to in s.1-5) and 5a), who require special organization of learning and working methods. Special education can be conducted in mainstream schools, integration schools or classes, special schools or classes or [special educational centres [...].</p>	<p>the terms should not be used interchangeably to avoid confusion.</p> <p>As the CRPD has not yet been published in the Journal of Laws, it remains to be seen what term will be used in the official translation of the Convention.</p>

ANNEX 2 – STATISTICAL INFORMATION

Number of violation ⁸²	Violence	Gender discrimination	Other discrimination	Criminal suspects
Year				
2007				
2008				
2009				
2010				
2011				

No data identified on the table's issues.

⁸² 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 States⁸³ 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.⁸⁴ 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.

⁸³ 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.

⁸⁴ 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 2008⁸⁵) 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'.⁸⁶ Recently, the CJEU has further developed this concept⁸⁷ 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 2008/52⁸⁸ 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

⁸⁵ 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).

⁸⁶ Judgment C-13/05 of the Court (Grand Chamber) of 11 July 2006, *Sonia Chacón Navas v Eurest Colectividades*, pt 43.

⁸⁷ 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.

⁸⁸ Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters.

Family Reunification Directive⁸⁹ requires Member States' authorities to consider the best interests of children when examining an application for family reunification (Article 5)⁹⁰. The protection of the best interests of the child is explicitly mentioned in Council Directive 2004/81/EC⁹¹ 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.⁹² They lay down rules 'for combating discrimination (...) with a view to putting into effect in the Member States **the principle of equal treatment**'.⁹³ 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 grounds⁹⁴.

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 telecommunication⁹⁵.

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 *Iibis*

⁸⁹ Council Directive 2003/86/EC, on the right to family reunification.

⁹⁰ '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.

⁹¹ 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.

⁹² 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.

⁹³ Article 1 Directive 2000/43/EC.

⁹⁴ 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.

⁹⁵ '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 IIbis Regulation 2201/2003.

The EU has adopted a number of measures on the **protection of children from violence**⁹⁶ relating to child trafficking, to the sexual exploitation of children and to the protection of victims including several Directives⁹⁷ 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 pornography⁹⁸ provides the need for specific protection of children with disabilities.

The **right to family life** and the maintenance of the child in family context is at the heart of Council Regulation 2201/2003 Brussels IIbis (EC)⁹⁹. In the field of immigration policies, the right of the child to family life is ensured by the rules on family reunification¹⁰⁰ and the provisions of the Directives on asylum¹⁰¹ regarding unaccompanied minors and the respect for the family unit.

⁹⁶ 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.

⁹⁷ 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.

⁹⁸ Article 1 Directive 2011/92/EU.

⁹⁹ Council Regulation (EC) No 2201/2003, concerning jurisdiction, recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility.

¹⁰⁰ 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.

¹⁰¹ 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 2010-2020¹⁰² and the EU 2020 Programme in relation to education and training¹⁰³. The 2003 Council Resolution on equal opportunities for Pupils and Students with Disabilities¹⁰⁴ 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 disabilities¹⁰⁵ 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 training¹⁰⁶.

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

¹⁰² 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.

¹⁰³ Council Conclusions of 12 May 2009 on a strategic framework for European cooperation in education and training ('ET 2020'), 2009/C 119/02, OJ C 119/2, of 28 May 2005.

¹⁰⁴ Council Resolution of 5 May 2003 on equal opportunities for pupils and students with disabilities in education and training, 2003/C 134/04.

¹⁰⁵ 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)).

¹⁰⁶ 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
Country Report on Germany for the Study on Member States' Policies for Children with Disabilities	PE 474.422	978-92-823-4553-5
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

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

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