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

This study looks at the situation of children with disabilities in Malta 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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<td>Art.</td>
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<td>CFC</td>
<td>Commission for Children</td>
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<td>Charter</td>
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<td>Equal Opportunities Compliance Unit</td>
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<td>Foundation for Respite Care Services</td>
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<td>SMP</td>
<td>Statementing Moderating Panel</td>
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<td>TEU</td>
<td>Treaty on the European Union</td>
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<td>TFEU</td>
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<td>UN</td>
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<td>UNESCO</td>
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<td>YPU</td>
<td>Young People’s Unit</td>
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EXECUTIVE SUMMARY

The two main pieces of legislation aimed at safeguarding the rights of children with disabilities are the Equal Opportunities (Persons with Disabilities) Act and the Commissioner for Children Act.

Inclusive education has been the main focus of national action with regards to children with disabilities. The State invests heavily in an inclusive education system where the vast majority of children with disabilities attend mainstream schools. This does not, however, mean that all children with disabilities are fully included in mainstream schools. Accordingly, the inclusion of a child with disability in a mainstream school depends often on the goodwill of the persons involved in his/her education (school principals, teachers, learning assistants, etc.). In fact, children with disabilities, including those with specific learning difficulties and challenging behaviour, remain at particular risk of exclusion from the mainstream education.

While the infrastructure for providing and supporting inclusive education has developed and improved significantly, support services for children with disabilities outside school, especially within the family home or in a residential setting, still need to be developed to ensure appropriate support. In terms of service provision, children with disabilities are entitled to free healthcare like all the population and to certain forms of financial and legal support.

Children with disabilities are not specifically catered for under Maltese law as the national legislation focuses either on persons with disabilities or on children but not on children with disabilities. Legislation addressing these groups includes the Education Act which ensures inclusive education and the Commissioner for Children Act which provides for the mechanisms for the promotion and protection of rights of all children. The Equal Opportunities (Persons with Disability) Act regulates the situation of persons with disabilities and covers discrimination in different aspects of life, including education, access to goods, services and facilities, and physical accessibility. In terms of safeguarding the rights of children with disabilities, it has been referred to mainly to address discrimination encountered in mainstream schools. The Equal Opportunities Act also empowers the National Commission Persons with Disability (KNPD) to investigate complaints of discrimination on the grounds of disability and to take action, including, if necessary, taking cases to court. Thus, KNPD is the body which is best equipped to safeguard the rights of children with disabilities.

Moreover, several other legal acts regulate rights of persons and/or children with disabilities. In particular, the Civil Code provides for the respect of the (best) interests of the child, right to be heard and (to the limited extent) evolving capacities of the child. The Foster Care Act regulates in details placement of children in foster care facilities. The Criminal Code and the Domestic Violence Act contain certain provisions to ensure freedom from violence for children. The Social Security Act provides for financial support for children with disabilities, including visually impaired children.

Malta signed the CRC on 26 January 1990 and ratified it on 30 September 1990. The CRPD was signed by Malta in March 2007 and the Convention and its Optional Protocol were ratified in October 2012, both coming into effect on 9 November 2012. Neither Convention
has been incorporated into Maltese legislation. Consequently, the implementation of these Conventions depends on the extent to which they coincide with existing Maltese laws.
INTRODUCTION

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

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

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

This country report for Malta 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.

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).
Given their ratification of both UN Conventions, Member States are obliged to take 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 Malta. 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 MALTA

KEY FINDINGS

- The national action focuses on the following areas: early intervention, health services and inclusive education.

- The following gaps, problems and challenges have been identified: i) ensuring that inclusive education is truly inclusive for all children with disabilities, ii) providing support services for families of children with disabilities and community-based residential services where these are necessary.

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

The Maltese population stands at 401,846 inhabitants. Of these, around 8% have a disability. The population of children (from 0 to 18 years of age) accounts for 76,228, of which around 5% have a disability.2 There are no specific laws aimed at children with disabilities. The rights of children with disabilities are protected by the Equal Opportunities (Persons with Disability) Act which covers discrimination in different aspects of life including, among others, physical accessibility, access to goods, services and facilities, and access to education.

Within the policy framework, the only policy which is aimed directly at children with disabilities is that of inclusive education. In other areas, these children benefit from policies and measures aimed at persons with disabilities (regardless of age) or are aimed at children. For example, the Draft National Children’s Policy includes a section on the inclusion of children with disabilities.3

The two main institutions which safeguard the rights of children with disabilities in Malta are the National Commission Persons with Disability and the Children’s Commissioner.4

In terms of service provision, children with disabilities are entitled to free health and education services on the same basis as other children. Parents of children with disabilities are also entitled to special children’s allowances. Furthermore, there is a variety of state and non-governmental organisations which provide services specifically for children with disabilities or for people with disabilities, including children.

Inclusive education is arguably the area in which Malta has made the best progress in the disability sector. In 1993, Malta adopted an inclusive education policy.5 In addition, it is

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2 Statistics provided by the National Statistics Office, Valletta, Malta.
a signatory to the Salamanca Statement. The right of children with disabilities to attend mainstream schools is also asserted in the Education Act (Chapter 327) and the Equal Opportunities (Persons with Disability) Act (Chapter 413). The inclusive education policy was further reinforced by the guidelines Creating Inclusive Schools and, more recently, the training and engagement of Inclusion Coordinators in mainstream schools. In this document, the authors note that the adoption of the term ‘individual educational needs’ is in line with an approach that views ‘all students as learners with equal rights but with a diversity of needs’.

According to the World Report on Disability, Malta has one of the highest proportions of children with disabilities in inclusive education in the European Union. This has been achieved by the gradual building up of the inclusive education system since its inception in 1993. Support for children with disabilities in mainstream schools is mainly provided by a learning support assistant (LSA). Once the child with disabilities reaches school age, he or she is referred to the Statementing Moderating Panel (SMP) which issues a statement of individual educational needs. This statement specifies the level of support that the child is to receive in their mainstream school. Parents have recourse to appeal to the Statementing Appeals Board if they do not agree with the decision of the SMP. Apart from the support provided by the LSAs, the Student Services Department within the Directorate for Educational Services also provides a number of services in schools, namely the Early Intervention Service, Teachers for the Hearing and Visually Impaired, an Autism Spectrum Support Team, an Access to Communication and Technology Unit, Home Tuition and Hospital Classes.

However, despite this extensive support framework, not all children with disabilities are fully included in mainstream education and there are still hurdles to be overcome for this to happen. In other aspects of life outside school, progress has been observed but there are considerable gaps which are identified in the sections below in this report.

1.2. Review of issues and identification of possible regulatory gaps

Of all the issues of relevance to children with disabilities in Malta, inclusive education is the subject that has been most extensively researched. Even so, there is little published academic research on the topic, with most of the research being found in dissertations by students of the University of Malta.
One of the issues that were looked into by researchers was the assistance received by children with disabilities attending mainstream schools. It has been found that the adequate training of teachers of classes including children with disabilities is one of the challenges. According to literature, attending a mainstream school does not by itself imply that a child with disabilities is fully included. There are also indications that children with certain impairments face more difficulties in being fully included in mainstream schools than others. It appears that teachers are more likely to accept and respond to children with physical or intellectual impairments than children with behavioural and emotional difficulties. Students with social, emotional and behavioural difficulties tend to be isolated from their peers and feel excluded from school life. It is pointed in particular that autistic children are at the elevated risk of being taken out of the class and receiving lessons in an isolated setting within the mainstream school.

Although children with disabilities do mostly attend mainstream schools, their inclusion is still perceived as a favour done to these children rather than their genuine right which hinders inclusion in the fullest sense of the word.

Other deficiencies with regard to the situation of children with disabilities in Malta have been recognised in the field of assistance for families raising children with disabilities. Accordingly, support services for families of children with disabilities and the provision of community-based residential services require significant improvements in order to meet special needs of children with disabilities and their parents.

2. OVERVIEW OF THE LEGAL FRAMEWORK IN MALTA

**KEY FINDINGS**

- Malta has a dualist legal system in which international agreements require ratification by the House of Representatives for their incorporation into domestic law. Malta has ratified both the CRC and the CRPD; however, their provisions have not been incorporated into Maltese legislation. Hence, both conventions do not yet form part of Maltese law.

- Children with disabilities are not specifically catered for under Maltese law as legislation focuses on persons with disability or on children in general.

- The right of persons with disabilities to education is enshrined in the Constitution. The Education Act and implementing measures provide for a legal framework fostering inclusive education.

- Specific laws address issues such as discrimination of and social services for persons with disabilities and/or children.

- The National Commission Persons with Disability identifies, establishes and updates all national policies directly or indirectly related to disability issues and investigates the complaints.

2.1. General overview of the national legal and institutional framework

The Constitution of Malta (Chapter 0 Laws of Malta) is divided into eleven chapters setting out a series of laws laying down basic principles, rules on citizenship, fundamental rights and freedoms of the individual, as well as providing the legal framework for the President, Parliament, the Judiciary, the Executive, Finance and Public Service. While the Constitution is generally enforceable at law, the provisions in Chapter II entitled ‘Declaration of Principles’ are not justiciable.\(^\text{17}\)

Maltese Law is constituted by a series of chapters (at present 523 chapters), including the Criminal Code (Chapter 9), the Civil Code (Chapter 16), the Code of Organisation and Civil Procedure (Chapter 12) and the Commercial Code (Chapter 13). The primary source of law is legislation, supplemented by jurisprudence and scholarly commentaries of comparative law jurisdictions where there is a lacuna in the law. Malta does not apply the doctrine of precedent although the previous judgements of courts have a persuasive influence on future judgements. Maltese courts look to consider the case-law of the European Court of Human Rights in interpreting proceedings regarding fundamental human rights but are not bound to decide in keeping with such case-law.

Malta has a dualist legal system where international conventions are not automatically applicable in domestic law. To render them applicable, the Parliament must integrate the

\(^{17}\) Constitution of Malta: ‘Section 21 Guiding Principles are not Rights: The provisions of this Chapter shall not be enforceable in any court, but the principles therein contained are nevertheless fundamental to the governance of the country and it shall be the aim of the State to apply these principles in making laws.’
agreement into a chapter of law by an act. For example, Malta has incorporated the European Convention on Human Rights into Maltese law (Chapter 319) and the Hague Conventions relating respectively to the Civil Aspects of International Child Abduction and to the Recognition and Enforcement of Custody Decisions (Chapter 410) but has still to incorporate the CRC and the United Nations Convention on the Elimination of all Forms of Discrimination Against Women into domestic law.

The Courts of Malta are divided into Superior courts (Constitutional Court, the Court of Appeal, the Court of Criminal Appeal, the Criminal Court and the Civil Court) and Inferior courts (the Court of Magistrates (Malta) and the Court of Magistrates (Gozo)). The Maltese Constitution provides for a system of checks and balances which safeguard the independence of the judiciary.

There are two levels of government in Malta: the central administration and municipal or local councils. Issues relating to welfare are coordinated at central government level and funding is also determined by Parliament. The local councils may be entrusted with service delivery and engagement of personnel but statutory responsibility, particularly in the field of welfare issues, rests with the central administration. The legislature and the executive powers are also kept in check through the Constitution with a number of Boards and Commissions responsible directly to Parliament, some of which respond to a particular Ministry, which may affect their perceived and actual independence.

2.2. Children with disabilities specific legal and institutional framework

2.2.1. Legal framework

As mentioned in the sections above, there is no specific legal framework addressing the situation and rights of children with disabilities in Malta.

The Constitution of Malta provides for protection of persons with disabilities in terms of employment, education, social assistance and discrimination in Articles 17 and 45:

17. (1) Every citizen incapable of work and unprovided with the resources necessary for subsistence is entitled to maintenance and social assistance.
(2) Workers are entitled to reasonable insurance on a contributory basis for their requirements in case of accident, illness, disability, old-age and involuntary unemployment.
(3) Disabled persons and persons incapable of work are entitled to education and vocational training.

45. (1) Subject to the provisions of sub-articles (4), (5) and (7) of this article, no law shall make any provision that is discriminatory either of itself or in its effect.\(^\text{18}\)

In 2011 an amendment to the Civil Code by Act XIV.2011 established parental responsibility to maintain a child with a disability. This obligation had been recognised and upheld by the courts in the context of court proceedings, but there was no legislation to reinforce it. The amended provisions refer to the obligation within the ambit of

\(^{18}\) Article 45(4) provides that Sub-article (1) does not apply where the restricting or advantaging law is 'reasonably justifiable in a democratic society'.

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parental authority and separation or divorce of the parents. Accordingly, Article 3B of the Civil Code now reads:

(1) Marriage imposes on both spouses the obligation to look after, maintain, instruct and educate the children of the marriage taking into account the abilities, natural inclinations and aspirations of the children.

(2) The obligation of the parents to provide maintenance according to sub-article (1) also includes the obligation to continue to provide adequate maintenance to children, according to their means, and where it is not reasonably possible for the children, or any of them, to maintain themselves adequately, who: (a) are students who are participating in full-time education, training or learning and are under the age of twenty-three; or (b) have a disability, as defined in the Equal Opportunities (Persons with Disability) Act, whether such disability is physical or mental.

The responsibility towards children with disabilities remains whole in the event of the separation of the spouses.¹⁹

The Civil Code was also amended in 2012 by Act II.2012 to update the terminology used in relation to disability and this amendment is also applicable to children. Currently, the Civil Code provides that persons who have reached the age of majority and who are unable to manage their affairs owing to a mental condition may be interdicted from carrying out certain acts by law.²⁰

Furthermore, general articles relating to capacity to contract and succession are also dealt with in the Civil Code and mention children.²¹ These are complemented by the procedural aspect in provisions of the Code of Organisation and Civil Procedure which addresses the process for interdiction but only refers to children in relation to the transition from parental authority into curatorship under interdiction when the person was suffering from mental incapacity since childhood.²²

The Social Security Act guarantees entitlement to a Disability Pension to a person who:
(a) has attained the age of sixteen years; and
(b) is certified to be suffering from a mental severe subnormality or to be a severely disabled person in accordance with the provisions of this Act, or to be suffering from cerebral palsy; and

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¹⁹ It is noteworthy that this provision relates solely to parents who are married.
²⁰ Article 189. (1) of the Civil Code: ‘A major who is a person with a mental disorder or other condition, which renders him incapable of managing his own affairs, or who is insane or prodigal, may be interdicted or incapacitated from doing certain acts, as provided in articles 520 to 527 inclusive, of the Code of Organization and Civil Procedure. (2) The same shall apply in regard to the minor referred to in article 156. (3) The demand for interdiction or incapacitation may be made not only by the persons mentioned in article 521 of the Code of Organization and Civil Procedure, but also by any person related by affinity who, under the provisions of this Code, might be compelled to supply maintenance to the person who has a mental disorder or other condition, which renders him incapable of managing his own affairs, or is insane or prodigal. (4) For the purposes of this Title, and for the purposes of the provisions of articles 597, 752, 1034, 1035, 1036 and 1241: (a) “other condition”, where used in the context of a condition that renders a person incapable of managing his own affairs, means a long-term physical, mental, intellectual or sensory impairment which in interaction with various barriers may hinder one’s full and effective participation in society on an equal basis with others; and (b) “mental disorder” shall have the meaning assigned to it in the Mental Health Act: Provided that any reference in such definitions to “disability of mind” or “arrested or incomplete development of mind” shall not be construed to mean a mental disorder for the purposes of this Title and such provisions’.
²¹ Articles 189-192, 597,752,1034-1036,1241 of the Civil Code.
(c) shows to the satisfaction of the Director that he is a citizen of Malta and normally resides in Malta.

The Act also provides entitlement to a Pension for the Visually Impaired for a visually impaired person who:

- Has attained the age of fourteen years; and
- Produces such certificates regarding his visual impairment, as the Director may, in particular cases, require; and
- Shows to the satisfaction of the Director that he is a citizen of Malta and normally resides in Malta.

The Education Act obligates the State to promote, support, coordinate and ensure lifelong learning services and initiatives, including educational and cultural initiatives within the community, e-learning and distance learning, adult education, evening classes and other initiatives relating to complementary education and services for persons having specific learning difficulties.

Furthermore, the Education Act requires the State to provide 'resource centres' responding to individual educational needs of children who, due to physical, sensory, intellectual or psychological difficulties, cannot be taught in mainstream schools.

Under the Education Act, the Minister for Education is to ensure that the national policy on inclusive education is being applied in all schools and that there are sufficient resources, tools and facilities. This includes maintaining specialised centres of resources to support schools and colleges in the implementation of the policy of inclusive education. The centres offer services to students having specific learning difficulties, and others which provide education and training services to students with individual educational needs whose educational entitlement may be better achieved in such centres. These students may attend the centres on a full-time basis.

Under the Equal Opportunities Act, all employers are obliged to provide reasonable accommodation for persons with disabilities. The Act ensures also accessibility of persons with disabilities to public properties and facilities, transport, facilities for entertainment, etc. Moreover, it is unlawful for an education institution to deny access for a student with disability to any benefit and/or facility provided by such institution. While there have not been any cases that reached court, the National Commission Persons with Disability has dealt with complaints of discrimination in this area which have been settled through negotiation.

The Minister may implement the obligation of reasonable accommodation by issuing directives and regulations on, inter alia, the multi-disciplinary assessment of the condition of children with individual educational needs, the statementing process and the formulating

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23 The term 'Director' means the Director General (Social Security) and includes any public officer of the Social Security Division designated by him or any public officer designated by the Minister for a particular purpose or class of purposes. "Minister" means the Minister from time to time in charge of the Social Security Division and includes any officer designated by the Minister for a particular purpose or class of purposes. (See: Part I (2) of the Social Security Act).
24 Ibid.
25 Ibid.
26 Article 11(2)(h) of Chapter 327.
27 Articles 45 and 48 of the Education Act.
28 Article 13 of the Equal Opportunities (Persons with Disabilities) Act.
and the application of an individual educational programme.\textsuperscript{30} In practice, the multi-disciplinary assessment is carried out at the Child Development Assessment Unit. Following this assessment, the Statementing Moderating Panel meets the child, his/her parents and teachers and issues a statement of individual educational needs which identifies the support to be provided to the child, including, where necessary, the services of a Learning Support Assistant. Panel decisions can be appealed before the Statementing Appeals Board.

\section*{2.2.2. Institutions and authorities}

Matters relating to persons with disabilities fall under the remit of:

- The \textbf{Ministry for Health} where this is related to assessment and service provision;
- The \textbf{Ministry for Family and Social Policy} which is entrusted with provision of support in and outside the home;
- The \textbf{Ministry for Education} which is responsible for statementing, provision of education and integration into education;
- The \textbf{Malta Environment and Planning Authority} being responsible for ensuring accessibility for persons with disabilities.

The \textbf{main authority} entrusted with responsibility for persons with disabilities and therefore for children with disabilities is the \textbf{National Commission Persons with Disability (KNPD)}.\textsuperscript{31} It has been appointed by the Independent Mechanism according to Article 33.2 of the CRPD;(the focal point is to be designated by the Ministry responsible for Social Policy). Under the Equal Opportunities (Persons With Disability) Act, the Commission is composed of seven officials representing the Ministries responsible for Social Policy, Labour, Health, Education, Housing and Economic Planning, and seven representatives of voluntary organisations working in the field of disability issues. At least one half of the total number of the members of the Commission must themselves be persons with a physical disability or family members of persons with a mental disability, and if possible, there should be a balanced representation of women and men.

The Commission is charged to identify, establish and update all national policies directly or indirectly related to disability issues and to report to the Ministry for Family and Social Policy. It is obligated to differentiate between the specific needs of men, women and children with disability. Furthermore the Commission is entitled to initiate investigations into complaints. It is noteworthy that the Commission in its reports makes reference to persons under 16 years of age and then 17-59 and 60 years and over, so presumably children between 16-18 years of age are grouped with adults.

The \textbf{Commissioner for Children}\textsuperscript{32} is responsible for the promotion and protection of rights of all children. The Act refers to children with disabilities in the provisions setting out the guiding principles for the Commissioner as follows: ’[C]hildren with disabilities and

\textsuperscript{30} The Minister can also issue directives and regulations on the following issues: special arrangements on the assessment, tests and examinations of concerned students, the programmes in specialised centres of resources or special schools, the application of therapies or the giving of medicines as prescribed by competent professional persons according to any law in force to students while at a school or centre and any other matter connected with the implementation of the policy on inclusive education.

\textsuperscript{31} Established under Article 21 of the Equal Opportunities (Persons With Disability) Act.

\textsuperscript{32} Established under the Commissioner for Children Act (Chapter 462).
children from a disadvantaged family or social circumstances should enjoy the same quality of life as all other children’.

There is no body specifically responsible for the protection of children with disabilities. The National Commission for Persons with Disability is the most relevant organisation which addresses their needs and advocates for their rights in terms of equality, non-discrimination and integration.

2.2.3. Definitions

The Constitution of Malta provides no definition of the term ‘disability’ although it makes reference to it in Articles 17 and 45.

The Equal Opportunities Act defines disability as ‘a physical or mental impairment that substantially limits one or more of the major life activities of a person and "impairment" in the context of disability, means any loss, restriction or abnormality of psychological, physiological, or anatomical structure or function’.

The Social Assistance Act defines a person with severe disabilities as a person ‘who still has a reasonable expectancy of life and who is incapable of supporting himself through full-time employment or self-occupation, or who will be rendered incapable when of age, owing to a permanent disability arising from total deafmutism.’

Under the Mental Health Act, ‘mental disorder’ is defined as ‘mental illness, arrested or incomplete development of mind, psychopathic disorder, and any other disorder or disability of mind’. The Mental Health Act has been the subject of discussion for a number of years and although a number of amendments have been proposed, these have not yet been passed by Parliament.

The Civil Code defines a minor as ‘a person of either sex who has not yet attained the age of eighteen years’. A minor may marry at the age of sixteen which is also the age of termination of compulsory education. The age of criminal responsibility starts at fourteen and the right to be heard in family court proceedings is also set at age of 18.

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33 Article 2 (interpretation clause) of Chapter 413.
34 Article 2 (interpretation clause) of Chapter 318.
35 ‘Psychopathic disorder’ is further defined as a ‘persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the patient, and requires or is susceptible to medical treatment’. ‘Severe subnormality’ is ‘a state of arrested or incomplete development of mind which includes subnormality of intelligence and is of such nature or degree that the patient is incapable of living an independent life or of guarding himself against serious exploitation, or will be so incapable when of an age to do so’. ‘Subnormality’ is defined as a ‘state of arrested or incomplete development of mind (not amounting to severe subnormality) which includes subnormality of intelligence and is of a nature or degree which requires or is susceptible to medical treatment or other special care or training of the patient’.
36 According to the suggested amendments to the Mental Health Act Draft Bill (2007), ‘intellectual disorder’ means a “significant mental or behavioural dysfunction, exhibited by signs and, or symptoms indicating a disruption of mental functioning, including disturbance of thought, mood, volition, perception, cognition, orientation or memory which are present to such a degree as to be considered pathological in accordance with internationally accepted medical and diagnostic standards and “mental illness” shall be construed accordingly’.
37 Article 157 of Chapter 16.
38 Article 2 of the Education Act: ‘compulsory school age means any age from five years to fifteen years, both inclusive, and accordingly a person shall be deemed to be of compulsory school age if he has attained the age of five years and has not attained the age of sixteen years; (...)’.
39 Article 35 of the Criminal Code: ‘Minors under the age of nine years are exempt from criminal responsibility. Minors under 14 years of age shall likewise be exempted unless they have mischievous discretion. However, if a
fourteen years.\textsuperscript{40} It should be pointed out that there are new amendments to the civil law\textsuperscript{41} establishing the possibility of the appointment of a guardian to assist a person with intellectual disability which include new definitions of ‘disability’ and ‘mental disorder’.\textsuperscript{42}

\textsuperscript{40} Article 6A and Article 131(4) of the Civil Code:

\textbf{6A(1):} ‘In case of any disagreement either spouse may apply to the competent court for its assistance and the presiding judge, after hearing the spouses and if deemed opportune any of the children above the age of fourteen years residing with the spouses, shall seek to bring about an amicable settlement of such disagreement.’

\textbf{131(4)(4):} ‘The court, after hearing the parents and the child if the latter has reached the age of fourteen years, shall make those suggestions which it deems best in the interest of the child and the unity of the family.’

\textsuperscript{41} Act XXIV.2012.

\textsuperscript{42} According to the Codes (Guardianship) (Amendment) Act, 2012, an Act to amend the Code of Organisation and Civil Procedure and the Civil Code for the purpose of providing for Guardianship: ‘(i) “disability” shall have the same meaning as assigned to it in the Equal Opportunities (Persons with Disability) Act; (ii) “intellectual disorder” shall have the same meaning as assigned to it in the Mental Health Act. Provided that any reference in such definitions to “disability of mind” or to “arrested or incomplete development of mind” shall not be construed as a reference to an intellectual disorder for the purposes of this Sub-title’. (...) (b) achondroplasia, hypopituitarism, osteogenesis imperfecta or other forms of dwarfishism; or (c) one of the following diseases, namely: Multiple Sclerosis; Muscular Dystrophy; Spina Bifida; Systemic Lupus Erythematosus; Haemophilia or any other similar permanent disorder of the blood characterised by chronic or repeated bleeding; Hydrocephalus; Huntington’s Chorea; Cystic Fibrosis; T C II Deficiency; Cerebellar Ataxia; Chronic-Granulomatous Disease; Leopard’s Syndrome; or (d) permanent total paralysis or permanent total severe malfunction or permanent total disease, whether through amputation or otherwise, of both upper or lower limbs; or (e) epilepsy with a frequency of attacks exceeding four per month, which condition is confirmed by appropriate investigations including an electroencephalogram and so certified by a Government neurologist or psychiatrist provided that the person concerned is not in possession of a driving licence; or (f) congenital indifference to pain’.

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3. LEGAL FRAMEWORK AND IMPLEMENTATION ASSESSMENT

KEY FINDINGS

- The legal framework is not child-focused and although there are a number of laws targeting persons with disabilities or children, the two issues do not often come together. An overview of child rights issues has already been identified as overdue and in need of consolidated legislation. Such a step would contribute towards acknowledgment of children with disabilities as a particular group whose rights deserve special protection and promotion.

- The main issue faced by children with disabilities in Malta is a continued lack of understanding and tolerance towards their particular vulnerability. This, in turn, leads to emphasis on targeting discrimination issues rather than focusing on mainstreamed child rights such as ensuring well-being and promoting participation rights. The introduction of a specific code of legislation for children as a group could help to strengthen the lobby among vulnerable child group such as children with disabilities.

3.1. Implementation of the provisions of the CRPD and CRC

Malta was one of the first countries to sign the CRPD in March 2007 and ratified it in October 2012.

Malta signed the CRC in January 1990 and ratified it in September 1990. The provisions of the CRC have not been incorporated into Maltese legislation. To date, Malta has presented just one report to the Committee on the CRC in May 2000 and has responded to some – but not all – of the recommendations of the Committee following that report (including the call for a clear policy on children with disabilities). However, there were no policies or measures put in place that addressed the rights of children with disabilities. For the effective implementation of the CRC, it needs to be incorporated into Maltese law.

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

The principle of the best interests of the child is considered as a basic tenet of Maltese law and is invariably cited as motivating Court judgements. Indeed, the concept of interests of the child has consistently been adjudged as a matter of great relevance in the courts. Accordingly, interests of the child are referred to in case-law as being ‘paramount’, ‘supreme’ or ‘important in deciding on matters which affect the family’. ‘Welfare’

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incorporates every type of welfare ranging from physical, social, intellectual to moral welfare.

There is no clearly identifiable definition or reference of the term ‘best interests’ in Maltese law although numerous articles make reference to the welfare of the child, the interest or best interests of the child and on occasion they also mention that the interests of the child are of paramount consideration.

Provisions of the Civil Code law relating to separation and divorce make clear provision for the allocation of custody and access arrangements and are guided by the principle of best interests of the child. There is also a blanket article within the Civil Code, which clearly sets out that ‘notwithstanding any other provision of this Code, the court may, upon good cause being shown, give such directions as regards the person or the property of a minor as it may deem appropriate in the best interests of the child’. There is no specific reference to the rights of the child with disability.

In the light of the Foster Care Act, foster care facilities should be carried out in the best interests of the child. Also the Criminal Code refers to the best interests of the child, e.g. when regulating proceedings carried out by the Police.

However, it is noteworthy that the CRC and the CRPD are not part of Maltese law, and since Malta is dualist country, the articles relating to best interests in these Conventions are not binding in domestic law, although they may have persuasive influence.

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

The Constitution, in Article 14 and 45, contains prohibition of discrimination on a number of grounds, however, without explicit mention of disability. Although Article 14 is non-enforceable, Article 45 has full force of law.

The Gender Equality Act makes no mention of discrimination on grounds of disability. In 2012, the remit of the National Commission for the Promotion of Equality (NCPE) was extended to cover the promotion of equality on the basis of sexual orientation, age, religion or belief, racial or ethnic origin, and gender identity in employment, financial institutions and education but makes no mention of disability. The rights of children with disabilities against discrimination on the grounds of disability are protected by the **Equal Opportunities (Persons with Disability) Act**. This Act applies to employment, education and access to goods, facilities, services and accommodation. It also prohibits indirect discrimination based on disability.

The principle of **reasonable accommodation** is applied in all aspects of the Equal Opportunities (Persons with Disability) Act. While not all titles of the Act use the words 'reasonable accommodation', the requirement is still applicable to all areas covered by it. In fact, the principle of reasonable accommodation is used to reach a solution to a situation of discrimination. The implementation of the right to non-discrimination is therefore complete.

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44 Articles 35-66 of the Civil Code.

45 Article 149 of the Civil Code.

46 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’.
3.1.3. Evolving capacities of the child\textsuperscript{47} (Art. 5 CRC and Art. 3 CRPD)

The concept of evolving capacities of the child is \textit{not explicitly recognised} under Maltese law. The national law refers broadly to similar concepts, i.e. ‘age and understanding’ of the child and the ‘abilities’ of the child.

The Civil Code states that parents should provide maintenance for their children in accordance with the abilities, natural inclinations and aspirations of the children. Also in the light of the Civil Code, \textit{age and level of understanding of a child} are factors that need to be taken by the court in adoption cases.

The Commissioner for Children addresses the concept of the evolving capacities of the child, to certain extent, by making distinctions between younger and older children in its policy documents and recommendations, and also in the resources available on its website for children in different age groups.\textsuperscript{48}

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

Freedom of expression is ensured under Article 32 of the Constitution and children fall under the scope of this article.

The child’s \textit{right to be heard} is ensured with regard to \textit{civil proceedings} concerning certain spheres of children’s life (e.g. adoption, custody).\textsuperscript{49} As a rule, the Courts of Justice are bound to hear children who have reached the age of fourteen years when the matter is being decided in the context of family proceedings affecting present and future well-being of the child. A children’s advocate may be appointed by the court in order to represent the interests of the child in the proceedings. The mediator and either spouse may also request such appointment and the court may also opt to hear the child. The institute of the office of the child advocate dates back to the introduction of the family court in 2003. Since that time, this institute has not been developed much as it is run by a small number of part-time advocates who are called to promote the best interests of the child while also representing children’s wishes.

The right to be heard is also provided under the Children and Young Persons Care Orders Act\textsuperscript{50} and the Foster Care Act.\textsuperscript{51} The \textbf{Criminal Code} provides that child victims can be present at the proceedings, engage a lawyer, examine or cross-examine witnesses and produce other evidence.

To date, a child still does not have the \textit{locus standi} to ask to be included in court proceedings; notwithstanding recommendations by Parliament to promote child

\textsuperscript{47} 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.

\textsuperscript{48} See resources and documents available from the Commissioner for Children’s website: \url{http://www.tfal.org.mt/} (last accessed 3rd October 2012).

\textsuperscript{49} In adoption proceedings, children have the right to state their views and give or withhold consent from age of 11.

\textsuperscript{50} Section 3(1) of the Children and Young Persons Care Orders Act.

\textsuperscript{51} Article 24 of the Foster care Act.
participation and notwithstanding suggestions to include the Council of Europe Guidelines on Child Friendly Justice into the EU Strategy on Children, which applies to Malta.

The Commissioner for Children Act makes specific mention of the duty of the Commissioner to promote and ensure child participation, however this right is considered to be problematic to enforce in practice.

According to the Education Act, the Directorate for Educational Services promotes, encourages and monitors the democratic governance of schools through School Councils with the active participation of parents, teachers and students.

There are no articles in Maltese legislation referring specifically to children with disabilities with regard to right to be heard and right to participate.

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

The Constitution of Malta, in Article 36, provides that no one can be subjected to inhuman or degrading punishment or treatment. Children fall under the scope of this provision.

The Criminal Code regulates and penalises various forms of abuse against minors, including sexual violence, child prostitution, abandoning or exposing a minor, ill-treatment, etc.

The Criminal Code establishes violence against a child and person with disabilities as an aggravating circumstance. In particular, Article 208AC the Criminal Code provides a long list of ‘vulnerable’ persons who, if subjected to sexual violence, incur a greater penalty to the perpetrator.

The Foster Care Act requires an accredited Agency to investigate any allegations of abuse in any foster care facility.

The Domestic Violence Act makes specific provision for responses to violence committed in family environment and regulates a system of assistance for persons falling victims of domestic abuse.

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

The Constitution of Malta makes direct reference to the right to family life. Furthermore, the European Convention for the Protection of Human Rights together with its first Protocol were incorporated into Maltese law by the enactment of the European Convention Act which is consistently applied by the Courts. The Schedule to the European Convention Act provides for the right to family life and prohibition of interference with the family life.

In the light of the national law, children separated from parents and placed in alternative care have a care plan drawn up in their best interests. Decisions regarding contact with parent(s) make up part of the care plan.

52 Articles 203, 204 and 208 of the Criminal Code.
There is no express reference to persons with disability in the national law regulating family life.

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

According to Article 17 of the Constitution, every citizen incapable of work and lacking the resources necessary for subsistence is entitled to maintenance and social assistance.

Financial support for persons with disabilities, in a form of Disability Pension or Pension for the Visually Impaired, is ensured under the Social Security Act. In addition, special allowances are foreseen for children placed in foster care or in institutions.

The Equal Opportunities (Persons with Disabilities) Act guarantees the provision of assistance, including financial and legal support, to persons with disabilities enforcing their rights under this Act.

Health care is provided through the state funded health service, including the Child Development and Assessment Unit. All persons, including children with disabilities, are entitled to free health services and medical treatment although no special provisions for children with disabilities have been identified in this regard.

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

The Constitution makes provision for the right to (primary) education and the right of persons with disabilities to education, however these articles are part of Chapter II of the Constitution, which is declaratory in nature and not enforceable.

The Education Act places an obligation on the Minister to ensure that the national policy on inclusive education is being applied in all schools. In the light of the Education Act, there should be established specialised centres of resources which support schools and Colleges in the implementation of the policy of inclusive education.

The Equal Opportunities Act prohibits discrimination on the grounds of disability in education, among other aspects of life. It also ensures accessibility of persons with disabilities to education facilities.

The right to inclusive education is applied in policy documents issued by the Ministry of Education. For more details on the implementation of the right to inclusive education in Malta see Section 3.2.4. below.

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53 Article 76A of the Social Security Act.
54 Article 13 of the Equal Opportunities (Persons with Disabilities) Act.
3.2. Specific issues faced by children with disabilities

The points raised and discussed in this section are based on information and data collected from published reports and other documents as well as the interviews conducted with three national stakeholders. These were as follows:

- A representative of the Commissioner for Children (CFC 2012);
- A representative of the Equal Partners Foundation, which provides educational and therapy services for children and young people with disabilities, and who is also the parent of a person with a disability (Equal Partners 2012);
- A representative of Ġenzija Sapport, which provides residential, community and day services for people with disabilities, and who is also the parent of a person with a disability (Ġenzija Sapport 2012).

3.2.1. Gender vulnerability

There are no legal regulations specifically targeting women or girls with disabilities. The Equality for Men and Women Act (Chapter 456) prohibits and regulates discrimination between men and women, especially in the employment sector. The Mental Health Act states that sterilisation or other invasive devices to modify sexual and emotional changes resulting from mental illness are prohibited in Malta.56

Statistical research in the disability sector is disaggregated by gender and shows the difference between men and women with disabilities in marital status, level of education, employment situation, the type and quality of residence, access to the Internet and participation in sport. These statistics show that, in most of the areas researched, women are more disadvantaged than men.57 Other research also shows that women, including girls, with disabilities face a risk of discrimination double as high as men and experience more disadvantages than men.58 Parents of young women with intellectual disability find that their daughters are more vulnerable than men, especially in the area of sexuality. They believe that the response to this increased vulnerability must not be sterilisation but additional sheltering and protection for girls and women with disabilities.59

In the interviews, the issue of fear among parents of sexual abuse against girls with disabilities was issued. However, it is difficult to ascertain whether in reality they are more at risk than boys. Another interviewee pointed out that his organisation comes across cases of abuse of both boys and girls with disabilities, and that their disabilities cause a greater risk than their gender.60

56 Article 31 (2) of the Mental Health Act.
59 Azzopardi-Lane describes that persons with intellectual disability in Malta do sometimes receive sex education which is focused on teaching them how to recognise abuse and how to prevent it. Azzopardi-Lane, K., ‘Sexuality and People with Learning Disability in Malta: realities and potential’, (Ph.D thesis, University of Kent. 2011).
60 Information collected through stakeholder consultation.
One of the interviewees emphasised the **need for better sex education** especially addressing the needs and levels of understanding of girls with intellectual disabilities. However, very often sex education lessons in mainstream schools are delivered to the whole class and the material is not adapted for children with intellectual disabilities.

It should be noted that Malta’s government adopted a sexual health policy acknowledging gender-related vulnerability of women and referring to the importance of sexual health services being responsive to persons with disability.

### 3.2.2. Violence

Two interviewees referred to cases of abuse of children with disabilities that were reported to their respective organisations, both of which are authorised to intervene in and investigate such cases.

When violence is being committed in the family environment or within an institution, the Social Work Unit of Aġenzija Sapplt assesses the situation and if it deems that further investigation is required, it refers the case to the Child Protection Unit of Aġenzija Appoġġ, the public entity that provides care and support to children and families in need. Following the referral, the social workers of both units work jointly according to an established protocol.

Children with intellectual disability are said to be more at risk of abuse than other children with disabilities. One of the reasons may be that those children and their parents tend to accept more easily certain treatments that would never be considered acceptable for other children.

### 3.2.3. Children as vulnerable suspects

Under Maltese criminal law, minors under the age of nine are exempted from criminal responsibility. Between the age of nine and fourteen, children are deemed to be capable of malicious discretion (*doli capax*) and can be held responsible. From the age of fourteen to eighteen any criminal offence committed by a child is penalised to a lesser degree. The Criminal Code provides the possibility of a custodial sentence being converted into a Care Order for a child who has committed an offence. However, this provision has never been applied (allegedly because of the lack of suitable facility to accommodate juvenile offenders).

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61 Information collected through stakeholder consultation.
63 Ministry for Health, the Elderly and Community Care, ‘The National Sexual Health Policy for the Maltese Islands’, (Valletta, Malta. 2010).
65 Information collected through stakeholder consultation.
66 Information collected through stakeholder consultation.
67 Article 36 of the Criminal Code.
68 Article 37 of the Criminal Code.
The Criminal Code provides for a detailed regulation of criminal offences committed by deaf-mute minors.\textsuperscript{69} For instance, deaf-mute children who at the time of the offence have not attained the age of fourteen years and who have acted without a mischievous discretion are exempt from any punishment.\textsuperscript{70}

The Juvenile Court Act (Chapter 287 Laws of Malta) regulates the proceedings applying to juvenile offenders until the age of sixteen. Pursuant to Article 8 of this Act, proceedings against children may be held behind closed doors and the publication of any information that may identify the child is prohibited.

No specific legislation regulating the interrogation or prosecution of suspects under the age of eighteen has been identified.

### 3.2.4. Inclusive education

The right to education for children with disabilities is enshrined in the Education Act as well as in the Equal Opportunities (Persons with Disability) Act which indicates education as one of the areas where discrimination on the grounds of disability is prohibited and which ensures access to education facilities. The Education Act obliges competent national authorities to ensure that the national policy on inclusive education is applied in all schools and that there are available the resources, tools and facilities required for this purpose.

In 2004, a review of special and inclusive education system in Malta was carried out by experts commissioned by the Ministry of Education, a decade after the initiation of the inclusive education policy. The report sets out a re-positioning plan with specific recommendations, many of which have been wholly or partly implemented.\textsuperscript{71} The recommendations that were implemented include the setting up of the Student Services Department\textsuperscript{72}, the training and engagement of Inclusion Coordinators\textsuperscript{73}, the revision of the job description of Learning Support Assistants,\textsuperscript{74} the setting up of a multi-disciplinary Statementing Moderating Panel, and the reform carried out to transform the former special schools into resource centres.\textsuperscript{75}

The report warns against ‘the pitfalls of a culture of dependency’ pointing out the importance of ensuring that students with individual educational needs contribute to decision-making processes affecting them directly.\textsuperscript{76}

\textsuperscript{69} Article 39-40 of the Criminal Code.
\textsuperscript{70} Article 39 m) of the Criminal Code.
\textsuperscript{72} Student Services Department, available from https://www.education.gov.mt/Page.aspx?pid=256&depid=2&pageid=14 (last accessed 3\textsuperscript{rd} October 2012).
\textsuperscript{73} Directorate for Educational Services, ‘Post of Inclusive Education Coordinator (INCO) in the Directorate for Educational Services (DES)’, Floriana, Malta, available from www.education.gov.mt/mediacenter.ashx?file=MediaCenter/Docs/1_INCO%202011%20ENG.pdf (last accessed 3\textsuperscript{rd} October 2012).
\textsuperscript{74} Ministry of Education, Culture, Youth and Sport, ‘Supporting Learners in Independent Schools’, Floriana, Malta, 2007, available from www.education.gov.mt/MediaCenter/Docs/1_Supporting%20Learners.pdf (last accessed 3\textsuperscript{rd} October 2012).
\textsuperscript{75} Ministry of Education, Culture, Youth and Sport, ‘Special Schools Reform’, Floriana, Malta, 2010, available from https://www.education.gov.mt/MediaCenter/Docs/2_Special_Schools_Reform_ENG.pdf (last accessed 3\textsuperscript{rd} October 2012).
The Student Services Department implements practices that enable students with individual educational needs to be involved in drawing up their respective Individual Educational Programmes. In key stages of the education of children with disabilities, Making Action Plan (MAPs) sessions can be carried out with the active contribution of the student concerned. MAPs are based on the principles of person-centred planning and are to be responsive to ‘the student’s dreams, fears, interests, and needs’. While MAPs sessions have been established as part of the tools used in the inclusion process, there has not been any research carried out evaluating the extent to which the principles of person-centred planning are adhered to in practice.

While considerable advances could be observed in including children with disabilities in mainstream schools in Malta, the inclusion appears to be unsystematic. The implementation of inclusive education is often left to the particular head of school and also strongly depends on the goodwill of teachers. In many cases the responsibility for the education of children with disabilities is left in the hands of the LSAs, and children with disabilities are only tolerated in classes but do not receive adequate education and attention from the side of the school staff. The gaps between children with disabilities and other children are more evident in the secondary school years, both on an academic and on a social level. In the post-16 sectors, the gaps become even wider.

Furthermore, according to the interviewees, the right of children with disabilities to education is not fully recognised in practice. For instance, children with disabilities absent from school are not reported to the competent authorities as happens in the case of children without disabilities. As a consequence, these children stay at home and miss out on their education. Moreover, if the LSA is temporarily absent, the child may not be accepted at school and has to stay at home. This is not necessarily acknowledged as a problem by the schools taking an approach of indifference to the absence of children with disabilities. It has been also reported that parents may feel that they are not in a position to complain if the LSA is not fulfilling his or her duties and obligations well.

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

Children with very challenging behaviour are at a high risk of institutionalisation. If it is considered beneficial for a child with a mental disability to be removed from the family, they are placed under a Care Order which is issued by the Minister. Following the Care Order, the Children & Young Person’s Advisory Board, on behalf of the Minister, exercises parental authority over the child. It is the psychiatrist in charge of the situation of a particular child with disability who decides if the child is to be admitted to the psychiatric unit. The parents/carers can appeal to the decision on the child’s status. Under the Care Order, the child may be placed in a residential institution. In severe cases, the child is sent to the Young People’s Unit (YPU), which is part of Mount Carmel Hospital, the state mental

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77 Directorate of Educational Services, ‘Individual Education Programme’, Floriana Malta.
78 Directorate of Educational Services, ‘Transition Document from Year 6 to Form 1’, Floriana Malta.
80 Information collected through stakeholder consultation.
81 Information collected through stakeholder consultation.
82 Opinion expressed by one of the stakeholders consulted.
83 Information collected through stakeholder consultation.
84 Information collected through stakeholder consultation.
hospital in Malta (where there are currently eight children with disabilities\textsuperscript{85}) or to YOURS, the juvenile unit of the prison. With reference to the YPU, although the setup is different from that of the wards for adults, and although all efforts are made to remove children from the YPU into the community, this is not always possible because of a lack of community-based services.

In general, there is a lack of residential services for children with disabilities who, for various reasons, cannot continue to live in their family homes. Some efforts are made to increase the offer of services, such as the planned establishment of a residential service for children with disabilities at risk operated by the Agenzija Sapport, which to date only offers residential services for adults with disability. The Richmond Foundation Malta also runs a residential service for children with severe emotional and behavioural difficulties. And the Foundation for Respite Care Services plans to provide a residential respite for persons with disabilities, including children with disabilities, especially those with intellectual disability.\textsuperscript{86}

Overall, children with challenging behaviour face an increased risk of exclusion, when compared to other children with disabilities and may be hindered from benefiting from the progress that has been registered in the disability sector in Malta.\textsuperscript{87} This conclusion is consistent with the results of research published by Inclusion Europe.\textsuperscript{88}

There is a need for coordination between different agencies, especially health and education. For many parents of children with disabilities, especially when children are very young or are diagnosed at birth, the first point of reference is the health sector. Health staff needs to be trained and informed about services and benefits available as well as educational opportunities so that health care authorities can provide the right advice and support to parents.\textsuperscript{89}

Other issues faced by children with disabilities in Malta relate to their future as independent adults. The development of self-advocacy for people with intellectual disability in Malta has been subject to research. While the focus is on adults with disabilities, the findings are also relevant for children. The study shows how Maltese culture does not foster self-advocacy, but rather tends to create dependency especially on family members who are expected to continue looking after people with disabilities for as long as possible. The development of autonomy and self-determination skills in children with disabilities is therefore not necessarily seen as a priority.\textsuperscript{90}

Children with disabilities in Malta also face an uncertain professional future once they become adults. While post-secondary and vocational training opportunities become increasingly available for persons with disabilities, employment opportunities still remain scarce and the support services provided by the Employment and Training Corporation are in need of restructuring.\textsuperscript{91}

\textsuperscript{85} Information collected through stakeholder consultation.
\textsuperscript{86} Dar il-Kaptan, available from http://www.darilkaptan.org/ (last accessed 3\textsuperscript{rd} October 2012).
\textsuperscript{88} Inclusion Europe, 2006, ‘The Specific Risks of Discrimination Against Persons in Situation of Major Dependence or with Complex Needs’, available from ec.europa.eu/social/BlobServlet?docId=3009&langId=en (last accessed 3\textsuperscript{rd} October 2012).
\textsuperscript{89} Information collected through stakeholder consultation.
4. ASSESSMENT OF THE PRACTICAL IMPLEMENTATION OF THE RIGHTS AND LEGAL PRINCIPLES

**KEY FINDINGS**

- Since there is no specific legal framework to address the rights and needs of children with disabilities, general provisions in various laws are applicable to the situation of children with disabilities. Individual cases of discrimination against children with disabilities may be dealt with effectively but overall systemic change has not yet been achieved.

- Reporting seems to be focused on the discriminatory provision of services and particularly on access to education. KNPD is entrusted with the drafting of policy, monitoring of infringements and with investigations into alleged violations. KNPD has developed into a respected advocate for persons with disabilities and is nationally recognised as a worthy reference point.

- In the field of education, considerable progress has been made towards including children with disabilities into mainstream education. However, it still remains a relatively discretionary policy and the Commissioner for Children’s monitoring powers in this area appear to be severely restricted, possibly due to understaffing and internal policy decisions relating to the Office of the Commissioner for Children.

- The literature recommends: 1. understanding and promoting the perspectives of children with disabilities; 2. training professionals on issues related to working with children with disabilities and fostering cooperation between them; 3. paying special attention to the needs of children with disabilities who have behavioural difficulties.

4.1. Enforcement and reporting mechanisms

The **National Commission Persons with Disability** (KNPD) is the entity which is empowered by law to enforce anti-discrimination legislation in the disability sector. KNPD’s competences result from the Equal Opportunities Act which covers discrimination against people with disabilities in education, employment, access to goods, services and facilities, housing, physical accessibility, and insurance. Through recent amendments to this Act, KNPD has been assigned also the role of an independent mechanism ‘to protect, promote and monitor’ the implementation of the CRPD, according to Article 33.2 of the Convention.

The **Equal Opportunities Compliance Unit** (EOCU) within KNPD receives complaints on discrimination and investigates them. Complaints are lodged by persons with disabilities, parents or relatives of persons (especially children) with disabilities or are referred to KNPD by other entities. This includes referrals from the Commissioner for Children, who is, pursuant to the Commissioner for Children Act, empowered to promote the rights of children.

As can be seen from the Equal Opportunities Act annual reports published by KNPD, the **majority of complaints involving children with disabilities focus on education** and difficulties encountered in mainstream education. In the first ten years of the EOA, KNPD
dealt with 228 cases of discrimination in education, being 21% of complaints overall. These included issues of transport for children with mobility impairments and those who need supervised transport; the refusal of accepting children with disabilities having challenging behaviour at mainstream schools; students who are kept at home because the LSA is absent or has not yet been recruited; arrangements for support during examinations; and physical accessibility to the school and to facilities within the school.

KNPD settles most cases through discussion and negotiation and very few cases are taken to court. Published reports on KNPD’s implementation of the Equal Opportunities Act show that of 1074 cases of discrimination investigated from 2000 to 2011, only six were taken to court or a tribunal. One of the few court cases concerned the administration of medicines to children with disabilities attending mainstream schools. Some parents of children with disabilities had to visit their children’s schools every day in order to administer medicines to their children. KNPD filed a suit against the Education Ministry for failing to draw up a policy on this issue. The Education Ministry eventually adopted a policy ensuring that children with disability attending mainstream schools and needing medicines to be administered are attended to by qualified professionals.

Other complaints concerned educators (especially teachers and LSAs) regarding their duties vis-à-vis children with disability. When conflicts arise, these educators may turn to their union, the Malta Union of Teachers. Some of the Union directives were hindering the implementation of policies and practices aimed at achieving higher levels of inclusion. To be more precise, one of the directives prohibited teachers and LSAs from preparing adapted examination papers for children with disability following an alternative curriculum. This practice is usually followed for children with intellectual disability. As a result of this directive, these children are not provided with an appropriate assessment scheme on an equal basis with their peers.

From the above it can be concluded that the national legal and policy frameworks protect the rights of children with disabilities, especially in the field of education, and enable them and their parents to have legal recourse to redress any breaches of rights.

4.2. Gaps, problems and issues in the implementation

More than ten years after the enactment of the Equal Opportunities Act and at a point in time when Malta has recently ratified the CRPD, there are still considerable gaps in the implementation of the rights of persons with disabilities, including children. In particular, in the educational context, children with disabilities in mainstream schools are tolerated rather than fully included.

The situation of children with severe or behavioural disabilities is more complex and problematic than position of children characterised by other types of disabilities. This includes children with intellectual disability; children with communication difficulties; children with complex dependency needs (such as multiple disabilities and challenging behaviour). Also children with disabilities from ethnic minorities face greater
difficulties. The latter relates especially to the children of undocumented migrants who reach Maltese shores from North Africa.95

Outside the field of education, children with disabilities need to be given adequate support, both within their families (e.g. effective system of legal and emotional counselling, early intervention, adequate social and legal assistance) and through the provision of appropriate community-based residential services for those who, for various reasons, cannot remain with their families of origin.96

It is noteworthy that the situation of victims of discrimination has changed. The increased number of complaints lodged with KNPD over the years indicates the increased willingness and ability of persons with disabilities and their family members to lodge complaints rather than accept cases of discrimination. What may have previously been accepted as fate is increasingly being recognised as discrimination and the effects of national structure, systems and attitudes that do not take into account the needs of persons with disabilities. In this context, there is a move towards recognising that enacting the necessary changes in established structures and systems is a question of rights, not charity.9798

KNPD is the best-resourced entity to uphold the rights of people with disabilities, especially in the light of its role of monitoring the implementation of the Equal Opportunities Act since 2000 and its new role as Independent Mechanism of the CRPD as from 2012.

### 4.3. Best practices

There has been considerable progress in seeking to remove systemic barriers to inclusive education. Perhaps one of the most significant steps has been the recent appointment of inclusion coordinators (INCOs) in mainstream schools.99 An inclusion coordinator is a staff member who is trained in the principles and practice of inclusive education and who works with the senior management team as well as with teachers and LSAs in the process of including individual children with disabilities. However, these INCOs are often not equipped to address all the issues faced by each child with a disability and to resolve each issue swiftly and effectively.100

One particular school held by the Catholic Church adopted a whole-school approach to inclusive education, taking into account the individual needs of all children. Rather than LSAs taking care of individual children with disabilities, the class teacher supports all students and, at the same time, acts as key person for children with a statement of

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95 Information collected through stakeholder consultation.
96 Information collected through stakeholder consultation.
100 Information collected through stakeholder consultation.
individual educational needs. Responsibility for the education of these children is, according to this model, shared by everyone.\textsuperscript{101}

### 4.4. Data and monitoring mechanisms

The only available data on cases of discrimination against children with disabilities is accessible via KNPD’s Equal Opportunities Acts reports. This study has focused on the complaints regarding education (see in Section 4.1 above). Statistics from 2007 to 2011 are provided in the table in Annex 2.

Malta has recently ratified the CRPD, and a monitoring mechanism has not yet been put in place. This task has been assigned to KNPD itself. KNPD is currently preparing a report on the implementation of the CRPD.\textsuperscript{102} It is worth noting that this report, pursuant to Article 7 of the CRPD, is considered to be a cross-cutting tool with relevance to the implementation of all the articles in the Convention.

### 4.5. Recommendations given by the literature

As pointed out in the above Sections, since research carried out on the situation of children with disabilities in Malta almost exclusively focuses on \textit{inclusive education}, the recommendations emphasise mostly this subject. Recommendations by the literature on support and services provided to children outside school are conspicuous by their absence. However, the recommendations given on inclusive education are also relevant for improving the situation of children with disabilities in other areas of life.

A common issue present in the research studies is that successful outcomes in inclusive education are dependent on educators being willing to accept children with disabilities and their specific impairments. The research indicates that this applies especially to those children whose disabilities are associated with behaviours which challenge the established educational system. The \textit{need for a better understanding of children with disabilities} is highlighted in the recommendations presented by various researchers in particular in relation to children with social and emotional behaviour difficulties,\textsuperscript{103} children with ADHD\textsuperscript{104}, and children on the autistic spectrum.\textsuperscript{105} The research also points the \textit{importance of seeking ways of connecting with children with disabilities}, especially those who have communication difficulties.\textsuperscript{106} There are instances where such connections are made successfully, sometimes not by professionals but by auxiliary staff and by classmates. The importance of the acceptance of children with autism is also a point raised with reference to society as a whole.\textsuperscript{107} Fostering a positive attitude among children must

\textsuperscript{101} Information collected through stakeholder consultation.

\textsuperscript{102} KNPD, ‘Working towards the Implementation of the CRPD’, available from http://www.knpd.org/ (last accessed 10\textsuperscript{th} January 2013).


\textsuperscript{106} Ibid.

\textsuperscript{107} Ibid.
start from the teachers. There is also a need for peer-preparation programmes and for teachers to encourage children without disabilities not only to accept children with autism but also to become their friends.

Reference is also made to the importance of continuing to develop teacher training so that it is ensured that they fully understand the principles of inclusive education and the implications and means of applying them in practice, and for diversity to be celebrated rather than perceived as a source of difficulties. The importance of teachers being trained in differentiated teaching methods is also mentioned. Another recommendation highlighted by the researchers is the importance of professionals working together, underlining the need for teachers to learn how to use the services available fully and effectively.

With reference to the wider society, it is important for social workers and other professionals to work together and provide effective support for children with disabilities and their families.

112 Ibid.
5. CONCLUSIONS

The rights of children with disabilities in Malta are mainly safeguarded by the Equal Opportunities Act which deals with the prohibition of discrimination based on disability and establishes the requirement of reasonable accommodation as well as ensures accessibility of public facilities and services. The Commissioner for Children Act establishes competences of the Commissioner for Children who is responsible for the promotion and protection of rights of all children. Next to the Commissioner, the National Commission Persons with Disability is legally empowered to enforce anti-discrimination legislation in the disability sector.

The Social Security Act provides for financial assistance for persons with disabilities (in the form of Disability Pension and Pension for the Visually Impaired). The Education Act ensures access of children with disabilities to inclusive education and their attendance to mainstream schools together with children without disabilities. The Mental Health Act covers the rights of minors suffering from intellectual impairments. The Foster Care Act regulates the functioning and the organisation of foster care facilities. Numerous provisions of the Civil Code and Criminal Code ensure rights of children to be heard, to be free from various forms of violence and their best interests to be taken into account by public authorities in certain proceeding concerning children’s lives.

However, there is no legislation that specifically addresses children with disabilities and their vulnerable situation in the social, public and economic life. Moreover, the CRPD and the CRC have not yet been incorporated into Maltese legislation. This is particularly problematic as Malta is a dualist country which means that in order for international agreements to be applicable, their provisions need to be implemented into national legal order by means of national legislation.

A heavy investment in the inclusive education system has been made in Malta. Consequently, most children with disabilities attend mainstream schools. However, the degree to which children with disabilities are included depends on the goodwill and commitment of their educators. Research shows that the children who face the highest risk of exclusion are children with severe disabilities and/or challenging behaviour.

Moreover, while the infrastructure for providing and supporting inclusive education has developed and improved significantly, much needs to be done for services for children with disabilities outside the school to develop to the same extent. This includes supporting children in the family home, and the provision of adequate and appropriate residential services for children with disabilities who cannot remain at home.
REFERENCES

1. Legislation

a. International Law


b. National Law

- Chapter 0 The Constitution of Malta.
- Chapter 9 The Criminal Code.
- Chapter 16 The Civil Code.
- Chapter 262 The Mental Health Act.
- Chapter 285 The Children and Young Persons (Care Orders) Act.
- Chapter 318 The Social Assistance Act.
- Chapter 319 The European Convention Act.
- Chapter 327 The Education Act.
- Chapter 413 The Equal Opportunities (Persons with Disability) Act.
- Chapter 426 The Commissioner for Children Act.
- Chapter 491 The Foster Care Act.

2. Literature

- Azzopardi-Lane C. and Callus, A.M. (in press), Self-advocacy and Sexuality.


• MHECC, (2010), ‘The National Sexual Health Policy for the Maltese Islands’, Ministry for Health, the Elderly and Community Care, Valletta, Malta.


3. Statistics


4. Other

## ANNEX 1 – SUMMARY TABLE

### Analysis of the legal implementation of the CRPD and CRC rights and principles

<table>
<thead>
<tr>
<th>National legislation (translated in English)</th>
<th>Comments/assessment on the implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Best interests of the child</strong></td>
<td></td>
</tr>
<tr>
<td>Article 47 of the Civil Code</td>
<td>Incomplete implementation:</td>
</tr>
<tr>
<td>During the pendency of the action the court shall give such directions concerning the custody of the children as it may deem appropriate, and in so doing the paramount consideration shall be the welfare of the children.</td>
<td>There is no clearly identifiable legal definition or reference of the systematic consideration of the best interest of the child in Maltese law; however numerous articles make reference to the ‘welfare of the child’, ‘the interest’ or ‘best interests of the child’. Court decisions are also guided by the principle.</td>
</tr>
<tr>
<td>Article 56 of the Civil Code</td>
<td></td>
</tr>
<tr>
<td>(1) On separation being pronounced the court shall also direct to which of the spouses custody of the children shall be entrusted, the paramount consideration being the welfare of the children.</td>
<td></td>
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<tr>
<td>(4) The court may, at any time, revoke or vary such directions respecting the children, where the interests of the children so require.</td>
<td></td>
</tr>
<tr>
<td>Article 57(3) of the Civil Code</td>
<td></td>
</tr>
<tr>
<td>(3) It shall be lawful for the court entirely to forbid such access [of parents] to their minor children if it may be detrimental to the welfare of such minors.</td>
<td></td>
</tr>
<tr>
<td>Article 58 of the Civil Code</td>
<td></td>
</tr>
<tr>
<td>58. (1) The court may, where it shall deem it expedient so to do in the interest of the spouses and the children, order the suspension of the action of separation for such time as it may deem proper, and give such interim directions as circumstances may require.</td>
<td></td>
</tr>
<tr>
<td>Article 131 of the Civil Code</td>
<td></td>
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<tr>
<td>(4) The court, after hearing the parents and the child if the latter has reached the age of fourteen years, shall make those suggestions which it deems best in the interest of the child</td>
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</table>
### Analysis of the legal implementation of the CRPD and CRC rights and principles

<table>
<thead>
<tr>
<th>National legislation (translated in English)</th>
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<tbody>
<tr>
<td>and the unity of the family.</td>
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<tr>
<td>Part I(2) of the Foster Care Act</td>
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<tr>
<td>&quot;Foster care&quot; means a service for a determinate period whereby a child is placed in the continuous care of a foster carer, and through which the child is brought up in a family environment according to his best interests.</td>
<td></td>
</tr>
<tr>
<td>Article 543 of the Criminal Code</td>
<td></td>
</tr>
<tr>
<td>It shall be lawful for the Police to institute proceedings even without the complaint of the private party in any of the following cases: (...) giving particular consideration to the best interests of any minors involved, and shall cause such request and decision to be registered in the records of the case.</td>
<td></td>
</tr>
</tbody>
</table>

### Non-discrimination

<table>
<thead>
<tr>
<th>Constitution of Malta</th>
<th>Effective implementation:</th>
</tr>
</thead>
<tbody>
<tr>
<td>14. The State shall promote the equal right of men and women to enjoy all economic, social, cultural, civil and political rights and for this purpose shall take appropriate measures to eliminate all forms of discrimination between the sexes by any person, organisation or enterprise (...).</td>
<td>Maltese law regulates discrimination based on disability and provides for specific enforcement mechanisms.</td>
</tr>
<tr>
<td>45. (1) (...) no law shall make any provision that is discriminatory either of itself or in its effect. (2) (...) no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority. (3) In this article, the expression &quot;discriminatory&quot; means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of</td>
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</table>
### Analysis of the legal implementation of the CRPD and CRC rights and principles

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<tr>
<th>National legislation (translated in English)</th>
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<td>another such description.</td>
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<tr>
<td>Article 22 of the Equal Opportunities (Persons with Disability) Act</td>
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<tr>
<td>The Commission, whilst paying particular attention to the different needs of children, women</td>
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<td>and men with disability, shall; (...)</td>
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<tr>
<td>g) work towards the elimination of discrimination against people with disabilities;</td>
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<tr>
<td>h) carry out general investigations with a view to determining whether the provisions of this Act</td>
<td></td>
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<td>are being complied with;</td>
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</tr>
<tr>
<td>Article 7 (2) of the Equal Opportunities (Persons with Disability) Act</td>
<td></td>
</tr>
<tr>
<td>(2) For the purposes of sub-article (1) and without prejudice to the generality of Part II of this Act, an employer shall be considered to discriminate on the grounds of disability against a person as is referred to therein, if such employer unreasonably:</td>
<td></td>
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<tr>
<td>(d) fails to make reasonable accommodation for the disability of such a person, unless the employer can prove that the required alterations would unduly prejudice the operation of the trade or business run by such employer;</td>
<td></td>
</tr>
<tr>
<td>Article 12. of the Equal Opportunities (Persons with Disability) Act</td>
<td></td>
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<tr>
<td>(...) it shall be unlawful for any person to discriminate against another person on the grounds of the disability of such other person (...):</td>
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<tr>
<td>(a) by refusing to allow such other person access to, or the use of any property, or of any facilities within such premises, that the public or a sector of the public is entitled or allowed to enter or use.</td>
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<tr>
<td>Article 13 of the Equal Opportunities (Persons with Disability) Act</td>
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<tr>
<td>(...) no qualified person with a disability shall, on the grounds of disability, be excluded from participation in or be denied the benefits of the programmes or activities of any person or body</td>
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</table>
### Analysis of the legal implementation of the CRPD and CRC rights and principles

<table>
<thead>
<tr>
<th>National legislation (translated in English)</th>
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<tbody>
<tr>
<td>in relation to the goods, facilities or services to which this article applies or be discriminated against by any person or body providing such goods, facilities or services which the qualified person seeks to obtain or use.</td>
<td></td>
</tr>
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</table>

#### Evolving capacities of the child

**Article 3B of the Civil Code**  
(1) Marriage imposes on both spouses the obligation to look after, maintain, instruct and educate the children of the marriage taking into account the abilities, natural inclinations and aspirations of the children.

**Article 119 of the Civil Code**  
(2) In determining whether an adoption decree if made will be for the welfare of the person to be adopted, the court shall have regard (among other things) to the health of the applicant (...) and shall give due consideration to the wishes of the person to be adopted, having regard to his age and understanding and to the religious persuasion of such person and of his parents.

Incomplete implementation:  
There is no explicit recognition of the concept of the evolving capacities of the child in the Maltese legislation. The national law refers to the concept of ‘age and understanding’ of the child and the ‘abilities’ of the child.

#### Right to participate /right to be heard

**Article 32 of the Constitution**  
Whereas every person in Malta is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely – (...)  
(b) freedom of conscience, of expression and of peaceful assembly and association; (...).

**Article 9 of the Commissioner for Children Act**  
The Commissioner shall have the following functions:  
(a) to promote and advocate for the rights and interests of children;

Incomplete implementation:  
Freedom of expression is ensured under the Constitution and children fall under the scope of this article.  
The child’s right to be heard is ensured with regard to civil proceedings concerning certain spheres of children’s life (e.g. adoption). The principle is also
### Analysis of the legal implementation of the CRPD and CRC rights and principles

<table>
<thead>
<tr>
<th>National legislation (translated in English)</th>
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<tr>
<td>(b) to ensure that children are being given the opportunity to express their opinions and that these are in fact considered (...).</td>
<td>provided under the Children and Young Persons Care Orders Act and the Foster Care Act. The Criminal Code provides that child victims can be present at the proceedings, engage a lawyer, examine or cross-examine witnesses and produce other evidence.</td>
</tr>
</tbody>
</table>

**Article 6A of the Civil Code**
1) In case of any disagreement either spouse may apply to the competent court for its assistance and the presiding judge, after hearing the spouses and if deemed opportune any of the children above the age of fourteen years residing with the spouses, shall seek to bring about an amicable settlement of such disagreement.

**Article 131 of the Civil Code**
(4) The court, after hearing the parents and the child if the latter has reached the age of fourteen years, shall make those suggestions which it deems best in the interest of the child and the unity of the family.

**Section 3 of the Children and Young Persons Care Orders Act**
(1) If, on representations made to him in writing by the Director of the Department responsible for social welfare and after giving the parents and the guardian, if any, of the child or young person an opportunity to express their views, and after hearing any other person he may deem likely to assist him, the Minister is satisfied that that child or young person is in need of care, protection or control, it shall be the duty of the Minister by an order in writing under his hand to take such child or young person into his care.

**Article 24 of the Foster care Act**
(5) The foster care agreement, drawn up by the accredited agency, shall be signed by the accredited agency, the foster carer and the person having care and custody of the child. This agreement shall be drawn up after having heard the child to be fostered, according to his age and understanding, and any person caring for the child.
## Analysis of the legal implementation of the CRPD and CRC rights and principles

### National legislation (translated in English)

<table>
<thead>
<tr>
<th>Article 11 of the Education Act</th>
<th>Comments/assessment on the implementation</th>
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<tbody>
<tr>
<td>(2) In particular, this Directorate [for Educational Services] shall: (...) (g) promote, encourage and monitor the democratic governance of schools through School Councils with the active participation of parents, teachers and students; (...)</td>
<td></td>
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</table>

### Right to be free from violence

<table>
<thead>
<tr>
<th>Article 36 of the Constitution of Malta:</th>
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<tbody>
<tr>
<td>(1) No person shall be subjected to inhuman or degrading punishment or treatment.</td>
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<thead>
<tr>
<th>Article 203 of the Criminal Code</th>
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<tbody>
<tr>
<td>(1) Whosoever, by lewd acts, defiles a minor of either sex, shall, on conviction, be liable to imprisonment for a term not exceeding three years (...)</td>
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<table>
<thead>
<tr>
<th>Article 204 of the Criminal Code</th>
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<tbody>
<tr>
<td>(1) Whosoever in order to gratify the lust of any other person induces a person under age to practise prostitution, or instigates the defilement of such person, or encourages or facilitates the prostitution or defilement of such person, shall, on conviction, be liable to imprisonment for a term from eighteen months to four years (...)</td>
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<thead>
<tr>
<th>208AC of the Criminal Code</th>
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<tbody>
<tr>
<td>(1) The punishment for the offences referred to in articles 204, 204A to 204D, both inclusive, 208A(1) and 208(1A), shall be increased by one to two degrees in each of the following cases: (a) where the offence results in harm to the physical or mental health of the person under age; (b) where the person under age is a vulnerable person within the meaning of subarticle (2); (2) For the purposes of this article a vulnerable person means: (a) any person under the age of fifteen years; or (b) any person suffering from a physical or mental infirmity.</td>
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<table>
<thead>
<tr>
<th>Effective implementation:</th>
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<tr>
<td>The Constitution provides that no one can be subjected to inhuman or degrading punishment or treatment; children fall under the scope of this Article. Furthermore, national law ensures protection of children from different forms of violence and abuse.</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>The Foster Care Act requires an accredited Agency to investigate any allegations of abuse in any foster care facility.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 208 of the Criminal Code establishes violence against a child and person with disabilities as an aggravating circumstance.</td>
</tr>
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</table>
### Analysis of the legal implementation of the CRPD and CRC rights and principles

<table>
<thead>
<tr>
<th>National legislation (translated in English)</th>
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<tbody>
<tr>
<td><strong>Article 246 of the Criminal Code</strong>&lt;br&gt;Whosoever shall be guilty of abandoning or exposing any child under the age of seven years shall be liable to imprisonment for a term from seven months to one year.</td>
<td></td>
</tr>
<tr>
<td><strong>Article 247A of the Criminal Code</strong>&lt;br&gt;(1) Whosoever, having the responsibility of any child under twelve years of age, by means of persistent acts of commission or omission ill-treats the child or causes or allows the ill-treatment by similar means of the child shall, unless the fact constitutes a more serious offence under any other provision of this Code, be liable on conviction to imprisonment for a term not exceeding two years.</td>
<td></td>
</tr>
<tr>
<td><strong>Article 339 of the Criminal Code</strong>&lt;br&gt;(1) Every person is guilty of a contravention against the person who (...)&lt;br&gt;(j) being in duty bound to take care of children, or of other persons incapable of taking care of themselves.</td>
<td></td>
</tr>
<tr>
<td><strong>Article 17 of the Foster Care Act</strong>&lt;br&gt;An accredited agency shall be responsible to:&lt;br&gt;(k) investigate any allegations of abuse in any foster care placement, in accordance with the manual or procedures mentioned in article 18, and report as necessary to the competent authority.</td>
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### Right to family life

<table>
<thead>
<tr>
<th>National legislation (translated in English)</th>
<th>Comments/assessment on the implementation</th>
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<tbody>
<tr>
<td><strong>Article 32 of the Constitution of Malta</strong>&lt;br&gt;Whereas every person in Malta is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely (...)</td>
<td>Incomplete implementation:&lt;br&gt;The general right to family file is ensured by the Constitution.</td>
</tr>
</tbody>
</table>
### Analysis of the legal implementation of the CRPD and CRC rights and principles

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<thead>
<tr>
<th>National legislation (translated in English)</th>
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</thead>
<tbody>
<tr>
<td>(c) respect for his private and family life.</td>
<td>The Schedule to the European Convention Act provides for the family life and prohibition of interference with the family life.</td>
</tr>
</tbody>
</table>

**Article 8 of the European Convention Act**

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

**Right to assistance**

**Article 17 of the Constitution**

1. Every citizen incapable of work and unprovided with the resources necessary for subsistence is entitled to maintenance and social assistance.

**Article 27 of the Social Security Act**

1. Save as provided for in article 96 and subject to the other provisions of this Act, a person who -
   a. has attained the age of sixteen years; and
   b. is certified to be suffering from a mental severe subnormality or to be a severely disabled person in accordance with the provisions of this Act, or to be suffering from cerebral palsy; and
   c. shows to the satisfaction of the Director that he is a citizen of Malta and normally resides in Malta, shall be entitled to a Disability Pension under this Act and the highest rate of which, including any increases in terms of the provisions of article 90, shall be such in accordance with Part III of the Sixth Schedule and with the provisions of sub-article (3).
2. Subject to the provisions of this Act, a visually impaired person who -

**Effective implementation:**

The Constitution establishes a general right to assistance for persons with disabilities.

Financial support for persons with disabilities is ensured under the Social security Act. Special allowances are foreseen for children placed in foster care or in institutions.

Financial and legal support is ensured under the Equal Opportunities (Persons with Disabilities) Act.
<table>
<thead>
<tr>
<th>National legislation (translated in English)</th>
<th>Comments/assessment on the implementation</th>
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<tbody>
<tr>
<td>(a) has attained the age of fourteen years; and</td>
<td></td>
</tr>
<tr>
<td>(b) produces such certificates regarding his visual impairment, as the Director may, in</td>
<td></td>
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<tr>
<td>particular cases, require; and</td>
<td></td>
</tr>
<tr>
<td>(c) shows to the satisfaction of the Director that he is a citizen of Malta and normally resides in</td>
<td></td>
</tr>
<tr>
<td>Malta, shall be entitled to a Pension for the Visually Impaired under this Act in accordance with Part III</td>
<td></td>
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<tr>
<td>of the Sixth Schedule and with the provisions of sub-article (3).</td>
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</table>

Article 76A of the Social Security Act
Subject to the provisions of this Act it shall be the right of every child who is certified by a           |
competent authority, either as a fostered child, or is certified as being under care in an institution, to |
have an allowance paid out in his respect to the head of household who is an approved foster carer in       |
accordance with the Foster Care Act or the head of the institution, as the case may be, at the rates        |
specified in Part VIII of the Fourteenth Schedule to this Act.

Article 22 of the Equal Opportunities (Persons with Disabilities) Act
The Commission, whilst paying particular attention to the different needs of children, women and men with  |
disability, shall (...)
(k) provide, where and as appropriate, assistance, including legal and financial assistance, to persons  |
with disabilities in enforcing their rights under this Act; (...).

**Right to education (including inclusive education)**

**Article 17 of the Constitution**
(3) Disabled persons and persons incapable of work are entitled to education and vocational training.

**Article 58 of the Education Act**
(1) The Minister shall ensure that the national policy on inclusive education is being applied in

**Effective implementation:**
The Constitution makes provision for the right to (primary) education and the right of persons with disabilities to education, but these articles are part of...
<table>
<thead>
<tr>
<th>National legislation (translated in English)</th>
<th>Comments/assessment on the implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>all schools and that there are available the resources, tools and facilities required so that this may be given as effectively as possible. (2) The Minister shall ensure the existence of specialised centres of resources which support schools and Colleges in the implementation of the policy of inclusive education, which give a service to students having specific learning difficulties, and others which provide education and training services to students with individual educational needs whose educational entitlement may be better achieved in such centres.</td>
<td>Chapter II of the Constitution, which is declaratory in nature and not enforceable. The Education Act places an obligation on the Minister to ensure that the national policy on inclusive education is being applied in all schools. According to the Education Act, there should be established specialised centres of resources which support schools and Colleges in the implementation of the policy of inclusive education, which give a service to students having specific learning difficulties. The Equal Opportunities Act prohibits discrimination on the grounds of disability in education, among other aspects of life. It also ensures accessibility of persons with disabilities to education facilities.</td>
</tr>
</tbody>
</table>

Article 55 of the Education Act
In each College there shall be a Council of Heads of school forming the College to be presided by the Principal. The Council shall:
(d) ensure that the national policies on matters of education, including those relating to (...) inclusive education (...) are well understood by all the teaching and non-teaching staff, and that they are being effectively followed; (...).

Article 11of the Education Act
(2) In particular, this Directorate shall: (...)
(h) promote, support, coordinate and ensure lifelong learning services and initiatives, including educational and cultural initiatives within the community, e-learning and distance learning, adult education, evening classes and other initiatives relating to complementary education and services for persons having specific learning difficulties; (...)
(l) in conjunction with Colleges and schools, provide the resources required for inclusive and special educational programmes and for other schemes related to individual educational needs.

Article 11 of the Equal Opportunities (Persons with Disabilities) Act
(...) it shall be unlawful for an educational authority or institution to discriminate against -
<table>
<thead>
<tr>
<th>Analysis of the legal implementation of the CRPD and CRC rights and principles</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>National legislation (translated in English)</strong></td>
</tr>
<tr>
<td>(a) an applicant for admission as a student on the grounds of his disability or a disability of any of his family members - (i) by refusing or failing to accept his application for such admission, or (ii) in the terms or conditions on which such educational authority or institution is prepared to admit him as a student; and, or, (b) a student on the grounds of his disability or disability of any of his family members by - (i) denying him access, or limiting his access, to any benefit, facility or service provided by such educational authority or institution; or (ii) expelling him from the educational institution he is attending.</td>
</tr>
</tbody>
</table>
### ANNEX 2 – STATISTICAL INFORMATION

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of violation</th>
<th>Violence</th>
<th>Gender discrimination</th>
<th>Other discrimination</th>
<th>Criminal suspects</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>No data identified</td>
<td>No data identified</td>
<td>14</td>
<td></td>
<td>No data identified</td>
</tr>
<tr>
<td>2008</td>
<td>No data identified</td>
<td>No data identified</td>
<td>28</td>
<td></td>
<td>No data identified</td>
</tr>
<tr>
<td>2009</td>
<td>No data identified</td>
<td>No data identified</td>
<td>38</td>
<td></td>
<td>No data identified</td>
</tr>
<tr>
<td>2010</td>
<td>No data identified</td>
<td>No data identified</td>
<td>22</td>
<td></td>
<td>No data identified</td>
</tr>
<tr>
<td>2011</td>
<td>No data identified</td>
<td>No data identified</td>
<td>19</td>
<td></td>
<td>No data identified</td>
</tr>
</tbody>
</table>

115 These figures are taken from KNPD’s Equal Opportunities Act Reports; available at: www.knpd.org/legislation.
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 States 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. 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.

116 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.

117 8 rights and principles have been identified as most relevant to the situation of children with disabilities: the best interests of the child, the right to non-discrimination, the consideration of evolving capacities, the right to participation/to be heard, the right to be free from violence, the right to family life, the right to assistance and the right to education.
The **rights to participation and to be heard** in decision making processes affecting children with disabilities are recognised under the legislation of the 18 Member States. However, their implementation is often limited to some sectoral procedures mostly regarding family law and at a certain extent in education. In practice, children with disabilities are not systematically involved and do not get to participate in public and private life at the same level than their able-peers.

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

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

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

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

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

On the basis of these findings, the study sets forth conclusions and recommendations for EU action, taking into account the competence of the EU conferred by the Treaties on a range of policy areas, including disability and children’s rights.
B.1 The role of the European Union

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

The EU, together with Member States in areas of shared competence or national competence, is bound by the CRPD obligations and is required to take the necessary measures to combat discrimination on the grounds of disability within the framework of Article 19 TFEU or in other matters falling within EU competence. Article 19(1) TFEU provides the legal basis for EU action (see among others the proposal for equal treatment Directive of 2008) 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’. Recently, the CJEU has further developed this concept stating that disability results from barriers hindering the full and effective participation of the person concerned in professional life on an equal basis with other workers and calling on the employer to take reasonable accommodation measures.

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

B.2 Existing relevant EU secondary legislation

The best interests of the child as primary consideration in actions relating to children is a fundamental requirement recognised in EU legislation. Article 7 of the Mediation Directive 2008/52 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

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119 Judgment C-13/05 of the Court (Grand Chamber) of 11 July 2006, Sonia Chacón Navas v Eurest Colectividades, pt 43.
120 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.
Family Reunification Directive\textsuperscript{122} requires Member States’ authorities to consider the best interests of children when examining an application for family reunification (Article 5)\textsuperscript{123}. The protection of the best interests of the child is explicitly mentioned in Council Directive 2004/81/EC\textsuperscript{124} 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.\textsuperscript{125} They lay down rules ‘for combating discrimination (...) with a view to putting into effect in the Member States the principle of equal treatment’.\textsuperscript{126} Disability is recognised as grounds for discrimination under Directive 2000/78/EC and, furthermore, protection of equality between men and women in matters of employment and occupation under Directive 2006/54/EC applies to persons with disabilities. Directive 2000/43/EC on equal treatment between persons irrespective of racial or ethnic origin does not include disability as a protected ground. Directive 2004/113/EC on equal treatment between women and men in access to supply of goods and services refers to discrimination on grounds of sex but not on age or disability.

The European Commission has acknowledged the differences of protection provided across the various grounds and published a proposal for a Directive in 2008 aiming at completing the legal framework on anti-discrimination law and providing for a more equal level of protection across the grounds\textsuperscript{127}.

Other measures in policy areas such as the internal market or transport have an impact on children with disabilities’ access to services with no-discrimination. For example, Directive 2001/85/EC on the carriage of passengers, requires accessibility features for persons with reduced mobility and visually impaired persons. Other instruments cover rights of persons with disabilities when travelling by air, accessibility to lifts, in carrying out public procurement or in measures for telecommunication\textsuperscript{128}.

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

\begin{footnotes}
\item[124] 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.
\item[125] 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.
\item[126] Article 1 Directive 2000/43/EC.
\item[127] 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.
\end{footnotes}
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 relating to child trafficking, to the sexual exploitation of children and to the protection of victims including several Directives that have been adopted to replace some of these instruments. For example, the Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, focus on the protection of children which are more vulnerable than adults and establishes more severe penalties when the offence is committed against vulnerable persons such as children and persons with disabilities.

The Directive 2012/29/EU establishing minimum standards on the rights, support and protection of the victims of crime recognises that a victim of crime should be treated without discrimination based on any ground including age and disability. Lastly, Directive 2011/92/EU on combating sexual abuse, the sexual exploitation of children and child pornography 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). In the field of immigration policies, the right of the child to family life is ensured by the rules on family reunification and the provisions of the Directives on asylum regarding unaccompanied minors and the respect for the family unit.


131 Article 1 Directive 2011/92/EU.


The principle of **maximum inclusion in society** of children with disabilities is reflected in strategy documents such as the Disability Strategy 2010-2020\(^{135}\) and the EU 2020 Programme in relation to education and training\(^ {136}\). The 2003 Council Resolution on equal opportunities for Pupils and Students with Disabilities\(^ {137}\) addressed the problem of access to education by children with disabilities. In 2010, the Resolution of the European Parliament on mobility and inclusion of children with disabilities\(^ {138}\) stressed the need to ensure full respect for the rights of the child, including the right to education and the right to participate in community life of children with disabilities. The EU Institutions also support the **European Agency for Development in Special Needs Education**, the independent organisation acting as a platform for collaboration on special educational needs and the promotion of full participation within mainstream education and training\(^ {139}\).

### C. Recommendations for EU action

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

#### Horizontal issues

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

- **The European Commission**, liaising with the UN Secretariat for the CRPD and the UN Secretariat for the CRC, should ensure Member States understanding and implementation of several definitions of the Conventions that are cornerstones for the implementation of the rights of children with disabilities, namely the definition of “disability”, the “best interests of the child” and the “evolving capacities of the child”. They should lead the development of initiatives to ensure that the specificities of children with disabilities are taken into account.

  To that end, it is recommended that the Commission takes the initiative to provide clarification at EU level of the CRDP definition of “disability” as it is considered to be too broad in practice and its implementation at national level is therefore difficult. The development of guidance documents, exchange of best practices and promotion of existing manuals are recommended.

- **The European Commission** should take action to promote that children with disabilities are considered in existing mainstreaming initiatives for non-discrimination and equal treatment.

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


\(^{137}\) Council Resolution of 5 May 2003 on equal opportunities for pupils and students with disabilities in education and training, 2003/C 134/04.


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

<table>
<thead>
<tr>
<th>Name of the Study</th>
<th>PE number</th>
<th>ISBN number</th>
</tr>
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<tr>
<td>Study on Member States' Policies for Children with Disabilities</td>
<td>PE 474.416</td>
<td>978-92-823-4548-1</td>
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