

EUROPE CARES- INCLUSIVE QUALITY EDUCATION FOR CHILDREN WITH DISABILITIES

I. SUMMARY

Subject matter:

The right to inclusive education of children with disabilities within the European Union

Description of the objectives

Over 70 million EU citizens have a disability and 15 million children have special educational needs. Children and adults with disabilities are facing excessive barriers in exercising their right to quality inclusive education. Many are placed in segregated institutions and those in mainstream educational settings often receive inadequate support.

We call on the EC to draft a bill on a common EU framework of inclusive education, which will ensure that no child is left behind when it comes to early intervention services, education and transition towards the labor market.

Provisions of the Treaties:

Art. 165 TFEU,

Art. 153 TFEU (j)

Art. 9 & 10 TFEU

Art. 3., (3) TEU

II. JUSTIFIATION OF THE NEED

Over 70 million EU citizens of working age have a disability and 15 million children have special educational needs¹. Despite commitments by Member States to promote inclusive education,

¹ <https://www.disability-europe.net/theme/statistical-indicators>

children with special educational needs and adults with disabilities are facing excessive barriers in exercising their right to quality inclusive education. Many are placed in segregated institutions and those in mainstream educational settings often receive inadequate support.

There is a wide variation between Member States² as to how children with special needs are identified, as well as whether they are placed in mainstream or special schools. For example, in Romania³ over 40% of pupils with special needs are in segregated special schools, while in Italy it is only 0.01%.

Children with special educational needs frequently leave school with few or no qualifications. People with disabilities or special educational needs are much more likely to be unemployed or economically inactive. At the EU level, nearly 2 out of 5 people having a disability attained only “pre-primary, primary and lower secondary education” levels. Moreover, the share of disabled persons attaining a tertiary education level is significantly lower than for non-disabled persons (15.5 % compared with 25.0 %) ⁴.

While it is of vital importance to move towards more inclusive education systems, teachers’ education and continuing professional development are not organized along inclusive lines. In addition, learning support teachers and classroom assistants who play a vital role in making inclusion work well in practice are a constant challenge for the Member States, which fail to provide the necessary staffing (e.g. Romania has employed only 1,385 support teachers as of 2018 for over 72.000 children with disabilities)⁵.

In some European countries (e.g. Romania, Bulgaria, Hungary, Croatia, Slovakia) curricula are standardized and inflexible, which makes the inclusion of children with disabilities difficult. Grade retention practices also undermine the principles of inclusion, while in centralized states like Romania, grading system has been transformed into an apparently legal instrument of exclusion.

Due to the lack or scarcity of early intervention services and community-based habilitation and rehabilitation services, children and adults with disabilities are less likely to access and/or progress into education than non-disabled people.

Moreover, the lack of a mechanism of transition from the educational systems towards the labor market results into low rates of employment of persons with disabilities and perpetuation of exclusion and the dependence on families or care institutions, fact which falls against the principles of TFEU, TEU and UNCRPD.

² <http://www.nesse.fr/nesse/activities/reports/activities/reports/disability-special-needs-1>

³ Romanian Ministry of Education official statistics provided to the European Center for the Rights of Children with Disabilities upon request.

⁴ https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Disability_statistics_-_access_to_education_and_training

⁵ Romanian Ministry of Education official statistics provided to the European Center for the Rights of Children with Disabilities upon request.

III. LEGAL GROUND

Both fundamental treaties of the European Union provide a generous basis for developing a common and unitary legal framework on inclusive education, European Union being “*DETERMINED to promote the development of the highest possible level of knowledge for their peoples through a wide access to education and through its continuous updating*”.⁶

Article 165 of the TFEU lays the ground for “*the development of quality education*”⁷, encouraging cooperation and exchange of experience between the Member States, while Articles 9, 10 and 153 (j) of the TFEU draw the overlying principles that must guide any social policy:

- “- *the guarantee of adequate social protection,*
- *the fight against social exclusion,*
- *a high level of education, training and protection of human health*”⁸

As well, combating “*discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation*”⁹

Similar principles are enshrined in the provisions of the TEU, strengthening the core values that the European Union must observe when it comes to its citizens: “*It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child*”.¹⁰

Moreover, Art. 6 of the TEU recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union, which under Art. 14 guarantees “*the right to education and to have access to vocational and continuing training*”¹¹.

In the light of these principles stipulated in the founding Treaties, the European Union signed the UN Convention on the Rights of People with Disabilities and ratified it through the Council Decision 2010/48/EC¹².

The Convention commits parties to making sure that people with disabilities fully enjoy their rights on an equal basis with all other citizens. For the EU, this means ensuring that all legislation, policies and programs at EU level comply with the Convention's provisions on disability rights,

⁶ TFEU Preamble

⁷ Art. 165 TFEU (1)

⁸ Art. 9 TFEU

⁹ Art. 10 TFEU

¹⁰ Art 2&3 (3) TEU

¹¹ http://www.europarl.europa.eu/charter/pdf/text_en.pdf

¹² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010D0048&rid=1>

within the limits of EU responsibilities. Ratifying countries, such as the EU Member States, should act in the following areas: **access to education**, employment, transport, infrastructures and buildings open to the public, granting the right to vote, improving political participation and ensuring full legal capacity of all people with disabilities.

According to Art. 24 of the UNCRPD, ratified by the EU through the Council Decision 2010/48/EC¹³:

“1. States Parties recognise the right of persons with disabilities to education. With a view to realising this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:

(a) the full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;

(b) the development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;

(c) enabling persons with disabilities to participate effectively in a free society.

2. In realising this right, States Parties shall ensure that:

(a) persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;

(b) persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;

(c) reasonable accommodation of the individual’s requirements is provided;

(d) persons with disabilities receive the support required, within the general education system, to facilitate their effective education;

(e) effective individualised support measures are provided in environments that maximise academic and social development, consistent with the goal of full inclusion.

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

(a) facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;

¹³ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010D0048&rid=1>

(b) facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;

(c) ensuring that the education of persons, and in particular children, who are blind, deaf or deaf-blind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximise academic and social development.

4. In order to help ensure the realisation of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities¹⁴.”

While observing the principles of subsidiarity and proportionality, as set forth in Art. 5 of the TEU, European Union must however set the subsequent legal framework meant to operationalize the general provisions of the TFEU, TEU and UNCRPD in relation to the right to inclusive education of EU citizens with disabilities. In the absence of a unitary EU subsequent legislation ready to address the multi-faced implementation of the right to inclusive education and to set common minimum standards of quality and inclusion in education, the provisions of the Treaties and the UNCRPD remain far from being effective.

Moreover, given the vulnerability of the social category referred upon and the cross-border homogenous pool of needs when it comes to inclusive education, the European Union cannot leave at the solely discretion of the Member States the way in which the right to education of almost ¼ of its population is granted.

The Committee of the Convention on the Rights of Persons with Disabilities concluded in its observations regarding the implementation by the EU of the UNCRPD, para. 84&85:

“84. The Committee is concerned that not all students with disabilities receive the reasonable accommodation needed to enjoy their right to inclusive quality education in European schools in line with the Convention, and that the schools do not comply with the non-rejection clause. It is also concerned that European schools are not fully accessible to children with disabilities nor do they provide for inclusive, quality education.

85. The Committee recommends that the European Union take the necessary measures to ensure that all students with disabilities receive the reasonable accommodation needed to enjoy their

¹⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010D0048&rid=1>

right to inclusive quality education in European schools. It also recommends that European schools implement a non-rejection policy on the grounds of disability and ensure inclusive, quality education for all students with disabilities.”¹⁵

Building on the legal provisions mention above, as well on the observations by the UNCRPD Committee, we kindly call on the European Commission, which has under Art. 165, para. (4) the authority to propose to the Council recommendations of legislation on the matter, to promote a bill on inclusive quality education for adults and children with disabilities in Europe.

IV. Provisional areas of the bill

Our proposal covers 10 provisional main areas that may eventually lead to a common framework on inclusive quality education at EU level. Each of the chapters represents a milestone when it comes to implementing inclusive education:

1. **Early intervention, habilitation and rehabilitation**

- early intervention and community services are the fundamental premises for the full realization of the right to quality inclusive education

2. **Identification – Child Find -Referral – Upon Request**

- Early identification of children with special educational needs through at least 3 programs (Child Find, Referral, Upon request) is strongly needed to avoid children being left outside the educational system and to prevent social exclusion

3. **Free Adequate Public Education**

- 4. – Minimum common standards on the management of the inclusive education systems across EU and on the substantial access to education

5. **No-rejection clause**

- Common standards to ensuring formal access to education and to prevent rejection based on disability criteria

6. **Parents’ involvement**

- the active role of the parents in the educational process

7. **Less restrictive environment**

- Common algorithm of placement based on the needs of support of the child from the less restrictive placement - mainstream class – mainstream class with supports – partial mainstream class with separation at various classes – separate class with common some interaction with the mainstream class – separate class in a mainstream school with common recess time – special school – the most restrictive placement.

8. **Individualized Education Plan (IEP)**

- individualized IEP team
- individualized IEP for every child with special educational needs

¹⁵ Concluding observations on the initial report of the European Union – CRPD Committee, CRPD/C/EU/CO/1, 2015.

9. Alternate evaluation mechanisms and abilities-based certification

- while upholding the general rule of participation to general curriculum, students must have the option of alternate evaluation mechanisms and certification.

10. Transition to labor market

- Common provisions on the development of a framework for transition plans towards the labor market through programs of internship, mentorship, development of abilities and assisted work

11. Nondiscrimination

- common specific provisions of nondiscrimination in education

12. Personal development and training of the teachers

- In order to build an inclusive educational system that requires more than technical skills, human resources must pass through a process of training and continuous learning, as well through trainings on leadership and personal development

The premises that lay the foundations for an inclusive European educational system must observe the following common principles:

- ✓ **the special educational services follow the child**
- ✓ **budget follows the child**
- ✓ **the evaluation team follows the child**
- ✓ **the placement of the child is made in the less restrictive environment based on his/her needs**
- ✓ **parents' choice with regard to the placement of the child is fundamental**

The aspects presented in this proposal are an overview of a mechanism that can be further developed into a modern European legal framework able to accommodate all European children in a friendly and qualitative educational environment able to prepare them for an independent and active life within the European Union.

Should this initiative will be considered by the Commission we commit ourselves to provide free expertise and support in all the aspects related to the programming process.

Drafted in Bucharest, Romania

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