COMMITTEE OF MINISTERS
COMITÉ DES MINISTRES

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

MINISTERS' DEPUTIES Resolutions **CM/ResChS(2018)3** 4 July 2018

Resolution CM/ResChS(2018)3
The Mental Disability Advocacy Centre (MDAC) v. Belgium, Complaint No. 109/2014

(Adopted by the Committee of Ministers on 4 July 2018 at the 1321st meeting of the Ministers' Deputies)

The Committee of Ministers,[1]

Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Taking into consideration the complaint registered on 30 April 2014 by the Mental Disability Advocacy Centre (MDAC) against Belgium;

Having regard to the report by the European Committee of Social Rights containing its decision on the merits, in which it concluded:

- ***unanimously, that there is a violation of Article 15 § 1 of the Charter on the ground that the right to inclusive education of children with intellectual disabilities is not effectively guaranteed in the Flemish Community of Belgium;***

a) the right of children with intellectual disabilities to inclusive education

Article 15 § 1 of the Charter does not leave States Parties a wide margin of appreciation when it comes to choosing the type of school in which they will promote the independence, integration and participation of persons with disabilities, as this must clearly be a mainstream school (*European Action of the Disabled (AEH) v. France*, Complaint No. 81/2012, decision on the merits of 11 September 2013, §75). The margin of appreciation applies only to the means that States deem most appropriate to ensure that this assistance is provided. However, this is subject to the provision that, at all events, the choices made and the means adopted are not of a nature or are not applied in a way that deprives the established right of its effectiveness and turns it into a purely theoretical right (*European Federation of National Organisations working with the Homeless (FEANTSA) v. France*, Complaint No. 39/2006, decision on the merits of 5 December 2007, § 55).

In the instant case, MDAC argues that there is lack of access to mainstream schooling in the Flemish Community for children with intellectual disabilities (mild, moderate or severe mental disabilities) and that they are subjected to discriminatory treatment. The percentage of disabled children attending special schools in the Flemish Community of Belgium is high (85% according to the complainant organisation and 75% according to the government). Moreover, 1,000 children with disabilities are exempt from compulsory schooling and do not receive any education at all.

[1] In accordance with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints, the following Contracting Parties to the European Social Charter or the revised European Social Charter have participated in the vote: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

It is noted that various measures have been adopted by the Flemish Government aiming to ensure that every child with a disability has access to inclusive education, in particular, through the adoption of the M-Decree, the provision of some additional funding and transfer of staff from special to mainstream schools.

However, the eligibility requirements for admission to mainstream education according to the M-Decree, (as stipulated in Article 37 *undecies* §§ 1 and 2 of the Decree on primary education as amended by the M-Decree), are based on the notion of integration rather than inclusion. The M-Decree requires a child to adapt to the mainstream system. It does not ensure his/her right to participate in mainstream school and the school's obligation to accept the child taking account of the best interests of the child.

The M-Decree merely provides for budget transfers and it is noted that resources in fact will go unused during the reference year and therefore will become available for increasing the number of children with disabilities in mainstream education. Specifically, no calculation has been provided as to how much additional spending might be necessary for inclusive education in the mainstream system. This creates the risk of a gap between financial needs and supply. The adoption and implementation of the M-Decree is not part of a coherent action plan, creating the necessary conditions for effective inclusion. Based on the information at the Committee's disposal, no evidence was found that the M-Decree sets out a time frame for implementing the right to inclusive education nor indicators of success for measurable progress.

Moreover, there is nothing that shows that the integration programmes GON and ION put in place by the Flemish Community have guaranteed the transition to inclusive education for disabled children.

In the current Flemish education system there are serious and numerous restrictions to the right of inclusive education by excluding pupils who are "unable to follow the common curriculum".

There is nothing to show an objective and reasonable justification for not providing reasonable accommodation in respect of children with intellectual disabilities as opposed to the situation of other children. In this particular case, the children's right not to be discriminated against in the enjoyment of their right to inclusive education under Article 15 § 1 of the Charter has not been guaranteed.

b) the right to an effective remedy

Under Article 15 § 1, non-discrimination legislation should confer an effective remedy on those who are found to have been unlawfully excluded or segregated or otherwise denied an effective right to education (Conclusions 2007, Statement of interpretation of Article 15 § 1).

In this particular case, a legal procedure may be possible under the Anti-Discrimination Act, but it is rarely used as parents are not aware that this remedy is open to them. The mere existence of a possible remedy does not suffice once it is not usable in practice, as this would not amount to an "effective" remedy.

The government does not provide any evidence showing that remedies are effective in practice. There is a violation of Article 15 § 1 of the Charter due to lack of an effective remedy against refusal of enrolment in mainstream schooling for children with intellectual disabilities.

- ***by 10 votes to 2, that there is no violation of Article E read in conjunction with Article 15 § 1 of the Charter;***

Allegations of discrimination based on disability have been analysed under Article 15 § 1 of the Charter. Therefore, only the issue of a potential discrimination on the ground of socio-economic origin has been examined under Article E read in conjunction with Article 15 § 1 of the Charter.

However, there was no specific evidence supporting the allegations of the complainant organisation.

- ***by 11 votes to 1, that there is a violation of Article 17 § 2 of the Charter;***

Referring to the issue of the delimitation of the material scope of Articles 15 and 17 of the Charter, it is recalled that the fact that the right to education of persons with disabilities is guaranteed by Article 15 § 1 of the Charter does not exclude that relevant issues relating to the right of children and young persons with disabilities to education may be examined in the framework of Article 17 §§ 1 and 2 of the Charter. Article 17 § 2 of the Charter is directly engaged by the situation at issue as it guarantees the rights of all children to education, including children with intellectual disabilities. All education provided by States must fulfill the criteria of availability, accessibility, acceptability and adaptability.

For the same reasons given under Article 15 § 1, the accessibility criteria to an inclusive education is not fulfilled. As indicated above mainstream educational institutions and curricula are not accessible in practice to the children concerned.

- ***by 10 votes to 2, that there is no violation of Article E read in conjunction with Article 17 § 2 of the Charter.***

For the same reasons as under Article E taken in conjunction with Article 15 § 1 of the Charter, there is no violation of Article E read in conjunction with Article 17 § 2 of the Charter.

Having regard to the information communicated by the Belgian delegation at the meeting of the Rapporteur Group on Social and Health Questions (GR-SOC) of 3 April 2018 (see the appendix to the resolution),

1. takes note of the commitment of the Belgian Government to bring the situation into conformity with the Charter and the information it has communicated in this regard (see the appendix to this resolution), and considers, in this respect, that the M-Decree is a step in the right direction;

2. looks forward to Belgium reporting, at the time of the submission of the next report concerning the relevant provisions of the Charter, on any new developments regarding their implementation.

Appendix to Resolution CM/ResChS(2018)3

Address by the Representative of Belgium at the meeting of the Rapporteur Group on Social and Health Questions (GR-SOC) of 3 April 2018

***The Mental Disability Advocacy Centre (MDAC) v. Belgium*, Complaint No. 109/2014**

See reference document: DD(2018)254

The M-Decree

The decree concerning measures for students with specific educational needs was enforced in schools as from the academic year 2015-2016 and is an important first step in a move towards more inclusive education in Flanders.

The M-Decree contains a number of important key aspects and guiding principles aligning the situation of children with a disability with the European Social Charter.

1.1 First ordinary (mainstream) then extraordinary (special needs) education (mind shift)

Schools that offer mainstream education start with the question: what does a child require in order to learn, so what are the student's educational needs? The answer to this question lies primarily in mainstream education, which focuses on a thorough welfare policy by applying the principles of action-oriented activity and uses reasonable adaptations where necessary to help overcome the barriers in educating children and young people. Only when such necessary measures are unreasonable can the child or young person attend special education.

1.2 Right to reasonable adaptations (mastership)

1.2.1 Principle

From now on, a mainstream school must demonstrate its search for reasonable adaptations together with parents and the Pupil Guidance Centre (CLB). This is the right of children with specific educational needs. Reasonable adaptations are “necessary and appropriate changes, and adaptations which do not cause a disproportionate, adverse, or unnecessary burden, if they are required in a specific case to guarantee that people with a disability can enjoy and exercise all human rights and fundamental liberties on an equal footing with others”. In order to achieve such inclusive education, members of educational staff must master the skills needed to deal with students with specific educational needs and in applying reasonable adaptations.

1.2.2 Ratio between reasonable adaptation and funding

The report from the European Committee of Social Rights claims that we do not provide a satisfactory solution to the budgetary aspects connected with the reasonable adaptations for children with an intellectual disability. The right to an inclusive education and the reasonable adaptations to make this possible are a basic principle in the M-Decree. Both the basic principles of the M-Decree and the resources released to this effect, apply in full to all students with a disability, including students with an intellectual disability.

The answer to these questions is summarised in points 2.1 and 2.2 of this memorandum. The support model, and other funding elements, formed part of an earlier decision-making phase, in close collaboration with school and staff representatives. The commitment to roll out the decree in discussion with those in the field takes time, and it is somewhat ironic that this should be held against the government. The additional resources mentioned in this context are being used, together with the resources that are being released in special education due to a shift in the numbers of students, to fund the reasonable adaptations. In fact, reasonable adaptations are, to a large extent, not a matter of resources, but a matter of training and education of teaching staff.

1.2.3 Development and assessment of reasonable adaptation

A protocol agreement has been made concerning the term “reasonable adaptation” between the various governments, including the Flemish Community (Protocol dated 19 July 2007 between the Federal State, the Flemish Community, the French-speaking Community, the German-speaking Community, the Walloon Region, the Brussels Capital Region, the Common Community Commission and the French Community Commission on behalf of those with a disability).

The second paragraph of article 2 of this protocol specifies four criteria which the amendment must satisfy:

- effectiveness: the adaptation must achieve a specific improvement;
- equality: the adaptation must allow an equivalent use of facilities and services; however, a partial achievement should not stand in the way of still carrying out the reasonable adaptation;
- independence: as much as possible, the adaptation should give the person with a disability the opportunity to carry out an activity without help from others;
- safety: the installation and the use of the adaptation should not endanger the safety of the person with a disability.

The third paragraph in the protocol summarises the indicators which allow a specific check of whether an adaptation can be considered reasonable. The list of indicators is non-exhaustive. These indicators must make it possible to judge the extent of “reasonableness” in the light of the complex and individual context of those requesting the reasonable adaptation and those that are required to carry it out. This means that the reasonableness of an adaptation must be judged on the following criteria at minimum:

- the financial impact of the adaptation;
- the organisational impact of the adaptation;
- how long and how often the adaptation is likely to be used bydisabled people;
- the impact of the adaptation on the environment and other users;
- the presence or absence of equivalent alternatives.
  In doing so, claims the protocol, it is important to take into account the qualitative impact on the life of the person(s) concerned. A rather limited quantitative but large qualitative impact also tips the balance towards reasonable.

The Flemish Conciliation Committee, referred to in 2.4.4, also mediates in the event of disputes concerning the reasonable adaptation.

1.3 Right to register in a mainstream school (more inclusion)

Every child has the right to register in an ordinary school. Students needing an individually-adapted curriculum also have the right to register in an ordinary school. A student's registration may only be cancelled after discussions between the school, the Pupil Guidance Centre and the parents about the (un)reasonableness of adaptations and a written explanation of the decision.

1.4 New types of special education (modernisation)

The M-Decree allows for an adaptation in the typology of special education (basic type, type 9, inclusion of speech and language development disorders within type 7). Also, special education must respond in a flexible and tailored manner to the demands of students and their parents who use this on a temporary or permanent basis when no further reasonable adaptations are possible in mainstream education.

1.5 New conditions for admission to special education (participation)

Rather than the medical label being the main focus, attention moves instead to the student's educational needs and the teacher's support needs. These are assessed by the Pupil Guidance Centres, together with the parents and schools concerned. In doing so, there is consideration of the measures that have already been taken in the mainstream school. Participation in the action-oriented diagnostic process, in particular from parents, is emphasised.

1.6 Support in mainstream education (resources)

Satisfying the demands of the M-Decree and therefore also the requirements of the UN Treaty (Article 24) requires significant changes in education. The creation of an effective and future-oriented support model is an essential prerequisite for success. After all, the need for support in mainstream education will increase, as more students with specific educational needs wish to receive quality education in the context of the ordinary school. Over the last decades, considerable expertise has been acquired in special education in Flanders, and this will be very useful. That is why the M-Decree includes a mechanism to involve people and resources in support of mainstream education (guarantee rule). A support model must also offer schools and staff members in special education perspectives for the future which continue to shape and develop their supporting role. This means that work can be carried out with students and their parents in collaboration with teacher (teams) in mainstream education and other supporting services towards more inclusive education.

Later in this memorandum there is more detail of the resources that the government is investing in the M-Decree.

General: roll-out of M-Decree and resources

Rolling out the M-Decree takes time. It is a new course that will gradually have a great impact on education. Institutions, staff members and parents will gradually adapt to the new situation. Moreover, in Flanders, a high-quality system of special education has already been developed, which parents may continue to choose.

Indeed, the OECD recognises in its report related to school resources that the implementation of the M-Decree will take time and should not be hurried:

"The implementation of the M-Decree will require time, and – at least during initial years – greater resources, although cost-savings are likely to be achieved in the longer run. Besides the need for more specialised staff in mainstream schools to support SEN students, infrastructure adaptations between mainstream and special schools will be needed. Effective inclusion of SEN students will need to be school-based planning and decision making (in collaboration with special education experts and parents), which is likely to require a shift of resources and teacher hours from SEN schools to mainstream schools over time. Ideally, resources for students with special educational needs should follow the students independently of whether they are involved in a separate special school or a mainstream school. To ensure quality education in inclusive settings, it will be important that all teachers receive relevant preparation on how to serve SEN populations in mainstream classrooms. Such training should be provided during both initial education and continuing professional development. Information and preparation of all students, as well as their parents, during the initial few years should also aid in the transition period."

The Flemish education system must make a transition from the former model to the model under the M-Decree. The Flemish Community is investing resources to facilitate this transition. In this memorandum we can report these measures, which were not yet determined during the earlier response memorandum.

1.7 Support model

A new support model was enforced as from the academic year 2017-2018.

In order to organise such support a distinction is made between two groups of students:

- students with a motivated report or (registration) report for type 2 (intellectual disability), type 4 (motor skills disorder), type 6 (visual impairment) or type 7 (hearing impairment). Schools for mainstream and special education continue to collaborate on a bilateral basis. The framework granted to schools for special education is an annual precursor to the total budget in the support model. The size of the budget fluctuates in proportion with the evolution of the students in the named target audiences;

- students with a motivated report or (registration) report for basic type or former types 1 and 8 (mild intellectual disability or learning disability), type 3 (emotional or behavioural disorder), type 7 (STOS (speech and language disorder)), type 9 (autism spectrum disorder). This involves the creation of school support networks for mainstream and special needs education. A framework is granted to schools for special education in the support networks based on a 70/30 distribution mechanism. There is a transition period of 3 academic years.

There are therefore resources for all students in the support model. For the second group of students, the support relies on support networks. A support network is a partnership between schools in mainstream education and schools from special education, together with the Pupil Guidance Centres and educational support services. Supporters from special education team up with teaching teams in the mainstream school, in order to tackle the support needs. The network is also enriched with GON (integrated education), ION (inclusive education), guarantee resources and competence coaches. 30 networks have been active since 1 September 2017.

The new support model focuses on co-creation and participation between mainstream and special education to work together with students and their parents, teacher (teams) in mainstream education and other supporting services towards more inclusive education. The support model offers special schools perspectives for the future which continue to shape and developing their supporting role.

More focus lies on the students' educational needs and teachers' support needs. These are also an important aspect in the action-oriented diagnostic process that can lead to the creation of a motivated report. Medical diagnosis remains a requirement for many types in generating a (motivated) report, however, the aim is to make this less of a factor in achieving support.

Support must be felt at the classroom level. The mainstream school collaborates with parents and the Pupil Guidance Centre to determine the relevant support needs, and uses these to formulate its requests for support. In this way, schools providing mainstream education are given greater authority in formulating the required support, tailored to their specific school.

Every request for support must be included. Support demands can also be made during the course of the academic year. The support offered in a mainstream school may be focused on the teacher, team or student, depending on the specific support demand. Support must be more flexible and tailored to the individual. The government no longer determines a particular number of hours of support per week, nor a time limit. Schools providing special education receive a framework budget and, based on the support demands in mainstream schools relating to students with specific educational needs, consideration will be made of which support can be offered (in terms of nature, quantity, intensity and duration).

The support in mainstream schools is to be offered by support staff employed in special education and with the necessary expertise to provide help with the support demanded. Where required, they will transfer their disability-specific knowledge into mainstream schools.

The support model replaces various parallel forms of support: integrated education (GON), the project concerning inclusive education for students with an intellectual disability type 2 (ION), abnormal hours GON ASS (Autism Spectrum Disorder) and the guarantee regulation.[2] The separate budgets are to be combined. This academic year, the Flemish Government is investing 107 million euros to support students with extra needs in mainstream education, which is 40% more than at the beginning of this legislature. The addition of an extra budget of 15.2 million euros, has allowed the development of a special model for higher education in support of students with a functional disability. In total, a budget of 103 million euros is available to fund the support model in primary and secondary education. This is equivalent to around 2,000 FTE support staff.

Recently a report was published stating the current status with regard to the launch of the Support Model. The report is founded on information from the support networks and schools for special education, received from overarching bodies and the GO!, information from trade unions, the Pupil Guidance Centre and parent and stakeholder associations. The report was written in collaboration with the support model steering committee and parent and stakeholder associations. The report is a photo of the launch and covers the period from mid-August 2017 until the end of October 2017.

The government will work on this report together with the overarching bodies, trade unions, parent and stakeholder associations. An important task in the short term is a punctual and more reasonable distribution of the resources for the academic year 2018-19. This will already allow schools and support networks to prepare all the necessary support at the end of this academic year for the following academic year.

1.8 Professionalisation

In support of the implementation of the M-Decree, extra support staff (M-Decree competence coaches) have been allocated to join educational support services (around 70 FTE in a group of 470 regular support staff).

The educational support services are using competence coaches to extend competence levels allowing the treatment of students with specific educational needs to be optimised.

The support services are doing this in three ways:

- they are providing information on what is involved in the M-Decree;
- they are offering support at school and classroom level, by giving tips to the teacher and the school;
- they are encouraging co-operation with schools and teachers and working on the development of expertise in support networks (operational as from 1 September 2017).

The competence coaches are there to support:

- teachers, student support staff, support staff, welfare co-ordinators, directors;
- schools providing mainstream and special education;
- schools wishing to extend and deepen their approach and offer for students with an autism spectrum disorder;
- schools starting with type 9;
- schools starting with the basic type (replacing the former type 1, type 8 and type 1-OV3).

[2] The M-Decree contains a mechanism whereby resources from special education can be used to offer support in mainstream education. Where student numbers decrease in special education leading to a reduction in lesson time and teaching hours, these are then recuperated and used in support of mainstream education. In this way, staff in special education (teachers, paramedics, remedial educationalists…) can share their expertise with the teachers, welfare co-ordinators and student advisors in mainstream schools. In the academic years 2015-2016 and 2016-2017, guarantee projects were also carried out in primary schools, and in 2016-2017 also in secondary schools. The resources were applied in a limited number of mainstream schools. These were distributed across all support networks as from the academic year 2017-2018.

Besides the competence coaches, all resources related to continued training have been applied on the Flemish Government's initiative for the professionalisation of school teams.

Participants become more professional thanks to the range of training on offer for free to school teams. This is based on the following objectives:

- teachers know the various conceptual frameworks which form the basis of working more inclusively;
- teachers are open to dealing with the various conceptual frameworks in an integrated manner;
- teachers can use reflective or application assignments to translate the proposed concepts and frameworks in an educational and didactic manner to their own teaching methods;
- school teams can integrate the conceptual frameworks, tools and instruments in the school's policy;
- school teams can involve all players in and around the school, including parents and students, in shaping education for students with specific educational needs (emphasis on united co-operation).

Stated below are the number of teaching staff (including welfare co-ordinators, student support staff etc.) working intensively on one of the five training processes during the academic year 2015-2016, subdivided according to the level of education of their activity.

Infant education	167
Primary education	387
Infant education and primary education	292
Secondary education	1087

As stated, the table shows only the number of participants following the process intensively, often known as the core team.

In addition, the entire school team tends to be involved in most schools on a few occasions during the process. Many of these core teams work on an ongoing basis with other colleagues and do so in the following ways: they are actively questioned about their demands and worries with regard to the M-Decree, they attend an inspiration session about the components of the Association of Network-Related Pedagogical Counselling Services (SNPB), they are informed about the status in the process, discussion in the expert group, etc. Each core team organises an internal study day already allowing them to reach other colleagues.

The total training budget amounted to a total of 1,091,898 euros for these two academic years (2015-2016 and 2016-2017).

Similarly, in the current academic year 2017-2018, resources for priority training have also been invested in the continued implementation of the M-Decree. Those to be targeted in the process for the academic year 2017-2018 are schools that have not yet participated in the process during the academic years 2015-2016 and 2016-2017 and more specifically teachers, boards, internal support staff: middle management, those responsible for professional groups, welfare support staff, training co-ordinators, external support staff: educational support staff, teacher trainers and support staff within the support model M-Decree.

It is advisable for support staff to participate in order to anchor the insights acquired over the long term. They can continue to support the school teams once the project has finished.

Competence coaches that have joined the pedagogic support services for the M-Decree are also required to work on developing expertise in the support networks.

For the academic year 2018-2019 the training budget will be increased to € 577,000 and investment will be focused on professionalising the educational needs of support staff.

Meanwhile, the Minister has asked organisations to submit appropriate proposals.

This will help maximise the transfer of existing expertise in special education to mainstream education in order to achieve greater inclusion.

1.9 Facts and figures

1.9.1 Evolution of student numbers in special education

Special primary education

type	01/02/2014 (ref.)	01/02/2015	01/02/2016	01/02/2017
BA	0	0	2204	4732
1	8574	7788	5697	3925
2	5189	5081	4847	4637
3	2687	2640	2164	1941
4	1719	1686	1527	1404
6	150	139	130	128
7	1600	1654	1534	1447
8	10420	10445	7599	5452
9	0	0	1846	2941
Tot special	30339 (4.33%)	29433	27548	26607 (3.66%)
Tot mainstream	668790	679589	690630	698672
Tot special+mainstream	699129	709022	718178	725279

Special secondary education

Type of education	Type	01/02/2015 (ref.)	01/02/2016	01/02/2017
1	2	3012	2992	3040
1	3	137	138	172
1	4	1019	947	904
1	6	183	190	200
1	7	283	218	171
1	9	0	144	291
2	2	2628	2567	2470
2	3	152	141	131
2	4	272	238	215
2	6	19	17	16
2	7	93	86	77
2	9	0	80	156
3	BA	0	1493	2859
3	1	8901	6894	4934
3	3	1645	1407	1198
3	4	266	213	163
3	6	12	11	4
3	7	403	314	265
3	9	0	337	573
4	3	657	556	501
4	4	658	551	470
4	6	30	33	30
4	7	273	207	140
4	9	0	524	1121
Tot special secondary education		20643 (4.62%)	20298	20101 (4.48%)
Tot mainstream		425319	426649	427820
Tot special secondary edu+mainstream		445962	446947	447921

As far the registrations for schools providing special education are concerned we are now seeing the following effects:

a. For primary education: Tally of students in special primary education on 1/2/2014 (reference date for the count in primary education) = 30,339 students. Tally on 1/2/2017 = 26,607. In two academic years the number of students in special primary education has decreased by 3,732 students (or -12.3%). The percentage of students in special primary education has dropped from 4.34% (2014) to 3.67% (2017).

b. For secondary education: Tally of students in special secondary education on 1/2/2015 (reference date for the count in secondary education) = 20,643 students. Tally on 1/2/2017 = 20,101. There is a decrease of 542 students or -2.63%. The percentage of students in special secondary education has dropped from 4.63% (2015) to 4.49% (2017).

1.9.2 Monitoring and research

The M-Decree aims to offer more children with specific educational needs a place in mainstream education and is focusing on a more inclusive system of education. A specific line of research has been created in order to gain scientifically-based insights into the way in which the M-Decree is shaped in Flemish education. The following general research questions are fundamental to this line of research: How should implementation of the M-Decree take shape? Should the intended goals in the M-Decree be achieved at a macro, meso and micro level? What is the impact of the M-Decree on students, parents, teachers and schools in mainstream and special education, Pupil Guidance Centre staff, referral processes and on the further development of welfare policy and practice in schools? Are there unintended and unwanted side effects and can these be explained?

- Monitoring research (conducted by the Flemish Government)

Monitoring of the implementation of the M-Decree will be carried out by the Education and Training Department. A data warehouse will chart the quantitative impact and movements relating to students and teachers. The special processes for students with specific educational needs in mainstream and special education will be monitored, together with the impact on staff members.

For each operational objective, policy indicators will be construed in order to monitor the trends and evolution.

- Complementary research

Besides the collection and analysis of key figures based on administrative data, complementary research is also required to understand and explain the reality behind the recorded trends and evolutions.

The meta review related to inclusive education in primary and secondary education has been finalised. An English-speaking publication has been issued and is being submitted to an international scientific journal with peer review, namely the International Journal of Inclusive Education. The result of this peer review is anticipated in 2018.

This will answer the following policy questions:

Is more inclusion being achieved in compulsory education? Is the number of students in special education declining? How many students are there with specific educational needs in mainstream education? To what extent are foreign-language students and students from lower socio-economic environments overrepresented in special education? What are the trends? How are the careers of students with specific educational needs progressing?

How is the area of special education evolving? How are the careers of staff in special education developing?

(How) is the right to reasonable adaptations / individually-adapted curricula being guaranteed? How many specific educational resources are being requested? How many students in mainstream education have an individually-adapted curriculum?

(How) is the right to register in an ordinary school being guaranteed for students with specific educational needs? How efficiently are things progressing when it comes to the registrations of students with specific educational needs?

How many registrations have been cancelled due to the unreasonableness of adaptations for students with specific educational needs? How many registrations have been refused for students with specific educational needs?

In what form is support being given to teaching staff and schools? How many members of staff are being employed to support mainstream schools in achieving the goal of inclusive education? What profile do the support staff and competence coaches have? Where are supporting staff being employed?

Monitoring work on the key numbers has begun and the first results will be available at the end of 2018. Naturally, there will also be retroactive reports on previous academic years.

- Quantitative research

Using data assembled in earlier consecutive studies relating to “welfare policy in Flemish schools” and “guidance to welfare”, a list has been made of schools that participated in one or several of these studies. These schools have been contacted once again for participation in the new research survey. The survey was conducted in January to February 2018. Teachers, a person responsible for welfare and a member of the board will be asked to complete the digital questionnaire. Moreover, in 2018, the data will be cleaned and processed for the first time, in a descriptive analysis.

Aspects to be included are: student movement (mainstream-special-various types), orientation by the Pupil Guidance Centre, refusals from schools, plans, the evolution of the direct flow into primary education and movements of teaching staff.

- Longitudinal case study research

Case studies (based on 10 primary and 10 secondary schools) were set up in order to study the dynamics and complexity of introducing the M-Decree and to answer intensive questions on the subject. During the school selection, in the spring of 2017, there was specific inclusion of schools that had participated in the government's diverse additional support measures (co-teaching via the (pre)guarantee rule, continued training initiatives), in order to collect data on the perceived impact of these measures and check which new practices would be launched as a result. The first measurement period in this longitudinal research took place in the autumn of 2017. In 2018, the data will undergo vertical analysis (i.e. per case), after which a horizontal analysis will be conducted using NVivo.

1.10 Protection of rights – Option to appeal for parents (items 81, 82, 83, 84, 85, 86 and 87 of the report)

The following elements related to the protection of rights include not only procedures based on discussion and conciliation and elements allowing a complaint to be submitted to an independent body, but also traditional procedures for courts and tribunals.

The government refers to these options to appeal in its communication on the M-Decree and subsidises interest groups like UNIA and the Support Centre for Inclusion to help parents use the most suitable tools in finding the most appropriate course in the event of a dispute.

1.10.1 Motivation when refusing a registration in a mainstream school

The M-Decree features a variety of conditions to protect the rights of parents and students.
The M-Decree states that every child has the right to register in a mainstream school. This is a logical consequence of the right to reasonable adaptations. Also, a student that needs an individually-adapted curriculum has the right to register in a mainstream school. A registration may only be cancelled after discussions between the school, Pupil Guidance Centre and parents about the (un)reasonableness of adaptations.

The school must explain its decision. This gives those involved an insight into the reasons behind the decision and leads both *de jure* and *de facto* to more informed decisions. This therefore also allows the judge to check the regularity and assess the opportunity in the event of a jurisdictional appeal.

The education law includes strict terms related to the refusal of a student to mainstream education. The rule states that the school must demonstrate the:

- the welfare continuum has been carried out;
- adaptations, including remedial, differentiating, compensating and dispensing measures required for the student's continued participation in the common curriculum are either disproportional or insufficient;
- the student's educational needs have been described using a classification system that is scientifically based and founded on an interactive vision and social disability model;
- that the educational needs are not purely down to an socio-economic characteristic of the student.

A school board refusing a student confirms its decision to the student's parents within four calendar days by registered post or along with proof of delivery and as agreed also to the chairman of the Local Consultation Platform. If the school or site is located beyond the operating area of an LOP, the school board shall report the unsuccessful registration to the administrative team.

The Flemish Government has determined a model with which the school board communicates an unsuccessful registration to parents and, in this case, also the Local Consultation Platform.

The model contains both *de jure* and *de facto* reasons for the refusal and tells parents that they may receive more information or appeal for mediation at the Local Consultation Platform (LOP) or launch a complaint with the Pupils' Rights Committee (CLR) and contact details for both. The parents may ask for an explanation of the decision from the school board.

1.10.2 Conciliation by the Local Consultation Platform

In the case of an unsuccessful registration, the Local Consultation Platform starts mediation if this is specifically requested by the parents. The platform mediates between the student and the parents and the boards of schools within the operating area, with a view to achieving registration of the student in a school.

If mediation by the Local Consultation Platform does not result in a registration being achieved, the CLR becomes involved to give its judgement on the justification of the refusal decision.

If the CLR considers the unsuccessful registration to be unfounded or insufficiently founded, the student may exercise his right to register in the school.

Concerning the remark that organisations representing the interests of disabled people are not represented in the LOP, reference is made to article VIII 4, 7° in the Decree by the Flemish Government with regard to codification of certain provisions related to education of 28 October 2016 under which up to ten representatives of local socio-cultural and/or economic partners (included the above associations) may report to and be present at the LOP.

Therefore the possibility to attend does exist.

It should be noted that, in any case, the pupil guidance centres and parents' associations are represented in the LOP.

1.10.3 The Pupils' Rights Committee (CLR)

Following an unsuccessful registration, parents and other stakeholders may decide to directly launch a written complaint to the CLR.

The CLR confirms its decision to those involved and to the chairman of the LOP (Local Consultation Platform) who may mediate upon request in the case of a new registration.

If the CLR considers the unsuccessful registration to be unfounded or insufficiently founded, the student may exercise his right to register in the school.

If the unsuccessful registration is considered to be unfounded or insufficiently founded, the Commission may advise the Flemish Government to recover or withhold an amount from the school's operating resources related to the academic year in which the registration applied.

The CLR shall inform the Flemish Government immediately of this advice.

The Flemish Government decides about giving a financial sanction, which may involve part of the school's operating resources being returned or withheld.

Prior to a sanction, the Flemish Government will first check whether the student has been registered in the school concerned.

The Commission can also decide to refer the dossier to UNIA, the body with the mandate to operate as an independent mechanism under article 33, § 2, of the UN treaty of 13 December 2006 with regard to the rights of People with a Disability and under Article 40 in the decree of 10 July 2008 containing a framework for the Flemish equal opportunities and equal treatment policy.

When the Commission is involved in advising on the merits and ascertaining the rights in aforementioned complaints, the commission group is extended with expert members in the field of practical realisation of reasonable adaptations. In doing so, it can be guaranteed that every case involves people with a disability or an organisation representing them, a staff representative and a representative of those providing education.

With regard to the report that only 3 complaints have been handled at the Students' Rights' Commission compared to 54 complaints by UNIA, we can only confirm the aforementioned conditions whereby, under the model established by the Flemish Government, the school board must also inform the parents when reporting an unsuccessful registration of their right to appeal to a Local Consultation Platform or to submit a complaint to the Students' Rights' Commission, including contact details in both cases.

The Students' Rights' Commission handles all complaints that have been submitted.

The aforementioned means that the regulations include various internal means of redress which parents can depend on.

If all aforementioned possibilities (if used) fail to achieve the desired result, Belgium boasts a legal system allowing every opportunity for jurisdictional protection to be acquired in the courts.

Besides the existing law of 10 May 2007 to combat certain forms of discrimination (anti-discrimination act) and the decree of 10 July 2008 containing a framework for Flemish policy for equal opportunities and equal treatment, since 2014 there has also been the M-Decree allowing the beneficiary to appeal and that the judge can apply from both a *de jure* and *de facto* perspective.

Prejudiced parties may initiate a claim at the court of first instance for free subsidised education and at the Council of State for official education.

Finally, it must also be stated that UNIA, GRIP, Parents for Inclusion, Support Centre for Inclusion, etc. are receiving financial support from the government to inform parents and the specific task has been given to UNIA, Parents for Inclusion and Support Centre for Inclusion to offer guidance to parents. This can also involve support in submitting a complaint to the Students' Rights' Commission.

1.10.4 Flemish Conciliation Commission

Registration in special education starts with a report from the Pupil Guidance Centre. This report must demonstrate that reasonable adaptations are impossible or insufficient to allow the child to achieve the usual educational goals in a mainstream school.

In the event of a dispute about the Pupil Guidance Centre's decision with regard to a report related to special education, parents may lodge a complaint with the Flemish Conciliation Committee. The Flemish Conciliation Committee mediates on the request of parents, the school or the Pupil Guidance Centre when there is disagreement on the necessity or content of the report for access to special education.

1.10.5 Regular remedies

The aforementioned resources are intended to give the best possible chance to solutions emerging from discussion and mediation. However, they do not exclude traditional remedies. Should all previous possibilities fail to achieve the desired result, parents are still entitled to use traditional remedies to acquire jurisdictional protection. Courts and tribunals uphold national and international law and have indeed already made decisions in cases of inclusion.

1.10.6 Supervision

The administration will monitor the effects of the systems for the protection of rights based on an analysis of the number and nature of the complaints to the Student Rights' Commission and the Flemish Conciliation Committee, and based on the complaints to UNIA and the Children's Rights' Commission.

1.11 Access to school buildings (items 70 and 106 of the report)

The Flemish minister of Education launched the school building master plan and committed to sharing good practice related to access. Access is an ongoing topic for the Agency for Educational Infrastructure and a focus in their support to schools and designers.

This is allowing a gradual improvement in the access to school buildings. A set of documents has been assembled to help constructors improve access to school buildings.
https://www.agion.be/sites/default/files/images/Agion_271214_web.pdf

These documents also contain the legal framework for access to all public buildings in Flanders and the relevant terms required to receive a permit.

The progression of access is then also monitored in the school building's monitor.

Below you can see figures relating to access in the school building's monitor, measured in 2013 (the first publication was in 2008). The 2018 edition of the monitor is planned this year, which will provide us with updated figures. These figures give an nuanced impression (based on a 5-point scale) of the extent to which buildings are made sufficiently accessible. The figures also reflect the type of adaptations that are being carried out and provide a more nuanced impression than sketched in the report.

year / wave monitor			The buildings are sufficiently accessible to people with a disability					Total
			Not1	To a limited extent2	Moderately3	Largely4	Entirely5	
2013	type of education	1 mainstream primary education	20.2%	25.6%	25.4%	21.1%	7.8%	100.0%
		2 mainstream secondary education	19.1%	28.3%	26.5%	18.4%	7.6%	100.0%
		3 special primary education	15.7%	21.3%	19.7%	24.4%	18.9%	100.0%
		4 special secondary education	14.6%	19.8%	19.8%	28.1%	17.7%	100.0%
	Total		19.5%	25.9%	25.2%	20.8%	8.6%	100.0%

Number of sites where the following measures are available for people with a disability, in %, 2013							
		Adapted parking spaces close to the entrance	Unhindered access	Signalisation	Adapted student toilets	Adapted staff toilets	Other
	1 mainstream primary education	55%	63%	10%	28%	28%	2%
	2 mainstream secondary education	58%	59%	44%	34%	34%	4%
	3 special primary education	64%	67%	29%	35%	35%	16%
	4 special secondary education	72%	72%	32%	36%	36%	17%
Total		57%	63%	21%	30%	30%	4%
	source: AGION, the school buildings monitor 2013						

The figures in the monitor 2013 have fuelled the school buildings policy 2014-2019.

1.12 A judicial framework allowing staff to administer medical care (item 70 of the report).

Determination of a legal framework for the administration of medical care is not covered under the educational authority. It is also a delicate matter. In Belgium, we are obliged to help a person in need. As long as you are not put in danger you are obliged to provide any help that you know and are able to give.

Administration of medicine is not considered as First Aid. This is restricted to doctors, pharmacists and other medical professions. It is a punishable offence to give other people medicine.

The Royal Decree No. 78, law regarding the practice of healthcare professions and the Royal Decree of 18 June 1990 clearly state that administering medicines in any way, including an injection, is an action legally restricted to doctors and nurses. Unauthorised persons carrying out such an activity risk legal proceedings and will receive punishment in accordance with Article 38 in the Royal Decree No. 78.

A protocol has been agreed between the federal government and the communities. This protocol was signed on 19 December 2017 and published on 12 February. This protocol has allowed a framework and conditions to be determined, including in the area of education, allowing uncertified carers (e.g. teaching staff) to provide certain medical treatment.

Is the right to education guaranteed for everyone? (item 68 of the report)

It is stated that the right to education is not guaranteed for a group of approximately 1,000 children who would otherwise be obliged to attend compulsory education.

In Flanders, we are familiar with the general rule of compulsory education, but young people “for whom it is impossible to receive education” may be considered exempt. Following a request from the parents, the Inspectorate of Education may decide on a temporary or permanent exemption from compulsory education. If it impossible for the child to receive education, the Inspectorate of Education may decide on a temporary or permanent exemption from compulsory education, upon the parents' request. There is no further definition of the notion of it being “impossible for the child to receive education”. The Ministry of Education judges each case individually. To be specific, this mainly concerns children and young people with severe multiple disabilities (SMD) and, to a lesser extent, also children and young people with severe behavioural and emotional issues (BE).

This exemption from compulsory education can therefore only be given when the parents request it.

In the academic year 2014-2015 (most recent figures), 487 children in Flanders were given an exemption from compulsory education. This number is relatively stable and has remained around the 500 level in recent years rather than affecting thousands of students. This concerns more students in secondary (312) than in primary education (175) and amounts to a total school population of compulsory students of 840 000, representing 0.059% of the total school population.

Very young children given an exemption from compulsory education belong to the group SMD. (Note, very young people within the group SMD do “go to school” (whether or not inclusive), and there can also be an exemption for young people battling with other problems.)

SMD, “severe multiple disabilities” are defined as follows:

The children suffer from very serious disabilities affecting various areas of their activity. At minimum there is a combination of the following three (groups of) disabilities:

- serious cognitive disabilities;
- serious deficiencies in social adaptive behaviour;
- serious deficiencies in sensorimotor abilities.

Serious cognitive disabilities are established on the basis of standardised intelligence tests or development charts. Serious deficiencies in social adaptive behaviour are established on the basis of standardised observation scales or questionnaires. Important areas of social adaptive behaviour are self-reliance, communication, socialisation and motor skills. This concerns how a child acts in daily life situations. The score achieved is at least four standard deviations from the population average. Specifically, these children depend on the care of others for all activities in daily life (eating, dressing and undressing, using the toilet). Children and young people with severe multiple disabilities seldom use spoken language. They demonstrate their wishes and feelings using facial expression, movements, sounds, body language, muscle reflex, etc. Familiarity with the child and the context is essential to interpret these expressions of communication sufficiently.

Finally, there are severe disabilities with regard to sensory or motor abilities. Many of these children are unable to sit, stand or move without support due to their motor disorders. Many are unable or can hardly use their hands and/or arms, e.g. to point or to grasp an object. These children often also have a serious or less serious visual and/or hearing impairment.

The small group of children with an exemption from compulsory education will “to a large extent” be found in an institution subsidised by the Flemish Agency for People with a Handicap (VAPH). Some of these children are found at home.

Although, strictly speaking, the young people concerned do not receive an education in a welfare institution, it must also be said that staff in such welfare institutions also work to develop the young people in question.

In early 2015, the Department of Education and Training and the Flemish Ministry of Education assembled a “Commission of Criteria for Exemption from Compulsory Education” which was given the task of developing a scientifically-based and socially-responsible frame of reference to assess requests for exemption to compulsory education. The Commission consisted of scientists and experts from the policy areas Education and Training and Welfare, Public Health and Family.

The Commission reached the conclusion that it is not desirable to continue the current system of “exemption from compulsory education”, partly because of the principle right to education and the conclusion that no scientifically-based rationale can be found for a general set of criteria with regard to the child's characteristics. The Commission believes there are no fixed, objective characteristics, such as a development age of a few weeks or month, being toilet trained, or a certain level of adaptive behaviour, which could be specified as the limit, under which no learning or education was possible (from the perspective of the person providing such education). There are, however, exceptional and individual situations for which it can be argued that learning and educational processes are impossible and/or have no meaning. Medical or psychiatric factors can also play a role.

The Commission proposed to stop using the “figure” related to the “exemption from compulsory education” and to work with an “integrated education and welfare plan” when dealing with children with very particular educational needs.

In the integrated education and welfare plan, it will be possible to set up flexible educational and support packages to suit individual children.

The main question is then not whether the child can gain an exemption from compulsory education, but “what the child needs, and in what way can this child receive a realistic and high-quality (tangible) education and help to suit his or her needs or abilities?”

An “integrated education and welfare plan” describes:

- the reasons for creating the plan;
- a description of the educational offer (with specific learning and development goals (= customised work);
- a description of the help on offer, with specific support goals related to education, welfare and healthcare;
- alignment and discussion between the players involved.

In realising the integrated education and welfare plan, resources may be generated and used not only from the area of education but also from youth support and/or healthcare.

The education of children with intensive care and support needs should be facilitated by the efforts of regular and/or disability-specific welfare and health services, or by using the personal budget acquired by parents of children with a disability.

The realisation of the integrated education and welfare plan should occur under normal conditions as much as possible, so at school, allowing the child to be (or remain) part of a (school) community. After all, going to school is a bonus for many of these children: being part of a class, being in another environment than the family or social group context, receiving a targeted and systematic offer that is focused on learning and developing, having social contact with children of same age, etc. If otherwise impossible, education may also be provided (temporarily or permanently) at a location other than the school, such as at home or in a welfare institution.

The Flemish Minister of Education has adopted the Commission's idea and recommendations. The idea addresses today's questions and problems: it is founded on the right to an education and guarantees that right, the idea streamlines the measures with regard to young people with SMD.

The current Minister of Education has therefore decided to continue developments in this area. Currently, a subsidy of (48,000 euros) is being offered to an initiative for inclusive child care to develop an integrated education and care plan in collaboration with a school providing special education to a number of infants and to allow the shaping of the education given to these children. This subsidy has been awarded for the academic years 2016-2017 and 2017-2018.