LEGISLATIVE DEFINITIONS AROUND LEARNERS' NEEDS

POLICY BRIEF

The work of the European Agency for Special Needs and Inclusive Education (the Agency) supports the development of inclusive education systems to ensure **every** learner's right to inclusive and equitable educational opportunities (**European Agency, 2016**).

Agency work acknowledges that every learner has their own unique experiences of discrimination and/or barriers to learning. All aspects of Agency work aim to consider everything and anything that can marginalise learners and increase their risk of exclusion (**European Agency, 2021a**).

In line with this commitment, the **Legislative Definitions around Learners Vulnerable to Exclusion** activity has focused on collecting and analysing information on legal definitions and descriptions used in Agency member countries. There was a particular focus on legislative definitions and descriptions around a broad vision of inclusive education for **all learners**.

Specifically, this activity examined how Agency member countries legally define and describe learners' needs in terms of considering them as groups of **learners with special needs** or **learners vulnerable to exclusion**. It also considered how **anti-discrimination legislation** and **legislation for inclusive education** define and/or describe learners' needs, and explored the concept of **intersectionality**.

Evidence was collected from 35 Agency member countries.

For more information, see the full report, *Legislative Definitions around Learners' Needs: A snapshot of European country approaches* (**European Agency, 2022a**), and the **Legislative Definitions web area**.

Different approaches to addressing learners' needs in inclusive education systems

Since the Agency's foundation in 1996, there have been key conceptual changes in countries' thinking behind and policy priorities for inclusive education (**European Agency, 2022b**). Across European countries, the debate about developing education systems that are equitable for all learners has moved from '**integration**' (the mainstreaming of learners with special educational needs), to '**inclusion**' (more focused on 'learning opportunities' for all learners), to the more current and broader understanding of **inclusive education** as an equitable and high-quality education for all learners (ibid.).

The move from a categorical approach, underpinned by a medical model within special needs education, towards a more normative view, focusing on the rights of every learner regardless of their circumstances, requires a change in educational thinking and culture. In an education system aiming to be equitable for all learners, the focus on learner categories and individual support (**categorical approach**) needs to change to a focus on increasing schools' capacity to respond to all learners' diverse needs (**rights-based approach**) (ibid.).

Developments in thinking around inclusive education as an approach to high-quality education for **all learners** (**European Agency, 2021b**) led to discussions around the necessity to identify learners' needs without using labels (in particular, labels based on medical or deficit models). All countries currently face the problem of framing their legislation and policy so that they clearly aim to ensure the full participation of and raised achievement for all learners while avoiding labelling individuals or groups of learners. The dilemma of whether or not to use different labels is evident in countries' legislation and policy documents, implementation strategies and plans, and in their monitoring and data collection activities.

In this activity, the term '**learners' needs**' is understood as a way to highlight a requirement for educational provision and/or support without applying a label based on an external factor that in some way describes or impacts upon an individual or group of learners. Using the non-categorical term 'learners' needs' would be an **ideal** approach for countries to take and is in line with the Agency position on inclusive education systems (**European Agency, 2022c**).

The **reality** – as evidenced by analysing countries' legislative definitions or descriptions in policy around learners' needs – clearly indicates that legislation and policy documents describe learners' needs with less of a focus on learner requirements for provision and support, and more on externally generated labels that identify groups of learner characteristics. This activity uses the terms '**categories of groups of learners**' and '**groups of learners**'. They refer to the groups of learners identified through the analysis conducted in this activity.

The summary of results below lists the number of countries information applies to, out of a total of 35.

Legislative definitions or descriptions in policy relating to learners with special needs

In policy and legislation addressing learners with special needs, most countries (32) use the label of **learners with disabilities, special needs and learning difficulties**. Some countries refer to **socio-emotional difficulties** (14), **national minorities and cultural diversity** (8) or **socio-economically disadvantaged background** (7). Only a few countries include categories addressing learners who are **migrants, refugees and newly arrived** (5), have **age-related issues** (4), have **experience of crisis or trauma** (2), are **out of education** (2), show **delinquent or criminal behaviour** (2) or are **living in remote, rural or disadvantaged areas** (1).

In most countries, legislation and policy relating to special needs take a categorical approach, underpinned by a medical model, to labelling learners' needs.

Legislative definitions or descriptions in policy relating to learners vulnerable to exclusion

In policy and legislation addressing learners vulnerable to exclusion, most countries use the labels **learners with disabilities, special needs and learning difficulties** (24) or **socio-economically disadvantaged background** (23). Some countries refer to **national minorities and cultural diversity** (16), **migrants, refugees and newly arrived** (16) or **out of education** (9). Only a few countries include labels addressing **experience of crisis or trauma** (6), **age-related issues** (4), **addiction and substance abuse** (4), **living in remote, rural or disadvantaged areas** (4) or **socio-emotional difficulties** (4).

While these are presented as distinct categories of learners' needs, the Agency recognises that, on an individual level, these different groups are likely to overlap.

The categorical approach to labelling groups of learners vulnerable to exclusion is as prevalent as the rights-based approach, which focuses on the circumstances of learners with socio-economically disadvantaged backgrounds. This shows that countries are using categorical approaches (groups), but there is a movement away from a purely medical model (labels around disabilities and special educational needs) when considering learners vulnerable to exclusion.

Anti-discrimination legislation

Anti-discrimination legislation in Agency member countries focuses mainly on learners with **disabilities, special needs and learning difficulties** (22), **national minorities and cultural diversity** (20) and **gender, gender identity, LGBTQI+ (lesbian, gay, bisexual, transgender, queer/questioning, intersex) or gender-related issues** (16).

Fewer countries provided data on anti-discrimination legislation, although most have such laws in place. All Agency member countries have ratified the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities (**CRPD**). Most member countries have signed the Optional Protocol to the CRPD, which establishes an individual complaints mechanism for those who feel their rights under the CRPD have been denied.

Anti-discrimination legislation and policy exist in all Agency member countries, suggesting that, in general, all countries are committed to a rights-based approach. It is unclear how strongly anti-discrimination legislation is considered within the education field.

Legislation or policy for inclusive education

A self-assessment by Agency member countries indicates that legislative definitions or descriptions in policy of inclusive education are almost equally distributed among addressing **specific learner groups, all learners** or **both all learners and specific learner groups**.

Analysis of the terminology in the evidence provided shows that 18 countries include terminology around inclusive education, such as **all learners, equal opportunities** or **diversity**, in their legislative definitions or descriptions in policy.

Fewer countries (12) name specific learner groups in their legislative definitions or descriptions in policy of inclusive education. For those that do, the most commonly mentioned is **learners with disabilities, special needs and learning difficulties**.

Across and within countries, legislative definitions or descriptions in policy around inclusive education include both a categorical and a rights-based approach. Some countries do not label specific learner groups in their definitions of inclusive education.

Legislation or policy that considers issues around intersectionality

The data collection in this area investigated whether legislation or policy mentions intersectionality at all. Only six countries stated that their legislation or policy refers to intersectionality. Although five of the six countries provided details and references, it was not enough information to identify any country's overall approach.

Few countries mention intersectionality in their legislation or policy. This may indicate that it is still a relatively new concept that is being discussed within different countries, but is not yet evidenced in legislation or policy.

A snapshot of legislative definitions or descriptions in policy around learners' needs across European countries

This activity only gives a snapshot of where Agency member countries currently stand in their legislative approaches towards groups of learners and risk factors that may affect learning opportunities. Accordingly, it is not possible to comment on 'trends' in approaches. However, there are some commonalities across countries that are relevant for future Agency activities with member countries.

The following bar chart summarises the analysis results presented above. It shows how many countries have identified or described groups of learners in their legislation or policy around learners with special needs and learners vulnerable to exclusion, as well as in anti-discrimination legislation and legislation/policy for inclusive education.

Number of countries in which groups of learners were identified or described in different areas of legislation and policy

Addiction and substance abuse
- Legislation for inclusive education: 0
- Anti-discrimination legislation: 0
- Learners vulnerable to exclusion: 4
- Learners with special needs: 0

Age-related issues
- Legislation for inclusive education: 2
- Anti-discrimination legislation: 11
- Learners vulnerable to exclusion: 4
- Learners with special needs: 4

Delinquent and criminal behaviour
- Legislation for inclusive education: 0
- Anti-discrimination legislation: 0
- Learners vulnerable to exclusion: 2
- Learners with special needs: 2

Disabilities, special needs and learning difficulties
- Legislation for inclusive education: 11
- Anti-discrimination legislation: 22
- Learners vulnerable to exclusion: 24
- Learners with special needs: 32

Experience of crisis or trauma
- Legislation for inclusive education: 0
- Anti-discrimination legislation: 1
- Learners vulnerable to exclusion: 6
- Learners with special needs: 2

Gender, gender identity, LGBTQI+ or gender-related issues
- Legislation for inclusive education: 4
- Anti-discrimination legislation: 16
- Learners vulnerable to exclusion: 1
- Learners with special needs: 0

Living in remote, rural or disadvantaged areas
- Legislation for inclusive education: 3
- Anti-discrimination legislation: 5
- Learners vulnerable to exclusion: 4
- Learners with special needs: 1

Migrants, refugees and newly arrived
- Legislation for inclusive education: 4
- Anti-discrimination legislation: 9
- Learners vulnerable to exclusion: 15
- Learners with special needs: 5

National minorities and cultural diversity
- Legislation for inclusive education: 4
- Anti-discrimination legislation: 20
- Learners vulnerable to exclusion: 16
- Learners with special needs: 8

Out of education
- Legislation for inclusive education: 0
- Anti-discrimination legislation: 1
- Learners vulnerable to exclusion: 9
- Learners with special needs: 2

Socio-economically disadvantaged background
- Legislation for inclusive education: 4
- Anti-discrimination legislation: 12
- Learners vulnerable to exclusion: 23
- Learners with special needs: 7

Socio-emotional difficulties
- Legislation for inclusive education: 1
- Anti-discrimination legislation: 1
- Learners vulnerable to exclusion: 4
- Learners with special needs: 14

Legend:
- Legislation for inclusive education
- Anti-discrimination legislation
- Learners vulnerable to exclusion
- Learners with special needs

Key messages

Based on the activity findings, the following key messages in relation to legislative definitions or descriptions in policy around learners' needs across European countries have been identified:

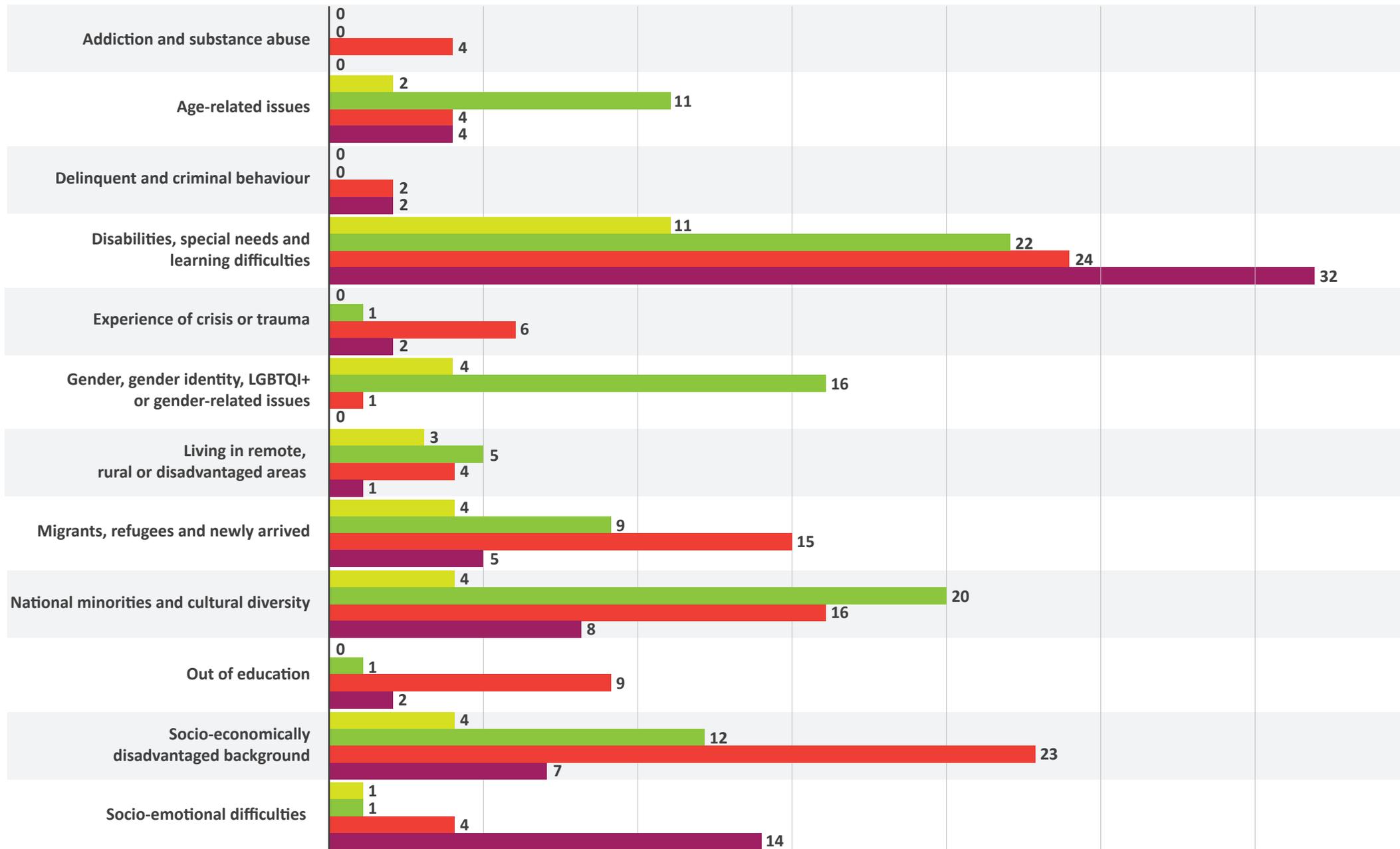- Most countries still use a **categorical approach** that considers learners as having deficits that require compensatory measures in provision. At the same time, countries are building their education systems' capacity to address and encompass all learners.

- Countries are moving away from categorical approaches underpinned by medical models, towards other types of categorical approaches that consider wider social or circumstantial factors.

- Inclusive education is often interpreted as being specifically aimed at learners with disability and/or special needs, instead of catering for **all learners**, with all of their diverse and individual needs, by identifying and removing barriers to learning. These may include the potential legal barriers that fail to address discrimination and ensure all learners' full participation, as outlined in international conventions.

- A focus on learners' needs in general, and not on labelling groups of learners, would indicate a move towards a **rights-based approach**.

> Inclusive education policy and practice activities that use labelling and terminology linked to special needs underpinned by a medical approach, with separate provision for different groups, are not in line with the rights-based approach to inclusive education systems, which focuses on the barriers within the system (**European Agency, 2022b**).

Terminology linked to special educational needs that is underpinned by a medical approach potentially promotes a categorical approach to labelling learners. The alternative is to focus on characteristics of inclusive education systems that build capacity to more effectively ensure all learners' rights to inclusive education are met.

> The term '**learners vulnerable to exclusion**' covers the widest range of different groups of learners and all the factors that may negatively affect their learning opportunities. It encapsulates the broad vision and rights-based approach of including all learners in inclusive education.

Using the term '**learners vulnerable to exclusion**' as the focus of all activities with Agency member countries will support policy development towards a broad vision of inclusion underpinned by a rights-based approach. This is in line with the Agency position on inclusive education systems.