



**EUROPEAN UNION STRUCTURAL
AND INVESTMENT FUNDS
AND THE TRANSITION
FROM INSTITUTIONAL CARE
TO COMMUNITY LIVING:
Towards a More Effective Monitoring
and Complaints System**

EU FUNDS FOR OUR RIGHTS CAMPAIGN – BRIEFING



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Chapter 1

Introduction

This briefing considers the provisions governing the use of European Structural and Investment Funds ('ESI Funds') to assess whether such provisions provide an effective means of monitoring the extent to which ESI Funds meet their objective of facilitating the transition from institutional care to community living. It does so by examining the various mechanisms established under EU regulations and guidance for the monitoring of Member States' use of ESI Funds, identifies areas of concern and makes recommendations on how these can be addressed.

By focusing on the monitoring mechanisms for ESI Funds, this briefing forms part of ENIL's *EU Funds for Our Rights* Campaign. This campaign aims to encourage the European Commission and Member States to improve the mechanisms for monitoring how ESI Funds are applied, thereby ensuring that ESI Funds are used to promote the rights of people with disabilities, rather than restrict them. Launched in November 2016, the campaign has two key objectives. The first is to increase the capacity of civil society organisations to take part in monitoring the planning and implementation of initiatives supported by ESI Funds. The second is to highlight key problems with the current mechanisms for monitoring the use of ESI Funds, including concerns about the systems for examining complaints about their use, and to propose how the monitoring mechanisms can be improved.

Accordingly, this briefing aims to assist European Commission officials responsible for ESI Funds (ESF and ERDF), Managing Authorities and Monitoring Committees in the Member States, as well as civil society organisations working in this area. Its overarching objective is to ensure that EU Funds promote, not hinder, community living for people with disabilities.

Community living and the importance of monitoring the use of ESI Funds

Ensuring that ESI Funds promote the vision of community living is central to the work of the European Union (EU) in meeting its commitment to respecting the rights of people with disabilities. However, despite policies of the EU and Member States highlighting the importance of promoting the social inclusion of people with disabilities, progress towards alternatives to institutionalisation has been slow and in many countries, institutional care remains the predominant form of care. Furthermore, in the past, ESI Funds were invested in systems of institutional care that segregated disabled people, infringed their rights and excluded them from community life. Improvements have been introduced to the legal and policy framework for the monitoring of ESI Funds, predominantly through Regulation (EU) No 1303/2013, which sets out 'common provisions' on EU funds including the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the Cohesion Fund (referred to in this briefing as 'the CPR').¹ Nevertheless, as noted in ENIL's 2016 report 'Working Together to Close the Gap between Rights and Reality', significant concerns about the potential misuse of these funds remain.²

1 Regulation (EU) 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 ('the CPR').

2 ENIL-ECCL, 2016, Working Together to Close the Gap Between Rights and Reality – A report on the action needed to ensure that European Structural and Investment Funds promote, not hinder, the transition from institutional care to community living. Available at: <http://www.enil.eu/wp-content/uploads/2016/06/Working-Together-to-Close-the-Gap-web.pdf> (Working Together to Close the Gap').

Thus, action is needed to ensure that ESI Funds are not misused. Simply moving individuals from the traditional, large institutions to smaller facilities is not enough. When ESI Funds are used to support activities for the transition from institutional care to community living, the overall purpose must be to promote the social inclusion of disabled people. This is to be achieved by developing services and supports that provide disabled people with the same rights and opportunities to live independently and participate in the community as other EU citizens.

An effective system for monitoring the planning and implementation of activities supported by ESI Funds is needed, so that any potential problems can be identified at an early stage and measures then taken to prevent the misapplication of funds. As the European Ombudsman notes, notwithstanding the importance of remedies being in place where harm has been done, there is a need to focus efforts on preventative measures to avoid harm in the first place.³

Monitoring the use of ESI Funds: Key issues

The following areas are considered in this briefing:

- **ESI Funds and the promotion of community living**

Chapter 2 considers what is meant by community living and how community living links to EU law and policy that promote the social inclusion of disabled people. Such an objective is underpinned by the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).

- **ESI Funds and the principle of partnership**

Chapter 3 highlights the important role of partner organisations, including civil society organisations, in the planning, implementation and monitoring of the use of ESI Funds.

- **Monitoring mechanisms**

Chapter 4 considers the monitoring mechanisms engaged in the planning and implementation of activities supported by ESI Funds.

- **Action taken to prevent the misuse of ESI Funds**

Chapter 5 considers the sanctions that might be imposed on Member States if they misapply ESI Funds.

- **Conclusions and Recommendations**

Chapter 6 sets out the key findings of the briefing's analysis. It highlights concerns about the mechanisms for monitoring Member States' use of ESI Funds. In the light of such concerns, it makes recommendations on how potential problems with ESIF funded projects can be identified and addressed promptly and efficiently.

Links to the EU Funds for Our Rights Campaign

The points of concern and the proposed recommendations set out in this briefing reflect issues raised during three regional events organised by ENIL (in Brussels, Vilnius and Bucharest) which brought together organisations promoting the rights of disabled people from 18 EU Member States. The countries involved

³ *Decision of the European Ombudsman closing her own-initiative inquiry OI/8/2014/AN concerning the European Commission* May 2015. Available at: <http://www.ombudsman.europa.eu/cases/decision.faces/en/59836/html.bookmark> (European Ombudsman Own-initiative inquiry), p. 7

were: Belgium, Bulgaria, the Czech Republic, Croatia, Germany, Estonia, Greece, Hungary, Latvia, Lithuania, Malta, the Netherlands, Portugal, Romania Slovakia, Slovenia, Spain and the UK. (A list of organisations that attended regional events is available in Annex C.)

Participants attending these regional events were asked to share their experiences of monitoring, including the extent to which they are able to raise concerns about the misuse of ESI Funds. The information provided by the participants suggests that the involvement of organisations of people with disabilities in the monitoring of ESI Funds is extremely limited, while there is very little awareness of the complaints procedures that should be in place. These points and further examples of how ESI Funds are being applied in Member States are included in the discussions below.

Chapter 2

Community Living and ESI Funds

This chapter provides the context for the issues considered in subsequent chapters. It explains the terms ‘community living’ and ‘independent living’ and emphasises that an effective use of ESI Funds by Member States can help to address the lack of community-based services and the prevalence of the institutionalisation of disabled people.

Significant improvements have been introduced to the provisions governing the use of ESI Funds for the programming period 2014-2020. These include a greater emphasis on social inclusion and the introduction of ex ante conditionalities on compliance with the UNCRPD. In addition, guidance has been developed to assist Member States on how to use ESI Funds to promote community living. However, serious concerns remain. Such concerns include the lack of strategic vision, planned investments into institutional care and inattention to developing services that promote social inclusion.

The meaning of ‘community living’ and ‘independent living’

The term ‘community living’ is used interchangeably with ‘independent living’ in this briefing. Both reflect the need to uphold the notion that people with disabilities are able to live in their local communities as equal citizens, with the support that they need to participate in every-day life.⁴ This will include, for example, disabled people living in their own homes or with their families, going to work, going to school and taking part in community activities. It also means that people with disabilities have the same choice, control and freedom as other citizens. Such a vision is articulated in Article 19 of the UNCRPD (living independently and being included in the community) which provides that all persons with disabilities, regardless of the type or degree of the impairment or the level of support necessary, have the right to ‘live in the community, with choices equal to others’. Further information on Article 19 of the UNCRPD is included in the resources listed in Annex A.

The role of ESI Funds in realising Article 19 of the UNCRPD

Article 19 of the UNCRPD provides that people with disabilities have the right to live in the community as equal citizens. It requires States to take concerted action to ensure that people with disabilities are able to exercise their right to independent living. States must recognise the right of people with disabilities ‘to live in the community, with choices equal to others’ and take steps to facilitate their ‘full enjoyment of this right’ and ‘their full inclusion and participation in the community’.

The EU and all Member States, with the exception of Ireland,⁵ have ratified the UNCRPD and therefore have made a commitment to ensure that people with disabilities can exercise their rights under the UNCRPD, including the right to community living. Ensuring that ESI Funds are utilised to promote, not hinder, independent living is required by the UNCRPD.⁶ Moreover, as made clear by the European Commission in

4 See Annex B for the full definition of these terms, together with other key terms for independent living

5 Ireland signed the UNCRPD on 30th March 2007.

6 For a discussion on the role of ESI Funds and the need for compliance with the UNCRPD, see for example: Open Society Foundations, 2015, *Community, not Confinement The Role of the European Union in Promoting and Protecting the Right of People with Disabilities to Live in the Community* (author Dr. Israel Butler); Office of the High Commissioner for Human Rights (OHCHR), 2012, *Getting a Life – Living Independently and Being Included in the Community* and Open Society Foundations (OSF), 2012, *The European Union and the Right to Community Living – Structural Funds and the European Union’s Obligations under the*



its report to the Committee on the Rights of Persons with Disabilities (the CRPD Committee),⁷ the promotion of independent living forms part of the EU's Disability Strategy.⁸ Thus, 'the Commission has undertaken to promote the use of EU Structural Funds to assist Member States in the transition from institutional to community-based services and to raise the situation of people with disabilities living in residential institutions, in particular children and elderly people'.⁹

Community living and the goals for Europe 2020


Taking action to promote community living forms part of meeting the Europe 2020 objectives of smart, sustainable and inclusive growth. This can be achieved by ensuring that ESI Funds are directed to supporting a range of initiatives to facilitate the development of community-based alternatives to institutional care, as well as services and supports that promote the social inclusion of people with disabilities.

Significantly, a prerequisite for the use of ESI Funds by some Member States is that they have in place measures for the shift from institutional care to community living. This is an ex ante conditionality set out under Thematic objective 9 (promoting social inclusion, combating poverty and any discrimination),¹⁰ which applies where the need for such measures has been identified. Given that such a need was identified for these Member States, this requirement applies to Bulgaria, Croatia, Czech Republic, Greece, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovenia and Slovakia.¹¹

In addition, the provisions governing ESI Funds also emphasise the importance of using ESI Funds to promote the shift away from institutional care:

-  the use of the ESF 'must aim to combat all forms of discrimination and to improve accessibility for persons with disabilities...and facilitating the transition from institutional to community-based care'.¹²
-  one of the investment priorities of the ERDF is the promotion of 'the transition from institutional to community based services'.¹³

Furthermore, the European Commission has stated:

-  'The ERDF should as a basic principle not be used for building new residential institutions or the renovation and modernisation of existing ones. Targeted investments in existing institutions can be justified in exceptional circumstances where urgent or

Convention on the Rights of Persons with Disabilities.

7 The Committee responsible for overseeing State Party's implementation of the UNCRPD.

8 European Disability Strategy *A Renewed Commitment to a Barrier-Free Europe for Disabled Persons* – COM (2010) 636 final.

9 European Commission, Staff Working Document *Report on the implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD) by the European Union*, June 2014, (EU report on the UNCRPD), para 93.

10 Annex XI of the CPR, L 347/448.

11 The European Commission's position papers on the development of Member States' Partnership Agreements identified the need for such measures in these countries. See European Expert Group on the Transition from Institutional to Community-based Care, 2014, *Toolkit on the Use of European Union Funds for the Transition from Institutional to Community-based Care: Revised edition*. Available at: <http://enil.eu/wp-content/uploads/2016/09/Toolkit-10-22-2014-update-WEB.pdf> (the 'Toolkit') p. 24

12 Article 8 of the Regulation (EU) No 1304/2013 of the European Parliament and of the Council of 17 December 2013 on the European Social Fund and repealing Council Regulation (EC) No 1081/2006 (the ESF), (the 'ESF').

13 Article 5(9)(a) of Regulation (EU) No 1301/2013 of the European Parliament and of the Council of 17 December 2013 on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006 (the 'ERDF').

life-threatening risks to residents linked to poor material conditions need to be addressed, but only as transitional measures within the context of a deinstitutionalisation strategy.¹⁴

- “ ‘The transition from institutional to community-based services is one of the aims of investments in health and social infrastructure under the European Regional Development Fund (ERDF).’¹⁵
- “ ‘The European Social Fund (ESF) should support the fulfilment of the Union’s obligation under the Convention with regard to education, work, employment and accessibility. It should not support any action that contributes to segregation or social exclusion.’¹⁶

Thus, it is clear that ESI Funds are to be applied to promote community living and should not be invested in institutional care.

The use of ESIF and the EU Charter of Fundamental Rights

In the decision of the European Ombudsman’s ‘own-initiative inquiry’ in relation to the use of ESI Funds, the Ombudsman highlighted the importance of ensuring that ESI Funds are not applied in a manner that violates the rights under the EU Charter of Fundamental Rights:

- “ ‘...The Commission is obliged to respect the Charter in its entirety, in all its activities, including in the distribution and monitoring of ESI Funds. The Commission should interpret its rights under the cohesion policy in light of its obligations under the Charter, the principles of which should be understood as complementing the provisions of Regulation 1303/2013. Thus, the Commission should ensure that all Member State actions, which are funded under the EU cohesion policy, should respect fundamental rights’ principles whether or not, strictly speaking, they are actions taken in the implementation of EU law...
- “ ... In short, it all comes down to the fact that the Commission should not allow itself to finance, with EU money, actions which are not in line with the highest values of the Union, that is to say, the rights, freedoms and principles recognised by the Charter.¹⁷

The imperative to ensure that EU Funds are not used to finance projects that lead to the infringement of EU Charter rights is equally applicable to the UNCRPD.¹⁸

14 EU report on the UNCRPD (n 9), para. 98.

15 European Commission – Commission Staff Working Document *Reply of the European Union to the List of issues in relation to the initial report of the European Union on the implementation of the UN Convention in the Rights of Persons with Disabilities* SWD(2015) 127 final, (‘EU reply to list of issues’) para 81.

16 EU reply to list of issues (n 15) para. 82.

17 European Ombudsman Own-initiative inquiry (n 3) paras 42 – 46.

18 See for example, Keynote Speech by Nils Muižnieks Council of Europe Commissioner for Human Rights International Symposium “Human Rights and Disability” Vienna, Austria, 10–11 April 2014. Open Society Foundations (OSF), 2012, *The European Union and the Right to Community Living – Structural Funds and the European Union’s Obligations under the Convention on the Rights of Persons with Disabilities*. Available at: <http://www.opensocietyfoundations.org/sites/default/files/europe-community-living-20120507.pdf>

The use of ESI Funds: current concerns

The ENIL/ECCL 2016 report *Working Together to Close the Gap Between RIGHTS and REALITY*,¹⁹ identified five key areas to be addressed by Member States if they are to achieve the transition from institutional care to community living, but also raised concerns about each of these five areas. These are set out below.

1. Strategic Vision for the Transition from Institutional Care to Community Living

CONCERN: There is a lack of strategic vision. Despite the crucial importance of developing strategies for the transition from institutional care to community living, not all Member States have such strategies in place.

2. Prohibition of investments in institutional care

CONCERN: Proposed measures indicate planned investments in institutional care, rather than seeking to eliminate institutional care.

3. Assessment of the situation

CONCERN: There is little analysis by Member States of the situation of people with disabilities, and therefore unclear whether there is an understanding of the gap between the vision of community living and reality.

4. Range of community-based services that promote social inclusion

CONCERN: There is a lack of clarity on the planned range of services, with insufficient attention given to promoting social inclusion.

5. Participation of civil society – putting the partnership principle into practice

CONCERN: Concerted action will be required to encourage the participation of civil society.

Given that civil society organisations have a significant role throughout the process of the planning, implementation and evaluation of programmes supported by ESI Funds, their involvement is considered in the next chapter, which concerns the ‘partnership principle’.

¹⁹ Working Together to Close the Gap (n 2).

Chapter 3

The Partnership Principle

Working in partnership with a range of organisations, including civil society organisations, is a core principle of the provisions governing the use of ESI Funds. This chapter highlights key points and areas of concern in relation to the partnership principle.

Member States to work in partnership with a range of organisations

The European Code of Conduct on Partnership in the framework of the European Structural and Investment Funds ('the Code of Conduct') highlights the importance of partnership, stating:

“Working in partnership is a long-established principle in the implementation of the ESI Funds. Partnership implies close cooperation between public authorities, economic and social partners and bodies representing civil society at national, regional and local levels throughout the whole programme cycle consisting of preparation, implementation, monitoring and evaluation.”²⁰

Article 5 of the CPR requires Member States to work in partnership with a range of organisations, including civil society organisations, in relation to the Partnership Agreement (which sets out the Member State's strategy for using ESI Funds) and each Operational Programme (which sets out the activities that are to be supported by specific ESI Funds).

Partnership and representation of the relevant stakeholders

Article 2 ('Representativeness of partners') of the Code of Conduct states that Member States should ensure that the partners in the procedures involved in the planning and implementation of ESI Funds are 'the most representative of the relevant stakeholders and are nominated as duly mandated representatives, taking into consideration their competence, capacity to participate actively and appropriate level of representation'.²¹ Thus, the partners are to include bodies representing civil society, such as non-governmental organisations and bodies responsible for promoting social inclusion, gender equality and non-discrimination, including bodies working in the areas related to the planned use of ESI Funds and:

“...other organisations or groups which are significantly affected or likely to be significantly affected by the implementation of the ESI Funds, in particular groups considered to be at risk of discrimination and social exclusion”.²²

²⁰ Preamble to the Code of Conduct, paragraph (2).

²¹ Article 2 of the Code of Conduct.

²² Code of Conduct Article 3(1)(c) and Article 4(1)(c), see also Preamble, paras (3) and (4).

The Preamble to the Code of Conduct states:



‘Specific attention should be paid to including groups who may be affected by programmes but who find it difficult to influence them, in particular the most vulnerable and marginalised communities, which are at highest risk of discrimination or social exclusion, in particular persons with disabilities, migrants and Roma people.’²³

Involving partners in the planning and implementation of ESI Funds’ initiatives

In addition to their involvement in the preparation of the Partnership Agreement and Operational Programmes, partner organisations are to be involved in monitoring the implementation of the ESI Funds. Article 5(2) of the CPR states that partner organisations ‘shall be involved by Member States in the preparation of Partnership Agreements and progress reports and throughout the preparation and implementation of programmes, including through participation in the monitoring committees for programmes’. Furthermore, Member States are required to involve partners in ‘the preparation of calls for proposals or in their assessment’,²⁴ the preparation of the progress reports on the implementation of the Partnership Agreement,²⁵ assessing the performance of the Operational Programmes²⁶ and the evaluation of the programmes.²⁷

Technical assistance to facilitate partnership

To assist partners in undertaking such work, Managing Authorities are required to consider the need to make use of technical assistance ‘to help them so that they can effectively participate in the preparation, implementation, monitoring and evaluation of the programmes’.²⁸ Such support can include ‘dedicated workshops, training sessions, coordination and networking structures or contributions to the cost of participating in meetings on the preparation, implementation, monitoring and evaluation of a programme’.²⁹ Article 59 of the CPR states that, at the initiative of the Member State, ESI Funds ‘may support actions for preparation, management, monitoring, evaluation, information and communication, networking, complaint resolution, and control and audit’.³⁰

Of further importance to partnership working is that, for activities funded by the European Social Fund (ESF), Member States must ‘ensure that an appropriate amount of ESF resources is allocated to capacity building for non-governmental organisations’. This is to ‘encourage the adequate participation of, and access by, non-governmental organisations in and to actions supported by the ESF’, in particular in relation to ‘social inclusion, gender equality and equal opportunities’.³¹ Furthermore, the Code of Conduct states that Managing Authorities ‘shall ensure that, according to need, appropriate ESF resources are

23 Preamble (4).

24 Code of Conduct Article 13.

25 Code of Conduct Article 14.

26 Code of Conduct Article 15.

27 Code of Conduct Article 16.

28 Code of Conduct Article 17(1).

29 Code of Conduct Article 17(2).

30 For further information, see European Commission, *Draft guidance fiche for desk officers programming of technical assistance at the initiative of the member states version 2 – 25/06/2014*

31 Regulation (EU) No 1304/2013 of the European Parliament and of the Council of 17 December 2013 on the European Social Fund and repealing Council Regulation (EC) No 1081/2006 (the ESF regulation) Article 6(3).

allocated to the capacity building activities of social partners and non-governmental organisations that are involved in the programmes'.³²

Problems with implementing the partnership principle

The need for good overall management of the partners' involvement and a flexible approach, allowing the Managing Authority to adjust to the changing circumstances during the programming period, was noted in a study on partnership published by the Directorate-General Regional and Urban Policy in 2016.³³

This study, *Implementation of the partnership principle and multi-level governance in 2014-2020 ESI Funds* (the 'DG Regio study'), suggested a need for continued assessment of the partnership involvement, to establish whether there is room for improvement. 'Capacity building schemes' for partners were also suggested, 'especially when mobilising the relevant partners raises a challenge'. Notably, the study highlighted that new partners may need to be taken on board during implementation, and may require capacity building as a result of the need for additional competences and changing roles. Finally, the study considered that there is a need to 'avoid imbalances in the partnership both as regards its formal composition as well as the actual role and influence of partners'. This observation is relevant to the use of ESI Funds for the transition from institutional care to community living. This is because, although organisations of people with disabilities have expertise relevant to developing projects that promote community living, they tend to be grassroots organisations with little experience in policy development and committee work and may feel that their views carry very little weight.

Moreover, the information provided from the 18 Member States included in ENIL's *EU Funds for Our Rights* campaign suggests that those who are the most marginalised, such as people with disabilities living in institutions, are not being consulted at any stage of the process of the planning and implementation of activities funded by ESI Funds.

Another area of concern is the inadequacy of the information about projects funded by ESI Funds. ENIL has been informed by organisations of people with disabilities that the information made available by the Managing Authorities about projects funded by ESI Funds is too general to ascertain whether they are promoting community living in compliance with Article 19 of the CRPD and it can be difficult to obtain more detailed information on such projects. In some countries, such as Romania and Bulgaria, civil society organisations have resorted to making applications under the Freedom of Information Act to find out how ESI Funds are being spent.

32 Code of Conduct, Article 17(4). See also ESF Reg Article 6(3). It should be noted that for the 2014-2020 period, the Cohesion Fund concerns Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia and Slovenia. See: http://ec.europa.eu/regional_policy/en/funding/cohesion-fund/

33 Directorate-General Regional and Urban Policy (authored by Sweco & Spatial Foresight & Nordregio) *Implementation of the partnership principle and multi-level governance in 2014-2020 ESI Funds*, Final Report Contract: 2014CE16BAT065. Available at: http://ec.europa.eu/regional_policy/sources/policy/how/studies_integration/impl_partner_report_en.pdf

Chapter 4

Monitoring the Use of ESI Funds

This chapter considers the framework for monitoring Member States' use of ESI Funds and highlights areas of concern. It first briefly considers the limited role of the European Commission in this area and the potential problem this creates. The five main mechanisms for monitoring are then reviewed. These are: 1) the role of the Monitoring Committees; 2) requirements on Member States to report to the European Commission; 3) evaluation; 4) on-the spot audits by the European Commission; and 5) investigating complaints. For each of these areas, suggested points to consider are noted.

Monitoring the use of ESI Funds and the role of the European Commission

The European Commission must approve the content of the Member States' Partnership Agreements and Operational Programmes and be satisfied that the Member State has put in place the necessary arrangements for the management and control systems for the implementation of the ESI Funds, including the designation of the Managing Authority.³⁴ Thereafter, as the Open Society Mental Health Initiative's report *Community, Not Confinement* observes, the European Commission's monitoring role 'is primarily based on information it receives from national authorities', being 'geared towards verifying that national management and control mechanisms are adequate, and that progress is being made towards the objectives of the OPs [Operational Programmes] and PAs [Partnership Agreements]'.³⁵

As discussed below, the European Commission has a key role in monitoring the use of ESI Funds and can take action where information suggests that ESI Funds are misapplied. It is therefore vital that the European Commission receives information about the use of ESI Funds from civil society and other sources that are independent from the relevant Member State. For example, partner organisations should have an active role in preparing Member States' reports on the implementation on the ESI Funds, such as the annual implementation reports and progress reports (discussed below), so that they can provide input on the progress made and problems encountered.

Moreover, mechanisms are needed to enable civil society organisations to provide feedback to the European Commission on the implementation of ESI Funds and whether they are meeting their objectives.

Monitoring the use of ESI Funds: Five key mechanisms

1. The Role of the Monitoring Committees³⁶

Member States are required to establish, in agreement with the Managing Authority³⁷ a Monitoring Committee to monitor the implementation of one or more Operational Programmes. These committees have a key role in the monitoring of the use of ESI Funds, given that they 'review the implementation of

³⁴ Articles 122 – 127 of the CPR

³⁵ Open Society Foundations, 2015, *Community, not Confinement The Role of the European Union in Promoting and Protecting the Right of People with Disabilities to Live in the Community* (author Dr. Israel Butler); (*Community, not Confinement*), p 53.

³⁶ See Articles 47 and 48 of the CPR.

³⁷ Article 47 of the CPR

the programme and progress towards achieving its objectives³⁸ and have extensive functions to enable them to do so.

Notwithstanding their crucial role in overseeing the implementation of the use of ESI Funds, concerns have been raised in relation to their operation and effectiveness. For example, Community Living for Europe: Structural Funds Watch reports that ‘in general ESIF Monitoring Committees have infrequent meetings and that representation of civil society and NGOs is inadequate’.³⁹ Furthermore, a report published by the European Anti-Poverty Network in March 2016 raised concerns about the quality of the participation of civil society in the Monitoring Committees, noting that the reasons given for this were ‘lack of access to political decision-making and insufficiently participative mechanisms, as well as NGO’s lack of financial resources, information and capacity’.⁴⁰

Three areas of concern are considered in more detail below. These relate to the membership of the Monitoring Committees, the rules of procedure of the Monitoring Committees and the need to ensure that Monitoring Committees are supported in undertaking their functions.

1.1 Membership of the Monitoring Committees

Although it is for the Member State to decide the membership of the Monitoring Committees, this must include representatives of partner organisations.⁴¹ ESI Funds regulations envisage that partner organisations that have been involved in the preparation of the Operational Programme will be represented on the Monitoring Committees,⁴² such representatives having been selected through a transparent process.⁴³

Article 2 of the Code of Conduct (‘Representativeness of partners’) states that Member States should ensure that the partners in the procedures involved in the planning and implementation of ESI Funds are ‘the most representative of the relevant stakeholders and are nominated as duly mandated representatives, taking into consideration their competence, capacity to participate actively and appropriate level of representation’. In relation to the Operational Programmes, the list of organisations from which Member States are to identify relevant partners include ‘bodies representing civil society...non-governmental organisations, and bodies responsible for promoting social inclusion, gender equality and non-discrimination’, and moreover:



‘...other organisations or groups which are significantly affected or likely to be significantly affected by the implementation of the ESI Funds; in particular, groups considered to be at risk of discrimination and social exclusion.’⁴⁴

Thus, the membership of Monitoring Committees responsible for Operational Programmes concerning projects for the transition from institutional care to community living should include organisations with

38 Article 49(1) of the CPR.

39 Community Living for Europe, Structural Funds Watch, *Building on the Promise of European Structural and Investment Funds into the Future European Parliament round table* - 1st December 2016, Background Note, p. 6.

40 European Anti-Poverty Network, *Barometer Report Monitoring the implementation of the (at least) 20% of the European Social Fund that should be devoted to the fight against Poverty during the period 2014-2020*, 2016, 8.


41 CPR Article 48(1) of the CPR. See also Article 5 of the CPR (Partnership and multi-level governance).

42 Article 10 (Rules of membership of the monitoring committee) (1) When formulating the rules of membership of the monitoring committee, Member States shall take into account the involvement of partners that have been involved in the preparation of the programmes and shall aim to promote equality between men and women and non-discrimination.

43 Article 5(3)(a) of the CPR. See also Preamble to the Code of Conduct, para (5) which states: ‘For the selection of partners, it is necessary to take into account the differences between Partnership Agreements and programmes. Partnership Agreements cover all the ESI Funds providing support to each Member State, while programmes refer only to the ESI Funds contributing to them. The partners for Partnership Agreements should be those relevant in view of the planned use of all the ESI Funds, while for programmes it is sufficient that the partners are those relevant in view of the planned use of the ESI Funds contributing to the programme.’

44 Article 4(c)(iii) of the Code of Conduct.

an interest and expertise in this area. This will include civil society organisations ‘representing people with disabilities and people with mental health problems, children, homeless people and older people’.⁴⁵ The Toolkit on the Use of European Union Funds for the Transition from Institutional to Community-based Care (‘the Toolkit’),⁴⁶ which was prepared by the European Expert Group on the Transition from Institutional to Community-based Care comments:

 ‘Moreover, since one of the ex ante conditionalities relates to the UN Convention on the Rights of Persons with Disabilities, and based on Article 4(3) of the CRPD requiring close consultation with and active involvement of people with disabilities (including children) in all processes which concern them, it follows that organisations of people with disabilities should be involved in the monitoring of OPs [Operational Programmes] with actions concerning people with disabilities.’⁴⁷

Although each Operational Programme has its own Monitoring Committee, ENIL’s partner in Slovakia reports that the representatives of organisations advocating for the rights of people with disabilities who are members of different Monitoring Committees are working together so that they can provide input into all relevant projects under all the Operational Programmes. This is important, as it may help to avoid problems that arose in the last programming period, in which institutions for people with disabilities were financed from more than one Operational Programme (for example, under an Operational Programme concerned with energy efficiency).

Membership of the Monitoring Committees: Key points

Two areas of concern in relation to how these provisions are implemented in practice are set out below.

- **Choice of partners:** The basis on which members of the Monitoring Committee are chosen is an area of concern for organisations involved in ENIL’s *EU Funds for Our Rights* Campaign. While the Managing Authority must select members of the Monitoring Committee from a number of NGOs working with different user groups (such as people with disabilities, children, older people, the homeless people), there is a concern that grassroots organisations are left out. Larger, umbrella organisations that have stronger links to the Government tend to be appointed to the Monitoring Committees, regardless of whether they have personal experience of, or expertise in the transition from institutional care to community living.
- **Participation:** Membership of the Monitoring Committee is not enough. The Toolkit also emphasises the importance of ensuring that organisations representing users of services ‘have the opportunity to participate meaningfully in the work of the committees, rather than be passive observers’.⁴⁸ It is therefore of concern that an issue raised in ENIL’s *EU Funds for Our Rights* Campaign is that Monitoring Committee members only receive the outline of the calls for proposals and proposed projects, which makes monitoring difficult.

1.2 Rules of Procedure

It is for the Monitoring Committee to establish its rule of procedure.⁴⁹ Article 11 (Rules of procedure of the monitoring committee) of the Code of Conduct states:

45 The Toolkit (n 11) p. 49.

46 The Toolkit (n 11).

47 Toolkit (n 11) p. 49

48 Toolkit (n 11) pp. 49 – 50.

49 Article 47(1) of the CPR.



‘When formulating the rules of procedure, monitoring committees shall take into account the following elements:

- (a) the members’ voting rights;
- (b) the notice given of meetings and the transmission of documents, which, as a general rule, shall not be less than 10 working days;
- (c) the arrangements for publication and accessibility of the preparatory documents submitted to the monitoring committees;
- (d) the procedure for adoption, publication and accessibility of the minutes;
- (e) the arrangements for the establishment and activities of working groups under the monitoring committees;
- (f) the provisions on conflict of interest for partners involved in monitoring, evaluation and calls for proposals;
- (g) the conditions, principles and arrangements for reimbursement rules, capacity building opportunities and use of technical assistance.’

Rules of procedure: Key points

The following points are relevant to the efficient working of Monitoring Committees.

- **Supporting the Members of the Monitoring Committee:** The ability of Monitoring Committees to ensure that ESI Funds are used to promote, rather than hinder, community living is largely dependent on the information and support that they receive. The Toolkit emphasises the importance of ensuring that members are informed of the meetings well in advance, with documents being provided at least 10 working days beforehand, while ‘[p]reparatory documents, as well as meeting minutes, should be accessible to all members of the MCs’.⁵⁰
- **Establishing working groups:** The Toolkit suggests that consideration be given to ‘establishing working groups under the Monitoring Committees and should define what tasks they will have’.⁵¹ The Code of Conduct envisages that working groups will form a useful means for Monitoring Committees to undertake their role both in relation to assessing the performance of the Operational Programme and the evaluation of the programme. For example, Article 15 (Involvement of relevant partners in the monitoring of programmes) states:

‘Managing authorities shall involve the partners, within the framework of the monitoring committee and their working groups, in assessing performance of the programme, including the conclusions of the performance review, and in the preparation of the annual implementation reports on the programmes.’

- **Voting rights for all members of the Monitoring Committee:** An area of concern in relation to the role of partner organisations is that the provisions state that each member of the Monitoring Committee ‘*may* have a voting right’.⁵² Merely having an observer status will limit the ability of members to influence decisions made by the Monitoring Committee.⁵³ In this regard, the Toolkit suggests that Member States should consider giving all members of the Monitoring Committee voting rights (rather than some merely having observer status).

⁵⁰ Toolkit (n 11) 26 – 27.

⁵¹ Toolkit (n 11) 26.

⁵² Article 48 (1) of the CPR.

⁵³ *Community, not Confinement* (n 35) p. 60


- **Use of technical assistance:** Despite guidance that technical assistance should be used to improve the capacity of NGOs to take part in different stages of ESI Funds implementation, of those NGOs involved in ENIL's *EU Funds for Our Rights* Campaign, none have received such assistance. As an example of good practice, however, in Latvia, training on the transition from institutional care to community living was provided to members of the relevant Monitoring Committees.

1.3 The Functions of Monitoring Committees

As noted above, Monitoring Committees have extensive functions in undertaking their role of reviewing the implementation of the relevant Operational Programme and that programme's progress in achieving its objectives.⁵⁴ The general functions of the Monitoring Committees are set out under Article 49 of the CPR, which are then elaborated upon by Article 110.

The functions set out in Article 49 fall into three broad categories. First, the Monitoring Committee is required to consider the implementation of the Operational Programme. It must have regard to financial and other information, including 'programme specific indicators', progress towards quantified target values', as well as the 'milestones' that are set out in the performance framework;⁵⁵ and 'examine all issues that affect the performance of the programme, including the conclusions of the performance reviews' (discussed below).⁵⁶ Secondly, Monitoring Committees must be consulted about any amendment to the Operational Programme suggested by the Managing Authority and give its opinion on such an amendment if it considers this to be appropriate.⁵⁷ Thirdly, Monitoring Committees 'may make observations to the managing authority regarding implementation and evaluation of the programme' and it 'shall monitor actions taken as a result of its observations'.⁵⁸

In addition, Article 110 of the CPR sets out a range of functions to be undertaken by the Monitoring Committee in relation to monitoring and evaluation, which include 'any issues that affect the performance of the operational programme', the implementation of the evaluation plan (and follow-up given to findings of the evaluations), actions to promote gender equality, equal opportunities and non-discrimination and if the ex ante conditionalities had not been fulfilled when the Partnership Agreement was submitted, progress on actions to do so. Moreover, Article 110(2) states that Monitoring Committees must 'examine and approve' the following:

-  (a) the methodology and criteria used for selection of operations;
- (b) the annual and final implementation reports;
- (c) the evaluation plan for the operational programme and any amendment of the evaluation plan, including where either is part of a common evaluation plan pursuant to Article 114(1);
- (d) the communication strategy for the operational programme and any amendment of the strategy;
- (e) any proposal by the managing authority for any amendment to the operational programme.'

⁵⁴ Article 49 of the CPR.

⁵⁵ CPR Article 49(1) of the CPR. Annex II of the CPR states (para. 2), that 'milestones' are intermediate targets, directly linked to the specific objective of a priority, where appropriate, expressing the intended progress towards the target set for the end of the period'.

⁵⁶ Article 49(2) of the CPR.

⁵⁷ Article 49(3) of the CPR.

⁵⁸ Article 49 (4) of the CPR.

The functions of the Monitoring Committee: Key points

The important role of the Monitoring Committees is emphasised by the following points

- **Scrutiny:** By requiring the Monitoring Committee to ‘examine and approve’ all the matters listed in (a) – (e), which are of key importance to the implementation of the Operational Programme, the CPR makes clear that the Monitoring Committees of each Operational Programme are expected to have a central role in monitoring the implementation of the activities supported by ESI Funds.
- **Support to be provided to the Monitoring Committee:** the Managing Authority is required to support the work of Monitoring Committees and provide them ‘with the information it requires to carry out its tasks, in particular data relating to the progress of the operational programme in achieving its objectives, financial data and data relating to indicators and milestones’.⁵⁹

1.4 The Role of the Monitoring Committees: Points to Consider

The following questions focus on how the Monitoring Committees operate in practice. They will therefore be relevant to representatives of the European Commission, Managing Authorities and civil society organisations with an interest in reviewing two areas. The first is the extent to which the workings of the Monitoring Committees adhere to the partnership principle. The second area is the extent to which Monitoring Committees can ensure that ESI Funds support projects that develop alternatives to institutional care and promote the social inclusion of people with disabilities and are not invested in services that replicate institutional care.

Membership of the Monitoring Committees

- How are the partner representatives selected for membership of the Monitoring Committee?
- How many members of the Monitoring Committee represent organisations with an interest and expertise in developing community-based services and supports and/or other initiatives that promote the social inclusion of disabled people?
- What procedures are in place to involve individuals who are the most marginalised and to include them in the work of the Monitoring Committees?
- What capacity-building training and support are given to members of the Monitoring Committee?

Procedures of the Monitoring Committees

- How many times a year does the Monitoring Committee meet?
- Are the meetings arranged so the members of the Monitoring Committee have time to comment on the documents submitted, for example the selection criteria for projects, the evaluation plan and communication strategy and such comments can be taken into account when finalising the relevant documents?
- Do all members have a vote? If not, what is the role of those attending who do not have a vote?
- Are comments from the partner representatives taken on board? Is there a written record on which comments have and have not been accepted by the Monitoring Committee?
- Is the information about the membership and work of the Monitoring Committees publicly available, for example on the website of the Managing Authorities?

⁵⁹ Article 125(2)(a) of the CPR.

Role of the Monitoring Committees

- What arrangements are in place to ensure that members have sufficient opportunity to consider documents and provide comments and for the comments to be taken into consideration?
- What is the role of the Monitoring Committee working groups?
- What role does the Monitoring Committee have in ensuring that other partners not represented on the Monitoring Committee are involved as and when necessary, through for example, working groups?
- How does the Managing Authority support Monitoring Committees in undertaking their work?
- Does the Managing Authority have in place adequate arrangements to ensure that relevant documents are provided in an accessible format for members or the Monitoring Committee and where these should be made so available, to members of the public?

2. Requirements on Member States to Report to the European Commission

Member States are required to provide reports to the European Commission in relation to the implementation of the Operational Programmes (by way of an annual report and meeting with the European Commission), as well as the implementation of the Partnership Agreement (by way of a progress report). These are considered below.

2.1 Annual reports on the Operational Programmes

As from 2016, until and including 2023, Member States are required to submit to the European Commission ‘an annual report on implementation of the programme in the previous financial year’.⁶⁰ The annual implementation and final reports, together with a ‘summary for citizens’ must be made available to the public.⁶¹

The annual reports are to ‘set out key information on implementation of the programme and its priorities’. Such information includes financial data, indicators and quantified target values; ‘a synthesis of the findings of all evaluations of the programme that have become available during the previous financial year’, in the 2017 report and thereafter, ‘the milestones defined in the performance framework’ and ‘any issues which affect the performance of the programme and the measures taken’.⁶² Specific information is required in certain years. For example:

- Member States are required to fulfil any applicable ex ante conditionalities not later than 31 December 2016 and report on this not later than the 2017 annual report.⁶³
- The reports for 2017 and 2019 must include information in relation to the evaluations of the design and implementation of the programme and follow up to findings of evaluations; the results of information and publicity measures carried out under the communication strategy and ‘the involvement of the partners in the implementation, monitoring and evaluation of the operational programme’.⁶⁴

60 Article 50(1) and Article 111 (1) and (2) of the CPR.

61 Article 50(9) of the CPR.

62 Article 50(2) of the CPR.

63 Article 19(2) of the CPR.

64 Article 111(4) of the CPR.

Annual implementation reports: Key points

- **Role of the Monitoring Committee:** As noted above, the Monitoring Committee is required to examine and approve the annual implementation reports.
- **Involvement of partners:** Article 15 (Involvement of relevant partners in the monitoring of programmes) of the Code of Conduct requires Managing Authorities to ‘involve the partners, within the framework of the monitoring committee and their working groups...in the preparation of the annual implementation reports on the programmes’.
- **European Commission’s consideration of reports:** Within 2 months of receiving the annual implementation report, the European Commission shall give its observations to the Member State (for the final implementation report, the European Commission must provide its observations within 5 months of receipt of that report).⁶⁵
- **Response to concerns raised by European Commission:** Where the Commission makes observations ‘which significantly affect the implementation of the programme’ the Managing Authority ‘shall provide all necessary information with regard to those observations and, where appropriate inform the Commission, within three months of the measures taken’.⁶⁶
- **Annual implementation reports and community living:** The Toolkit notes that the annual implementation reports ‘provide an opportunity for Member States to assess how Structural Funds have contributed to the process of transition from institutional to community-based care and the implementation of the CRPD’. It adds that if problems are identified, this ‘should result in changes to the OPs or other actions’ and that annual reports ‘also provide the European Commission with an opportunity to intervene, if necessary, by issuing recommendations on the implementation of the programme’.⁶⁷

2.2 Annual Review Meetings

As from 2016, until and including 2023, an annual review meeting is to be held between each Member State and the European Commission ‘to examine the performance of each programme, taking into account the annual implementation report and the Commission’s observations, where applicable’.⁶⁸

Annual review meetings: Key points

- **Response to concerns raised by the European Commission:** Member States are required ‘to ensure that appropriate follow-up is given to comments of the Commission’ following such meetings ‘concerning issues which significantly affect the implementation of the programme and, where appropriate, inform the Commission, within three months of the measures taken’.⁶⁹
- **Annual review meetings and community living:** The Toolkit comments that the annual review meetings should include a discussion on whether the Operational Programmes have contributed to ‘the implementation of the deinstitutionalisation strategies and the implementation of the CRPD in the Member State’.⁷⁰
- **Participation of services users in annual review meetings:** The Toolkit suggests that organisations representing service users should take part in these meetings.⁷¹

65 Article 50(7) of the CPR.

66 Article 50(8) of the CPR.

67 Toolkit (n 11) p. 50, referring to Article 50(7) of the CPR.

68 CPR Article 51(1) of the CPR.

69 Article 51(5) of the CPR.

70 Toolkit (n 11) p. 50.


71 Toolkit (n 11) p. 50.

2.3 Progress reports on the implementation of the Partnership Agreement

Article 52 of the CPR requires that progress reports are submitted to the European Commission by the end of August in 2017 and 2019 on the implementation of the Partnership Agreement.⁷²

Progress reports: Key points

- **Information to be included in the progress reports:** Member States must include information on, and assess, matters such as changes in the development needs of the Member State since the adoption of the Partnership Agreement and the contribution of ESI Funds to the thematic objectives selected.⁷³ The 2017 report must state whether any ex ante conditionalities that were not fulfilled at the time the Partnership Agreement was adopted, have been implemented within the timetable established.⁷⁴
- **Progress reports and the partnership principle:** Article 14 of the Code of Conduct (Involvement of relevant partners in the preparation of progress reports) requires Member States to ‘involve relevant partners in the preparation of the progress reports on implementation of the Partnership Agreement’. The issues to be included are specified as follows:

 ‘...in particular concerning the assessment of the role of partners in the implementation of the Partnership Agreement and the overview of the opinions given by the partners during the consultation, including, where appropriate, the description of the way in which the opinions of partners have been taken into account.’

- **Progress reports and community living:** The requirement to confirm that the ex ante conditionalities have been met will, as the Toolkit notes, ‘ensure that the relevant strategies for the transition from institutional to community-based care and the administrative capacity for the implementation of the CRPD are in place during the course of the programming period’ (both being ex ante conditionalities).
- **Possible sanctions:** As the Toolkit notes, failure to meet the ex ante conditionalities ‘can result in the suspension of interim payments by the Commission to relevant priorities in the [Operational Programme]’.⁷⁵

2.4 Performance Review

Based on ‘the information and assessments presented in the annual implementation report submitted in the year 2019’,⁷⁶ the European Commission ‘in cooperation with the Member States shall undertake a review of the performance of the programmes in each Member State in 2019 (the ‘performance review’) with reference to the performance framework set out in the respective programmes’.⁷⁷

Performance review: Key points

- **Scope and purpose of the review:** The review will ‘examine the achievement of the milestones of the programmes at the level of priorities’.⁷⁸ Paragraph 22 of the preamble to the CPR explains that:

72 The deadlines for submission are: for 2017, as at 31st December 2016; for 2019, as at 31st December 2018.

73 Article 52 of the CPR. See also Toolkit (n 11) p. 50.

74 Article 52(2)(c) of the CPR.

75 Toolkit at 50. Article 19 (5) of the CPR.

76 Article 21(2) of the CPR.

77 Article 21(1) of the CPR.

78 Article 21(2) of the CPR.



‘The performance framework should be defined for each programme with a view to monitoring progress towards the objectives and targets set for each priority over the course of the 2014 - 2020 programming period (the “programming period”).’

- **The role of the Monitoring Committee:** The Code of Conduct requires Managing Authorities to ‘involve the partners, within the framework of the monitoring committee and their working groups, in assessing performance of the programme, including the conclusions of the performance review’.⁷⁹

2.5 Requirements on Member States to Report to the European Commission: Points to Consider

The following questions focus on the need for ESI Funds monitoring mechanisms to ensure a) information concerning the monitoring of the use of ESI Funds is accessible to the public; b) the partnership principle is respected throughout the monitoring process; and c) that the effectiveness of ESI Funds in facilitating progress towards community living is recognised as being a core requirement of the monitoring process. Accordingly, the questions will be relevant to representatives of the European Commission and Member States, including the Managing Authorities, involved in preparing the relevant reports and attending review meetings. They will also be of interest to civil society organisations with an interest in monitoring the use of ESI Funds.

Reporting in general

- To what extent are the relevant reports publicly available and provided in accessible formats? (As noted above, annual implementation and final reports, as well as a ‘summary for citizens’ must be made available to the public.⁸⁰)
- To what extent do the annual and progress reports, and the annual and performance review meetings assess the progress in achieving the transition from institutional to community-based care?⁸¹

Annual reports

- Given the importance of the annual implementation reports and the requirement that the Monitoring Committees ‘examine and approve’ them, to what extent does the planning for the preparation of these reports allow for comments by members of the Management Committees to be taken into account before finalising such reports?
- What arrangements are in place to ensure that partner organisations are involved in assessing the performance of the Operational Programme and the preparation of the annual implementation reports?

Annual review meeting

- To what extent do the targets, indicators and milestones focus on the quality of the services provided and the extent to which they promote social inclusion?
- For years other than 2017 and 2019, the EC and the Member States can agree not to organise annual review meetings – if such meetings have been postponed, what reasons are given for this?
- Are partner organisations invited to attend the annual review meetings between Member States and the European Commission?

79 Article 15 of the Code of Conduct.

80 Article 50(9) of the CPR.

81 Community not Confinement (n 35) raises concerns that such reports only provide ‘an abstract picture’, 66.

Progress reports

- What arrangements are in place to ensure that partner organisations are involved in the preparation of the progress reports on the programmes?

Performance review

- How are the milestones on which the performance review is assessed developed and agreed? To what extent do the targets, indicators and milestones focus on the quality of the services provided and the extent to which they promote social inclusion?

3. Evaluations of Programmes Supported by ESI Funds

The CPR requires that evaluations are carried out ‘to improve the quality of the design and implementation of programmes, as well as to assess their effectiveness, efficiency and impact’.⁸² Such evaluations take the form of ‘ex ante evaluations’ (‘to improve the quality and design of each programme’),⁸³ on-going evaluations (‘to assess effectiveness, efficiency and impact’)⁸⁴ and ‘ex post evaluations’ (‘to examine the effectiveness and efficiency of ESI Funds and their contribution to the Union strategy for smart, sustainable and inclusive growth’).⁸⁵ The ‘ex post evaluations are undertaken by the European Commission, ‘or by the Member States in close cooperation with the Commission’.⁸⁶ The points below focus on the on-going evaluations.

On-going evaluations: Key points

- **Evaluation plan - the role of the Monitoring Committees:** Monitoring Committees are required to examine and approve the evaluation plan, while the annual implementation reports must include information on evaluations undertaken.
- **Involvement of partners:** Article 16 of the Code of Conduct (Involvement of partners in the evaluation of programmes) requires Managing Authorities to ‘involve the relevant partners in the evaluation of programmes’ through the work of the Monitoring Committees. This can be through ‘specific working groups established by the monitoring committees for this purpose’. Managing Authorities are also required to ‘consult the partners on the reports summarising the findings of evaluations carried out during the programming period’, which must be submitted to the European Commission by the end of 2022.⁸⁷
- **Evaluations to be undertaken:** Managing Authorities must ensure that evaluations ‘to assess effectiveness, efficiency and impact, are carried out for each programme on the basis of the evaluation plan’, with the appropriate follow-up. Furthermore,



‘At least once during the programming period, an evaluation shall assess how support from the ESI Funds has contributed to the objectives for each priority. All evaluations shall be examined by the monitoring committee and sent to the Commission.’⁸⁸

82 Article 54 of the CPR.

83 Article 55 of the CPR.

84 Article 56 of the CPR.

85 Article 57 of the CPR.

86 Article 57(1) of the CPR.

87 Article 114(2) requires Managing Authorities to submit a summary of the findings of the evaluations carried out during the programming period, together with the main outputs and results of the operational programme, to the European Commission by the end of 2022.

88 Article 56(3) of the CPR

The Toolkit notes that both ‘the monitoring committees (involving users of services and other stakeholders) and the Commission should examine the evaluation’.⁸⁹

- **Evaluations and community living:** The Toolkit comments:



‘Any problems identified during the evaluation can help ensure that the necessary changes are made in the OPs, and increase the likelihood Structural Funds will contribute to the process of deinstitutionalisation in the Member States. They may also point to the need for the Commission to carry out its own evaluation.’⁹⁰

- **Checklist for evaluations:** The Toolkit’s checklist for evaluations is as follows:
 - Evaluation covers all stages of the programming and implementation before, during and after
 - The focus is on the effectiveness, efficiency and impact of the projects funded
 - Evaluations provide adequate information about the projects funded
 - Monitoring Committees, involving civil society representatives, examine evaluations
 - Based on the outcome of evaluations, the necessary actions are taken by the Member State or the Commission
 - The evaluation process is adequately resourced
 - Evaluations are carried out by independent experts
 - Evaluations are available to the public in an accessible format

3.1 On-going Evaluations: Points to Consider

The following questions are directed to representatives of the Managing Authorities responsible for arranging on-going evaluations and members of Monitoring Committees who are required to examine and approve the Managing Authority’s evaluation plan. They should also be of interest to the European Commission, as well as civil society organisations, for example when considering the results of evaluations undertaken.

- What procedures are in place to ensure that all evaluators assessing projects possess the required expertise and independence?⁹¹
- Are the evaluations undertaken focused on the quality of the services and the extent to which they promote disabled people’s social inclusion?
- To what extent are civil society organisations involved in the evaluations (both in terms of undertaking the evaluations and being asked for their views in the evaluation process)?
- To what extent is information about the evaluation process, including members of the evaluation team and the outcomes of the evaluation, publicly available, including in accessible formats?

89 Toolkit (n 11) p. 52.

90 Toolkit (n 11) p. 52.

91 See European Commission *Guidance for Member States on Designation Procedure EGESIF_14-0013-final* 18/12/2014, para 3.10.

4. On-the spot audits

Article 75(2) of the CPR provides that the European Commission or its representatives ‘may carry out on-the-spot audits or checks’ (subject to giving ‘at least 12 working days notice to the competent authority, except in urgent cases’).

On-the spot audits: Key points

- **Scope of audits and checks not limited to financial matters:** The audits and checks may include, ‘verification of the effective functioning of management and control systems in a programme or a part thereof, in operations and assessment of the sound financial management of operations or programmes’.⁹²
- **Frequency of audits and checks:** In her own-initiative inquiry, the European Ombudsman commented that the ‘on-the-spot visits need to be more frequent and thorough, as in many cases they constitute the only real means to verify the situation on the ground’.⁹³
- **Potential role of civil society organisations:** civil society organisations with an expertise in developing services that promote community living, and organisations of people with disabilities, could provide assistance by highlighting actions in which there are concerns and providing input on the issues to explore.

4.1 On-the spot audits: Points to Consider

The questions below are relevant to the role of the European Commission and also highlight the importance of the partnership principle, as well as ensuring that relevant information is accessible to the public. Accordingly, the questions are also intended to be of assistance to Managing Authorities, Monitoring Committees and civil society organisations monitoring the use of ESI Funds.

- How often does the European Commission undertake on-the-spot audits and checks?
- Do such audits and checks include the non-financial matters such as the assessment of the quality of services delivered, or the extent to which different actions contribute to social inclusion?
- What training is available to those undertaking on-the-spot audits on the transition from institutional care to community living and the UNCRPD?
- To what extent do auditors involve partners, in particular, organisations with expertise in developing services that promote community living and organisations of people with disabilities, before, during and after on-the-spot audits and checks?
- To what extent can partners suggest services or actions that would require an on-the-spot audit or check to the European Commission, because of suspected irregularities?
- To what extent is the information on on-the-spot audits and checks publicly available, including in accessible formats?

⁹² Article 75(2) of the CPR.

⁹³ European Ombudsman Own-initiative inquiry) (n 3), Guideline (v), page 8.

⁹⁴ See European Commission *Guidance for Member States on Designation Procedure EGESIF_14-0013-final* 18/12/2014, para 3.10.

5. Investigating Complaints

Article 74 of the CPR provides that, as part of their management and control system for the implementation of ESI Funds, Member States must ‘ensure that effective arrangements for the examination of complaints concerning ESI Funds are in place’.⁹⁵

The provision requiring Member States to establish a complaints system, is considered first, followed by concerns about the investigation of complaints.

5.1 The Requirement to Establish a Complaints Procedure

It is for each Member State to decide how it will establish such a complaints system. Article 74(3) of the CPR states:

“ ‘The scope, rules and procedures concerning such arrangements shall be the responsibility of Member States in accordance with their institutional and legal framework.’⁹⁶

The requirement to establish a complaints procedure: Key points

- **Member States to investigate complaints submitted to the European Commission:** Article 74(3) of the CPR provides that Member States ‘shall, upon request by the Commission, examine complaints submitted to the Commission falling within the scope of their arrangements’ and that they ‘shall inform the Commission, upon request, of the results of those examinations’.
- **An effective complaints procedure to be part of the Member States’ management and control system:** As part of its assessment of the Member States’ management and control system, the European Commission will consider ‘the existence of effective arrangements to carry out all stages of the procedure for the examination of complaints within the Member State.’⁹⁷
- **Member States to decide on the type of complaints system:** While noting that if the Member State does not have procedures for handling complaints, it will need to establish one, the European Commission states:

“ ‘Since the Regulation expressly provides that this comes under the responsibility of the Member States in accordance with their institutional and legal framework, Member States can establish the system that best suits their legal and institutional system, provided the arrangements put in place are effective. The European Commission has no empowerment to adopt further provisions concerning the arrangements referred to in Article 74(3) Regulation (EU) No 1303/2013’.

- **Little guidance on complaints systems required:** Save that a complaints procedure must be established, the CPR places no further requirements on Member States in respect of their complaints system, while to date there is little guidance on this aspect of the monitoring and control system.

⁹⁵ Article 74(3) of the CPR.

⁹⁶ See also para 67 to the Preamble to the CPR: ‘Member States should fulfil the management, control and audit obligations and assume the responsibilities as laid down in the rules on shared management set out in this Regulation, the Financial Regulation and in the Fund specific rules. Member States should ensure that, in accordance with the conditions set out in this Regulation, effective arrangements for the examination of complaints in relation to the ESI Funds are in place...’

⁹⁷ European Commission, *Comments on the European Ombudsman’s Own-initiative inquiry* Ref. OI/8/2014 AN (European Commission response to *European Ombudsman’s Own-initiative inquiry*), Question 4, p 7.


5.2 Investigating Complaints

The provisions regarding the investigation of complaints arising from the planning and implementation of activities supported by ESI Funds raise three areas of concern. The first is the lack of clarity on how the effectiveness of Member States' complaints procedures is assessed. The second is the need for the European Commission to take on a more substantial supervisory role than currently envisaged. The third is that the information made available to the public in Member States about the complaints system relevant to ESI Funds is insufficient. These points are elaborated upon below.

a) Lack of clarity on 'effective arrangements'

The European Commission states that 'Member States can establish the system that best suits their legal and institutional system, *provided that the arrangements put in place are effective*'.⁹⁸ This raises two of the following points:

- **How is the effectiveness of the complaints system assessed?** The checklist included in guidance issued by the European Commission for the preparation and assessment of the management and control systems for ESI Funds includes a question on complaints, asking whether, in relation to both the Managing Authority and the Certifying Authority, a procedure has been described:

 '...in relation to the scope, rules and procedures concerning the effective arrangements set out by the Member State for the examination of complaints concerning the ESI Funds, in the context of Article 74(3) of Regulation (EU) No 1303/2013?'⁹⁹

Although this question is welcome, and highlights the importance of considering whether an effective complaints procedure is in place, it does not explore how the effectiveness of such procedures is to be assessed.

- **Independence of complaints investigators is crucial:** The need for clarity on how complaints are investigated – and that those investigating the complaint are independent from those who are the subject of the complaint – is illustrated by the following example from one Member State:

Two calls for proposals under the Operational Programme included projects to build new institutions for people with disabilities. Although the NGO considered complaining to the Managing Authority, it decided against doing so because the complaint would be against the Managing Authority, which would therefore be unable to provide an independent examination of the complaint. An alternative route was found in that, with the help of the European Expert Group on the Transition from Institutional to Community-based Care, the local NGOs made a complaint to the European Commission, which contacted the Managing Authority and explained why the calls should be revised. The European Commission used the UNCRPD to argue against the building of new institutions, with the outcome that the calls for proposals were revised.

b) Greater supervision by the European Commission is needed

The European Commission states that, when it receives a complaint that falls within the scope of Article 74(3), 'as a general rule it will ask the Member State to deal with it', but that:

⁹⁸ European Commission response to European Ombudsman's Own-initiative inquiry (n 92), response to Question 5 (emphasis added), p. 8.

⁹⁹ European Structural and Investment Funds Guidance for Member States on Designation Procedure EGESIF_14-0013-final 18/12/2014 ANNEX 3: paras 4.1. and 4.8.

Upon request, the Member State will have to report within a set deadline on the follow up given to the complaint, in order for the Commission to be able to check the proper treatment of the complaints received. The Commission will in this case assess whether the Member State has handled the complaint according to the arrangements set up at national or regional level for the examination of the complaints.¹⁰⁰

It is not clear when the European Commission envisages that it will ‘request’ the Member State to report back on its investigation of a complaint. ENIL is concerned that the Commission’s approach is likely to mean that much is left to the Member States in how they handle complaints about the use of ESI Funds. ENIL therefore welcomes the views expressed by the European Ombudsman who emphasises that ‘the Commission has a role to play in supporting by, but also compelling Member States to implement well-functioning, effective complaints and address systems’. Furthermore, ENIL supports the European Ombudsman’s view that:

- ‘...receiving systematic information from Member States concerning the results of ESI Funds-related complaints will enable the Commission to have a complete picture of the complaint-handling situation and the effectiveness of the relevant arrangements at all times and in all Member States, and to detect anomalies on time.’¹⁰¹
- The European Commission should systematically require Member States to ‘inform the Commission of the results of all complaints concerning ESI Funds, whether they were initially submitted to the Commission or not’.¹⁰²

c) Insufficient information on complaints systems relevant to ESI Funds

The information provided to ENIL by partners involved in EU Funds for Our Rights Campaign indicates that very few organisations are aware of how to make a complaint, or even whether a complaints system exists. The question of the scope of the complaints system envisaged by the CPR was raised by the European Ombudsman in her own-initiative inquiry. In the Ombudsman’s view:



‘...most, if not all, Member State actions which arise in the context of programmes funded under the EU’s cohesion policy involve the implementation of EU law. This is so because the vast majority of the Member States’ main obligations are defined in detail in Regulation 1303/2013 (and other relevant Regulations) and are subject to the rules and principles laid down therein, from which they cannot validly depart.’¹⁰³

The European Ombudsman’s comments give rise to the following two points:

- **Use of ESI Funds may give rise to wide range of complaints:** A range of differing circumstances might give rise to a complaint. For example, a complaint might concern allegations that the use of ESI Funds has breached EU law and/or policy (including breaches of the UNCRPD and the EU Charter), partner organisations may be dissatisfied with the level to which they are being involved in the planning and implementation of ESI Funds, while other organisations may raise concerns about the procedures for selecting beneficiaries.

100 European Commission response to European Ombudsman’s Own-initiative inquiry (n 92), response to Question 6. p. 9.

101 European Ombudsman Own-initiative inquiry (n 3) p. 8.

102 European Ombudsman Own-initiative inquiry (n 3) p. 7.

103 European Ombudsman Own-initiative inquiry (n 3), p. 5, para 39.

- **Need for clear information on complaints procedures:** Jargon-free information on the relevant complaints procedure(s) needs to be available to the public and disseminated widely. If there is more than one complaints procedure, depending on the type of complaint, this should be explained. The information provided should set out how to make a complaint (and to which complaints body), the procedures and timescales involved, including the basis on which an appeal can be made if the complainant is not satisfied with the outcome of the complaint.

5.3 Investigation of Complaints: Points to Consider

The first three questions are directed to the European Commission. The last question is directed to Managing Authorities.

European Commission's role in ensuring effective complaints procedures are in place

- In its response to the European Ombudsman's own initiative inquiry, the European Commission stated that it 'will also check whether a complaints handling system is in place and whether that system delivers effective assessment of the case':¹⁰⁴
 - How does the European Commission assess whether the Member State has provided an effective complaints system?
- In its response to the European Ombudsman's own initiative inquiry, the European Commission stated that it would disseminate good practices of what are effective arrangements for the treatment of complaints:¹⁰⁵
 - When will such examples be available for dissemination?
- As highlighted by the European Commission, Member States can use ESI Funds to support technical assistance including arrangements for complaints resolution:¹⁰⁶
 - Are there examples of good practice of this from Member States, which can be shared with other Member States?

Managing Authorities and the provision of information on complaints procedures

- Is information about the complaints systems available to the public, for example easily located on the Managing Authority's website, providing all the necessary information on how to make a complaint, such as the type of complaints that can be investigated, the procedure for investigating complaints and any time limits for making complaints?
- Is such information also available in accessible formats?

104 European Commission response to *European Ombudsman's Own-initiative inquiry* (n 96), response to Question 6. p. 9.

105 European Commission response to *European Ombudsman's Own-initiative inquiry* (n 96), p. 12.

106 European Commission response to *European Ombudsman's Own-initiative inquiry* (n 96), p. 12.

Chapter 5

Action Taken to Prevent the Misuse of ESI Funds

Under the CPR, the European Commission can, in certain circumstances, impose sanctions on Member States if it has concerns about the manner in which ESI Funds are being implemented. The circumstances in which such powers arise include cases where the Member State has failed to fulfil an applicable ex ante conditionality¹⁰⁷ and where the performance review evidences serious failures in meeting relevant milestones¹⁰⁸

Action Taken to Prevent the Misuse of ESI Funds: Key points

- **ESI Funds and community living:** The European Commission has stated that it will use its powers to suspend or withdraw payments to ensure the Member States' Operational Programmes 'comply with EU law, including EU legislation and the CRPD, and their strategies are in line with EU strategies and policies, including the EU Disability Strategy'.¹⁰⁹ As noted in Chapter 2, it is a requirement on Member States in Central and Eastern Europe and the Baltics wishing to use ESI Funds to have in place measures to facilitate the transition from institutional care to community-based services. That ESI Funds must be used to promote community living is emphasised by the European Commission:



'Only actions that help to establish the conditions for independent living should be supported by the EU. Any measure contributing to further institutionalisation of disabled people or the elderly should not be supported by ESI Funds'.¹¹⁰

- **Failure to comply with the EU Charter:** the European Commission considers that 'should a Member State not ensure proper application of the Charter when taking acts or measures in the course of implementation of EU law, this would constitute an irregularity or even a serious deficiency in the effective functioning of the management and control system of operational programmes which may trigger a suspension of payments or a financial correction, as a Member State has not complied with its obligations under Article 1435 of the Regulation (Article 142 and 144(1)(a) and (b) of Regulation (EU) No 1303/2013)';¹¹¹
- **The absence of a complaints procedure:** the European Commission has stated that 'The failure of a Member State to establish a complaints handling procedure could constitute a serious deficiency which would provide the basis for suspension of payments (Article 142 of Regulation (EU) No 1303/2013) and may ultimately lead to a financial correction pursuant to Article 144(1)(a) of that Regulation'.¹¹²
- **Ineffective complaints procedures:** the European Commission has stated that it will discuss concerns about Member States' 'continued failure' to manage complaints effectively 'or evidence that

107 Article 19(5) of the CPR.

108 Article 22(6) of the CPR.

109 EU report on the UNCRPD (n 9), para 99.

110 European Commission – Commission Staff Working Document *Reply of the European Union to the List of issues in relation to the initial report of the European Union on the implementation of the UN Convention in the Rights of Persons with Disabilities* SWD(2015) 127 final, (EU reply to list of issues') para 81.

111 European Commission response to European Ombudsman's Own-initiative inquiry (n 96), p. 7.

112 European Commission response to European Ombudsman's Own-initiative inquiry (n 96), p. 8.

the system does not work properly, which includes non-compliance with the obligation to inform the Commission upon request' at the annual review meetings:

“Furthermore, should the failure to handle complaints effectively provide evidence to suggest a significant deficiency in the management and control system or the Commission's investigation of a complaint reveal the failure to ensure the respect of an applicable provision of the Charter, the Commission may interrupt interim payments (Article 83 of the Regulation) and, in case of serious deficiencies, suspend the payments (Article 142) or apply financial corrections (Article 144).¹¹³

- **Consideration of infringement proceedings:** The European Ombudsman has recommended that the European Commission should consider infringement proceedings as an alternative to sanctions. This is because, while the fear of ESI Funds being cancelled, recovered or suspended by the European Commission is likely to deter clear violations of the CPR and Partnership Agreements:

“infringement proceedings grant the Commission a wider margin of negotiation and power of persuasion to tackle widespread breaches of fundamental rights which may go beyond the implementation of the cohesion policy as such’.

Furthermore, the European Ombudsman considers that ‘a declaration of infringement by the Court of Justice is a powerful argument for citizens to claim compensation for any damage they may have suffered before national courts’. Accordingly, in the European Ombudsman's view:

“The Commission could thus use its discretion in choosing one procedure over another with the objective of better protecting citizens' fundamental rights.’¹¹⁴

113 European Commission response to European Ombudsman's Own-initiative inquiry (n 96), p. 10.

114 European Ombudsman Own-initiative inquiry (n 3), p. 8.

Chapter 6

Conclusions and Recommendations

The main findings from the examination of the mechanisms to monitor the use of ESI Funds fall within the following five broad areas:

- 1. More information is needed from Member States on their use of ESI Funds**
- 2. Monitoring Committees have key role but need support to enable them to exercise their functions effectively**
- 3. Action is required to ensure that people with disabilities are involved in monitoring the use of ESI Funds, as required by the partnership principle**
- 4. Although Member States are required to establish an effective complaints procedure, there is little clarity on how this obligation is to be met**
- 5. Insufficient information is provided to the general public on the ESI Funds monitoring mechanisms and there is little opportunity for civil society organisations to provide feedback on how projects funded by ESI Funds are being implemented in practice.**

A summary of these concerns and recommendations on how to address them are set out below.

1. More information is needed from Member States on their use of ESI Funds

As noted in Chapter 3, in carrying out its monitoring role, the European Commission is dependent on information being provided by the Member States; for example, the annual implementation reports and the progress reports. The information contained in such reports tends to be limited, and does not provide desk officers with the details needed to assess the extent to which progress is being made towards community living; therefore making it difficult to assess the projects' compatibility with Article 19 of the CRPD. While the desk officers can ask for additional information, not all of them do. This may be due to a number of factors, such as lack of time (desk officers tend to be responsible for a range of policy areas), while they may not have sufficient expertise on the transition from institutional care to living in the community to know what further questions to raise.

Recommendations to increase level and quality of information from Member States:

- An intermediary, independent body in the Member State, with expertise in ESI Funds and the UNCRPD, should collect information about the relevant projects selected for funding and alert the European Commission in case of irregularities. This activity can be funded from ESI Funds allocated for technical assistance.
- A database should be launched on the European Commission website, with all the projects funded by ESI Funds. Similar to the EEA and Norway Grants database,¹¹⁵ the Commission database should contain a qualitative description of projects and the allocated funds. Good practices in promoting the transition from institutional care to living in the community should be highlighted.

115 See the EEA and Norway Grants Project portal at: <http://eeagrants.org/project-portal>

- All the reports, including annual implementation reports, progress reports, evaluation reports and the results of annual reviews and performance review meetings, as well as audits undertaken by the European Commission, should be available online. A citizens' summary in easy-to-read language should also be available.

2. Monitoring Committees have key role, but need support to enable them to exercise their functions effectively

Monitoring Committees have a key role in ensuring that ESI Funds are used to support, not hinder, community living and the implementation of Article 19 of the UNCRPD. However, for the reasons highlighted in chapter 4, ENIL is concerned that the Monitoring Committees are not able fulfil this function effectively. The main problems identified are the lack of expertise on community living, infrequent meetings, lack of time by the members to review documentation before the meetings, and lack of voting rights for NGOs.

Recommendations to strengthen the role of Monitoring Committees:

- Given their extensive role, Monitoring Committees should meet on a regular basis and this should be reflected in the provisions governing ESI Funds for 2021 – 2028 (the current CPR requires only that Monitoring Committees meet 'at least once a year'¹¹⁶). Furthermore, procedural arrangements should reflect the requirement on Monitoring Committee to examine and approve key documents. Members should have sufficient opportunity to consider documents and provide comments so that their views can be taken into account before finalising the relevant documents.
- Although the European Commission only has an advisory role on the Monitoring Committees,¹¹⁷ it should ensure that members of Monitoring Committees are informed about relevant guidance on the transition from institutional care to community living, such as the *Common European Guidelines* and the *Toolkit* and where to obtain such information. In addition, information on the *Common European Guidelines* and the *Toolkit* should be included in the training on the implementation of the EU Charter, to be organised by the European Commission as recommended by the European Ombudsman.¹¹⁸
- Technical assistance should be used to assist members, such as user representatives, in undertaking their role as Monitoring Committee members.¹¹⁹ In preparation for their involvement, members should be given training and information on ESI Fund Regulations, the Code of Conduct on Partnership, as well as other relevant law and policy (such as the UNCRPD and Europe 2020) and guidance (on ex ante conditionalities, deinstitutionalisation and the implementation of EU Charter). The training should be delivered by individuals who have expertise in promoting the rights of people with disabilities and an understanding of particular issues relevant to different user groups.
- Information to support members of the Monitoring Committee when considering projects relating to the transition from institutional care to community living should include information on the situation of people with disabilities in the Member State, including those living in institutional care, as well as explanations of terminology used. The Toolkit's recommendation for addressing the concern that monitoring 'focuses on technical criteria rather than on mid and long-term impact of the projects' is also apt. The Toolkit recommends that a 'deinstitutionalisation strategy, or criteria/quality standards for deinstitutionalisation, should be attached to the call for proposals and inform the working of the committee'.¹²⁰

116 Article 49(1) of the CPR.

117 Article 48(3) of the CPR.

118 Article 48(3) of the CPR.

119 Toolkit (n 11) p. 51.

120 Toolkit (n 11) p. 51.

- As recommended by the European Ombudsman, ‘the Commission should publish documents setting out the details of its monitoring role over national mechanisms and release comprehensive and detailed information about all monitoring measures taken thus far in respect of ESI Funds and fundamental rights.’¹²¹ Furthermore, ENIL supports the European Ombudsman’s suggestion that the European Commission ‘could promote the adoption of adequate equality and fundamental rights indicators and draft checklists to evaluate the use of the funds to promote fundamental rights and non-discrimination in the broader sense.’¹²²

3. Action is required to ensure that people with disabilities are involved in monitoring the use of ESI Funds, as required by the partnership principle

Few organisations of people with disabilities in the Member States are involved in monitoring the use of ESI Funds, and this is particularly true of grassroots organisations. Many such organisations lack influence to be included in the Monitoring Committees, and do not have the knowledge to engage with the different stages of ESI Funds implementation. This is of particular concern, given that Member States should make an effort to include those most marginalised in different stages of ESI Funds spending.¹²³

Recommendations to increase the capacity of partner organisations

- Accessible information should be provided to explain how NGOs can get involved in different stages of the planning, implementation, monitoring and evaluation of activities supported by ESI Funds. Training and technical assistance should be provided to NGOs, to ensure they can allocate staff equipped to carry out such activities. Concerted action should be taken to involve NGOs representing the most marginalised groups (including people with disabilities in institutions). This would ensure that civil society organisations are able to carry out their own monitoring work independently from the state authorities.
- In line with the European Ombudsman’s recommendation, ‘the Commission should focus its training, technical assistance and capacity building efforts on Member States which, on the basis of the Commission’s assessment, have a less positive track record of compliance with fundamental rights in the implementation of EU cohesion policy.’¹²⁴
- Given that Operational Programmes can cover a number of user groups¹²⁵ technical assistance should be used to facilitate ‘[c]oordination among representatives of different user groups’ so as to ensure ‘that the people in the monitoring committees can represent interests of more than one group’.¹²⁶
- As highlighted by the DG Regio study on partnership ‘planned actions to involve partners in the implementation process should be followed-up and assessed regularly to see whether things can be improved further’. If needed, new members should be co-opted to the Monitoring Committee during the programming period.¹²⁷

121 European Ombudsman Own-initiative inquiry (n 3), p. 8.

122 European Ombudsman Own-initiative inquiry (n 3), p. 7.

123 See the Code of Conduct, Article 4(c) (iii).

124 European Ombudsman Own-initiative inquiry (n 3), p. 7.

125 Monitoring Committees can be responsible for more than one Operational Programme – see Article 47(1) of the CPR.

126 Toolkit (n 11) p. 51.

127 Implementation of the partnership principle and multi-level governance in 2014 – 2020 ESI Funds (n 33) p. x

4. Although Member States are required to establish an effective complaints procedure, there is little clarity on how this obligation is to be met

As explained in Chapter 5, while Member States are required to have an effective complaints system in place, neither the ESI Funds regulations, nor guidance, provide sufficient information on what is required for such complaints systems to be considered effective.

Recommendations: further provisions on complaints procedures are required

- As recommended by the European Ombudsman, the European Commission should apply ‘strictly and without exception the obligation to verify that the management and control systems, including complaint-handling arrangements, are adequate and efficient, that they remain so for as long as programmes are implemented and that weaknesses are duly corrected’.¹²⁸
- As recommended by the European Ombudsman, the European Commission should publish guidance for the Managing Authorities on what constitutes an efficient complaints system. Such guidance should include an explanation of:

“ ‘...what the Commission understands by an effective redress mechanism and, equally importantly, which mechanisms are deemed ineffective or purely formal. The guidance should include clear indications about when monitoring processes will be triggered, what criteria will be applied, and what measures will be adopted as a result, thus ensuring transparency and legal certainty.’¹²⁹

- The European Commission should include, in the proposed ESI Funds regulations for 2021 – 2028, requirements for an effective complaints system. Under the improved system, Monitoring Committees should receive reports on complaints, which should be discussed during the annual review meetings and/or performance reviews. The European Commission should have the power to examine complaints if the complainant is not satisfied with the outcome of their complaint at the national level, and there should be clear guidance about such a review process.
- Provisions concerning complaints should clarify that, to avoid potential conflicts of interests, Member States complaints systems must ensure that complaints are investigated by an independent body.

5. Insufficient information is provided to the general public on the ESI Funds monitoring mechanisms and there is little opportunity for civil society organisations to provide feedback on how projects funded by ESI Funds are being implemented in practice

ENIL is concerned that civil society organisations promoting community living are not familiar with the mechanisms for monitoring the use of ESI Funds, in particular, the work of the Monitoring Committees and the complaints procedures.

128 European Ombudsman Own-initiative inquiry (n 3), p. 7.

129 European Ombudsman Own-initiative inquiry (n 3), p. 7.

That civil society organisations are not informed about the mechanism for monitoring the use of ESI Funds is a concern in itself, given that they should be encouraged to participate in the monitoring of ESI Funds, including, where considered necessary, submitting a complaint. It is also of concern that there is a lack of information about what, if any, complaints have been submitted in relation to the use of ESI Funds. ENIL has been unable to obtain information on complaints submitted to the Managing Authorities of Member States. In relation to the transition from institutional care to community living, the only available information on complaints appear to be those submitted directly to the European Commission by the European Expert Group.

Recommendations to improve the flow of information

- Communication strategies (which the Monitoring Committee has to examine and approve) should include a dissemination plan for information on how to make complaints in relation to ESI Funds (who can complain, what about, who to, time limits etc.) Such information should be included on the websites of both the Managing Authorities and the European Commission.
- As recommended by the European Ombudsman, ‘the Commission should launch an online platform where civil society, particularly small organisations which do not easily come into contact with the Commission, could report abuses of Funds and Charter violations and submit complaints and shadow reports on complaint-handling mechanisms and Member States’ compliance with the European Code of Conduct on Partnership’.¹³⁰
- ESF Thematic Networks¹³¹, established by the European Commission, could be used to share information about the complaints handling systems in the Member States, and the complaints received by the Managing Authorities. These networks should also be used to share good practice in monitoring the use of ESI Funds, the use of technical assistance to improve monitoring etc.

130 European Ombudsman Own-initiative inquiry (n 3), p. 8.

131 European Commission, European Social Fund, ESF Transnational cooperation, <https://ec.europa.eu/esf/transnationality/>

Annexes

Annex A

Useful resources

Legislation

Common Provisions Regulation (CPR) - Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013R1303>

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Websites

Open Data Portal on ESIF: <https://cohesiondata.ec.europa.eu/>

ESF in your country: <http://ec.europa.eu/esf/main.jsp?catId=45&langId=en>

ESF Transnational Platform: <https://ec.europa.eu/esf/transnationality/> (List of ESF Managing Authorities: <https://ec.europa.eu/esf/transnationality/whoswho>)

Structural Funds Watch – Community Living for Europe: <https://communitylivingforeurope.org/>

Annex B

Definitions

Independent Living is the daily demonstration of human rights-based disability policies. Independent living is possible through the combination of various environmental and individual factors that allow disabled people to have control over their own lives. This includes the opportunity to make real choices and decisions regarding where to live, with whom to live and how to live. Services must be available, accessible to all and provided on the basis of equal opportunity, free and informed consent and allowing disabled people flexibility in our daily life. Independent living requires that the built environment, transport and information are accessible, that there is availability of technical aids, access to personal assistance and/or community-based services. It is necessary to point out that independent living is for all disabled persons, regardless of the gender, age and the level of their support needs.

Personal Assistance is a tool which allows for independent living. Personal assistance is purchased through earmarked cash allocations for disabled people, the purpose of which is to pay for any assistance needed. Personal assistance should be provided on the basis of an individual needs assessment and depending on the life situation of each individual. The rates allocated for personal assistance to disabled people need to be in line with the current salary rates in each country. As disabled people, we must have the right to recruit, train and manage our assistants with adequate support if we choose, and we should be the ones that choose the employment model which is most suitable for our needs. Personal assistance allocations must cover the salaries of personal assistants and other performance costs, such as all contributions due by the employer, administration costs and peer support for the person who needs assistance.

Deinstitutionalisation is a political and a social process, which provides for the shift from institutional care and other isolating and segregating settings to independent living. Effective deinstitutionalisation occurs when a person placed in an institution is given the opportunity to become a full citizen and to take control of his/her life (if necessary, with support). Essential to the process of deinstitutionalisation is the provision of affordable and accessible housing in the community, access to public services, personal assistance, and peer support. Deinstitutionalisation is also about preventing institutionalisation in the future; ensuring that children are able to grow up with their families and alongside neighbours and friends in the community, instead of being segregated in institutional care.

Community-based services: The development of community-based services requires both a political and a social approach, and consists of policy measures for making all public services, such as housing, education, transportation, health care and other services and support, available and accessible to disabled people in mainstream settings. Disabled people must be able to access mainstream services and opportunities and live as equal citizens. Community-based services should be in place to eliminate the need for special and segregated services, such as residential institutions, special schools, long-term hospitals for health care, the need for special transport because mainstream transport is inaccessible and so on. In many cases, group homes do not support independent living (see Annex 2 below). Where they are provided, they must form part of a range of community-based services that offer genuine, adequately funded independent living options.

Annex C

List of organisations which took part in the EU Funds for Our Rights regional events

Country	Organisation(s)
Belgium	EVA asbl
Bulgaria	Center for Independent Living Sofia
Croatia	Kuca ljudskih prava (Human Rights House)
Czech Republic	Quip: Quality in Practice
Estonia	Challenge Your Senses
Germany	Verein zur sozialen und beruflichen Integration e.V.
Greece	i-living
Hungary	Hungarian Civil Liberties Union (TASZ)
Latvia	ZELDA
Lithuania	Lithuanian National Federation of Users of Psychiatry, Vilnius University, Lithuanian Disability Forum, Mental Health Perspectives, National Network on Poverty Reduction, Viltis, SOS Children's Villages, Women's Information Centre, Giedra, Children's Confederation
Malta	Federation of Organisations of Persons with Disability
Netherlands	Coalition for Inclusion
Portugal	Centro de Vida Independente (Centre for Independent Living)
Romania	Consiliul de Monitorizare, Mental Disability Advocacy Centre, Concordia, Pro Act Support, World Vision, In Dialog, Centre for Legal Resources, European Network of Ex/Users and Survivors of Psychiatry
Slovakia	SOCIA Foundation
Slovenia	YHD – Drustvo za teorijo in kulturo hendikepa (Association for Theory and Culture of Handicap)
Spain	FICE - International Federation of Educative Communities
United Kingdom	University of Leeds
EU level	Autism Europe, European Association of Service Providers for Persons with Disabilities (EASPD), Inclusion Europe, Human Rights Watch, European Disability Forum (EDF), Eurochild, Lumos/Community Living for Europe: Structural Funds Watch, SOS Children's Villages International

Annex D

Model letter on partnership

Dear [Managing Authority],

I am writing on behalf of [Name of the organisation], in order to express **our concerns about the involvement of civil society organisations (CSOs) in the process of the European Structural and Investment Funds (ESI Funds) programming and implementation**. We wish to remind you that there is a requirement to work in close cooperation with a range of partners during the entire ESI Funds programming cycle, and call on you to take the necessary steps to work together with CSOs in the implementation and monitoring of the current programming period, and the preparation of the next one.

As you are aware, the European Code of Conduct on Partnership¹³² was adopted on 7th January 2014. The objective of the Code of Conduct is to facilitate the involvement of partners, including CSOs, in the preparation of the Partnership Agreements and programmes supported by ESI Funds.

In the preamble, the Code of Conduct explains how ‘partnership’ should be interpreted and that it applies to all stages of ESI Funds use:

 ‘Working in partnership is a long-established principle in the implementation of the ESI Funds. **Partnership implies close cooperation between public authorities, economic and social partners and bodies representing civil society at national, regional and local levels throughout the whole programme cycle consisting of preparation, implementation, monitoring and evaluation.**’

The Code of Conduct goes on to state that ‘partners should include **public authorities, economic and social partners and bodies representing civil society**, including environmental partners, community-based and voluntary organisations, which can significantly influence or be significantly affected by implementation of the Partnership Agreement and programmes’. It instructs the Managing Authorities on how to select partners:

 “The partners selected should be the **most representative of the relevant stakeholders**. Selection procedures should be transparent and take into account the different institutional and legal frameworks of the Member States and their national and regional competences.

Importantly, the Code of Conduct requires that ‘specific attention [...] be paid to including **groups who may be affected by programmes but who find it difficult to influence them**, in particular the most vulnerable and marginalised communities, which are at highest risk of discrimination or social exclusion, **in particular persons with disabilities**, migrants and Roma people.’

In order to facilitate partners’ involvement in all the stages of ESI Funds use, including the preparation of Partnership Agreements, the Code of Conduct requires that Member States ‘establish the main principles and good practices concerning **timely, meaningful and transparent consultation of the partners on the**

¹³² European Commission’s Delegated Regulation (EU) No 240/2014 on the European code of conduct on partnership in the framework of the European Structural and Investment Funds. Available at: http://eur-lex.europa.eu/legal-content/EN/TX-T/?uri=uriserv:OJ.L_.2014.074.01.0001.01.ENG

analysis of challenges and needs to be tackled, the selection of objectives and priorities to address them, and the coordination structures and multi-level governance agreements necessary for effective policy delivery”.

We are aware that some CSOs are part of the Monitoring Committees (MCs) and otherwise consulted, but are concerned that many organisations advocating for the rights of persons with disabilities – including our organisation - are left out.

Therefore, we would like to ask you to:

- Ensure that organisations advocating for the rights of persons with disabilities, especially those that include or represent the most marginalised groups (such as persons with intellectual disabilities, persons with mental health problems or persons with disabilities in institutional care) are included in the current ESI Funds programming cycle and the preparation of the Partnership Agreement for 2021 – 2028;
- Involve organisations with expertise on the transition from institutional care to community-based services and independent living in the preparation of the relevant calls for proposals, and the work of the relevant MCs;
- Facilitate participation of CSOs in all the stages of ESI Funds use by using technical assistance for their training, staff costs (to enable them to monitor the use of ESI Funds and to participate in MC meetings), the publication of accessible materials – to ensure they are on a level playing field with other stakeholders;
- Consider how to improve the implementation of the Code of Conduct on Partnership in the current and next programming period, by consulting with a range of partners that should be involved in the use of ESI Funds.

As advocates for the rights of persons with disabilities, with expertise in transition from institutional care to community-based services, we believe that we can contribute to ensuring ESI Funds support the social inclusion of persons with disabilities.

We would like to have a meeting, as soon as is feasible, to go over our proposals, and to discuss additional actions that could be taken to improve the implementation of the partnership principle. You may contact us at: [Contact information]

Thank you for your consideration.

Yours sincerely,

Annex E

Model letter on the complaints system

Dear [Managing Authority],

I am writing on behalf of [Name of the organisation], in order to **express our concerns in relation to the current complaints system in the framework of the European Structural and Investment Funds (ESI Funds)**. Specifically, we are concerned about the lack of information on how to file a complaint when ESI Funds are being used to support projects that maintain the social exclusion and segregation of persons with disabilities.

Although the European Union (EU) and most Member States (with the exception of Ireland) ratified the UN Convention on the Rights of Persons with Disabilities (CRPD), **in the past, ESI Funds were invested in systems of institutional care that segregated persons with disabilities, infringed their rights and excluded them from community life**. Ensuring that ESI Funds promote the vision of community living is therefore central to the work of the EU and the Member States in meeting their commitment to respecting the rights of persons with disabilities.

As set out in the ESI Funds Regulations, the European Social Fund (ESF) ‘must aim to combat all forms of discrimination and to improve accessibility for persons with disabilities...and facilitating the transition from institutional to community-based care’. The European Regional Development Fund (ERDF) ‘should as a basic principle not be used for building new residential institutions or the renovation and modernisation of existing ones’. The European Commission has stated that it would suspend or withdraw payments in the event of this principle being breached.

Member States are also required to fulfil a number of *ex ante* conditionalities, in order to improve the efficiency and effectiveness of investment and to ensure that the necessary framework conditions for the efficient use of EU support are in place.

To ensure compliance with the ESI Funds Regulations, the EU Charter of Fundamental Rights and the CRPD, **each Member State must put in place an adequate ‘management, monitoring and control system’**. This was highlighted in the *Guidance on ensuring the respect of the Charter of Fundamental Rights of the European Union in the implementation of ESI Funds*¹³³, issued by the European Commission in 2016.

Moreover, in her inquiry on the use of ESI Funds, the European Ombudsman pointed to the need to ensure that:



‘[...] the management and control systems [in the Member States], including complaint-handling arrangements, are adequate and efficient, that they remain so for as long as programmes are implemented and that weaknesses are duly corrected.’

Member States are not only required to have an effective complaints system in place, but to ‘inform the Commission of the results of all complaints concerning ESI Funds, whether they were initially submitted to the Commission or not.’

¹³³ Guidance on ensuring the respect for the Charter of Fundamental Rights of the European Union when implementing the European Structural and Investment Funds. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2016.269.01.0001.01.ENG&toc=OJ:C:2016:269:TOC

Despite our efforts, we have not been able to find any information about the complaints system in [name of the Member State]. We therefore ask you to:

- Provide us with information about the arrangements that are in place for making complaints about the use of ESI Funds, where there are concerns that they have been used in violation of the EU Charter of Fundamental Rights and other EU laws and policies, including the UN Convention on the Rights of Persons with Disabilities. Specifically, we would like to know:
 - The name of the body/institution examining complaints, and their contact details;
 - What format should the complaint be in;
 - What are the deadlines for making a complaint, and when can we expect it to be dealt with;
 - What can we do if we are not happy with the outcome of the complaint;
 - Where can we find accessible information about the complaint handling system;
 - Where can we find information about the complaints that have been made until now and their outcome.

Thank you for sending us this information, which we believe should be easily available from all the Managing Authorities (online, in language that is easy to understand). We would also welcome the opportunity to meet with you, to discuss how to improve the current complaints system, in order to make it more accessible to all citizens.

Thank you for your consideration.

Yours sincerely,

About the European Network on Independent Living

The European Network on Independent Living (ENIL) is a Europe-wide network of people with disabilities. It represents a forum intended for all disabled people, Independent Living organisations and their non-disabled allies on the issues of independent living. ENIL's mission is to advocate and lobby for Independent Living values, principles and practices, namely for a barrier-free environment, deinstitutionalisation, provision of personal assistance support and adequate technical aids, together making full citizenship of disabled people possible.

ENIL has Participatory Status with the Council of Europe, a Consultative Status with ECOSOC and is represented on the Advisory Panel to the EU Fundamental Rights Agency's Fundamental Rights Platform.

About the EU Funds for Our Rights Campaign

On 8 November 2016, ENIL launched a campaign on the use of European Structural and Investment Funds ('Structural Funds') in the European Union (EU) Member States. The aim of the EU Funds for Our Rights Campaign is to encourage the European Commission and the Member States to improve the monitoring and complaints system, in order to ensure that Structural Funds are used to support the rights of people with disabilities, rather than restrict them. Specifically, the EU Funds for Our Rights Campaign is focusing on the role of Structural Funds in supporting the right to live independently and being included in the community, set out in Article 19 of the UN Convention on the Rights of Persons with Disabilities (CRPD). The campaign is supported by the Open Society Foundations – Mental Health Initiative.

Follow the Campaign on [Facebook](#)

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