



# European Commission's proposal for the EU Funds regulations 2021 - 2027

Position of the European Network on Independent Living (ENIL),  
September 2018

## 1. Introduction

On 29 and 30 May, the European Commission published its proposals for the European Social Fund+ (ESF+), and the European Regional Development Fund (ERDF) and the Cohesion Fund, for the new programming period 2021 - 2027<sup>1</sup>. The two legislative proposals, as well as the Common Provisions Regulation, will be negotiated with the European Parliament and the European Council, before they are adopted and become law.

The European Network on Independent Living (ENIL) has been closely following the use of European Union funds - in particular ESF and ERDF - for years, in relation to projects affecting persons with disabilities. ENIL acknowledges that, when used properly, EU funds can contribute significantly to disabled people's access to the right to live independently and to be included in the community, and to other rights set out in the UN Convention on the Rights of Persons with Disabilities (CRPD). Although 'transition from institutional to community-based care' is included in the current ESI Funds regulations (2014 - 2020), there is much room for improvement when it comes to investments that aim to facilitate deinstitutionalisation and access to independent living<sup>2</sup>.

ENIL has made a number of recommendations in relation to the previous and the current ESI Funds programming period, which can be found in several reports<sup>3</sup>. In particular, ENIL has made specific recommendations on how to improve the monitoring and complaints system, to ensure that ESI Funds are not used for investments that perpetuate social

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<sup>1</sup> See: [https://ec.europa.eu/commission/future-europe/eu-budget-future\\_en](https://ec.europa.eu/commission/future-europe/eu-budget-future_en)

<sup>2</sup> General comment No. 5 sets out the obligations of State Parties to the CRPD (ie all Member States and the European Union) with regard to the right to live independently and to be included in the community. Available from: [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/5&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/5&Lang=en)

<sup>3</sup> See, for example, ENIL (2018) *Briefing on the Use of EU Funds for Independent Living*, available from: [http://enil.eu/wp-content/uploads/2018/04/EU-Funds-Briefing\\_web0903.pdf](http://enil.eu/wp-content/uploads/2018/04/EU-Funds-Briefing_web0903.pdf)

exclusion and segregation of disabled people in the Member States under the guise of 'deinstitutionalisation'<sup>4</sup>.

To reach the objective of “a more social Europe” and to implement the European Pillar for Social Rights<sup>5</sup>, the European Parliament and the European Council must ensure that lessons learnt from the previous and the current programming period are taken into account in the new regulations. This would allow the EU to maximise the potential of EU funds with regard to the rights of persons with disabilities and other marginalised groups.

## 2. Common Provisions Regulation

### 2.1. General comments

- **Fundamental rights:** Commitment to the Fundamental Rights Charter and the rule of law are only useful when accompanied by a proper monitoring and complaints system. In order to enable the monitoring of these requirements, an independent monitoring system must be put in place in the Member States, going beyond the work of the Monitoring Committees. Technical assistance should be used to develop the capacity of the national human rights institutions (NHRIs) and civil society, to be able to monitor the use of EU funds.

It is positive that in recital 5, the CPR refers to the need “to respect the obligations of the UN Convention on the Rights of Persons with Disabilities”. General comments, published by the Committee on the Rights of Persons with Disabilities in respect of Articles 12 (legal capacity), 9 (accessibility), 6 (women and girls with disabilities), 24 (inclusive education), 19 (independent living) and 5 (equality and non-discrimination), should be used by the European Commission and the Member States during the programming, implementation, monitoring and evaluation of EU funds.

- **Simplification:** The ultimate goal of simplification should be better use of EU funds, more specifically their contribution towards enjoyment of fundamental rights and social inclusion. The fact that the proposed regulations allow for more flexibility is positive, as this is often needed with regard to developing services for persons with disabilities, especially during the process of deinstitutionalisation. It is important that projects are able to respond to the changing needs of the final beneficiaries.

While fewer controls and less administrative burden are also welcome innovations, this should not mean that there will be less oversight of how EU funds are used. On the contrary, a robust system is needed in the Member States to prevent investment

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<sup>4</sup> ENIL (2017), *EU Structural and Investment Funds and the Transition from Institutional Care to Community Living, Towards a More Effective Monitoring and Complaints System*, available from: [http://enil.eu/wp-content/uploads/2017/07/OurRightsCampaign-Briefing\\_FINAL.pdf](http://enil.eu/wp-content/uploads/2017/07/OurRightsCampaign-Briefing_FINAL.pdf)

<sup>5</sup> Among the 20 principles, those on equal opportunities, childcare and support to children, inclusion of people with disabilities, long-term care, housing and assistance for the homeless and access to essential services are of particular relevance for independent living of disabled people.

in the projects that do not comply with the national and EU law and policies on fundamental rights and social inclusion.

- **Availability of data:** Any indicators used for data collection must show to what extent projects are successful in implementing the Social Pillar principles (such as those on equal opportunities, inclusion of persons with disabilities and long-term care), i.e. their impact on the final beneficiaries. When it comes to projects that claim to promote the ‘transition from institutional to community-based care’, the data collected should demonstrate the extent to which persons with disabilities are able to live independently, included in the community (in line with Article 19 CRPD).
- **Monitoring and evaluation:** Given the frequency of the Monitoring Committee meetings, annual programme reviews and evaluations, the proposed system is still not sufficient to ensure effective use of ESI Funds. For this reason, strengthening the partnership principle and other provisions in the regulations, such as the use of technical assistance, are of key importance. It is positive that Monitoring Committees will be given a more prominent role and that the documents submitted to the Committee will be publicly available. It is also positive that the annual performance review will be used for policy dialogue, and that evaluations will be linked to EU policy.
- **Technical assistance:** Technical assistance must be used to build the capacity of civil society organisations and other independent human rights institutions to monitor ESI Funds during all stages, and to participate in projects supported by ESI Funds. Lessons learnt during the current programming period<sup>6</sup> should be taken into account, in order to improve partnership and promote co-production.
- **Enabling conditions:** The framework for monitoring the horizontal and thematic “enabling conditions” should be sufficient to establish compliance with the relevant laws, policies and strategies, and measures should be taken if the Member States fail to comply. Moreover, the European Commission should involve social partners and civil society organisations in this process, in line with the partnership principle.

## 2.2. Specific amendments

EC proposal	ENIL’s suggestion (in red)	Explanation
<p><i>Recital (5)</i> Member States should also respect the obligations of the UN Convention on the Rights of Persons with Disabilities and ensure accessibility in line with its article 9 and in accordance</p>	<p>Add:</p> <p><i>Article XX</i> <b>Promotion of equality between men and women and non-discrimination</b> <b>The Member States and the Commission shall ensure</b></p>	<p>We suggest adding a separate article, as is the case in the 2014-2020 Common Provisions Regulation, to strengthen the non-discrimination and accessibility requirement for the use of ESI Funds.</p>

<sup>6</sup> See the report of the Thematic Network on Partnership [here](#).

<p>with the Union law harmonising accessibility requirements for products and services. Member States and the Commission should aim at eliminating inequalities and at promoting equality ...</p>	<p>that equality between men and women and the integration of gender perspective are taken into account and promoted throughout the preparation and implementation of programmes, including in relation to monitoring, reporting and evaluation.</p> <p>The Member States and the Commission shall take appropriate steps to prevent any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation during the preparation and implementation of programmes. In particular, accessibility for persons with disabilities shall be taken into account throughout the preparation and implementation of programmes.</p>	
<p><i>Article 32</i> In addition to Article 31, the Member State may propose to undertake additional technical assistance actions to reinforce the capacity of Member State authorities, beneficiaries and relevant partners necessary for the effective administration and use of the Funds.</p>	<p>In addition to Article 31, the Member State may propose to undertake additional technical assistance actions to reinforce the capacity of Member State authorities, beneficiaries and relevant partners necessary for the effective administration, <b>monitoring</b> and use of the Funds.</p>	<p>It is important that technical assistance is used to reinforce independent monitoring of the use of Fund by the civil society organisations and the national human rights institutions (NHRIs).</p>

### 2.2.1. Annex III - Horizontal enabling conditions

<p>Effective application and implementation of the EU Charter of Fundamental Rights</p>	<p>1. Arrangements to ensure verification of compliance of operations supported by the Funds with the Charter of Fundamental Rights, <b>including independent monitoring of compliance by the national human rights institutions and civil society</b></p>	<p>This is necessary to prevent influence by the Managing Authority of the monitoring process, given the conflict of interest that arises from being responsible both for implementation and monitoring of the Funds.</p>
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	<b>organisations.</b>	
Implementation and application of the United Nations Convention on the rights of persons with disabilities (UNCRPD) in accordance with Council Decision 2010/48/EC	Add: <b>3. Definitions of the relevant terms, to prevent the use of Funds for actions that contribute to any form of segregation.</b>	Based on the lessons learnt from the current financing period, there is a need to set out the key definitions, such as 'residential care', 'institution', 'community-based care', in line with the UNCRPD and more specifically, its General Comment No. 5.

## 2.2.2. Annex IV - Thematic enabling conditions

<b>EC proposal</b>	<b>ENIL's suggestion (in red)</b>	<b>Explanation</b>
National strategic policy framework for social inclusion and poverty reduction	3. Measures for the shift from <b>residential/institutional care to community-based services.</b>	This amendment is necessary for consistency with ESF+ proposal, and to ensure that Funds are used to move away from both residential and institutional care, to community-based services and support.
Strategic policy framework for health	Add: <b>4. Measures for the shift from residential/institutional care to community-based services.</b>	This is required to ensure that any investment in health infrastructure is in accordance with EU laws and policies on fundamental rights and social inclusion, including the UNCRPD.

## 2.2.3. Annex X - Key requirements of management and control systems

<b>ENIL's suggestion (in red)</b>	<b>Explanation</b>
Add: <b>Effective systems to ensure the organisation and implementation of partnership principle.</b>	For the Managing Authority to comply with the proposed Article 6, on partnership and multi-level governance, and the Commission Delegated Regulation (EU) No 240/2014, it is important to add this to prerequisites for the use of Funds. Once added, this requirement should be added to the definition of what constitutes a 'serious deficiency'.

### 3. European Social Fund +

EC proposal	ENIL's suggestion (in red)	Explanation
<p><i>Recital 32</i>            ESF+ lays down provisions intended to achieve freedom of movement for workers on a non-discriminatory basis by ensuring the close cooperation of the central employment services of Member States with one another and with the Commission. The European network of employment services should promote a better functioning of the labour markets by facilitating the cross-border mobility of workers and a greater transparency of information on the labour markets. The ESF+ scope also includes developing and supporting targeted mobility schemes with a view to filling vacancies where labour market shortcomings have been identified.</p>	<p>ESF+ lays down provisions intended to achieve freedom of movement for workers on a non-discriminatory basis by ensuring the close cooperation of the central employment services of Member States with one another and with the Commission. The European network of employment services should promote a better functioning of the labour markets by facilitating the cross-border mobility of <b>all</b> workers and a greater transparency of information on the labour markets. The ESF+ scope also includes developing and supporting targeted mobility schemes with a view to filling vacancies where labour market shortcomings have been identified <b>and facilitating the freedom of movement of persons with disabilities.</b></p>	<p>Persons with disabilities in the EU are still not able to enjoy their rights as EU citizens, because of the various barriers to freedom of movement. These include the inability to transfer support packages and/or to access social protection, such as personal assistance, in other Member States. It is important that ESF+ is used to promote and expand the current promising practices like the EU Disability Card, to enable the freedom of movement of all citizens. Similarly, actions that facilitate employment of persons with disabilities across the EU should be supported.</p>
<p><i>Article 2 - Definitions</i></p>	<p>Add:</p> <p><b>Community-based services: spectrum of services that enable individuals to live in the community and, in the case of children, to grow up in a family environment as opposed to an institution.</b></p> <p><b>People with fewer opportunities: people facing barriers that hinder them from fully participating in society. This could be for</b></p>	<p>Adding these definitions would help ensure more accurate interpretation of the regulations by the Member States. The definition of community-based services, taken from the Common European Guidelines on the Transition from Institutional to Community-based Care, is needed to prevent investment of Funds into services that perpetuate the social exclusion of children, persons with disabilities and</p>

	<p>economic, social, cultural, geographical or health reasons, a migrant background or for reasons such as educational difficulties and disability, including long-term physical, mental, intellectual or sensory impairments.</p>	<p>other groups.</p>
<p><i>Article 7(3)</i> Member States shall allocate at least 25% of their ESF+ resources under shared management to the specific objectives for the social inclusion policy area set out in points (vii) to (xi) of Article 4(1), including the promotion of the socio-economic integration of third country nationals.</p>	<p>Member States shall allocate at least 30% of their ESF+ resources under shared management to the specific objectives for the social inclusion policy area set out in points (vii) to (xi) of Article 4(1), including the promotion of the socio-economic integration of third country nationals.</p>	<p>It is important to ensure that there is an adequate amount of funds for social inclusion, as many Member States exceeded the allocation of 20% in the current programming period. This, in turn, will strengthen the contribution of Funds to social inclusion of different groups.</p>
<p><i>Article 8(1)</i> Each Member State shall ensure adequate participation of social partners and civil society organisations in the delivery of employment, education and social inclusion policies supported by the ESF+ strand under shared management.</p>	<p>Each Member State shall ensure adequate participation of social partners and civil society organisations in the preparation, delivery and monitoring of employment, education and social inclusion policies supported by the ESF+ strand under shared management. The European Commission and the Managing Authorities shall ensure there is an active dialogue with social partners and civil society organisations, supported by an effective monitoring system.</p>	<p>There is a need for a stronger provision on partnership in Article 8, as consultations and active involvement of civil society organisations are crucial for the success of EU funded projects. Regular monitoring of the partnership principle should also be stipulated.</p> <p>While we welcomed the adoption of European Code of Conduct on Partnership in 2014, evidence shows that it was not sufficiently implemented in practice. Civil society organisations were largely excluded from the programming, implementation and monitoring of EU funds in numerous Member States.</p>

<p><i>Article 20 (3)</i> The following costs shall not be eligible: (a) interest on debt; (b) provision of infrastructure; (c) costs of second-hand goods.</p>	<p>Add: The following costs shall not be eligible: (a) interest on debt; (b) provision of infrastructure; (c) costs of second-hand goods; <b>(d) actions that contribute to any form of segregation.</b></p>	<p>It is important to specify that ESF+ should not be used for actions that perpetuate the segregation of persons with disabilities, or other marginalised groups. For example, it should not be used to fund the costs of staff in institutional care. In the current programming period, such investments have been made under the pretext of supporting independent living of persons with disabilities. ESF+ should be used in line with the UNCRPD and more specifically, its General Comment No.5.</p>
<p><i>Article 22</i> Audit of operations may cover all stages of its implementation and all levels of the distribution chain, with the sole exception of control of the end recipients, unless a risk assessment establishes a specific risk of irregularity or fraud.</p>	<p>Audit of operations may cover all stages of its implementation and all levels of the distribution chain, with the sole exception of control of the end recipients, unless a risk assessment establishes a specific risk of irregularity or fraud. <b>Audit of operations shall cover alignment of policy and funding.</b></p>	<p>It is important that, besides fraud and irregularity, audit checks for the alignment of policy and funding.</p> <p>In the previous and current financing period, audits have focused on the quantitative criteria, while the qualitative ones have been neglected. Furthermore, we are concerned that, without efficient monitoring and audits, it is impossible to prevent investment into projects that perpetuate social exclusion and segregation.</p>

## 4. European Regional Development Fund and the Cohesion Fund

EC proposal	ENIL's suggestion (in red)	Explanation
<p><i>Article 2(d)</i>            (iii) increasing the socioeconomic integration of marginalised communities, migrants and disadvantaged groups, through integrated measures including housing and social services;            (iv) ensuring equal access to health care through developing infrastructure, including primary care;”</p>	<p>(iii) increasing the socioeconomic integration of marginalised communities, migrants and disadvantaged groups, through integrated measures including housing and social services;            (iv) ensuring equal access to health care through developing infrastructure, including primary care;”  <b>(v) ensuring that investments into infrastructure do not contribute to any form of segregation.</b></p>	<p>It is important to ensure that the development of infrastructure does not encourage construction of new residential institutions for persons with disabilities, or any other form of segregation (including special schools or segregated housing for the Roma, for example). This needs to be stated clearly in the regulation, to ensure compliance with the Fundamental Rights Charter and the UNCRPD.</p>
<p><i>Article 6 (2)</i>            In addition, the Cohesion Fund shall not support investment in housing unless related to the promotion of energy efficiency or renewable energy use.</p>	<p>In addition, the Cohesion Fund shall not support investment in housing unless related to the promotion of energy efficiency or renewable energy use, <b>and in compliance with the applicable law.</b></p>	<p>Based on the previous and the current financing period, we are concerned that Member States will continue investing into segregated infrastructure (such as residential institutions for persons with disabilities), under the excuse of improving energy efficiency. It needs to be clear that any investment into infrastructure must comply with the applicable law, including the Fundamental Rights Charter and the UNCRPD.</p>

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