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Chair of the Petitions Committee
European Parliament
B-1047 Brussels

Petition to the European Parliament concerning the use of the European Structural and Investment Funds to support deinstitutionalisation of people with disabilities in Bulgaria

1. Introduction

This petition is submitted by the Centre for Independent Living (CIL) – a Bulgarian non-profit organisation of disabled people. It is supported by the Bulgarian Helsinki Committee, the European Network on Independent Living (ENIL) and the Validity Foundation.

The petition concerns the planned use of the European Structural and Investment Funds (ESIFs) for building group homes for people with disabilities and older people, as part of the Bulgarian Government's efforts to deinstitutionalise the long-term care system. Between 2007 and 2013, Bulgaria has built 140 group homes for 1,845 children and plans to continue with the construction of such facilities for adults with disabilities and older people in the current ESIF programming period (2014 – 2020).

According to the General Comment on Article 19 of the UN Convention on the Rights of Persons with Disabilities (the right to live independently and to be included in the community)¹, group homes perpetuate disabled people's exclusion from society and violate their right to live in the community. Such segregated treatment and facilities are also considered to be a *prima facie* form of discrimination – prohibited under the EU and international law².

¹ Committee on the Rights of Persons with Disabilities (2017) General comment No. 5 (2017) on living independently and being included in the community. Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/5&Lang=en.

² Quinn, G. et al. (2018) Segregation and Segregated Facilities as a *prima facie* form of discrimination. The Impermissibility of using the ESIF to invest monies in long term care residential institutions for persons with

2. Policy and legal framework: the right of people with disabilities to live in community and the European Structural and Investment Funds

The right of people with disabilities to live independently and be included in the community is set out in Article 19 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD), ratified by both Bulgaria and the European Union. It is also guaranteed under the Article 26 (Integration of people with disabilities) of the Charter of Fundamental Rights of the European Union.

In line with its obligations, the EU has committed to promote deinstitutionalisation and participation of people with disabilities in the community, including through its Cohesion Policy. Thus, in the European Disability Strategy 2010-2020, the European Commission undertakes to promote the ‘transition from institutional to community-based care by: using Structural Funds and the Rural Development Fund to support the development of community-based services and raising awareness of the situation of people with disabilities living in residential institutions’. In addition, significant and positive reforms were made in the provisions governing the use of ESIFs for the period 2014-2020. For example, an ex-ante conditionality was introduced, requiring the states to have in place ‘measures for the shift from institutional to community based care’, where such needs are identified. The ‘transition from institutional to community based services’ has also been included as one of the investment priorities of the ERDF³.

Despite these positive developments, concerns about the use of ESIFs have been raised by the Council of Europe’s Human Rights Commissioner⁴ and the Committee on the Rights of Persons with Disabilities (the CRPD Committee). In its concluding observations on the EU’s progress in implementing the CRPD, the Committee noted that EU funds continue to be used ‘for maintenance of residential institutions rather than for development of support services for persons with disabilities in local communities’⁵. It recommended that the EU ‘develop an approach to guide and foster deinstitutionalization and to strengthen the monitoring of the use of the European Structural and Investment Funds, so as to ensure that they are used strictly for the development of support services for persons with disabilities in local communities and not for the redevelopment or expansion of institutions’⁶.

The European Ombudsman, in her own-initiative inquiry, has also expressed concerns about the compliance of EU Cohesion Policy with the Charter of Fundamental Rights of the European Union (the Charter). She noted that the EU ‘should not allow itself to finance, with EU money, actions that are not in line with the highest values of the Union, that is to say, the

disabilities. Legal memo. Available at: www.enil.eu/wp-content/uploads/2018/03/ESIF-Legal-Memo-final-edit.docx.

³Regulation (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. Article 5(9)(a)

⁴ ENIL (2016) *European Structural and Investment Funds and People with Disabilities in the EU*, Study for the PETI Committee. Brussels: European Union. Available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571386/IPOL_STU\(2016\)571386_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571386/IPOL_STU(2016)571386_EN.pdf).

⁵ Committee on the Rights of Persons with Disabilities (2015) Concluding observations on the initial report of the European Union CRPD/C/EU/CO/1. Available at:

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FEU%2FCO%2F1, para 50.

⁶ CRPD Committee (n. 5), para 51.

rights, freedoms and principles recognised by the Charter’.⁷

3. Group homes and the right to live in community

The term ‘group homes’ is used here to refer to the combined provision of housing and support in one package, most commonly in purpose built facilities accommodating 10 – 15 individuals.

In its General Comment on Article 19, the CRPD Committee concludes that “‘package solutions” which, among other things, link the availability of one particular service to another, expect two or more persons to live together or can only be provided within special living arrangements are not in line with article 19’⁸. The Committee also notes that both ‘independent living and being included in the community refer to life settings outside residential institutions of all kinds’⁹. It underlines that small group homes (with 5-8 people) cannot be called independent living arrangements ‘if they have other defining elements of institutions or institutionalisation’, such as, ‘obligatory sharing of assistants with others and no or limited influence over whom one has to accept assistance from; isolation and segregation from independent life within the community; lack of control over day-to-day decisions; lack of choice over whom to live with; rigidity of routine irrespective of personal will and preferences; identical activities in the same place for a group of persons under a certain authority; a paternalistic approach in service provision; supervision of living arrangements’.

The Council of Europe Commissioner on Human Rights has also criticised small group homes on a number of grounds. He pointed out that group homes: (1) hinder genuine inclusion because, similar to the traditional large-scale institutions, they *group disabled people based on their impairment* and thus set them apart from the rest of the community¹⁰; (2) even when small in size, increase the risk of *exploitation, violence and abuse* because they operate as a closed system, usually far from the public eye and people living there are often vulnerable and dependent and therefore unwilling or unable to report such cases; (3) have a tendency to draw services to the setting, rather than ensuring the use of mainstream services, which maintains the existence of a parallel to the mainstream system of services and perpetuates disabled people’s segregation and isolation from the community. In general, the Commissioner has questioned the introduction of small group homes as ‘*the alternative*’ to institutional care – something that is currently happening in Bulgaria – and has called for actions to ‘prevent group homes from becoming the default solution that presumes to embody the principles of the right to live in the community’.

The European Commission has also publicly expressed concerns about the building of ‘care villages’ (i.e. a collection of small group homes) in Estonia. In addition, as a result of EC’s intervention, a call for proposals in the Czech Republic, which could have led to the building of new, albeit small institutions, has been revised. It is worth noting, however, that the EC

⁷ European Ombudsman (2015) *Decision of the European Ombudsman closing her own-initiative inquiry Ol/8/2014/AN concerning the European Commission*. Available at:

<https://www.ombudsman.europa.eu/en/cases/decision.faces/en/59836/html.bookmark> Para 46.

⁸ Para 17.

⁹ Para 16 (c).

¹⁰ Council of Europe Commissioner for Human Rights (2012) *The right of people with disabilities to live independently and be included in the community*. Strasbourg: Council of Europe. Available at: <https://rm.coe.int/the-right-of-people-with-disabilities-to-live-independently-and-be-inc/16806da8a9>

does not have a consistent approach to this issue.

4. The national context

Bulgaria, supported financially by the EU, has been working to close down its large-scale residential institutions since 2010. In the 2007-2014 programming period, the focus was exclusively on deinstitutionalisation of children, for which more than 170 million EUR from three EU funds were used (ESF, ERDF and the European Agricultural Fund for Rural Development)¹¹. In the current programming period, the process of deinstitutionalisation has been continued and expanded to include institutions for older people and people with disabilities. This is a welcome development, as support for these groups is still predominantly provided in traditional institutions – at the end of 2016, approximately 96% of all people placed in large-scale institutions (10,401 people) were adults with disabilities and older people. However, the approach adopted – prioritising the establishment of group homes rather than the provision of support in the home of the person – can be a hindrance to the realisation of the right of people with disabilities to live independently and can prolong their segregation and exclusion.

4.1. Prioritisation of group homes in the process of deinstitutionalisation

The measures for deinstitutionalisation of services for adults and older people are set out in the Action Plan 2018-2021 to the National Strategy for Long-term Care. The Strategy was adopted in 2014 as part of Bulgaria's efforts to fulfil the ex-ante conditionality concerning the shift from institutional to community-based care. The Action plan to the Strategy, however, was only adopted at the beginning of 2018.

According to the Plan, 10 institutions for adults and older people should be closed by 2021 and services in the community should be developed to support the people leaving institutions. This process will be co-financed by two EU funds and the national budget. The ERDF will fund the development of the infrastructure for the new services, and ESF – the closure of institutions (for example, the individual assessments and the development of individual plans for the residents) and the provision of services for one year. The services that will be developed to support the closure of the institutions include 68 care centres – a type of group home where housing and support is provided in one package.

In line with the Action plan, in March 2018 the Bulgarian government published a call for proposals for the procedure 'Support for deinstitutionalization of social services for older people and people with disabilities' (BG16RFOP001-5.002). The procedure aims to facilitate the process of deinstitutionalisation by securing 'suitable infrastructure, supporting the provision of new quality services for people with disabilities and older people'¹². It is co-financed by the ERDF, through the Operational Programme 'Regions in Growth', with 17 981 053,14 EUR, which represents 85% of the total funding. This funding will be used for the building, renovation, furnishing and equipment of 6 day-care centres and 68 care centres for older people and people with disabilities, including people with mental health problems, intellectual disabilities and people with dementia. The deadline for the implementation of the

¹¹ Council of Ministers (2016) Updated Action Plan for the Implementation of the National Strategy 'Vision for Deinstitutionalisation of Children in Republic of Bulgaria.

¹² Ministry of Regional Development and Public Works (2018) *Nasoki za kandidatstvane* [Guidelines for Applicants, procedure BG16RFOP001-5.002 'Support for deinstitutionalization of social services for older people and people with disabilities'].

infrastructural projects is 2 years after their start.

Overall, the first steps towards de-institutionalisation of services for adults with disabilities and older people are dominated by a narrow focus on building small group homes as alternatives to large institutions. The rationale for that, expressed in the Action plan, is that most people living in institutions do not have families to look after them and therefore need residential care. While it may be true that many people in institutions do not have family support, it is important to stress that they do have different support needs and preferences and one solution will not be suitable for all. There are other ways to organise the provision of housing and support, allowing for more choice and control of people with disabilities and older people and genuine inclusion and participation in the community, in line with the CRPD and the Charter. For example, the Common European Guidelines on the Transition from Institutional to Community-based Care¹³ stress that it is important to ensure that the provision of housing and support is separated, that housing is dispersed in the community and that it is of the type and size the majority of the population lives in. The General Comment on Article 19 CRPD highlights the importance of individualised support, including personal assistance, which should be made available to all people with disabilities, regardless of their impairment.

The argument that group homes are a transitional measure, which will allow institutions to be closed in a shorter period of time is also not justified. Given the high level of investment into these residential settings, it is unlikely that resources will be available to develop the necessary community services, thus turning the transitional into a permanent measure. Furthermore, experiences from the United States have shown that using group homes as a transitional measure has proved to be unnecessary¹⁴.

4.2. Bulgaria's experience with deinstitutionalisation of children – group homes perpetuate exclusion

De-institutionalisation of children's services in Bulgaria is often quoted as a good example of deinstitutionalisation, made possible by EU co-financing. While it is true that most institutions for children were closed, Bulgaria's experience has also shown that group homes – hundreds of which were built to accommodate children leaving institutions in the 2007-2014 programming period – do not necessarily mean inclusion.

A recent evaluation of deinstitutionalisation of services for children with disabilities¹⁵ has shown that the majority of the children with disabilities placed in group homes during this period continue to live in isolation, spending all of their time in the setting – a situation similar to the situation in traditional institutions. They have very limited opportunities for interaction with the local communities, including when it comes to education. The majority of the children either receive their education in the group home, in special outreach classes, or attend a special school and thus remain isolated from their non-disabled peers. There are

¹³ European Expert Group on the Transition from Institutional to Community-based Care (2012) Common European Guidelines on the Transition from Institutional to Community-based Care. Available at: <https://deinstitutionalisation.com/eeg-publications/>.

¹⁴ Eidelman, S. (2013) *Community for All – Making the Dream Real*. Available at: <https://www.centreforwelfarereform.org/uploads/attachment/390/institution-watch.pdf>

¹⁵ Lumos (2015) *Ending Institutionalisation: An Assessment of the Outcomes for Children and Young People in Bulgaria Who Moved from Institutions to the Community*. Available at: https://lumos.contentfiles.net/media/documents/document/2017/02/Bulgarian_Outcomes_Report_ENG.pdf.

also 17% of the children who are not included in the educational system at all. Reports have also shown that small residential services remain institutional in character, significantly limiting the residents' choice and control and violating their right to privacy – in some cases cameras have been installed in the children's bedrooms¹⁶. In addition, there have been numerous reports of violence against the children by members of staff¹⁷. Examples include children being hit by staff members, deprived of food, isolated or locked outside of the centre, and immobilised¹⁸. The increasing number of cases of violence and abuse was a reason for the National Child Protection Agency to plan inspections in all family-type placement centres. Last but not least, concerns were raised by the Ombudsman that some of the newly created small residential settings hinder the reintegration of children in their families¹⁹.

Overall, while it is positive that Bulgaria is taking steps to close down its residential institutions for adults with disabilities and older people, the approach adopted, which relies exclusively on building small group homes, is problematic. Although it may eventually lead to the closure of traditional institutions, it is unlikely to contribute to the inclusion of people with disabilities and older people in society, which should be the main goal of deinstitutionalisation. On the contrary, it can prolong their segregation and exclusion.

Instead of building small group homes, Bulgaria should invest into a range of alternatives that support people with disabilities to live and participate in the community, without limiting their choice. For example, EU funds can be used to purchase apartments in existing blocks of flats or houses and organise more flexible individualised support, allowing individuals to choose where and with whom to live. Furthermore, funds should be invested into improving access of people with disabilities coming out of institutions to education and employment, and to other mainstream services (such as health, transport, leisure, sports). This way, EU funds would genuinely facilitate social inclusion and participation, rather than perpetuate the current status quo.

5. Requests for actions

By submitting this petition, we ask the European Parliament's Petition Committee to:

- Call upon the European Commission to ensure that Bulgaria uses EU funds to support the social inclusion of disabled people, in line with the country's and the EU's obligations under the UN CRPD. This requires the adoption of a strategy and a plan for long term care (deinstitutionalisation), which prioritises the provision of accessible and affordable housing (not congregated) and non-residential support in community, including personal assistance.
- Strengthen the interpretation of ex-ante conditionality concerning deinstitutionalisation, by linking it to Article 19 CRPD, as explained in the General

¹⁶ Centre for Independent Living (2016) *Deinstitutionalizatsiata e skupa, no nishto ne struva!* [De-institutionalisation is expensive but it does not do the job!].

¹⁷ For example, Narechenski bani – 2 settings (2015), Shumen - two settings (2016 and 2018), Novo Selo (2017), Borovan (2018); Gabrovo (2018).

¹⁸ State Child Protection Agency (2015) *Disciplinarni Nakazania zaradi Nsilie v TNST Poiska Predsedateliat na DAZD* [The Head of the State Child Protection Agency Requested Disciplinary Sanctions for Violence in a Family-type Placement Centre]. News, 6 March 2015.

¹⁹ Ombudsman of Republic of Bulgaria (2016) *Monitoring na Natsionalnia Prevantiven Mehanizum na Ombudmana Vurhu Politikite I Praktikite na Deinstitutionalizatsia v Bulgaria*. [Monitoring of the National Mechanism for Prevention of the Ombudsman on De-institutionalisation Policies and Practices in Bulgaria.

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- Call upon the European Commission to develop a methodology for evaluating Member States' deinstitutionalisation strategies that takes into account the CRPD, in particular Article 19 CRPD and any relevant recommendations by the UN treaty bodies and other human rights mechanisms.
- Ensure that deinstitutionalisation in the Member States is evaluated not only by the number of institutions that were closed, the number of individuals that have moved out or the number of new services that were developed, but by the outcomes for the individuals concerned, in terms of their social inclusion and participation in community.

We ask the European Parliament's Petition Committee to call on the Bulgarian Government to:

- Revise the Action Plan 2018 - 2021 to ensure that different housing and support options are developed and are made available to people leaving the institutions planned for closure, allowing them to exercise choice of where and with whom to live and how they wish to be supported.
- Ensure that in the upcoming EU Funds programming period (2021 – 2027), deinstitutionalisation of services for people with disabilities and older people focuses on:
 - provision of accessible housing, which is not tied to provision of support and which is dispersed in the community – in apartments or houses of the type the majority of the population lives in;
 - provision of flexible, individualised support for people leaving institutions and access to assistive technology;
 - access to mainstream services, in particular employment and education, but also housing, health care, transport and other.
- Ensure that national disability policies promote independent living for all persons with disabilities, regardless of their level of support needs, by allowing for individualised support which is person centred and based on the principle 'the money follows the person'.

Signed on behalf of the petitioners by:



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