



VALIDITY



Marianne Thyssen  
Commissioner for Employment, Social Affairs,  
Skills and Labour Mobility  
European Commission  
Rue de la Loi 200  
1049 Brussels  
E-mail: [cab-thyssen@ec.europa.eu](mailto:cab-thyssen@ec.europa.eu)

14 January 2019

**Subject: Transition from residential/institutional care to family and community-based care in the EC Proposal for the ESF+ Regulation**

Dear Commissioner Thyssen,

On behalf of the undersigned European and international organisations advocating for the rights of the child and persons with disabilities, we would like to bring to your attention the importance of maintaining the wording in Article 6(2) (Equality between men and women and equal opportunities, and non-discrimination) of the European Commission's proposal for the European Social Fund Plus Regulation<sup>1</sup> in the trialogue. Specifically, keeping in line with their obligations under the UN Convention on the Rights of Persons with Disabilities (CRPD), the **European Union and its Member States should use ESF+ to facilitate the “transition from residential/institutional care to family and community-based care” of children and persons with disabilities.**

For a number of years, our organisations have been monitoring the use of European Union Funds - in particular the European Social Fund and the European Regional Development Fund - in relation to projects affecting children and persons with disabilities. We acknowledge that, **when used well, EU Funds can contribute significantly to ensuring that all children can grow up in families and that persons with disabilities are able to enjoy the right to live independently and to be included in the community**, and other CRPD rights. Although “transition from institutional to community-based care” is included in the current European Structural and Investment Funds (ESI Funds) Regulations (2014 - 2020), there is much room for improvement when it comes to investments that aim to facilitate the closure of long-stay residential institutions and access to family care and independent living.

For this reason, we welcome the fact that **the European Commission's proposal on ESF+ recognises in Article 6(2) the importance of using these funds to move away from both “residential care” and “institutional care” to family and community-based care.** We are, therefore, deeply concerned that, as of 29

---

<sup>1</sup> Proposal for a Regulation of the European Parliament and of the Council on the European Social Fund Plus (ESF+), COM(2018) 382 final. See: [https://ec.europa.eu/commission/sites/beta-political/files/budget-may2018-european-social-fund-plus-regulation\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/budget-may2018-european-social-fund-plus-regulation_en.pdf)

November 2018, the European Parliament's Committee on Employment and Social Affairs has proposed an amendment on this article, suggesting that "residential care" should be removed from Article 6, thus allowing the Member States to invest in residential care facilities, rather than being encouraged to move towards family support and community living.<sup>2</sup>

There are three main arguments for maintaining the EC proposed wording of Article 6(2) of the ESF+ Regulation during the triilogue. These arguments are further detailed in the Annex to this letter and outlined further in the joint statement "The Right of All Children to Live and Grow Up in a Family."<sup>3</sup>

- 1. Legal basis for investing into family and community-based support:** Article 19 CRPD affirmatively establishes that persons with disabilities have a right to live independently in the community, with choices equal to others. With regard to children, under Article 23(5) CRPD, when "the immediate family is unable to care for a child with disabilities," governments must "undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting." The Committee on the Rights of Persons with Disabilities has made it clear, in its General Comment No. 5, that living independently refers to life "outside residential institutions of all kinds".<sup>4</sup> With regard to children, it has stated that "[f]or children, the core of the right to be included in the community entails a right to grow up in a family." This is especially pertinent given the current trend among the Member States of replacing large long-stay institutions with other types of residential care services, such as small group homes and family-type homes for children, which perpetuate institutional culture. Research shows that residential care is especially detrimental for children, with and without disabilities.
- 2. Lessons learnt:** Lessons learnt during the 2007 – 2013 programming period, during which large numbers of residential care facilities were developed with EU Funds, point to the need to move away from any type of residential care to family and community-based care and support. Many of the residential care facilities, for children and persons with disabilities, which have been built before 2013, and are still being built during the current programming period, have failed to facilitate family reintegration, social inclusion and to prevent segregation.
- 3. The need to invest into community-based alternatives:** There is a lack of quality community-based services for children and persons with disabilities across the EU. Therefore, there is a strong case for investing EU Funds into

---

<sup>2</sup> See:

[http://www.europarl.europa.eu/meetdocs/2014\\_2019/plmrep/COMMITTEES/EMPL/AMC/2018/12-03/EMPL20181203\\_LOPE\\_FONTAGNE\\_ESF\\_AMC\\_EN.pdf](http://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/EMPL/AMC/2018/12-03/EMPL20181203_LOPE_FONTAGNE_ESF_AMC_EN.pdf)

<sup>3</sup> Rosenthal, Eric, *The Right to Live and Grow up in a family for all children: Children with and without disabilities have the right and the need to grow up in families not in institutions, residential care, or group homes*, December 14, 2018, available at: <https://www.driadvocacy.org/wp-content/uploads/DRI-Right-to-Family-December-2018.pdf>. This paper has been adopted jointly by Disability Rights International, the European Network on Independent Living, Validity and TASH.

<sup>4</sup> U.N. Secretary-General, *General Comment No. 5 (2017) on living independently and being included in the community*, U.N. Doc. CRPD/C/GC/5 (Oct. 27, 2017), para. 37. [hereinafter General Comment No. 5] (emphasis added).

alternatives to residential and institutional care. This includes investment into mainstream settings, such as schools, kindergartens, transport, cultural and sports institutions, which would contribute to the effective inclusion of children and adults with disabilities in the community. Where Member States invest in residential and institutional services, this reduces the financing available to improve the accessibility and availability of community-based services which facilitate independent living and inclusion in the community.

In view of the arguments set out above, and further explained in the Annex, **we call on the European Commission to maintain the wording of Article 6(2) of the proposed ESF+ Regulation during the trialogue**, as the only means to prevent future development of institutions in the EU, and to ensure that any available funds are invested into development of family and community-based support services.

We thank you for your consideration and stand at your disposal, should you wish to meet with us to further discuss the points set out in this letter.

Your sincerely,



Kapka Panayotova, President  
European Network on Independent Living



Yannis Vardakastanis, President  
European Disability Forum



Dragana Ciric Milovanovic, Director, Europe Regional Office  
Disability Rights International



Steven Allen, Co-Executive Director  
Validity Foundation

## Annex: Arguments for maintaining the EC Proposed wording of ESF+ Regulation during the dialogue

### 1. Legal basis for investing into family and community-based support

Independent monitoring shows that, **in the previous and the current programming period, many Member States have used ESI Funds to build “family-type homes” and other residential care facilities (such as small group homes)**, as a purported means of moving away from large long-stay residential institutions.<sup>5</sup> For example, more than a hundred group homes for children were built in Bulgaria between 2007 – 2013, and Hungary is currently implementing a programme whereby some 2,500 persons with disabilities will be moved into almost 200 small residential care facilities.

Although smaller in size, **such facilities do not comply with requirements laid down in Article 19 CRPD (the right to live independently and to be included in the community), further detailed in the General Comment No. 5 on living independently and being included in the community.**<sup>6</sup> Regardless of their size or name, such facilities tend to retain an institutional culture, restricting the autonomy of persons who are placed therein and *de facto* segregate people from the community. The General Comment, developed by the Committee on the Rights of Persons with Disabilities (CRPD Committee) to provide guidance to States Parties on the implementation of Article 19, states in Paragraph 16(c):

*“Both independent living and being included in the community refer to life settings outside residential institutions of all kinds. [...] Large or small group homes are especially dangerous for children, for whom there is no substitute for the need to grow up with a family. “Family-like” institutions are still institutions and are no substitute for care by a family.”*

It is important to note that **the key language of the General Comment No. 5 applies to all “children”**, and not just children with disabilities. Article 23(4) CRPD states that “in no case shall a child be separated from parents on the basis of a disability either of the child or one or both of the parents.” This article protects “children” from family separation if their parents are disabled – or are wrongly perceived to be unable to keep or care for their children. Instead of breaking up the family, the CRPD requires that support is provided to the family.

Although it was once believed that residential care facilities (group homes or other “family-like” facilities) were an acceptable alternative to large institutions, **recent research strongly supports the conclusions of the CRPD Committee that smaller institutions are no substitute for care by a family.** Group care in large or small residential facilities is inherently detrimental to the growth, development, and well-being of children.<sup>7</sup> While early research focused on the special dangers in respect of

---

<sup>5</sup> See, for example, ENIL Briefing on EU Funds and Independent Living, at: [https://enil.eu/wp-content/uploads/2018/04/EU-Funds-Briefing\\_web0903.pdf](https://enil.eu/wp-content/uploads/2018/04/EU-Funds-Briefing_web0903.pdf) and the Structural Funds Watch report, at: <https://umos.contentfiles.net/media/documents/document/2018/11/SFW-Digital - 2018.pdf>

<sup>6</sup> U.N. Secretary-General, General Comment No. 5 (2017) on living independently and being included in the community, U.N. Doc. CRPD/C/GC/5 (Oct. 27, 2017)

<sup>7</sup> Rosenthal, Eric, *The Right to Live and Grow up in a family for all children: Children with and without disabilities have the right and the need to grow up in families not in institutions, residential care, or group*

children in the 0-3 age range, it is now understood that growing up in a congregate setting is detrimental to older children as well.<sup>8</sup>

If a child's parents are unable to care for their child, **numerous alternatives can be made available to ensure that a child can live and grow up with a family** – including extended kinship care, substitute family care, or foster care.

## 2. Lessons learnt during 2007 - 2013

The situation of children in residential care deserves particular attention because of the **EU legacy of funding a large number of residential care facilities** (also referred to as “small group homes” or “family-type homes”) in the previous and the current ESI Funds programming periods.

For example, a recent evaluation of deinstitutionalisation of services for children with disabilities in Bulgaria<sup>9</sup> has shown that **the majority of the children with disabilities placed in group homes during the 2007 – 2013 programming period continue to live in isolation**, spending all of their time in the setting – in a manner that is similar to the situation in traditional institutions. They have very limited opportunities for interaction with the local community, including when it comes to education. Reports have also shown that small residential services retain an institutional character, significantly limiting the residents' choice and control over their lives and violating their right to privacy – in some cases cameras have been installed in children's bedrooms.<sup>10</sup> In addition, there have been numerous reports of violence against children by members of staff.<sup>11</sup> Examples include children being hit by staff members, deprived of food, isolated or locked outside of the centre, and being restrained.<sup>12</sup>

## 3. The need to invest into family and community-based alternatives

There is a **strong case in the European Union for investing into family support and independent living options**. The development of community-based services requires both political commitment and robust social policy, consisting of measures for increasing the availability and accessibility of all public services for children and persons with disabilities, including housing, education, transportation, health care and other services available to the general population. In addition, specialised services, such as personal assistance, early intervention, foster care, respite care and other individualised and adaptable services must be put in place to facilitate the closure of

---

homes, December 14, 2018, available at: <https://www.driadvocacy.org/wp-content/uploads/DRI-Right-to-Family-December-2018.pdf>.

<sup>8</sup> *Ibid.*

<sup>9</sup> 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\\_EN\\_G.pdf](https://lumos.contentfiles.net/media/documents/document/2017/02/Bulgarian_Outcomes_Report_EN_G.pdf).

<sup>10</sup> Centre for Independent Living (2016) *Deinstitutionalizatsiata e skupa, no nishto ne struva!* [Deinstitutionalisation is expensive but it does not do the job!].

<sup>11</sup> For example, Narechenski bani – 2 settings (2015), Shumen - two settings (2016 and 2018), Novo Selo (2017), Borovan (2018); Gabrovo (2018).

<sup>12</sup> 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.

residential institutions and prevent future placements.

The EU Fundamental Rights Agency has **called on the European Commission to invest in personalised and user-controlled support options**, and to ensure that the proposed ESI Funds Regulations for 2021 - 2028 contain strong human rights guarantees. Specifically, the FRA recommends that:

*“EU Member States, and the European Commission when ESIF are involved, should allocate resources for the prompt deinstitutionalisation of persons with disabilities. They should phase out investment in institutions and instead sufficiently fund services in the community that persons with disabilities guide and control. [...] EU institutions and Member States should take advantage of the full range of EU financial tools to support the transition from institutional to community-based support. This should include training and capacity building for staff, developing individual support plans and funding home adaptations and other infrastructure. The EU legislature should ensure that the post-2020 ESIF regulations build on the current legal framework and contain strong fundamental rights guarantees to ensure that the EU fully respects its human and fundamental rights obligations under the CRPD and the Charter for Fundamental Rights.”<sup>13</sup>*

---

<sup>13</sup> European Union Agency for Fundamental Rights (2018) From institutions to community living for persons with disabilities: perspectives from the ground. See: <http://fra.europa.eu/en/publication/2018/independent-living-reality>