Shadow report on the implementation of the UN Convention on the Rights of Persons with Disabilities in the European Union
February 2022
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About the European Network on Independent Living

The European Network on Independent Living (ENIL) is a Europe-wide network of disabled people, with members throughout Europe. ENIL is a forum for all disabled people, Independent Living organizations and their non-disabled allies on the issues of Independent Living. ENIL represents the disability movement for human rights and social inclusion based on solidarity, peer support, deinstitutionalization, democracy, self-representation, cross disability and self-determination.

Acknowledgments

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### List of abbreviations

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<td>CEE</td>
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Introduction

Scope and purpose

The purpose of this report is to analyse how the European Union (EU) implemented the UN Convention on the Rights of Persons with Disabilities (CRPD) between 2015 and 2022. Drawing on existing empirical evidence, the report raises serious concerns about the implementation of the CRPD by the EU. While Article 19 on the right to live independently and being included in the community is the primary focus, the report illuminates how the denial of the right to live independently in the community impacts other fundamental human rights including Article 10, Right to life and Article 15, Freedom from torture or cruel, inhuman, or degrading treatment or punishment.

In 2014, the European Network on Independent Living submitted its first shadow report on the implementation of Article 19 of the UN Convention on the Rights of Persons with Disabilities in the European Union¹. Many of the key concerns expressed in that report have not been addressed in the seven years since the first report. In fact, this report gathers evidence showing that many of the concerns are exacerbated by the continued investment of European funds to reinforce institutional segregation of disabled people² throughout Europe.

In 2020, a report on institutionalisation across 27 Member States estimated that there are at least 1, 438, 696 European citizens confined to institutions and these numbers have not substantially changed in the past 10 years³. Furthermore, there are more than 302,979 children in residential care in the EU countries⁴. This failure to close institutions had devastating consequences when the COVID-19 pandemic spread across the EU. The pandemic exposed the failure to provide the most basic human rights protections within institutions large and small. Deprivation of liberty intensified during the COVID-19 pandemic, with reports of increased physical and chemical restraints⁵. Disabled people in institutions accounted for the majority of COVID-19 related deaths in many EU Member States⁶.

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² We use the term ‘disabled people’ in this report, in line with the social model of disability, to acknowledge the disabling social, economic and attitudinal barriers.
Considering the deterioration of disability rights across Europe, ENIL’s main concerns are:

- **Continuing investment** of EU funds (from the ESI Funds and EIB) in institutions for disabled children and adults, including group homes, and in nursing homes, many of which practice torture, including the use of cage beds and straightjackets, and deny basic healthcare;
- **Lack of meaningful consultation** and involvement of disabled people and their representative organisations in EU law and policy;
- **Inadequate non-discrimination measures** due to failure to adopt a horizontal directive for equal treatment outside the field of employment;
- **Deprivation of legal capacity and limited access to justice**;
- **Inadequate monitoring and complaints mechanisms** in EU policies impacting disabled people;
- **Lack of access to supports and services** including personal assistance, inclusive education, and employment.

**EU competencies and the UN CRPD**

Pursuant to Article 216 of the Treaty on the Functioning of the European Union, ‘the agreement is legally binding upon the EU institutions and the Member States. Responsibility to implement the Convention is shared between the EU and the Member States, covering the extent of their respective competences’. All EU Member States have ratified the Convention as of March 2018. While EU confirmation represents a significant human rights milestone, it also presents several challenges in defining EU competencies. More information about the EU competences in the areas covered by the report can be found in Appendix 2.

**EU implementation of the CRPD**

Twelve years have passed since the CRPD became the first United Nations Treaty to be confirmed by the EU. The European Commission submitted the first implementation report to the UN Committee on the Rights of Persons with Disabilities in June 2014, covering the period from January 2011 to December 2013. In September 2015, the

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8 The European Union currently has 27 Member States. The United Kingdom was a member of the European Union until 31 January 2020.
CRPD Committee finalised its first review of the EU by issuing Concluding Observations.\(^\text{10}\) They included the following recommendation:

‘that the European Union 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. The Committee also recommends that the European Union suspend, withdraw and recover payments if the obligation to respect fundamental rights is breached’\(^\text{11}\).

Despite formal complains made by ENIL about the use of European funding in breach of EU Law\(^\text{12}\), and contrary to the CRPD Committee’s recommendations, the EU has continued to support investments in large and small institutions, justified as a temporary measure or as a measure suitable for ‘persons requiring constant care and medical supervision’\(^\text{13}\). The complaints, submitted by ENIL and its members, have been consistently rejected on this ground. The flawed complaint procedure, based only on the examination of documents submitted by the authorities, has also not allowed for an objective assessment of the situation. It was only after a CRPD Committee’s inquiry (under the Optional Protocol to the CRPD) criticised the institutional character of some EU-funded services that the EU intervened, albeit in one case.

The creation of group homes and other segregating arrangements as an ‘alternative’ to large institutions has been a persistent problem of the EU-funded deinstitutionalisation process, hindering the implementation of Article 19. According to General Comment No.5, ‘[a]rticle 19 is not properly implemented if housing is only provided in specifically designed areas and arranged in a way that persons with disabilities have to live in the same building, complex or neighbourhood’\(^\text{14}\).

In addition, group homes 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;

\(^{10}\) 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/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fEU%2fCO%2f1&Lang=en

\(^{11}\) Ibid.


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 General Comment also emphasises that ‘[l]arge or small group homes are especially dangerous for children, for whom there is no substitute for the need to grow up with a family’, noting that ‘family-like’ institutions are still institutions’15. Similarly, the Special Rapporteur on the rights of persons with disabilities notes that ‘[a]ny placement of children in a residential setting outside a family must be considered placement in an institution’16. In addition, group homes, small and large, have been found to have ‘detrimental effects on the healthy development of children, regardless of age’17.

Proposed questions for the List of Issues Prior to Reporting

1. EU investments in institutions
   - What measures will the EU take to stop the continuing investment of EU funds (from the ESI Funds and EIB) in institutions for disabled children and adults, including group homes, and in nursing homes? (Article 19)
   - How will the EU ensure that EU-funded projects do not prioritise investments in small and large institutions, such as group homes, but are directed towards mainstream living arrangements, personal assistance, provision of accessible and affordable housing in the community, support for families, and other services in the community? (Article 19)
   - What measures will the EU take to ensure that its guidance and decisions concerning the investment of ESI Funds in long-stay residential settings is in line with the CRPD and General Comment No. 5 and does not permit the use of EU funds in segregating settings, including group homes18? (Article 19)
   - What measures is the EU taking to ensure that the EU external action funding only supports projects compliant with the CRPD, and does not reinforce the segregation of disabled people in large or small institutions? (Article 32)
   - How will the EU ensure that EU funding does not support institutions that practice torture including the use of cage beds and straightjackets, and other forms of physical and chemical restraints? (Article 14, Article 15)

15 General Comment No5, para. 16c.
18 Currently, EC’s legal services opinion is that investments in long-stay institutions are permitted, as long as Member States made ‘progress in general on ensuring independent living and deinstitutionalisation’ (see the section on Art.19).
2. Lack of meaningful consultation and involvement of disabled people and their representative organisations
   • How will disabled people and their representative organisations be consulted and meaningfully involved by the EC/EU in the development of the European Care Strategy and the Council Directive on Equal Treatment? (Article 4)

3. Inadequate non-discrimination measures
   • How will the EU promote the adoption of a horizontal directive for equal treatment outside the field of employment and what alternative legislative measures will be considered if the directive is not adopted? (Article 5)

4. Deprivation of legal capacity
   • How does the EU plan to ensure that the implementation of the 2000 Hague Convention will not involve measures contradictory to the CRPD? (Article 12)
   • How will the EU ensure that disabled people are not denied access to justice, due to deprivation of legal capacity? (Article 12, Article 13)
   • What specific measures will the EU take to promote supported decision-making? (Article 12)

5. Inadequate monitoring and complaints mechanisms
   • What measures will the EU take to ensure that its complaint mechanism for breaches of EU law involves adequate investigation, which is not limited to review of documents submitted by the government, but also includes independent assessment (for example, by national human rights institutions)? (Article 19, Article 33)

6. Lack of access to supports and services
   • How will the EU ensure that EU-funded personal assistance schemes are consistent with the CRPD and General Comment No. 5? (Article 19)
   • What measures will the EU take to ensure that the scope of the proposed Disability Card covers a wide range of disability benefits, including cash allocations earmarked for personal assistance, and is recognised by all Member States? (Article 18, Article 19)
   • How will the EU ensure that disabled citizens are not denied the right to healthcare? (Article 25)
   • What steps will the EU take to promote the provision of support in mainstream educational settings and in the community, allowing for inclusive education of children with disabilities? (Article 4)
   • What measures will the EU take to ensure that EU funds are not misused to build sheltered employment that denies disabled people their employment rights? (Article 27)
   • What measures will the EU take to ensure that the European Solidarity Corps programme does not support employment and volunteering in institutions?
Key concerns about the implementation of the CRPD

Article 4 (3) - General obligations

Meaningful involvement and consultation with disabled people in European Care Strategy

Article 4 (3) of the CRPD requires the close consultation and involvement of disabled people and their representative organisations in the ‘development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities’. The European Commission’s Work programme for 2022 promises ‘a European care strategy - Communication on a European care strategy, accompanied by the revision of the Barcelona targets and a proposal for a Council Recommendation on long-term care’. It is not yet clear how disabled people and their representative organisations will be meaningfully consulted and actively involved in the development of an EU strategy that will directly impact them. Furthermore, the Commission’s Work programme for 2022 proposes a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation.

Suggested question for the LOIPR:

- How will disabled people and their representative organisations be consulted and meaningfully involved in the development of the European Care Strategy and the Council Directive on Equal Treatment?

Article 5 - Equality and non-discrimination

Failure to adopt non-discrimination legislation

The horizontal Equal Treatment Directive, which was proposed in 2008, and would offer significant anti-discrimination rights for disabled EU citizens has been blocked in the Council of the European Union. Hence, without horizontal non-discrimination legislation at EU level, disabled people are exposed to a wide range of other forms of discrimination in access to housing, goods, and services, which are not covered under

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20 Ibid
European non-discrimination law\(^{22}\).

While it is positive that in the EU Disability Strategy for 2021-2030, the Commission calls on the Member States to enable the adoption of a horizontal directive on implementing the principle of equal treatment outside the field of employment, including disability, no specific measures are planned. It is not clear how the EC will promote the adoption of the directive and whether and what alternative legislative measures will be considered, if the directive is not adopted by the Council.

**Suggested question for the LOIPR:**

- What actions will the EU take to prevent discrimination on all grounds including access to goods, services, housing, healthcare, social security, and social assistance?
- How will the EU promote the adoption of a horizontal directive of equal treatment outside the field of employment and what alternative legislative measures will be considered if the directive is not adopted?

**Article 7 - Children with disabilities**

**Placement of children with disabilities in group homes**

Despite the fact that General Comment 5 explicitly states that group homes are ‘especially dangerous for children’, significant amount of the European Structural and Investment Funds (ESI Funds) has been invested in the creation of group homes for disabled children. For example, 149 ‘family-type placement centres’ were built in Bulgaria in the last decade, funded with more than 100 million EUR from the ESI Funds\(^{23}\). They accommodated 70% of the disabled children leaving institutions\(^{24}\). An assessment of the deinstitutionalisation process in the country suggested that more children could have been placed in families if greater focus had been put on the development of family and community support instead of residential settings\(^{25}\). Furthermore, the process led to the expansion of the system of residential institutions for disabled children, with more places in residential settings than under the old system.

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\(^{25}\) Ibid
of traditional large-scale institutions. Thus, while the EU-funded deinstitutionalisation of children in Bulgaria may have contributed to the closure of large-scale institutions, the overreliance on group homes in this process has failed to guarantee the right of disabled children to grow up in a family and to support their inclusion in the community. To this date, the European Commission has not taken any steps to sanction Bulgaria for their investments into group homes for children.

**Suggested question for the LOIPR:**

- How will the EU ensure that EU-funded support for disabled children does not prioritise the establishment of residential services, such as group homes, but focuses on supporting children to grow up in a family?

**Article 10 - Right to life**

**Failure to protect the right to life in institutional settings**

Deaths in European institutions highlight the systemic failure to protect the right to life of disabled people detained in various kinds of institutions, including nursing homes, group homes, social care homes for children and adults, and psychiatric institutions. The widespread practice of locking people in their rooms and using physical restraints puts their lives in grave danger during emergencies. In January 2022, six people died and a further 17 were hospitalised when a fire broke out in a Spanish nursing home which housed 70 people. In November 2021, nine people were killed in a fire at a Bulgarian nursing home of 58 people. In January 2020, six people died when a fire broke out in a Czech nursing home which housed 20 people. In 2020, eight disabled people died and 30 more were injured in a fire at a Czech institution which housed 35 disabled people. This tragedy occurred shortly after a report by the Czech Ombudsman, which found that disabled people were locked in their rooms at night, warning that ‘in the event of a fire, staff, of which there are only a minimal number at night, would have to bypass and unlock all parts of the facility in order to evacuate the clients’. In 2015, three people who were tied to their beds lost their lives when a fire

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broke out at a Greek psychiatric hospital.  

**Failure to protect the right to life during the COVID-19 pandemic**

Emergency human rights monitoring that was conducted by disabled people’s organisations (DPOs) during the COVID-19 pandemic gathered empirical evidence of grave and systemic violations of fundamental freedoms and human rights of disabled people confined to large and small institutions throughout Europe. Inadequate measures to protect the lives, health and safety of persons confined to institutions are reflected in the disproportionate number of COVID-19 related deaths. For example, deaths in nursing homes account for 51% of the total COVID-19 deaths in the Netherlands and 68% of COVID related deaths in Spain. Even in death, disabled people in institutions were denied their inherent dignity. For instance, in the Madrid district of Usera, the bodies of two nursing home residents who had died from the virus were left in their rooms for almost an entire day before their bodies were collected.

**EU funds risking lives by supporting institutions**

Despite the threat to life within overcrowded institutions, EU funds are supporting the proliferation of large institutions in Europe. For instance, Poland has used 7 million EUR of the European Regional and Development Fund (ERDF) on institutional settings for disabled people, including a 4-storey building for approximately 90 people in Łódź and the extension and conversion of an 80-person social care home in Drzewica.

Multi-million investments are going ahead despite the devastating death rates associated with overcrowding, abuse, and neglect in nursing homes. Backed by the Investment Plan for Europe (Juncker plan), the European Investment Bank (EIB) approved multi-million loans to various companies for the expansion of nursing homes. There are reports that European-backed funds are supporting nursing homes.

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40 The European Commission is a major shareholder in the European Investment Fund, which is a subsidiary of the EIB. The European Commission nominates a member of the Board of Directors and expresses an opinion on every project presented to the Board of Directors.
that practice locking residents inside their rooms. For instance, reports from Spain suggest that dangerous human rights abuses occurred within nursing homes run by the Vitalia group, when the residents in this institution were locked in their rooms during COVID-19 outbreaks\textsuperscript{41}. The EIB has invested heavily in the nursing homes under investigation. EIB intends to provide grants of EUR 57.5m to Vitalia Home to build 19 retirement homes, which will provide 3200 residential places for ‘groups of 15 to 20 elderly people’ in Spain\textsuperscript{42}. The Vitalia group also run residential institutions for disabled people\textsuperscript{43}.

**Suggested question for the LOIPR:**

- What measures will the EU take to prevent EU-backed investments in institutions, including nursing homes which are at the centre of gross human rights violations, including denial of the right to life?

**Article 11 - Situations of risk and humanitarian emergencies**

**EU Funding inherently dangerous institutions**

Emergency human rights monitoring at the beginning of the COVID-19 pandemic exposed the systematic failure to provide a disability-inclusive response to protect disabled people confined to institutions. The most basic safety measures were not implemented in institutions, which failed to provide personal protective equipment (PPE) and adequate sanitation\textsuperscript{44}.

The human rights violations recorded during the COVID-19 pandemic, although significant, are not an isolated incident\textsuperscript{45}. Disabled people confined to institutions are


inherently exposed to natural disasters, hazards, and infectious diseases. On July 15th, 2021, 12 disabled people lost their lives in a German group home during severe flooding. Yet, despite the immediate risk, the EU funds continue to support the building of institutions in high-risk areas. For example, ESI Funds have been used to build institutions on flood plains in Hungary (Táplánszentkereszt).

**Disabled people are not meaningfully involved in disaster risk planning**

Disaster risk management is one critical area in which the EU does not provide adequate consultation with disabled people and their representative organisations. The European Commission has endorsed the Charter on Inclusion of Persons with Disabilities in Humanitarian Action (2016) which recognises that ‘persons with disabilities and their representative organizations have untapped capacity and are not sufficiently consulted nor actively involved in decision-making processes concerning their lives, including in crisis preparedness and response coordination mechanisms’. Yet, the EU has not meaningfully engaged with disabled people and their representative organisation on disaster risk reduction. Despite warnings from disabled people and their representative organisations about the inherent dangers of large and small institutions, ESI Funds are being used to build institutions that put disabled people at unnecessary risk of natural disasters, hazards, and the spread of infectious disease.

**Suggested questions for the LOIPR:**

- How will the EU meaningfully consult and involve disabled people and their representative organisations in planning for the adoption of a risk-informed approach into all EU policies and programmes?
- How will the EU ensure that EU funds are not used to build or renovate large and small institutions which inherently and unnecessarily expose disabled people to disasters and hazards?

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Article 12 - Equal recognition before the law

Guardianship is widely used across Europe

Following the ratification of the CRPD, many EU Member States took steps to align their policies and legislation with the requirements of Article 12. However, there are still countries where legislation does not support the exercise of legal capacity by disabled people or where progress has been reversed by the adoption of new legislation, reintroducing guardianship. Even in countries where alternatives to guardianship have been developed, they are rarely used, with guardianship continuing to be a norm rather than exception (for example, Belgium, Netherlands, and France). In Hungary, which was among the first countries to initiate reforms of its legal capacity legislation, there has been a steady increase in the number of people under guardianship.

Limited promotion of supported decision-making at EU level

Many disabled people living in institutions in the EU are deprived of legal capacity, wholly or partially, and not allowed to make decisions about whether and with whom to live. The decision about their institutionalisation has been made by a guardian, usually a relative, against the persons’ will or without their informed consent. In some cases, the placement of disabled people in institutions has been motivated by relatives’ own interests, for example, concerning property ownership. At the same time, the deprivation of legal capacity and the lack of direct access to the justice system often means disabled people are unable to leave institutions. Thus, deprivation of

57 Committee on the Rights of Persons with Disabilities (2019). Inquiry concerning Hungary carried out by the Committee under article 6 of the Optional Protocol to the Convention, para. 25. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fIC%2fHUN%2fIP%2f1&Lang=en
59 Ibid.
legal capacity both leads to institutionalisation and hinders deinstitutionalisation and independent living by preventing disabled people from making choices about their lives.

While the EU has limited competencies in relation to legal capacity, it could take steps to promote a shift towards supported decision-making, for example, by raising awareness and supporting research and exchange of good practices. The EU has not used the opportunity provided by the midterm review of the European Disability Strategy 2010-2020 to revise the strategy and step up its efforts in the area of legal capacity. The new EU Strategy for the Rights of Persons with Disabilities 2021-2030 also pays limited attention to issues related to legal capacity and supported decision-making. Furthermore, it is concerning that the Strategy supports the ratification of the 2000 Hague Convention, which ‘deeply relies on limitations of legal capacity that the CRPD prohibits’. Concerns have also been raised about the lack of involvement of DPOs in the discussions concerning the ratification of the 2000 Hague Convention by the EU Member States.

Suggested questions for the LOIPR:

- How does the EU plan to ensure that the implementation of the 2000 Hague Convention will not involve measures contradictory to the CRPD?
- How will the EU ensure that disabled people are not denied access to justice, due to deprivation of legal capacity?
- What specific measures will the EU take to promote supported decision-making?

Article 14 - Liberty and security of persons

Detention in institutions

Throughout Europe, disabled people young and old are deprived of their liberty and detained against their will in institutions. Physical restraints are commonly used. For instance, straightjackets were found in institutions partially funded by the European...
Union.

Nursing homes have been criticised for locking doors in the name of ‘safety’. A Spanish study estimated that 85% of residents in Spanish nursing homes had been physically restrained. Deprivation of liberty intensified during the COVID-19 pandemic, with reports that people in nursing homes were locked in their rooms in countries including Finland, the Republic of Ireland, Spain, and Italy. This left disabled people exposed to abuse and exploitation. For instance, in Ireland, a woman with Alzheimer’s was raped by a worker while she was confined to her room during the pandemic.

The human rights violations reported in nursing homes also impact young disabled people. Figures for the numbers of young disabled people confined to nursing homes in Europe are scarce. Hence, disabled people in nursing homes remain hidden across the EU. A recent report by the Office of the Ombudsman in the Republic of Ireland reported that there are at least 1,300 disabled people under 65 years old confined to nursing homes. The high proportion of disabled young people in Irish nursing homes is a result of the chronic underfunding of personal assistance and the prioritisation of nursing home care, which has received multi-million investments. Hence, young disabled people live with the constant threat of institutionalisation within nursing homes.

A recent decision by the Department of Enterprise excludes home carers from the critical skills exemption to the non-EEA employment permit system. As a result, the Irish government are actively encouraging staff into the nursing home sector, resulting in the chronic understaffing of personal assistance and home care initiatives.

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EU-backed funding institutions depriving liberty

Despite the dangers posed by nursing homes, the EIB continues to invest heavily in these institutions. Recently, the EIB approved a €100 million loan to the Zuyderland Group in the Netherlands. The Zuyderland Group provides a range of medical services including the construction of 14 homes for people with dementia, which will house up to two groups of 7 people. The EIB has also promised €200 million for projects consisting of construction, refurbishment or enlargement of existing social and long-term care facilities across Portugal... aims at delivering continued care services to elderly people and people with disabilities.

Suggested questions for the LOIPR:

- What measures will the European Union take to ensure that European-backed investments do not fund institutions that deprive disabled people of their right to liberty?
- What measures will the European Union take to ensure that abuses such as the use of straightjackets and locked doors policies do not occur in institutions?

Article 15 - Freedom from torture or cruel, inhuman, or degrading treatment or punishment

Use of torture in EU-funded institutions

Overwhelming evidence of torture throughout European institutions strongly indicates that it is a systemic issue in the EU. For instance, there is video evidence of the use of chemical and physical restraints, solitary confinement and cages in Greek and Slovak institutions. A child with autism was taped to a chair and tied to a bed for more than 5 years in a Finnish institution that houses up to 11 people.

European Union funds have been used in institutions at the centre of gross human rights violations. For instance, ESI Funds were used to fund a 220-bed institution which was found to use metal cage beds and straightjackets for adults and children in Göd,

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78 YLE. (2021). Days taped to a chair and nights with loads attached to bed – unlawful treatment and abuse of a mentally disabled boy in a care home was allowed to continue for years. Available at https://yle.fi/uutiset/3-12175567
Hungary\textsuperscript{79}.

**Suggested question for the LOIPR:**

- How will the EU ensure that EU funding does not support institutions that practice torture including the use of cage beds and straightjackets, and other forms of physical and chemical restraints?

**Article 18 - Freedom of movement**

**Lack of portability of social assistance benefits**

The enjoyment of the right to free movement of disabled people is limited by the lack of portability of social assistance benefits and the restrictions on the possibility to claim such benefits in the host state within the EU. While there is coordination among EU Member States in relation to social security benefits (for example, sickness and unemployment benefits and pensions), which allows cash benefits from one country to be exported to another, there is no such coordination with regard to social assistance benefits, under which personal assistance falls. At the same time, access to social assistance of people moving to another Member State is limited by requirements related to their employment status or length of stay in the host country\textsuperscript{80}. Even if a person is in principle eligible to access social assistance in the host state (for example, because they are employed or a family member of a worker), they might need to undergo a long assessment process, which would leave them without support for a considerable period of time. In addition, the requirement for people to be working in order to access social assistance puts those disabled people who require additional support to engage in employment in an unequal position.

The negative impact of the existing arrangements on the free movement of disabled people can be illustrated by the very low levels of participation of students with additional support needs in the Erasmus programme, supporting students to study abroad. While the programme promotes mobility for all, the percentage of students receiving additional support needs supplement is between 0.11 and 0.15\%\textsuperscript{81}. In addition, the share of disabled students undertaking mobility out of all disabled students in a Member State is close to zero, with no outgoing students from some countries in some years\textsuperscript{82}.


\textsuperscript{80} They need to be workers or self-employed; if economically inactive, to have lived in the host country for five years.

\textsuperscript{81} SIHO (2020). Making mobility programmes more inclusive for students with disabilities. Available at: \url{https://www.siho.be/sites/default/files/making_mobility_programmes_more_inclusive_for_students_with_disabilities.pdf}

ENIL welcomes the EC’s commitment to expand the geographical coverage and the scope of the European Disability Card83, expressed in the new EU disability strategy (2021-2030). While it is still not clear how the card will function, ENIL is concerned that the limited scope of the entitlements included and participation by Member States or service providers could hinder the potential of the card to support the freedom of movement of disabled people.

Suggested questions for the LOIPR:

- How will the EU encourage Member States to recognise the European Disability Card?
- Does the EU plan to expand the scope of the European Disability Card to cover disability benefits?

Article 19 - Living independently and being included in the community

Investment of EU funds in large institutions for disabled people

ESI Funds continue to be invested in building and renovating large institutions for disabled people. For example, in the 2014-2020 programming period, the Łódź Voivodeship in Poland used resources from the European Regional Development Fund to build, expand or renovate institutions for disabled people with 80-90 residents84. The Region of Attika, Greece, while including deinstitutionalisation in its strategy for social inclusion, has planned to enhance the infrastructure and programmes of institutions with support from the ESI Funds85.

Funds from the Recovery and Resilience Facility, an instrument aimed to support EU’s recovery from COVID-19, are also being invested in large and small institutions in many EU Member States, including Croatia, France, the Czech Republic, and Latvia86.

EU Funds support the proliferation of group homes and other segregating residential settings

Despite the prohibition of using public or private funds to maintain institutions, required by the CRPD, in the last 10 years, there has been a proliferation of group homes for disabled people in the EU. In many countries, this has been supported with resources from ESI Funds, for example in Austria, Bulgaria, Croatia, the Czech Republic, Estonia, Portugal, and Latvia.

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83 The Card was piloted as a voluntary initiative in 8 EU member states between 2016-2019, but only covered the areas of culture, leisure, sports and transportation.
Greece, Hungary, Lithuania, Malta, Poland, Portugal, Romania and Slovenia\textsuperscript{87, 88}. The availability of EU funding for group homes and the lack of restrictions concerning investment of EU money in such settings has provided an incentive to build new group homes in some countries. In 2020, the UN Special Rapporteur on the rights of persons with disabilities and the Special Rapporteur on adequate housing wrote to the President of the European Council to express their concern at the continued use of European funding to maintain institutionalisation, by replacing large institutions with smaller institutions\textsuperscript{89}.

Group homes (and other similar settings, such as community centres and protected or supported houses) are often created as the main alternative to traditional large-scale institutions in EU-supported programmes for deinstitutionalisation. For example, in Lithuania, the plans for ‘deinstitutionalisation’ involve moving 2,700 – 3,000 disabled people (out of approximately 6,500 living in social care institutions) to group homes and similar small institutions\textsuperscript{90}, for which the government has designated 26.5 million Euro from ESI Funds and 6 million from the state. CRPD Committee’s inquiry concerning Hungary, completed in 2020, found that the investment of ‘significant amount of resources’, including from ESI Funds, in moving people from large to small group homes has sustained and expanded the institutionalisation of disabled people and has thus prevented their inclusion in the society\textsuperscript{91}. In the concluding observations on Poland, the CRPD Committee expressed concerns about ‘[t]he spending of European Union funds allocated to deinstitutionalization on measures that are not


\textsuperscript{89} UN Special Rapporteur on the Rights of Persons with Disabilities, Ms. Catalina Devandas-Aguilar, and the UN Special Rapporteur on the Right to Adequate Housing (2020). Available at: https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?qId=25267.


\textsuperscript{91} Committee on the Rights of Persons with Disabilities (2019) Inquiry concerning Hungary carried out by the Committee under article 6 of the Optional Protocol to the Convention. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fIC%2fHUN%2fIR%2f1&Lang=en, para 1b.
consistent with the Convention. Estonia, Lithuania and Bulgaria have also received recommendations from the CRPD Committee urging them to re-direct the investment of EU funds to the development of individualised support and away from institutions and congregated settings.

In a number of countries (for instance, Estonia, Latvia, and Slovenia), the creation of group homes has been presented as a temporary step in the process of transition from large institutions to life in the community, justified with the 'difficulties in immediate integration of former residents of large institutions into communities'. The EC has defended the substantial investments of EU money in such settings arguing that they 'may serve to achieve the aim to progress towards community-based living' because '[b]efore (full) de-institutionalisation is achieved, the persons concerned have, however, to be cared for'. Due to the lack of commitment and the insufficient and uneven development of other support options in the community, such arrangements typically become long-term or permanent. A recent study on the right to live independently and being included in the community in European states confirms that it has not found an example where a timeframe has been placed on the use of such settings, emphasising that they are 'a common living arrangement' and continue to be developed in many countries where large-scale institutions have been closed (for example, Denmark).

There are also many cases where clusters of group homes or other residential settings have received ESI Funds, reinforcing the segregation and isolation of

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disabled people (for example, in Estonia\textsuperscript{99}, Hungary\textsuperscript{100}, and Poland\textsuperscript{101}). In Malta, despite the objections from disabled people, the Commission for the Rights of Persons with Disabilities and the CRPD Committee, a ‘community hub’ for disabled people is being built with four blocks, comprised of ‘semi-independent living residential units, a community building, restaurant and cafeteria, a retail outlet, offices, gym and therapy pool’\textsuperscript{102}. The investment in the hub is 39 million EUR, of which 9 million come from ESI Funds. Such practices and are not in line with Article 19.

There are also many examples from the EU demonstrating the institutional character of group homes. In Hungary, disabled people living in supported houses have no influence over the services and support they receive\textsuperscript{103}. Their autonomy and self-determination are further restricted by the requirement to obtain permission for inviting guests or engaging in activities outside the setting\textsuperscript{104}. In Estonia, group homes have fixed timetables, including for getting up and going to bed and mealtimes, and residents need permission from staff to use the kitchen or house telephone\textsuperscript{105}. In some countries, group homes additionally limit disabled people’s choice by providing housing and support in one package or by not ensuring adequate choice of providers of support (for example, Bulgaria, Hungary). According to the General Comment No. 5, “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\textsuperscript{106}.

It is important to emphasise that the institutional character of group homes is not simply a consequence of inadequate funding or training of staff, as it is sometimes suggested; it is related to the very nature of these settings. As the Council of Europe Human Rights Commissioner notes, a person living in a group home ‘has little chance of choosing


\textsuperscript{104} Committee on the Rights of Persons with Disabilities (2019) Inquiry concerning Hungary carried out by the Committee under article 6 of the Optional Protocol to the Convention, para 68. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fHUN%2fIR%2f1&Lang=en


\textsuperscript{106} General comment No. 5
her housemates or having privacy within her home. Because the house is run for a large group, and especially if she needs support for daily living or in accessing the community, she will likely be subject to restrictions that impede possibilities for a self-directed life, including rules about when she can leave and with whom and how often, and when to retire for the night\textsuperscript{107}.

There is also evidence of \textbf{financial irregularities in the use of ESI Funds}. For instance, a Romanian NGO has collected disturbing information about the misuse of European money for deinstitutionalisation: prices well above the maximum cost standard for the construction of smaller institutions, so-called ‘protected housing’ projects have been delayed or even non-existent\textsuperscript{108}.

\textbf{Inadequate development of community services}

The limited availability of adequate community support options, in line with Article 19, forces many disabled people to ‘choose’ residential care. For example, in the Netherlands, the shortage of accessible and affordable housing options in some municipalities makes it difficult for disabled people to choose their place of residence or to leave residential settings\textsuperscript{109}. In the Czech Republic, personal assistance is often only provided for up to 4-5 hours a day, during the standard daily working hours, making it impossible for disabled people without informal support to avoid institutionalisation\textsuperscript{110}. In some countries, there has been a trend towards re-institutionalisation; for example, as a result of the decrease of state-funded personal assistance (Sweden\textsuperscript{111}) or the lack of community-based services and financial assistance for young people leaving foster care (Greece\textsuperscript{112}).

Although a significant amount of EU money has been allocated to support the development of community-based services, the parallel investment in small and large


residential settings has been a hindrance to the development of alternative housing and support options. For example, in Upper Austria, the majority of disabled people (approximately 70%) live in residential settings\textsuperscript{113}. Despite the need for mainstream living arrangements and personal assistance, ESI Funds have been used to build segregated living facilities for disabled people. Six such facilities were built – some of them are extensions of existing large institutions, another links the residential setting to a sheltered workshop, creating a ‘total institution’, yet another replaces a smaller older facility (for 6 people) with larger one (for 16 people)\textsuperscript{114}.

**EU funding for personal assistance schemes**

It is positive that money from the ESI Funds has been used by some EU Member States to support personal assistance schemes (for example in Bulgaria, Croatia, Cyprus and Portugal), allowing more disabled people to have access to the service. However, the organisation of the service has often not been in line with the requirements of the CRPD and General Comment 5 and has thus failed to adequately support independent living. For example, in Croatia, the number of hours of assistance was limited to only 20 per week and the service is not available to children or people above 65 (unless they have had access before). The lack of administrative capacity by the relevant ministry has also caused problems for implementing NGOs, which rely on project funding to guarantee the continuity of personal assistance. Some schemes in Bulgaria allowed only working-aged people to become assistants. Concerns have also been raised by the CRPD Committee about the sustainable provision of independent living services following the termination of ESI Funds\textsuperscript{115}.

**Limitations of EU policies and guidance to Member States**

In 2014, the EC issued a draft thematic guidance on deinstitutionalisation for desk officers, responsible for overseeing EU funds, stating that ‘[b]uilding or renovating long-stay residential institutions is excluded, regardless of their size’\textsuperscript{116}. However, in June 2018, the Legal Service opinion\textsuperscript{117}, issued by the European Commission and addressed internally to DG Employment, Social Affairs and Inclusion (DG EMPL) and DG Regional and Urban Policy (DG REGIO), advised that investments into long-stay institutions were permitted, as long as the Member State in question made ‘progress in general on ensuring independent living and deinstitutionalisation’, that such support was embedded in the ‘transition process from institutional to community-based care’


\textsuperscript{114} IL Austria and ENIL (2021) Further information regarding the complaint submitted by the European Network on Independent Living and Independent Living Austria in July 2020, ref: CHAP(2020)1883.


\textsuperscript{116} European Commission (2014) Draft thematic guidance fiche for desk officers on the transition from institutional to community-based care (de-institutionalisation).

and in cases of residential institutions ‘for persons requiring constant care and medical supervision’.

According to the 2015 thematic guidance for Member States on the use of ESIFs in tackling educational and spatial segregation, interventions addressing the needs of ‘marginalised communities’ must follow the principles of ‘non-segregation’ and ‘desegregation’. This means that ‘investments in housing or education should not lead to increased concentration or further physical isolation of marginalised groups’\textsuperscript{118}. This guidance, however, has not been applied with regard to interventions related to disabled people, although its scope covers Roma and ‘other socially disadvantaged groups’.

The EU Strategy for the Rights of Persons with Disabilities 2021-2030 puts greater emphasis on independent living and demonstrates a commitment of the European Commission to end the practice of institutionalisation across EU Member States. ENIL welcomes the Commissions’ flagship initiative to issue guidance to Member States on improving independent living and inclusion in community’ by 2023. However, we are concerned that this initiative could sustain or expand the isolation of disabled people in group homes, if it does not explicitly recognise the segregating nature of group homes and emphasises the need to move away from such settings, encouraging the development of a range of community supports and services, such as personal assistance, and creating pathways to accessible and affordable housing.

**Suggested questions for the LOIPR:**

- What measures will the EU take to ensure that EU funds are used for the development of inclusive community services for disabled people, rather than invested in segregating services?

- What measures will the EU take to ensure that its guidance regarding the use of EU Funds is in line with the CRPD and General Comment 5 when it comes to institutions for disabled people, including group homes?

- How will the EU ensure that the planned guidance on improving independent living and inclusion in community will not contribute to re-institutionalisation and segregation of disabled people in small residential settings?

- What guidance will the EU provide to Member States to ensure that EU-funded personal assistance schemes are consistent with the CRPD and General Comment 5?

- Why has the EU not intervened to stop the investment of EU-money in small institutions for disabled people in countries other than Hungary (for example,\textsuperscript{118})

Estonia and Bulgaria)?

- Does the EU plan to ratify the CRPD Optional Protocol?

### Article 23 - Respect for home and the family

#### Continued institutionalisation of children with disabilities

The DataCare project recorded a total number of 302,979 children in residential care in the EU countries\(^{119}\). A disproportionate number of children with disabilities live in institutional and residential care\(^{120}\). For example, in Flanders, the Flemish region of Belgium, 92% of children in institutional care are with disabilities\(^{121}\). In many countries, children with disabilities are much more likely to be placed in institutional care than those without disabilities\(^{122}\).

One of the key factors for the separation of children with disabilities from their families and their placement in residential care is the insufficient or lacking information and support for them and their families\(^{123}\). Without adequate assistance, families are often unable to care for their child at home. Even where support services do exist, they are sometimes insufficient or unequally distributed - mainly concentrated in or around the cities, while access of people living in the countryside to services tends to be much more limited\(^{124}\).

In some countries, children with disabilities can be forcibly taken away from their parents and placed in a residential setting. This is the case, for example, in France, where children with autism are institutionalised against the will of their parents. A report by the UN Special Rapporteur on the rights of persons with disabilities reported that ‘some parents who oppose the institutionalization of their children with disabilities are intimidated and threatened and, in some cases, lose custody of their children, with the children being forcibly institutionalized or subject to administrative placement’\(^{125}\).

While EU funding has been used to advance deinstitutionalisation of children in some Member States, a recent study concluded that ‘national experts were asked to identify

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\(^{122}\) Crowther, N. (2019), op. cit.

\(^{123}\) Lerch, V. and Severinsson, A., op. cit.


the extent to which EU Funds are already used at national level to ensure the rights of the TG [target group], but most noted that they had difficulty tracing information on how EU Funds were being used. There was mostly no further detailed information on how the money was spent, nor on whether the programmes had any direct or indirect impact on children\textsuperscript{126}.

Furthermore, despite policy initiatives promoting the rights of the child at EU level, the Council Recommendation (EU) 2021/1004 of 14 June 2021 establishing a European Child Guarantee still allows for placement of children in institutions. It states, in preamble 24, that: “Placing children in institutional care should be done only when it is in the best interests of the child, taking into account the child’s overall situation and considering the child’s individual needs.” In article 10, on Adequate housing, it recommends that Members States should “take into account the best interests of the child as well as the child’s overall situation and individual needs when placing children into institutional or foster care.”\textsuperscript{127}

**Suggested questions for the LOIPR:**

- How will the EU promote the development of policies and services supporting families and preventing separation and institutionalisation?
- What measures will the EU take to address the practice of institutionalisation of children with disabilities?

**Article 24 - Education**

**Limited support in community and mainstream schools reinforces segregation**

A large number of children with disabilities in Europe remain excluded from quality inclusive education. It has been estimated that at least 75% of children with disabilities in Central and Eastern Europe (CEE) and Central Asia are excluded from quality inclusive education\textsuperscript{128}.

The segregation of children in special settings is facilitated, among others, by the limited support in the mainstream education system and in the community. For example, in Ireland, parents are sometimes encouraged to send their children to special rather than mainstream schools in order to be able to access medical


support. In Luxembourg, specialised services, such as physiotherapy, occupational therapy and speech therapy are only provided in special schools, forcing some parents to choose special education for their children. In Malta, the limited support in mainstream schools is also a hindrance for young disabled people wishing to continue with their studies after completing their compulsory education.

Suggested question for the LOIPR:

- What steps will the EU take to promote the provision of support in mainstream educational settings and in the community, allowing for inclusive education of children with disabilities?

Article 25 - Health

Denial of essential healthcare

Throughout Europe, disabled people have been subjected to unnecessary pain and suffering because of denied medical treatment. For example, in November 2021, members of a Romanian NGO found a 33-year-old, severely malnourished (20kg) woman in a nursing home for older persons. The woman had been subjected to 4 months of unnecessary pain and suffering, having been denied medical treatment for a fracture to her leg.

Denial of healthcare during the COVID-19 pandemic

The COVID-19 pandemic exposed the systemic denial and rationing of healthcare for disabled people across the EU Member States. Guidelines sent to nursing homes by Madrid’s department of health stated that people who cannot move independently, have intellectual disability, or have a comorbidity should not be sent to hospital.

Reports from Italy suggested that doctors were rationing intensive care treatment based on who was ‘deemed worthy of intensive care’.


Suggested question for the LOIPR:

- How will the EU ensure that disabled citizens are not denied the right to healthcare?

Article 27 - Work and employment

Disabled people disproportionately exposed to unemployment and job insecurity

Figures obtained by the EU show that the employment rate of disabled people (aged 20-64) stands at 50.8%, compared to 75% for the general population. In addition, disabled people in employment are more likely to receive temporary contracts, lower wages and are more likely to lose their jobs in economic recessions. This means that disabled people have less access to employment-based social security, making them particularly at risk of poverty.

A recent proposal for a Directive on adequate minimum wages in the European Union recognised that disabled people ‘have a higher probability of being minimum wage or low wage earners than other groups. During economic downturns, such as the Covid-19 crisis, the role of minimum wages in protecting low-wage workers becomes increasingly important and is essential to support a sustainable and inclusive economic recovery’. This Directive that protects the minimum wage for workers is particularly important for disabled citizens, who have been targeted by governments wanting to cut minimum wage. For example, the government of the Netherlands proposed legislation that would have allowed employers to ask disabled employees to take a ‘productivity test’ which would have allowed employers to pay disabled workers less than the minimum wage.

Denial of employment rights in EU funded sheltered workshops

In addition to the essential minimum wage directive, the EU must also act on behalf of the significant number of disabled people who are denied employment rights in sheltered employment. The European Strategy for Persons with Disabilities 2021-2030 recognises that ‘large number of persons with severe disabilities do not work in the

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open labour market, but in facilities offering so-called sheltered employment\textsuperscript{140}. Despite this, EU funding continues to support the construction of sheltered workshops that deny disabled people employment rights. €7.5 million of the European Agricultural Fund for Rural Development (EAFRD) have been used in Upper Austria to build institutions and sheltered employment facilities for disabled people\textsuperscript{141}. A report by the Director-General for Internal Policies at the European Parliament recognised that disabled people in sheltered employment in Austria are denied employment protection laws and are denied access to independent social security\textsuperscript{142}. A complaint filed to the European Commission found that the ‘projects co-financed by EAFRD have… reinforced the segregation, isolation and discrimination of persons with disabilities in Upper Austria’\textsuperscript{143}. EU investment in sheltered workshop violates the Council Directive 2000/78/EC on equal treatment in employment and occupation, which stresses ‘the need to foster a labour market favourable to social integration by formulating a coherent set of policies aimed at combating discrimination against groups such as persons with disability’\textsuperscript{144}. Despite this, the EU has failed to take any concrete action, for example by sanctioning the use of EU funding or providing guidance to Member States.

**European Solidarity Corps promoting employment and volunteering in institutions**

The European Solidarity Corps is an EU initiative to support youth employment across the EU. Jobs and volunteering opportunities included under ‘disability inclusion’ include an institution which houses 40 disabled people\textsuperscript{145}, a boarding school for 54 disabled children\textsuperscript{146} and another boarding school for more than 200 disabled children\textsuperscript{147}. These placements support the maintenance of institutions in Europe. Furthermore, voluntary work in an institution is misrepresented as ‘disability inclusion’.

**Suggested questions for the LOIPR:**

- What measures will the EU take to protect disabled workers against precarious employment?


\textsuperscript{145} https://europa.eu/youth/volunteering/organisation/48972_en

\textsuperscript{146} https://europa.eu/youth/volunteering/organisation/50893_en

\textsuperscript{147} European Youth Portal (2022). Available at https://europa.eu/youth/volunteering/organisation/62309_en
• What measures will the EU take to ensure that EU funds are not misused to build sheltered employment that denies disabled people their employment rights?
• What measures will the EU take to ensure that the European Solidarity Corps does not support employment and volunteering in institutions?

Article 28 - Adequate standard of living and social protection

Disproportionate impact of austerity on disabled people

The COVID-19 pandemic has accelerated poverty among disabled people. The rising cost of living, inflation, and housing crises, together with a breakdown of supports and services resulted in disabled people not being able to afford essentials, including food and medication\(^{148}\). The pandemic follows more than a decade of austerity measures required by the International Monetary Fund (IMF), the European Commission and the European Central Bank. The austerity measures required by the IMF, European Commission and the European Central Bank are a clear example of how European policy places disabled citizens at greater risk of poverty. These austerity measures have had a devastating and disproportionate impact on disabled people. For instance, the Irish government reduced disability allowance and the drug payment scheme which subsidises additional medical costs. Austerity measures remained in place for disabled people, despite Ireland’s exit from the Troika\(^{149}\) in 2014\(^{150}\). Austerity measures were misused to justify cutbacks to supports and services that enable disabled people to live independently in the community. In the case of the United Kingdom, the UN Committee on the Rights of Persons with Disabilities recognised that use of austerity measures led to grave and systematic human rights violations\(^{151}\).

Suggested question for the LOIPR:

• How will the EU ensure that disabled people are not disproportionately impacted by austerity measures?


\(^{149}\) The Troika was made up of the European Commission (EC), the European Central Bank (ECB) and the International Monetary Fund (IMF) to oversee austerity measures.


\(^{151}\) Committee on the Rights of Persons with Disabilities (2017). Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fIC%2f15%2f4&Lang=en
Article 32 - International cooperation

Lack of support to deinstitutionalisation reforms outside EU

ENIL, in cooperation with the European Disability Forum, carried out research into the use of EU external action funding (i.e. its development and humanitarian aid) for the purpose of supporting deinstitutionalisation reforms. As the world’s largest donor and the only regional organisation to have ratified the CRPD, the EU is in a strong position to provide leadership on this issue and to facilitate better access to the right to live independently and being included in the community. This is especially so during the process of EU enlargement.

In consultation with DPOs from countries benefitting from EU funding, we have identified the following key concerns: a) there is a lack of projects on deinstitutionalisation funded by the EU; b) deinstitutionalisation is understood as moving residents from large to small institutions; c) there is a lack of clear criteria (which would ensure compliance with the CRPD) for the selection of projects; d) contracts are awarded to beneficiaries with the lack of expertise on deinstitutionalisation; e) there is a lack of sustainability of the newly-developed services, as a result of which people might lose support once the funding ends; f) it is extremely difficult, if not impossible, to access comprehensive information about the projects funded; and g) there is a lack of involvement of DPOs in programming, implementation and monitoring of EU funds globally. Finally, we have found that EU’s reliance on international organisations, including UN agencies, to implement the projects excludes DPOs from decisions and processes which concern them.

Suggested question:

- What measures is the EU taking to ensure that the EU external action funding only supports projects compliant with the CRPD, and does not reinforce the segregation of disabled people in large or small institutions?

Article 33 - Implementation and monitoring

Inadequate investigation of alleged human rights violations

In 2020, ENIL and its members submitted complaints to the European Commission concerning the segregation and social exclusion of disabled people in institutions funded by the European Regional Development Fund (ERDF) in Romania and Estonia. The European Commission responded almost one year after the complaint.


was made. The Commission claimed that the investments are not violating EU law\textsuperscript{154}. Their response stated that there is no ‘general and absolute prohibition to support long-stay residential institutions’\textsuperscript{155}. The response from the Commission also stated that Member States are responsible for the drawing up of the programmes and selecting the projects which will be co-financed by the ESI Funds. It is up to Member States to set up the operations they would like to co-finance in the context of the process to ensure independent living arrangements and deinstitutionalisation\textsuperscript{156}.

The Commission’s examination of the complaints was limited to a paper-based assessment of strategies, plans and other documents provided by the Managing Authorities in the two countries\textsuperscript{157}. Romanian authorities have consistently denied the use of torture and physical restraints in institutions, despite video evidence of torture including children tied to beds, tied to door handles and placed in solitary confinement\textsuperscript{158,159}. These institutions used ESI Funds for their so-called de-institutionalisation programmes.

**Inadequate complaints mechanism**

The European Commission has introduced a complaints system for breaches of EU law\textsuperscript{160}, which ENIL has used to file complaints against the Managing Authorities in EU Member States using ESI Funds to build or renovate institutions for disabled people. We have filed several complaints in relation to Romania, Poland and Austria, mostly in cooperation with our members from these countries. In addition to this system, we have used other avenues (i.e. contacting the relevant Commission services) to file complaints against Hungary, Bulgaria, Portugal and Estonia, among other.

To this date, despite the strong legal basis provided by EU’s and the Member States’ ratification of the CRPD, the European Commission has not found a single breach of EU law in response to our complaints and has relied on its Legal opinion from 2018 to justify investments in institutions for disabled people. All decisions regarding our complaints have consistently interpreted the CRPD and the General Comment 5 as allowing investments in institutions.

In addition to using the Commission’s complaints system, ENIL and our members have filed a petition against Bulgaria to the Petitions Committee at the European Parliament (Petition no. 0862/2018) and a complaint against the European Commission for allowing investments into institutions in Hungary and Portugal to the European

\begin{itemize}
  \item \textsuperscript{154} Ibid
  \item \textsuperscript{156} Ibid
  \item \textsuperscript{157} Ibid
  \item \textsuperscript{160} See: https://ec.europa.eu/assets/sg/report-a-breach/complaints_en/index.html.
\end{itemize}
Ombudsman (Case 1233/2019)\textsuperscript{161}. Furthermore, we have taken a case to the General Court in Luxembourg (Case T-613/19), challenging the Commission’s lack of action to stop EU funds investments in institutions in Bulgaria. The case was dismissed on procedural grounds.

**Inadequate EU response to human rights violations**

Following the CRPD Committee inquiry report on Hungary, which criticised the re-institutionalisation of disabled people in EU-funded ‘supported housing’ (project EFOP-2.2.2-17), the European Commission intervened and stopped the continuation of this process (project EFOP-2.2.5-17), raising concern about the housing model\textsuperscript{162}. However, the Commission has failed to apply its recommendations for Hungary to other countries with similar practices, despite the numerous complaints submitted by ENIL and its members (as listed above). We have been unable to bring our complaints directly to the CRPD Committee, as the EU has not yet ratified the CRPD Optional Protocol.

**Suggested questions for the LOIPR:**

- What concrete measures will the EU take to investigate accusations of human rights abuses?
- What measures will the EU take to ensure that its complaint mechanism for breaches of EU law involves adequate investigation, which is not limited to review of submitted by the government documents, but also includes independent assessment (for example, by national human rights institutions)?)


Appendix 1: The list of Concluding Observations on the initial report of the European Union relevant to this report

Article 5 Equality and non-discrimination

The Committee recommends that the European Union adopt its proposed horizontal directive on equal treatment, extending protection against discrimination to persons with disabilities, including by the provision of reasonable accommodation in all areas of competence. The Committee also recommends that the European Union ensure that discrimination in all aspects on the grounds of disability is prohibited, including multiple and intersectional discrimination.

Article 7 Children with Disabilities

23. The Committee recommends that the European Union take the necessary measures, including through the use of the European Structural and Investment Funds and other relevant European Union funds, to develop support services for boys and girls with disabilities and their families in local communities, foster deinstitutionalization, prevent any new institutionalization and promote social inclusion and access to mainstream, inclusive, quality education for boys and girls with disabilities. The Committee also recommends that the renewed Agenda for the Rights of the Child include a comprehensive rights-based strategy for boys and girls with disabilities and safeguards to protect their rights. The Committee further recommends that all disability strategies address and mainstream the rights of boys and girls with disabilities.

Article 11 Situations of Risk and Humanitarian Emergencies

33. The Committee recommends that the European Union: (a) adopt an implementation plan in line with the Council conclusions on disability-inclusive disaster management of February 2015 and the Sendai Framework for Disaster Risk Reduction 2015-2030; (b) establish a mechanism to build capacity and share good practices among the different European Union institutions and among its Member States on disability-inclusive and accessible humanitarian aid; (c) establish a monitoring and accountability framework for the implementation of European Union policies and programmes, including the collection of data disaggregated by sex, disability and age.

Article 12 Equal recognition before the law

37. The Committee recommends that the European Union take appropriate measures to ensure that all persons with disabilities who have been deprived of their legal capacity can exercise all the rights enshrined in European Union treaties and legislation, such as access to justice, goods and services, including banking, employment and health care, as well as voting and consumer rights, in line with the Convention, as developed in the Committee’s general comment No. 1 (2014) on equal recognition before the law. The Committee also recommends that the European Union step up efforts to foster research, data collection and exchange of good practices on
supported decision-making, in consultation with representative organizations of persons with disabilities.

**Article 14 Liberty and security of persons**

The UN Committee on the Rights of Persons with Disabilities expressed concern ‘about the involuntary detention of persons with disabilities in psychiatric hospitals or other institutions on the basis of actual or perceived impairment’.

**Article 18 Freedom of Movement**

49. The Committee recommends that the European Union take immediate action to ensure that all persons with disabilities and their families can enjoy their right to freedom of movement on an equal basis with others, including with regard to the portability of social security benefits, in a coordinated manner across its Member States.

**Article 19 Living independently and being included in the community**

51. The Committee recommends that the European Union 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. The Committee also recommends that the European Union suspend, withdraw and recover payments if the obligation to respect fundamental rights is breached.

**Article 23 Respect for Home and the Family**

57. The Committee recommends that the European Union take appropriate measures to ensure that its economic and social policies and recommendations promote support for families with persons with disabilities and ensure the right of children with disabilities to live in their communities.

**Article 24 Education**

61. The Committee recommends that the European Union evaluate the current situation and take measures to facilitate access to and enjoyment of inclusive, quality education for all students with disabilities in line with the Convention and include disability-specific indicators in the Europe 2020 strategy when pursuing the education target.

**Article 25 Health**

63. The Committee recommends that the European Union explicitly prohibit discrimination on the grounds of disability in the field of health care and take measures to ensure access to quality health care for all persons with all types of disabilities. It also recommends that the European Union evaluate the impact of the European Parliament and the Council of the European Union Directive 2011/24/EU on patients’ rights in cross-border health care with regard to gaps in access for persons with disabilities, including accessible information, reasonable accommodation and training
of professionals’.

**Article 27 Work and Employment**

The Committee recommends that the European Union take effective action to measure the employment of persons with disabilities and to increase their employment rate in the open labour market, including by providing training for Member States on reasonable accommodation and accessibility in the context of employment.

**Article 28 Adequate standard of living and social protection**

67. The Committee recommends that the European Union take urgent measures, in cooperation with its Member States and representative organizations of persons with disabilities, to prevent further adverse and retrogressive effects of the austerity measures on the adequate standard of living of persons with disabilities, including by setting a social protection floor that respects the core content of the right to an adequate standard of living and to social protection.
Appendix 2: Explanation of EU competencies by CRPD article, as relevant to this report

Article 5 Equality and non-discrimination
Article 21 of the Charter of Fundamental Rights prohibits discrimination on multiple grounds, including disability.

Article 7 Children with Disabilities
Article 3(3) of the Treaty on European Union establishes the objective for the EU to promote protection of the rights of the child. Article 24 of the Charter of Fundamental Rights of the EU states that ‘children shall have the right to such protection and care as is necessary for their well-being’

Article 10 Right to Life
Article 2 of the European Charter of Fundamental Rights protects the Right to life of European Union citizens. Likewise, Article 2 of the European Convention on Human Rights protects the Right to Life. In the case of Jasinskis v. Latvia, the European Court of Human Rights reiterated that ‘Article 2 of the Convention not only required a State to not “intentionally” take a life, but also to take appropriate steps to safeguard the lives of those within its jurisdictions’\(^\text{163}\).

Article 11 Situations of Risk and Humanitarian Emergencies
The European Commission is a signatory to the Sendai Framework for Disaster Risk-Reduction. The Commission says it is at ‘the forefront of promoting risk reduction and anticipatory actions and ‘supports the adoption of a risk-informed approach into all EU policies and programmes’\(^\text{164}\). The European Commission has also endorsed the Charter on Inclusion of Persons with Disabilities in Humanitarian Action (2016) which recognises that ‘persons with disabilities and their representative organizations have untapped capacity and are not sufficiently consulted or actively involved in decision-making processes concerning their lives, including in crisis preparedness and response coordination mechanisms’\(^\text{165}\). The Eurocodes outline mandatory building standards for EU Member States\(^\text{166}\).

Article 14 Liberty and security of persons Article 6 of the EU Charter of Fundamental Rights ensures that ‘everyone has the right to liberty and security of person’. Article 5 of the European Convention on Human Rights protects the right to

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\(^\text{166}\) Eurocodes Available at: [https://eurocodes.jrc.ec.europa.eu/showpage.php?id=1](https://eurocodes.jrc.ec.europa.eu/showpage.php?id=1)
liberty and security. In the case of Stanev v. Bulgaria, the Grand Chamber of the European Court of Human Rights held that there had been a violation of the right to liberty and security, in that the applicant had been illegally detained in a social care home against his will\textsuperscript{167}.

**Article 15 Freedom from torture or cruel, inhuman, or degrading treatment or punishment**

Article 4 of the EU Charter of Fundamental Rights states that ‘no one shall be subjected to torture or to inhuman or degrading treatment or punishment.’ Likewise, Article 3 of the European Convention on Human Rights ensures that ‘no one shall be subjected to torture or to inhuman or degrading treatment or punishment’. In the case of Aggerholm vs. Denmark (2020) the European Court of Human Rights ‘held that there had been a violation of Article 3 (prohibition of inhuman and degrading treatment) of the Convention, finding that the Danish authorities had not sufficiently proven that continuing to strap the applicant to a restraint bed for 23 hours had been strictly necessary\textsuperscript{168}.

**Article 18 Freedom of movement**

The freedom of movement of EU citizens is established by Article 3(2) of the Treaty on European Union, Article 21 of the Treaty on the Functioning of the European Union and Article 45 of the Charter of Fundamental Rights of the European Union.

**Article 19 Living independently and being included in the community**

Article 26 of the Charter of Fundamental Rights of the European Union states that the ‘Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.’

The EC Strategy for the Rights of Persons with Disabilities 2021 – 2030 identifies “developing independent living and reinforcing community-based services” as one of the three priorities for the EU. It promises that the “Commission will support national, regional and local authorities in their efforts for deinstitutionalisation and independent living, including through the 2021 – 2027 shared management funds”.

Section 13 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council states that ‘the Union should, at all stages of implementation of the ESI Funds, aim at eliminating inequalities and at promoting equality between men and women and integrating the gender perspective, as well as at combating discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

The EU Declaration of Competences\textsuperscript{169} and its updated version establishes direct link between the regulations governing ESI Funds and the UN CRPD\textsuperscript{170}.

**Article 23 Respect for Home and the Family**

Article 7 of the European Charter for Fundamental Rights says that ‘everyone has the right to respect for his or her private and family life, home and communications’. Likewise, Article 8 of the European Convention on Human Rights states that ‘everyone has the right to respect for his private and family life, his home and his correspondence’.

**Article 25 Health**

Article 35 of the EU Charter of Fundamental Rights ensures that ‘everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.’

**Article 27 Work and Employment**

Council Directive 2000/78/EC on the equal treatment in employment and occupation protects persons with disabilities from discriminations and requires that reasonable accommodation is provided to enable persons with disabilities to “have access to, participate in, or advance in employment” (Article 5). The European Pillar of Social Rights, on inclusion of persons with disabilities recognises the right of persons with disabilities to “services that enable them to participate in the labour market and in society, and a work environment adapted to their needs”.

**Article 28 Adequate standard of living and social protection**

Combating poverty, social exclusion and discrimination are specific social policy goals of the EU and its MS\textsuperscript{171}. The European Pillar of Social Rights Action Plan aims to reduce the number of EU citizens at risk of poverty or social exclusion by at least 15 million by 2030\textsuperscript{172}.


\textsuperscript{170} See also Quinn, G., de Búrca, G., Bell, M., Lawson, A., Stein, M, Mattsson, T., and Clements, L. (2018). Legal memo Segregation and segregated facilities as a prima facie form of discrimination. The Impe

\textsuperscript{171} See also Quinn, G., de Búrca, G., Bell, M., Lawson, A., Stein, M, Mattsson, T., and Clements, L. (2018). Legal memo Segregation and segregated facilities as a prima facie form of discrimination. The Impe
