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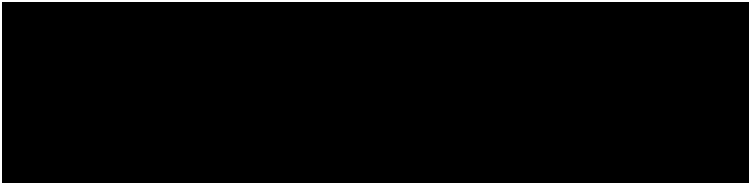
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European Commission

Directorate-General for Agriculture and Rural Development



Vienna, Brussels, 27/04/2023

Subject: Further information regarding the complaint submitted by the European Network on Independent Living and Independent Living Austria in November 2022

Ref: CHAP(2022) 03039

Dear 

We thank you for your letter dated 30 March 2023 (henceforth referred to as “the letter”) in response to the complaint dating from November 2022 introduced by the European Network on Independent Living (ENIL) and Independent Living Austria (ILA) against the State Government of Carinthia with regard to the segregation and social exclusion of children with disabilities in a facility which is co-financed by the European Agricultural Fund for Rural Development (EAFRD). We appreciate the efforts of the European Commission to examine the arguments brought forward by ENIL and ILA. However, to provide the European Commission with further evidence to evaluate a breach of EU law we would like to present the following additional information:

### **1. Shared management between the Member States and the Commission**

The European Commission emphasizes the shared management between the Member States and Commission for the implementation of specific measures and projects within the European Structural and Investment Funds (ESIF) partnership agreement. However, “shared management” does not imply shifting the sole responsibility for the projects co-financed by ESIF to the Member State. According to the ESIF Regulations, the European Commission has a responsibility to monitor and control if ESIF is used according to the goals and standards defined in the respective partnership agreement and the Operational Programmes.

In case C-I 17/14, *Nisttahuz Podava*, cited in the letter to support the argument that implementing EU funds does not constitute an application of EU law that would trigger the application of the EU Charter on Fundamental Rights (“the Charter”), the question analyzed is not equivalent to that of our complaint. The cited case establishes that the fact that the contract object of the case may be financed by

structural funds is not sufficient, in itself, to fulfill the conditions of article 51 in the Charter. However, this does not imply that it cannot be applicable in all cases concerning EU funds. In the *Nisttahuz Podava* case, the use of structural funds was possible as a co-financing mechanism, but the cited case does not concern the management of the funds by the national authorities, unlike the case at the center of our complaint.

To this regard, the Commission has considered in the past that the implementation of ESI funds is indeed an implementation of EU law under the scope of the Charter, under the Commission notice: Guidance on ensuring the respect for the Charter of Fundamental Rights of the European Union when implementing ESIF, C/2016/4384. This notice states: “in the context of the implementation of the ESIF, all the Member States' actions undertaken for the implementation of the applicable regulations fall within the scope of EU law.” The notice further explains which specific situations fit the conditions of article 51 of the Charter, in which implementation by the national authorities is specifically mentioned, particularly regarding non-discrimination and the integration of disabled people. It would be contradictory to the European Commission’s own opinion that in the case concerned by our complaint, the Charter would not apply due to the shared management of the funds.

## **2. Sources of evidence referred to by the European Commission**

The European Commission refers to a communication with the Austrian authorities regarding the conditions of the residential facility. We would first like to stress that no matter how “humane” the conditions of a residential facility are, it remains a violation of the United Nations Convention on the Rights of Persons with Disabilities (CRPD). Despite this, we await to receive the documentation referring to this communication with the Austrian authorities by the Commission, that we have already requested.

However, we would have expected that the European Commission would consult with independent organizations that may provide a less biased opinion, such as Human Rights bodies in Austria. This would include the Independent Monitoring Committee for the implementation of the UN CRPD, the Austrian Ombudsman Board and the Austrian Disability Ombudsman.

## **3. Opinion of the Carinthia Monitoring Committee**

Further to the above, the Carinthian Monitoring Committee has endorsed the complaint CHAP(2022) 03039 to the European Commission, stating that “the new building of an institution for disabled children in Carinthia massively endangers their human rights”. The Committee “urgently recommends that the province of Carinthia meet the demands for family-centered support services and to immediately stop the construction of new segregating institutions that endanger human rights”. Please see Annex I to this letter for the statement of the Carinthian Monitoring Committee.

## **4. Austrian Disability Council’s involvement in the design and selection criteria of the projects**

The European Commission received the information that the Austrian Disability Council is involved in the supervisory committee and has voting rights, and therefore they have an impact in the design and selection criteria of the projects.

After contacting the Austrian Disability Council and making them aware of the pre-closure letter in case CHAP(2022) 03039, they have asserted that they contest this affirmation. Despite being represented in the Advisory Committee, they are only informed about selected content in the

meetings, which take place twice a year. They do not have the possibility to approve or reject funding, and they do not have access to information about the funded projects.

Not only does the Austrian Disability Council not support these projects, but on the contrary, in 2019, the Austrian Disability Council together with the then member of the EAFRD Advisory Committee submitted a complaint to the Ministry of Social Affairs regarding the use of funds for the construction of institutions. In a discussion with the Ministry of Social Affairs as well as with the Ministry of Agriculture, the Austrian Disability Council handed over an information letter which shows how a CRPD-compliant use of funds would work. This document was then brought to the attention of the EAFRD Managing Authorities and the Laender by the Ministry of Social Affairs. However, they state that their recommendations have been ignored.

In light of these comments, the affirmation that the Austrian Disability Council has an impact on the design and selection criteria of the projects and agrees with the building of facilities such as the one which is subject of complaint CHAP(2022) 03039 is false. Please see Annex II to this letter for the statement of the Austrian Disability Council.

#### **5. United Nations Special Rapporteur on the Rights of Persons with Disabilities report on the European Union**

In the report of the United Nations Special Rapporteur on the Rights of Persons with Disabilities ('the Special Rapporteur') visit to the EU in 2022, presented in March 2023 to the Human Rights Council, the Special Rapporteur expresses his concern about the misinterpretation of the requirements of the CRPD regarding independent living from EU officials.<sup>1</sup> The Special Rapporteur criticizes the opinion of the Legal Service from 2018 in which, in its view, the progressive realization of the right to independent living is compatible with financing long-term stay institutions, as long as there is progress towards independent living. According to the Special Rapporteur, this is an incorrect understanding of the CRPD.

The Special Rapporteur supports the view of the European Ombudsman in its Decision on the own initiative inquiry into how the European Commission monitors EU Structural and Investment funds to ensure they are used to promote the right of persons with disabilities to independent living and inclusion in the community (OI/2/2021/MHZ).<sup>2</sup> The European Ombudsman states that in cases of breach of the CRPD regarding EU funds, and particularly in the case of institutions, the European Commission should resort to the infringement procedure to end the violation.

We wish to bring to your attention the call of the Special Rapporteur to end funding towards institutions, and hope that the European Commission reconsiders its position in light of the Special Rapporteur's report.

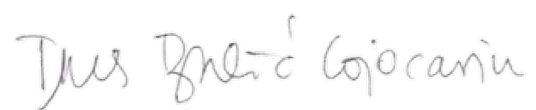
We respectfully request that you review your decision in the complaint brought by ENIL and ILA (CHAP(2022) 03039), taking into consideration this additional information, to ensure compliance with the relevant EU law on the rights of persons with disabilities.

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<sup>1</sup> Visit to the European Union - Report of the Special Rapporteur on the rights of persons with disabilities, Gerard Quinn. A/HRC/52/32/Add.1. 28 December 2022. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/613/97/PDF/G2261397.pdf?OpenElement>

<sup>2</sup> European Ombudsman. Decision on the own initiative inquiry into how the European Commission monitors EU Structural and Investment funds to ensure they are used to promote the right of persons with disabilities to independent living and inclusion in the community (OI/2/2021/MHZ). 3 February 2021. Available at <https://www.ombudsman.europa.eu/en/decision/en/155353>

Yours sincerely,

A handwritten signature in black ink that reads "Ines Bulic Cojocariu". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

Ines Bulic Cojocariu  
Director  
European Network on Independent Living

Bernadette Feuerstein  
Chair woman  
Independent Living Austria

## Menschenrechte behinderter Kinder durch Neubau von Institution gefährdet

Der Kärntner Monitoringausschuss sieht durch den Neubau einer Institution für behinderte Kinder in Kärnten ihre Menschenrechte massiv gefährdet. Der Ausschuss verweist diesbezüglich auf die 3. offizielle Beschwerde von Selbstbestimmt Leben Österreich (SLIÖ) und des Europäischen Netzwerks für Selbstbestimmtes Leben (ENIL) bei der EU-Kommission und schließt sich der geäußerten Kritik an:

[https://www.ots.at/presseaussendung/OTS\\_20221103\\_OTS0056/rechte-von-behinderten-kindern-werden-in-oesterreich-ignoriert](https://www.ots.at/presseaussendung/OTS_20221103_OTS0056/rechte-von-behinderten-kindern-werden-in-oesterreich-ignoriert)

Entgegen der im Übereinkommen der UN-Konvention über die Rechte von Menschen mit Behinderungen verankerten Forderungen nach De-Institutionalisierung und dem Ausbau von Unterstützungsstrukturen für die Familien behinderter Kinder, wird in Kärnten im Jahr 2022 eine Institution für behinderte Kinder neu errichtet.

Petra Flieger, Expertin für die Menschenrechte behinderter Kinder, kritisierte die österreichischen Missstände bereits 2020<sup>1</sup> und forderte den Ausbau von „Dienstleistungen wie Mobile Hilfsdienste und Persönliche Assistenz bedarfsgerecht für Kinder und Erwachsene mit Behinderungen in ganz Österreich.“

Der Kärntner Monitoringausschuss verweist in diesem Zusammenhang auch auf seine Stellungnahme zur fehlenden De-Institutionalisierung in Kärnten (Feber 2022):

[http://www.monitoring-ktn.at/wp-content/uploads/2022/04/Stellungnahme\\_bfz-Projekt-neu\\_070222.pdf](http://www.monitoring-ktn.at/wp-content/uploads/2022/04/Stellungnahme_bfz-Projekt-neu_070222.pdf)

Der Monitoringausschuss empfiehlt dem Land Kärnten dringend, den Forderungen nach bedarfsgerechten, familienzentrierten Unterstützungsangeboten nachzukommen und den Neubau menschenrechtsgefährdender und segregierender Institutionen unverzüglich zu stoppen.

Der Kärntner Monitoringausschuss  
Klagenfurt, 17. November 2022

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<sup>1</sup> Siehe <http://bidok.uibk.ac.at/download-stimme/stimme-flieger-der-aktuelle-kampf-gegen-die-institutionalisierung-behinderter-menschen.pdf>

## **Human rights of disabled children threatened by new institution**

The Carinthian Monitoring Committee considers that the new building of an institution for disabled children in Carinthia massively endangers their human rights. The committee refers to the 3rd official complaint of Selbstbestimmt Leben Österreich (SLIÖ) and the and the European Network for Self-Determined Living (ENIL) to the EU Commission and endorses the criticism expressed:

[https://www.ots.at/presseaussendung/OTS\\_20221103\\_OTS0056/rechte-von-behindertenkindern-werden-in-oesterreich-ignoriert](https://www.ots.at/presseaussendung/OTS_20221103_OTS0056/rechte-von-behindertenkindern-werden-in-oesterreich-ignoriert) (link to ENIL / ILA press release in German)

Contrary to the demands for de-institutionalization and the expansion of support structures for families of children with disabilities enshrined in the UNCRPD an institution for disabled children will be newly established.

Petra Flieger, an expert on the human rights of disabled children, criticized the Austrian grievances as early as 20201 and called for the expansion of "services such as Mobile Assistance Services and Personal Assistance in line with demand for children and adults with Disabilities throughout Austria."

In this context, the Carinthian Monitoring Committee also refers to ist statement on the lack of de-institutionalization in Carinthia (February 2022): [http://www.monitoring-ktn.at/wp-content/uploads/2022/04/Stellungahme\\_bfz-Projektneu\\_070222.pdf](http://www.monitoring-ktn.at/wp-content/uploads/2022/04/Stellungahme_bfz-Projektneu_070222.pdf)

The Monitoring Committee urgently recommends that the province of Carinthia meet the demands for family-centered support services and to immediately stop the construction of new segregating institutions that endanger human rights.

The Carinthian Monitoring Committee

Klagenfurt, November 17, 2022

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[Redacted]

**Betreff:** Re: CHAP(2022)03039 - Your complaint concerning a facility for children with disabilities in Carinthia cofinanced under the Austrian RDP 2014-2020 - Pre-closure - Ares(2023)2314323

Liebe [Redacted]

vielen Dank für die Information.

Es ist leider genau, wie beim letzten Mal. Der Behindertenrat ist im ELER Begleitausschuss vertreten. Dieser setzt das Partnerschaftsprinzip nicht gehörig um. Wir werden in diesen (ca 2mal im Jahr stattfindenden) Sitzungen lediglich über ausgesuchte Inhalte informiert. Der Behindertenrat hat keine Möglichkeit, irgendwelchen Förderungen zuzustimmen oder diese abzulehnen. Wir haben auch keinen Zugang zu den geförderten Projekten dh wir wissen nichtmal, wohin die ganzen ELER Gelder fließen. Wir haben den verantwortlichen Stellen bereits Kurzinformationen dazu zusammengestellt, was im sozialen Bereich prinzipiell aus behindertenrechtlicher Sicht gefördert werden könnte. Offensichtlich wird diese Information nachhaltig ignoriert.

Liebe Grüße,

[Redacted]

M  
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ZVR-Zahl: 413797266

Dear [REDACTED]

thank you very much for the information.

Unfortunately, it is just like last time. The Disability Council is represented in the EAFRD Monitoring Committee. This one does not implement the partnership principle properly. We are only informed about selected contents in these meetings (which take place about 2 times a year). The Disability Council has no possibility to approve or reject any funding. We also have no access to the funded projects, i.e. we do not even know where all the EAFRD money goes. We have already provided the responsible authorities with brief information on what could be funded in principle in the social sector from the point of view of disability law. Obviously this information is sustainably ignored.

Kind regards,

[REDACTED]

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[REDACTED]

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